

652 S.E.2d 525, 07 FCDR 3299

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Supreme Court of Georgia.  
LYONS  
v.  
The STATE.  
No. S07A1061.  
Oct. 29, 2007.

**Background:** Defendant was convicted by a jury in the Superior Court, Pike County, Johnnie Caldwell, Jr., J., of malice murder, armed robbery, and kidnapping with bodily injury and was sentenced to life imprisonment without the possibility of parole. Defendant appealed.

**Holdings:** The Supreme Court, [Hines](#), J., held that:

- (1) evidence was sufficient to support conviction for kidnapping with bodily injury;
- (2) affidavit submitted in support of search warrant for defendant's residence established probable cause;
- (3) trial court admission of two post-incision autopsy photographs was not an abuse of discretion; and
- (4) trial court's refusal to allow defense expert to testify about false confessions arising from police interrogation techniques was not abuse of discretion.

Affirmed.

[Hunstein](#), P.J., concurred in judgment only as to Division 1.

West Headnotes

[1] [KeyCite Notes](#) 

↳ [231E](#) Kidnapping

↳ [231Ek33](#) Evidence

↳ [231Ek36](#) k. Weight and Sufficiency. [Most Cited Cases](#)

Evidence was sufficient to support conviction for kidnapping with bodily injury; defendant and co-conspirator forced defendant at gunpoint from a standing position to the floor, and the movement of victim facilitated the intentional suffocation of victim and the armed robbery.

[2] [KeyCite Notes](#)



↳ [231E](#) Kidnapping

↳ [231Ek14](#) Elements

↳ [231Ek17](#) k. Asportation; Movement of Victim. [Most Cited Cases](#)

The requirement of asportation to prove kidnapping is satisfied if there is movement of the victim, however slight that movement is.

[3] [KeyCite Notes](#)



↳ [231E](#) Kidnapping

↳ [231Ek14](#) Elements

↳ [231Ek17](#) k. Asportation; Movement of Victim. [Most Cited Cases](#)

The distance that a kidnapper transports the victim is not of legal significance.

[4] [KeyCite Notes](#)



↳ [231E](#) Kidnapping

↳ [231Ek14](#) Elements

↳ [231Ek17](#) k. Asportation; Movement of Victim. [Most Cited Cases](#)

Where the movement involved is minimal, and the alleged kidnapping occurs in furtherance of some other criminal enterprise, in order to constitute asportation the movement must be more than a mere positional change of the victim incidental to the other criminal act; it must be movement, even if a positional change, designed to better carry out the criminal activity.

[5] [KeyCite Notes](#)



↳ [349](#) Searches and Seizures

↳ [349II](#) Warrants

↳ [349k113](#) Probable or Reasonable Cause

↳ [349k114](#) k. Particular Concrete Applications. [Most Cited Cases](#)

Affidavit submitted in support of search warrant for defendant's residence established probable cause for its issuance; affidavit was issued by homicide investigator, it stated that defendant, the victim's ex-girlfriend, was the last person to see the victim alive, that the time frame defendant related for the victim being in her home was inconsistent with the evidence, that certain items victim had in his car, which was later used to transport his body to the site where it was ultimately found, defendant had in her possession and gave

to the victim's family, that the victim had certain pieces of jewelry on his person when he left to see defendant, that the jewelry was not found on his body, and that defendant had given victim the jewelry. [U.S.C.A. Const.Amend. 4](#).

[6] [KeyCite Notes](#) 

- ↳ [349](#) Searches and Seizures
  - ↳ [349II](#) Warrants
    - ↳ [349k113](#) Probable or Reasonable Cause
      - ↳ [349k113.1](#) k. In General. [Most Cited Cases](#)

The magistrate's task in determining if probable cause exists to issue a search warrant is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. [U.S.C.A. Const.Amend. 4](#).

[7] [KeyCite Notes](#) 

- ↳ [110](#) Criminal Law
  - ↳ [110XXIV](#) Review
    - ↳ [110XXIV\(O\)](#) Questions of Fact and Findings
      - ↳ [110k1158](#) In General
        - ↳ [110k1158\(2\)](#) k. Conclusiveness of Findings on Preliminary Proceedings in Conduct of Trial in General. [Most Cited Cases](#)

The Supreme Court's duty in reviewing the magistrate's decision to issue a search warrant is to determine if the magistrate had a substantial basis for concluding that probable cause existed to issue the search warrant. [U.S.C.A. Const.Amend. 4](#).

[8] [KeyCite Notes](#) 

- ↳ [349](#) Searches and Seizures
  - ↳ [349VI](#) Judicial Review or Determination
    - ↳ [349k191](#) k. In General; Conclusiveness of Warrant in General. [Most Cited Cases](#)

A magistrate's decision to issue a search warrant based on a finding of probable cause is entitled to substantial deference by a reviewing court. [U.S.C.A. Const.Amend. 4](#).

[9] [KeyCite Notes](#) 

- ↳ [349](#) Searches and Seizures

- ↳ [349II](#) Warrants
- ↳ [349k113](#) Probable or Reasonable Cause
- ↳ [349k113.1](#) k. In General. [Most Cited Cases](#)

The test for probable cause to support the issuance of a search warrant is not a hypertechnical one to be employed by legal technicians, but is based on the factual and practical considerations of everyday life on which reasonable and prudent men act. [U.S.C.A. Const.Amend. 4.](#)

[10] [KeyCite Notes](#) 

- ↳ [110](#) Criminal Law
- ↳ [110XVII](#) Evidence
- ↳ [110XVII\(P\)](#) Documentary Evidence
- ↳ [110k431](#) Private Writings and Publications
- ↳ [110k438](#) Photographs and Other Pictures
- ↳ [110k438\(5\)](#) Depiction of Injuries or Dead Bodies
- ↳ [110k438\(6\)](#) k. Purpose of Admission. [Most Cited Cases](#)

Trial court admission of two post-incision autopsy photographs was not an abuse of discretion, in prosecution for malice murder and other offenses; one photograph showed a hemorrhage and broken neck that could not otherwise be seen, the second photograph depicted a carotid artery and a crossing bone fracture not recognizable or seen without opening the wound, and the photographs corroborated the details of the assault on defendant that led to his death.

[11] [KeyCite Notes](#) 

- ↳ [110](#) Criminal Law
- ↳ [110XVII](#) Evidence
- ↳ [110XVII\(P\)](#) Documentary Evidence
- ↳ [110k431](#) Private Writings and Publications
- ↳ [110k438](#) Photographs and Other Pictures
- ↳ [110k438\(5\)](#) Depiction of Injuries or Dead Bodies
- ↳ [110k438\(6\)](#) k. Purpose of Admission. [Most Cited Cases](#)

Post-incision autopsy photographs are admissible if they show some material fact that becomes apparent only due to the autopsy.

[12] [KeyCite Notes](#) 

- ↳ [110](#) Criminal Law
- ↳ [110XXIV](#) Review

- ↪ [110XXIV\(Q\)](#) Harmless and Reversible Error
- ↪ [110k1169](#) Admission of Evidence
- ↪ [110k1169.1](#) In General
- ↪ [110k1169.1\(9\)](#) k. Hearsay. [Most Cited Cases](#)

Trial court error, if any, in admitting testimony from victim's girlfriend about certain statements that victim made under the necessity exception to the hearsay rule did not constitute harmful error, in prosecution for malice murder and other offenses; the victim was unavailable as he had been murdered, the statements were relevant to defendant's relationship with victim, her motive, her pattern of conduct, and her opportunity to commit the crimes, and the statements contained particular guarantees of trustworthiness because of the close relationship between victim and his girlfriend. [West's Ga.Code Ann. § 24-3-1\(b\)](#).

[\[13\] KeyCite Notes](#) 

- ↪ [110](#) Criminal Law
- ↪ [110XVII](#) Evidence
- ↪ [110XVII\(R\)](#) Opinion Evidence
- ↪ [110k468](#) Subjects of Expert Testimony
- ↪ [110k474.3](#) Credibility, Veracity, or Competency
- ↪ [110k474.3\(1\)](#) k. In General. [Most Cited Cases](#)

Trial court's refusal to allow defense expert to testify about false confessions arising from police interrogation techniques was not abuse of discretion, in prosecution for malice murder; expert testified before the trial court on the issue of whether certain interview techniques could result in a greater likelihood of false confessions by the person being interrogated, but when asked what he had to impart specifically about defendant's case, expert responded that he would explain generally how interrogation works.

[\[14\] KeyCite Notes](#) 

- ↪ [110](#) Criminal Law
- ↪ [110XXIV](#) Review
- ↪ [110XXIV\(O\)](#) Questions of Fact and Findings
- ↪ [110k1158](#) In General
- ↪ [110k1158\(4\)](#) k. Reception of Evidence. [Most Cited Cases](#)

The Supreme Court is to accept a trial court's factual and credibility findings as to the voluntariness of custodial statements unless they are clearly erroneous.

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[Scott L. Ballard](#), Dist. Atty., Fayetteville; [Thurbert E. Baker](#), Atty. Gen., \*527 David

Allan Zisook, Department of Law, Atlanta, for Appellee.

[HINES](#), Justice.

Shirley Lyons appeals her convictions for malice murder, armed robbery, and kidnapping with bodily injury in connection with the [asphyxiation](#) death of her former boyfriend, Bobby Jackson. She challenges the sufficiency of the evidence of her guilt; the affidavit in support of the search warrant for her home; the admission of autopsy photographs; the admission of statements by the victim; the admission of what she terms her “confession”; the exclusion of certain alleged expert testimony; the allowance of victim impact statements during the penalty phase; the denial of a mistrial; and the refusal to give certain requests to charge to the jury. Finding the challenges to be without merit, we affirm. [FN1](#)

[FN1](#). The crimes occurred on April 12, 2002. On April 22, 2003, a Pike County grand jury indicted Lyons for the malice murder of Jackson; the felony murder of Jackson while in the commission of aggravated assault with intent to rob; the armed robbery of Jackson in taking his jewelry and wallet; the armed robbery of Jackson in taking his vehicle; and the kidnapping with bodily injury of Jackson. On May 8, 2003, the State gave notice of its intent to seek the death penalty based upon 21 statutory aggravating circumstances. Lyons was tried before a jury February 9-11, 2004, and found guilty of all charges. In the penalty phase, the jury found beyond a reasonable doubt the existence of five aggravating circumstances and fixed Lyons's punishment at life imprisonment without parole. On February 12, 2004, Lyons was sentenced to life in prison without the possibility of parole for malice murder; a consecutive term of life in prison for armed robbery (the court found that the two armed robbery counts merged for the purpose of sentencing); and a term of life in prison for the kidnapping charge, to be served concurrently with the life term for armed robbery. The felony murder stood vacated by operation of law. A motion for new trial was filed on February 18, 2004, and amended and denied on March 22, 2007. A notice of appeal was filed on March 22, 2007, and the case was docketed in this Court on April 3, 2007. The appeal was submitted for decision on May 28, 2007.

The evidence construed in favor of the verdicts showed that Bobby Jackson was romantically involved with Jessica Smith. Shirley Lyons, Jackson's ex-girlfriend, began harassing Smith at Smith's office, prompting Smith to tell Jackson to “deal with his past.” At approximately 6:45 p.m. on April 12, 2002, Jackson told Smith that he was going to Lyons's house to pick up some of his belongings. Later that evening, Jackson's body was found in the woods near a church playground. There was an impression on the embankment from the church parking lot that indicated that someone had slid or stumbled down the embankment. Jackson's body was wrapped in a quilt. Duct tape was wound very tightly around Jackson's entire face and head; one ear canal was the only exposed portion. His hands were bound behind him with duct tape, his feet were duct taped together, and his ankles were tied to his neck with a white cloth. There were dead leaves and dirt on his clothing.

An autopsy on Jackson's body revealed cuts and [abrasions on his head](#) and face, indicating blows to the head, a small stab wound to the neck, discoloration around the

neck, hemorrhaging indicating strangulation, a broken bone in his neck, a fractured vertebrae, and blood in the lungs. The cause of death was ligature strangulation with upper [airway obstruction](#).

On April 15, 2002, a homicide detective investigating Jackson's death had a telephone conversation with Lyons. Lyons related that Jackson came to her house on April 12 to give her money to pay a utility bill and that the last time she saw him was at 7:00 that evening when he left to go to a meeting. After speaking with Smith and Jackson's daughter regarding the time that Jackson was at Smith's home on April 12, the detective became suspicious about the time frame related by Lyons, so he visited Lyons at her home on April 23, 2002. Lyons told the detective about jewelry she had given Jackson, and the detective realized that even though Jackson's body was found adorned with jewelry, the pieces described by Lyons were not on the body. The detective noticed that Lyons had new bed sheets and a new quilt; he also noticed curtains whose pattern appeared to match that of the quilt on Jackson's body. The detective picked up Lyons from her office and took her to the police station on April 29 where she gave a statement, which was typed up and then signed \*528 by Lyons; the detective returned her to work after the statement. In this statement, Lyons related that Jackson came to her home around 6:15 p.m. on April 12 to bring her money to pay the light bill; they discovered the lights were out and he left to get some electric cords; he came back and connected the cords; Jackson left to go to a meeting at 6:45 p.m. or 6:50 p. m., but he did not disclose its location; and when Jackson left he was wearing the jewelry Lyons had given him.


The following day, the detective obtained a search warrant for Lyons's home and the nearby trailer which she also used. The home search revealed blood stains on the floor and wall, and curtains that matched the pattern of the quilt wrapped around Jackson's body. Analysis determined that one of the bloodstains was from Jackson. After the detective apprised Lyons that they had found evidence that the murder was committed in her home, Lyons put her head down, cried, and stated, "I didn't mean for him to die, I just meant for them to hurt him." The detective read Lyons her [Miranda](#)<sup>FN2</sup> rights. But, Lyons chose to speak with the detective and told him that she had paid two guys to beat up Jackson, but that it got out of control. She indicated that Jackson had been taped up in the bedroom, where the murder occurred. Lyons was taken to the police station, where she was again advised of her [Miranda](#) rights. She then gave a two-part videotaped statement, and confessed to assisting in Jackson's murder. She stated that she hired a person to kill Jackson.




[FN2. \*Miranda v. Arizona\*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 \(1966\).](#)

Lyons identified Khalique Shariff as the person she hired. Following Shariff's arrest, Shariff admitted to killing Jackson because Lyons hired him to do so. Shariff described how the murder occurred.

Shariff testified at trial that initially Lyons had asked him to hurt Jackson, but eventually she hired him to kill Jackson. Lyons was going to pay Shariff \$2,000 for the murder. Lyons picked up Shariff at about 3:00 p.m. on April 12, 2002. They then purchased beer, duct tape, and gloves, and went to Lyons's house to wait for Jackson. Lyons heard

Jackson arriving and gave Shariff a silver .38 caliber revolver and told him to wait in the closet; Shariff did so. Shariff heard Lyons and Jackson arguing about the light bill and Jackson gave Lyons \$50 for the bill. Jackson then left to get an extension cord, and Shariff and Lyons tried to devise a plan for the murder. Shariff advised that they latch the door to prevent Jackson from escaping when Shariff appeared. When Jackson returned, Shariff emerged from the closet with the pistol drawn and ordered Jackson to “lay it down.” Jackson hesitated, but after Lyons also ordered him to lie down, Jackson “got on the ground.” Shariff passed the pistol to Lyons, while he ripped sheets to bind Jackson. Lyons screamed at Jackson, and Shariff went outside. Lyons summoned Shariff back inside, telling him that Jackson was struggling and attempting to get loose. Lyons asked Shariff to kill Jackson. Shariff covered Jackson's head and face with duct tape and stabbed him in the neck. Lyons kicked Jackson in the side. They took the blanket off the bed and wrapped it around Jackson. They took Jackson's wallet and jewelry, and then placed him in the hatchback of his own car. Shariff dumped Jackson down a ravine by a church playground, abandoned the car, and threw the pistol away. Lyons had given Shariff the \$50 she had received from Jackson; Lyons later paid Shariff an additional \$150.






[1]  1. Lyons contends that the State failed to prove beyond a reasonable doubt her guilt of the offenses with which she was charged, and therefore, she was entitled to a directed verdict of acquittal on all counts. She argues that particularly her conviction for kidnapping with bodily injury cannot stand because the State failed to establish asportation of the victim. But, that is not the case.

[2]  [3]  [4]  The requirement of asportation to prove kidnapping is satisfied if there is movement of the victim, however slight that movement is. [Griffin v. State, 282 Ga. 215, 647 S.E.2d 36 \(2007\)](#). The distance that a kidnapper transports the victim is not of legal significance. [Mullins v. State, 280 Ga.App. 689, 634 S.E.2d 850 \(2006\)](#). However, where \*529 the movement involved is minimal, and the alleged kidnapping occurs in furtherance of some other criminal enterprise, in order to constitute “asportation” the movement must be more than a mere positional change of the victim incidental to the other criminal act; it must be movement, even if a positional change, designed to better carry out the criminal activity. [Garza v. State, 285 Ga.App. 902, 903-904\(1\)\(a\), 648 S.E.2d 84 \(2007\)](#); [Leppla v. State, 277 Ga.App. 804, 807\(1\), 627 S.E.2d 794 \(2006\)](#). That is precisely the situation in this case. Here, even assuming that Jackson was dead by the time he was moved to his car, the evidence was that Lyons and Shariff forced Jackson at gunpoint to go from a standing position to lying on the floor. And it is clear that this positional change was more than the result of the aggravated assault; it materially facilitated what followed, that is, the intentional suffocation of Jackson as well as his armed robbery.<sup>FN3</sup> Consequently, the jury was authorized to find there was asportation of Jackson to support the charge of kidnapping with bodily injury. [Garza, supra at 904\(1\), 648 S.E.2d 84](#). Lyons was not entitled to directed verdicts on any of the charges. Indeed, the evidence was sufficient to enable a rational trier of fact to find Lyons



guilty beyond a reasonable doubt of the crimes with which she was charged and convicted. [Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 \(1979\).](#)

[FN3.](#) A defendant may commit an armed robbery even if he kills the victim first and then takes the victim's property. [Cross v. State, 271 Ga. 427, 429\(1\), 520 S.E.2d 457 \(1999\).](#)


[\[5\]](#)  [\[6\]](#)  [\[7\]](#)  [\[8\]](#)  [\[9\]](#)  2. Lyons contends that the trial court improperly admitted evidence gathered during the search of her home because the affidavit submitted in support of the search warrant did not demonstrate probable cause for its issuance. But, that is not the case.


The magistrate's task in determining if probable cause exists to issue a search warrant is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Our duty in reviewing the magistrate's decision ... is to determine if the magistrate had a substantial basis for concluding that probable cause existed to issue the search [warrant]. A magistrate's decision to issue a search warrant based on a finding of probable cause is entitled to substantial deference by a reviewing court. The test for probable cause is not a hypertechnical one to be employed by legal technicians, but is based on the factual and practical considerations of everyday life on which reasonable and prudent men ... act. Moreover, even doubtful cases should be resolved in favor of upholding a warrant.


[State v. Hunter, 282 Ga. 278, 646 S.E.2d 465 \(2007\).](#) (Internal citations and quotation marks omitted.)

The affidavit stated, inter alia, that the affiant detective was an experienced homicide investigator and that his investigation of Jackson's homicide disclosed that Jackson's estranged girlfriend, Lyons, was the last person to see Jackson alive; that the time frame Lyons had related for Jackson being at her home was inconsistent with evidence placing Jackson there later in the evening and closer in time to the discovery of his body; that the amount of Jackson's blood found in the hatchback of Jackson's abandoned vehicle indicated that he had been transported in the hatchback; that certain items of Jackson's had been in the hatchback when he left to go to Lyons's home; that the items were taken out of the hatchback before Jackson was placed inside; that Jackson was scheduled to work the afternoon following his disappearance and that Jackson would have needed certain of these items for work, including his work uniform and work identification card; following his death, Lyons gave the items to Jackson's family; Jackson had specific jewelry on his person when he left to see Lyons, and when his body was found some of that jewelry was missing; and the missing jewelry had been given to Jackson by Lyons.

On its face, the affidavit provided the magistrate with enough information to reach the practical, common-sense conclusion that there was a fair probability that evidence of a \*530 crime could be found at Lyons's residence. Id.

 [10] 3. Lyons next contends that the trial court improperly admitted into evidence two post-incision autopsy photographs, State's Exhibits Nos. 169 and 179, because they were more prejudicial than probative, serving only to inflame the jury. But, the contention is unavailing.

 [11] Post-incision autopsy photographs are admissible if they show some material fact that becomes apparent only due to the autopsy. [Banks v. State, 281 Ga. 678, 680-681\(2\), 642 S.E.2d 679 \(2007\)](#). The forensic pathologist testified that Exhibit No. 169 showed a hemorrhage and broken neck that could not otherwise be seen. As to Exhibit No. 179, the forensic pathologist stated that it depicted a carotid artery and a crossing bone fracture not recognizable or seen without opening the wound. Thus, these internal injuries could not have been shown by photographs of the outside of the body. *Id.* Lyons complains that the injuries in question were not the subject of the indictment or the cause of death. However, while the depicted injuries may not have been the direct cause of the victim's death, they were material in corroborating the details of the assault on the victim which ultimately led to his demise. The trial court did not abuse its discretion in admitting the photographs. [Peterson v. State, 274 Ga. 165, 171\(5\), 549 S.E.2d 387 \(2001\)](#).

 [12] 4. Lyons maintains that the trial court improperly admitted hearsay when it allowed Smith to testify about certain statements that Jackson made to her.<sup>FN4</sup> Failing to cite any legal authority, she argues merely that the statements were not admissible under any hearsay exception.

[FN4](#). Lyons cites the following statements to the effect that: Lyons was a “nut”; Smith should keep Lyons out of her office; Jackson described the relationship with Lyons; Jackson said he loved Smith and that it was “over” with Lyons; Jackson told Smith to keep her door locked; Jackson was now popular with women because he worked for MARTA; Jackson wanted Smith to bring his work clothes to a meeting; and Jackson told Smith he was going to Lyons's home because he was tired of Lyons constantly calling him on his cell phone and he was going to pick up his clothes.

The trial court found that the declarant was the deceased victim, and therefore, unavailable, and allowed the testimony implicitly under the necessity exception to hearsay.<sup>FN5</sup> See [OCGA § 24-3-1\(b\)](#).<sup>FN6</sup> A hearsay statement is admissible under this exception when it is necessary and accompanied by particularized guarantees of trustworthiness. [Turner v. State, 281 Ga. 647, 649-650\(3\)\(a\), 641 S.E.2d 527 \(2007\)](#). Such necessity may be shown when the declarant is deceased and the statement is relevant to a material fact and is more probative of the material fact than other evidence that may be produced and offered; the trustworthiness requirement is satisfied when the declaration is coupled with circumstances which attribute verity to it. *Id.* The trial court's determination of the issue will not be disturbed absent an abuse of discretion. *Id.*

[FN5](#). Lyons makes no suggestion of a violation under [Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 \(2004\)](#).

[FN6](#). [OCGA § 24-3-1\(b\)](#) states:

Hearsay evidence is admitted only in specified cases from necessity.

Lyons argues neither the “necessity” element nor the “particularized guarantees of trustworthiness” element of admissibility under the necessity exception. See [Culmer v. State, 282 Ga. 330, 647 S.E.2d 30 \(2007\)](#). However, it appears that such elements were satisfied. The declarant, Jackson, was unavailable due to his murder. The statements were relevant to Lyons's relationship with Jackson, her motive, her pattern of conduct, and her opportunity to commit the crimes. Finally, the statements had particular guarantees of trustworthiness because of the close relationship between Jackson and Smith. [Brooks v. State, 281 Ga. 514, 518\(3\), 640 S.E.2d 280 \(2007\)](#). The evidence was that the two were involved in a romantic relationship and were living together.

Even assuming arguendo that the statements were inadmissible hearsay, allowing the testimony does not constitute reversible error unless Lyons suffered harm. \*531 [Heard v. State, 274 Ga. 196, 199\(6\), 552 S.E.2d 818 \(2001\)](#). In light of the overwhelming evidence of Lyons's involvement in the crimes, including Shariff's admissions and her own inculpatory statements, it is highly probable that the admission of the contested testimony did not contribute to the verdicts; therefore, any error in admitting the statements was not harmful. [Id.](#)



[\[13\]](#) 5. Lyons asserts that the trial court improperly excluded testimony from her proffered expert witness in the area of police interrogation tactics resulting in false confessions.

Lyons sought to have Dr. Richard Ofshe testify as an expert witness on false confession theory. Following a hearing outside the jury's presence at which Ofshe testified, the trial court ruled that it would not allow the testimony based upon the evidence in the case, because such theory had not reached a verifiable stage of scientific certainty, and because whether Lyons's inculpatory statements were the results of threats or coercion was a matter the jury could discern for itself.[FN7](#)

[FN7](#). Apparently, Lyons told Ofshe that at one point the detective threatened her with a gun and then later made her an offer of leniency.

In [Riley v. State, 278 Ga. 677, 682\(4\), 604 S.E.2d 488 \(2004\)](#), this Court noted, “the knowledge that a false confession can be obtained from a suspect by police is not beyond the ken of the average juror; this knowledge is implicit in the jury charges on the voluntariness, credibility, and corroboration of a defendant's statement to the police.”

This Court further observed in [Riley](#) that the admission of expert testimony based on the theory of false confessions was premature and unreliable inasmuch as there was insufficient scientific support and too many unanswered questions regarding such theory. [Id. at 682-683\(4\), 604 S.E.2d 488](#). In short, false confession theory does not satisfy the evidentiary test in criminal cases set forth in [Harper v. State, 249 Ga. 519\(1\), 292 S.E.2d 389 \(1982\)](#).[FN8](#)

[FN8](#). Lyons does not address the standard set forth in [Daubert v. Merrell Dow Pharmaceuticals](#), 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), regarding the admissibility of scientific evidence. In any event, this Court has recently affirmed Georgia's traditional reliance on [Harper](#) in criminal matters. [Vaughn v. State](#), 282 Ga. 99, 101(3), 646 S.E.2d 212 (2007).

Moreover, on the issue of whether certain police interview techniques may result in a greater likelihood of false confessions by the person being interrogated, Ofshe was questioned at length in this regard before the trial court, and he testified about other cases with which he had been involved; but, when asked what he had to impart specifically about Lyons's case that would help the jury's understanding, Ofshe responded that he would explain generally how interrogation works. [FN9](#)

[FN9](#). The following colloquy occurred:

STATE: What's your expected testimony in-Let's talk about this case; let's not talk about Illinois, Temple murders in Phoenix, or anything else. What have you got to say about this particular case that would help this jury understand something about it?

OFSHE: Generally how interrogation works in order to create a frame work in order to understand the fact testimony given by people who are present at the interrogation.

The decision whether to admit Ofshe's testimony was within the sound discretion of the trial court, whose determination will not be disturbed absent a clear abuse of discretion.


[Riley v. State](#), *supra* at 683(4), 604 S.E.2d 488. Under these circumstances, the trial court did not abuse its discretion by refusing to allow the testimony on false confession theory. [Id.](#)

6. Lyons further asserts that the trial court improperly admitted her “confession” [FN10](#) because it was coerced in light of the totality of the evidence that was available to the trial court. She fails to cite any legal authority in support of her assertion of the involuntariness of her “confession,” but instead, urges that the issue of voluntariness should be considered along with her challenge to the exclusion of evidence by Dr. Ofshe on false confession theory, that is, that this Court should examine Dr. Ofshe's testimony in determining\*532 whether her “confession” was coerced. See Division 5, *supra*.

[FN10](#). Lyons fails to specify which of her inculpatory statements she deems to be her “confession”; however, her inculpatory statements to police, collectively, will be considered in this enumeration.

But, as this Court has explained, the testimony on false confession theory was properly disallowed. See Division 5, *supra*. Therefore, this Court will not grant Lyons's request to review the decision below by considering evidence not admissible before the trial court. [FN11](#)

[FN11](#). In argument, Lyons also mentions that the trial court refused to allow a psychologist who examined her to view the videotape of her “confession” “while it was played” ostensibly for the jury, but this is not enumerated as error or pursued by legal argument or citation of authority.

[14]  This Court is to accept a trial court's factual and credibility findings as to the voluntariness of custodial statements unless they are clearly erroneous, and in this case, there is evidence to support the trial court's determination that Lyons's inculpatory statements were voluntarily made. [Young v. State, 280 Ga. 65, 67\(3\), 623 S.E.2d 491 \(2005\)](#).

7. Lyons is unsuccessful in her bare assertion <sup>FN12</sup> that it was error to allow victim impact statements during the penalty phase of her trial because such statements are per se violative of the State and Federal Constitutions. “Victim impact evidence is not unconstitutional in the sentencing phase in general.” [Braley v. State, 276 Ga. 47, 54\(33\), 572 S.E.2d 583 \(2002\)](#).

<sup>FN12</sup>. Here again, Lyons fails to support her argument with legal authority.

8. There is likewise no merit to Lyons's contention that the trial court improperly overruled her motion for mistrial and its renewal as well as erroneously denying her request to instruct the jury relative to the motion.

During the cross-examination of Lyons's mitigation witnesses, the State asked questions about Lyons's prior convictions. At the charge conference following the testimony, Lyons, citing [Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 \(2002\)](#) and [Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 \(2000\)](#), moved for a mistrial because the State had not tendered certified copies of the convictions. The State responded that it had certified copies of the convictions, but that it was unable to obtain transcripts of the guilty pleas from the clerk of court. The State also maintained that it had a good faith basis for the cross-examination. The certified copies of the convictions and the corresponding indictments were made State's exhibits in the case. The trial court overruled the motion for mistrial, explaining that the State was not introducing the convictions into evidence in aggravation, but rather to merely cross-examine the witnesses about the basis of their testimony. The trial court also denied Lyons's request to instruct the jury to disregard the testimony about the convictions, and her renewal of her motion for mistrial.

First, Lyons did not object to the cross-examination as it was taking place. Thus, Lyons failed to make the required contemporaneous objection in order to preserve her complaint for review on appeal. [Butler v. State, 273 Ga. 380, 382\(5\), 541 S.E.2d 653 \(2001\)](#). In any event, neither a mistrial nor curative instruction was warranted inasmuch as the documentary evidence of the convictions and indictments placed in the record were in order for the State to demonstrate it had a good faith basis for asking Lyons's mitigation witnesses on cross-examination about their knowledge of Lyons's criminal history, and such documents were sufficient to establish that the State had a good faith basis for its cross-examination questions regarding Lyons's convictions. [Presnell v. State, 274 Ga. 246, 253\(13\)\(a\), 551 S.E.2d 723 \(2001\)](#).

9. Finally, Lyons makes the blanket complaint that the trial court failed to give her requests to charge for the penalty phase “even though they were a correct statement of the

law and conformed to the evidence.” Even assuming that the requested charges accurately stated the law and were adjusted to the facts, it was not necessary for the trial court to give the exact language of the requests by Lyons inasmuch as its instruction to the jury fairly covered the legal principles applicable in the penalty phase of the case. \*533 [McCoy v. State, 273 Ga. 568, 573\(12\), 544 S.E.2d 709 \(2001\)](#).

*Judgments affirmed.*

All the Justices concur, except [HUNSTEIN](#), P.J., who concurs in judgment only as to Division 1.

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