ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

RECEIVED
JAN 24 2019
SC Court of Appeals

V.

ROBERT LEE MILLER, III,

APPELLANT.

APPELLATE CASE NO. 2017-001347

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General
S.C. Bar No. 101477
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

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STATE OF SOUTH CAROLINA	)	
	)	IN THE FAMILY COURT
COUNTY OF ALLENDALE	)	IND. NO.: 2014-JU-03-00021
		2014-JU-03-00022
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ROBERT LEE MILLER, III,	)	
	)	
DEFENDANT.	)	
	)	

March 24, 2015

Allendale, South Carolina

B E F O R E:

HONORABLE GERALD C. SMOAK, JR., JUDGE.

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

ISAAC MCDUFFIE STONE, III, ESQ.
Solicitor, 14th Judicial Circuit
Attorney for the State of South Carolina

CHRISTINE GREFE, ESQ.
Assistant Solicitor, 14th Judicial Circuit
Attorney for the State of South Carolina

KIMBERLY JORDAN, ESQ.
STEPHANIE SMART, ESQ.
Attorneys for the Defendant

RONDA TAYLOR CUMMINGS, CVR-M
Official Court Reporter
P.O. Box 2082
Walterboro, SC 29488

THE COURT: All right, Solicitor?

SOLICITOR STONE: May it please the Court, Your Honor?

First, this took place on June the 17th of 2014, and that is relevant in this situation because that is roughly six months shy of the juvenile's sixteenth birthday. There are two other defendants charged with this. It is a murder/burglary case.

The other two individuals, one is sixteen and one is seventeen. Obviously, the seventeen was -- was an adult at the time. The sixteen-year-old, because of the charge of murder and burglary, was also considered at that time an adult.

This individual at that time was fifteen, again, six months prior to this. Now, I'm assuming Your Honor has, and I'll check, the -- the Department of Juvenile Justice Waiver Report?

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

SOLICITOR STONE: You already have that. The crime itself took place on June the 17th, and it took place in the home of a man named Willie Johnson, who was at [redacted] here in Allendale.

The -- it was a -- it was a home invasion, in which three people went in. Two of them, one being Mr. Miller, charged into the defendant, took him, strapped him with

straps behind his back, took a plastic bag, put it over his head, and then stomped him until he died.

The elements that Your Honor has to consider obviously from the standpoint of a waiver to adult court, which is what the State is asking for is outlined in State versus Pittman, which is the King -- the King elements. The first two or three of those, I think we can cover simply by the -- by the nature of the crime.

The seriousness of the alleged offense, whether the offense was committed in an aggressive, violent, or premeditated manner, and whether it was against a person or property. Obviously, the murder charge itself is against Willie Johnson. It was a burglary.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification only.)

(WHEREUPON, Court's Exhibit No. 2 was marked for identification only.)

(WHEREUPON, Court's Exhibit No. 3 was marked for identification only.)

SOLICITOR STONE: I'll hand you up, Your Honor, three, if I may, I've made these three Court's Exhibits, crime scene photographs showing you the violent and aggressive manner in which the crime was committed. And these are Court's Exhibit One, Two, and Three, if I may hand those to you.

Robert Miller, III, was questioned because he was involved in a shooting of a juvenile on June the 24th, and the timeframe on this, Your Honor, is particularly relevant as to -- as the murder took place on June the 17th. The shooting of the juvenile on the 24th, which caused law enforcement to -- to interview him was due to a shooting with a shotgun, and the shotgun was believed to be one of the items stolen from Mr. Johnson's home.

The defendant, along with one other codefendant, has made statements to S.L.E.D. confessing to the crime. I understand that is also as -- one of the elements as to the -- as to the credibility or the merits of the particular prosecution. Mr. Miller, himself, also made a statement not only to S.L.E.D. but also to a civilian witness, who also got this information.

Mr. Miller's prior criminal history I think also gives us some insight as to -- as to what we're dealing with. Again, he's being investigated for a shooting that took place on June the 24th, when they make the link to him and the murder that took place on June the 17th.

On June the 17th, he was -- he had just six -- four months earlier, February the 25th, 2014, he was sentenced to probation for a burglary in which he, along with a codefendant, charged the victim in their house, pushed them up against the wall, kicked -- or beat him in his

ribs, took his wallet and his telephone and then fled the house. That took place June the 30th of 2013, but he was sentenced on February the 25th of 2014.

His other prior criminal history, he has a burglary that is still pending from prior to the previous burglary that he has been -- that he had been adjudicated delinquent on.

He also has a previous disturbing school, that being November the 8th, 2012.

From his criminal history, just from the last two years, Your Honor, were he in adult court, we would -- we would have him prosecuted by the Career Criminal Prosecution Team. He not only has prior criminal history, but it seems that every one of them seems to be linked.

He's out of trouble one minute, he turns around and gets in trouble the very next minute. In some cases he's on probation. In some cases the previous offense hasn't been adjudicated yet prior to -- prior to the next crime that he commits.

As to the elements that Your Honor must consider from the standpoint of the waiver, the seriousness of the alleged offense, I can't imagine a more serious offense. It was clearly, and I think the photographs give you some indication of the aggressive and violent nature of the actual crime. It was against a person, and it was a

murder case.

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

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

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

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

Because of those factors, Your Honor, and also because he was merely six months shy of being considered an automatic adult, we would ask Your Honor to consider using the King factors to waive him to the Court of General Sessions, where we are prepared to go forward with the prosecution of this matter.

THE COURT: Do you plan to call any other witnesses?

SOLICITOR STONE: We do not, Your Honor.

THE COURT: Ms. Jordan?

MS. JORDAN: Your Honor, I'm unsure of the King factors. I'm going by the Kent factors. Is that the same? Kent factors are what are familiar in juvenile court.

MS. GREFE: That's correct. They are, indeed, the Kent factors, Your Honor.

MS. JORDAN: Your Honor, I'm prepared to go through each factor, because I think there's a lot more to it than just a brief outline. Since Kent was a case which outlines these factors here in juvenile court, it requires a meaningful review. It should not be remitted to assumptions, statements of the reasons motivating your waiver should not be assumed, and statement of relevant facts. So, it is essential that due process and fair treatment be done at this stage.

There are several things elicited from the Solicitor,

and I'd just like to go through them one at a time, if that would be okay with Your Honor. Number one speaks of the seriousness of the alleged offense, but not only that it says whether the protection of the community requires waiver.

Obviously, any murder is a serious offense. Anything that is violent against a person is a serious offense; however, we believe the protection of the community can be adequately addressed through the juvenile court system and all the agencies and services and programs available through DJJ. Therefore, this does not require waiver, just because it's a serious offense.

And any murder -- in Section Two, any murder can be addressed as aggressive or premeditated. We don't know if it was premeditated, but anything in murder is always a very serious offense, and that would be a given in this charge.

And against a person would also cover Three. We just covered that.

When we get to Section Four, the prosecutive merit of the complaint and whether there is evidence in which a Grand Jury may be expected to return an indictment. Under the guidelines, -- under the National Prosecution Guidelines, insufficient admissible evidence and the failure of law enforcement to perform necessary duties or

investigation are some things to consider in whether or not to go forward with an indictment. Insufficient inadmissible evidence to support the conviction; and we argue that there is a lot of inadmissible evidence at this point.

I was -- we heard yesterday afternoon that there are possibly a number of pages that have not been turned over to us as of yet. I just want to clarify that, whether there is more DNA analysis that has not been shipped over. I currently have a report of three hundred and ninety-three pages, and I don't know if there's anymore.

As of right now, the DNA analysis which has been taken since June of last year, nothing has come back to match Robert of anything. There's no -- he had fingerprints taken and Items Number 0-0- -- Item Number 0707 and Item Number 072 were taken. Swabs were taken from him during questioning, and they proved to be no match. At least there is no evidence turned over to us that there's a match of anything to Robert's DNA.

The Solicitor spoke of confessions and statements. First of all, in reviewing the statements, there are a number of statements, I'd say probably around ten, maybe, and every statement that S.L.E.D. agent spoke to, and none of them match up together. They are very inconsistent in all statements. Some say guns, some say money, some say

safe.

The Solicitor said that there was a question because of the gun that was stolen from the home that was involved in the murder. There's been no connection with that.

There's been no evidence turned over that there was a gun taken from the home or if there was even guns in the home. No one has testified that there was even guns in the home or they were taken or that was the gun that was involved in the shooting or that my client was the one with the gun.

Going to Robert's confession, he was brought into the station around 2:00 or 3:00 o'clock with a Ms. Tiffany Sabb and Jonathan Capers, Jonathan, who I -- I assume was the person they said made -- the other person he made a statement to. Obviously, if he made a statement against Robert, not a person of interest, nor would his mother be at that point, obviously protecting her son more than they would protect Mr. Miller.

From 2:00 or 3:00 o'clock in the afternoon until he was taken to DJJ, which he was booked into DJJ at 3:00 o'clock in the morning. During the period of questioning, there was no parent. There was no Miranda.

There was no -- was not told he could leave. There was a number of officers in and out of the room. The iPhone that was used to record this incident continued to

shut on and off through -- at least three times.

There was no Miranda recorded during any of those times, and all this time he was in custody alone with no parent. They asked a person, Ms. Tiffany Sabb, if they could speak to Robert, and they continued talking when she said she agreed with that, which is not his parent.

So there's very -- there's a lot of issues that go towards what would be actually presented at the Grand Jury and whether or not it would be indicted or would be admissible evidence.

Again, it obviously would go to the voluntariness of that during another hearing, but that is part of the issues that are raised, whether or not there was a voluntary statement given. The latest case law under Graham, Roper, JDB vs. North Carolina, and Miller have all recently upheld that children cannot be viewed as miniature adults, and it's common sense that a seven-year-old is not a thirteen-year-old, and neither is an adult, and courts are leaning more towards that than they were in the past, that children are rehabilitative and that they can be rehabilitated.

Regarding this report from the psychologist, I had mentioned to Solicitor Christine Grefe that I felt -- I found discrepancies within the report. Ms. Smart and I were at the actual hearing, the initial interview, and our

notes had a conflict with what was written in the report as to how he understood Miranda.

In the beginning of the report she said -- she asked him if he understood what it meant that he had a right to remain silent and a right to an attorney, in which he answered he did not, and she had to explain it to him. That was not listed in the report.

Upon contact of the psychologist, she said she would write an addendum. I told her we had court today. I have not received an addendum. She said she had to bring it by her legal service before it was sent to us, and I got that this morning before court started here.

There's also other discrepancies within the report. As Your Honor is well-aware of reading through reports that certain numbers are used in the WCIS scale, the W-C-I-S scale, different ways of categorizing their knowledge.

In all reports -- a report was done at CEC evaluation, which came back that he is operating at a fourth grade level. He is low average. He is years behind his grade level in understanding comprehension. His IQ is at 76. As Your Honor knows, 100 is average, so that was below average.

There was a mistake, I alleged to the psychologist, in that they said he had a different score in his reading

comprehension in a report that was done four months later in July, which put him at the eleventh grade.

It is obvious to all that that child cannot jump from fourth grade to eleventh grade reading, comprehension, understanding within four months, especially during that time he was expelled from school. So there's some considerations of this voluntariness, the understanding, and what happened in court that day.

Number Five talks about the desirability of a trial and the disposition of the entire offense in one court. Judicial economy, when we're dealing with a juvenile, we feel should never be a reason to try a child in adult court with other codefendants.

Again, in Number Six, the sophistication and maturity of the child as determined by consideration of his home, emotional attitude and living pattern.

Excuse me for a minute.

Robert entered the DSS system in 2001. He was born in 1998. So, from 2001 had a history all the way through 2011 in which mental health services were sporadic, at most.

He was bounced around in foster placement and was not provided adequate medication or mental health to address his diagnosed disorders, one being ADHD. It was addressed to Mr. Grant. I spoke with him, and he said that he was

of the understanding his father didn't want him to have mental health counseling and medication, and not that the juvenile wasn't participating, but it made a great difference in that when he was on it.

The Solicitor mentioned the child's record. Your Honor should have the Form 5 in front of you, also the adjudications. There are two adjudications, burglary second and disturbing schools, starting in -- those are the only two adjudications, 2012/2013.

The other cases mentioned to -- mentioned are still pending. The cases are past the 365-day window, so, therefore, there's a possibility of dismissals. The two cases that went forward are not serious or violent charges.

On probation with DJJ, he was compliant. He did what he was supposed to, absent the mental health treatment and -- and medication, but that was no fault of his own.

Excuse me, I'm a little stuffed. Excuse me, Your Honor.

MS. SMART: May it please the Court, Your Honor?

With regard to the burglary charge dated June 30th of 2013 where the State has alleged the facts in that case or have submitted to the Court for its attention the facts in that case, that case can be distinguished from this particular case because the victim in that case was Robert

Miller's mother's boyfriend.

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

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

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

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

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

to interrogate, I believe they were under the impression that they should have asked a parent for that permission. And if, in fact, they asked Ms. Sabb, they should have sought out either Mr. Robert Miller or Ms. Enell Binam prior to interrogating Robert.

So, I'd ask the Court to consider whether or not he would do a Jackson v. Denno Hearing to determine the admissibility of the confession prior to going forward.

THE COURT: Anything else from Ms. Jordan or Ms. Smart?

MS. JORDAN: Your Honor, at the appropriate time I'd like to address Number Eight, if you want me to go through Number Eight, but if you want to address the Jackson v. Denno issue first? I have more information for Number Eight, to rehabilitate.

THE COURT: What's your position on that, Solicitor?

SOLICITOR STONE: Number Eight, or the Jackson/Denno?

THE COURT: The Jackson/Denno.

SOLICITOR STONE: The Jackson/Denno, Your Honor, is something that we will, obviously, do before we try the case itself; however, keeping in mind that not only did he make a statement to S.L.E.D., he also made a statement to a civilian witness, and in the statement to a civilian witness, he said he put a bag on the old man's head and stomped his head.

Your Honor has now seen a photograph of the crime scene, which kind of begs the question: How would he know there was a bag on the man's head, if he wasn't the one that did it?

So, from the standpoint of the Jackson/Denno Hearing, Your Honor, we will do that prior to -- prior to the trial, but we don't believe that that is one of the Kent factors. There is nothing in here that indicates that we would do all of our pre-trial prior to that.

And I did leave out Element Number Five, which was whether or not you should try all of these people, and there is some interest in that. Obviously two of the three are already in General Sessions Court.

And I would agree with Ms. Smart, there is a difference between the burglary that took place on June the 30th in Mr. Dwight Jabazz's home. The difference is Mr. Jabazz wasn't murdered. He was punched. He was beat.

He was -- they invaded his home, and they stole from him. They stole his wallet and his telephone. So, I would agree that they aren't identical; however, I would not agree that that is not a serious offense.

THE COURT: All right.

Anything else, Ms. Smart or Ms. Jordan?

Ms. Jordan, you want to be heard on Number Eight?

MS. JORDAN: Yes, Your Honor.

THE COURT: Now is the time to do it.

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

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

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

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

the Roper decision that we have a lot of immaturity and irresponsibility at a juvenile level.

Inconsistent -- and our number three reason for negative was inconsistent expression of remorse and empathy. Well, the client denies his involvement, so he's -- you can take that what it is. He maintains his innocence.

Admitted to the use of marijuana, which is illegal and can impair judgment. I don't see how that's a negative affect. Actually admitting is the first step to recovery and rehabilitation, and that is done through DJJ and all the services they provided there.

They have several counseling services at the DJJ facilities that address juveniles in their youth in the problems of drug and alcohol abuse, which in the side -- the other side in SCDC is very limited.

The family -- family support and concern; the family is supportive of their son. Excuse me. That would be the first thing.

Responded well to mental health and medications; along time -- for most of his DSS history, which is most of his life, he was not adequately medicated or treated. Now he is and there's been vast changes.

DSS dropped the ball with him. Medications were discontinued, and DJJ offers mental health services and

medication management.

SCDC gravely lacks mental health services, as seen in a recent Baxley Opinion, Your Honor, where the Court found SCDC's mental health programs are inherently flawed and systematically deficient in all major areas. The program was lacking sufficiently in any kind of treatment facility towards mental health, and it says that inmates' mental health illness are not receiving adequate treatment and oftentimes leave prisoners worse off than when they entered.

So, adolescents who are amenable to treatment have a higher likelihood of rehabilitation. And that's showing that he had -- is amenable to treatment. He can make changes.

DJJ Probation Officer, Lewis Grant, I asked him. He said he had no problems with him on probation.

I spoke with his social worker, Deborah Bennett York, who referred him initially, he had a little bit of problems, but once we got things going, he has straightened out. He is working in programs.

He is actually well-liked within the DJJ facilities and has given extra credits and assignments in the details and on the floor. He attends school daily, participates in religious activities, and is in counseling weekly.

DJJ engages juveniles in programs and activities,

unlike SCDC, who has a 23-1 policy.

Structure and support; structure and support is what is mentioned throughout all the evaluations and throughout all mental health for juveniles. He does well under structure and support and extensive therapy and substance abuse under one roof are found at DJJ. They keep the juveniles engaged, and he has a better chance of being rehabilitated through their program.

DJJ offers individual group family therapy, substance abuse counseling, social skills training, assertiveness training, tutorial programs, independent living skills, vocational rehabilitation programs, psychiatric services, medical services, religious and musical.

SCDC has inadequate mental health services, limited drug counseling. He may get his GED and may be able to go to religious services.

So, we ask that -- he has a great capacity of rehabilitation. The courts are leaning more towards rehabilitating juveniles than punishing juveniles.

All of the recent cases, Miller, Roper, Graham, and JDB all address the issues that juveniles have a capacity for rehabilitation and we should take on that capacity. So, we ask that this child remain in the juvenile system, a system that is adequately equipped to rehabilitate a juvenile, rather than house him, a system that advocates

structure and therapy, in turn supplies the community with the most protection.

When a child leaves the system, they will have this training. Which child do we want next door to us; a child who leaves the system with opportunities and training for rehabilitation, or a child leaving without nothing from SCDC?

THE COURT: Anything else, Ms. Smart?

MS. SMART: Nothing further, Your Honor.

THE COURT: Anything further?

SOLICITOR STONE: No, sir, not from the State.

THE COURT: All right. The Court first of all was provided and has reviewed the Waiver Evaluation, the date of the evaluation is December 30th, 2014, was ordered July 1st, 2014. The Court has reviewed that in its entirety.

The Court has also reviewed the file and also the hearing today. The Court has also reviewed the Kent factors concerning waiver, in particular this juvenile.

The Court, first of all, finds that there is and continues to be probable cause that this juvenile committed these offenses.

In regards to the Kent factors, the Court has reviewed them. Based upon arguments of counsel, I will further find that I have considered the serious nature of the offense, and I've also considered whether or not the

community can be protected from this juvenile; I've also considered the aggressive nature of the offense, based on the exhibits and the file; I've also considered whether or not this offense, no question it was committed against a person, which it made it most egregious.

Also, I have considered the merit of the petitions. I've considered the presentations. I further have considered the fact that two other codefendants apparently are now in General Sessions Court.

I've also considered that based on the review of the report, I've considered the juvenile's sophistication and maturity, the environmental situation in his home. Obviously, his pattern of living over the past probably thirteen or fourteen years, I think is covered in that report in detail.

I've considered his record and his offenses. I've also considered his likelihood of rehabilitation and the protection of the public.

Based upon my review of all of the above and the Kent factors, my review of the evaluation, this Court is going to waive him up to General Sessions Court for these charges.

He needs to be submitted to the magistrate to have a bond set, Solicitor.

Anything else from the State?

SOLICITOR STONE: Nothing else from the State, Your Honor. Thank you.

THE COURT: Anything else, Ms. Smart?

MS. SMART: May it please the Court, Your Honor? The Family Court still has the authority to hold a preliminary hearing. I know that he probably will not be able to have a preliminary hearing by the magistrate because the codefendants have already had a preliminary hearing, so we would ask that the Court consider having a -- holding a preliminary hearing.

THE COURT: No, ma'am.

MS. SMART: Thank you, Your Honor.

THE COURT: Thank you, ma'am.

Solicitor, draw me an order. I'll be glad to sign it.

MS. GREFE: Yes, Your Honor. Thank you.

THE COURT: Mr. Miller, good luck to you.

The court has already ordered discovery. I'm sure y'all have motions coming up. It will be taken up in General Sessions Court.

(END OF REQUESTED TRANSCRIPT OF RECORD.)

In the Court of General Sessions for the
State of South Carolina, County of Allendale

Case No.: 2015GS030050

State of South Carolina,
Plaintiff(s),

vs.

Robert Lee Miller, III,
Defendant(s).

Transcript of Record

July 11-14, 2016

Allendale, South Carolina

BEFORE:

The Honorable Lawton McIntosh

APPEARANCES

REPRESENTING PLAINTIFF(S):

Sean Thornton, Assistant Solicitor
Ann Fitz, Assistant Solicitor
14th Judicial Circuit Solicitor's Office
39 Sheridan Park Circle, Suite 2
Bluffton, SC 29910
843-255-5880

REPRESENTING DEFENDANT(S):

Stephanie Smart-Gittings, Public Defender
1905 Duke Street, Room 260
PO Box 525
Beaufort, SC 29901-0525
843-255-5000

Thereupon,

MARVIN WILLIAMS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Obviously, Chief, I've asked you these kinds of questions a number of times.

But is your full name Marvin Williams?

A Yes, sir, Marvin J. Williams.

Q And are you the chief, currently, of the Fairfax Police Department?

A Yes, sir.

Q In June of 2014, were you still the chief of the Fairfax Police Department?

A Yes, sir.

Q And in that capacity, sir, did you have occasion to talk to the defendant in this case, Mr. Robert Lee Miller, III?

A Yes, sir.

Q And I'm going to hand you what's been marked as Court's 1, and ask you if you can identify that document for me?

A Yes, sir.

Q And what is that document, Chief?

jury research is we want you to listen to the testimony, to listen to the evidence that you hear right here from the witness stand by the way of sworn testimony, whether it direct examination or cross-examination, and make your decision based on that testimony and according to the law as I give it to you at the end of this case unaffected by anything that you may see outside.

That being said, anybody have a problem with being here and starting at 9:30 in the morning?

(No response.)

All right. Thank you so much. We'll excuse you for the day. If you will be in your jury room tomorrow at 9:25, I'll get started at 9:30 or as close to it as I can. Thank you.

(Jury exits the courtroom at 4:50 p.m.)

PRE-TRIAL HEARINGS

All right. Mr. Thornton, are you ready for your first witness in the Jackson Denno hearing?

MR. THORNTON: I am, Judge, if I could just have one second?

THE COURT: Yes, sir.

MR. THORNTON: Thank you, Your Honor. State's ready to proceed. I call Chief Marvin Williams to the stand, Chief of Fairfax Police Department.

A It's a Miranda warning.

Q Is that Miranda warning specific to any particular person?

A Mr. Miller.

Q All right. And is that Mr. Miller, the defendant in this case?

A Yes, sir.

Q And is that the Miranda form that you used on, I believe it's -- what's the date referenced on that, Chief?

A June --

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

A Yeah.

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

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

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

MR. THORNTON: The Court's indulgence?

THE COURT: Yes.

BY MR. THORNTON:

Q I'll show you a little better copy.

Would it be correct to say on or about June the 24th?

A Yes, sir.

Q I realize that it's hard to read.

So on or about June 24th, sometime in the late afternoon, about 4:56, is that when you Mirandised Robert

Miller?

A Yes, sir.

Q All right. Now, Chief, obviously, that's a standard Miranda form. Would you go down, please, the rights that you discussed that Mr. Miller had, that you told him about?

A Yes, sir.

I explained to Mr. Miller that -- that he had the right to remain silent, anything that you say can be used against you in a court of law. As we was going down that I had him initials -- his initials that he had the right to have an attorney present anytime during any questioning. That he can't afford a lawyer, one would be appointed for him, for Mr. Miller. He decided to talk to officer without a lawyer present. He has -- he also had that right also to stop talking at any time.

Q And did you explain each of these rights to Mr. Miller?

A Yes, sir, and he initialed the initials.

Q And I realize it's faint, but are his initials present where he initialed each one of these?

A Yes, sir.

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

A Yes, sir.

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

appears on that form that's Court Exhibit 1?

A Yes, sir.

MR. THORNTON: Your Honor, first of all, let me stop here with the Court's indulgence and just ask that it be moved into evidence for the purposes of this hearing as Court's 1?

THE COURT: Any objection?

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

THE COURT: Admitted for purposes of this hearing.

(Whereupon, Court's Exhibit No(s). 1 marked for identification and received in evidence.)

BY MR. THORNTON:

Q Chief, if you could tell me, what was Mr. Miller doing at the -- was this at the police department, at the Fairfax PD?

A Yes, sir.

Q And what was he doing there?

A It's in reference to a case we were working on, a shooting incident that took place in Fairfax.

Q And that's actually separate from the incident that he's on trial for regarding the murder of Willie Johnson; is that correct?

A Yes, sir.

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

did he get there?

A He was -- I don't know exactly he was brought in who brought him in.

Q Was there a Ms. Tiffany Sabb with him?

A Yes.

Q All right. And did -- did he at some point -- was she present during the time he was being questioned?

A Yes.

Q And was he -- at this point, was he cuffed or anything like that?

A No, sir.

Q All right. And had you charged him in reference to the shooting?

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

Q Right. But at that time, had he been charged when he came in to talk to you?

A No, sir.

Q All right. And did -- had he been charged at this point with this incident, being the shooting of Willie Johnson that he's on trial for today, had he been charged for that?

A No, sir.

Q While you were talking to him, Chief, did you threaten him in any way or make any promises to him for leniency?

A No, sir.

Q At some point, Chief, and while you were with him, did any of your officers or anyone else while in your presence threaten him in any way or make promises of leniency to him to try to get him to talk?

A No, sir.

Q Did you use any kind of force or any coercion on him?

A No, sir.

Q All right. When you were talking to him about the shooting incident, Chief, did he volunteer information as to the murder that we're here about today?

A Yes, sir.

Q All right. Could you tell the Court, please, how that occurred?

A In speaking to Mr. Miller in reference to the shooting in Fairfax --

Q And let me stop you, Chief, real quick. And this is a shooting of another -- of a juvenile in Fairfax that you were investigating, is that correct?

A Yes, sir.

Q All right, sir. Go ahead.

A And he said that he didn't do the shooting in Fairfax. He thought we wanted him for the incident that took place in Allendale. And I stated, what are you

talking about. And he went into the situation of -- of the beating of the old man in Allendale.

Q All right. And did he give you some details as to what he was talking about as to the beating of the old man in Allendale?

A He stated that they went there to rob the old man and it just got out of hand. And stated that, you know, he didn't mean to kill him, but the guy keep looking at him, so he put a bag over his head.

Q And did he discuss the beating of or talk about the beating of Mr. Johnson?

A Didn't go into any details, but just said that he just kept hitting him, because he just kept looking at him. So he was putting the bag over his head.

Q All right. So his statement to you was that they went there to do a robbery, and it got out of hand. And that -- and I'm not trying to put words in your mouth, Chief --

A Right.

Q -- just to reiterate what you just said.

That the Defendant in this case said that he was hitting him because he kept looking at him. And then he put a plastic bag over his head so he wouldn't look at him anymore?

A Right.

Q Is that the essence of what he told you?
A Yes, sir.
Q While you were talking to him, did he ever admit to doing the shooting of the 14-year-old?
A No, sir.
Q All right. Now, at this point, was there any other agency working the murder of Mr. Johnson, that we are here about today?
A Yes, sir.
Q All right. And was SLED involved in that?
A Yes, sir.
Q And was SLED, then, notified that they might want to come talk to him?
A Yes, sir.
Q All right. Chief, let me ask you this. Was this -- when you were discussing this other shooting with him and he made these statements with regard to this case, was that recorded in any way, either video or audio?
A No, sir.
Q All right. And did he do any written statement or anything?
A No, sir.
Q Once he told you that, did you question him any more about the murder of Willie Johnson?
A No.

Q And at some point after you get done, does -- that same day, does SLED come in and do an interview?

A Yes, sir.

Q Okay. And did you, Chief, did you write any reports up about this, about this confession or anything?

A No, sir.

Q All right. And why was that?

A Because state law enforcement was handling that case and it was outside -- it was at my office also.

Q Okay. And did he then -- is it your understanding that he then gave a statement or admission of some responsibility to SLED as well?

A Yes, sir.

Q All right. Now, again, Chief, while you were in the room talking to him, had he been charged with anything at this point?

A No, sir.

Q All right. And you said Tiffany Sabb, who -- I'll ask somebody else about this in a minute -- but Tiffany Sabb was with him?

A Yes, sir.

Q Did you use any kind of force, coercion or promises of leniency?

A No, sir.

Q And were you even questioning him about the case

that we're here about today?

A Have I questioned him?

Q I'm sorry. At that time you were -- that he made these statements, Chief, were you even asking him about the murder in Allendale?

A No, sir.

Q All right. You were talking to him about a completely different case?

A Yes, sir.

MR. THORNTON: I don't have any further questions. Chief, if you would, please answer any questions Ms. Smart-Gittings has.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Chief Williams, do you have access to a recording device?

A Yes, ma'am.

Q But you didn't have it that day?

A No, ma'am.

Q Did you initiate contact with SLED prior to your investigation with -- or your interrogation of Mr. Miller?

A On this incident?

Q Yes.

A Yeah.

Q So SLED was already in your police department when

you began questioning Mr. Miller?

A Yes, sir.

Q And in total, how many officers were present while Mr. Miller was there? Corporal Singleton?

A I think Corporal Singleton --

Q Don Williams?

A -- Sergeant Don Williams.

Q Natasha Merrell, Special Agent?

A Right.

Q Johnson, special agent?

A Yes, ma'am.

Q And was Tameaka Legette there, as well, assistant solicitor?

A I think Legette came later on.

Q But she was there during the time that the confession occurred?

A Not to my knowledge. I know she was outside after I finished talking to Mr. Miller.

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

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

Q Now, did you -- you gave us the Miranda form. Did you ask him to read this form to you?

A Yes, ma'am, I asked him could he read and write. He said, yes.

Q Okay. So did he read each of these Miranda warnings to you?
A Yes, ma'am.
Q And when he read them to you, after each particular right or warning, did you ask him if he understood?
A Yes, ma'am.
Q And what did he tell you?
A He said yes, and he initialed his initials on the line.
Q So just for the record, he told you that he understood his right to remain silent?
A Yes, ma'am.
Q He understood the word "right"?
A Yes, ma'am.
Q And he told you that he understood anything I say can be used against me in court?
A Yes, ma'am.
Q He understood that he had a right to have an attorney present at that time?
A Yes, ma'am.
Q And he didn't ask for an attorney?
A No, ma'am.
Q He didn't ask any questions about an attorney?
A No, ma'am.

Q Did he understand when it said, If you cannot afford an attorney, one will be provided to you?

A Yes.

Q And he understood that if I decide not to talk to an officer without an attorney present, he could stop at any time?

A Yes, ma'am.

Q Okay. And he didn't have any questions about his rights, whatsoever?

A No, ma'am.

Q Now, with regard to his parent being present.

Is Ms. Sabb his parent?

A I don't know.

Q Isn't it, in fact, true that Ms. Sabb's son gave a statement against Mr. Miller's interest?

A In reference to?

Q This case.

A The shooting case?

Q Both cases, yes.

A Not to my knowledge.

Q Isn't it true that Johnathan Capers, Ms.Tiffany Sabb's son, said that Robert Miller shot Rick Wright (phonetic)?

A Yes, ma'am.

Q Isn't it also true that Johnathan Capers, Tiffany

Sabb's son, said that Robert Miller killed Willie Johnson?

A Not in my knowledge.

Q That's -- you're not aware of that?

A No, ma'am.

MR. THORNTON: Your Honor, I'll stipulate to that. Mr. Capers did give a -- did give a statement that -- basically saying that Mr. Miller had confessed to him that we've turned over to Defense. The Chief would probably not be aware of that. But I just want to make that clear for the record that that is correct.

And I believe her other statement is correct, also. That Ms. Sabb -- I believe in his interview that Ms. Smart gave me a transcript of, he said, she's like a mother to me. That is --

THE WITNESS: Right.

MR. THORNTON: That is absolutely not his legal guardian mother.

BY MS. SMART-GITTINGS:

Q And you were aware at the time that you were questioning him he was 15-years-old?

A Yes, ma'am.

Q Did you ask him what grade he had completed in school? Whether or not he had been attending school regularly?

A No, ma'am.

Q Did you ask him about his grades in school?

A No, ma'am.

Q All right. Now -- so it's your testimony that you have about five law enforcement officers there, an assistant solicitor there.

Did he at any time tell you that he wanted to leave?

A No, ma'am.

Q And none of this is recorded?

A No, ma'am.

Q In total, how long was he at the police department?

A I'd say probably a couple of hours.

Q And during that time, in that couple of hours, was he in that exact same room?

A No, ma'am.

Q He was moved from one room to another?

A After I finished talking with him, I don't know who else talked with him after that.

Q Was he free to leave at any time?

A Yes.

Q He was free to leave? Isn't it true he was arrested and he was not allowed to leave?

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

Q He was not --

A -- he was still being questioned.

Q -- arrested on June 24th at the Fairfax Police Department?

A After the questions. After he'd been questioned, he was arrested for the shooting in Fairfax.

Q So then he was arrested on June 24th at the Fairfax Police Department?

A Right.

Q Okay. Now, did you at any time attempt to make contact with Enell Bynum or Robert Miller, his father?

A No, ma'am. He always says Ms. Sabb is his mother, he didn't have no other family.

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

A Uh-huh.

Q Tiffany Sabb, does she live in Fairfax or Allendale?

A Fairfax.

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

A I know of Tiffany Sabb.

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

A I don't know who his parents are.

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

A No, ma'am.

Q Did she tell you that Robert -- that she was a legal guardian of Robert Miller?

A No, ma'am.

Q Okay. Now, did he tell you that his mother was at home?

A No, ma'am.

Q So you didn't ask him?

A No, ma'am.

Q Was Ms. Sabb in the room when you were asking questions of Robert?

A No, ma'am.

Q So there was no guardian in the room, at all?

A No, ma'am.

Q How many officers were in the room when you were asking him questions?

A No one.

Q Just you?

A Yes, ma'am.

Q So you're the only officer there. Your questions have not been recorded. You didn't write a police report. He didn't write a written statement?

A Right.

Q So we just have your word for it?

A Yes, ma'am.

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

questions.

THE COURT: Any redirect?

MR. THORNTON: Only thing, Judge, just to make sure.

REDIRECT EXAMINATION

BY MR. THORNTON:

Q Chief, I did not ask you this. I know in another statement that you didn't have anything to do with, we're going to talk about, that there's some references to Mr. Miller smoking marijuana.

While you were talking to him, did he appear to be under the influence of any alcohol or drugs?

A No, sir.

Q Did he appear to understand your questions?

A Yes, sir.

Q And was he able to communicate with you in a way that you understood what he was saying?

A Yes, sir.

Q And did he seem to understand all of his rights?

A Yes, sir.

Q Thank you.

MR. THORNTON: I have nothing further.

THE COURT: Thank you, sir. You may step down.

MR. THORNTON: Your Honor, I ask he be excused out of the room so that we can maintain

sequestration.

Chief, if you'd do me a favor, don't go anywhere, just have a seat out there. And would you tell Richard Johnson to step in?

Thereupon,

RICHARD JOHNSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. THORNTON: Your Honor, may we approach, briefly?

THE COURT: Yes, sir.

(Off-the-record discussion held.)

DIRECT EXAMINATION

BY MR. THORNTON:

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

A South Carolina Law Enforcement Division.

Q Is it also known as SLED?

A Yes, sir.

Q All right. And were you working for SLED on or about I believe it's June the 24th, 2014?

A Yes, sir.

Q And were you participating in an investigation involving the death of Willie Johnson here in Allendale County?

A Yes, sir.

Q And seated at defense table is the defendant, Robert Lee Miller, III.

Did you have -- on the 24th of June, 2014, did you have occasion to speak with Mr. Miller?

A Yes, sir.

Q And did -- was there a recording of that interview?

A Yes, sir, it was.

Q And at the request of my office, have you been involved with reviewing recordings and things to make sure that they are accurate?

A I have not reviewed it in-depth.

Q After the revisions?

A Yes.

Q All right. Which we will play here in a minute.

A Yes.

Q Do you know how this recording was done?

A Agent Natasha Merrell recorded it on her cell phone.

Q All right. So the audio quality, is it fair to say, is not the best in the world?

A That's correct.

Q All right. And you have listened to it after -- I realize not after the revisions, but you have heard it since then --

A Yes.

Q -- to make sure it recorded --

A Yeah.

Q -- is that correct?

A Yes.

Q All right. Did you do any additional Miranda warnings to the defendant in this case?

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

Q All right. Is it your understanding that Chief Williams of the Fairfax Police Department had already done Miranda?

A Yes, sir. It's normally -- it's the normal procedure to Mirandise everyone.

Q And when you were talking with Robert Lee Miller, did you threaten him in any way?

A No, sir.

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

A No, sir.

Q And did you go over --

MR. THORNTON: A couple of things, Your Honor, so the Court knows, Ms. Smart-Gittings already knows.

BY MR. THORNTON:

Q In one section of the interview, did you talk about that he -- you knew he smoked weed and you weren't

here about weed and you weren't the weed police or something to that effect?

A That's correct, yes, sir.

Q Did he also provide a lot of information in regards to, or at least discuss, the shooting incident that the Fairfax Police Department had been asking him about?

A Yes, sir.

Q And those are all things that would not be relevant to this case; is that correct?

A That's correct.

Q All right. At some point in the interview -- first of all, let me ask this, who was -- when you were talking to him, who all was in the room?

A Myself, Agent Natasha Merrell. I want to say, I'm thinking, Ms. Tiffany Sabb was in there at some point.

Q And at some point is she actually on the recording?

A Yes, sir, she'll be on the recording.

Q And did Mr. Miller at some point indicate that Ms. Sabb was like a mother to him or something like that?

A Yes, sir, he did.

Q And did you actually ask Mr. Miller is it -- are you okay going forward without your mom here?

A Yes, sir, I did.

Q And did he at any time indicate, until you

concluded the interview, up until that point, did he indicate that he didn't want to talk to you or that he wanted to wait on his mom or anything like that?

A At that time, no, sir, no indication.

Q And did he ask for an attorney at any time?

A No, sir.

Q Did you at the beginning of this, of your talks with him, have him read a certificate?

A Yes, sir.

Q And I think he did have trouble with one or two words. But other than that, was he able to read the certificate okay?

A Yes, sir.

Q All right. When you were talking with him, Agent Johnson, I know that redacted portion is an half an hour.

So would it be fair to say that y'all talked to him for roughly an hour?

A Yes, sir.

Q During that time, did he appear to have any problem understanding you? He, being Robert Miller, III.

A No problem understanding.

Q And did he have any problem communicating to you?

A No, sir, no problem.

Q And you said that the Natasha Merrell was also in the room.

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

A Well, not in those words.

Q More or less?

A Yes.

Q All right. And at some point, then, did he change his story of he didn't know anything, didn't have -- didn't know anything about this and make some admissions as regards to the incident involving the murder of Willie Johnson?

A Yes, sir, he did.

Q And is all of that recorded on tape?

A Yes, sir.

Q All right. At any time, Agent Johnson, while you -- or when you were out of the room, were you able to hear what was going on?

A No, sir.

Q All right. While you were in the room, then, did you threaten or did you see anyone else threaten or coerce Mr. Miller in any way?

A No, sir.

Q Did you promise him anything, as far as leniency? Any specifics? I realize there's some discussions, which we'll play for the Court in a minute, about, you know, minimizing your time if you're cooperative and things, if you are convicted of anything. But did you give him any specific promises of leniency?

A No, sir.

Q And did you tell him the amount of time he was -- he would get was not up to you?

A Absolutely.

Q Did he appear to be, he being Robert Lee Miller, III, did he appear to be under the influence of drugs?

A No, sir, no appearance.

Q All right.

MR. THORNTON: Your Honor, at this time what I'd like to do, as long as defense counsel has no argument, rather than play the tape and then bring another SLED agent up I'll stop questioning now. Bring up the other SLED agent and then play the tape when they're done.

THE COURT: Any objection to that procedure?

MS. SMART-GITTINGS: No objection. But I do want to cross-examine him before he's --

MR. THORNTON: Absolutely. I just meant for order purposes if that's okay with the Court.

I have no further questions. Please answer any questions that defense counsel has.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Agent Johnson --

A Yes, ma'am.

Q -- so you were at the Fairfax Police Department

when Chief Williams was interrogating Robert, correct? You and Agent Merrell?

A Yes, I was there.

Q Okay. And when you initially began your interrogation of Robert, he told you that he didn't want to talk to you, correct?

A He didn't want to speak with me, but he would speak with Agent Merrell.

Q And you asked him, am I intimidating you, am I intimidating, correct?

A It may be. I'm not certain.

Q And he said, um, um. And he said he wanted you to leave the room, correct?

A And I left, that's correct.

Q And you left.

So at that point when you asked him if he was intimidating -- if you were intimidating to him, why did you re-enter the room?

A At that point Agent Merrell came out and asked me to step back in.

Q Okay. But he had told you that you intimidated him, but you still re-entered the interrogation, correct?

A At that point Agent Merrell asked me to step back in.

Q But you understood that you intimidated Robert

Miller; is that correct?

A Yes.

Q Okay. So when he told you during the line of questioning that he didn't want to talk any more, but you continued to ask questions; is that correct?

A I'm not quite sure. I need to listen to that recording and look back at my notes there.

Q Prior to confession you don't recall him saying, just stop, please stop, just please stop with me, please, just please stop?

A No, let me listen to the recording.

Q Okay. And you don't recall telling him, now, come on, boy, let's see what we can do to minimize your sentence?

A I know I more than likely have used the word minimize, that, you know, coming clean would be the best thing to do to minimize your time.

Q Would you not agree that that is promising leniency?

A No, sir, that's not.

Q To a 15-year-old child who does not have a parent present, who has been interviewed by Chief Williams, Agent Merrell, you, possibly others, after he had been with you or in police custody at least at this point for about two hours, do you not believe that he meant -- by you telling him that, that he wouldn't believe that you would be lenient

on him?

A No, I don't believe so.

Q Okay. Do you recall telling him that you were going to talk to the solicitor if he cooperated with you?

A I don't recall.

Q Okay. If you did recall that, would you believe that that would be promising leniency to him?

A No.

Q If he did -- if you recall him telling you to please stop, would you believe that he wanted you to stop questioning him?

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

Q And so if you continued to question him after he said, please stop, would then you believe that that was coercing him to continue talking?

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

Q But he said, please stop and you continued to interrogate him, would that not be coercing him?

A No.

Q You said he told you you were intimidating, he asked you to stop and you did not stop, you do not believe that that's coercing him to continue?

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

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

THE COURT: Any further questions?

MR. THORNTON: No, Your Honor. I'll just rely on the tape. I mean, it's -- obviously, without him having a copy of the transcripts, I'll just -- we'll just play the tape and then go from there.

THE COURT: Okay.

MR. THORNTON: At this time I'd ask that he be able to step down. And Agent Johnson, if you don't mind not leaving, but if you'll just step out since we're still under sequestration.

At this time, Judge, I'd call Agent Natasha Merrell to the stand.

Thereupon,

NATASHA MERRELL

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Agent Merrell, who do you work for?

A South Carolina Law Enforcement Division.

Q Is that also known as SLED?

A Yes, sir.

Q And were you working for SLED on or about June the 24th of 2014?

A Yes, sir.

Q And are you what is commonly referred to as the case officer in the case that we're here to try today?

A Yes, sir.

Q As part of your investigation in this matter, were you with Agent Johnson, who just testified, in interviewing Robert Lee Miller, III?

A Yes, sir.

Q And did you start the interview yourself when Mr. Miller indicated he'd rather talk to you?

A Yes, sir.

Q And did you talk to him for a while?

A Yes, sir.

Q And during that talk, is that captured on the recording that's been mentioned?

A Yes, sir.

Q And I'll ask you this question, because I think I asked the wrong person.

At our request, have you gone through some of the audio recordings with our office in trying to get ready for court here today?

A Yes, sir.

Q And when you listened to those recordings, was that -- were they accurate?

A Yes, sir.

Q And had they been altered or changed in any way?

Let me rephrase that, it's a bad -- that's a really poorly phrased question.

Other than the things that we took out to play here today that are directly related to this case, have they been altered or changed in any way?

A Besides the phone stopping when it's ringing --

Q Right. And so the things that are --

A No.

Q -- limited -- go ahead and tell the Judge what you're referring to.

A During the recordings, if I received an incoming call, it would stop the voice recording. And I didn't discover that until later on during the interview when I looked down and it wasn't recording. So there's sections where the recording was -- has stopped.

Q And what I meant to say was, since you turned that over to us, other than us taking sections out that didn't relate to this case, that related to the Fairfax shooting, other than that, we haven't altered it in any way; is that fair to say?

A That's correct.

Q And I'm sorry, I just didn't ask a very -- very well-phrased question.

While you were in the room, Agent Merrell, did you threaten or did you see anyone threaten Robert Miller in

any way?

A No, sir.

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

A No, sir.

Q All right. And is it your understanding that, as you were obviously in here as case officer, that the chief of Fairfax had Mirandised him?

A That's correct.

Q And I know that this question has been asked once before by -- by Ms. Smart, but did -- at any time did he ask you for an attorney?

A No, sir.

Q And did he even request that his mother be brought in, or was he comfortable with Ms. Sabb being there?

A He was comfortable with Ms. Sabb.

Q And at least when this interview started, had Ms. Sabb -- was she present in the room?

A Yes, sir.

Q At some point during this, does he refer to her as, She's like a mother to me?

A Yes, sir.

Q But just so we're clear, you at no time attempted to call his real mother or anything, did you, to get her down there?

A No, sir.

Q All right. And while you were talking with him, how many people were in the room, total? That you were talking to Robert Lee Miller in?

A It started out with myself and Agent Johnson and Robert.

Q Right.

A And then it was myself and Robert.

Q And at some point did you leave and go get Agent Johnson and bring him back in?

A Yes, sir.

Q And was it -- and, again, I know that I'm paraphrasing just for time purposes -- but was it at that time that Agent Johnson basically told him that y'all didn't believe what he was telling you and -- and he was going to go to jail anyway or something to that effect?

A Yes, sir.

Q And during those conversations, did he then make some incriminating admissions?

A Yes, sir.

Q And is that recorded on the tape?

A Yes, sir.

Q And I know Ms. Smart has asked about some things that Agent Johnson, she's indicated he said. And, again, we'll play the tape. But that he indicated -- when we

talked, obviously, I think y'all talked something about weed or marijuana, that's been redacted, obviously, out of it because it has nothing to do with this case. And all the Statements he made about things people had said he did or anything about this Fairfax shooting, all of that has been redacted, to your knowledge, as well; is that correct?

A That's correct.

Q Other than saying things like if you cooperate, we'll talk to the solicitor for you, because that clearly was said, based on your review of everything; is that correct?

A That's correct.

Q And, you know, you can help minimize your time if you, you know, tell us the truth and you need to tell us what went on and that sort of thing.

Those types of things were said, correct?

A Yes, sir.

Q Other than that, were there any specific promises of leniency? Did you tell him you'd let him go or anything like that?

A No, sir.

Q In fact, just the opposite. You told him he was going to jail regardless, and he even said that; did he not?

A Yes, sir.

Q And that's also recorded on the tape; is it not?

A Yes, sir.

Q So other than those types of things that -- during your interview that you conducted, did anybody threaten him physically or threatened him in any other way?

A No, sir.

Q Did he appear to be under the influence of any alcohol or drugs?

A No, sir.

Q Did he seem to understand the questions that you asked him or the discussions you all had?

A Yes, sir.

Q There's a couple of times on the interview when you're laughing with him a couple of times. I don't know that it's recorded or in this section that we've redacted. I think you were talking about the marijuana.

But did he at some point, was he relaxed enough that he laughed with you or you laughed with him?

A Yes.

Q And did you -- in your discussion with him, did he seem to be able to communicate effectively with you? In other words, I know the audio quality's not great, but did you understand what he was saying and were you able to converse with him?

A Yes, I was.

Q Okay.

MR. THORNTON: Your Honor, I don't have any further questions.

I'd ask you answer any questions Ms. Smart-Gittings has, and I'll happy to play the tape for Your Honor.

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

THE COURT: Yes, you may.

MS. SMART-GITTINGS: Will you pronounce your last name, please?

THE WITNESS: Merrell.

MS. SMART-GITTINGS: Merrell, okay.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Now, Ms. Merrell, you were in there the entire time that the interrogation was going on with SLED, correct?

A Yes, ma'am.

Q Now, isn't it true that Mr. Johnson asked Ms. Sabb to leave the room? Well, he said, Can we just talk to him, just us?

A That's correct.

Q And she left?

A She stayed for a minute. But, yes, she did end up leaving.

Q So she was not -- for the majority of the interrogation she was not present, correct?

A That's correct.

Q Okay. And were you also there when Mr. Johnson asked Mr. Miller did he intimidate him?

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

Q Okay. But he wasn't comfortable with Agent Johnson, correct?

A That's correct. He said that he would feel more comfortable with me.

Q Okay. And during the course of the time that you interviewed, interrogated Robert, he never confessed to anything to you, did he?

A No, he did not.

Q It wasn't until Agent Johnson came back in the room and talked to him about talking to the solicitor that he confessed?

A That's correct.

Q I only have one more question.

Isn't it also true that Mr. Johnson asked him to read a certificate --

A Yes.

Q -- and he told him that he wanted to make sure that he understood right from wrong?

A Yes.

Q But he didn't want to make sure that he understood what he was doing there, correct? He was only concerned

with whether or not he knew right and wrong?

A That's what he said.

Q Okay.

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

MR. THORNTON: Nothing further, Judge. If it's okay with the Court, I'll play it.

And, Your Honor, I believe that we have already handed -- if I haven't, let me grab it real quick -- I've already handed defense counsel this. And this is, again, Judge, the redacted copy which takes out the references that I've made -- I mean, I've given a copy to defense counsel so she can follow along with it. And we have it on the screen that will play which matches the transcript that you have in front of you. I just don't know how -- we're still trying to get this audio right so . . .

Okay. We'll go as loud as you can for the Judge. Make sure that he can hear it.

(Audio recording playing.)

THE COURT: You need to work on that audio. It's not very --

MR. THORNTON: Yes, sir, we've got a different speaker, Judge. I think it'll be much clearer. It's just there's a lag form --

THE COURT: Yeah, is there any way to track that when you're going through that when they're talking? You remember when you watched cartoons as a kid, like a bouncing ball?

MR. THORNTON: Yes, sir. It would be helpful. We've got a better speaker that we'll have, Judge. I apologize.

THE COURT: I'm going to read this. I mean, I just have a hard time --

MR. THORNTON: Yes, sir.

THE COURT: All right. Anything further?

MR. THORNTON: Nothing further from the State, Judge. We're ready for argument unless Defense has anything.

THE COURT: Ms. Smart?

MS. SMART-GITTINGS: May it please the Court? Defense calls Kimberly Jordan.

Thereupon,

KIMBERLY JORDAN

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SMART-GITTINGS:

Q Ms. Jordan, would you state your name and spell it for the record?

A Kimberly Jordan, J-O-R-D-A-N.

Q Where are you employed?

A I work -- I'm the juvenile public defender for the 14th Circuit.

Q Were you employed as such in June of 2014?

A I was.

Q And do you know Robert Miller?

A I do.

Q How do you know Robert Miller?

A I began representing him as I took over the rest of the circuit, the counties in the other circuit in -- on around 2014.

Q So you were involved in representing him with this case?

A Yes.

Q Do you have any information regarding Robert's ability to understand his waiver?

A Yes.

Q Do you -- tell this Court your involvement with Robert to this point.

A I began various -- shortly around the time that we scheduled a pre-waiver evaluation. And we had the pre-waiver evaluation with the DJJ psychologist.

Q And who was that psychologist?

A That Dr. Candice Dunn.

Q And how are you familiar with Dr. Dunn?

A She was the one conducting the pre-waiver evaluation. We had scheduled for the hearing to take -- the evaluation to take place. And because he was in Columbia and I was in -- we were in Beaufort, we scheduled to have a video conference at the same time. So Dr. Dunn and her assistant, and I was -- I was in part of the -- the evaluation via video.

Q And what was your role in the evaluation, if any?

A Evaluation, at that point I was just taking notes, monitoring what was going on, so that I could further, you know, pursue whatever avenues we needed to take.

Q What, if anything, did you observe with regard to Robert?

A When we began the pre-waiver evaluation, Dr. Dunn talked to him about the Statements he was going to make during this evaluation process. And she said, told him that, you know, any statement could not be used. Any statements that he made here could not be used against him. She further went on to talk to him right after that, she said, you understand your Miranda right -- what your Miranda rights were. And -- continue?

Q Yes.

A She went through each of the rights. And she got

to the right to remain -- do you know understand what the right to remain silent was. Is it okay if I refer to my notes?

Q Yes.

A Do you understand the right to remain silent. And he said, I'm not sure what that means. And she had to stop and explain that to him.

The next question, he came -- that she stopped at was, you know you have a right to an attorney. Do you understand what that right means, and he said no.

THE COURT: I will note your objection. For purposes of this hearing I'm going to allow it.

MR. THORNTON: Thank you, Your Honor.

THE WITNESS: And he was not sure how an attorney would be helpful to him.

BY MS. SMART-GITTINGS:

Q Did she have to explain that information to him?

A Yes, she did.

Q And did -- and after she explained that information to him, did he understand how an attorney would be helpful?

A I'm not sure if he did or not at that point. I mean, but it was --

Q Did he --

A It took her to go through -- you mean -- after

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

Q Okay. And did you have any other dealings with Robert with regard to his Miranda warnings?

A Those were the only two that I remember.

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

THE COURT: Cross-examination?

MR. THORNTON: None, Judge.

THE COURT: Okay. You may step down.

Any further witnesses, Ms. Smart?

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

THE COURT: Anything in response?

MR. THORNTON: Not from witnesses, Judge. I'm just ready for argument whenever the Court is.

THE COURT: All right. I'll be glad to hear from the State.

MR. THORNTON: Your Honor, as you know, I certainly don't need to tell you, you've been on the Bench a long time, it's the totality of the circumstance. I would point out that under State versus Pittman, which is 373 South Carolina 527. You don't have to have anybody with a juvenile. There's no requirement that you have anybody with a juvenile.

Age is one of the things that you take into

consideration. I would point out to the Court, I know Ms. Smart-Gittings will correct me if I get this wrong, Robert Lee Miller would not have even been considered a juvenile I think in about a month. I think this occurred a month before he turned 16. He would have been ours without even having a waiver hearing. So he wouldn't have even been a juvenile.

They did have Tiffany Sabb with him, at least, in the room. I know the audio was terrible, Judge, but you saw in the transcript that he was asked -- he made several reference to she's like a mother to me. He was asked several times if he wanted to stop. I would point out a couple of the things, specifically, Judge.

One of the things that Ms. Smart-Gittings asked Agent Johnson about was, but, yet, he told you, you know, just please stop, and you kept questioning him. What he says is, this is on page 11 of the transcript, he said, Robert Miller says, I'm still going to be doing the time. I'm still doing the time, man, and just please stop. Just please stop with me. Please, just please. And then Agent Johnson says, Well, like I told you from the beginning. Then Miller says, I said I've been honest with you. And then Johnson says, Listen, it's like I told you from the beginning, it's up to you to talk to us. You can stop talking to us at

any time.

So I think it was a mischaracterization that he continued to question him. He stops and says, I told you before, if you don't want to talk to us, you don't have to talk to us. What do you want to do. And he says, well, I want to go home. And he says, well, you're not going home, what do you want to do. And her client continues to talk to him. I don't think -- I think it would be a mischaracterization to say that he was, you know, that he had had some unequivocal statement that he wanted to stop. He certainly never asked for an attorney.

And, finally, at the end, Judge, he says, I just want to leave here, I'm done talking. Whenever you all are ready to lock me up, I'm ready. Let's go, please. I'm ready. And he says, okay, when you're done talking to us, and they stopped the interview.

A couple of other things I would point out. As to Chief Williams' statement, the Statement that he gave Chief Marvin Williams. You know, the test really is, Judge, is his will overborne. Chief Williams is talking to him about the shooting of a juvenile that he never gives any information on. He's doesn't give that up. I think that in and of itself is evidence that his will is not overborne. He does give up his

participation in this case. And then he gives it up again at the end when talking with Agent Johnson and Agent Merrell. Under the totality of circumstances, Judge, it's pretty clear his will was not overborne.

Again, I apologize for the quality of the audio. We're going to take care of that. It was -- there was not any yelling and screaming. Agent Johnson, which I stipulated to and made sure it was on the record, clearly says things like, you know, you can minimize the time if you cooperate. We'll talk to solicitors. But he also said, I can't tell you how much time you're going to get. I'm not the Judge, I'm not the lawyer.

I don't think there's any -- anything even close to an offer of leniency, Judge. He's trying to get him to go ahead and be cooperative. And he said he would tell the solicitor if he was. And there's nothing, there's no case law that I'm aware of, Judge, that makes him any promise of leniency. He clearly tells him, I can't tell you how much time you're going to get. I'm not the Judge.

Based on everything, Judge, he's got a Miranda. He was given a Miranda. Chief Williams testified to it. There's a Miranda form that's been made Court's Exhibit 1. I think under the totality of the circumstances, Judge, the State has met its burden at

least to get it in front of the jury, and it, ultimately, will be up to them.

Thank you, Your Honor.

THE COURT: Thank you.

Ms. Smart?

MS. SMART-GITTINGS: May it please the Court, Your Honor.

The Defense is going to rely on J.D. versus North Carolina. And in that case the Court talks about whether or not he was free to leave. And it is clear --

THE COURT: What about he was reeled in?

MS. SMART-GITTINGS: He was free to leave.

THE COURT: Oh.

MS. SMART-GITTINGS: And looking at the totality of the circumstances it is clear that he was not free to leave. They told him he was not free to leave.

And the Court also has to take into consideration the fact that Ms. Sabb was asked to leave the room, and she did leave the room. Agent Johnson asked her to leave. So at that point, Robert, a 15-year-old, and although he's big now, at the time he was 15 and he was much smaller. He was in the room by himself with at least three police officers. None of whom he knew. And that's clear from the audio. He said that he

didn't recognize any of the police officers. He didn't know them.

From the onset he said he only wanted to talk to one agent, and that he wanted to speak to Agent Merrell. Agent Johnson clearly said, you find me intimidating, and he said, yes. He should not have entered the room once Robert told him that he thought he was intimidating. That's the question that he elicited, and Robert responded to that affirmatively.

At the end of the tape it's clear that he is crying. Robert is crying at the end of the tape. So I believe that not only was he intimidated by Agent Johnson, he was coerced. He told him he never was concerned about whether or not Robert understood his Miranda, he was concerned whether or not Robert knew right from wrong.

That indicates that he has some issue with Robert's level of intelligence. Because he wouldn't have queried as to whether or not he knew right from wrong. And having him read a certificate of appreciation has nothing to do with whether or not he knew right or wrong. It had nothing to do with whether or not he knowingly, intelligently and voluntarily waived his Miranda rights that he didn't even reiterate to him.

What was redacted from the tape is the initial interrogation by Fairfax Police Department, had something to do with a shooting that occurred. So Robert thought he was there for a shooting when, in fact, SLED was there to investigate a murder that occurred in Allendale.

He told -- everything he told everybody was this is what I heard. First I heard that SLED was going to kick in the door. SLED was going to have guns. SLED was going to kill me. I'm going to go to jail. So a 15-year-old who is in -- who is being interrogated by at least five police officers, an assistant solicitor is present, his mother isn't present, the person who is like a mother was asked to leave the room, and he's in the room by himself.

Investigator -- and I don't know whether it's on the tape, but at some point Agent Williams said that he actually goes to sleep. He lays down on the floor and he goes to sleep. He was there from at least, at least, 4:00 in the afternoon. SLED indicates that their interrogation ends at someplace around 7:00.

So now you have a 15-year-old who was at the hospital with his friend who had been shot. He's brought to the Fairfax Police Department. He's there. He doesn't have a parent. And all of these people in

the law enforcement are there. And he doesn't have one person, one adult, who could reassure him. No one is concerned about whether or not he understood what was going on, whether or not he was coerced in any way.

He tells -- Agent Johnson says, oh, well, stuff happens, you know, stuff happens. And he assures him. As a matter of fact he says, well, that's right. Whenever Robert was saying what Agent Johnson wanted to hear, he said, that's right, yes, that's right. And Robert says, what do I have to do, I just want to get this done. And he was like, well, tell me the truth. And Robert -- when Robert starts telling him something that he doesn't want to hear, he says, no, no, no, man, no, no, no. And so Robert changes his story. And whenever he's in agreement with it, he says, yes, yes, yes. He confirms whatever it is that Robert is saying.

In fact, on Page 10 he says, no, no, no, that's the wrong answer. That's the wrong answer. And Robert says, no, and he says something back. And then Johnson says, look at me, look at me, stuff happens. You said that you didn't want to be there, wanted to go home. And then he goes on to tell him what he said. And then after that he says, now, let's minimize it.

So what he's telling him is, you're not telling me what I want to hear. When you tell me what I want to

hear, I can help you. He's 15. He doesn't understand. An average adult probably wouldn't understand that the people who Robert has in his mind are coming to kick in his door and shoot him, kill him. How can he understand as a 15-year-old what this agent is telling him?

He can understand what he is being affirmed when Agent Johnson is saying, yes, yes, yes. But he understands when he's saying no, no, no, that he has to change. And he tells him, he goes, well, your prints are going to be all over stuff. I asked you did you know what CSI is, your prints are going to be on the wallet, your prints are going to be on the safe. And then Robert says something, and he says, yeah, thank you. So he's affirming what he wants Robert to say.

At this point I believe his -- not only was he coerced, he was intimidated. I don't believe that this confession was willing, that it was freely given, that it was voluntarily given, that it was knowingly given. I believe with that in mind, that taking that totality of his circumstances, that the Court should suppress this confession. I think that -- and I would ask the Court, because it is -- the transcript is 12 pages, I would ask that the Court at least take it under review tonight and give us a ruling in the morning.

But particularly I think the Court should focus on the fact that, number one, they asked Ms. Sabb to leave the room. So they were not concerned about him having someone there who could help him, who could advise him, who could reassure him. They asked her to leave. And that means that he was there without an adult, without anyone that he could trust, without anyone that he could feel safe with. And, particularly, pay attention to the end of the tape when it's apparent that he's crying. And, again, J.D. versus North Carolina of 2011, Supreme Court case.

THE COURT: All right. Thank you, ma'am. I will take you up on your offer to let me look at the transcript, because I have not read through it thoroughly. I'll be quite frank with you, I do think in the totality of the circumstances it probably errs on the side of the State just because of the fact it's not an error, that is a way of putting it. But let me read it and I'll give you my decision first thing in the morning.

We've got to have something better about that audio.

MR. THORNTON: Yes, sir. We'll take care of it, Your Honor.

THE COURT: All right, guys. Anything else from

the State?

MR. THORNTON: No, sir.

THE COURT: From the Defense?

MS. SMART-GITTINGS: Nothing, Your Honor.

THE COURT: All right. We'll see you all in the morning at 9:30.

MR. THORNTON: Yes, sir.

THE COURT: Thank you.

(Trial concluded for the day.)

* * *

7-12-2016 PROCEEDINGS

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

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

THE COURT: Which juror is it?

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

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

Quattlebaum? Do you all know a Quattlebaum in Branchville's court, at all?

MR. THORNTON: I don't, Judge. But I can put some people on it and try to figure it out and get you a number.

THE COURT: You think you could do that for me?

MR. THORNTON: Yes, sir.

THE COURT: All right. I'll try to call.

MR. THORNTON: I'll get somebody to work on it right now.

THE COURT: Okay. My clerk may have that up and check and see.

MR. THORNTON: Now, Your Honor, do you need the town of Branchville clerk's number, because I think that we have that right now. Write it on a sheet of paper. I'll get it to you when I have it.

THE COURT: Okay.

Okay. Now, let me tell you what my suggestion is, and I'll be glad to hear from both sides and take any other suggestions you may come up with, but, number one, what I normally do when this comes up, and it's not terribly unusual, unfortunately, but is to ask that juror to come back to my chambers in the presence of counsel for both sides, to then question that juror as to whether or not their friendship with this particular

introduce through a former SLED agent who's now with the Tennessee Bureau of Investigation and I will have her testify afterwards.

THE COURT: Okay. Very good.

Are you in agreement with that, Ms. Smart?

MS. SMART-GITTINGS: I am, Your Honor.

THE COURT: All right. As to the Jackson-Denno, I read through -- I was handed a case from defense counsel last night. I did check that out. I don't disagree with what they said. My understanding of the case is, essentially, that you take age as a factor in determining whether or not there is a custodial interrogation. It's just one of the factors you look at. But I don't think there's any real issue in this case that there was custodial interrogation going on.

But we had Miranda given. And so, you know, that's what triggers the Miranda. There is the custodial nature of the interrogation, especially given the defendant's young -- his age, given at the time, was 15 going on 16. I don't think any objective person, especially somebody that age, felt like they were free to leave in a room full of officers. But there was Miranda given.

The next question is the voluntariness of the

statement. I have to tell you, I read this transcript and it's difficult to read. I read it at least six times, and it's hard for me to follow. Part of it is vernacular that you use in low state that I'm not used to. I should be, my mother's from Beaufort, my dad's from Charleston, you'd think I'd know it.

But some of it's hard, and quite frankly, I think some of it has to do with the education of the defendant. I think that he is probably, with all due respect, somewhat limited on an educational basis. But on the other hand, I think he's pretty street smart, because the way he set this thing up it appeared he was trying to set up an alibi for himself. He wasn't present. And I'm going to go through that a little more.

The first factor that we look at, and this is under State versus Miller, that's 652SE2nd444, from the standpoint of the defendant whether there was police coercion. Any time you have interrogation by law enforcement, there's a certain coerciveness to the questions. That's just the nature of the beast. Was there undue coercion, I do not believe so.

I believe from the totality of the circumstances, from a Jackson-Denno standpoint, that there was no coercive nature of this interview that would lead to a

suppression. The length was entirely reasonable in the circumstance. The place was fine. Although there was multiple locations within the same place, apparently.

The maturity level of the Defendant, and the education level of the defendant is a little bit concerning to me, he's only in the eighth grade. But reading through what he was saying, while he may not have obtained or is capable of obtaining a higher level of understanding based from an intellectual standpoint, I thought that he was pretty street-wise in the way he responded to the questions and set it up. There is no indication the Defendant was not in good physical condition at the time. No indication, whatsoever, one side or the other about the mental health, so I'm not considering that.

I don't know of his experience. I understand from the State there's no record for this gentleman; is that correct?

MR. THORNTON: Your Honor, I believe he had one juvenile conviction.

THE COURT: Okay.

MR. THORNTON: But he has nothing -- nothing other than that, Judge.

THE COURT: Well, you know, from a criminal record standpoint, then, it's fairly limited. But I

did notice multiple times when he first got in to the interview, he knew some of the officers there. When they came to -- they questioned him about the whereabouts of Gabriel or Gabrel (phonetic) -- how do I pronounce that, Ms. Smart?

MS. SMART-GITTINGS: I think it's Gabriel.

THE COURT: Gabriel.

-- he knew one of the officers there. Apparently, he didn't know the Caucasian officer, but he knew one of the officers there. So it appeared to me that he had had some experience with law enforcement by the fact that they knew him and he knew them. And that may just be from small town, not being any bigger than it is, same as it is in Anderson.

There were no police misrepresentations. There were some statements made that you need to help yourself, but I -- there was no misrepresentations or promises of leniency or threats of violence toward this gentleman. They told him, in fact, you're going to jail.

And this is all from the totality. You can take certain statements in isolation and give them what meaning that you want to prescribe to them. But from the big picture there was no misrepresentations or promises that you're going to get this, you're going to

get that.

In fact, Officer Johnson, I believe, said, look, you can just say, for example, 30 years, I'm not the Judge. I'm not the prosecutor. I can't tell you this, but we will go to them and tell them that you helped us out, which is not problematic as far as I'm concerned.

The isolation is minor, from his parents. We had someone who was not a natural parent there, but somebody who he claimed as being, you know, almost like his mother. She was there. He was okay. Even after she -- Ms. Sabb, I believe is her name, is asked to leave, the officers then asked him if he's ready -- if he's willing to go forward, and he says, yeah, I'm fine to talk with them. But then I'm going to only talk to Ms. Merrell, I don't want to talk to Mr. Johnson.

And so I'm finding from a totality of the circumstances that the admission or confession, if you will, is admissible and it'll be up to the jury to decide further based on whether it meets the burdens of beyond reasonable proof of being voluntary.

That being said, I note your objection, Ms. Smart, to my ruling.

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

THE COURT: Okay. Anything further before we get started?

MR. THORNTON: Your Honor, just so the record's clear. Is Your Honor's ruling as to the statement given that's recorded as well as the statement given to Chief Marvin Williams, who testified yesterday?

THE COURT: My understanding -- yes. My understanding, those all took place contemporaneously. They are all there. And that's when -- because the -- Williams only gave him Miranda. And if there was a substantial break, and then they came in from SLED and started questioning him without re-Mirandising him, then I would have a problem with it.

MR. THORNTON: Yes, it was all contemporaneous.

THE COURT: That's what I understood.

MR. THORNTON: I believe Ms. Smart even has said, I think, between four and seven. So it was the same day, within a couple of hours of each other.

THE COURT: All right. That being said, State ready to the proceed?

MR. THORNTON: State's ready, Your Honor.

THE COURT: Defense ready to proceed?

MS. SMART-GITTINGS: Defense is ready, Your Honor.

THE COURT: Very good. All right.

Would you bring the jury in, please?

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

THE COURT: All right. Good morning ladies and gentlemen. Before we get started, I will ask our clerk of court to swear you in, please.

(Jury sworn by the clerk.)

THE COURT: Thank you, Madam Clerk.

All right. I'll ask you this every morning. Before we get started, during the break, has anyone spoken with anyone about this case, read, saw or listened to anything about this case? If so, will you raise your hand?

(No response.)

Let the record reflect that no one responded in the positive. And thank you, I'm going to ask you that every morning.

All right. Ladies and gentlemen, as you were advised yesterday, this is case of the State of South Carolina versus Robert Miller, III who has been indicted for murder.

I don't know if any of you have ever been involved in a trial before, whether you ever watched one, participated in one, testified in one or been a litigant. I would imagine, though, that each and every one of you have watched on TV or at the movies with something that purports to show a trial. Let me just

quickly dispel you, what you're about to embark on is nothing like you've seen at the movies, it's nothing like you've seen on TVs.

Trials are very slow. They're very deliberate, and they're very methodical. They're certainly not entertainment, but they are a fundamental part of our democracy. They are a search of the truth to try to make sure that justice is done.

Now, these attorneys who represent the State and Defendant in this matter, when they were sworn in as attorneys, they took an oath to zealously represent their client to the best of their abilities. You can expect no less of them during this trial. But they're also officers of this court. What that means is you can expect them to be professional, to be competent and courteous to one another, to witnesses and to this Court throughout these proceedings.

Likewise, you just took an oath that you would try to reach a fair and a just verdict in this case. What that means is that State, the Defendant and the Court and their respective attorneys have a right to expect of you that you will be fair and impartial and that you abide by the rules of the Court as I give it to you and you will perform your duties in a diligent manner.

Now, what I'm telling you now is not the law that

MS. SMART-GITTINGS: I am, Your Honor.

THE COURT: I thought you would.

(The jury returns to courtroom.)

THE COURT: State ready to proceed with opening statements?

MR. THORNTON: State's ready, Your Honor.

THE COURT: Does Defense intend to have opening statements?

MS. SMART-GITTINGS: Yes, Your Honor.

THE COURT: Mr. Thornton?

MR. THORNTON: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

OPENING STATEMENT BY MR. THORNTON

MR. THORNTON: Ms. Smart.

Good morning. June the 19th, 2014, 86-year-old Willie Johnson has not been heard from in a couple of days. You're going to hear from some people that went to church with him and were checking on him, hadn't been able to reach him. But on that day, June the 19th, it's a Thursday, 2014, one of his friends found him, Willie Johnson, 86-years-old. Found him in his home along Pickrum Street, it's [redacted], about a mile from here. Rode by there last night.

And his friends found him face down in his own

home with his hands tied behind his back and a plastic bag wrapped around his head. They knew Mr. Willie Johnson had been murdered. He'd been beaten. He had been bound with his hands behind his back. And he had a plastic bag wrapped around his head. That's how Willie Johnson was made to leave this world.

Robert Lee Miller, III is one of three people charged in this case. And for reasons that are not relevant here, they are being tried individually. But this case is about Willie Johnson and what happened to him. And you'll hear different testimony and evidence about when he was last heard from, when people were trying to get ahold of him, and he was found on the 19th. So between the afternoon of the 17th of June 2014 and when he was found about noon, almost one, on the 19th of June 2014.

But that's what this case is about. It's about Willie Johnson. It's about Robert Miller, III. It's about Mr. Johnson's murder. That's what this case is about.

You are very likely to hear myself and Ms. Smart and the Judge make -- say very similar things to you. And one of the things that we'll probably all say or at some point you'll hear us say is nothing the lawyers tell you is evidence. The only evidence in this case

is something that comes from the witness stand or whatever evidence you see that the Judge admits into evidence.

And all anybody can ask you is to reserve your judgment until every single witness has testified, and until you've seen every exhibit and you've been given all the pieces to look at as a complete picture. That's all any of us can ask of you before you render your decision.

One of the things that's always concerning to a lawyer in a trial like this, it's not like it is on television. I think that you heard the Judge tell you that. It's not overly exciting. It's certainly not for entertainment. Sometimes it moves a little slower than we would like it to. And, frankly, this trial is going to be a lot shorter than probably what you're used to. Now, you've heard of those cases in California that go on for six months and all of that sort of thing, this case will be resolved this week.

But just because it doesn't take a long time, please don't misunderstand that as it's not important. Because it is important. Willie Johnson was murdered. And he was left tied up with a bag over his head in his own home at 86-years-old. That's what this case is about and that's why it's important.

And one of the three men that did it sits at that table over there (indicating). And when all of the evidence has been put before you, we will come back and we will argue at that time and I'll ask of you to find him guilty. Thank you.

THE COURT: Ms. Smart?

MS. SMART-GITTINGS: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

OPENING STATEMENT BY MS. SMART-GITTINGS

MS. SMART-GITTINGS: Mr. Thornton.

Good morning, ladies and gentlemen. I agree wholeheartedly with Mr. Thornton. Although this case is going to be short, it is very, very important. And he is absolutely right, this case is about Mr. Willie Johnson. But it's also about Robert Miller.

It's about a 15-year-old young man who lived in Allendale, lived in Allendale his entire life. His whole family is here in Allendale. But he's 15, and this is not family court. Because in family court, it's private. There's only a judge and the particular juveniles who are charged with offenses.

But you're sitting in judgment of a 15-year-old. He's 17 at this point, but at the time that he was arrested he was 15. He was asked to do things that

adults are asked to do. And what's important is that you keep in mind that at the time this occurred he was 15.

I don't even remember when I was 15. But what I do know is that when I was 15, I wasn't as savvy as I am now. I didn't know the things that I know now, because I was a child. And I need you to consider and think that he's a child.

Well, why is that important. This is why it's important. Because you're going to hear evidence, Allendale -- our law enforcement officers, generally, error on the side of caution if they call SLED in, because SLED is the more specialized agency for the state. They are trained to do more crime scene investigation. They have more training than our law enforcement officers in interrogation. They have forensic scientists. So they have more resources. And so what our police department does, is they -- whenever they have a major case, and I appreciate that they understand their limitations, but they call SLED in. And they have SLED come in and they have SLED do the investigation.

So you have a 15-year-old child who is bombarded by five officers, and he's asked questions over and over and over again. And what does a 15-year-old do?

What does a 15-year-old do when he's been interrogated for hours, hours on end, without his mother, without his father, without any adult that he knows and he cares about. So just think, what do we expect him to do. Reasonable people.

I know that you watched the jury qualification and you probably thought this is not the Price is Right. Why are they making me sit down. But the price is right. We believe, the State and I believe, that you are the most reasonable people to sit in judgment of this. The fact that you're going to hear what we believe that your experiences are what's going to be best for both the State and Defendant. We believe that your experiences will help you judge the credibility of the witnesses, because that's why you were chosen. Because you were the right ones for this trial at this time.

We believe, we have faith, that you're going to listen to the evidence. That you're going to judge the integrity of the witnesses. You're going to use your life experiences to say, well, did it really happen like that, or do they have the wrong guy. We don't doubt -- we don't doubt the circumstances that we're hearing. We don't doubt, it's not called into question, that Mr. Johnson was killed. But Robert

Miller said he didn't do it. That's why we are here. Because if he admitted that he did it, we wouldn't be here. But he says he didn't do it.

So the State's going to bring you witnesses that are going to say he confessed. We're just going to go ahead and put that out there. The State recorded an interrogation and he confessed. But I want you to listen very closely to the way in which the confession was given, and ask yourselves would I have confessed. Or if you have children and your children were in that situation, would they have confessed. And that is how you determine the credibility of that confession.

You determine whether or not he confessed because he really did it or if he confessed because he wanted to go home or because he was tired or because he was intimidated by law enforcement and that is what he felt like he should do.

Because he didn't have the advice of a lawyer. He didn't have the advice of a parent to help him make that critical decision at that important time in his life. He didn't have that. The police didn't call his mother. They didn't call his father. They just decided to interrogate him for hours. And that is what you need to be looking for and judging, those facts.

We don't -- we will never call into question the

integrity of our law enforcement. But what I will call into question is the tactics that our law enforcement used in order to get the interrogation -- to get confession. So that's what we're asking, never will we say that our law enforcement is distrustful or they can't be trusted. But are their tactics sufficient for juveniles, for a 15-year-old child.

And if you believe that Robert was coerced or intimidated or just felt like he had to give in, then you can't believe his confession. And if you can't believe his confession, then you have to return a verdict of not guilty. If there's any other evidence that the State is going to present that is questionable, then you have to judge it that way as well.

But we submit that after you've heard all the testimony, after you have seen all the pictures, we believe that you're going to find Robert not guilty.

THE COURT: All right. Mr. Thornton, will you call your first witness, please.

MR. THORNTON: Chastity Robinson.

THE COURT: Let's stop, do we have everyone sequestered?

MR. THORNTON: We do, Your Honor. They're in a room very close, so it shouldn't take long to -- the

sheriff's department has graciously agreed to help us get them in.

THE COURT: Thank you, sir.

Thereupon,

CHASTITY ROBINSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Ma'am, what is your name?

A My name is Chastity Robinson.

Q And who do you work for?

A I am currently employed by the Allendale County Magistrate's Office. I formerly used to work as an E9-1-1 dispatcher for Allendale County Communications.

Q All right. So in June of 2014, specifically June 19th of 2014, did you work for the Allendale -- for Allendale County as a dispatcher?

A Yes, sir, I did.

Q And I'm sure the jury probably already knows this, but could you explain what a dispatcher is?

A Well, the main job of the dispatcher is to take any type of emergency call whether it's for police, fire, or EMS, and to take all the pertinent information that the caller is giving you, could be a address, telephone number,

caller name, whatever the situation is, and to get the appropriate personnel there.

Q Is it fair to say that if someone called 9-1-1 at that time in Allendale, you were one of the people they might talk to?

A Yes.

Q Ma'am, I'm going to hand you what's been marked for identification as State's Exhibit 1, and that's a disk I've handed you.

Can you identify that disk?

A Yes, sir, I can. This is the 9-1-1 call recorded with the transcription, I initialed it and dated it, about the call.

Q And is that call relating to the case we're here about today, Mr. Willie Johnson?

A Yes, sir, it is.

Q And is that a call that you took?

A Yes, sir, it is.

Q And is it an accurate reflection, both the transcript and the audio?

A Yes, sir, it is.

MR. THORNTON: Your Honor, I'd ask at this time to move State's 1 into evidence.

THE COURT: Any objection?

MS. SMART-GITTINGS: Without objection.

THE COURT: Admitted.

MR. THORNTON: Your Honor, I've got a copy of this, so we don't have to wait on the disk. With the Court's permission, go ahead and publish to the jury?

THE COURT: Yes, sir.

MR. THORNTON: Thank you, Your Honor.

(Whereupon, State's Exhibit No(s). 1 marked for identification and received in evidence.)

(Playing audio CD and showing transcription of same on television screen.)

BY MR. THORNTON:

Q Now, after receiving a call like that, is part of your job to dispatch law enforcement, EMS and, if necessary, fire out?

A Yes, sir.

Q And did you dispatch some officers and EMS out after that?

A Yes, sir, I did. I dispatched the police department. They were actually coming up on scene as I was dispatching them.

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

THE WITNESS: You're welcome.

MR. THORNTON: Please answer any questions Ms. Smart has for you.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. SMART-GITTINGS:

Q Good morning, Ms. Robinson.

A Good morning.

Q You were familiar with that residence at Pickrum Street?

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

Q Okay. So you don't know whether or not you had received calls about that address before?

A No, ma'am.

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

THE COURT: Redirect?

MR. THORNTON: None, Your Honor.

THE COURT: May this witness be excused?

MR. THORNTON: We would ask that she be allowed to go back to work, Judge.

MS. SMART-GITTINGS: No objection.

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

THE WITNESS: Thank you.

THE COURT: Please call your next witness.

MR. THORNTON: Yes, sir, Investigator Manor.

Thereupon,

QUANTIQUE MANOR

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

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Mr. Manor, are you currently a detective?

A Yes, sir, I am.

Q All right. And So, Detective Manor, who do you work for, sir?

A Allendale Police Department.

Q And did you work for the Allendale Police Department on or about June the 19th of 2014?

A Yes, sir, I did.

Q And did you respond out to any particular location about 1:00 or late -- early afternoon, say 12:50/1:00, on June 19th, 2014?

A Yes, sir, I did.

Q Where did you go, sir?

A [redacted].

Q And who lived at that address at that time?

A Mr. Willie Johnson.

Q And when you arrived, sir, was there a -- was there already somebody on scene?

A Yes, sir. There was a male in the yard, he was waving towards us upon arrival.

Q And were you able -- at some point in going up to the house, did you talk to that gentleman?

A Yes, sir, I did.

Q And do you remember what his name was?

A Yes, sir, his name was actually Mr. Robert Miller.

Q All right. Now, any relation to the Robert Miller that's on trial?

A No, sir, none.

Q And without saying specifically anything that he told you, did -- was it your understanding he had been in the house?

A Yes, sir.

Q And did you at some point, Detective, go into [redacted]?

A Yes, sir, I did.

Q Let me ask you a quick question. First, let me hand you what's been marked as State's Exhibit No. 2, and ask you if you can identify that photograph for me?

A Yes, sir, this is [redacted]

Q Also, if I could ask you to look at State's Exhibit No. 3?

A That's the side of the residence.

Q All right. Is that the same [redacted]

A Yes, that's correct.

Q Now, are these photos that you've seen, which you've identified as State's 2 and 3 for identification, are

they accurate photographs of how [redacted] appeared that day?

A Yes, sir, they are.

Q And, again, whose residence was that at that time?

A Mr. Willie Johnson.

Q And have these photographs appeared to have been altered or changed in any way?

A No, sir.

MR. THORNTON: Your Honor, at this time the State would ask to move in State's 2 and 3?

THE COURT: Any objection?

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

THE COURT: Admitted.

(Whereupon, State's Exhibit No(s). 2-3 marked for identification and received in evidence.)

BY MR. THORNTON:

Q All right. Is this the front of Mr. Willie Johnson's house at [redacted]?

A Yes, sir, it is.

Q All right. And that's State Exhibit 2.

And State's 3 you identified as -- is that, basically, like the side yard?

A Yes, it is.

Q Is that -- and I was going to say Toyota pickup, because I haven't seen one -- a Chevrolet like that in a

long time -- but that pickup was parked in Mr. Willie Johnson's yard; is that correct?

A Yes, sir.

Q Let me ask you a question. Where is [redacted] [redacted] In what county?

A It's in Allendale County, sir.

Q I'm now going to hand you, just for identification, what's been marked as State's Exhibit Number 4, and I'm going to go ahead and give you 5 and 6, as well.

And I'm going to ask you if you can identify those three photographs?

A How we found Mr. Johnson when we entered the residence.

Q And are those pictures accurate representations of how Mr. Johnson appeared when you entered the residence?

A Yes, sir, they are.

Q Have they -- appeared to have been altered or changed in any way?

A No, sir.

MR. THORNTON: Your Honor, at this time I'd ask that State's 4, 5 and 6 be entered into evidence.

THE COURT: Any objection?

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

THE COURT: Admitted.

(Whereupon, State's Exhibit No(s). 4-6 marked for identification and received in evidence.)

BY MR. THORNTON:

Q Before we get to publishing these to the jury, when you got to [redacted] that day, obviously you were dispatched out; is that correct?

A Actually, sir, Mr. Willie Johnson's son arrived at the police department around the same time that we received a dispatch call also.

Q All right. So those two things happened simultaneously?

A Yes, sir, around the same time.

Q All right. And, again, without saying what Mr. Johnson's son, the victim in this case, Mr. Johnson's son told you, did he relay information that he was concerned about his father?

A Yes, sir, he did.

Q So that combined about, apparently the same time that dispatch went out is that why you went out to [redacted]?

A Yes, sir.

Q What did you do when you got there?

A I spoke to the gentleman in the yard for a brief moment. I approached the --

Q And let me stop you real quick. And that was no

relation, but his name was Mr. Robert Miller also?

A Robert Miller, also. Yeah, Robert Miller also.

I spoke to Mr. Miller briefly. Myself and Sergeant Tison, we walked toward the house, and we approached the door and pushed the door open a little bit. And at that time that's when I observed Mr. Johnson lying on the floor.

Q All right. And let me stop you right there.

MR. THORNTON: Mr. Hutto, if we could bring up State's 4.

BY MR. THORNTON:

Q All right. And if you could, to the left I see a door that's open with what appears to be a screen door.

Would that be the front door of the residence?

A Yes, sir.

Q All right. And when you walked in, you found Mr. Johnson.

What condition was -- without saying anything specific medically, but how did you find him when you walked in?

A He was laying face down, his hands tied behind his back and he had a bag tied over his head.

Q And are those the -- what appear to be the -- did you notice what was tying his hands?

A At -- no, sir.

Q Okay.

A It was some type of -- just a tie, maybe it was just something to tie his hands. I'm not sure what.

MR. THORNTON: Go to State's 5 for me.

BY MR. THORNTON:

Q All right. Now, in State's 5, would that be a closer view? It shows, actually, it's of his torso and his head, so that's what his hands were tied with. And he also appears to have something on his head.

Were you able to look at that and determine what it was?

A It was a plastic bag, a black plastic bag.

MR. THORNTON: And, Mr. Hutto, if you will go to 6 for me, please?

BY MR. THORNTON:

Q All right. And I don't know if the jury can see this well, but this is a closer view of the plastic bag; is that correct, sir?

A Yes, sir.

Q Now, can you see this okay, Detective, what this item is that looks like something brown?

A No, sir, if I could see the pictures.

Q All right. Let me bring this to you.

What is this item here over to the left-hand side that I'm pointing to?

A That's Mr. Johnson's wallet.

Q All right. And that was found next to him?
A That's correct.
Q All right. And what is this item that appears to be -- it looks like teeth, which are right next to the wallet?
A It was pieces of dentures.
Q All right. And were there multiple pieces of his dentures that had been scattered all about the room?
A Yes, sir.
Q Detective, at this point, you have walked in. You've seen Mr. Johnson.

Did you see any signs of life from him at that point?
A No, sir.
Q All right. He wasn't moving? He wasn't breathing? Anything like that?
A No, sir.
Q Did you go up and do anything to him or feel for a pulse, or was EMS already on the way or there?
A EMS was already there.
Q And is that John Johnson?
A That is correct.
Q What did you do at that point, Detective?
A Before EMS got on, came in, made a determination, me and -- myself and Sergeant Tison, we went through and

cleared the residence just looking for anybody else that might have been inside the residence.

Q Did you find anybody inside the residence?

A No, sir.

Q And did you set up, I guess, what they call crime scene tape, or did somebody with your department set up tape?

A We set up, myself and other sheriff's deputies, which were called in, set up a perimeter around the house.

Q And was SLED also called?

A Yes, sir.

Q And is SLED the same thing as the South Carolina State Law Enforcement Division?

A Yes, sir.

Q Is that -- for y'all, is that unusual to call SLED out to emergencies like this?

A No, sir, not at all.

Q Detective, had you been out to that residence before, or responded out to [redacted] before?

A Yes, sir, numerous times.

Mr. Johnson had an alarm. He was an older gentleman, and he had problems with his alarm system. And while working day shift, I would have to go there every morning when he gets up, probably between 7:30 and 8:30. And I would help him turn his alarm off, and we would talk

briefly and I'd go away. And, also, sometimes, at night, also, it was common for us to go by and help him turn his alarm off.

Q And did -- and these alarms, when these were going off, was -- in your dealings with Mr. Willie Johnson, you said he was an older man, but do you know how old he was?

A At the time he was maybe in his 80s, 90s. He was older.

Q The reason I ask is, you know, 20 years ago I didn't think -- I thought 50 was real old, you know, real old, and now I don't think that anymore.

So when you say "an older man," somebody in his --

A Later years.

Q -- later years, 80s? 90s?

A Yes, sir.

Q Let me ask you this. In your dealings with him when you went out on these alarm calls or where his alarm had been going off and you helped him.

Was he angry and agitated all the time, or was he more of a calm person?

A No, he was very calm. He's a very nice guy.

Q Had you ever had any problems with him? As they -- oftentimes, when we ask that question about have you ever responded out to the scene, you hear all kinds of bad

things about the victim.

But in this case, had you ever had any problems with Mr. Johnson himself?

A No, sir.

MR. THORNTON: The Court's indulgence, please, Your Honor.

THE COURT: Yes, sir.

BY MR. THORNTON:

Q Did you notice anything about the air conditioning that you found unusual?

A Well, upon going to Mr. Johnson's house on different times in the morning, it would also be kind of hot in the house. You know, he never turned the air conditioning on. But -- so I was used to walking in the house and I'd come out sweating, pretty much. This time I went in the house, it was cold like a refrigerator, real cold. And that was kind of unusual.

Q Now, when you backed back out of the house, you talked about went out and the crime scene tape was set up.

At some point, did you do a search of the surrounding area behind the house or around the house?

A Yes, sir, I assisted SLED, I believe it was a short time later.

Q All right. And what -- did y'all find anything of any significance outside?

A We found a safe outside the residence, behind the residence, near the ditch.

Q All right. And when you say "a safe," you mean like a floor safe?

A It was a big safe. A floor safe, yes, sir.

Q And did -- what condition was the safe in? What did it look like?

A Someone had used some type of tool to try to open it. It was open pretty much. They used a -- some kind of saw, maybe. They cut it open with a power tool of some sort.

Q So when you say that "it was open," it wasn't -- it didn't look like somebody just opened the door?

A The back of it or the side of it, as I can remember, was cut open, not the door.

Q And do you recall whether or not there was any sort of tools or anything left near the safe?

A I believe there were.

MR. THORNTON: Sorry, Your Honor, the Court's indulgence one moment. I'll need to show this to defense counsel.

BY MR. THORNTON:

Q I'm going to show you what's been marked as -- and if you will just keep them down there with you right now -- 7 and 8 for State's identification.

Do you recognize those photographs?

A Yes, sir, I do.

Q And what are those photographs of?

A It's the safe the way we found out.

Q And is -- right next to the safe is there a tool of some sort?

A Yes, sir. A pair of shears, a pair of long sheers.

Q Like you trim hedges with?

A Yes, sir.

Q And is that an accurate picture of the way that appeared when you found it?

A Yes, sir.

Q You along with SLED -- SLED agents and other folks?

A Yes.

Q Does it look like it's been altered or changed in any way?

A No, sir.

MR. THORNTON: Your Honor, at this time I'd ask that State's 7 and 8 be entered into evidence.

THE COURT: Any objection?

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

THE COURT: Admitted.

(Whereupon, State's Exhibit No(s). 7-8 marked for

identification and received in evidence.)

MR. THORNTON: Your Honor, the -- unfortunately -- I apologize to the Court, when doing these exhibits we got numbers backwards, that's actually going to be State's Exhibit Number 8, for the record. The screen is showing 7, I'll have that changed.

THE COURT: Okay.

BY MR. THORNTON:

Q Detective Manor, that's the photograph you referenced, which actually should be marked State's Exhibit Number 8, which shows the safe as you described, cut open with the large garden shears next it to; is that correct?

A That is correct.

Q All right. And if we can go to the other picture, which is actually going to be State's Exhibit Number 7, and that is a close-up view of where the safe has been cut open.

A That is correct.

Q And that is how you found it on that day; is that correct?

A That's correct, yes, sir.

Q I realize any time that there's been investigation like this there's lots of little things that you do.

Is that the majority of what you did on this case, at least, with regard to the scene?

A Yes, sir, that is correct.

MR. THORNTON: I have nothing further for you.

Your Honor, I would ask that he be -- although could be temporarily excused today to go back to work, I am going to ask he be subject to recall.

And please answer any questions Ms. Smart puts forth.

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

THE COURT: Yes, ma'am.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Detective Manor, you were familiar with Mr. Johnson?

A Yes.

Q And Allendale Police Department had responded to numerous alarm calls at his house?

A That's correct.

Q Day and night?

A That's correct.

Q And, in fact, you or someone from your police department had responded a burglary over there?

A Maybe.

Q The shed was burglarized?

A Yes, ma'am.

Q And the windows had been broken out the back of

his house?

A I'm not familiar with that incident.

Q So you weren't involved in -- you didn't investigate when the windows were broken out of the back of his house?

A I'm just not familiar with it. If you have a report or anything I can go off of, I'd be happy to answer that question.

Q Do you recall the back door being boarded up?

A Yes, ma'am.

Q Do you recall the window being boarded up?

A I remember the back door.

Q What about -- but you do know that the home had been burglarized before?

A Yes, ma'am.

Q And that he had received threatening calls before?

A Well, the shed had been burglarized.

Q I didn't hear you.

A The shed.

Q The shed?

A In the rear of the house.

Q And he also called 9-1-1 and said that someone had threatened him at some point earlier in the year?

A I'm not familiar.

Q You don't recall that?

A No, ma'am.

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

THE COURT: Yes, ma'am.

BY MS. SMART-GITTINGS:

Q Can you tell me if this document will refresh your memory?

A This is actually --

Q Don't read from it, just tell me if it refreshes your memory.

A Well --

Q If it doesn't, just say so.

A No.

Q Okay.

A No.

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

A No, ma'am, I was not.

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

Isn't it true that you said that Mr. Johnson never turns his air conditioner on unless he has company?

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

When I went there for the alarm calls in the morning, he didn't have his AC on. I'm not familiar with how he conducted himself when other people come over or anything. I just know when I went over there, it wouldn't be in the

morningtime.

Q Okay. He often forgot his alarm code, and you guys had to go over there and reset it?

A Yes, ma'am.

Q Now, are you familiar with any of his family members?

A I am.

Q Prior to this incident, were you familiar with his family members?

A Yes, ma'am.

Q Okay.

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

THE COURT: Yes, ma'am.

BY MS. SMART-GITTINGS:

Q Mr. Johnson would tell you when he went out of town; is that correct?

A No, ma'am.

Q No?

A No, ma'am.

MS. SMART-GITTINGS: I don't have any other questions for this witness.

THE COURT: Redirect?

MR. THORNTON: No, Your Honor. Again, just subject to recall. But, obviously, he can go back to work.

THE COURT: Detective, as you understand you are free to go today. But you are subject to being called back.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

MR. THORNTON: Thank you, Your Honor.

The State calls Mr. Robert Miller, II.

Thereupon,

ROBERT MILLER II

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Good morning, Mr. Miller.

A Good morning.

Q Mr. Miller, do you know or did you know, before his murder, Willie Johnson?

A Yes, sir, I know him.

Q And how did you know him?

A One of the church members, deacon of my church.

Q So he was one of the -- a church member in your church?

A Yes, sir.

Q And how long had you known Mr. Johnson?

A Oh, I don't know, about, like about 20 years.

Q Twenty years?
A Yes.
Q All right. Mr. Miller, I'm going to ask you something. If you would either pull that mike down to you a little bit or lean a little closer, so we can all hear.
A (Witness complies.)
Q Thank you, sir.
So you know Mr. Johnson, you said, about 20 years?
A Yeah.
Q And you said you went to church with him?
A Yes, sir.
Q Okay. On -- and I know that it's been a little while, but Thursday, June 19th of 2014, did you have occasion to go over and check on Mr. Johnson?
A I called. I think it was Ms. Bowman called Raymond, Deacon.
Q All right. And let me stop you real quick. You said Ms. Bowman, and you referenced Raymond Simmons.
Is he also a deacon in you all's church?
A Yes.
Q And is Ms. Bowman, Mary Bowman, in your church?
A Yes.
Q We're talking about all folks go to the same church?

A Right.

Q All right. So Ms. Bowman had made a phone call, to your knowledge, to -- and is it okay to say Deacon Simmons?

A Yeah.

Q Okay.

-- to Deacon Raymond Simmons in your church. And then did Deacon Simmons call you?

A Right.

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

A Because Ms. Bowman was calling Deacon -- what his name -- Deacon Johnson, was calling and couldn't get in touch with him.

Q All right. So they were trying to reach Mr. Johnson, the victim in this case, and they couldn't reach him?

A Right.

Q So Deacon Raymond Simmons called you; is that correct?

A Right.

Q And without saying exactly what he told you, did he want you to do anything?

A Yes. They called me and said they were trying to get in touch with Deacon Johnson, would I run around there and check on him.

Q All right. Now, did you live, at the time, close to --

A About --

Q -- Deacon Johnson?

A -- about two blocks.

Q All right. So you were very close?

A Yes, I was very close.

Q Distance-wise?

A Yes. Distance-wise, yeah.

Q Did you go over to his house?

A Yes.

Q All right, sir. And if you'll hang on for me just a second, I'm going to show you what's already in evidence as State's Exhibit Number 2.

And is that Deacon Willie Johnson's house?

A Yes.

Q Is that 300[redacted]?

A Yes.

Q And is that where you went that day?

A Yes, sir.

Q And what did you do when you got there?

A When I got there, I knocked on the door. I didn't get no answer, so I heard the air conditioning running.

Q Is that unusual?

A Yeah, that's unusual for him.

Q And what did you do then, sir?

A Then I turned the door knob.

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

A Yes, the door was unlocked and I walked right on in, not all the way in, no farther than the door stop.

Q And what did you see and what did you find when you got in there?

A When I got there, I seen a blanket on the floor. Because when I got in there, my eyes were a little blurry. Then I look and I saw Mr. Johnson on the floor with his hands tied behind his back.

MR. THORNTON: Mr. Hutto, would you bring up State's Exhibit Number 4, please?

BY MR. THORNTON:

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

A Yes.

Q Over there to the left of the photograph, is that the front door that you would have come in?

A That's the front door.

Q All right. And is that what you remember seeing? I think that you mentioned the quilt.

A Yes, quilt.

Q And is that how you saw Deacon Johnson?

A Yes, sir.

Q Now, Mr. Miller, when you went in and found Deacon Johnson with his hands tied behind his back laying on the floor like that, what did you do then?

A I backed out, shut the door and then I hollered to tell them to call 9-1-1, and I'm trying to get 9-1-1 on my phone too.

Q Do you remember, and I know that I didn't show you a picture of that, but do you remember, Mr. Miller, whether Deacon Johnson when you saw him, whether you recall a plastic bag or not? Or did you look long enough?

A I ain't look long enough. I didn't pay no attention to it.

Q As soon you saw him you backed up?

A I backed right out of door.

Q And you may have already said this and I missed it, did you call anybody?

A I tried to call 9-1-1. And some people was sitting on the porch, and I said call 9-1-1, call 9-1-1, because I was trying to get my 9-1-1 through.

Q All right. And did you at some point talk to 9-1-1?

A I probably did, I don't know. I was nervous and shaken up then.

Q Were you pretty --

A No, I think I shut it down, because I saw the son

and cops, coming around the curve, you know, turning around the curve.

Q Okay. Let me stop you here, please.

You saw the son, do you mean Mr. Willie Johnson's son?

A Yeah.

Q You saw him, and you saw the police coming?

A Yeah, they was behind him.

Q And did they come up and --

A They come up.

Q Did they speak with you, and then --

A Yes, they asked me --

Q -- go in the house?

A They said what's -- I said, somebody in the house dead. Mr. Johnson is dead, I think. That's all I said.

MR. THORNTON: Thank very much, Mr. Miller, I appreciate it. If you'll answer any questions that the Ms. Smart has for you.

THE WITNESS: Yes, sir.

THE COURT: Cross-examination?

MS. SMART-GITTINGS: I don't have any questions at this time of Mr. Miller.

THE WITNESS: Thank you.

MR. THORNTON: Thank you, Mr. Miller.

Judge, I'd ask that he be excused.

THE COURT: Any objection?

MS. SMART-GITTINGS: No objection.

THE COURT: All right. Thank you, sir. You're excused.

MR. THORNTON: John Johnson.

Thereupon,

JOHN JOHNSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Good morning, Mr. Johnson.

A Good morning.

Q Will you please give your full name for the record?

A John Louis Johnson.

Q Mr. Johnson, in June, specifically June 19th of 2014, who did you work for at that time, sir?

A I was working with the Allendale County Rescue Squad.

Q And what was your job title or job description with the rescue squad?

A I was a paramedic.

Q And can you explain to the jury, I'm sure everybody's heard of either EMS or fire rescue, are there

different levels of qualifications with regard to providing emergency services?

A Yes, there are. It begins as a basic EMT. There's also a advanced or now -- it's now advanced, at that time it was intermediate EMT. And there is a paramedic level. The paramedic level is the highest level of certification in the state of South Carolina in pre-hospital medicine.

Q All right, sir. And I know that I -- I think that -- I'm trying to think how many times I've asked this question and I already know the answer, but the jury's not going to, or they may not.

What's the biggest difference, say, between a paramedic -- what is a paramedic allowed to do that an EMT basic or EMT advanced is not allowed to?

A Paramedic is allowed to administer drugs, defibrillate patients. They're trained in cardio resuscitation. We do defibrillations, that type of thing. Very -- very similar to what's done in the emergency room only it's done at the field level.

Q Yes, sir. Let me ask you a quick question. How long and -- first of all, do you still hold all of your certifications as a paramedic?

A I think about 18 years.

Q Okay. So about 18 years you were a certified

paramedic?

A Uh-huh. (Indicating affirmatively.)

Q On June 19th of 2014, did you respond out to [redacted] here in Allendale?

A Yes, I did.

Q And when you got there, what, if anything, did you do?

A When we got there, there was a -- there was several police officers already present. One of the officers escorted us into the house. Upon arriving in the house, I observed what appeared to be a male that was laying prone or face down on the floor. He had something covering his head. I couldn't tell you what it was. His hands were behind his back and were tied with something.

Q All right. And let me ask you real quick, this has already been entered into evidence.

Is that an accurate depiction of how the victim in this case, Willie Johnson, appeared when you entered his home on Pickrum Street?

A Yes, it is.

THE COURT: What is exhibit number's that, please?

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

THE COURT: Okay.

BY MR. THORNTON:

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

A Yes.

Q All right. And what, if anything, at that point did you do once you walked in?

A It was obvious that something here was not right. That this was probably a crime scene. We did as little as we could to disturb that scene to determine his status. I reached down and touched his arm with the back of my arm. It was cold to the touch. When I attempted to move it, it was rigid.

Q And let me ask you, and this is, obviously, going to be a silly question, but we have to do it for record purposes.

Did you see any signs of life?

A No.

Q Was it clear that he was dead?

A It was very clear that he was deceased.

Q To the extent that with your 18 years of experience as a paramedic, you didn't feel it medically necessary to do anything once you had confirmed?

A No.

Q And was that because, obviously, it's a crime scene and you didn't want to disturb anything?

A Right, exactly.

Q So other than walking over and establishing that he was cold to the touch and that -- stiff, that rigor had started to set in or had set in --

A Uh-huh.

Q -- did you do anything else?

A No.

Q Did you then leave the residence?

A Yes, we did.

THE COURT: The Court's indulgence, please?

I don't have anything further for Mr. Johnson.

Mr. Johnson, please answer any questions that Ms. Smart has for you.

MS. SMART-GITTINGS: I don't have any questions for this witness.

THE COURT: May this witness be excused?

MR. THORNTON: Thank you, Your Honor. Yes, I'd ask that he be excused. I would say go back to work, but he reminded me the other day that he is now retired.

THE COURT: All right. Thank you, sir. You are excused.

THE WITNESS: Thank you.

MR. THORNTON: Thank you, Mr. Johnson.

Kiawah Cave.

Thereupon,

KIAWAH CAVE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Good morning, Ms. Cave.

A Good morning.

Q Would you please give your full name for the record?

A Kiawah Cave.

Q And, Ms. Cave, in June of 2014, where were you living and working?

A I was living on Pickrum Street at that time, and I was working with the PSA Healthcare in Savannah, Georgia.

Q So you lived on Pickrum Street, but you worked in Savannah?

A Yes, sir.

Q And did you know or were familiar with Mr. Willie Johnson that lived at [redacted]?

A I just knew him as my parents' neighbor.

Q Okay.

A Yes.

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

A Yes, sir.

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

A Yes, sir.

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

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

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

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

A Yes, sir.

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

A Yes.

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

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

father helped him cut hedges and I didn't think anything about it. And I just kept going. And when I looked back at the stop sign I didn't see anyone at the gate anymore.

Q All right. They were gone at that point?

A Yes, sir.

Q You couldn't see him?

A No, sir.

Q They weren't cutting grass or anything? You saw them when you went by, and when you turned around at the stop sign, they couldn't be seen?

A Yes, sir.

Q Now, based on everything that I have, you weren't able to positively identify anybody at the house?

A No, sir.

Q But were you able to tell if they were older men or younger men?

A They were younger guys, because I'm 30 and they were way younger than that. They didn't look no more than maybe 20 years old at the most.

Q Twenty years old or younger is what they looked like?

A Yes, sir.

Q You said that there were three of them?

A Yes, sir.

Q That was about 8:00 on Tuesday, June 17th?

A Yes, sir.

Q All right. And you know that because why?

A Because I was on my way to watch my patient at the hospital in Savannah and I was on nightshift.

Q Ma'am, I don't have any further questions for you. Oh, just one quick thing. You said that your parents were Mr. Johnson's neighbors; did they live just in the same neighborhood, or right next door?

A They stay right next door. The only thing that separates their yard is some hedges.

MR. THORNTON: Thank you very much. I have nothing further. Answer questions of Ms. Smart.

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

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

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

A Rose and James Boynkin.

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

A Yes, ma'am.

Q Did you recognize any of the people that you saw, any of the three men?

A No, ma'am.

Q Did you see anything in their hand?

A No, ma'am.

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

A No, ma'am.

Q Did you specifically see any bags in their hands?

A No, ma'am.

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

A No, ma'am.

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

A I didn't see exact faces, I just saw figures. I was driving by, it shouldn't say it, but at a speed. So I wasn't looking to see exactly whose face it was, I just saw guys.

Q So, from what you can see, did you look at the men that you saw?

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

MS. SMART-GITTINGS: I have nothing further.

MR. THORNTON: I don't have anything further. I ask that she be excused. I ask to approach before we call the next witness.

THE COURT: Thank you. You may be excused, Ms. Cave.

MR. THORNTON: Thank you, may I approach Your Honor?

THE COURT: Yes.

(Off-the-record discussion held.)

Ms. Smart.

MS. SMART-GITTINGS: I saw them, Your Honor. And they are gruesome, but I know that they are relevant. So I don't have any objections.

THE COURT: Okay. So, 9, 10, 11 and 12 will come in without objection, is that correct?

MS. SMART-GITTINGS: Yes.

MR. THORNTON: And for the record, Judge. I believe they are relevant because they show evidence of injury, and I am putting them in through to the pathologist. And, again, I've limited it to four photographs.

THE COURT: Very good.

All right. You ready to proceed?

MR. THORNTON: Yes, sir.

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

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

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

MR. THORNTON: Thank you, Your Honor.

Mary Bowman.

Thereupon,

MARY BOWMAN

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Good morning, Ms. Bowman.

A Good morning.

Q Ms. Bowman, would you please state your whole name for the record for me?

A My name Mary Alice Johnson Bowman.

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

A Yes, I do.

Q And did you live here in Allendale in June of 2014?

A I did.

Q And are you familiar with or were you familiar with Mr. Willie Johnson?

A Yes.

Q And did he live over on Pickrum Street --

A Yes.

Q -- [redacted]?

A Yes.

Q And I realize it's been a couple of years ago, but on Tuesday, June 17th of 2014, did you get a voice message or a call from Mr. Willie Johnson?

A I did.

Q And can you tell me what the voice message was about?

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

phone. Mr. Johnson called me, asked me to return his call. He wanted me to take him someplace the following day.

Q All right. Let me ask you a question. How do you know or how did you know Mr. Johnson?

A We are a member of the same church, and I've basically known him all of my life.

Q All right. And I know it's rude to ask, but how long have you known him? You said "all of your life," how long you think you've known him?

A Oh, over 50 years.

Q Okay. And has Mr. Johnson been in Allendale that whole time?

A Well, you know, he was a merchant marine, so he would go out to sea.

Q Yes, ma'am.

A And when he'd come home, yes.

Q But this was where he lived?

A He lived, yes.

Q So you've known Mr. Johnson over 50 years, and y'all were both at the same church?

A Yes.

Q Now, was he also at some point a deacon at y'all's church?

A Yes.

Q So was it unusual for Mr. Johnson to call you and

ask you for a ride to go somewhere like the grocery store or things like that?

A No.

Q Was Mr. Johnson up in years?

A Yes, he was.

Q About how -- do you know how old he was?

A He was in his '80s.

Q You said he called you. It was Tuesday, June 17th, when he called you.

Do you remember about what time it was?

A It was somewhere between three and four --

Q Okay. And --

A -- if I'm not mistaken. Because when I returned home, I listened to my messages about four.

Q Okay. So between three and 4:00 in the afternoon?

A Yes.

Q Did you try to call Mr. Johnson back on Tuesday, the 17th?

A Yes, I did.

Q And do you remember when you were calling him?

A When I returned home. Like I said, I listened to my messages. I got this message, and I think my first call to Mr. Johnson was about 8:00.

Q And did you get an answer or not?

A I did not.

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

got the phone call from Mr. Teddy Johnson, Mr. Deacon Johnson's son?

A I informed Ted that, no, I did not know where his father was, but that I would make a call and see if maybe John, another deacon of the church, had taken him someplace. I called John, but I did not get John. So then I hung up and I called Deacon Simmons, Raymond, and I asked if he knew where Mr. Johnson was. And he said, no, but that he would call Deacon Miller.

So when I hung up from Raymond, I called IGA and I spoke to Mr. Taylor, and I asked him if he would please check the store and make sure Mr. Johnson was in there for me. He did. And when he returned to the phone, he told me no. And when I hung the phone up from talking to IGA, Mr. Taylor, my phone rang again and it was Deacon Simmons.

Q All right. And without specifically saying what he told you, did he relate that something bad had happened to Mr. Johnson?

A He told me, Come over to the house, that Deacon Miller, you know, found him.

Q Okay. And, Ms. Bowman, do you know, had -- Deacon Johnson, had his -- his home -- had he had break-ins or something at his shed or some other things before this that you are aware of? Take your time, Ms. Bowman.

A Yes.

Q Ms. Bowman, I tell you what, there's no other question that I have that is important enough for me to bother you any more. Thank you so much for answering my questions. We're going to grab you some water real quick. Please answer any question that Ms. Smart has for you. Thank you, ma'am.

THE COURT: Any questions?

MS. SMART-GITTINGS: I don't have any questions for this witness.

THE COURT: May she be excused?

MR. THORNTON: She may.

Your Honor, if I may approach?

THE COURT: Yes, you may.

MR. THORNTON: Ask she be excused, Judge.

THE COURT: Yes.

MR. THORNTON: Thank you.

THE COURT: Call your next witness, please.

MR. THORNTON: Deacon Raymond Simmons, please.

Thereupon,

DEACON RAYMOND SIMMONS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Good morning, Mr. Simmons.

A Good morning.

Q Could you give your whole name for me for the record, please?

A My name is Raymond Vernall Simmons, Sr.

Q Mr. Simmons, would it be appropriate for me to call you -- we -- obviously, you weren't in here, we've heard several people refer to you as Deacon Simmons; is that fair?

A That's fine.

Q Okay. Deacon, do you know or did you know a man named Willie Johnson?

A Yes, I do.

Q And how did you know Mr. Johnson?

A We've been members the same church. Ever since I've been a child I've known Deacon.

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

A No, sir, but I know he be up in the 80s, though. He been oldest one in the church.

Q On Thursday, June 19th of 2014, did you get a call from Ms. Mary Bowman?

A Yes, I did.

Q And is she a member of your church also?

A Yes, sir.

Q Did she have some concerns about not being able to

reach Mr. Johnson?

A Yes, sir.

Q And let me ask you this. You talked about Mr. Johnson being a member of your church, is it -- at some point, was he also a deacon of y'all's church?

A Yes, sir.

Q And did he do any other functions in the church, as far as cleaning up or anything like that?

A Yes, sir. They ain't nothing he wouldn't do.

Q Okay.

A No one had to even ask him. If he come to the church during week time, in the yard he would start cleaning from the church all the way down Flat Street then come back on the other side clean all the way down. He didn't clean just in front of the church, he cleaned the whole community.

Q Even at 80 something years old?

A Yes, sir.

Q What did you do when Mary Bowman called you concerned that she couldn't reach Deacon Johnson?

A I told Sister Bowman, I said, I'll -- just wait, I'll call Brother Miller and ask Brother Miller to go to their home and see what is wrong, why he's not answering any phone.

Q And is that Robert Miller?

A Yes, sir.

Q And not -- obviously, the gentleman here is Robert Miller, III. But this is Robert Miller, a member of your church, totally different person, correct?

A Yes, sir, a deacon.

MR. THORNTON: Well, the Court's indulgence, please, Your Honor?

BY MR. THORNTON:

Q Did you get a -- without going into anything specific about what he said, did -- once Robert Miller had gone and checked and found Deacon Johnson had been murdered, did he call you back and let you know?

A Yes, sir, he sure did.

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

A I -- no, sir, I don't -- no, sir, I didn't place -- I don't think I placed no call back to her. Because I -- I was jumped out the house and went.

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

A Yes, sir.

Q Deacon, thank you, sir. I don't have any other questions. Please answer any questions Ms. Smart has for you.

MS. SMART-GITTINGS: I don't have any questions for Deacon Simmons.

THE COURT: May this witness be excused?

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

MS. SMART-GITTINGS: No objection.

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

Call your next witness.

MR. THORNTON: Marquita Barron, Your Honor.

Thereupon,

MARQUITA BARRON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Good morning, Ms. Barron.

A Good morning.

Q And can you state your full name for the record for me, please?

A Marquita Barron.

Q Ms. Barron, in June, specifically -- well, let me start off a little more general.

In June of 2014, who were you working for?

A Allendale Office on Aging.

Q Allendale Office of Aging?

A Yes.

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

microphone so we make sure we can hear you.

What was -- what did you do for the Allendale Counseling Agent?

A I was the driver, actually, for the meals on wheels.

Q All right. And lots of folks I know are familiar for that. So you were a driver for meals on wheels.

Does that mean you delivered meals out to, was it generally, older folks?

A Yes, sir.

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

A Yes, sir.

Q Okay. And is Mr. Johnson, was he one of the folks that you delivered meals to?

A Yes, sir.

Q And was there a specific day that you delivered those meals?

A Only on Wednesdays.

Q Only on Wednesdays?

A Uh-huh. (Indicating affirmatively.)

Q And so Wednesday, June 18th, do you remember going out to deliver a meal to the Mr. Johnson's house?

A Yes, sir.

Q And is that -- here in Allendale County, I believe it's [redacted]; is that right?

A Yes, sir.

Q I'm going to show you real quick a -- what's been already put into evidence, State's Exhibit 2. As that's being brought up on the screen, is that Mr. Willie Johnson's house at [redacted]?

A Yes, sir.

Q And is that where you delivered the meals on wheels to every Wednesday?

A Yes, sir.

Q There is -- let me ask you something. When you got there that day, which is Wednesday, June, 18th, did Mr. Johnson answer the door?

A No, he didn't.

Q And was there anything unusual about the door that you noticed that's different than the times you'd been there before?

A No, sir.

Q When -- normally, when you got to the -- when you got to the door, was the screen door opened or closed?

A When I got to the door?

Q Not June 18th, prior times when you had been there, would both doors be closed or just one or --

A The hard door would be open.

Q All right. Now --

A You could see through the screen door.

Q I know you and I have already had this conversation, but and you had to -- help me explain. When you say the "hard door," you mean the inside? The bigger door?

A The house door.

Q Okay.

A Yeah.

Q And that would be open?

A Yes, sir.

Q And the screen door would be?

A Shut, but you can look in the inside.

Q Okay. Because it's got screen in it, obviously?

A Yes, sir.

Q Now, on June 18th when you got there, was that how it was that day, or were both of them closed?

A Both of them were closed.

Q All right. And I'm sorry, when I asked that question a few minutes ago, I probably didn't do a very good job of asking it.

So when you got there on June 18th, was that different than it normally was?

A Yes, sir.

Q All right. And so you when you got there on June 18th, both doors were closed, and that's not normally how he would have them when you were coming over?

A No, sir, because he'd always be home.
Q All right. And did you -- and you said it was every Wednesday.
Was it different times or about the same time?
A Around about the same time.
Q Now, when you got there, you said you went up. Did you knock on the door?
A Yes, sir.
Q And, again, June 18th which is a Wednesday, 2014?
A Yes, sir.
Q All right. Did Mr. Willie Johnson answer the door?
A No, sir.
Q So at some point, did you leave and get back in your car?
A Yes, I did.
Q And did you have other deliveries to make?
A Had -- yes, I had to -- other deliveries to make around.
Q Did you come back to Mr. Johnson's house, at all, that day?
A Yes, I did.
Q And did you go up to the house again and knock?
A Yes, I did.
Q Did he answer?

A No, sir.

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

A Uh-huh. (Indicating affirmatively.)

Q Did you leave?

A Uh-huh, I did.

Q And did you come back again?

A I did. Before I actually went in to take the agency cart in after I finished my route of my meals. I did it one more last time before I run the car in, actually at the end of the day, but I still didn't get no answer.

Q So you went back a total of three times on Wednesday at different times during the day, and he never came to the door?

A No, sir.

Q And would you say that was unusual?

A Yes, sir.

Q Had you ever had to come to the door more than once before?

A No.

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

A No, I didn't.

Q He never answered the door?

A No, sir.

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

the third time and knocked and got no answer, what did you do then?

A I left. Went and took the agency cart with his meals, because he wasn't there at the time. And I went and I told my supervisor, which is Ms. Bennett, maybe he had a doctor appointment, maybe he was in the hospital. Because we have so many, you know, elderly people and sometime individuals may have doctor appointments, many things. So she said she would take care of it. And, actually, I didn't hear any more from Ms. Bennett, which is my boss at the time --

Q Right.

A -- until that Saturday what happened.

Q And then you found out that he'd been murdered?

A Yes, sir.

Q When -- at other times when you'd been there and seen Mr. Johnson, had he ever given you any problems or bothered you in any way?

A No, sir.

Q Would you consider him to be a easy-going person and easy for you to talk to?

A Yes, sir.

Q And he was always there any other time you've been there?

A Always.

Q And I'm sorry, your supervisor's name again, was what?

A Ms. Jannette Bennett.

Q And did you let her know that you were concerned because he didn't answer the door?

A Yes, sir.

Q Thank you so much, ma'am, I appreciate it. Please answer any questions Ms. Smart has for you.

MS. SMART-GITTINGS: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Ms. Barron, you met with Agent Merrell from SLED back in 2014?

A Yes.

Q And she asked you for a statement?

A Yes.

Q And you did that on June 24th?

A Uh-huh, yes, ma'am.

Q Now, you wrote in your statement that nothing was out of the ordinary when you arrived at the house, correct?

A Nothing, yes, ma'am.

Q You -- as a matter of fact, you addressed that issue twice.

A Yes, ma'am.
Q Did someone ask you whether or not anything was out of the ordinary?
A When I did the statement?
Q Right.
A Yes, ma'am.
Q And so that's why you answered that question twice?
A Yes, ma'am.
Q Now, you didn't see any papers on the floor?
A No, ma'am.
Q You didn't see any papers in the yard?
A No, ma'am.
Q You didn't see any identification cards?
A No, ma'am.
Q You didn't see a safe?
A No, ma'am.
Q You didn't notice any scuff marks on the porch?
A No, ma'am.
Q The screen door wasn't broken? It didn't look like anybody had tried to break in the house?
A No, ma'am.
Q You didn't see any blood drops?
A No, ma'am.
Q You didn't see any blood?

A No, ma'am.

Q Any bloody prints on the door?

A No, ma'am.

Q Nothing?

A Nothing.

Q It looked just like it would look other than the door wasn't open?

A Yes, ma'am.

Q And Mr. Johnson was a creature of habit, like he would get up and open his door, and his door would be open all day, pretty much?

A Yes, ma'am.

Q So no matter what time you went, that front door would be open?

A Yes, ma'am.

Q And he usually sat outside sometimes, or was he always in the house?

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

Q Did you ever go in his house?

A No, ma'am.

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

A Yes, ma'am.

Q -- and took the meals from the door?

A Yes, ma'am.

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

have any idea who went in Mr. Johnson's house, do you?

A No, ma'am.

Q Okay.

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

THE COURT: Redirect?

MR. THORNTON: Very briefly, Judge.

REDIRECT EXAMINATION

BY MR. THORNTON:

Q Ms. Barron, did you go around and look in all the windows of the house, or did you just go to the front door and knock on it?

A I just went to the front door.

Q You didn't do a search of the yard or back yard or walk back behind the house?

A No, sir.

Q Okay.

MR. THORNTON: I don't have anything further. Thank you, ma'am.

THE WITNESS: Okay.

THE COURT: May this witness be excused?

MR. THORNTON: I'd ask she be excused, Judge.

MS. SMART-GITTINGS: No objection.

THE COURT: Thank you. You may be excused.

THE WITNESS: Thank you.

MR. THORNTON: Jannette Bennett.

Thereupon,

JANNETTE BENNETT

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Good morning, Ms. Bennett.

A Good morning.

Q Ms. Bennett, would you please give your entire name for the record, please?

A Jannette Milton Bennett.

Q Ms. Bennett, in 2014, specifically, June 2014, who did you work for?

A Allendale County Office on Aging.

Q And we just heard from Ms. Barron, Marquita Barron, did she work for you at that time, or were you her supervisor?

A Yes.

Q And is this part of what your responsibilities are, is supervising the meals on wheels program?

A Yes.

Q Do you know or did you know who Willie Johnson was?

A Yes.

Q And how did you know Mr. Johnson?

A He was one of our clients we deliver home delivered meals to every day.

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

A That's correct.

Q At some point on Wednesday, June 18, 2014, did Ms. Barron come in and tell you that she was unable to get Mr. Johnson to come to the door, and he wasn't there to pick up his meals, or at least he didn't come to the door?

A Yes.

Q And did that concern you, ma'am?

A Yes.

Q Was it unusual?

A Yes.

Q All right. Did Mr. Johnson normally -- was he normally there to receive his meals?

A Yes.

Q Are you aware of any other time that he wasn't there on Wednesdays to get his meal?

A No.

Q What did you do once Ms. Barron came in and let you know that Mr. Johnson had not come to the door any of the times she'd been there?

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

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

Q Who did you call?

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

Q And did you get any answer?

A No, sir.

Q Was it -- did it just ring and ring, or was it a busy signal?

A The phone line was busy.

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

A More than once.

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

A Always busy, no answer.

Q Did you call him again?

A I did.

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

A I did.

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

A No answer, still busy.

Q Thank you so much, Ms. Bennett. I appreciate it. If you'll please answer any questions that Ms. Smart has.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

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

able to get in touch with Mr. Johnson?

A After I called and his line was busy, that was on Wednesday, on Thursday morning, I arrived at work and I told one of the staff that Mr. Johnson was on my mind. I looked in his file. I got his niece telephone number. I called his niece. I explained to her who I was, who I worked for, and that Mr. Johnson did not receive his meals on Wednesday, the day before.

Q And do you have -- how many numbers on file do you usually have for your clients?

A Two.

Q Was that -- that was just the first number that you called?

A Yes, his niece.

Q Okay. But you didn't call anyone else besides his niece?

A No.

Q You didn't call his son?

A No.

Q Thank you.

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

THE COURT: Any redirect?

MR. THORNTON: None, Your Honor. I'd ask she be excused.

THE COURT: Ms. Bennett, you are excused. Thank you, ma'am.

THE WITNESS: Thank you.

THE COURT: All right.

MR. THORNTON: Dr. Janice Ross.

Thereupon,

DR. JANICE ROSS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Dr. Ross, if you would, please give your full name for the record.

A Janice Edwards Ross, R-O-S-S.

Q Dr. Ross, can you tell me both right now and in 2014, June of 2014, who do you work for?

A Newberry Pathology Associates in Newberry, South Carolina.

Q And I've called you, of course, by your correct title which is doctor.

What are you a doctor of?

A Pathology.

Q All right. And could you explain to the jury what a doctor of pathology does?

A Sure.

We have -- I'm a medical doctor. I have an MD from Upstate Medical Center in Syracuse, New York. I went to the University of South Carolina before that. A pathologist as opposed to a surgeon or a pediatrician goes into a specialty where we identify cancers, leukemias, different diseases that people have. And we look at tissue under the microscope, for one thing, in order to do that. We learn how to do an autopsy to find a cause of death.

Further, a forensic pathologist, certified forensic pathology, the word forensic means legal. So we use our pathology knowledge in legal matters. We learn how to do a legal, forensic autopsy in determining the cause of death by identifying patterns of injury, photographing the injuries and taking the materials for the purpose of the court of law and submitting them to -- usually to SLED.

Q Dr. Ross, thank you. We'll -- speaking with co-counsel, I'll try to speed this up, so we won't have to go through your whole CV. I know sometimes we have to do that.

How long have you been a forensic pathologist?

A Since 1985, but I've been doing forensic autopsies since 1976.

Q All right. And have you ever been qualified as an expert in the courts of South Carolina and/or other states before?

A Yes.

Q Approximately how many times?

A Over 150 times.

MR. THORNTON: Your Honor, at this time I'd ask that Dr. Ross be recognized as an expert in the field of forensic pathology.

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

THE COURT: Okay. Ladies and gentlemen of the jury, normally a witness is not allowed to give their opinion but in very limited circumstance. However, a person because of their education or their experience or a combination of the two, if they develop an expertise in a certain area that would be helpful to you, the jury, they're allowed to give their opinions in their area of expertise.

In this case it is stipulated that Dr. Ross is an expert is in the field of forensic pathology. She will be allowed to give her opinion in that area. I will tell you that expert testimony is like any other testimony you will hear in this case. You may accept it, reject it or give it as much weight as you think that it deserves.

All right, sir.

MR. THORNTON: Thank you, Your Honor.

DIRECT EXAMINATION OF DR. ROSS BY THORNTON

BY MR. THORNTON:

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

A Yes.

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

A Yes.

Q And is it 86-years-old?

A Yes.

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

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

Q If I could stop you, Doctor, briefly. I'm going to hand you what's been marked as State's Exhibit Number 9 for identification, or at least show that to you.

Can you identify what that is a picture of?

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

stained T-shirt.

Q And is that a fair and accurate depiction of how he appeared when you were performing your autopsy?

A Yes.

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

A No, it does not.

MR. THORNTON: Your Honor, I'd ask that State's Exhibit Number 9 be introduced into evidence.

THE COURT: Any objections to Number 9?

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

THE COURT: It is admitted.

(Whereupon, State's Exhibit No(s). 9 marked for identification and received in evidence.)

BY MR. THORNTON:

Q Doctor, I believe this is what you're referencing, is Mr. Johnson, he has a -- what appears to be a plastic bag, is that correct, that's been tied around his head or placed around his head?

A That is correct.

Q And you indicated his blood-soaked T-shirt. Is that where the blood pooled? If he was -- obviously, when he was found it was -- the jury has seen photographs -- face down, so that's where the blood would have collected?

A Yes.

Q I'm going to hand you what's been marked as -- or show you State's Exhibit 10.

A Yes.

Q And is that a photograph of -- first of all, do you recognize that photograph?

A Yes.

Q And what is it of, ma'am?

A It's a -- of Willie Johnson after we'd taken the clothes off, before we cleaned all of the blood off of him.

Q And is that an accurate depiction of how he appeared to you prior to you doing any cleaning of his face or head?

A Yes.

Q And has it been altered or changed in any way?

A No.

MR. THORNTON: Your Honor, I'd ask State's 10 be moved into evidence.

MS. SMART-GITTINGS: Without objection.

THE COURT: Admitted.

(Whereupon, State's Exhibit No(s). 10 marked for identification and received in evidence.)

BY MR. THORNTON:

Q This is where, I think, Doctor, some of the evidence of injury that I would ask you to talk about.

State's 11 and 12, are those photographs that

you recognize?

A Yes.

Q And are both of those photographs of some of the evidence of injury that you found while you were examining him?

A Yes.

Q And are they true and accurate depictions of what you found in your autopsy?

A Yes, they are.

Q Been altered or changed in any way?

A No, they have not.

MR. THORNTON: Judge, I'd ask State's 11 and 12 be moved into evidence.

THE COURT: Any objection?

MS. SMART-GITTINGS: Without objection.

THE COURT: Admitted.

(Whereupon, State's Exhibit No(s). 11-12 marked for identification and received in evidence.)

BY MR. THORNTON:

Q I'm sorry to have interrupted you, Doctor. If you would, please, go through to the process as you're looking for the evidence of injury what you found that was relevant on Mr. Johnson.

A Yes. The other thing, besides the plastic bag over his head, we found that his wrists were tied so that

his hands were behind his back. The wrists were tied with something that looked like a shoelace wrapped around the wrists several times. He had on a jump suit and underwear.

And then we -- we then take all his clothes off and looked -- look at him externally to identify any further injuries or any evidence of natural disease. We take photographs front and back. And then we proceed with the internal examination.

Q And what were your findings as far as the external or internal, as to the head, what, if any, injury did you find?

A There were multiple injuries. There was bruising around the right eye. And once we deflected the scalp, underneath the skin we found bruises on the right -- I'm sorry, the left temple area and the left frontal area of the scalp. We found this laceration (indicating) of the lower lip was consistent with his teeth actually going through his lip from blunt force injury of the mouth. The piece of skin, it's called a frenum, inside the lip on the top, that was lacerated also. And that's consistent with being hit in the mouth or having very hard pressure against the -- the mouth.

We found that he had two or three fractures of the ribs on the left, ribs number seven, nine -- seven, eight and nine. And he had some bruising around the left

collarbone.

Q Would it be fair to say, Doctor, that all those injuries would be consistent with what is commonly referred to as blunt force trauma?

A Yes.

Q And as part of your autopsy findings, Doctor, do you look for the -- what's called the cause and manner of death?

A Yes.

Q And were you able to determine a cause of death in this case?

A Yes.

Q And what was the cause of death?

A The cause of death was asphyxia, which means to be without oxygen due to smothering.

Q And I know this sounds like a dumb question, but is that, in your medical opinion, a result of the bag being placed over the head or consistent with the bag being placed over the head and oxygen being cut off?

A Or it could -- that, plus it could be from something being over his mouth and nose, like a hand or something that would put so much pressure on his mouth that -- that he couldn't -- mouth and nose that he couldn't breath plus the bag.

Q And what are some of the other things you look for

to determine asphyxiation? Again, you've got the obvious sign, which is there's a bag over his head. What other things did you find on Mr. Johnson that would indicate that he died, basically, from being smothered to death?

A In the white of the eye we found what's called Petechia, the little red dots, and they indicate like there's been a lot of pressure on blood vessels below the eyes. So that pressure builds up in the blood vessels and blood cells are allowed to leak out of little capillaries, little tiny vessels. And they -- they are visible to the eye as little red dots.

Q And you said "pressure," forgive me for trying to kind of break it down so I understand what you're saying. Is that consistent with like choking or pressure being placed on the neck?

A Yes. It's mostly from the neck, from -- from closing off of the veins, the jugular vein, you've heard of, which allow blood to come down from the -- from the brain and from the face to the heart.

Q Now, you've talked about what the cause of death is, Doctor. You've talked about blunt force trauma, the lacerations. And I don't know that you used this word, but I believe that the internal under the skin bruising, is that subdural hematoma? Is that -- or am I picking the wrong word?

A The sub -- underneath the scalp, the subgaleal, it's -- it's just an anatomic position. But internally in -- around the brain itself there was indeed some blood in a couple of spaces. So that -- indicating that his head had -- he had been beaten. His head went back and forth a little bit at some point.

Q And, Doctor, the other thing that I asked you earlier was, in addition to cause of death, one of the things that you generally do is also find a manner of death; is that correct?

A Yes.

Q Were you able to find a manner of death based on everything you had been provided as well as the medical examination?

A Yes.

Q And what was it?

A Homicide.

Q Doctor, as part of your --

MR. THORNTON: The Court's indulgence one moment, please, Judge.

BY MR. THORNTON:

Q Doctor, as part of your autopsy, both in general and specifically with Mr. Johnson's autopsy, do you take vials of blood, what would be called the blood standard or a blood sample?

A Yes.

Q And did you do that in this case?

A Yes.

Q And was it properly sealed and turned over to agents with the South Carolina Law Enforcement Division?

A Yes.

Q And I'm not going to put you on the spot, if you don't remember. But if you do, do you recall the agents?

A Mr. Schenk and a female, Hezel.

Q All right. Schenk and Hezel?

A Yes.

Q All right. But you turned that blood over to law enforcement, and it was in a properly sealed container that followed all your normal protocols; is that right?

A Correct.

MR. THORNTON: Your Honor, Court's indulgence, please.

Doctor, thank you very much, ma'am. I have no further questions. If you would, please answer any questions that Ms. Smart has for you.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Doctor, you also took fingernail clippings from Mr. Johnson as well, didn't you?

A Yes, I did.

Q And you turned that over to SLED?

A Yes.

Q And why did you take his fingernail clippings?

A Just to indicate -- find out if there was -- if there were a fight or something that some skin or cells from the perpetrator could be underneath the fingernails, and they could do DNA on that.

Q Okay. So you took the fingernails and sent that to SLED so that they could test it to maybe find out the identity of the person who afflicted those injuries on Mr. Johnson?

A Yes.

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

THE COURT: Redirect?

MR. THORNTON: Just one question.

REDIRECT EXAMINATION

BY MR. THORNTON:

Q Doctor, related to what Ms. Smart asked you. I didn't notice in your report, did you see any on Mr. Johnson's hands what would be called defensive wounds, things that you would commonly associate with any type of drawn-out struggle or anything?

A No, there were no injuries on the hands.

THE COURT: Anything from the defense?

MS. SMART-GITTINGS: Nothing, Your Honor.

THE COURT: All right. 2:30.

(Lunch recess.)

THE COURT: Please be seated.

Mr. Thornton, you ready for the next witness?

MR. THORNTON: Yes, sir. We are ready, Your Honor and I would say that as before, I've shown some photographs that I'll be introducing that are State's Exhibit 13 through State's Exhibit 27, which are all photographs mostly of the crime scene. There's a couple of other ones in there. I have shown them to defense counsel. She indicates that she has no grounds for the objection. And State's 28 is the crime scene diagram prepared by SLED. Crime scene photos, one of which is my first/next witness. And Ms. Smart-Gittings has stated no ground for objection as to that. And we have other things to take up as witnesses go, but I believe that everything has been agreed to as far as no grounds for objections.

THE COURT: Is that correct?

MS. SMART-GITTINGS: That's correct, Your Honor.

THE COURT: So Exhibits 13 through 28 are admitted into evidence at this juncture without objection.

MR. THORNTON: Brittany Burke.

Thereupon,

BRITTANY BURKE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Would you please state your entire name for the record?

A My name is Brittany Nicole Burke.

Q And would it be proper to call you at this time Agent Burke?

A Yes, it would.

Q And who do you work for, Agent Burke?

A I'm currently employed by the Tennessee Bureau of Investigation.

Q Is that also known as TBI?

A Yes, it is.

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

A I worked for the South Carolina State Law Enforcement Division also known as SLED.

Q Okay. What do you do for the Tennessee Bureau of Investigation?

A I work as a criminal investigator in the criminal investigations division.

Q And does that lend itself to you going out to crime scenes fairly frequently?

A Yes, it does.

Q And what did you do when you worked for SLED?

A I worked as a special agent in the crime scene unit.

Q And as part of your duties in a crime scene unit, what sorts of things would you do?

A I would respond to the crime scenes at the request of other local, state and federal agencies, and process the scene and collect evidence in relation to the crime in question.

Q And would you do things like take photographs?

A Yes, I would document the scene with photographs, notes, a sketch, and then identify and collect any items of evidence that were there.

Q And let me ask you this, have you as a crime scene -- would crime scene analyst, would that be a proper term?

A It would be.

Q And have you ever been qualified as an expert in the field of crime scene analysis?

A Yes, I have.

Q And has that ever been in the state of South Carolina?

A Yes.

Q And have you ever testified before as an expert in crime scene analysis?

A Yes.

Q How long did you work for SLED in crime scene analysis?

A Approximately three and a half years.

Q And how many crime scenes do you think that you visited?

A Well over 100.

MR. THORNTON: Your Honor, at this time I'd ask that she be declared an expert in the field of crime scene analysis.

THE COURT: Objection?

MS. SMART-GITTINGS: No objection.

THE COURT: No objection?

All right. Ladies and gentlemen, if you recall, I told you normally witnesses are limited to not giving their opinion about what they saw, they felt, they heard, they smelt. In this case, this witness has been stipulated to be an expert in crime scene analysis. She will be allowed to give her opinion in that area. Expert opinion is just like any other testimony you will hear, you may accept it, you may reject it or give it as much weight as you think it deserves.

All right, Mr. Thornton?

MR. THORNTON: Thank you, Your Honor.

Your Honor, to save some time, I'm going to do this in bulk, with the Court's permission.

THE COURT: They have been admitted at this juncture, have they not?

MR. THORNTON: They have, Judge, but I did want to lay at least a brief foundation so that the jury knows where they all came from.

THE COURT: I understand.

MR. THORNTON: Thank you, Judge.

BY MR. THORNTON:

Q I'm going to hand you a very large stack of photographs. It is State's Exhibit 13 all the way through State's Exhibit 28, and ask you just as a group if you can identify whether or not you are familiar with these photographs?

A Okay. (Witness reviews documents.)

Yes, I am.

Q All right. And before I ask you about those, as part of your duties with SLED in June 2014, did you have occasion to visit a crime -- actually, several scenes, but specifically a crime scene at [redacted] here in Allendale?

A Yes, I did.

Q And was that involving the murder of Willie Johnson?

A Yes, it was.

Q And did you also go to, at some point, the home of Robert Miller's mother?

A Yes, I did.

Q And are those items, are those photographs and I believe one crime scene sketch, are those all in relation to your trips to those various locations involved in this case?

A Yes, they are.

Q Okay. Are they all accurate representations?

A Yes.

Q Have they been altered or changed in any way?

A No, they have not.

Q All right.

MR. THORNTON: Your Honor, at this time -- I believe they are in evidence. Just for the record purposes I'd ask that State's I believe it's 13 through 28, Your Honor, be admitted into evidence.

THE COURT: Admitted without objection.

MR. THORNTON: Thank you, Judge.

BY MR. THORNTON:

Q Let's go through -- if you don't mind, let's just go through them one at a time. I'll start with State's 13. If you would, go through that photograph -- and are you

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

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

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

A Yes. Special Agent Tiffany Hezel and Special Agent Todd Schenks traveled with me to these locations.

Q And, specifically, Agent -- and you said, Hezel, I always say Hazel (phonetic), I've probably gotten that wrong a number of times -- do you think it likely that Special Agent Hezel will be joining you to testify?

A No, she will not.

Q And why is that?

A She is on her honeymoon in California at the moment.

Q And is that why I brought you in from Tennessee to testify?

A That is.

Q All right. If you would, please, ma'am, go through -- we've got -- if we could do State's Exhibit 13 up here, Mr. Hutto -- is this the scene at [redacted]?

A Yes, it is.

Q All right. And could you go through what you did

as relates to what you found in this photograph and what was relevant to you?

A Yes. In this photograph you can see -- we photographed the scene taking this photograph, which represents the victim. There's part of his dentures, is what we believe to be his dentures, up in the corner by what appears to be a wallet with some papers in it there. All of which was collected.

Q And to your knowledge and while you were doing your scene investigations, did -- was he bound in that fashion and had the bag tied over his head when y'all got there?

A Yes, when we -- this was exactly how the victim was positioned upon our arrival.

Q All right. I'm going to ask you -- State's 14, Mr. Hutto -- just go ahead and, if you would, explain State's 14.

A This is a close-up photograph. It just better shows the piece of denture and the wallet that were represented in the last picture just above the head of the victim.

Q Now, that's not the only place that you found pieces of his dentures, was it?

A No, it was not.

Q Bring to your attention to State's Exhibit 15, if

you would go through that one?

A This is a picture of a piece of denture that was located on top of the TV stand that was located just right next to the victim.

Q State's Exhibit 16?

A This picture was taken after the victim was moved and rolled over, so we could see what was underneath of him. It -- the -- this object that you see underneath, just kind of where the shirt is unbuttoned, is a tie with -- a black tie with a white glazed-in color pattern that was located underneath him.

Q We'll do 17 and 18 together. Is that the way that you found the victim's phone when you entered the house?

A Yes, it is.

Q And if we could go to 18 as a close-up? So without belaboring the point, when you photographed that and found that, the victim's phone was off of the hook; is that correct?

A Yes, that's correct.

Q And State's 19, if you would explain that picture, please?

A This picture shows the wall. If you see the certificate of appreciation there on the wall, the victim was located just below that. That's the wall that was behind him in the previous pictures. The area where there

is tape, it's scale tape actually on the wall there, is an area of suspected blood that we observed on the wall that we put tape up to mark there.

Q And any time that you find anything that would appear to be suspected blood, especially, do you generally put that tape up?

A We generally put the tape up to show the area, the size of the area where the suspected blood is and to show it in relationship to the other items.

Q And while I've got you talking about blood. Do you do what they call presumptive tests for blood?

A Yes, we have the ability to do presumptive tests for blood while we are on a scene.

Q And what do you do and what do you use and how does it work?

A For something like a wall or a large area we use LCV, which is known as liquid crystal violet. It reacts with protein that are in blood. It's a kit that we get. We mix all the chemicals together in a spray bottle, and we spray it on the area. It turns a purple color when it reacts, when it has a positive reaction, with something that is presumably blood.

Q Let me ask you State's 20?

A This is a photograph of the TV -- the TV that was located in the TV stand right next to the victim. All of

these scale tape that you see on there is marking areas of suspected blood that were located on the TV.

Q State's 21?

A This is a piece of paper, it was located next to the area where the phone was off of the hook, that has suspect blood splatter on the paper.

Q State's 22?

A This is an area where there -- there was suspected blood transferred on to a wall in the dining room area going in towards the kitchen.

Q Let me ask you another question. I see that there is a trash can located in that photograph; is that correct?

A That is correct.

Q And, obviously, the victim in this case was found with a black trash bag over his head?

A That is correct.

Q All right. And did the SLED crime scene folks, did y'all do a search of the residence? As you were going through, did you find anything or any boxes or any containers that would have contained a trash bag consistent with the one that was wrapped around his head?

A No, we did not. The one wrapped around his head was a black trash bag with a yellow drawstring. We did not find any trash bags that were consistent with that or boxes of trash bags that are consistent of that -- with that

trash bag at the residence.

Q I'm going to -- a couple of these are going to be out of order. I'm going to ask you about State's 24.

A This is suspected blood that was located at Marker H. And this blood has actually got what appears to be, or appeared to be at that time, ridge detail that is in the suspected blood.

Q All right. And when you say "ridge detail," explain that to me in regular people terms. What does that mean?

A Ridge detail means that -- all of the little lines that are on your hands form ridges and those are what make up your fingerprints. And they can be transferred through a substrate on to another sub -- or through another substance on to another substrate, which means that if there's something on your hands and you touch it, then they can be transferred to that other item.

Q All right. Well, let me ask you this. Can -- for instance, let's say that I have touched and left a palm print on a wall and later on blood gets thrown on top of that print, will that form a, for lack of a better word, a bloody palm print?

A No, it will not. If there's not -- blood does not adhere to palm prints in that fashion like a fingerprint dust or something like that would.

Q So in order to get, if that is in fact a ridge detail or a palm print in blood, if that's what that is, there are -- what are the ways that that would -- it seems like there'd be a pretty limited way on how that could get there.

A There would be. It would have to be by a substance being on the hand or suspected blood being on the hand and touching the wall. Because, if you think about it, if you paint your hands and you touch something, then you leave those ridges there. The blood -- we know the blood wasn't already there because if you touch the blood or if you touched paint and then you picked it up, then it would pick up that part of the paint. And since you can clearly see ridges in this, then you know that they are on the hand when the hand was placed on the wall.

Q Let me show you State's 23. And I'm not sure if you can read that, but is the H that you just talked about, is that in that photograph?

A Yes. The H is the -- if you're looking at the monitor over there -- it is the farthest one to the left on the top.

Q All right. So this would be a far away shot of the H that you just showed us in the previous, I believe, State's 24?

A That is correct.

Q And it -- the wall now looks like it has violet or purple all over it.

Is that the LCV that you talked about?

A Yes, that is.

Q I'm going to show you what's been marked as State's 27. Can you tell me what that is?

A This is Marker H that we looked at in the previous picture, and this is after it had been processed. The -- and the processing allowed us to see the ridges clearer and more definitively to determine that it was ridge detail in the suspected blood.

Q Now, after spraying that with the LCV it has a -- when it turns purple like that, would you explain what that means again?

A Yes. The purple is the LCV reacting with the proteins in the suspected blood, meaning that it did test positive as a presumptive test to the blood that was located on the wall there.

Q And did you do anything else with what appears to be a print of some kind in what is suspected blood now or presumptively blood based on your LCV test? Did you do anything else with it?

A After we photographed it and then sprayed it with the LCV for the presumptive test and photographed it again, we collected swabs of the presumptive blood to be sent to

the laboratory for testing.

Q And since defense counsel and I have already talked about this, to save a little time, were those labeled as SLED Item 35 and collected by you and Tiffany Hezel and Todd Schenks while you were at the crime scene?

A They would have been labeled at the crime scene as two swabs of suspected blood, taken to a lab, logged in where they would have been given Item No. 35. And then from there sent for further testing at another department.

Q All right. And that would have gone to the DNA department?

A That is correct.

Q Okay. And did you follow all of the protocols that are required when you are collecting swabs?

A Yes, we did.

Q All right. And were those swabs properly labeled and then transported to SLED and logged in?

A Yes. They were collected, labeled, sealed and then transported and logged in.

Q I'm going to show you what's been marked as State's 25, and ask you if there's any significance to that photograph or what it conveyed to you when you were there?

A This photograph is of a, for lack of a better word, a box that contained silverware that had been opened and everything was disheveled and dismantled in it.

Q Basically, it looked like it had been gone through?

A That is correct.

Q I'll hand you State's 28. All right. Can you kind of go through where the front door is and all that, and just kind of what you did as you went through the rooms?

A I can.

The front door is on the long wall at the bottom. You can see the house kind of juts out, and there's a long wall in the middle. The front door's the door that's depicted on there. As you walk straight in the front door there's a TV stand on the left, and the victim is positioned straight in front of the door there. If you turn down to the bedrooms towards the left, there's a small hallway which would have been where the phone was located off of the hook and two bedrooms. Back off the living room on the other side was a dining room and off of that was the kitchen. Towards the back of the house from the living room was a back room and a third additional bedroom there.

Q All right. Let me ask you, at some point did you -- I mentioned this earlier to you and you confirmed it -- at some point, did you go out to [redacted] in Allendale, the home of Robert Miller or his mother?

A Yes, I did.

Q All right. I'm going to ask you about State's

Exhibit 26.

A Okay. This is a picture that depicts a box of black drawstring trash bags with yellow drawstrings that was found at that residence.

Q All right. And would that -- would that -- would the trash bags that were -- actually appear on the front of that box, would those be consistent with the trash bag that was wrapped around the victim's head?

A They are consistent in appearance with the bag that was found around the victim's head.

MR. THORNTON: Your Honor, Court's indulgence, please.

Okay. Just a couple more questions. If we could bring up the crime scene sketch, please, I'm sorry, I don't what -- it's Exhibit 28 for the record, Judge.

BY MR. THORNTON:

Q As we're looking at Exhibit 28 can you describe for me, if the victim is laying here so -- there was a piece of the dentures that was on top of the television as well as next to him; is that correct?

A That is correct. There was a piece laying on top of the television there. And if you go back to where the wall juts out just slightly, above the head of the victim there where -- on the other side of the door frame there --

Q Right there (indicating)?

A -- right there, it was located just to the right of that, on the floor was another piece of dentures.

Q Okay. And that -- it says Marker H, ridge detail in what is suspected to be blood. That is marked in that same area; is that correct?

A That is correct.

Q And that's where the -- the ridge detail being what would appear to be a print of some kind?

A That is correct.

MR. THORNTON: Your Honor, I believe that's it. I would -- she's going to remain with me, I know, until the end of today before driving back. Obviously, I would ask her to be subject to being recalled in case I missed something. But I think that's it.

Thank you very much, ma'am. If you'd please answer any questions that Ms. Smart has for you.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Agent, you executed a search warrant on the Bynum house, Bynum's house?

A Yes, ma'am.

Q But when you went there, Robert was not there, correct?

A That is correct.

Q And you didn't find any of Mr. Johnson's belongings in the house, did you?

A No, ma'am.

Q You didn't find any of the silverware that was depicted in the picture, that wasn't there?

A No, ma'am.

Q No information from Mr. Johnson's wallet was at the Bynums' house, correct?

A No, ma'am.

Q And, in fact, Ms. Bynum has two sons that were charged with this crime, right?

A I do not know the names of --

Q You don't know the other two suspects?

A I know that -- I know who they are, I do not know the relationship there.

Q Okay. Now, when you -- the photo of the trash bag. Trash bags don't have individual characteristics, do they?

A They're -- they do not have individual characteristics based on one trash bag to the next, no.

Q Correct.

And so that box that you had a picture of does not -- you cannot testify that the trash bag that was found over Mr. Johnson's head came from that box that was at Ms. Bynum's house, can you?

A No, I cannot.

Q You can't identify the trash bag or the box, even, with Robert, can you?

A No, I cannot.

Q And, in fact, many stores carry black trash bags with a yellow tie, yellow string, strap, piece?

A Yes.

Q That's nothing unusual?

A No, it is not.

Q And you are not saying that you know anything about this particular Robert Miller, correct? It's not your testimony? You're not saying that you know that he did this or anything like that?

A I am just testifying as to what evidence was collected at the crime scene.

MS. SMART-GITTINGS: Okay. Thank you. I have nothing further.

THE COURT: Redirect?

MR. THORNTON: None, Your Honor. Again, just subject to recall if she doesn't mind hanging out with us for just a couple more hours. I don't want to lose her back to Tennessee and then try to get her back.

THE COURT: All right. Thank you, ma'am. Could you stick around with us, please, ma'am?

THE WITNESS: Yes, sir.

THE COURT: But you will remain sequestered.

THE WITNESS: Okay. Thank you.

MR. THORNTON: Todd Schenk.

Thereupon,

TODD SCHENK

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Mr. Schenk, good afternoon.

A Afternoon.

Q Mr. Schenk, let me ask you a quick question. Would you, please, state your full name, for the record?

A Yes, sir. My name is Todd Matthew Schenk.

Q Mr. Schenk, who do you work for?

A I would the South Carolina State Law Enforcement Division, which is also called SLED.

Q And did you work for SLED back in June of 2014?

A I did.

Q And did you respond out along with -- and I think I will pronounce her name right this time -- Tiffany Hezel and with Brittany Burke?

A I did.

Q And, in fact, did you all go to several different

locations here in Allendale investigating the scenes involved with the Willie Johnson murder?

A We did.

Q I'm going to hand you -- we'll start with the small one first -- Exhibit -- States 29, which has been marked for identification.

Can you identify what that is for me?

A Yes, sir. This is marked as Container O, which -- may I refer to my notes?

Q Yes, sir.

A -- Container O -- yes, sir, I apologize for taking so long.

Q That's okay. I was going to help you out.

A Thank you.

Q We were getting it out.

What are those items in Container O, which is a clear plastic envelope?

A Actually, it's -- inside there -- or small manila envelopes and it's marked with Item No. 48.1 -- and there it is -- and Item No. 48 itself was the blood standard of Mr. Willie Johnson.

Q All right. There's a blood standard of Mr. Johnson.

Is there also a 46 and 47 in there, which are fingernail clippings, all of which would have been collected

by you at the autopsy?

A The fingernail clippings would have been taken by the pathologist, but we would have taken custody --

Q Yes, I didn't mean you physically took it.

A Oh, okay.

Q Did you take all of those things from the pathologist, you along with Agent Hezel, and then transport them to SLED?

A Yes, that is right.

Q And were those items in your care, custody and control? And did you and Agent Hezel, then, get them logged into evidence at SLED?

A They would have been in Special Agent Hezel's custody --

Q Right.

A -- but, yes, they were. And we logged them all in at SLED.

Q And you logged them all in to SLED. And you were there with the pathologist and Agent Hezel when all this stuff was turned over --

A Yes, sir.

Q -- is that correct?

Okay. And did follow all proper protocols -- did Agent Hezel follow all proper protocols with getting them sealed up and logged into evidence?

A Yes, sir.

Q All right. And are they -- actually, have come back now after testing and everything is still sealed up in a SLED evidence bag; is that correct?

A Yes, all -- there are -- it is sealed all the way around.

Q And does it have various signatures from people at SLED who have tested it or done things to it?

A Yes, sir, it does.

Q All right.

THE COURT: Your Honor, at this time, unless there's an objection, I'd ask that State's 29 be moved into evidence, which is the blood standard of the victim, as well as the fingernail clippings.

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

THE COURT: Admitted.

(Whereupon, State's Exhibit No(s). 29 marked for identification and received in evidence.)

MR. THORNTON: Your Honor, at this time I will, with Court's permission, approach?

THE COURT: Sure.

BY MR. THORNTON:

Q Show you what's marked as State's 30. And I believe that it's got Items 63 and 64, and it's marked as Container, I believe, L or one of the Container Ls.

Can you tell me what's inside that box. And please don't open it, if there's a way for you to look at your inventory list and tell me what it is.

A Yes, sir.

In Container L, it would contain Items No. 63 and 64, which is one black plastic bag from around the head of Willie Johnson, and one white string from around the wrist of Willie Johnson.

Q All right. Now, obviously, the jury has seen the photographs in this case, although, you were not in the room.

Is that why it's marked with a pink sticker that says biohazard, meaning there's obviously blood?

A Yes, sir.

Q All right. And if we opened this box, it would --

A Yes, sir.

Q -- likely be unpleasant?

A Yes, sir.

Q All right. I'm going to ask you what's been marked as State's Exhibit 31, if you can identify what is in that box?

A Yes, sir. That should be Container K.

Q It is Container K, and it would appear to have Items 55, 56, 57, 58, 59, 60 and 62.

A Yes, sir. So Items 55 was the broken dentures of

Mr. Willie Johnson. Items No. 56 was a white Hanes undershirt, it was size large, from Willie Johnson. Item No. 57 was one blue Dickey's jump suit, size large and tall, from Willie Johnson. Item No. 58 was one pair of green boxers from Willie Johnson. And Item No. 59 was one pair of brown socks from Mr. Willie Johnson. And No. 60 was one pair of black workload boots from Willie Johnson. And Item No. 62 was one white handkerchief and a napkin -- or one white handkerchief and napkin/paper towel from Mr. Willie Johnson.

Q As with State's 29, did State's 30 and 31 get turned over at the autopsy to Agent Hezel as well as yourself, and were those items then transported, sealed and then put into SLED evidence?

A Yes, sir, it was.

Q And are they still in sealed condition today?

A Yes, sir, they are.

MR. THORNTON: Your Honor, basically, because of the -- the fact that these, basically, are the victim's blood soaked clothes as well as the dentures, I am going to ask that they be moved into evidence. I'm not going to open them at this time. Obviously, if the jury wants to open them at some point, we can make arrangements and give them gloves and all that. But I don't see the need to open them,

but I would ask that they be moved into evidence.

THE COURT: Any objection to the admission?

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

THE COURT: Any objection to the procedure outlined by Mr. Thornton?

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

THE COURT: All right. They are admitted.

You may proceed.

MR. THORNTON: Thank you, Your Honor. The Court's indulgence, please.

(Whereupon, State's Exhibit No(s). 30-31 marked for identification and received in evidence.)

BY MR. THORNTON:

Q And just to -- sometimes I use terminology, and, frankly, use it incorrectly.

One of the things we talked about in State's 29 that you mentioned was a blood standard, and that's basically the known blood sample that is collected from, in this case, the victim, Willie Johnson at autopsy and provided to you that you then transport along with Agent Hezel to SLED?

A That is correct.

Q Okay.

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

Agent Schenk, if you'll, please, answer anything

that Ms. Smart has.

THE WITNESS: Yes, sir.

MS. SMART-GITTINGS: I don't have any questions of Agent Schenk.

THE COURT: No questions.

MR. THORNTON: All right. Ashley Bell -- I'm sorry, Judge, I got ahead of myself. I ask that he be excused, but I would ask that he stay with me, I think they're all traveling together, until we make sure we don't need anything else.

THE COURT: Very good.

Any objection to that, Ms. Smart?

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

THE COURT: So you're excused.

Thereupon,

ASHLEY BELL

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Ma'am, would you, please, tell me your full name for the record?

A It's Ashley Bell.

Q And Ms. Bell, is it okay to call you Agent Bell?

A Yes.

Q All right. And who do you work for?

A The South Carolina State Law Enforcement Division, more commonly referred to as SLED.

Q And what do you do for SLED?

A I am a drug analyst at SLED.

Q And in 2014, specifically June 2014 until now, have you been employed by SLED?

A Yes, I have been.

Q I'm going to ask you -- this is actually already in evidence and this may be the shortest testimony you've ever given -- but State's 29, I believe your name is on the front of that bag?

A Yes, sir, I recognize the package. It has my initials, the date that I sealed it as well as the unique SLED lab number.

Q In this case, the case that we are here about today, the murder of Mr. Willie Johnson, can you tell me what you did in relation to this case as far as preparing anything for analysis?

A Yes.

I would have stabilized the liquid blood samples of the victim onto a sterile piece of paper and dried that in a sterile hood and then packaged it into this envelope to give to the DNA analyst.

Q So, basically, you took the known blood sample

that had been turned over from the autopsy. You created a -- and I know you corrected me on this earlier, when I asked you -- it's not a slide, but it's a piece of paper, and you created a standard to be compared with anything else that an analyst needed to compare it against; is that correct?

A That is correct.

Q You didn't go out to the crime scene. You didn't do anything else with this. You were there preparing and assisting in the lab; is that right?

A That's correct. I did not go out to any crime scenes. I simply stabilized the blood sample in the lab.

MR. THORNTON: I have, Judge, nothing else for Ms. Bell. Same thing, though, I'd ask, she's traveling with the other SLED folks, ask that she remain with us.

But please answer any question that Ms. Smart has.

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

THE COURT: Thank you, ma'am. You are excused from the hearing. If you would please stay with us, please, ma'am.

MR. THORNTON: Jennifer Bartman.

Thereupon,

JENNIFER BARTMAN

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

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Could you please state your full name for the record?

A My name is Jennifer Bartman.

Q And who do you work for?

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

Q And what do you do for SLED?

A I am currently assigned to the DNA casework department where we receive evidence from crimes that happen all over the state of South Carolina. We perform DNA analysis on the evidence as well as known standards, and we make comparisons between them.

Q And how long have you worked for SLED as a DNA analyst?

A I have worked there since October of 2012.

Q And what sort of training do you get when you're doing DNA analyst work? In other words, what qualifies you to be a DNA analyst?

A I have a bachelor's degree in biology, and I also have a master's degree in forensic science with a concentration in forensic biology. And I also received approximately a year of training at SLED by a court

qualified analyst in the proper techniques and procedures of the laboratory.

Q And as a DNA analyst, do you analyze known standards against unknown to try to determine if the DNA matches or doesn't match, those sorts of things?

A Yes. We make comparisons from known DNA standards that are submitted to evidence that are submitted from a crime.

Q And how many samples do you think you have performed tests on since you've been at SLED?

A I have worked hundreds of cases, so hundreds of samples.

Q And have you ever been qualified as an expert in the state of South Carolina to testify in court?

A Yes, I have.

Q And was that as an expert in DNA analysis?

A Yes, it was.

MR. THORNTON: Your Honor, at this time I'd ask that she be qualified as an expert in the field of DNA analysis.

MS. SMART-GITTINGS: No objection.

THE COURT: All right. Ladies and gentlemen, I'll remind you about expert testimony. This expert has been stipulated to be an expert in DNA analysis. Again, you are to treat it like any other testimony

you will hear in this case. You may accept it, reject it, give it as much weight as you think it deserves.

MR. THORNTON: Thank you, Your Honor.

BY MR. THORNTON:

Q I think probably everybody has seen shows like CSI and all these other things, so we probably don't have the same problem we used to with explaining DNA to people.

But could you just give us a brief -- kind of explanation of DNA and what you're looking for?

A Okay. DNA stands for deoxyribonucleic acid, and it's a chemical that is found in our bodies. And it basically just makes up who we are. You get half of your DNA from your mom and half of your DNA from your dad.

Q When -- in this case, did you perform some tests on, actually, multiple items?

A That's correct.

Q And were you given -- and I'm just going to use the SLED item numbers for you if that makes it simpler, if that's okay?

A Yes, it does.

Q All right. There was a known standard, it's actually in evidence already as State's 29, I believe. There was a known standard which is SLED Item 48, I believe it's actually 48.1, was a swab from the known standard that

Ashley Bell testified to already.

And did you take that and then compare it against SLED Item No. 35, which was testified to earlier by Agent Burke as the swabs from the ridge detail with suspected blood?

A Yes, I did make that comparison.

Q And so at this point, what -- and, please don't let me put words in your mouth -- but are you comparing what we know to be the victim's blood or the victim's DNA with an unknown? In other words, a swab collected at the scene, which is Item H but SLED Item 35, the ridge detail?

A Yes, that's correct. Our SLED Item 48.1 is a known dried blood standard from Willie Johnson.

Q And 35 was listed as swabs from documented ridge detail at Marker H that the jury heard testimony on already?

A That's correct.

Q And were you able to reach any conclusion as to the DNA or was there a match? Were you able to reach that conclusion?

A Yes. The results regarding that item, the DNA profile was developed from SLED Item 35, which were the swabs from the documented ridge detail at Marker H, matched the DNA profile of Willie Johnson. The probability of randomly selecting an unrelated individual having a DNA profile matching that item is approximately one in

210 trillion.

Q So the swab collected at 35, in your expert opinion, contained, that substance, contains DNA belonging to Willie Johnson?

A Yes, that's correct.

Q And it's a match?

A That's correct.

Q All right. Did you also test some fingernail clippings, which are Item 46 and 47 -- it was actually brought up earlier -- 46 and 47, fingernail clippings from the right and left hand of Willie Johnson?

A Yes, I did.

Q And what were your results, if any, from testing those?

A The DNA profiles developed from these two items were mixtures of at least two individuals. So when we do DNA analysis, sometimes we get a single source profile which is just attributable to one person. But sometimes we can get a mixture of more than one person's DNA in -- in a sample.

And in this case, both of these DNA profiles were mixtures of at least two individuals. The DNA profile of the major contributor to these mixtures, so the person who contributed more DNA than any other contributor to the mixture, was consistent with the DNA profile of Willie

Johnson. And the partial DNA profile of the minor contributors, so that second contributor, was insufficient for comparison. I couldn't make any comparison to that second contributor.

Q And so there were at least those two, and I believe there were others -- I won't go through every single item that you tested, you tested a bunch -- there were several items that came back as either the victim's blood -- sorry, the victim's DNA, let me be precise, or a mixture with the victim's DNA and some unidentified portion or couldn't be identified because it was insufficient for testing; is that right?

A That's right.

Q All right. And there was no -- in the testing that you did, the Defendant's DNA was not identified on anything that you recall testing; is that correct?

A I would have to check my results.

MR. THORNTON: The State will stipulate that her answer if she went and checked her notes would be no, his DNA -- it's not just for time purposes, Judge, I don't want her to have to -- she did several reports.

THE COURT: You agree with that stipulation?

MS. SMART-GITTINGS: Yes, Your Honor.

BY MR. THORNTON:

Q But it is fair to say that there were several that

were a mixture of Mr. Johnson and another individual's DNA, but it's just not enough there to test.

A That's correct.

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

Your Honor, I don't think that I have anything else. I'd ask that she answer any questions that Ms. Smart has.

THE COURT: Cross examination?

MS. SMART-GITTINGS: Court's indulgence one moment.

I don't have any questions -- sorry, one moment.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q In some of the DNA testing that you did, and this is the report dated January 28th, Robert was excluded as a contributor; is that correct?

A On the report dated January 28th?

Q Yes, specifically page 3 of 6?

A For Item 26 Robert Miller was excluded.

Q And none -- Robert Miller's DNA was not in Mr. Johnson's fingernail clippings?

A The profile of the minor contributor was insufficient for comparison.

Q So, but it wasn't Robert's? You're not testifying

it was?

A I am not testifying that it was, no.

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

THE COURT: Redirect?

MR. THORNTON: Just -- I want to be sure we're clear on that.

REDIRECT EXAMINATION

BY MR. THORNTON:

Q When you say it's "insufficient," you can't -- you certainly cannot say that it is Robert Miller's DNA as the minor contributor; is that fair?

A That's correct.

Q Is it also fair to say you can't say that it isn't his either?

A That's correct.

Q All right. It's unknown because it's insufficient for comparison?

A That's correct.

Q As to the fingernail clippings --

A That's correct.

Q -- and other items that we talked about?

A Yes, sir.

Q Thank you.

MR. THORNTON: Nothing further, Judge.

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THE COURT: All right. Mr. Thornton, Ms. Smart, we had a meeting in my chambers before we came out here about some evidentiary matters.

MR. THORNTON: Yes, sir, Your Honor. I believe Ms. Smart has two motions -- or two things she needs to put on the record that we may have to have brief argument on.

THE COURT: Okay. Ms. Smart, I'll be glad to hear from you.

MS. SMART-GITTINGS: May it please the Court, Your Honor.

Before the jury comes out and just in the interest of time, I want to renew my motion to suppress the confession given by Mr. Miller to Agent Johnson. Just renew on the reason that I don't think it was voluntary. I don't think that it was normally and intelligently waived.

I also believe that there were two interrogations. The first interrogation was done by Agent -- Chief Williams of the Fairfax Police Department, and the subject matter of that investigation was the shooting of Ray Quan (phonetic) prior, which is one crime. The second crime that SLED was interested in interrogating Mr. Miller was the death of Mr. Johnson. So I believe

that those are two separate crimes which require two different Mirandas. The second Miranda was not given, and I believe that that's a violation of his rights.

THE COURT: I noticed that objection. In fact, my law clerk and I were researching cases and looking at the gap between time. The way I look at it, although they might involve --

MS. SMART-GITTINGS: Judge, I'm sorry --

THE COURT: -- different topics --

MS. SMART-GITTINGS: -- I can't hear you.

THE COURT: I'm sorry.

-- although they might involve different topics, and I looked at it as, basically, a contemporaneous interrogation although two different groups.

We had State versus Simmons, there was a four-hour gap in time that was found to be acceptable, twelve hours in West versus Coxton. Two and a half in (inaudible) versus US Frankston. And 30 minutes in State versus Smith. I think the evidence in this case shows it was around an hour or so gap in between the two, maybe, more or less, somewhere in that time frame.

So I think it's acceptable under case law in this case. But I note your objection for the record.

MS. SMART-GITTINGS: And just so -- just so we won't hear argument, and I know that the objection

has to be contemporaneously with the testimony, can I just say I renew my previous objection so it'd be contemporaneous right before Agent Johnson --

THE COURT: As to the statement?

MS. SMART-GITTINGS: Right.

THE COURT: Yes, ma'am. You should be protected.

MS. SMART-GITTINGS: So we don't have to take -- go out -- go back outside.

THE COURT: Yes, ma'am.

MS. SMART-GITTINGS: Oh, and --

THE COURT: You have some fingerprint issues, I think?

MS. SMART-GITTINGS: Fingerprint issues. Because I don't want to confuse the facts, I'll ask Mr. Thornton to put on the record how we came to this, and then I'll -- I'll give my argument.

THE COURT: Yes, ma'am.

MR. THORNTON: Thank you, Judge.

Basically, Your Honor, is -- and I think you know this just from some conversations we've had, obviously, both pretrial and this morning -- one of the pieces of evidence the State intends to put on this morning through SLED agent Kimberly Mears is a comparison of the Defendant's, what I call case prints or standard

prints, his set of fingerprints that was done with Item H, that I know the Court is familiar with, that was testified yesterday by SLED contained the DNA of suspected blood and was one in whatever, 240 trillion, DNA of the victim.

THE COURT: And that's the palm print, right?

MR. THORNTON: Yes, sir. In laymen's terms it's a palm print in the victim's blood.

THE COURT: Okay.

MR. THORNTON: That palm print was compared to the prints of, the major case prints, of Robert Lee Miller, III, as well as other individuals, Gabriel Joiner, I think Keshawn Bynum. Mr. Robert Miller, who found the Defendant, because he was in the same -- they actually collected prints from him as well. And the palm print from H was examined as -- against all of those. It was found to be a match to the Defendant, Robert Lee Miller.

There was a report generated by Tiffany Hezel with SLED, who is the person who took the prints both from the scene, as Brittany Burke testified. Brittany Burke as well as Tiffany Hezel did the crime scene. And Tiffany Hezel actually collected the major case prints from the defendant in this case, Robert Lee Miller, then logged them into SLED.

As the Court knows, Tiffany Hezel is on her honeymoon this week. The protocol at SLED, Your Honor, is that when someone does -- and Tiffany Hezel actually did the initial identification. When Tiffany Hezel got a match, they are required to send it to another analyst who does their own independent examination. And if they agree with the other analyst, then the first analyst, in this case Hezel, generates a report.

The defense has gotten the fingerprint from H. They have gotten the report from Hezel. Mears, who is the one who will testify as to the print, did not generate a report because that's not their protocol. And Mr. Jordan asked what I thought was a very good question of me yesterday, well, you know, then how would the defense ever know if they disagreed. Well, it's easy. If they don't agree and they can't come to an agreement, then the print is not considered a match. I confirmed that with Kimberly Mears this morning.

So Kimberly Mears will be the one testifying to that today, because she did her own independent examination of the prints.

THE COURT: Go ahead.

MR. THORNTON: What the defense didn't get from my office was her client's set of fingerprints.

THE COURT: The standard?

But as to the Defendant, that Agent Hezel collected what we call major case prints or fingerprints for comparisons with items at the scene, and that those were, then, transferred to SLED. And I believe it is SLED Item No. 95.

THE COURT: Do you stipulate to that, Ms. Smart?

MS. SMART-GITTINGS: I do, Your Honor.

THE COURT: Very good.

MR. THORNTON: Thank you, Your Honor.

Thereupon,

KIMBERLY MEARS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Would you please state your name for the record, ma'am?

A Kimberly Mears.

Q And is it okay to call you Agent Mears?

A That's fine.

Q And who do you work for?

A The South Carolina Law Enforcement Division which is commonly known as SLED.

Q And how long have you worked for SLED?

A I've been with SLED for almost nine years.

Q What do you currently do for SLED?

A I'm a forensic scientists in the latent print department.

Q Let me ask you this. What kind of education do you have in both school as well as whatever training you have with SLED to qualify you to do the type of work that you currently do?

A I have a bachelor of science degree in biology from Winthrop University. Once I was hired into the latent print department, I completed their in-house training program. I was also accepted into a latent print examiner training program sponsored by the National Institute of Justice, which was a ten-week program with courses covering all aspects of fingerprint work.

Q And how long have you been doing fingerprint -- would be fair to say fingerprint comparison or examination?

A Yes.

Q How long have you been doing that?

A A little over five years.

Q And how many sets of prints do you think you've analyzed in your career?

A It would be in the thousands.

Q And have you ever been qualified as an expert to testify in the field of fingerprint comparisons in --

A I have.

Q -- the courts of South Carolina?

A Yes, I have.

Q All right.

MR. THORNTON: Your Honor, at this time, I'd ask that she be qualified as an expert in fingerprint identification and comparison.

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

THE COURT: Very good.

All right. Ladies and gentlemen, if you recall throughout this case we've had various experts. Experts are allowed to give their opinion in the area of their expertise. This lady has been stipulated to be an expert in the field of fingerprint identification and comparison. She'll be allowed to give her opinion in that area and state her reasons for her opinion is. I'll remind you, expert opinions are like any other testimony you'll hear in this case. You may accept it, you may reject it or give it as much weight as you think that it deserves.

All right. Mr. Thornton?

MR. THORNTON: Thank you, Your Honor.

BY MR. THORNTON:

Q Agent Mears, I'll try to keep this as straightforward as possible.

When you are comparing fingerprints, is it

typically a known and an unknown?

A For the most part, yes.

Q All right. And in this case, the case of the State versus Robert Lee Miller, III involving the murder of Willie Johnson, is that what you were comparing is known and -- knowns and unknowns?

A Yes, it was.

Q Okay. Specifically, and unfortunately SLED has item numbers and sometimes there's multiple item numbers for the same thing, but what we're talking about, I believe, is what the jury has already been given is a ridge impression from the home of the victim in this case, which is referenced by Marker H.

Is that the unknown that you were looking at?

A Yes, it is.

Q And I think it was -- is your item number on that 71.1?

A That's correct.

Q And that's what you did your comparison off of?

A Yes.

MR. THORNTON: Your Honor, I apologize, Court's indulgence, please, one moment.

BY MR. THORNTON:

Q All right. And is your designation -- would you please read the designation that you have as far as the

description of what 71.1 is?

A Item 71.2 is a latent impression at Marker H represented on, it's the file name, from Item 71.

Q All right. So it's Marker H. And the markers that -- that refers to, is that the identifying letters or numbers that they would give an item at the crime scene?

A Yes, it is.

Q Okay. And so what your testimony is, the unknown you compared was at Marker H from this crime scene?

A That is correct.

Q Which is the ridge detail?

A Yes.

Q Now, when you compare one, an unknown, do you leave it as the purple LCV, or do you print it out in another fashion?

A No, our photography department changes it or enhances it to a black and white copy of that to match the known standards, so that it's black ridges with black ridges.

Q All right. So when you say "black ridges versus black ridges," when someone gets their fingerprints taken, generally speaking and in this case, what color are they?

A They are black from the ink that's applied to the hand.

Q Is it fair to say, then, that you just removed the

color from this so that you're comparing, my daddy would say, apples to apples and oranges to oranges?

A Yes.

Q So black to black?

A Yes.

Q All right. Did you just examine Marker H, the ridge print found with the victim's DNA, did you just examine that as to the case prints, which I believe we've got as item, by stipulation, 95, SLED Item 95? Is that the only set of known prints that you compared this to?

A No, it is not.

Q What other prints did you compare it to?

A The names?

Q Please.

A Okay. They were compared to Willie Johnson, William Johnson, Robert Miller Gabriel Joiner and Keshawn Bynum.

Q Now, you just said Robert Miller, but that's -- your understanding, is that Robert Lee Miller, III or is that a different person?

A No. Robert Lee Miller, III is the last person, a different person that they were compared to.

Q Obviously you weren't in here, but the jury's already heard testimony from Mr. Robert Miller who found the victim.

A Okay.

Q So you compared this unknown meaning you don't know who it belongs to at this point to all those individuals?

A Yes.

Q As to -- would you read the names off one at a time for me?

A Willie Johnson.

Q Was it a match or not?

A No.

Q So that's not the victim Willie Johnson's print?

A No, it's not.

Q All right. Who's next?

A William Johnson.

Q Is that Mr. William Johnson's print?

A No, it's not.

Q All right.

A Robert Miller.

Q All right. Is that Mr. Robert Miller, the person that found the victim, is that his print?

A No.

Gabriel Joiner.

Q Is that his print?

A No.

Keshawn Bynum.

Q Is that his print?
A No, it's not.
Q Who's the last person that you can -- or who's the other person that you compared it to?
A Robert Miller, III.
Q Is it his print?
A Yes, it is.
MR. THORNTON: Your Honor, the Court's indulgence, please.
Your Honor, at this time I have no further questions.
Please answer any questions that Ms. Smart-Gittings has for you.
THE COURT: Cross examination.
MS. SMART-GITTINGS: May it please the Court?
THE COURT: Yes, ma'am.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:
Q Agent Mears, you've indicated that you've also compared prints from Robert Lee Miller.
You didn't collect those prints from Robert Lee Miller, did you?
A No, I did not.
Q And so how were you able to distinguish which Robert Lee Miller's prints you were examining?

A I do not have copies of the fingerprint cards with me. But, generally, they have a date of birth, Social Security, other identifying factors on the card other than just the name.

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

THE COURT: Yes, ma'am.

BY MS. SMART-GITTINGS:

Q Do you recognize that?

A This is a copy of Item 95, which are the known standards of Robert Lee Miller, III.

Q And does it also say Robert Lee Miller where it says, name, first name, middle name?

A Yes, it does.

Q So in one spot it has Robert Lee Miller and in the other it has the Robert Lee Miller, III; is that correct?

A Yes, it is.

Q And you don't have Item 70n with you so that you could look at it?

A I do not.

Q And it does not have a date of birth on it, does it?

A On this one or --

Q On this one?

A This does not have a date of birth listed.

Q And it does not have a Social Security number on it, does it?

A No, it does not.

Q It only has in one spot Robert Lee Miller, correct?

A Correct.

Q In another spot Robert Miller, III?

A Correct.

Q So it has, actually, both names, Robert Lee Miller and Robert Lee Miller, III?

A Yes.

Q So you can't testify to this court that this is the set of prints for Item 70 or there's another set of prints for Item 70 because they don't have identifying markers on them?

A This has Item 95.

Q As far as the individual with whom the prints were taken --

A No, I do not --

Q -- you do not have a date of birth, it does not have a Social Security number?

A No. I did not take these prints, I can't say.

Q It only has a name?

A Correct.

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

questions.

May I approach the witness, Your Honor?

THE COURT: Okay.

Redirect?

REDIRECT EXAMINATION

BY MR. THORNTON:

Q You said it has Item 95 on it?

A Yes, it does.

Q I'm sorry, the -- the item that Ms. Smart just handed you, which is -- it actually has Robert Lee Miller and Robert Miller, III, and it has Item 95 --

A Correct.

Q -- correct?

And Item 95 is what we've already stipulated to were the prints as one set of major case prints collected from Robert Lee Miller, III?

A Correct.

Q And that is the print that matches the Defendant to Item H, correct?

A Correct.

Q All right. So -- but you did not personally pull these or see these get pulled, which is why we entered the stipulation that there was a set of case prints pulled. You didn't personally see these prints pulled, which are listed

as Item 95, correct?

A I did not.

Q All right. But there's no doubt that Item 95, these prints are the ones that matched Item H?

A That's correct.

Q All right. Thank you.

MR. THORNTON: I have no further questions.

RE-CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q But you do not have the other set of prints that you could testify what the identifying marks as to the individual are, do you?

A The --

Q You don't have the -- Item 70, you don't have those?

A I do not.

Q So you can't tell this jury what the identifying markers are on Item 70?

A Correct.

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

MR. THORNTON: No questions.

Judge, ask that she be excused.

THE COURT: Any objection, Ms. Smart?

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

THE COURT: Thank you, ma'am. You may be excused.

MR. THORNTON: The state investigator Donnie Hutto to the stand.

Thereupon,

DONNIE HUTTO

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Investigator Hutto, I know they're really going to be dumb questions since you work with our office, but who do you work for, sir?

A I'm an investigator with 14th Circuit Solicitor's office.

Q And how long have you been with our office?

A Three years now.

Q And where were you before that? Who'd you work for?

A I was a detective with Allendale Police Department.

Q And how long have you been with Allendale Police Department?

A I was there six years.

Q All right. Now, before we go back any further,

how long have you been in law enforcement in one form or another?

A Approximately 18 and a half years.

Q And as an investigator with the solicitor's office, do you assist both SLED and local law enforcement with cases that are being prosecuted by our office?

A Yes, I do.

Q I'm going to show you this set of case prints.

MR. THORNTON: And, Judge, there's no marker on these. I'm not planning on introducing them as an exhibit, but it's the same prints, for the record, Ms. Smart showed Agent -- Agent Kimberly Mears a moment ago.

THE COURT: Okay.

BY MR. THORNTON:

Q I'm going to show you that set of prints which has been testified by the agent to be the prints from which a match, matches H, which is the fingerprint found at the scene in the victim's blood with his DNA on it.

Do you recognize those?

A I'm sorry, I left my reading glasses on the corner of the table. I apologize.

Q I need mine too, no problem.

A Thank you.

Q Look at those and tell me if you can identify them

or if you have any knowledge of them.

A (Witness reviews document.) Yes, sir, I do.

Q All right. And they are labeled, are they not, and I --

MR. THORNTON: The State will stipulate that one place it says Robert Lee Miller and the other it says Robert Miller, III on it. It also has Item 95, which has already been stipulated to be the case prints, as labeled, of Robert Lee Miller, III, the defendant in this case, Your Honor.

BY MR. THORNTON:

Q Mr. Hutto, you said you know -- you recognize those.

How do you recognize them?

A I was -- I was present when Agent Hezel took these prints.

Q So you were present in the room when Agent Hezel from SLED took those prints?

A Yes, sir.

Q And it's already been stipulated that she did take these prints and transported it to SLED; is that correct?

A Yes, sir, that's correct.

Q Who else was in the room with you?

A Agent Johnson, and -- I'm not sure if Ms. Smart was in the room or in the hallway, somewhere around, but --

and Agent Hezel. And that's the only ones I remember in the room.

Q Any doubt in your mind that those items as labeled and signed by Agent Hezel are the ones that she pulled from Robert Lee Miller, III --

A No, I was there when she signed them.

Q -- the defendant in this case?

A That's correct.

MR. THORNTON: I don't have any further questions. Please answer any questions Ms. Smart has for you.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Investigator Hutto, you weren't present when or if the other Robert Miller was fingerprinted, were you?

A No, I was not.

Q And you were in here. He didn't testify that he had been fingerprinted, did he?

A No, he did not.

Q And there hasn't been a witness to testify that Robert Miller was finger -- the other Robert Miller was fingerprinted?

A No.

Q And you can't testify that the other Robert Miller was fingerprinted?

A Other than seeing his name on the report.
Q Seeing a Robert Miller's name on the report?
A Yes. I mean, I wasn't there when Robert Miller was fingerprinted.
MS. SMART-GITTINGS: I don't have any other questions.
THE COURT: Any redirect?
MR. THORNTON: None, Your Honor.
THE COURT: All right. Thank you, sir. You may step down.
MR. THORNTON: Johnathan Capers. The State calls Johnathan Capers to the stand.
Thereupon,
JOHNATHAN CAPERS
was called as a witness, having been first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. THORNTON:
Q Good morning, Mr. Capers.
A Good morning.
Q If you would, that's good that you're close to the microphone, just make sure so everybody can hear what your testimony is.
Can you do that for me?
A Yes, sir.

Q All right. Thank you.

Mr. Capers, could you state your full name for the record?

A Johnathan Rasheen Capers.

Q Mr. Capers, do you know the defendant in this case, Robert Lee Miller, III?

A Yes, sir.

Q And how do you know him?

A We growed up together.

Q You grew up together?

A Yes, sir.

Q Has he ever been to your house or stayed overnight at your house?

A Yes, sir.

Q One time or a bunch of times?

A He stayed a couple of weeks.

Q He stayed for a couple of weeks?

A (Nods in the affirmative).

Q And you said you grew up together. So have you known him pretty much all your life?

A Yes, sir.

Q Back in June of 2014, specifically on Thursday the 19th of June, did -- let me ask you this before I ask you that.

So had y'all been friends in June of 2014?

Would you have considered Mr. Miller to be your friend?

A Yeah, he was like my brother.

Q He was like your brother.

Let me ask you this, on June 19th of 2014, did Mr. Miller talk to you about his involvement in the case that we're here today, about the murder of Mr. Willie Johnson over on Pickrum Street?

A Yes, sir.

Q All right. And did you on the 24th, June 24th of 2014, did you give a statement to law enforcement where you wrote out a statement to them about what he told you?

A Yes, sir.

Q All right. What did -- what, if anything, did the defendant in this case, Mr. Miller, what did he tell you about his involvement in the murder of Willie Johnson?

A It was like his brother -- his brothers came and got him. Said they was going to hit a lick or something like that.

Q All right. Hang on a second. I'm going to ask you to slow down and speak up a little bit.

You said that his brother came by. Who is his brother?

A Keshawn.

Q All right. Do you know Keshawn's last name?

A Bynum.

Q Keshawn Bynum.

So his brother, Keshawn Bynum, and who -- if anybody else, who else?

A I guess his home boy.

Q All right. Do you know what his home boy's name is?

A Gabriel.

Q Gabriel.

All right. So Keshawn and Gabriel come by his house. And I think what you said was, to do a lick. They were going to do a lick.

What does that mean?

A I guess like --

Q No, don't guess.

A Break in somebody's house.

Q What do you understand? If somebody says that they're going to do a lick, what do you understand that means?

A Go in somebody's house. Run in somebody's house.

Q Run in somebody's house?

A Yes, sir.

Q So do you mean with permission, or do you mean like to do a burglary or a robbery?

A Yeah, like a burglary.

Q So Mr. Miller told you that his brother and his

home boy, Gabriel, came by his house and they were going to do a lick.

What else did he tell you?

A He said they went in. And I guess he asked them like -- he said something about some sugar or something like that, yeah.

Q That he -- I'm sorry, what about sugar?

A No, he asked them, they're like did he have some sugar. I mean, like when they knock on the --

Q Again, I need you to slow down for me. "He," meaning Robert Lee Miller?

A Yes, sir.

Q Asked Mr. Johnson?

A Yes, sir, I don't know the old man's name that --

Q You don't know his name.

Asked the man in the house for some sugar?

A Yes, sir.

Q All right. What else?

A And he said, the man said he couldn't -- he couldn't give him none, because he was getting robbed lately and before. So he said he wasn't -- he wasn't trusting them. So I guess they said that they went up and hit him and then he fought. The other two -- the other two went and searched the house. And then I guess that's what happened.

Q All right. Well, what else did he say? Did he say anything else about he said -- you said -- you just testified that the -- that Robert Lee Miller said that he hit the old man.

So while they were searching, what did -- what did they say they do with the old man?

A Beat him.

Q Beat him?

A Yes, sir.

Q Did they say anything about anything else? And if I need to give you your statement so you can read it to refresh your memory, that's fine. What else did the tell -- what else did they tell you that they did?

A Tie him up, put a bag on his head, beat him.

Q So they -- Robert Lee Miller told you that he and Keshawn Bynum and his home boy Gabriel went and asked the old man for sugar. And the -- you've testified that Robert Lee Miller admitted to you that he beat him, they were beating him. That they tied him up, and then they put a bag on him?

A Yes, sir.

Q And did he say they put a bag somewhere particular? In other words, where on his body did they put the bag?

A I guess on his head.

Q Okay. And did he say whether or not they took anything from the house or from the man himself?

A Some money. And, I don't know, a gun.

Q All right.

MR. THORNTON: Your Honor, may I approach?

THE COURT: Yes, sir.

BY MR. THORNTON:

Q Mr. Capers, I'm going to hand you your statement.

MR. THORNTON: And I'm not introducing it, obviously, Judge. His testimony would be best unless we can't get it this way.

BY MR. THORNTON:

Q And I want you to read your statement, sir, out loud. Would you just read the bottom portion of that. You seemed a little unclear, and you said money and guns. Just read the rest of your statement. And when you're done, if that refreshes your memory of what you told law enforcement right after this happened, then I'll ask you the next question. You let me know when you're done.

A You want me to read it out loud?

Q You've read it?

A Yeah, I read it. I already know.

Q Okay. All right. Mr. Capers, you said -- we left off with that they took some money from the old man and some guns.

Now, do you remember getting asked some questions by the law enforcement person that you were talking to? In other words, after you gave a statement, they asked you some specific questions that you answered?

A Yes, sir.

Q All right. And was one of the things they asked you, where did he, meaning the defendant, stomp the old man? What did you say?

A Will you repeat that?

Q I'm sorry.

Was one of the questions where did he, meaning the defendant, stomp the old man.

And what was your answer?

A You say where?

Q Yes, sir, where on him?

A I guess face, his face.

Q And did you also give them some information that Mr. Miller had told you about the phone in the home?

A Yes, sir.

Q All right. What was that? What did he tell you they did with the phone?

A He said -- he said that his brother -- the brother took the phone off of the hook, so it couldn't ring. And I think that's it.

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

Your Honor?

THE COURT: Yes, sir.

BY MR. THORNTON:

Q Mr. Capers, I don't have any other questions for you. Please answer any questions that Ms. Smart-Gittings may have.

THE COURT: Cross examination?

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

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Isn't it true that Robert told you that he had heard some stories in the street, and that he was accused of doing something?

A Can you repeat that?

Q Isn't it true Robert had heard rumors that SLED was looking for him?

A Yes, ma'am. Yes, ma'am.

Q And he told you that he was afraid because they accused him of something?

A No, ma'am.

Q Okay. So you told law enforcement that Robert told you that he tied the old man up with a Dollar General bag?

A Yes, ma'am.

Q So Robert said, he put a Dollar General bag over

the man's head?

A Yes, ma'am.

Q And what do you believe a Dollar General bag to be? Have you seen a Dollar General Bag?

A Yes, ma'am.

Q What does it look like?

A A regular bag.

Q What color is it?

A Yellow.

Q What does it have on it?

A Dollar General.

Q Now, Robert also told you that he tied the man's feet up?

A He said his brother did.

Q But his feet were tied?

A I don't know, I ain't never seen the man.

Q But that's what you're saying that Robert told you?

A Yes, ma'am.

Q And did you see Robert with any money?

A No, ma'am.

Q So he didn't have any money?

A No, ma'am.

Q And he came to your house on that -- on that night --

A Yes, ma'am.
Q -- after it happened, but he didn't have any money?
A He said that -- he didn't have any what?
Q Money?
A Yes, ma'am.
Q But he told you that he took money from the man?
A Yes, ma'am.
Q And you also --
MS. SMART-GITTINGS: The Court's indulgence?
BY MS. SMART-GITTINGS:
Q You said that he asked the man for some sugar?
A Yes, ma'am.
Q And he said the man said that he didn't have any sugar because people were robbing him?
A Yes, ma'am.
Q He came to your house with your mother, right?
A Yes, ma'am.
Q And your mother is?
A Tiffany.
Q Tiffany Sabb?
A Yes, ma'am.
Q But you weren't with her when she picked him up?
A No, ma'am.
MS. SMART-GITTINGS: I don't have any other

questions.

THE COURT: Redirect?

MR. THORNTON: None, Your Honor. Ask that he be excused.

THE COURT: All right. Sir, you are excused. All right.

MR. THORNTON: Tiffany Sabb.

Thereupon,

TIFFANY SABB

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. THORNTON:

Q Good morning, ma'am.

A Good morning.

Q Would you please state your name for the record?

A Tiffany Sabb.

Q Ms. Sabb, do you know the defendant in this case Robert Lee Miller, III?

A I do.

Q And how long have you known him?

A For a while now.

Q Did you know him back in June of 2014?

A Yes, sir.

Q Has -- is your son Johnathan Capers?

A Yes, sir.
Q And has your son been friends with Robert Lee Miller, III?
A Yes, sir.
Q Has Mr. Miller, the defendant in this case, been to your house or stayed at your house?
A Yes, sir.
Q And has he done that just every once in a while, or has he done it for an extended period at some point?
A He was with me for a while.
Q He was with you for a while?
A Uh-huh. (Indicating affirmatively.)
Q So did he stay with you for some amount of time back in 2014?
A Yes, sir.
Q Ms. Sabb, is it fair to say that you don't particularly want to be here today?
A Yes, sir.
Q And I subpoenaed you to come to court; is that correct?
A Yes, sir.
Q Ms. Sabb, did Robert Lee Miller, III ever give you any information or tell you about his involvement in the murder of Mr. Willie Johnson?
A Yes, sir.

Q And how did that come about? How'd that conversation happen?

A One of my friends, they called me and told me about it. And I went back to my residence to ask him about it. Question him about it.

Q And did you ask him about it?

A Yes, sir.

Q And what did he tell you?

A Robert stated to me that if -- he was -- I dropped him off at home this particular day to take -- me and my kids was going off to Statesburg. When I dropped Robert off to his house to go back to pick him up later that night, I had spotted him across to the tracks when I was at one of my girls, home girls' house. And during that particular I started, you know, what -- what was going on until I got a phone call: And then I asked Robert about what happened. And at that time, he didn't want to talk. And I asked him, can we ride down the road to speak about what happened.

Q All right. And I'm sorry, Ms. Sabb, I'm going to have to stop you every once in awhile just so -- because when people have a conversation, sometimes you talk faster than you think you do.

So you got a phone call, you had found out about this. You questioned Robert about it. He said he

didn't want to talk right now, but he would later; is that right?

A Yes, sir.

Q All right. So did you go off with him by yourself and have a conversation with Robert Lee Miller, III about the murder of Willie Johnson?

A Yes, sir.

Q And what did he tell you, or did he tell you anything?

A It was not Robert idea, he was pulled into it.

Q Well, let -- let's talk about what he told you.

A Robert stated that the other two, the other two gentlemen that was -- that's involved with the case, that it was their idea. It was their planning. And he didn't want to be involved in it, but it was too late.

Q All right. When you say "the other two that are involved", are you referring to Gabriel Joiner and Keshawn Bynum, who is, I believe, Mr. Miller's brother?

A Yes, sir.

Q And is that who he told you was involved?

A Uh-huh. (Indicating affirmatively.)

Q All right. You said that he told you it was -- is that what he told you, that it was their idea?

A Yes, sir.

Q But did he go along and go to the house with them,

according to what he told you?

A After they drove him involved, yes.

Q All right. Ms. Sabb, I just need you to answer the questions.

A Yes.

Q And what did they do when they got there? And when I say -- I understand that you were not there, Ms. Sabb, but what did he tell you that they did?

A According to what Robert said, that it was the other two when they knocked on the door, they asked the old man for some sugar. The young -- older man told them that he could not -- he was not going to allow -- give them any sugar, because he was already being robbed. Somebody was -- already was trying to rob him. He was not to give them no sugar.

So, apparently, the other two young gentlemens must have kicked in the door. And Robert said it was too late. The old man had done seen all three of them. She all three of them went in the house together.

Q And what did they do when they got in the house together?

A I guess they tortured the old man.

Q Don't guess. I want to know what he told you. And if I need to give you your statement you gave the police to refresh your memory now, I can. That's fine if you need

to refresh your memory.

But what did he tell you that they did?

A They beat him.

Q "They beat him," meaning the old man in the house?

A Uh-huh. (Indicating affirmatively.)

MS. SMART-GITTINGS: If it please the Court, Your Honor, may we approach?

MR. THORNTON: Your Honor, may we take a short break?

THE COURT: Yes, sir.

Madam forelady, ladies and gentlemen of the jury, if you'd go back to the jury room, we'll resume trial in just a few minutes.

(The jury exits the courtroom.)

MR. THORNTON: Your Honor, I believe Ms. Smart has a matter she needs to take up with the Court.

MS. SMART-GITTINGS: Your Honor, I wasn't aware of the other statement. Mr. Thornton just gave me an email, it was sent to me on June 29th. I don't know that I received it, because I don't have it. This is the first time that I seen this. The only thing that we were given in our discovery was the statement made June 24th. Apparently this new statement was made this year and was sent June 29th. I don't have it.

And I don't -- and usually I respond when I get

discovery. So I didn't respond to this email indicating that I had got discovery.

THE COURT: All right. Just one second.

Take her back to the witness room, please. You're still under subpoena, you can't leave. We will bring you back. Okay.

All right. Are there material differences in the statements?

MS. SMART-GITTINGS: Yes.

MR. THORNTON: Yes, sir. I mean, well, there's not a -- she doesn't say one thing in one and one thing in the other, but the statements are certainly materially different.

THE COURT: How are they different?

MR. THORNTON: In the first one she just talked about dropping him off. She didn't say that he had confessed to her at all. This is all the stuff that he told her.

What occurred was, just for -- for the Court's record. When Mr. Hutto went to serve her with a subpoena to testify, she, basically, reiterated that she didn't want to do this. She didn't want to participate. But now she was being served with a subpoena, she knew he shouldn't have done this and, you know, that he had told her about it. And at that point

he stopped her. He -- we got SLED to come down. They re-interviewed her.

THE COURT: What date did they re-interview her?

MR. THORNTON: May 18th.

THE COURT: And so some three weeks later, roughly?

MR. THORNTON: We -- yes, sir. And, you know, Judge --

THE COURT: Why did it take so long to give her the statement?

MR. THORNTON: Judge, I don't know. It was three weeks. I'm not sure. All I can do, though, Judge, is send it to her, and the email actually says --

THE COURT: Let me see your email transmittal, please.

MR. THORNTON: Yes, sir.

THE COURT: Is that your number on that email?

MS. SMART-GITTINGS: It says sent, that's all it says, sent. That doesn't mean that I received it.

THE COURT: Should -- doesn't have a contact number?

MR. THORNTON: No, it has to Smart-Gittings, comma, Stephanie. She's in our email system, I mean, we email back and forth and she --

MS. SMART-GITTINGS: Yes.

THE COURT: Okay. Let's bring back in Ms. Sabb.

MR. THORNTON: Yes, sir. If we could bring Ms. Sabb back in please.

THE COURT: Ready to proceed, Mr. Thornton?

MR. THORNTON: State is ready, Your Honor.

THE COURT: Ms. Smart?

MS. SMART-GITTINGS: The Defendant is ready, Your Honor.

THE COURT: Thank you. Bring in the jury.

(The Jury enters the courtroom.)

THE COURT: Ms. Sabb, you are still under oath. You may proceed.

MR. THORNTON: Yes, sir. The State is ready, Your Honor.

DIRECT EXAMINATION (CONTD)

BY MR. THORNTON:

Q Ms. Sabb, I know that you have already testified. And clearly I know that you don't want to be here. But I have a few more questions for you. Now, we were talking about what Robert Miller III, the defendant in this case, had admitted to you about his involvement with the murder of Willie Johnson. You have already told us some of the information that he had talked about striking the man, that it was his brother and his friend's idea, according to you,

as to what he told you, and he went along with it. Did he mention anything to you about a bag?

A The only part that he mentioned to me about the bag was, when I asked him, How did you know that the old man was still alive. He said that he was still breathing because the bag was moving.

Q The reason that I asked you that, you hadn't said that yet. He indicated they put the bag over his head?

A They didn't say who put it over his head. He just said that it was moving.

Q So, there was a bag placed over the victim's head?

A Yes.

Q And did he tell you anything about some keys or that they had taken keys or something?

A He didn't tell me anything about any keys, but there was some keys found in my house.

Q Okay. Did he tell you anything about what they were planning on doing with the keys?

A I guess they were going back to get the old man's truck.

MS. SMART-GITTINGS: Objection.

THE COURT: Sustained.

BY THE COURT:

Q Don't guess. What did he tell you?

A That they were going to go back and get the old

man's truck.

Q That they were going to go back and get the old man's truck?

A Yes.

Q Ms. Sabb, you originally talked to law enforcement right after this happened, right after the murder occurred. When I say "right after," within a week or two; is that correct?

A Yes.

Q And when you originally talked to law enforcement, you didn't mention any of this to them at that time; did you?

A No.

Q You did not mention any of that until you mentioned it this year; is that correct?

A Yes.

Q So, none of that would have been in your original statement?

A No.

Q Why not?

A I forgot about it, the keys.

Q Why didn't you tell law enforcement at that time; was it because you didn't want to be involved?

A Yes.

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

Please answer any questions that Ms. Smart-Gittings has for you.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q You are not Rob's mother?

A No.

Q You know his mother?

A Yes.

Q And you know his stepfather?

A Yes.

Q And you know his father?

A Yes.

Q But you were close to him?

A Yes.

Q He was staying with you at the time?

A Yes, ma'am.

Q And your son is his best friend?

A Yes, ma'am.

Q You had heard rumors about Mr. Johnson's death in the streets?

A Yes.

Q When you were first interviewed by the police on June 24th, you told them what you heard about this incident?

A Yes.

Q And you told them that you asked Robert about it?

A Yes.
Q And he denied it?
A Yes.
Q And you also picked him up the night that this incident happened, correct?
A Yes.
Q And the police asked you, Did you observe any blood on him?
A Yes.
Q And you said no?
A Yes.
Q And the police asked you if they could search your car?
A Yes.
Q And you gave them permission?
A Yes.
Q They didn't find any blood or anything that belonged to the man in your car?
A No, ma'am.
Q And the police asked you if you had cleaned your car?
A Yes, ma'am.
Q And you told them that you did?
A Yes, ma'am.
Q You didn't clean it with bleach or anything trying

to destroy evidence?

A No, I just cleaned it out.

Q In fact, if you had seen evidence you would have told the police?

A Yes, ma'am.

Q Now, you also -- you indicated that Robert didn't have any blood on his body?

A No, ma'am.

Q You told the police he didn't have any blood on his hands?

A He didn't.

Q His shoes?

A No.

Q His clothes?

A No.

Q Anything?

A Nothing.

Q He wasn't acting nervous?

A No.

Q Wasn't acting suspicious?

A No, ma'am.

Q He wasn't acting any differently than he normally does?

A No, ma'am.

Q Now, in 2014 did he have dreads in his hair?

A I think so.

Q He had dreads?

A Yes, ma'am.

Q Now, let's talk about the statement that you gave to law enforcement in May of this year.

A I believe, yes, ma'am.

Q So, this was two months ago, maybe?

A Yes, ma'am.

Q And the only reason why you gave this statement was because they came to serve a subpoena on you?

A Yes, ma'am.

Q And you felt like you needed to tell them something?

A Yes, ma'am.

Q Now, you told -- did Robert tell you that he heard stories about what was being said?

A Yes, ma'am.

Q That is what you told law enforcement initially, that he had heard these stories?

A Yes, ma'am.

Q Now, you said that -- in this detail -- and you admit that statement that you gave a couple of months ago is much more detailed than the statement that you gave right when it happened?

A Yes, ma'am.

Q Now, you didn't mention anything about keys in this first statement?

A No, ma'am.

Q You didn't mention anything about a car in this first statement?

A No, ma'am.

Q You didn't mention anything about a heater in this first statement.

A No, ma'am.

Q But in this statement you mentioned or you suggested that they dropped a heater on the old man?

A Yes, ma'am.

Q And he said that they asked the old man for sugar?

A Yes, ma'am.

Q And let's see what else. A lot of other details that you didn't put in your first statement. Now, you met with the SLED agent back in June 2014; right?

A Yes, ma'am.

Q Two of them, a female and a male?

A Yes, ma'am.

Q And you met with the same female in May?

A Yes, ma'am.

Q Now, let me direct your attention back to June 2014, do you remember when you took Robert to Fairfax Police Department?

A Yes, ma'am.
Q Do you remember who all was there when you took him?
A Yes, ma'am.
Q Do you remember Chief Marvin Williams?
A Uh-huh. (Indicating affirmatively.)
Q Officer Singleton.
A Yes, ma'am.
Q Donald Williams?
A Yes, ma'am.
Q Agent, the female agent, the agent that is sitting right here?
A Yes, ma'am.
Q A male agent?
A (Nods in the affirmative).
Q Did you also see Assistant Solicitor, Tameaka Legette, a black female, long hair?
A I don't remember.
Q Now, you were in the room when they interviewed Robert, they asked you for permission?
A I was in the room. When we got to the police department they already had Robert in the back. I was on one side and he was on one side. My son was on the other, three separate rooms. And I asked him if I could see Robert before I left. And they gave me a chance to see

him.

Q But they asked you for permission to interrogate Robert?

A No, they asked Robert. They said that Robert said it was okay to talk to him.

Q Now, were you in the room with Robert when they were interrogating them?

A After the fact.

Q Isn't it true that Robert asked you to leave the room?

A Yes.

Q And you didn't go back in the room?

A Actually it was time for us to leave.

Q Do you know about how long you were up at Fairfax Police Department?

A We were there for some hours.

Q Probably about four hours?

A Total, yes, ma'am, around about that time.

Q Did you stay until when they took Robert away?

A No, I left.

Q You left before then?

A No, they were pulling off with him.

Q Okay. And do you remember the time?

A It was dark. I can't remember the time, but we were up there for a minute.

Q Did they ever call -- to your knowledge, was Robert's parents ever asked to come up there?

A His father was there.

Q Did law enforcement call his father?

A I don't know how his father got the news, but I know that his father showed up before they took him.

Q While they were interrogating Robert?

A (Witness nods.)

Q Did they allow his father to go in the room?

A He was on the outside. We both was on the outside.

Q So, his father was at the Fairfax Police Department but not in the room with Robert when he was being interrogated?

A I can't answer that. All I know, me and him both on the outside at this particular time.

Q All right. Now, do you admit that your first statement was totally different from your second statement?

A Yes, ma'am.

Q Had many more details in your second statement than in your first statement?

A Yes, ma'am.

MS. SMART-GITTINGS: Nothing further.

THE COURT: Redirect?

MR. THORNTON: None, Your Honor.

THE COURT: May this witness be excused?

MR. THORNTON: I would ask that she be excused, Judge.

THE COURT: Any objection, Ms. Smart?

MS. SMART-GITTINGS: No, Your Honor.

THE COURT: Ms. Sabb, you are excused. You are free to go.

MR. THORNTON: The State calls Chief Marvin Williams to the stand, Your Honor.

Thereupon,

CHIEF MARVIN WILLIAMS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Chief, could you give your entire name for the record please?

A Marvin J. Williams.

Q And are you currently Chief of the Fairfax Police Department?

A Yes, sir.

Q Did you serve in that capacity, Chief, on or about June -- I think that it was June 24th?

A Yes, sir.

Q Of 2014?

A Yes, sir.

Q And on or about June the 24th of 2014, Chief, did you have occasion to interview the Defendant in this case, Robert Lee Miller III?

A Yes, sir.

Q And prior to asking him any questions, did you do a Miranda reading to him or a Miranda rights form?

A Yes, sir.

(Pause.)

MR. THORNTON: May I approach, Your Honor?

THE COURT: Yes.

BY MR. THORNTON:

Q Sir, I'll hand you what's been marked as State's Exhibit 32. Are you familiar with that document?

A Yes, sir.

Q What is that document, Chief?

A It is a Miranda rights form.

Q Is that what you read to someone before you question them?

A Yes, sir.

Q And is that Miranda rights form just a blank form, or does it reference a specific person?

A It references Robert Miller.

Q Is that Defendant, Robert Lee Miller III, that is seated at the defense table?

A Yes, sir.

Q Did you talk to him on that day after -- about the rights in that form?

A Yes, sir.

Q Now, again, if you will look Chief, is it the June 24th, 2014, I believe it's 4:56 p.m.; is that correct?

A Yes, sir.

Q Will you tell the jury what the rights form says and whether or not you read those rights to the defendant in this case, Mr. Miller?

A The Miranda rights stated that you have the right to remain silent. Anything you say can and will be used against you in a court of law. That he had the right to have an attorney present during questioning and if he couldn't afford one one would be appointed to him. And he had the right to stop answering questions at any time if he felt like he needed an attorney.

Q And are those rights referenced on that form?

A Yes, sir. On each line he put his initial. He signed it and put his initial on each line as we went through it.

Q So, after each right is there a blank where you would have someone initial?

A Yes, sir.

Q And after going over each of those rights, did

Mr. Miller initial?

A Yes, sir.

Q And is there also a place at the bottom for him to sign?

A Yes, sir.

Q And what does it say right above that signature line?

A It states, Willing to make any statement or answer any questions without waiving the right to silence and the right to have a lawyer present. If he stopped answering any questions, he still have that right at any time to say he needed a lawyer.

Q Did you go over all of those rights with him?

A Yes, sir.

Q Did he initial by each right?

A Yes, sir.

Q Did he print or sign his name on the blank where it says either, I don't know if it says witness or defendant; what does it say Chief?

A Yes, he signed at the bottom line.

Q And is there a space for you to sign as well?

A Yes, sir.

Q And did you sign it?

A Yes, sir.

Q Now, Chief is that -- I know it is a photocopy,

but is that an accurate copy of the form that you used for Robert Lee Miller III on June 24th, 2014?

A Yes, sir.

Q And has it been altered or changed in any way, other than it is obviously a copy?

A No, sir.

MR. THORNTON: Your Honor, I ask that State's Exhibit 32 be moved into evidence.

THE COURT: Any objection?

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

THE COURT: Admitted.

(Whereupon, State's Exhibit No(s). 32 marked for identification and received in evidence.)

BY MR. THORNTON:

Q Chief, I'm going to also ask you, it is actually -- I know it's in evidence, but his name is actually signed or printed in two different places, is it not?

A Yes, sir.

MR. THORNTON: I'll publish it to the jury since it is in evidence.

Q Chief, at the bottom of your form, after all of the rights have been gone through it also says, I'm willing to make a statement and answer questions. I hereby knowingly and purposely waive my right to remain silent and

my right to have a lawyer present while I make statements and answer questions. I have the right to terminate any interview and stop answering questions at any time hereafter. I can request to have a lawyer present with me before I continue answering anymore questions or making anymore statements if I choose to do so. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me. Is that accurate that I just read to you?

A Yes, sir.

Q And he signed under that as well, right?

A Yes, sir.

Q And then you signed it?

A Yes, sir.

Q Chief, during that interview on June 24th, did Robert Lee Miller make any statements to you or admissions to you about his involvement in the murder of Mr. Willie Johnson?

A Yes, sir.

Q All right. Can you tell me please what he told you about Mr. Johnson?

A I started asking him questions about the case involving Fairfax.

MS. SMART-GITTINGS: Objection, Your Honor. May we approach?

THE COURT: Yes, ma'am. Madam forelady, would you take the jury to the jury room?

(The jury exits the courtroom.)

THE COURT: All right. The objection is that there's a reference to another criminal investigation in Fairfax; that is your objection?

MS. SMART-GITTINGS: I don't know if he said that it was criminal. I think that he said the case that he was involved in. I just don't want you to go any further.

THE COURT: When you came up to the Bench, I asked you if you wanted a curative instruction, sometimes that is done.

MS. SMART-GITTINGS: I don't think that he said enough to warrant a curative instruction, but I don't want him to go into it.

THE COURT: Don't reference any other investigation, okay. Do you understand what she's saying?

MR. THORNTON: Yes, sir.

THE COURT: Anything that you want to put on the record?

MR. THORNTON: I just want to say, Judge, that is why I asked the question the way that I did with regard, and I am going to ask it the same way, With

regard to Willie Johnson, what did he tell you, if anything. So, I apologize to the Court, I tried to steer it that way.

MS. SMART-GITTINGS: I have no objection to that.

THE COURT: All right. If you will bring the jury back, please sir.

(The jury enters the courtroom.)

THE COURT: Mr. Thornton.

MR. THORNTON: Thank you, Your Honor.

BY MR. THORNTON:

Q Mr. Williams, earlier -- let me just re-ask the question. We have already talked about the Miranda that you gave the defendant in this case, Robert Lee Miller. And your interview of him, did he give you any information with regard to his participation in the murder of Mr. Willie Johnson?

A Yes, sir.

Q And what, if anything, sir, did he tell you?

A He stated that they pushed him down.

Q Let me slow you down, Chief, for just a second. They pushed him down, meaning Robert Miller and the other people?

A Right, stated that --

Q Pushed who down?

A Yes, stated that they pushed Mr. Johnson down. Stated that him and other people, no names, stated that they pushed him down, robbed him and beat him. And stated that they beat him and put a bag over his head. And I asked him, why you put a bag over his head. He said he, He kept looking at him. That is why he put the bag over his head.

Q Chief, is that more or less the substance of what me admitted or confessed to you that he did to -- and I don't know that he used Mr. Johnson's name, but to the old man in Allendale on Pickrum Street which we now know as Willie Johnson?

A Yes, sir.

Q Did you then have some SLED agents come in and do an interview after that?

A Yes, sir.

Q And was one of those agents Natasha Merrell who is seated at the table with me?

A Yes, sir.

Q Now, Chief, let me ask you some questions about the mechanics or the process that you used when you were talking to him; did you threaten him in any way?

A No, sir.

Q Did you promise him any leniency if he cooperated?

A No, sir.

Q And did anybody else in your presence physically threaten him or anything to get him to talk?

A Not in my presence.

Q All right. How many -- there was a question earlier, Chief, that you weren't obviously in the room for -- how many people were in the room with you while you were talking to Robert Miller when he confessed to his participation to the murder of Willie Johnson?

A No one.

Q So just you and him?

A Yes, sir.

Q Now, Chief, was this interview recorded, written, or was it just verbal to you?

A Just verbal.

Q Were there other officers -- where did this take place at?

A In my office.

Q Your office, meaning inside the Fairfax Police Department?

A Right.

Q So, what you testified is that it was just you and Mr. Miller in the room after you Mirandised him and got his confession?

A Yes, sir.

Q Were there other officers around, as far as in the

area?

A In the area. Not in my office.

Q Did any of them make any threats to him in your presence?

A Not in my presence.

Q Did any of them make any promises to him about, he could walk away or he can whatever while you were there?

A Not in my presence.

Q And within an hour or so, and I realize I'm not asking a specific amount of time, did SLED then come into your building and did they then do an interview with Mr. Miller as well?

A Yes, sir.

Q All right.

MR. THORNTON: Your Honor, the Court's indulgence please just a moment.

(Pause.)

BY MR. THORNTON:

Q Chief, while you were in your office talking with the defendant in this case, Mr. Miller, did you -- I'm trying to figure out the right way to ask this, Chief.

MR. THORNTON: Your Honor, the Court's indulgence one moment.

(Pause.)

DIRECT EXAMINATION OF CHIEF WILLIAMS BY THORNTON

BY MR. THORNTON:

Q Chief, while you were talking to him, did he seem to understand what you were saying to him?

A Yes, sir.

Q Did he seem to have any trouble at all understanding when you went over his rights form with him?

A No, sir.

Q Did he appear to be under the influence of any alcohol or drugs, to the point that he didn't know what was going on?

A No, sir.

Q And when he was talking with you, was he able to communicate to you clearly so you understood what he was saying?

A Yes, sir.

Q Your Honor, at this time, I don't have any further questions. I ask that you answer any questions Stephanie has.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q You didn't have to write a report about this?

A Huh?

Q You didn't write a report about your interview with Mr. Miller?

A No, ma'am.

Q And you didn't record the interview?

A No, ma'am.

Q You didn't get him to write a statement?

A Excuse me?

Q He didn't write a statement?

A No, ma'am.

Q You are not familiar with him? He's not from your town?

A No, ma'am.

Q You don't know his parents?

A No, ma'am.

Q You don't know anything about him?

A No, ma'am.

Q He didn't give you any specific facts about the alleged offense, did he?

A No, other than what I told counsel.

Q Just general stuff?

A Yes, ma'am.

Q So, your office was pretty busy that day. You had how many SLED agents there?

A I think two.

Q And Assistant Solicitor Legette came?

A Yes, ma'am.

Q Now, did you call Assistant Solicitor Legette to

come?

A Not to my knowledge.

Q But someone called her to come to your office?

A Yes, ma'am.

Q How many of your officers were present and involved with Robert while he was there?

A I think two officers, Officer Donald Williams and Officer Singleton.

Q From your experience in law enforcement, does knowing right from wrong have anything to do with understanding their Miranda rights?

A Yes.

Q So, their Miranda rights have something to do with whether or not they are able to tell right from wrong?

A Yes, ma'am.

Q Explaining right from wrong helps someone understand their Miranda rights?

A He acted like he understood everything. I also asked if he could read and write and he said yes.

Q Does that mean that you understand your right to remain silent?

A Yes. My understanding was that he understood it.

Q If you know right from wrong, does that mean that you understand that you don't have to talk to the police?

A Right, he didn't have to talk but he did.

Q You are not understanding my question. Isn't it true that knowing right from wrong does not assist in understanding whether or not you have to talk to the police or you don't have to talk to the police?

A Right. He didn't have to talk.

Q Does knowing right from wrong help him understand how an attorney could help him?

A Not to my knowledge.

Q So, knowing right from wrong doesn't help you understand how a lawyer can help you and it doesn't help you understand whether or not you need to talk to the police or whether or not you need to keep your mouth shut?

A Not to my knowledge.

MS. SMART-GITTINGS: No further questions.

THE COURT: Redirect?

MR. THORNTON: Just a couple of very quick questions.

REDIRECT EXAMINATION

BY MR. THORNTON:

Q Ms. Smart-Gittings asked you about several other people, officers, that he may have had involvement with -- he being Robert Lee Miller III. Nobody else was in the room when you talked to him?

A No, sir.

Q You didn't have five or six officers standing in

there leering over him, did you?

A No, sir.

Q Assistant Solicitor Tameaka Legette has been brought up two or three times. In your presence did she ever interview or have anything to do with the interviews of the defendant in this case?

A No, sir.

Q But she was there somewhere at the Fairfax Police Department?

A Yes.

MR. THORNTON: I have nothing further.

THE COURT: May he be excused?

MR. THORNTON: I ask that he be excused to go back to work, Judge.

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

THE COURT: Thank you, Chief. You are excused.

MR. THORNTON: State calls Richard Johnson to the stand.

Thereupon,

RICHARD JOHNSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Good morning, Agent Johnson.

A Good morning.

Q Would you please give your full name for the record for me?

A Richard L. Johnson.

Q Is it proper to call you Agent Johnson?

A Yes, sir.

Q Why is that?

A I am an agent with the South Carolina State Law Enforcement Division.

Q Is that also known as SLED?

A That's correct.

Q Agent Johnson, were you working with SLED back in June 2014, specifically, June the 24th, 2014?

A Yes, sir, I was.

Q In what capacity were you working for them; what did you do for them?

A Special agent.

Q Is that what you currently do?

A Yes, sir.

Q At some point was SLED called in to assist local law enforcement in the case involving the murder of Mr. Willie Johnson?

A Yes, sir.

Q And did you, along with Natasha Merrell, respond out as one of the agents?

A Yes, although I wasn't directly called out. I was coming through, stopped in and got involved with the case at that point.

Q Did you at some point then get involved with the case in your capacity with SLED?

A That is correct.

Q On or about June 24th of 2014, did you have occasion to interview Robert Lee Miller III?

A Yes, sir.

Q Would you tell me where that was?

A At the Fairfax Police Department.

Q Can you tell us what transpired, as far as what you started, his interview, or if you did or somebody else did, who all was in the room while you were talking to Mr. Miller?

A At the onset, myself, Agent Merrell, and Ms. Tiffany Sabb. And at one point I think that it was Officer, I want to say that it was Williams, was in the room. And I introduced myself to Robert Miller, explained to him why we were here and we needed to talk to him about whatever. And asked Ms. Sabb if she minded if we talked with him. I asked Mr. Miller if he would have a problem talking to us. He was glad to speak with us at that point. We continued to interview him.

Q Did you at that point, and again there's already

been testimony, and obviously you were not in the room, regarding Miranda; did you do any Miranda?

A No, sir, I did not.

Q Was it your understanding that it had already been done?

A Yes, the Fairfax PD would Mirandise everyone, plus Chief Marvin Williams told me that he had already been advised of his rights.

Q At some point you began your interview, you mentioned that Tiffany Sabb, who the jury has already heard testify, Tiffany Sabb was actually in the room?

A Yes, sir.

Q You asked her to step out; is that correct?

A Yes, sir.

Q At that point, did Robert Lee Miller want to talk to you, or did he want to talk to somebody else with SLED?

A He wanted to talk to someone else.

Q All right. Someone specific?

A Yes, sir.

Q Who did he want to talk to?

A Merrell, Agent Merrell.

Q Agent Merrell. Is that who is seated with me at counsel table?

A That's correct.

Q Would she be considered the case officer on this

case?
A Yes, sir.
Q Was your -- was your interview, along with obviously Agent Merrell, was it audio or video recorded?
A Audio.
Q It was an audio recording?
A Yes, sir.
MR. THORNTON: Your Honor, if I may, I apologize, may we approach real quick?
THE COURT: Yes, sir.
(Off-the-record discussion held.)
MR. THORNTON: Thank you, Your Honor.
BY MR. THORNTON:
Q Sorry, Agent Johnson. So, there is an audio recording?
A Yes, sir.
Q And so statements that are made, if you get any questions about that you don't know, it is going to be referenced on the recording?
A Yes, sir.
Q All right. Are there -- and you may not be the best person to ask about that, but I do think that you will know this -- are there some times during the recording where the recorder shuts off?
A Yes, sir, there is.

Q And let me ask you a question, was Agent Merrell the one who was recording it?

A That's correct, yes, sir, she was.

Q What was she using to record it?

A Her SLED cell phone.

Q Apparently when a call comes in, if it's not in airplane mode, the recording stops; is that correct?

A That's correct.

Q So, are there -- so, there are a couple of occasions where it does cut off?

A Yes, sir.

Q Okay. Now, while you were talking with Robert Lee Miller, and I know that you said that he wanted to talk to Agent Merrell, but while you were in the room with him talking to him, did you make any threats to him?

A No, sir.

Q Did you promise him any specific leniency or deals?

A No, sir.

Q Did anybody else in your presence?

A No, sir.

Q When you asked Ms. Sabb to leave, you indicated that Mr. Miller said that he wanted to talk to Agent Merrell; did you step out of the room at that point?

A Yes, sir.

Q At some point did you step back in?
A Yes, sir, I did.
Q Why did you do that?
A Agent Merrell came outside and asked me to come back in.
Q Did you go back in?
A Yes, sir, I did.
Q And I'll try to make this as quick and clean as possible. I'll just paraphrase a little bit, because obviously there's an audio recording of this. Did you give the defendant some indication that he was going to be going to jail?
A Yes, sir, I did.
Q And that you basically didn't buy what he was selling?
A That's correct.
Q Is that a common tactic in interviewing?
A Yes.
Q And did he change his tune for -- that is what my daddy would have said anyway. Did he change what he was saying or story that he was giving at that point, or beginning to change?
A Yes, sir, he started changing.
Q At some point did he make admissions to you with regard to his involvement in the murder of Mr. Willie

Johnson?

A Yes, sir, he did.

Q When you came back in the room, did you make any specific promises or deals with him?

A No, sir.

Q You did, did you not -- or let me rephrase that question. Did you say anything about, You might try to minimize your time or things of that nature?

A Yes, sir, I did.

Q Did he -- did you also, though, tell him that you couldn't tell him how much time he was going to get because you weren't the Judge?

A That's correct.

Q Did you mention something about that -- about CSI?

A Yes, sir, I did.

Q What did you tell him about CSI, or what reference did you make about CSI?

A I asked him had he ever see the TV show CSI. He indicated that, Yeah. And I went further to explain to him some of the evidence that we had that he was looking at.

Q Now, this early in the investigation you typically don't have any results. And the jury has heard about DNA from the victim's results, they have heard about a match in a print?

A Yes.

Q And I see you smiling up there because you know the question that I'm going to ask you, on the 24th of June you didn't have anything at that point, did you?

A No, sir.

Q All right. So you made a reference to CSI; is that another common technique used in interviews?

A That is correct.

Q And is it at that point that he started, and I say "he," Robert Lee Miller III started telling you or admitting to you some involvement in his participation with Robert Lee Miller -- I am sorry with the murder of Mr. Willie Johnson?

A Yes, sir, that's correct.

Q In general terms, again -- we have got the tape, but in general terms what did he tell you about his -- what did he confess to you about what he did to Mr. Willie Johnson?

A He knocked on the door. Once they got in the door --

Q Let me stop you for a second. "They," did he ever say who they was?

A Yes.

Q Who did he say they was?

A Kashaun Bynum.

Q All right.

A And his brother. I forgot his name.

Q Kashaun Bynum is his brother, and who else?

A Gabriel Joyner.

Q Gabriel Joyner. Just as an aside, and again we don't need any details because it is not pertinent to this case, they will have their day in court, are both -- were both of those people also charged in this case?

A Yes, sir, they were.

Q Again, I apologize for stopping you, but they, meaning Robert Lee Miller III, Kashaun Bynum, his brother, and Gabriel Joyner, tell me what he said they did.

A Young Miller put the emphasizes on Gabriel Joyner as being, I guess, the mastermind behind it all. And when he stood inside the room where Mr. Johnson was at, Gabriel and the other two went through the house. He just stood -- Miller stood posted in the living room where Mr. Johnson was at.

Q All right. Did he admit to striking Mr. Johnson and beating him?

A Yes, he did.

Q Did he tell you who put the bag over Mr. Johnson's head?

A Yes, sir, he did.

Q Who did he say did that?

A He did.

MR. THORNTON: I apologize, Judge, the Court's

indulgence one moment.

(Pause.)

BY MR. THORNTON:

Q Let me ask you this, Agent Johnson, is that more or less the admissions that he made? Again, I'm not asking you for every detail because it is on tape, but is that kind of the substance that he confessed to you?

A Yes, sir.

Q So, he confessed to you that he did -- he was, you know, the person who hit him and that he put the bag over his head?

A That's correct.

Q Agent Johnson, how many people were in the room with the defendant when he was confessing, or during the whole process while you were there and stepped out and back in? I mean, how many people are we talking about are in the room with Robert Lee Miller III?

A If memory serves me correct, at the end it was just myself and Agent Merrell.

Q What about at the beginning? In other words, When y'all first started talking, who all was in the room?

A Myself, Agent Merrell, Ms. Tiffany Sabb, and I'm still thinking that there was Officer Williams.

Q Okay. At some point in the beginning of this, did you or Agent Merrell, did someone ask him to read a

certificate or something that was on the wall?

A Yes, sir, I did.

Q And did you do that in an effort to figure out whether he was able to read and write? I am sorry, not write, but read?

A I wanted to make certain, at least give me some good indication that he could comprehend and he understood what was going on, what we were saying.

Q And did he, during this entire process, both before he actually admitted his responsibility in the murder of Mr. Willie Johnson, before he did that and after, was he able to communicate with you?

A Yes, sir.

Q Did he seem to understand what he was doing?

A Yes, sir.

Q Did he appear to be under the influence of any alcohol or drugs or anything to where he couldn't understand either what you were asking him or what his responses were to you?

A No appearance.

Q And just so we are clear, you did talk to him and mentioned to him that he could help himself and that you would talk to the prosecutor and minimize the time, again, all of which would be on tape?

A Yes, which is standard.

Q Did you ever make any, You can get out of this, we can get you out of here, we are going to get you a bond or anything like that?

A No, sir.

Q In fact, you told him, did you not, he was going to jail either way?

A That's right.

MR. THORNTON: Your Honor, this would definitely be a witness, due to his involvement, would be subject to recall, but at this time I have no further questions for Agent Johnson. Agent Johnson, if you would please answer any questions that Ms. Smart-Gittings has for you.

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

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Agent Johnson, we know each other.

A Yes, we do.

Q We have been through this many times before. So, let's talk about your involvement. Captain Williams didn't dispatch you to Allendale on the 18th, 19th, when this initially occurred?

A No, ma'am.

Q So you became involved in this about June 24th?

A No, it was the date of the incident itself, the

date that Mr. Willie Johnson was discovered when I got involved with it.

Q But you didn't come to the crime scene?

A Yes, I did.

Q Did you make a report about it?

A No, I was coming through Allendale on another case.

Q And you just happened upon it?

A Yes.

Q Because you are so duteous, you wanted to be involved in it?

A Not necessarily wanted to be involved.

Q You got pulled into it?

A Yes.

Q Typically, you do memorandums of interview; did you do any in this case?

A I didn't in this case.

Q Now, typically when SLED does interviews, you use a video camera; is that correct?

A No, ma'am.

Q You never have audio?

A We do, but it's not a typical thing. We don't have access to one all of the time. So, there's cases when we have access to at least audio and we try to remember to use it.

Q So, you didn't have a regular tape recorder this day?

A No, ma'am.

Q You all just used a normal Iphone?

A That's correct.

Q Okay. And you admit that during the process of this interview with Mr. Miller, that Iphone stopped recording several different times?

A I don't know if it was several different times, but I know one time it stopped because Agent Merrell indicated to me that it had stopped recording and she got it back.

Q There is a difference in interviewing a person and interrogating a person; is that correct?

A That's correct.

Q And generally you interrogate suspects, correct?

A That would be the normal thing. But often I often interview suspects as well as non-suspect. It is a matter of your own approach to the individual.

Q You have gone to the criminal justice academy, you have taken training and things like that?

A Yes, ma'am.

Q And you have taken interviewing and interrogation classes as well?

A Many years.

Q They teach you how to interrogate people to get a confession, correct?

A They give you an overview.

Q So, basically your interrogation technique is something that you have made up that works for you?

A I would say, yes, it works well for me.

Q Okay. So, in speaking of interrogations, let's talk about June 24th. You were at Fairfax Police Department and you and Agent Merrell went in and interrogated Robert?

A Yes.

Q Now, initially when you went in he didn't want to speak to you, correct?

A That's correct.

Q And as a matter of fact, you tried to laugh it off and say, Oh, I'm intimidating; correct?

A I asked him, I said, Why do you want to talk with Agent Merrell, am I intimidating you? And he said, No, I just don't -- I just want -- I respect women more.

Q That is what he said?

A Yes.

Q So he didn't want to talk to you?

A Yes.

Q He made it clear he didn't want to talk to you?

A That's correct.

Q So you left out of the room, but you didn't leave

the building?

A That's correct.

Q Now, then Agent Merrell she interrogated him, she spent some time, she talked to him; but she couldn't get a confession, could she?

A No, ma'am.

Q When she couldn't get a confession, she came to you and then you went back in?

A That's correct.

Q And after you went back in you immediately, immediately started talking to him and telling him, Look, I'm not buying this; correct?

A Essentially.

Q And you said -- well, first of all, he told y'all that he heard SLED was looking for him?

A Yes.

Q And said that he had heard that SLED was going to kick in the door, that they were going to have weapons, and they were going to shoot and kill him, correct?

A Correct.

Q He said that he had heard on the street that he had been accused of a murder, correct?

A Correct.

Q And he said that there were several different stories about that that he had heard?

A Correct.

Q All right. And he also said that they told him that -- he heard that he kicked in the door, something to that effect?

A Yes.

Q Okay. So, when you went back in the room after agent -- was Agent Merrell in there with you as well?

A The second time?

Q The second time.

A Yes, ma'am.

Q So you just went on -- you initially came in and said, You going to jail.

A That wasn't my first words. I came in and more than likely just said, Robert, call somebody, it looks like you are going to jail.

Q You didn't come in and just say, Look, this is BS, you are going to jail?

A I don't about those exact terms, but it wasn't long before I made it clear to him that he was going to jail.

Q He asked, he said, Today?

A Yes.

Q And you said, Yeah. And you said, There ain't nothing that you can do to stop it, correct?

A That's right.

Q But at that time he did not confess?
A No.
Q He had not confessed and you said, You are going to jail and there's nothing that you can do to stop it, correct?
A That's correct.
Q Then you also said, Do you know what an ass is?
A That's correct.
Q And he said, No. And you said, That is a lot of time, right?
A Along those lines.
Q And you also said, You ever heard the prosecutor say an ass of time?
A Say that again.
Q You ever heard the prosecutor say, An ass of time.
A No.
Q You don't recall saying that?
A No.
Q Okay. And Robert said to you, What can I do to get me out of this situation; do you recall that?
A That's correct.
Q And your response is, You can't get out of it but what you can do is minimize the kind of time; is that correct?
A Correct.

Q And you told him how much time he was looking at. You told him, You can come clean, you can lay it out on the table, you can cooperate; correct?

A No, ma'am.

Q You didn't tell him that?

A I didn't tell him how much time he was looking at.

Q No, I didn't say that, I said, you told him he could come clean, and you said, possibly, if you were looking at a specific amount of time?

A That's more likely.

Q Adn then you asked him, you said, Do you know who the prosecutor is, correct?

A Correct.

Q He said, No, sir; correct?

A Yes, correct.

Q Then you had to explain to him that the prosecutor was the person who was going to be against him?

A Before I completed the explanation, he injected and said, That is the one against me.

Q Going against, yes?

A Yes.

Q And then you said, That is the one that is going to try to send you to prison?

A I'm not sure if that is my exact words, but they

was along those lines.

Q Okay. And then there was communication back and forth and you kept talking to him about the amount of time that he was going to get and that it was a lot of time. And still at this point, it wasn't until after you continued to talk about him going to prison that he started to break down and talk to you and he finally said, All right, all right, I did it. Correct?

A Along those lines, yes.

Q But he never gave you specific details about anything inside that house, did he?

A I didn't ask him.

Q So you weren't concerned about whether or not his confession was consistent with the evidence that you had?

A I was very much concerned, it's just that he terminated the interview before we could delve into it more thoroughly.

Q So, he is the one that stopped the interview?

A Yes, ma'am.

Q As a matter of fact, when you continued to talk to him about the time that he was going to receive he said, Just please stop, just please stop, please, please just stop; correct?

A No, ma'am.

Q Okay. And he said, I have been honest with you.

And your response was, I told you from the beginning if you want to stop you can stop at any time, it's up to you. And he said, I just want to go home.

A That's correct.

Q And you were like, Huh?

A No, ma'am.

Q And he said, I just want to go home?

A No, ma'am.

Q You don't recall that either? Do you recall telling him, Well, you ain't going home?

A That's correct.

Q And you told him, We need a clear picture from you. And he said -- so, this is what you told him -- he was 15 at the time, correct?

A Correct.

Q You said, When I talk to the solicitor, I'm going to tell the solicitor, This is what Robert told us. He's hurt. I can tell that he's hurt about it. Whatever you can do to help him, you help him. Is that not what you told him?

A No, ma'am.

Q That is not what you said?

A No, I told him. I said, This is what will happen. You come clean with us and then when we go, when we do talk to the prosecutor, we will let the prosecutor

know what you said, that you were cooperative and ask if he could help you, help him.

Q You didn't say, Whatever you could do to help him you would help him?

A Yes, but I didn't tell him that this is what I am going to do, I said, This is what would happen or what could happen.

Q Now, if Robert said, I only have two choices right now, either go to jail or die, right?

A Correct.

Q He just said, I just want to leave, I just want to leave, I am done, I just want to leave; correct?

A Yes.

Q And you went on to say -- because you are through talking to us?

A That's correct.

Q I want to make sure that you don't want to talk to us any more?

A That's correct.

Q Even after he told you he didn't want to talk to you, he wanted to leave, he wanted to go home, you continued to question him?

A That is the only time that he said he wanted to leave and just wanted to go home. When he was telling me, stop, stop, stop, he was not telling me that, I was telling

him to stop because he was saying that he wanted -- just wanted to just die. I said, Stop, that is the wrong answer.

Q Okay. So you did tell him -- you admit that you kept telling him the wrong answer?

A No, I wasn't telling him the wrong answer. I told him that his statement that he wanted to die is the wrong answer or wrong response, so I was telling him to stop.

Q Do you recall when he was talking to you, you said, All right, so, Gabriel tied him down?

A I'm not certain.

Q Okay. And he said, I said -- and then you say, No, no, that is the wrong answer, that is the wrong answer, wrong. You don't recall that?

A Yes, I do recall that.

Q That does not have anything to do with him saying he wanted to die?

A No, when he was saying stop in an earlier question. When I was saying stop it was because he was saying that he just wanted to just die, so I was telling him to stop, you don't talk like that in public if you are innocent.

Q Did you ever tell him that you were going to see what you could do to minimize the charges that he would

receive?

A No, not like that. I told him that this was the best thing that he could do, come clean and see if he could minimize his time.

Q So, you don't -- you have had a chance to review the video, correct?

A Yes, I have.

Q And you are aware that the video was transcribed?

A Yes.

Q And you are pretty much aware that that is what I'm reading from?

A Yes.

Q So, you admit that the question that I'm asking you from this document was transcribed from the audio?

A The questions are not verbatim from the audio.

Q This is not what the solicitor transcribed?

A Your question being asked to me is not the same thing that took place.

Q So, Johnson: No, no, that is wrong. That is the wrong answer. Wrong. Isn't it true that that would be something that was transpired from the interrogation that you said?

A Now, the way that you just said that, yes, that is what I said.

Q So, Gabriel, he ain't. Johnson: Name. All right

who is he? Miller: He who? That is the only thing I just want. All right. So you say Gabriel tie him down. Miller: I said -- Johnson: No, no, that is wrong, that is wrong, wrong answer.

A Yes.

Q So you didn't tell him then that the answers that he was giving you were the wrong answers?

A Probably did.

Q Okay. So, that basically means that the confession that he was giving you wasn't the confession that you wanted?

A No, not the confession. He was not telling the whole truth.

Q So, how do you know the whole truth?

A Experience with the information that I had. We had already had -- I think that it was Caper who had already conveyed to us what he told them. Just investigative experience. It wasn't adding up.

Q Isn't it also true that the facts that Capers gave you was not consistent with the facts at the residence?

A I can't say that. I don't know.

Q Okay. Now, did you call Solicitor Legette to come to the Fairfax Police Department?

A I either called her -- I called someone from the Solicitor's office at some point. I don't recall exactly

which one it was.

Q Okay. So you thought that it was important to have the assistant solicitor who prosecutes cases to be at the Fairfax Police Department, but not important to have an attorney to represent him at the police department?

A Every case that we work, the homicide cases, we always notify the Solicitor's office as quickly as possible as to what we have to give them a heads-up as to what is to be expected. And if there's a time that we need legal opinion, then we would ask them if they could come, yes.

Q Is there often times that the solicitor comes to the interrogation?

A No, the solicitor wasn't at the interrogation.

Q Now, you talked to Robert about his parents?

A Yes.

Q About his mother, or Ms. Sabb, you asked him, was this his mother and he said, No, she was like a mother?

A That's correct.

Q You were also the agent that asked Ms. Sabb to step outside of the room?

A I asked her if she minded if we talk with Mr. Miller outside of her presence and then I asked Mr. Miller is that okay.

Q So, the only guardian that he had present, you asked her to leave so you could have Robert by himself; is

that correct?

A No, I asked her do she mind if we talk to him alone.

Q Does that mean that you wanted her to stay, or does that mean that you want her to leave?

A Possibly leave, yes, ma'am.

Q So you admit that you wanted her to leave so you could interrogate him by himself?

A Se we could question him, that's correct.

Q Also, his father came up there while you were interrogating him, correct?

A I know his father came up at some point, but I don't know if he came up while we was talking to him or not.

Q But y'all never let his father come in the room while y'all were interrogating him?

A If I'm in the middle of an interrogation, I don't know whether his father is out there or not. I don't know, I can't answer.

Q You indicated that when you finished interrogating Robert, he laid down on the floor and went to sleep; did he not?

A That's correct.

Q And at the end of the interview, he was crying; he was in tears, correct?

A I think he was.

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

MR. THORNTON: Just a couple of questions.

REDIRECT EXAMINATION

BY MR. THORNTON:

Q You have already answered the question about the assistant solicitor. Do you call defense lawyers to ask them legal opinions about your case?

A I don't just call them, no.

Q So, do you call assistant solicitors, or in some cases, deputy solicitors to ask opinions about your case?

A Yes.

Q At any point did Robert Lee Miller ask for an attorney?

A Never did.

Q Had he asked for an attorney, would you have stopped the interview?

A Most definitely.

Q When she said he was tired of talking to you, did you stop the interview?

A Certainly did, yes.

Q At any time was Tameaka Legette involved in your questioning of Mr. Miller?

A No.

Q When I say "involved," was she in the room, was she feeding you questions?

A She was not even there.

Q To your knowledge.

A I don't even recall her being there.

Q Ms. Smart-Gittings asked you about interrogation techniques versus interviewing and when you are talking to people and that you are a trained interrogator; are you in there to get somebody to admit to something they didn't do or are you after the truth?

A The truth.

MR. THORNTON: Subject to recall, Judge, I don't have anything else from this witness at the moment.

THE COURT: Thank you, sir. You may step down but don't leave.

MR. THORNTON: May we approach, Judge?

THE COURT: Yes, sir.

(Off-the-record discussion held.)

THE COURT: All right. Madam forelady, at this juncture the lawyers tell me this is a good point to take a break. Let's take a lunch break now. If you will be back in the jury room at 1:30 we will return to the trial at that time. Let me remind you not to speak amongst yourselves or to anyone else about the case. Leave your notes in the jury room if you will

please.

(Jury exits the courtroom.)

THE COURT: Do you have something?

MR. THORNTON: Briefly, if I may. It is something that I talked to you at the Bench about. One of the things that always concern me when we have audio, and it's even worse with video recordings, this one won't be as bad because there's been an explanation that the tape cut off sometimes, but that the jury thinks that we are hiding something form them. And, of course, the case law requires me to redact certain things, the stuff about the weed, prior bad acts, the thing about the Fairfax shooting that we obviously don't want to get into. My request would be when I talk to or when I introduce the video through -- or, excuse me, the audio through Agent Merrell, I usually say something like, Your Honor, this is the portion that has been redacted either by order of the Court or by agreement of the parties, because I'm required to redact it and I don't want to be unfair -- have the jury think that I'm hiding things from them that I'm forced to take out.

Normally I ask for permission to say, you know, as redacted for time and with content as agreed by the parties, or something like that. Because she can't say

that it hasn't been altered. It has been altered because portions have been removed.

THE COURT: What is your feeling on that?

MS. SMART-GITTINGS: I don't have any. The only thing that I'm going to ask her about is what she put in her report, that it stopped. That is it. I mean, I'm not going into anything redacted or about taking anything out.

MR. THORNTON: If that's okay if I just say by agreement of the parties that we are putting in the redacted version. And the only other thing that I mention, Judge, I just -- I apologize, I should have talked to Ms. Smart-Gittings about this before and made this clear. Obviously when we get these tapes, and the audio is a thousand percent better than it was when we did the pretrial, but it's still audio, it is still a tape, there's still multiple people talking. When we do these transcripts, it's done by our office. And the only fair way I know to do it is for them to listen and put down what they hear or think they hear. I actually came across a 2016 case that Your Honor did where you allowed the jury to use the transcript and it was upheld and we used it many times. But, as you know, there's generally instructions that say you have to listen to it

before we bring the jury back?

MR. THORNTON: No, sir.

THE COURT: Ms. Smart?

MS. SMART-GITTINGS: No, sir.

THE COURT: All right. Bring in the jury.

(The jury enters the courtroom.)

THE COURT: Call your next witness.

MR. THORNTON: Thank you, Your Honor. The State calls Natasha Merrell.

Thereupon,

NATASHA MERRELL

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THORNTON:

Q Please state your full name?

A Natasha Merrell.

Q Are you the Case agent assigned to this case?

A Yes, I am.

Q Who do you work for?

A South Carolina State Law Enforcement Division, also known as SLED.

Q Are you, basically, the lead officer or the one who is responsible for this case?

A Yes, sir.

Q From SLED's perspective, obviously there has been some testimony about this already. And obviously you have been in here with me as case officer and you have heard a lot of this. So, forgive me for asking some of the same things that we have asked others. But as case officer, have you made additional arrests in this case? Are there others, other than Robert Lee Miller, arrested and pending trial?

A Yes.

Q Who are those individuals?

A Kashaun Bynum and Gabriel Joyner.

Q Are they currently charged and awaiting trial?

A Yes, sir, they are.

Q Are you one of the people with SLED who went out to the scene at Mr. Willie Johnson's house?

A Yes.

Q And were you there with SLED's crime scene folks, Brittany Burke and Tiffany Hezel -- who we heard was on her honeymoon -- were you there when they came through doing all of the LCV tests and that sort of thing?

A Yes, sir.

Q Is that part of your job as a case officer?

A Yes, it is.

Q Also, as part of your job as a case officer, did you have any occasion to interview Robert Lee Miller III, the defendant in this case?

A Yes, sir.
Q Were you interviewing him and did you talk to him about what involvement he had, if any, with Mr. Willie Johnson's murder?
A Yes.
Q And where were you located when you did that?
A Fairfax Police Department.
Q Were you with anyone else from SLED?
A I was with Special Agent Richard Johnson.
Q Is that who -- Agent Johnson that just testified right before you?
A Yes.
Q And were you present for the total interview that he had with y'all?
A Yes, I was.
Q At some point did -- does Agent Johnson step out of the room?
A Yes, he did.
Q And again, you are probably the best person to ask about this, but was this recorded, this interview?
A Yes, it was.
Q Was it recorded audio or video?
A It was audio.
Q What did you use to record it?
A My SLED Iphone.

Q At any time during this interview, at least once, does the Iphone cut out, and if it does, could you explain why?

A Yes, it cut out a couple of different times. As the recording was going, I was receiving in-coming calls and when I hit the ignore button the voice recording would stop and I would have to manually restart it.

Q I'm going to show you a document. I'm going to show you what's been marked as State's Exhibit 33 and ask you, just, if you are familiar with that document?

A Yes.

Q And what is that document? Obviously, it is a multi-page document. What is it?

A An audio interview transcription.

Q Now, just so we make this clear, did you prepare that -- is that a transcript of the audio that we are going to hear in a moment of Robert Lee Miller's interview or portions of it?

A Yes, it is.

Q Now, was that transcript, was that done by you or Agent Johnson or anybody from SLED?

A No, it was not.

Q Was that actually done by a member of my office?

A Yes, it was.

Q I apologize, it was an inartful way that I was

about to ask that question. I realize that there may be some minor discrepancies, as far as what you hear on the tape as to what the transcript is, because, obviously, it is just someone listening, they weren't there; is that correct?

A That's correct.

Q Other than those minor things and the redactions that were done that you were aware of that is done by agreement of the parties, pursuant to the state law and the Judge, with regard to relevance and time; other than those things, has it been altered or changed in any way, or is it a fairly accurate representation of what is heard on the tape?

A Yes, it is.

MR. THORNTON: Judge, I would ask at this time that the transcript be moved into evidence. And that is State's 33, Your Honor.

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

THE COURT: I'll admit it. Ladies and gentlemen of the jury, let me tell you this, this Exhibit 33 which is a purported transcript of audio. It is not evidence in the sense that it was taken from the scene, it was not witnessed by somebody, it was just somebody with the Solicitor's office who did their best to type down what was heard on the audio. Therefore, when the audio is played, if you hear

something that differs from what you see in this transcript, the audio would control. Okay?

In other words, if there's a discrepancy, the audio is what you depend on and not necessarily the transcript. With that being said, I'll further tell you that certain aspects of this transcript have been what we call "redacted", meaning there's not everything to be in there. I require that certain parts not be in there and the parties stipulate that certain parts not be in there, but the relevant parts are in here.

MR. THORNTON: Thank you, Judge. For Your Honor's edification, I'll ask her about a disc that I'll place in evidence, that counsel is aware of, the audio recording that has the transcript overlaid on the screen. I will move that into evidence. I did include a paper copy of the transcript so that the jury will have it if and when we get to the appropriate point.

(Whereupon, State's Exhibit No(s). 33 marked for identification and received in evidence.)

BY MR. THORNTON:

Q. I'll show you what's marked as State's Exhibit 34, which is the disc marked as the Miller statement; is that correct?

A. That's correct.

Q Have you been with us and our office pretrial and seen the transcription that is overlaid?

A Yes, I have.

Q And subject to what the Judge has instructed as with regard to the necessary redactions for relevance and time, other than that, is that an accurate recording and recording that you made of Mr. Miller's interview that day of his confession?

A Yes, it is.

MR. THORNTON: Your Honor, at this time I move in State's 34, which is the audio recording as well as the transcription laid over it.

THE COURT: It'll be admitted subject to prior rulings.

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

THE COURT: Yes, ma'am.

(Whereupon, State's Exhibit No(s). 34 marked for identification and received in evidence.)

BY MR. THORNTON:

Q I'll not ask you too many more questions, because obviously, this is on tape. But just a few more things. When you and Agent Johnson were in the room at Fairfax Police Department with Mr. Miller, who all was in the room that you recall?

A Myself, Agent Johnson, Tiffany Sabb.

Q And was there an Officer Williams in there at some point in the very beginning?

A I do remember a Fairfax police officer being there, but I do not recall his name.

Q Okay. So, there were you, a Fairfax officer, Agent Johnson, Tiffany Sabb, and the defendant in the room; is that correct?

A That's correct.

Q While you were talking to him, who was in the room once you started your interview of Mr. Miller?

A In the beginning, it was myself, Agent Johnson and Tiffany Sabb.

Q Did -- was she at some point asked to leave?

A Yes, she was.

Q And I -- I understand that -- I know that that question was asked and you were in the room. Was she asked if it was okay if y'all talked to him without her in the room is probably a better way to put it?

A Yes, she was.

Q Did she say yes and left?

A Yes.

Q At that point did you and Agent Johnson both talk to him or did y'all switch off, or was it just you; or how did that work?

A Miller the III indicated that he only wanted to

speak to one of us and he would prefer to speak to me.

Q At that point did Agent Johnson leave the room?

A Yes, he did.

Q While you were doing your initial interview of the defendant, Mr. Miller, did he stay out of the room?

A Yes, he did.

Q While you were talking with Mr. Miller, did you ask him about his whereabouts on the night Mr. Willie Johnson was killed?

A Yes, I did.

Q And was he giving you -- and again, I know this is on the tape, but was he giving you consistent answers?

A Not exactly. He could not remember how he got back to Ms. Sabb's residence that evening.

Q Did he talk to you about stories he had heard about SLED was going to kick in his door and shoot him and things like that?

A Yes, he did.

Q And what was your response, if any, to that?

A I said, Has it happened and he responded, No.

Q Did you ask him, Well, what does that tell you or something to that effect?

A I don't recall.

Q That is okay. We will play the tape in a minute. Is he admitting that he did anything at first?

A No, he is not.

Q Is he saying, Well, I heard this story in a dream; is that what he said?

A No.

Q He point blanks says, I didn't do anything?

A That is correct.

Q Did you at some point go get Agent Johnson and ask him to come back in?

A Yes, I did.

Q Once Agent Johnson comes back in, does he talk to him about, Well, you are going to go to jail?

A Yes, we did.

Q And you can help yourself or minimize, things like that; does he make those types of general statements?

A Yes, he does.

Q We will play the tape in a minute. But at some point does Mr. Miller, as my daddy would have said, change his tune?

A Yes.

Q Does he make some admissions or confessions as to being responsible in the murder of Willie Johnson?

A Yes, sir, he does.

Q In general terms, what does he tell you?

A He told us that it was Gabriel's idea, the whole thing, but he did hit Mr. Johnson and he did place the bag

over his head.

Q So when he confessed, he is still minimizing his role?

A Yes.

Q And saying, Well, it was Gabriel's idea, I just went along; is that correct? Is that accurate?

A That is accurate.

MR. THORNTON: The Court's indulgence please, Your Honor.

(Pause.)

BY MR. THORNTON:

Q And there's been some -- there was actually a question last time about, Well, he didn't give you any details and I think that the jury will hear about Agent Miller (SIC) himself stopping the interview when you tried to do that. But he did talk about the bag over his head?

A Yes, he had did.

Q Did you already then have a statement from Johnathan Capers?

A Yes, we did.

Q The jury has already heard Mr. Caper's testimony and there was a discrepancy about it being a Dollar General bag, but there was a bag over his head. Was the rest of that mainly consistent?

A Yes, it was.

MR. THORNTON: Your Honor, at this time I think that the best thing to do is play the tape, since it speaks for itself. With the Court's permission, I would like to publish?

THE COURT: Yes.

MR. THORNTON: I did, Your Honor, want to inform the Court, we fixed our audio problems from earlier. We don't have a lot of volume, but it's loud enough. If it's too loud for any of the jurors, I'll have to take the speaker and move it back. Hopefully it'll be okay. I went through it earlier and listened to the entire thing. You can hear it from the Bench and jury box.

THE COURT: If during the course of it it becomes too loud, raise your hand and we will adjust it to minimize it. But apparently it is going to be loud.

MR. THORNTON: There are places that a door closes and that is much louder than the audio. But that's not consistent.

(The audio disc was played.)

MR. THORNTON: Your Honor, I would point out to the Court, as I'm following through, unfortunately, it is a large file. I did hear the computer lag. If the jury needs that replayed, we can replay portions

or all of it.

BY MR. THORNTON:

Q Agent Merrell, one other thing. One of the questions asked earlier by Agent Johnson from defense counsel: Well, if you talked to him, why didn't you do a memorandum of interview. Again, were you the case officer?

A Yes, I was.

Q Are you generally the one that does the memorandum of investigation as the case officer?

A I did the memorandum of investigation.

Q You have already answered my question. Did you do that in this case?

A Yes, I did.

CROSS EXAMINATION

BY MS. SMART-GITTINGS:

Q Agent Merrell, you did several investigative memorandums?

A Memorandum of investigations?

Q Yes.

A Yes.

Q And you interviewed seven, eight witnesses?

A That's correct.

Q And you had about 49 attachments in your file, a lot?

A Yes.

Q Are you familiar with those attachments from your memorandums?

A If I have my case file in front of me, yes.

Q Do you want to take a moment to get that?

A Sure.

Q You learned that Mr. Johnson lived alone on Pickrum Street in Allendale?

A That's correct.

Q And basically the church folk took care of him?

A That's correct.

Q And he had an alarm system on his house?

A That's correct.

Q And as a result of that alarm system a lot of the police reports or dispatch calls were generated?

A That's correct.

Q And I guess each time that the alarm went off they notified the Allendale Police Department?

A I believe that's correct.

Q But on the date of the incident Allendale Police Department was not notified of anything that occurred in that house, on June 17th or 18th?

A June.

Q Like, nobody went out to investigate anything suspicious at Mr. Johnson's house on June 17th, 2014?

A That's correct.

Q Or June 18, 2014?
A That's correct.
Q And even June 19th of 2014, the police department was never dispatched by the alarm service?
A That's correct.
Q But these times they had been dispatched out there by the alarm service --
A That is --
Q -- to your knowledge?
A To my knowledge, yes.
Q Now, you were there when the crime scene was surveyed by Agents Hezel and the other one?
A Yes.
Q Did you observe the heater near Mr. Johnson's body, the portable heater?
A No, I did not.
Q And you are familiar with the wallet that was collected?
A Yes.
Q There weren't any prints of Mr. Miller's on Mr. Johnson's wallet, correct?
A Correct.
Q So, the fact that Agent Johnson told him that his prints were on the wallet, that wasn't true?
A That's correct.

Q Now, as far as you know, during the course of your investigation you discovered that the last person -- a neighbor saw Mr. Johnson about 8:00 on June 17th?

A That's correct.

Q And then at some point you all, I think it might have been somebody from the Allendale Police Department, but they received information from the alarm company about how many times the door opened and the alarm went off and stuff like that?

A Correct.

Q And within that information, was information about the fact that Mr. Johnson had opened his door at about 12:00 on the 17th?

A Give me a second to get to that.

Q Do you need my copy?

A I'm with you.

Q Generally, he would open his door in the morning time and it would stay open all day?

A Yes.

Q Because as we heard, the hard door?

A Yes.

Q He had a screen door and then he had the regular door?

A Correct.

Q So, he opened that door like at 12:00 that day and

it stayed open all day, correct?

MR. THORNTON: Judge, may we approach?

THE COURT: Yes.

(Off-the-record discussion held.)

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

THE COURT: Yes, ma'am.

BY MS. SMART-GITTINGS:

Q So, during the course of your investigation you learned that on the 17th of June at about 12:00 he opened his door?

A Correct.

Q And it stayed open all day until about 8:00, 8:18, and he closed the door?

A Correct.

Q And it opened again and closed at 8:35?

A Correct.

Q So, on June the 17th his door closed at 8:00 and opens and closed again at 8:18, and didn't open any more; correct?

A According to this document, yes.

THE COURT: Identify those documents, please ma'am.

MS. SMART-GITTINGS: Oh, I am Sorry. It is the Vivint Security description that was included in the investigation file. We are done with that document.

BY MS. SMART-GITTINGS:

Q So, you also, during the course of your investigation, you learned that Mr. Johnson -- you interviewed a lady that worked at the bank?

A Can you give me her name please?

Q Ms. Bagwell (phonetic).

A Yes.

Q And -- well let me back up a minute. Has anybody from Mr. Johnson's family been with us this week?

A Can you repeat the question?

Q Has anyone from Mr. Johnson's family been in court with us this week?

A Yes.

Q And who is that?

A His son.

Q And is he located in the courtroom?

A Yes, he is currently in the courtroom.

Q Where is he?

A He is behind Agent Huff, Mr. Teddy Johnson.

Q Okay. So, during the course of your investigation, you discovered that Mr. Teddy Johnson had gone to the bank and wanted to know if his account would be available --

MR. THORNTON: Objection, Your Honor. This is just hearsay. She's couching it in, You learned that

this happened. And the only reason that it was learned --

THE COURT: Just a moment. Would you take the jury to the jury room.

(The Jury exits the courtroom at 2:29 p.m.)

THE COURT: Please ask the question again, Ms. Smart.

MS. SMART-GITTINGS: During the course of your investigation, you learned that Mr. Teddy Johnson inquired about his father's account?

THE COURT: About his father's?

MS. SMART-GITTINGS: Bank account.

THE COURT: I don't necessarily have a problem of you asking a question, couching a question, "As a result of your investigation, you discovered", but I'm not sure what the relevance is you are working up to.

MS. SMART-GITTINGS: It was payable upon his death to his son.

THE COURT: So? Is that relevant to what we are doing today? You think that he had the --

MS. SMART-GITTINGS: I just wanted the jury to be aware of all of the facts. Apparently they thought that it was important, they put it in the police report. I would not have --

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CROSS EXAMINATION OF N. MERRELL BY SMART-GITTINGS

MR. THORNTON: I have two objections, Judge.

THE COURT: That is not true. It is not hearsay. I understand that it's based on hearsay statements, but I don't think that that is an objection that I am going to sustain. What is the other?

MR. THORNTON: Trying to interject third-party guilt, which is completely improper. There is no indication whatsoever that his son had anything to do with it. Frankly, I'm offended that she would bring that up.

THE COURT: The law is clear on third-party guilt.

MR. THORNTON: Yes, sir, I think that is completely improper.

THE COURT: I agree. And I'll strike that testimony from the record, strike the question. Did you respond at all, Officer?

THE WITNESS: No, sir.

THE COURT: I didn't think so. All right. Do you want to cure it with an instruction?

MR. THORNTON: I don't want a curative instruction, and I don't want to beat a dead horse, but I just want to know what the Court is going to rule.

THE COURT: You never know what the Court is going to rule, man, I will you that. I don't even know what they are going to rule.

MR. THORNTON: What I don't want her to do is say -- to use the words, As a result of your investigation you learned that -- and the only way that they learned that was because she interviewed a person who has not been brought here to testify. And I think that's back-dooring in hearsay by couching it in a term -- instead of saying, What did the lady from the bank tell you, what she says is, As a result of your investigation, what did you learn about the lady from the -- well, the only way that they got it was talking to them.

THE COURT: I understand that is your objection, I'm not going to sustain it.

MR. THORNTON: Yes, sir.

THE COURT: You ready to go, Ms. Smart?

MS. SMART-GITTINGS: Yes, sir.

THE COURT: All right. Bring the jury.

(The jury enters the courtroom at 2:34 p.m.)

MS. SMART-GITTINGS: I thought that you were going to strike that.

THE COURT: I did already.

MS. SMART-GITTINGS: Sorry. May it pease the

Court.

BY MS. SMART-GITTINGS:

Q Just one other question. It was clear that the tape recorder stopped a couple of times?

A Yes.

Q And that wasn't intentional.

A No, it was not.

Q And you did note that in the memorandum that it stopped?

A Yes, I did.

Q And finally, after everything is over, he laid on the floor and went to sleep?

A Yes, he did.

MS. SMART-GITTINGS: Nothing further.

THE COURT: Redirect.

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

THE COURT: Yes, sir.

(Pause.)

BY MR. THORNTON:

Q Agent Merrell, just a question that I want to ask you. And I can hand these to you, if I need to, if it would help.

The alarm records that were referenced earlier, I believe that she asked you a couple of questions.

Just to clarify. There is a front door closing at 8:18, and this is on June 17th, 2014 at 8:18 and 51 seconds; is that correct?

A That's correct.

Q According to this, the monitoring company?

A Correct.

Q And you have a front door -- you don't have the front door opening and closing again for -- between 8:18 until 8:35, so 17 -- almost 20 minutes; is that correct?

A That's correct.

Q You don't have another -- there's a lot of modem pings and other information, but there is no door opened or closed after that 8:35 closure until the body of Mr. Willie Johnson was discovered two days later on Thursday at 12:50 something; is that correct?

A Correct.

MR. THORNTON: I don't have any other questions. Thank you.

THE COURT: Thank you, Officer. You may step down.

THE WITNESS: Thank you, Judge.

MR. THORNTON: Your Honor, at this point the State rests.

THE COURT: Okay. Ladies and gentlemen of the jury, the State has advised me that they rest, which

means that they have presented their case-in-chief against the defendant in this matter. I have to take up administrative things now. Let's take an afternoon break. It'll be about 15 or 20 minutes, at the minimum, may be up to 30 minutes before we get you back in here. You may go back to your jury room.

(The jury exits the courtroom at 2:38 p.m.)

MS. SMART-GITTINGS: Your Honor, we move for a directed verdict in that the indictment as stated, that the State failed to prove competent evidence to --

THE COURT: Do you also renew your motion to suppress the statement?

MS. SMART-GITTINGS: Yes.

THE COURT: Thank you. Those are denied. All right. Ms. Smart, have you had an opportunity to discuss with Mr. Miller whether or not he wishes to testify or whether or not he wishes to exercise his rights under the fifth amendment?

MS. SMART-GITTINGS: I have, Your Honor.

THE COURT: What does he wish to do?

MS. SMART-GITTINGS: He wishes to exercise his fifth amendment rights.

THE COURT: Is that correct, Mr. Miller?

THE DEFENDANT: Yes, sir.

THE COURT REPORTER: No.

THE COURT: She has the chance to get the last charge. I'll do whatever you want to do, it is a short charge. I typically don't like to give the case after 4:00, but I will. But I don't want them to rush to judgment. What would be your pleasure? Do you want to keep going?

MR. THORNTON: Your Honor, I don't have a strong preference. I'll do whatever the Court wishes. I don't like to give them murder cases like this this late in the afternoon. By the time we get back, bring them in, and she rests.

THE COURT: It'll be after 4:00.

MR. THORNTON: I would ask for at least, with all due respect, 20 to 30 minutes to get the closing together, then you have argument, charge. I would rather come back in the morning but . . .

THE COURT: She is shaking her head. We are all on the same page. Your motion is denied. Renewed, but denied. I'll bring the jury in and release them, 9:30 in the morning like we have been doing. Everybody good with that?

MR. THORNTON: Yes, Your Honor.

THE COURT: All right. Bring the jury.

(The jury enters the courtroom at 2:43.)

THE COURT: Ms. Smart. Mr. Thornton requested a charge on hand of one, hand of all. I think that that's appropriate in this case.

MS. SMART-GITTINGS: I agree.

THE COURT: Are you still of the same mind, charge first, argument second?

MS. SMART-GITTINGS: Yes.

MR. THORNTON: Yes. Your Honor. If I might, this is the stipulation that you asked for. It's been signed by both parties.

THE COURT: Very good. Excellent.

All right. Bring the jury in, please sir.

(The Jury enters the courtroom at 9:35 a.m.)

JURY CHARGE

THE COURT: Good morning ladies and gentlemen, before I get started. Let me ask everyone, if anyone has spoken with anyone about this case, during the break or read, heard or seen anything about it during the break? If so, would you raise your hand.

(No response.)

THE COURT: Very good. Let the record reflect no one responded. Ladies and gentlemen, if you will remember, at the beginning of this trial, I told you that there's five phases. You have the opening

statements, you have the presentation of evidence, and then you have closing arguments, and I charge you on the law and you begin deliberations.

We have finished the presentation of the evidence phase. With agreement of counsel, what I'm going to do instead of having closing arguments now, I'm going to charge you on the law that you must apply and then the lawyers will give you their closing arguments. We will have a meeting and then we will send word back to you at the appropriate time to begin your deliberations. So, Madam Forelady, until you get that message do not begin your deliberations.

All right. Now, let me tell you this before we get started, let me apologize to you, I'm neither smart enough or articulate enough to tell you the law, unfortunately a lot of this will be read to you so it is very important, they are principles that you need to be hearing, so just bear with me if you will.

If anyone needs to move around during the course of this charge, you may stand up. But please pay close attention. Mr. Bailiff, if you would, do not let anyone enter or leave the courtroom during my charge or during closing arguments, please sir.

With that being said, ladies and gentlemen, you have heard all of the testimony and evidence that is

going to be admitted in this case, so let me tell you this: At this juncture, a lot of times in other places I have juries send a request to hear additional information that is not put in the record. At this juncture, there will be no more evidence presented to you. We may replay evidence and watch certain parts of the evidence that you have back with you, but there will be no more testimony and no more additional information placed on the record. You must make your decision based on what is before you now and according to the law as I give it to you.

My instructions to you will be in three parts. The first part will be general instructions that define and control your duties as jurors. The second will be the instruction of the law or the rules of law that apply in this case, that is the law of murder and related doctrine to that. In other words, what the State must prove in order to make out its case against the defendant. Third, I'll give you general instructions about your deliberations. I'll give you a break after the first part of my charge because it's somewhat lengthy, and let you move around so I don't put you to sleep, hopefully.

Ladies and gentlemen, as I told you, you are the judges of the facts, you and you alone will determine

what the facts are in this case and hopefully ultimately reach a unanimous verdict. But you must find the facts and the evidence presented to you in this case thus far. To those facts you must apply the law as I give it to you now. You must not and shall not be concerned with what you would like the law to be or what you think it should be, but only what it is.

Also, ladies and gentlemen, you must not be influenced by any personal likes, dislikes, opinions, prejudice or undue sympathy that you may have for one side or the other. What that simply means is this: You must decide the case solely on the evidence and according to the law as I give it to you now. And I will remind you at the beginning of this case, you took an oath and you swore or affirmed to do just that.

In following my instructions, you must follow all of the instructions as I give them to you. You must not single out ones that you like and apply those and ignore others. They are all equally important. And also let me tell you this, if I have done anything throughout the course of this trial to indicate to you how you are to define facts, in other words the verdict that you should reach, I'll instruct you that you shall disregard that. Our Constitution doesn't allow any judge to have a comment on the facts or opinion on the

facts, it's you and you alone who determine those facts.

You determine what the facts are by evaluating and weighing the evidence that you have heard throughout this trial. Now, there's no way to weigh evidence in a literal sense, you can't have a set of scales to weigh it in its literal meaning, but it is entirely a mental process and you will evaluate, judge, and weigh the evidence simply by using good common and sound judgment that you brought with you when you were sworn in.

Now, this is what the evidence is in this case: The sworn testimony of the witnesses, whether it's on direct examination or cross examination, it is evidence. Also, any exhibits that have been admitted into evidence is evidence.

Finally, there's a stipulation that was entered into by the parties that has been submitted as evidence and you must accept this as a fact. And this is the following stipulation: Agent Tiffany Hezel collected case prints that were taken from the defendant Robert Lee Miller III. Those prints were transferred to SLED and related to SLED item 95.

Now, Madam forelady, you may not debate whether or not that's in fact true, that's been stipulated by both parties as being true so you shall accept that as being

a fact in this case.

So, that leads me to what is not evidence. As I told you at beginning of the case, lawyers are not witnesses. Their arguments and their statements made in the course of this trial are designed to help you understand and interpret the evidence, but they have not been sworn in or cross-examined so what they tell you and what they will tell you in just a minute is not evidence. What that simply means is if they tell you something, either or both of them, that differs from your memory of what the facts are, then your memory of those facts will control.

Madam forelady, I'll remind you about the notes. Just because something appears in one of the juror's notes doesn't mean that it trumps somebody's memory as to that particular fact or issue. That is why we call it deliberations, you have to hash it out and come to a collective decision about what that issue may be.

Also, ladies and gentlemen, questions or objections by lawyers are not evidence. I'll remind you again that lawyers have a duty, ethical duty, to object whenever they feel like there's something improper going on in the courtroom. You may not and shall not consider any objection during the deliberations or my ruling on that objection, to the

extent that I let you stay in the courtroom and see it. And, madam forelady, if someone tries to raise the fact of an objection and my ruling on that, it is your job to make sure that that's not a topic of discussion in deliberations.

Also, ladies and gentlemen, anything that you may have heard in court while court is not in session is not evidence. Only the testimony from the witness stand and exhibits in evidence and stipulation is considered evidence. Also, we had the one transcript that was admitted for the limited purpose of being what was on audio tape. If the audio differs from that transcript, the audio will control.

So, ladies and gentlemen, that leads me to the types of evidence that we recognize in South Carolina. There are two types of evidence which are generally presented during a trial. That is direct evidence and circumstantial evidence. I'll tell you about each of them.

Direct evidence directly proves the existence of a fact and does not require deduction. For example, if an issue in a case was whether or not I ran a stop sign and my law clerk testified that she saw me run that stop sign, that would be direct evidence because it immediately establishes the issue of whether or not I

ran the stop sign. That is direct evidence.

Now, circumstantial evidence is a little more tricky, but fairly understandable. This is it: Circumstantial evidence is a proof of a chain of facts and circumstances indicating the existence of a fact. In other words, you infer a fact, it doesn't directly establish it. For example, if we all went to bed at night and we had a fresh sheet of snow in our front yards, if you were to wake up in the morning and see tracks in that snow you may reasonably infer that someone or some thing walked through your yard in the night although you didn't actually see it. That is circumstantial evidence.

And I'll charge you ladies and gentlemen that crimes may be proven by circumstantial evidence as with direct evidence. The law makes no distinction between the weight or value to be given either direct or circumstantial evidence. However, to the extent that the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If the circumstances merely portray the Defendant's behaviour as suspicious, the proof has failed.

The State has the burden of proving the defendant

guilty beyond a reasonable doubt. And this burden rests with the State regardless of whether the State relies on circumstantial evidence, direct evidence, or a combination of both.

Ladies and gentlemen, in deciding what the facts are in this case or which verdict you wish to render, you must consider all of the evidence. And in doing this, you must decide which testimony you wish to believe and which testimony you wish not to believe. You may disbelieve all or part of any witness' testimony. You may believe all of a witness' testimony. In making this decision of the credibility of a witness or credibility of the evidence, you may take into account a number of factors which include the following: Was a witness able to see or hear or know things about which the witness testified. How well was the witness able to recall and describe those things. What was the witness' manner while they were on the witness stand. In other words, what was their demeanor while they were sitting on the witness stand.

You can ask yourself if there is some reason that a witness would want to give testimony that would help or hurt one side or the other. Did the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved

in the case? You may ask yourself how reasonable was the witness' testimony considering in light of all of the other evidence in this case and whether that witness' testimony has been contradicted by what that witness had said or done at another time, by the testimony of other witnesses or by other evidence submitted in this case.

Ladies and gentlemen, those are some of the factors that you may consider in deciding which testimony to believe or not to believe. Again, when you are sworn in as jurors you don't check your common sense at the door. You should use those things that you use in your day to day lives that you find indicative of truthfulness or indicative of lack of truthfulness when you go through the issue of credibility.

In assigning credibility, you may believe one witness over many, you may believe many over one, but what you do not do is add up the number of witnesses who appeared on behalf of one side or the other in making the issue of believability. Your sole objective is to try to find the truth from the evidence presented in this matter.

Also, ladies and gentlemen, you have heard testimony from persons described as experts. People

who by their education or experience have become an expert in some field may state their opinion in matters in that field and may also state the reasons for their opinion. Expert testimony should be judged just like in any other testimony. You may accept it, you may reject it or give it as much weight as you think that it deserves, considering the witness' education and experience and the reasons given for their opinion and all of the other evidence in this case.

Ladies and gentlemen, I remind you that the indictment in this case and the fact that this defendant was arrested and charged is not evidence and cannot be considered by you during your deliberations. It does not create an inference nor a presumption of his guilt. It's simply the charging mechanism by which the State of South Carolina brings a defendant such as this one before you for a trial and determination of guilt or innocence. The indictment, madam forelady, will not be sent back with you to the jury room.

Now, the fact is in this case the defendant has pled not guilty to the indictment. Therefore, that plea puts the burden on the State of South Carolina to prove him guilty. I'll charge you that a person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it is an important rule of law that a defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued and its guilt has been proven by evidence satisfying you of guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness which is placed upon the shoulders of the defendant where it remains until it has been stripped from his shoulders by evidence satisfying you of guilt beyond a reasonable doubt.

The presumption of innocence is not merely a theory, it's not just a legal phrase, it is a substantial right which every defendant is entitled unless you the jury are satisfied from the evidence of guilt beyond a reasonable doubt.

So, that leads me to what is reasonable doubt. This is the definition of reasonable doubt: A reasonable doubt is the kind of doubt that would cause

a reasonable, sincere, honest and conscience person to hesitate to act in an important matter in their own affairs.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Now, there are very few things in this world that we know with absolute certainty. In criminal cases the law doesn't require proof that overcomes every possible doubt. If based upon your consideration of the evidence you are firmly convinced of the Defendant's guilt, you need to find him guilty.

On the other hand, if you think that there's a real possibility that the defendant is not guilty, you must give him the benefit of the doubt and find him not guilty. A reasonable doubt may arise from the evidence or the lack of evidence. And I further instruct you that the defendant is entitled to every reasonable doubt that may arise in a case. What that simply means is this: Is that upon any issue of fact essential to conviction or a verdict of guilty, if you have any reason to doubt about how that issue should be resolved, it is your duty to resolve that issue or that doubt in favor of the defendant.

Now, in order to establish criminal liability, criminal intent is required. For example, the mental

state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by you the jury from the circumstances surrounding the situation.

There's no way to prove intent to a mathematical certainty. There's no way to dissect a person's brain to see what that person had in mind. So, the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the evidence required for intent was present.

It's not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact, by taking into consideration the facts and the actions of the parties and all of the facts and circumstances of the case.

Ladies and gentlemen, let me take a quick break. I'll have a quick moment. Go to your jury room. I have to take a quick break. I'm sorry. Five minutes.

(Brief recess.)

(The jury enters the courtroom.)

THE COURT: All right. Ladies and gentlemen of the jury, let's try it one more time. I apologize, I was trying to suppress a cough and it just wasn't going to happen. All right. I was charging you on the law of intent. I'll do that again since I kind of stunk through it. Let me try again.

Ladies and gentlemen, in order to establish criminal liability, criminal intent is required. For example, the State -- the mental state required to be proven by the State for a particular crime by purpose, intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by you, the jury, from the circumstances surrounding the situation. Now, if there's no way to prove intent to a mathematical certainty, there's no way that medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent is present.

It's not necessary to establish intent by direct or positive evidence, but it may be established by

inference the same way as any other fact by taking into consideration acts of parties and all of the facts and circumstances of the case.

Criminal intent is a mental state, it is a conscience wrongdoing. Now, ladies and gentlemen, it's up to you to determine what the defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or indifference to duty, or to the consequences that is considered by law to be the equivalent of criminal intent.

Now, madam forelady, ladies and gentlemen of the jury, the fact that this defendant did not testify may not and shall not be considered by you in your deliberations. The burden remains with the State of South Carolina at all times to prove each and every element of murder by proof beyond a reasonable doubt. You may not consider that or discuss it, okay.

All right. Ladies and gentlemen, a statement alleged to have been made by the defendant has been admitted into evidence in this case. While I have determined that the statement is admissible, I instruct you that you make the ultimate decision whether or not the defendant made the statement. If the defendant did

make the statement you must determine whether the statement is made by the defendant voluntarily and of his own freewill.

That means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation or by hope or a promise of leniency or a reward of any kind. In determining whether the defendant statement was voluntary, you should consider both characteristics of the defendant and the details of the question. Some of the factors that you must consider are the age of the defendant, the Defendant's education, or lack of education, the Defendant's mental ability or capacity, the Defendant's IQ or intelligence, the Defendant's background and environment, the place and length of detention, the nature of the questioning and the bias or lack thereof to the defendant of his constitutional rights including but not limited to the right to remain silent, that any statement could be used against him in a court of law. The right to have a lawyer present. That if he could not afford a lawyer, that a lawyer would be appointed to represent him without cost. And that he can stop making the statement at any time.

You must consider carefully all of the surrounding circumstances before you give any weight to an alleged

statement. The State has the burden of proof beyond a reasonable doubt that the alleged statement was voluntary. If you determine that it was voluntary, you may give to the statement any further consideration that you deem proper. You must decide what weight, if any, shall be given to the alleged statement.

If you determine that the alleged statement was not freely and voluntary, the statement -- excuse me, if you determine that the statement was not a freely and voluntary statement of the defendant, you shall not consider the statement at all.

Now, ladies and gentlemen, this is the law of murder that you must apply. In this case the defendant is charged with murder, the State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse, and with intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time the act is

committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. These terms, "expressed" and "inferred," do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is, either by direct evidence or by inference from the facts and circumstances which are proved.

Expressed malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, laying in wait for a person or any other acts in preparation going to show that the deed was within the Defendant's mind would be expressed malice. Malice may also be inferred from conduct showing a total disregard for human life.

Ladies and gentlemen, if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

For example, two people can be guilty of killing

another person when only one of the two had a gun, there was only one bullet, and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, or as it is sometimes said, "the hand of one is the hand of all".

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the person as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal.

The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present aiding, abetting, or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both.

Where two or more, acting with a common plan or intent, are present at the commission of a crime, it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all. Present at the commission of the crime means to be sufficiently near to aid and abet and assist in the commission of the crime.

However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element. For there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs; not accidentally or involuntary.

Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements by proof beyond a reasonable doubt.

Now, finally, ladies and gentlemen, let me tell you this, you don't serve as jurors to be partisans for one side or the other. In other words, you are not an advocate for the State or for the defendant. In fact,

when you were selected, both sides picked you because you represented to be fair and impartial and you would make a decision based on the testimony and evidence and according to the law as I give it to you.

You go back and you begin your deliberations. You should use your experiences in life, your good common sense, your sense of logic and reason in hopes of ultimately reaching the verdict. In your deliberations -- and let me tell you this. Deliberation is defined as a careful consideration weighed up with a view to a decision. Regardless of what any of you may think about our system, I'll submit to you that the genius of our jury system is that it allows 12 men and women such as yourselves who come from different walks of life, who have different backgrounds, life experiences and perspectives, to listen to the testimony, listen to the law, and ultimately reach a unanimous decision as to what that verdict is.

And you shall consider all of the evidence carefully, courteously, and deliberately and discuss it in a calm and deliberate manner. You are not partisans or advocates for one side or the other. You are the judges of the facts and your sole interest in this matter is to find the truth from the testimony and

evidence that you have heard in this courtroom.

I'll ask you, and I'm also going to charge you that you are to listen to the views of your fellow jurors, consider their points, their points of view, and talk through all of the evidence carefully and considerately and do not be in a big hurry. This case is important to both sides of this trial and this is their only day in court.

They do not have another bite at the apple. In order for your verdict to stand, you have to all agree as to what that verdict should be. With that being said, each of you have to decide this case for yourselves, but you should only do so after you have talked through all of the evidence with your fellow jurors and listened to their points and points of view.

Don't be afraid to change your opinion if the discussion convinces you that that is the right thing to do. But on the other hand, do not come to a decision simply to appease your fellow jurors.

Now, madam forelady, if at any time during your deliberations you have any questions or you need any explanations, if you would write down what the issue is or what the question is, give it to the bailiff and we will receive it here in the court and we will respond in court. One thing, never ever let me, the lawyers,

the bailiffs know where the jury stands numerically, 6-6, 12-0, 11-1, it is none of our business. That is entirely up to you, the jury.

With that being said, at the end of the closing arguments I'll go over the verdict form with you and make sure that you know how to fill it out. But before we have closing arguments by the lawyers let me make sure that I haven't made a mistake in my charge or there's any objections. So, if you will go to the jury room for a minute and then we will bring you back out here for closing arguments.

(The jury exits the courtroom.)

THE COURT: Besides me choking up the whole time I was doing my charge, additions or exception to the charge?

MR. THORNTON: None, Your Honor.

THE COURT: From the defense?

MS. SMART-GITTINGS: No, sir, Your Honor.

THE COURT: I am sorry, I couldn't get the tickle out of my throat. Do you need a minute, or are you ready to go?

MR. THORNTON: The State is ready, Your Honor.

THE COURT: Are you ready?

MS. SMART-GITTINGS: We are ready, Your Honor.

THE COURT: Bring the jury back in.

(The jury enters the courtroom at 10:12 a.m.)

THE COURT: State ready for closing arguments?

MR. THORNTON: The State is ready.

THE COURT: Defense ready?

MS. SMART-GITTINGS: Defense is ready, Your Honor.

THE COURT: Mr. Thornton.

CLOSING ARGUMENT BY THE STATE

MR. THORNTON: Thank you, Your Honor. May it please the Court. Ms. Smart-Gittings. Good morning, ladies and gentlemen.

Oftentimes in cases it is helpful to talk about what we know for sure, what is not contradicted, and then go from there. There are a lot of things in this case that we know as an absolute certainty and it can't be contradicted. We know who the victim in this case is. You were introduced to him over and over again by folks at his church, Mr. Willie Johnson, a deacon in his church. You remember Ms. Mary Bowman said she had known him over 50 years here in Allendale. So, we know who the victim is in this case, no question who that is.

We know that he lived at [redacted] right here in Allendale. We know that as an absolute certainty. What are some of the other things that we

know? We know that he's 86 years old. And we know that he was murdered. We know that he was left either dead or to die, depending on which of the four confessions given by Robert Lee Miller III you believe.

Tied up and beaten with a bag over his head. We know that. That is not in dispute.

Let's talk about the time line in this case, ladies and gentlemen. You know that on June 17th, 2014 that somewhere around 3 in the afternoon or a little bit after. I think that she said between 3 and 4, that Ms. Bowman got a call from the victim in this case, Mr. Willie Johnson. And Mr. Johnson called her, like he had before, asking for a ride to the store. We know that as a fact.

You also know that sometime between 8 and 11:00 p.m. she tried to call him back several times and the line was always busy. You also know because of the alarm codes that shortly after 8:00 the door is closed and at 8:35 it is opened and closed again. But most importantly you know that it is not opened again until when? 12:56 on Thursday when Mr. Willie Johnson's body is found.

You know that on Wednesday, the 18th, that Ms. Barron with Meals on Wheels tried to deliver Mr. Willie Johnson's meals three times. And for the

first time in all of the time that she had delivered his meals he did not come to the door. When she told Jeanette Bennett that, Ms. Bennett called two times that day and one time on Thursday morning. And what did she get each time? A busy signal. And we will talk about how important that is here in just a few minutes.

You know that on Thursday morning Ms. Bowman got a call from Mr. Johnson's son who was calling to check on his daddy. She then called and talked to one of the other church members, she talked to Deacon Raymond Simmons and Mr. Simmons then calls Robert Miller. No relation, obviously. Mr. Miller then goes over to the house, walks in, and what does he tell you? He says that he opened the door, he looked in, he saw the quilt, he saw Willie Johnson, he saw his hands bound and he backed out and called 911. And you heard his 911 call.

You know that that is an accurate time line. Now, let's talk about some of the evidence in this case. There's not one, not two, not three, but four separate confessions from the defendant, two made to law enforcement. And two made to Tiffany Sabb, one to her and one to Johnathan Capers. One of the things that you have to decide, as the Judge has already instructed

you, when it comes to the law enforcement statements, did law enforcement coerce him into the statements?

You know, Ms. Smart asked a lot of questions about intimidating and, you know, didn't you say this, didn't you say that. Well, let me ask you a question. Let's start with the first statement that we talked about. How about Johnathan Capers and Tiffany Sabb, what coercion did they use? What reason did they have to get up and try to coerce it or get up on that stand and not tell you the truth? Did either one of them look like they wanted to be here answering my questions?

What did he say about Tiffany Sabb? Do you remember? What did the defendant himself in his interview say about Tiffany Sabb? "She is like a mother to me." Now, how hard do you think that it was for Tiffany Sabb to get up on that stand and give the information that he gave her, his confession? Did it look easy for her or did it look difficult?

Because one of the things that you as a jury have to do is you have to decide the believability or the credibility of what a witness has testified to. Did she also try to minimize his involvement? Well, he told me this but it wasn't his idea, it was that Gabriel. Right? Isn't that what she said?

What about Johnathan Capers? When I asked

Johnathan Capers, did he look like he was cooperative or wanted to be here? When I asked Johnathan Capers, Were y'all friends, what did he say? "He is like my brother." So, what coercion did they use to get him to admit the crime that he committed, along with Gabriel Joyner and his brother, Kashaun Bynum? There is no coercion.

What about Chief Marvin Williams? Any evidence presented or questions about coercion that Chief Williams used? Because there wasn't any. There were five officers that came in contact with him that day, weren't they? Yes. And there was an assistant solicitor somewhere floating about, yes. Do you find it unusual that an assistant solicitor might be in a police department at some point?

What is important is how many people were in the room? Two. Chief Williams and the defendant, Robert Lee Miller III. What coercion did he use? What promises did he use? What testimony? Because, remember, and I know the Judge has said this, and we have both said it so please forgive me for plowing the same ground. What I tell you is not evidence, I'm simply telling you what I believe the evidence shows, as Smart-Gittings will do.

So it's not what Ms. Smart-Gittings wants the

evidence to be, it is what it is. What did the Chief say? What questions were asked? What issues were brought up about any coercion on behalf of the Chief? None, because there wasn't any.

The statement to Agent Merrell who is seated at the table with me and Agent Richard Johnson. Now, that is the one that is recorded, that is the one that you can hear. And I would invite you to do this, if y'all will remember, when I got up here and talked to you, the first thing, one of the first things that I told you was -- it may have been the last thing that I told you, sometimes they blur together -- you have to listen to everything.

We have to ask you to listen to every single piece of evidence. That is why you are not allowed to deliberate until everything is in and done. And even when that happens, as the Judge told you, we still have to come back and make sure that all of the exhibits are lined up and everything is where it is supposed to be. And then send those back. And you are not allowed to deliberate until you get all of that. And here is why: You have to look at the total picture. It is not one piece or one part. You have to look at everything that gets presented.

Now, one of the things that you get the benefit

of -- and I realize that the audio was not the best in the world, and I apologize for that. Technology is what it is. You can always listen to it again if you want to. That is not a problem. That is why we prepared the transcript, again, not as a replacement for but as an assist.

But the audio is what the real evidence is and what you need to pay attention to. One of the things that you have the benefit of as far as that is, what was the tone of the interview? And Ms. Smart-Gittings called it interrogation, you can call it whatever you want.

The name is not important. The conduct is what is important. What did it sound like? Did you hear any violence on behalf of the officers? Did you hear screaming and yelling on behalf of the officers? Or was it a fairly calm question and answer? Now, did Agent Johnson say, Look, you are going to go to jail today either way, I'm tired, I'm lazy, I'm ready to go home? Absolutely, it is on there.

Is that coercing him? You know, you are probably going to do a lot of time. You know, if you cooperate and you talk to us, we will go tell the solicitor. I can't tell you how much time you are going get, that is up to the Judge. Any of that not true? Did he lie to

him about what was going to happen? He said, you are going to go to jail today. Guess what, he went to jail. He told him the truth.

What can I do to get myself out of this? What did he say? You can't get yourself out of it. The best thing you can do is try to minimize your time. You cooperate, we will go talk to the solicitor. I'm paraphrasing.

That is what he said. He didn't say, If you don't just confess to this whether you did it or not, I'm going to lock you up tonight. He said, You are going to jail, regardless. If you want to try to help yourself, now is the time to do it.

One of the things that Ms. Smart-Gittings pointed out or asking him about was, Well, he didn't give you a lot of detail. Well, that is a tricky statement. He certainly said he put the bag over his head. That is a pretty important detail considering that his death was caused by suffocation and choking. He said that he hit him. Also super important considering that he was beaten, which is what blunt force trauma is.

All of those things are details. But what happened when they wanted to get more detailed than that? "I'm done talking." And the agents did what they were supposed to do. What did they do? "Okay,

you sure you don't want to talk to us anymore"? Yes. Interview is over.

And y'all forgive me, the older I get the less I'm able to memorize, so I'm going to have to step back to this podium on occasion, because there's a lot in here, and I am not going to try to go through every single thing. But unfortunately this is the only time that I get to talk to you. Ms. Smart-Gittings gets to get up in a minute and she has the last word to you as far as the lawyers go, so this is the only opportunity that I have.

A couple of other things about the statement. There is no requirement that you have a parent. He was 15 at the time, nobody is trying to hide that from you. But you are not legally required to have a parent there. Is that something that you should consider? Sure, just like you consider everything else. But what was important about that was, where was his daddy? According to the testimony, now, not what I want it to be, but what it was. Daddy was right outside, was he not? Wasn't that the testimony? Tiffany Sabb, who was like a mother to him, right outside. Now, did they say, Ms. Sabb, you need to get out because we are going to get a confession out of him? No.

What did they say? Ms. Sabb, would you mind

stepping out so we can talk to him. And then they turned to him and said, Is it okay if we talk to you without Ms. Sabb? And everybody said yes. All right. It is on the tape.

There was no coercion. And even if you decided that there was, which certainly that is for you to decide, not me. I don't see how you could, but if you did, what about the other three statements? He confessed four times.

Now, what is important about the hand of one is the hand of all, on each confession no matter if Gabriel did this or Gabriel did that, you know, I didn't really want to do it, they wanted to go do a lick, I was just kind of standing there and I agreed to go along with it and then it went bad.

Well, what do you think is going to happen when you beat, and tie up and put a plastic bag over an 86 year old man's head? What do you think is going to happen? That is not going along. If you were there and participated in any way you are as guilty as each other person. Hand of one is the hand of all. The act of one is the act of all. You heard Richard Johnson tell him that on the tape. That is the truth. That is what the law in South Carolina is.

Oh, another thing, minor thing but when you are

talking about, was this a coercive environment. The total amount of time he was there was about three to four hours according to the testimony. He was asked -- I don't know if you remember this, again, it is a minor thing, Do you need to go to the bathroom, do you need a bathroom break. All of those things are factors that you should consider, and the tone of the interview. What did it sound like.

One of the things that often get, I think, lost in the shuffle in these cases when people are talking to law enforcement, Well, you just wanted to get a confession, you just wanted to get a confession. When I asked Mr. Johnson, What do you want to get? He wants to get the truth. Why? Because he wants to get the right person.

So, let's talk about the other evidence in the case and whether or not it ties in with the four separate confessions given by Robert Lee Miller. All right. One of the things that he says in just about every statement, again, it is y'all's memory, not mine, and not Ms. Smart-Gittings that counts. If I get something wrong that differs from whatever and you need to re-hear it, fine. What you have heard and what the record says is what controls, not me.

But I believe that every statement says something

either about, It was supposed to be a lick or we were going to do a robbery, or something of that nature. So, is there anything that would indicate that that is an actual statement, that that is actually what occurred? Mr. Hutto, how about pulling up 13 for me?

Well, there's a wallet that has been taken out. In one statement they asked, Well, who got the wallet? I did.

Twenty-five. Testimony that stuff had been gone through, rifled through, and things were missing, right? Does that look like maybe there was a robbery, somebody going through stuff? How about the biggest one? Don't get much more robbery or burglary oriented than that, does it? If you are going to do a lick, you take the safe and you take the shears and you pry the top of the safe open.

Now, do his confessions match things at the scene? Because if they do, that makes them more believable, right? First of all, there's four of them. Second of all, he gave them to a person that he thinks of as a mother and someone who felt like they were brothers, and to Chief Williams and to SLED. Okay.

But it was in the statements. Does it look like there was a lick or a robbery that went on?

Next, and before I go to the next ones, I have

been doing this almost 20 years now, sometimes we forget how disturbing images can be to people, so in showing you some of the photos, and I'm not going to show any of the pathology photos today. I only put four of them into evidence, they are there. I do feel like they are, obviously, part of the case. They are in evidence. You do need to consider them as you need to consider everything else in the case. I'm not going to put any of them up here.

Let me apologize to you for any of the images if you found them disturbing, and I'm sure that you did. But it is a disturbing case. A murder is a disturbing crime. And the evidence is what the evidence is.

He says in his statements that the victim was beaten and he admits that he beat him I believe in just about every one. So, was there any evidence that the victim was beaten?

Fourteen and then 15. Pieces of his dentures, both next to the body and on top of the TV next to him. Does that look like evidence of a beating? What about what the pathologist got up and testified to? He had injuries to his mouth, he had injuries to his eyes, contusions, subdural hematomas, consistent with blunt force trauma. Petechia in the eye, appeared that he had been choked or asphyxiated, which is consistent

with both choking and with a bag tied over his head.

And what else? Three fractured ribs. Does that sound like a beating occurred? Is that consistent with the evidence? The State submits that it is.

In every statement he says that he's tied up. Six. He's tied up. Now, Ms. Smart said, Well, but Johnathan Capers, she said it before and I'm assuming she is going to get up here and say it again. He said it was also his feet and his feet weren't bound. That is a discrepancy.

Now, did Johnathan just hear it wrong? I don't know, I can't answer that for you. But I can tell you in every statement he said that he was tied up. Is he tied up? Yes. Now, is that consistent with his four confessions? Yes.

He says that he has a bag over his head. Pretty evident that is -- and remember, who put the bag over his head? I did. And something else that is important that I'll talk about in a little while, it is a little bit of what I would call a self-serving statement, meaning that you are trying to minimize what you did, remember what Ms. Sabb said? When they left, the bag was still moving. I believe it was Ms. Sabb, it was either her or the Chief, forgive me, I don't remember which one. But when they left, meaning when they left

him he was alive because the bag was moving.

Well, let me go ahead and tell you this now: In a lot of ways, if that's true, that is worse. Do you remember what the Judge said about inferring intent and inferring malice? He said that it can be because of action, in other words, what you do, or inaction, what you fail to do. And is it an evil heart? Is it an evil intent? How much more evil can you get than watching an 86 year old man that you have beaten and tied up and put a bag over his head and you know that he's still alive because the bag is moving, and why in God's name wouldn't you just pull the bag off of his head before you left?

What is going to happen to that 86 year old man laying in the floor that you put there? So, you are going to walk away while he's struggling and gasping his lasts breaths? If that's true, that is worse because they left him there to die knowing that is what was going to happen. So they either did that or they left him there dead, but one of the two had to happen. Clearly, he has a bag over his head.

Twenty-six. Interestingly enough, none of the bags in his house, Mr. Johnson's house, matched the bag over his head, did it? You saw it in the trash can, he had white trash bags. They searched, didn't find

anything. They did, however, find the Built Tough black bags with the yellow drawstring. Nobody can say that for absolute certainty that is the box that that bag came out of, can't do it, that is not possible. But it is something that you need to consider just like every other piece of evidence. That is a heck of a coincidence that they just happen to go to Robert Miller's house and there just happens to be a box of trash bags, empty box, with the same black trash bag and yellow drawstring.

Now, Ms. Smart said earlier, may say again, yeah, but Timothy -- excuse me, Johnathan Capers said, But he said that it was a Dollar General bag. Again, did he hear it wrong? I don't know. Did he mean an actual yellow Dollar General bag with black writing on it? I don't know. Could it be that he bought those or those came from Dollar General? Because, you know, that's not Hefty and that's not Glad. I don't know. Should you think about that? Absolutely. But you have to think of it in context of all of the other evidence.

One of the biggest ones in one of his statements, one of his confessions, I think that it was to Mr. Johnson, The phone is off of the hook.

Seventeen. And eighteen. If those weren't -- if that wasn't a valid confession, how would he know that?

Remember he gave it to him the 19th of June, a couple of days after it happened. How would you know that the phone was off of the hook unless it was you, you were there, and it is a true confession? How would you know that that was done during the time that the murder happened? Because nobody could get through.

How many people got up here and testified, I called. Did it ring through? No, it was busy signal, busy signal. What happens when you leave the phone off of the hook? It is a busy signal. There is no answer and there's no answer because they took the phone off of the hook.

Twenty-eight. What is interesting about the crime scene is this: There's actually -- there is a couple of things, we will get into both of them right now. One of two statements talk about, We went up and we asked for sugar and he said that he couldn't give us any because he had been robbed. We ran in and hit him. And one of the things that Robert Miller said on the tape is, and he is confirming to Mr. Johnson, you just waited in the room, you know, he watched in a room. Where is he at? Is he in a back bedroom? Is he somewhere in the backside of the house? No, he's where you would expect him to be, right opposite the front door and he was rushed after he opened the door and was

asked for sugar. Is that consistent with what the statements are? It would appear to be.

What is another piece of physical evidence that would match up with Robert Lee Miller III being there and participating and doing and beating and all of these other things, and murdering Willie Johnson? SLED items, originally 35, and when it was analyzed 71.1, but marker H. That is why we give things numbers, so we know exactly what it is and there is no confusion. What do you have at SLED marker H? Victim's DNA. Do you remember? One in 210 trillion that that is the victim's DNA. It reacts positive for blood on the LCV. Is it relatively obvious that there's a print of some kind there once you LCV it? And it was examined by a SLED expert.

Now, as the Judge told you, there's a stipulation in this case which you must accept as a fact. That both parties have to agree to, or did agree to and you have to accept as fact. Robert Lee Miller III's prints were taken by Tiffany Hezel with SLED. They are SLED item 95. Again, we give things numbers so there is no confusion. I asked the examiner, Did you examine these different sets of prints, specifically his item 95. Yes. Whose did it match? His, 95.

Now, Ms. Smart asked about, Well, did you bring

this other one because there is another Robert Miller. It doesn't matter. His prints are 95. It is a fact. It's stipulated to. I also had Investigator Hutto get up on the stand to tell you, I watched them being taken. And it says on the card it is 95. But it is stipulated to. It is a fact. Ninety-five was compared to that print, H, and it was a match. Well, yeah, they were out to get somebody. Well, they also excluded two of the people who were charged in the case. So, if we are out to get people, why pick Robert Miller III?

They excluded Mr. Miller, Robert Miller who found him. Here is another thing. Even, if you dismiss -- which you are not supposed to, the Judge told you you have to accept it as fact, and didn't believe Mr. Hutto, how about -- if you put the crime scene sketch back up for me? I think that it's 28.

What was Mr. Miller's testimony? Because, remember, it's not what Ms. Smart-Gittings nor I want the evidence to be, it is what it is. What did he testify to? He said, I opened the door. I saw him. I saw the quilt, which is behind him or next to his feet, and I saw that his hands were bound and I backed out. If that's what he said and you believe him to be honest, then that is a fact in this case, that is the evidence because that is what the testimony was. If

that supposedly is his print, how did it get over there and how is it in the victim's blood? He would have had to walk over, touch something, either the victim or somebody else, because you remember what she said, you can't put a bloody handprint on something if it wasn't already there. The blood was on the hand when it got put on the wall. Do you remember that? Because that's how it works.

Walk between him and the TV to go stand over here and then walk out. Why would he lie to you about that? But again, I would remind you that it is a stipulation. That is Robert Lee Miller III's print. There is no doubt. It was examined by SLED. The expert came up, she gave her opinion, It is a match. Now, is that consistent with Robert Lee Miller being there and participating in the beating and murder of Willie Johnson? The State submits to you, Yes, it is.

His print with the victim's DNA on it at the crime scene a couple of feet from Willie Johnson's dead body. In his statements he also identified Gabriel Joyner and Kashaun Bynum, his brother. If he was just telling stories and submitting to the awful pressure that Richard Johnson was placing on him, why implicate his brother if he wasn't being honest and telling the truth? Why implicate Joyner? They have both been

arrested; they are pending trial.

You know, we have heard several things about, Well, he also told you that he had heard stories. He being the defendant, Robert Lee Miller III. He heard stories. And maybe the defense is going to be, when she gets up, Well, he was just repeating stories. Because, you remember the other thing she said was, I don't think law enforcement is lying, they were just coercive. Well, where was the coercion from Chief Williams? If he's not lying, he said that Robert Lee Miller confessed to him or not, did he not? There's no evidence of coercion.

There's no evidence of coercion from the SLED statement either. What about the other two statements? Well, they are stories. They are stories. You heard him tell Agent Merrell, I heard this one and they said I held him and I heard one where I didn't touch him. Not one of those times did he say, Well, I heard this story where I put a bag over his head. He didn't mention that in any of the stories he was telling Agent Merrell. He didn't mention that until he said, I am going to be honest with you, I did it. Gabriel did this, Gabriel did this, and I did this.

One of the more telling things -- I don't know if you saw it or not. I would like you to search your

memories. Agent Johnson said, You are going to go to jail. He said, Today? And Agent Johnson said, Yeah. And what did he say? What would a reasonable person in that scenario say? You are going to jail today. I didn't do anything, why am I going to jail? What did he say? I know. I know. Because he knows what he did. Not, I didn't do it. Not, Why would you put me in jail, I'm innocent. No. I know. I know I'm going to jail. I have got two choices, I'm going to go to jail or I'm going to die. I know. Because he knows what he did.

I think that it's also pretty important to remember that in all of the discussions with Agent Merrell, I wasn't even in Allendale that week. And then it was, Ooh, well, I mean, I was there on that Tuesday, that Tuesday morning. Now, Wednesday I was in Fairfax and I went to school. Well, what did you do after you left that meeting in the morning, Tuesday morning, or Tuesday afternoon all the way up to Wednesday morning? I forgot. Now, this is just a week after. I couldn't remember. Very detailed about what he did Tuesday morning, what he did Wednesday morning, but couldn't come up with what he had done Tuesday night. And, of course, Tuesday the 17th is when this murder occurred.

There's been a lot of discussion, there was a lot of discussion by Ms. Smart-Gittings, and I can only imagine that there will be again, Well, he's 15. One of the things that she said was, Well, he was 15 and he was asked to do adult things. Murder is an adult crime. Beating and robbing an 86 year old man is an adult crime. And those are things that you choose to do. And that at 15 you know that it's wrong to beat a man and to rob a man in his own home and to kill a man. You know that that's wrong at 15.

So, if you are 15 and you choose to go into a man's home who is 86 years old and you choose to beat him and break his ribs and you choose to tie him up and you choose to tie him and bag him and leave him like yesterday's garbage, then you have chosen to commit adult acts. And when you commit adult acts, there are adult consequences. And Robert Lee Miller chose to do those things. And if you believe that statement about, The bag is still going, then he chose to let that man die rather than to take a bag off of his head. He has chosen an adult crime as his path. It is time for him to pay an adult price. Thank you.

THE COURT: Ms. Smart.

CLOSING ARGUMENT BY THE DEFENSE

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

Your Honor. Mr. Thornton. Ladies and gentlemen of the jury, I too am like Mr. Thornton, I cannot remember much either, so I too have a pad.

Unfortunately I have a problem with my foot and I generally speed a lot. And one of the things that I hate to see is a blue light behind me. But what happens whenever I look back and see a blue light, my heart starts to beat and my palms start to sweat and I get nervous. And I'm like, Oh goodness. Even if I know the officer, I still get nervous. And it is even worse when I'm charged with it. I'm good with it. But the bottom line is, I am an adult and when I have contact with law enforcement I am nervous. I don't know what's going to happen. I have no idea what is going to happen, but it physically affects me. So, can you imagine what it must be like to be a child to encounter the police? That is something to think about it.

Now, Mr. Thornton talked about everything that he expected that I would say, and he's known me long enough. And he's right, there are some things that I'm going to tell you. But this is one thing that we all know because we are from Allendale. And we hear about things moments after they happen. Let's be truthful. I hear about things in Hampton that happened in

Allendale. I wasn't there, but by the time the facts get to me, the things that I heard were pretty much consistent. We are a small town. If you tell me and I tell you, you are going to tell somebody else and you are going to tell somebody else and you are going to tell somebody else and the word is out. And that is how we live, and that is the truth. And you can't get around that. If it were Orangeburg, Columbia or New York, then maybe, maybe you wouldn't have heard about it, but it's Allendale. And you hear about it. And so when Tiffany Sabb came in here and told you that people were calling her and people were telling her. And when Robert told you that he had heard about it. It is very, very possible that he had heard about it.

So, if he heard about it would he not repeat what he heard? But if he knew about it, would he not repeat details about it? And that is what is important, because if he was there and if he knew would he have not said, I put a black bag over his head. Because there's a stark difference between a black bag and a Dollar General bag. But if you are familiar with a Dollar General bag and you know or you heard that a bag was placed over his head, then what kind of bag are you going to put on his head? A Dollar General bag.

So, if he put a black bag over his head, wouldn't

he have said, I put a black bag or would he have said, I put a Dollar General bag?

We talked about the alarm system on the door. Now, what we can't dispute is the alarm system. The alarm system says that on June the 17th the door was open at 12:23. And that is consistent with the lady that delivered the Meals on Wheels, because she said Mr. Johnson would have his door open. Typically that is what happened. He would get up, and he would open the door and the door would be opened all day. It didn't matter what time she came, the big door would be open. So, why is that important? Because he opened it in the morning.

Now, Ms. Cave said that she saw three people going towards the house but none of them had bags. I specifically asked her that for a reason because the State wants you to believe that an empty black bag box was the box that that trash bag came out of. That is what they want you to believe but they can't tie that bag to Robert because his DNA is not on it. His fingerprints were not on it. But they want you to believe that he took the last bag out of the box and he took it with him when he went to Mr. Johnson's house. But the lady didn't see him with a bag. So, you have to decide. Did they prove to you that he took a bag

from his house to Mr. Johnson's house when the eye witness that saw the people in the yard didn't see any of the boys with a bag? She didn't even tell you that it was Robert. She said that she couldn't tell, she didn't know.

But we do know that that door opened at 12:23. Now, listen, think about this. It closed at 8:18. It didn't open and close again until 8:35. So, what does that tell you? Did he go knock on the door and Mr. Johnson opened the door? He couldn't have. It was either already opened, but it couldn't have been he knocked on the door and he opened the door and then he come back and closed it because it only opened twice that day. It only opened at 12:23. And it opened again at 8:35. It opened and closed. So how could he have done that? It couldn't have happened. The alarm system checked it.

He closed it at 8:18. He didn't open it. It was closed at 8:18. So, if that door was closed at 8:18, what happened? Whatever happened to Mr. Johnson happened when he closed his door. So that can't be that they knocked on the door and he opened the door and let them in. It couldn't have happened. The alarm system would have told you that. So, that is not true about his confession.

What else did he say? Tiffany Sabb. Now, when she first talked to the police when this first happened she said, When he got in the car he didn't have any blood on him, she didn't notice anything. She said somebody called her and told her about it and she asked Robert and he denied it. But what happens almost two years later when the police come to her house and serve her a subpoena? Then she starts to tell you, Did you know what her son had said? Who goes to somebody's house and who tells you that, I don't have any sugar because I have been robbed. You go to somebody's house that you don't know and they tell you -- they open the door, they let you in, and they tell you, I don't have any sugar because I was robbed. Do they steal sugar now? So, how much sense does that make? How real is that, or is that real in the mind of a 15 year old who is in a situation?

Then they say that his hands -- so, he told Johnathan that his hands and feet were tied. Well, if he was there, would he not have known that Mr. Johnson's feet were not tied? Why would he add a fact? He said that his feet were tied. He said that he put a Dollar General bag over his head. That is not consistent. So the other piece of evidence that might cause you to think. The fingerprint, the palm print.

Well, what do we know for a fact? We know that they took Robert's print. But do you know if they took Mr. Miller's print? Did he tell you that from the witness stand? Did anybody come in here and tell you that they took his print? I don't recall that testimony. But they want you to infer that they did because they have two SLED reports that one says that doesn't identify with the blood but then the other one does. How do we know that they didn't test it twice? And then I asked her, I said, How do you know that this sheet is actually Robert Miller's sheet? She said, Oh, we put Social Security numbers and we put dates of birth on it. And I specifically asked her, Is there a date of birth on this fingerprint card? She said, No. I said, Is there a Social Security number on this fingerprint card? She said, No. So, how do we know that that was his card? How do we know that the cards weren't mixed up? We don't know because y'all didn't see the second fingerprint card.

So, they want you to jump to the conclusion that that, in fact, that number 70 couldn't have been this Robert Miller because it wasn't him. But they want you to say 95, we know that that was Mr. Robert Miller's because we took his blood. Well, we know what SLED's item number is, but do we know that when they went in

the lab to test it, that this one and this one are the same document? Nobody came in here and told you that. They didn't tell you that, but that is what they want you to believe. They want you to have a whole lot of faith in what they do up in SLED.

So, I had thick paper, about this much, and I said, Agent Merrell, that alarm system generated a lot of calls to the police department because whenever the alarm would go off they would dispatch law enforcement over there, so there were a lot of calls over there, but none on the night that he was killed. The alarm didn't pick it up. It didn't pick anything up. It picked up the opening and the closing of the door. But it didn't pick up the scuffle, it didn't pick up any type of -- anything. No alarm went off. No calls to law enforcement. That is something to think about.

Money. Robert said that he took, I think, that somebody somewhere said that he took $400 from the wallet, Mr. Johnson's wallet. Who picks him up the same night that we believe Mr. Johnson was killed? Ms. Sabb. He was at her house. But she never saw any money. How could a kid hide $400.00. She said all he had on were basketball shorts or something like that. So, where is the money? If he took $400 that night, where is the money?

And another thing, 8:00, it is not dark outside. 8:30, it is not dark outside. So, why would three kids take a safe outside of somebody's house in the daylight? Because it's daylight at 8:00. How could they have gotten that safe out of that man's house without anybody seeing it? But they want y'all to believe that they took that safe that they showed y'all out of that man's house. Now, why did I ask the Meals on Wheels lady about whether or not there were scuff marks on the porch or whether or not anything was different on the porch? Because if you are trying to take a safe out of a house something is going to be different because that is not a light safe. You can use your life experience to know that is a heavy safe.

How did they get it out of the house without the neighbor seeing them? There is a house right across the street. There is a house right next door. How did they get the safe out of the house? But that is what they want y'all to believe, that they took it out of the house. The safe was in the woods and the safe looks rusty.

And did anybody ever say that is Mr. Johnson's safe? His son is here. Did he tell you, That is my dad's safe. I know that safe was in the house. I know that my dad had $400 in his wallet. Did he come in

here and tell you that? He didn't, but that is what the State wants you to believe. That is what they proved to y'all, that those boys took that safe out of that house and left it in the woods? Look at those shears, they are old and rusted. But they want you to believe that that is what they used to open that safe that night. That is what you -- that is what they have proven to you?

Let's talk about the confession. They are all different. And if you would call a confession what he gave Mr. Johnson. Was he not answering Mr. Johnson's questions? Who did this, I did. Who did this, I did. Who did this? He gave him the answers. So all he had to do was say yes or no. We already know that there was a bag, so of course he is going to say I put the bag over his head because he knew that, he knew to say that.

And then Chief Williams, why didn't he record it? And even if he did say what he said to Chief Williams, that is just what he had heard, that is what he stuck to. He knew that there was a bag. He knew that there was some ties involved. But did you notice, they tested the string that was used to tie up Mr. Johnson, but it didn't have Robert's DNA on it.

And the wallet that Agent Johnson told him that

his fingerprints, DNA was, would be on, it wasn't on there. Because you know if his DNA was on that chain, you would know it. If his DNA was on that wallet, you would know. If his fingerprints were on the bloody cards surrounding that wallet, you would know it. But it wasn't. I asked her, specifically, how much DNA did she test? Lots of it. None of it, none of it had Robert Miller's DNA on it. None of it. Not even the blood, the mixture of the handprint, it didn't have his DNA on it. But they want you to believe that it did. They want you to believe that he was in that house that night with those boys. And we don't even know if there were three boys. We know that Ms. Cave saw three boys, but what did she say? She said, It's not unusual because he gets people to do work for him, so it's not unusual to see people in his yard. We know that.

We don't really know when Mr. Johnson was killed. We know that he didn't answer his phone. Ms. Bowman, she said she called him at 8 and the line was busy at 8. But remember now, his door was still open at 8:00, because it didn't close until 8:18. So, think about it, did they really set it up, that three unknown boys would go into a strange man's house in broad daylight and beat him and nobody heard anything? Can you imagine the beating? Nobody heard anything. And y'all

know that we are nosy here. But nobody heard anything. How strange is that? Three young teenagers they want you to believe went in that man's house, beat him, nobody heard or seen or speak, nothing.

What else? Reasonable doubt. Have you hesitated? Are you firmly convinced? You are firmly convinced that the State proved to you that Robert Miller put that bag, that Dollar General bag, on Mr. Johnson's head. Are you firmly convinced that Robert Miller tied Mr. Johnson's hands and feet? Are you firmly convinced or do you doubt it? Are you hesitant? Maybe he didn't. Well, if maybe he didn't, he's not guilty.

But are you firmly convinced that even three people went in that house? Didn't have fingerprints from anybody in there. One. And did you see the print? Did you see the picture of that print? One. The entire house. All of that stuff moved. No fingerprints anywhere, except for that one, second one, second identification they say it is his. I submit that you have a lot to think about. And in doing so if you hesitate, if you hesitate, the correct verdict is not guilty.

THE COURT: All right. Madam forelady, the verdict form will be sent back to you with the other evidence in just a few minutes and we will give you

word to begin deliberations. The verdict form, I have to put your choices in some order and the order in which they appear is of no significance, but your options are this: As to the charge of murder, under Indictment 2015-GS-0350, we the jury unanimously find the defendant not guilty. If that's what the jury unanimously decides, you will check beside A.

Then you will sign your name and knock on the door and we will receive the verdict back here in the courtroom.

The other option, under B, is as to the charge of murder under Indictment 2015GS-0350, we the jury unanimously find the defendant guilty. If you find that he is guilty you will check B. Likewise, you will sign your name. You will knock on the door and we will receive your verdict back here in the courtroom.

That being said, I'll ask the two alternates to stay right there. I'll send the jury back to the jury room. And we will send the verdict form back with the exhibits and then you may begin your deliberations.

(The jury exits the courtroom at 11:06 a.m.)

THE COURT: All right. Any additions or exception from the State with regard to my explanation of the verdict form?

MR. THORNTON: No, Your Honor.

THE COURT: From the defense?

MS. SMART-GITTINGS: Nothing, Your Honor.

THE COURT: Let me say this before we go over exhibits, I'm really proud of both of these lawyers. I go all over the State of South Carolina, and you were prepared and did an excellent job to represent your clients, you should be proud of yourselves. You did very good. I don't say that often. If you would, I'll talk to you in just a minute. Go over the exhibits and make sure you agree. Once you agree we will send the verdict form back to them and then tell them to begin their deliberations. Okay?

MR. THORNTON: Yes, sir. Thank you, Your Honor.

(Jury deliberations begin.)

THE COURT: All right. I am advised that we have a verdict. Bring the jury in, please sir.

(The jury enters the courtroom at 12:29 p.m.)

THE COURT: Madam forelady, my understanding is that the jury has reached a verdict?

THE FOREPERSON: Yes, sir.

THE COURT: It is unanimous amongst all of the 12 jurors?

THE FOREPERSON: Yes, sir.

THE COURT: Publish the verdict.

THE CLERK: In the Court of General Sessions,

State of South Carolina; County of Allendale, the 7tate of South Carolina; versus Robert Lee Miller, III. In Indictment 2015-GS-030050 as to the charge of murder in Indictment of 2015-GS-030050 we the jury unanimously find the defendant guilty.

THE COURT: All right. Madam forelady, ladies and gentlemen of the jury, if that was your verdict in the jury room and if that is your verdict now, would you each raise your right hand.

(All 12 jurors raise their right hand.)

THE COURT: And let the record reflect that all 12 jurors responded affirmatively. All right. Ladies and gentlemen, the Court is never concerned what your verdict is, but concerned that you performed your duty as jurors in a fair and impartial manner and that you stayed diligent throughout the course of the trial by watching the testimony and listening to the evidence. And I looked at all of you throughout the course of this trial and you did that.

So I would thank you for your service. I am not thanking you for your verdict but thanking you for your service to the County of Allendale and the State of South Carolina. Without people such as yourselves we have no way to resolve our differences whether it be in

civil court or criminal court.

If you don't have this outlet, you can just look on the news at night and see places who don't have the judicial system and it creates a havoc that reigns down on people.

With that being said, you are excused for the week. You are excused for three years. You can't be required to come back for three years.

Before you go, I would ask you to go to the jury room. Madam forelady, I need you to sign some papers and I would like to speak with you very briefly and then you will be released.

THE CLERK: If you need an excuse for work you can go to the clerk's office and one of my staff members will gladly give you an excuse.

(The jury exits the courtroom at 12:33 p.m.)

THE COURT: Mr. Thornton, if you will prepare the paperwork for sentencing.

MR. THORNTON: Yes, sir.

MS. SMART-GITTINGS: Your Honor, we would ask for APB Buyers (phonetic) mitigation expert because he was a juvenile at the age of the event and the charge. We didn't do this pre-trial because they wouldn't give us the funding, since they didn't know what the verdict was. And so we would ask that the

sentence be held in abeyance until we can get a mitigation.

THE COURT: So, you want to have that prior to sentencing?

MS. SMART-GITTINGS: Yes, sir.

THE COURT: You know that he will be held?

MS. SMART-GITTINGS: Yes, sir.

THE COURT: Do I need to sign an order to have the public defender cooperation pay you?

MS. SMART-GITTINGS: Yes, sir. We will have to get -- I don't know if I have to get it from OID. We will look into that. But I do know that we have to get --

THE COURT: Since that's fairly new. I haven't even done an Aikens (phonetic) case.

MS. SMART-GITTINGS: This is the first one. I was talking with Judge Bloom and --

THE COURT: So, I think that it is a pre-sentencing procedure as opposed to a post?

MS. SMART-GITTINGS: It is. It is pre-sentencing.

THE COURT: Okay.

MS. SMART-GITTINGS: But they wouldn't fund us prior to sentencing, because they didn't want to put the money out.

In the Court of General Sessions for the
State of South Carolina, County of Allendale

Case No.: 2015GS03-0050

State of South Carolina,
Plaintiff(s),

vs.

Robert Lee Miller III
Defendant(s).

TRANSCRIPT OF SENTENCING

June 5, 2017
Allendale, South Carolina

BEFORE:
The Honorable R. Lawton McIntosh

APPEARANCES

REPRESENTING PLAINTIFF(S):

Brian Hollen, Assistant Solicitor

14th Judicial Circuit Solicitor's Office

39 Sheridan Park Circle, Suite 2

Bluffton, SC 29910

843-255-5880

REPRESENTING DEFENDANT(S):

Stephanie Smart-Gittings, Public Defender

1905 Duke Street, Room 260

PO Box 525

Beaufort, SC 29901-0525

843-255-5000

PROCEEDINGS

MR. HOLLEN: If it pleases the Court, Your Honor. The State calls Robert Lee Miller, III. Mr. Miller is coming before you under indictment 2015GS03-0050.

THE COURT: Here -- I have got it. I didn't mean to interrupt you, I'm sorry.

MR. HOLLEN: No, no, that is all right.

THE COURT: Instead of setting him up as a sentencing, I want to conduct it more like a hearing, if that's okay. We will let him sit there. Is there any reason that that will be a problem?

MS. SMART-GITTINGS: No, Your Honor.

MR. HOLLEN: Okay. For the record, this is Case 2015GS-03-0050. Mr. Miller was tried and found guilty of the offense of murder during the July term of court last year. It has been almost a year since that happened. In terms of today's hearing, it is for sentencing on that charge because he was a juvenile at the time of the offense pursuant to State's Supreme Court opinion in Aiken v. Byars.

THE COURT: I met -- and just for the record, I met with counsel in my chambers in anticipation -- this is my first such Aiken versus Byars hearing. I think that the State -- I mean the Defense feels that the standard that has to be established through the factors

to be considered based on Mr. Miller's youth is that -- what is the standard, did you say?

MS. SMART-GITTINGS: Irreparable -- Irreparably corrupt.

THE COURT: Irreparably corrupt.

MS. SMART-GITTINGS: And that is the State's burden to overcome. There is a presumption that he isn't irreparably corrupt and the State has to prove to the Court that he is irreparably corrupt. And that is what we believe the first benchmark is, that first the State has that burden. And once the State meets that burden, then the Court is to consider the five other factors.

THE COURT: Say that next to the last part of it again.

MS. SMART-GITTINGS: After the State meets their burden of showing that he is irreparably corrupt, then that is when the Miller factors actually kick in, once the State has met that burden.

THE COURT: So, you get your irreparably corrupt standard based on the Federal Court standard --

MS. SMART-GITTINGS: This is the Miller versus -- the Alabama versus Miller, Miller versus Alabama case, and that is what the Aiken v. Byars case actually applies to South Carolina.

THE COURT: And in South Carolina, and I have looked back, looked back over these cases, it seems to me that although they certainly said Miller was applicable to the extent that youth has a constitutional aspect to it that because there was a non-mandatory sentencing scheme of life without the possibility of parole, that there is distinguishing factors. I think that it was Chief Justice -- then Chief Justice Toal and Kittredge said that they were not entitled to a hearing at all.

But with that being said, I told both sides of the case that I felt like there were distinguishing aspects of it and that the factors set forth in Aiken Byars case are the ones that should apply, that being the irreparably corrupt standard.

With that being said, I'll give the State a chance to address it and give the Defense a chance to come back and add anything to the record that they want to add at this juncture. Okay? Go ahead.

MR. HOLLEN: Just so I understand, Your Honor, your reading of Aiken v Byars, I don't see irreparably corrupt anywhere in that opinion. I think that comes from Miller. And are you ruling that that is not the standard? So I understand the irreparably corrupt standard.

THE COURT: What they said in the Miller case is that you had factors and the factors would be the chronological age of defendant and hallmark features of youth including the maturity, impetuosity, and failure to appreciate the risk of the consequences, family and home environment surrounding the defendant, circumstances of the homicidal offense, including the extent of the Defendant's participation in the conduct and how familiar with the people and how it affected him in that situation, and the competency associated with youth.

And they gave examples like the inability of the defendant to deal with law enforcement and prosecutors to obtain a plea and the ability of the defendant to assist his attorneys. And the possibility of rehabilitation. And they further point out that mitigation factors in a death penalty case would also be relevant to this evaluation.

But I agree with the State, I haven't seen any standards from our State that says irreparably corrupt, with that being the burden upon you to show.

MR. HOLLEN: Yes, sir. I just wanted to --

THE COURT: So, with that being said, obviously somebody is going to look at it again so we will find out.

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

THE COURT: Are you ready to call your first witness?

MS. SMART-GITTINGS: I think --

ATTORNEY1: Your Honor, however you would like to go about it. You know, we can go first and then Ms. Smart-Gittings can address our position. Or she can present evidence and we can address it and she can reply. I don't -- however Your Honor would --

THE COURT: Whatever you think would be most appropriate.

MS. SMART-GITTINGS: I think that the State should present their case and then I will come behind the State.

THE COURT: Okay. Sorry, I know that this is not a normal scenario. Call your first witness.

MR. HOLLEN: Your Honor, we are not going to have any witnesses in this case. First of all, may I approach and hand up the sentencing sheet in this matter?

I simply plan to address the Court and refresh all of our recollection about the facts of this case and Mr. Miller's role in the murder of Mr. Johnson.

I would like to tell Your Honor, his son, Teddy Johnson is here and I know he would to address the

Court. If you would like to go ahead and hear from him, we would be happy to do that.

THE COURT: I will let you do what you need to do now and then I'll call him after the hearing of the case.

ATTORNEY1: All right. Yes, sir. First of all, Your Honor, I have already said, you presided over this case. You presided over the trial of the co-Defendant in this case. You have heard the facts twice over. But it has been almost a year since we were here for Mr. Miller's trial.

So, I'm not going to take up a tremendous amount of time but I would like to go through some o the facts that came out in that case just so we are all clear on what Mr. Miller's role was during the murder of Mr. Willie Johnson.

The victim in this case was found on June 19th, 2014, about 1:00. The day prior he had been -- people had been unable to communicate with him. Members of his church, Meals on Wheels, and his son all had trouble getting in touch with him. About 1:00, the Allendale Police Department entered the home. They found Mr. Johnson with his hands tied behind his back; shoelaces were used to tie him up. A black plastic trash bag was wrapped around his head. Mr. Johnson had

been severely beaten. The evidence of that was the fact that his dentures were smashed all over the living room where he was found. There was blood splatter on the wall. His house had been ransacked. His wallet had been gone through. And that was kind of the scene that they found him.

The Defendant in this case, Robert Miller, was developed as a suspect during the investigation along with two other juveniles, one of whom was his brother and one was a friend that lived across the street from Mr. Johnson.

Mr. Miller was interviewed. He eventually confessed to his part in the crime. And we are going to get into that in just a minute. But he gave some details that were unknown to law enforcement at the time.

And then I am going to get into the factors. But starting with the Aiken v. Byars case, the five factors, you already laid those out. The first two of those, Your Honor, as far as his chronological age and his family and home environment we can address briefly, but you know that investigation has been done by the defense. His background is not something that I am extremely familiar with, but I will tell you that no matter how bad someone's upbringing might be it doesn't

mean that they automatically resort to murder. There are people who overcome obstacles everyday despite how they are brought up. So, I don't believe that that is or should be a deciding factor in the length of his sentence.

The third factor, the circumstances of the homicide is what I would like to spend most of my time addressing. So, talking about Mr. Miller's role here. Our first position, Your Honor, would be that this was premeditated. It required planning. Mr. Miller was the one that took a bag with him from his home, the bag that was wrapped around Mr. Johnson's head and eventually suffocated him. They did this, Your Honor, three defendants did this at -- shortly before 8:00 p.m according to the testimony that we heard during the case. That is when Ms. Cave saw three individuals going into the house. Shortly before 8:00 p.m. in June in South Carolina it's still daylight outside.

Despite the fact that one of the Defendants lived across the street from Mr. Johnson, they made no attempt to conceal their identity. They wore no masks, they wore no gloves, they carried a plastic trash bag. Our position is that this was a planned murder to begin with. They did not want to leave any living witnesses, and that is exactly what they did.

Mr. Miller, as I said, brought the trash bag. He was one of the individuals that went to the door and knocked. When Mr. Johnson came to the door, he pushed it hitting Mr. Johnson, by his own admission. He punched him. He, by his own admission, was the one that wrapped the plastic trash bag around his head.

If you recall the pathologist, the cause of death in this case was asphyxiation with attributing factor of blunt force trauma. So, Mr. Miller, again according to the testimony that we heard, was the one that wrapped the trash bag around his head. He stayed with Mr. Johnson. According to the alarm records that came out during the trial we believe that they were inside for about 20 minutes. For 20 minutes this defendant sat there with an 86-year-old man with a trash bag wrapped around his head and just left it there. The other two ransacked the house. The other two found the safe that they eventually dragged out. And then they left.

I don't know exactly how old someone is when they first realize that you can't breath through a plastic bag, but it's certainly younger than 15. They knew what was going to happen. Mr. Miller knew what was going to happen when he left that bag on Mr. Johnson's head. And probably the most disturbing fact that came

out of this trial is that when they left the home Mr. Johnson was still alive. That trash bag was moving in and out with his breath. All that it would have taken was for Mr. Miller to just take the bag off of his head. And Mr. Johnson would have been badly beaten, but according to the pathologist he would have survived. He didn't do that.

And we are going to get into his juvenile record. I have got that, I have provided it to Your Honor and Ms. Smart-Gittings, but a week after this crime occurred Mr. Miller was charged with attempted murder for shooting someone with a shotgun that we believe was taken from Mr. Johnson's house.

THE COURT: This is on his record?

MR. HOLLEN: It was attempted murder. It was dismissed by our office due to the murder charge. Obviously we have leave to restore that and we would if needed. But he has been found guilty of this murder, so we don't plan to do that at this time.

Your Honor, our position is that due to the brutality of this crime, due to planning it, due to Mr. Miller's role in this crime, he should be sentenced to life without the possibility of parole. And we are going to get into his record. This is not his first contact with law enforcement. You, I don't know if you

have it in front of you, but I'm happy to provide it to you. His juvenile record consists of a 2012 disturbing schools, a 2013 burglary second degree, assault and battery third degree, and petty larceny.

Obviously he was convicted of this murder that occurred on June 17th, 2014. And he was charged with the attempted murder that occurred on June 24th, 2014. That record, along with the brutality in this crime, I think shows his propensity for violence. I think that he still has that. And we believe that he should spend the rest of his life behind bars.

Briefly, Willie Johnson was 86 years old when he was murdered. He was a lifelong resident of Allendale. He was a former Merchant Marine. He was a deacon in his church. He was extremely active in his church. But for intents and purposes, when you look at the rest of his life, he was pretty much an invalid. He depended on church members for transportation. He depended on church members for taking him shopping, that sort of thing. And he depended on Meals on Wheels to bring him his meals once a week. He, as far as we could tell, was very well regarded. He didn't have any enemies in Allendale County and he didn't deserve this.

So, I would like you to take all of that into account when you think about sentencing for this crime,

but as I already stated, we will -- we are asking Your Honor to sentence him to life without the possibility of parole. And I would like to, if Your Honor would allow it, to listen to his son, Mr. Teddy Johnson, at this time.

THE COURT: I'll be glad to let you come forward now. Good to see you again, but not under these circumstances. Would you mind giving the court reporter your full name for the record, please sir, and your address. Not address of where you live, but just the town that you live in.

MR. T. JOHNSON: My name is William Johnson. My nickname is Teddy and currently I'm residing in Martinez, Georgia. I have been living in Martinez for approximately 24 years. And I'm retired from the Savannah River Site. I retired back in 2011. I was a senior corporate planner. I began employment with Savannah right after I got out of graduate school after doing my MBA and I have been employed with them ever since. But I'm from Allendale, born and raised, just to give you all the higher points of, let's say, my background.

THE COURT: And the victim in this case was your father?

MR. T. JOHNSON: Yes, sir, that is correct, Your

Honor.

THE COURT: I'll be glad to hear from you, anything that you would like to state.

MR. T. JOHNSON: Well, Your Honor, I'm not going to take a lot of time in terms of my statement and be very, let's say, redundant. I think Mr. Hollen the prosecutor has pretty much set the stage for all of the critical things that you need to hear. But just to talk about a couple of items. My father was a Merchant Seaman. He went into the Merchant Marines when he was 18 years old. He served in this assignment for approximately four years.

And after his 40-year tenure he returned to Allendale where he retired and he became very, very active in his church. He became the lead deacon in the church. And my dad always put God first, family second. Coming up as a child, my dad was always there. I mean, he was always there for me and my sister and my mom. He took very good care of us. He college-educated both of his children, myself and my sister.

But the thing that concerns us today, Your Honor, just the way that he left us. He didn't have to leave us this way. I mean, it's just totally inconscionable in terms of the way that he left us. I have a problem

processing this. I live with myself with a lot of internal pain everyday saying my dad didn't have to leave the world this way for such a senseless crime that was so inhumane and just -- it makes no sense to me.

I mean, I grew up in Allendale, this is where I am from. I mean, I am a product of this town. But taking the standards that my dad set in place for me and my sister and also my mom, I couldn't imagine somebody being so mean and cruel to an individual. And basically just by saying those things to you, the family today is asking for life in this case.

And we would like for you to, let's say, to consider my father's character. I'm quite sure you have been very well briefed in terms of the kind of man he was, and those things are very true. I mean, you know, from the standpoint of the dialogue that was shared with you regarding his character as an individual. And I brought a picture of my father today that I would like to give to you. Could I walk around and give it to you?

THE COURT: Give it to the clerk if you don't mind, please sir.

MR. T. JOHNSON: So you can take a look at him. He looks like a college professor, you know, somebody

that would be probably teaching at one of your prestigious colleges and someone who was, let's say, very very knowledgeable, very prowessed individual, and someone that wouldn't even dare think about hurting somebody.

So, this whole thing, Your Honor, like I just spoke to you recently, I'm having a problem processing this. It is very difficult for me. And this is pain that I'm going to take to my grave. I mean, I would never, let's say, overcome this. His grandchildren will never overcome this. He has great-grands. The great-grands the other day says, We really miss Papa. Papa didn't have to leave us the way that he did.

So, with that being said, I am going to -- the family is going to leave it in your hands to make the decision in terms of what you have to do today. Thank you, sir.

THE COURT: Thank you for being here. Anything further?

MR. HOLLEN: Your Honor, I forgot to mention just -- Mr. Miller has already been found guilty, but the soul piece of physical evidence in this case was a palm print in the victim's blood that was found on the wall in the case. I failed to mention that. Thank you.

THE COURT: I recall that. Is that it?

MR. HOLLEN: There's nothing further for the State.

ATTORNEY1: May it please the Court, Your Honor. First of all, I want to say that this is a very hard day for all of us, for the citizens of Allendale County, for Mr. Johnson, for Robert and for his parents, his grandparents, for his -- his father is here, his maternal aunt is here, his maternal grandmother is here, his cousin, and his paternal grandfather are all here to support him today.

I want to start with the Miller versus Alabama case. 567 U.S. 2012 case. Just a couple of things that I wanted to pull from that just to set a background for the Court to understand. The concept of proportionality is essential to the Eighth Amendment, and that was held in the Graham case. We view the concept as less than a historical precedent, but the evolving standards of decency that mark the progress of a maturing society.

And that is when they started looking at these juvenile cases that were -- the juveniles that were previously sentenced to life sentences. And now the Court is re-evaluating that to determine whether or not these juveniles should have the opportunity to have

their cases heard. And that is what South Carolina has done in the Aiken V Byars case that is based primarily on the Miller v. Alabama case.

And the Miller v. Alabama case cites Roper and Graham and says, Children are constitutionally different than adults for the purpose of sentencing because juveniles have diminished culpability and greater prospects for reform, and they are less deserving of the most severe punishments. The decision in -- and I think that the Court should take that into consideration when they are making a decision regarding Robert today.

Also, in the Graham case it noted that the developments in psychology and brain science continue to show the fundamental difference between juvenile and adult minds. Those findings are transient rashness, proclivity for risk, inability to assess consequences. They lessen a child's moral culpability and enhance the prospect that as the years go by the neurological development occurs. So, Robert was 15 at the time that this offense was committed. His brain wasn't fully developed.

THE COURT: You said 16?

MS. SMART-GITTINGS: Fifteen. He was 15. The distinctive attributes of youth diminish the

penological justifications for imposing the harshest sentences on juveniles, even when they commit terrible crimes. And we all agree that a murder is a terrible crime. But the Roper Graham Courts recognize the distinction of, Youth diminish the penological justifications for imposing the harshest sentences on juveniles.

Deciding that a juvenile forever will be a danger to society will require making a judgement that he is incorrigible and incorrigibility is inconsistent with youths. Life without parole forswears altogether the rehabilitative ideal. It reflects an irrevocable judgment about an offender's value and place in society.

Now I would like to move on to resubmit to the Court that the presumption is still the irreparable corruption, that the State has to prove that Robert was irreparably corrupt. And that burden should be placed on the State versus taking into consideration the Miller factors. The first one would be chronological age and hallmark features of youth.

As I said earlier, Robert was 15 at the time that this crime was committed. And he is a true juvenile. He loves cartoons. He had a security blanket at the time that he was 12. His juvenile records indicate

that -- one of the things that he said when we asked him how he's doing is -- his response is always, Everything is Gucci. We had to figure out what that means. It is just that, Everything is good.

THE COURT: Say that last sentence again, please.

MS. SMART-GITTINGS: Everything is Gucci, G-U-C-C-I. That means everything is good. So, even though his situation and his circumstances, in his mind everything is good. He's not complaining about it. Everything is good. He says that he loves it here at the Allendale County Detention Center, Department of Juvenile Justice has too many kids. He has excelled himself.

Again, all of those are indicators of a juvenile minds a person who doesn't understand the consequences of his actions. He doesn't really understand the severity of being incarcerated even two or three years. He says, when asked how things are at the jail, he says he's too young for a job. These are serious charges. He is on the max side, so he can't even be a trustee.

So, even while he is in jail he is thinking that his time would have been better suited if he could be a trustee. But because he's too young he can't go out to work. So, he has a mind that he needs to work and take responsibility for himself. He says that he likes it

there at the Allendale County Detention Center because it is calm and it's laid back and there are adults there. But he also feels like he's young, but he doesn't feel young. He's seen too much. He has tried -- he wants to do more things. But now he wants to do things differently. So, he has a sense of remorse for what has happened. He feels like if given the opportunity he would have made different choices, he would do things different.

When we asked, What was it like when he was growing up he said that he doesn't even remember the first time that he saw his mother, whether or not it was in foster care. His first involvement with DSS was when he was four years old. There was an allegation that his mom physically abused him. He and his siblings were taken from his mom and placed in foster care. He grew up in several different foster cares, several different group homes.

He didn't learn well in the Allendale County schools. He needed more individualized attention and he didn't realize that until he was actually at DJJ and he felt like he learned better at DJJ because the classrooms were smaller and the teachers were able to teach him individually. And so he said that they broke it down more, and they didn't do that in Allendale

County schools. So, again, it talks to his rehabilitative nature because he understood what went wrong in Allendale after experiencing the structure while he was at DJJ.

With regard to his family, the second prong of Miller, the family and home environment as I have told the Court in 2003 when he was four years old was the first time that he ever had an educational evaluation. His parents weren't married. They were together for a little while, but they didn't stay together very long. He lived with his mom and I think that he enjoyed living with his mom because he said that he was his mom's other half. He felt like he completed her. He was her protector. He felt like he was his younger sister's protector. But his mother should have been the one protecting him and he didn't have that.

They all, all three children, loved their mom and they wanted to stay with their mom because the dad was the disciplinarian, the dad had the rules in their home. The dad was the one, he said, who actually punished them for things that they did while their mom let them walk the street all night. She just -- she wasn't able to supervise them because she has a history of alcohol and drug abuse. And so most of the time the three siblings raised themselves.

His sister did stay with his father longer, but Robert didn't have a very good relationship with his stepmother, so he constantly ran away from his dad's house; he never really stayed there very long. He talked more about loving his mom and having conversations with his mom. And he actually said that he was glad when his mom left Allendale because she had a better life when she lived in Columbia, and now she lives in Georgia. But he put everybody before himself, even in this particular case. He felt like his brother was more important than he.

He wanted to make sure that he took the blame for this and not his brother. He wanted the State to know that his brother didn't have anything to do with this, that it was just him and he made all of the bad decisions. He says that he gets his kindness and forgiveness from his mom. He says that he is just like Jesus, he forgives all. So he says that even when people do him wrong, even though he knows that his mother didn't do well by parenting him, he still loves her and he forgives her for that.

He talked about when he stayed -- one of his foster care homes, Ms. Human, she took him to church and that is when he first understood about the Bible. And since he has been in jail, he's been very -- he has

a lot of time to read. He likes to read books. Ms. Russell has given him several books and he writes poems. And I submit to the Court one of the poems that he's written, he wrote.

When asked about his personal goals, he said that he actually wanted to attend college. He wanted to become a businessman. He wanted to work in construction. But he said that he was working raking yards, doing landscaping ever since he was 11, 12 years old. He says that he has about six or seven friends he plays basketball with. But there wasn't a lot to do in Allendale, so they didn't have an activity center or anything like that, any place to go.

We had several, several GS records, 911 calls to the house, numerous. His mother indicated that it took him until he was about five years old until he was completely potty-trained. He does have prior mental health. He has been taking medicine for ADHD. But his father stopped that counseling and medication. He said that the doctor stopped prescribing the medication, so he stopped going to DSS. Our records indicated that between 2004 and 2010 there were fifteen 911 calls made from his mom's residence.

THE COURT: There was what now?

MS. SMART-GITTINGS: Fifteen 911 calls made. A

lot of them had to do with the siblings fighting or his mother might -- being a little too strict. But there were fifteen 911 calls. Most juveniles aren't -- have not experienced that. But that is the life that he had. That was the home environment that Robert had.

And again, in 2007, there was a finding of physical abuse and neglect. DJJ recommended that he continued monitoring by a psychiatrist and make sure that he has the anger management training, interpersonal skill building, substance abuse treatment. We don't know that he received any of the things that were recommended by DJJ. A lot of those services weren't provided to him.

His dad had some concerns about him. He thought that he was immature. He thought that he was considered to be immature or off. He was overly active. He rushed through activities without thinking. And that he expressed that Robert expressed to his dad a lot of feelings of being unhappy, of being sad, and just being stressed at life. He was at risk for having attention problems, so he was never really able to focus. He was easily distracted. He couldn't concentrate. And he struggled to complete simple tasks. He had trouble completing those.

Factor four -- sorry, factor 3, the Court is

familiar with the facts of the case. So, we won't go into the factor three because the Court, you heard the facts of the case, Your Honor. We would -- the only thing that I would bring up in regard to factor three was the fact that he was interviewed without an adult present. And so, we asked the Court to consider keeping out the confession based on the fact that he was interrogated by law enforcement at night for, I don't know how many hours without an adult present. But that was admitted into evidence. But it is something that I would like the Court to consider.

With regard to peer pressure. Specifically with this fact: His brother was his co-Defendant. Gabriel Joyner, the other co-Defendant, was friends with his brother. So, the three people involved, Robert wasn't friends with Gabriel Joyner, so I would submit that he had peer pressure. That is one of the reasons why he was involved in this case. And I think just the fact that he wants to show his brother was not culpable goes to the pressure that he was under at the time of this offense.

I think that I did relate there was an issue with regard to custody. Sorry, jumping back to two. His father was supposed to have physical custody of his brothers and sisters, but I don't think that they

stayed with his father; they went back to their mother's house. So, he stopped taking his medications, and the issue of where he should have lived was also in question.

And incompetency associated with youth. Inability to deal with the criminal justice system. He had three prior offenses with DJJ. He was unable to understand Miranda. I believe when he did the psychological evaluation, the evaluator had to continuously explain to him what the Miranda warnings were. When we asked law enforcement during the incarceration whether or not they asked him if he understood, I think one of the officers gave him a certificate and told him to read the certificate that was his basis for determining that Robert understood his Miranda warnings. But we would like the Court to take into consideration that he did not understand those Miranda warnings.

He was too immature to appreciate the consequence of even being in law enforcement custody for so long all of those hours by himself late at night. I think that the Court will remember, he actually laid down on the floor and went to sleep after all of the custody interrogations were over.

His inability to deal with police officers, he did exactly what they wanted him to do. They told him what

to do and he did that, just that. Because of his youth he didn't understand that he didn't have to talk to them, that he didn't have to answer their questions.

His IQ was 76, very low functioning. Undeveloped cognitive and reasoning skills. Difficulty understanding the consequences of his decision. He was held for ten hours. Our records show that he was held for ten hours with no parent and the report said that he indicated, "No" to understanding Miranda.

Dr. Candace Dunn provided an addendum to her evaluation. The educational assistance data from his DJJ evaluation said that he had low intellectual functioning, he was in the low to average range, performing in the low grade level. He had symptoms consistent to ADHD, being contributory to behavior issues, poor school performance. He did well in a structured environment. When he was at the teen after school center he did very well there. Again, that was just a structured environment that he didn't have at home or at Allendale County schools.

He did make significant improvements when he was at -- when he was at DJJ and at the Allendale jail, he didn't have any type of disciplinary infraction. He followed whatever the correctional officer said and he did what he was told. He didn't cause any problems at

DJJ. He didn't cause any problems at the jail. That goes to the possibility of rehabilitation. We believe the fact that he hasn't gotten into any problems since he has been incarcerated shows that he can be rehabilitated.

The point that he might talk about his confidence in the things that he wants to do is at -- at Allendale jail he wasn't provided the opportunity to study for his GED. I think that given the opportunity to get a GED while he is in prison, I think that will go to his ability to be rehabilitated. Zero disciplinary problems. The correctional officers liked him. They didn't have a problem with him. He attended bible study. He read a lot.

We believe that and we would ask that the Court seriously consider the 30-year sentence. I know that it's a mandatory minimum but we believe that it's sufficient under the circumstances. When we look at proportionality, when we take into consideration defendants who have gotten a life sentence we think of people like Dylann Roof who certainly deserved the life sentence because he killed nine people. The guy from Spartanburg, Todd Kohlhepp who killed all of those women, who raped all of those women, those people when you look at the facts, Your Honor, of who deserves a

life sentence, when you compare those defendants to a 15-year-old who grew up in a house that was not structured, who did not receive a good education, who is not able to make decisions as an adult would, we believe that they would deserve a life sentence versus Robert. So, we would ask that you take into consideration the proportionality of what he did compared to others who have received a life sentence have gotten. Thank you.

THE COURT: Anything further?

MS. SMART-GITTINGS: Nothing, Your Honor.

THE COURT: Anything in response?

MR. HOLLEN: Not really, your Honor. I think that you know the facts. You have heard -- you have heard everything that both sides have to say in this case. So, I don't have anything to respond to. I mean, the part about Miranda, you did find in this case, you heard the facts and you found that he knowingly, willingly and everything else waived his rights when he spoke to officers that day, and that he did understand his Miranda rights.

There was also an adult present, just if I remember correctly. It was Ms. Sabb who -- Ms. Sabb was present for a short time at the beginning of his interrogation, who he said was like a mother to him.

That was Mr. Johnathan Caper's mother. But as far as the remainder of it goes, Your Honor, I'll leave you with this: In the Aiken case the Court says, Without question the Judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances.

Again, we do believe that is the appropriate sentence in this case and that is what the State would ask for. Thank you.

THE COURT: Let me ask a couple of questions, if I may. You mentioned that there was a psychological evaluation pre-trial; is that correct?

MS. SMART-GITTINGS: He had a waiver hearing in DJJ. And this was maybe about three to six months after he was arrested, when he -- when they determined whether or not they were going to waive him up to general sessions court.

THE COURT: So, was part of their waiver hearing an evaluation?

MS. SMART-GITTINGS: Yes.

THE COURT: Was he diagnosed with conditions? I know that you mentioned ADHD, but what other diagnoses did he have?

MS. SMART-GITTINGS: Oppositional defiant disorder

was one of the diagnosis, if I remember. If the Court's indulgence, Your Honor.

(Pause.)

MS. SMART-GITTINGS: Unspecified disruptive impulse control and conduct disorder. Cannabis abuse ruled out. Specific learning disorder, mathematics, ruled out.

THE COURT: Could you pass that and let me look at it, please ma'am?

MS. SMART-GITTINGS: This is not the evaluation, Judge. It is a note from the evaluation. But the evaluation should be in the family court file and I could go to the clerk's office and get that if the Court would like to take that into consideration.

THE COURT: Tell me again what those were again. Unspecified --.

MS. SMART-GITTINGS: Unspecified disruptive impulse control and conduct disorder.

THE COURT: Okay. Now, let me ask you this: Assuming that the Aiken case says, you know, the mitigating circumstances in the death penalty phase of the capital murder case would be a relevant consideration as well?

MS. SMART-GITTINGS: I am sorry, I didn't hear that last part.

THE COURT: I am saying that, according to what I read today and before, in addition to the factors that I placed on the record about youth and the facts of this case, that also mitigating factors that would be brought forth in the death penalty -- in a penalty phase of a death penalty case would be relevant inquiries?

MS. SMART-GITTINGS: That is correct, Your Honor that is one of the reasons --

THE COURT: And the question that I had was, assuming that there are mitigating factors under the case law, who has the burden of establishing those factors and isn't it on the Defendant by the preponderance of the evidence?

MS. SMART-GITTINGS: It is, Your Honor.

THE COURT: Okay. Now, what grade did he get to?

MS. SMART-GITTINGS: Eighth grade.

THE COURT: Eighth. And he attempted the GED subsequent to dropping out of school?

MS. SMART-GITTINGS: He was 15 in the eighth grade, so he didn't attempt to get his GED.

THE COURT: And in eighth grade, how long had he been out of school when this event occurred? In other words, he was --

MS. SMART-GITTINGS: He was in school when this

happened.

THE COURT: You can speak. I know that you were the investigator, you can give us the answers too to me, if you want. Unless someone objects to it. I am just trying to get the information.

MR. HOLLEN: I am not going to object.

MS. RUSSELL: It is my understanding that he was 15 years old and in eighth grade summer school at the time of this happening. So, he went to DJJ until his 17th birthday awaiting pretrial. And at 17 they took him back to the Allendale Detention Center where there is no GED program. And he hadn't gotten enough credits during his year and a half stint at DJJ to get a high school diploma. So it was not involuntarily, you know, it wasn't that he didn't want to get a GED, but it was that there was no resources for him to be able to do that.

THE COURT: And for the record, would you give us your name please, ma'am.

MS. RUSSELL: Yes, Brie Russell. B-R-I-E R-U-S-S-E-L-L.

THE COURT: I'm confused. Now, are you an attorney or PD or an investigator?

MS. RUSSELL: I am a mitigation specialist for Ms. Smart.

THE COURT: Ma'am?

MS. RUSSELL: A mitigation specialist.

THE COURT: Okay. So, you are not actually with the Public Defender's Office?

MS. RUSSELL: No, Your Honor.

MS. SMART-GITTINGS: But she is an attorney, Your Honor.

THE COURT: Okay. Do you know how many IQ tests he had taken?

MS. SMART-GITTINGS: At least three, Your Honor, if you consider his DJJ records.

THE COURT: I was just thinking through school or otherwise as well, but what were the ranges of the scores on IQ?

MS. SMART-GITTINGS: The last one was a 76. That is when he was in the fifth grade.

THE COURT: What were the other two?

MS. SMART-GITTINGS: That is when he was in the fifth grade. When he was in the fifth grade his last one was a 76 and he hasn't had one since then.

THE COURT: Fifth grade?

MS. SMART-GITTINGS: Yes, sir.

THE COURT: Were those full IQ tests or Wechsler, or do you know that?

MS. SMART-GITTINGS: Yes, sir.

THE COURT: And so I understand it from the Solicitor's standpoint, the attempted murder charge from Fairfax was dismissed?

MR. HOLLEN: It was dismissed in light of -- it was dismissed with leave to restore in light of the murder charge, Your Honor. It was dismissed with leave to restore in light of the fact that he was arrested and on trial for a murder.

THE COURT: And that was a separate alleged event; is that correct?

MR. HOLLEN: That happened seven days exactly after this murder.

THE COURT: And there was an assault and battery third degree that was nolle prossed?

MR. HOLLEN: Your Honor, I --

THE COURT: The records that I'm reading say, Nolle prossed.

MR. HOLLEN: Well it says dismissed, but I believe that that -- I don't have a lot of experience with juvenile records. I know that we have a couple of juvenile lawyers in the courtroom. But he was sentenced to probation for those offenses. I believe that after the probation period they put dismissed on it.

THE COURT: I got you.

MR. HOLLEN: And I have all of those -- I have a write-up from our investigator regarding those charges, so I know that he was found guilty of that burglary second, assault and battery third and petty larceny and disturbing schools.

THE COURT: Say that again.

MR. HOLLEN: He was found guilty of disturbing schools in 2012 and then the burglary second degree, assault and battery third degree, and petty larceny. And in 2013 he was sentenced to probation.

THE COURT: If this was just, obviously, an adult, straight adult case, I have no questions on what to do. But in going through the factors in this case that I have to, the defendant was 15 years old at the time. The maturity, quite frankly, I recall during the course of the trial that there was not a lot of direct evidence but there was certainly little if any parental guidance for him.

There was an older brother who seemed to influence his actions or someone that he looked up to. Clearly, the act itself was impetuous and his conduct, based on even unconvicted charges, and he has a fairly extensive record involving violence, so those kind of mitigate against each other.

It is hard for me, even somebody with a 76 IQ, to

imagine that the -- to appreciate the risk of going in and beating an 80 something year old man to the point where his teeth were scattered, his dentures were scattered around. That is one of the things that I remember discussing with my wife, and it was a brutal case, one of the more brutal that I have seen. The teeth were scattered around the room. There were fractured ribs, if I recall, and lacerations around the head, mouth and face.

And as pointed out by the State, just putting a bag over the man's head and cinching it and seeing him breathing when they were walking out is just almost beyond belief. That factors against him.

His home environment and family factors for him. I mean, he hasn't had much of an opportunity coming up. It's clear from the information that you presented to me and it is clear from the information at trial from the witness stand. His mom was not in the trial, if I recall. Somebody else that cared for him for at least just a little bit of time is who actually had him admit or go forward with his confession, or at least got that started.

Again, the circumstances of this case showed that his involvement in this particular heinous crime, and his involvement was pretty much up there with -- as

much as anybody's that I can tell. I have been involved in two of the trials. If I recall, the second trial, the person was older by somewhat, but he allegedly stayed out and was watching and then came in and ransacked the place and may not even have involved himself in the actual beating and torture of this man. I do feel like the big brother involvement there was -- and both of the codefendants being older, there was both familial and peer pressure that could have an affect on him.

I really didn't feel that he didn't have the ability to deal with law enforcement. I know sometimes by just the mere age you feel like you have to answer everything, you have to tell them everything I would suspect. But there's no indication that I have seen through this date, through this hearing, that his inability to understand and deal with law enforcement on the proof basis, or assist with his attorneys. I remember remarking after the trial both attorneys did grand jobs in their preparation and presentation of the case.

I don't know that I have heard anything about rehabilitation. If you did, it passed by me. Do you want -- I'll give you the opportunity to address that again. Is there any evidence of rehabilitation in this

matter?

MS. SMART-GITTINGS: May it please the Court, Your Honor, there's just case law that says that juveniles are a protective class and there is a presumption and expectation that they are rehabilitative. The detention center didn't give him the opportunity to get his GED or take any classes, so basically he hasn't had the opportunity to go to school since he left Columbia. So, for the last year or so he just has not had the opportunity to get any classes. He has read a lot of books. He is likely to get his GED, provided the right assistance. Like he's going to have to have special classes. He is going to have to have someone explain it to him. Smaller classes where he seems to do better.

And the fact that he hasn't had any problems since he's been at the jail. He hasn't had any write-ups, any referrals, anything since he's been in jail. He will probably, now that he's older and once he is convicted, he will be able to get education credits while he is incarcerated. He will be eligible to maybe work in the library or some type of job in the institution.

I'm sure that he won't be on work release or anything, but he will have the opportunity to work.

He's physically able to work. He has the ability to do so. So, we believe alone -- the fact that he -- although he was in special needs classes, he does have the ability to receive his GED and that he's physically able to work, we believe that, taking those into consideration, that he will be able to be rehabilitated.

THE COURT: Thank you, ma'am. All right, anything further from anyone?

MR. HOLLEN: Not for the State, Your Honor.

THE COURT: Mr. Johnson, I have your father's funeral pamphlet. Do you want me to pass that back so your family can keep it as a momento? I have looked through it.

MR. T. JOHNSON: No, sir, you can keep it.

THE COURT: All right. And I say a lot of this, with all due respect, for the victim's family in this case. They are the ones that have suffered more than anybody. Again, if this was an adult I would have no qualms about anything, but he was at the tender age of 15 and he will be required to serve day for day, any sentence that I give him. And he will have ten days, as I'm sure that you have explained to him, to appeal my sentence.

But at this juncture he is 18 years old. I am

going to sentence him to 55 years. I will give you ten days to appeal. Good luck to you.

MS. SMART-GITTINGS: Your Honor, just for the record, I have several objections I want to put on the record.

THE COURT: Ma'am?

MS. SMART-GITTINGS: I have three objections that I would just like to put on the record.

THE COURT: Certainly.

MS. SMART-GITTINGS: The first one, Judge's failure to make a finding of irreparable corruption. I know that the Court believes that that standard does not apply because of the Miller v. Alabama, but we wanted to put that objection on.

And also, we would object to a 55-year sentence because we believe that that is a functional equivalent to a life without parole. We believe that anything above 38 would be equivalent to life without parole. So, we would object to that.

THE COURT: So, you are arguing that in the circumstances involving minors there is a mathematical formula that should be applied based on their age?

MS. SMART-GITTINGS: Yes, sir.

THE COURT: Okay.

MS. SMART-GITTINGS: And of course we object to

the 30-year mandatory minimum sentence as well.

THE COURT: Yes. And I'm assuming that you are also adopting your other objections laid out in the brief?

MS. SMART-GITTINGS: Yes, Your Honor.

THE COURT: Would you make that brief a court exhibit? We have our copy, so you can make it a court exhibit.

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

THE COURT: In all deference to the State, I know that the State would, if it had been an adult, would have gone for death penalty in this matter, probably, rightfully so, and I know that you wanted to go for life without possibility, but under the circumstances that is going to be my sentence. Thank you gentlemen.

MR. HOLLEN: Yes, sir, thank you.

THE COURT: Thank you, sir.

(Proceeding concluded.)

Fairfax Police Department
Post Office Drawer 810
171 Aiken Avenue, North
Fairfax, South Carolina 29827
803-632-3222
Fax: 803-632-2864

MARVIN J. WILLIAMS
CHIEF

SHARON GOULD
VICTIM ADVOCATE

SGT. J. GINN
SGT. T. RIZER
CPL. R. POPE
PFC. J. SINGLETON
PVT. K. HARNEY
PVT. D. WILLIAMS
PVT. S. WATSON

*** MIRANDA RIGHTS FORM***

My name is Robert Miller, Phone Number Jackson 5+, My address is _____, DOB 12 Dec 30 1998

SSN _____

I have completed 8 years of education.

Circle the line that best applies to you. I can/ I cannot read and write.

Please carefully read each of your rights and initial after reading each line.

1. That I have the right to remain silent. Initial: BM
2. Anything I say, can be used against me in court. Initial: BM
3. That I have the right to have an attorney present at any time during questioning. Initial: BM
4. That if I cannot afford an attorney, I can apply to the court to have on appointed for me, at no cost to me. Initial: BM
5. That if I decide to talk to an officer without an attorney present, I may stop at any time, and request an attorney be present for further questioning. Initial: BM

I have read and initialed each line of my rights listed above, and I understand what my rights are

Date 6-2-14 Time 4:56 PM Signed Robert Miller

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make statements and answer questions. I have the right to terminate any interview, and stop answering questions at any time hereafter. I can request to have a lawyer present with me before I continue answering any more questions or making any more statements if I choose to do so. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed: Robert Miller

Witness: _____

Witness: _____

EXHIBIT
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State of South Carolina
OFFICE OF THE SOLICITOR
FOURTEENTH JUDICIAL CIRCUIT
CAREER CRIMINAL INVESTIGATIVE UNIT

State Vs. Robert Miller

Audio Interview Transcription

Present in the interview:

S/A Richard Johnson
S/A Natasha Merrell
Williams
Ms. Sabb
Robert Miller

Unknown: All right… sit right there.
Johnson: You straight Ms. (inaudible). You straight?
Unknown: I'm good.
Johnson: Rob… (inaudible)
Miller: (inaudible)
Johnson: Oh.. You alright? I'm Agent Johnson, I'm with SLED. You know what SLED is? What are we? What does SLED do?
Miller: Umm… I think (inaudible)
Johnson: Yeah that's part of it, but we also investigate all types of crimes. We are the state police essentially, that's what we are. We are the state police. Ok… and we need to talk to you about some things. And we have Ms. Sabb in, you know Ms. Sabb right?
Miller: Yes sir.
Johnson: And what relation Ms. Sabb is to you?
Miller: She like a mother to me.
Johnson: Like a mother to you…
Miller: Yes sir.
Johnson: Alright… umm… where is your mom?
Miller: She's at the house.
Johnson: Okay… alright… This is Ms. Umm… Agent Merrell. Alright. You know the other officers in here right?
Miller: Umm… I know 'em… (inaudible)
Johnson: What's your name?
Williams: Williams.
Johnson. Okay. We wanna talk to you and we have Ms. Sabb in here… You okay with talking to us?
Miller: Yes sir.
Johnson: Alright and your mom is not here. You're okay with that?
Miller: Yes sir.
Johnson: How far… What grade you in?
Miller: Eighth...

EXHIBIT
S 33

Johnson: Eighth… You can read and write?
Miller: Yes sir.
Johnson: Alright… umm… Let me get something… I want you to read it for me right quick…If you don't mind. Anything… A piece of paper.
Williams: (inaudible) get this certificate…
Johnson: Let me see what's that…
Williams: It's a certificate.
Johnson: Read what's on this certificate for me if you don't mind.
Miller: Umm…
Johnson: Read it out loud.
Miller: Appreciation to CPL Jamie Singleton for outstanding dedication, commitment, and contri…
Johnson: Contributions.
Miller: Contributions and your work for the Fairfax Police Department present, present on December 31st, 2013… (inaudible)
Johnson: All right. That's fine. Make me a copy of that. And the reason why we did that is to (inaudible) understand right from wrong. You understand whatever questions we are asking you and that…
(BREAK)
…Ms. Sabb you mind if we talk with him just, just the two of us…
Ms. Sabb: (Inaudible)
Johnson: You're okay if we talk to him…
Miller: (inaudible) talk to one person…
Johnson: Huh?
Miller: One person?
Johnson: Well that's fine if you want to… Who, which one you want to talk to?
Miller: (inaudible)
Johnson: Okay that's fine, you don't like males? I intimidate you?
Miller: I don't (inaudible)
Johnson: Alright well that's fine with me 'bo. I feel you.
(People talking in the background)
Johnson: You need to use the restroom or something man?
Miller: No.
Johnson: Alright, umm… You good with just what we have done? We don't need any…umm… I guess do anything else, just, talk with him, just, (inaudible) talk is fine…
Merrell: Alright.
Johnson: And I have already made it clear with you, it's up to you if you wanna talk to us now… You said you okay.. Isn't that right?
Miller: Yes sir.
Johnson: Okay.
Merrell: Alright Robert. Let me get some information from you. What is your date of birth?
Miller: December the 30th, 1998.
Merrell: Do you know your social security number?

Miller: No ma'am (inaudible)
Merrell: Okay. What's your address?
Miller: I'm on Jackson St.
Merrell: Jackson St.?
Miller: It's a white house. Do you know where D&G at?
Merrell: Nah I'm not from here.
Miller: Oh. Yeah. It's umm, out in, it's on Jackson St. If you, if you, if you going to D&G, if you going to Allendale…
Merrell: Umm Hmm.
Miller: You first hit that right… just keep going straight, it will be that second street called Jackson St.
Merrell: Uhh huh.
Miller: That right, right there and you go down. It's going to be uhh a little white house, it's going to be a fence, an abandoned house on the other side… Just keep going straight, you gonna pass a house, you gonna pass a house, house close to the umm.. real real close… Matter of fact, a trailer right here on the right side when you uhh, a big trailer and a white trailer right there with a grey, green van, it will be parked with a picnic table on the side.
Merrell: Umm Hmm.
Miller: Hit that right, keep going, keep going down and you're gonna see a house… a fence around it on the right side… a big ole yard.. a black truck.
Merrell: Umm Hmm.
Miller: Where you see a lot of bushes and stuff at… Cross the street it's going to be another house who got a fence around it, but nobody been living there, but next to that house is where I stay at.
Merrell: Oh okay.
Miller: With a red bench on the porch.
Merrell: Next to the abandoned house, with the fence around it?
Miller: Yes ma'am.
Merrell: Alright. And you said that's Allendale?
Miller: Allendale, South Carolina.
Merrell: What's the zip, you know the zip?
Miller: 29810.

(BREAK)
Merrell: So you have a better connection with…
(11:49)
Miller: (Tiff)
Merrell: That's your mother… That's why you said she is like a mother figure to you. Okay. So when was the last time you were in Allendale?
Miller: Friday.
Merrell: Friday? This past Friday?
Miller: This last week, was Friday, last week.
Merrell: Today is Tuesday.

Miller: Last week.
Merrell: Last week?
Miller: Cause the police had came to my house and asked me did I saw Gabriel.
Merrell: You remember what day that was?
Miller: Day, day? I say it was like around the afternoon, something like that… Something around… It was hot but, it wasn't that much hot, but it looked like it was about to cool down.
Merrell: Umm Hmm.
Miller: I'd say around… got out of school, got out of school (inaudible) I'd say they came around there 3 or 4, 4 or 5, something like that. I know, I know, it was some down there, but it was still more heated then. … I didn't know what time it was… I'm just guessing the time. It was hot, but it wasn't that hot. It was around about 5 or 4.
Merrell: But do you remember what day it was?
Miller: Friday.
Merrell: Friday?
Miller: Yes ma'am.
Merrell: And you said the police came to your house looking for Gabriel?
(13:02)
Miller: Yes ma'am.
Merrell: Who is Gabriel?
Miller: Tasha's son.
Merrell: Was he there?
Miller: No ma'am.
Merrell: Did they say why they were looking for him?
Miller: (Inaudible) Only thing they said. It was Manor and a white police. I don't know the white police name. I know Manor for sure, so. (Inaudible) he said Rob, where umm, you know where Gabriel at? I said I don't know no Gabriel… I don't really know him, but I know his mom. Cause I ain't, now his momma I know cause… Well my street, she used to live across the street from me, but I ain't never saw him. I saw his momma, but I ain't never saw him. Right after that he said, he said, who are you again, who are you again? I said I'm Rob. He said, he said where your brother at, Kashawn? I ain't said nothing, I just kept quiet. (inaudible) unlocked the door… I said huh? He said have you seen Gabriel? I said no, I ain't seen no Gabriel. He said alright when you do, we looking for him man. Aight, aight I went in the house (inaudible) on the porch.
Merrell: Umm Hmm.
(14:43)
Miller: Then after that, that night I told (inaudible) I was about to walk to Fairfax, but Sonya came home.
Merrell: Sonya?
Miller: Sonya.
Merrell: Sonya. Who is Sonya?
Miller: Sonya Smith. Robert Miller, my, my father's wife. Not my father, my daddy's wife.
Merrell: Okay.
Miller: She ain't my real mom.
Merrell: So it's your step mother?

Miller: Yes ma'am.
Merrell: She came.
Miller: Yeah, no she saw me walking in the street, walking on the side walk... Her car going this way... (inaudible) I'm about to walk to Fairfax. Cause she was at the white house. (Inaudible) staying behind (inaudible) I stay on Jackson St. so I'm about to walk over there. Well, halfway I was on the sidewalk, I saw her, she turned around (inaudible). It was just her, her daughter, and my niece in the car and my Daddy's... (inaudible) my nieces until Sunday. Cause my sister there, she hold him, can he hold her til Sunday. Three days, three days that's it. So after that, I got, I ain't got in the car. I had said Sonya, I said, one favor, will you please take me to Fairfax? She said why you always wanting to go to Fairfax? I said cause I ain't really got nothing to do around here, (inaudible) see me down here. I mean seriously.
Merrell: Umm Hmm.
Miller: I don't even be coming outside like that. Only thing, only thing somebody, only time somebody coming to see me... I live in Allendale right now. The only time somebody come to see me (inaudible) going to the library, two o'clock leaving, not going to school... Seven... If I'm going to school, in uhh, alternative school, sometimes I walk to alternative school... 3:02 that's what time I get in there.
Merrell: Umm hmm.
Miller: I'm going straight to the library, the library closes around four six... Cause they got two different... It's a library but, but it's like, (inaudible) people that like go to college, yeah.
Merrell: Okay.
Miller: Yeah. They got computers in there for, you just write your name and you get a computer in there...
Merrell: Alright.
Miller: Other libraries you got to get a card... I don't got no card, so I just go to Denmark and they close around six.
Merrell: Umm hmm.
Miller: That library close around four, I just go, I just go around there til about six and I go back home.
Merrell: Ok. Do you know why we are here?
(BREAK)

Miller: It's about (inaudible) the dude that got killed?
Merrell: Umm hmm.
Miller: (Inaudible)
Merrell: I'm going to let you talk.
Miller: I wasn't there. That's all that happened. That's all I know. I was in Fairfax, I was in Fairfax that whole week until Friday when I got off that bus. You can ask Gail, the one that stay in that trailer.
Merrell: Umm hmm.
Miller: That trailer down the road, that... we got...at that trailer, at that trailer... her name, she drive, she drives a school bus.
(17:24)

Merrell: Okay, Rob, I'm asking you to… I'm trying to help you out, okay?
Miller: Yes ma'am.
Merrell: And I want you to be completely honest with me. I'm being completely honest with you.
Miller: Yes ma'am.
Merrell: Cause you told me you were in Allendale last week.
Miller: Friday.
Merrell: Friday?
Miller: That's when I got dropped off because I have been going to summer school in Fairfax the whole last week… You could ask the school… everybody… They dropped me off right in Fairfax.
Merrell: So you didn't get a ride from Allendale on Tuesday night back to Fairfax?
Miller: Tuesday night?
Merrell: Umm hmm.
Miller: Tuesday, last Tuesday?
Merrell: Umm hmm.
Miller: I was… I was in uhh Tuesday… I went to a hearing.
Merrell: You had a hearing?
(18:27)
Miller: Uhh at alternative school and I went to my hearing at 2.
Merrell: Umm hmm.
Miller: I remember I went to a hearing.
Merrell: Where was your hearing at?
Miller: Alternative school.
Merrell: Where is the alternative school?
Miller: Adult ed…
Merrell: Is that in Fairfax or Allendale?
Miller: That's in Allendale.
Merrell: That's in Allendale.
Miller: Yes ma'am.
Merrell: Okay. So Tuesday you said you had an alternative hearing?
Miller: Hearing. Cause I couldn't go to school until I go to the hearing. (Inaudible) me and my buddy had a hearing together.
Merrell: Umm hmm.
Miller: So all of the (inaudible) had a hearing that day.
Merrell: What time was that?
Miller: I'd say around, we came, the hearing started at 10 o'clock and we came about 9…
Merrell: In the morning?
Miller: 9:30-9:40 something, cause it started at 10.
Merrell: Okay. You said that was at the alternative school?
Miller: Yeah, adult ed, yes ma'am.
Merrell: Adult ed.
Miller: It's, it's called adult ed but, alternative school, that's adult ed now.

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Merrell: Okay. So take me through your day on that day.
Miller: Took me back (inaudible).
Merrell: Leading with what time you got done...
Miller: With the hearing?
Merrell: Umm hmm.
(19:46)
Miller: Oh I ain't know (inaudible).
Merrell: Okay.
Miller: And he tried (inaudible). Yeah he gave me twenty dollars after we came from Hardee's... He gave me twenty dollars cause he, supposed to be (inaudible), last week or week before.
Merrell: Umm hmm.
Miller: I was in Fairfax for, for weeks... I was in Fairfax for weeks. I had (inaudible) been in Fairfax. He was supposed to give me my money, but I was never there to get it. So he gave me my twenty dollars that Tuesday... he came from Hardee's cause he bought me and my brother, and my sister... My sister was at the house with the baby so he bought her something to eat... Gave her ten dollars, gave my brother ten and gave me twenty. At twenty dollars I was had twenty dollars in my pocket just sitting there all day. After that, I caught a ride, trying to think... cause I had twenty dollars, that twenty dollars... Well you already know about that twenty dollars.
Merrell: (Laughing)
Miller: Yeah I got twenty dollars there... (inaudible) Fairfax...
Merrell: How'd you get back to Fairfax?
Miller: That's what I'm trying to think right now. If I did (inaudible)... I don't even (inaudible)... I don't... I can't really say who took me to Fairfax... I know that Wednesday I went to school from Fairfax.
Merrell: Okay.
Miller: So y'all just wanted to talk to me, that's it?
Merrell: Yeah I just wanna talk to you.
(22:02)
Miller: All this, all this right here crazy... I already know, you done heard me say, I been hearing things too... I was in school and I was home with my mom...
Merrell: Umm hmm.
Miller: She told me a lot of things.
Merrell: What have you been hearing?
Miller: I been hearing that if SLED catch me they gonna have the gun pointed on me cause I really do... I say, who did I murder and why would they do that for... that, that, that's what I'm hearing... Only thing they gonna do is take me off and slam and have gun points on me... That's right here on the bible. Somebody, somebody, somebody that I know, uhh, a grown person that has kids already, that, that know somebody in the force told me that.
Merrell: Has it happened?
Miller: No ma'am.
Merrell: And who were you talking to?
Miller: SLED.

Merrell: So what does that tell you?
Miller: There's too many stories I done heard.
Merrell: So what are some of the other stories that you heard?
Miller: Other stories say… other stories telling me, some people came to me, telling me that they had described everything what I said I did, they say it was old people… Then they said I had kicked in the door… They said I hold the person and after that those three are the one that I just told you… Those are the only four stories I heard. They say I had kicked the door open… One person said that I didn't kick the door open… I ain't touch the dude or nothing… The other person say I was holding the dude, like, like while he was getting beat up and umm (inaudible). The third person told me, the third person told me, shoot, the true story. I don't really know what to believe. I just heard three stories, four stories. I don't really even know what to believe… That's what I'm hearing… I heard this… I heard this is last night… Now last night is the one they said about they catch me they gonna come shoot me down. I heard that last night. The other three I was in school when I heard that.
Merrell: Umm hmm.
Miller: Cause some kids in Allendale, cause some of the kids that go to Allendale… They told me about it.
Merrell: So what is the truth?
Miller: I had nothing to do with it.
Merrell: That's the truth?
Miller: Yes ma'am.
Merrell: You sure?
Miller: Yes ma'am I had nothing to do with it I wasn't in… I was in Allendale but I was not in Allendale that long.
Merrell: But you said you don't know how you got back to Fairfax…
Miller: Yeah, I was it (inaudible) early that morning. Gail picked me up from Fairfax and you got to go ask her… She picked me up Wednesday morning at 7 o'clock from Fairfax to take me to school cause I went to school two times last week.
(25:07)
Merrell: I know but on Tuesday you said you didn't know how you got back here
Miller: Yeah I don't really know, I forgot, I feel like I was just… (inaudible)
Merrell: so from the time that… your hearing till Wednesday, you don't know what you did for the rest of the evening?
(BREAK)
Miller: But Wednesday morning 7 o'clock Gail, Gail in the trailer, she came and picked me and Sam up cause I was going to summer school. She pick us up from there and took us to school and she asked me "what you doing here Robert?" I was like "sitting out here" she was like "who you down here with?" and I was like "My Brother", Sams My brother.
Merrell: Sam is your brother?
Miller: (Inaudibile)
Merrell: And you said that was Friday when the police came to the house looking for Gabriel?
Miller: Yes ma'am.
Merrell: And you.. Who is Gabriel?

Miller: I don't really… I don't know nothing anything about him, to tell you the truth, nothing… The police, the police the main thing that know everything about him… Gabriel I might see his face, but other than that, streets wise? I don't know him, I know everybody in the streets but not him. I don't even mess with him. I ain't never been with him a day in my life, ask my mom that she aint.. nobody never seen me walking with him.
Merrell: Well, let me ask you this, why would the police come to your house looking for Gabriel if y'all don't ever…
Miller: Really…really they want my brother …
Stopped at 27:25
Miller: (Inaudible). They asked, they say, you seen Gabriel? I say, I don't know Gabriel. And they say, who is you again, and I say (inaudible) … I didn't say nothing. They really don't want me.They really want my brother. (Inaudible) I don't really know no Gabriel. That's the only thing they asked me. They didn't ask me nothing else.
Merrell: So does your brother hang with Gabriel?
Miller: Nah, um, I don't really know. Only (inaudible) the house.
Merrell: So you don't even hang with your brother?
Miller: My family, we cool. I love him no matter what, but otherwise when we leave the house, I'm the only one in there. I don't know where he go , what he do. Now, my momma, I know where she go. But, my sister, my brother? They be all over the county. If they don't be in Fairfax, they'd be all in Barnwell. If they don't be in Barnwell, they'd be right to to Augusa, n ot Augusta, but Hampton. That's all I know.
Merrell: Anything else you want to add or say?
Miller: No, ma'am.
(BREAK)
Merrell: Hang tight for me, please.
Miller: Ma'am?
Merrell: I said just hang tight for me, please, sir.
(Richard Johnson enters)
(BREAK)
Johnson: Now, I want you to listen to me carefully. What's that in your pocket?
Miller: Candy
Johnson: Oh okay, make sure there wasn't no gun in there.
Miller: Ah nah.
Johnson: Um, what we trying to get at? Here's the thing: You're going to jail.
Miller: Today?
Johnson: Yea, and there ain't anything we can do to stop it.
Miller: I know.
Johnson: Here's what we want to try and do is help you on the far end. Why? When you're young … Truth, you're the very first one we're talking to and that's why you getting that break. Cause in South Carolina, the hand of one is the hand of all. It doesn't matter which one of you did what, you were there. That makes you equal. Oh, if we charge you with assault and battery, everybody else is going to get charged with assault and battery.
Miller: Yes, sir.… If they charge me with murder … everybody is going to get murder.

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CAREER CRIMINAL INVESTIGATIVE UNIT

Johnson: Everybody is getting the same amount time except for the one that is cooperating.
Johnson: I'm lazy.
Miller: So what will they ....
Johnson. Wait a minute.
Miller: Yes, sir.
Johnson: I'm lazy. I'm ready to go home. Alright? There's this thing that you don't know. That while you were here, we already got what we need. You ever watch CSI?
Miller: How many years I got?
Johnson: I don't know. I don't know. You know what an ass is? You know what an ass is? That's a lot of time. You ever hear the prosecutor say an ass of time?
Miller: So what can I do to get me out of this situation?
Johnson: You ain't getting out of this, but what you can do is minimize the kind of time. Look at it this way, alright, I don't know what kind of time you'll get. I can't tell you that. I'm not the judge or the lawyer. But here's what I'm getting at, I'm just throwing some hypothetical numbers out. Let's say if you were looking at 30 years and because you talked, let's say you tell the truth and come clean. One second. You come clean and you lay it out on the table, and you cooperate? What we do is, is let the prosecutor know. You know who the prosecutor is?
Miller: No, sir.
Johnson: The prosecutor is the one that...
Miller: Go against them.
Johnson: Yea, that's the one that's going to go up against you. That's the one who is going to try and send you prison.
Miller: Go by me?
Johnson: Yea.
Miller: Alright, alright. I'll tell you. I'll be honest with you. I ain't really wanting to do this. I ain't really wanting to do it. Tell you the truth, I was sitting on the porch (inaudible) and he came by me. He came at me and told me, he told me about the situation.
Johnson: Who's he?
Miller: Gabriel! The one, the one, the one, it's the, it's the main boy! The main one. He's the main one!
Johnson: Okay.
Miller. I ain't want to do none of this man. All I wanted to do was go to Fairfax cause I ain't want to stay in Allendale. I'm trying to tell y'all I love Fairfax... I love Tiff... I ain't want to stay in Allendale, man.
Johnson: Okay.
Miller: I knocked on the door and I opened it and (inaudible) after that and tied him down...
Johnson: Who is he?
Miller: Gabriel... He ain't (inaudible)
Johnson: Name names... Alright who is he... what else?
Miller: He who... That's the only... I just... I just wanna (inaudible)
Johnson: Alright, so you say Gabriel tie him down?
Miller: I say (inaudible)
Johnson: No, no that's the wrong, that's the wrong answer, wrong...

Miller: No (inaudible)
Johnson: Rob, look at me bo, look at me, look at me Rob... Shit happens... You said you didn't wanna be there and from what we was told it wasn't supposed to go down like that. Y'all was just doing a lick. Shit happens. Now the thing to do is let's see how we can minimize it. I told you...
Miller: I don't...
Johnson: I told you up front...
Miller: I don't... but listen...
Johnson: (Inaudible talking over each other) going to jail...
Miller: I don't really care... minimize or not... I'm still getting locked up... Ain't nothing changed about that...
Johnson: Yes it is.
Miller: No, I'm still getting locked up ain't nothing going to change about that... What's changed about it, tell me one thing that's changed about it?
Johnson: The length of time that you going to be looking at...
Miller: (Inaudible) It still don't mean nothing, I'm still going to be doing the time. I'm still doing the time man it's... just please stop, just please stop with me... please, just please...
Johnson: Well bo like I told you from the beginning...
Miller: I said... I been honest with you... (inaudible)
Johnson: Listen, it's like I told you from the beginning, it's up to you to talk to us. You don't have to talk to us... If you wanna stop at any time we can stop... It's up to you. What do you wanna do?
Miller: I just wanna go home man.
Johnson: Huh?
Miller: I just wanna go home man.
Johnson: Well you ain't going home, but what you wanna do?
Miller: I'm being honest with y'all... I told you...
Johnson: I understand that man...
Miller: I told you what I do...
Johnson: No, the only thing you told us was that you didn't want to be there and Gabriel planned... Gabriel did this, Gabriel did that... and... but you didn't tell us details.
Miller: I was just... told you... I knocked on the door, I went in and I hit him... And I hold him down.
Johnson: I didn't hear that... You say that?
Miller: I say that out of my mouth.
Johnson: (Inaudible) I'm sorry I didn't hear that, forgive me. I apologize...
Miller: Well he, he (inaudible) wanted to go searching the house... I know he (inaudible)... He was the main thing searching... (inaudible) I was just posted up the whole time.
Johnson: Yep. That's right.
Miller: (Inaudible)
Johnson: That's right... You stayed in the living room with him, with, with the old man.
Miller: Watching him.
Johnson: Watching him, that's right...

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CAREER CRIMINAL INVESTIGATIVE UNIT

Miller: They kept coming back…
Johnson: Who put the bag over his head?
Miller: I did.
Johnson: Thank you. You did. Alright, who took the wallet out of his, umm, pocket?
Miller: I did.
Johnson: And you know your prints and stuff will be on that wallet…
Miller: (Inaudible)
Johnson: Thank you. That's why I asked you if you have ever seen CSI…
Miller: (Inaudible)
Johnson: Alright, so… All we, all we need is a clear picture from you, so when I talk with the Solicitor, this is what Robert told us. He's hurt… I can tell he is hurt about it… Whatever you can do to help him, you help him… But like I told you from the beginning, ain't nothing we can do about stopping jail time…
Miller: No that's what I said, just lock me up… I, I only got two choices in my life right now, either go to jail or die…
Johnson: Well…
Miller: I just wanna, I just wanna, I just wanna leave here… I'm done talking… Whenever y'all ready to lock me up, I'm ready… Let's go, please… I'm ready…
Johnson: Okay, alright… You, you through talking with us?
Miller: I already told you… I told y'all the details of what happened… I admitted I did it…
Johnson: I just wanted to make sure, I (inaudible)… You ain't wanna talk no more.
Miller: I ain't wanna talk no more. I say what I have to say, I just ready to go man.
Johnson: Alright, you um, can you do a Memorandum of Interview of what he said? Hang tight man.
(BREAK)

END OF INTERVIEW



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FOURTEENTH JUDICIAL CIRCUIT
CAREER CRIMINAL INVESTIGATIVE UNIT

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT OF THE
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF ALLENDALE)	
)	ORDER OF WAIVER
IN THE INTEREST OF:)	TO GENERAL SESSIONS
Robert Miller, III)	
)	2014-JU-03-21, 22
DOB: 12-30-98)	
)	

FILED FOR RECORD
2015 MAR 26 AM 11:48
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, SC

This matter was before the Court on March 24, 2014, on a motion for waiver to the Court of General Sessions on the above-referenced petitions.

Present were Duffie Stone, Solicitor, Shawn Thornton, Deputy Solicitor, Christine Grefe, Assistant Solicitor; Lewis Grant of the Department of Juvenile Justice; Natasha Merrill, SLED, Respondent; his father, Robert Miller, II, and Respondent's counsel, Stephanie Smart Gittings and Kimberly Jordan.

Based on the argument presented by the State and Defense, the pre-waiver evaluation conducted by the Department of Juvenile Justice, as well as other evidence, the Court finds and concludes:

1. The Defendant Robert Miller, III was born on December 30, 1998, and is sixteen (16) years old.
2. The Defendant has been charged with Murder and Attempted Murder.
3. The alleged offenses occurred in Allendale County on or about June 17, 2014, when the Defendant was fifteen (15) years old.

(The following findings are based on the criteria listed by the United States Supreme Court in Kent v. United States, 383 US 541 (1966).)

4. There is probable cause to believe that the Defendant committed the crimes for which he has been charged.

5. The seriousness of the offenses is against persons and is of such gravity as to require waiver for the protection of the community.

6. The alleged offenses are of a violent, aggressive, and willful nature.

7. There is sufficient merit to warrant the Grand Jury to return a true bill on the charges.

8. The crimes for which the Defendant is charged are of a serious nature and if found guilty, would suggest he is capable of acting without regard for others.

9. It is the opinion of the pre-waiver evaluation team that it is not likely that the Defendant could be rehabilitated.

Conclusions of Law

1. The court has jurisdiction over this matter pursuant to South Carolina Code of Laws 63-19-1210.

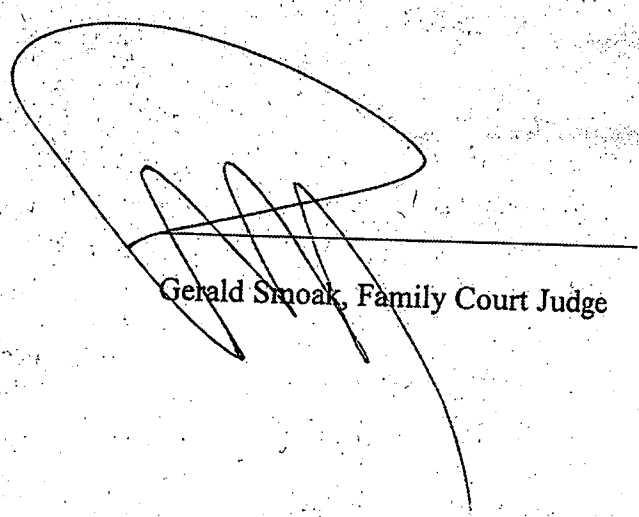
2. Based upon the factors outlined above, the Court concludes that there is little likelihood that Robert Miller, III can be rehabilitated in the Juvenile Justice System.

3. It is in the best interest of Robert Miller, III that he be waived to the Court of General Sessions for proceedings on the charges alleged in petition numbers 2014-JU-03-21, 22.

IT IS THEREFORE ORDERED THAT jurisdiction of this matter shall be transferred to the Court of General Sessions.

IT IS FURTHER ORDERED THAT bail be denied at this time and that bail may be reconsidered by a Circuit Court Judge at the next term of General Sessions Court in Allendale County.

AND IT IS SO ORDERED



Gerald Smoak, Family Court Judge

Allendale, South Carolina

March 24, 2015

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF ALLENDALE)	
)	
State of South Carolina,)	Case No.) 2015-GS-03-0050
)	
Plaintiff,)	
)	
vs.)	**MOTION TO PRECLUDE LIFE WITHOUT PAROLE AS A PUNISHMENT**
)	
Robert Miller,)	
)	
Defendant.)	
)	

FILED FOR RECORD
2017 JUN -5 PM 12:46
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 § 15 OF THE SOUTH CAROLINA CONSTITUTION PRECLUDE LIFE WITHOUT PAROLE AS A PUNISHMENT FOR JUVENILE OFFENDERS.

I. Introduction.

Over the last decade, the Supreme Court of the United States has dramatically altered the legal framework governing the sentencing of juvenile offenders. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court held that the Eighth Amendment's prohibition against cruel and unusual punishment prevented states from sentencing juveniles to death. Next, in *Graham v. Florida*, 560 U.S. 48 (2009), the Court went a step further, holding that sentencing juvenile offenders to life imprisonment without the possibility of parole for non-homicide offenses was also barred by the Cruel and Unusual Punishment Clause. In 2012, the Court determined in *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012), that even in homicide cases, states are precluded from imposing mandatory life without parole sentences on juvenile offenders. And most recently, in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718 (2016), the Court held *Miller* to be "a new substantive rule that, under the Constitution, must be retroactive" and effectively ordered new sentencing proceedings for hundreds of individuals who had been sentenced to mandatory

life without parole as juveniles. All four cases were grounded in one core Eighth Amendment principle: "children are constitutionally different from adults for purposes of sentencing." *Miller*, at 2464.

In *Aiken v. Byars*, 410 S.C. 534, 542–43, 765 S.E.2d 572, 576 (2014), the South Carolina Supreme Court embraced the reasoning of the United States Supreme Court that "youth has constitutional significance" and "must be afforded adequate weight in sentencing." After examining the sentencing hearings in cases where juveniles were sentenced to life without parole in this State in light of these decisions, the South Carolina Supreme Court concluded that the Eighth Amendment required that they be resentenced. The key defect in South Carolina's sentencing practices noted in *Aiken* was the failure to "fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543. Defendant, one of the individuals whose sentence was vacated by the South Carolina Supreme Court in *Aiken*, is now before this Court for resentencing. He now moves that this Court remove life without parole as a sentencing option.

II. Juvenile Offenders' Criminal Culpability is Diminished in Ways that Make Life Without Parole Excessive and Cruel and Unusual.

A closer examination of the Court's reasoning in *Miller* is of particular importance to the issues raised in this section of the motion: whether a juvenile offender can ever be sentenced to life imprisonment without the possibility of parole.[1] The Court first observed that the question presented implicated "two strands of precedent reflecting our concern with proportionate punishment." *Miller*, 132 S.Ct. at 2463. The first set of cases adopted "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the

[1] The Court explicitly reserved judgment on whether the Eighth Amendment categorically prohibits sentencing juveniles to life imprisonment without parole regardless of the offense or the procedures used as this question was not presented to them. *Miller*, 132 S.Ct. at 2469.

severity of the penalty." *Id.* (citing *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (holding that the death penalty is disproportionate for non-homicide crimes committed by adults), and *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that the death penalty may not be imposed upon persons with mental retardation)). After reaffirming that *Graham* "likened life without parole for juveniles to the death penalty itself," the Court turned to the second strand of relevant cases: those holding that mandatory imposition of capital punishment violates the Eighth Amendment. *Id.* at 2463–64 (citing *Woodson v. North Carolina*, 428 U.S. 280 (1976), and *Lockett v. Ohio*, 438 U.S. 586 (1978)). The Court then concluded that "the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Id.* at 2464.

The Court in *Miller* explained that all its recent holdings regarding juveniles hinged on the now established constitutional maxim that juveniles have both "diminished culpability and greater prospects for reform" and are thus "'less deserving of the most severe punishments.'" *Id.* at 2464 (quoting *Graham*, 560 U.S. at 68). The lessened culpability and possibility of rehabilitation are grounded in three constitutionally significant differences between juveniles and adults:

- Children are less mature and developed than adults, leading to "recklessness, impulsivity, and heedless risk-taking," *id.*;
- Children are more "vulnerable . . . to negative influences and outside pressures," and have "limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings," *id.* (internal quotations omitted);
- Children's actions are "less likely to be evidence of irretrievable depravity" because "a child's character is not as well formed as an adult's" and "his traits are less fixed," *id.* (internal quotations omitted).

These differences, *Miller* noted, result in part from a consistently growing body of social science and neuroscience research conclusively establishing that: a) only a small percentage of adolescents who commit crimes, even serious crimes, "'develop entrenched patterns of problem behavior,'" *id.* at 2464 (quoting *Roper*, 543 U.S. at 570), and, b) there are fundamental differences between the brains of juveniles and adults in areas "'involved in behavior control.'" *Id.* at 2464–65 (quoting *Graham*, 560 U.S. at 68). Because the brains of juveniles are not "fully mature in regions and systems related to higher executive functions such as impulse control, planning andrisk avoidance," juveniles have a constitutionally different level of moral blameworthiness and, for that reason, the penological justifications for any criminal punishment—deterrence and retribution—are inconsistent with life without parole sentences. *Id.* at 2464 n.5 (quoting Brief of the American Psychological Association et al.). The same characteristics that make this category of offenders less culpable necessarily mean that "'an irrevocable judgment about a [juvenile] offender's value and place in society,' [is] at odds with a child's capacity for change."[2] *Id* at 2465.

Miller reaffirmed what the Court had previously established in *Graham* and *Roper*: "Children are constitutionally different from adults for the purposes of sentencing." *Id.* at 2464. This immutable constitutional fact led the Court in *Roper* and *Graham* to declare that juveniles may not be sentenced to death regardless of the circumstances of the crime, and to similarly ban

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[2] Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 BRAIN AND COGNITION 160, 162 (2010) ("From this perspective, middle adolescence (roughly 14–17) should be a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature. And, in fact, many risk behaviors follow this pattern, including unprotected sex, criminal behavior, attempted suicide, and reckless driving."); Sarah-Jayne Blakemore, *Imaging Brain Development: The Adolescent Brain*, 61 NEUROIMAGE 397 ("The plentiful data that consistently paint a picture of the adolescent brain as relatively immature might speak against the relatively young age of criminal responsibility and harsh sentences for adolescents.").

life without parole for non-homicide offenses, regardless of the underlying facts of the case. In *Miller*, the Court simply took the next logical step and held that the Eighth Amendment also bars mandatory life without parole sentences for homicides committed by juveniles.

For these reasons, the Court concluded that a sentence of life without parole, when imposed on a teenager as compared to an adult is the same "in name only." *Id.* at 2466. From a constitutional perspective, it is akin to the death penalty. *Id.* at 2466 ("[W]e viewed this ultimate penalty for juveniles as akin to the death penalty, we treated it similarly to that most severe punishment."). Thus, the Court held that the same constitutional protections afforded adults in capital cases must be provided in any case where a juvenile faces a possible sentence of life without parole. *Id.* at 2468 ("[A] similar rule [to capital cases] should apply when a juvenile confronts a sentence of life (and death) in prison"). The Eighth Amendment, in fact, demands "individualized sentencing . . . analogous to [that required in] capital punishment [cases]." *Id.* It was both the fact that the sentences were mandatory as well as the absence of a process for allowing a juvenile to present the full range of mitigating evidence at a meaningful sentencing hearing similar to the penalty phase of a capital trial which rendered the life without parole sentences imposed upon the petitioners constitutionally infirm. *Id.*

Significantly, "[n]othing the Court said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." *Id.* at 2465. Those characteristics are "evident in the same way, and to the same degree" in juveniles who commit homicide as they are in those who commit armed robbery, kidnapping or any other offense. *Id.* at 2465. In short, the constitutional difference between juvenile and adult offenders does not turn in any respect on the nature of the crime, and any purported distinction on that basis finds no support in the Court's recent decisions.

The Court's recent holding in *Montgomery v. Louisiana* emphasized how uncommon a juvenile life without parole sentence should be. The Court stated that is only "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S.Ct. at 733. However, as the Court has recognized, there is great difficulty in distinguishing between the "unfortunate" and the truly culpable offender: "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable." *Graham*, 560 U.S. at 72–73. Elaborating on the cruelty of imposing a life without parole sentence on a juvenile, the Court noted "the great difficulty . . . of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" *Miller*, 132 S.Ct. at 2469 (quoting *Roper*, 543 U.S. at 573); *see also Graham*, 560 U.S. at 68–69. Rather, "incorrigibility is inconsistent with youth." *Miller*, 132 S.Ct. at 2465 (internal quotation marks omitted).[3] Indeed, it is difficult

[3] Many individuals who committed serious crimes as juveniles have gone on to lead very productive lives. Wilbert Rideau, for example, was convicted of committing murder as a teenager and sentenced to death. *See Rideau v. Louisiana*, 373 U.S. 726 (1963). During his incarceration, he began writing for the prison newspaper and received numerous awards for his writing. Sometimes referred to as "the most rehabilitated man in America," (Life Magazine 1993), he was eventually released after his conviction was overturned by the federal courts. Post-release, he has authored several award-winning books. Erwin James, From Death Row Inmate to Acclaimed Author, THE GUARDIAN, (May 31, 2011), http://www.theguardian.com/society/2011/may/31/wilbert-rideau-rehabilitate-prisoners. Alan Simpson was convicted when he was seventeen years old of destroying government property. Facing years in prison, the judge instead decided to impose a sentence of two years of probation. With the help of a probation officer, Simpson turned his life around. He eventually went to college, graduated from law school, and after serving in the Wyoming state legislature was elected to the United State Senate. Brief of Former Juvenile Offenders Charles S. Dutton, Former Sen. Alan K. Simpson, R. Dwayne Betts, Luis Rodriguez, Terry K. Ray, T.J. Parsell, and Ishmael Beah as Amici Curiae in Support of Petitioners, Graham v. Florida, 560 U.S. 48 (2010) Nos. 08-7412, 08-7621.

for even highly-trained child psychologists and psychiatrists to differentiate juvenile offenders whose crimes are the product of permanent fixed character traits from those whose crimes are the result of circumstances and the transient qualities of youth.[4] *Id.* at 2469 (citing *Roper*, 543 U.S. at 573, and *Graham*, 560 U.S. at 68). It is equally difficult for a judge to make such a determination. This difficulty leads to the unacceptable risk that a juvenile may receive a constitutionally disproportionate sentence of life without parole. The fact that the judge took age into consideration is not enough to render such a sentence constitutional—if the sentence is disproportionate, it is necessarily unconstitutional. *Montgomery*, 136 S.Ct. at 734 ("Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'") (quoting Roper, 543 U.S., at 573).

The potential for reform that is present in all juvenile offenders requires States to maintain the possibility of eventual release as a sentencing option. It would be constitutionally excessive to render a final, permanent judgment that a juvenile offender should never be released; a mechanism for future review must be available, because States cannot ignore the juvenile's "potential to attain a mature understanding of his own humanity." *Roper*, 543 U.S. at 573–74.

Because the Court was confronted only with cases involving mandatory sentences of life without parole, it did not reach the question of whether "the Eighth Amendment requires a categorical bar on life without parole for juveniles." *Miller*, 132 S.Ct. at 2469. However, the Court did establish a presumption against such sentences:

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[4] In this case, we have the benefit of hindsight to show us that defendant does *not* fall into the class of incorrigible juveniles for whom life-without-parole is an acceptable sentence. [If applicable give social history of rehabilitation]

> [G]iven all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.

Id. (internal quotation marks omitted). The Court further emphasized in *Montgomery* that *Miller* had gone a long way towards eliminating life without parole for juveniles and re-iterated that such sentences should be scarcely given: "*Miller* did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S.Ct. at 734. The constitutional reasoning that drove the decisions in *Roper*, *Graham*, *Miller*, and *Montgomery* leads inexorably to the conclusion that any life without parole sentence imposed on a juvenile offender is cruel and unusual punishment proscribed by the Eighth Amendment. *See Montgomery*, 136 S.Ct. at 734 ("[T]he penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'") (quoting *Miller*, 132 S.Ct. at 2465). There can be no genuine doubt that the Supreme Court will eventually so hold. Thus, rather than wait for the High Court to act, this Court should now declare that life without parole sentences are barred for juvenile offenders by the Eighth Amendment of the United States Constitution and Article I § 5 of the South Carolina Constitution.

III. The National and International Consensus Against Sentencing Juveniles to Life Imprisonment Without the Possibility of Parole.

The Eighth Amendment's prohibition on cruel and unusual punishment is measured against the "evolving standards of decency that mark the progress of a maturing society." *Trop*

v. Dulles, 356 U.S. 86, 101 (1958). While "the standard for extreme cruelty 'itself remains the same, . . . its applicability must change as the basic mores of society change.'" *Kennedy*, 554 U.S. at 419 (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972)) (Burger, C.J., dissenting). In order to determine whether the language of the Eighth Amendment applies, the Court looks to contemporary societal norms. *See* Robert J. Smith et al., *The Way the Court Gauges Consensus (and How to Do It Better)*, 35 CARDOZO L. REV. 2397, 2406 n.43 (2014); *Atkins*, 536 U.S. 304 (prohibiting imposition of the death penalty on the intellectually disabled). Since 2002, the Court has measured "evolving standards of decency" by determining whether a "national consensus" supports a categorical prohibition of a given punishment.[5] *See Atkins*, 536 U.S. at 312. Legislative enactments constitute the "clearest and most reliable objective evidence of contemporary values." *Atkins*, 536 U.S. at 312 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989)). However, "actual sentencing practices are [also] an important part of the Court's inquiry into consensus." *Graham*, 560 U.S. at 62.

In *Roper*, the Court found a national consensus against the imposition of the death penalty on offenders under eighteen years of age at the time of their crime. 543 U.S. at 568. The Court concluded that:

> the objective indicia of consensus in this case—the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice—provide sufficient evidence that today our society views juveniles . . . as "categorically less culpable than the average criminal."

[5] By contrast, the Court will typically only invalidate a term of years sentence for an adult if it is an "extreme punishment" that is "grossly disproportionate" to the crime. *Harmelin v. Michigan*, 501 U.S. 957, 997 (1991); *see* Jennifer S. Breen, John R. Mills, *Mandating Discretion: Juvenile Sentencing Schemes After* Miller v. Alabama, 52 AM. CRIM. L. REV. 293, 301–02 (2015).

Id. (citations omitted). Then, in *Graham*, the Court found a national consensus against sentences of life without parole for non-homicide offenses committed by persons less than eighteen years old at the time of the offense based on its infrequent use and "despite its widespread legislative authorization." Smith, *supra*, at 2451. The Court noted that six jurisdictions did not allow life without parole sentences for any juvenile offenders.[6] Next, in *Miller*, the Court rejected the state's argument that because twenty-nine jurisdictions statutorily authorized the punishment, there could be no consensus against it. *Id.* at 2471. The Court noted that in *Graham*, there were thirty-nine jurisdictions authorizing life without parole for juvenile offenders for non-homicide offenses and the Court nonetheless found a consensus against that punishment. The Court explained that "the statutory eligibility of a [juvenile life without parole sentence] does not indicate that the penalty has been endorsed through deliberate, express, and full legislative deliberation." *Miller*, 132 S. Ct. at 2473 (citing *Graham*, 560 U.S. at 67). In *Atkins*, the Court found consensus by relying on "not so much the number of the States . . . , but the consistency and the direction of the change." *Atkins*, 536 U.S. at 315.

South Carolina would not be the first jurisdiction to make life without parole unavailable for juveniles. Since *Miller*, nine states have abolished life without parole as a sentence for juveniles, bringing the current number of jurisdictions completely banning the sentence to sixteen.[7] Among the states that retain juvenile life without parole policies, the legislatures and courts have greatly diminished its impact via retroactivity rulings that allow every juvenile an

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[6] The Court referred to Alaska, Colorado, Montana, Kansas, Kentucky, and Texas. *Graham*, 560 U.S. at Appendix III.

[7] Since *Miller*, life without parole has been abolished as a sentence for juveniles in Connecticut, Delaware, Hawaii, Massachusetts, Nevada, Texas, West Virginia, Wyoming, and Vermont.

opportunity for a lesser sentence,[8] reforms that narrow the application of the sentence, or a combination of the two.

The sixteen jurisdictions barring juvenile life without parole are two fewer than the Court counted in *Atkins* when it barred imposing the death penalty on the intellectually disabled. *Atkins*, 536 U.S. at 313–15. However, the "consistency of the direction of change" in policy has even more significance than the number of states banning the sentence. *Id.* at 315. In the thirteen years between *Penry* and *Atkins*, sixteen states eliminated the death penalty for the intellectually disabled. *Id.* In the fifteen years between *Stanford v. Kentucky*, 492 U.S. 361 (1989), and *Roper*, five states eliminated the death penalty for juveniles. *Id.* at 565. The elimination rate for these respective punishments was roughly 1.23 and .33 jurisdictions per year.

In the years since *Miller*, the response in the states has been strong and uniform. On average 3.33 states per year have eliminated juvenile life without parole, and six jurisdictions eliminated the punishment since June 2014. In response to a case that restricts a punishment, states are eliminating the punishment all together, suggesting that *Miller* has caused states to examine their sentencing practices and, once scrutinized, abolish them. *Graham*, 560 U.S. at 66 (noting that existence of the possibility of a sentence via a provision transferring juveniles to adult court does not amount to an acceptance of the range of sentencing outcomes that a juvenile would be subject to in adult court). Moreover, as in *Atkins* and *Roper*, no states without juvenile

[8] At least two states, including South Carolina, have granted retroactive relief to persons serving discretionary juvenile life without parole sentences. Those states held that the sentences violated *Miller* because the statutory schemes at the time did not require consideration of youth as a mitigating factor. See *Aiken*, 410 S.C. at 578; *State v. Long*, 8 N.E.3d 890, 893–99 (Ohio 2014).

life without parole have chosen to enact it, and no state has expanded its application.[9] The direction, consistency, and rate of change all suggest a mounting consensus against the sentence.

Both overall and in recent years, states have limited their use of life without parole as a punishment for juveniles in actual practice, even if the sentence is statutorily available. In addition to the jurisdictions that have abolished the sentence, Indiana, Maine, New Jersey, New Mexico, New York, Rhode Island, and Utah currently have no one serving a juvenile life without parole sentence. An additional four states have five or fewer persons serving such a sentence from any time period,[10] and, in addition to those, five states have one or zero persons serving a juvenile life without parole sentence imposed in the last five years.[11] Further, the decision in *Montgomery v. Louisiana* ensures that hundreds, if not thousands of people will no longer be serving a sentence of life without parole. Given that only the exceedingly "rare juvenile offender" should receive such a sentence, only very few of those entitled to resentencing will again receive the ultimate penalty of life without parole. *Montgomery*, 136 S.Ct. at 733.

At the international level, universal human rights principles, including the American Declaration of the Rights and Duties of Man,[12] preclude the imposition of life without parole

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[9] Some states have amended their statutes to comply with *Miller* while retaining life without parole as a sentencing option for juveniles. The states that have retained the sentence after *Miller* have blunted its impact by narrowing the reach of their juvenile life without parole schemes beyond what is clearly required by *Miller*'s narrowest holding.

[10] Idaho (4), Ohio (5), New Hampshire, North Dakota (1).

[11] Alabama (0), Arkansas (1), Iowa (1), Maryland (1), Minnesota (0).

[12] The International Covenant on Civil and Political Rights, to which the United States is a party, prohibits a life without parole as a sentencing option in cases involving juveniles, International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, Articles 7, 14, 24. Such sentences also constitute a violation of numerous human rights treaties. *See* American Declaration of the Rights and Duties of Man, Article VII; American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143, Article

sentences for children on the basis that the unique characteristics of youth mandate a second opportunity for review. *See T. v. United Kingdom*, 170 Eur.Ct. H. R. ¶ 121 (1999) (holding that a sentence of detention is illegal under international law where no parole eligibility date is set, and relying upon many of the same reasons contemplated in United States' domestic case law concerning the need for a second chance of review in these cases). In *Graham*, the Court recognized that the U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, ratified by every country except Somalia and the United States, represented evidence of international opinion that life without parole is not an appropriate sentence for juvenile offenders. 560 U.S. at 81. (quoting *Roper*, 543 U.S. at 572) (observing that "'the United States now stands alone in a world that has turned its face against'" life without parole sentences for juvenile non-homicide offenders); *see also id.* at 85 (Stevens, J., concurring) (reaffirming the Court's reliance on international law for at least a century when interpreting the Eighth Amendment's "evolving standards of decency") (internal quotation marks omitted).

IV. Life Without Parole Sentences for Juveniles Serve No Penological Justification.

A punishment that lacks the penological justifications of retribution, deterrence, and rehabilitation violates the Eighth Amendment as a disproportionate sentence.[13] Relying on

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19; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc No. 95-20 (1922), 1465 U.N.T.S. 85. http://www.aclu.org/blog/criminal-law-reform-human-rights/seeking-second-chance-children-sentenced-life-without-parole.

[13] *See Graham*, 560 U.S. at 71. Several commentators have noted that the Court has never found a national consensus against a punishment where it did not also hold that its independent judgment required prohibition of the punishments and vice versa. *See* Edward A. Hartnett, *Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges' Bill*, 100 COLUM. L. REV. 1643, 1730–31 (2000); Meghan J. Ryan, *Does the Eighth Amendment Punishments Clause Prohibit Only Punishments That Are Both Cruel and Unusual?*, 87 WASH. U. L. REV. 567, 590 (2010). Perhaps the best explanation for this consistent convergence is the Court's use

psychological and social science evidence, as well as what "any parent knows," the Court has consistently held that these purposes are greatly diminished in the context of imposing extreme sentences on juveniles. *Roper*, 543 U.S.at 569.

"[C]hildren are different" and inherently less culpable than their adult counterparts. *Miller*, 132 S.Ct. at 2469. Rationales of retribution are tied to blameworthiness and the idea that one is deserving of punishment. Because of their "vulnerability and comparative lack of control over their immediate surroundings . . . juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." *Roper*, 543 U.S. at 570. Juveniles, in short, are less to blame for the crime-producing circumstances they have been exposed to. Thus, the retributive rationale is significantly diminished for all juvenile offenders.[14]

The hallmark features of youth also weaken the deterrence rationale. Because of the inherent features of youth such as "immaturity, impetuosity, and failure to appreciate risks and consequences," juveniles are "less likely to consider potential punishment" that may result from present conduct. *Miller*, 132 S.Ct. at 2465, 2468.

Finally, the Court has held that juveniles are uniquely well-suited to reform. As the Court has noted, "the character of a juvenile is not as well formed as that of an adult." *Roper*, 543 U.S. at 570. That a juvenile is still struggling to form her or his identity "means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.* Moreover, a sentence of life without parole is a once and for all finding that a juvenile is among the very few "incorrigible juvenile offenders" rather than

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of discretion in granting certiorari in cases where the national consensus and its independent judgment are likely to align. S. Ct. Rule 10 (providing grounds for granting a writ of certiorari).

[14] No greater incapacitation for juveniles is authorized than life without parole. *See Roper*, 543 U.S. at 578. Thus, the incapacitation value is at its zenith for such sentences.

the "vast majority of juvenile offenders" who have the "capacity for change." *Graham*, 560 U.S. at 95, *Montgomery*, 136 S.Ct. at 734.

V. Conclusion.

Given the direction of the Supreme Court's juvenile sentencing decisions, the legal principles it has established governing the sentencing of juvenile offenders, and the heightened capacity for change in all juvenile offenders, it is now evident that life without parole sentences for juvenile offenders violate both the United States and the South Carolina Constitutions. Therefore, this Court should declare that life without parole is not a sentencing option in this case.

Respectfully submitted,

By: _____

Stephanie J. Smart Gittings
P.O. Box 506
Hampton, SC 29924

Counsel for Defendant

June 5, 2017

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WITNESSES

Natasha Merrell- SLED

Richard Johnson, SLED

ARREST WARRANT NUMBER

2015A0310100028

Date of Arrest: April 6, 2015

ACTION OF GRAND JURY

True Bill

Paula K Ward 7-23-15

Foreperson of Grand Jury

VERDICT

Guilty

X Malicia Wright

Foreperson of Petit Jury

Date: 7-17-16

INDICT

DOCKET NO. 2015GS0300050

The State of South Carolina

County of Allendale

COURT OF GENERAL SESSIONS

July Term 2015

THE STATE

vs.

Robert Lee Miller III

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

INDICTMENT

2015GS0300050

At a Court of General Sessions, convened on July 23, 2015, the Grand Jurors of Allendale County present upon their oath:

Murder / Murder

That in Allendale County on or about June 17, 2014- June 19, 2014, with malice aforethought, Robert Lee Miller III did kill and murder Willie Johnson by means of blunt force trauma and/or suffocation, and that Willie Johnson did die in Allendale County as a proximate result thereof on or about June 17, 2014; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Isaac M. Stone

Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

(30 - Life)

STATE OF SOUTH CAROLINA

COUNTY OF Allendale

STATE

VS.

Robert Lee Miller III

AKA:

Race: B Sex: M Age: 18

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: Allendale, SC 29810

DL# * SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN T. COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015 -GS- 03 - 50

A/W#: 2015A0310100028

Date of Offense: 06/17/2014

S.C. Code §: 16-3-010

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

In violation of § 16-03-010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor 101928 SC Bar # Defendant Attorney for Defendant 14907 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 55 days/months/years or ☐ under the Youthful Offender Act not to exceed ____ years and/or to pay a fine of $ ____; provided that upon the service of ____ days/months/years and or payment of $ ____; plus costs and assessments as applicable*; the balance is suspended with probation for ____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: $ plus 20% fee: $ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of $ Beginning

$ Paid to Public Defender Fund

Other:

Recipient:		
*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 05.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)	$	$ 3.75
TOTAL		$ 108.75

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk Elaine Salter

Court Reporter: Mona Manley

Presiding Judge 21555

Judge Code:

Sentence Date 6-5-17

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED
JAN 24 2019
SC Court of Appeals

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24TH day of January, 2019.