

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Cherokee County

Frank R. Addy, Circuit Court Judge

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**RECEIVED**

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**S.C. Supreme Court**

JEREMY RICHARD PHILLIPS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212165

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APPENDIX

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Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 (The following takes place in the presence of the  
2 jury.)

3 MR. WEATHERFORD: Your Honor, that's all the questions  
4 I have for this.

5 CROSS-EXAMINATION

6 BY MR. MORIN

7 Q Mr. Phillips, what year did you say you graduated from  
8 Broome High School?

9 A '96, sir.

10 Q And did you go into the Army directly from high  
11 school?

12 A I believe it was January of '97, sir.

13 Q What did you do from June of '96 to January of '97?

14 A I was working at Fulton Competition. He builds racing  
15 engines on 221.

16 Q Okay. Then you went into the Army.

17 A Yes, sir.

18 Q You were there three years.

19 A Yes, sir.

20 Q Jumping out of planes and doing all kinds of stuff.

21 A Yes, sir.

22 Q How much money did you make a day when you were in the  
23 Army? What was your regular salary?

24 A It just, it varied depending on pay grade, depending  
25 on how many jumps you done, different things. They call it

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

- 1 B. A. S. and B. A. H. and B. A. Q., which was if we was in  
2 the field training that month, we would get paid for food,  
3 different allotments for all different types.
- 4 Q Okay. I'm not going to submit these numbers to the I.  
5 R. S. In general, during those three years how much money  
6 did you make?
- 7 A Anywhere between, rough guess, would say \$13,000 to  
8 \$18,000 a year or something.
- 9 Q Thirteen to eighteen thousand.
- 10 A Yes, sir, between the three years.
- 11 Q All right. Why did you leave the Army?
- 12 A My A. T. S. day come up.
- 13 Q Well, I know. But when your A. T. S. date came up you  
14 were what, 21 or 22?
- 15 A Yes, sir.
- 16 Q So why did you leave?
- 17 A I just decided to get out, didn't want to reenlist at  
18 the time.
- 19 Q Why not?
- 20 A I just didn't want to.
- 21 Q Okay. So you got out. And where did you move to from  
22 there?
- 23 A I moved back to Oakdale.
- 24 Q Back behind grandma and grandpa?
- 25 A No, sir. I had a trailer over beside my mama and

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

- 1 daddy's house.
- 2 Q Beside mama and daddy.
- 3 A Yes, sir.
- 4 Q Okay. And did you work then?
- 5 A Yes, sir.
- 6 Q Where did you work?
- 7 A I worked in different construction jobs. I believe
- 8 the first one I got when I got back from there was A. I.
- 9 C., American Industrial Contractors. And then I went to
- 10 work for Mountain View Construction.
- 11 Q What was the longest period you worked at any place?
- 12 A Mountain View Construction. I worked there probably
- 13 about two and a half or three years, something like that.
- 14 Don't hold me to the exact number but...
- 15 Q Well, I understand. I'm not going to hold you to
- 16 specific times.
- 17 A Yes, sir.
- 18 Q Because that would be silly.
- 19 A Yes, sir.
- 20 Q But-and I also understand there's some testimony about
- 21 a child you have. Do you have a child?
- 22 A Yes, sir.
- 23 Q I didn't hear you mention that. How old is your
- 24 child?
- 25 A He's six years old.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

- 1 Q And where does he stay?
- 2 A He lives in Cowpens as well.
- 3 Q Okay. Now, back in the summer of 2006 you were doing
- 4 odd jobs for your grandfather. Is that the way I
- 5 understood it?
- 6 A Yes, sir; yes, sir.
- 7 Q Cutting grass and cleaning the pool.
- 8 A Yes, sir.
- 9 Q That kind of stuff.
- 10 A I was also working with this crew called the Cleaning
- 11 Team, yes, sir. You know, it was just part time. He had a
- 12 full crew.
- 13 Q Just part time.
- 14 A Yes, sir.
- 15 Q So during this time you really, you really didn't have
- 16 any specific time that you had to get up in the morning.
- 17 A No, sir.
- 18 Q Let me ask you this.
- 19 A I didn't have to clock in nowheres:
- 20 Q When you was in the Army you had a certain time you
- 21 had to get up, right?
- 22 A Yes, sir, you did.
- 23 Q And had certain places you had to be.
- 24 A Yes, sir.
- 25 Q Had certain jobs you had to do.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 A Yes, sir.

2 Q After you got out of the Army you didn't have certain  
3 places you had to be.

4 A Well, I did.

5 Q When you were working for those two years.

6 A Yes, sir. Well, I did, you know, pretty regular. I  
7 worked all kinds of different odd jobs, you know.

8 Q Well, I understand but --

9 A Anything I could get my hands on, hands-on work, you  
10 know. No office work or nothing like that.

11 Q But that was time to time. That wasn't every day. I  
12 mean, some days you got up off work and some days you  
13 didn't.

14 A Yes, sir. That's the how it is in any construction  
15 field.

16 Q I understand. And course when you went into the  
17 construction field, you didn't have any training in that.  
18 The Army didn't give you any training in that.

19 A No.

20 Q That was just something you went into.

21 A Yes, sir.

22 Q So, you know, if you need any money, then you'd see  
23 about what jobs pay most.

24 A I've always been able to do anything with my hands  
25 work-wise.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 Q And how were you paying -- how were you supporting  
2 your son?

3 A I mainly just gave her money through different pay  
4 checks from time to time, you know. But me and her had a  
5 bad falling out, you know. And she just kind of completely  
6 withdrew from me and got a new boyfriend. She tried to  
7 claim the young'un wasn't mine and everything else, I mean.

8 Q Did your parents and your grandparents give you money  
9 to give to your son?

10 A No, sir.

11 Q Did you ever pay any rent since you've been out of the  
12 Army?

13 A Yes, sir.

14 Q Where?

15 A I lived on Turkey Ridge Road down here in Goucher. I  
16 rented from --

17 Q How long did you live down there?

18 A Probably about 16 or 18 months, be a year and a half  
19 or something like that.

20 Q All right.

21 A Yes, sir. I bought a trailer from the repo lot down  
22 here across at the intersection of 105 and moved it in down  
23 there.

24 Q Now, we come to the -- we come to 2006 in the summer,  
25 and you are staying in this trailer that's behind your

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 grandpa's barn.

2 A Yes, sir. It was my trailer I had bought that I just  
3 moved it back down there behind my grandpa's.

4 Q Okay. And he's not, he wasn't charging you anything  
5 for that.

6 A No, sir. He kept me working.

7 Q Because you stated that your daily routine of the  
8 neighborhood, because basically as the way I understand it  
9 from your testimony is the daily routine in the  
10 neighborhood goes Hazel, Jesse, Alberto, Juan, you and  
11 Nakia, the six of you. That's who lives in the  
12 neighborhood, right?

13 A There's 14 houses. That's, that's pretty much the bad  
14 half of the neighborhood that you've just named.

15 Q You're in that half.

16 A No, sir; no, sir. You've named, you've named only  
17 alcoholics, you know, you know what I'm saying. They're  
18 only troublemakers. The rest of the neighborhood is good  
19 church people.

20 Q So all of these people -- so there's a bad side of the  
21 neighborhood.

22 A No, sir. There's not two separated sides. You picked  
23 out the only, only people that would ever have any  
24 problems. The rest are just blue-collared people you'd  
25 say, you'd say.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 Q Well, I also picked out the people that you knew. You  
2 knew all of them, right?

3 A Yes, sir. I know everybody in the neighborhood.

4 Q And I, I also picked out all the people that are  
5 involved in this case.

6 A Yes, sir.

7 Q You didn't have a job at the time. You were doing odd  
8 jobs, getting up when you want, just like Hazel, just like  
9 Jesse, just like Juan, just like Alberto. Did the rest of  
10 the people in the neighborhood just sort of just hang out  
11 all the time, or did they have jobs?

12 A No, sir. They had designated places to be.

13 Q They did, not you and not the people on the bad side  
14 that you just said that you don't put yourself in, is that  
15 right?

16 A Yes, sir.

17 Q Now, you testified that Hazel was always calling the  
18 police on Jesse for any old reason.

19 A Yes, sir.

20 Q You turned around. And you also testified that Hazel  
21 had to call the police on Jesse all the time because he  
22 steals stuff.

23 A I didn't say she had to. I said she did.

24 Q Well, you testified to two instances. One was she  
25 called them because he ate her fries or something.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

- 1 A That's what she said.
- 2 Q And the other time was because he was stealing her  
3 stuff.
- 4 A Yes, sir.
- 5 Q Well, I'm not clear exactly what point you're bringing  
6 to us. Are you saying that Jesse was a bad son or are you  
7 saying that Hazel was a bad mom?
- 8 A I'm saying there's a combination to be honest with  
9 you.
- 10 Q Okay. Now, you lived out there. The number on your  
11 trailer was what, ■■■, ■■■?
- 12 A ■■■.
- 13 Q All right. And of course in your trailer you had two  
14 D. V. D. players.
- 15 A Yes, sir.
- 16 Q And some other things, right?
- 17 A Yes, sir.
- 18 Q Now, there's testimony you didn't have no water out,  
19 official water, hooked up to your trailer.
- 20 A It wasn't coming from Goucher power, I mean, Goucher  
21 water, no, sir.
- 22 Q All right.
- 23 A No, sir.
- 24 Q Did you have power?
- 25 A Yes, sir.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 Q Okay. You had power. Was that coming from Duke Power  
2 or was that coming from somewhere else?

3 A Coming from a power pole that was previously set there  
4 before I moved the trailer in there. They come out there  
5 and set a meter base and a power.

6 Q So you were paying which power company?

7 A It went with my grandpa's barn power.

8 Q Oh, I see. Your grandpa was paying for your  
9 electricity.

10 A I, I reimburse him, but yes, sir.

11 Q When you've got money, because, you know.

12 A It ain't like I was running around without a dime in  
13 my pocket, no, sir.

14 Q All right.

15 A I ain't saying I had no bank roll or nothing and I was  
16 doing great. But, I mean, I wasn't going around looking  
17 for nickels.

18 Q Did Juan ever go in your house?

19 A No, sir.

20 Q Never?

21 A Never, not to my knowledge, no, sir, no way.

22 Q Now, when you say that Juan's house is down in a gully  
23 and it's got a gravel road that dips down and goes like  
24 that --

25 A Yes, sir.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

- 1 Q -- your Aunt Grace, her house doesn't go in that kind  
2 of gully, does it?
- 3 A No, sir. It's a hill right there.
- 4 Q So she's actually almost in the opposite direction up  
5 on a hill.
- 6 A Well, I say --
- 7 Q I won't say a big hill. It goes up. Is that fair to  
8 say?
- 9 A The angle is slight from his house to hers.
- 10 Q Slight, right.
- 11 A But the one from the road to his house is pretty  
12 steep.
- 13 Q All right. Let me back up. Juan's is steep down this  
14 way.
- 15 A Yes, sir.
- 16 Q Your Aunt Grace, the bottom of her house would  
17 probably be almost at the top of his house if you came  
18 straight across.
- 19 A Maybe close to same, yes, sir, maybe.
- 20 Q Now, you testified that you saw the fire. You  
21 actually thought it was your Aunt Grace's house.
- 22 A Yes, sir.
- 23 Q So those, actually the flames on that fire were  
24 actually shooting up.
- 25 A No, sir.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 Q Well, you said you thought Aunt Grace's house was on  
2 fire. He's down in a hole and she's over there across the  
3 street.

4 A I could see the lights. And there's a big old oak  
5 tree right there kinda in front of Juan's house and between  
6 Aunt Grace's. There's a big oak tree, big old thick oak  
7 tree. And I could see that it was lit up. It looked as if  
8 the fire was behind that oak tree instead of under that oak  
9 tree.

10 Q Now, if I understand it correctly, you signed in to  
11 see Nakia in jail but you used a different name.

12 A Yes, sir.

13 Q Because you thought you were going to be arrested for  
14 a bad check.

15 A Yes, sir.

16 Q Now, is there any reason?

17 A I was worried about that. I don't know how the law  
18 worked then.

19 Q Is there any reason why you didn't take care of the  
20 check or find out somehow like call or go there?

21 A Well, if you check the phone records, I called 9-1-1  
22 on -- it was in February before -- and tried to turn myself  
23 in on that warrant --

24 Q Okay.

25 A -- to the Cowpens police department.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

- 1 Q So you were going to go to jail.
- 2 A Yes, sir.
- 3 Q You were ready to go to jail.
- 4 A Officer Jason Coffin come down there and went through  
5 all the paperwork and couldn't find the warrant. He said  
6 we don't got no warrant on you, Jeremy. And I left and  
7 went home.
- 8 Q So what changed between then and the time you started  
9 visiting her at the jail that you didn't want to go to  
10 jail?
- 11 A Shannon's brother, which is also a policeman, told me  
12 that they had the warrant, they just probably didn't have  
13 it at Cowpens right then. They didn't have it in their  
14 file but there was a warrant --
- 15 Q But you wanted to be --
- 16 A They thought I was. I got my -- I got checked after I  
17 got here. I have no holds, no warrants, nothing. I  
18 thought I did because of an iffy check and --
- 19 Q Right.
- 20 A He said an iffy check and an outstanding ticket. I  
21 couldn't figure out what the ticket was, but I knew I did  
22 have an iffy check.
- 23 Q All right. But I still don't understand why you were  
24 trying to avoid the law because you said you were ready to  
25 turn yourself in. So why were you using a different name?

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 A I wasn't trying to go to jail coming down here to  
2 visit her.

3 Q You were ready to go to jail over that and not over --

4 A That was February before. I had, I had the money. I  
5 thought I was going to be able to just go up there and get it  
6 cleared.

7 I was also, I was considering reenlisting as I spoke  
8 of earlier with, when my contract window had run out with  
9 the reserves, is the only reason that I was going to go get  
10 a background check. And I knew I had to get that cleared  
11 before I got that background check.

12 Q Well, you already had the marijuana charge on your  
13 record. You've already testified to that.

14 A That's, that's nothing but a simple possession of  
15 marijuana.

16 Q Well, this is nothing but a bad check.

17 A I agree. But it wasn't an outstanding ticket. That  
18 had been cleared years before.

19 Q All right. Now, I want to make sure I understand  
20 this. You came in possession of a cell phone.

21 A Yes, sir.

22 Q You say you got it from Jesse but you don't know where  
23 it came from. You had it for a while and now you don't.

24 A Yes, sir.

25 Q And that's pretty much what you know about that.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

- 1 A Yes, sir.
- 2 Q Item number, State's Item No. 17, a towel that came
- 3 from your house, it's got Juan's blood on it. He's never
- 4 been in your house according to your testimony.
- 5 A No, sir. He hadn't.
- 6 Q How did Juan's blood get in your house?
- 7 A You tell me, sir.
- 8 Q Well.
- 9 A The only way I could figure is, like she said, she
- 10 dried him off or something and he had blood on him and
- 11 carried it in the house or something maybe.
- 12 Q But you testified you were at home and woke up and
- 13 there was a fire.
- 14 A No. I testified that I was at her father's.
- 15 Q Oh, you were at her father's.
- 16 A Yes, sir.
- 17 Q Which is on this map Zack's.
- 18 A No, sir.
- 19 Q I am sorry. Down here at the bottom corner, 29.
- 20 A Yes, sir.
- 21 Q I mean down here at the bottom.
- 22 A Uh-huh.
- 23 Q All right. Well, Hazel gave you stuff to hide from
- 24 Jesse, didn't she?
- 25 A Yes, sir.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 Q Well, how did you hide it from him if he could go in  
2 your house?

3 A He put it in -- as a matter of fact, it wasn't, it  
4 wasn't even got until I went and sent for it last week. I  
5 put it on the top, the top of the shelf in the back of the  
6 closet behind a bunch of baseball cards, boxes of baseball  
7 cards. I just had somebody go out there and retrieve it  
8 for my lawyer two or three days ago.

9 Q So I think I understand. You're saying that at about  
10 9:30 that night you fell asleep and woke up and there was a  
11 fire.

12 A I'm not going to say 9:30, no, sir.

13 Q No. I don't want you to say a time. But, once again,  
14 it's been a year. And saying what time is kinda skeptical.

15 A It was well before dark when I went back to her  
16 father's house. And started watching "Cat Woman", and I  
17 didn't even finish watching it. And I went to sleep.

18 Q Right. Was it light or dark when you fell asleep?

19 A It was light.

20 Q Okay. And what time did you get up that day?

21 A I couldn't tell you an exact time.

22 Q Well, I mean, did you get up --

23 A Earlier that morning.

24 Q Was it light out when you got up?

25 A Yes, sir.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

- 1 Q Okay. It was light out when you got up and it was  
2 light out when you went to sleep.
- 3 A Yes, sir.
- 4 Q And your testimony is, is that that very next day you  
5 saw Hazel. You were with Nakia for a while. And you'll  
6 have to correct me. Did you see Shannon that day?
- 7 A I couldn't tell you exactly.
- 8 Q You might. It is hard to say.
- 9 A I seen her husband.
- 10 Q Okay. You saw him.
- 11 A Yes, sir.
- 12 Q You didn't leave the neighborhood.
- 13 A No, sir. I never spoke to her husband that day. He  
14 was down there in the driveway with Hazel, not Hazel, I  
15 mean Jessee. I'm sorry. Was down there in the driveway.  
16 I see him down there when -- evidently he was the ride for  
17 Jesse to go get the weed or whatever when he come up there  
18 to get the money.
- 19 Q I guess, but my question is on that day of the fire  
20 you pretty much stayed in the neighborhood.
- 21 A Yes, sir.
- 22 Q You didn't go anywhere, to work or nothing.
- 23 A Not that I recall, no, sir.
- 24 Q And you woke up in the nighttime and you fell asleep,  
25 and it still wasn't even dark out.

Jeremy Richard Phillips  
Cross-examination by Mr. Morin

1 A Yes, sir.

2 Q When you fell asleep you were by yourself.

3 A Yes, sir. When I fell asleep Nakia was still at the  
4 house. She was in the kitchen, as I said. She was washing  
5 dishes with all the water I brought down there preparing to  
6 cook for her father.

7 Chickens wake me up every morning though. It ain't  
8 like I sleep to lunchtime. I've got chickens and dogs, and  
9 the chickens wake me up every morning.

10 Q After, after it's gotten light out.

11 A Sometimes, yes, sir.

12 Q Well, like I said, you're not going to talk about a  
13 specific time. You but said that day you remember it was  
14 light out when you got up.

15 A Yes, sir, it was light out.

16 Q Now, Hazel's testified, and I think, would you agree,  
17 Hazel is somewhat slow?

18 A Yes, sir.

19 Q And Jesse's pretty much on that same footing with his  
20 mother.

21 A Jesse's ten times smarter than his mom. When it comes  
22 to hands-on stuff and all, Jesse can do anything he wants  
23 to, he puts his mind to.

24 Q I take it -- now, the trailer that you stayed in was a  
25 standard single-wide, right?

Jeremy Richard Phillips  
Redirect examination by Mr. Weatherford

1 A Yes, sir.

2 Q And did you have a bed or did you -- where, how was  
3 your house set up?

4 A There was a bedroom in the back. The bed was not put  
5 together. Nakia had brought a sofa couch over there a  
6 couple or three weeks before. It was just a fold-out sofa  
7 couch in the living room. I pulled it out and would sleep  
8 on it usually.

9 Q Pretty much the same way Juan's house was set up.

10 A Kinda, similar, yes, sir.

11 Q And of course you had that basket there at the end,  
12 dirty-clothes basket at the end.

13 A Yes, sir. There was a dirty-clothes basket, which I  
14 believe she testified being blue and they showed in the  
15 record as white. I mean, that's --

16 Q Okay. And your testifying is that the bloody  
17 soaked-through towel with the blood of Juan that came out  
18 of, it was in your house.

19 A Yes, sir, that's, that's what's testified.

20 MR. MORIN: I have no further questions.

21 REDIRECT EXAMINATION

22 BY MR. WEATHERFORD

23 Q That towel that he was talking about, it's got number.  
24 24, Jeff Gordon. It's a racing type towel.

25 A Yes, sir.

Jeremy Richard Phillips  
Redirect examination by Mr. Weatherford

1 Q Are you a race fan?

2 A Yes, sir.

3 Q And how do you feel about Jeff Gordon?

4 A I despise him, sir. I despise him. If I had knew  
5 anything of Jeff Gordon in my house I'd have threw it in  
6 the yard myself. Anybody that's knew me for any length of  
7 time, been in the Army with me, knew me, anything, anybody  
8 from the race shop at Fulton's, they can tell you I despise  
9 Jeff Gordon with a passion.

10 Q You didn't throw it in the burn barrel?

11 A No, sir, evidently not. It's setting right there.

12 Q Because, I mean, there was testimony about you burning  
13 all the bloody clothes.

14 A That's all lies, sir.

15 Q But that's still just laying in your house?

16 A Yes, sir.

17 Q Do you know how it got in there?

18 A No, sir. I've never seen that.

19 Q Nakia and Jesse had pretty much access to your house?

20 A Yes, sir. You can come and go as you please really if  
21 you, if you knew the trick to the door. It had, like I was  
22 talking about at Juan's trailer, the little window panes.  
23 It had them in my door. It was a small door about that  
24 big. And you could slide it up and reach your harm in and  
25 just unlock the door.

Jeremy Richard Phillips  
Redirect examination by Mr. Weatherford

1 Q Well, according to these hospital records Juan went to  
2 the hospital with a bloody nose the night before, the 29th.  
3 Then the fire was on the 30th.

4 The testimony was you burned up all the dirty, bloody  
5 clothes. And that was in your house when they came in with  
6 the search warrant on the 7th. I guess you were in jail.

7 A I was in jail. But what man in his right mind's going  
8 to hide everything else and leave a bloody towel laying out  
9 in plain view beside his bed? I mean, come on.

10 Q That's not your towel.

11 A No, sir, it is not my towel.

12 Q Okay.

13 THE COURT: You may step down.

14 THE WITNESS: Thank y'all.

15 MR. WEATHERFORD: Your Honor, I would move Defendant's  
16 Exhibits 1 and 2 for identification into evidence.

17 MR. MORIN: No objection.

18 THE COURT: They are admitted.

19 (Photographs marked Defendant's Exhibit No. 1; record  
20 marked Defendant's Exhibit No. 2.)

21 MR. WEATHERFORD: May I publish?

22 All right. Your Honor, the defense rests.

23 THE COURT: Any reply?

24 MR. MORIN: No, sir.

25 THE COURT: All right. Ladies and gentlemen, that's

## Motion

1 all of the testimony or evidence to be offered in the trial  
2 of the case.

3 What remains to be done are the lawyers' final  
4 summation, after which I'll instruct you on the law. And  
5 then you'll begin with your deliberations in the case.

6 Quite obviously, that can't all take place this  
7 afternoon. So we're going to begin with that in the  
8 morning, summations, my instruction and your deliberations.

9 As you go home this evening keep in mind the  
10 instruction previously give you. No discussions about the  
11 case with you or fellow jurors or anybody else. No  
12 exposure to any type of media coverage that relates to the  
13 case. Don't conduct any research or do your own  
14 investigation.

15 Do have a good evening. I'm going to ask that you  
16 please report to your jury room at 9:15, at 9:15 in the  
17 morning. Have a good evening.

18 (The following takes place outside the presence of the  
19 jury.)

20 THE COURT: All right. Motions or other matters to  
21 address?

22 MR. WEATHERFORD: Your Honor, I just renew my same  
23 motion that I made at the close of the state's case.

24 THE COURT: All right. Motion is denied.

25 Do either of you have jury instruction requests?

1 MR. MORIN: We do not, the state.

2 MR. WEATHERFORD: No, sir.

3 THE COURT: Court is in recess until 9:15 in the  
4 morning.

5 END OF PROCEEDINGS DECEMBER 6, 2007

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1 (Proceedings December 7, 2007)

2 (The following takes place outside the presence of the  
3 jury.)

4 THE COURT: Have the record reflect that this morning  
5 I was informed by the bailiff that one of the jurors needed  
6 to speak with me, and I spoke with him.

7 He indicated that yesterday during the course of  
8 testimony he realized that he did know two people that were  
9 connected with the defendant. Based upon the testimony of  
10 the defendant as to his grandfather and to an uncle, this  
11 juror recognized the fact that he did know who those  
12 individuals were through his employment.

13 He said since I had asked the question earlier about  
14 it he didn't make a connection at the time but he realized  
15 after testimony and during the overnight recess that it  
16 dawned on him that he did, in fact, know who those people  
17 were through that employment, but there was no particular  
18 close social connection but there was that connection.

19 I inquired of him as to whether or not those facts or  
20 those connections would in any way affect his ability to be  
21 fair and impartial or affect his judgment in the case, and  
22 he indicated that it would not, and there did not appear to  
23 be any hesitation in that respect.

24 I did inform counsel of that contact with the Court  
25 and my discussions with the juror. And I understand that

1 there is no objection to the juror continuing to serve in  
2 the case.

3 MR. MORIN: None from the state.

4 MR. WEATHERFORD: None from the defense.

5 THE COURT: Okay. Any other matters we need to  
6 address before the jury is brought in?

7 MR. WEATHERFORD: Your Honor, I would request a charge  
8 of assault and battery of a high and aggravated nature.

9 There's been a lot of testimony about blood on the  
10 defendant and so forth. But the jury, I think, could  
11 believe that while he may have gotten in a fight with the  
12 defendant and believe there is a reasonable doubt about  
13 whether or not he started the fire which caused the murder  
14 or caused the death, so I just make that request for the  
15 record.

16 THE COURT: What's the state's position?

17 MR. MORIN: We oppose that, Your Honor. It's not a  
18 lesser included and it's not enough evidence in there to  
19 show that.

20 THE COURT: All right. Well, I asked yesterday if  
21 anybody had any instruction requests, and nobody had any.  
22 But, nevertheless, I don't think that instruction is  
23 appropriate under the facts of this case. So I'm going to  
24 decline it.

25 Okay. Bring the jury in.

## Closing arguments

1       (The following takes place in the presence of the  
2 jury.)

3       THE COURT: Good morning, ladies and gentlemen.

4       As you know, when we recessed yesterday all of the  
5 evidence had been received, and therefore what remained to  
6 be done were the lawyers' final summations, after which  
7 I'll instruct you on the law that's applicable in the case.  
8 And then you'll begin deliberations.

9       So we are going to begin with the summations of the  
10 lawyers. We'll begin with Mr. Weatherford, followed by Mr.  
11 Morin, and then I'll instruct you fully on the law. And  
12 then you'll begin deliberations.

13       So please give the lawyers your attention now as they  
14 give you their final summations.

15       Mr. Weatherford.

16       MR. WEATHERFORD: May it please the Court.

17       Ladies and gentlemen, we're drawing near the end of  
18 this case and we're about to put this most serious case in  
19 your hands.

20       I'd like for you to give me your attention for a  
21 little while. As the judge has told you, nothing I say is  
22 evidence, but it might be important. I think some of the  
23 things I'm going to tell you are.

24       You may notice that I was the last one to present any  
25 evidence and that I am the first one to make an argument to

## Closing arguments

1 the jury. So, in other words, the state goes first, and  
2 they get to go last. And when I sit down right now in a  
3 minute, when I sit down the solicitor is going to talk to  
4 you. And no matter what he tells you or no matter what I  
5 think about it or if I've got a good response to it or a  
6 good reply to it, I can't get back up and say anything  
7 else.

8 So I just ask you, even though the last thing you're  
9 going to hear of course is the judge, but the last argument  
10 from counsel will be the prosecution who actually started  
11 the case.

12 I just ask you to remember some of the things I talk  
13 to you about, and talk to each other about it in the jury  
14 room and see if any of it causes you to have a doubt about  
15 whether the state has met its burden of proving the  
16 defendant to be guilty beyond a reasonable doubt.

17 The judge is going tell you in so many legal words  
18 that reasonable doubt, if you find any, must be resolved in  
19 favor of the defendant. So I submit it's your duty to look  
20 at all of the evidence and look and see if any of it, any  
21 one thing or any number of things, causes you to have a  
22 doubt about the defendant's guilt.

23 As I told you to start with, after you hear all the  
24 evidence it's not enough that you say, well, I think he's  
25 probably guilty, I think he's, I suspect he's guilty, I

## Closing arguments

1 have strong a suspicion, strong probability that he's  
2 guilty. That is not proof beyond a reasonable doubt. And  
3 it will be your duty, and even, and I told you it might be  
4 hard in facing the prosecution and the police officers and  
5 everybody testifying against this defendant, and it might  
6 be hard to say, look, you didn't prove the case.

7 But if you are going to seriously consider the oath  
8 that you took to give Jeremy Phillips a fair trial, then  
9 the only thing you can do if you find a reasonable doubt is  
10 to find it in his favor.

11 The judge is going to tell you that's what the law is.  
12 He's going to tell you you must accept the law as he gives  
13 it to you. And he'll tell you if you find any doubt, and  
14 he'll define reasonable doubt, if you find that you are  
15 obligated to find it in favor of Jeremy and find him not  
16 guilty.

17 We don't have to prove he's innocent. Haven't tried  
18 to. He did testify. He wouldn't even have to do that. If  
19 he hadn't testified the judge would have told you you  
20 couldn't hold that against him. But he did.

21 But let's look at the evidence. And I'm going to talk  
22 to you about some of the evidence, and I'm going to talk to  
23 you about some evidence that wasn't presented. And  
24 sometimes the lack of evidence, especially when you're  
25 considering the burden of proof is all on the state, and if

## Closing arguments

1 something is available to them and they don't present it,  
2 then you can consider the failure of the state to present  
3 evidence knowing they have the burden of proof.

4 So I'm going to talk to you about some of the evidence  
5 and some of the evidence that was not presented in court.  
6 And I'm, I'm, everything I say to you is related. And what  
7 I'm going to be talking about is the reason for doubt,  
8 reasonable doubt, the burden of proof, not any kind of  
9 proof that the defendant is innocent. That's not what  
10 we're talking about, and we haven't tried to do that, and  
11 can't. The judge told you a lot of times nobody can prove  
12 they're innocent.

13 The first witness we had, Frank Conrad, a lieutenant,  
14 fire expert from SLED, now, he presented scientific  
15 evidence. And many times cases are solved by scientific  
16 evidence. But I submit to you in this case the scientific  
17 evidence presented by this expert fire investigator who has  
18 all kind of credentials and was qualified by the Court as  
19 an expert, his testimony contradicts important, very  
20 important, points, the testimony of these witnesses against  
21 Jeremy.

22 One of the first things that I wanted to find out,  
23 because I knew what some of the testimony was going to be.  
24 That's the reason I asked him a lot of those questions.  
25 But I asked him if a cigarette could start or cause an

## Closing arguments

1 explosion or blowup like some people, some of these  
2 witnesses have described.

3       You remember that putting the pipe in, in Juan's mouth  
4 and poured gas in it, and then it going off like a Roman  
5 candle. I mean, that's, that's pretty inflammatory  
6 no-fun-intended testimony. If you pour gas down somebody's  
7 mouth and blow their head off or blow their head up, that  
8 was the testimony that these witnesses gave, some of them.

9       And they said it was started by a cigarette. And I  
10 asked him, I said, well, what would happen with a cigarette  
11 in those circumstances. More than likely the cigarette  
12 would go out.

13       You can take a bucket of gasoline or a cup of gasoline  
14 and take a cigarette right here, put it in there and the  
15 cigarette would go out. It wouldn't start the fire,  
16 wouldn't cause an explosion, wouldn't do what these  
17 witnesses have described. It's impossible or unlikely.

18       Now, he did mention if there was something containing  
19 some fumes, something may start the fumes up. But that's  
20 not the testimony we've got. We've got a pipe pouring it  
21 in there and putting a cigarette in there, one of them. I  
22 think another of them may have said. I don't remember if  
23 this came out or not. So I'm not even going to say that.

24       The point is, is that he said that it couldn't be  
25 started with a cigarette. And that is one of the most

Closing arguments

1 inflammatory pieces of evidence that was presented here in  
2 court.

3 His testimony about the location of the body, he's got  
4 the body somewhere over here. You know, this is not to  
5 scale, but on the right-hand side away from the kitchen on  
6 the bed, couch, whatever. And the, the, the places where  
7 he found the accelerant were right around there and up to  
8 the front door, right like this, sort of like that.

9 Now, that's, and he's the expert. He showed you the  
10 pictures and he showed you the pour patterns around here  
11 and the, the places where the dog hit right around the bed  
12 and where the body was right there.

13 What did Nakia Gossett tell you about where the body  
14 was? She said it was over here in the floor. What did  
15 Hazel Willis tell you? She said that somebody, that  
16 Jeremy, threw a flame in this window and caused an  
17 explosion.

18 I'm saying to you that expert, fire-arson expert, and  
19 I asked him in addition to that if there was any kind of  
20 burn pattern, pour pattern from here over to where the body  
21 was. Nay.

22 That means the scientific evidence presented by the  
23 state's own expert witness contradicts what Hazel Willis  
24 said and it contradicts about throwing the flame in a  
25 window. It contradicts what Nakia Gossett said about

## Closing arguments

1 where, where the body was, and it contradicts what Shannon  
2 Powell said about the Roman candle in the mouth. Every bit  
3 of that, every key witness they brought up here has been  
4 contradicted.

5 And I'm talking about reasons for doubt now. That's  
6 all I'm talking about. Their own witness has contradicted  
7 in very important points about where the fire started,  
8 about where the body was and about the gas blowing up in  
9 his mouth. Every bit of that by their own expert witness  
10 didn't happen.

11 And remember I'm talking about doubt. He said the  
12 body was 20 feet, approximately 20 feet, from the kitchen,  
13 not where Nakia Gossett said but where he actually found  
14 it.

15 There was a lot of testimony about boots, cowboy  
16 boots, steel-toed boots, boots getting burned up. The only  
17 two places I know of that were burning or had burned was  
18 Juan's trailer and the burn barrel, trash barrel, whatever,  
19 behind Jeremy's house.

20 Did you? And there was evidence or testimony by some  
21 people that Jeremy took the boots, or sometimes there's  
22 some testimony Jesse said he threw the boots in the fire.  
23 But the boots, there was testimony the boots were either in  
24 there or in the burn barrel that Jeremy, and clothes with  
25 blood on them were either in the fire or in the burn

## Closing arguments

1 barrel.

2 But what do we find out? I specifically asked  
3 Mr. Conrad if he looked for and found any remnants of a  
4 boot, especially steel-toed boots. But he said if there  
5 had been any boots or anything like that in there there  
6 would have been enough of a boot left to see that it had  
7 been a boot. Did he find any?

8 And then I asked him about steel toe, would that be  
9 left even if the rest of it burned up. He said it should  
10 be. And he looked. And what did he find? Absolutely  
11 nothing.

12 And they looked in that burn barrel. They went and  
13 took a bunch of stuff out of there, clothes half burned,  
14 panties, underwear. There's a whole list of things they  
15 took out of that burn barrel. And no boots. There ain't  
16 nothing in the burn barrel. Nothing was taken from there  
17 that had any kind of evidence on it whatsoever. And if  
18 Jeremy had blood all over his clothes, where did they go?

19 Well, they did all the scientific looking and  
20 scientific, I'm sure, testing and so forth. They went to  
21 all the trouble to get all of this stuff from the floor and  
22 all of that. I'm sure that SLED is professional. I'm sure  
23 that SLED can do anything anybody else can do. And I'm  
24 sure they, after they, were called on the scene the second  
25 time, did everything they could to find some kind of

## Closing arguments

1 evidence that would connect somebody with something. But  
2 they didn't find any evidence that connected Jeremy with  
3 anything.

4 Like I said, they found a lot of evidence that  
5 contradicts everything any of these witnesses, or most, an  
6 important point is what these witnesses have said that  
7 testified against him. You know, scientific evidence  
8 solves most crimes, but we don't have any in this one.

9 D. N. A. Now, there was a D. V. D. that had some  
10 blood on it. Well, where was it? It was in Shannon's  
11 trunk, one of the witnesses here. I'll get to her in a  
12 minute. But, you know, she was riding around with this D.  
13 V. D. that had Juan's blood on it, claimed she came into  
14 possession of it at Hazel's house from Jesse.

15 There was, the only other D. V. D. found, and they  
16 checked a lot of things, all of that stuff Jimmy Henson  
17 gathered up. They checked a lot of things. And the only  
18 thing they found other than the D. V. D. was they found a  
19 towel, this Jeff Gordon towel, right here that had two  
20 spots of blood on it.

21 All right. And I want to read you, just talking about  
22 blood here, now, because it may be important. It is  
23 important how Juan's blood got on that towel, especially  
24 when you're talking about proof beyond a reasonable doubt.  
25 And I want to read you from Defendant's Exhibit 6 the

## Closing arguments

1 Upstate Carolina Medical records over on one, two, three,  
2 four, fifth page.

3 Chief complaint, this top half of the page. Alcohol  
4 intoxication acute. Brief assessment. Presents  
5 intoxicated. States when he is asleep his nose bleeds.  
6 Didn't say that now. States he is here to have blood drawn  
7 so he won't bleed. States he has too much blood.  
8 Nosebleed since this morning. Feels dizzy. Drank 18  
9 beers.

10 So this was the night. This is the emergency room  
11 records from the night before on the 29th. Been bleeding  
12 all day. So I don't know when or how or where that blood  
13 of Juan's got on that towel. I mean, there was some  
14 testimony that Nakia was in Juan's house that night before,  
15 before she passed out. She's got no recollection of it.  
16 It's just as probable that the blood came from this towel  
17 and she could have put it in Jeremy's the night before.

18 But I'm talking about reasonable doubt and I'm talking  
19 about proof. And all I'm saying is we know from the  
20 medical records Juan was doing a lot of bleeding the night  
21 before, the day before, bleeding all day. And I don't know  
22 what he put that blood on. That's probably his towel  
23 there. Jeremy wouldn't have a Jeff Gordon towel in his  
24 house. We knew that. So where did that blood come from?  
25 When did it get on that towel?

## Closing arguments

1       We've got evidence that just as easily, and I'm  
2 talking about doubt, could have come from the day before  
3 and not the day going back.

4       Now, when you look at the doubt, I submit to you  
5 that's a good reason. There's no proof that that blood on  
6 that towel was put on there on August the 30th, not one  
7 single shed of proof.

8       The only thing is a week later after they claim that  
9 Jeremy had burned up all the evidence with blood on it,  
10 everything, his clothes, Jesse's clothes, everything. He  
11 got rid of boots. They claim he got rid of everything with  
12 blood on it, that that's in his house a week later. What  
13 kind of sense does that make?

14       But it was there. Now, how it got there, I submit to  
15 you there's no proof that that came, had anything to do  
16 with the murder or the lighting of the fire and the killing  
17 of Juan. There's no proof that didn't come from the night  
18 before.

19       SLED can take fingerprints, and I think they did send  
20 that one D. V. D., that Duraband that had the blood on it.  
21 And I think they, they sent it for prints. And the only  
22 logical assumption is that since we didn't hear anything  
23 about prints on that D. V. D. that there weren't any,  
24 certainly weren't any of Jeremy's on there or you would  
25 have heard about it, I'm sure. But I think it's safe to

## Closing arguments

1 assume there was no fingerprints of Jeremy's on that D. V.  
2 D. There was no, there was no D. N. A. of Jeremy's on the  
3 D. V. D. There's no D. N. A. of Jeremy's on this towel.

4 Now, a lot of things they got, a lot of other things  
5 they got out of Jeremy's house which had a lot of Nakia's  
6 D. N. A. and had a lot of Jeremy's D. N. A. but didn't have  
7 any of Jeremy's on this towel. Nothing but that blood of  
8 Juan's. There's nothing to connect that towel with Jeremy  
9 except it was in that basket in his house. How it got  
10 there and when it got there, who knows?

11 All right. Let me talk a little bit about some of the  
12 these witnesses, Hazel, Hazel Willis, the one that came  
13 down and made a statement seven days after this happened.

14 Now, you've got to remember there was a fire, they  
15 found the body, there was a death. Cherokee County  
16 detectives went out there; SLED sent an investigator, an  
17 arson investigator, up there that night. And what  
18 happened? Nothing. Case closed. Nobody was being  
19 investigated. Nobody was doing anything.

20 Detectives weren't taking any statements, weren't  
21 interviewing any witnesses. They had gone through the  
22 neighborhood and talked to everybody in the neighborhood.  
23 There was nothing there to show them that a crime had been  
24 committed.

25 Well, a week later Hazel comes in to the, comes in the

## Closing arguments

1 sheriff's department and talks to the detectives and gives  
2 them a statement. And I told you everything has flowed  
3 from that statement. All this evidence has been produced  
4 in an effort to verify or substantiate Hazel's statement.  
5 So let's just, let's just look at Hazel.

6 Now, if she had come in there, in an office with a  
7 detective a week later, seems to me like the first, first  
8 thing, most important thing to start with, is why are you  
9 coming in here now, why didn't you tell us something  
10 before, why didn't you tell us something that night. There  
11 were fire trucks and police all around that night and next  
12 day. Why didn't you tell us something then?

13 But apparently that wasn't important, because nobody  
14 until she got in court here, nobody even asked her as far  
15 as we know about what she had been doing during that whole  
16 week, what her and Alberto had been doing during that whole  
17 week.

18 We know that Hazel moved. She said it was because she  
19 was scared, but she didn't move until Eric Powell stole  
20 some of her stuff two or three days later. That's when she  
21 moved. She moved to her son's house, she said because she  
22 was scared, about a mile down the road, told him why she  
23 was scared. Well, did he come in here and testify? She  
24 told you that she moved to her son's to get protection, but  
25 he hadn't showed up around here.

## Closing arguments

1       Then she said she was, she was having mental problems  
2       so she went to her doctor and he put her in the hospital  
3       for two days.

4       Now, ladies and gentlemen, I'm talking about the  
5       burden of proof. If that happened she could have, Hazel  
6       could have, signed a statement saying I give my doctor and  
7       my hospital permission to bring my records into court and  
8       verify what I'm saying just like these records right here  
9       from the hospital the night before.

10       We would have had something to verify her story. And  
11       if she's telling you the truth that evidence is out there  
12       and it could have been produced. So either it's not out  
13       there and everything she said is a lie or the state didn't  
14       think it was important enough to go try to get something to  
15       verify why she waited one whole solid week to cook up this  
16       story.

17       They, on the other hand, just simply start trying to  
18       prove she's telling the truth without question, without any  
19       checking behind to see why she didn't come in when it  
20       happened or why she took so long to come in. Apparently  
21       that was not important to the prosecution. But I submit to  
22       you it's important, it's very important. It goes to the  
23       credibility and believability of what Hazel Willis told  
24       you.

25       And there are at least two witnesses and the hospital

## Closing arguments

1 records, her son, the doctor and the hospital records. And  
2 none of that is in evidence in this case. And I ask you  
3 why. And I'm telling you I'm talking about reasonable  
4 doubt and burden of proof.

5 Hazel talked about bloody clothes. Of course none of  
6 them, no bloody clothes have ever been found. Small  
7 discrepancies sometimes make a lot of difference.

8 Hazel said that Jeremy, Jermamy, was wearing overalls  
9 and they are what had blood on them. Nakia Gossett who  
10 didn't hear that testimony told you that when Jeremy got  
11 cleaned up he put on overalls. Now, that seems like a  
12 simple discrepancy in their testimony, but, you know, if  
13 they are telling you the truth, why would you have that  
14 discrepancy, because, you know, simple matter of whether or  
15 not they're telling the truth. The judge is going to tell  
16 you that's your job to decide who is telling you the truth.

17 Now, you know, Hazel is the one that drank beer every  
18 day, drinks liquor every day, takes pills every day. Who  
19 knows what she actually knows or saw and what she's  
20 dreaming or hallucinating? I mean, you drink that much  
21 beer and liquor and pills, you could probably see monsters  
22 walking on the wall and think they're just as real as  
23 anything else.

24 One thing I did not understand is this part about  
25 Jeremy knocking on the window. I think she said he knocked

## Closing arguments

1 so hard it broke it out. Wanting her to turn out the light  
2 in her bedroom down here. What difference would that make  
3 if there was a light on in that trailer down behind the  
4 fire?

5 I was just talking to you about hallucinating and  
6 dreaming up stuff, and I just can't figure out what that  
7 would have to do with anything.

8 Why was Jeremy who for all intents and purposes is the  
9 only one half sober around here go up there and break,  
10 knock so hard to break her window just to get her to turn  
11 out a light inside her house which she's got every right in  
12 the world to have on? What would it have to do with Jeremy  
13 having anything to do with anything, a light on in that  
14 trailer?

15 I'm sure there were lights on in a lot of these other  
16 places around here. There's houses over here too. There's  
17 lights in all of those places. What kind of sense does  
18 that make? It doesn't make any sense because Hazel Willis  
19 doesn't make any sense.

20 One other thing that she said that kinda, and I'm  
21 talking about credibility and believability of witnesses,  
22 now, she said a day or two afterwards Jeremy and this other  
23 guy who I think we found out was Eric Powell, Shannon's  
24 husband, came into her house and while Jeremy was trying to  
25 kiss her, if you can believe that, while he was trying to

## Closing arguments

1 kiss her Eric Powell was robbing her stuff.

2 I don't know whether she is saying that was a  
3 coincidence that Jeremy just had the hots for her or if she  
4 was saying Jeremy was doing that as a diversion so Eric  
5 could steal something from her. Whichever way, I submit to  
6 you, is not believable. If you think he had the hots for  
7 her, then you've got a right to think that, but I submit to  
8 you it's not believable under the circumstances in this  
9 case.

10 If you think he was working with Eric to try to get a  
11 diversion so Eric could steal some stuff from her, this is  
12 the same time when she said she's so scared she moved the  
13 next day, I think. Jeremy was trying to kiss her. She was  
14 scared Jeremy was going to kill her. I mean, you know, you  
15 put them on the same stick and see how that worked out.

16 But she, remember she, when her dope-head son,  
17 crack-head son, was stealing everything in sight from her  
18 for two years, I think she said he had been on crack, would  
19 steal, she took her, some of her valuable stuff, movies and  
20 D. V. D.'s and records and stuff down to Jeremy for  
21 safekeeping.

22 Obviously, she trusted him to keep her valuable stuff  
23 away from that crack-head son of hers. And then she's  
24 going to, and then she tells you and expects you to believe  
25 that Jeremy comes in her house after the fire when he's

## Closing arguments

1 threatening to kill her and trying to kiss her while Eric  
2 steals stuff? Talking about believability, or not.

3 Nakia Gossett. You know, I think the testimony was  
4 she was going with Jesse, the crack-head son, before she  
5 started going with Jeremy. And Hazel told you that Jesse  
6 was still in love with Nakia. But because of Hazel's  
7 statement, and I think some testimony about Jesse blaming  
8 Nakia or something, but, anyway, she had got herself in a  
9 trap because of Hazel.

10 And she, she was arrested and she went down there and  
11 she made a statement. The first statement she made to  
12 them, apparently didn't know a lot about, she, in fact, at  
13 the time she was arrested for stealing electric power or  
14 something, is all she was charged with. And she gave them  
15 a statement.

16 I think she and Jeremy were arrested the same day. I  
17 think at the same time. Didn't have, obviously didn't know  
18 anything was coming, didn't have time to plan up some kind  
19 of statement.

20 The first statement she made before she got influenced  
21 by any outside pressures was that she and Jeremy didn't  
22 have anything to do with it. Pretty much matches the  
23 testimony Jeremy gave to you from the witness stand.  
24 That's her first statement.

25 Then they come in there, they slap her with murder,

## Closing arguments

1 arson first, strong arm robbery, start telling her stuff  
2 about she, she, and her kids and trying to protect Jeremy  
3 and, you know, why would you put a man in front of your  
4 children and all of this kind of stuff, and then she  
5 capitulates. She says, and then she denies, and then she  
6 says, and then she denies, said that they didn't show her a  
7 statement. Some places she said they did show her a  
8 statement. Some places she said she tried to conform her  
9 statement to what they had showed her to Jesse's statement  
10 and Hazel's statement.

11 But the fact is, is that when she got pressured she  
12 what you call towed the company line. She fell in line  
13 with what they wanted, because, I'm submitting to you, that  
14 after Hazel's statement the whole effort of all the law  
15 enforcement was to make this story fit.

16 So they didn't like her first statement. So they  
17 came, they put all of this pressure on her and got her to  
18 sign another statement which is pretty consistent with  
19 Hazel's except in a few important things.

20 The first thing she said, and, and I got her statement  
21 out and showed her, she said Jesse started the fire. When  
22 she testified first she changed Jesse to Jeremy -- one  
23 little word, one person -- started the fire. But then when  
24 I finally kept on to her she admitted first she had put  
25 Jesse, but then she finally admitted she didn't know who

## Closing arguments

1 started the fire. And the fire is what caused the death.  
2 But that's important. That's the crux according to the  
3 coroner. The cause of death is the fire. So who started  
4 the fire is the one that's guilty of the murder.

5 And so what, what Nakia, first she made a statement  
6 saying Jeremy had an alibi. Second, she made a statement  
7 saying Jesse started a fire. It wasn't until she got down  
8 here in court on that witness stand did she say Jeremy  
9 started the fire. And then she finally had to back up on  
10 that because she wasn't in a position to say who started  
11 it. You know, what kind of proof is that?

12 No question that Nakia Gossett is scared. She's still  
13 charged with all of these, with these same crimes that  
14 could affect her the rest of her life. She says the state  
15 hasn't made her any deals, but I submit to you there's no  
16 question that when she testifies she's trying to help  
17 herself. She doesn't expect to end up charged with these  
18 charges that Jeremy is facing. She is trying to help  
19 herself. She's not trying to help you find the truth.  
20 She's not trying to tell the truth. She's trying to tell  
21 whatever is necessary to get herself out of the trap.

22 But I submit to you the first thing a person tells you  
23 is more likely the truth than after somebody puts some heat  
24 on you and tries to get you to change your story, put the  
25 most stock in these second under-pressure statements,

## Closing arguments

1 testimony that people made.

2 Shannon Powell, a little meth-addicted hoochie-coochie  
3 dancer. I don't know how credible she is, but she is the  
4 one that had the D. V. D. player in her trunk. Now, she  
5 said she got it from Jesse, not, I mean Jesse, not Jeremy.  
6 Doesn't put any of that, anything on Jesse as far as that  
7 D. V. D. player.

8 But then she says, well, towing the company line, she  
9 says that when she came up to Hazel's the next day or so  
10 Jeremy took her around to the side of the trailer and  
11 confessed everything to her. And then, you know, and she  
12 was talking about putting that cigarette in that pipe and  
13 the Roman candle thing. That was, that was one of her  
14 deals.

15 But when she got into court she stood up there and  
16 said blah-blah as she was testifying and said he threw a  
17 match and lit it. Well, her statement says cigarette. Why  
18 would she change that testimony, that one little important  
19 factor? Why would she change that on the witness stand?

20 I mean, we had all found out that she couldn't light a  
21 cigarette. Her story wouldn't hold water, had to be a  
22 match, had to be an open flame. And she just kind of ran  
23 right by that. But I was listening for it. I caught it.

24 And she finally went back to the statement. And she  
25 finally went back and said cigarette, but I submit to you

## Closing arguments

1 she said match for a reason, to make the story work because  
2 it wouldn't work otherwise. It's all trying to support  
3 Hazel's story.

4 The autopsy established beyond any doubt that the  
5 cause of the death was the fire, not any kind of beating,  
6 not any kind of fight, not anything like that. The cause  
7 of death, the murder, was the arson.

8 So that becomes the critical fact, is who started the  
9 fire. Or where is the proof beyond a reasonable doubt in  
10 this case that Jeremy Phillips started that fire? Well,  
11 that's, I talked to you about that.

12 Hazel's testimony that she saw from her bedroom window  
13 a little flame going in the kitchen and she saw Jeremy  
14 throw it from back here peeping out her window and it dark  
15 and everything. She's telling Jeremy, not Jesse. Saw them  
16 throw it in the kitchen window.

17 Well, that couldn't have caused the fire, didn't cause  
18 the fire according to the expert. The fire didn't start  
19 there. The fire started over here from the front, which  
20 she couldn't have seen anything.

21 So, you know, I'm talking about proof of who started  
22 the fire. But just I've mentioned to you trying to make  
23 the facts fit, and there's a good example in this autopsy  
24 that I don't understand. But we found out some, some funny  
25 things when I got down on the dates in these dental

## Closing arguments

1 records. And that autopsy says identity confirmed by  
2 dental records with x-rays, confirm the identity.

3 Well, ladies and gentlemen, if you're going to compare  
4 anything you've got to have one to compare to the other.  
5 The autopsy was done on the 31st of August. It was typed  
6 up on the 1st of September.

7 The pathologist didn't remember when he signed it.  
8 Seems to me you wouldn't sign anything unless it had the  
9 date you were signing on it. That's what it's supposed to  
10 mean. But it had the date of September the 1st on it.

11 And the coroner, I mean, the pathologist couldn't say  
12 that's the day he signed it. Well, that's kind of odd to  
13 me that you wouldn't date something with the proper date on  
14 it before you, when you sign it. If you signed something  
15 that's got to type the date in there and it's wrong, you  
16 strike through it and put the date you signed it on there.

17 Well, he just said he signed it. He didn't remember.  
18 And apparently he just signs things without paying  
19 attention to the dates. But I did. And it's got  
20 September the 1st on there. And it clearly says dental  
21 records, compare to dental records and x-rays.

22 Well, then we find out that Dr. Watts didn't even fax  
23 her, her record, this handwritten record here. She didn't  
24 even fax that to that Dr. Brown until the 5th.

25 Now, what in the world is an autopsy signed by two

Closing arguments

1 pathologists doing saying dental records confirm the  
2 identity when they don't even have anything to compare it  
3 to? Nothing.

4 And then on the 5th, four days after that autopsy was  
5 typed, anyway, and who knows when it was signed, but it was  
6 typed up and wasn't, hadn't been changed since. But yet  
7 these dental records faxed down to Dr. Brown, and then he  
8 said from these dental records I don't see any  
9 inconsistencies, although there is three or four teeth  
10 different missing in the autopsy than is on his record  
11 here. We don't know what happened to those two or three or  
12 four teeth that weren't there. He says there's nothing  
13 inconsistent with that.

14 And then he didn't get the x-rays and he didn't look  
15 at those x-rays until November the 28th of 2007 just before  
16 court started before he ever even looked at both sets of  
17 x-rays and compared them, way after Jeremy had been  
18 charged, way after Jeremy had been indicted by the Cherokee  
19 County Grand Jury.

20 They go around and try to make their statement in the  
21 autopsy that dental records confirmed the identity, and  
22 then they try to make that fit. Maybe it does, but I'm  
23 just saying that has the flavor of this case trying to make  
24 everything, a round peg fit in a square hole.

25 And you remember I'm talking about reasonable doubt

## Closing arguments

1 here. Why would they do that? Why would a pathologist and  
2 a dentist say that the identify was confirmed when that  
3 pathologist's statement was written, there was nothing to  
4 confirm the identity?

5 And is that how the state goes about proving things to  
6 you? I submit to you that that is just questionable.  
7 Bothers me. That's not the way things are supposed to be  
8 done. I'm talking about reasonable doubt.

9 Some things you don't have in evidence. And, as I  
10 told you, realizing the burden is on the state to prove  
11 guilt beyond any reasonable doubt, you can consider  
12 evidence that's available to them that they don't produce.  
13 The lack of evidence sometimes is as important or more  
14 important than what you do have.

15 Alberto Rodrigues. He never did sit down there, never  
16 did come in here. He is an eye witness to this same thing  
17 Hazel said she saw. So there's two eye witnesses in this  
18 case, two. But you only heard from one of them. Wonder  
19 why. Wonder why the state didn't bother to get Alberto on  
20 this witness stand to testify under oath that he saw the  
21 same thing that Hazel saw.

22 Would that cause a reasonable person to have a doubt  
23 if there's two eye witnesses and they only bothered to  
24 bring one of them? Are you just supposed to blindly accept  
25 what a drunk pill-head woman is telling you without any

## Closing arguments

1 corroboration, without any verification, without anything?

2 It shouldn't be the way the burden of proof is analyzed.

3 We know that at one point within that day or the next  
4 day, the day before, Alberto was mad at Juan first for  
5 hitting on Hazel. I guess everybody was hitting on Hazel  
6 around there. But Alberto got mad at Juan according to  
7 Hazel for him trying to go with Hazel. So Alberto is mad  
8 at him..

9 Before Hazel ever moved, before she came down here and  
10 made this statement, apparently Alberto disappeared. And  
11 as far as we know he's still gone. I don't know if running  
12 off from a crime scene indicates guilt or not. Sometimes I  
13 submit to you it does.

14 But Alberto has disappeared. And he hasn't been in  
15 here. And according to Hazel he is an eye witness. He  
16 hasn't shown, he hasn't shown up anywhere around this  
17 courtroom in this court where proof is supposed to be put  
18 to you.

19 Hazel's other son. Said she went up there because she  
20 was scared. He hasn't showed up. There's no, there's no  
21 D. N. A. of Jeremy Phillips connected with any of this  
22 evidence of the crime that's on this table or in this case  
23 or in evidence, not one bit of D. N. A., scientific  
24 evidence. It's solved a lot of crimes. None of it. None  
25 of Jeremy's is on anything that they were able to find.

## Closing arguments

1        There are no fingerprints. They only bothered to  
2 check one thing, and that was that D. V. D. player, that  
3 Duraband. And it didn't have any. But that's the only one  
4 they even bothered to check.

5        There's no, no cowboy boots, no belt, no cell phone,  
6 no steel-toed boots. All of this stuff, physical evidence,  
7 we've heard about and should have been burned if it ever  
8 existed. SLED would have been able to get some kind of  
9 evidence or some kind of trace.

10       They took, they took some denim pants down there, is  
11 one of the things on the list. They didn't find anything  
12 in there. That's something they got out of the burn. They  
13 got some panties and they got some underwear. No D. N. A.  
14 of anybody, much less Jeremy. I've already mentioned they  
15 didn't bring anything in here, medical records to verify  
16 what Hazel had said.

17       Lastly, ladies and gentlemen, I want to talk to you a  
18 little bit about Jeremy, the defendant in this case. You  
19 know, he grew up in the community over there near Cowpens.  
20 Parents are good Christian people.

21       He went after high school. He graduated from high  
22 school. He went to high school with Jimmy Lamb, the fire  
23 chief that testified. Said he was a friend of his. And I  
24 said does that mean you liked him. He said, yeah, that  
25 meant I liked Jeremy. Nothing about Jeremy having any

## Closing arguments

1 problems in school, being a troublemaker or anything like  
2 that.

3 He joined the Army. And he wanted to go to airborne  
4 because everybody in his family was connected with flying  
5 in some, in some manner. So he did join airborne. And he,  
6 he went through that training. And he made the necessary  
7 jumps. And he got his wings that are something that people  
8 wear with pride the rest of their life.

9 The United States Army was proud of Jeremy Phillips.  
10 They considered him qualified to wear the wings of the  
11 paratroopers.

12 He didn't have any trouble when he was in the Army.  
13 He got honorably discharged from the Army after serving his  
14 country. No trouble, no violence, no nothing. Honorable  
15 discharge from the United States government.

16 He comes back here. He works construction type work,  
17 lives off a while and comes back and lives around his  
18 granddaddy's house. And he helps his granddaddy.

19 And he mentioned one time growing a garden, and I  
20 think that says something about a person. How many  
21 criminals have you heard of that tend a garden, grow things  
22 from a little seed? I just, a gardener, I don't think, is  
23 the kind of person that turns into a criminal. It's  
24 something.

25 There's never no evidence whatsoever of any kind of

## Closing arguments

1 crimes of violence, any kind of violent nature, anything  
2 about Jeremy in this case. On the other hand Jesse, the  
3 codefendant, the crack-head son of Hazel, I think there was  
4 testimony Hazel's prior Mexican boyfriend was put in the  
5 hospital because Jesse beat him so bad.

6 Hazel's called the police on Jesse for beating her up.  
7 I mean, the only violent person that we have even heard  
8 alluded to in this case is her crack-head son, not Jeremy.  
9 And to do murder and arson first degree, that's a real,  
10 real, real violent crime.

11 So who has a tendency or propensity to do a violent  
12 crime? Who would not think twice about doing a violent  
13 crime? Crack-head son who has plenty of history of it or  
14 Jeremy?

15 I mean, he even beat up Hazel. He stole from Hazel.  
16 She was trying to get rid of him. I don't know. That  
17 might be why she hatched this story out, trying to get rid  
18 of Jesse, because he was a thorn in her side that she  
19 couldn't get rid of.

20 She said for two years he was on that crack and nobody  
21 could help him and he wouldn't help himself and he was  
22 causing her all kinds of trouble. He was stealing her  
23 money, stealing her stuff, beating up her boyfriend,  
24 beating her up. I mean, where is the violent propensity in  
25 this case when you're talking about who started that fire?

## Closing arguments

1 Who would it more likely be?

2 I leave you with this question. Why would Jeremy kill  
3 Juan? Why? Was it to protect Hazel's honor? I mean,  
4 Hazel said that they went down there to get some beer and  
5 that Jesse and Jeremy went down there to get some beer,  
6 came back with blood on them.

7 And you remember Jesse had already put the other prior  
8 boyfriend in jail for threatening his mama, Hazel. And  
9 then they come back with a story that Juan was threatening  
10 his mama. So who would more likely be to kill Juan for  
11 threatening Hazel -- Jesse or Jeremy?

12 What on God's green earth, would Jeremy have any  
13 reason to kill Juan Roman? Why would he do that? What  
14 possible reason after living the life he's lived pretty  
15 much nonviolent? Nobody said a bad word about Jeremy as  
16 far as being violent. No evidence that he's ever been  
17 violent. Plenty of evidence that Jesse has been violent.  
18 Who would think twice or not think twice about firing up  
19 Juan's body? What's more likely?

20 I submit to you when you're talking about reasonable  
21 doubt and burden of proof, you ask yourself that question.  
22 And if you do, we think that there's more than sufficient  
23 reason to have a doubt about the proof of Jeremy's guilt in  
24 this case.

25 You heard him. You've heard him testify. Do you

## Closing arguments

1 think he is the kind of person that would have done that?

2 No.

3 THE COURT: Does any juror need a short break before  
4 we continue with the solicitor's final summation?

5 (No response.)

6 THE COURT: Okay. Solicitor.

7 MR. MORIN: There has been a lot of talk in this case  
8 about timelines, timelines. The defense has been very  
9 specific to want to know about timelines, when did things  
10 happen.

11 When I was thinking about this case and going over the  
12 evidence in my mind and what I remember happened and what I  
13 remember testified to, this is what I'm fairly certain.  
14 And if your recollection is different than mine, I submit  
15 to yours.

16 September 6th. Okay. September the 6th Hazel goes  
17 down to the sheriff's department and says I've got to tell  
18 you what happened out there at that fire. She tells about  
19 how her son came up there. She tells about how Jeremy was  
20 covered with blood. She tells them they sat that fire.  
21 Okay. That's Hazel and that's September 6th.

22 What else happened on September the 6th? Frank Conrad  
23 at SLED got a phone call and said we've got information  
24 this fire might have been set, can you come out there. He  
25 says yes. And the next day he comes out there.

## Closing arguments

1        Now, if a person comes in if you've got a suspicious  
2 fire and you pull up to the police and say, well, we've got  
3 a suspicious fire and this person comes in, you know what?  
4 That thing was set. And that's the next thing you do  
5 logically, I would think, I would submit, is find out if  
6 she's telling the truth. How do you find out if she is  
7 telling the truth?

8        Well, the first thing you do is you go see if you have  
9 any evidence of it being set. Is there any question in  
10 this case that this fire was set? We've got gas and we've  
11 got burn patterns that he found out there.

12       All right. Then we get to September 8th,  
13 September 8th. Jeremy Phillips and Nakia Gossett are  
14 arrested. All right. Now, Nakia, she's arrested for theft  
15 of power. Okay. But they asked her about what happened.  
16 Okay. And she told you on the stand she wrote an alibi for  
17 Jeremy. Now, that's important. Okay. Because on  
18 September 8th she's telling you I still loved him, I wrote  
19 an alibi for Jeremy.

20       And of course she also testified, where did her copy  
21 of that go? Gave it to Jeremy. Slid it under the door,  
22 which just coincidentally as Mr. Weatherford has pointed  
23 out is pretty much what Jeremy testified to.

24       September the 9th. Well, I'm sorry. Messed that up.  
25 This actually was the 6th. I messed up my timeline

## Closing arguments

1 already. September 6th, that's when that happens.

2 September 8th is when she gives the second statement.  
3 That's the statement that she told you. That's the  
4 statement she gave from the stand. Okay. Now, there's the  
5 second statement. And that's what she told you and that's  
6 September 8th.

7 When did she get served with the warrants? That was  
8 September the 9th. So when the state says, when the  
9 defense says, oh, they've got those warrants and they  
10 browbeat her into it, she wasn't charged until after she  
11 gave that statement.

12 Okay. Now, remember there was, the defense has gone  
13 on and on about whether or not the police told her what  
14 Jesse said. And she said in my statement it says or in the  
15 letter she wrote says Jesse, Jesse said this, Jesse said  
16 that. When they, and then she said, well, I didn't tell  
17 them. And they went back and forth about whether or not  
18 she assumed it was Jesse or what.

19 Here's the key point. At no time did she ever get  
20 asked or ever state that someone had showed her Hazel's  
21 statement. Never, not one time.

22 Hazel says two bloody men show up at my house, one of  
23 them was my son. Nakia's statement says I was at Hazel's  
24 and two bloody men, Jeremy and Jesse, showed up. Never has  
25 it even been suggested that she knew anything about Hazel's

## Closing arguments

1 statement. She on the day after that, on September the  
2 6th when she got arrested from what Nakia, from what Hazel  
3 said, she was never told what she said. And that is a  
4 critical point.

5 Then on September 11th Sharon Powell is talked to.  
6 She says he told me he did it. Okay. That's September the  
7 11th. At that point what you have is you have a statement  
8 from Hazel, a statement from Nakia, a statement from  
9 Shannon. And when I say a statement from Nakia, I mean a  
10 statement, the second statement, those two statements.

11 They all testified. They all testified consistent in  
12 what they had told the police as of September 11th. Okay.  
13 What did they testify to? Hazel. She saw Jeremy Phillips.  
14 Where? At my house. When? On the 30th. I saw him before  
15 the fire with blood on him. I saw him when the fire got  
16 started.

17 Now, you can ask yourself how believable she is. Mr.  
18 Solicitor, how can I believe her? She got up here. She  
19 said she was drunk. She's clearly called him Jermamy.  
20 Nakia said she's slow.

21 But by the time Nakia had testified that she was slow  
22 y'all already knew that. Y'all had seen her close to two  
23 and a half hours the day before. That was no big surprise.

24 And I suppose had it ended right there that wouldn't  
25 have been a problem. But when Nakia gives a statement

## Closing arguments

1 about blood on the defendant, now we've got two people.

2 When Nakia says Jeremy said I was going to burn down  
3 that place and left out, and when Shannon says he told me  
4 he did it, remember Shannon wasn't told about all of this.  
5 She just went down there and saw a fire, and he told her.

6 You know, you hear the statement a lot that idle hands  
7 are the devil's playground. Well, down there on Oakstone  
8 in 2006 we had three 20-something-year-old people --  
9 Jeremy, Jesse and Nakia. No jobs. Living off their  
10 parents, or in his case his grandparents, living in a --  
11 he's living in a trailer that doesn't even have water.  
12 Nothing to do. Got nothing to do all day except drink, get  
13 high and hang out.

14 Well, let me tell you. That was a recipe for the  
15 devil to really run amuck. And it was going on. Jesse was  
16 stealing from his mama. Jeremy was sleeping, by his own  
17 admission, with two of the witnesses, Nakia and Shannon.

18 Now, mind you, according to him that was the bad part  
19 of the neighborhood. He wasn't involved with the bad part  
20 of the neighborhood. Of course I never asked him anything  
21 that happened on the 29th and I never asked him anything--  
22 that happened after the 30th. I asked him about stuff on  
23 the 30th. And he never named one single person he was with  
24 that wasn't -- that y'all didn't already know about. He  
25 wasn't part of that, but that was the only people he was

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1 with.

2 When Hazel testified, and I'll leave it to your  
3 discretion whether or not she's believable, but when she  
4 testified as to what she saw when her son came in there  
5 blood soaked, what did she say? I collapsed. I lost it.  
6 Nakia said I was out of the house. Jamie and Jeremy came  
7 up there and she collapsed. She lost it. Right on time.  
8 No connection between the two of them. Do you think Hazel  
9 could conspire with somebody to come up with that kind of  
10 story?

11 Meanwhile, while that's going on, there's a man in  
12 another trailer bleeding, tooth knocked out. Dr. Sexton  
13 told you, said tooth got knocked out shortly at the time of  
14 teeth or around there.

15 Brain injury. The defense said could have killed him.  
16 Might have. I've seen it do it. So he's lying there and  
17 he's dying, because we know from later testimony from Dr.  
18 Sexton he didn't actually die at that point. But he could  
19 have been dying, and he certainly had bled a lot.

20 Too much time on their hands, too much time on his  
21 hands. Yet I don't know back in the 90's, he was in the  
22 Army. But you know what? He didn't want to have to do  
23 that work. Sit around, lay around the trailer, get some  
24 money in my pocket one way or another whenever. Got a kid  
25 somewhere in Cowpens sometimes sends some money. Get up

## Closing arguments

1 when you want; go to bed when you want; do what you want.

2 That was a breeding ground. That was a breeding  
3 ground for what you're going to hear as a reckless heart  
4 bent on mischief, reckless disregard for social duty.

5 Jeremy told me he did it, said the man's head went off  
6 like a Roman candle. That's true enough. There's no  
7 testimony that anybody said they actually stood there and  
8 watched them do it. I didn't. You got Hazel said she saw  
9 them throw it through the window.

10 Now, I don't know what he did with that gasoline  
11 inside the house. I don't know how he poured it. And  
12 there's certainly, and Mr. Weatherford certainly is true,  
13 when you got a bucket of gas and you throw it in, a  
14 cigarette in, or you throw something in, it's going to put  
15 it out.

16 But I tell you what. Take a bucket of gas and set it  
17 here for about two or three seconds, four seconds, a  
18 minute, and drop something in there that's lit, then we'll  
19 see what happens. Yeah, if you just throw it straight in.

20 I don't smoke when I pump gas, and I don't even see  
21 the gas. But it says right there. And, you know, you're  
22 not supposed to do that. It's dangerous. It'll start a  
23 fire.

24 August 30th, August 30th. The devil's playground is  
25 all over the place with drinking, with smoking, with taking

## Closing arguments

1 drugs, with having sex.

2       Why did he do it, why did he do it? That's what the  
3 defense. Why did he do it? Nakia asked him why he did it.  
4 He did it in his words because he didn't -- why did you do  
5 it? I want to make sure I get it straight. What if  
6 somebody had done that to your son? Nakia is just -- he  
7 did it because he could. Because why else? Why not? He  
8 intended to injure him.

9       I'm not going to, as far as who he is, we get back to  
10 Dr. Sexton, because after the fire and after Jimmy Lamb  
11 testified I've been to fires before and I've seen death but  
12 I ain't never seen one where we couldn't smell it, they  
13 actually tripped over what was left of the body.

14       How did he die, Doctor? Well, he had carbon monoxide,  
15 choking. Flames on the inside of his throat had burned his  
16 voice box. That's what the doctor said. Flames in his  
17 throat. He was breathing in fire. Legs burned off from  
18 the meat below. Hands and arms gone. The entire thoracic  
19 cavity, right here, all of his organs, exposed from the  
20 fire. The only thing that you could even see according to  
21 the doctor that had any notion of being Hispanic was a  
22 little bit of skin on his back side.

23       He told me he put the gas in the mouth to get rid of  
24 the dental records. That's what he told you. And he  
25 probably thought that was going to be enough. He slipped

## Closing arguments

1 up in that he didn't know that Juan had had a toothache in  
2 April and gotten dental records.

3 And the doctor came in here and he put the x-rays up  
4 here for you to see, and he showed you why they're the same  
5 person. I've proved it's Juan. I don't know that that's a  
6 disputed issue. Make sure y'all know. That was Juan  
7 Roman. He was a person. And somebody sat him on fire.  
8 That somebody right there, right there.

9 They didn't have anything to do, so we burned up, I  
10 burned up a Mexican in his trailer. Ain't no big thing.  
11 [REDACTED], a structure, it was intentionally set on  
12 fire. Conrad told you that.

13 And the judge is going to tell you I have to show that  
14 it was, the structure was, damaged or destroyed. Damaged  
15 or destroyed, caused the death. I don't even think -- I  
16 have to prove it. I don't know if there's any doubt about  
17 that. It was set and he died from the fire.

18 And then at that point we start the defense's, and Mr.  
19 Weatherford said it best in his opening statement. Said  
20 his job was to create doubt, create a word of doubt.  
21 Create. To invent is another way of saying it. That's  
22 another definition of it.

23 Well, Mr. Solicitor, what are you talking about?  
24 Create, create. What is that supposed to mean? Well,  
25 we've got this whole thing about August the 29th. That's a

## Closing arguments

1 whole.

2 I never asked one single question of any witness about  
3 what happened on August 29th. Do you know why? Because  
4 I'm here to talk about when he got killed on August the  
5 30th. You know, it's a quick magician's trick to make you  
6 look one way while something else is going on somewhere  
7 else.

8 I'm talking about that body burnt beyond recognition  
9 in there and they're talking about what did or didn't  
10 happen on the 29th. Didn't ask one question.

11 Talked about the evidence. There has been a lot of  
12 testimony the defense said about boots. I never asked one  
13 single question about a boot. Didn't do it. He asked  
14 every single witness about boots. Why? He knew the  
15 evidence. You heard the evidence. They tested the  
16 evidence.

17 There's not anything involving a boot. Why would I do  
18 that? Why would I bring in here and talk about something  
19 that has nothing to do with what we are here to talk about?  
20 Look over here, look over here.

21 Jeremy testified. I'm not sure, but I think the  
22 defense may actually be I-don't-like-Jeff-Gordon-  
23 therefore-I-did-not-do-this.

24 We know that Juan Roman bled and it got on this towel.  
25 And this towel was found in the basket, and the basket was

## Closing arguments

1 at the foot of Jeremy's sofa bed. And the defense wants to  
2 know what evidence I have that this got there, how this got  
3 here.

4 Well, Nakia said I was standing outside washing blood  
5 off of Jesse and drying it off with a towel. And I said  
6 what did he do with the towel. Put it in that basket right  
7 there at the bottom of the bed.

8 Mr. Weatherford said did you see any blood on it. No,  
9 I didn't see any blood. But there is blood, and it's  
10 Roman's, Juan Roman's.

11 Did Juan Roman bleed while this was going on? Yeah,  
12 probably did. I did too, but my D. N. A., my blood, is in  
13 Jeremy's house. Juan Roman is dead. His D. N. A. isn't in  
14 Jeremy's house.

15 And when I asked him about that he said I don't know  
16 how it got there, why don't you tell me. In my younger  
17 days as an attorney I would have said I'm asking the  
18 questions, but I thought better of it. I thought, you  
19 know, it takes an arrogant person to just be on trial for  
20 murder and be up there laughing and smiling and snap back  
21 when somebody's asking him how the victim's blood is in his  
22 house. I thought better.

23 So I went on to the next question, and I said tell me  
24 about your house, this basket was at the bottom of your  
25 bed. Yeah. Well, where is your bed? Well, it's a

## Closing arguments

1 broke-down bed, you don't really use it in the back. Nakia  
2 had a sofabed and I put it in the living room, put it in  
3 the living room, and that's what we slept on. And in this,  
4 I said, you know, so it was a lot like what Juan's house  
5 was. And I'll be darned. You know what he said next? He  
6 said, yeah, just like Juan's.

7 He said he hadn't been in Juan's house. He said he  
8 had never been in there. And I just went on. But there he  
9 was. He got on the stand and told y'all he had never been  
10 in there. But he knows his house is just like Juan's.

11 Those kind of details are the real testimony in this  
12 case. They're the real testimony. So the fact that Hazel  
13 gave a statement saying she saw two blood-soaked men come  
14 in her house that night and without any, any allegation  
15 that Hazel had been off that night, I rested. Maybe, maybe  
16 Nakia put this in a basket some other time. That's what  
17 the defense says.

18 But the problem with that is when she first got  
19 arrested for the power she was trying to cover for him. So  
20 when did she back herself up by putting this in there? She  
21 didn't know there was blood on there. He didn't either.  
22 But we look, and there it is. And it's right where she  
23 said it went. And that's what she said back then, not  
24 after she got charged, not after she got to come to court.  
25 Yeah, she's afraid.

## Closing arguments

1 Another interesting thing. I never asked Hazel about  
2 this robbery or when Jeremy came in supposedly. And y'all  
3 might remember. It wasn't Hazel that said Jeremy tried to  
4 kiss me that night. That was Mr. Weatherford was asking  
5 about something that happened two days later.

6 He said she said Jeremy wanted to have sex with me.  
7 And that was funny and it's still funny. But then when  
8 Nakia got up, he went down that road again. You know, I'm  
9 worried about the proving the murder here. I'm not worried  
10 about whether or not something is taken from Hazel the next  
11 day.

12 And he goes on. And Nakia says I was there and I  
13 looked in the window and I saw Jeremy kiss Hazel and I  
14 couldn't believe it because if Hazel was in bed and got  
15 kissed by a man, what do you think was going through her  
16 mind?

17 Hazel said all my stuff was in this little pouch, mind  
18 you. Now, that's not in anybody's testimony, anybody's  
19 statement, because they didn't talk to her about that.  
20 Nakia comes in and says I was looking through there and I  
21 saw him kiss her, he took her stuff and it was in a little  
22 pouch.

23 Try as he might he cannot get that blood off, can't  
24 get it off. He talked about the 29th and he talked about  
25 what happened two days later. Hazel said she was

## Closing arguments

1 frightened. I'll let y'all decide. Y'all saw her. Y'all  
2 heard her. Do you believe she was telling you that she was  
3 frightened?

4 I'm going to leave it with this. I truly believe  
5 that, that, that the case really does fit in the idle hands  
6 of the devil's playground. These three people had idle  
7 hands and had nothing else to do.

8 And I've heard another one, another little saying like  
9 that. It's called the greatest trick the devil ever did,  
10 was convince people he didn't exist.

11 Jeremy is trying to do a trick like that now. Jeremy  
12 is trying to trick. The trick Jeremy is trying to think is  
13 convince you he is not a murderer.

14 He did. He set a fire. He set a fire because he told  
15 Nakia he was going to do it; he set a fire because he was  
16 seen there at the scene doing it; he set a fire because he  
17 told Shannon Powell he did it; he set a fire because he had  
18 to wash off the blood he got from the first scene knocking  
19 out teeth and making a man unconscious, because the blood  
20 shows up in his house. That's not a coincidence.

21 He set a fire and killed a man. And the only thing he  
22 knows is he was sleeping at Nakia's daddy's house on the  
23 bad side of town that he's not involved in. They must have  
24 gone in my house when I wasn't there. And yet he testified  
25 the day before he was in the house and people came and

## Closing arguments

1 knocked on the door and couldn't get in. Remember there  
2 was all that commotion the day before. At least that's  
3 what he says. Create doubt.

4 Ladies and gentlemen, I brought in the evidence to  
5 prove that a fire was started and a man's killing, and the  
6 man is Juan Roman. And that man right there is the one  
7 that started it.

8 I got him before saying he's going to do it, we got to  
9 get rid of that body, no, don't do that. I'm going to burn  
10 it down. I've got him standing there then and I've got him  
11 coming back carrying a gas can. Nakia said he come across  
12 that way carrying a gas can.

13 Of course he told you he had all of these cans. I  
14 didn't even ask him about that. He told Mr. Weatherford.  
15 I've got all of these cans of water, keep water in.

16 How do you know it was, how do you know it was Jeremy  
17 carrying the gas and not Jesse? They both come across  
18 there. Jeremy's calling. She was trying to cover for him  
19 but not, not all of this November, January, writing  
20 letters. That ended right here on September 8th. She gave  
21 a statement to the police, which is the statement she told  
22 you, which is the statement that you see in Hazel's  
23 statement. Bloody men at my house.

24 He's guilty of murder and he's guilty of arson. He  
25 started a fire and it killed a man. Why did he do it?

## Jury charge

1 It's just a Spick, just a Spick. Because he could.

2 THE COURT: Any juror need a short break before I  
3 provide you with the instruction?

4 (No response.)

5 THE COURT: Ladies and gentlemen, you have heard and  
6 seen all of the evidence and in the case, and of course  
7 you've heard the final summations of the lawyers. It now  
8 becomes my duty and obligation to instruct you on the law  
9 that's applicable in the case. And then you'll be asked to  
10 go back and begin with your deliberations. And through  
11 that process you will examine the evidence, decide the  
12 facts, apply the law and arrive at a fair and just decision  
13 in the case.

14 It is your exclusive duty to determine what the facts  
15 are, and you do that through your own common-sense  
16 examination and evaluation of all of the testimony and the  
17 other evidence received during the trial of this case.

18 You 12 jurors alone will decide what weight, value and  
19 effect to give to any particular testimony or other  
20 evidence in the case. Again, your sole objective is to  
21 simply reach the truth in the matter, and by doing that you  
22 will have fulfilled your obligations as jurors, and that is  
23 to simply give both the state and the defendant a fair and  
24 impartial trial.

25 Now, as you know, in this case the state through the

## Jury charge

1 solicitor or the prosecutor has accused the defendant,  
2 Jeremy Richard Phillips, with having committed two separate  
3 and distinct offenses, although they are alleged to have  
4 arisen out of one particular event or course of events  
5 which the state alleges occurred back on August the 30th of  
6 2006.

7 But there are two separate indictments. There are two  
8 separate charges. You will be called upon to consider the  
9 evidence as it relates to each of the charges, decide the  
10 facts, apply the law as it relates to the separate charges  
11 and determine whether or not the defendant's guilt has been  
12 proven beyond a reasonable doubt.

13 By way of one indictment the state charges the  
14 defendant with the crime of arson. And the state alleges  
15 in that indictment that the defendant, Jeremy Richard  
16 Phillips, did on August the 30th of 2006 wilfully and  
17 maliciously cause an explosion or set fire to or burn or  
18 cause to be burned a structure or building which resulted  
19 in damage to the building or structure and which caused the  
20 death of a person, that person being Juan Roman.

21 The second indictment charges the defendant with the  
22 crime of murder. And it alleges that Jeremy Richard  
23 Phillips did on or about August the 30th of 2006 wilfully  
24 and with malice aforethought kill one Juan Roman by beating  
25 him and setting fire to him and to his residence, and that

## Jury charge

1 he died as a proximate result of those acts.

2 Now, as to each of those indictments and the charge  
3 contained therein and as to the allegations that are set  
4 forth in each of those indictments the defendant has  
5 entered a plea of not guilty.

6 And, as you know, that plea as of not guilty therefore  
7 places upon the state the burden of proving the allegations  
8 that are set forth in the indictments, the burden of  
9 proving each of the essential elements of the crimes that  
10 are alleged against the defendant; and therefore the burden  
11 is upon the state to establish the defendant's guilt to the  
12 satisfaction of you 12 jurors beyond a reasonable doubt  
13 before any verdict of guilty could be returned.

14 The burden is never upon a defendant to prove that he  
15 is not guilty or to prove that he is innocent because in  
16 some cases that might not be possible. The burden is  
17 always upon the state in bringing a charge against another  
18 to establish that person's guilt beyond a reasonable doubt.

19 Now, you are instructed that it is a vital, important  
20 and cardinal rule of law that every defendant in a criminal  
21 trial, and it doesn't matter how serious the offense might  
22 be for which that person is standing trial, that person  
23 shall always be presumed innocent of that charge. And that  
24 presumption of innocence remains with any defendant, as it  
25 does with this defendant, from the time that he is placed

## Jury charge

1 under arrest and throughout the course of the criminal  
2 process and even throughout the course of the trial.

3 And, as I told you, that presumption of innocence will  
4 be with Mr. Phillips even as you go back into your jury  
5 room to begin with your deliberations in this case. And  
6 that presumption of innocence will be with him in that jury  
7 room, and it will be with him forever unless you 12 jurors  
8 determine that he's no longer entitled to that presumption  
9 of innocence.

10 That is after you've carefully considered all the  
11 evidence in the case and from that evidence you've decided  
12 the facts, and after you decide those facts you have  
13 applied the law that I will have provided you, if you 12  
14 jurors unanimously determine that his guilt has been proven  
15 beyond a reasonable doubt, then he's no longer entitled to  
16 the presumption of innocence. But it's only if, unless and  
17 until you 12 jurors are satisfied of his guilt beyond a  
18 reasonable doubt that that presumption of innocence would  
19 no longer be applicable.

20 Now, while the state does have the burden of proving a  
21 defendant's guilt beyond a reasonable doubt, it's not  
22 required that the state prove a defendant's guilt beyond  
23 all doubt or beyond any possible doubt. But the state does  
24 have the burden of proving a defendant's guilt to your  
25 satisfaction beyond a reasonable doubt.

## Jury charge

1       The term reasonable doubt should be given its plain  
2 and ordinary meaning. A reasonable doubt is the kind of  
3 doubt that would cause a reasonable person to hesitate to  
4 act upon the information provided. And the defendant in a  
5 criminal trial is entitled to any reasonable doubt that  
6 arises from the evidence or lack of evidence in a case.  
7 And if upon any factual issue essential to a finding of a  
8 verdict of guilty you have some reasonable doubt as to how  
9 that issue should be resolved, it would be your duty to  
10 resolve that reasonable doubt in favor of the defendant.

11       And therefore if upon your consideration of the whole  
12 case you have a reasonable doubt as to the defendant's  
13 guilt as to one or both of the charges, it would be your  
14 obligation and duty to resolve that reasonable doubt in his  
15 favor and to return a verdict of not guilty.

16       On the other hand, after you have carefully considered  
17 all the evidence in the case and applied the law that I  
18 will have provided you, if you have no reasonable doubt as  
19 to the defendant's guilt as to one or both of the charges,  
20 then of course it would be your corresponding duty to  
21 convict the defendant or to find him guilty of any crime  
22 that you are convinced beyond a reasonable doubt that he  
23 has committed.

24       Now, the same law that provides that you are the  
25 judges of the facts also provides that I am the judge of

## Jury charge

1 the law. And that simply means that nobody is going to  
2 tell you how to arrive at your determination of fact in  
3 this case. You do that, as I have already stated, through  
4 the exercise of good judgment and common sense  
5 conscientiously applied to the testimony and the evidence  
6 in the case.

7       You must however accept the law as I provide it to you  
8 as being the law that is applicable in this particular  
9 case. In other words, you're not to concern yourself with  
10 what you thought the law was before you came to serve as a  
11 juror this week or what you think the law ought to be.

12       Under your oath as a juror you must accept the law as  
13 I provide it to you as being the law that you are to apply  
14 in this case. And then you simply take that law and you  
15 apply it to the facts as you 12 jurors determine those  
16 facts to be based upon your common-sense examination and  
17 evaluation of all of the evidence in the case.

18       Now, as you have been told, you are the sole judges of  
19 the facts in this case. And you are therefore necessarily  
20 the sole judges of the credibility, that is the  
21 believability, of each witness that has testified during  
22 the trial of this case.

23       You 12 jurors alone must decide what weight, value and  
24 effect to give to any particular witness' testimony, or  
25 even a portion of a witness' testimony. And so there are a

## Jury charge

1 number of factors which you should consider in arriving at  
2 your assessment as to a particular witness' credibility,  
3 and I'm going to discuss those factors with you.

4       You may consider the demeanor of the witness. That is  
5 you can consider how the witness appeared to you as the  
6 witness testified from that witness stand. In other words,  
7 was the witness straightforward in responding to questions,  
8 or was the witness hesitant or evasive in responding to  
9 questions that were asked of that particular witness?  
10 Simply put, did the witness appear to you to be telling the  
11 truth and to have knowledge of the facts to which that  
12 witness has testified?

13       You may also consider whether or not the testimony of  
14 a witness was consistent, or was it inconsistent with that  
15 witness' own testimony as well as statements made by that  
16 particular witness, whether they be in court or out of  
17 court. And you may consider whether or not the testimony  
18 of a witness is consistent, or is it inconsistent with  
19 other witnesses' testimony or other evidence received  
20 during the trial of the case?

21       You may also consider how the witness came to know the  
22 facts to which that witness has testified. In other words,  
23 what was a particular witness' opportunity and ability to  
24 perceive the existence of those facts to which that witness  
25 has testified to? And then what is that witness' ability

## Jury charge

1 to be able to come into court and to accurately recollect  
2 to you as to what they have previously perceived, seen, or  
3 felt for that matter.

4 You have may also consider any bias or prejudice that  
5 a witness might have in the case. In other words, do you  
6 find some reason that a particular witness would come into  
7 court and would testify one way or another to help or to  
8 hurt one side or the other? And you may consider any  
9 interest that a witness might have in the outcome of a case  
10 if you determine that a witness does have such an interest  
11 in the outcome and you find that that interest would bear  
12 upon that particular witness' credibility and  
13 believability.

14 You may also consider whether or not the testimony of  
15 a witness was strengthened, or was it weakened by other  
16 testimony or other evidence received during the trial of  
17 the case?

18 Now, you have heard some testimony from individuals  
19 that were qualified as experts in a particular field. And  
20 the fact that a court qualifies a witness as an expert  
21 should not be taken by you as any indication by me as to  
22 how I think you ought to accept or reject that witness'  
23 testimony.

24 But where a person has some special education,  
25 training and experience and expertise in a particular

## Jury charge

1 field, based upon that special education and training and  
2 experience they may be qualified to testify as an expert in  
3 court. And experts can testify in an opinion form based  
4 upon the facts of the matter.

5 Lay witnesses generally are not permitted to testify  
6 in an opinion form. They can testify as to what they have  
7 perceived based upon their own personal experience and then  
8 come to court and testify as to what they previously saw or  
9 heard or felt. But they are not permitted to testify in an  
10 opinion form. Now, if a person is qualified as an expert,  
11 then they are permitted to testify in an opinion form based  
12 upon the facts relating to a particular case.

13 Now, if you determine that a person who has been  
14 qualified as an expert in your view doesn't possess the  
15 requisite or proper training, education or experience or  
16 you find that the expert did not properly consider the  
17 facts that relate to this particular case, then you may  
18 reject that expert's opinion, or you may accept it.

19 In other words, you have to assess and evaluate the  
20 credibility of an expert witness just as you do any other  
21 witness, and it is for you 12 jurors to make that  
22 determination.

23 Now, because you are the finders of the facts and  
24 because you are the judges of the credibility of each  
25 witness that has testified you are permitted to believe as

## Jury charge

1 much or as little of what a witness has testified to as you  
2 deem is appropriate. And therefore you may believe  
3 everything that a particular witness said; you may choose  
4 to believe none of it. You may believe one portion of a  
5 witness' testimony and reject some other portion of that  
6 same witness' testimony.

7 In a given case you could believe one witness as  
8 opposed to several, or several as opposed to one. But  
9 whatever your good judgment and common sense tells you is  
10 the most believable and credible testimony is the testimony  
11 you should accept, and you should reject any testimony or  
12 other evidence that you find not to be credible or  
13 believable. Again, your sole objective is to simply reach  
14 the truth in the matter. And by doing that you will have  
15 fulfilled your obligations as jurors.

16 Now, while there are various forms of evidence such as  
17 testimony, photographs, documents, charts and other types  
18 of physical exhibits that might be introduced, there are  
19 really only two types of evidence. And either one or both  
20 of those types of evidence may be used to prove any fact in  
21 issue. But the two types of evidence are direct evidence  
22 and circumstantial evidence.

23 Now, direct evidence is the testimony of a person who  
24 testifies from actual knowledge of a fact. It is testimony  
25 of a person who has perceived the existence of some fact by

## Jury charge

1 means of his or her senses and then that individual comes  
2 into court and testifies as to what he or she has  
3 previously seen or heard or felt.

4 Circumstantial evidence, on the other hand, is the  
5 proof of other fact or set of facts which taken either  
6 singly or collectively may prove the existence of a fact in  
7 question as a necessary consequence, that is through an  
8 inference. And an inference is simply a deduction of fact  
9 that may logically and reasonably be drawn from the proof  
10 of some other fact or set of facts.

11 It's not a fact that is proven by the direct testimony  
12 of a witness based upon personal perception, but it is a  
13 conclusion which might reasonably be drawn from the proof  
14 of some other fact.

15 In other words, you may infer that a particular event  
16 occurred or that a particular fact exists based upon the  
17 proof of sufficient factual circumstances which would  
18 reasonably warrant your arriving at such a conclusion.

19 Now, the law makes absolutely no distinction between  
20 the weight or the value to be given to either direct  
21 evidence as opposed to circumstantial evidence, nor is a  
22 greater degree of certainty required of circumstantial  
23 evidence as opposed to direct evidence.

24 Whatever the type of evidence used to prove any fact  
25 in issue, you should consider all of the evidence presented

## Jury charge

1 during the trial of this case. And after carefully  
2 considering and weighing all of that evidence in your minds  
3 if you are not convinced of the guilt of the defendant  
4 beyond a reasonable doubt, then you must resolve that doubt  
5 in his favor and return a verdict of not guilty.

6 Now, in this case, as you are aware, the defendant has  
7 been charged with two separate crimes. One is the crime of  
8 arson in the first degree; the other is the crime of  
9 murder.

10 Both of these are statutory offenses. That just means  
11 that the legislature has defined what those two criminal  
12 offenses are. Every year the legislature meets. And when  
13 they're in session they pass all kind of laws and rules and  
14 regulations that govern our conduct in a lot of different  
15 ways.

16 Some of the statutes they pass are criminal statutes.  
17 In other words, those statutes prohibit an individual from  
18 engaging in particular types of conduct. And also they  
19 provide for a penalty where a person is found to have  
20 engaged in that conduct in violation of that particular  
21 statute.

22 Now, these two statutes -- I'm going to begin with  
23 arson in the first degree. Arson in the first degree is a  
24 statutory criminal offense. That statute is set forth in  
25 Section 16-11-110.

## Jury charge

1        That section provides in its pertinent parts the  
2 following: A person who wilfully and maliciously causes an  
3 explosion, sets fire to, burns or causes to be burned or  
4 aids, counsels or procures a burning that results in damage  
5 to a building, a structure, a dwelling house or any other  
6 structure designed for human occupancy, whether it's the  
7 property of himself or of another, which results either  
8 directly or indirectly in death or serious bodily harm to a  
9 person is guilty of the crime of arson in the first degree.

10       Therefore in order for the defendant to be found  
11 guilty of the crime of arson in the first degree it would  
12 be necessary that the state has proven to your satisfaction  
13 beyond a reasonable doubt that the defendant, Jeremy  
14 Richard Phillips, acted wilfully and maliciously and he did  
15 set fire to or burn or cause to be burned, or he did  
16 counsel, procure or otherwise did aid and assist another to  
17 set fire to or burn or cause to be burned a dwelling or a  
18 building or any other structure designed for human  
19 occupancy resulting in damage to that structure which  
20 directly or indirectly results in death or serious bodily  
21 harm to another.

22       Now, within the meaning of that statute the terms  
23 wilfully and maliciously mean the following: Wilfully  
24 means to do an act knowingly and intentionally and not by  
25 accident or mistake or inadvertence. The term maliciously

## Jury charge

1 means to do a wrongful act intentionally and without just  
2 cause or legal excuse.

3 Now, the defendant is also charged with the crime of  
4 murder. Murder is also a statutory offense. And that  
5 offense is set forth in Section 16-3-10. And that statute  
6 provides that killing, excuse me, murder is defined as the  
7 killing of any person with malice aforethought either  
8 expressed or implied, expressed or implied referring to  
9 malice aforethought.

10 In order for you to find the defendant guilty of the  
11 crime of murder it would be necessary that the evidence in  
12 this case has established to your satisfaction beyond a  
13 reasonable doubt that the defendant or an accomplice -- and  
14 I'll define an accomplice for you later on in this  
15 instruction -- did commit some act or acts which  
16 proximately caused the death of a person and that that  
17 killing was done with malice aforethought. Malice  
18 aforethought is an essential element of the crime of  
19 murder.

20 The acts of the defendant and-or of an accomplice must  
21 be the proximate cause of the decedent's death. And the  
22 law defines the proximate cause of a death to be something  
23 which brings about a chain of events which in the end  
24 brings about the death. The proximate cause is the direct  
25 cause without which the death would not have occurred.

## Jury charge

1        Now, as I stated, any killing must be shown, and it  
2 must be proven that it was accompanied by malice  
3 aforethought. Malice is a term connoting an ill will and  
4 an intent to do harm. It is a technical term importing  
5 wickedness and excluding just cause or legal excuse.

6        Malice may be likewise defined as a state of mind  
7 which indicates a formed purpose and design to do a  
8 wrongful act under circumstances that exclude any legal  
9 right to do it.

10       Now, the words expressed or implied malice do not mean  
11 different kinds of malice but merely the manner in which  
12 malice may be shown to have existed. That is to say either  
13 by direct evidence or by circumstantial evidence implying  
14 or inferring the existence of malice. And, again, an  
15 inference is simply a deduction of fact that may logically  
16 and reasonably be drawn from the proof of some other fact  
17 or set of facts.

18       Now, malice may be expressed as where there is an  
19 expressed threat to kill or where there is a lying in wait  
20 or where the circumstances show directly that an intent to  
21 kill was entertained by the person committing the killing.

22       Malice may be inferred, though no expressed intent to  
23 kill is proven by direct evidence, where the facts and the  
24 circumstances which have been proven by the evidence in the  
25 case satisfy you beyond a reasonable doubt that malice was

## Jury charge

1 present in the mind of the defendant at the time that any  
2 killing took place.

3 The existence of malice may be inferred from the  
4 circumstances shown to have existed at the time of the  
5 event, and you are permitted to infer the existence of the  
6 element of malice from proof of an unlawful and an  
7 intentional killing of another without justification or  
8 legal excuse. You may infer malice from proof of a  
9 wrongful intent to injure another person through the  
10 infliction of serious bodily harm indicative of a wicked or  
11 depraved spirit.

12 You may infer the existence of malice from proof of  
13 the intentional use of some type of deadly weapon. And a  
14 deadly weapon is defined as any device or instrument which  
15 in the manner it is used or is intended to be used is known  
16 to be capable of producing death or serious bodily harm.

17 You are also permitted to infer malice from proof of  
18 the intentional commission of an act which is inherently  
19 dangerous to human life. You are also permitted to infer  
20 the existence of malice from the intentional killing of  
21 another or the intentional commission of criminal acts  
22 resulting in the death of another during the commission of  
23 a felony such as arson which is dangerous to human life or  
24 where the circumstances of the crime create a substantial  
25 foreseeable risk to human life.

## Jury charge

1        You are also permitted to infer the existence of  
2 malice from proof of the commission of reckless acts which  
3 are inherently dangerous to human life and which are done  
4 so recklessly as to manifest a depravity of mind signifying  
5 an extreme disregard for or an extreme indifference to  
6 human life.

7        Malice as an essential element of the crime of murder  
8 may be described as the state of a person's mind signifying  
9 a general malignant recklessness and extreme disregard for  
10 or indifference to human life.

11        Now, even if the facts in the case which are proven  
12 are sufficient to raise an inference of malice as I have  
13 described, such an inference would simply be an evidentiary  
14 fact to be taken into consideration by you 12 jurors along  
15 with all of the other evidence received during the trial of  
16 the case, and you may give such inferences whatever weight  
17 you deem they should receive, if any.

18        Simply stated, you are permitted to infer the  
19 existence from the proof of any one or more of those  
20 circumstances that I have described, as well as from any  
21 other evidence in the case reasonably tending to prove that  
22 fact. But you are in no way required to do so.

23        You must simply determine whether or not malice has  
24 been proven by the state beyond a reasonable doubt  
25 considering all of the evidence introduced during the trial

## Jury charge

1 of the case and any reasonable inferences that might be  
2 drawn from that evidence.

3 It is also essential that there exist not only malice  
4 but that it be malice aforethought. Now, the law does not  
5 require that malice must exist for any appreciable length  
6 of time before the commission of an act proximately causing  
7 a fatal result. Indeed that malice may be conceived at the  
8 very moment that the fatal act is committed.

9 It is sufficient in the law so long as the state has  
10 proven beyond a reasonable doubt both the existence of  
11 malice and the commission of an act or acts by the  
12 defendant which proximately caused the fatal result.

13 Now, while the state must prove beyond a reasonable  
14 doubt that a killing did occur accompanied by malice  
15 aforethought in order to establish the crime of murder, it  
16 is not necessary that the state prove any motive for the  
17 killing, although there may be evidence relating to the  
18 issue of motive introduced during the trial of the case.

19 Now, you are further instructed that one who is  
20 charged with the commission of a crime may be convicted as  
21 either a principal or as an accomplice. And an accomplice  
22 is a person who knowingly and voluntarily and with common  
23 intent with a principal offender unites with the principal  
24 offender in the commission of the crime. An accomplice is  
25 often referred to as an abetter or an abettor in the

## Jury charge

1. commission of the crime.

2. Now, in this case state alleges that the defendant,  
3. Jeremy Richard Phillips, is guilty of the crime of arson in  
4. the first degree, as well as murder, either as a principal  
5. or as an accomplice.

6. You are instructed that where two or more people act  
7. together with a common intent and purpose and where they  
8. combine, conspire, plan or otherwise agree to the  
9. commission of a crime, each person who is present to aid,  
10. abet, assist or otherwise participate in the commission of  
11. that crime is equally guilty. The act of one is deemed to  
12. be the act of all.

13. Any person who joins with another or others to  
14. accomplish an illegal purpose is held to be criminally  
15. responsible for everything done by any other person which  
16. occurs as a natural and probable consequence of the acts  
17. done pursuant to and in furtherance of the common plan or  
18. purpose.

19. Therefore where two or more persons are acting  
20. together and they are aiding, abetting and assisting and  
21. participating with each other in the commission of the  
22. crime, the acts of one become the acts of all, the hand of  
23. one is deemed to be the hand of all. And all are equally  
24. guilty of any crime which is accomplished thereby.

25. Now, prior knowledge that some person is intending to

## Jury charge

1 commit a crime without more is not sufficient to make a  
2 person guilty of that crime of which he may be shown to  
3 have knowledge. And likewise the mere presence of a person  
4 at the scene of a crime or in close proximity thereto even  
5 with knowledge that another is intending to commit a crime  
6 is not sufficient standing alone to prove a person guilty  
7 of a crime as an accomplice.

8 In order for a person to be found guilty of a crime  
9 under the legal theory of aiding and abetting, which is  
10 also referred to as accomplice liability, it must be proven  
11 beyond a reasonable doubt that that person was present at  
12 the scene of the crime with the intention of aiding,  
13 abetting, assisting or participating in the common plan  
14 which culminates in the commission of a criminal offense.

15 And under a theory of accomplice liability two or more  
16 persons may be guilty of an unlawful homicide even though  
17 only one person actually commits the act which is directly  
18 responsible for the death of another.

19 Now, a criminal intent is also a necessary element of  
20 any crime that has to be proven beyond a reasonable doubt.  
21 The term intent means the state of a person's mind which  
22 directs his actions toward a specific object or goal.

23 The term intent would include those consequences which  
24 represent the very purpose for which an act is done, as  
25 well as those consequences which are known to be

## Jury charge

1 substantially certain to result whether actually intended  
2 or not.

3 A criminal intent is the state of a person's mind that  
4 operates jointly with an act in the commission of a crime.  
5 Criminal intent is a mental state of conscious wrongdoing  
6 in contrast to the commission of an act which is the result  
7 of accident, inadvertence or mistake. And the element of  
8 criminal intent may be proven by acts, declarations and  
9 conduct of the defendant, as well as any other  
10 circumstances which are established by the evidence in the  
11 case from which you might naturally and reasonably infer  
12 such criminal intent.

13 Now, Madam Forelady and ladies and gentlemen of the  
14 jury, I am not in any way concerned with what your  
15 decisions are.

16 But you are instructed that your verdicts must be  
17 unanimous. All 12 of you must be in agreement before any  
18 decision may be reached and returned to the court as a  
19 verdict.

20 Madam Forelady, as I have already indicated to you,  
21 these indictments will be in the jury room along with all  
22 the evidence presented during the trial of the case. These  
23 indictments are not evidence. They're not proof of  
24 anything.

25 The purpose of the indictments being in the jury room

## Jury charge

1 are to serve as the verdict forms. And so it's going to be  
2 on the back of each of the indictments that you will be  
3 asked to indicate the jury's unanimous decision as to that  
4 particular charge, and of course you have two.

5 I simply ask that you indicate the jury's unanimous  
6 decision on the back of the indictment. You'll see in the  
7 lower left-hand corner there's the word verdict. And it's  
8 beneath the word verdict that you will indicate the jury's  
9 unanimous decision.

10 Now, as to each of the indictments there are two  
11 possible verdict forms.

12 If the state has proven to your satisfaction beyond a  
13 reasonable doubt the defendant has committed the crime set  
14 forth in the indictment, then your verdict would be guilty.

15 And if the state has failed to prove one or more of  
16 the essential elements necessary to establishing that crime  
17 beyond a reasonable doubt, then your verdict would be not  
18 guilty.

19 So whether it be guilty or not guilty, indicate the  
20 unanimous decision as to that particular charge on each of  
21 the respective indictments. Also, you will be asked to  
22 sign your name as the foreperson and place the appropriate  
23 date on the indictment.

24 Now, during your deliberations there may come a time  
25 where you have -- there may come a time where you have a

## Jury charge

1 question about the evidence or facts or whether or not  
2 there is some other witness or some other item of evidence  
3 or something else that you wonder if it exists.

4 I can never respond to any questions as it relates to  
5 the evidence in the case. I'm just not permitted to do so.

6 If you're looking for something else by way of  
7 evidence, it doesn't matter whether it does exist or it  
8 doesn't exist. You can't have it. No additional evidence  
9 can be received now that you're going back to begin with  
10 your deliberations. So you base your decision upon what  
11 has been presented during the trial of this case.

12 If you have a question about a witness' testimony and  
13 you think that question can be answered by having that  
14 testimony replayed, we can bring you back into court and  
15 have testimony replayed in whole or in part.

16 We don't have transcripts of the testimony, so I can't  
17 send you back a transcript. But if you'd like to have a  
18 particular witness' testimony replayed for your benefit and  
19 you need it in whole or just in part, just let us know  
20 through the bailiff, and I'll bring you back to accommodate  
21 that request.

22 If at any time during your deliberations you have a  
23 question about the law that's applicable, I can always  
24 answer those questions. So if you need an additional  
25 explanation or you need a reexplanation or you need a

## Jury charge

1 clarification as to the law that's applicable, I can  
2 respond to those questions, and I will be happy to try to  
3 provide you with that additional explanation or  
4 clarification.

5       During your deliberations if we have any smokers on  
6 the jury, you are permitted to smoke during deliberations,  
7 but you can't smoke in the jury room. You have to go  
8 outside. So if you need to smoke, let the bailiff know.  
9 They'll make those arrangements to have those that want to  
10 smoke taken outside.

11       You are instructed however that deliberations have to  
12 stop if any juror is absent, because all must be present in  
13 order that they may participate. So if at any time during  
14 the jury deliberation process a juror is absent for any  
15 authorized purpose, the deliberations must stop. And then  
16 they may only resume when all 12 jurors are present.

17       During your deliberations, as you go back the clerk  
18 will come back there to take your lunch orders, and you can  
19 provide her with that. She'll tell you where you can order  
20 it from. She might give you a choice. I'm not sure about  
21 that. But, anyway, you tell her what you want and we'll  
22 order it and bring it to the jury room for your benefit.

23       And when the lunch does arrive you can stop and eat or  
24 you can deliberate while you eat or whatever suits you.  
25 I'll leave that up to you. I'll leave that up to your

## Jury charge

1 discretion.

2 Now, with the exception of Ms. Scruggs, I'm going to  
3 ask the initial primary 12 jurors if you'll please go back  
4 with the bailiff to the jury room.

5 Do not however begin your deliberations until I send  
6 you word to do so. I've got some matters I'll need to  
7 address with the lawyers. If I do not need to bring you  
8 back for any reason, then I'll simply send word by way of  
9 the bailiff that you may begin with your deliberations.  
10 And in that event he'll bring to the jury room all of the  
11 exhibits which have been introduced.

12 And to you, Madam Forelady, he'll also bring the  
13 indictments which will serve as the verdict forms.

14 If at any time, Madam Forelady, you need to address an  
15 issue or question or difficulty to me, simply write it on a  
16 piece of paper and provide it to the bailiff. He'll  
17 provide it to me, and I will respond accordingly.

18 Okay. So with the exception of Ms. Scruggs, I'll ask  
19 the jury to please go back. But await my instruction as to  
20 when to begin your deliberations.

21 (Whereupon, the jury retired to deliberate at  
22 11:35 a.m.)

23 (Whereupon, the alternate juror was excused.)

24 THE COURT: Are there any exceptions taken to the  
25 instructions?

## Jury charge

1 MR. MORIN: None from the state.

2 THE COURT: Or any requests for additions to the  
3 instruction by the state?

4 MR. MORIN: No, sir.

5 THE COURT: By the defense?

6 MR. WEATHERFORD: None other than that request I made  
7 earlier.

8 THE COURT: The request for an assault and battery  
9 charge?

10 MR. WEATHERFORD: Yes, sir.

11 THE COURT: All right. That is declined. I don't  
12 think it's applicable, and it's not a lesser included  
13 offense.

14 All right. Let me ask y'all to verify the existence  
15 of all the exhibits before they go back.

16 (Pause.)

17 MR. MORIN: Mr. Weatherford and I have verified all  
18 the exhibits that are in that box, Your Honor.

19 MR. WEATHERFORD: That's correct, Your Honor.

20 THE COURT: Okay. Send the indictments back and the  
21 evidence back and tell the jury they may begin their  
22 deliberations and notify us when they have concluded.

23 (Whereupon, a recess was taken.)

24 (Question from the jury and response by the Court  
25 marked Court's Exhibit No. 3.)

## Verdict

1 THE COURT: All right. I am told the jury has reached  
2 a verdict. Are we ready to receive it?

3 MR. MORIN: The state is ready.

4 MR. WEATHERFORD: The defense is ready.

5 THE COURT: All right. Bring them in.

6 (Whereupon, the jury returned to the courtroom at  
7 3:36 p.m. to report its verdict.)

8 THE COURT: Madam Forelady, have you and your fellow  
9 jurors reached a unanimous decision?

10 THE FOREPERSON: Yes, we have.

11 THE COURT: Did you indicate those decisions on the  
12 backs of the indictments as requested?

13 THE FOREPERSON: Yes, sir.

14 THE COURT: Did you sign your name as the foreperson?

15 THE FOREPERSON: Yes.

16 THE COURT: Place today's date on it?

17 THE FOREPERSON: I haven't got the date on it.

18 THE COURT: Place today's date on there, please,  
19 ma'am, December the 7th.

20 (Pause.)

21 THE COURT: If you will, hand those verdict forms up  
22 by way of the bailiff.

23 All right. You may publish the verdicts.

24 THE CLERK: Indictment 2007-GS-11-301, the State of  
25 South Carolina vs. Jeremy Richard Phillips, indictment for

## Verdict

1 murder, the verdict is guilty. Signed by foreperson, Janet  
2 Hall.

3 Indictment 2007-GS-11-302, the State of South Carolina  
4 vs. Jeremy Richard Phillips, indictment for arson first,  
5 the verdict is guilty. Signed by foreperson, Janet Hall.

6 Ladies and gentlemen of the jury, if this is the  
7 verdicts of you all, please indicate by raising your right  
8 hand.

9 (Whereupon, all jurors responded in the affirmative.)

10 THE CLERK: Thank you.

11 THE COURT: All jurors indicated the affirmative.

12 Does -- are there any matters we need to address with  
13 the jury present?

14 MR. MORIN: None from the state.

15 MR. WEATHERFORD: No, sir.

16 THE COURT: Does the defendant wish to have the  
17 verdict -- or the jury polled?

18 MR. WEATHERFORD: Yes, sir.

19 THE COURT: All right. Poll the jury, please, ma'am.

20 THE CLERK: As I call your name, please raise your  
21 right hand.

22 Juror 92, Angela Upchurch, is this your verdict?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: Juror 16, Cynthia Camp, is this your  
25 verdict?

Verdict

1 THE JUROR: Yes.  
2 THE CLERK: Juror 36, Janet Hall, is this your  
3 verdict?  
4 THE JUROR: Yes.  
5 THE CLERK: Juror 70, Andrea Reasinger, is this your  
6 verdict?  
7 THE JUROR: Yes.  
8 THE CLERK: Juror 45, Earl Jolly, is this your  
9 verdict?  
10 THE JUROR: Yes, it is.  
11 THE CLERK: Juror 103, Kyle McNier.  
12 THE JUROR: Yes, ma'am.  
13 THE CLERK: Is this your verdict?  
14 THE JUROR: Yes, ma'am.  
15 THE CLERK: Juror 75, Quensena Robinson, is this your  
16 verdict?  
17 THE JUROR: Yes, ma'am.  
18 THE CLERK: Juror 99, Danny Wycoff, is this your  
19 verdict?  
20 THE JUROR: Yes, ma'am.  
21 THE CLERK: Juror 62, Michael Oliver, is this your  
22 verdict?  
23 THE JUROR: Yes, ma'am.  
24 THE CLERK: Juror 107, Steven Large, is this your  
25 verdict?

## Sentence

1 THE JUROR: Yes, ma'am.

2 THE CLERK: Juror 105, Brooke Bobo, is this your  
3 verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror 29, Melissa Fowler, is this your  
6 verdict?

7 THE JUROR: Yes.

8 THE COURT: All right. Any other matters to be  
9 addressed?

10 MR. MORIN: None from the state.

11 MR. WEATHERFORD: No, sir.

12 (Whereupon, the trial jury was excused.)

13 THE COURT: All right. Any matters to address prior  
14 to imposition of sentence?

15 MR. WEATHERFORD: No, sir.

16 THE COURT: All right. Anything further on behalf of  
17 the state?

18 MR. MORIN: Yes, sir, Your Honor. The family has  
19 given a brief typed statement they would like for me to  
20 hand up on their behalf.

21 (Pause.)

22 THE COURT: Okay. All right. I have read the letter.  
23 I will allow Mr. Weatherford to have a look at it so he can  
24 respond to it if he needs to, and then we will make it a  
25 part of the record.

## Sentence

1 (Pause,)

2 (Letter from the victim's family marked Court's Exhibit  
3 No. 4.)

4 THE COURT: Anything further on behalf of the state?

5 MR. WEATHERFORD: Just one thing, Your Honor, the  
6 matter of the strong-arm-robbery indictment. I assume  
7 that's been nolle prossed or will be.

8 MR. MORIN: It will be.

9 THE COURT: Okay. All right. Mr. Weatherford, I'll  
10 hear from you and Mr. Phillips.

11 MR. WEATHERFORD: Your Honor, there's nothing else I  
12 can, I can say except what came out in the testimony and  
13 arguments. I mean, there's nothing else I could tell you.  
14 I told everything I know about the case and Jeremy to the  
15 jury which you were privy to. So that's all I can say.

16 THE COURT: All right. Mr. Phillips, have you got  
17 anything you want to tell me before I impose a sentence?

18 THE DEFENDANT: No, sir.

19 THE COURT: On Indictment 2007-301, that's an  
20 indictment for murder, wherein you have been found guilty  
21 by a jury of that offense, the Sentence of the Court is  
22 you, Jeremy Richard Phillips, be confined to the South  
23 Carolina Department of Corrections for a period of your  
24 natural life.

25 On Indictment 2007-302, an indictment for arson in the

## Sentence

1 first degree, wherein you have been found guilty by a jury  
2 of that offense, the Sentence of the Court is you, Jeremy  
3 Phillips, be confined to the South Carolina Department of  
4 Corrections for a period of 30 years.

5 Mr. Phillips, you have a right to appeal the verdicts  
6 of the jury and the Sentence of the Court. You must file  
7 any notice of your intentions to appeal those decisions  
8 within ten days of today's date.

9 END OF REQUESTED TRANSCRIPT OF RECORD

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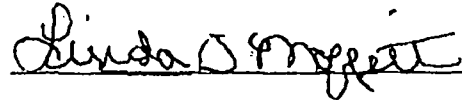
## Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 3rd, 5th, 6th and 7th days of July 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 12, 2008



Linda D. Moffitt  
Circuit Court Reporter

010CP-110591

STATE OF SOUTH CAROLINA )  
 County of Cherokee )

In the Court of Common Pleas

Jeremy Richard Phillips 325588  
 Full name and prison number, if any, of applicant. )

v. )

State of South Carolina  
 Name of Respondent )

APPLICATION FOR

POST-CONVICTION RELIEF

BRANDY W. MCBEE

2010 AUG -4 A 11:01

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Perry Corr. Inst. 430 Oaklawn rd.  
Pelzer S.C. 29669
2. Name and location of Court which imposed sentence General Sessions Cherokee Co.  
State of S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 07-GS-11-0301
  - (b) 07-GS-11-0302
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Dec. 7<sup>th</sup> 2007 - life
  - (b) Dec. 7<sup>th</sup> 2007 - 30 yrs.
  - (c) \_\_\_\_\_

5. Check whether a finding of guilty was made
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. denied
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. July 14<sup>th</sup> 2010
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2010-UP-363
- ii. N/A
- iii. N/A
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of trial Counsel / see Attached
- (b) N/A
- (c) Will Amend pursuant to SCRCP, Rule 71.1

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See Attached

(b) See Attached

(c) Applicant reserves right to Amend

11. Prior to this application have you filed with respect to this conviction

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

No / Appeal only

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

Other than Direct Appeal NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Ineff. Trial Counsel cannot be raise on Direct Appeal
- (b) N/A
- (c) Will Amend new grounds upon appt. of PCR Counsel

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?  
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Wade S. Weatherford, III Attorney at Law P.O. Box 2207 Gaffney SC. 29
- ii. N/A
- iii. N/A

(b) the proceedings at which each such attorney represented you:

- i. Wade S. Weatherford III, Arraignment, Trial, Sentencing, post-trial motion
- ii. N/A
- iii. N/A

18. State clearly the relief you seek in filing this application.

Vacate / Reverse Sentence and Conviction, Remand for New Trial

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA )  
COUNTY OF Cherokee )

VERIFICATION

I, Jeremy Phillips, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jer R Phillips

Sworn to and subscribed before me

This 29<sup>th</sup> day of July, 2010.

Barry J. Gorman L.S.  
Notary Public for South Carolina

My Commission Expires May 12<sup>th</sup>, 2014

**APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, \_\_\_\_\_, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Jer R Phillips  
Applicant

Sworn to and subscribed before me

This 29<sup>th</sup> day of July, 2010.

Barry J. Gorman L.S.  
Notary Public for South Carolina

My Commission Expires May 12<sup>th</sup>, 2014

BRANDY W. MCBEE  
2010 AUG -4 A 11:02

- (A) Trial Counsel was ineffective for failing to investigate documentary evidence and witnesses in the case of the applicant.
- (B) Trial Counsel was ineffective for failing to call the state's key witnesses Jesse Willis and Alberto Rodrigues to Direct Examination or Cross Examination.

BRANDY W. MCBEE

2000 AUG -4 AM 11:02

OFFICE OF  
PROSECUTOR  
GENERAL  
STATE OF TEXAS

Aug. 1<sup>st</sup> 2010

Brandy McBee  
 Clerk of Court, Cherokee Co.  
 P.O. Drawer 2289  
 125 E. Floyd Baker Boulevard  
 Gaffney, S.C. 29342

BRANDY W. MCBEE

2010 AUG -4 A 10:56

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

Mrs. McBee,

Enclosed you will find my PCR  
 application along with attachment.

Please send me a copy after youve  
 clock stamped and filed it. Thankyou.

Please staple attachment to  
 my application. Thank you

Respectfully  
 Jeremy R Phillips

Jeremy Phillips #325588  
 Perry Corri Inst. - Q1A - 213  
 430 Oaklawn rd.  
 Pelzer S.C. 29669

|                                   |   |                              |  |
|-----------------------------------|---|------------------------------|--|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS |  |
|                                   | ) | SEVENTH JUDICIAL CIRCUIT     |  |
| COUNTY OF CHEROKEE                | ) |                              |  |
| Jeremy Richard Phillips, #325588, | ) | 2010-CP-11-0591              |  |
|                                   | ) |                              |  |
| Applicant,                        | ) |                              |  |
|                                   | ) |                              |  |
| v.                                | ) | RETURN                       |  |
|                                   | ) |                              |  |
| State of South Carolina,          | ) |                              |  |
|                                   | ) |                              |  |
| Respondent.                       | ) |                              |  |
|                                   | ) |                              |  |

FILED  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2011 FEB 16 A 10:36  
BRANDY W. MCBEE

Respondent, making its Return to the application for post conviction relief (PCR) filed August 4, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2007 term of the Cherokee County Grand Jury for murder (07-GS-11-0301) and arson – 1<sup>st</sup> degree (07-GS-11-0302). Wade S. Weatherford III, Esquire, represented him. On December 7, 2007, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable J. Derham Cole sentenced him to confinement for life for murder and a concurrent sentence of thirty years for arson – 1<sup>st</sup> degree.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Phillips, Op. No. 2010-UP-363 (S.C. Ct. App. filed July 14, 2010). The Remittitur was sent on July 30, 2010.

Attached herewith and incorporated herein by reference are the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

## II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that;
  - a. Counsel was ineffective for failing to investigate documentary evidence and witnesses in the case,
  - b. Counsel was ineffective for failing to call the State's key witnesses, Jesse Willis and Alberto Rodriquez to Direct Examination or Cross Examination.

## III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), citing Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

SUZANNE H. WHITE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

February 15, 2011.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )

IN THE COURT OF COMMON PLEAS

2010-CP-11-0591

JEREMY RICHARD PHILLIPS, #325588 )

Applicant, )

vs )

STATE OF SOUTH CAROLINA, )

Respondent. )

AFFIDAVIT OF SERVICE BY MAIL

FILED IN COURT OF COMMON PLEAS  
CHEROKEE COUNTY, S.C.  
2011 FEB 16 AM 10:36  
BRANDY W. MOORE

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Samuel Robert Bass, II, Esquire  
P.O. Box 3547  
Spartanburg, SC 29304

DATED this 15<sup>th</sup> day of February, 2011.

  
Norma Bigbee, Legal Assistant



ALAN WILSON  
ATTORNEY GENERAL

February 15, 2011

The Honorable Brandy W. McBee  
Cherokee County Clerk of Court  
P.O. Drawer 2289  
Gaffney, SC 29342

BRANDY W. MCBEE

2011 FEB 16 A 10:36

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

**Re: Jeremy Richard Phillips, #325588 v. State of South Carolina**  
**2010-CP-11-0591**

Dear Ms. McBee:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office. I am also sending you copies of the following documents to accompany our Return:

Sincerely,

Suzanne H. White  
Assistant Attorney General

SHW/nb

**Enclosure**

Cherokee County Clerks Records  
SCDC Records  
The Appellate Court Records  
Trial Transcript  
PCR Application

cc: Samuel R. Bass, II, Esquire

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF CHEROKEE

) IN THE COMMON PLEAS COURT

3 Jeremy Phillips,  
4 Applicant,

) TRANSCRIPT OF RECORD  
) 2010-CP-42-591

5 -VS-

6 The State.

) February 3, 2012  
) Spartanburg, South Carolina

7  
8  
9  
10  
11 B E F O R E :

12 HONORABLE FRANK R. ADDY, JUDGE  
13  
14

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

16 SAMUEL R. BASS, II, ESQUIRE  
17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQUIRE  
19 Attorney for the State

20 DOUGLAS BRANNON, ESQUIRE  
21 Attorney for Jesse Curtis Willis  
22

23 Linda D. Moffitt  
24 Circuit Court Reporter  
25

|    |                                  |             |
|----|----------------------------------|-------------|
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EXHIBITS

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1 THE COURT: This is -- the first case up is the  
2 Phillips case? Is that right, ma'am?

3 MS. WHITE: Yes, sir, Your Honor.

4 THE COURT: Go right ahead.

5 MS. WHITE: This Jeremy Phillips vs. the State of  
6 South Carolina. It's Case No. 2010-CP-11-0591.

7 He's represented today by Mr. Sam Bass.

8 Mr. Phillips was indicted March of '07 for murder and  
9 arson first degree, proceeded to a trial at which point he  
10 was represented by Wade Weatherford, received a sentence of  
11 life and 30 years.

12 He filed an appeal. Ultimately, the conviction was  
13 confirmed or affirmed -- excuse me -- and then he has filed  
14 this P.C.R. alleging various claims of ineffective  
15 assistance of counsel.

16 At this time I will turn it over to Mr. Bass. And I  
17 believe we have an initial witness we're going to start off  
18 with, Your Honor.

19 THE COURT: All right. And I would ask that the  
20 record reflect that based upon what was told to me prior to  
21 the call of this case I've taken it upon myself to appoint  
22 Doug Brannon as attorney and G.A.L. for the first witness  
23 just for purposes of this hearing out of some concerns that  
24 the Court had as to what the witness might say and the  
25 witness' current mental capacity.

1        So at this point in time, Mr. Bass, are you ready to  
2 proceed, sir?

3        MR. BASS: Yes, Your Honor.

4        THE COURT: All right. Call your first witness,  
5 please, sir.

6        MR. BASS: My first witness is Jesse Curtis Willis.

7        THE COURT: The record should also reflect that of  
8 course Mr. Brannon is present to assist Mr. Willis. Is  
9 that the name of the first witness?

10       MR. BASS: Yes, Your Honor.

11       THE COURT: Mr. Willis -- I'm sorry.

12       MR. BRANNON: May I?

13       THE COURT: Sure. Please.

14       (Pause.)

15       MR. BRANNON: I'm sorry, Your Honor.

16       THE COURT: Quite all right. Thank you, sir.

17       MR. BRANNON: Your Honor, at this time point based on  
18 the desires of the Court, I spoke with Mr. Willis. And  
19 before any questions are asked, Your Honor, I must let the  
20 Court know that Mr. Willis desires to invoke his right to  
21 remain silent and will refuse to answer any questions asked  
22 in this court.

23       THE COURT: Is that correct, Mr. Willis? I need you  
24 to answer out loud.

25       MR. BRANNON: You have to say yes out loud.

1 JESSE WILLIS: Yes.

2 THE COURT: Okay. All right. Very good. And it's  
3 his desire to invoke these rights in full?

4 MR. BRANNON: In full, Your Honor.

5 THE COURT: Good very. All right. I will -- in that  
6 case I don't know that there's any reason to even ask the  
7 witness' name, but I can take notice, take judicial notice,  
8 this is, in fact, Mr. Willis.

9 So anything you want to do at this point?

10 MR. BASS: As long as you take judicial notice this  
11 is, in fact, Mr. Willis.

12 THE COURT: All right. I have taken notice that this  
13 is Mr. Willis.

14 He has informed the Court that he desires to invoke  
15 his Fifth Amendment rights, his Fifth Amendment  
16 protections, in full. So that concludes this witness.

17 Thank you, sir. You can step down.

18 MR. BRANNON: Thank you.

19 THE COURT: Thank you, sir.

20 (Whereupon, Mr. Brannon and Mr. Willis were excused.)

21 THE COURT: If you will, call your next witness,  
22 please, Mr. Bass.

23 MR. BASS: Your Honor, at this time I would like to  
24 call Joseph Smith to the stand.

25 THE COURT: Mr. Smith.

Joseph Smith  
Direct examination by Mr. Bass

1 MR. BASS: Mr. Smith is in the holding cell on the  
2 other side of the courthouse. I apologize, Your Honor.

3 THE COURT: Quite all right.

4 THE OFFICER: What's his name?

5 MR. BASS: Joseph Smith.

6 (Pause.)

7 THE COURT: Sir, if you will, come around and have a  
8 seat over here, please.

9 JOSEPH SMITH, having been  
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. BASS

12 Q Mr. Smith, can you please state your name for the  
13 record?

14 A Joseph Smith.

15 Q Speak up so the court reporter can hear you.

16 A Joseph Smith.

17 Q Okay. Thank you. And currently right now where are  
18 you housed?

19 A McCormick Correctional.

20 Q And why are you there?

21 A For accessory after the fact to felony.

22 Q I'm going to get it marked.

23 (Letter from Joseph Smith marked Applicant's  
24 Exhibit No. 1 for Identification.)

25 Q If you could just take a look at that. And I'll hand

Joseph Smith  
Direct examination by Mr. Bass

1 up a copy to the judge.

2 A Okay.

3 Q Mr. Smith, do you recognize what I just handed to you?

4 A Yes, sir.

5 Q Okay. Do you recognize the handwriting on that  
6 letter?

7 A Yes, sir. It's mine.

8 Q That's your handwriting. Do you recognize the  
9 signature on that letter?

10 A It's mine.

11 Q That's your signature. Did you write this letter?

12 A Yes, sir.

13 Q This obviously isn't an original, but it's a fair and  
14 accurate representation of the original.

15 I need for you to answer out loud, please.

16 A Oh, yeah, yeah. I see that.

17 Q What I want you to do is I'm going to read the letter.  
18 I want you to follow along.

19 A Okay.

20 Q And please just tell me if what I have read is  
21 correct. Okay?

22 A All right.

23 Q "I'm writing to state that Jesse Willis," and in  
24 parenthesis, "Cornbread, stated in C-max --"

25 MS. WHITE: Your Honor, I just want for the record

Joseph Smith  
Direct examination by Mr. Bass

1 object to anything that's going to be said that was told to  
2 him by Mr. Willis as hearsay.

3 THE COURT: I was wondering how we were going to get  
4 around the hearsay objection on this.

5 MR. BASS: Well, Your Honor, Mr. Willis has -- has  
6 invoked his Fifth Amendment. He's now unavailable.

7 This is a statement in his interest and falls within  
8 the hearsay rule. And let me make sure I quote it  
9 correctly -- 804(b)(3).

10 MS. WHITE: Your Honor, I would also -- within that,  
11 that exception, it does say that the statement tending to  
12 expose the declarant at the time to any criminal  
13 liability -- and it's offered to exculpate -- excul --

14 THE COURT: Exculpate.

15 MS. WHITE: Yes. Thank you very much. I can't get  
16 that out today -- the accused is not going to be admissible  
17 unless corroborating circumstances clearly indicate the  
18 trustworthiness of the statement.

19 I don't believe that there's been any kind of  
20 corroborating circumstances that are going to establish  
21 trustworthiness of the statement at the time. So I would  
22 argue that this, any statement by him, should not be  
23 admissible.

24 MR. BASS: Your Honor, if I may address that, right  
25 above that in the rule it says, "The statement which was at

Joseph Smith  
Direct examination by Mr. Bass

1 the time of its making so far contrary to the declarant's  
2 pecuniary and proprietary interest, or so far tended to  
3 subject the declarant to civil or criminal liability, or  
4 to render invalid a claimant by the declarant against  
5 another, that a reasonable person in the declarant's  
6 position would not have made the statement unless believing  
7 it to be true."

8 I don't know why he would have made this statement  
9 unless he believed it to be true.

10 I'll also be putting up corroborating witnesses after  
11 Mr. Smith to testify to statements like this which I will  
12 be introducing into evidence as well.

13 THE COURT: All right. This is in a way however a  
14 somewhat of a self-serving declaration.

15 I realize that the law has changed concerning  
16 third-party guilt in the last -- I guess the Supreme Court  
17 case that came -- what was it -- out five years ago or  
18 something?

19 In the context of a post-conviction-relief action,  
20 this being a civil action, and with Mr. Smith, the witness  
21 testifying, having been charged and involved with all of  
22 this --

23 MR. BASS: I'm sorry. Mr. Willis.

24 MS. WHITE: Yes.

25 THE COURT: I'm sorry.

Joseph Smith  
Direct examination by Mr. Bass

1 MR. BASS: Mr. Willis invoked his Fifth Amendment.

2 THE COURT: Right.

3 MS. WHITE: Mr. Smith was not involved with this  
4 action at all.

5 THE COURT: He was not involved in this action?

6 MR. BASS: No, he was not.

7 THE COURT: I will allow his testimony.

8 Go ahead.

9 MS. WHITE: Thank you.

10 BY MR. BASS

11 Q I'm just going to read the statement. And tell me if  
12 what I'm reading this correct. Okay?

13 A Okay.

14 Q "I'm writing this statement. Jessie Willis" -- in  
15 parenthesis -- "Cornbread stated in C-max that he got into  
16 a fight with the Mexican and beat him down, poured gas into  
17 his mouth and put grass into his mouth and set it  
18 affair" -- I believe it's fire -- "and he said that his  
19 head blowed up like a Roman candle. I told him there's no  
20 way he could do that, and he said he did it and he done it  
21 alone. That's what was stated to me from Jesse Willis" --  
22 in parenthesis -- "Cornbread during a confession in C-max."  
23 Signature, Joseph E. Smith.

24 A Yes, sir, that's correct.

25 Q I read that correctly?

Joseph Smith  
Direct examination by Mr. Bass

1 A Yes, sir.

2 MR. BASS: At this point, Your Honor, I'd like to --  
3 it's actually entered into evidence, but move it into  
4 evidence.

5 THE COURT: Subject to your earlier objection, it will  
6 in be in evidence.

7 (Letter from Joseph Smith marked Applicant's Exhibit  
8 No. 1.)

9 MR. BASS: Now, also at this point, Your Honor, I'd  
10 like Mr. Weatherford to please identify himself to the  
11 witness.

12 THE COURT: Mr. Weatherford, just stand up, please.  
13 (Whereupon, Mr. Weatherford stood.)

14 Q This is Chip Weatherford, Wade Weatherford. And he  
15 was Jeremy's lawyer in his original criminal action.

16 Have you ever met Mr. Weatherford before?

17 A I never met him.

18 Q Okay. Has he ever contacted you about Jeremy's  
19 original case that we're here to talk about today?

20 A No, sir.

21 Q Has anyone from his office ever contacted you about  
22 this case?

23 A No, sir.

24 Q Had anyone ever contacted you about this case before I  
25 sent you a letter and called you up about it?

Joseph Smith  
Cross-examination by Ms. White

1 A You was the first.

2 Q And had -- had Mr. Weatherford contacted you, had he  
3 showed you this statement that you had written and had he  
4 called you to the stand during Mr. Phillips' criminal trial  
5 would you have testified that this was, in fact, an  
6 accurate statement at the time?

7 A Of course.

8 Q And you would have backed it up.

9 A Of course.

10 MR. BASS: Your Honor, at this time I have no further  
11 questions for Mr. Smith.

12 Q Please answer any questions that Ms. White will have  
13 for you.

14 THE COURT: Ms. White.

15 MS. WHITE: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. WHITE

18 Q Mr. Smith, you said you're in prison for accessory  
19 after the fact to a felony. Was the initial charge assault  
20 and battery with intent to kill?

21 A The original charge was murder.

22 Q Okay. And you were originally charged with murder.  
23 And it was dropped down to accessory?

24 A To accessory.

25 Q Okay. Now, did you know Jeremy or Jesse before you

Joseph Smith  
Cross-examination by Ms. White

- 1 were in C-max?
- 2 A No, ma'am.
- 3 Q Okay. You're from Cherokee County?
- 4 A I'm from Cherokee County.
- 5 Q And how old are you?
- 6 A I'm 24.
- 7 Q Do you know how old Mr. Willis is?
- 8 A No, ma'am.
- 9 Q But you were in the same location with him at the
- 10 time?
- 11 A Yes, ma'am.
- 12 Q Okay. So y'all never talked about your ages or --
- 13 A No, ma'am.
- 14 Q But he told you that he committed this crime and gave
- 15 you all the details of it?
- 16 A He gave me the details of it, yes, ma'am.
- 17 Q But you never even had an idea of how old he was?
- 18 A Never asked him.
- 19 Q Okay. Did you talk about anything else, or was the
- 20 crime the only thing that you talked about?
- 21 A Well, you know, other than like Jesus and stuff like
- 22 that, you know, when you're in lockup you talk about maybe
- 23 the Bible and stuff. That's about it.
- 24 Q Okay. All right. And did you know Mr. Phillips
- 25 before you were in lockup?

1 A No, ma'am.

2 Q All right. And Cherokee County -- did you go to  
3 Gaffney High School?

4 A I went to Gaffney High School.

5 Q So you weren't at Gaffney High School at any point  
6 with Mr. Willis?

7 A No, ma'am.

8 Q Okay. At the time did you ask him about the crime, or  
9 did he just volunteer it?

10 A Well, we was in there and I was like, "Man, what you  
11 locked up for," you know I mean. He was like, "well, I'm  
12 locked up for murder." And I am like yeah, like, well,  
13 what happened, and that's when he told me what I wrote in  
14 my statement.

15 Q Okay. Did he talk to you about anything else he had  
16 done involved with it, about stealing anything or anything?

17 A He said he had stole some stuff. He didn't mention  
18 what. He said he stole some stuff.

19 Q But you didn't put that in the statement.

20 A I didn't think nothing of it.

21 Q Okay. Now, why did you write the statement?

22 A Because he told me what happened. And I'm like -- and  
23 I get back. I go to E-dorm. And that's when I met Jeremy.  
24 And he was telling me about his case. And I was like you  
25 couldn't have done it. I's like because I've got somebody

Joseph Smith  
Cross-examination by Ms. White

1 else that's saying they done it.

2 Q So you wrote the statement after you met Mr. Phillips?

3 A Yes, ma'am, because he asked me if -- if I would tell  
4 him what Cornbread had said. And I'm like of course,  
5 because he said it.

6 Q Okay. And who did you give this statement to?

7 A I submitted one to Jeremy and I submitted one and a  
8 copy that supposed to got submitted to his lawyer.

9 Q But you gave them both to Jeremy?

10 A Yes, ma'am.

11 Q Okay. All right.

12 MS. WHITE: That's all I have at this time, Your  
13 Honor.

14 THE COURT: Anything on redirect?

15 MR. BASS: No, Your Honor.

16 THE COURT: Thank you, sir. You can step down.  
17 Call your next witness, Mr. Bass.

18 MR. BASS: At this time, Your Honor, I'd like to call  
19 Carmie Joe Hull.

20 THE COURT: He is on lockup?

21 MR. BASS: He's on this side, Your Honor. He's a lot  
22 closer.

23 (Pause.)

24

25

Carmie Joe Hull  
Direct examination by Mr. Bass

1 CARMIE JOE HULL, having been  
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BASS

4 Q Would you please state your full name for the record?

5 A Carmie Joe Hull.

6 Q And where are you currently located, Mr. Hull?

7 A I am assigned to Tyger River Correctional Institution.

8 Q And then what are you in Tyger River for?

9 A Armed robbery and carjacking.

10 Q Mr. Hull, what I'm going to do is I'm going to hand up  
11 a statement. And I imagine we might be going through the  
12 same objections.

13 MR. BASS: Please mark this as Exhibit 2.

14 (Letter from Carmie Joe Hull marked Applicant's Exhibit  
15 No. 2 for Identification.)

16 THE COURT: Ms. White, you will have the same  
17 objection to this document as the prior document?

18 MS. WHITE: Yes, Your Honor.

19 THE COURT: You're going to make the same argument?

20 MR. BASS: Yes, Your Honor.

21 THE COURT: All right. I make the same ruling.

22 MS. WHITE: Okay. Thank you, Your Honor.

23 MR. BASS: In that case I'd like -- well, I'll make it  
24 first.

25 THE COURT: Very good.

Carmie Joe Hull  
Direct examination by Mr. Bass

1 BY MR. BASS

2 Q Mr. Hull, I apologize for the -- looks like a little  
3 rough -- rough reading. But do you recognize this copy of  
4 this letter?

5 A Yes, sir.

6 Q Okay. Is this your handwriting?

7 A Yes, sir.

8 Q I don't know if you can do it. Can you flip over to  
9 the second page of the letter? Down there it's kind of  
10 hard to read. It says, "Later, pro," and then there's  
11 something else signed there. What is that signed on there?

12 A Gypsy. Gypsy is my nickname.

13 Q And is Gypsy a nickname you have?

14 A Yes, sir.

15 Q Did you write this letter?

16 A Yes, sir.

17 Q I realize this isn't the original, but this is a fair  
18 and accurate representation of the letter you wrote.

19 A Yes, sir.

20 MR. BASS: Your Honor, I'd like to -- may I approach  
21 the witness?

22 THE COURT: Please.

23 Q If you will, turn to the first page, please. Okay.  
24 About two thirds of the way down it says, "I haven't  
25 forgot." Do you see that?

Carmie Joe Hull  
Direct examination by Mr. Bass

1 A Yes, sir.

2 Q Okay. Now, I'm going to read from that, and I want  
3 you to just tell me if I read that correctly. Okay.

4 "I haven't forgot the promise I made about helping  
5 with the statement of what I heard Cornbread say on visit  
6 that day to his mom about how he was going to get away with  
7 it because he had convinced them you did it."

8 Did I read that correctly?

9 A Yes, sir.

10 Q Okay. What I'd like you to do is tell me the  
11 circumstances under which you wrote this and what you're  
12 referring to in this letter.

13 A Well, it was referring to a -- a visit that we had at  
14 the county jail.

15 Q Okay. When you say county jail, do you mean Cherokee  
16 County Jail?

17 A Cherokee County Detention Center.

18 Q Okay.

19 A And if you were a dorm worker you got a special visit.  
20 You got an extra visit for helping clean the units up. And  
21 me -- I was one in E-block and Cornbread was one, and Jason  
22 was one in another block.

23 Q When you say Cornbread, you mean Jesse Willis,  
24 correct?

25 A Right. And-but we all had the same visit on the same

Carmie Joe Hull  
Direct examination by Mr. Bass

1 day, and it was on a Tuesday. And it was sometime around  
2 March, April, May or something like that of 2007, I  
3 believe.

4 And I overheard this, and-but I promised and I told  
5 him that I wouldn't -- when I say I told him, promised him,  
6 that I would help him, I meant that I would do it after my  
7 case was over with because --

8 Q When you say help him, who do you mean?

9 A Jeremy.

10 Q Okay.

11 A Because I didn't want to get involved in that before I  
12 went in and pled guilty, because I knew I was guilty. And  
13 I didn't want to have any kind of repercussions from going  
14 against a prosecution for the same people that were having  
15 to prosecute me.

16 Q I understand.

17 A And, now, this was wrote after I had received my  
18 prison sentence.

19 Q Okay.

20 A And I was willing to do it. And I told him that I  
21 would make a statement. And-but before it could ever  
22 happen, the next thing I read in the newspaper that he had  
23 done went to trial.

24 Q Okay. So you were -- you were in the Cherokee County  
25 Jail, and you were having a visit. Who were you visiting

Carmie Joe Hull  
Direct examination by Mr. Bass

1 with?

2 A My exwife.

3 Q Your exwife. Was she your exwife at the time?

4 A Well, she was my common-law wife.

5 Q Okay. All right. And how far away was Jesse Willis  
6 from you?

7 A Three or four feet. I mean, it's not far.

8 Q And you heard what's stated in here that -- and I'll  
9 just paraphrase, and you tell me if I'm correct -- that  
10 Cornbread or Jesse Willis said he was going to get away  
11 with it because he convinced them that Jeremy Phillips had  
12 acted alone.

13 A Right. He was visiting with -- with his mother, and  
14 they visit. Grandfather may have been there too. But she  
15 was going on about how he was going to go to prison for the  
16 rest of his life and, you know, she was upset. And he was  
17 like no, no, no, don't worry about it, you know, and all,  
18 I'll take care of it and I'm going to get away with it now  
19 because I've convinced them that Jeremy has done it and --

20 Q Mr. Hull, this gentleman seated at the table to my  
21 left, do you recognize him?

22 A Yes, sir. I know him.

23 Q And how do you know him?

24 A He's an attorney from Gaffney, plus he's a magistrate  
25 in Gaffney.

Carmie Joe Hull  
Direct examination by Mr. Bass

1 Q Okay. All right. Well, I will identify him as Wade  
2 Weatherford. He was Mr. Phillips' attorney in his criminal  
3 case.

4 A Right.

5 Q So you know who Mr. Weatherford is now.

6 A Yes, sir.

7 Q And you knew him from before.

8 A Yes, sir.

9 Q Did Mr. Weatherford -- well, sorry. Strike that. Let  
10 me get back a little bit. So you wrote this statement on  
11 July 22nd of '07.

12 A Yes, sir.

13 Q That's the date at the top of it. You wouldn't have  
14 written a different date, correct?

15 A No.

16 Q What did you do with the statement after you -- after  
17 you wrote it?

18 A Well, I never actually wrote the statement, you know.  
19 I wrote this while I was at R & E, at the reception center  
20 in Columbia.

21 Q Okay.

22 A And I wrote him again and told him that I was going to  
23 get an affidavit made when I got reassigned to McCormick.  
24 But before -- you know, it's hard to correspond from one  
25 inmate to another through the Department of Corrections.

Carmie Joe Hull  
Direct examination by Mr. Bass

1 It's not allowed. But, you know, there's ways to get  
2 around it.

3 Q Well, with this statement, you wrote it and you sent  
4 it to Jeremy.

5 A Yes.

6 Q Okay. And you sent it either on July 22nd, 2007, or  
7 shortly thereafter, is that correct?

8 A Yeah.

9 Q Okay. Did Mr. Weatherford -- did he ever try to  
10 contact you concerning Mr. Phillips' case?

11 A No, sir.

12 Q Did anyone from his office ever try to contact you  
13 concerning Mr. Phillips' case?

14 A No, sir.

15 Q Before I contacted you had anyone contacted you  
16 concerning Mr. Phillips' case?

17 A No, sir.

18 Q Okay. And had Mr. Weatherford contacted you and  
19 showed you this letter would you have been willing to  
20 testify in Jeremy's criminal trial?

21 A Yes, sir.

22 Q And would you have testified to the same thing that's  
23 in this letter?

24 A Yes, sir.

25 Q And that testimony would be that Jesse "Cornbread"

Carmie Joe Hull  
Cross-examination by Ms. White

1 Willis stated that he done it alone and he was going to get  
2 away with it.

3 A Yes, sir.

4 Q One final thing.

5 MR. BASS: At this moment, Your Honor, I would like to  
6 move it into evidence.

7 THE COURT: Subject to the same objection as earlier,  
8 the objection is overruled and it will be in evidence.

9 (Letter from Carmie Joe Hull marked Applicant's Exhibit  
10 No. 2.)

11 MR. BASS: Thank you, Your Honor. I have no further  
12 questions for Mr. Hull.

13 Q If you could, please answer any questions Ms. White  
14 has for you.

15 THE COURT: Ms. White.

16 MS. WHITE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. WHITE

19 Q Mr. Hull, can you tell me how you knew Mr. Phillips?

20 A I was in the same cell block with him in the detention  
21 center, and we were in the same cubicle for a while.

22 Q Okay. And for how long was that before this letter in  
23 July of '07?

24 A About nine months.

25 Q Okay. Had you -- how long had you -- and that was in

Carmie Joe Hull  
Cross-examination by Ms. White

1 the Cherokee County Detention Center?

2 A Yes, ma'am.

3 Q Had you also known Mr. Willis at --

4 A No, ma'am.

5 Q Okay. So you only met Mr. Willis at what point, when?

6 A One time in the visiting room.

7 Q How did you know that was Mr. Willis?

8 A Well, I mean, they call everybody out, you know. And  
9 everybody in the jail knew that Jesse and Nakia or some  
10 girl -- I think her name was Nakia -- was Jeremy's  
11 codefendant. And it wasn't a big secret.

12 Q Okay. And you and Jeremy were friends, weren't you?

13 A Well, we were acquaintances, I mean.

14 Q But seems like from the letter you were fairly close.  
15 You were asking him to write you and giving him your  
16 address and --

17 A After you're in that close of proximity with somebody  
18 for that long, you know, you do get to know them.

19 Q Okay. Now, at the time you wrote this letter you said  
20 you had been in there with him about nine months.

21 A Yes, ma'am.

22 Q And you knew he was facing trial for the murder and  
23 arson first degree charges.

24 A Yes, ma'am.

25 Q When did you plead guilty for your charges?

Carmie Joe Hull  
Cross-examination by Ms. White

1 A Right before this letter was written.

2 Q Okay.

3 A Same month.

4 Q About what time maybe?

5 A It was probably a week before this, I guess.

6 Q Okay. And I'm going to ask you a few questions about  
7 some of your past charges just to make sure I've got it  
8 right.

9 Now, did you plead guilty to assault and battery of a  
10 high and aggravated nature in September of -- excuse me --  
11 November of 2005?

12 A Yes, ma'am.

13 MR. BASS: Objection, Your Honor. Relevance.

14 THE COURT: Testimony?

15 MS. WHITE: Yes, sir, Your Honor.

16 THE COURT: Overruled.

17 BY MS. WHITE

18 Q You received a sentence of three years suspended to  
19 three months -- I mean, six months, three years probation?

20 A Yes, ma'am.

21 Q Okay. And was that after? That was after this  
22 charge, right?

23 A No. It was before this charge.

24 Q Well, it says 11/25/2005 is when the Court date was.  
25 Is that wrong?

Carmie Joe Hull  
Cross-examination by Ms. White

1 A No. It was. But this what I'm in jail for now was  
2 2006.

3 Q Okay. Now, you also had -- let me see if I can get  
4 this right -- a charge for housebreaking and grand larceny  
5 for August 18th of 2005, is that right, that you were  
6 convicted of?

7 A No, ma'am.

8 Q Okay. Would it be connected with some fraudulent  
9 check, maybe 28 counts of fraudulent check  
10 more-than-a-thousand-dollars charges that you pled to or  
11 were convicted of -- excuse me -- March 27th of 2006?

12 A No. I wrote the checks, but the checks were on my own  
13 checking account. Now, I did have a burglary charge, but  
14 it was from 1988.

15 Q So were you -- you did not get convicted of 28 counts  
16 of fraudulent check more than a thousand dollars and  
17 receive --

18 A Twenty-seven of them, and a burglary count in 2006,  
19 yes, ma'am, I did.

20 Q Okay. That's what I'm asking. And then 2007 you were  
21 convicted of assault and battery with intent to kill, armed  
22 robbery with a deadly weapon, failure to stop for a blue  
23 light and a carjacking with great bodily harm?

24 A I was arrested for armed robbery, failure to stop for  
25 a blue light and carjacking with bodily injury.

Carmie Joe Hull  
Cross-examination by Ms. White

1 Q And my question is were you convicted July 19th of  
2 2007 of assault and battery with intent to kill, armed  
3 robbery, failure to stop for a blue light second or  
4 subsequent and carjacking without great bodily harm.

5 A All of them except the assault and battery with intent  
6 to kill. I was not charged with that.

7 Q So if your record shows that you were convicted of  
8 that and received a 3-year sentence, you would contest  
9 that?

10 A I don't remember it.

11 Q Okay. So you don't remember it.

12 A Right.

13 Q But it's possible.

14 A The only assault charge I'm aware of is the one from  
15 2005.

16 Q Okay. All right.

17 MS. WHITE: That's all the questions I have, Your  
18 Honor.

19 THE COURT: Nothing on redirect -- or go ahead if you  
20 need to.

21 MR. BASS: Nothing, Your Honor.

22 THE COURT: Thank you, sir. You can step down.

23 MR. BASS: May Mr. Hull be excused?

24 THE COURT: No objection to being excused?

25 MS. WHITE: No objection, Your Honor.

1 THE COURT: Thank you, Mr. Hull.

2 (Whereupon, the witness was excused.)

3 THE COURT: Call your next witness, Mr. Bass.

4 MR. BASS: Yes, Your Honor. At this time point I  
5 would call Donald Wayne Adams.

6 THE OFFICER: Mr. Adams apparently hasn't gotten here  
7 yet.

8 MR. BASS: He's in county lockup. I did get a  
9 transport order for him, Your Honor.

10 THE COURT: Donald Wayne --

11 MR. BASS: Donald Wayne Adams, yes.

12 THE COURT: Check real quick and see.

13 MS. WHITE: County lockup in Cherokee. Oh, he's here?

14 MR. BASS: He's in Spartanburg, yeah.

15 MS. WHITE: Okay. I thought it was Cherokee. That  
16 sometimes is the problem.

17 THE COURT: We are off the record for a second.

18 (Pause.)

19 THE COURT: Mr. Bass, let me ask you if this witness  
20 we are waiting on, is it going to be similar to the last  
21 two?

22 MR. BASS: Yes, sir, Your Honor.

23 THE COURT: On the record.

24 The next witness apparently we're looking for him, he  
25 should be shipped.

1        what I'd like to do is in the interest of moving along  
2 if there is no objection, it's been represented to me that  
3 this next witness would testify essentially similar to the  
4 last two witnesses.

5        I assumed that one of the reasons that you want him to  
6 testify first is to lay a foundation for you to then ask  
7 your client whether he received a correspondence from this  
8 third witness that's about to testify. If you want -- do  
9 you have any other witnesses from S.C.D.C. other than your  
10 client?

11        MR. BASS: That's it.

12        THE COURT: Okay. While we're trying to look for him  
13 or while they're trying to determine if he was seen shipped  
14 here, why don't I suggest you go ahead and call your  
15 client? You can take his testimony about receiving these  
16 and what he did.

17        And as far as the third piece of correspondence, we  
18 can clean up the foundation at a later point in time when  
19 we do locate that person if that would be okay with you.

20        MR. BASS: That would be fine, Your Honor.

21        THE COURT: Let's go ahead and do that -- if you want  
22 to call your next witness after the witness that we're  
23 looking for.

24        MR. BASS: That is fine. At this point I would call  
25 Mr. Jeremy Phillips to the stand.

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 JEREMY RICHARD PHILLIPS,  
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BASS

4 THE COURT: Mr. Bass.

5 MR. BASS: Thank you, Your Honor. And during this  
6 time do I have the freedom to move about the courtroom?

7 THE COURT: By all means.

8 MR. BASS: Thank you.

9 BY MR. BASS

10 Q Mr. Phillips, could you please state your name for the  
11 record?

12 A Jeremy Richard Phillips.

13 Q And where are you from originally?

14 A I'm from Cowpens, South Carolina.

15 Q And where did you go to high school?

16 A Broome High School.

17 Q And did you attend college?

18 A I went to Tech for three semesters and didn't finish.

19 Q Okay. And then after -- after that, what did you do  
20 after that?

21 A The reason I didn't finish was I enlisted in the Army.

22 Q So you went to the Army. What was your capacity in  
23 the Army? What did you do?

24 A I was in the 82nd Airborne Division Supply and  
25 Transport.

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 Q Is that a Ranger?

2 A No, sir. No Ranger training.

3 Q No. All right. But you jumped out of planes and  
4 stuff, made parachute jumps.

5 A Yes, sir.

6 Q Approximately how many jumps did you make?

7 A There was a discrepancy on the logs, but in the low  
8 60s.

9 Q You are a better man than I am.

10 Did you receive an honorable discharge from the Army?

11 A Yes, sir, I did twice.

12 Q Okay. And we've had a couple of meetings concerning  
13 this hearing here, and I don't want you to talk about what  
14 we talked about. But throughout your criminal trial from  
15 the time you were charged all the way up through it and  
16 even to this day haven't you always maintained your  
17 innocence?

18 A Yes, sir. I am most definitely innocent of these  
19 charges.

20 Q And when were you arrested for these charges?

21 A September of 2006.

22 Q Okay. And you were held in the Cherokee County Jail  
23 from September of '06 until your conviction?

24 A Yes, sir.

25 Q And then where were you transported?

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 A I went to Kirkland Correctional for the little  
2 receiving portion of where you go to prison. And then I  
3 wound up at Lee County. And now I'm at Perry.

4 Q Okay. And we've had our interactions at Perry,  
5 correct?

6 A Yes, sir.

7 Q Now, until your arrest in September of '06 -- at what  
8 point was Mr. Weatherford retained? Well, first of all, is  
9 he retained or is he appointed?

10 A My parents hired him a couple of weeks after I was  
11 locked up.

12 Q Okay. So he was retained to represent you. Do you  
13 know approximately how much -- how much his retainer was?

14 A I'm not exactly sure, but I did get one piece of  
15 paperwork from Mr. Weatherford that had a \$10,000 payment  
16 across the bottom. But I believe there might have been  
17 additional payments. I'm not sure.

18 Q I only want you to testify what you know about. But  
19 so he was hired a couple of weeks after you were arrested.  
20 And did Mr. Weatherford represent you throughout the entire  
21 process from September of '06 until your conviction?

22 A The first week I was there they sent a public defender  
23 to see me, and then I never seen him again after my parents  
24 hired Mr. Weatherford.

25 Q All right. What I would like to do now is hand up a

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 transcript of your bond hearing.

2 (Transcript marked Applicant's Exhibit No. 3 for  
3 Identification.)

4 Q I'm going to have you flip through it a couple of  
5 times.

6 Now, your bond hearing was before the Honorable J.  
7 Mark Hayes. And it was January 17th of 2007, is that  
8 correct?

9 A Yes, sir.

10 Q And Mr. Weatherford represented you at that bond  
11 hearing, right?

12 A Yes, sir.

13 Q Okay. What I would like you to do is turn to page  
14 five of that bond hearing, and line 24. Are you there?

15 A Yes, sir.

16 Q Okay. I'm going to read out some lines here, and you  
17 just tell me if I read them correctly. And Mr. Weatherford  
18 is speaking here starting on line 24.

19 "And Mr. Willis has written. Shortly after his  
20 original statement he wrote another statement that I have a  
21 copy of and I'd like to hand up. I don't know if you've  
22 seen that one or not. I've got another one."

23 Mr. Morin says, "Oh, I'm sorry. We'll hand that one  
24 up."

25 Mr. Weatherford says, "Well, I wanted to hand one up

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 and give you one for you to take sole responsibility. And  
2 also that was shortly after the arrests were made and  
3 shortly after the statements were made. And then there's  
4 another one that I want to hand up here from an inmate who  
5 basically says that Mr. Willis takes sole responsibility  
6 for committing the crime" -- did I -- "committing this  
7 crime." Did I read that correctly?

8 A Yes, sir.

9 Q Now, he refers to a statement where -- from an inmate  
10 who basically says that Mr. Willis takes sole  
11 responsibility for committing this crime, correct?

12 A Yes, sir.

13 Q Do you know who he's referring to there?

14 A I believe he was referring to Joseph Smith, the boy  
15 that previously testified.

16 Q well, let's actually go back further to page 12, okay,  
17 line four.

18 Mr. Morin says, "In the matter of credibility, Your  
19 Honor, I also note the confession that I believe you just  
20 put down signed by Joseph Smith -- Mr. Smith is the one  
21 that pled before you and got 15 years just a few people  
22 ago."

23 Mr. Weatherford says, "well, I could bring about a  
24 dozen witnesses from the jail to say the same thing as in  
25 this -- as in that statement."

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 Did I read that correctly?

2 A Yes, sir.

3 Q So at your bond hearing Mr. Weatherford represented to  
4 Judge Hayes that, one, not only he had a written confession  
5 from Jesse -- Jesse Willis -- one of the codefendants  
6 saying he takes sole responsibility, but that he also  
7 represented that he's got a written statement from  
8 Mr. Smith. And let me. I believe it was marked as  
9 Exhibit 1. We will take a look here. Exhibit 1, is this  
10 Mr. Smith's statement?

11 A Yes, sir.

12 Q And you heard Mr. Smith's testimony earlier, correct?

13 A Yes, sir.

14 Q And he said he heard Jesse's confession and he wrote  
15 it down and he gave it to you, is that correct?

16 A Yes, sir.

17 Q Is that how you came into possession of that -- of  
18 that document?

19 A Yes, sir.

20 Q What did you do with that document?

21 A I wrote a request form to -- when you're in the county  
22 jail you have to send requests to see your lawyer or speak  
23 to him.

24 So I wrote a request form to be delivered to  
25 Mr. Weatherford. And I mailed a copy to my mother. She

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 made me a copy and she mailed Mr. Weatherford a copy.

2 Q Okay. So this statement got passed on to  
3 Mr. Weatherford.

4 A Yes, sir.

5 Q And that's how it ended up at your bond hearing.

6 A Yes, sir.

7 MR. BASS: What I would like to do also at this point,  
8 Your Honor, is move the -- at least take judicial notice or  
9 move into evidence the transcript of the bond hearing.

10 THE COURT: Without objection?

11 MS. WHITE: Yes, Your Honor.

12 THE COURT: In evidence as -- I think we're up to four  
13 now.

14 MR. BASS: Three. I believe Mr. Adams' statement  
15 would be three.

16 (Transcript marked Applicant's Exhibit No. 3.)

17 Q So at your bond hearing Mr. Weatherford says he's got  
18 a dozen witnesses, and he also says he's got Jesse's  
19 confession. And not only that, he says -- sorry -- Jesse's  
20 confession from Jesse. He also says he has a written --  
21 and shows to it the judge -- confession from Jesse -- from  
22 Mr. Smith, correct?

23 A Yes, sir.

24 Q All right. What I'd like you to take a look at now --  
25 I'm going to keep this here. This is Exhibit 2. That's

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 moved into evidence. That is the letter we got or that you  
2 got moved into evidence from Mr. Hull.

3 Can you please explain to the Court how you came into  
4 possession of that, how you came into that letter --  
5 possession of that letter from Mr. Hull. You heard his  
6 testimony. Is what he said accurate?

7 A Yes, sir, it is.

8 Q All right. And so how did you get that letter?

9 A I got it in the mail, sir.

10 Q Okay. And what did you do with that letter?

11 A I sent it to my family and had a copy made. And  
12 Mr. Weatherford got it, the original. And my parents kept  
13 a copy, which later on they sent me the copy.

14 Q So Mr. Weatherford had at this point at least two  
15 statements from people who were in Cherokee County Jail who  
16 heard Mr. Willis confess to the crime.

17 A Yes, sir.

18 Q Okay.

19 A Mr. Weatherford had kind of taken an interest in  
20 wanting to know who these people were and where they were.  
21 And since this letter had the man's address on it that was  
22 like -- I believe when I -- that was like a second or third  
23 visit that I'd seen that me and Mr. Weatherford was kind of  
24 on the same page at when he got this letter.

25 Q So he had possession of it.

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 A Yes, sir.

2 Q All right. Now, what I'd like to show you now -- and  
3 this will -- this is Mr. Adams' letter that we'll lay the  
4 foundation for later.

5 THE COURT: Subject to your earlier objection, I  
6 understand your position. But go ahead and show it.

7 MS. WHITE: Thank you, Your Honor.

8 BY MR. BASS

9 Q Take a look at that for right now.

10 MR. BASS: Here you go, Your Honor.

11 Q Now, I'm going to read the letter, and you just tell  
12 me if I read it correctly. Okay. And then I may ask you a  
13 couple of questions about it.

14 "I, Donald Wayne Adams, I am writing this statement  
15 willingly and on my own free will. I was incarcerated in  
16 Cherokee County Detention Center from January of '07 to  
17 March of '07. I was in B-pod. I was training a few guys  
18 to box. And one guy named Jesse Willis was wanting to work  
19 out. He seems kind of cocky. He made a statement to me  
20 that really doesn't need to learn anything that he done  
21 beat up one man to death and poured gasoline on him and  
22 blew him up. I stopped right then and told him to stay  
23 away from me and I didn't want anything to do with him. I  
24 didn't have anything to do with him the rest of the time I  
25 was there. I wrote this statement on the date 1/22/08."

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 And then he gives an address where he can be reached.

2 And then looks like it's been notarized down here.

3 I want to ask you two questions. One, down here it  
4 says new evidence. Whose handwriting is that?

5 A That's mine.

6 Q Okay. And did you give me a copy of this letter?

7 A Yes, sir.

8 Q All right. You wrote the evidence on it.

9 A Yes, sir.

10 Q All right. And, two, how did you come into possession  
11 of this letter?

12 A I was at Kirkland at the receiving portion of when  
13 they give you the Department of Corrections number and  
14 decide where you go.

15 And I seen Mr. Adams, and he asked me how much time I  
16 got. I told him they give me a life sentence. He was kind  
17 of stunned, and he said what did they give Jesse. And I  
18 told him they give him -- going to give him a plea deal  
19 later on, he didn't testify.

20 And he said, well, likes like Jesse would have got the  
21 life sentence. And then that's when he told me what this  
22 letter says. And I asked him if he'd be willing to write  
23 it down for my lawyer.

24 Q Now, the date on this is 1/22/08. Now, that comes  
25 into play. That's obviously after you've had your trial.

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1 It's after you've been convicted. I believe -- let me  
2 check something. That is before, I believe that is before,  
3 Jesse actually had his plea deal, because he pled guilty in  
4 May. But so this was written after your trial.

5 All right. So at the time of your trial  
6 Mr. Weatherford didn't have a copy of this letter, correct?

7 A No, sir. He didn't.

8 MR. BASS: Beg the Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 Q Now, okay. I'm going to hand up another letter here  
11 and here it's -- take a look at this. All right. And I am  
12 sorry. One second, please.

13 MR. BASS: Mark this.

14 (Affidavit marked Applicant's Exhibit No. 4 for  
15 Identification; letter dated November 27, 2007, marked  
16 Applicant's Exhibit No. 5 for Identification.).

17 Q Do you have what's been marked as Exhibit 5 in front  
18 of you? This is a letter, and I'll lay some more  
19 foundation on it before I actually move it into evidence.  
20 This is a letter on Mr. Weatherford's stationery, correct?

21 A Yes, sir.

22 Q Okay. And it's got Michael Morin at the top. Was he  
23 the assistant solicitor on your case?

24 A Yes, sir.

25 Q Okay. And in here it's signed by Chip Weatherford, is

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1 that correct, the last page?

2 A Yes, sir.

3 Q Okay. And it's been clocked at the Cherokee County  
4 Courthouse, correct?

5 A Yes, sir.

6 Q Okay. And what date was it clocked?

7 A November the 27th of 2007 at 3:00 p.m.

8 Q And that's the same date as the top of the letter,  
9 correct?

10 A Yes, sir.

11 Q Okay. One of the things I want you to read me from  
12 this letter is the first paragraph there. Actually, I'll  
13 read it to you, and you tell me if it's correct. Okay.

14 "After describing the items of evidence which we  
15 recently viewed my client told me that he would need to see  
16 all of the items in order to help me prepare a defense. I  
17 ask that you set this up with the sheriff's department in  
18 my office."

19 Did I read that correctly?

20 A Yes, sir.

21 Q Okay. And I'll get to the relevance of this in a  
22 second.

23 But there's a list of 12 things in this letter,  
24 correct? Ten on the first page and two on the second page.

25 A Yes, sir.

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1 Q okay. Hand up another letter.

2 (Letter dated November 30, 2007, marked Applicant's  
3 Exhibit No. 6 for Identification.)

4 Q okay. This is another letter on Mr. Weatherford's  
5 stationery, correct?

6 A Yes, sir.

7 Q okay. And it's dated November 30th of 2007, correct?

8 A Yes, sir.

9 Q And that's before your trial, right?

10 A Yes, sir.

11 Q I'm going to read it, and you tell me if I'm correct.

12 "Dear Michael: The following may be material  
13 witnesses for the defendant. They were all in jail with  
14 Jesse Willis and/or Jeremy Phillips. I need to know their  
15 current location, i.e., in jail here or in the Department  
16 of Corrections or the last known address on the list. Got  
17 a list of people, specifically, No. 1, Carmie Hull. I  
18 think he's in the Department of D.O.C., No. 6, Joseph  
19 Smith, S.C.D.C., and a bunch of others here."

20 And the last line says, "I also need a list of people  
21 in C-max in Cherokee County Jail from September 6th of 2006  
22 through September 8th of 2006, is that correct?

23 A Yes, sir.

24 Q okay. And I guess what I'm getting at is so  
25 Mr. Weatherford didn't have this letter from Mr. Adams

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 before your trial, correct?

2 A No, sir.

3 Q All right. Do you feel -- do you think had he done  
4 his dual diligence, had he looked into things, had he  
5 followed up on this letter from September '06 when he was  
6 retained, approximately 15 months later to your trial, do  
7 you feel that he would have found Donald Wayne Adams?

8 A Yes, sir, most definitely.

9 Q So you think he should have had this statement as  
10 well.

11 A Yes, sir.

12 Q What I'd like to talk to you about now is physical  
13 evidence from the trial. I'm specifically at --

14 MR. BASS: And, Your Honor, if it's all right I'll  
15 pass up -- I believe this is his copy of the record.

16 THE COURT: Sure. He might need assistance holding  
17 that or turning the pages because he's in cuffs.

18 MR. BASS: I'll be glad to help him.

19 THE COURT: Yeah. If you need to stay close to him  
20 and help him, that's fine.

21 BY MR. BASS

22 Q Just to be clear, I just want to make sure. This  
23 letter is not in evidence yet, and this letter is not in  
24 evidence yet, and this letter is not in evidence.

25 MR. BASS: I don't want to forget to move them in,

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1 Your Honor.

2 THE COURT: No problem.

3 Q I'm going to help you turn the pages. Okay?

4 A Thank you.

5 Q The first thing I want to turn to is page 313.

6 Okay. All right. Now, at the top it says this is  
7 Nakia Moss Gossett's testimony. It's her direct  
8 examination, correct?

9 A Yes, sir.

10 Q Okay. She was allegedly one of the codefendants in  
11 your case, correct?

12 A Yes, sir.

13 Q Okay. I'm going to read this testimony here, and  
14 we'll go from there on line 13, question from Mr. Morin.

15 "Q All right. Well, now, when Jesse  
16 went into the house, he was all wet, right?

17 "A Yes.

18 "Q Did he put on the clothes wet?

19 "A No. He dried off.

20 "Q What did he dry off with?

21 "A There was a towel.

22 "Q Okay. Do you know where -- what  
23 did -- what he did with the towel when he got  
24 done drying off?

25 "A It probably was in the dirty clothes

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Direct examination by Mr. Bass

1 in Jeremy's front room.

2 "Q Tell me about the dirty clothes in  
3 Jeremy's front room.

4 "A He had a basket of dirty clothes  
5 right there.

6 "Q What color was the basket, do you  
7 remember?

8 "A It seems like it was blue maybe.

9 "Q Okay. And there was a towel. And  
10 that's where the towel went, you think?

11 "A Yes.

12 All right. And we're going to get to the importance  
13 of this towel. We're going to turn to page 354, okay, line  
14 three.

15 "Q But let's get back on the night.

16 I'm sorry. This is Nakia Moss Gossett's testimony,  
17 correct? This is cross-examination by your attorney, Mr.  
18 Weatherford.

19 A Yes, sir.

20 Q Okay. All right. But let's get back on the night.

21 "Q So he came up and he changed -- he  
22 had changed clothes. And you had -- you and  
23 Jesse were -- were standing there. He had  
24 already been washed off standing there wet in  
25 his -- in his underwear.

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1           "A     And he went in the house and he got  
2           some of Jeremy's clothes.

3           "Q     Okay. And you said something about a  
4           towel.

5           "A     There was a towel in the front room.

6           "Q     What did anybody do with the towel?

7           "A     He dried off.

8           "Q     Jesse did?

9           "A     Jesse did, yeah. Jeremy was already  
10          clothed again.

11          "Q     So what kind of -- so when he dried  
12          off was there any blood? I guess he'd already  
13          washed the blood off of him.

14          "A     Yes.

15          "Q     So there wasn't any blood on him?

16          "A     No.

17          "Q     What kind of towel was it?

18          "A     I don't remember what kind of towel  
19          it was.

20          "Q     Well, some towels are right -- white  
21          and some towels have got flowers on them and  
22          some have designs and things.

23          "A     Well, there was a lot going on that  
24          night. I do not remember the kind of towel it  
25          was.

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1           "Q     All right. But as far as you know  
2           there could have been no blood on that towel.

3           "A     No blood on that towel, right.

4           "Q     And you said that the towel was put  
5           there.

6           "A     In the living room. He had a basket  
7           of dirty clothes that was right there in the  
8           living room.

9           "Q     And that towel so far as you know  
10          with no blood on it was put in the basket.

11          "A     Yes, sir.

12          All right. I apologize for belaboring the point, but  
13          I'll get to it. Turn to page 534.

14          Let me just ask you. The testimony I've been reading,  
15          have I been reading it correctly?

16          A     Yes, sir.

17          Q     534. This is in closing arguments. This is  
18          Mr. Weatherford's closing argument, okay, dealing with the  
19          towel. This is line 17.

20          "And the only thing they found other than the D.V.D.  
21          was they found a towel, this Jeff Gordon towel, right there  
22          that had two spots of blood on it.

23          "All right. And I want read to you -- read you, just  
24          talking about blood here, now, because it may be important.  
25          It's important how Juan's blood got on that towel,

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1 especially when you're talking about proof beyond a  
2 reasonable doubt. And I want to read you from Defendant's  
3 Exhibit 6, the Upstate Medical records, over on one, two,  
4 three, four, fifth page.

5 "Chief complaint, this top half of the page. Alcohol  
6 intoxication, acute. Brief assessment. Presents  
7 intoxicated. States when he was asleep his nose bleeds.  
8 Didn't say that now. States he is in here to have blood  
9 drawn so he won't bleed. States he has too much blood.  
10 Nosebleed since this morning. Feels dizzy. Drank 18  
11 beers.

12 So this was the night. This was the emergency room  
13 records from the night before on the 29th. Been bleeding  
14 all day. So I don't know when or how or where that blood  
15 of Juan's got on that towel. I mean, there was some  
16 testimony that Nakia was in Juan's house that -- the night  
17 before when she passed out. She's got no recollection of  
18 it. It's just -- just as probable that the blood came from  
19 this towel and that she could have put it in Jeremy's house  
20 the night before.

21 But I'm talking about reasonable doubt and I'm talking  
22 about proof."

23 Let's skip down a couple of lines to line 21.

24 "And I don't know what he -- what he put that blood  
25 on. That's probably his towel there. Jeremy wouldn't have

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Direct examination by Mr. Bass

1 a Jeff Gordon towel in his house. We knew that. Where did  
2 the blood come from? When did it get on that towel?"

3 So at this point in his closing Mr. Weatherford is  
4 basically saying you wouldn't have a Jeff Gordon towel and  
5 it was probably Juan's towel. That's what he's going with  
6 right here, is that correct?

7 A Yes, sir.

8 Q Okay. Now I want you to one -- two more short towel  
9 testimonies here, 565. And this is Mr. Morin's closing  
10 argument. 565, line 21.

11 Briefly, did I read that last section correctly?

12 A Yes, sir, you did.

13 Q "Jeremy testified. I'm not sure, but I think the  
14 defense may actually be I-don't-like-Jeff-Gordon-  
15 therefore-I-did-not-do-this.

16 We know that Juan Roman bled and it got on this towel.  
17 And this towel was found in the basket, and the basket was  
18 at the foot of Jeremy's sofa bed. And the defense wants to  
19 know what evidence I have that this got there, how this got  
20 here.

21 Well, Nakia and I was standing outside washing blood  
22 off of Jesse and drying it off with a towel. And I said  
23 what did he do with the towel. Put it in that basket right  
24 there at the bottom of the bed."

25 And the last item -- really, sorry I had to belabor

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1 this, Jeremy.

2 A That's all right.

3 Q Back to page 519. I want to talk about Jeff Gordon  
4 for just a second. And this is on Mr. Weatherford's  
5 redirect.

6 THE COURT: Forgive me. Which page are you on again?

7 MR. BASS: I'm sorry, 519, line 23.

8 Q "That towel he was talking about" -- by the way, did I  
9 read that last part correctly?

10 A Yes, sir, you did.

11 Q "That towel he was talking about, it's got No. 24,  
12 Jeff Gordon. It's a racing type towel.

13 You said, "Yes, sir."

14 "Q Are you a race fan?

15 "A Yes, sir.

16 "Q And how do you feel about Jeff  
17 Gordon?

18 "A I despise him, sir. I despise him.  
19 If I had knew anything of Jeff Gordon in my  
20 house I'd have thrown it in the yard myself.  
21 Anybody that's knew me for any length of time,  
22 been in the Army with me, knew me, anything,  
23 anybody from the race shop at Fulton's, they  
24 can tell you I despise Jeff Gordon with a  
25 passion."

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1 And on 521, line ten.

2 "Q That's not your towel.

3 "A No, sir, it's not my towel.

4 "Q Okay."

5 Now, one, this towel was found in your house, correct?

6 A Yes, sir.

7 Q All right. And it had the victim's blood on it,  
8 correct?

9 A Yes, sir.

10 Q Okay. What -- you testified after, after Hazel Willis  
11 testified, correct?

12 A Yes, sir.

13 Q And who is Hazel Willis?

14 A Jesse's mother.

15 Q She is Jesse's mother. All right. Where do you  
16 contend now that that towel came from?

17 A It came out of Hazel's living room.

18 Q And why do you do say that?

19 A She lived in a little single-wide trailer, and it had  
20 the big double windowpanes in the living room. And she  
21 kept that Jeff Gordon towel hanging over those windows like  
22 for a curtain.

23 Q So you say that Jeff Gordon towel came from her  
24 trailer.

25 A It was her towel, yes, sir. It had to come from her

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 trailer.

2 Q All right. Let me ask you this. Did you ever get a  
3 chance to view the physical evidence in this case?

4 A No, sir, I did not.

5 Q When was the first time you had a chance to view the  
6 physical evidence in this case?

7 A When they brought it out during the trial after  
8 Ms. Willis had testified.

9 Q So the first time you saw that towel, the towel that  
10 had the victim's blood on it, was at trial.

11 A Yes, sir.

12 Q Had you made a request earlier from your attorney to  
13 go look at the evidence?

14 A Yes, sir. I had written him a letter and mailed it to  
15 my parents. They made copies of it and passed it along to  
16 him.

17 Q All right. I want you to look at -- back at Exhibit 5  
18 here which hasn't been entered into yet. But I think we  
19 read this before. This is the first paragraph.

20 "After describing the items of evidence which you  
21 recently viewed my client told me that he would need to see  
22 all of the items in order to help me prepare a defense. I  
23 ask that you set this up with the sheriff's department in  
24 my office." Is that correct?

25 A Yes, sir, it is.

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Direct examination by Mr. Bass

1 Q So you told Mr. Weatherford you wanted to see the  
2 evidence, correct?

3 A Yes, sir, I did.

4 Q And he obviously communicated that to the solicitor's  
5 office by a letter, correct?

6 A Yes, sir.

7 Q But you never got to see it.

8 A No, sir, I didn't.

9 Q Do you know if Mr. Weatherford ever went to view the  
10 evidence in person?

11 A I am not -- he didn't -- we didn't speak about it, but  
12 on the second page of that letter I believe he mentions  
13 that the evidence that he had seen or something to that  
14 nature. He did show me some pictures of some burnt  
15 material, but it was -- you couldn't tell what it was.

16 Q You never saw this towel.

17 A No, sir.

18 Q This towel that you say was Hazel Willis' towel.

19 A Yes, sir.

20 Q Okay. That would have been important though, wouldn't  
21 it?

22 A Very important, sir.

23 Q Had you known ahead of time this was a Jeff Gordon  
24 towel, that this was Hazel Willis' towel, do you think that  
25 Mr. Weatherford would have asked some different questions

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 to Mr. Willis on the stand?

2 A Yes, sir, definitely.

3 Q Like maybe how did her towel come to have blood on it  
4 and be in your trailer?

5 A Yes, sir.

6 Q But he didn't ask those questions, did he?

7 A No, sir.

8 Q Because he didn't know it was her towel.

9 A Correct.

10 Q How could he, because he hadn't seen the evidence,  
11 correct?

12 A Yes, sir.

13 (Return marked Applicant's Exhibit No. 7 for  
14 Identification.)

15 Q I'm going to ask you about the writing on it, Jeremy.  
16 what we have here, this is an inventory of the search  
17 warrant of your house, is that correct?

18 A Yes, sir.

19 Q Okay. And on this there's a bunch of writing on it.  
20 Some of it -- is it yours?

21 A Yes, sir, it is.

22 Q Okay. And up at the top here is this your writing?

23 A Yes, sir, it is.

24 Q Okay. And where it says Jeff Gordon towel, is that  
25 your writing?

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 A Yes, sir.

2 Q Okay. And where it says police messed with the towel  
3 one day before the search warrant, is that your writing?

4 A Yes, sir.

5 Q Because I'm not concerned about any of that. All I'm  
6 concerned about is the third line down. All right. I'm  
7 going to read it. Tell me if I'm reading it correctly.

8 "White clothes basket, foot of bed, five white socks,  
9 one towel, one dishcloth stained. Did I read that  
10 correctly?

11 A Yes, sir, you did.

12 Q Okay. And is that the towel that they're referring to  
13 that had the -- or to your knowledge is that the towel  
14 they're referring to that had Juan's blood on it?

15 A Yes, sir. That's what was testified to.

16 Q So all it has in here is towels, correct?

17 A Yes, sir.

18 Q It doesn't say Jeff Gordon towel, doesn't say No. 24,  
19 is that correct?

20 A Yes, sir, that's correct.

21 Q All right. So at this point you wouldn't know what  
22 kind of towel it was, right?

23 A No, sir.

24 Q And you didn't know until you got to court, is that  
25 correct?

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 A That's correct.

2 MR. BASS: Your Honor, if there's no objection I would  
3 like to move this into evidence.

4 THE COURT: No objection.

5 MS. WHITE: No objection, Your Honor.

6 THE COURT: In evidence.

7 (Return marked Applicant's Exhibit No. 7.)

8 MS. WHITE: If I could ask what number that's going to  
9 be.

10 MR. BASS: I believe that's seven.

11 THE COURT: Seven.

12 MR. BASS: We've got some others I'm going to move in  
13 or attempt to move in.

14 MS. WHITE: I just wanted to make sure I keep up with  
15 them.

16 BY MR. BASS

17 Q And so this was really -- this towel was a Jeff Gordon  
18 towel you contend was Hazel's. This was one of the main  
19 pieces of physical evidence that tied you to this crime, is  
20 that correct?

21 A Yes, sir.

22 Q And you never got to see it ahead of time, right?

23 A No, sir, I didn't.

24 Q But you wanted to see it ahead of time.

25 A Yes, sir.

Jeremy Richard Phillips  
Direct examination by Mr. Bass

- 1 Q And you asked your attorney to arrange that.
- 2 A Yes, sir.
- 3 Q And he didn't do it.
- 4 A I believe he tried to schedule the appointment, but
- 5 due to notice of trial it just didn't happen before they
- 6 took me to trial. It was only a few days before when he
- 7 scheduled it, and it just didn't happen.
- 8 Q But you retained him back in 2006, September of 2006,
- 9 right?
- 10 A Yes, sir, I did.
- 11 Q So he had 15 months before your trial approximately to
- 12 schedule a visit for you to see this towel.
- 13 A Yes, sir.
- 14 Q And he didn't do that.
- 15 A No, sir, he didn't.
- 16 Q All right. Move on to the last thing I want to talk
- 17 about, and that's one of your codefendants, Jesse Willis.
- 18 Now, you were in here earlier when he came up and took
- 19 the stand, correct?
- 20 A Yes, sir.
- 21 Q And he pled the Fifth Amendment, is that right?
- 22 A Yes, sir.
- 23 Q Okay. Had you ever discussed calling Jesse Willis
- 24 with Mr. Weatherford?
- 25 A Yes, sir, repeatedly.

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 Q And did you want Jesse Willis to be called?

2 A Yes, sir, I did.

3 Q Did you express those concerns to him?

4 A Yes, sir. I felt that if Jesse would have been called  
5 the case against me would have been completely done away  
6 with.

7 Q I mean -- sorry. Strike that. So at the very least  
8 you expressed your wishes to call a witness to the stand.

9 A Yes, sir.

10 Q And you gave those concerns to Mr. Weatherford.

11 A Yes, sir.

12 Q And he don't do it.

13 A No, sir.

14 Q So, I mean, at the very -- he could have been called  
15 to the stand, and Jesse would have done the exact same  
16 thing he did today, right? He'd have pled the Fifth  
17 Amendment.

18 A He could have. I don't know.

19 Q But at least he would have been called, correct?

20 A Yes, sir.

21 Q Okay. And you've always maintained your innocence  
22 throughout this entire process.

23 A Yes, sir. I am innocent.

24 Q Do you still maintain it today?

25 A Yes, sir, I do.

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 Q And you maintain that Jesse committed this act,  
2 correct?

3 A Yes, sir.

4 Q I'm going to show you some statements, and what I'd  
5 like for you to do is, because I'm not sure which ones are  
6 which, and I apologize for that -- but I know you said some  
7 of these actually came from Jesse.

8 MR. BASS: May we approach, Your Honor?

9 THE COURT: Please.

10 (Bench conference held off the record.)

11 Q Now, we met at Perry and you identified that some of  
12 these were handed to you by Jesse Willis. And I just want  
13 you to tell me which ones were actually handed to you by  
14 Jesse Willis. Okay?

15 A One.

16 Q This one?

17 A Yes, sir.

18 Q Okay.

19 A And this one here.

20 Q This one right here.

21 A Yes, sir.

22 Q The others weren't personally handed to you.

23 A No, sir. They came through the motion for discovery.

24 Q Thank you.

25 MR. BASS: Your Honor --

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1 (Sworn statement marked Applicant's Exhibit No. 8 for  
2 Identification.)

3 MR. BASS: Do you have an Exhibit 8? I apologize.  
4 I'm sorry.

5 Q I am going to read this and then we can get to it.

6 "I, Jesse Willis, do confess to beating Juan Roman and  
7 taking his boots and phone on August 30th of 2006. Then I  
8 run to Jeremy and Nakia, but they was not home. So I got  
9 Jeremy's gas jug off his porch and went back to Juan's and  
10 set it on fire. I sold Jeremy his phone the next day for  
11 \$10. This is my sworn statement." Signed Jesse Willis,  
12 September 9th of 2006.

13 Did I read that correctly?

14 A Yes, sir.

15 Q And how did you get this statement?

16 A It was personally handed to me from Jesse Willis.

17 THE COURT: I'm sorry. Would you say that again? I  
18 didn't hear you.

19 A It was personally handed to me from Jesse Willis.

20 THE COURT: Thank you, sir.

21 Q All right.

22 MR. BASS: This is the same gentleman that came here  
23 and pled the Fifth, Your Honor.

24 A Yes, sir, it is.

25 Q All right. He personally gave you this statement?

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Direct examination by Mr. Bass

1 A Yes, sir.

2 MR. BASS: Your Honor, I'd like to move into evidence.

3 MS. WHITE: Your Honor, my same objection in regards  
4 to him being unavailable and the fact that, you know, the  
5 corroboration, and the fact that whether or not the  
6 motivation I think behind this is -- you know, the  
7 credibility and stuff is questionable.

8 THE COURT: I understand your position. At the very  
9 least it needs to be proffered into the record. So I'll  
10 admit it. It will be in evidence.

11 MS. WHITE: Thank you, Your Honor.

12 (Sworn statement marked Applicant's Exhibit No. 8.)

13 Q And after you got this statement, what did you do with  
14 it?

15 A I gave it to Mr. Weatherford.

16 Q Mr. Weatherford. This is the statement  
17 Mr. Weatherford had, correct?

18 A Yes, sir.

19 Q This is the statement he had at your bond hearing?

20 A Yes, sir, it is.

21 Q So it's the statement he referred to when he was  
22 talking with Judge Hayes about having a written confession?

23 A Yes, sir.

24 Q All right.

25 (Letter marked Applicant's Exhibit No. 9 for

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Direct examination by Mr. Bass

1 Identification.)

2 Q Okay. Do you have it in front of you, Mr. Phillips?

3 A Yes, sir.

4 Q It's kind of an odd statement here. At the top and  
5 the bottom, let's see, Jesse W. and Jesse W. Whose  
6 handwriting is that?

7 A That's my mother's.

8 Q Okay. Very top. Timmy Clark, Tracy Fowler, Mark  
9 Vandenburg. Who are they?

10 A Three detectives.

11 Q Okay. And in what capacity are they detectives?

12 A They're detectives in Cherokee County.

13 Q Why are their names at the top of this list?

14 A This is actually three little slips of paper.

15 Q Okay. This is your three separate statements that  
16 copied onto one page?

17 A Yes, sir.

18 Q Okay.

19 MS. WHITE: Your Honor, I'm just going to object to  
20 this in regards to authentication.

21 There's no signature on it and there's no -- if he's  
22 going to state, as I imagine he is, that Jesse wrote  
23 this -- that, you know, Jesse is not going to testify as to  
24 whether or not he wrote the statement, and there's no  
25 signature on here other than as he indicated his mom's

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 indication that this is from Jesse.

2 THE COURT: All right. Let me see where he's going  
3 with it, and we'll take care of the objection if we need  
4 to.

5 Go ahead.

6 BY MR. BASS

7 Q So let me back up.

8 This is actually three separate pieces of paper. You  
9 have at the top No. 1.

10 A Yes, sir.

11 Q Is this a fair and accurate representation of those  
12 three pieces of paper?

13 A Yes, sir.

14 Q Now, why were the detectives' names written at the  
15 top?

16 A It was in a different order. Jesse had came and  
17 slipped these little letters under my door. The first --

18 Q All at once or --

19 A No. Three separate times.

20 Q Okay.

21 A The first -- the first one was the center one.

22 Q Okay.

23 A Says, "I was not going to tell them nothing, but they  
24 made me write this statement."

25 Q All right.

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 A And I said who, and then he sent back a little --

2 Q You say who through the door or --

3 A Yes, sir.

4 Q Okay.

5 A He sent back the little Timmy Clark, Tracy Fowler,  
6 Mark Vandeburg note and then --

7 Q So those are the detectives that would have made him  
8 write a statement?

9 A Yes, sir.

10 Q Okay.

11 A And then a few minutes later I got this other one.

12 Q All right. I'm going to read this other one here.  
13 okay.

14 A Yes, sir.

15 Q "Tell them we was at Nakia's daddy's house during that  
16 scene. I live right behind Juan's house. We was out  
17 cigarettes. When we asked him we can -- we asked him can  
18 we have one. He didn't have one. He was trying to cook.  
19 And you seen sparks flying. We started to run. The house  
20 went up in flames."

21 So it's your testimony that this statement was handed  
22 to you by Jesse Willis, is that correct?

23 A Yes, sir.

24 MR. BASS: At this point, Your Honor, I would like to  
25 move it into evidence.

Jeremy Richard Phillips  
Direct examination by Mr. Bass

1 THE COURT: Subject to your earlier objection, that  
2 will be No. 9, I believe.

3 (Letter marked Applicant's Exhibit No. 9.)

4 Q So did Mr. Weatherford also have this statement?

5 A Yes, sir, he did.

6 Q So he had a copy of at least two statements in Jesse's  
7 own handwriting that he gave -- that you gave to him saying  
8 that either he did it by himself or making up a story about  
9 how it happened.

10 A Yes, sir.

11 Q All right. Did any of those statements get introduced  
12 at trial?

13 A No, sir.

14 Q Okay. And he didn't call Jesse, did he, to the stand?

15 A No, sir.

16 Q And is it your contention, Mr. Phillips, that  
17 Mr. Weatherford was indeed ineffective as your counsel for  
18 failing to call Jesse Willis to the stand?

19 A Yes, sir. He was. I believe if he would have called  
20 Jesse Willis the outcome of my trial would have been  
21 different.

22 Q Okay.

23 MR. BASS: Your Honor, that's all the questions I  
24 have.

25 Q Please answer any questions that Ms. White might have

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 for you.

2 A Yes, sir.

3 THE COURT: Before we do that, the deputy is outside.  
4 Do we know if the other witness is here?

5 MS. WHITE: I think I saw him.

6 THE COURT: He is here. Okay. I just wanted to check  
7 on that.

8 MS. WHITE: We just wanted to make sure it was  
9 Mr. Adams. He is here.

10 THE COURT: Thank you. Go ahead.

11 MS. WHITE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. WHITE

14 Q Mr. Phillips, I'm going to kind of start back a little  
15 bit the same order that Mr. Bass went over with you.

16 Obviously, the defense that y'all presented at trial  
17 was a defense of complete innocence, right?

18 A Yes, ma'am.

19 Q Okay. So it was never a defense of I was partially  
20 responsible or, you know, it was self-defense or anything.

21 A No, ma'am.

22 Q Okay. And in regards to the evidence that the state  
23 had against you, you talk a lot about the towel. But they  
24 also had some things at trial they introduced, things that  
25 they found from a burn barrel that they had found in front

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 of your house, isn't that right?

2 A Yes, down behind -- behind my trailer, between mine  
3 and Jesse's trailer.

4 Q Okay. And it was a burn barrel that had -- one of the  
5 things was I think the heel of the boot maybe that y'all  
6 were accused of taking from Mr. Roman, the victim?

7 A No, ma'am. None of that was never introduced or as  
8 far as I can remember even spoke of. I believe  
9 Mr. Weatherford said they had lost it from the evidence  
10 locker.

11 Q Okay.

12 A But it wasn't -- it wasn't a boot heel from the  
13 victim's. I know that. But I'm not sure what it was.

14 Q Okay.

15 A It was -- I believe it was labeled as an unknown  
16 burned substance. But it was later lost from the evidence  
17 rock locker.

18 Q Okay. So I'm going to go back. Page 419 of the  
19 transcript, and that's just the testimony of I think one of  
20 the sheriff's officers, crime investigator and evidence  
21 officer.

22 And he just kind of detailed some of the things that  
23 he found at your house. And it's kind of similar to the  
24 inventory list we found. Found a D.V.D. player, towel with  
25 some stains, washcloth, he says, tissues with some stains.

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 They found it looks like about three towels, isn't that  
2 right?

3 A Yes, ma'am.

4 Q Okay. Then if you'll look -- let's see. Skip. Page  
5 425, line 17, it says outside the residence they found some  
6 items in burn barrel -- a belt buckle; a burned jean-pants  
7 leg; some burned ladies' panties; a burned red cloth; a  
8 burned unknown substance; a burned T-shirt; burned  
9 underwear; and they said at the time burned heel. But they  
10 didn't ever put that into evidence, but they just said that  
11 that's what they collected, is that right?

12 MR. BASS: I'm sorry. What page are you on?

13 MS. WHITE: Sure. 425, lines 17 through 22.

14 A Yes, ma'am. And I'm looking at the inventory here  
15 from the search-warrant return. There's only two towels on  
16 it, and the one that was testified during trial was to be  
17 the towel that came from the basket.

18 Q Right. And then I was asking you though about the  
19 testimony, what they said. But then on page 425 you was  
20 also talking about the things that they found in the burn  
21 barrel, is that right?

22 A Yes, ma'am.

23 Q Okay. Now, they found some of those things, and they  
24 did some testing on those to see if they found any blood or  
25 anything, is that right?

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 A Yes, ma'am.

2 Q And really the only thing they found for the blood was  
3 if I'm correct, was the towel.

4 A Yes, ma'am.

5 Q And I think there was a washcloth that had a  
6 presumptive test for blood. There was a sleeveless --  
7 yeah. There were some other things but no real apparent  
8 bloodstains other than the blood on that towel, is that  
9 right?

10 A There was blood, but it was determined to be Nakia  
11 Gossett's blood, I believe.

12 Q Okay. Now, but in addition when they're talking about  
13 the physical evidence, they actually had a couple of people  
14 that had given statements against you, is that right?

15 A Yes, ma'am.

16 Q So, in fact, Ms. Willis I guess was the first one that  
17 came forward about a week after the incident.

18 A Yes, ma'am.

19 MR. BASS: Objection, Your Honor. I want to know if  
20 she's going to be introducing Ms. Willis' testimony as far  
21 as her statements or --

22 MS. WHITE: I think I'm going to ask Mr. Weatherford a  
23 little bit about the evidence, but I'm just asking  
24 Mr. Phillips about the evidence against him right now, not  
25 the substance as much.

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 THE COURT: Go right ahead.

2 BY MS. WHITE

3 Q And Ms. Willis offered a statement against you  
4 accusing you and Jesse of being involved in this, right?

5 A Yes, ma'am.

6 Q Okay. And then after -- after Hazel Willis gave a  
7 statement Jesse gave a statement admitting that he was  
8 involved in beating up and helping with this crime, is that  
9 right?

10 A Yes, ma'am. That was his statement.

11 Q Okay. Now, a Shannon Powell gave a statement, is that  
12 right?

13 A Yes, sir. They tracked her down a few weeks -- I  
14 believe a week or two after we were arrested. She's the  
15 one that had a D.V.D. player that Jesse had sold her from  
16 the victim with the victim's blood on it. Just -- just to  
17 clarify, that's not the D.V.D. player that come from my  
18 house.

19 Q But she gave a statement in which she alleged that you  
20 had confessed to her, is that right?

21 A Yes, ma'am.

22 Q All right.

23 A Which now she has completely recanted that, and during  
24 her testimony before Mr. Weatherford she had got off the  
25 stand. She mentioned that she didn't know who had told her

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 that.

2 Q Her statement to police and her testimony at the time  
3 though, she testified for the state against you, right?

4 A Yes, ma'am.

5 Q Okay. And there were a couple of other people that  
6 wrote statements. Weren't there a couple of other either  
7 coworkers of Nakia, I think, and maybe a couple of  
8 neighbors?

9 A I'm not sure.

10 Q Okay. Now, Nakia originally gave police a statement  
11 that kind of helped you, and then she went back and gave  
12 police a statement that -- that accused you of doing the  
13 crime and testified against you, is that right?

14 A Yes, ma'am.

15 Q Okay. So it wasn't just -- the physical evidence  
16 might have been this lone towel, but you had testimony of  
17 some witnesses that were also accusing you of it or saying  
18 that you had confessed, is that right?

19 A Yes, ma'am.

20 Q Okay.

21 A which couldn't be further from the truth.

22 Q Now, you said that you did talk with Mr. Weatherford  
23 and you talked with him about some of these folks that had  
24 written statements. And obviously you produced a letter  
25 that showed he had talked about maybe getting some of them

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 to testify. Were you aware -- did you talk with him about  
2 the fact that all of those folks that were in jail at the  
3 time, whether or not that would help your case or --

4 A Yes, ma'am. I thought that would be what took it over  
5 the top to prove my innocence.

6 Q And whether or not that they had criminal records,  
7 whether or not that would affect if the jury believed them  
8 or not or --

9 A I didn't -- I wasn't looking at things from a jury  
10 standpoint. I knew I was not guilty of it. And Jesse was  
11 just repeatedly bragging and telling everybody how he  
12 committed this crime. He was proud of it. And that I  
13 would relay that to Mr. Weatherford and who -- who people  
14 would come up and say, man, Jesse -- Jesse's over there  
15 bragging, talking about the crime. And I'd say, well, are  
16 you willing to write a statement. And nine times out of  
17 ten all of them say no.

18 Q Now, he had also though given a statement the opposite  
19 of that, right?

20 A Yes, ma'am.

21 Q Okay. Now, when you said he handed you these  
22 statements, were y'all in cells at the time?

23 A Yes, ma'am.

24 Q Okay. So did he physically hand them to you --

25 A He put it in my hand.

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 Q -- or did he slip them through the door?

2 A You could stick your fingers under the door and hand  
3 it to you.

4 I asked Mr. Weatherford to get the video tape. They  
5 had him in a suicide cell because he was flipping out and  
6 cussed out the police and told them he was going to kill  
7 them. So they put him in a cell to watch him. And there  
8 was a camera on that cell. So I asked Mr. Weatherford to  
9 get that video tape to both authenticate that it was Jesse  
10 Willis's and how I received it from Jesse Willis.

11 Q How long had you and Mr. Willis been friends at the  
12 time of this in 2006?

13 A Maybe a year or so.

14 Q Okay. And you knew him because you lived in a trailer  
15 that was in a near location to where he and his mother  
16 lived?

17 A Yes, ma'am.

18 Q And had y'all lived there the whole time in near  
19 proximity?

20 A Yeah. We had both lived in the same spot in the  
21 neighborhood.

22 Q Okay.

23 A As far as I know that's where he lived. He was  
24 already living there when I moved back to the neighborhood,  
25 I believe.

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 Q And how old were you at the time of this incident?

2 A Twenty-six or 27.

3 Q And how old was Mr. Willis?

4 A I'm not sure. Early 20s.

5 Q He was younger than you?

6 A Yes, ma'am.

7 Q And do you know if he had graduated high school or  
8 anything?

9 A I believe he got threw out of the high school for  
10 fighting with a teacher. And they sent him to some kind of  
11 like alternative school or something like that.

12 MR. BASS: Objection, Your Honor. Do you know -- this  
13 is hearsay. I don't know if this is personal experience  
14 or, you know, we've already had Mr. Willis come in here and  
15 invoke the Fifth Amendment, and how my client's come to  
16 this alleged information.

17 THE COURT: Okay. Seems to be helping your client,  
18 but if you want to object to it, that's fine. Do you want  
19 to go talk about that or, I mean --

20 MS. WHITE: Just trying to establish a little bit  
21 about the --

22 THE COURT: Relationship between --

23 MS. WHITE: The relationship and whether or not, you  
24 know, he did a lot of things with this gentleman and --

25 MR. BASS: Your Honor, I'm afraid of where that's

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 going to lead to down the road in what she's trying to  
2 establish with my client.

3 THE COURT: All right. I allowed you some latitude.  
4 I'm going to give her a little bit too.

5 Go ahead.

6 MS. WHITE: Okay. Thank you.

7 BY MS. WHITE

8 Q So just from knowing him from that year or so you knew  
9 that he might have been thrown out of school at a  
10 younger -- younger time, but you didn't know when or for  
11 what reason other than you said fighting.

12 A Yes, ma'am.

13 Q Now, did y'all -- did y'all do anything together, hang  
14 out together much?

15 A Yes, ma'am. We spent time together.

16 Q Okay. Did he work while you knew him during that  
17 year?

18 A Yes, ma'am.

19 Q And what kind of jobs did he do?

20 A He worked for a man down on 29 that done like vinyl  
21 siding and soffit and put windows in.

22 Q And to your -- when y'all did things together was he  
23 able to -- I mean, was he the one that wanted to get  
24 together? I mean, obviously you testified sometimes about  
25 he had trouble with his mama and trouble with things like

Jeremy Richard Phillips  
Cross-examination by Ms. White

1 that and you were the one that tried to take care of him --  
2 and look after him and take up for him. Is that how you  
3 felt towards him or --

4 A When Jesse -- he had a rough situation down there  
5 where he lived. And his mother's boyfriend, Alberto --  
6 they was mean to him, you know, and they would party and  
7 get drunk. And there'd be times when he'd come up there  
8 after being into it with them and ask if he could stay  
9 there. You know, as far as taking care of him, you know,  
10 that would have been like the only way you could view that  
11 but --

12 Q Did he look up to you as a brother type or --

13 A No. Basically, well --

14 Q I'm sorry? I didn't hear.

15 A Basically, like equals, you know, just buddies.

16 Q Okay. All right.

17 MS. WHITE: If I can have just one moment, Your Honor.

18 THE COURT: Certainly.

19 (Pause.)

20 MS. WHITE: I think that's all I have for him, Your  
21 Honor.

22 THE COURT: Redirect?

23 MR. BASS: Briefly.

24

25

Jeremy Richard Phillips  
Redirect examination by Mr. Bass

1 REDIRECT EXAMINATION

2 BY MR. BASS

3 Q Ms. White talked about a number of statements that  
4 were made against you either, you know, when you've been  
5 arrested, leading up to your arrest, and even during the  
6 trial.

7 I guess my point is that we've introduced into  
8 evidence a number of statements that would have helped you,  
9 is that correct?

10 A Yes, sir, it is.

11 Q And Mr. Weatherford didn't introduce those into  
12 evidence in your trial, is that correct?

13 A No, sir.

14 MR. BASS: That's all I have, Your Honor.

15 THE COURT: Thank you, sir. You can step down.

16 We've been going for about two hours straight. Let's  
17 figure out what we're going to do, because we still have  
18 one more witness for you, right?

19 MR. BASS: Two. I've got one D.O.C. and then  
20 Mr. Weatherford.

21 THE COURT: Okay. All right. I was thinking of maybe  
22 they were going to call him. We've got that other one at  
23 2:00 o'clock. We're just going to be off the record for a  
24 minute here and see where we stand.

25 (Whereupon, a recess was taken.)

Donald Wayne Adams  
Direct examination by Mr. Bass

1 THE COURT: Let's do that next witness that was out  
2 there in the yellow, and then we'll break again.  
3 Hopefully, he'll be over here and we can figure out where  
4 they stand.

5 (Pause.)

6 MR. BASS: Your Honor, I'd like to call Donald Wayne  
7 Adams to the stand.

8 DONALD WAYNE ADAMS, having  
9 been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BASS

11 Q Mr. Adams, I'm Sam Bass. We spoke on the phone  
12 earlier last week, correct?

13 A Yes, sir.

14 Q I'm going to find -- this has been previously marked  
15 as Exhibit No. 4. Would you take a look at it? I'm going  
16 to read it to you. You tell me if I read it correctly.  
17 okay?

18 A Yes, sir.

19 Q Well, first, let me start off. What is your full  
20 name?

21 A Donald Wayne Adams.

22 Q And where are you located right now?

23 A Annex, over in the Spartanburg County Jail.

24 Q Why are you there?

25 A Burglary second and petty larceny.

Donald Wayne Adams  
Direct examination by Mr. Bass

1 Q Are you charged with that or convicted of that?

2 A I'm just charged with it.

3 Q All right. And you have an attorney in that matter?

4 A Yes, sir.

5 Q Okay. Who is that?

6 A Matthew Shealy.

7 Q Do you feel like you need to speak with him today?

8 A No.

9 Q Okay. All right. I'm going to read the letter, and I  
10 want you just to tell me if I read it correctly.

11 "I, Donald Wayne Adams, I'm writing this statement  
12 willingly and on my own free will. I was incarcerated on  
13 Cherokee -- in Cherokee County Detention Center from  
14 January of '07 to March of '07. I was in B-pod. I was  
15 training a few guys to box, and one guy named Jesse Willis  
16 was wanting to work out. He seemed kind of cocky. He made  
17 a statement to me that he doesn't really need to learn  
18 anything, that he'd done beat up one man to death and  
19 poured gasoline on him and blew him up. I stopped right  
20 then and told him to stay away from me and I didn't want  
21 anything to do with him. I didn't have anything to do with  
22 him the rest of the time I was there. I wrote this  
23 statement on the date of 1/22/08. I can be reached at [REDACTED]  
24 [REDACTED], Inman, South Carolina, 29349, for further  
25 assistance." Signed, Wayne Adams. And it seems that it

Donald Wayne Adams  
Direct examination by Mr. Bass

1 was notarized as well on January 27th of 2008.

2 First of all, did you write this statement?

3 A Yes, sir.

4 Q Okay.

5 A No. I don't remember writing it.

6 Q You don't remember writing the statement.

7 A I don't remember writing it, but, yes, sir, I signed  
8 it.

9 Q Okay. So that is your signature down there.

10 A Yes, sir.

11 Q Okay. And -- but you don't remember writing this  
12 statement.

13 A I don't remember fully. I can't remember one way or  
14 the other, but it is my signature.

15 Q Well, if you had -- if you signed this would you have  
16 read it before you signed it?

17 A Yes, sir, yes, sir.

18 Q Okay. And the contents of this statement, do you  
19 remember the contents of what I was talking about?

20 A Yes, sir.

21 Q Okay. Can you explain to me, you know, how -- how you  
22 came to write this statement?

23 A Well, like it says, you know, I -- we was in there  
24 working out, and the guy made the statement.

25 Q In where working out?

Donald Wayne Adams  
Direct examination by Mr. Bass

- 1 A In the Cherokee County Jail. And the guy made the  
2 statement that he made, and I didn't appreciate it and  
3 didn't think it was a fair statement for me to be around,  
4 somebody like that for me to be around, so I told --
- 5 Q Who is the guy you're talking about?
- 6 A The guy in this right here, Tillis, Willis, whatever  
7 his name is. And I just told him I didn't want to be  
8 around him.
- 9 Q All right. This -- this address, [REDACTED],  
10 [REDACTED], South Carolina, 29349, what address is that?
- 11 A That's my sister's address.
- 12 Q All right. Would anyone else know that besides you?
- 13 A No, sir.
- 14 Q All right.
- 15 A I've never -- I've never been in Cherokee County or in  
16 any trouble up there or even been in Gaffney, but just  
17 going through Gaffney, sir.
- 18 Q Okay.
- 19 A I don't know no one up there.
- 20 Q So this is your signature, right?
- 21 A Yes, sir, that is my signature.
- 22 Q And apparently this is notarized, correct?
- 23 A Yes, sir.
- 24 Q And you wouldn't have signed this if this was --  
25 unless this was a true and accurate statement, correct?

Donald Wayne Adams  
Direct examination by Mr. Bass

1 A Yes, sir. I would not have put my signature on it.

2 Q This is a pretty serious accusation, right?

3 A Yes, sir.

4 Q Now, this obviously is not an original. It's a copy.

5 Is this a fair and accurate representation of an original,

6 at least your signature there?

7 A Yeah. That's my signature.

8 Q Okay. All right.

9 MR. BASS: Your Honor, at this particular time I'd  
10 like to move this into evidence.

11 THE COURT: Subject to the earlier objection by the  
12 state, it is in evidence.

13 MS. WHITE: Thank you, Your Honor.

14 (Affidavit marked Applicant's Exhibit No. 4.)

15 Q Mr. Adams, do you know who this gentleman is sitting  
16 here to my left?

17 A No, sir.

18 Q You've never seen him before?

19 A No, sir.

20 Q I'll represent to you that this is Wade Weatherford.

21 He was Mr. Phillips' attorney during his original criminal  
22 trial. Did Mr. Weatherford ever attempt to contact you?

23 A No, sir.

24 Q Okay.

25 A Not as I know of.

Donald Wayne Adams  
Direct examination by Mr. Bass

1 Q Okay. Did anyone from his office ever attempt to  
2 contact you?

3 A No, sir, not as I know of.

4 Q Especially concerning this case.

5 A No, sir, not as I know of.

6 Q Okay.

7 A Because my sister would have informed me if somebody  
8 had contacted me.

9 Q Before I contacted you had anyone had any contact with  
10 you concerning this case?

11 A No, sir. I thought no more about this since I was in  
12 Cherokee County to be honest with you.

13 Q All right. Had -- had Mr. Weatherford contacted you,  
14 had he called you up and asked you about any statements  
15 Jesse Willis might have made to you concerning the crime  
16 that Mr. Phillips was convicted of, especially as it  
17 relates to this statement right here, would you have spoken  
18 to him?

19 A Sure, I mean.

20 Q If he had called you to testify at Mr. Phillips' trial  
21 would you have done so?

22 A Yes, sir.

23 Q And would you have testified as --

24 A I would have testified that that was my signature.

25 Q All right. And you would have testified that that's

Donald Wayne Adams  
Cross-examination by Ms. White

1 your signature below what is written right here.

2 A Yes, sir.

3 Q And you wouldn't have signed that unless you had read  
4 it and it was correct.

5 A I would not have put my signature on it if I hadn't  
6 have read and was fully understanding of what was said or  
7 what was wrote on the paper.

8 MR. BASS: And, Your Honor, those are -- that's the  
9 only questions I have for this witness.

10 THE COURT: Cross.

11 MS. WHITE: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. WHITE

14 Q Mr. Adams, if you didn't write that statement who  
15 wrote that statement?

16 A Ma'am, I don't remember.

17 Q who brought it to you to sign?

18 A I don't -- it's been so long ago, ma'am, I don't  
19 remember I been through so much the last four years. Like  
20 I said, I thought no more about Cherokee County since I  
21 left there.

22 Q okay. So you know you signed it. You know -- you  
23 remember the facts that happened, but you don't remember  
24 who wrote that statement or who brought it to you to sign.

25 A Ma'am, I'm not saying I didn't write it. I'm saying I

Donald Wayne Adams  
Cross-examination by Ms. White

1 don't remember. I don't remember if somebody wrote it. I  
2 mean, I don't.

3 Q Okay. How did you know Mr. Phillips?

4 A How did I know? Just from being in the Cherokee  
5 County Jail.

6 Q And you said you were only there briefly?

7 A Yes, ma'am.

8 Q For how long were you there?

9 A Probably 45 days, I guess.

10 Q All right. So how did you know that you needed to get  
11 this statement to him in 2008?

12 A Because I was -- that's whenever I was in the Cherokee  
13 County Jail and that's when that boy made the statement.

14 I didn't give the statement to nobody. I just signed  
15 it, and then where it went from there, I don't know.

16 Q Okay. But Mr. Willis that told you that didn't give  
17 this to you, right?

18 A No.

19 Q So somebody that's wanting to help Jeremy Phillips had  
20 you sign the statement, right?

21 A I guess. I mean, like I said, ma'am, I may have wrote  
22 the statement. I mean, I don't remember. My daughter has  
23 died since then and all of that. I been through so much in  
24 my life, I mean, I don't remember. I thought nothing else  
25 about being in the Cherokee County Jail.

Donald Wayne Adams  
Cross-examination by Ms. White

1 Q But you remember hearing Mr. Willis make these  
2 statements while you were in the Cherokee County Jail.

3 A Yes, ma'am. Somebody tells me they killed somebody,  
4 yes, ma'am, sure, yeah.

5 Q Okay. So for those 45 days you remember that, but you  
6 don't remember somebody bringing you something to sign that  
7 was notarized?

8 A Ma'am, like I said, I signed it.

9 Q Okay.

10 A That is my signature.

11 Q And that's not a question. I'm asking you. You don't  
12 remember that, but you remember within that 45 days, you  
13 remember the facts of the statement, but you don't  
14 remember --

15 A Yes, ma'am. That's what I'm saying.

16 Q Okay, okay. Now, Mr. Adams, you were convicted of  
17 breach of trust with fraud in 2003, weren't you?

18 A Ma'am, my criminal record don't have nothing to do  
19 with what I'm testifying here today on.

20 Q Mr. Adams, I just need a yes-or-no answer. Were you  
21 convicted of breach of trust with fraud in 2003 in  
22 Spartanburg County?

23 A Once again, ma'am, my criminal record does not have  
24 nothing to do with what I testified.

25 THE COURT: Sir, if you will, please answer the

Donald Wayne Adams  
Cross-examination by Ms. White

1 questions. And if there's going to be an objection, then  
2 he'll make the objection. I just need you to answer.

3 BY MS. WHITE

4 A Yes, ma'am.

5 Q Okay. And in 2003 you were convicted of property  
6 offense, third or subsequent, in Spartanburg County.

7 A Yes, ma'am.

8 Q And also in 2003 another property offense third or  
9 subsequent.

10 A Yes, ma'am.

11 Q And in 2003 you were also convicted of driving under  
12 suspension and operating uninsured motor vehicle.

13 A Yes, ma'am.

14 Q 2004 you were convicted of burglary second degree and  
15 a property, third or subsequent.

16 A Does my criminal record -- is it really?

17 THE COURT: She's introducing it for purposes of  
18 impeachment of your testimony. She needs you to answer the  
19 question.

20 BY MS. WHITE

21 A Yes, ma'am.

22 Q You were convicted in 2005 for receiving stolen goods,  
23 malicious injury to personal property and giving false  
24 information, weren't you?

25 A Yes, ma'am.

Donald Wayne Adams  
Redirect examination by Mr. Bass

1 Q And then in 2006, another burglary second degree.

2 A Yes, ma'am.

3 Q And 2007, driving under suspension.

4 A Yes, ma'am.

5 Q And in 2007, another burglary second degree.

6 A Yes, ma'am.

7 Q And property offense third or subsequent.

8 A Yes, ma'am.

9 Q Okay.

10 MS. WHITE: That's all the questions I have for this  
11 witness, Your Honor.

12 MR. BASS: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. BASS

15 Q Were you ever located in Kirkland?

16 A Kirkland R and E, yes, sir.

17 Q Okay. All right. Could that be where this statement  
18 was written?

19 A It very well might have could have been.

20 Q These are very serious allegations in this statement,  
21 correct?

22 A Yes, sir.

23 Q Do you have any reason at all why you would make  
24 something up like this?

25 A No, sir.

Donald Wayne Adams  
Redirect examination by Mr. Bass

1 Q Do you have any --

2 A I don't know this fellow and I don't know the fellow  
3 that said it.

4 Q So you don't know Jeremy Phillips from Adam.

5 A No more than I know you, sir.

6 Q And you don't know Jessie Willis from Adam.

7 A No more than I know you, sir.

8 MR. BASS: That's all I have, Your Honor.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: We will be at ease in this for a few  
12 minutes.

13 (Whereupon, a recess was taken.)

14 THE COURT: Are we ready to resume with this case,  
15 with the Phillips case?

16 MR. BASS: Yes, Your Honor.

17 THE COURT: You needed to before we broke, you needed  
18 to formally move the Exhibit 4 -- was it?

19 MR. BASS: Yes, sir, Your Honor. Donald Wayne Adams'  
20 statement as four into evidence.

21 THE COURT: Subject to the earlier objection, it will  
22 be in evidence.

23 MS. WHITE: Thank you, Your Honor.

24 (Previously introduced.)

25 THE COURT: Anything further from the applicant?

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 MR. BASS: Well, I'll go ahead and call  
2 Mr. Weatherford.

3 WADE S. WEATHERFORD, III,  
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BASS

6 Q Mr. Weatherford, would you please state your name for  
7 the record?

8 A Wade S. Weatherford, III.

9 Q And what is your occupation?

10 A I am an attorney.

11 Q And where are you an attorney?

12 A Gaffney.

13 Q Do you have any other occupations besides being an  
14 attorney?

15 A Yeah. I'm part-time city judge.

16 Q Is that in Gaffney as well?

17 A Uh-huh.

18 Q Okay. In -- obviously you recognize Mr. Phillips  
19 here.

20 A Yes.

21 Q When were you retained by either Mr. Phillips or his  
22 family to represent him in this case?

23 A Well, it was within a few weeks of when he was  
24 charged.

25 Q So fall, I guess. He was charged in September of '06.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 So within a few weeks it would have been?

2 A Well, yeah, and I'm not exactly sure. My agreement  
3 with them is I wanted to have a preliminary hearing to  
4 eliminate the possibility of a death sentence. So we had  
5 the preliminary hearing. And after I was satisfied they  
6 didn't have the elements for a death sentence, I agreed to  
7 continue it.

8 Q Okay. Was that in the fall of 2006?

9 A I couldn't tell you without looking.

10 Q Well, let me ask you this.

11 A I mean, I've got it if you want me to look.

12 Q Yeah. Well, I will tell you. Do you have a copy of  
13 the transcript in front of you?

14 A The preliminary hearing?

15 Q Well, no. The full trial transcript.

16 A I didn't bring it. I've got it in there. Maybe I  
17 ought to just bring the box up here.

18 MS. WHITE: I will pass this over.

19 MR. BASS: That will probably be easier.

20 (Pause.)

21 Q If you can, just pull out the trial transcript of the  
22 actual trial. If you would, turn to page 49, please, line  
23 six.

24 The Court asks you, "Okay. When were you retained to  
25 represent -- well, you were retained to represent

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Mr. Phillips when?" said, "A long time ago. And when was  
2 it? September 25th of '06." Does that sound about right?

3 A Well, let's see. Yep. That was the first day I  
4 talked to anybody.

5 Q Okay.

6 A His parents.

7 Q You spoke to his parents. I believe their names are  
8 Norma and Keith, is that right?

9 A Right.

10 Q How much was you to be paid to represent Mr. Phillips?

11 A \$10,000.

12 Q \$10,000. okay. Let's just actually skip ahead to --  
13 I'd like you to turn to the exhibit up there, and I believe  
14 it is exhibit -- let me make sure I find it. Which exhibit  
15 is the bond hearing? Is that Exhibit 3?

16 A Exhibit 3.

17 Q Exhibit 3. All right. If you could, please turn to  
18 page five, line 24. This is when you're talking to Mr.--  
19 Judge Hayes.

20 "Mr. Willis has written shortly after his original  
21 statement, he wrote another statement that I have a copy  
22 of, and I'd like to hand up. I don't know if you've seen  
23 that one or not. I've got another one."

24 Mr. Morin says, "Oh, I'm sorry. I want -- you want me  
25 to hand that one up?"

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1           And you said, "Well, I wanted to hand one up and give  
2 one -- and give you one where he takes full responsibility  
3 and also -- and that was shortly after the arrests were  
4 made, shortly, and shortly after his statement was made.  
5 And then there's another one that I want to hand up here  
6 from an inmate who basically says that Mr. Willis takes  
7 sole responsibility for committing this crime."

8           Did I read that correctly?

9   A     Yes.

10   Q     Okay. And the statements that I'm referring to are  
11 Court's Exhibit No. 8 if you'll take a look at that, and  
12 Court's Exhibit No. 1. Court's Exhibit No. 8 -- is this  
13 what appears to be the written confession by Jesse Willis?

14   A     It's one of them.

15   Q     Okay. Is this the one that was introduced at the bond  
16 hearing?

17   A     I don't know.

18   Q     Okay.

19   A     He had several, some saying he did it and some saying  
20 he didn't do it.

21   Q     But you did introduce at least one confession.

22   A     Yeah. But I had -- I had five of them. Two of them  
23 said he didn't do it and three of them said he did.

24   Q     Okay. Well, we'll get to those as well.

25   A     All right.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Q In this letter here, Exhibit 1, from Joseph Smith,  
2 that was introduced at the bond hearing as well, correct?

3 A I guess. I don't know.

4 Q Well, could you --

5 A I mean, I'm not denying any of these letters. I mean,  
6 I --

7 Q Well, I understand. Mr. Weatherford, I'm just trying  
8 to take it through the record here.

9 A Okay.

10 Q If you could, please turn to page 12 of the bond  
11 hearing, line four.

12 Mr. Morin says, "In the matter of credibility, Your  
13 Honor, I also note the confession that I believe you just  
14 put down signed by Joseph Smith. Mr. Smith is the one that  
15 pled before you and got 15 years just a few people ago."

16 Mr. Weatherford said, "Well, I could bring about a  
17 dozen witnesses from the jail to say the same thing as in  
18 that statement."

19 Did I read that correctly?

20 A Yeah. That's what Jeremy told me.

21 Q Okay. So you were retained September 25th of '06.  
22 From September 25th of '06 until December, early December,  
23 when the trial started of '07, what steps did you take to  
24 authenticate the confession of Jesse Willis that you  
25 introduced at the bond hearing?

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 A None.

2 Q None. Okay. Between the -- from September of '06 to  
3 December -- sorry -- from the bond hearing in January where  
4 you had this written statement from Mr. -- Mr. Smith to the  
5 actual trial date in December, what steps did you take to  
6 contact Joseph Smith?

7 A I didn't take any. Do you want me to tell you why?

8 Q Not just yet.

9 A Well, can I explain my answer?

10 Q When I get to it, Mr. Weatherford. And you made one  
11 more statement concerning the dozen witnesses in the jail  
12 that could testify to the same thing as Mr. Smith.

13 what steps did you take from the bond hearing until  
14 the trial to contact any of those witnesses?

15 A I decided that would not be fruitful.

16 Q Decided it would not be fruitful.

17 Okay. I'd like to turn your attention to the trial  
18 transcript, page 43. On line two states, "Your Honor, my  
19 last motion is a motion for a continuance based on two  
20 reasons. Number one is the discovery is not, was not  
21 completed when I filed the motion. Some has been completed  
22 since then, but/and the second one is a continuance based  
23 on the fact that the defendant had insufficient notice to  
24 prepare for trial. They kinda go together."

25 Did I read that correctly?

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 A Yes.

2 Q Okay. Now, I'd like for you to take a look at Exhibit  
3 No. 5. It hasn't been entered into evidence yet but --

4 A Why don't you take these and get them in order if  
5 you're going to have me look through them? They're  
6 spreaded all over the place.

7 Q Take this, Exhibit No. 5. All right. That's a --  
8 well, can you tell me what that is, Mr. Weatherford?

9 A That's a letter I wrote to Michael Morin.

10 Q Okay. And what was the purpose of this letter?

11 A Well, I asked him to let my client see the evidence  
12 that I hadn't seen, and I brought out some -- a number of  
13 things which had not been furnished yet. And then I --  
14 after he furnished some more I went through and I wrote no.  
15 And than I checked -- checked over some of the notes when I  
16 did get the things.

17 Q Okay. In this -- this letter was -- can you turn to  
18 page 47 of the trial transcript, please? And this letter  
19 has -- has how many, I guess, items in your list of things  
20 you want or wished to see?

21 A Twelve.

22 Q Twelve. Okay. And this letter was -- was filed along  
23 with your motion for a continuance as Exhibit F, isn't that  
24 correct?

25 A I don't know what exhibit.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Q Okay. Well, let's just read the trial transcript on  
2 page 47. Court, page 47, line eight.

3 Court says -- I guess he's asking for a little --  
4 well.

5 THE COURT: I don't have what you're  
6 referring to.

7 Now, I have a motion for a  
8 continuance. I don't have the exhibits,  
9 so I don't know what list you're reading  
10 from."

11 You say, "Well, it should be in the file. But I'll  
12 give you my copy of them. I don't have the file. That was  
13 Exhibit F, number ten, I'm talking about.

14 THE COURT: All right. I have  
15 Exhibit F with the list of ten. Say 12.  
16 Twelve items that you had requested of Mr.  
17 Morin.

18 Say, "Yes, sir."

19 "And No. 11, I've asked for the social security number  
20 of the deceased that was listed on the autopsy to be run  
21 through the national law enforcement system to see if it's  
22 a valid social security number, to see if there's criminal  
23 records or history of the deceased or -- and I've had no  
24 response whatsoever to that.

25 Does it seem then that this would be Exhibit F that

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 matches up your motion for a continuance, this letter?

2 A Yeah.

3 Q Okay.

4 MR. BASS: At this moment, Your Honor, I'd like to  
5 move Exhibit 5 into evidence.

6 THE COURT: Any objection?

7 MS. WHITE: No objection, Your Honor.

8 THE COURT: Without objection into evidence.

9 (Letter dated November 27, 2007, marked Applicant's  
10 Exhibit No. 5.)

11 Q All right. Now, I'd like you to take a look at  
12 Exhibit 6. Mr. Weatherford, can you please identify for me  
13 what this letter is?

14 A They were names given to me by Jeremy that would  
15 verify that Jesse Willis had told them at one time or  
16 another that he was responsible for the death by himself.  
17 That's what Jeremy told me.

18 Q Okay. All right. And this was a letter that you  
19 wrote to Mr. Morin, correct?

20 A Yeah.

21 Q Okay. You were asking him to find where these people  
22 were for you.

23 A The ones that were incarcerated, I didn't have any way  
24 of finding out. And the ones that were supposed to be in  
25 Cherokee County Jail weren't there.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Q You say the ones that were incarcerated you didn't  
2 have any way of finding out? Is that what you said?

3 A The people in the Department of Corrections, the  
4 solicitor could find out a whole lot easier than me. I  
5 didn't know other than asking him where they were how to  
6 locate them at that time.

7 Q All right.

8 MR. BASS: At this point, Your Honor, I'd like to move  
9 Exhibit 6 into evidence.

10 THE COURT: No objection?

11 MS. WHITE: No objection, Your Honor.

12 THE COURT: In evidence.

13 (Letter dated November 30, 2007, marked Applicant's  
14 Exhibit No. 6.)

15 Q And this is marked as -- at the top Exhibit G. Can  
16 you turn to page 48 of the trial transcript, line ten?

17 "And finally, Your Honor, the last page of that motion  
18 or the last page of that exhibit, Exhibit G, I have asked  
19 that -- I understand there's some statements made in the  
20 jail and that some, or some of these people that I've  
21 listed on Exhibit G may have some information about inculp"  
22 -- pardon my not being able to pronounce this --  
23 inculpatory, exculpatory statements by one of the  
24 codefendants. Since I was only notified of the trial on  
25 such short notice, and, as Your Honor knows, my only

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 authority is to subpoena records to the court. But I --  
2 but I would ask -- but what I was asking the solicitor is  
3 to provide me with either which ones of these individuals  
4 were in the Cherokee County Jail, which ones were in the  
5 South Carolina Department of Corrections, and if they had  
6 been released at least their last known address. I have  
7 gotten no response whatsoever on that."

8 Did I read that correctly?

9 A Yes.

10 Q Pardon not being able to pronounce inculpatory and  
11 exculpatory.

12 So it's your contention at that time that you could  
13 not find a number of people on this list, is that correct?

14 A Well, I didn't know where they were. That's right.

15 Q Okay.

16 A They had at one time been in the Cherokee County Jail,  
17 I guess, at least what Jeremy told me.

18 Q On this list on Exhibit 6, No. 1, whose name is that?

19 A Carmie Hull.

20 Q Okay. And we heard testimony from Mr. Hull today,  
21 correct?

22 A I guess.

23 Q Okay. Well, I'll represent to you that we did.

24 A I didn't write his name down. That's why. I'm not  
25 taking notes.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Q That's all right. If you could, take a look at  
2 Exhibit No. 2. It's been into evidence. This is a letter  
3 received by Jeremy from Mr. Hull. He testified to it. And  
4 then Mr. Phillips testified to handing this letter to you,  
5 making sure you had it. Did you have a copy of this letter  
6 in your file?

7 A I think I did. I don't have any independent  
8 recollection now, but I had a lot of different letters that  
9 he gave me along the same line.

10 Q Could you read the sixth name on Exhibit 6?

11 A Joseph Smith.

12 Q Joseph Smith. Joseph Smith was the first person who  
13 testified today.

14 A Yeah. I remember his name.

15 Q And that, so you remember Mr. Smith.

16 A I remember his name.

17 Q Remember his name. Okay. And we have -- that's  
18 Exhibit 1 -- was -- matches his name with this letter right  
19 here.

20 A Well, I don't know.

21 Q Well, how many letters --

22 A Yeah.

23 Q How many letters do you have in your file from Joseph  
24 Smith?

25 A I don't know.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Q You had at least one, correct?

2 A I think.

3 Q Okay. Well, you presented -- according to the bond  
4 hearing you presented a letter from Mr. Smith.

5 A Well, I -- that'd have to be it then.

6 Q So you at least had one letter from Mr. Smith you  
7 presented back in January of '07, is that correct?

8 A Yeah.

9 Q I'd like for you to please turn to page 64 of the  
10 trial transcript, please. I'm sorry. Sixty-three, bottom  
11 of page 63, line 24. Talking about Exhibit G here.

12 MR. WEATHERFORD: Just those, just  
13 those prisoners.

14 THE COURT: That's on a different  
15 list.

16 MR. WEATHERFORD: Well, that's the  
17 Exhibit G.

18 THE COURT: Oh, excuse me. Okay.  
19 And there's a letter, Exhibit G,  
20 indicating the defense wants to know where  
21 these people are. Now, Mr. Weatherford,  
22 do you understand that these people aren't  
23 under the custody and control of the  
24 solicitor's office? They're in the  
25 Department of Corrections. And the

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1           solicitor doesn't have any more control  
2           over them than you would have as far as  
3           where they are. In fact, the Department  
4           of Corrections has a website. Anybody in  
5           the world that has a computer can go  
6           onto -- can go to it and find out who is  
7           in jail and any information you want to  
8           know about it. If they've been released,  
9           I assume the probation office or the  
10          department of parole and probation would  
11          know that if they have a location, if they  
12          have an address."

13 Q     Did I read that correctly?

14 A     Yes.

15 Q     Did you have access to the internet in 2006-2007?

16 A     I suppose. You asking me dates. I couldn't swear to  
17 any dates.

18 Q     Did you have email in 2006?

19 A     I don't know.

20 Q     You don't know in 2006. Are you aware that the  
21 Department of Corrections if you just go on their website,  
22 you can look up prisoners?

23 A     Now, yeah.

24 Q     Okay. So you're aware you can do an inmate search in  
25 the Department of Corrections website.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 A Yeah. Tells you if they're in jail or not, where they  
2 are.

3 Q And that's -- as a matter of fact, that's how I find  
4 the guys that came here today.

5 What efforts did you make beyond sending this letter  
6 and making a motion for a continuance to find these  
7 witnesses that Mr. Phillips said would corroborate his  
8 story of him not doing it?

9 A Shortly thereafter I did a little research on  
10 third-party guilt. I decided that none of these witnesses  
11 had admissible testimony and I decided not to spend any  
12 more time along that line and because Jesse Willis had made  
13 about six statements, one sworn statement, that totally  
14 implicated Jeremy, five what I called jailhouse statements.

15 One day he would say he -- the confession was totally  
16 false. One day he said he was guilty. One day he would  
17 say all of that confession was lies. The next day he'd say  
18 he wanted to make a confession.

19 And I asked Deputy Folks, the chief investigator at  
20 the preliminary hearing, why he wouldn't take any more  
21 statements from Jeremy, I mean from Jesse, and he said his  
22 captain told him they had a statement that they were going  
23 to use and they didn't want any more and didn't need any  
24 more and they didn't put any credence to these jailhouse  
25 statements.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1           And I, quite frankly -- if anybody had testified --  
2 they had these statements just as well as I did -- the ones  
3 where he said he did it and the ones where he said he  
4 didn't -- him saying that or somebody else saying he said  
5 that to them on one occasion that he was guilty would have  
6 been counterbalanced by the ones where he said he wasn't  
7 guilty. And therefore I decided that would do nothing more  
8 than create some kind of suspicion. And as I looked up --

9   Q     Are these reasonable doubt?

10   A     I wasn't through. Huh?

11   Q     Like reasonable doubt?

12   A     No. I'm talking about the third-party guilt and if  
13 all -- if the evidence of third-party guilt as I understood  
14 it at that time only created a -- some kind of suspicion  
15 that somebody else had done it, that it was not admissible.  
16 And that's the way I viewed this; these statements and this  
17 evidence. And that's why I abandoned any attempts to  
18 verify it further.

19   Q     Well, we've got two statements here in evidence.

20   A     So that was a decision that I intentionally made.

21   Q     Did you consult with Jeremy on that decision?

22   A     Not about legal matters, no. I don't discuss that  
23 with clients except as far as factual matters. I make the  
24 legal. I can't sit and explain law to people who have no  
25 legal training.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Q So you didn't explain to him what you were going to do  
2 in his trial.

3 A I probably said I don't think that's admissible, I'm  
4 not going to try to find them. I probably did. But that's  
5 as far as I went.

6 Q Ms. Weatherford, did you consult with Mr. Phillips on  
7 his trial?

8 A Not on legal matters, no.

9 Q So you didn't ask him how he wanted to try his case.

10 A No.

11 Q Well, we've got these two statements that have been  
12 into evidence I'll hand to you, Exhibit 8 and Exhibit 9.  
13 You might have -- I think you have Exhibit 8 there, and  
14 here is Exhibit -- this is Exhibit 8 right here.

15 A All right. What are you asking me about?

16 Q I just want you to have it in front of you.

17 A Which one?

18 Q Exhibit 8.

19 A Here it is.

20 Q Okay. And here is Exhibit 9. All right. So we have  
21 these two statements from Jesse that you had. And you  
22 mentioned these other statements that he had allegedly  
23 given while he was incarcerated contradictory. Some of  
24 them say he did it, and some of them said Jeremy did it,  
25 and some of them say they did it together, some of them

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 say -- all kinds of things.

2 A No.

3 Q No?

4 A Basically, the statements, the letters, said either  
5 Jesse was confessing or he was innocent and he didn't do  
6 it.

7 Q Okay. All right. So we had conflicting --

8 A One one day and one the next.

9 Q So we had conflicting. So you had and knew about  
10 conflicting statements from Jesse Willis.

11 A Well, the solicitor did too. They were all brought  
12 out at the preliminary hearing.

13 Q I'm asking you. So you had those statements in your  
14 possession.

15 A Yes.

16 Q Okay. And we had Mr. Hull testify and we had  
17 Mr. Smith testify and we had Mr. Adams testify.

18 MS. WHITE: Your Honor, I hate to object, but I  
19 think -- I think we've asked and answered kind of the  
20 point. He's admitted he's had the letters and the  
21 statements. And we have gone over the fact that he had  
22 some and he was aware of those folks. And he's testified  
23 to what his strategy was in regards to that.

24 THE COURT: All right. I will let him -- I will let  
25 him ask it again.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1           Go ahead.

2   BY MR. BASS

3           MR. BASS: To be absolutely clear, now, I'll move on.

4           THE COURT: That's all right.

5           MR. BASS: I won't belabor the point, Your Honor.

6   BY MR. BASS

7   Q     I just want to make it absolutely clear that we heard  
8     those three witnesses testify today that not only did they  
9     write statements concerning Mr. Willis admitting to them  
10    that he performed this heinous act by himself but then they  
11    would have been willing to testify as you called them. Is  
12    that the testimony we heard today?

13   A     Yes.

14   Q     I want to move on to the evidence, the physical  
15    evidence.

16           Now, I know you might have something to say concerning  
17    the motion for a continuance that was filed and as well as  
18    this letter asking for Exhibit 5, all of this evidence that  
19    you contend that you weren't given.

20           At any point from when you were retained till the  
21    trial did you go physically see the evidence in this case?

22   A     Yes, I did.

23   Q     You did. When did you go do that?

24   A     I have no idea. I may have some notes about it in my  
25    file, but I don't have them at my fingertips.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Q Do you think you could consult your file?

2 A Yeah.

3 (Pause.)

4 Q And while you're doing that let me just ask you one  
5 more question concerning that.

6 Did you ever arrange for Mr. Phillips to go see the  
7 evidence that was going to be presented against him at  
8 trial?

9 A No. I don't think we got there because they rushed us  
10 into trial on short notice.

11 (Pause.)

12 A I just found the preliminary hearing. That was the  
13 17th of October of '06.

14 See, my file is totally disheveled because after the  
15 case was over I copied everything that Jeremy wanted and  
16 sent to him. And I did not after that, after I had been  
17 relieved and the case was over -- I have not gone back and  
18 reorganized this file. So it's going to take quite a bit  
19 of time to find anything in this file.

20 Q Well, let me ask this about the evidence. How many  
21 times did you go view the physical evidence?

22 A Once.

23 Q Once. And when did you go view the physical evidence?  
24 I mean, how about this? Was it within the month before  
25 trial?

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 A You'd be asking me to make a pure guess. I know I had  
2 sufficient time to look at it, talk to Jeremy about what I  
3 had seen. I think I made a list in here somewhere of  
4 everything they had.

5 Q But you never allowed Jeremy to go view the evidence  
6 or never arranged --

7 A Jeremy wasn't in my custody.

8 Q I apologize for that question. Strike it. Never  
9 arranged for Jeremy to view the evidence.

10 A No. I tried, but we didn't get there. We got to  
11 trial first.

12 Q And you claim that you had insufficient time to  
13 prepare?

14 A No. I had insufficient notice of the trial. You  
15 know, solicitors was running around, and they just about a  
16 week or two or three ahead of time, they say, okay, you're  
17 up for trial. They don't give you much advance notice.

18 I was completely prepared. I had done everything that  
19 needed to be done except what I mentioned in that letter  
20 they hadn't provided.

21 Q Well, let's while you're thumbing through that, let's  
22 talk about what they -- they hadn't provided.

23 You've got a list here of things they hadn't provided.  
24 And you go through this during your motion for a  
25 continuance and asking for it.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1       If you'd turn to page 52, please, of the trial  
2 transcript, line 12.

3       "And I think I've been kind of trial-by-ambush here  
4 because the solicitor has failed to exercise due diligence  
5 to get the things I've requested that may be beneficial or  
6 exculpatory for the defendant. That's just my position."

7       The Court says to you, "Well, in the exercise of due  
8 diligence the solicitor is not obligated to do a  
9 defendant -- defendant's lawyer's work for him.

10       "I mean, they to do due dili -- they have to exercise  
11 due diligence in complying with the rules and providing  
12 information they're obligated to provide. But, at the same  
13 time, the defense counsel has the same obligation to  
14 exercise due diligence in the representation of clients.  
15 So everybody has to exercise due diligence."

16       At that particular time you feel that you had been  
17 exercising due diligence in this case.

18 A     Yes.

19 Q     Even though you hadn't contacted Carmie Hull and even  
20 though you hadn't contacted Joseph Smith.

21 A     Yes. That's -- I eliminated them as --

22 Q     And then though you hadn't arranged for Mr. Phillips  
23 to view the physical evidence.

24 A     Well, it was a bunch of pictures. I showed him copies  
25 of all of the pictures, and we went over that. I think a

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 lot of that was that burn barrel. But I haven't reviewed  
2 those pictures. I don't know what -- but there were a lot  
3 of pictures. I showed them to him and told him what all I  
4 had. And the only thing I can see is that -- is that Jeff  
5 Gordon towel.

6 Q Jeff Gordon towel. That towel, that's the towel that  
7 had Juan Roman's blood on it, right?

8 A Yeah, and it was found at the foot of his bed.

9 Q That's right. And we discussed this. The first time  
10 Mr. Phillips knew that was a Jeff Gordon towel was in  
11 trial, correct?

12 A I believe it was. And at that time he told me that he  
13 hated Jeff Gordon. And he did not tell me it was in Hazel  
14 Willis' house. And when he testified he did not say it was  
15 in Hazel Willis' house.

16 Q But at the time -- had you known ahead of time -- not  
17 just contemporaneous with the trial -- had you known ahead  
18 of time that he told you that that was Hazel Willis' towel  
19 do you think you would have asked her different questions  
20 on the stand?

21 A I would have asked her if that was hers and if so how  
22 it got in his house. She probably -- I don't know if she'd  
23 know that or not.

24 Q Do you think that would have made a difference or  
25 changed your strategy at all?

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 A No.

2 Q Regarding Jesse Willis, why didn't you call him to the  
3 stand?

4 A All right. No. 1, he was a codefendant and he had an  
5 attorney. No. 2, the state had listed him as a witness,  
6 and I was prepared to cross-examination him extensively.  
7 And I didn't know until the very end of the trial that they  
8 weren't going to call him. And I asked -- I think it was  
9 Mike Morin -- it might have been Phil Sinclair, his  
10 lawyer -- if they were going to call him. And the comment  
11 I remember was he's too unreliable, we're not going to call  
12 him.

13 And then, No. 2, if he had -- if I'd called him more  
14 than likely he would have taken the Fifth Amendment on the  
15 advice of his attorney because he was still charged with  
16 murder and arson.

17 I wouldn't have any idea he'd get up there and testify  
18 for something that would help Jeremy and inculpate himself.

19 And then, third, if he had testified they had a  
20 complete written statement -- the police did -- his --  
21 witnessed-and-everything statement that he gave them.

22 I believe he even started giving them a statement and  
23 had some kind of seizure or something and they stopped it  
24 and started it back over another day after he got back from  
25 the hospital.

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 But that statement blames everything on Jeremy. So  
2 even if -- even if Jesse had testified and admitted that he  
3 was guilty and tried to alleviate, I mean, tried to  
4 exculpate Jeremy the state had that statement. They could  
5 have, you know, made him look bad.

6 I just didn't -- I never -- I never considered calling  
7 a codefendant who has a lawyer as a witness when he's made  
8 a statement against my client.

9 Q Well, see, just for hypothetical sake here, taking the  
10 Fifth Amendment. All right. You have -- you had in your  
11 possession the statement of Carmie Hull and you had in your  
12 possession the statement of Joseph Smith.

13 A Well, handwritten jail notes with no authentication.

14 Q Well, you could have called them to the stand.

15 A I told --

16 Q You had their names.

17 A I could have. I decided not to.

18 Q Did you consult that decision with Mr. Phillips?

19 A I told him it was not admissible in my opinion.

20 Q Even though it clearly falls under a hearsay  
21 objection.

22 A I don't think it does --

23 Q Okay.

24 A -- as far as third-party guilt at that time.

25 Q Did you make any -- did you make any attempts to

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 interview Jesse Willis through his attorney? Did you  
2 contact his attorney?

3 A No.

4 Q Now, the state had a statement from Jesse saying  
5 Mr. Phillips had done it.

6 A Right.

7 Q But you just talked about how they are all of these  
8 other statements.

9 A Those are handwritten unauthenticated.

10 Q I understand. Did you ever make any attempts to  
11 authenticate them?

12 A No.

13 Q So you had statements.

14 A They wouldn't have been admissible anyway. I didn't  
15 have time to waste.

16 Q When you say you didn't have time to waste, why didn't  
17 you have time to waste?

18 A Do you? I mean, nobody -- I try to concentrate on  
19 what I think's important, not things that I think are  
20 totally a waste of time.

21 Q Let me rephrase the question. That was phrased  
22 unartfully.

23 You were hired in September of '06. From then until  
24 December of '07 what did you do to authenticate statements  
25 made by Jesse Willis or made by other people who are in

Wade S. Weatherford, III  
Direct examination by Mr. Bass

1 Cherokee County Jail that would exculpate Mr. Phillips?

2 A I have told you none --

3 Q None.

4 A -- and why.

5 Q Mr. Weatherford, could you turn to page 77, please, of  
6 the trial transcript?

7 A All right.

8 Q And this is the first paragraph from your opening  
9 statement, line 16.

10 "Ladies and gentlemen, this is a -- other than a case  
11 where the state is asking for the death penalty, this is  
12 the most serious kind of case, a criminal case, that any  
13 jury can sit on. And I think it's fair to say that the  
14 rest of Jeremy Phillips' life is in your hands or will be  
15 when this case is over with."

16 Now, when Mr. Phillips hired you or his parents hired  
17 you in September of '06 is it fair to say that he  
18 essentially put his life in your hands?

19 A That's right. And I take that responsibility  
20 seriously. And I don't think I have ever been to court  
21 when I wasn't as prepared as I thought was humanly  
22 possible. And the same is true in this case.

23 Q Well, given what we've heard today from the witnesses  
24 who say they would have testified had you called them --  
25 that Jesse said -- he did it all by himself.

Wade S. Weatherford, III  
Cross-examination by Ms. White

1        Given that we know that Mr. Phillips never got to view  
2        the physical evidence until his trial -- the physical  
3        evidence that had he seen he would have been able to say  
4        that's Hazel Willis' towel -- can you honestly say that you  
5        really did your due diligence in this case?

6        A        Yeah. He didn't even say that in the trial when he  
7        saw the towel, and he didn't say it when he testified.  
8        This is the first time I've ever heard of that, and I don't  
9        think it makes any difference because it had Juan's blood  
10       on it. He was just trying to say it didn't like -- it  
11       wasn't his towel because he didn't like Jeff Gordon. But  
12       it was in his house. Somehow it got there.

13       MR. BASS: I have no further questions, Your Honor.

14       MS. WHITE: Thank you, Your Honor.

15       CROSS-EXAMINATION

16       BY MS. WHITE

17       Q        Mr. Weatherford, I want to go back and just ask you a  
18       few questions.

19       You started off by telling us a little bit about your  
20       experience. How long have you been practicing law?

21       A        May the 15th, 1974, I was sworn in.

22       Q        And what type of law? Has it all been criminal law,  
23       or civil?

24       A        About half criminal and about half civil, and family  
25       originally. Eventually, after so long I quit doing family

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 court, and then about half civil and half criminal.

2 Q And what types of cases do you do? Obviously, this  
3 was a pretty serious case. Do you do magistrate level up  
4 to murder charges or --

5 A Yeah. In fact, this I think was my eleventh or  
6 twelfth murder trial --

7 Q And --

8 A -- or case. Not all trials.

9 Q Now, you filed discovery Rule 5 Brady motions in this  
10 case.

11 A Uh-huh.

12 Q And obviously we've heard some talk about the fact  
13 that at the motion for continuance you felt you had not  
14 received some of the evidence that you wanted. But in  
15 response to that what was some of the evidence that you  
16 received from the state that they were going to use to try  
17 Mr. Phillips in this case, do you recall?

18 A Well, I was looking for exculpatory evidence, and my  
19 understanding is they've got to provide that if -- not only  
20 if they have it in their file but if it's within their  
21 control, and that our solicitor at that time was real good  
22 about saying, well, here, look at my file. But there's a  
23 lot of things not in his file that's under their control.  
24 So I had to bleed it out of them sometimes. And that was  
25 what this is all about.

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 Q So where they said we've got an open file, you can  
2 look through it, you wanted them to specifically produce  
3 certain things.

4 A Yes.

5 Q Okay. Now, in regards to the evidence that the state  
6 had, we've talked a little bit about a towel and some of  
7 the statements, a lot about Jesse. Tell me a little more  
8 about some of the statements that the state had against  
9 Mr. Phillips in this case witness-wise.

10 Who else did they have? Do you recall some of the  
11 folks that they had statements from?

12 A I think the main witness against him -- well, Hazel --  
13 Hazel Willis. She didn't, I don't think -- she made a  
14 statement after she went down to the police station.

15 But I think the one that got him the most was Nakia  
16 Gossett, the one that was basically his girlfriend. They  
17 kind of -- the whole time he was in jail she was writing  
18 him love letters, and I produced those at the trial.

19 Her first statement kind of exculpated Jeremy, said  
20 that neither one of them were involved. And then to be  
21 honest with you, I think the state threatened. I had heard  
22 some information the state threatened her with her  
23 children, that she would never see them again. And so she  
24 made another statement.

25 And we went all through that in the trial. But

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 it's -- but it squarely put the -- put Jeremy at fault.

2 And then Jesse's statement, the one, the witness one that  
3 the police took, squarely put Jeremy at fault.

4 And then this Shannon Powell. Well, I know her  
5 testimony -- I don't know if she had a statement or not --  
6 but I thought that her testimony was kind of unbelievable.  
7 She just said she -- I think she was the one that danced at  
8 a club out here. I think I gave her a pretty hard time.

9 And she just said that she saw Jeremy the next day or  
10 so up at Hazels and all of a sudden out where nobody else  
11 could hear it Jeremy just confessed everything to her for  
12 no good reason that I could see.

13 Q Okay.

14 A I -- as you can tell from the closing argument, I had  
15 a lot of problems with all of their testimony.

16 They didn't really have any physical evidence on him  
17 except the blood on that towel not -- I mean, I think the  
18 fact that it had some racecar driver on it might have even  
19 been a little helpful so he could say that he didn't like  
20 that racecar driver as opposed to just a white towel. He  
21 wouldn't be able to say that wasn't mine.

22 I mean, he said that, and none of it apparently was  
23 enough for a reasonable doubt.

24 Q The statements from Nakia -- and I guess I'll say the  
25 second statement, because obviously, as you said, the first

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 statement she gave was trying to get her and Jeremy out of  
2 it.

3 A Right.

4 Q You know, saying they didn't have any involvement.

5 Nakia's second statement, Shannon Powell's statement,  
6 Hazel Willis's, Jesse's. I believe there was a statement  
7 perhaps from a Beverly, a Cindy Gallman that were  
8 neighbors.

9 A They just kind of saw them in the area, nothing,  
10 nothing specific that he did.

11 Q Okay. So the four main statements, were those fairly  
12 consistent in their stories as to what they had either  
13 seen, heard or had been told by Mr. Phillips?

14 A Yeah. I couldn't -- there's no, no major discrepancy.  
15 I mean, I think -- I think Jesse said that Nakia was in the  
16 trailer. And Nakia said she was outside watching. And  
17 Jesse said a little bit different about how the fire got  
18 started. And Hazel said a little bit different about how  
19 the fire -- and I brought all of that out, but.

20 Q Now, there's no question that Jesse was involved in  
21 beating Mr. Roman and then involved with Mr. Phillips  
22 somehow in the fire. He's never alleged he wasn't involved  
23 at all in any of this.

24 A He was involved with the assault and battery of  
25 Mr. Roman.

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 MR. BASS: Objection, Your Honor. There's no  
2 foundation for that.

3 MS. WHITE: I'm sorry, Your Honor. I am basing that  
4 off his statements and the statements that Mr. Bass has put  
5 in. I'm sorry. I just was basing it off Mr. Weatherford's  
6 experience in working with the case based on his knowledge.

7 THE COURT: I am going to allow it. He tried the  
8 case. He can testify.

9 BY MS. WHITE

10 A Was what's --

11 Q Mr. Willis during all of the statements that you had  
12 from him, did he ever claim complete innocence, that he had  
13 no involvement in any of these actions that night?

14 A No. I don't think so. No.

15 Q Okay.

16 A He -- his statement, he said he was an observer but he  
17 was involved with the fight with Juan Roman. But I think  
18 his statement even said that he peeped in the window  
19 afterwards and before the fire and that Juan Roman was  
20 moving around.

21 Q And to your knowledge was -- Mr. Willis pled guilty to  
22 arson first degree.

23 A I don't know. That was all -- they didn't invite me  
24 and didn't tell me about it. And it was afterwards  
25 several -- I don't know if it was the next term or what.

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 Q Okay. But he did get charged with something, right?

2 A He was charged at the time of this, of our trial, with  
3 the same thing Jeremy was charged with. And so was Nakia.

4 Q Okay. Now, tell me a little bit. You said -- you've  
5 obviously talked a little bit about the fact that you did  
6 some research and that was why you decided not to focus on  
7 any of these, these jailhouse notes.

8 Tell me a little more about your strategy in regards  
9 to the defense and why or why not you -- why you didn't  
10 choose to follow this as a strategy of pursuing those guys.

11 A I don't know. I've got a little research here. I  
12 there was -- I think I had been to a seminar where they  
13 talked about and had in the materials for the seminar Home  
14 vs. South Carolina with regard to third-party guilt.

15 And the way I understood the law, if an admission  
16 merely casts suspicion or raises conjecture about the guilt  
17 of another, it's not admissible. It's got to be more than  
18 that.

19 And with these jailhouse statements by Jesse and  
20 Jesse's own hand if they're authentic, that he did it and  
21 didn't do it, and did it and didn't do it, and they're  
22 hearing him say he did it, I didn't think was anything more  
23 above a mere suspicion. So I just decided that was not  
24 worth pursuing.

25 Q Okay. Now, in regards to going and looking at the

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 evidence, what other work did you do to prepare for the  
2 case in Mr. Phillips' case? You looked at the evidence,  
3 you said. You did some research. Do you recall any other  
4 things that you tried to focus on or work on?

5 A Well, the -- since the case was primarily based on  
6 those statements of those witnesses, I spent a lot of time  
7 analyzing those statements and going through them time and  
8 time again. And, I mean, you know, I knew what the  
9 statements said, and I thought I had found some holes in  
10 all of them. If -- if somebody was trying to give the  
11 defendant the benefit of the doubt, I thought it was there.

12 Q So did you prepare your cross-examination ahead of  
13 time, or how does that work?

14 A No. I don't do that. I just get as familiar as I  
15 possibly can with all of the facts in the case.

16 I'd been out to his place and looked at the scene a  
17 number of items. I had -- I had him draw me maps and went  
18 out there and saw where everything was a number of times.

19 I think I called up the witnesses that weren't  
20 codefendants, that Ms. Mimms and them, and talked to them.  
21 They were pretty consistent. They were totally consistent  
22 with the statements they gave as far as I could tell.

23 I don't know what else you can do other than talk to  
24 your client, go over all of these. I mean, I made copies  
25 of everything and gave it to Jeremy. We talked about it,

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 and I went to the jail numerous times and talked to him. I  
2 even made notes on the dates I went to and talked to him.

3 Q Did y'all talk some about his knowledge of some of  
4 these witnesses maybe and about ways to attack their  
5 credibility?

6 A Well, I just told them -- I went over what they had  
7 said on the -- what they had said and got his version of  
8 what they said. And I used that to try to attack what they  
9 were saying from any way that I could find.

10 Q Well, you mentioned earlier the woman danced at the  
11 club. Where did you get that information from?

12 A She admitted that.

13 Q Okay. Was that in her statement or --

14 A I mean, Jeremy told me that, and I asked her that.  
15 No, it wasn't in her statement.

16 Q So you had talked with him about each of the folks  
17 that had given statements and asked him what he knew about  
18 the folks or --

19 A Yeah.

20 Q Did you think some of these folks, any of these  
21 witnesses, had any -- any reason to testify against him or  
22 make any statements against him or I guess show any, you  
23 know, any bias or anything against him?

24 A Well, they were all drinking, using dope. From what  
25 they told and testified about, I was surprised anybody

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 could remember anything, but they did.

2 I didn't think any of them had much credibility, but  
3 the most unbelievable thing to me was a week after. When  
4 the fire first happened the police didn't interview anybody  
5 in the neighborhood. It was pretty much like a -- I don't  
6 know. Just written off as an accident or something. They  
7 didn't investigate. Arson didn't investigate. They didn't  
8 do anything until Frances Willis went down there. And we  
9 know. We made a point out of that. And I asked her why  
10 she did it, and she said she got scared of Jeremy.

11 Q And that was Hazel?

12 A Hazel Willis.

13 Q And that's -- she's the one that started. The arson  
14 investigation came right after she went down and made a  
15 statement.

16 A Everything happened a week later after she went down  
17 there and told the story about Jeremy. But then the other  
18 one -- then they started getting statements out of the rest  
19 of them that were substantially consistent with her  
20 testimony, her statement.

21 Q Now, in regards to the towel that you talked about,  
22 you said the first time you've heard that was in Hazel's  
23 house was today.

24 Doesn't Hazel testify that after the beating of  
25 Mr. Roman that both Jeremy and Jesse came in her house

Wade S. Weatherford, III  
Cross-examination by Ms. White

1 originally all covered in blood?

2 A Yeah.

3 Q Okay. So they were --

4 A There was even testimony that the deceased had a big  
5 nosebleed the day before. And I'm sure he was using some  
6 kind of towel. I don't know if he got it from Hazel or not  
7 or if it was his towel or anything. But it got in Jeremy's  
8 house at the foot of his bed somehow.

9 Q Now, did they use phone records at trial?

10 A Well, I thought -- I spent a lot of time on those  
11 phone records trying to figure out who was doing what. And  
12 I thought they may be very important. But it turns out  
13 they was passing that phone around from one to another.  
14 And we couldn't tell who even made a call, much less who --  
15 I mean, you know, who had the phone. But I spent a lot of  
16 time. I thought that might turn out to be an important  
17 fact, but it turned out it wasn't.

18 Q And that was a cell phone that supposedly --

19 A Stolen.

20 Q -- was stolen from the defendant, but I think was  
21 supposedly sold to Mr. Phillips by Jesse, or that's what --

22 A Or vice versa.

23 Q Okay. All right. In regards to the case, obviously  
24 I'm sure you don't like losing any, any case. But, you  
25 know, was there anything at the time you felt that, you

Wade S. Weatherford, III  
Redirect examination by Mr. Bass

1 know, y'all could have brought out any more or focused a  
2 little more at the time?

3 A No. In fact, you know, I mentioned to you I'd had a  
4 number. This is the first client I've ever had convicted  
5 of murder. The rest of them I either got off at a trial or  
6 pled down to some acceptable lesser offense.

7 Q Okay. Thank you, Mr. Weatherford.

8 MS. WHITE: That's all I have, Your Honor.

9 THE COURT: Anything on redirect briefly?

10 MR. BASS: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BASS

13 Q Ms. White spent a lot time talking about statements  
14 that were made against Mr. Phillips.

15 Now, you spent a lot time going over those statements.  
16 Fair to say that those statements were almost, except for  
17 that towel, the crux of the state's case against  
18 Mr. Phillips and the testimony of those people?

19 A Yeah. That's all they had.

20 Q So they had statements against him. Again, why would  
21 you introduce statements that would exculpate Mr. Phillips?

22 A Well, I've explained that I didn't.

23 Q Withdrawn.

24 THE COURT: All right. Thank you very much, sir. You  
25 can step down.

1 I've got a good feel for what the issues are in this,  
2 but is there anything y'all want to cite specifically or  
3 anything that you need to point out to me specifically at  
4 this point?

5 I'm not going to rule today. I'm going to -- I'm  
6 going to want to look at the transcript as a whole. And  
7 this is one my clerk needs to look at and brief me on. And  
8 I want to lay a second set of eyes on it. So if you need  
9 to get something, you need to get it to me early next week.

10 MR. BASS: Your Honor, just for the record, I know  
11 you're familiar with our burden and what we have to bring  
12 to the table according to Strickland vs. Washington, proof  
13 that counsel's performance was deficient measured by the  
14 reasonableness and professional performance and performance  
15 prejudiced Mr. Phillips such that there was a reasonable  
16 probability that but for Mr. Weatherford's professional  
17 errors the result of the proceeding would be different.

18 I think we have proven in today's testimony or at  
19 least presented through today's testimony that his failure  
20 to call Mr. Smith and Mr. Hull and Mr. Adams, as well as  
21 statements in the bond hearing -- we could bring a dozen  
22 witnesses testifying to Mr. -- Mr. Willis saying he did it  
23 by himself. Failure to present that evidence that would  
24 exculpate Mr. Phillips shows that he was ineffective as  
25 counsel.

1           Additionally, the issue with not arranging for  
2 Mr. Phillips to go and view the evidence in which  
3 Mr. Phillips would have identified the towel with Juan  
4 Roman's blood on it as coming from Hazel's -- coming from  
5 Hazel Willis' trailer, that speaks directly to  
6 Mr. Weatherford's failure to investigate and prepare for  
7 trial. And that's all I have to say right now, Your Honor.  
8 Thank you.

9           MS. WHITE: Your Honor, just to argue briefly, Your  
10 Honor, obviously the state would argue that he's not met  
11 his burden of proof.

12           The witnesses presented today and the strategy that  
13 his attorney has -- has put forth is reasonable, and the  
14 fact of the credibility of the witnesses that were  
15 available to offer these exculpatory statements and the  
16 fact that their ability to withstand cross-examination,  
17 Mr. Willis' ability to withstand cross-examination, the  
18 fact is that it's perfectly reasonable not to call a  
19 witness when you have no idea what they're going to say,  
20 whether it is going to further harm your client's case or  
21 it's going to, you know, assist in that manner. It's a  
22 strategic decision that is reasonable under the  
23 circumstances, and I think that he has put forth that  
24 today. And they have failed to establish that, that but  
25 for that or but for the ability of Mr. Phillips to view the

1 actual physical evidence that the outcome of the trial can  
2 be called into question.

3 And, Your Honor, I would just note our recent Edwards  
4 vs. State, South Carolina, 392, S.C., 449, a recent finding  
5 that counsel has not -- was not found ineffective for  
6 failing to interview or call a codefendant as a witness  
7 when the question of what his testimony would be and  
8 whether or not he could be a credible witness and a helpful  
9 witness based on the inconsistencies and prior statements  
10 are available.

11 THE COURT: All right. Thank you both.

12 I'm going to take the matter under advisement, and I  
13 hope to have an order to y'all sometime next week. It's  
14 4:33. We are sine die.

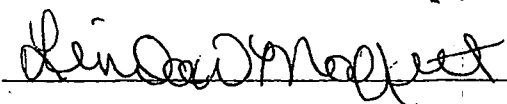
15 END OF REQUESTED TRANSCRIPT OF RECORD  
16  
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Cherokee County, South Carolina, on the 3rd day of February 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 8, 2012



Linda D. Moffitt  
Circuit Court Reporter

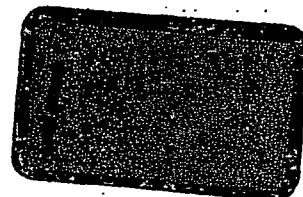
Introduced  
Jan 17 2007  
at Bond Hearing

I'm writing to state that Jesse <sup>Willis</sup> (Corn Bread) stated in C-MAX that he got into a fight with the Mexican. He beat him down, poured gas into his mouth, put grass into his mouth and set it off and he said that his head blowed up like a Roman candle. I told him there's no way that he could do that, and he said that he did do it and he done it alone.

This is what was stated to me from Jesse <sup>Willis</sup> (Corn Bread) during a conversation on C-MAX.

JOSEPH E. SMITH

Joseph E. Smith



Jeremy,

7-22-07

What's up Bro? Not much here.  
 Laid down about all day, except to  
 go to the toilet, or I should say inhale it, no  
 more than 5 mins to eat. Man this place  
 was gotten crazier than the last time,  
 and well all be here for about 45 to  
 00+ days. Well the only person I have  
 haven't see yet that went to court in  
 here is TC. Which isn't a bad thing  
 since he's a retard! But there is a  
 rumor that they are going to open the  
 DE back up at Broad River, and they  
 are going to quit doing the women here  
 Fridays and start back transporting men  
 on Fridays too. Maybe that will get  
 us out of here quicker. I haven't forgot  
 the promise I made about helping with  
 the statement of what I heard Campbell  
 say on visit that day to his Mom. About  
 how he was going to get away with  
 it because he had convinced them you  
 did it. If you need a signed statement  
 I can provide one.

get in touch this is my address

Carmie Joe Hull #116882

K. Land RFE CA-36-B

4344 Broad River Rd,

Columbia SC 29210

and send me your Mom's address or  
 someone who will forward a letter  
 to you, Hey send me Kim Wilson's home  
 address too if you can I want to send  
 her a dirty letter, tell her how I  
 want to spank her ass while  
 I fuck her ~~big~~ tell her I said  
 hello and how I'm doing etc.

Bro write first chance you get  
 let me know I can help.

Later Bro,

"I'm going"

STATE OF SOUTH CAROLINA  
COUNTY OF CHEROKEE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 JEREMY PHILLIPS, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

TRANSCRIPT OF RECORD

JANUARY 17, 2007  
GAFFNEY, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MARK HAYES

APPEARANCES:

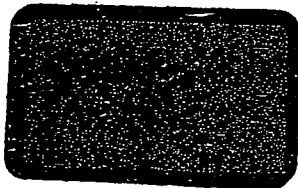
ATTORNEY FOR PLAINTIFF:

MICHAEL D. MORIN, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

WADE S. WEATHERFORD, ESQUIRE

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER



INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

16

COURT REPORTER'S NOTE: NAKIA GOSSETT'S BOND HEARING WAS ALSO HEARD  
ALONG WITH THIS HEARING.

EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVIDENCE</u> |
|-----------|--------------------|-----------|-----------------|
|-----------|--------------------|-----------|-----------------|

(NO EXHIBITS WERE PRESENTED DURING THIS HEARING)

1 MR. MORIN: MAY IT PLEASE THE COURT, YOUR HONOR?

2 THIS IS JEREMY RICHARD PHILLIPS, A MOTION FOR BOND BY MR.  
3 WEATHERFORD AND NAKIA GOSSETT, A MOTION FOR BOND BY MS.  
4 BLAND. EACH DEFENDANTS ARE CHARGED WITH MURDER AND  
5 ARSON, FIRST DEGREE. I BELIEVE THIS IS THEIR FIRST  
6 APPEARANCE FOR BOND.

7 THE COURT: WHO WISHES TO GO FIRST? MR. ---

8 MR. WEATHERFORD: I WILL. YOUR HONOR, MY CLIENT'S  
9 ALSO CHARGED WITH STRONG ARM ROBBERY, I BELIEVE.

10 MR. MORIN: YES, THAT'S CORRECT.

11 MR. WEATHERFORD: THAT WAS THE FIRST CHARGE HE WAS  
12 ARRESTED ON. AND BOND HAS BEEN DENIED BY THE MAGISTRATE.  
13 HE'S NEVER BEEN TO CIRCUIT COURT FOR A BOND.

14 HE WAS -- THIS INCIDENT OCCURRED ON AUGUST THE 30TH  
15 OF 2006. A JUAN RODRIGUEZ, I BELIEVE, WAS -- RON, I'M  
16 SORRY, WAS FOUND BURNED UP IN A MOBILE HOME OVER NEAR  
17 COWPENS.

18 AND ABOUT A WEEK AFTER HE WAS FOUND AND IDENTIFIED  
19 PEOPLE STARTED MAKING STATEMENTS. THE END RESULT WAS  
20 ABOUT A WEEK AFTER THE EVENT THREE PEOPLE WERE ARRESTED  
21 FOR -- AND ALL CHARGED WITH MURDER, ARSON, FIRST DEGREE,  
22 AND STRONG ARM ROBBERY, MY CLIENT, MS. NAKIA GOSSETT, I  
23 THINK, AND JESSIE WILLIS.

24 MY CLIENT DOES NOT HAVE A RECORD, THAT I KNOW OF.

25 AND AT LEAST IN THE DISCOVERY THAT I HAVE GOTTEN SO FAR I

1 DIDN'T FIND ANY EVIDENCE OF A RECORD. AND IN ADDITION,  
2 BEFORE I FORGET, MY MOTION ALSO ASKS FOR A SPEEDY TRIAL  
3 PRIMARILY SO MY CLIENT DOES NOT HAVE TO SIT IN JAIL. I  
4 KNOW SLED'S OVERWORKED, BUT, YOU KNOW, WITHOUT BOND SOME  
5 HEAT NEEDS TO BE PUT ON SOMEBODY ABOUT GETTING THE CASE  
6 EITHER TRIED OR GETTING HIM A BOND. AND SO THAT'S WHY  
7 I'VE INCLUDED THAT.

8 AND ALSO TO THE SPEEDY TRIAL IS TO ENCOURAGE  
9 DISCOVERY. THERE'S SOME DISCOVERY THAT I KNOW EXISTS  
10 THAT IS HERE THAT I DON'T HAVE. THERE'S SOME PHYSICAL  
11 EVIDENCE, AND THERE'S SOME RECANTING STATEMENTS MADE BY  
12 JESSIE WILLIS THAT I SAW AT THE PRELIMINARY HEARING, BUT  
13 STILL HAVEN'T GOTTEN A COPY OF.

14 WITH REGARD TO THE STATEMENTS THAT HAVE BEEN MADE BY  
15 CO-DEFENDANTS, I BELIEVE MS. GOSSETT MADE A STATEMENT.  
16 FIRST IT WAS EXCULPATORY OF HERSELF AND MY CLIENT. THEN  
17 LATER SHE MADE ONE THAT'S INCULPATORY OF MY CLIENT AND  
18 MR. WILLIS, BUT EXCULPATORY OF HERSELF.

19 AND THEN SHE'S MADE -- I HAVE A FILE THAT THICK WITH  
20 LETTERS SHE'S WRITTEN TO MY CLIENT, LOVE LETTERS AND  
21 THINGS LIKE THAT. AND SOME OF THEM SHE CLAIMS MY  
22 CLIENT'S GUILTY. AND SOME OF THEM SHE CLAIMS HE'S NOT,  
23 THAT NEITHER ONE OF THEM ARE.

24 AND MR. WILLIS HAS WRITTEN -- SHORTLY AFTER HIS  
25 ORIGINAL STATEMENT HE WROTE ANOTHER STATEMENT THAT I HAVE

1 A COPY OF I'D LIKE TO HAND UP. I DON'T KNOW IF YOU'VE  
2 SEEN THAT ONE OR NOT. I'VE GOT ANOTHER ONE.

3 MR. MORIN: OH, I'M SORRY. YOU WANT ME TO HAND THAT  
4 ONE UP?

5 MR. WEATHERFORD: WELL, I WANTED TO HAND ONE UP AND  
6 GIVE YOU ONE WHERE HE TAKES SOLE RESPONSIBILITY. AND  
7 ALSO -- AND THAT WAS SHORTLY AFTER THE ARRESTS WERE MADE  
8 AND SHORTLY AFTER HIS STATEMENT WAS MADE. AND THEN  
9 THERE'S ANOTHER ONE THAT I WANT TO HAND UP HERE FROM AN  
10 INMATE WHO BASICALLY SAYS THAT MR. WILLIS TAKES SOLE  
11 RESPONSIBILITY FOR COMMITTING THIS CRIME.

12 SO, YOUR HONOR, I THINK THAT GOES TO WHETHER OR NOT  
13 THERE'S A DANGER -- MY CLIENT'S A DANGER TO THE  
14 COMMUNITY. HE IS THE ONLY ONE THAT HAS NOT CONFESSED.  
15 HE'S THE ONLY ONE THAT HAS NOT MADE AN INCULPATORY  
16 STATEMENT.

17 IN FACT, HE TELLS ME HE OFFERED TO GO DOWN AND GIVE  
18 A LIE DETECTOR TEST, IF HE PASSED IT, AND THEY WOULD  
19 PROMISE TO LET HIM GO AND MADE THAT PROMISE IN WRITING.  
20 BUT, OF COURSE, THEY WOULDN'T DO IT. SO THAT DIDN'T  
21 HAPPEN.

22 WITH REGARD TO FLIGHT RISK, AS I SAID, MY CLIENT HAS  
23 NO RECORD. HE'S SERVED IN THE 82ND AIRBORNE IN THE  
24 MILITARY IN THE ARMY AND THE RESERVES AND HAD BEEN  
25 LOOKING INTO THE POSSIBILITY OF GOING BACK INTO THE

1     MILITARY.

2             HIS ONLY FAMILY IS HERE. HIS GRANDFATHER LIVES  
3     HERE. AND HE LIVES IN A SMALL TRAILER BEHIND HIS  
4     GRANDFATHER'S HOUSE. BOTH HIS PARENTS LIVE HERE. AND  
5     THEY'RE FINE CHRISTIAN PEOPLE THAT LIVE JUST ACROSS THE  
6     STREET FROM HIM. AND HE ALSO HAS A CHILD, WHO LIVES JUST  
7     DOWN THE ROAD IN COWPENS.

8             HE HAS WORKED AS A CONSTRUCTION WORKER SINCE HE'S  
9     GOT OUT OF THE MILITARY. AS FAR AS FLIGHT, I DON'T THINK  
10    MY CLIENT -- HE HAS NO MONEY, NO MEANS AND REALLY NO  
11    PLACE TO GO TO OTHER THAN CHEROKEE COUNTY. ALL OF HIS --  
12    ALL OF HIS CONNECTIONS IN THIS WORLD ARE RIGHT HERE.

13            SO, YOUR HONOR, WITH REGARD, AS I SAID, WITH REGARD  
14    TO THE DANGER TO THE COMMUNITY, HE IS THE ONLY ONE OF THE  
15    THREE THAT HAS NOT CONFESSED OR THE ONLY ONE OF THE THREE  
16    THAT'S ASSERTED HIS INNOCENCE. AND WHILE THE OTHER TWO  
17    HAVE MADE STATEMENTS COMING AND GOING ALMOST DAILY --  
18    WELL, THAT'S BASICALLY WHAT I HAVE TO SAY.

19            THE COURT: EMPLOYMENT AS ...

20            MR. WEATHERFORD: HE'S WORKED AS A CONSTRUCTION --  
21    SIDING CONTRACTOR. AND HE HAS NO REAL EXPENSES. SO ...

22            THE COURT: ALL RIGHT. YES, MA'AM, MS. BLAND.

23            MS. BLAND: MAY IT PLEASE THE COURT, YOUR HONOR?

24    WE'RE, OF COURSE, HERE FOR THE SAME PURPOSE, NAMELY THE  
25    SETTING OF BOND. AND AGAIN, AS MUCH AS MY CLIENT'S

1 PREVIOUSLY BEEN DENIED BOND, SHE WAS ARRESTED BACK IN  
2 SEPTEMBER OF LAST YEAR.

3 YOUR HONOR, MY CLIENT HAD THREE CHILDREN, THREE  
4 YOUNG CHILDREN. AND UP TO THE TIME OF HER ARREST SHE WAS  
5 THE CUSTODIAN OF HER CHILDREN. THERE'S A CHILD NAMED  
6 CAITLIN, WHO'S EIGHT, KIRSTEN, WHO'S SEVEN, AND TREY, WHO  
7 IS SIX.

8 SHE WAS A SINGLE PARENT RAISING THESE CHILDREN  
9 WITHOUT ANY CHILD SUPPORT OR, FROM WHAT I UNDERSTAND, ANY  
10 PUBLIC ASSISTANCE. SHE WAS WORKING PRIOR TO THE TIME  
11 THAT SHE WAS ARRESTED. SHE WAS WORKING AT TOWN GRILL IN  
12 COWPENS AND HAD BEEN THERE FOR CLOSE TO ONE YEAR. SHE  
13 WAS WORKING THERE AS A WAITRESS.

14 PRIOR TO THAT SHE'D WORKED FOR ALCOA FOR A PERIOD OF  
15 TWO YEARS UNTIL SHE WAS LAID OFF. SHE WAS ONLY OUT OF  
16 WORK FOR APPROXIMATELY ONE MONTH BEFORE SHE FOUND THE JOB  
17 AT THE TOWN GRILL.

18 YOUR HONOR, HER MOTHER LIVES HERE IN CHEROKEE COUNTY  
19 AND IS EMPLOYED AT BMW MANUFACTURING. AND HER FATHER  
20 ALSO LIVES IN CHEROKEE COUNTY.

21 BECAUSE OF THE FACT THAT SHE HAS THESE THREE  
22 CHILDREN, WHOM SHE ADORES AND MISSES, AND SHE BASICALLY  
23 IS IN THE SAME POSITION OF HAVING NOWHERE ELSE TO GO,  
24 YOUR HONOR, WE WOULD SUBMIT TO THE COURT THAT SHE IS NOT  
25 A FLIGHT RISK.

1           SHE DOES HAVE A PRIOR RECORD. I THINK IT WAS  
2 APPROXIMATELY MAYBE A LITTLE UNDER TEN YEARS AGO. WHEN  
3 SHE WAS SEVENTEEN YEARS OLD SHE HAD A SECOND DEGREE  
4 BURGLARY CHARGE, NON-VIOLENT, FOR WHICH SHE RECEIVED A  
5 PROBATIONARY SENTENCE. AND SHE COMPLETED HER PROBATION  
6 SUCCESSFULLY. SO, YOUR HONOR, WE WOULD ALSO SUBMIT THAT  
7 SHE DOES HAVE A HISTORY OF BEING RESPONSIBLE AND SHOWING  
8 UP WHEN SHE IS FACING LEGAL CONSEQUENCES AND LEGAL  
9 MATTERS.

10           THE COURT: YES, SIR, MR. MORIN.

11           MR. MORIN: YOUR HONOR, ON AUGUST 30TH OF 2006 THE  
12 SHERIFF'S DEPARTMENT WAS INVESTIGATING A SUSPICIOUS FIRE.  
13 IN FACT, IT TOOK A WHILE BEFORE THEY EVEN FOUND THE  
14 VICTIM'S BODY. HE WAS BURNT SO BADLY THAT IT TOOK THEM  
15 SEVERAL DAYS TO BE ABLE TO EVEN IDENTIFY HIM.

16           AS MR. WEATHERFORD STATED, TWO OF THE DEFENDANTS,  
17 MR. PHILLIPS AND MS. GOSSETT, HAVE GIVEN STATEMENTS TO  
18 THE POLICE IMPLICATING EACH OTHER, IMPLICATING MR.  
19 PHILLIPS, GOING BACK AND FORTH.

20           THE EVIDENCE SEEMS TO APPEAR THAT ALL THREE OF THEM  
21 HAD BEEN AT HIS HOUSE PREVIOUSLY. HE WAS BEATEN, MR.  
22 ROMAN [SIC], THAT IS, AND ROBBED. AND ALL THREE OF THEM  
23 WENT BACK TO THE HOUSE. THERE SEEMS TO BE SOME DISPUTE  
24 ABOUT WHO OR HOW MANY OF THEM WENT IN AND THEN WHETHER OR  
25 NOT MS. GOSSETT WAS IN OR OUTSIDE THE HOUSE.

NOTE: MS. GOSSETT  
PHILLIPS

1           HOWEVER, THE INJURIES TO THE VICTIM APPEAR TO BE  
2           CONSISTENT WITH THE STATEMENTS THAT GASOLINE WAS POURED  
3           ON THE DEFENDANT [SIC] AND ESPECIALLY IN AND AROUND HIS  
4           HEAD, AND HE WAS SET AFIRE.    THAT'S THE CAUSE OF DEATH  
5           AS WE UNDERSTAND IT TO BE FROM COMMUNICATING WITH THE  
6           MEDICAL EXAMINER.

7           AND WE HAVE NOT RECEIVED AN OFFICIAL AUTOPSY YET.  I  
8           HAVEN'T.  AND IF -- IT MAY BE IN THE POSSESSION OF THE  
9           SHERIFF'S DEPARTMENT, BUT I HAVEN'T GOTTEN IT INTO MY  
10          FILE.

11          BUT NONETHELESS, WE CONSIDER THIS OBVIOUSLY A VERY  
12          SERIOUS CRIME.  IT WAS -- WE BELIEVE THAT THE EVIDENCE  
13          WILL SHOW THAT THEY WERE ALL TOGETHER AND ONE OR MORE OF  
14          THEM WERE IN THE HOUSE WHEN THE FIRE WAS STARTED.  
15          THERE'S NO DISPUTE THAT THE FIRE WAS STARTED WITH AN  
16          ACCELERANT.  AND I DON'T THINK THERE'S ANY DISPUTE AS TO  
17          WHAT THE CAUSE OF DEATH WAS.

18          WITH REGARD TO DANGER IN THE COMMUNITY, WE BELIEVE  
19          THAT THE CHARGE BEING -- AND I DON'T WANT TO TRY THE  
20          CASE.  AND, OBVIOUSLY, MR. WEATHERFORD'S GOING TO HAVE  
21          ISSUES OF CREDIBILITY WITH VARIOUS WITNESSES.  THE FACT  
22          OF THE MATTER IS WE CONSIDER SETTING SOMEONE AFIRE IN  
23          THEIR HOME THAT KILLS THEM A VERY DANGEROUS SITUATION IN  
24          THE COMMUNITY.  AND AS SUCH WE DON'T BELIEVE -- WE  
25          BELIEVE A HIGH BOND IS WARRANTED.

1           WITH REGARD TO RECORD, MS. GOSSETT HAS A '97  
2   BURGLARY, SECOND, FOR GRAND LARCENY. I BELIEVE MR.  
3   PHILLIPS HAS JUST A MINOR POSSESSION OR A SIMPLE  
4   POSSESSION OF MARIJUANA IN HIS RECORD. OBVIOUSLY OUR  
5   CONCERN IS DANGER TO THE COMMUNITY.

6           AND, OF COURSE, FLIGHT RISK BEING THE FACT THAT  
7   THEY'RE FACING LIFE SENTENCES ON BOTH THE ARSON, FIRST,  
8   AND THE -- OR NOT -- THIRTY YEARS ON THE ARSON, FIRST,  
9   AND AN ADDITIONAL THIRTY TO LIFE ON THE MURDER.

10          MR. WEATHERFORD: YOUR HONOR, THE ONLY THING I WOULD  
11   ADD IS THE FACT THAT THEY WERE ALL SEEN IN AND AROUND  
12   EACH OTHER, WELL, THEY ALL LIVE WITHIN WALKING DISTANCE  
13   OF EACH OTHER. AND THEY SOMETIMES DRINK TOGETHER AND ONE  
14   THING OR ANOTHER. AND THIS JUAN [SIC] HAD ONLY LIVED  
15   THERE A WEEK OR SO, WEEK OR TWO. IT'S NOT LIKE THEY HAD  
16   GONE VISITING OR ANYTHING LIKE THAT. THEY LIVE RIGHT  
17   ALMOST ON TOP OF EACH OTHER.

18          MS. BLAND: AND, YOUR HONOR, JUST FOR THE RECORD, I  
19   THOUGHT THAT THE RECORD INDICATED A PETTY LARCENY, NOT A  
20   GRAND LARCENY ---

21          MR. MORIN: I'M SORRY.

22          MS. BLAND: --- FOR MY CLIENT.

23          MR. MORIN: I MAY HAVE MISREAD THAT. YES, SIR,  
24   PETTY LARCENY.

25          MR. WEATHERFORD: IT WAS BOOTS, AND A BELT AND

1 SOMETHING ELSE.

2 MR. MORIN: HER PRIOR RECORD.

3 MR. WEATHERFORD: OH, I'M SORRY.

4 MR. MORIN: AND THE MATTER OF CREDIBILITY, YOUR  
5 HONOR, I ALSO NOTE THAT THE CONFESSION THAT I BELIEVE YOU  
6 JUST PUT DOWN, SIGNED BY JOSEPH SMITH, MR. SMITH IS THE  
7 ONE THAT PLED BEFORE YOU AND GOT FIFTEEN YEARS JUST A FEW  
8 PEOPLE AGO.

*1c44et*  
9 MR. WEATHERFORD: WELL, I COULD BRING ABOUT A DOZEN  
10 WITNESSES FROM THE JAIL TO SAY THE SAME THING AS IS IN  
11 THAT STATEMENT.

12 MR. MORIN: I'M JUST SAYING ---

13 MR. WEATHERFORD: SO THAT'S NOT -- THAT'S NOT REALLY  
14 -- THAT'S THE ONLY WRITTEN ONE I HAVE.

15 THE COURT: HAVE YOU -- HAVE YOU SERVED YOUR BRADY  
16 AND RULE 5 MOTIONS ON THE STATE?

17 MR. WEATHERFORD: YES, SIR.

18 MS. BLAND: I HAVE ALSO, YOUR HONOR.

19 MR. WEATHERFORD: I'VE GOTTEN A LOT OF DISCOVERY,  
20 BUT THERE'S A LOT THAT I HAVEN'T GOT. SOME OF IT I KNOW  
21 IS AT SLED, BUT THERE'S SOME HERE THAT I DON'T HAVE THAT  
22 I KNOW EXISTS HERE. AND I'VE GOT A COPY OF IT IF ---

23 MR. MORIN: HE'S OBVIOUSLY GOTTEN SOMETHING. HE'S  
24 GOT SOME ---

25 MR. WEATHERFORD: WELL, I KNOW I'VE GOT SOME. I GOT

1 A BUNCH OF IT.

2 MR. MORIN: --- THAT I HAVEN'T GOTTEN YET, BUT ...

3 THE COURT: THESE ARE QUITE SERIOUS CHARGES. I KNOW  
4 WE DON'T TRY THE CASES AT THIS STAGE. THEY ARE PRESUMED  
5 INNOCENT OF THE CHARGES THAT THEY'RE FACING. MR. MORIN,  
6 THESE STATEMENTS ARE PRETTY -- PRETTY DIRECT AS TO MR.,  
7 YOU KNOW, AS TO MR. WILLIS' INVOLVEMENT IN IT.

8 MR. MORIN: I UNDERSTAND. MR. WILLIS IS REPRESENTED  
9 BY MR. SINCLAIR. AND ---

10 THE COURT: ALL RIGHT.

11 MR. MORIN: --- I BELIEVE THAT HE'S GOING TO HAVE  
12 HIS OWN POSITION ON THOSE. I DON'T WANT TO SPEAK FOR HIM  
13 AT THIS TIME, OBVIOUSLY.

14 THE COURT: ALL RIGHT. I'M GOING TO SET BOND AT  
15 FIFTY THOUSAND DOLLARS ON EACH OF THEM. IF THEY DO MAKE  
16 BOND PRESENTLY THEY WOULD NEED TO BE UNDER SOME TYPE OF  
17 ELECTRONIC MONITORING SO THAT WE COULD MONITOR THEIR  
18 WHEREABOUTS GIVEN THE SEVERITY OF THE CHARGES THAT ARE  
19 AGAINST THEM.

20 IT WOULD HAVE TO BE SOME TYPE OF SECURITY EITHER BY  
21 PROFESSIONAL SECURITY, REAL ESTATE, CASH, SOME TYPE OF  
22 COLLATERAL THAT IF YOU FAILED TO SHOW UP FOR ANY TYPE OF  
23 COURT APPEARANCES THAT WE WOULD BE ABLE TO COLLECT ON  
24 THOSE. NATURALLY THERE WOULD BE THE USUAL STANDARD  
25 CONDITIONS OF THE BOND OF BEING GOOD CONDUCT.

1           ALSO, YOU KNOW, WE CAN REVISIT THE BOND IN THE EVENT  
2   THAT DISCOVERY REQUESTS ARE NOT COMPLIED WITH WITHIN  
3   THIRTY DAYS?

4           MR. MORIN: YES, SIR.

5           THE COURT: WITHIN THIRTY DAYS WE CAN -- IF BOND  
6   WERE NOT ABLE -- IF THEY FOUND THAT THE COSTS WAS  
7   PROHIBITIVE WE COULD REVISIT THE BOND IN THE EVENT THAT  
8   DISCOVERY HAS NOT BEEN SHARED OR COMPLIED WITH IN THIRTY  
9   DAYS.

10          ARE THERE VICTIMS OF THIS -- ARE THERE FAMILY  
11   MEMBERS OF THE VICTIM?

12          MS. WILLINGHAM: THERE IS A BROTHER THAT LIVES IN  
13   CHARLOTTE, NORTH CAROLINA.

14          THE COURT: ALL RIGHT. JUST NO CONTACT WITH THE  
15   FAMILY OF THE DECEASED. I'M NOT SURE THAT'S NECESSARY,  
16   BUT I'M GOING TO MAKE THAT A STANDARD REQUIREMENT OF THIS  
17   TYPE OF BOND.

18          MR. MORIN: YOUR HONOR?

19          THE COURT: UM-HUM (AFFIRMATIVE).

20          MR. MORIN: IF I MAY, ON THE ELECTRONIC MONITORING  
21   IS IT POSSIBLE THAT WE ADD -- THAT WE REQUEST THE GPS  
22   ELECTRONIC MONITORING? THEY HAVE THAT HERE.

23          THE COURT: ALL RIGHT. YES, SIR.

24          MS. BLAND: YOUR HONOR, ONE MORE THING. AND IT MAY  
25   BE HIGHLY UNUSUAL. INASMUCH AS MY CLIENT HAS GIVEN AN

1 INCULPATORY STATEMENT THAT INCLUDES THIS OTHER CO-  
2 DEFENDANT OF HERS, WE WOULD LIKE TO ASK THAT A CONDITION  
3 OF HIS BOND BE THAT HE NOT COME AROUND HER OR HAVE  
4 CONTACT WITH HER.

5 MR. WEATHERFORD: AND VICE VERSA.

6 THE COURT: MUTUAL PROHIBITIONS ON CONTACT WITH  
7 THEM. ALL RIGHT. GOOD LUCK TO Y'ALL.

8 MS. BLAND: THANK YOU.

9 MR. WEATHERFORD: THANK YOU, YOUR HONOR.

10 MR. MORIN: THANK YOU, YOUR HONOR.

11 (HEARING ENDED AT 4:54 PM)

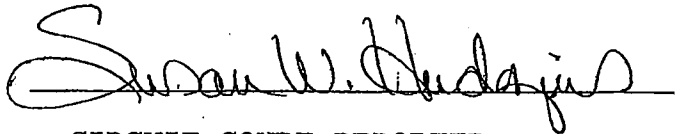
12 (END OF REQUESTED TRANSCRIPT OF RECORD)

## 1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT  
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE  
4 OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING  
5 IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF  
6 ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE  
7 TRIAL/HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL,  
8 IN THE CIRCUIT COURT FOR CHEROKEE COUNTY, SOUTH CAROLINA,  
9 ON THE 17TH DAY OF JANUARY 2007.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
11 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

12 APRIL 10, 2009

13  
14  
15 

16 CIRCUIT COURT REPORTER

I Donald Wayne Adams, I am writing this statement willingly and on my own free will. I was incarcerated in Cherokee County Detention Center from January of 07 to March of 07. I was in B pod. I was training a few guys to box and one guy name Jesse Will was wanting to workout. He seemed kinda cocky, he made a statement to me that he really doesn't need to learn anything that he done beat one man to death and poured gasoline on him and blew him up. I stopped right then and told him to stay away from me that I didn't want anything to do with him. I didn't have anything to do with him the rest of the time I was there. I wrote this statement on the date of 1-22-08.

I can be reached at 202 Motheau Rd for further  
inman S.C. 29349

SSS5KNC

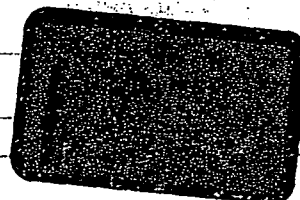
s/ Wayne Adams

Sworn to and Subscribed before me  
this 22nd day of Jan 2008

Howie B. [Signature]  
Notary Public for South Carolina

My Commission Expires on My Commission Expires November 8, 2017

New  
Evidence



770

pg 1 of 3  
Received  
Oct 2008

Wade S. Weatherford, III  
Attorney at Law  
915 N. Limestone Street  
Gaffney, South Carolina

Mailing Address:  
P.O. Box 2207  
Gaffney, SC 29342-2207

November 27, 2007

Office: 864-489-1500  
Fax: 864-488-2590

VIA FAX 487-2753 TO ADDRESSEE AND FILING

Michael Morin  
Assistant Solicitor  
Cherokee County Courthouse  
Gaffney, SC 29340

Re: State vs. Jeremy Phillips  
Discovery  
Indictment #: 07-GS-11-300, 07-GS-11-301, 07-GS-11-302

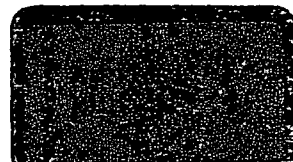
Dear Michael:

After describing the items of evidence which we recently viewed, my client told me that he would need to see all of the items in order to help me prepare a defense. I ask that you set this up with the Sheriff's Dept. and my office.

In addition, pursuant to my Rule 5 and Brady requests, I ask that you provide me with the following:

1. Hospital records of the deceased on August 29, 2006;
2. EMS records regarding the deceased on August 29, 2006; - my subp.
3. Dental records including x-rays of the deceased;
4. Toxicological analysis of the deceased;
5. History of alcohol abuse of deceased, as mentioned in the autopsy;
6. Criminal record of the deceased and of any witness the state intends to call to testify;
7. Department of Social Services records regarding Shannon Denis Powell and Eric Powell AKA Shannon Sanders;
8. Phone records of deceased, phone 864-384-8234 after September 7, 2006 at 5:00 p.m. which show date and reason for termination of service;
9. Booking sheets and property sheets of Jeremy Phillips, Jessie Willis and Nakia Gossett;
10. The E-911 records indicate the caller on August 29, 2006 was Carol 864-593-9019, please identify by full name and address;

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2007 NOV 27 P 3:07  
BRANDY W. MCBEE



New Evidence

771

2 of 3  
Received  
Oct 2008

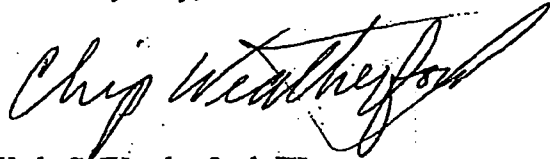
Michael Morin  
November 27, 2007  
page 2

11. Statement of Beverly S. Mims indicates deceased told her that someone had taken his cell phone and Social Security Card. The autopsy lists a SSN# 543-20-9112. I request that you run this number through the National Law Enforcement System to determine whether or not it is valid;
12. Any letters or notes written by my client.

As you know, I asked for most of this material at our discovery conference on June 4, 2007, in my office. Thereafter, I filed a Motion to Compel Discovery on July 17, 2007, seeking many of these specific items. I believe Judge Hayes gave you thirty (30) days to comply.

★ Finally, I need to know if the boot heel which could not be located when we visited the evidence locker has been found, if so, my client and I would like to see it along with the other evidence.

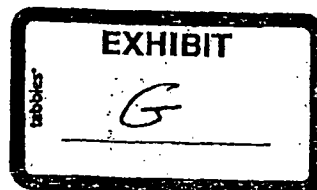
Yours very truly,



Wade S. Weatherford, III

WSW,III;vw

Wade S. Weatherford, III  
 Attorney at Law  
 915 N. Limestone Street  
 Gaffney, South Carolina



Mailing Address:  
 P.O. Box 2207  
 Gaffney, SC 29342-2207

November 30, 2007

Office: 864-489-1500  
 Fax: 864-488-2590

VIA ONLY TO ADDRESSEE 864-487-2753

Michael Morin  
 Assistant Solicitor  
 Cherokee County Courthouse  
 Gaffney, SC 29340

Re: State vs. Jeremy Phillips  
 Discovery

Dear Michael:

The following may be material witnesses for the Defendant. They were all in jail with Jesse Willis and/or Jeremy Phillips. I need to know their current location, i.e. in jail here, in Dept. of Corrections or last known address upon release:

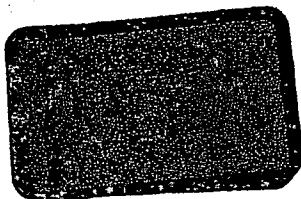
1. Carmie Hull - I think he is in McCormick D.O.C.
2. Daniel Wintz - I think released on PR Bond
3. Rocky Bowles - ?
4. Giles Lee Palmer - SCDC?
5. Kelly Roberts - in jail in GA.
6. Joseph Smith - SCDC?
7. Billy Spencer - Cherokee County Jail?
8. Mike Pridmore - Former Trustee
9. Jason Burke - in C-Max at Cherokee County Jail when Defendant was arrested
10. Billy Davis - Cherokee County Jail?

I also need a list of people in C-Max at Cherokee County Jail from September 6, 2006 thru September 18, 2006.

Yours very truly,

Wade S. Weatherford, III

WSW,III:vw



Search of My Trailer / Detectives moved towel and ask who's it was before at 9ish. And refused to lock up trailer when they carried me and left Jesse wound up "hang out" there that night and RETURN lockup following day with my boots on.

I received the attached Search Warrant September 7, 2006, and have executed it as follows:

On September 7, 2006 at 1550 o'clock PM, I searched (The person) described in the warrant and (the premises)

I left a copy of the warrant with TERRY PHILLIPS

(Name of person searched or "at the place of search") together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- (1) CYBER HOME CH-DVD 300 Player Ser# 594AAA5B010957
- (1) APEX Digital DVD/CD/MP3 Player. Ser# EE421039856
- (1) WHITE CLOTHES BASKET (FOOT OF BED) (5) WHITE SOCKS (1) TOWEL (1) DISH CLOTH (STAINED)
- (1) WHITE TSHIRT (STAINED)
- (1) WHITE BAG (THANK YOU) (1) TOWEL (CORNER OF BED/ROLL OUT COWH) STAINED
- (1) WHITE TOWEL (BATHROOM) STAINED
- (1) BELT BUCKLE (BURN BARRELL) YARN
- (1) DARK COLOR DENIM JEAN MATERIAL (BURN BARRELL) BURNED
- (1) PARTIALLY BURN FOL UNDERNEAR (BURN BARRELL)
- (1) PARTIALLY BURN TSHIRT MATERIAL (BURN BARRELL)
- (1) BOOT HEAL SOLE (BURN BARRELL)
- (1) BURNED PANTIES MATERIAL (BURN BARRELL)
- (1) BURNED RED CLOTHING (BURN BARRELL)

FILED IN OFFICE OF  
CHEROKEE COUNTY  
JANUARY 18, 2006  
S.C.

Jeff Gordon  
Towel

Police mess with Towel  
one day before search warrant

This inventory was made in the presence of

AND

JOEY GUYTON

MIKE FOWLER'S  
JIMMY HENDERSON

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this

Day of

Sept

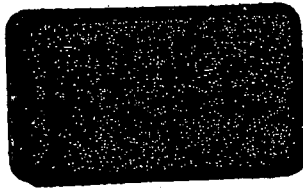
, 2006

(Signature of Officer Executing Warrant)

Signature of Judge

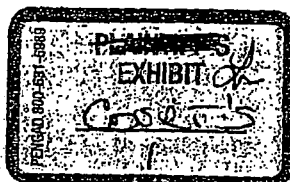
(L.S.)

6 of 11



I Jesse Willis do confess to beating JAUN FLOMAN and taking  
 his beads and phone on Aug 30<sup>th</sup> 2006 then I run to Jeremy's  
 kitchen but they was not home so I opt Jeremy's gas jug  
 off his porch and went back to Jan's and set it on fire  
 I sold Jeremy his phone the next day for \$10  
 This IS MY SWORN STATEMENT

Jesse Willis SEPT 09 06



(Jesse W.)

Timmy Clark track ~~Mark~~  
fowler Vandenburg

~~[REDACTED]~~  
~~[REDACTED]~~  
~~[REDACTED]~~  
~~[REDACTED]~~

I was not going to tell them nothing but they  
made me write the statement

Tell them we was at Nick's daddy's house  
during that scene, I live right behind  
Juan's house ~~was~~ We was out cigarettes  
when we ask him can we have one he didn't  
have ~~one~~ he was trying to cook ~~[REDACTED]~~  
and how seen sparks flying we started to  
run the house went in flames.



Jesse W.

FILED IN OFFICE OF  
CLERK OF COURT  
STATE OF SOUTH CAROLINA  
CHEROKEE COUNTY, S.C.  
COUNTY OF CHEROKEE  
2012 MAY 17 PM 3 04  
IN THE COURT OF COMMON PLEAS

BRANDY W. MCBEE

# JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP1100591

Jeremy Richard Phillips vs. State of South Carolina

## CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),  
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:  
☐ Binding arbitration, subject to right to restore to confirm; vacate or modify arbitration award;  
☐ Other: \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

## Order of Dismissal

Dated at Gaffney, South Carolina, this the 17th day of May, 2012.

Court Reporter:

s/ Frank R. Addy, Jr

PRESIDING JUDGE - Frank R. Addy, Jr

This judgment was entered on the the 17th day of May, 2012, and a copy mailed first class this the 17th day of May, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Samuel R Bass Harrison, White, Smith & Coggins  
Po Box 3547 Spartanburg, SC 29304

Office of Attorney General PO Box 11549  
Columbia, SC 29211-11549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Brandy W. McBee*

Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHEROKEE ) FILED IN OFFICE OF SEVENTH JUDICIAL CIRCUIT  
CLERK OF COURT

Jeremy Richard Phillips, #325588, ) CHEROKEE COUNTY, S.C. 2010-CP-11-0591

2012 MAY 17 AM 11 05  
Applicant, )

BRANDY W. MOBEE )

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 4, 2010. The Respondent made its Return on or about February 16, 2011. An evidentiary hearing into the matter was convened on February 3, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Samuel R. Bass II, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Joseph Smith, Carmie Joe Hull, and Donald Wayne Adams also testified on his behalf. Jesse Willis invoked his 5<sup>th</sup> Amendment right against self-incrimination. Wade S. Weatherford III, Esquire, also testified. This Court also had before it a copy of the records of the Cherokee County Clerk of Court's office, Applicant's records from the South Carolina Department of Corrections, the Return, the trial transcript, Applicant's appellate records and exhibits introduced by Applicant at the hearing.

This Court notes that prior to the hearing, it came to the Court's attention that one of the Applicant's potential witnesses may need representation to review his rights and the risks he faced were he to testify as was expected. This Court appointed N. Douglas Brannon, Esquire, as attorney/Guardian ad litem for the limited purpose of representing Jesse Willis at this hearing.

### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the March 2007 term of the Cherokee County Grand Jury for murder (07-GS-11-0301) and arson – 1<sup>st</sup> degree (07-GS-11-0302). Wade S. Weatherford III, Esquire, represented him. On December 7, 2007, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable J. Derham Cole sentenced him to confinement for life for murder and a concurrent sentence of thirty years for arson – 1<sup>st</sup> degree.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Phillips, Op. No. 2010-UP-363 (S.C. Ct. App. filed July 14, 2010). The Remittitur was sent on July 30, 2010.

### ALLEGATIONS

In his initial application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that;
  - a. Counsel was ineffective for failing to investigate documentary evidence and witnesses in the case,
  - b. Counsel was ineffective for failing to call the State's key witnesses, Jesse Willis and Alberto Rodriguez to Direct Examination or Cross Examination.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186,

480 S.E.2d 733, 735 (1997) (citing Strickland).

Jesse Willis was called to the stand, at which time his attorney, N. Douglas Brannon, spoke on behalf of his client and informed this Court that Mr. Willis invoked his Fifth Amendment right against self-incrimination.

Joseph Smith testified that he is currently incarcerated at McCormick Correctional Institution for accessory after the fact to a felony. Smith acknowledged that a previous charge of murder against him had been dismissed. Smith testified that he met the Applicant at the Detention Center prior to Applicant's trial and told him about a conversation with Jesse Willis and the Applicant asked him to write a note about the conversation. Smith testified that a copy of a handwritten note that was presented to him was a fair and accurate representation of a note he wrote and gave to the Applicant prior to his trial. Over Respondent's objection, the note was entered into evidence. (Applicant's Exhibit #1). The note indicated that Jesse Willis had told Smith that Willis had fought with the victim, beat him up, poured gas into him and set him on fire alone. Smith testified that he never met with Counsel and was never contacted by anyone from Counsel's office, but he would have testified to the conversation had he been asked to.

Carmie Joe Hull testified that a copy of a handwritten note that was presented to him was a fair and accurate representation of a note he wrote and gave to the Applicant prior to his trial. Over Respondent's objection, the note was entered into evidence. (Applicant's Exhibit #2). The letter was written from a "Gypsy," which was Hull's nickname. Hull testified that the letter referred to a time that he was in the visitation room at the Cherokee County Detention Center and Willis was visiting with his mother. Hull testified that once he overheard Willis make the statement, Hull told Applicant that he would help Applicant after Hull's own plea with a sworn statement. Hull testified that he was never able to provide a signed affidavit, but he was willing

to testify at trial if he was needed. Hull testified that he knew Applicant because he spent nine months in the Cherokee Detention Center; however, he only saw Willis that one time in the visitation room. Hull was questioned then for impeachment purposes as to his prior record, at which time he acknowledged that he had previously been convicted of assault and battery of a high and aggravated nature in 2005, housebreaking and grand larceny in 2005, approximately 28 counts of fraudulent check more than \$1,000 in 2006, assault and battery with intent to kill, armed robbery, attempted carjacking without great bodily harm, and failure to stop for a blue light in 2007.

Donald Wayne Adams testified that he was present and was currently being held in the Spartanburg County Detention Center on a burglary – 2<sup>nd</sup> degree charge. Adams testified that he was present to testify because he knew the Applicant. After reviewing a handwritten note, although he did not recall writing the statement, Adams acknowledged that the signature was his and he would not have signed the statement if he did not agree with what it said and that no one else would know his address. (Applicant's Exhibit #4). However, on cross-examination, Adams did not recall if he wrote the statement or if someone else wrote it and he simply signed it. Adams testified that the one time he met Willis that Willis told him he killed a man. Adams testified that he did not like to be around someone like Willis because of Willis' attitude on the day he met him. Adams testified that no one ever tried to contact him in regards to testifying on Applicant's behalf. Adams was then questioned for impeachment purposes as to his prior record, at which time he reluctantly acknowledged that he had previously been convicted of breach of trust with fraud in 2003, two counts of property offense – 3<sup>rd</sup> or subsequent in 2003, driving under suspension and operating an uninsured motor vehicle in 2003, burglary – 2<sup>nd</sup> degree and property offense – 3<sup>rd</sup> or subsequent in 2005, receiving stolen goods, malicious injury to personal

property, and giving false information in 2005, burglary – 2<sup>nd</sup> degree in 2006, driving under suspension, property offense – 3<sup>rd</sup> or subsequent, and burglary – 2<sup>nd</sup> degree in 2007.

Applicant testified that he was honorably discharged from the Army after being a member of the 82<sup>nd</sup> Airborne supply and transport. Applicant testified that he was arrested and then convicted of the crimes in September 2006. Applicant testified that his family retained Counsel to represent him on the charges. Applicant testified that his bond hearing was January 17, 2007, at which time Counsel presented to the court the fact that Willis had given several inconsistent statements which sometimes claimed full responsibility for the crimes and other witnesses had given inconsistent statements. The bond hearing transcript was entered into evidence. (Applicant's Exhibit #3). Applicant testified that he had Smith's letter and forwarded it to his family and to Counsel. Letters from Counsel's file were then introduced into evidence regarding potential witnesses for Applicant at trial and discovery requests. (Applicant's Exhibits #5 & #6, respectively). Applicant testified that, as the letter from Counsel indicated, Counsel was aware of both Smith and Hull as potential witnesses, along with numerous other people who were in the Cherokee County Detention Center at the time that Willis and Applicant were present.

Applicant testified that the only physical evidence that was presented at trial was the fact that a towel with the victim's blood was found at the Applicant's home. However, Applicant testified that there were several references to towels being picked up into evidence, as indicated from the search warrant inventory sheet. (Applicant's Exhibit #7). Applicant testified that Counsel never allowed him to see the physical evidence that was used against him and the first time he saw the evidence was at trial. Applicant testified that if he had seen the evidence prior, he could have advised Counsel that the racing towel was one that Hazel Willis, Jesse's mother,

kept in her trailer. Applicant testified that he felt that the State focused on the racing towel as the main piece of evidence.

Applicant testified that he wanted Counsel to call Jesse Willis as a witness at his trial, but Counsel told him that Willis would most likely refuse to testify. Applicant testified that he was willing to take that risk because then at least he would have been subpoenaed and could have been there in case he did testify. Over Respondent's objections, the Court allowed Applicant to introduce into evidence two handwritten statements attributed to Jesse Willis, one from 2006 and one that contained three separate notes. (Applicant's Exhibits #8 & #9, respectively). Applicant testified that he personally handed the statement from 2006 to Counsel and Counsel had that statement at the bond hearing. The second document contained copies of three notes that were slipped under Applicant's door in the Detention Center by Willis.

Counsel testified that he is an attorney in Gaffney, SC, and a part-time city judge. Counsel testified that he has been practicing law since 1974 and his practice has always involved about half of his cases being criminal cases. Counsel testified that the Applicant's case was his eleventh or twelfth murder trial, but the Applicant was the first client that was convicted of murder because the others were either acquitted or pled to lesser-included charges. Counsel testified that he takes his responsibility very seriously and is always prepared for trial. Counsel acknowledged that at the bond hearing he referenced statements from Jesse Willis accepting responsibility for the crime, but said that there were five statements, some saying Willis did it alone and some saying he did not. Counsel acknowledged that he did not take any steps to authenticate Willis' confession or contact any of these potential witnesses from the Detention Center because he decided it would not be fruitful. Counsel testified that the officers had been instructed to not take any more statements from Willis because they were not credible.

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Additionally, Counsel testified that Willis had a very low IQ. Counsel testified that he was hoping to find some exculpatory evidence. Counsel testified that Hazel Willis, Jesse's mother, was the main witness against Applicant at trial, but Applicant's girlfriend, Nakia Gossett, also testified against Applicant. Nakia gave an initial statement exculpating Applicant, but then gave a second statement that implicated Applicant as the one who committed the crime. However, Counsel also noted that Shannon Powell testified that the Applicant confessed to her the day after the fire. Counsel testified that he would not have called Willis as a witness for several reasons, the first being that he was a co-defendant and was represented by counsel, the second being that he was listed as a State's witness and did not know until trial that he was not testifying against the Applicant, and finally, there was no way of knowing what he would say and whether or not he would blame it all on Applicant.

Counsel agreed that there was no real physical evidence except for the blood on the towel. Counsel testified that he did show Applicant pictures of evidence and the scene, but the racing towel was not shown to him. However, Counsel testified that at the trial, Applicant did not mention to him that he believed the towel was Hazel's. Counsel also testified that he did not believe that it would have changed the outcome of the trial because testimony had also been presented that after the fight, the Applicant and Willis went to Hazel's trailer. Counsel testified that he met with and discussed the evidence with Detective Fowlkes. Counsel testified that he researched case law, in particular the issue of third party guilt, but determined that there was not enough evidence to create more than just a suspicion of guilt and Counsel did not think it would be admissible. Counsel testified that he went to the scene a number of times and had the Applicant draw him maps of where he and the other people were on the night of the fire. Counsel also testified that he called and spoke with each of the witnesses who were not co-

defendants, as well as visiting the jail numerous times to meet with the Applicant. However, Counsel acknowledged that he did not ask the Applicant how Applicant wanted Counsel to try the case or discuss legal matters with Applicant because Counsel testified that he had the experience and knowledge. Counsel testified that he reviewed the witness statements a great deal to prepare for trial, so that he would be prepared for cross-examination.

This Court, upon review of the entire trial record, consideration of the testimony and exhibits presented at the post-conviction relief hearing, and review of the applicable law, finds that the Applicant has not met his burden of proving his entitlement to post-conviction relief. This Court finds Counsel's testimony to be more credible than the testimony of the Applicant or any of the additional witnesses. The Applicant alleged that Counsel was ineffective for failing to investigate the evidence and witnesses in the case. This Court finds that Counsel was not ineffective for investigating the evidence in the case or for failing to ensure the Applicant had the opportunity to review the physical evidence obtained from the scene prior to trial. Counsel testified that he reviewed photos of the scene with the Applicant and discussed the items that the police removed from the home with Applicant. Specifically, as it relates to the racing towel, this Court finds Counsel's testimony credible that even during trial, the Applicant did not indicate to Counsel that the towel was actually a towel from Hazel Willis' house. In fact, as the record reflects, the Applicant did not offer that as an explanation while he was testifying. This Court finds that even if Counsel had ensured the Applicant had the opportunity to review the physical evidence, the outcome of the trial would not have changed.

As it relates to the Applicant's allegation that Counsel was ineffective for failing to properly investigate or call potential defense witnesses, this Court finds that Counsel was not ineffective. Trial counsel, <sup>possessing</sup> ~~possession~~ experience in trying a dozen homicides over his career,

articulated a valid reason and a valid trial strategy for not calling the co-defendant Willis as a witness. *See generally Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998); *Edwards v. State*, 392 S.C. 449, 710 S.E.2d 60 (2011). Calling co-defendant Willis would have been fraught with risks, not the least of which would have been testimony consistent with an earlier statement implicating Applicant. Calling the other witnesses who had supposedly overheard Willis admitting to the homicide would have required Willis being called first and Willis asserting his 5<sup>th</sup> amendment rights in order to render him unavailable. Again, such a prerequisite was inherently risky, and Counsel was not deficient for failing to call Willis as a witness. Similarly, Trial Counsel's failure to offer supposed evidence of third-party guilt (*see Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727 (2006)), was reasonable for the reasons explained above. Additionally, this Court did not find the testimony of any of the three additional witnesses to be credible, which further supports this Court's opinion that Counsel utilized a proper trial strategy in not calling these many witnesses from the Detention Center in an attempt to cast blame fully upon Jesse Willis. The Applicant raised the issue that Counsel was ineffective for failing to call Alberto Rodriquez as a witness in his application, but failed to offer any testimony or evidence in support of this allegation.

Therefore, as to the allegations regarding Counsel's ineffectiveness, this Court finds that the Applicant has failed to meet his burden of proof. The claims are denied and dismissed.

#### *Summary*

This Court finds that in regards to the allegations of ineffective assistance of counsel, Counsel's testimony was more credible than Applicant's testimony. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the

objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

#### CONCLUSION

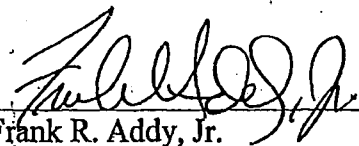
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15<sup>th</sup> day of May, 2012.

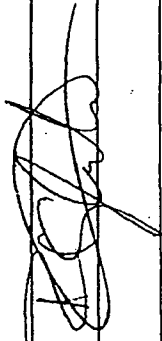
  
Frank R. Addy, Jr.  
Presiding Judge

Greenwood, South Carolina

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2012 MAY 17 AM 11 05  
BRANDY W. MCBEE

WITNESSES

684



DOCKET NO. 07-GS-11-0301

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

Defendant

I, \_\_\_\_\_  
Hereby appear in my own proper person and  
plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

MAR 27 2007 TERM

ARREST WARRANT NUMBER

H852948

Defendant

Witness:

C.C.C. PLS. AND G.S.

THE STATE  
vs.

Jeremy Richard Phillips

ACTION OF GRAND JURY

FILED

Angela M. Copeland

Foreperson of Grand Jury

Date: 3-22-07

VERDICT

Guilty

Indictment for

MURDER

Dec. 7, 2007

James M. Hall

Foreperson of Petit Jury

Date:

SC Code 16-03-0010

After being fully advised as to my legal rights,  
I hereby waive presentment to the Grand  
Jury.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )

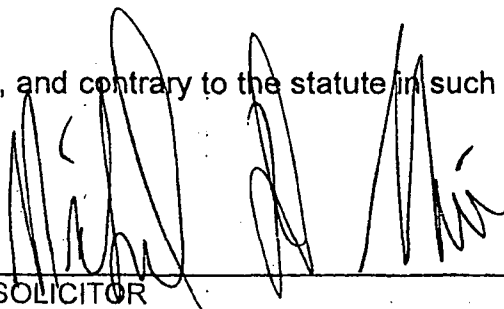
## INDICTMENT

At a Court of General Sessions, convened on MAR 22 2007, the  
Grand Jurors of Cherokee County present upon their oath:

**MURDER**

That Jeremy Richard Phillips did in Cherokee County on or about August 30, 2006, feloniously, willfully, and with malice aforethought, kill one, Juan Roman by beating him and setting fire to him and his residence, and that the victim died as a result thereof, in violation of §16-3-010, *THE South Carolina Code of Laws*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such  
case made and provided.

  
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF  
STATECherokee

VS.

Jeremy Phillips

AKA:

Race:

W

Sex:

M

Age:

29

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

07

-GS-

11301

A/W#:

A-852948

Date of Offense:

8-30-06

S.C. Code §:

16-3-10

CDR Code #:

0 1 1 1 1 1 6☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Murderin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 1 6☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed     years and/or to pay a fine of \$    ; provided that upon the service of     days/months/years and/or payment of \$    ; plus costs and assessments as applicable\*; ~~the balance is suspended with probation for~~     months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:    ☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$     plus 20% fee: \$    

Payment Terms:

☐ set by SCDPPPS    

Recipient:

\*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

|         |          |
|---------|----------|
| \$      | \$       |
| \$      | \$       |
| \$100   | \$100.00 |
| \$100   | \$       |
| \$12    | \$       |
| \$500   | \$       |
| \$25    | \$25.00  |
| \$100   | \$       |
| \$50    | \$       |
| \$40/ea | \$       |
| \$      | \$37.5   |
| \$      | \$88.75  |

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$     beginning\$     paid to Public Defender FundOther:    ☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

DOCKET NO. 07-GS-11-

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 22 2007

TERM

THE STATE

vs.

Jeremy Richard Phillips

Indictment for

ARSON 1ST

SC Code: 16-11-110

WITNESSES

ARREST WARRANT NUMBER

H852949

ACTION OF GRAND JURY  
IN RE BILL

Angela W. Copeland  
Foreperson of Grand Jury  
Date: 3-22-07

VERDICT

Guilty

Dec. 7, 2007

Janet M. Hall  
Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHEROKEE )

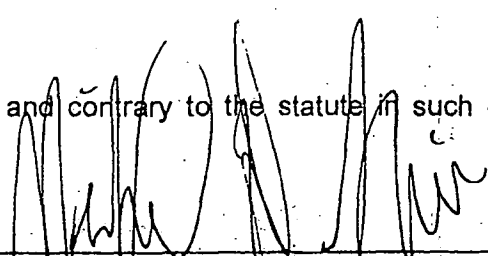
INDICTMENT

At a Court of General Sessions, convened on MAR 22 2007 the Grand  
Jurors of Cherokee County present upon their oath:

**ARSON 1ST**

That Jeremy Richard Phillips did in Cherokee County on or about August 30, 2006, did willfully and maliciously cause an explosion, set fire to, burn, or cause to be burned a building or structure which resulted in damage to the building or structure and causing the death, of a person, to wit: Juan Roman, in violation of Section 16-11-110 *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.

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee  
STATE VS.  
Jeremy Phillips  
AKA:  
Race: W Sex: M Age: 29  
DOB: SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

INDICTMENT/CASE#: 07 -GS- 11 - 302  
AW#: H-852949  
Date of Offense: 8-30-06  
S.C. Code §: 16-11-110(A)  
CDR Code #: 2151510  
☐ CASE RESTORED  
SENTENCE  
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS  
TO: Arson 1st  
in violation of § 16-11-110(A) of the S.C. Code of Laws, bearing CDR Code # 2151510  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.  
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.  
ATTEST: Michael D. Shiri Solicitor Fernando Phillips Defendant Walter S. Wetherby Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.  
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_  
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.

**SPECIAL CONDITIONS:**  
☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
☐ set by SCDPPPS \_\_\_\_\_  
Recipient: \_\_\_\_\_  
\*Fine: \$ \_\_\_\_\_  
\$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \_\_\_\_\_  
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
\$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§ 35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ \_\_\_\_\_  
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_  
\$50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
3% to County (if paid in installments) \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

Brandon W. McBeal  
Clerk of Court/ Deputy Clerk  
Court Reporter: Linda Moffitt

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED  
Attend Voc. Rehab. or Job Corp.  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Walter S. Wetherby  
Judge Code: 101513  
Sentence Date: Dec. 7, 2007