

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**S.C. SUPREME COURT**

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Certiorari to Richland County

Honorable Deadra L. Jefferson, Circuit Court Judge  
\_\_\_\_\_

CARMEN L. RICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001857  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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1           In this case, malice was shown by the defendant  
2           when she pulled that trigger, her Taurus .357 Magnum  
3           revolver, that first time. It was shown when she  
4           pulled the trigger the second time, the third time,  
5           the fourth time and the fifth time.

6           Ladies and gentlemen, Bernard Brennan was shot  
7           five times in the back by Carmen Rice and she left  
8           him there to die while she stole his money and wiped  
9           away the evidence of her presence from that car,  
10          that is murder.

11          Armed robbery, the elements of armed robbery:  
12          The taking of goods or money from the person or  
13          presence of another while armed with a deadly  
14          weapon. In this case, you see evidence of theft of  
15          money. You've got the fact that Bernard Brennan had  
16          a wad of hundreds, a few thousand dollars worth  
17          earlier in the evening. When his body was  
18          discovered, his wallet and his money were missing  
19          and his pants pocket was turned out.

20          Also, you heard the evidence from Iris Bryant  
21          that she watched Carmen Rice take his money, take  
22          his wallet while he laid -- while he sat in that car  
23          bleeding, moaning and asking why.

24          Deadly weapon, obviously that .357 magnum is  
25          deadly in this case. And those five bullets in

1 Bernard's back showed that it was used in this  
2 robbery. No question as to guilt on armed robbery  
3 either.

4 Now, the next thing I want to talk about is two  
5 different types of evidence that you've seen in this  
6 case, direct evidence and circumstantial evidence.  
7 Let me start out by saying that under the law, the  
8 law draws no distinction between direct or  
9 circumstantial evidence, either is as good as the  
10 other. You can use both in deciding what you  
11 believe really happened.

12 Direct evidence is evidence gathered by a  
13 person's senses that they come into this courtroom  
14 and report to you. It's evidence of what somebody  
15 saw, what they heard, what they touched, what they  
16 smelled, what they tasted.

17 And this evidence -- examples of direct  
18 evidence from this case, you've got eyewitness  
19 testimony. Eyewitness testimony of Iris Bryant who  
20 witnessed this murder. She told you what happened.  
21 She told you how she saw with her eyes, saw Carmen  
22 Rice shoot Bernard Brennan five times in the back.  
23 She told you how she saw the gun flash, how she saw  
24 Carmen Rice take Bernard Brennan's wallet and money,  
25 how she saw Carmen Rice wipe down the car to



1 eliminate any evidence of her presence in that car,  
2 direct evidence.

3 Another example from this case of direct  
4 evidence is confessions. Witnesses who came in and  
5 testified to you about what they gathered through  
6 their senses, their hearing Carmen Rice telling  
7 them.

8 Amber Byrd told you that the night of the  
9 murder she saw Carmen Rice jumpy. She heard Carmen  
10 Rice tell her in detail about the murder.

11 You heard Falisha Hallmon come in and tell you  
12 about direct evidence. She explained to you how she  
13 heard Carmen Rice, as they were talking about this  
14 case, heard Carmen Rice say, That's when I did the  
15 nigger, that's when I did him, something to that  
16 effect. You heard how she said Carmen Rice told her  
17 that she had -- that Carmen had switched up the  
18 weapon and that she had sold the real murder weapon  
19 to a drug dealer.

20 You heard from Teresa Rouse direct testimony  
21 about a threat that was made, something she  
22 perceived, senses heard Carmen Rice say, I'll do you  
23 like I did that man. You heard Shawnetta Wise come  
24 in and very reluctantly admit to you that in a  
25 discussion with Carmen Rice about this murder,

1 Carmen Rice said, Yeah, I did it, but it wasn't  
2 supposed to go down that way and I wasn't alone.  
3 You heard those examples of direct evidence in this  
4 case.

5 Now, John Meadors will talk to you about other  
6 examples of direct evidence in this case and the  
7 actual arguments on the facts.

8 There is also circumstantial evidence.  
9 Circumstantial evidence is proof of a chain of facts  
10 which taken together lead to the conclusion that  
11 another fact exists. Examples of circumstantial  
12 evidence in this case come from testimony about the  
13 pay phone. You saw a chain of facts proving that  
14 Carmen Rice did not have a phone in her house.  
15 Amber Byrd took Carmen Rice to a pay phone that was  
16 located near Carmen Rice's house, loaned her some  
17 change and Carmen Rice made a phone call or a couple  
18 of phone calls. You heard proof that there were two  
19 phone calls made at that time, approximately, 6:30,  
20 that two phone calls were made to Bernard Brennan's  
21 cell phone.

22 You heard proof of a specific fact from Alton  
23 Page that Bernard Brennan received a cell phone call  
24 or cell phone calls and that on one of them, he told  
25 somebody come on down. You heard from Amber talking

1       about how after the cell phone -- pay phone calls  
2       were made, she took Carmen Rice to a location right  
3       next to the Varsity.

4               You heard Alton Page testify about a fact that,  
5       in response to the cell phone -- to the calls that  
6       Bernard received on his cell phone, that two women,  
7       one of whom met the description of Carmen Rice and  
8       was wearing an orange sweater or some sort of orange  
9       top, came into the Varsity at about seven o'clock  
10      that evening. That's proof of a chain of facts that  
11      leads to the conclusion Carmen Rice was one of those  
12      two women that walked into the Varsity, the one in  
13      the orange top.

14             Another example of circumstantial evidence in  
15      this case is the testimony about the gun, testimony  
16      from -- concerning America's Best Security. In that  
17      case, you heard testimony, proof of certain facts,  
18      Carmen Rice was an armed security officer. As part  
19      of her job, she was issued a Taurus .357 Magnum  
20      revolver loaded with .38 Caliber Special Plus P  
21      hollow point ammunition. You heard from both  
22      witnesses in documentary evidence. You saw that  
23      that weapon was issued to Carmen Rice, but as of the  
24      time of this murder, it hadn't been turned in. She  
25      still had it.

1           You additionally heard evidence from the  
2 ballistics expert that the bullets that killed  
3 Bernard Brennan were consistent with having been  
4 fired from a Taurus .357 Magnum revolver loaded  
5 with .38 Caliber Special Plus P Hollow Point  
6 ammunition. That chain of evidence leads to the  
7 conclusion that Carmen Rice used her security issued  
8 weapon to murder Bernard Brennan, which brings me to  
9 the next area that I want to talk about and that's  
10 credibility.

11           Credibility is key in deciding what evidence  
12 you should believe and what evidence you should  
13 disregard and what weight you should place on the  
14 evidence you've heard. The law gives you -- allows  
15 you to use all of the same tools back in the jury  
16 room in deciding credibility that you would use in  
17 your everyday life. And the first one of those I  
18 want to talk about is corroboration. Is evidence  
19 corroborated?

20           And the two examples of circumstantial evidence  
21 that I talked about, was that evidence corroborated?  
22 Yes. You look at the phone chain of evidence, was  
23 it corroborated? Heidi Feagin at Calloways saw  
24 Carmen Rice come in with Bernard Brennan wearing  
25 that same orange top. Iris Bryant testified, told

1       you that after leaving the Varsity, she, Carmen Rice  
2       and Bernard Brennan went to Calloways and that  
3       Carmen Rice was wearing that same orange top. Those  
4       facts from independent witnesses corroborate each  
5       other establishing credibility.

6               With regards to the gun, is that evidence  
7       corroborated? Yes, it is. Amber Byrd testified  
8       about seeing Carmen Rice carrying that very same gun  
9       on a number of occasions or previously to this.  
10       Iris Bryant told you how she watched helplessly as  
11       Carmen Rice used that weapon to murder Bernard  
12       Brennan. Amber Byrd told you how, after the  
13       murder --

14              **MR. MOBLEY:** Your Honor, I've got to object at  
15       this point. I think he's gone well beyond the scope  
16       of arguing on the law. He's arguing facts. I'm  
17       trying to give him some latitude. I'll object at  
18       this point.

19              **THE COURT:** I'll remind you, sir, this is  
20       opening on the law.

21              **MR. LUPTON:** With regards to corroboration,  
22       those are the factors you can look at, is it  
23       corroborated? Did somebody else tell you something  
24       that supports it? Look at that.

25              Falisha Hallmon talking about the switched up

1        weapon to a drug dealer, is that corroborated? Is  
2        it corroborated by other evidence of the gun? Is  
3        there testimony about a drug dealer living next  
4        door, about Carmen Rice who knew about the murder  
5        weapon? Do these facts corroborate each other?

6                What about motive to lie? Examples of motive  
7        to lie include fear. Now, you've heard, in this  
8        case, examples of fear as a motive to lie with  
9        regards to witnesses who talk to you about being  
10       threatened either by an investigator for the  
11       defendant or being contacted directly through third  
12       party, through three way calls by Carmen Rice,  
13       herself, and feeling intimidated and being scared to  
14       come in. You heard evidence of other threats  
15       against witnesses. Are these -- going back to  
16       corroboration, are these corroborated by letters  
17       that came into evidence, other evidence of witnesses  
18       being contacted by the defendant? Fear is a motive  
19       to lie.

20               Friendship also provides motive to lie. You  
21       heard from two friends of Carmen Rice. Does  
22       friendship provide a motive to lie? Certainly, it  
23       does. You can look at that. One of those two  
24       admitted to being friends with Carmen Rice. The  
25       other one refused to admit that, said she had no

1       bias towards either party. Of course, later  
2       admitted that she had assaulted Iris Bryant. And  
3       you heard from Iris Bryant --

4               **MR. MOBLEY:** I'll object. He's  
5       mischaracterizing that testimony, Your Honor.

6               **THE COURT:** Ladies and gentlemen, I remind you,  
7       all of these are arguments of counsel, their view of  
8       -- both sides, their view of facts and testimony.  
9       You're to go on your collective recollection of the  
10      evidence during the testimony of the -- during the  
11      course of the trial.

12              **MR. LUPTON:** Now, you heard the testimony that  
13      Quattlebaum was a friend of Carmen Rice and Carmen  
14      Rice had put her up to it.

15              The last thing I want to talk to you about  
16      regarding credibility and the last thing I want to  
17      touch upon in my part of the trial is what's called  
18      demeanor, demeanor evidence. Demeanor evidence is  
19      simply how a person acted, how a person acts. You  
20      can look at how people act on the stand and use that  
21      to judge their credibility just as you can everyday  
22      of your life. Sometimes you can look at a person  
23      talking and just tell they're telling the truth.

24              An example of that from this trial is when Iris  
25      Bryant was on the stand and she told you how it made

1 her feel, how she felt as she watched helplessly  
2 when Carmen Rice pumped five bullets into Bernard  
3 Brennan's back as he begged for his life, as he  
4 asked why, as he moaned and how she felt --

5 **MR. MOBLEY:** I'm going to renew my objection,  
6 Your Honor, that he is clearly, clearly arguing at  
7 this point and he is going well beyond the scope of  
8 opening on the law.

9 **THE COURT:** He can give examples to support.  
10 I'll remind counsel not to go into arguing the facts  
11 to the jury.

12 **MR. LUPTON:** And you saw her. As an example of  
13 demeanor how you can tell when somebody's telling  
14 the truth, you saw her when she was telling you,  
15 begging for forgiveness for being too much of a  
16 coward to do something or to come forward and how  
17 she begged forgiveness and said she wanted Hilda to  
18 have peace. You saw that. You know that that was  
19 raw truth. She want Hilda -- she wanted to give  
20 Hilda peace. Ladies and gentlemen, I would ask you  
21 to give Hilda and Bernard justice as well. Thank  
22 you.

23 **THE COURT:** Thank you, Mr. Lupton.

24 **MR. MOBLEY:** Your Honor, can we approach.

25 **THE COURT:** Let me ask the jury first. Ladies



1       and gentlemen, do y'all want to take a short break  
2       right now or do y'all want to proceed?

3               **FORELADY:** Proceed.

4               **THE COURT:** Yes, sir, counsel.

5               (Whereupon, a bench conference was held off  
6       the record, in the presence of the jury, but out of  
7       the hearing of the jury.)

8               **THE COURT:** Thank you, counsel.

9               Mr. Mobley.

10              **MR. MOBLEY:** I'm sorry, I thought we were  
11       taking a break.

12              **THE COURT:** The jury said they prefer to go on.

13              **MR. MOBLEY:** Okay. Thank you.

14              Iris Bryant, she's a liar. Carmen Rice is not  
15       guilty of murder. Carmen Rice is not guilty of  
16       armed robbery. You may recall when I spoke to you  
17       and addressed you in opening statement, I indicated  
18       that was the most important thing I can say to you  
19       in the course of this trial and that was important  
20       for me to say to you again in the beginning of my  
21       closing argument.

22              I do want to thank you. On behalf of Ms. Rice,  
23       on behalf of Mr. Hart and myself, I want to thank  
24       you for the attention you've paid throughout the  
25       course of this trial. We've been here for a week, a

1 lot of long hours and we appreciate the attention  
2 you've paid to the testimony. All we ask is for you  
3 to give Carmen Rice a fair trial.

4 As I indicated in my opening statement to you  
5 that you're the first people to hear all of the  
6 evidence in this case. That is why it's so  
7 important that you receive information. And I want  
8 to make it very clear, if anything that anyone said  
9 in the course of this trial was deemed to be  
10 insensitive to Mr. Brennan or Ms. Brennan or  
11 offensive or disrespectful, it was not intended to  
12 be that way. That was not the case at all. I don't  
13 know if anyone got that impression. I want to make  
14 sure no one did.

15 The bottom line, as I indicated, you're the  
16 people to hear all of the evidence in this case. In  
17 order to make a fair determination as to whether or  
18 not Carmen Rice is guilty or not guilty, you've got  
19 to hear all of the evidence that we think is  
20 relevant. And I'm certain with a task as important  
21 as yours, you would much rather get too much  
22 evidence than not enough evidence for you to make a  
23 decision. And that also goes to investigator --  
24 Lieutenant Smith and the town as well.

25 Once again, it's very important. It's

1       primarily important that you receive all of the  
2       evidence you need to make a fair decision and that's  
3       why we try to give you all of the evidence that  
4       you're entitled to hear in this case.

5               Now, I want to talk to you about certain facts  
6       and certain testimony that you've heard over the  
7       last week. And I'm going to state right now that  
8       when I talk to you about facts or I talk to you  
9       about testimony, I'm relying on my memory. So if  
10      you recall something differently from the way I  
11      state it, you rely on your memory and not mine. I  
12      want you to know I'm not intentionally misstating  
13      facts. We've been here a week, so if I recall a  
14      fact that is different from the way you recall, you  
15      rely on your memory, but it's not intentional on my  
16      part because I'm relying on my memory.

17             Now, we all agree murder is a horrible crime.  
18      Murder is the most horrible crime a person can  
19      commit or be accused of. But when you reach a  
20      decision in this case as to whether Carmen Rice is  
21      either guilty or not guilty, your verdict doesn't  
22      need to be based on how horrible the crime is or any  
23      sense of obligation to Ms. Brennan or Mr. Brennan or  
24      any kind of sense of vindication or obligation to  
25      Mr. Meadors or Mr. Lupton or Lieutenant Smith. All

1 of the hours you put in your verdict can't be the  
2 result of passion or sympathy, it's got to be on the  
3 facts and evidence you've heard the last week during  
4 the course of this trial.

5           You don't owe anyone a guilty verdict. You  
6 don't owe Mr. Meadors and Mr. Lupton a guilty  
7 verdict. The only obligation you have is to Carmen  
8 Rice and your obligation to require the State to  
9 produce sufficient evidence that she's actually  
10 guilty of murder and armed robbery. That's your  
11 obligation. That's the only obligation you have in  
12 this task.

13           And, once again, I talked about, in my opening  
14 statement, how, given that obligation, that heavy  
15 obligation, that you have to sit in judgment to  
16 determine whether or not Carmen Rice was guilty,  
17 you've got a right to have certain expectations.  
18 You've got a right to expect, you've got a right to  
19 demand the evidence they give you, the compelling  
20 evidence. You've got a right to demand that the  
21 witnesses they give you are reliable and honest and  
22 trustworthy. You've got a right to demand that they  
23 give you strong, corroborating, physical evidence.  
24 Those things you have a right to demand.

25           When we talk about lawyer expectations

1 throughout the course of the trial, they might try  
2 to lower your expectations, but you don't have to  
3 accept that. You have the right to look at my good  
4 friend, Mr. Meadors, and say, no, sir, we do not  
5 find your evidence sufficient.

6 I want to talk about some of the witnesses in  
7 this case and we can start with some of these  
8 jailhouse informants. I mean, these women are in  
9 jail, you heard, some as long as a year. They're  
10 all housed together. They have nothing to do.  
11 They're sitting there, they're gossiping, they're  
12 arguing, they're fighting, they's discussing each  
13 other's cases, discussing the details of each  
14 other's cases. You think if they go down there and  
15 they do a sweep of the jail and pick any defendant  
16 and start asking people whether or not that person  
17 made a statement or made an incriminating statement  
18 or made a confession, do you think they could not  
19 come up with a hand full of people every single  
20 time. Of course, they could. And that's what they  
21 did.

22 These are people that want to get out of jail.  
23 These are people that's in there for a reason. They  
24 get people like Falisha Hallmon. I mean, the goal  
25 they have to put up Falisha Hallmon on the witness

1 stand, Falisha Hallmon is a professional con artist,  
2 a professional liar. She gets arrested for crime of  
3 forgery or fraud. She gets out of jail. She does  
4 it again. She gets on probation, does the exact  
5 same thing. They put her up there.

6 She writes a letter, sends it to law  
7 enforcement, tries to set up her child's father  
8 because she's mad at him for not paying child  
9 support. She sends Stan Smith on a wild goose  
10 chase. He gets information she made it up about  
11 Carmen Rice giving her boyfriend the gun and he can  
12 find it at her house. She's mad at him for not  
13 paying child support and that's why she made that  
14 up. She also admitted in her letter, which they  
15 forgot to bring out that portion, she had an  
16 argument with Carmen Rice.

17 She lied constantly. She lied to them. She  
18 sent them on a wild goose chase. She's a  
19 professional liar, professional con artist. They  
20 put her up and they want you to believe her, why?  
21 Because she said something about Carmen Rice, she's  
22 got to be telling the truth.

23 We can go down the list with all of the  
24 jailhouse informants that they put up, but that's  
25 what happened. It's almost absurd that they go to

1       those kind of lengths to get a conviction. They go  
2       down to the jail to find inmates, to find a  
3       confession to a crime. They could go back out there  
4       today and bring in a half dozen more.

5               But, of course, when you hear from Alicia  
6       Wilder and Alana Quattlebaum, they don't want you to  
7       believe them. And I don't understand the rationale  
8       for that, how you can believe their jailhouse  
9       witnesses, but not Quattlebaum and Wilder.  
10       Quattlebaum and Wilder had nothing to gain by being  
11       here. There's nothing Carmen Rice can do to benefit  
12       Alicia Quattlebaum and -- Alana Quattlebaum and  
13       Alicia Wilder.

14              Anybody they interviewed they can certainly  
15       help. They can help them on pending charges. They  
16       can get them a new sentence. They can get them out  
17       of jail sooner.

18              **MR. MEADORS:** Objection.

19              **THE COURT:** Sustained.

20              **MR. MOBLEY:** They have motivation. They have  
21       jailhouse witnesses that have motivation. They have  
22       bias, they can get a break.

23              What did Alicia Wilder and Alana Quattlebaum  
24       have to gain? How do they hurt Iris? Iris is  
25       already charged with murder. How do they hurt her?

1       How do they get any benefit from coming here? You  
2       heard those two women, they never met before, one  
3       until five minutes before she testified and one when  
4       she got on the witness stand. You talk about  
5       credibility.

6               You know Shawnetta Wise, her testimony was  
7       interesting because she seemed to be kind of  
8       battling with the prosecutors over her testimony.  
9       She even indicated that when the investigator came  
10      to her house, he wasn't writing down everything she  
11      said. And they had to go through the statement  
12      process three times.

13             She said the first time he was writing down  
14      what he wanted, parts of her testimony, parts of her  
15      questions. She said that's not right, you need to  
16      change that. So he'd go through the process again.  
17      He does the same thing again. And, finally, she  
18      indicated pretty clearly her grandmother terminated  
19      the interview, said get out, the interview is over.  
20      She even argued with the prosecutor what she told  
21      them. Quite frankly, I'm not sure what Shawnetta  
22      Wise's issues are, but how can you put any weight in  
23      her testimony?

24             One thing she was clear about, whatever she  
25      heard about Carmen Rice, Carmen Rice was crying and



1       very upset and talking about she missed her son.  
2       How can you believe those witnesses? How can they  
3       justify putting up those kind of witnesses in a case  
4       of this magnitude.

5               Let's talk about their main witness. Iris  
6       Bryant. You know they put a lot of faith in Iris  
7       Bryant. Mr. Meadors, in opening statement, talked  
8       about how she was such a great witness. Iris  
9       Bryant, believe Iris Bryant. Iris Bryant makes  
10      Carmen Rice the shooter. Iris Bryant puts Carmen  
11      Rice at the scene. Iris Bryant is coming forth  
12      today demonstrating such remorse. She is helping  
13      us.

14             Let's look at Iris Bryant. Well, her statement  
15      she made to investigators, when they could find her  
16      on July 28th, 2003, she admitted she spoke with  
17      investigators. They put her under oath. She  
18      understood they were investigating a homicide. She  
19      said she talked to them for about 30 minutes. For  
20      30 minutes, she lied under oath to these people.  
21      She admitted that. They admit that.

22             They go back to her. And I guess they want you  
23      to believe that Carmen Rice is very credible -- I'm  
24      sorry -- Iris Bryant's very credible, that Iris is  
25      very compelling, believable. Well, you're right,

1 she is. She fools them every single time.

2 They go back to her. She actually initiates  
3 contact with them again. Keep in mind, no one was  
4 forcing her to give testimony. She was initiating  
5 contact with the investigators. She was initiating  
6 this perjured testimony. She perjured herself.

7 I asked her about if she knew what oath meant,  
8 that's when you swear or affirm to tell the truth.  
9 You saw her under oath when she was testifying just  
10 like she was under oath July 28th. She admitted she  
11 knew what under oath meant.

12 Why did she say she lied? Because she was  
13 scared. She didn't want to be charged with murder.  
14 So she initiates contact with them again on August  
15 6th, 2003. She speaks with investigators for  
16 another 30, 40 minutes. They asked her -- we asked  
17 her about that statement. And what does she do for  
18 another 30 minutes, 45 minutes? Again, she lied  
19 under oath. She committed perjury.

20 But once again she's very compelling. She's  
21 very convincing. So they want to go back and talk  
22 to her again on August 25th, talk to Ms. Bryant  
23 again. They talked to her for another 30, 40  
24 minutes. They drove her around. They put her under  
25 oath. And what does she concede and what does she

1       admit that she did? And what do they concede that  
2       she did on August 25th while under oath? She lied  
3       under oath. She committed perjury.

4               And the very first time -- the testimony she  
5       gave in this courtroom, the very first time she said  
6       that to anybody, we asked her about that, I asked  
7       her about that was when? About two weeks ago.

8               Three and a half years later, after perjuring  
9       herself on at least three different prior occasions  
10      with the same investigators, they do it yet again.  
11      Now, they know she's committed perjury, they know  
12      she's lied to them three times already, they know  
13      she has lied to them every single time they talk to  
14      her and they still bring her up here to interview  
15      her three weeks before trial. And what is she made  
16      aware of? We need your testimony. Testify for us  
17      and we will see what we're going to do to help you  
18      out.

19              Well, I guess the question is do you think --  
20      you know, Stan Smith talked about different  
21      motivations people had to lie in the course of  
22      investigations and I think that's a pretty big one  
23      at this point. See, before, she was scared of being  
24      charged with murder, now she is charged with murder.  
25      She understood, you heard her, she understood she's

1 facing life in prison for that and she understood  
2 because she got -- she got life in prison for  
3 murder, she would never get out of jail again. She  
4 would die in jail.

5 **MR. MEADORS:** Objection.

6 **THE COURT:** Sustained.

7 **MR. MOBLEY:** That's bias. Do you think that's  
8 a motivation for her? Do you think that's good  
9 motivation for someone like Iris Bryant, an admitted  
10 perjurer, a confessed liar? Do you think she  
11 wouldn't tell them whatever they wanted to hear?  
12 And what do they want to hear? They want to hear  
13 Carmen Rice was the shooter. That's what they want  
14 to hear and that's what she told them.

15 Do you think she was scared for what she's  
16 facing now -- do you think she's more scared now  
17 when she's charged with murder than she was when she  
18 was a suspect? Keep in mind when she gave these  
19 prior statements, she wasn't even charged yet, she  
20 hadn't even been charged with murder. She was just  
21 scared of being charged with murder and she lied  
22 under oath.

23 Imagine, what do you think she would do if she  
24 knew she was facing the time? I mean, does anyone  
25 think that Iris Bryant wouldn't lie to do less time?

1 Iris Bryant knows they could dismiss one of her  
2 charges. They could dismiss both of her charges.  
3 That's a pretty good motivation when you look at  
4 what she's facing. Does anyone believe, do they  
5 believe she wouldn't lie?

6 I mean, how could they tell you that? I mean,  
7 how many times can someone lie to your face? How  
8 many times can someone lie to your face? How many  
9 times can someone look you in the eye and lie to you  
10 and commit perjury? How many times before you stop  
11 believing them? Apparently, you can do it as much  
12 as you want. They kept going back to her. They  
13 kept getting a different story. And, finally, when  
14 they got the story that makes Carmen Rice the  
15 shooter two weeks before trial, that's when they go  
16 -- ladies and gentlemen, if they go talk to her  
17 again next month, she'll give a different version.  
18 If they talked to her enough times, she will  
19 probably admit that she was the shooter and that  
20 Carmen Rice was not involved in this. That's  
21 consistent with the testimony of Falisha Wilder and  
22 Alana Quattlebaum. You heard what they said. One  
23 said Iris Bryant told Carmen, I'll shoot you like I  
24 did that man or I'll do you like I did that man.

25 Alana Quattlebaum talked to Iris about it. And

1 we asked Alana what did she know about the case.  
2 She knew nothing about the case. She knew nothing  
3 about the charges. She had no idea what Iris was  
4 talking about. But what did she say Iris said she  
5 said? I'm going to tell you the truth, Carmen had  
6 nothing to do with it. Keep in mind, she didn't  
7 mention Carmen in her earlier statements. Did she  
8 lie last month? Did she lie this week to you?

9 You know, when I asked Iris about drug use and  
10 she mentioned that she took marijuana and didn't do  
11 anything else, well I think she forgot about  
12 something. November 2003, this same month, this  
13 same month or right around the same time she was  
14 arrested or the warrants were drafted for her, she  
15 got a conviction for distribution of crack cocaine.  
16 Looks like she lied again. So she's not just using  
17 marijuana, she's using crack cocaine. So now not  
18 only is she an admitted liar, admitted perjurer,  
19 she's a drug addict.

20 Ladies and gentlemen, if Carmen Rice was on  
21 trial for a speeding ticket, if she were down in  
22 magistrate court and the issue was whether or not  
23 Carmen Rice was speeding and they gave you Iris  
24 Bryant, Iris Bryant was a witness to testify and the  
25 only main witness to testify that Carmen Rice was

1       speeding, would you convict her of speeding based on  
2       this woman's word? I submit that you can't do that.  
3       You couldn't do that.

4               Well, Carmen's not on trial for speeding.  
5       She's on trial for murder and armed robbery. Well,  
6       how can you convict her on those charges on this  
7       woman's word? That's Iris Bryant, that's who they  
8       gave you, that's who they served up to you.

9               If John Meadors and Iris Bryant gave you a bowl  
10       of spaghetti that had three or four cockroaches in  
11       it, would you pull the cockroaches out and eat the  
12       rest of the spaghetti? Of course, you would throw  
13       the whole batch out. The whole batch is made with  
14       Iris' testimony. If she would lie to you in small  
15       things, she would lie to you in all things. And she  
16       has lied to you in all things.

17              And I want you to consider Carmen's -- Iris'  
18       testimony in conjunction with some of the physical  
19       evidence in this case. Let's talk about physical  
20       evidence, how they kind of botched the crime scene  
21       in this case.

22              Law enforcement arrived shortly after the  
23       homicide. I believe one of the primary  
24       investigators that arrived was Investigator Turnely.  
25       You heard about the canine unit and that's great for

1       trying to track down suspects when the trail is hot,  
2       so possibly they could smell some powder residue  
3       from one of the assailants. Perfect opportunity to  
4       call the canine unit. Did he call the canine unit?  
5       No, he didn't. He failed to call the canine unit.

6               Quite frankly, what he testified, he didn't  
7       bring an incident report sheet or a note pad, so you  
8       kind of wonder why he showed up. I mean, he wasn't  
9       going to take any notes. He wasn't going to call  
10      the canine unit.

11             He also indicated he knew there were several  
12      houses in the area, several residences in the area  
13      where the crime occurred, in the proximity of where  
14      the crime occurred. What would be the most logical  
15      thing to do when you arrive and do that? What would  
16      be the most logical thing to do? Investigate, talk  
17      to the residents, see if they saw anything, see if  
18      they heard anything. Did the investigator do that?  
19      No, he didn't do that. Never did that.

20             Let's talk about Investigator Clemens. She  
21      responded to process the crime scene. When I asked  
22      about her report, in her report, she states she  
23      didn't locate any hair, didn't locate any fiber  
24      evidence. So when she was asked about it, she said,  
25      Well, I said I couldn't find any, but I really



1       didn't look.

2               Okay. So it's not that you didn't find any,  
3       you didn't look for it.

4               Well, let's talk about the bullet, the bullet  
5       fragments. They did look at bullets, right? She  
6       talked about it's so much better to take the vehicle  
7       to a more secure climate control, well-lit  
8       environment so you can conduct a more thorough, more  
9       proper examination of the crime scene. And, ladies  
10      and gentlemen, they knew they could tell, obviously,  
11      you saw the photographs -- it's obvious from the  
12      photographs, they could tell the bullets had been  
13      fired into the windshield. We're not experts and we  
14      can see that.

15              But, of course, what do they fail to do? They  
16      failed to locate the bullet at the base of the  
17      windshield.

18              Now, if they want to lower your expectation to  
19      justify that, well I don't think that's fair for a  
20      couple reasons: Number one, it's obvious that some  
21      bullets were fired into the windshield and they may  
22      not have been immediately apparent or visible from  
23      the naked eye with a cursory look, but what are they  
24      supposed to be doing? What are they supposed to be?  
25      They're experts. They're experts. They're supposed

1 to be held to a higher standard. That's what they  
2 do. That's what they're paid to do. And they  
3 couldn't locate the bullet when they were looking  
4 for it. Botched the crime scene.

5 They would never have known about the bullet  
6 unless Bernard Brennan's wife hadn't brought it to  
7 them. Some mechanic, some auto body shop guy found  
8 the bullet. When at the crime scene, she talked  
9 about three, four people looked at it on a couple of  
10 different occasions, they couldn't find it. They  
11 couldn't find something that was physically visible  
12 to your eye. An auto body shop finds it. Bernard  
13 Brennan's wife brought it in. And they want to  
14 justify, well, we couldn't see it. They're experts,  
15 that's their job to know things like that.

16 And why is that important? Handling evidence  
17 is always important when you have a crime scene. It  
18 is always important. When that bullet was taken,  
19 when it left -- when the car left their possession,  
20 their custody, the bullet was touched by presumably  
21 at least one mechanic or one auto body guy. It was  
22 touched and handled by Hilda Brennan and handled by  
23 whoever she turned it into. At that point, it had  
24 been touched and handled and smeared and smudged by  
25 so many people that any identification of a print on

1       that bullet was destroyed. They botched that.

2               Let's talk about the hair. Now -- and, ladies  
3       and gentlemen, think about Iris Bryant's testimony.  
4       Iris Bryant stated Carmen Rice was sitting in the  
5       back seat when she shot Bernard Brennan, got out,  
6       opened the door, opened the driver's side door and  
7       shot him again. That hair in the back seat, don't  
8       let them fool you. I mean, I think that's one of  
9       the -- one of the areas they really fell short in  
10      their presentation, in their explanation of forensic  
11      evidence in this case because, at this point, I  
12      think we know who recovered the hair, but what  
13      happened to it after then is completely obscure.

14             I mean, even with what happened to Investigator  
15      Smith, he talked about it being sent to SLED, but  
16      admitted he didn't have any kind of documentation  
17      that he brought that could reflect the SLED test,  
18      the kind of test SLED can do. There wasn't anybody  
19      here from SLED to talk about that.

20             But then they're going to try to tell you don't  
21      worry about the hair, don't worry about that  
22      physical evidence, that doesn't mean anything.  
23      Ladies and gentlemen, don't let them lower your  
24      expectations. Don't let them fool you. That hair  
25      in the back seat of the victim's Mercedes was a bomb

1 shell, was a block buster, something that could be  
2 tested, analyzed and used to compare, identify or  
3 even eliminate suspects in a very complicated  
4 investigation. What happened to that hair? What  
5 happened to that hair? Nobody really knows. That's  
6 the scary thing about it, no one really knows.  
7 There's no documentation for why it sat there for  
8 three and a half years.

9 Matter of fact, the person that testified about  
10 the results admitted that he never actually saw the  
11 report. That's what Ted Lupton told him on the  
12 telephone when he testified he was just reporting  
13 what Ted Lupton told him. It was sent somewhere  
14 else. How can they justify that? How can they  
15 minimize that.

16 And the report speaks for itself. This murder  
17 happened on October 25th, 2001 -- I'm sorry --  
18 October 26th. The only report that we have on the  
19 analysis of the hair, it wasn't even done by SLED,  
20 it was done by Richland County. So we have nothing  
21 to reflect that SLED looked at it. It's dated March  
22 25th, 2005, a couple weeks before trial.

23 Mr. Smith -- Lieutenant Smith admitted that  
24 Carmen Rice's lawyer was a proponent in getting this  
25 thing tested before trial. They would try to argue

1 or infer, I'm not sure, where they were going with  
2 her lawyer waited two weeks before trial to get it  
3 tested. I guess the question is, who do they think  
4 has an obligation, whose job is it to get it tested?  
5 Is it, are they saying that it's Carmen Rice's  
6 lawyers' job to make sure they do their jobs? Don't  
7 wait two weeks before trial, three and a half years  
8 after the incident for Carmen Rice's lawyers to do  
9 that, that's their job. Once again, they didn't do  
10 it and they can't explain it.

11 There was no documentation, nothing, no one  
12 testified about what happened with that hair, why it  
13 wasn't tested, why it sat there or why it wasn't  
14 analyzed.

15 They talk about the kind of test SLED can do.  
16 They're not SLED employees. There's no  
17 documentation they even talked to SLED. They don't  
18 know. SLED never looked at it, so how can they do  
19 that. SLED can't do a comparison with this hair.

20 If they had it sooner instead of waiting two  
21 weeks before this trial, they could have used it  
22 during the investigation, which is an important part  
23 of this case. There are numerous suspects. They  
24 interviewed numerous individuals that matched the  
25 composite giving details about the events. They

1       could have used that as an investigative tool. They  
2       couldn't do that because it sat there untested.

3               You know, when Mr. Lupton made some reference  
4       as to how expensive the test was, part of which they  
5       had to pay a rush fee, I guess the reason is that  
6       whose fault is it they had to pay a rush fee? Who  
7       let it sit there for three and a half years? Is it  
8       Carmen Rice's fault they had to pay a rush fee? Is  
9       it Carmen Rice's fault they did a last minute job?

10              And I guess he made some reference as to how  
11       expensive -- Mr. Lupton made some reference as to  
12       how expensive the test was. And I guess the  
13       inference was they're doing everybody such a big  
14       favor. The Solicitor's office and the sheriff's  
15       department are doing everybody such a big favor by  
16       testing this DNA evidence, by testing this hair. Is  
17       that what they think they're doing? They think  
18       they're doing Bernard Brennan's wife a favor? They  
19       think they're doing Carmen Rice a favor? Do they  
20       think they're doing you a favor? No, that's their  
21       job. That's why you pay taxes for things like that.  
22       That's what they're supposed to do.

23              And they would have you believe that it's  
24       Carmen Rice's lawyers' job to make sure it gets  
25       tested and they're doing everybody a favor by paying

1       for it. They're trying to justify a sloppy crime  
2       scene investigation. They're trying to give you low  
3       expectations and justify that. How can they do  
4       that? How can they sit here with a straight face  
5       and give you jailhouse informants, perjured  
6       witnesses, untested evidence, unfounded evidence and  
7       ask you to convict Carmen Rice?

8               And let's talk about Carmen Rice and that hair.  
9       Two weeks before trial Carmen Rice voluntarily  
10      submitted to giving a sample to be compared to that  
11      hair evidence. They want you to believe Iris  
12      Bryant. And it's the first time anyone heard the  
13      story about her wiping the car down or wiping the  
14      seat down. You know, you would think Carmen had  
15      something to be afraid of. You would think Carmen  
16      was thinking, I must have missed something.

17             And you heard some talk about a Schmerber  
18      hearing to force a defendant to be required to  
19      submit to a test sample to be tested. Carmen Rice  
20      had a right and she does, any person does, because  
21      the Government can't just start poking needles in  
22      your body and taking blood samples, taking saliva  
23      samples and cutting your hair off whenever they want  
24      to. I don't think anybody agrees that's  
25      appropriate. There's got to be some kind of

1       justification. There's got to be some reason to do  
2       that.

3               And you've got a right to do that and request a  
4       hearing. You've got a right to challenge that.  
5       Carmen Rice had a right to challenge that. She  
6       didn't challenge it. She didn't challenge it. She  
7       consented to it. Why would she consent to it  
8       voluntarily if she thought there was any chance that  
9       hair might be hers? Why would she do that? If you  
10      believe Iris, Carmen must have been scared. She  
11      missed something. She wiped the car down, wiped the  
12      seat down. Why would she consent to it two weeks  
13      before trial if she wasn't certain there was no way  
14      it could match her?

15             And, also, you know Investigator Smith talked  
16      about fingerprints. How, you know, Carmen Rice was  
17      uncooperative, they were unable to get some  
18      fingerprints from her. That calls into question the  
19      same thing.

20             This crime happened in October of 2001. Carmen  
21      got arrested well over a year ago. And about a week  
22      ago, they go to her at the jail to try to get  
23      fingerprints. And the logic of that, I mean  
24      wouldn't you want to assume that they already had  
25      the fingerprints or they had good enough



1 fingerprints on her or if the fingerprints weren't  
2 good enough, they would have known it a week before  
3 trial and wouldn't that be necessary to compare it  
4 to existing physical evidence?

5 They already tried to compare prints to some  
6 prints lifted from the vehicle. And that's  
7 important as well because that's another opportunity  
8 for physical evidence that can corroborate what Iris  
9 Bryant said. She says Carmen Rice opened up the  
10 door to shoot Bernard Brennan. The fingerprint that  
11 was lifted from the door did not match Carmen Rice.

12 Don't let them fool you. They're going to want  
13 you to believe, don't worry about that, that didn't  
14 mean anything. That's a fingerprint -- this  
15 fingerprint doesn't mean a whole lot.

16 It could have been anybody's. Don't let them  
17 fool you. Don't let them feed you that more  
18 compelling, physical evidence that is consistent  
19 with Carmen Rice ever being in that Mercedes, ever  
20 being there on that night.

21 And that was interesting because you know the  
22 testimony, if you believe Iris Bryant and Amber, who  
23 we'll talk about a little later, was that Carmen was  
24 dating Bernard Brennan, right? And that's what they  
25 testified. They testified that she had this

1 relationship with older Bernard Brennan that had the  
2 Mercedes.

3 Well, if he was dating her, she didn't have a  
4 car, if she was dating Bernard Brennan, she was  
5 always in his car and always going out with him, why  
6 didn't they find some physical evidence that Carmen  
7 Rice had ever been in the vehicle? Why didn't they  
8 find any? None, nothing in the vehicle. Arguably,  
9 they should have found her fingerprints in the dash  
10 board in the front, perhaps on the passenger side  
11 door, somewhere in that vehicle. There's no way she  
12 could have constantly been in that vehicle and not  
13 touched something.

14 They found Bernard Brennan's prints in the  
15 vehicle, couldn't find Carmen's. She was never in  
16 the vehicle and they cannot prove that. They cannot  
17 establish that by any means, by any physical  
18 evidence. In fact, the physical evidence is  
19 inconsistent with Carmen ever being inside that  
20 vehicle.

21 Another way they botched the crime scene, they  
22 have botched and mishandled the physical evidence.  
23 You heard from one of the crime scene personnel, a  
24 gentleman that collected the evidence who talked  
25 about the process. He testified that he found fiber

1 in the back seat of the vehicle.

2 He testified -- Lieutenant Smith testified  
3 there's a reason they looked at those types of  
4 things, they don't just have a trace department and  
5 evidence collectors because they have discretion.  
6 There's a reason they send people to look at those  
7 types of things. There's a reason they have special  
8 equipment. They look and collect forensic, trace  
9 and fiber evidence.

10 Now, you heard him, he testified that when he  
11 collects trace evidence, fiber trace, he expected,  
12 as he should, that the investigators handling the  
13 case would do something with it, have it tested,  
14 have it analyzed, do a comparison. This is not a  
15 speed test. This is a violent homicide. As you saw  
16 from the photographs, there's blood in this car.  
17 This is an important scene to be processed. Blood,  
18 bullets, hair, fiber, physical evidence is very,  
19 very important in a crime like this, in a crime this  
20 important.

21 This is not a speeding ticket or a traffic  
22 ticket. You're compelled -- I mean, he owes it to  
23 everybody. He owes it to Bernard Brennan's wife.  
24 They owe it to any person accused. That's their job  
25 to make sure that this evidence is tested and

1 analyzed.

2 After sitting here for a week of testimony,  
3 after watching Lieutenant Smith go through 30 pages  
4 or 45 pages of crime scene notes, crime scene  
5 personnel, testify and different investigators  
6 testify, did anybody tell you one thing about what  
7 was done on the fiber that was found in the back of  
8 Bernard Brennan's Mercedes? Anything? Did anybody  
9 have any reference to anything that was done to it?  
10 Did anybody have any note that they had it tested or  
11 it was analyzed or it was found unsuitable, fabric,  
12 wool, polyester, nylon, silk, red, orange, green?  
13 No.

14 And I guess, arguably, that's Carmen Rice's  
15 lawyer's fault because Carmen Rice's lawyer should  
16 have done something about it. Not their job, right?  
17 It is their job. Once again, they didn't do it.  
18 They hadn't done their job. How can they sit here  
19 and look at you? They're paid to do this.

20 This is an important case. All cases are  
21 important. But this is a homicide. This is a  
22 murder. How can they justify not doing it, not  
23 making sure it gets done? Whose responsibility is  
24 it? Lieutenant Smith's responsibility, SLED's  
25 responsibility, Solicitor's office responsibility,

1       sheriff's department's responsibility? One of their  
2       responsibility, not my job.

3               They botched the crime scene. They had various  
4       opportunities to examine and collect critical,  
5       physical evidence that can be used in this critical  
6       investigation. You understand why it's important in  
7       a case like this.

8               Investigator Smith talked about the course of  
9       his investigation. Just so we're clear, you know  
10      Investigator Smith when he talks to witnesses, I  
11      mean, it's his job to write down what they say. I  
12      mean, that's clear. That's what he does. And he  
13      did that to a lot of people. But, as he indicated,  
14      that's not a science.

15              Just because he talked with somebody, somebody  
16      made a statement about this case or this  
17      information, that doesn't mean they're telling the  
18      truth. I mean, he's indicated that in this case  
19      alone, you've got people, he admitted, lied to him,  
20      had given them false information, had talked to them  
21      because they thought they were going to get a better  
22      deal for their charges or get somebody else in  
23      trouble or on drugs, in a haze.

24              And that's why physical evidence is important  
25      because you talk to 20 different people, or I think,

1 to be fair to Lieutenant Smith, probably like 50 or  
2 60 different people and you get 50 or 60 different  
3 stories, you don't know who to believe. You don't  
4 know who's lying.

5 Proof that a lot of times, ladies and  
6 gentlemen, the physical evidence doesn't lie.  
7 Fingerprints don't lie. DNA evidence doesn't lie.  
8 They don't have any motive. They don't have any  
9 bias. They're not on drugs. They don't have an ax  
10 to grind. They're not being asked to recall details  
11 from two years earlier when they were high. That's  
12 why the physical evidence was important and they  
13 botched it.

14 They had every opportunity, every single  
15 opportunity to conduct a proper examination and use  
16 the physical evidence to assist them to conduct an  
17 investigation in identifying and or eliminating  
18 suspects. They had every opportunity and they  
19 couldn't do it because they failed to test the  
20 evidence. It sat there. And that's why they felt  
21 it necessary to go sweeping the jailhouse or for  
22 jailhouse informants to bolster their case. They  
23 knew they dropped the ball. They dropped the ball.

24 And now they want you to pick it up. They want  
25 you to pick it up for them because you can't go back

1       now, you can't go back and compare the hair two  
2       weeks before trial. You can't go back and compare  
3       all the suspects before trial. You can't go back  
4       and compare the fingerprints from witnesses two  
5       weeks ago before trial. You can't test the fiber  
6       and go back and compare it to all of the witnesses  
7       you talked to two years ago when it's two weeks  
8       before trial. You can't do that.

9               With respect to physical evidence, we're going  
10       to talk about ballistics report they issued. One  
11       thing they did do, which I have to give them credit  
12       for, take the bullets, tried to identify potential  
13       weapons it could have been fired from.

14              You understand they have this theory they're  
15       trying to present to you that Carmen Rice worked as  
16       a security guard at America's Best Security and it  
17       could have been fired from her security issued  
18       weapon. They had Mr. Collins conduct various tests  
19       on the fragments that were found. And he testified  
20       there's no question about it, it's possible it could  
21       have been fired from a weapon of that nature, of  
22       that caliber and model.

23              Well, one thing he couldn't testify to -- well,  
24       the first thing is they never found the murder  
25       weapon. They don't have a murder weapon to give

1       you. He used something as an example for  
2       demonstrative purposes throughout the course of his  
3       testimony, but there's no murder weapon that they  
4       found that they can say specifically fired these  
5       bullets.

6             It could be in the woods. It could still be in  
7       the woods. They never checked. Wouldn't you think  
8       in a wooded, dense area, they would make sure no one  
9       threw any items, discharged any personal items, any  
10      items from the victim, any items involved in the  
11      crime or used in the crime in the nearby woods? I  
12      mean, it doesn't take a whole lot of time to do  
13      that. You call the canine unit. They do a little  
14      sniff, a little search just to be thorough on their  
15      investigation. They never did that.

16            But I asked him very specifically, he says he's  
17      not saying that the bullets he found were fired from  
18      a Taurus .357, he can't say that specifically. He  
19      said that's one of many, many different models.

20            And just so we're clear we talked about it, I  
21      had a very, very detailed cross-examination of him.  
22      He testified that that particular bullet could have  
23      been fired from 23 different models of .357 or .38  
24      Special caliber weapons, 23 different models.  
25      That's just in their data base. There probably



1       could have been more.  It's a very common bullet  
2       used in everyday type firearms.  The point is this  
3       bullet could have come from just about any weapon,  
4       any .38 Caliber or .357 weapon.  It could have come  
5       from any one of those weapons.

6             He also talked about the shell -- they found  
7       some other bullet shells at the crime scene, some  
8       nine millimeter shells of a different caliber.  What  
9       became of those?  Nothing.  That's evidence at the  
10      crime scene.  They botched the crime scene.  They  
11      found a separate firearm that could have fired those  
12      shells or held those shells that were involved in  
13      this case.  Did they look for it?  No.  They're  
14      focusing on Carmen.  They weren't looking for the  
15      other weapon, they were focusing on Carmen.

16            So let's talk about their search of Carmen  
17      Rice.  Dottie Cronise is the first witness that  
18      testified for America's Best Security.  I asked Ms.  
19      Cronise, the very first question I asked Ms. Cronise  
20      is, Ms. Cronise, wouldn't it be fair to say that  
21      America's Best Security had some problems?  Her  
22      response was, Well, what do you mean, problems?

23            That's sort of like General Custer saying what  
24      do you mean, Indians, as he's being pelt with  
25      arrows.

1           Well, the payroll checks are bouncing. They  
2           went bankrupt. They can't account for their  
3           weapons. They had high turnover. Do you think  
4           that's a problem? Do you think that's a problem? I  
5           think that's a pretty big problem. Except unless  
6           you're Chris Duke, former security guard.

7           Now, Deputy Duke says they're in pretty good  
8           shape, America's Best is in pretty good shape, but  
9           it's clear the record keeping is horrible. It's not  
10          they're in different places, the record keeping is  
11          horrible, went bankrupt, the payroll checks bounced.  
12          They had high turnover of employees at the time they  
13          were sold to another security company. There were  
14          33 weapons they could not account for. And I guess  
15          the idea they would try to suggest to you is that  
16          that means because they can't find any evidence that  
17          Carmen Rice turned in her service revolver, that  
18          must mean she never turned it in. That's laughable.  
19          That's laughable.

20          I think Lieutenant Smith said they had an  
21          entire team looking for records. They went to the  
22          warehouse. They went through every single file.  
23          They found plenty of records on Carmen Rice, plenty  
24          of them. They found her certification. They found  
25          a reprimand she got for taking her child to work.

1       Bad Carmen, taking her child to work, bad Carmen,  
2       horrible person. She should have left him at home  
3       by himself, right?

4               And they refer to this list where they cite  
5       people or document people who have not turned in all  
6       of their equipment. Well, equipment means a lot of  
7       different things. It could mean your hat, your  
8       whistle, your T-shirt, your hat -- handcuffs. It  
9       could mean a number of different things. And that's  
10      assuming the document is accurate based on the  
11      record keeping.

12             One of the employees, one of their senior  
13      employees, former employees, Anthony Stewart,  
14      testified. And this is one of the reasons they're  
15      in trouble not only payroll check bouncing, not only  
16      high turnover, not only do they have half their  
17      firearms unaccounted for, not only do they go  
18      bankrupt, one of their senior employees got arrested  
19      for trafficking cocaine. Who's this guy guarding?  
20      Trafficking in cocaine and unlawful possession of a  
21      pistol. This is representative of the kind of  
22      company America's Best Security was. There's no  
23      wonder they had so many problems.

24             But he testified also, though he didn't get the  
25      gun back from Carmen, Lieutenant Charlie Hynch told

1 him that he got the gun back from Carmen, end of  
2 story. They didn't call Charlie Hynch, did they?

3 What's interesting, and I know I'm skipping  
4 ahead a little bit, is Lieutenant Smith talked about  
5 his interview with Carmen Rice when he asked about  
6 the weapon. And what did Carmen Rice tell  
7 Lieutenant Smith about her firearm? She says she  
8 turned it in to Charlie Hynch. Anthony Stewart can  
9 verify that. She gave him two people to talk to to  
10 verify that she turned her firearm in. You saw  
11 Anthony Stewart verify it.

12 At this point, how can they argue to you, how  
13 can they argue to you or suggest to you that they  
14 have established or you should believe that her  
15 service revolver was used in this murder? How can  
16 they argue that? They can't even suggest that she  
17 didn't turn it in.

18 First, I submit to you, even without the  
19 statement that Charlie Hynch took her weapon, they  
20 couldn't establish that she used it anyway based  
21 upon the record keeping, but then on top of that,  
22 you have Charlie Hynch who stated to a coworker  
23 that, yes, I received Carmen Rice's weapon. Once  
24 again, they want to lower your expectations.

25 They know you expect to see a murder weapon.

1       They know you expect for them to locate the murder  
2       weapon and they can't do that. So they want to  
3       lower your expectations by giving you something  
4       else, a lame explanation why they can't locate it, a  
5       very lame explanation about that.

6               And speaking of things they couldn't locate,  
7       you heard -- there's testimony Bernard Brennan  
8       carried not one, not one, but two cell phones with  
9       him all the time. He always carried two cell phones  
10      with him and that was corroborated because  
11      Lieutenant Smith, although he couldn't recall from  
12      his memory when he reviewed his file, he subpoenaed  
13      two different sets of mobile phone numbers  
14      pertaining to Bernard Brennan.

15             To this day, three and a half years later, they  
16      have not been able to locate that second cell phone.  
17      Why is that? Where is it, Lieutenant Smith? Where  
18      is the second cell phone? Who has it? Why can't it  
19      be located? It might be in the woods next to the  
20      crime scene. They don't know because, of course,  
21      they never looked.

22             Let's talk about Amber Byrd's testimony. They  
23      would tell you that Iris Bryant is corroborated by  
24      Amber Byrd. Well, let's talk about Amber Byrd's  
25      testimony. First of all, Ms. Byrd, she was asked

1       about events that happened in 2001, two years later.  
2       She was asked to recall events that occurred two  
3       years later -- two years earlier, rather specific  
4       details about who she was with, what she did. So  
5       that alone is something I think, arguably, would  
6       cause her to be somewhat unreliable.

7               That's not all. Ms. Byrd -- excuse me -- yeah,  
8       Ms. Byrd -- Ms. Byrd conveniently omitted a very  
9       important part of her testimony from you because  
10       assuming you believe Iris Bryant, their star  
11       witness, she was smoking dope with Amber Byrd that  
12       night. Now, what's interesting, Iris, I don't know  
13       -- really know her, but we just get high together.  
14       You didn't hear anything about that, did you, from  
15       Amber? You didn't hear that from them either.

16              So now not only is she being asked to recall  
17       events that occurred two years earlier, she's being  
18       asked to recall events that she perceived when she  
19       was high. How could somebody with any degree of  
20       reliability recall something that occurred two years  
21       earlier that when they perceived the event they were  
22       high, they were on drugs, they were on dope?

23              They want to tell you that Amber Byrd had no  
24       reason to lie against Carmen Rice in this case. She  
25       had no bias. But you also heard evidence in this

1 case about these composites. You heard evidence  
2 that some witnesses said Amber Byrd looked like one  
3 of the people in the composites -- Amber Byrd looked  
4 like one of the people in the composites. He  
5 admitted that -- Lieutenant Smith admitted that,  
6 yeah, I had some witnesses that said that Amber  
7 resembled one of the people in the composites.

8 Well, what's the logical thing to do? I mean,  
9 you know everybody's lying to you at this stage.  
10 You've got people lying to you, making different  
11 stories up, which is, once again, the importance of  
12 the physical evidence. Physical evidence doesn't  
13 lie. Wouldn't the logical thing to do is go back  
14 and compare some of the fingerprints found at the  
15 scene to Amber Byrd? Did he do that? No.  
16 Lieutenant Smith dropped the ball on that.

17 He knew about a connection between Amber Byrd  
18 and Iris Bryant based on their statements. He  
19 didn't try to compare, he didn't test the hair  
20 against Amber Byrd's hair. He didn't try to take a  
21 sample from her. He didn't try to compare the  
22 fingerprints to her.

23 The waitress, Heidi Feagin, gave a composite.  
24 Once he identified Amber Bryant (sic) as someone  
25 that resembled -- I mean, that's what he's doing,

1 right? I mean, that's the whole point of his  
2 investigation. He's got a description of the  
3 suspects and he's got these composites so he's  
4 trying to identify people that fit the descriptions  
5 in these composites and that's the whole point of  
6 his investigation since he doesn't have any physical  
7 evidence, right?

8 What's the logical thing to do? Take Amber  
9 Byrd's photograph, put it in a photo lineup, show it  
10 to the witness. Did he do that? No, he didn't do  
11 that. But he eliminates Amber Byrd. Why? Because  
12 she points a finger at Iris. Oh, so she's clear at  
13 this point. We don't need the physical evidence to  
14 compare to Amber. We cleared her. You hear how  
15 he's clearing people. She's been cleared. She's  
16 given us a statement against Carmen Rice.

17 Also, you heard Amber in regard to her motive  
18 -- bias and motive to make up statements about  
19 Carmen Rice. I asked her, Amber, isn't it true that  
20 you had heard that Carmen was going around telling  
21 people that you were involved in the murder? And  
22 she admitted that Carmen was doing that probably  
23 because she looked like one of the composites. So  
24 Carmen says it about me, I'm going to say it about  
25 her.



1           Now, let's go to the rest of her testimony.  
2       Did she ever see a gun on Carmen Rice before they  
3       went out supposedly? Did she ever see a gun on  
4       Carmen Rice later? Did she see any blood on Carmen  
5       Rice? No, she did not.

6           And she talked about this pay phone. And the  
7       pay phone is very important because, once again,  
8       that was an opportunity for the investigators to  
9       collect critical, critical physical evidence that  
10      could link a suspect to the crime.

11          Two things are significant. Two things are  
12      significant. First is within a few days of the  
13      murder, they did lift a fingerprint from the pay  
14      phone. No question about it. They compared it to  
15      Carmen Rice's print, result was the same as the  
16      result of the fingerprint found in the vehicle, the  
17      same as the result of the hair found in the vehicle,  
18      the same as the result of the palm print found in  
19      the vehicle, no match. No match. None of it.

20          Opportunity after opportunity to try to connect  
21      Carmen Rice to this crime with physical evidence,  
22      forensic examination. And time and time again from  
23      multiple sources, fingerprint, hair, fingerprint  
24      again, what is the end result every single time? No  
25      match.

1           The question is this, the physical evidence,  
2           the little bit of work they did with physical  
3           evidence, does it corroborate the statements of  
4           Amber Byrd and Iris Bryant or does it contradict?  
5           No match, it contradicts.

6           There's another point about the telephone --  
7           about the pay phone. You heard Investigator Smith,  
8           Lieutenant Smith, identify another individual by the  
9           name of Levi Bates.

10          And just so we're clear on the telephone calls,  
11          according to Lieutenant Smith, and I'm conceding the  
12          records, the Bell South records show this, there  
13          were calls made to the victim's cell phone from that  
14          pay phone. There are also calls that are made  
15          before and after those calls are made to Bernard  
16          Brennan's cell phone. And he found the person that  
17          made those calls. The same person that was at that  
18          pay phone location around the same time as those  
19          calls were made. He was at the pay phone location  
20          before the calls were made and at the same location  
21          when the calls were made. Another opportunity for  
22          someone to identify Carmen Rice as being at that pay  
23          phone on that night at that time.

24          Did Levi Bates -- first of all, did they even  
25          put him on the witness stand? No, they didn't.

1       They didn't even call him. And you found out why  
2       through my good friend, Lieutenant Smith. He  
3       couldn't identify Carmen Rice as being present  
4       around that time. He couldn't give a description of  
5       anyone that resembled Carmen Rice being present at  
6       that time. So yet again the lack of corroboration.

7               Now, they're going to talk to you about Heidi  
8       Feagin. You heard Heidi Feagin talk about she was  
9       the waitress that waited on Bernard Brennan the last  
10      time that he was seen alive. And to kind of remind  
11      you how things went with Heidi, I mean she kind of  
12      -- she went back and forth. I mean, because on one  
13      hand, she tried to say she didn't get a look at  
14      them. She wasn't paying that much attention to them  
15      because she had no reason. If you have any doubt  
16      about it, you can ask the court reporter at any time  
17      to hear part of the transcript.

18             She was asked if she had any particular reason  
19      to pay attention to Bernard Brennan that night, any  
20      particular reason to pay attention to these two  
21      women he was with, her answer was no. She did give  
22      a description, but she said she really didn't have  
23      any reason to pay attention to them, but she gave a  
24      description.

25             Well, at that point, she becomes the best

1 person to make an identification and that's what  
2 they tried to do. I will certainly give my good  
3 friend, Lieutenant Smith, granted he didn't do it,  
4 he had Investigator Mincey do it, I will certainly  
5 give them credit when they identified Iris Bryant as  
6 a suspect, they took a photo lineup to Heidi Feagin,  
7 granted it was a couple years later or a year later,  
8 I'm approximating on the time.

9 And you may recall from the course of the  
10 trial, I'll use an example, I'll use a copy of a  
11 photo lineup that she was shown, and within a short  
12 time, about a year of making the perception or  
13 perceiving the ladies that she states Bernard  
14 Brennan was with, she was shown a photo lineup of  
15 one of the women that admitted to being there, Iris  
16 Bryant.

17 Now, keep in mind when they do photo lineups --  
18 and you heard Investigator Mincey talk. Now, first  
19 of all, they showed her a color one. What she was  
20 shown in court was a black and white version. They  
21 showed her a color one. And the reason it's not  
22 evidence, of course, is because they didn't bring  
23 it. Of course, I guess that's Carmen Rice's  
24 lawyer's fault, too, they that they didn't produce  
25 the original color photo lineup.

1           But he testified about showing her a photo  
2           lineup. And he testified and told you that Iris  
3           Bryant, her picture, was in that photo lineup. And  
4           he also explained to you, There's a reason we do  
5           things that way. We don't just show somebody one  
6           picture and say is that the person you saw. Of  
7           course not. That's suggestive.

8           You don't want to increase a risk of  
9           misidentification because we all know, I mean,  
10          eyewitness identification is not reliable. People  
11          see things differently. People perceive things  
12          differently.

13          As you heard from Ms. Feagin, she had no reason  
14          to pay any extra attention to them on that  
15          particular evening. And Mr. Lupton asked her about  
16          trying to, I guess, justify the nature of it saying,  
17          Well, you know, Bernard Brennan was killed, wasn't  
18          that significant in your memory? True. But at the  
19          time she perceived these two ladies, three and a  
20          half years ago, he hadn't been killed so there was  
21          nothing significant about it at the time she made  
22          the perception. That's what's critical. It's not  
23          even clear when she found out about Bernard Brennan  
24          being killed because they had, you know, some time  
25          to locate her.

1           But he showed her a photographic lineup with  
2           Iris Bryant in it. But the key is it wasn't just  
3           Iris' photo, there are five other photographs of  
4           people with similar descriptions. And there's a  
5           reason they do that because they don't want  
6           somebody, you know, once again, if the suspect is a,  
7           you know, is a black male with a big afro, you don't  
8           put him in a lineup with five bald headed white guys  
9           because you're going to lead the person or suggest  
10          this is the person to pick out.

11          In fact, they go a step further. Investigator  
12          Mincey testified he didn't even tell her the person  
13          was in the lineup. He wants to make sure. So when  
14          she is shown a photo lineup, and she told him, she  
15          says, I'm pretty sure I could identify them if I saw  
16          them again, but she is shown a photo lineup with  
17          Iris Bryant's picture in it, not only does she not  
18          point to Iris Bryant, she points to another  
19          photograph, not only does she point to one  
20          additional photograph that's not Iris Bryant, she  
21          points to a second photograph that's not Iris  
22          Bryant.

23          So with the person that's admitted to being  
24          there in the photo lineup -- now this is two years  
25          or this is at least a year before today, probably, I

1 think, about two years, but go on your memory of the  
2 testimony of the dates and times, but it's April of  
3 2003. So she is shown a photo lineup of Iris  
4 Bryant, not only did she misidentify one person, she  
5 misidentifies two people.

6 Yet she wants to come to court today, three and  
7 a half years later, and I asked her, I asked her,  
8 The people you saw Bernard Brennan with that night,  
9 was that the first time you'd ever seen them? And  
10 her answer was, Yes. Was that the only time you'd  
11 ever seen them? Yes.

12 So three and a half years later when she comes  
13 to court, gets on the witness stand, sees Carmen  
14 Rice sitting there between two lawyers knowing that  
15 she's the defendant accused of murder, what does she  
16 say, Oh, that's her. Yeah, that's the person I saw.

17 They would have you believe that that  
18 identification is reliable because Heidi Feagin  
19 pointed her out. But when did she point her out?

20 And what's interesting is they never, ever,  
21 they never, ever, ever put Carmen Rice's photograph  
22 in a photo lineup to show it to Heidi Feagin, never,  
23 never, never.

24 Stan Smith, I mean, you know, I asked him about  
25 that a little bit. And he made some comment about

1 not wanting to taint an identification of her or  
2 mess the person's memory. I mean, what  
3 identification? I mean, she hadn't identified  
4 anybody.

5 Why was she never shown a photograph of Carmen  
6 Rice? Why was she never shown one? This case  
7 happened three and a half years ago. Why was she  
8 never shown a photograph of Carmen Rice, never? Why  
9 is that? There is no justification for it.  
10 Lieutenant Smith dropped the ball again.

11 And you heard, and this is why this is  
12 important, you heard from him during his  
13 investigation, he interviewed at least a half a  
14 dozen people that identified other individuals that  
15 matched those composites or resembled those  
16 composites. And because they failed to do anything  
17 with the physical evidence, all he had was the  
18 investigation and the witnesses.

19 The thing to do, his entire purpose of his  
20 investigation was to identify those two black  
21 females. They had a woman that gave a description,  
22 did a composite. He identified at least five or six  
23 other women that fit the description of that  
24 composite that people told him, that looks like this  
25 person. Did he ever go back, did he ever go back



1       and show a picture, a photo lineup to Heidi Feagin  
2       and say, is this the person you saw or is the person  
3       you saw in this photograph? Did he ever go back to  
4       Alton Page and show him any photo lineups of Iris  
5       Bryant, of Carmen Rice, of anybody?

6               Did you hear him testify that he had some of  
7       these fingerprints compared to some of these people?  
8       No, you didn't. To some, but, no, not to them, not  
9       to them, not to them, not to them. Okay, so he  
10      wants you to believe he cleared these suspects.

11             He's got the women that witnesses, unbiased  
12      witnesses, are telling you matched the composites,  
13      matched the description and appear to be similar to  
14      the people that were described in the homicide. He  
15      wants to tell you he cleared these suspects.

16             I guess, the question is how did he clear them?  
17      He couldn't have done DNA evidence because they  
18      hadn't tested the hair. He didn't show the  
19      photographs to Heidi Feagin. And she didn't say,  
20      no, that's not the one. He didn't show the  
21      photographs to Alton Page and him say, no, those are  
22      not the ones. How did he clear them? There's no  
23      evidence, there's no testimony as to how he did  
24      clear them.

25             What he cleared was his desk because, as he

1       stated, limited manpower, more homicide cases coming  
2       in, only so many hours you've got to work in a day.  
3       And that's what's important. That's pretty  
4       important to Heidi Feagin's identification.

5             And, you know, she's relying on her memory  
6       pretty well. I mean, she's got to have pretty good  
7       confidence in her memory to come in here and -- I  
8       mean, you know, most of us can't, you know, we go to  
9       a restaurant, we can't recall what the waiter looks  
10      like, but she can come in here three and a half  
11      years later and then see somebody she saw for one  
12      time, the only time, see them in court and go,  
13      That's the person, when she sees them between the  
14      lawyers, knowing they're the defendant.

15            But you heard me ask about other details. And  
16      you recall, you know, Mr. Lupton talked about  
17      demeanor and demeanor. Do you recall Heidi Feagin's  
18      demeanor when asked to recall other details and  
19      other events? How her body language kind of changed  
20      and she took a lot longer to respond? She couldn't  
21      recall where she worked in 2003. And I told her, I  
22      said, Didn't you work at Ruby Tuesdays in April of  
23      2003? I told her that's where she worked and she  
24      still couldn't remember it because she had all of  
25      these different jobs and she just can't remember.

1           I asked her to remember the two different women  
2           that she picked in the photo lineup, could she do  
3           that? No, she couldn't. She remembered one. I  
4           remember this one. I don't remember picking the  
5           other one. I can't recall the other one I picked.

6           Well, how reliable is her memory? How can you  
7           rely on that? How can you take her identification,  
8           her pointing to this woman as she's sitting between  
9           her two lawyers three and a half years later when  
10          she misidentified twice the codefendant in the case,  
11          when she can't recall where she worked, how can you  
12          rely on that in-court identification?

13          Maybe she wants to help, but she's not helping  
14          anybody by picking out the wrong person. That  
15          doesn't help anybody. That doesn't give anybody any  
16          peace just to convict somebody, just to pick out  
17          somebody. That doesn't help. If you're not sure,  
18          you need to say so.

19          Significant to that identification, you heard  
20          Lieutenant Smith talk about this person named Tiki.  
21          And I believe in Iris' statement, she talked about  
22          this person named Nikki in one of her statements,  
23          one of her earlier statements in which she lied.  
24          And she talked about that person pretty  
25          consistently, this Nikki person, this Nikki person,

1       this Nikki person.

2               Well, when they were finally able to locate  
3       Iris Bryant, Lieutenant Smith did talk to her and  
4       she did identify a person by the name of Tiki.  
5       Lieutenant Smith pulls a photograph of this person  
6       Tiki and what does he concede is the very first  
7       thing that he noticed? What was so significant to  
8       him when he saw that photograph of Tiki? What was  
9       so significant to him that he wrote it down in his  
10      investigative report? That Tiki looked remarkably  
11      similar to Carmen Rice. Even he noted that.

12             Of course, the question is, well, you have this  
13      Tiki person. She clearly fits the composite. She  
14      looks that close to Carmen Rice. Did he go back and  
15      put Tiki's photo in the photo lineup and show it to  
16      Heidi Feagin or Alton Page? Of course not.

17             Of all the different suspects that he  
18      identified in his investigation that resembled the  
19      composite from multiple witnesses, he showed one  
20      photo -- he didn't show any. Just so we're clear,  
21      Lieutenant Smith didn't show anybody a photo lineup.  
22      Investigator Mincey showed one photo lineup. One  
23      was shown throughout the entire investigation on the  
24      witness stand with Bernard Brennan. The one time  
25      one was shown, it was shown to Heidi Feagin when she

1 misidentified the person twice in the same process.

2 I'm going to talk to you about this trip to  
3 Florida, which, quite frankly, is a red herring.  
4 You heard Mr. Lupton talk about Carmen Rice was  
5 suddenly fleeing to Florida or suddenly going to  
6 Florida. What you heard Sarah Dennis testify.  
7 Sarah Dennis -- and this is something interesting as  
8 well, you know, and I'm backing up a little bit  
9 because I'm going into this Bernard Brennan  
10 relationship between Iris -- I'm sorry -- Carmen and  
11 Bernard Brennan.

12 Except for Iris and Amber, nobody ever puts  
13 Carmen and with Bernard Brennan, nobody. And you  
14 heard Lieutenant Smith, I mean, you know, Bernard  
15 Brennan had a little black book, he was calling  
16 numbers, he was investigating a lot of people, men,  
17 but a lot of women as well. He investigated a lot  
18 of different women that people knew to be associated  
19 with Bernard Brennan, that was seen with Bernard  
20 Brennan, that had relations or interacted with  
21 Bernard Brennan, a lot of different women. Except  
22 for this Amber and Iris, how many people ever say  
23 they saw Carmen Rice with Bernard Brennan? They  
24 can't find any. They couldn't locate a single  
25 person, not a single person.

1           Sarah Dennis was Carmen Rice's friend. She  
2 lived in the exact same apartment building as  
3 Carmen. And she knew Carmen had boyfriends. She  
4 even knew one in particular. You heard about this  
5 guy named Dice. Everybody called him Dice, an older  
6 gentleman with a nice car. She knew about Dice.  
7 She never saw Carmen with Bernard Brennan.

8           There's no relationship, there's no correlation  
9 between Carmen Rice and Bernard Brennan. She wasn't  
10 in Bernard Brennan's little black book. She was  
11 never seen with him. They could never find any  
12 physical evidence to put her in this vehicle, in  
13 this Mercedes.

14           But on the trip to Florida with Sarah,  
15 Mr. Lupton would have you believe that this is a  
16 very sudden trip. And I believe, with all respect  
17 to my good friend, Mr. Lupton, he's  
18 mischaracterizing Ms. Dennis' testimony. Her and  
19 Carmen had talked about going to Florida on multiple  
20 occasions. Carmen had talked about having relatives  
21 there in Florida. And this is the words of Sarah  
22 Dennis. They talked about it. Carmen had relatives  
23 in Florida. You know, she was looking to go some  
24 place else. She was looking to make a move for a  
25 while and she went.

1           Well, Mr. Lupton says, It's all of a sudden.  
2           Well, it wasn't all of a sudden. They'd talked  
3           about it. And you had to go some time if you're  
4           going to go and she went.

5           And what's significant is when Sarah Dennis was  
6           here in Columbia, she was here when the murder took  
7           place, she just didn't know it. The first time she  
8           heard about the murder was when she was in Florida  
9           with Carmen Rice. And they had no details of the  
10          murder, but that was when they first heard about it.

11          And you heard what Sarah said, she asked  
12          Carmen, Is there anything to this? Carmen said, No.  
13          And what did Carmen do? She didn't take off. She  
14          wasn't scared. She didn't flee. Sarah said they  
15          got on the phone together. Carmen and Sarah  
16          together made telephone calls to the newspaper, to  
17          the police stations, this guy in the Andrew Dice  
18          murder, are there any warrants out for Carmen Rice.

19          She participated in that search with Sarah  
20          Dennis. If she had something to hide, if she  
21          thought there was a chance she might be charged with  
22          murder or a warrant for her arrest out here, why  
23          would she participate in that process with Sarah  
24          Dennis? She's got nothing to hide. She's got  
25          nothing to hide.

1           With respect to her memory of when she was in  
2           Florida, think about this, two things about memory  
3           in this case because this is pretty important. You  
4           saw investigator -- Lieutenant Stan Smith testify  
5           extensively. You saw Investigator Gene Mincey, my  
6           good friend, Gene Mincey testify about what they did  
7           in this case. Now, they testified they recalled  
8           that during their observations, they took  
9           investigative reports. They documented every single  
10          thing they did to the best of their ability in this  
11          investigation.

12           Yet when asked about details of things they did  
13          in the investigation, when asked about dates and  
14          details, what did Lieutenant Smith and Investigator  
15          Mincey both consistently have to do before they  
16          answered a question? Refer to their notes.

17           And you know he's been preparing for trial.  
18          They've been sitting up here all week. They've been  
19          hearing testimony. They worked this case. They  
20          took notes contemporaneously, extensive notes, pages  
21          of notes. And before they could answer a question  
22          and recall a detail every time, I need to take a  
23          look at my notes. Let me review my notes. I can't  
24          remember. If you say so. If that's in my notes,  
25          that's what happened.



1           So these experienced investigators who took  
2           detailed, copious notes of their activities in this  
3           investigation, they can't recall the details without  
4           their notes. But when Lieutenant Smith talks to  
5           Carmen Rice, he talks to her two years later. He  
6           talks to her in December of 2003 about things that  
7           happened in October of 2001. And when Carmen was  
8           wrong about a detail -- and Carmen didn't have  
9           notes. Carmen had no reason to take notes about her  
10          life. She wasn't keeping a journal. She wasn't  
11          keeping a diary.

12           You know, and Mr. Lupton, my good friend,  
13          Mr. Lupton, again, I believe he was disingenuous  
14          when he talks about Carmen Rice failing to cooperate  
15          with law enforcement. That's not what happened.  
16          She sat down and talked to Stan Smith. She told  
17          him, I was in Florida. She was mistaken about the  
18          dates, no question about it. She told him, I was in  
19          Florida. I was with an Oriental girl named Sarah  
20          who works at a hospital, which she corroborated it  
21          100 percent except for the date.

22           They talked about Lieutenant Lawrence who tried  
23          to do a sting operation. Isn't that interesting?  
24          Carmen Rice is a suspect in a murder. They know  
25          she's a suspect and they put a wire on a SLED agent

1 to try to trick her into giving a statement, didn't  
2 advise her of her rights, didn't know she was a  
3 suspect. They were going to trick her into saying  
4 something they could use against her.

5 Carmen Rice didn't know that when Dave Lawrence  
6 talked to her, she didn't know he was wearing a  
7 wire. She didn't know they were trying to trick  
8 her. She didn't know it was a ruse. But she talked  
9 to him. She talked to Investigator Lawrence without  
10 knowing she was recorded.

11 And during that conversation when she  
12 voluntarily talked to Dave Lawrence about her  
13 weapon, did she say anything incriminating? She did  
14 -- she's been consistent. She told him, Yeah, I  
15 work with the security company. I turned the weapon  
16 in. Payroll checks were bouncing. You know, it was  
17 a bad place to work. And she said, It's been a long  
18 time. That's what happened.

19 So they're frustrated with that. And it's  
20 funny how you can see they're biased because any  
21 time she doesn't give them information, she's being  
22 uncooperative or she's refusing or she gives an  
23 incorrect date, well she's lying about that date.

24 Well, she's being asked to recall events from  
25 two years earlier. When she makes a mistake, she's

1       lying. She's refusing to cooperate, that shows  
2       she's guilty because, of course, she should remember  
3       the exact date she went to Florida two years ago.  
4       Of course, she should recall the exact date that she  
5       left the security company and the exact date she  
6       turned in the gun. They don't even know. They had  
7       the benefit of records.

8               And just so we're clear, you heard Chris Duke  
9       talk about this letter he sent to Carmen Rice about  
10      her not turning her firearm in. Have you seen that  
11      letter? Have you heard anything about that letter?  
12      And they looked, they looked in every single box in  
13      the warehouse.

14             You heard about Mel Newman. He had a lot of  
15      the records on computer towers. Stan Smith took  
16      those computer towers, took them to SLED. Did they  
17      find any kind of letter?

18             Chris Duke, you heard him, told -- he put some  
19      of that stuff on his computer. Did he find anything  
20      on his computer? No. It never happened because she  
21      turned the weapon in. But when she can't recall a  
22      specific date or she misstates a date, Lieutenant  
23      Smith says she's lying.

24             And regarding her being in Florida at the time  
25      of the murder, if she, like Sarah, had no knowledge

1 of the murder and the very first time she heard  
2 about the murder she was in Florida with Sarah,  
3 wouldn't it be reasonable for her to assume that  
4 that was when the murder took place when she was in  
5 Florida because that's when she heard about it? No  
6 one had talked to her about it before then? She  
7 recalls being in Florida with Sarah at the time of  
8 the murder. She got the date wrong.

9 And just so we're clear, she wasn't wrong by  
10 like six months or eight months, she was off by a  
11 couple of weeks. That's still pretty good from two  
12 years earlier.

13 And he talked about her being able to meet with  
14 investigators again, how Dave Lawrence kept calling  
15 her and paging her and she would call him back and  
16 refuse to meet with them. Well, ladies and  
17 gentlemen, she didn't have to do that. I mean, she  
18 doesn't have to make herself available to them at  
19 their convenience.

20 She met with Dave Lawrence. She told him  
21 everything she knew. She met with Lieutenant Smith.  
22 It's not her obligation to meet with them at their  
23 inconvenience when it suits them. She met them on a  
24 number of occasions and each time she was consistent  
25 in what she told them.

1           And in this investigation, the witnesses are  
2           offered money. You heard Lieutenant Smith. He  
3           admitted it. How does that sound to you? How does  
4           that sound to you when you have a murder  
5           investigation that's ongoing, you have people lying  
6           to you already for various reasons, they have plenty  
7           of reasons that they want to get other people in  
8           trouble, they're trying to get a break on their  
9           charges, he knows all of that, what does he do to  
10          somebody? He goes and says -- he offers money or  
11          suggested they could get money if they would give  
12          information that connects Carmen Rice to this  
13          murder.

14                How does that sound to you? How does that  
15                sound to you? Do you like that? Does that sound  
16                good? He calls that incentive. Well, I think it's  
17                a pretty good incentive all right. It's a good  
18                incentive to procure perjured testimony. Does that  
19                sound fair to you? Do you like that, him going  
20                around, offer people money to give statements  
21                against witnesses or get defendants charged with  
22                murder?

23                Well, I guess when you -- when you botch a  
24                crime scene, when you can't find evidence, when you  
25                locate evidence -- when you can't locate evidence

1 and when you don't test evidence you have and the  
2 evidence you do have doesn't match the defendant, I  
3 guess you've got to do something.

4 Well, I know what you do, you fall back, fall  
5 back on Iris Bryant. There we go. We don't need  
6 our physical evidence. We've got Iris Bryant.  
7 We've got the four time perjurer and liar, crack  
8 dealer, dope smoker. We've got Iris Bryant. Don't  
9 worry about anything else.

10 If you can convict somebody on murder based on  
11 Iris Bryant, then you don't need any of this. It  
12 doesn't matter if they didn't show any battle scene  
13 photographs. It doesn't matter that Heidi Feagin  
14 misidentified the other suspect twice in this case.  
15 It doesn't matter that they admitted that witnesses  
16 are lying to them, giving them perjured testimony,  
17 that doesn't matter because then they've got Iris  
18 Bryant, you see.

19 Oh, no, she's just as bad as all the rest. It  
20 doesn't matter because you see they don't need  
21 strong witnesses. They don't need strong, physical  
22 evidence as you would expect, as you would demand,  
23 they want to lower your expectations. They count on  
24 you to make a decision based on the graphic nature  
25 of the crime. That's what they're counting on. And

1 I'm asking you not to do that.

2 I'm not asking you to disregard or ignore that  
3 a person was killed, but your decision needs to be  
4 based on the evidence not the horrific nature of the  
5 crime. You don't punish somebody just to punish  
6 somebody.

7 You've got to ask yourself, you know, and we  
8 talk about reasonable doubt. And the bottom line is  
9 this, I don't talk a whole lot about reasonable  
10 doubt to you, the Judge is going to charge you on  
11 what reasonable doubt is, but the bottom line is  
12 this, if you have a real problem convicting Carmen  
13 Rice on this kind of evidence where the witnesses  
14 are liars and perjurers and drug dealers and the  
15 crime scene was botched and the physical evidence,  
16 none of it matched Carmen Rice, time and time again,  
17 if you have a problem convicting her based on that,  
18 then that's reasonable doubt and you have to find  
19 her not guilty.

20 You don't owe them a conviction. You don't owe  
21 Lieutenant Smith a pat on the back. You don't owe  
22 John Meadors a guilty verdict. I'm asking you to  
23 base your decision on the evidence in the case.

24 And the verdict of not guilty doesn't mean you  
25 don't sympathize with Bernard Brennan's wife. It

1 doesn't mean you think Mr. Meadors, Lieutenant Smith  
2 and Mr. Lupton are bad guys. They're not. I will  
3 tell you that. I know these men personally and I  
4 know they're not, I can tell you they're not. But  
5 your verdict of not guilty doesn't mean you don't  
6 like them. It means you're saying, Listen, we've  
7 got a major responsibility here. You're asking us  
8 to sit in judgment of a woman accused of murder and  
9 we just can't convict her based on that. The  
10 evidence is not sufficient.

11 I'm asking you to find Carmen Rice not guilty  
12 of murder and armed robbery. Thank you.

13 **THE COURT:** Thank you, Mr. Mobley.

14 All right. Ladies and gentlemen, you look like  
15 you could use a short break. I'm going to have the  
16 clerk come back there, she's going to take your  
17 lunch orders. As soon as we do that, y'all can get  
18 you a Coke or something.

19 Mr. Bailiff, I don't know if we have some cups  
20 back there for them.

21 If y'all want to bring your Coke or something  
22 out with y'all, I'll give you permission to bring  
23 your drink out when you come back out.

24 Ladies and gentlemen, if you'll give the clerk  
25 your orders while we take this short break, we'll



1 bring you back out and conclude with the closing  
2 arguments. Don't begin to discuss the case yet,  
3 though. Thank you.

4 (The jury retires to the jury room.)

5 **THE COURT:** All right. We'll stand down for  
6 about five minutes.

7 (Brief Recess.)

8 **THE COURT:** Is the State ready?

9 **MR. MEADORS:** The State's ready, Your Honor.

10 **THE COURT:** Okay. Bring in the jury.

11 (The jury returns to the courtroom.)

12 **THE COURT:** Thank you, ladies and gentlemen.

13 Ladies and gentlemen, you're going to hear now  
14 from Mr. Meadors. He's going to close for the  
15 State. After that, I'm going to give y'all, which  
16 should not be a very long, charge on the law. And  
17 after that, you all can begin your deliberations.  
18 I'm going to let you eat lunch while you begin your  
19 deliberations and it should be here about the time  
20 that we break to begin your deliberations.

21 So, at this point, Mr. Meadors, are you ready?

22 **MR. MEADORS:** If it pleases, Your Honor.

23 **THE COURT:** Yes, sir.

24 **MR. MEADORS:** Madame Forelady, ladies and  
25 gentlemen of the jury, on behalf of Solicitor Giese,

1       Mr. Lupton and myself, I want to thank y'all for  
2       being here. Thank you for the attention you've  
3       given to this case. Thank you for listening. Y'all  
4       have been listening. Y'all have been paying  
5       attention. You've been watching the witnesses.  
6       That's all any of us can ask of you. Thank you.

7               I'd ask you just to listen to me. I'm going to  
8       be as short as I can. I'll try not to be long. But  
9       if you would listen to me as I go through -- what  
10      we're allowed to do right here at this point is to  
11      tell you what we think the evidence is and what  
12      reasonable inferences from that evidence is.

13             As has been stated several times, y'all decide  
14      what the facts are. Y'all decide based on what the  
15      Judge says the law is. And I know you'll do that.  
16      You'll follow your oath and give a decision that's  
17      based on the facts and that brings justice.

18             I think the evidence showed this is an  
19      extremely strong evidence case. I think we've gone  
20      beyond our burden. I do. And I think the evidence  
21      showed that.

22             And I'm going to go through right now some of  
23      the things Mr. Mobley was talking about. And when  
24      the State has a strong case, eyewitness testimony, a  
25      witness that has nothing to gain or lose and the

1       defendant confesses to shortly thereafter that he  
2       spent six minutes on in his hour and 30 minute  
3       presentation, the witnesses after that that  
4       corroborate it is an extremely powerful direct and  
5       circumstantial evidence.

6               When there's a case like that and when there's  
7       evidence like that, and I move around a little bit,  
8       I'm sorry, I can't help it, the State -- the  
9       defendant, the defendant puts up smoke. I used to  
10      tell stories about it, I'm not going to do it. They  
11      start fires. I submit this place would be burning  
12      down with the fires he started. They'll try to  
13      focus you over here, focus you over here, focus you  
14      over here, focus you over here, start fires to take  
15      your attention away from what happened on Crawford  
16      Road. That's what Mr. Mobley just did. It's what  
17      he tried to do throughout the trial and I'm going to  
18      give you examples of that. I call them smoke  
19      screens. I'm going to start off with that.

20             And I have -- a lot of folks said we shouldn't  
21      go over these, I said, yes, you should because none  
22      of these are reasonable doubts, that's what he's  
23      trying to get you to say. And I'll be --  
24      respectfully, some of them are just misleading. The  
25      reasonable inferences is all we can argue on based

1           on the evidence. I think he went way beyond that.

2           And I'm going to start off with, first and  
3           foremost, this hair. I could talk 30 minutes on the  
4           hair, tell you why I think it's unreasonable  
5           everything he said about it. Anna Clemens starts  
6           off -- tells you, to start with, I processed the  
7           outside right there just in case something was  
8           there. Did I go in and look inside? No. I  
9           happened to see one and two, and there are pictures  
10          down there, of the shells. I went ahead and got  
11          those. But then we go to a more secure environment.

12          That's what J. Russell told you, we go to a  
13          more secure environment. That's where he found the  
14          hairs. That's where he found the hairs. And they  
15          were taken to Richland County Sheriff's Department,  
16          taken out to SLED. And SLED didn't have a  
17          capability of testing it, that came out through  
18          testimony.

19          What happened with the hairs? The hairs were  
20          sent to Virginia. They were tested mitochondrial,  
21          excuse me, court reporter, I can't even pronounce  
22          it, but it's something that's not capable of doing  
23          here. We sent them out to SLED. I don't care if it  
24          costs five dollars or a million dollars, it was  
25          going to get done and it got done.

1           The results came back, they were testified to,  
2           one hair was Bernard Brennan's, the other hair we  
3           don't know whose it was. But Iris' sample was sent  
4           out, her DNA was sent out there and so was  
5           Bernard's. So it came back to be Bernard's, we  
6           don't know whose the other one was. There's nothing  
7           else you can do with that. They did -- we did  
8           everything you can do with the evidence. There's  
9           nothing else you can do.

10           We got it back. The report was stipulated to.  
11           Was it talked about? Was it entered? No. Do you  
12           think if that wasn't the report, he would have  
13           cross-examined the witness? He didn't ask her one  
14           question. That's misleading. That came back. We  
15           did do it. It's wrong when he says we didn't. We  
16           did do it. And that's wrong trying to start a fire  
17           for y'all to focus. They did everything you can do  
18           plus send it where it could be checked to see, to  
19           rule out everybody.

20           And then he said, down here, I'm going to check  
21           them off as I go, he says down here, by gosh, I tell  
22           you one thing though, if we hadn't sent that hair,  
23           if we hadn't sent that hair, they could have sent  
24           that hair and they didn't do it. That's lawyering,  
25           I guess, I'm not sure.

1           Then he said, I found -- we found Bernard's  
2 fingerprints. No, we didn't. There's no one asked  
3 -- you remember he said that we found Bernard's, no,  
4 we didn't. Bernard's fingerprints were not found in  
5 there at all. And isn't that amazing? His car, he  
6 drives, he talks about you don't have Carmen's  
7 prints in there, you don't even have Bernard's  
8 prints in his own car.

9           Now, it's a clean car. You can see a bucket in  
10 the back. I think Bernard took care of his car. I  
11 wouldn't expect to find one of Bernard's prints in  
12 there, we didn't, because she wiped the car down.  
13 That's why her prints wasn't there. Nobody's prints  
14 were there. Somebody's prints are on the outside.  
15 I don't know who it is. It's not her's, not Iris',  
16 not Bernard's. Bernard's -- that's not a reasonable  
17 inference from the evidence, y'all, that's not fair  
18 because Bernard Brennan's prints weren't found on  
19 there.

20           And the -- that little fifth bullet, and I  
21 wrote down here he said, It was clearly visible with  
22 the eye. No, it wasn't. The testimony was it  
23 clearly was not visible with the eye. It was only  
24 after they went down to replace the window that  
25 whoever replaced the window found the bullet and

1 Hilda brought it to law enforcement.

2 And he talks about that sixth bullet, well, it  
3 could have gone through the air. Wouldn't you think  
4 when they were looking in that car and there were  
5 three bullets in the front, maybe they thought, you  
6 know, maybe one bullet did go through? But now he's  
7 going to twist that around, try to use that and  
8 explain the sixth bullet and here say this fifth  
9 bullet there was sloppy.

10 It was lodged in there, they couldn't find it.  
11 They find a hair in the front seat or back seat and  
12 going to miss a bullet that's visible? That's  
13 misleading. That's not fair. That's not a  
14 reasonable inference, much less reasonable doubt.

15 Who's lowering your expectations? I'm just  
16 asking you to follow the law, decide on the facts.

17 And then going on that projectile, well they  
18 couldn't have checked fingerprints on that  
19 projectile, it went through Hilda and all these  
20 other folks. No, ma'am, no, sir. David Collins,  
21 they got up here, you can't get fingerprints off  
22 those little projectiles. They couldn't get it off  
23 any of them. That's not right. That's misleading.  
24 That's not a reasonable inference.

25 Turnely got up here and testified, asked him on

1       redirect, Did you find out the fellow who found the  
2       car and thought there had been an accident, confirm  
3       that his sister didn't hear anything and his mom and  
4       dad were sleeping didn't hear anything? Yes, sir, I  
5       did. He did talk to some folks down there that  
6       night. He didn't know if the canine unit was called  
7       out or not. That was his testimony, I didn't do it,  
8       I don't know if it was or not. Let's assume it  
9       wasn't.

10           No fiber analysis. Well, there was nothing to  
11       compare it to. But I wish we had her orange shirt,  
12       which a couple of other witnesses testified to she  
13       was wearing orange, I wish we did have it. We  
14       didn't even have her a suspect until several years  
15       later.

16           You know, fingerprints can place somebody at a  
17       scene, but because they aren't there, it doesn't  
18       exclude them, especially if they're wiped off. And  
19       y'all know that little print that was on the side,  
20       the palm print, it was smudged, couldn't compare it  
21       to anybody, couldn't compare it to anybody. It  
22       wasn't comparable. I wish it would have been. The  
23       fact that we couldn't compare it, couldn't get a  
24       sufficient print isn't a reasonable doubt, that's  
25       more consistent with somebody wiping it down.



1           You know, he talks about no physical evidence,  
2           you know, a botched crime scene, which is, to me,  
3           incredible, but they sure don't mind saying Iris,  
4           well, no fingerprints on her, nothing there. They  
5           don't have any problem saying Iris was there. Well,  
6           that's okay, they're biased.

7           You know, Heidi, folks, he talks about Heidi.  
8           I don't know. She was being asked -- the State  
9           didn't lead up to that question. We said, What did  
10          you observe? They had a hard time finding her, went  
11          out to California. She did a composite though, I  
12          tell you, shortly thereafter, composite shortly  
13          thereafter. So the word was out on the street one  
14          of those looked like Carmen. Carmen wasn't worried,  
15          certainly worried when they're in Florida. They  
16          called back.

17          Now, the call down there from Twana, was it  
18          Dice may have been killed. The name was just mixed  
19          up. But, you know, that Sarah Dennis testified when  
20          she heard that somebody was killed, the pool player,  
21          Dice, that Carmen got a little nervous. It wasn't  
22          until after that phone call that she changed her  
23          demeanor and, yes, she did. Shortly after that, she  
24          came home. And I'm going to get to that a lot later  
25          on.

1           But Heidi gave a description. Yeah, I paid  
2 more attention to the larger person, the larger  
3 female there. Mentioned wearing orange. That's  
4 pretty good. That orange is pretty clear. Wasn't  
5 showed a photo, you know, if these guys are going to  
6 cheat, if Gene Mincey is going to cheat and Stan  
7 Smith, do you think Heidi would have picked out Iris  
8 in that lineup? She hadn't picked out anybody.  
9 Well, this looks like similar, this is similar, but  
10 it's I can't pick out anybody. If they were  
11 cheating, Iris would have been picked out right  
12 then.

13           The only time Heidi sees Carmen Rice is this  
14 week, been out to California. Back and forth, she's  
15 moving. She's back here now for trial. She comes  
16 in here, tells y'all what she saw.

17           The State didn't try to get an in-court I.D.,  
18 only after questioning by Mr. Mobley, and he's  
19 going, you all this, you see her, you give a  
20 description, you can't identify her. She said, I'm  
21 not saying I can't identify her, bull. Mr. Lupton  
22 gets back up, Can you identify her? Yeah, that  
23 looks like her right there. How could she -- the  
24 first time she sees anyone live in this case, that  
25 was the only customer she's ever had murdered.

1           That's just one piece of evidence. I'm not  
2           saying it's the most powerful or it isn't, but it's  
3           one to consider. There's plenty without it. But  
4           she said under oath, she said, No, sir, I'm not  
5           telling you I can't pick her out, that is her.  
6           That's after questions from Mr. Mobley. And the  
7           inference is that the State's trying to get her to  
8           do that, that's not fair.

9           I think I forgot this earlier, and I'm sorry,  
10          I'll slow down. When we're coming up from that  
11          hearing on the hair, y'all please listen to this,  
12          and to get a swab of DNA so we can compare it  
13          against those hairs in this courthouse a few weeks  
14          ago and there was going to be a Schmerber hearing, a  
15          hearing to determine if the Judge is going to say,  
16          well, you can get a sample, it's not too intrusive.  
17          Well, after she's up here and about half the  
18          hearing, then they say, Okay, we'll give it to you.  
19          But, even then Stan said, well, they didn't want to  
20          sign the consent at first, but then he said, okay,  
21          I'll sign a consent. Lawyering.

22          Signed it, well we're going to do it, we were  
23          up here and they're going to get it, well I'll sign  
24          the consent so I can come in here and mislead y'all.  
25          We didn't have a problem. She didn't have a choice.

1       He decided then I might can get that to work to my  
2       advantage.

3               Of course, then when we tried to get prints  
4       earlier, Oh, that's -- lawyer wasn't there. She  
5       didn't want to give prints then. She wiped it down,  
6       she didn't know if there was another one there or  
7       not.

8               You know, some of this he may or may not have  
9       covered. I'm going to try to cover them all.  
10       There's no evidence whatsoever that Amber Byrd was  
11       at the Varsity inside, at Calloways, in the book or  
12       anything, she was never a suspect. Nobody said  
13       Amber Byrd confessed to me. Nobody said Amber Byrd  
14       shot me. She was never a suspect. That's why her  
15       print wasn't compared. That's why he only talked  
16       about her seven minutes out of an hour and 35. You  
17       can't get around the person you let take care of  
18       your child and you end up confessing to her.

19               And the other -- the amazing thing to me the  
20       evidence shows is that Amber says under  
21       cross-examination that Carmen was talking about how  
22       Amber had done it. Do you remember that after the  
23       incident? And yet when she talks to Stan Smith, I  
24       don't know what you're talking about, and when Sarah  
25       does call back here about a murder and yet when she

1 talks to Stan Smith, when he talks to her a couple  
2 years later, I don't know what you're talking about.  
3 And yet they say, Amber, wasn't Carmen saying it was  
4 you, Carmen was worried. She confessed to Amber.  
5 Iris saw her do it.

6 They're putting law enforcement on trial.  
7 That's what you do when you don't have any evidence.  
8 And, yeah, law enforcement makes mistakes. I'm not  
9 up here saying they're the greatest thing in the  
10 world. They make mistakes. We all make mistakes.

11 But you know what just doesn't make sense and  
12 the reason the whole Cold Case Squad was started, to  
13 keep going, to keep trying, to try to get closure  
14 and that's what they did. This guy's been pounding  
15 the street since the 60's. Good 'ol Gene keeps  
16 going after them. That is good law enforcement.  
17 That's why they formed it.

18 Shawnetta Wise, whose nickname is Peaches, I  
19 don't know if that came out, but when Shawnetta  
20 Wise, this is another nonreasonable inference from  
21 the evidence the time it came out, the reason -- and  
22 I love this job. And I, specifically, love trying  
23 cases because the truth comes out in here.

24 And, you know, when Shawnetta was up here, I  
25 think Shawnetta was the one that lives right down

1 the street from her and knew of her before, I think  
2 knew most of the parties and then sees her in jail  
3 later. And she tells her, Yeah, I did it. It  
4 wasn't supposed to go down that way. That's the  
5 same thing she told Amber the night of it by the  
6 way. But she tells the officers that.

7 And the officers say -- well, on cross, they  
8 say, Well did they tell you two or three times?  
9 Yeah. The right answers -- like they were pushing  
10 her, like they were threatening her. Y'all remember  
11 that on his cross.

12 And Mr. Lupton came back and said, Well, isn't  
13 it true that they didn't investigate her for  
14 threatening you? Well, yes, ma'am. Isn't it true  
15 that there was a three way call just recently? Yes,  
16 ma'am. Did you take it as threatening? Yes, ma'am.  
17 And you can see the results up there. It was hard  
18 getting it out. That's not fair.

19 And let me tell you something. If Gene Mincey  
20 had done that, Gene took the stand up here. How  
21 many questions did they ask Gene Mincey about how he  
22 got Shawnetta Wise's statement? Zero. That wasn't  
23 fair. That's not a reasonable inference. It's no  
24 where in the same world of a reasonable doubt.

25 This Levi Bates who was at the -- and I'll tell

1       you this phone number at -- it's across from  
2       Anthony's, I can't think of the store's name, but  
3       that phone number is extremely important and I'll  
4       get back to that in a minute and so is that date  
5       right there.

6               But they're trying to argue Levi Bates couldn't  
7       identify anybody. Stan said he went and traced down  
8       Levi Bates. I don't know -- he said he couldn't  
9       identify anybody, traffic going right and left. No,  
10      sir, I can't remember -- I couldn't remember who was  
11      there.

12             He couldn't identify anybody. Much less he's  
13      trying to say he couldn't identify Carmen. Folks,  
14      we didn't know who Carmen was then. She's down in  
15      Florida then. And he keeps saying, didn't ask him  
16      about Carmen, didn't ask him about Carmen, we didn't  
17      know who Carmen was.

18             But that phone sure was important right  
19      afterwards and we didn't know Carmen lived around  
20      the corner and we didn't know Amber had taken her  
21      there before she went down to the Varsity. We found  
22      that out when Amber called on November 4th.

23             And she says, yeah, I went and got them, Shawn,  
24      she knows their names, I went and got Shawn. She  
25      knows she worked at ABS. I went and got Carmen.

1       Before we went, we stopped by the store and made a  
2       phone call. Lights go off in that man's head.  
3       That's a dream, that's a dream come true for the  
4       investigator. His mind goes back, oh, that's where  
5       we got the phone call to Brennan on his cell phone  
6       the same night he was killed. That's pure. That's  
7       great evidence.

8               Anthony Stewart testified as of November when  
9       he left, he hadn't gotten the gun back. That would  
10      be after the killing, after the murder.

11             The testimony about Mr. Hynch, he may not be  
12      around in this world anymore, that he got it some  
13      time later. I don't know. Anthony doesn't know.  
14      He knows he hadn't gotten it in November when he  
15      left.

16             Everyone of these is smoke screens. None of  
17      them are reasonable doubts, much less any doubt.

18             There was something about the lineups I had  
19      written down here. It was these first suspects.  
20      Stan said that people calling in all the time, some  
21      of the names out of Mr. Brennan's book, in all due  
22      respect, calling in about different things. They  
23      checked them out. Nowhere even remotely connected  
24      to these things. That's what he was talking about  
25      looking at the lineups, back then on all of those.



1       That's trying to twist the testimony around on that.  
2       That's not a reasonable doubt.

3             And the other thing he said -- he tries to say  
4       Carmen, I think he's trying to say this is unfair  
5       law enforcement, I'm not sure, but, yeah, I think  
6       that's what he's saying, no question about it, when  
7       he talks to Carmen a few years later, she hadn't  
8       been taking a diary or a note or a book on what's  
9       been happening.

10            Well, you know, low and behold when he first  
11       talked to her, she does say, My daddy cashed a check  
12       on October 13th -- Oh, I went to Florida October  
13       13th -- excuse me. Well, they get a check that's  
14       cashed and bounced, I think, find her fingerprint on  
15       it. Well, she can remember that date two years  
16       later, can't she?

17            Come back to the Solicitor, can't be right.  
18       Your fingerprints cashed -- she said, oh, I must  
19       have cashed it, I guess that must mean that I went  
20       to Florida on October 17th. Well, she didn't have  
21       any trouble remembering those dates. Getting  
22       herself out of Columbia.

23            One other thing, and I hope I've covered  
24       everything he said, I may not have, but if I --  
25       before I get to the facts in this case -- beg the

1 Court's indulgence.

2 **THE COURT:** Yes, sir.

3 (Pause.)

4 **MR. MEADORS:** Oh, on the SLED agents who went  
5 to talk to her about the gun and gun only, they  
6 weren't questioning her about the murder. The gun  
7 which never came back before November. I don't know  
8 if it ever came back at all, but, clearly, it wasn't  
9 back before the murder.

10 Falisha Hallmon came out in testimony, said  
11 Carmen switched the gun, this is what he was talking  
12 about, switched the gun, sold the murder weapon to a  
13 drug dealer, turned it in, switched up gun. Now,  
14 it's kind of ironic, I think, he says our whole case  
15 is based on inmates, which is not true, not true.  
16 She confesses to a couple inmates. The whole case  
17 is not on it. And yet these two witnesses are  
18 inmates.

19 You know, my mom and daddy brought me up, all  
20 of us are the same. Actually, the way I was brought  
21 up, some of us may be a little richer, a little  
22 poorer, a little bigger, smaller, white, black,  
23 Korean, but we're all basically the same, same  
24 needs, hopes, desires. I'm not sitting here saying  
25 something about these people because they're in

1 jail. People make mistakes.

2 But to get up here and apply our case just  
3 relies on that, which it doesn't, and they come up  
4 here and their whole defense is some folks that are  
5 in jail, I'm not criticizing these ladies because  
6 they had some trouble with the law here, but you  
7 can't have it both -- it's not fair for him to argue  
8 that.

9 But he calls Ms. Wilder. She's a good friend  
10 of Ms. Carmen Rice. I think Ted covered that.  
11 Clearly, a bias. And I think I asked her when did  
12 it happen, she didn't have any idea.

13 The thing about Ms. Quattlebaum, bless her, I  
14 was confused on my notes here, but I said, Well, Ms.  
15 Quattlebaum -- this thing's great, you get the truth  
16 out here. First question, How do you know these  
17 people? I don't know either one of them, don't have  
18 a relationship with either one of them, don't have a  
19 friendship with either of them, don't have any  
20 biases or don't have any trouble with them either.  
21 She whips that out. And I said, Why did you say it  
22 that way? Why didn't you just say I don't really  
23 know them? Well, I wanted you to know I was fair.

24 Well, when I get myself together finally and  
25 realized that the notes about who took a warrant out

1       on who, is Ms. Quattlebaum, because remember I asked  
2       her first, I said, Wasn't -- didn't she take it out  
3       on her cousin? She went, No. Well, she didn't let  
4       me know then that she was the one it was taken out  
5       on.

6               When I came back and got myself together, I  
7       said, Well, actually the warrant's out on you, isn't  
8       it? And she said, Yes, it is. And that's what I  
9       mean about not -- that's not unbiased. That's their  
10      defense.

11             About three books were important to me when I  
12      was growing up. I'm just going to tell you about  
13      one right now. It's Your Greatest Power. I can't  
14      remember the guy's name. My dad gave it to me.  
15      It's about your greatest power. In that book is  
16      about your greatest power, which is your power to  
17      choose. That's all of us greatest power, who we  
18      hang around with, what we do in life, whether we do  
19      a good thing or a bad thing. Our greatest power is  
20      the power to choose.

21             Now, this case isn't about Bernard Brennan's, I  
22      love you, Hilda, whether he might have seen a lady  
23      or two around. That came out. And, you know,  
24      apologize for not asking about all of these other  
25      people, but there were never any legitimate suspects

1           there. Why is he asking about that?

2           Whether or not Bernard made mistakes here or  
3           there, I don't know. That's not for me to size on  
4           that and that's not the issues in the case. But  
5           Bernard didn't choose to get shot in the back and  
6           didn't deserve to get shot in the back. Somebody  
7           else chose to do that. Your greatest power.

8           Let me tell you about the Cold Case Squad and  
9           how we got to this point. Two females were last  
10          seen, two females at the Varsity and Calloways,  
11          African American females seen with Brennan. Phone  
12          call is traced back to the phone booth across from  
13          Anthony's on -- Anthony's corner of Two Notch and  
14          Chestnut and the store across the street, I can't  
15          remember, that may be Chestnut over there, I'm sorry  
16          I don't remember. As Stan Smith testified -- and  
17          you get a description from Heidi and a composite  
18          from Heidi.

19          February 5th, 2002, when Mr. Govan (ph)  
20          mentions Iris having talked about the case. She  
21          knew Brennan, searched for Iris again. In July --  
22          and we're searching and we're looking. We, being  
23          law enforcement. The case gets handed over to the  
24          cold squad, Gene Mincey, in August of 2002. Stan's  
25          still working on the case. He's head of the cold

1       squad, too. But -- well we've been around and come  
2       back, now we're going to keep plotting, keep  
3       looking, trying to solve. The witness gives up and  
4       talks about where Carmen lives. And Iris and takes  
5       them to [REDACTED] Braham Street.

6               At 7/25/03, Iris is calling. She says, I'm not  
7       talking to you. 7/28/03, she admits to knowing the  
8       individual that I.D.'d her.

9               7/28, this is the first -- excuse me -- 8/6,  
10       this is her second statement, she implicates Carmen  
11       right then, she didn't add her last week, and says  
12       this other known person was involved with it, Nikki.  
13       She made that up. Says she wasn't there, but had  
14       knowledge before and after. That's when Iris said  
15       that.

16              Iris pretty much, from the second statement and  
17       on, had Carmen there. Iris is minimizing her  
18       involvement. She's scared. Y'all saw her up here.

19              I submit to you we could meet our burden in  
20       this case with just Iris' testimony, I really do,  
21       her demeanor. But that's not the most impressive  
22       evidence at all in this case. Amber and Sarah sure  
23       help. Falisha helps. Teresa helps. But you judge  
24       her credibility, her believability. She's  
25       minimizing her involvement because she's scared.

1           None of these folks ran down to the police  
2 department, none of them. They didn't want to get  
3 involved. They were scared. And these are the  
4 witnesses Carmen Rice was friends with and hung  
5 around with. Was Iris scared? Was Amber scared?

6           8/25, the third statement, Iris finally admits  
7 to being there, still including this unknown person  
8 and again implicates the defendant as the shooter,  
9 implicates her as the shooter. That's back in  
10 August of 2003. Don't get the impression this just  
11 happened last week, that's not a reasonable  
12 inference, that's not fair, that's not what came  
13 from the witness stand.

14           And then on November 4th, 2003, is when Amber  
15 -- you've got that evidence of Iris, eyewitness,  
16 seen it happen. They keep searching. They're  
17 looking for some more evidence, some more  
18 corroboration. And you have that evidence of Carmen  
19 August 25th, 2003.

20           At this point, Iris is saying, Well, I'm there,  
21 I didn't have anything to do with it. Which guess  
22 who comes in there? Amber. Here's what Carmen told  
23 me. That's incredible corroboration, that's the  
24 phone booth, that's the phone calls to Brennan that  
25 show up on his phone. You can't get around that.

1 He didn't talk about that, did he? You can't get  
2 around that, the phone booth, two calls, Amber comes  
3 in out of the blue, Yeah, I took her there, yeah,  
4 she did that phone call. That's real. That's  
5 credible.

6 Amber said she and Cynthia, I don't know now, I  
7 can't remember how long she had known the defendant  
8 -- and that's another thing, credibility,  
9 believability, the defendant says one time, I  
10 wouldn't let Amber baby sit her kid because she's a  
11 lesbian.

12 Well, you know, Amber kind of gave that up, but  
13 yet she's invited into her home, that's just not  
14 credible. She came to live with her. She took care  
15 of Shawn. And on this night, she went over there  
16 and she told her, I've got to go work a security  
17 job. She'd seen the revolver before that spins.  
18 She picks them up, she being Iris, picks up Carmen,  
19 picks up Shawn, takes them by the pay phone, they  
20 make a phone call. She's not clear if she went to  
21 pick up Iris then or not, could have, I don't know.

22 But one thing's for sure, she went to the  
23 Varsity. One thing's for sure, Iris clearly went to  
24 the Varsity, she told you. Carmen clearly went  
25 because Amber told you. They go to the Varsity.



1           And as Alton Page said, I saw two females come  
2           in, one of them had on orange. I don't know who  
3           they were. I don't know who they were. But they  
4           came in shortly after he made those phone calls. He  
5           said, y'all come on down. He introduced one of them  
6           from Beaufort, the other one his cousin from New  
7           York. Obviously, Mr. Page knew Ms. Brennan --  
8           Mr. Brennan, that's why he introduced them then.

9           Corroboration, Iris is believable. Carmen was  
10          seen in that orange I don't know how many times that  
11          night. Iris says that. So that's three people that  
12          mentions the orange.

13          They play pool there for a while. Then they go  
14          to Calloways. There's a document that says 8:18  
15          they went to Calloways. She gave them chicken wings  
16          and a couple of drinks, I think. They go from  
17          Calloways, and here's where -- she didn't want to  
18          say it yesterday or the day before, whenever it was,  
19          but it's the truth. And he talks about the  
20          statement last week, the statement came out with her  
21          lawyer upstairs, when her lawyer was present, not  
22          the final. She had always put herself there in the  
23          last statement.

24          But it came out, Yeah, I knew it was going to  
25          happen. I knew we were going to rob him. I didn't

1 know we was going to kill him. And I suggest that's  
2 reasonable, she didn't know. She didn't know.

3 But she got on this stand and I told her, I  
4 asked her, You knew that you was going to rob him,  
5 didn't you? Yeah, I did. I thought it might be a  
6 Visine scam or something, but, yeah, I knew we were  
7 going to rob him. I knew she was going to rob him.  
8 I knew we were going to rob him.

9 She said we. She didn't want to do it then.  
10 And under the laws of this state, hand of one, the  
11 hand of all, Iris is just as guilty as Carmen. And  
12 Iris will have her day in court. She's just as  
13 guilty. That's what the law says. Even if Iris had  
14 shot him and Carmen in the back, be just as guilty.  
15 The credible evidence of that at all, if any, hand  
16 of one, hand of all.

17 But as they came down I-20 and they got on  
18 Fairfield and they're heading down on Fairfield  
19 Road, and Iris said, I thought they were going to a  
20 motel, took a right on Crawford, coming down  
21 Crawford, says, Carmen lights a cigarette up. They  
22 tried to get one witness up to say she doesn't  
23 smoke. Sarah Dennis says she smokes. She smokes.  
24 Bernard told her, Tell her not to smoke.

25 She turns around and she sees that gun. I'm

1       going to hold it down. As Iris' word, I wasn't in  
2       for all this. I didn't realize this was going to  
3       happen. Let me out.

4               I don't know how long she stayed in there, but  
5       she was there, knew they were going to rob him and  
6       that's enough under the law. You suffer the  
7       consequences for what happens after that. But she  
8       saw the gun and said, Let me out. Please let me  
9       out. Stop the car.

10              She got out and she says she hears some  
11       gunshots (indicating). The car rolls down. Is this  
12       incredible corroborating evidence? The engine is  
13       still going. Bernard is shot. He's over. The  
14       light's still on when the young man finds him, when  
15       Turnely finds him, when Anna's there talking about  
16       it, when Sergeant Lyons, don't forget Sergeant Lyons  
17       finds this right at the scene. And as Turnely said,  
18       I saw no skid marks, which is consistent with coming  
19       to a stop there just kind of easing in. Incredible  
20       corroborating evidence.

21              And then Iris says that she goes around, she  
22       gets out of the back seat and fires two more  
23       (indicating). And I'm going to show you these  
24       pictures in a minute. The crime scene itself  
25       corroborates what happened.

1           Y'all have heard -- let's talk about the  
2 pathologist briefly a minute. But you heard him he  
3 say he could have lived after the first, second,  
4 third, fourth, fifth shot. What was she saying he  
5 said? Why? Bernard can say -- Bernard said, Why?  
6 There's not a good answer for that.

7           Oh, Bernard, I think, would have given her --  
8 would have given them up to her. But he lives long  
9 enough to question that. And I think that affected  
10 Iris Bryant. I don't care what you think of her in  
11 her past. I do think that's finally why she came  
12 forward to help give her some closure.

13           After that, they run. And do you remember  
14 Carmen told her, It's time to toughen up? And  
15 they're running. They're running through the woods  
16 and they run across I-20 and they go to that stop up  
17 there, whatever it is, a convenient store, and  
18 somebody takes them back.

19           Now, Falisha Hallmon -- and they say, why  
20 should you believe Falisha Hallmon over these other  
21 folks? Well, Falisha Hallmon gave details about  
22 somebody picking them up there that she could only  
23 learn from Carmen Rice. Yes, she may -- obviously,  
24 lied and set her boyfriend up, but she couldn't have  
25 known those details unless it came from there

1       because that's what happened. She said somebody she  
2       knew picked her up from there and took her back.  
3       Iris didn't know who it was or why it would hurt her  
4       saying who it was that she did know.

5               They go back then to Anthony's. And Iris says  
6       they throw Carmen's clothes away in an oil pit and  
7       then they go to Braham street and that's where you  
8       see Amber and Cynthia.

9               And what does -- call her seven minute Amber.  
10       What does Carmen Rice say to Amber Byrd a.m., early  
11       morning hours of 10/26 at Carmen Rice's house on  
12       Braham Street? I did something I didn't think I was  
13       going to do, rob the guy. Iris is in front. A lot  
14       of money, shot the guy, had to run. At one point, I  
15       thought I had to kill Iris.

16              And this is a statement she made to the person  
17       she left her baby with. She trusted her that much  
18       to leave her child with her, didn't want to admit  
19       that at first because she knew she had confessed to  
20       her.

21              And you want me to tell you what I think is --  
22       Iris, it's time for you to toughen up. Time for you  
23       to toughen up. She stayed tough for a few years,  
24       didn't tell.

25              Judge, I'm sorry.

1           **THE COURT:** Yes, sir.

2           **MR. MEADORS:** This, to me, is telling. Amber  
3 Byrd describing Iris Bryant. Iris was very quiet.  
4 When did you see her after that? I didn't see her  
5 anymore.

6           She didn't want to come. She didn't want to  
7 tell. She didn't want to get her justice, but she  
8 knows she's got to. And she knows she's got to help  
9 give closure.

10          You know, seven minutes into closing, you know  
11 how many questions the defense asked Iris about what  
12 happened in the car, details? None. Because you  
13 can't cross that. And do you know how many  
14 questions the defense asked Amber about what went on  
15 in the house? Where were you? Who did all this?  
16 How was she when she told you? None. Because it's  
17 true.

18          It wasn't supposed to happen that way. I don't  
19 even know if that's true because Falisha said, I  
20 shot the, and used the N word, before we ran across  
21 the street. Teresa Rouse, I don't know if she was  
22 threatened, said she was okay until we got in a  
23 fight. She's the one that said, I'm going to do you  
24 like I did that man. The real Carmen Rice coming  
25 out. Well, they've got a witness to about say the

1 same thing from Iris, low and behold, here at the  
2 end. But that's what Carmen said to Teresa.

3 After she's identified, and again the details,  
4 they said she can't remember details, first she says  
5 the 13th. Then when confronted with the father  
6 cashed -- she says father cashed the check, when  
7 confronted with, well, there's fingerprints on  
8 there, she said, Well, it's the 17th.

9 Denied dating older men, yet now she's dating  
10 Dice. Denied Amber baby sitting, then kind of gave  
11 that up later on.

12 First, she says, Well, I don't have a phone, I  
13 mean, I do have a phone. They verified that with  
14 her, well I don't have a phone. She didn't want to  
15 be tied to that pay phone. Well, I might have a  
16 cell phone. No, ma'am, no, ma'am, you don't. What  
17 did she say to that? Well, she's got no answer, got  
18 no answer. She used the pay phone.

19 And Sarah Dennis, that's Sarah with an H, Sarah  
20 Dennis. You know, it's really again putting the  
21 police on trial. You know what she told them about  
22 Sarah? She said, Sarah, Oriental, Florida, maybe  
23 said hospital, I don't know, didn't give her last  
24 name. And this is the same woman she's known for a  
25 long time, a good friend, she didn't know her last

1 name, a woman who could provide her with her -- her  
2 whereabouts. That's all she gave Stan. That's all  
3 she gave Stan.

4 The Cold Case Squad found out about Sarah,  
5 traced her down to Florida, traced her back here to  
6 Richland Memorial Hospital. You want to talk about  
7 botched police work. That's incredible police work,  
8 incredible police work. That's who you want out  
9 there solving crimes, staying on it, plotting on it,  
10 staying with it.

11 One, I don't want say a good thing, my  
12 birthday's on [REDACTED], but the one thing that came out  
13 of [REDACTED], it gives everybody a reference point,  
14 doesn't it? Remember my dad said he remembered when  
15 Kennedy was shot, we all unfortunately have a  
16 reference point and that helps in this case.

17 And is there any question from Sarah Dennis  
18 when she came down there? She goes from the 13th to  
19 the 17th to Stan. Ms. Dennis, when did she get down  
20 there? After Thanksgiving. How did you know that?  
21 Two reasons, and this is her friend, they talk about  
22 her lying and all, her friend says had to be  
23 afterwards because Thanksgiving, we're all scared  
24 about 9/11, careful about going out. Everybody was  
25 scared. I remember my son went out and I remember



1       particularly he went out and if Shawn was there, he  
2       would have gone with us. He wasn't there. I know  
3       that.

4               And so Mr. Mobley said, Now you said October or  
5       November, it could have been -- no, sir, I didn't  
6       say that. I said November. It had to be after  
7       October.

8               What's the other reason you remember it? And  
9       this is critical in this case. The other reason is  
10      my mom went to visit her mom, who's now deceased, in  
11      November in Korea. It was in that time when she  
12      came down. I just know it. I know it.

13              That's real credible testimony. And the reason  
14      it's so incredibly important in this case, if I can  
15      find it, is because she wrote her a letter after she  
16      was arrested. She knew her last name then, knew her  
17      address. She wrote her a letter January 30th, 2004.  
18      Dear Sarah, and after I submit was some self-serving  
19      information in the front, y'all can read it,  
20      although there is something there I saw this morning  
21      where she says that Iris couldn't have because she  
22      didn't even hear one shot. See, a little truth even  
23      leaked out in the front.

24              But anyway, on the second page -- well, I think  
25      I've got this blown up now that I think about it.

1 On the second page, Please help me beat these  
2 charges. All I need you to do is verify I was in  
3 Florida when this happened. Your word is credible.  
4 Your word's credible.

5 And the date's October 17th, the final lie she  
6 told to Stan Smith, October 17th until the second  
7 week in December. What did that mean to you? She  
8 wanted me to say she was there.

9 She saved this. Sarah's to be commended. She  
10 saved this. Help me beat these charges. Your word  
11 is credible. Sarah, it is, your word is credible.

12 The final witness you heard from was Bernard.  
13 You didn't really hear from him, but you did. His  
14 body spoke to you through Doctor Clay Nichols. And  
15 that's what autopsies do, it's the victim's last  
16 chance to kind of say, Here's what happened to me.  
17 And Bernard -- well, Bernard left us a couple of  
18 signals, his phone he left for us to trace back to  
19 the pay phone and then Amber tied it up.

20 But Bernard showed you where he was sitting.  
21 And I'm not going to go over malice, but is there  
22 anything more malicious than shooting somebody in  
23 the back?

24 I don't know the exact sequence of these, but  
25 we know that three went and hit the windshield, two

1       came back down in the floor, one was stuck down in  
2       the bottom, not visible to the naked eye, and two  
3       went in his body. What the doctor designated as one  
4       stayed in his body. Then there are two more shots.  
5       I submit to you they went out. As Carmen gets  
6       around and fires two more, this third shot  
7       consistent with hitting the window over here. The  
8       fifth shot stays in his body.

9               I said, Doctor, can you group these things? I  
10       can group these three and it looks like these.  
11       Corroborating Iris. And don't look at it long, but  
12       you remember the contact, close contact, I'm not  
13       going to show it to you now. There's a picture of  
14       Bernard's back and you can see these other two --  
15       you can see the other two over here, I don't know  
16       which side, y'all will see it, and the burn marks  
17       around it.

18              That's why I don't even know if I believe that  
19       last statement she told Amber or even Shawnetta, It  
20       wasn't supposed to go down that way. Well, maybe so  
21       if you believe one, two or three, but you know what  
22       takes it to murder, well it's murder anyway, but you  
23       know what leaves no doubt it was murder? Those last  
24       two shots, burn marks. It doesn't get anymore up  
25       close and personal, malicious. Well, I think she

1           meant for it to go down that way.

2           And don't forgot the pockets, the armed  
3 robbery. Bernard's last thing he left you. It was  
4 just about money. That's just money. He shouldn't  
5 have been flashing it. He shouldn't have been, but  
6 he did. She chose to kill him.

7           Ladies and gentlemen, I'm going to sit down. I  
8 apologize, I'm sorry I kept you so long. Look at  
9 the exhibits. Think about the testimony. I submit  
10 to you when you go back to your jury room, there are  
11 no reasonable doubts.

12           Everything he mentioned was a smoke screen.  
13 This was an incredible investigation. Do we wish we  
14 had done one or two other things? Maybe. But, you  
15 know, just because you have questions, question  
16 this, question that, that doesn't mean it's a  
17 reasonable doubt when you have tremendous evidence  
18 of guilt, eyewitness testimony, someone else who  
19 confesses to her, Amber, Falisha, Teresa, Shawnetta.  
20 Shawnetta who's next door. They know each other  
21 from there. When she sees Shawnetta in jail, she  
22 confides in her. That's credible, credible.

23           When you go back to your jury room, consider  
24 all of the evidence. I'm going to ask you now  
25 please, respectfully, on behalf of the family, on

1       behalf of law enforcement, the people of the State  
2       of South Carolina, that you'll return a verdict that  
3       speaks the truth, that on October 25th, 2001,  
4       Bernard Brennan was in his vehicle on Crawford Road  
5       carefree, if you will, and he was shot in the back  
6       five times.

7               There are two individuals who are going to have  
8       to answer to that. One of them's time is today.  
9       And I ask you now to exercise your greatest power  
10      and choose to convict Carmen Rice based on the  
11      evidence of what she did, murder and armed robbery.  
12      Thank you.

13               **THE COURT:** Thank you, Mr. Meadors.

14              Thank you, ladies and gentlemen. I appreciate  
15      your attention, careful attention during the  
16      attorney's closing arguments. At this point, ladies  
17      and gentlemen, I'm going to give you all a charge on  
18      the law and you can begin your deliberations.

19              When we started this trial, ladies and  
20      gentlemen, and picked you all to sit on this jury, I  
21      explained to you all what the indictments are in  
22      this case. And at this point in the trial, I want  
23      to remind you that the fact that a defendant has  
24      been arrested, charged and even indicted is not  
25      evidence in this case and cannot be considered by

1       you as a jury as evidence of guilt in this case.

2               I further instruct you, ladies and gentlemen,  
3       that the indictments themselves do not create any  
4       presumptions or inferences of guilt. The documents,  
5       ladies and gentlemen, which are the indictments, are  
6       simply the formal, written instruments which  
7       actually bring a case and the charges against the  
8       defendant to this court.

9               Madame Forelady and members of the jury, I will  
10      tell you, you will have the indictments back in the  
11      jury room with you during the course of your  
12      deliberation, as well as all the exhibits which have  
13      been admitted into evidence in this case.

14              Now, ladies and gentlemen, the indictments  
15      charge the defendant with two crimes, two separate  
16      and different offenses. The charges in one  
17      indictment are for murder and then the second  
18      indictment are for armed robbery.

19              Now, ladies and gentlemen of the jury, each  
20      indictment charges a separate and distinct offense.  
21      You, as a jury, must decide each indictment  
22      separately on the evidence and the law applicable to  
23      it uninfluenced by your decision as to the other  
24      indictment. The defendant may be convicted or  
25      acquitted on any or all of the offenses charged.

1       You will be asked, ladies and gentlemen of the jury,  
2       to write a separate verdict of guilty or not guilty  
3       for each indictment.

4               Now, in this case, ladies and gentlemen, the  
5       defendant has pled not guilty to these indictments.  
6       And I tell you and charge to you that that plea puts  
7       the burden on the State of South Carolina to prove  
8       the defendant guilty. A person charged with  
9       committing a criminal offense in South Carolina is  
10      never required to prove himself or herself innocent.

11             I further charge you that it is an important  
12      rule of law that the defendant in a criminal trial,  
13      no matter what the seriousness of the charge or  
14      charges may be, will always be presumed to be  
15      innocent of the crimes for which the indictments are  
16      issued unless and until guilt has been proven by  
17      evidence that satisfies you, as the jury, of that  
18      guilt beyond a reasonable doubt.

19             Now, the presumption of innocence does not end  
20      once you all as a jury begin your deliberations, but  
21      rather accompanies the defendant throughout the  
22      trial unless and until you, as a jury, reach a  
23      verdict of guilt based on evidence satisfying you of  
24      that guilt beyond a reasonable doubt.

25             It's often said during criminal trials, ladies

1 and gentlemen, and this example is well worn, that  
2 the presumption of innocence is like a robe of  
3 righteousness that is placed about the shoulders of  
4 a defendant and which remains with the defendant  
5 until it has been stripped from the defendant by  
6 evidence satisfying you, as a jury, of the  
7 defendant's guilt beyond a reasonable doubt.

8 The presumption of innocence is not mere legal  
9 theory. It is not just a legal phrase. It is  
10 rather a substantial right to which every defendant  
11 is entitled unless and until you, as the jury, are  
12 satisfied from the evidence of the defendant's guilt  
13 beyond a reasonable doubt.

14 Now, what is a reasonable doubt, ladies and  
15 gentlemen? As I said, the State has the burden of  
16 proving the defendant guilty beyond a reasonable  
17 doubt.

18 Now, those of you who have either served on  
19 civil jury trials, or may be familiar with the  
20 standard in civil trials, may have been told or know  
21 that in those cases, ladies and gentlemen, it is  
22 only necessary to prove that a fact is more likely  
23 true than not true. It's by what we call by a  
24 greater weight or a preponderance of the evidence.  
25 In criminal cases, the State's proof must be more



1 powerful than that, it must be proof beyond a  
2 reasonable doubt.

3 A reasonable doubt is the kind of doubt, ladies  
4 and gentlemen of the jury, that would cause a  
5 reasonable person to hesitate to act.

6 I further charge to you, ladies and gentlemen,  
7 that proof beyond a reasonable doubt is proof that  
8 leaves you, as the jury, firmly convinced of the  
9 defendant's guilt.

10 I'll explain to you and charge to you further  
11 that there are very few things in this world that  
12 any of us can know with absolute certainty and in  
13 criminal cases, the law does not require proof that  
14 overcomes every possible doubt. If, based on your  
15 consideration of the evidence, you, as the jury, are  
16 firmly convinced that the defendant is guilty of  
17 either or both crimes charged, you must find the  
18 defendant guilty.

19 If, on the other hand, ladies and gentlemen of  
20 the jury, you think there is a real possibility that  
21 the defendant is not guilty, you must give the  
22 defendant the benefit of the doubt and find her not  
23 guilty.

24 Now, ladies and gentlemen, during the course of  
25 this trial, you and I, like the attorneys, have had

1       certain duties to perform during the course of this  
2       trial. I tell you now that as the trial Judge, it  
3       has been my responsibility to preside over the trial  
4       of this case and I've also had the duty to rule on  
5       the admissibility of evidence offered during the  
6       course of this trial.

7               You're to consider only the competent evidence  
8       before you. And if there was any testimony or other  
9       matters ordered stricken from the record in this  
10      case during the course of the trial, I instruct you  
11      that you must disregard that testimony. You're to  
12      only consider the testimony which has been presented  
13      from the witness stand, any exhibits that have been  
14      made a part of the record in this case and any  
15      stipulations between counsel.

16             As I told you earlier, you will have all  
17      exhibits which have been admitted into evidence in  
18      the jury room with you during the course of your  
19      deliberations.

20             Ladies and gentlemen, I have the additional  
21      duty to charge you the law applicable to this case.  
22      And as the presiding Judge, I am the sole Judge of  
23      the law of this case. I tell you that it is your  
24      duty as jurors to accept and apply the law as I  
25      state it to you during the course of this charge.

1           If you already have any ideas as to what the  
2           law is or what the law ought to be and it does not  
3           agree with what I tell you the law is in these  
4           instructions, you must abandon your idea because  
5           under your oath, you are sworn to accept and apply  
6           the law exactly as I state it to you.

7           Now, ladies and gentlemen, in every case tried  
8           in this court before a jury, the jury becomes the  
9           sole and exclusive judges of the facts in a case.

10          I further tell you that a trial judge cannot  
11          intimate, state, comment on or make any statement to  
12          a trial jury about the facts in a case. Since you,  
13          as the jury, are the sole judges of the facts in  
14          this case, you're not to infer from what I have said  
15          during the progress of this trial in ruling on the  
16          admissibility of evidence or otherwise or anything  
17          that I say to you during the course of this charge  
18          that I have any opinion whatsoever about the facts  
19          in this case. The law does not allow a trial judge  
20          to have an opinion about the facts, that is a matter  
21          solely for you, as a jury, to determine. As jurors,  
22          it is your duty to determine the effect, the value  
23          weight and truth of the evidence presented during  
24          the course of this trial.

25          Now, generally, ladies and gentlemen, there are

1 two types of evidence presented during the course of  
2 a trial, what's called direct evidence and  
3 circumstantial evidence. Direct evidence is the  
4 testimony of a person who claims to have actual  
5 firsthand knowledge of a fact, such as an  
6 eyewitness. It is evidence which immediately  
7 establishes the main fact to be proved.

8 On the other hand, circumstantial evidence is  
9 proof of a chain of facts and circumstances  
10 indicating the existence of a fact. It is evidence  
11 which immediately establishes collateral facts from  
12 which the main fact may be inferred. Circumstantial  
13 evidence is based on inference and not on personal  
14 knowledge or observation.

15 Now, ladies and gentlemen of the jury, the law  
16 makes absolutely no distinction between the weight  
17 or value to be given to either direct or  
18 circumstantial evidence, nor is a greater degree of  
19 certainty required of circumstantial evidence than  
20 of direct evidence.

21 You, as a jury, should weigh all of the  
22 evidence in this case. After weighing all of the  
23 evidence, if you are not convinced of the guilt of  
24 the defendant beyond a reasonable doubt, you must  
25 find the defendant not guilty.

1           And necessarily, ladies and gentlemen, you must  
2           determine the credibility of witnesses who have  
3           testified in this case. Credibility simply means  
4           believability. It becomes your duty as jurors to  
5           analyze and to evaluate the evidence and determine  
6           which evidence convinces you of its truth.

7           In determining the believability of witnesses  
8           who have testified in this case, you, as a jury, may  
9           believe one witness over several witnesses or  
10          several witnesses over one witness. You may believe  
11          a part of the testimony of a witness and reject the  
12          remaining part of the testimony of that same  
13          witness. You may believe the testimony of a witness  
14          in its entirety or reject the testimony of a witness  
15          in its entirety. You may consider whether any  
16          witness has exhibited to you any interest, bias,  
17          prejudice or other motive in this case. You may  
18          also consider the appearance and manner of a witness  
19          while on the witness stand.

20          Now, ladies and gentlemen, during the course of  
21          this trial, you've heard testimony and evidence  
22          regarding prior records of certain witnesses who  
23          have testified. I tell you and charge to you that a  
24          past record does not affect the ability of a witness  
25          to testify during the course of a trial. The past

1 record of any witness may only be considered by you,  
2 as a jury, if at all, on the question of determining  
3 the witness' believability. As I said, ladies and  
4 gentlemen, you all as a jury are the sole judges of  
5 the facts of the case and of the believability of  
6 any and all witnesses who have testified in this  
7 case.

8 Now, generally, ladies and gentlemen, as I told  
9 you all during the course of this trial, the rules  
10 of evidence ordinarily do not permit witnesses to  
11 testify to opinions or conclusions. One exception  
12 to this rule exists for witnesses we call expert  
13 witnesses. A witness who by education and  
14 experience has become expert in some art, science,  
15 profession or calling may state an opinion as to  
16 relevant and material matter in which the witness  
17 claims to be an expert and may also state the  
18 reasons for the opinion.

19 You, as a jury, should consider any expert  
20 opinion received in evidence in this case and like  
21 any other evidence, give it the weight that you  
22 think it deserves.

23 If you decide that the opinion of an expert  
24 witness is not based on sufficient education and  
25 experience or if you conclude that the reasons given

1 in support of the opinion are not sound or that the  
2 opinion is outweighed by other evidence, you may  
3 disregard the opinion entirely. An expert witness'  
4 testimony is to be given no greater weight than that  
5 of other witnesses simply because the witness is an  
6 expert. Further, you are not required to except an  
7 expert's opinion even though it is not contradicted.

8 Ladies and gentlemen, I instruct you and  
9 emphasize at this point that the fact that the  
10 defendant did not testify is not a factor to be  
11 considered by you, in any way, in the course of your  
12 deliberation and in your consideration on the  
13 question of guilt or innocence of the defendant. It  
14 must not be considered by you, as a jury, in any  
15 manner whatsoever.

16 A defendant has the constitutional right to  
17 remain silent and the assertion of that right must  
18 not be considered by you in your deliberations.  
19 Under your oath, ladies and gentlemen, you are to  
20 draw no conclusion whatsoever from the fact that the  
21 defendant in this case did not testify. The fact  
22 that this defendant did not testify should not even  
23 be discussed in the jury room.

24 The burden of proof, as I've stated to you, is  
25 on the State of South Carolina. The defendant is

1 not required to prove her innocence. The burden of  
2 proof remains on the State to prove guilt beyond a  
3 reasonable doubt.

4 In order to establish criminal liability,  
5 ladies and gentlemen, criminal intent is required.  
6 For example, the mental state required to be proven  
7 by the State for a particular crime might be  
8 purpose, intent, knowledge recklessness or criminal  
9 negligence.

10 Criminal intent must be proven by the State  
11 beyond a reasonable doubt. Criminal intent is  
12 always a matter that must be determined by the jury  
13 from the circumstances surrounding the situation.

14 Now, there's no way to prove intent to any  
15 mathematical certainty. There's absolutely no way  
16 we can physically dissect a person's brain and  
17 determine what that person had in mind. So the law  
18 says that criminal intent may be inferred from the  
19 circumstances shown to have existed. That is how  
20 you, as a jury, make a determination of whether or  
21 not the element requiring intent was present.

22 It is not necessary to establish intent by  
23 direct and positive evidence, but intent rather may  
24 be established by inference in the same way as any  
25 other fact by taking into consideration the acts of



1 the parties and all other facts and circumstances of  
2 the case.

3 Criminal intent is a mental state. It is a  
4 conscious wrongdoing. It is up to you, as a jury,  
5 to determine what the defendant intended to do based  
6 on the circumstances shown to have existed.  
7 Criminal intent can arise from action or a failure  
8 to act. It may arise from negligence, recklessness  
9 or an indifference to duty or to consequences such  
10 that it is considered by the law to be the  
11 equivalent of criminal intent.

12 Ladies and gentlemen, the defendant in this  
13 case is charged with two indictments as you've been  
14 told. One of those is the crime of murder. I tell  
15 you and charge to you that the State must prove  
16 beyond a reasonable doubt that the defendant killed  
17 another person with malice aforethought.

18 Malice, ladies and gentlemen of the jury, is  
19 hatred, ill will or hostility towards another  
20 person. It is the intentional doing of a wrongful  
21 act without just cause or excuse and with an intent  
22 to inflict an injury or under circumstances that the  
23 law will infer an evil intent.

24 Malice aforethought does not require that  
25 malice exist for any particular time before the act

1 is committed, but rather malice must exist in the  
2 mind of the defendant at least just before and at  
3 the time the act is committed. Therefore, there  
4 must be a combination of the previous evil intent  
5 and the act.

6 Now, ladies and gentlemen of the jury, malice  
7 aforethought may be either expressed or inferred.  
8 Now, these terms expressed and inferred do not mean  
9 different kinds of malice, but merely the manner in  
10 which malice may be shown to exist, that is either  
11 by direct evidence or inference from the facts and  
12 circumstances which are proved.

13 Expressed malice is shown when a person speaks  
14 words which express hatred or ill will for another  
15 or when the person prepared beforehand to do the act  
16 which was later accomplished. For example, lying in  
17 wait for a person or any other acts of preparation  
18 going to show that the deed was within the  
19 defendant's mind would be expressed malice.

20 Also, ladies and gentlemen, malice may be  
21 inferred from conduct showing a total disregard for  
22 human life. Inferred malice may also arise when the  
23 deed is done with a deadly weapon.

24 A deadly weapon is any article, instrument or  
25 substance which is likely to cause death or great

1       bodily harm. Whether an instrument has been used as  
2       a deadly weapon depends on the facts and  
3       circumstances of each case and is a question of fact  
4       for you, as the jury, to determine.

5               Now, ladies and gentlemen, further, if one  
6       intentionally kills another during the commission of  
7       a felony, the inference of malice may arise. I  
8       charge to you and instruct to you that armed robbery  
9       is a felony. If facts are proved beyond a  
10      reasonable doubt sufficient to raise an inference of  
11      malice to your satisfaction, this inference would be  
12      simply an evidentiary fact to be taken into  
13      consideration by you, as the jury, along with all  
14      other evidence in this case and you may give it the  
15      weight that you decide it should receive.

16             Ladies and gentlemen, the defendant is also  
17      charged with the crime of armed robbery. I charge  
18      to you that in order to prove this offense, the  
19      State must first prove beyond a reasonable doubt  
20      that the defendant took personal property from the  
21      person or presence of another person.

22             Property is in the presence of a person if it  
23      is within the person's reach, inspection,  
24      observation or control so that the person could, if  
25      not overcome with violence or prevented by fear,

1 keep possession of the property.

2 The State must also prove beyond a reasonable  
3 doubt that the defendant carried the property away  
4 intending to permanently deprive the owner of the  
5 property and to keep the property for the  
6 defendant's own use. The slightest removal of the  
7 property or the complete possession of the property  
8 even for an instant by the defendant is sufficient  
9 to show a taking and carrying away of the property.  
10 The taking and carrying away of the property must  
11 have been done with violence or by putting the owner  
12 of the property in fear of violence.

13 Finally, ladies and gentlemen, the State must  
14 prove beyond a reasonable doubt that the defendant  
15 was armed with a deadly weapon during the robbery.  
16 Again, a deadly weapon is any article, instrument or  
17 substance which is likely to cause death or great  
18 bodily harm. Whether an instrument has been used as  
19 a deadly weapon depends on the facts and  
20 circumstances of each case and is a question of fact  
21 for you as the jury.

22 Ladies and gentlemen, you all have heard this  
23 concept referred to during closing arguments and I  
24 tell you now about the concept of the hand of one is  
25 the hand of all. If a crime is committed by two or

1 more people who are acting together and committing a  
2 crime, the act of one is the act of all. A person  
3 who joins with another to accomplish an illegal  
4 purpose is criminally responsible for everything  
5 done by the other person which occurs as a natural  
6 consequence of the acts done in carrying out the  
7 common plan and purpose.

8 Ladies and gentlemen, if two or more people are  
9 together, acting together, assisting each other in  
10 committing the offense, the act of one is the act of  
11 all, or, as is sometimes said, the hand of one is  
12 the hand of all.

13 Prior knowledge that a crime is going to be  
14 committed without more is not sufficient to make a  
15 person guilty of that crime. Mere knowledge that  
16 another person is going to commit a crime, even if  
17 the defendant is present when the crime is  
18 committed, is not sufficient to convict the  
19 defendant as a principal.

20 Guilt as a principal is shown by actual or  
21 constructive presence at the scene as a result of  
22 prior arrangement. Therefore, a finding of a prior,  
23 arranged plan or common scheme is necessary for a  
24 finding of guilt as a principal. The State must  
25 prove beyond a reasonable doubt by competent

1 evidence the theory of the hand of one is the hand  
2 of all.

3 Ladies and gentlemen, a principal in a crime is  
4 one who either actually commits the crime or is  
5 present aiding, abetting or assisting in committing  
6 the crime. When a person does an act in the  
7 presence of and with the assistance of another, the  
8 act is done by both. Where two or more acting with  
9 a common plan or intent are present at the  
10 commission of a crime, it does not matter who  
11 actually commits the crime, all are guilty, the hand  
12 of one, again, ladies and gentlemen, is the hand of  
13 all.

14 Now, present at the commission of a crime means  
15 to be sufficiently near to aid and abet and assist  
16 in the commission of the crime. However, mere  
17 presence at the scene of a crime is not sufficient  
18 to convict one as a principal on the theory of  
19 aiding and abetting.

20 Intent is also a necessary element for there  
21 must have been a common design or intent to commit  
22 the crime and the crime must have been committed  
23 pursuant thereto with the person aiding or abetting  
24 by some overt act.

25 Intent means intending the result which

1       actually occurs not accidentally or involuntarily.  
2       Intent may be shown by acts and conduct of the  
3       defendant and other circumstances from which you, as  
4       a jury, may naturally and reasonably infer intent.  
5       The State must prove these elements beyond a  
6       reasonable doubt.

7               Ladies and gentlemen, during the course of this  
8       trial -- and there are just a couple more matters I  
9       want to go over with you, a couple of things. One  
10      is you may have heard some testimony during the  
11      course of this trial about prior inconsistent  
12      statements made by some of the witnesses or  
13      statements which are not consistent with the  
14      witness' present testimony here in court.

15             Ladies and gentlemen, you, as a jury, may use  
16      that evidence to decide whether to believe the  
17      witness. You may also use the evidence of the  
18      earlier contradictory statements to determine the  
19      truth of those statements. It is up to you, as a  
20      jury, to decide whether to believe the earlier  
21      statements or the testimony given at trial.

22             Now, if a witness is shown to have knowingly  
23      testified untruthfully concerning any material  
24      matter, you, as a jury, may consider this in  
25      determining whether to trust the witness' testimony

1 as to other matters. You may reject all testimony  
2 of that witness or give all or part of the testimony  
3 the weight you think it deserves. Again, ladies and  
4 gentlemen, as I instructed you all, it is your job  
5 and duty to weigh the credibility of all the  
6 witnesses who have testified in this case.

7 Now, ladies and gentlemen, also, during the  
8 course of this trial, you heard testimony regarding  
9 the potential sentences of anyone convicted of the  
10 crimes for which the indictments have been issued  
11 against the defendant. As I instructed you during  
12 that portion of the trial, ladies and gentlemen, you  
13 may consider those potential sentences only as they  
14 relate to any bias or motive on the part of that  
15 witness who was testifying.

16 You may not, under your oath, ladies and  
17 gentlemen, consider at all any possible sentences  
18 for these two indicted crimes as they relate to the  
19 defendant. They should have no bearing at all on  
20 your determination of whether the defendant is  
21 guilty or not guilty of these offenses.

22 Ladies and gentlemen, as I instructed you  
23 during the course of the trial, you may have heard  
24 some evidence and testimony regarding prior bad acts  
25 of witnesses. You may have also heard some



1 testimony related to any prior bad acts of the  
2 defendant, Ms. Rice.

3 I instruct you now, ladies and gentlemen, that  
4 you can only use that testimony as it relates to  
5 viewing the credibility of the witness who  
6 testified. You cannot and must not under your oath  
7 use any prior bad acts on the part of the defendant  
8 as evidence or consideration on her guilt or not  
9 guilty status on these two indicted crimes, ladies  
10 and gentlemen.

11 Now, Madame Forelady, it will be your job,  
12 during the course of deliberations, to basically  
13 lead the discussions to make sure that all of the  
14 jurors who are deliberating in that room with you  
15 get to have a say about all of the evidence.

16 Madame Forelady, it will be further your duty,  
17 should the jury have any questions at all, to  
18 communicate those to the Court. You would write  
19 those questions down, Madame Forelady, on the paper  
20 provided in the jury room for you and we'll return  
21 and try to deal with those questions if we need to.

22 Lastly, Madame Forelady, it will be your job to  
23 fill out the verdict form and sign the indictments.  
24 The verdict form is fairly simple, Madame Forelady.  
25 It has two questions. The first one is: We, the

1 jury, find as to the defendant, Carmen Rice, on the  
2 charge of murder, and there will be a place for you  
3 to check either guilty or not guilty. And,  
4 secondly, ladies and gentlemen and Madame Forelady,  
5 there's a place for you to mark: We, the jury, find  
6 as to the defendant, Carmen Rice, on the charge of  
7 armed robbery, again either guilty or not guilty.

8 Madame Forelady, once the jury has reached a  
9 unanimous verdict, you all 12 must agree on each  
10 verdict, you will sign this verdict form and let the  
11 bailiff know that you have reached a verdict and  
12 we'll return to receive your verdict.

13 Madame Forelady, before you actually leave,  
14 we'll also get you to sign the indictments issued in  
15 this case.

16 Ladies and gentlemen, that concludes my charge  
17 on the law to you all. Very shortly we're going to  
18 send you out, make sure we have all of the exhibits  
19 together which have been admitted into evidence in  
20 this case and you will have those back in the jury  
21 room with you.

22 When you go back to your jury room, ladies and  
23 gentlemen, I'm going to ask that you not begin  
24 deliberations, don't begin talking about the case  
25 until the bailiffs have brought you the exhibits.

1       Once they bring you the exhibits, they'll also have  
2       the indictments and the verdict form and, at that  
3       point, you can begin your deliberations.

4             My two alternates, at that point, I will also  
5       pull you both outside of the jury room. We'll put  
6       you some place else while the jury is deliberating.

7             Obviously, only 12 can deliberate on a jury and  
8       you two were here just in case something happened to  
9       our regular 12 jurors. I'm going to keep you all  
10      around just to make sure nothing else happens during  
11      the time that the jury is deliberating, that no  
12      problems come up because if something should happen,  
13      you all would be here and be available to continue  
14      your deliberations, actually start your  
15      deliberations over with the new juror.

16            Ladies and gentlemen, let me check with counsel  
17      and see if there's anything I left off or forgot to  
18      tell you and then we'll send you all out to begin  
19      your deliberations. As I said, lunch should be here  
20      shortly for you. We'll let you all eat lunch while  
21      you begin your deliberations and we'll, at that  
22      point, break down to await your verdict.

23            Counsel, anything else?

24            **MR. MEADORS:** Nothing from the State, no, sir.

25            **MR. MOBLEY:** Yes, Your Honor, I have some

1 matters, but...

2 (Whereupon, a bench conference was held off  
3 the record, in the presence of the jury, but out of  
4 the hearing of the jury.)

5 **THE COURT:** All right. Thank you, counsel.

6 Ladies and gentlemen, I'm going to ask if you  
7 all will return to the jury room, do not, again,  
8 begin your deliberations until the bailiffs bring  
9 the exhibits back there to you. We'll check those  
10 and make sure we have everything and they'll be sent  
11 back there to you very shortly. Thank you again for  
12 your attention.

13 (The jury retires to the jury room.)

14 **THE COURT:** All right. Counsel, I'll get y'all  
15 to check the exhibits and we'll send them back.

16 Mr. Mobley, you wanted to just place on the  
17 record again, make sure we've got your exception to  
18 the charge on hand of one, I think.

19 **MR. MOBLEY:** Well, first, Your Honor, also,  
20 during Mr. Lupton's opening on the law, I objected  
21 to him making statements that the jury owed Hilda  
22 Brennan justice. I would ask that the jury be given  
23 a curative instruction on that. I believe that that  
24 comment improperly injected passion or sympathy to  
25 the trial of this case. And it was an improper

1 statement or comment during the opening on the law  
2 by the prosecution in this case, Your Honor. That's  
3 my first request.

4 **THE COURT:** I told you I think his actual words  
5 were -- you asked him to bring -- he didn't say that  
6 they owed them justice, but I did not think it was  
7 an improper comment at the time and certainly  
8 nothing that's not cured by the overall instruction  
9 to them.

10 **MR. MOBLEY:** Thank you, Your Honor.

11 Next, I would take exception to the charge of  
12 the hand of one is the hand of all in this case. I  
13 don't think the evidence and the facts in the record  
14 warrant a justified charge.

15 Additionally, Your Honor, in the event that the  
16 Court overrules my exception to that charge, I would  
17 submit to the Court and ask the Court to also charge  
18 on accessory before the fact of armed robbery. I  
19 think the jury could believe that Iris Bryant was  
20 the shooter, but earlier Carmen Rice participated  
21 with her in the planning of robbing Bernard Brennan  
22 and having no knowledge that a murder may take place  
23 or what may be involved and that is another  
24 reasonable inference they could draw from the  
25 evidence whether they believe a portion of the

1 testimony. If they believe those facts, that would  
2 support a verdict of guilty of accessory before the  
3 fact of armed robbery, Your Honor.

4 And I would ask if the Court -- if the Court is  
5 still inclined to keep in the hand of one, hand of  
6 all charge, number one, give the lesser charge of  
7 accessory before the fact of armed robbery and,  
8 number two, also give a King charge along with that  
9 instructing to the jury to resolve any doubt about  
10 the two charges in favor of the lesser offense on  
11 behalf of the defendant. That's all I have, Your  
12 Honor.

13 **THE COURT:** I respectfully deny the motion. I  
14 understand your -- I went back and looked at it, I  
15 think Mr. Lupton was -- even during his opening -- I  
16 just see no basis to charge accessory before the  
17 fact, but I note your exception to the charge on  
18 hand of one, the hand of all.

19 **MR. MOBLEY:** Thank you, Your Honor.

20 **THE COURT:** Thank you, sir.

21 All right. I'll get both sides, if y'all will  
22 do that, check the exhibits. We'll send those down  
23 along with the indictments and the verdict form.  
24 We'll go ahead and take the defendant back down.  
25 All right, we'll stand down until 2:00.

1 (Pause.)

2 **MR. LUPTON:** Just for the record, defense and  
3 State has looked through the exhibits to go back to  
4 the jury. And both the State and the defense agree  
5 that they are in proper order, that they are all  
6 there and there's nothing in there that should not  
7 be included, that they were not altered in any way.

8 **MR. MOBLEY:** That's correct.

9 (The jury commences their deliberations at  
10 1:25 p.m.)

11 (A recess transpired.)

12 **THE COURT:** Mr. Meadors and Mr. Mobley, the  
13 jury sent a note, they're interested in hearing Ms.  
14 Iris Bryant's testimony. I'm going to give the  
15 court reporter a moment or two to T that up and then  
16 we'll bring them back in here and let them listen to  
17 that again.

18 **MR. MOBLEY:** What portion do they want to hear?

19 **THE COURT:** They just said her testimony.

20 **MR. MOBLEY:** So you're going to play that.

21 **THE COURT:** That was the note.

22 **MR. MOBLEY:** I would just think, with all  
23 respect to the Court, I mean, I wouldn't have any  
24 objection -- I mean, that's -- she had a lot of  
25 testimony. The question might be more convenient I

1 think --

2           **THE COURT:** I understand. Their statement in  
3 the letter, which is a Court's Exhibit, is they want  
4 to rehear Iris' testimony.

5           **MR. MOBLEY:** Thank you, Your Honor.

6           **THE COURT:** All right. Madame Clerk, I'm going  
7 to ask if you'll ask the jury to bear with us for a  
8 moment to get that T'd back up and we'll bring them  
9 back out here as soon as she gets that done.

10           All right. We'll stand down for a few minutes  
11 while she does that.

12           (Pause.)

13           (Court's Exhibit Number 10, jury note, was  
14 marked for identification purposes.)

15           **THE COURT:** All right. Counsel, we discussed  
16 back in the hallway the next set of questions from  
17 the jury. I'm going to mark that Court's Exhibit  
18 Number 11. As to all of these, I think the only  
19 thing I know to tell them is that they've received  
20 all of the evidence and testimony. I can't point  
21 them to or comment on specific things unless they  
22 point out specific witnesses that they wish to  
23 rehear their testimony on those matters, unless  
24 anybody has an objection to that?

25           **MR. MOBLEY:** No objection, not from the



1 defense, Your Honor.

2 **THE COURT:** Anything, Mr. Lupton?

3 **MR. LUPTON:** Oh, I'm sorry.

4 **MR. MEADORS:** No, sir.

5 **THE COURT:** All right, sir. We'll bring them  
6 back in then.

7 (The jury returns to the courtroom at 3:10  
8 p.m.)

9 **THE COURT:** Thank you, ladies and gentlemen. I  
10 appreciate your patience. I apologize for being  
11 late bringing you out here. There were some other  
12 things we were dealing with not related to this case  
13 that I had to get out of here before we could  
14 actually bring you all back into the courtroom.

15 Madame Forelady, I have two notes from the  
16 jury. The first one is, may you see Iris', and I  
17 take that to mean Ms. Iris Bryant's, testimony?  
18 Obviously, I can't show you a copy of it, but the  
19 court reporter has T'd back up, so to speak, her  
20 testimony and will play that back for you.

21 I'm not sure, and I don't want to ask and don't  
22 want you to tell me, if there's something specific  
23 you're looking for. If, Madame Forelady, there's a  
24 part of the testimony that you were waiting for and  
25 you hear that and you don't want to hear the rest of

1       it, you can just tell me and we'll stop it then,  
2       otherwise we'll just play her entire testimony.

3               As to your second note, Madame Forelady, there  
4       were actually three separate questions on that.  
5       Respectfully, I cannot point to you specific things  
6       about the evidence or testimony. I cannot make a  
7       comment on those or point y'all to the specific  
8       facts about that.

9               You've received the evidence and testimony.  
10       You can either go by your collective memory of those  
11       matters or if there's specific witnesses that you  
12       wish to hear from again, like with Ms. Iris Bryant's  
13       testimony, we'll be glad to play that back for you.

14              I just -- I cannot, as a trial Judge, comment  
15       on those facts to you, but we'll be glad to, if you  
16       can point us to specific witnesses that you want to  
17       hear from, replay that testimony for you.

18              At this point, the court reporter is ready to  
19       replay Ms. Bryant's testimony and we'll start that  
20       process. Thank you.

21              (Whereupon, a portion of Iris Bryant's  
22       testimony was played for the jury.)

23              **THE COURT:** Madame Court Reporter, you can stop  
24       it now.

25              Madame Forelady, you indicated that's all the

1 jury wanted to hear; is that right?

2 **FORELADY:** Yes, sir?

3 **THE COURT:** Thank you, Madame Forelady. I'm  
4 going to let you return to the jury room and  
5 continue your deliberations.

6 **FORELADY:** May we hear, I think, it's the  
7 waitress, Heidi?

8 **THE COURT:** Ms. Feagin's testimony?

9 **FORELADY:** As far as the receipt.

10 **THE COURT:** Yes, ma'am. I'm going to ask if  
11 you all can return to the jury room. The reason why  
12 is that it does -- the court reporter actually has  
13 to find those places on the computer and on the tape  
14 and if you give us a couple of minutes, we can do  
15 that for you. Thank you, ma'am.

16 (The jury retires to the jury room to  
17 continue their deliberations at 3:42 p.m.)

18 (Pause.)

19 **THE COURT:** Okay. We're ready to bring the  
20 jury back out.

21 (The jury returns to the courtroom at 3:48  
22 p.m.)

23 **THE COURT:** Thank you, ladies and gentlemen.

24 Madame Forelady, members of the jury, I think  
25 we found, Madame Forelady, what you indicated the

1 jury wanted to rehear. I'm going to let the court  
2 reporter replay that and you just let me know if  
3 that is it or if it isn't it. Thank you.

4 (Whereupon, a portion of Heidi Feagin's  
5 testimony was played for the jury.)

6 **THE COURT:** Is that what you needed?

7 **FORELADY:** Thank you.

8 **THE COURT:** Thank you, ladies and gentlemen.

9 (The jury retires to the jury room to  
10 continue their deliberations at 3:51 p.m.)

11 **THE COURT:** All right. Counsel, anything  
12 further before we stand down?

13 **MR. MOBLEY:** No, Your Honor.

14 **MR. MEADORS:** Nothing from the State. Thank  
15 you.

16 **THE COURT:** All right. We'll stand down.

17 (Court's Exhibit Number 11, jury note, was  
18 marked for identification purposes.)

19 (A recess transpired.)

20 **THE COURT:** Counsel, I've shared with  
21 Mr. Meadors and Mr. Mobley the note from the jury.  
22 I'm going to, I think, at this point, bring them  
23 back out and Allen charge them. They've indicated  
24 that they're having difficulty reaching a decision.  
25 Anything from either side as to that?

1           **MR. MEADORS:** No, sir.

2           **MR. MOBLEY:** Nothing from the defense, Your  
3 Honor.

4           **THE COURT:** Thank you, counsel. We'll bring  
5 the jury back out.

6                   (The jury returns to the courtroom at 5:08  
7 p.m.)

8           **THE COURT:** Madame Forelady, I've received your  
9 note from the jury and understand, based on your  
10 note, that the jury is having difficulty reaching a  
11 decision and that you believe, at this point, you've  
12 referred to yourself as a hung jury.

13           Ladies and gentlemen, I'm going to give you  
14 further instructions. I ask that you listen to  
15 these instructions and then I'm going to allow you  
16 to continue your deliberations. I will remind you  
17 to continue your deliberations with the charge on  
18 the law that I gave you all at the close of the  
19 case.

20           Ladies and gentlemen, as I, obviously,  
21 instructed you all earlier, your verdict must be  
22 unanimous. There's no question about that. And I  
23 tell you and charge to you that when a matter is in  
24 dispute, it isn't always easy for even two people to  
25 agree. So when, obviously, 12 people must agree on

1 something, it becomes even more difficult.

2 In most cases, ladies and gentlemen, absolute  
3 certainty cannot be reached or expected. However,  
4 you all as a jury in this case have a duty to make  
5 every reasonable effort to reach a unanimous  
6 verdict. In doing this, you should consult with one  
7 another, express your own views to each other and  
8 listen to the opinions of your fellow jurors, tell  
9 each other, ladies and gentlemen, how you feel and  
10 why you feel that way, discuss your differences with  
11 open minds.

12 Although, the verdict of the jury must be  
13 unanimous, every one of you has the right to your  
14 own opinion. The verdict you agree to must be your  
15 own verdict, the result of your own convictions and  
16 you should not give up any firmly held beliefs  
17 merely to be in agreement with your fellow jurors.

18 The majority, ladies and gentlemen, should  
19 consider the minority's position. And the minority  
20 should consider the majority's position. You, as a  
21 jury, should carefully consider and respect the  
22 opinions of each other and reevaluate your position  
23 for reasonableness, correctness and impartiality.  
24 You must lay aside all outside matters and reexamine  
25 the questions before you based on the law and the

1 evidence in this case.

2 Ladies and gentlemen of the jury, if you are  
3 unable to agree on a verdict in this case, I will  
4 have to declare a mistrial. And, in that case, it  
5 does not mean that anybody wins, it just means that  
6 at some future date and time, we will have to try  
7 this same case with some other jury sitting where  
8 you are sitting now, the same participants, ladies  
9 and gentlemen, will come and the same lawyers will  
10 ask, basically, the same questions and get,  
11 basically, the same answers and we will go through  
12 the whole process once again.

13 Ladies and gentlemen of the jury, you all were  
14 selected in the same manner and from the source as  
15 any future jury will be. And there's no reason for  
16 this Court to suppose that the case will ever be  
17 tried or submitted to 12 more intelligent,  
18 impartial, conscientious and competent jurors than  
19 yourselves or that more or clearer evidence will be  
20 produced on one side or the other.

21 Ladies and gentlemen, having told you all that,  
22 I will ask, at this point, send you back to continue  
23 your deliberations at this point with those thoughts  
24 in mind.

25 Ladies and gentlemen, once again, I just

1 reiterate to you to apply the charge on the law that  
2 I gave you all at the conclusion of the case to the  
3 facts as you all will find those facts during the  
4 course of your deliberations, but I do ask at this  
5 point that you bear in mind the charge that I just  
6 gave you as well.

7 Madame Forelady, I'm going to let you all  
8 continue your deliberations at this point. Thank  
9 you.

10 (The jury retires to the jury room to  
11 continue their deliberations at 5:13 p.m.)

12 **THE COURT:** Counsel, anything else before we  
13 break?

14 **MR. MEADORS:** No, sir. I think, as the Judge  
15 was talking, I had indicated to them that the way I  
16 took it, they might be hung or have indicated hung.  
17 I don't know. I don't guess I have anything.

18 **THE COURT:** Mr. Mobley, I didn't mean to cut  
19 you off. I'm sorry.

20 **MR. MOBLEY:** That's okay, Judge. Nothing from  
21 the defense, Your Honor.

22 **THE COURT:** All right. We'll stand down and  
23 give them a little more time to deliberate.

24 (Court's Exhibit Number 12, jury note, was  
25 marked for identification purposes.)



1 (A recess transpired.)

2 **THE COURT:** Counsel, I understand the jury has  
3 reached a verdict. Are both sides ready to receive  
4 the jury?

5 **MR. MEADORS:** The State's ready.

6 **MR. MOBLEY:** The defense is ready, Your Honor.

7 **THE COURT:** Thank you, sirs. We'll bring the  
8 jury out.

9 (The jury returns to open court to report  
10 its verdict at 6:03 p.m.)

11 **THE COURT:** Madame Forelady, members of the  
12 jury, I understand you have reached a verdict; is  
13 that correct?

14 **FORELADY:** We have.

15 **THE COURT:** Madame Forelady, if you'll pass the  
16 verdict form to the bailiff.

17 (The clerk hands the verdicts to the Judge.)

18 **THE COURT:** Counsel, the verdict form appears  
19 to be in proper order. And I'll ask if the  
20 defendant will please rise. And, Madame Clerk, if  
21 you will publish the verdict.

22 **THE CLERK:** Indictment number 2004-GS-40-8754,  
23 State of South Carolina versus Carmen Rice, it's an  
24 indictment for murder. We, the jury, as to the  
25 defendant, Carmen Rice, on the charge of murder,

1 find the defendant guilty.

2 And indictment 2004-GS-40-8755, the State of  
3 South Carolina versus Carmen Rice, we, the jury --  
4 it's an indictment for armed robbery. We, the jury,  
5 find as to the defendant, Carmen Rice, on the charge  
6 of armed robbery, guilty.

7 This is signed foreperson, Dianne Mancini,  
8 April 8th, 2005.

9 Madame Foreperson, are these your verdicts and  
10 the verdicts of the entire jury?

11 **FORELADY:** Yes, ma'am.

12 **THE COURT:** Thank you, ladies and gentlemen.  
13 Madame Clerk, thank you.

14 Mr. Mobley, anything further from the defense?

15 **MR. MOBLEY:** I would request to poll the jury,  
16 Your Honor.

17 **THE COURT:** Yes, sir.

18 Madame Clerk, if you will, please poll the  
19 jury.

20 **THE CLERK:** Ladies and gentlemen of the jury,  
21 I'm going to ask you two questions regarding your  
22 verdict, if you'll just answer yes or no to both  
23 questions.

24 Dianne Mancini, were these your verdicts?

25 **JUROR:** Yes.

1           **THE CLERK:** Are they still your verdicts?

2           **JUROR:** Yes.

3           **THE CLERK:** Mary Molinaroli, were these your  
4 verdicts?

5           **JUROR:** Yes.

6           **THE CLERK:** Are they still your verdicts?

7           **JUROR:** Yes.

8           **THE CLERK:** Christine Wallace, were these your  
9 verdicts?

10          **JUROR:** Yes.

11          **THE CLERK:** Are they still your verdicts?

12          **JUROR:** Yes.

13          **THE CLERK:** Linda Dickerson, were these your  
14 verdicts?

15          **JUROR:** Yes.

16          **THE CLERK:** Are they still your verdicts?

17          **JUROR:** Yes.

18          **THE CLERK:** Cynthia Simons, were these your  
19 verdicts?

20          **JUROR:** Yes.

21          **THE CLERK:** Are they still your verdicts?

22          **JUROR:** Yes.

23          **THE CLERK:** Althea Davis, were these your  
24 verdicts?

25          **JUROR:** Yes.

1           **THE CLERK:** Are they still your verdicts?

2           **JUROR:** Yes.

3           **THE CLERK:** Lisa Hanna, were these your  
4 verdicts?

5           **JUROR:** Yes.

6           **THE CLERK:** Are they still your verdicts?

7           **JUROR:** Yes.

8           **THE CLERK:** Gail Brazell, were these your  
9 verdicts?

10          **JUROR:** Yes.

11          **THE CLERK:** Are they still your verdicts?

12          **JUROR:** Yes.

13          **THE CLERK:** Michael Glenn, were these your  
14 verdicts?

15          **JUROR:** Yes.

16          **THE CLERK:** Are they still your verdicts?

17          **JUROR:** Yes.

18          **THE CLERK:** Anastacio Salvador, were these your  
19 verdicts?

20          **JUROR:** Yes.

21          **THE CLERK:** Are they still your verdicts?

22          **JUROR:** Yes.

23          **THE CLERK:** Cedric Gunter, were these your  
24 verdicts?

25          **JUROR:** Yes.

1           **THE CLERK:** Are they still your verdicts?

2           **JUROR:** Yes.

3           **THE CLERK:** Georgia Burton, were these your  
4 verdicts?

5           **JUROR:** Yes.

6           **THE CLERK:** Are they still your verdicts?

7           **JUROR:** Yes.

8           **THE CLERK:** The jury has been polled, Your  
9 Honor.

10          **THE COURT:** Thank you.

11               Anything further, counsel, before we dismiss  
12 the jury?

13          **MR. MOBLEY:** No, Your Honor.

14          **THE COURT:** Ladies and gentlemen of the jury,  
15 your service is complete and I appreciate your  
16 service. I know this is not easy, nothing ever  
17 really is that we deal with up here. And I know we  
18 pluck you all out on some Monday morning and bring  
19 you up here to deal with these matters and I'm  
20 always impressed with the patience and diligence  
21 and, quite honestly, the sincerity of which you all  
22 do your duty week in and week out.

23               I appreciate your service so much, ladies and  
24 gentlemen, this week. I know both sides also  
25 appreciate the fairness and attention that you've

1           given this case.

2           Y'all are done for the week. Your checks will  
3           be mailed to you. If anybody needs a statement from  
4           the clerk's office for work purposes, if you'll wait  
5           in the jury room, madame clerk will get that to you  
6           very shortly.

7           Ladies and gentlemen, I know, given the hour,  
8           any young ladies on the jury, if you all wish to  
9           wait, as soon as we can free up some deputies,  
10          somebody will be available to escort you to your  
11          vehicles.

12          Ladies and gentlemen, again, thank you so much.  
13          If you'll just -- if you need or want somebody to  
14          walk you to your car, if you'll wait in the jury  
15          room. But, ladies and gentlemen, I so much  
16          appreciate your service this week and thank you  
17          again for your hard work on this case. Thank you.

18                 (The jury was excused.)

19                 **THE COURT:** Mr. Mobley, anything further before  
20          we proceed?

21                 **MR. MOBLEY:** Yes, Your Honor. First, I would  
22          like to renew all previous motions and objections at  
23          this time.

24                 Secondly, Your Honor, I would move for -- that  
25          the verdict be set aside in this matter or, in the

1       alternative, I'd like the defendant to be granted a  
2       new trial. And then renew all of my motions for a  
3       directed verdict of not guilty, Your Honor.

4               **THE COURT:** Thank you, sir. For the previously  
5       stated reasons on the record, I respectfully deny  
6       the defense's motions as to a new trial, as well as  
7       all of the previous motions that were made. We'll  
8       just leave it at that and let the record stand for  
9       themselves as to the grounds offered for those  
10      motions and the reasons stated by the Court on those  
11      rulings.

12             **MR. MOBLEY:** Thank you, Your Honor.

13             **THE COURT:** Thank you, sir.

14             Anything else before we go into sentencing?

15             **MR. MEADORS:** No, sir.

16             **THE COURT:** All right. I'll be glad to hear  
17      from both sides as to sentencing.

18             **MR. MEADORS:** Beg the Court's indulgence.

19             **THE COURT:** Yes, sir.

20             (Pause.)

21             **MR. MEADORS:** Your Honor, I'll be very brief.  
22      Of course, the jury's spoken. Hilda's in the  
23      background very emotional. I told her she had the  
24      right to say something. She's just extremely  
25      emotional. And I think -- I told her I would just

1 speak for her, Your Honor, if that's okay.

2 She obviously misses Bernard. She, as Your  
3 Honor has seen, been here throughout the trial. And  
4 she is a most gracious lady. And I just want to  
5 thank her for being here.

6 Several other family members have been here,  
7 her brother, William Yarborough, the reverend, has  
8 also been here in and out. And we just bless her.  
9 She just misses Bernard.

10 **MS. BRENNAN:** I just want to say that I want to  
11 thank everybody that has helped me and assured me  
12 that this -- the death of my husband would not just  
13 be forgotten. And I lived and I waited and I do  
14 forgive them. And I hope my husband can rest in  
15 peace now because he's gone and he's not coming back  
16 to me. And I'm sorry that we had to go through all  
17 of this just for me to feel better and for my  
18 family, because we all hurt. We miss him. And it's  
19 not going to bring him back.

20 But I do forgive Carmen. I forgive you. I do.  
21 And I just -- I do forgive them and I pray for them,  
22 but hopefully now we can go on. All of us can just  
23 take the bull by the horn and accept what we have to  
24 do because my life has changed, too. And I know all  
25 of our lives have been changed. And I hope things



1 can work out because the Lord, he's the Master and  
2 he will protect all of us. Thank you.

3 **THE COURT:** Thank you, ma'am.

4 **MR. MEADORS:** Dianne Peterson is back here,  
5 too. I just want to thank her for being here.

6 Your Honor, in close, I just want to thank the  
7 sheriff's department and the Cold Case Squad and for  
8 how they handled this. Thank you.

9 **LIEUTENANT SMITH:** I think the case spoke for  
10 itself. I don't have anything further to say.

11 **THE COURT:** Thank you, sir.

12 Mr. Mobley.

13 **MR. MOBLEY:** May it please the Court, Your  
14 Honor. I would just like the Court to take into  
15 account that my client has no prior criminal history  
16 whatsoever. She's 27 years old. She has a  
17 seven-year-old son. To her immediate right is her  
18 husband, Joe Young, who's in the military. And she  
19 also has other family in the courtroom present, Your  
20 Honor.

21 On the advice of counsel, my client will not be  
22 addressing the Court. There's always the risk that  
23 -- that in the event of an appeal that they're  
24 successful, that statements that are made might be  
25 used against her at a later date. So my client,

1 under the advice of counsel, will not be addressing  
2 the Court.

3 But I respectfully request the Court to impose  
4 the minimum sentence in this case. I'm not certain,  
5 at this time, if her husband would like to address  
6 the Court.

7 **MR. YOUNG:** It's not her. That's about it.

8 **MR. MOBLEY:** That's all I would have, Your  
9 Honor.

10 **THE COURT:** Thank you, sir.  
11 Anything further, Mr. Meadors, from the State?

12 **MR. MEADORS:** No, sir. Thank you, Judge.

13 **THE COURT:** Thank you, sir.

14 Ms. Rice, on your indictment for murder,  
15 indictment 04-8754, I sentence you to a term of  
16 life. Concurrent to that, I sentence you on  
17 indictment 04-8755 to a term of 30 years. Thank  
18 you, ma'am.

19 (For purposes of the record, Court's Exhibit  
20 Number 9, jury note, was previously marked for  
21 identification purposes.)

22

23 **END OF PROCEEDINGS**

24

25

## C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Richland County, South Carolina, on the 4th of April, 2005.

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

November 11, 2005



Stacy L. Sheppard  
Circuit Court Reporter

## FORM 5

STATE OF SOUTH CAROLINA )

County of Richland )Carmen Rice, 308637 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

**2017 C1400 6361**

APPLICATION FOR

POST-CONVICTION RELIEF

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2017 OCT 18 PM 3:03

RICHLAND COUNTY  
FILED**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Leath Correctional Institution
2. Name and location of Court which imposed sentence Richland County Court of General Sessions, Columbia, SC
3. Name(s) of co-defendant(s) (if any) Aris Bryant
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 04-GS-46-8754, 8755
  - (b) Charges-Murder, Armed Robbery

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 8, 2005
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Reversed lower court
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. 10/5/07
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Rice, 375 S.C. 302, 652 S.E. 2d 409
- ii. (Ct. App 2007)
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Appeal  
trial counsel's ineffective representation(b) Judge's failure to insure Carmen Rice received fair trial(c) Violation of Carmen Rice's constitutional rights -

11. State concisely and in the same order the facts which support each of the grounds set out in (10): including newly found issues.

(a) Counsel failed to properly insist and/or present(b) evidence that Rice had no physical or direct(c) evidence link her to crime and appeal counsel  
further failed to raise such issue of appeal, which  
resulted in a procedural default in Applicant's Habeas  
Corpus

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? Yes(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. Appealii. Petition for Rehearingiii. Petition for Writ of Certiorariiv. P.C.R.v. Petition for Writ of Certiorari over  
(b) the name and location of the Court in which each was filed:i. South Carolina Supreme Courtii. Columbia, SC, Supreme Courtiii. South Carolina Supreme Courtiv. Richland County- SC Court of Appeals

13. vi. Petition for Writ of Certiorari  
S.C. Supreme Court  
Denied 11/4/15

13. vii. Petition for Habeas Corpus  
U.S. District  
Denied 9/26/17

(c) the disposition thereof:

- i. Lower court affirmed
- ii. Denied
- iii. Denied
- iv. 8/26/08 Denied  
Petition granted

(d) the date of each such disposition:

- i. 10/5/07
- ii. 1/2/08
- iii. 12/4/08
- iv. 8/22/11  
4/8/15

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

- i. Stater v. Rice, 315 S.C. 302, 652 S.E.2d 409
- ii. (Ct. App. 2007)
- iii. Unpublished
- iv. "

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Not specific ground

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

(a) which grounds have been presented:

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

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_



16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Counsel simply failed to present such ground  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

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

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

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

(a) the name and address of each attorney who represented you:  
 i. Trial: John T. Mobley, Chris Hart, Columbia, SC  
Appeal: Robert M. Dudek, Columbia, SC  
 ii. \_\_\_\_\_  
 iii. Writ of Certiorari: Katherine H. Hudgens, Columbia, SC  
 (b) the proceedings at which each such attorney represented you:  
 i. Trial  
 ii. Appeal  
 iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

Reconsideration of sentence  
New Trial  
New Sentencing or modification  
Release from Sentence/Incarceration

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

No

2007 OCT 19 PM 3:03  
 JEANETTE W. MCBRIDE  
 C.C.P. & G.S.

RICHLAND COUNTY  
 FILED

STATE OF SOUTH CAROLINA )

County of Greenwood )

VERIFICATION

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

Carmen Rice

SWORN to and subscribed before me this 6<sup>th</sup>  
 day of October, 2017.

Sandra Beorgette Hull (L.S.)  
 Notary Public

My Commission Expires Jan. 8, 2023

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

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

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

Carmen L. Rice  
Applicant

SWORN or affirmed to and subscribed before me this

6th day of October, 2017.

Dandra Dorette Hill  
Notary Public

My Commission Expires: Jan. 8, 2023

2017 OCT 18 PM 3:03  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

RICHLAND COUNTY  
FILED

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Carmen Latrice Rice, #308637  
Applicant,

**V.**

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
IN THE FIFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-40-6361

## RETURN AND MOTION TO DISMISS

Respondent, making its Return to the application for post-conviction relief filed by Carmen Latrice Rice (Applicant) on October 18, 2017, would respectfully show this Court:

## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2004, the Berkeley County Grand Jury indicted Applicant for armed robbery (2004-GS-40-8755) and murder (2004-GS-40-8754). John Mobley, Esquire, and Christopher Hart, Esquire, represented Applicant. Applicant proceeded to trial before the Honorable Reginald I. Lloyd and a jury. The jury found Applicant guilty as indicted. On April 8, 2005, Judge Lloyd sentenced Applicant to imprisonment for concurrent terms of thirty years for armed robbery and life without parole for murder.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division perfected the appeal. The South Carolina Court of Appeals affirmed Applicant’s conviction on October 5, 2007. State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007) (cert. denied December 4, 2008). The remittitur was issued December 8, 2008.

**2009-CP-40-0234**

Applicant subsequently filed an application for PCR on January 14, 2009, in which she alleged the following grounds for relief:

1. "Ineffectiveness of counsel"
2. "Judicial violation"
3. "Search, seizure, and investigator's violation of procedure"
4. "Miranda improperly done"
5. Incomplete discovery/Brady prior to trial"
6. "Sentence (sic) on basically hearsay; no tangible evidence"

Respondent filed its return on July 7, 2009. An evidentiary hearing into the matter was convened on June 6, 2011, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Mark Schnee, Esquire. Brian T. Petrano, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On August 22, 2011, the Honorable James R. Barber, III, issued the order of dismissal denying Applicant's application for post-conviction relief.

Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, filed a petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Respondent, through Assistant Attorney General Robert Corney, made a return to the petition on January 4, 2012. The South Carolina Supreme Court thereafter entered an order transferring the case to the South Carolina Court of Appeals. On May 21, 2014, the South Carolina Court of Appeals entered an order granting the petition for writ of certiorari and ordering further briefing.

Applicant, through appellate counsel, filed a Brief of Petitioner on June 24, 2014. The Respondent, through Assistant Attorney General J. Clayton Mitchell, filed the Brief of Respondent on November 24, 2014. On April 5, 2015, the South Carolina Court of Appeals

entered its order affirming the denial of post-conviction relief. Applicant made a timely petition for rehearing on April 16, 2015. On May 19, 2015, the Court of Appeals denied rehearing.

Applicant then filed a petition for writ of certiorari in the South Carolina Supreme Court on June 15, 2015. The return to the petition was made by Respondent on July 30, 2015. On November 4, 2015, the Supreme Court of South Carolina entered its order denying the petition for writ of certiorari. The remittitur was returned to the circuit court on November 9, 2016.

### **2:16 -2610-RBH-MGB**

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on July 13, 2016. Applicant set forth the following grounds for relief:

1. Ineffective Assistance of counsel.
  - a. The Court of Appeals erred in finding that if trial counsel was deficient for failing to call (Arletta) Frierson as a witness, petitioner failed to show prejudice because the testimony was merely cumulative when the PCR judge did not rule on the merits of the ineffective assistance of counsel claim and did not find the testimony merely cumulative. (Petitioner's Question Three on PCR Certiorari in S.C. Supreme Court).
2. No physical evidence was pointing to me as the person that committed the crime.
  - a. They had DNA and fingerprints, but none matched mine.
  - b. Petitioner asserts this issue was raised in the direct appeal and cert petition in the post-conviction relief appeal.
3. The trial court erred by ruling a prior inconsistent statement concerning third party guilt admissible.
  - a. Because this was a murder trial where someone was deceased and another incarcerated for life due to false statements by the state's key witness.
4. Feagin was given a photo line-up of all individuals including the subject(me Carmen) and I wasn't picked out until placed in court on trial between two attorneys charged with murder and armed robbery.

Respondent filed its Return and Motion for Summary Judgment on November 28, 2016. On July 31, 2017, the Honorable Mary Gordon Baker issued the Report and Recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied. Applicant filed her objection to the Report and Recommendation on August 11, 2017.

On September 26, 2017, the Honorable R. Bryan Harwell, United States District Judge, adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgement and dismissed Applicant's petition.

## **II. CURRENT ALLEGATIONS**

In her second and current application for post-conviction relief, Applicant alleges she is being held in custody unlawfully on the following grounds:

1. "Appeal Counsel's ineffective representation"
  - a. "Counsel failed to properly insist and/or present evidence that Rice had no physical or direct evidence linking her to crime and appeal counsel further failed to raise such issue on appeal which resulted in a procedural default in Applicant's habeas corpus"
2. "Judge's failure to insure (sic) Carmen Rice received fair trial"
3. "Violation of Carmen Rice's constitutional rights-other and further violations discovered in this case including newly found issues"

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's appellate records, the records of Applicant's previous PCR and federal habeas corpus actions, and the current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## **III. NEWLY DISCOVERED EVIDENCE**

Applicant's assertion she is being held in custody unlawfully as a result of newly discovered evidence, such that she should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of

actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

In this case, Applicant has wholly failed to set forth any facts whatsoever to establish a newly discovered evidence claim. The application is devoid of any information regarding what the “newly discovered issues” are, when such evidence or issue was discovered, and why it could not have been discovered before trial. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing she is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in her application, and, therefore, she is not entitled to an evidentiary hearing in the matter. Accordingly, this matter should be summarily dismissed with prejudice.

#### IV. FAILURE TO COMPLY WITH STATUTE OF LIMITATIONS

Applicant’s remaining allegations should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:



An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant was convicted and sentenced on April 8, 2005. The remittitur from her direct appeal was issued on December 8, 2008. Her PCR application was therefore due on December 9, 2009. This application was filed on October 18, 2017, well beyond the statutory filing period. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

## V. SUCCESSIVENESS

Applicant’s remaining allegations should also be summarily dismissed because they are successive to Applicant’s previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275

S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and/or her petition for writ of habeas corpus. Applicant has failed to establish any reason whatsoever why she could not have raised these current allegations her previous collateral actions. Thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Because Applicant has failed to meet the burden imposed upon her, the Court should summarily dismiss this application as successive to Applicant's previous PCR application.

**VI. RESPONSE TO ALL OTHER ALLEGATIONS**

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

**VII. PRAYER FOR RELIEF**

**WHEREFORE**, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired, is successive to Applicant's prior post-conviction relief and federal habeas actions, and fails to adequately set forth a claim of newly discovered evidence.

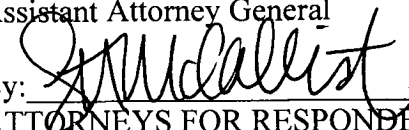
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER  
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

\_\_\_\_\_, 2019

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

2017-CP-40-6361

CARMEN RICE, #308637 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

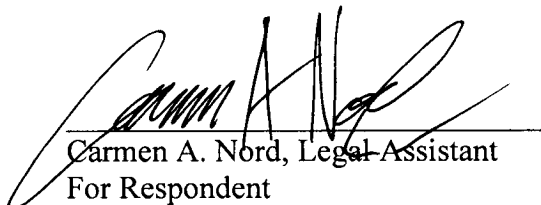
STATE OF SOUTH CAROLINA, )

Respondent. )

2019 FEB 19 PM 4:17  
CLERK OF COURT  
CORRIDE

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

**Carmen Latrice Rice, #308637**  
**A3-0203-B**  
**Leath CI**  
**2809 Airport Road**  
**Greenwood, South Carolina 29649**

DATED this the 14<sup>th</sup> day of February, 2019.


Carmen A. Nord, Legal Assistant  
 For Respondent

State of South Carolina } In the Court of Common Pleas  
 County of Richland } Fifth Judicial Circuit  
 ) Case # 2017-CP-40-6361

Carmen Latrice Rice #3086371

Applicant,

v.

State of South Carolina,

Respondent.

) Response to Respondents

) Return and Motion to

) Dismiss and/or Proposed

) Conditional Order of

) Dismissal

)

In Applicant's PCR, filed 10/18/17, she alleges ineffective representation on the part of appeal counsel; Judge's failure to ensure applicant a fair trial; and, violations of applicant's rights and newly discovered issues. Applicant will show that she is entitled to relief as follows:

### Appeal Counsel's Ineffective Representation

1. In September of 2017, the Honorable Bryan Harwell granted Respondent's Motion for

Summary Judgment following Applicant's Writ of Habeas Corpus. Within its Order granting summary judgment, the Court found that appeal counsel had failed to adequately raise the issue that there was no evidence linking Rice to the crime, resulting in a procedural default. Since applicant is not a member of the bar nor has legal expertise, she should not have been expected to advise appeal counsel on what issues should have been raised in her appeal. Surely, the Court recognizes that it has responsibilities to persons, such as the applicant, to protect the rights of those without such legal expertise. Further, until September of 2017, applicant did not realize that appeal counsel had failed to raise such issues, and as such became newly discovered information to the applicant. The mere fact alone that appeals counsel failed to argue there was no direct evidence linking applicant to the crime "should require vacation of sentence in the interests of justice." Applicant believes she is entitled

to rely for appeals counsel's flagrant failure to effectively represent her. Such failure resulted in a violation of applicant's civil rights to fair and due process as well as to a dismissal of applicant's appeal for habeas corpus.

### Judge's Failure to Ensure Applicant a Fair Trial

2. For all of the foregoing reasons as set forth in #1 above, it is clear that the Court (trial court), as well as the appeals court, prohibited applicant from receiving a fair and impartial trial and/or rehearing. Appeals Counsel's failure to present that there was absolutely no evidence in the case linking Rice to the crime prevented the Court from reaching a decision which would, without doubt, been favorable to the applicant. However, a thorough and complete review of the trial transcript and evidential documents further confirmed that no such evidence existed. Applicant believes the

Court has some duty to ensure applicant be granted fair and impartial treatment and that innocent persons, such as the applicant, not be incarcerated for crimes they did not commit.

Violations of Rights and  
Newly Discovered Issues

3. On November 22, 2016, Applicant learned that a female named Stacie Earle, who had previously signed a false statement against Rice during the investigation into this crime, had signed a statement verifying that she had been approached by 2 detectives during the investigation, who informed her that if she did not sign the initial false statement, she would be charged with further crimes. Earle did not know Rice, did not have knowledge of the crime to which Rice had been accused, and was actually serving time in a Florida prison when the crime was committed. Fearing legal repercussions, Earle signed the initial false statement.



4. Additionally, applicant has since received received a written statement of Holly Thompson, who unequivocally states that Felisha Hallman, Thompson's former roommate at the detention center, wrote a false statement against Rice after being coaxed by Chris Bryant, Rice's co-defendant. Thompson had personal knowledge that Hallman wrote false statements against Rice in an effort to get her own charges reduced and/or dismissed.

5. The entire case against the applicant relied solely on fraudulent, false statements made by numerous females, either roommates, or acquaintances of co-defendant Chris Bryant, a well-known liar and fabricator of the truth. Bryant lied repeatedly to investigators in this case and Rice was ultimately convicted, wrongfully, of a crime she had no involvement in whatsoever.

The newly discovered statements of Earle and Thompson (see attached copies) represent new evidence that, had this information been

made available previously, would certainly have resulted in a favorable and fair outcome for the applicant.

Further, Applicant has discovered that there are 2 other witnesses who have knowledge about the facts of the case, such facts being crucial for the Court and/or a jury to take into consideration. Nathan Hallman conversed with Chris Bryant about what had occurred on the night in question. Hallman took Bryant back to the scene of the crime and Bryant told Hallman that she (Bryant) and her cousin, "Nikki" or "Diki" had robbed the victim. There was no mention of Carmen Rice having been involved, because, in fact, she was not.

Lamont Bostic was approached on multiple occasions, prior to October of 2007, <sup>(by Bryant)</sup> seeking to have the victim robbed. Although Bryant wanted Bostic to commit the robbery, he would not do it. Bostic did not know Rice nor was Rice's name ever mentioned.

Amber Byrd can state she observed the victim's Mercedes in the parking area of Rice's apartment complex. However, according to Pro Bowl Motors, the victim did not even own the Mercedes

until almost 1 year after Rice moved from the complex.

The testimony of these 3 additional witnesses qualify as newly discovered evidence, as this information was only learned by the Applicant within the year prior to the filing of her PCR in October of 2017.

Argument

6. As required by Langdon v. State, applicant has clearly shown that the statements discussed above were discovered after trial. Such statements are, without question, material to the issue of guilt or innocence, and are not merely cumulative or impeaching. The statements are true, simple, clear and concise and prove that at least 2 alleged witnesses in the case lied and those lies helped convict an innocent person. Applicant believes a jury would certainly have made a different conclusion had they been aware that the witnesses in the case were lying in order to benefit themselves in some manner or out of fear of the authorities.

7. Applicant has made a prima facie case that she is entitled to the relief sought in her PCR. The issue of failing to comply with the statute of limitations, which the Respondents argues, clearly does not apply in this case, as the statement of Stacie Earle was signed and dated November 22, 2016, and the statement of Holly Thompson was received after that. Applicant's PCR was filed easily within 1 year, on 10/18/17. Applicant believes the failures of appeals counsel, the Court(s) and the newly discovered evidence in her case strongly supports the relief she is seeking in her PCR and that she should be entitled to a new and fair trial as soon as is practicable and that counsel be appointed to assist her.

Carmen L. Rice

Respectfully Submitted,

Carmen L. Rice #308637, Pro Se  
Leath Correctional, A3, 203  
2809 Airport Rd.  
Greenwood, SC 29649

Sworn and Subscribed to me  
This 27 day of Feb 2019.  
Margaret  
Notary Public of South Carolina  
My Commission Expires 2-13-2029

I Holly Jo Thompson 299956,  
do hereby attest that ~~one~~  
Felisha Hallman wrote  
statements against Carmen  
Rice After spending time  
with Carmen's co defendant  
Eris Bunt who also wrote  
statements on Carmen.  
I know this because Hallman  
was my roommate at the  
time. She talked about  
what she was going to  
write. Her statement/  
testimony should never  
have been used. Hallman  
did all this to get off of  
her charges

November 22, 2016

To whom this concerns:

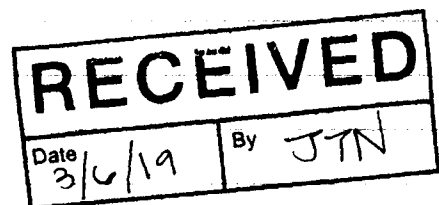
I was incarcerated from 1998-2000 at Gadsden Corr. Inst. in Quincy, Fl. I've never known Ms. Rice although I was approached by 2 detectives concerning her case which I have no knowledge of. I was told to sign a paper that I did not understand. I never wrote anything but only stated clearly that I did not know her. I was informed that if I did not sign the paperwork with my signature that I would be charged with withholding state's evidence to a capital crime and subpoenaed to Judicial Court. During her crime I was imprisoned in the state of Florida.

*Stanford*

I Carmen Latrice Rice # 308632 recieved  
the order from the Attorney General's  
Office on February 21, 2019 @ 10:30 A.M.  
From the Leath Correctional's Mailroom.

Sincerely,  
Carmen L. Rice

Reply to Respondent's  
Motion to Dismiss





February 25, 2019

Clerk of Circuit Court  
for Richland County  
P.O. Box 192  
Columbia, SC 29202

Re: Carmen Rice v. State of SC  
Case# 2017-CP-40-6361

Dear Sir/Madam:

Enclosed please find Applicant's Response to Respondent's Return and Motion to Dismiss and/or Proposed Conditional Order of Dismissal in the above-referenced matter for filing. Please return to me a filed copy of this document. By copy of this letter, I am also serving a copy of this Response upon Lindsey McAllister, Assistant Attorney General.

Sincerely,

Carmen L. Rice #308637, Pro Se  
Leah Correctional, A3, 203  
2809 Airport Rd.  
Greenwood, SC 29649

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carmen Latrice Rice (SCDC #308637),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-40-06361

**CONDITIONAL ORDER OF DISMISSAL**

2019 MAY 22 PM 4:37  
 JEREMY H. HARRIS  
 CLERK OF COURT  
 RICHLAND COUNTY

This matter came before the Court upon Application for Post-Conviction Relief (“PCR Application”) filed by Carmen Latrice Rice (“Applicant”) on October 18, 2017. Respondent filed its Return and Motion to Dismiss on February 19, 2019, requesting that the PCR Application be summarily dismissed. Respondent also submitted to the Court a proposed Conditional Order of Dismissal. On March 6, 2019, Applicant filed her “Response to Respondent’s Return and Motion to Dismiss and/or Proposed Conditional Order of Dismissal.”

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2004, the Berkeley County Grand Jury indicted Applicant for armed robbery (2004-GS-40-8755) and murder (2004-GS-40-8754). John Mobley, Esquire, and Christopher Hart, Esquire, represented Applicant. Applicant proceeded to trial before the Honorable Reginald I. Lloyd and a jury. The jury found Applicant guilty as indicted. On April 8, 2005, Judge Lloyd sentenced Applicant to imprisonment for concurrent terms of thirty years for armed robbery and life without parole for murder.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant’s conviction on October 5, 2007. *State v. Rice*, 375 S.C.

Page 1 of 7

Conditional Order of Dismissal

Carmen Latrice Rice v. State, 2017-CP-40-06361

302, 652 S.E.2d 409 (Ct. App. 2007) (*cert. denied* December 4, 2008). The remittitur was issued December 8, 2008.

**2009-CP-40-00234**

Applicant filed a PCR Application on January 14, 2009, in which she alleged the following grounds for relief:

1. "Ineffectiveness of counsel"
2. "Judicial violation"
3. "Search, seizure, and investigator's violation of procedure"
4. "Miranda improperly done"
5. Incomplete discovery/Brady prior to trial"
6. "Sentence (sic) on basically hearsay; no tangible evidence"

Respondent filed its return on July 7, 2009. An evidentiary hearing into the matter was convened on June 6, 2011, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Mark Schnee, Esquire. Brian T. Petrano, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On August 22, 2011, the Honorable James R. Barber, III, issued the order of dismissal denying Applicant's application for post-conviction relief.

Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, filed a petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Respondent, through Assistant Attorney General Robert Corney, made a return to the petition on January 4, 2012. The South Carolina Supreme Court thereafter entered an order transferring the case to the South Carolina Court of Appeals. On May 21, 2014, the South Carolina Court of Appeals entered an order granting the petition for writ of certiorari and ordering further briefing.

Applicant, through appellate counsel, filed a Brief of Petitioner on June 24, 2014. The Respondent, through Assistant Attorney General J. Clayton Mitchell, filed the Brief of Respondent on November 24, 2014. On April 5, 2015, the South Carolina Court of Appeals entered its order affirming the denial of post-conviction relief. Applicant made a timely petition for rehearing on April 16, 2015.

On May 19, 2015, the Court of Appeals denied rehearing.

Applicant then filed a petition for writ of certiorari in the South Carolina Supreme Court on June 15, 2015. The return to the petition was made by Respondent on July 30, 2015. On November 4, 2015, the Supreme Court of South Carolina entered its order denying the petition for writ of certiorari. The remittitur was returned to the Circuit Court on November 9, 2016.

**2:16-cv-02610-RBH-MGB**

Applicant also filed an action in federal court seeking a writ of *habeas corpus*. In that action, she alleged that she received ineffective assistance of counsel, challenging the Court of Appeals' decision in her PCR Application. She also alleged that she should not have been convicted, as no physical evidence connected her to the crimes charged. By Order and Judgment filed on September 26, 2017, the United States District Court granted summary judgment against Applicant, denying and dismissing her petition.

**Current Application**

In her second and current application for post-conviction relief, Applicant alleges she is being held in custody unlawfully on the following grounds:

1. "Appeal Counsel's ineffective representation"
  - a. "Counsel failed to properly insist and/or present evidence that Rice had no physical or direct evidence linking her to crime and appeal counsel further failed to raise such issue on appeal which resulted in a procedural default in Applicant's habeas corpus"
2. "Judge's failure to insure Carmen Rice received fair trial"
3. "Violation of Carmen Rice's constitutional rights-other and further violations discovered in this case including newly found issues"

Before this Court are the Richland County Clerk of Court records regarding the subject conviction, Applicant's prior post-conviction relief action records, Applicant's appellate records, Applicant's federal habeas corpus action records, and the current application.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Newly discovered Evidence**

The Court finds Applicant's assertion she is being held in custody unlawfully as a result of newly discovered evidence, such that she should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. CODE ANN. §17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. CODE ANN. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

*Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

The Court finds Applicant has failed to set forth any facts whatsoever to establish a newly discovered evidence claim. The PCR Application is devoid of any information regarding what the "newly discovered issues" are, when such evidence or issue was discovered, and why it could not have been discovered before trial. Further, Applicant's response to Respondent's Motion to Dismiss fails to demonstrate how Applicant could not, by the exercise of due diligence, have discovered such evidence sooner. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that she is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965);

*Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Court finds Applicant has failed to make such a showing based on the information set forth in her application, and, therefore, she is not entitled to an evidentiary hearing in the matter. Accordingly, this matter will be summarily dismissed with prejudice.

### Statute of Limitations

The Court finds all other allegations in this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. CODE ANN. §§17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. CODE ANN. §17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. CODE ANN. §17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant was convicted and sentenced on April 8, 2005. The remittitur from the direct appeal was returned to the circuit court on December 8, 2008. This application was therefore due on or before December 9, 2009. This application was filed on October 18, 2017, well beyond the statutory filing period. Therefore, the PCR Application shall be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

### Successive Applications

The Court further finds the remaining allegations must be summarily dismissed because they are successive to Applicant's previous PCR Application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." *Id.* at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Court finds that Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief or in her petition for writ of habeas corpus; thus, the current application is successive and barred under S.C. CODE ANN. §17-27-90. The Court finds Applicant has failed to establish any reason whatsoever why she could not

have raised these current allegations her previous collateral actions. Therefore, because she has failed to meet the burden imposed upon her, the Court shall summarily dismiss the application as successive to Applicant's previous PCR Application.

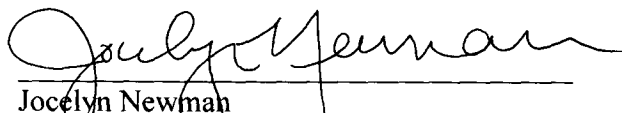
CONCLUSION

Pursuant to S.C. CODE ANN. §17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon her to show why this Order should not become final. Applicant shall file any reasons she may have with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Lindsey A. McCallister, Esquire  
PCR Division – 5<sup>th</sup> Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned her response to this order must be actually received by the Richland County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in her response if not so timely filed and served.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Jocelyn Newman  
Chief Administrative Judge

May 22, 2019  
Columbia, South Carolina.



State of South Carolina ) In the Court of Common Pleas  
 County of Richland ) Fifth Judicial Circuit  
 ) Case # 2017-CP-40-6361

Carmen Latrice Rice )

Petitioner/Applicant )

) Opposition to Conditional  
 ) Order of Dismissal

V. )

State of South Carolina )

Respondent. )

RICHLAND COUNTY  
 FILED  
 2019 JUN 18 AM 10:51  
 J. ANETTE W. MCBRIDE  
 C.C.P., G.S. § 82-11

Carmen Rice hereby shows the following  
 factual and legal reasons why her application  
 for post-conviction relief should not be dismissed.

Applicant filed this PCR primarily based  
 upon new evidence she discovered which  
 would most likely have changed the outcome  
 of her trial.

The law clearly provides the opportunity  
 for defendants convicted and sentenced for  
 a crime, to file a PCR upon learning of  
 information

(1)

They were not prying to during any other portion of their Cases, from trial/ sentencing to a deadline of one (1) year after learning of the newly discovered evidence. Rice clearly and fully complied with S.C. law and filed her PCR within the one year time allotted.

Rice's Claim of newly discovered evidence which would no doubt have changed the result in her trial is meritorious and should be granted as such with all the proper hearings and due process as required by the States law and constitutions.

When filing the PCR, Rice attached copies of new statements from two (2) individuals.

One person verified that she had been pressured to sign a formal statement against Rice by law enforcement, once Rice's co-defendant, Iris Bryant, had lied and coerced others to do the same, so that she would get a light sentence for her part in the robbery and death of the decedent in this case.

The other person proffering a statement had been a cellmate of one of the witnesses,

(2)

relied upon to help build a case against Rice unequivocally states her Cellmate lied.

These two statements show the dishonesty and conspiratorial behavior which occurred from the start of this case and which ultimately led to the wrongful conviction of Rice, an innocent person.

Within the one year deadline provided by law, after receiving these (2) statements Rice filed her PCB. S.C. Code Ann 17-27-45(e).

Rice has met and satisfied every element required by this statute and by Haydon v. State, 278 S.C. 610, 611, 299 S.E. 2d 854, 855 (1983), as shown below.

1) Rice believes that had the jury heard the defamatory statements newly discovered by Rice, that the ultimate results of her trial would have been completely different.

Bryant was known to law enforcement to be a liar. She lied against me (Rice) in an attempt to work out a deal that would and did get her off the hook for her part in the case.

If the jury had been aware of Bryant's

total lack of credibility as this new evidence shows, they would have had reasonable doubt to acquit Rice.

Surely this Court nor the Respondent can argue that they are the only proper figures to determine whether a jury would have returned a different verdict.

Without being on the minds of the jury no one can make such a decision, which is why the applicant, like any other citizen, is entitled to an evidentiary hearing and proper due process.

2) As clearly shown by the dates of the statements already provided to this Court and to the respondent, clearly the information in the statements was not known to Rice until just prior to filing this PR.

3) Rice could not have, by the exercise of due diligence, obtained this information prior to when I did, because I never knew it existed.

4). These 2 statements are material to the issue of Rice's guilt or innocence. Again, had the jury heard this new information there would had to have been serious consideration during deliberation as to the truth of the state's allegations against Rice and the story being alleged by IRIS BRYANT.

5) The statements are not merely cumulative or impeaching.

1) (Rice) knows the knowledge contained in them would have tipped the scales of legal justice in my favor and would of certainly provided reasonable doubt sufficient for an acquittal.

2) Surely in the state of S.C, a person accused of such an atrocious crime who is completely innocent, is entitled to a fair and non-prejudicial hearing.

### Conclusion

1) Carmen Rice asserts that my PCR should not be dismissed and that 1) (Rice) receive a fair and impartial hearing on the matter  
(5)

I Carmere Latrice Rice asks the Court to allow me to continue to pursue my PCR and to get the due process to which I (Rice) is entitled under the law.

Respectfully,

Carmere Latrice Rice

#308637 13-203

Leath Correctional Institution  
2809 Airport Rd  
Greenwood, S.C 29649

June 13, 2019

Re: Carmen Rice v. State of SC-Casi\*2017-CP406301

Dear Madam Clerk:

Enclosed you will find my Opposition to Conditional Order of Dismissal in the above-referenced matter. I was served with the Conditional Order on 5/28/19, giving me 20 days from the day it was served on me to respond. As you can see, I am easily filing this within that 20 day time period. Please return to me a filed copy of my response.

Sincerely,

x Carmen Rice # 308631  
Leath Correctional, 13, 203  
2009 Airport Rd.  
Greenwood, SC 29649

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carmen Latrice Rice (SCDC #308637),

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-40-06361

ORDER OF PARTIAL DISMISSAL

JENNIFER W. JACOBSON  
Clerk, P.G.S., & F.C.

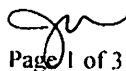
2019 JUL -1 AM 10:50

RICHLAND COUNTY  
FILED

This matter came before the Court upon Application for Post-Conviction Relief (“PCR Application”) filed by Carmen Latrice Rice (“Applicant”) on October 18, 2017. Respondent filed its Return and Motion to Dismiss on February 19, 2019, requesting that the PCR Application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive applications. On March 6, 2019, Applicant filed her “Response to Respondent’s Return and Motion to Dismiss and/or Proposed Conditional Order of Dismissal.”

The Court issued a Conditional Order of Dismissal on May 22, 2019, provisionally denying and dismissing the PCR Application, while giving Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. The Conditional Order of Dismissal was properly served on Applicant, and, in response, she filed her “Opposition to Conditional Order of Dismissal” on June 18, 2019.

Having fully reviewed the documents filed in this action, the Court finds that the PCR Application should be summarily dismissed, in part, and that an evidentiary hearing should be scheduled as to the remaining part, as follows:



Page 1 of 3

Order of Partial Dismissal

Carmen Latrice Rice v. State, 2017-CP-40-06361



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In this action, Applicant alleges she is being held in custody unlawfully on the following grounds:

1. "Appeal Counsel's ineffective representation"
  - a. "Counsel failed to properly insist and/or present evidence that Rice had no physical or direct evidence linking her to crime and appeal counsel further failed to raise such issue on appeal which resulted in a procedural default in Applicant's habeas corpus"
2. "Judge's failure to insure Carmen Rice received fair trial"
3. "Violation of Carmen Rice's constitutional rights-other and further violations discovered in this case including newly found issues"

As to Applicant's allegations of general ineffective representation (numbered 1 above), the judge's failure to ensure fairness (numbered 2 above), and the violation of her constitutional rights (a portion of number 3 above), the Court finds that Applicant has failed to show sufficient reason why the Conditional Order of Dismissal should not become final.

However, as to Applicant's contention that she is entitled to a new trial based on newly-discovered evidence, the Court finds that by supplementing her original PCR Application, Applicant has made the requisite *prima facie* showing that she may be entitled to relief. *See, e.g., Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965). At minimum, there exists a genuine issue of material fact as to the timeliness of this allegation. Therefore, an evidentiary hearing should be conducted as to this portion of her PCR Application. *See, e.g., Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002) (finding summary dismissal improper if there exists a material issue of fact).

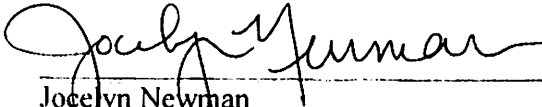
IT IS, THEREFORE, ORDERED that an evidentiary hearing be convened as to Applicant's allegation of newly-discovered evidence only.

  
Page 2 of 3

IT IS FURTHER ORDERED that, for the reasons set forth in the Conditional Order of Dismissal, the remainder of the Application for Post-Conviction relief is DENIED and DISMISSED with prejudice.

AND IT IS SO ORDERED.

June 29, 2019  
Columbia, South Carolina.

  
Jocelyn Newman  
Chief Administrative Judge

|                              |   |                               |
|------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS  |
| COUNTY OF RICHLAND           | ) | IN THE FIFTH JUDICIAL CIRCUIT |
|                              | ) |                               |
| Carmen Latrice Rice, #308637 | ) | Case No.: 2017-CP-40-6361     |
| Applicant,                   | ) |                               |
|                              | ) |                               |
| v.                           | ) | <b>AMENDED RETURN</b>         |
|                              | ) | <b>(COUNSEL APPOINTED)</b>    |
| State of South Carolina,     | ) |                               |
| Respondent.                  | ) |                               |

---

Respondent, making its Amended Return to the application for post-conviction relief filed by Carmen Latrice Rice (Applicant) on October 18, 2017, would respectfully show this Court:

### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In October 2004, the Berkeley County Grand Jury indicted Applicant for armed robbery (2004-GS-40-8755) and murder (2004-GS-40-8754). John Mobley, Esquire, and Christopher Hart, Esquire, represented Applicant. Applicant proceeded to trial before the Honorable Reginald I. Lloyd and a jury. The jury found Applicant guilty as indicted. On April 8, 2005, Judge Lloyd sentenced Applicant to imprisonment for concurrent terms of thirty years for armed robbery and life without parole for murder.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 5, 2007. *State v. Rice*, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007) (cert. denied December 4, 2008). The remittitur was issued December 8, 2008.

**2009-CP-40-0234**

Applicant subsequently filed an application for PCR on January 14, 2009, in which she alleged the following grounds for relief:

1. "Ineffectiveness of counsel"
2. "Judicial violation"
3. "Search, seizure, and investigator's violation of procedure"
4. "Miranda improperly done"
5. Incomplete discovery/Brady prior to trial"
6. "Sentence (sic) on basically hearsay; no tangible evidence"

Respondent filed its return on July 7, 2009. An evidentiary hearing into the matter was convened on June 6, 2011, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Mark Schnee, Esquire. Brian T. Petrano, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On August 22, 2011, the Honorable James R. Barber, III, issued the order of dismissal denying Applicant's application for post-conviction relief.

Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, filed a petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. Respondent, through Assistant Attorney General Robert Corney, made a return to the petition on January 4, 2012. The South Carolina Supreme Court thereafter entered an order transferring the case to the South Carolina Court of Appeals. On May 21, 2014, the South Carolina Court of Appeals entered an order granting the petition for writ of certiorari and ordering further briefing.

Applicant, through appellate counsel, filed a Brief of Petitioner on June 24, 2014. The Respondent, through Assistant Attorney General J. Clayton Mitchell, filed the Brief of Respondent on November 24, 2014. On April 5, 2015, the South Carolina Court of Appeals entered its order affirming the denial of post-conviction relief. Applicant made a timely petition for rehearing on April 16, 2015. On May 19, 2015, the Court of Appeals denied rehearing.

Applicant then filed a petition for writ of certiorari in the South Carolina Supreme Court on June 15, 2015. The return to the petition was made by Respondent on July 30, 2015. On November 4, 2015, the Supreme Court of South Carolina entered its order denying the petition for writ of certiorari. The remittitur was returned to the circuit court on November 9, 2016.

**2:16 –2610-RBH-MGB**

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on July 13, 2016. Applicant set forth the following grounds for relief:

1. Ineffective Assistance of counsel.
  - a. The Court of Appeals erred in finding that if trial counsel was deficient for failing to call (Arletta) Frierson as a witness, petitioner failed to show prejudice because the testimony was merely cumulative when the PCR judge did not rule on the merits of the ineffective assistance of counsel claim and did not find the testimony merely cumulative. (Petitioner's Question Three on PCR Certiorari in S.C. Supreme Court).
2. No physical evidence was pointing to me as the person that committed the crime.
  - a. They had DNA and fingerprints, but none matched mine.
  - b. Petitioner asserts this issue was raised in the direct appeal and cert petition in the post-conviction relief appeal.
3. The trial court erred by ruling a prior inconsistent statement concerning third party guilt admissible.
  - a. Because this was a murder trial where someone was deceased and another incarcerated for life due to false statements by the state's key witness.
4. Feagin was given a photo line-up of all individuals including the subject(me Carmen) and I wasn't picked out until placed in court on trial between two attorneys charged with murder and armed robbery.

Respondent filed its Return and Motion for Summary Judgment on November 28, 2016. On July 31, 2017, the Honorable Mary Gordon Baker issued the Report and Recommendation that Respondent's motion for summary judgment be granted and Applicant's petition be denied. Applicant filed her objection to the Report and Recommendation on August 11, 2017.

On September 26, 2017, the Honorable R. Bryan Harwell, United States District Judge, adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgement and dismissed Applicant's petition.

## II. CURRENT ALLEGATIONS

In her second and current application for post-conviction relief, Applicant alleges she is being held in custody unlawfully on the following grounds:

1. "Appeal Counsel's ineffective representation"
  - a. "Counsel failed to properly insist and/or present evidence that Rice had no physical or direct evidence linking her to crime and appeal counsel further failed to raise such issue on appeal which resulted in a procedural default in Applicant's habeas corpus"
2. "Judge's failure to insure (sic) Carmen Rice received fair trial"
3. "Violation of Carmen Rice's constitutional rights-other and further violations discovered in this case including newly found issues"

Respondent filed its Return and Motion to Dismiss on February 19, 2019, requesting that the PCR Application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive applications. On March 6, 2019, Applicant filed her response to Respondent's Return and Motion to Dismiss and/or Proposed Conditional Order of Dismissal. The Court issued a Conditional Order of Dismissal on May 22, 2019, provisionally denying and dismissing the PCR Application while giving Applicant twenty days from the *date* of service of said Order in which to show why the dismissal should not become final. The Conditional Order of Dismissal was properly served on Applicant, and, in response, she filed her Opposition to Conditional Order of Dismissal on June 18, 2019. After reviewing the documents filed in this action, the Court issued an order finding that the PCR Application should be summarily dismissed in part and that an evidentiary hearing should be scheduled as to the allegations of newly discovered evidence *only*. This Amended Return follows.

Attached to this Amended Return and incorporated by reference are the records of the current application. Additionally, the following records submitted with Respondent's original Return filed, March 6, 2019 are incorporated by reference: the Richland County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the records of Applicant's previous PCR and federal habeas corpus actions. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### III. NEWLY DISCOVERED EVIDENCE

The State submits Applicant's assertion she is being held in custody unlawfully as a result of newly discovered evidence is without merit. The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

*Hayden v. State*, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

In this case, Applicant claims to have copies of statements from two individuals: one person who claims Applicant was pressured to sign a formal statement against Applicant by law enforcement; and another person who claims her cell mate of one of the witnesses against Applicant unequivocally lied.

The State submits Applicant cannot meet the *Hayden* standard, however, the Court ordered an evidentiary hearing be held on this claim. Therefore Respondent requests an evidentiary hearing be held on Applicant's claim of newly discovered evidence *only*.

#### **IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY**

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”). Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a



continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196

## V. RESPONSE TO ALL OTHER ALLEGATIONS

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

## VI. CONCLUSION

**WHEREFORE**, Respondent requests an evidentiary hearing be held on Applicant's claim of newly discovered evidence *only*.

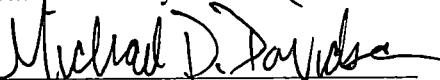
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

6/22, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Carmen L. Rice #308637,

CA No.: 2017-CP-40-006361

Applicant,

vs.

**FIRST AMENDED PCR  
APPLICATION**

State.,

Respondent.

FILED  
MAR 21 AM 9:50  
CLERK OF COURT  
RICHLAND COUNTY

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Rice amends her response to item 10 to add the following:

d. The State violated Rice's rights under the US and South Carolina Constitutions by failing to turn over to the defense the attached statements of witnesses, and the failure to turn over those statements prejudiced Rice's defense.

11. State concisely and in the same order the facts which support each of the grounds set forth in (10):

Rice amends her response to Item 11 to add the following:

d. The State failed to turn over to the defense the attached statements of witnesses

19. State clearly the relief you seek in filing this application:

Rice amends her response to Item 19 as follows:

Rice prays for an order vacating her convictions and sentences

Respectfully Submitted,

**AIKEN & HIGHTOWER, P.A.**

BY:   
Arthur K. Aiken SC Bar #12983  
PO Box 90707  
Columbia, SC 29290  
Tel: (803) 799-5205  
Fax: (803) 799-5206  
Email: [art@aikenandhightower.com](mailto:art@aikenandhightower.com)  
**ATTORNEYS FOR PLAINTIFF**

Columbia, South Carolina  
March 7, 2023

*Nathaniel Hallman*  
Statement

2

State of South Carolina )  
 ) S.S.  
County of Richland )

Personally appeared before me this 14 day of July 2003, at 1230 hours, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Nathaniel Hallman of 7115 Middle Street. Daytime telephone number 786 9290, Nighttime telephone number 786 9290.

Who makes the following statement under oath to wit:

Q: On July 13, 2003 at 2:55am hours you gave Iriv. Faust at statement in reference to information about a murder that occurred on Crawford Rd within the last two years and one of the persons involved you said is a Iris Bryant. Can you start from the beginning and tell me what you know about this murder.

A: Yes. It was between a year and two years ago. I was driving my sister's (Melody Bright) Lexis and Troy Stevenson was riding with me. Around midnight one night I received a phone call my sister's cell phone from Iris Bryant. She sounded real scared and nervous and asked me to hurry and come pick her up. About 30 minutes later I pulled into the hamburger stand at Two Notch and Chestnut and she was there alone where she said she would be. She got in the car with me and Troy. She asked me to take her to the pool hall, the lounge on North Main. I asked her what is wrong. She said we robbed a man and I think we killed him. I told her, no yall had'nt done nothing like that. She said "me and my cousin, Tina or Tika shot him". She said he might be dead. I asked her how did she know he was dead and she said he was not moving. She said we got some money off of him and she pulled out a big roll of bills from her pocket and said, see here. She said it was about \$1000.00 and she said she and Tina split the money. She said it happened about an hour before she called me to come and pick her up. She said they shot him and took his money. I asked her how they got away and she said they ran through the woods to Interstate (I-20) and I can't remember if she said someone picked them up or they had a car parked near. She said it happened off Fairfield Rd. on a dead end street just across I-20. I found out later that morning the name of the street is Crawford. Me and Troy both asked her for some money and she would not give us any. She asked me to drop Troy off because one reason he kept telling her she was going to jail. I took Troy home at Crescent Manor off Two Notch Rd. above Pulliam Motors. Iris asked me to take her to the Social Lounge on N. Main Street. I drove her to the lounge and she got out and talked with Stevie B., her boyfriend. They went inside the lounge and she came back out a few minutes later and asked me to take her back to the hamburger place at Two Notch and Chestnut. At that time Iris was living with her cousin (Tina or Tika) in the corner house on Branham Street and Chestnut. I don't think she wanted me to take her to her cousin's house because she didn't to give her cousin the idea that she had talked to someone about the robbery and murder. I dropped her off at the corner about 0230 to 0300 am and I went home.

*Contradict  
Statement #1*

This statement was made in the presence of Sgt. Gene Mincey of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me  
this 14 day of July 2003

Signed: Nathaniel Hallman

Witness: [Signature]

Witness: [Signature]

Gene S. Mincey  
Notary Public for South Carolina

My commission expires 04.27.05

*Did not want a copy*



### Statement

State of South Carolina )  
 ) S.S.  
County of Richland )

**Q: Did Iris refer to both of the females as her cousin?**

**A: Yes.**

**Q: I have shown you two line-ups today, is that true?**

A: Yes.

**Q: In the first line-up you picked out the female you knew as Carmen?**

A: Yes, she was #5 in that line-up. In the line-up I saw before, I was calling her Tikka.

**Q:** In the second line-up you picked out the girl you knew as Tikka?

A: Yes, she was the one on the bottom right.

Q: Do the two women look alike to you?

A: Yes.

Q: Is there any doubt in your mind now that the woman you picked out in line-up #1 (as Carmen) resided in that house you pointed out to Metz and Mincey on Brahm St.?

A: No doubt in my mind.

**Q: Did you also know a girl named Ashley back then?**

A: Yes. She was slim, brown-skinned girl about 5'5" tall and weighed about 110 lbs. She had braids in her hair. She wore thick glasses. She was always in a little blue small car. It was the same car Carmen was in a lot.

**Q: Who was Ashley with when you saw her?**

A: She was always with Carmen when I saw her. I only saw her once, or maybe twice.

**Q: Is there anything else you know about Ashley?**

A: Iris told me that she was bisexual and that she was Carmen's girl.

**Q: Did Iris ever tell you that Ashley knew about the murder?**

A: No.

This statement was made in the presence of Inv. Stan Smith of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me  
this 27 day of July 2003

Signed:

Witness

Witness:

Library Public for South Carolina  
1000 Commons Road, Columbia, S.C. 29201

## Statement

State of South Carolina)

) S.S.

County of Richland )

Q: What else do you recall about Carmen?

A: I knew she had a little boy who would be five or six years old now. She didn't talk that much when I would come to get Iris from her house. I know she wasn't right in the head. I got some vibes off of her that told me she wasn't straight.

Q: Why do you think you were confused about Carmen and Tikka again?

A: It was just in the names. I knew she hung around both of the girls but I couldn't put the right name with the right face. I knew that the girl Iris was talking about having committed the killing was the one who I knew lived in that house that I pointed out. I even met her (Carmen's) daddy before. He was brown-skinned and heavy set. He was about 220 to 250 lbs. He was about in his late 40's to early 50's.

Q: How many times did you go by that house?

A: Numerous times when I would go to get Iris, or after Stevie-B would drop her off and not come back to get her.

Q: Did you ever go to another girl's apartment at Allen-Benedict Ct. to get (or to see) Iris?

A: No.

Q: Is there anything else about this incident that you now recall?

A: No, that is it.

This statement was made in the presence of Inv. Stan Smith of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me  
this 27 day of June, 2003

Signed: Notary Public

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Notary Public for South Carolina  
my commission expires 12/31/04

Nathaniel Hallman

## Statement of

Nathaniel Hallman

Made at

Columbia, South Carolina, this 13 day of July 2003 at 2:55 am hours, in the presence of Inv. Faust of the Richland County Sheriff's Department.

I, Nathaniel Hallman, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q= Inv. Faust

A= Nathaniel Hallman

Q= You have told Inv. Lutz and Deputy M. Brown some information about a murder, what was it?

A= Iris Bryant told me that they robbed a man, and shot him, and that she did not know if he was dead or alive. She asked me to give her a ride. I took her to North Main at the Pool Hall across from the Smile Gas Station. She went inside, and she gave Stevie B, her baby's daddy, some money. But before we even made it over there, she threw some bloody blue jean short pants into trashcan at a across the street from Relative Motors at the hamburger stand on Two Notch. She also threw a wig away. It was a dark colored, like Chinese bob wig. That was thrown with the pants. It was like a couple of little splatters. She had for sure a \$1,000, but it could have been more because her and her cousin split the money. Iris is shisty, but she ain't that kind of heart to kill that man. I think Iris's cousin is the shooter because Iris was in the front seat, her cousin was in the back seat. Iris told me that. The police called Iris from the numbers in the man's book back to Renee Bostic's house, because Iris was living with Renee. Iris told me that she did not shot the man. Renee knows about it, and her brother knows about it, Lamont Bostic. Rita Bostic knows about it too. Rita is Renee's sister. The man had expensive jewelry, a Rolex, expensive rings. They had had tried to get someone to go with them to rob the man, but no one would. So

Contradict  
Statement  
# 2

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: \_\_\_\_\_

Signed: Nathaniel Hallman

Witness: \_\_\_\_\_

This is to certify that I have read or have read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this 13 day of July, 2003

Sworn to and subscribed before me  
This 13 day of July, 2003

Signed None

Dr. Faust  
Notary Public for South Carolina

Did Not want Copy

(1)



they did it themselves. Iris had asked me to go back and take his jewelry off for the money, but I told her no. They left him in the car bleeding, soon as you get off the highway at Fairfield Road at the Flying J. Make the right after you cross the bridge going out bound like you are going to Hollywood Hills. He was back there in the woods. Iris said after they shot him, they drove his car up into the bushes. It was a new Mercedes. If I am not mistaken, Iris's cousins name was either Tika (Teka) or Tina. I know where she stayed, off of Two Notch, by the Hamburger stand, take a right going inbound on Two Notch, make another right, and it on the left. There is only one house on the left. Iris stays in Tiffany Gardens. I don't know the trailer, but it is in the back right. Steven B, be at the pool hall on N. Main, right across from the smile gas station. He has a powder problem, he tries to sell and use.

Q= What do you know about the other murder?

A= Lamont Bostic was in Fox trot with me. He was the one talking about it. He said Dirty Red ~~was~~ is Kevin Sumter, and Fred C, and another guy with dreads. I don't know who he is, but he hangs with those two. Lamont said that it was Dirty Red, Fred C and the guy with the dreads was the one who robbed the boy that fell threw the window. They did it because he sold drugs. Lamont said that it was those boys who tied that boy up and robbed him.

Q= How did Lamont know that?

A= they all grew up together from out of Henley Homes, and they are real tight. Dirty Red mentioned to me that that is what he does. Dirty Red has some boys, and when he catches wind of some dope, he will send his boys in to rob'em. I know Fred C and the guy with the dreads are two of them, but there may be two or three more. I have never seen Fred C or the dread guy. Lamont said that Tivo didn't have anything to do with it.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: \_\_\_\_\_

Signed: Matthew Hallman

Witness: \_\_\_\_\_

This is to certify that I have read or have read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this 13 day of July, 2003

Sworn to and subscribed before me  
This 13 day of July, 2003

Signed None

Tom Fied  
Notary Public for South Carolina  
My Comm. Expires 12/31/2006

Did not want copy



Nathaniel Hallman

3

## Statement

State of South Carolina)

) S.S.

County of Richland )

Personally appeared before me this 27 day of October, 2003 at 1500 hours, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Nathaniel Hallman DOB 11-5-73 of 7115 Middle St. Day time telephone number N/A. Night time telephone number N/A.

Who makes the following statement under oath to wit:

Q: Nathaniel, you previously provided statements to both Investigator Faust and to Investigator(s) Mincey and Metz regarding a homicide from 2001, is that true?

A: Yes.

Q: On July 14<sup>th</sup> you also took Mincey and Metz and pointed out a house on Braham St., is that true?

A: Yes.

Q: In that statement to Mincey and Metz you alluded to a girl you knew as Tikka or Tina, is that true?

A: Yes. I said that was the girl who Iris Bryant was calling her cousin, who she was hanging out with at the time of the murder. Iris said she was involved in the murder.

Q: Metz and Mincey also showed you a line-up with a girl's picture in it that you identified, is that true?

A: Yes.

Q: During that same time did you also know a girl named Carmen who Iris also hung around with?

A: Yes.

Q: Regarding the house you pointed out to Metz and Mincey, whose house was it?

A: It was Carmen's house.

Q: Why were you confused?

A: I was confused about the names. I knew that Iris associated with two different girls with both of those names.

This statement was made in the presence of Inv. Stan Smith of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me this 27 day of Oct, 2003

Signed:

Nathaniel Hallman

Witness:

Witness:

Notar Public for South Carolina

My Commission Expires 12/15/04

Lamont Bostick

ISAAC

## Statement

State of South Carolina)

) S.S.

County of Richland )

Personally appeared before me this 1 day of Aug., 2003 at 1015 hours, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Lamont Bostick DOB 8-21-76 Swbesville C. I.  
 Day time telephone number N/A Night time telephone number N/A  
 Who makes the following statement under oath to wit:

Q: Lamont, are you related to Rita and Lerece Bostick?

A: Yes, I am their brother.

Q: Do you know Iris Bryant?

A: Yes, I used to mess with her.

Q: Do you know Nathaniel Hallman?

A: Yes, I call him "Peanut".

Q: What do you know about the murder of Bernard Brenner?

A: I know what Nathaniel Hallman told me when we were together in Richland County Detention Center. He told me that you could get

This statement was made in the presence of Lt. Stan Smith of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me this 1 day of Aug, 2003

Signed: Isaac Bostick

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Notary Public for South Carolina  
 My commission expires 7-15-04

## STATEMENT OF

Lament Bastick

(continued)

DATE: 8-1-03TIME: 4:15

out of trouble if you said what you knew about Iris killing that man. Pearl thought I knew about Iris' involvement in the murder but I didn't know anything specific. I tried to get Pearl to tell what he knew but he wouldn't tell. I teased him about having something to do with it himself because he used to mess with Iris. Pearl told me that he didn't have anything to do with it.

Q: Do you know anything else about the murder?

A: I know one day Iris came to ~~my~~ <sup>my</sup> house on McFadden St where I was drinking. She was with a dude who drove a nice burgundy car. Iris wanted

This statement was made in the presence of \_\_\_\_\_  
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 1 DAY OF Aug, 2003

NOTARY PUBLIC FOR SOUTH CAROLINA.

SIGNED: ISAAC Bastick

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

## STATEMENT OF

Isaac Bastick

(continued)

DATE: 8-1-03TIME: 1515

me to rob the dude. I told her I wouldn't because the dude might shoot me. She said that she would just take him to "Take a Break" on Beltline and drop some vodka in his liquor. Several days later I was at the Pub on Hardscrabble. I saw the poster with the two girls' drawings on them. When I saw the poster, I thought that may have been the dude. Iris had asked me to rob for her. The poster said "wanted for a murder" on them. Everybody at the Pub knew ~~the~~ <sup>that</sup> guy because he used to come in there all the time. My father ~~Isaac~~ Bastick goes into the

This statement was made in the presence of \_\_\_\_\_  
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 1 DAY OF Aug 2003



NOTARY PUBLIC FOR SOUTH CAROLINA

SIGNED: Isaac Bastick

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

## STATEMENT OF

Carol Bastick

(continued)

DATE: 8-1-03TIME: 1515

Punk a lot. My daddy probably knew the man too. After I thought Iris was involved in the murder (after seeing the wanted posters with what she had asked me to do), I went to ask Iris about it. She would only say "You crazy as hell". She never would say anything else about it.

Q! Do you know whether Rita or Renee know anything about the murder?

A: I don't know. I talked to Renee on Sunday. She told me that the investigators were "fucking with her" again. She told me that if Iris had something to do with it,

This statement was made in the presence of  
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 1 DAY OF Aug 2003

NOTARY PUBLIC FOR SOUTH CAROLINA.  
MY COMMISSION EXPIRES

SIGNED: Istara Bastick

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

## STATEMENT OF

Isaac Bastick

(continued)

DATE: 8-1-03TIME: 1515

that she needed to go on and  
 "fess up" so the investigators  
 would leave her "the fuck  
 alone."

Q: Do you know Troy Stevenson?  
 A: Yes.

Q: Do you know if Troy knows  
 anything about this murder?

A: I don't know. Troy is scary  
 so he wouldn't have wanted  
 anything to do with something  
 like this. I know that Troy  
 and "Pearl" were hanging  
 together at the time.

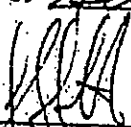
Q: Did you see the man in  
 the burgundy car the day  
 Tim came by?

A: No, he had the windows up

This statement was made in the presence of \_\_\_\_\_  
 of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is  
 the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME  
 THIS 1 DAY OF Aug 2003


SIGNED: Isaac Bastick

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_



## STATEMENT OF

Lenart Bostick

(continued)

DATE: 8-1-03TIME: 1515and were killed.

Q: Did Iris tell you anything about the man in the burgundy car?

A: She just said he was an "old dude" she was messing with.

Q: Do you recall who was with you that day when you were at the house on Mc Miller St?

A: It was me, Quincy, his girl named "Tasha" and a white girl who was staying next door there. It was Tasha's daddy's house we were at. It was two apts hooked onto each other.

Q: Did anyone else there hear

This statement was made in the presence of  
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 1 DAY OF Aug 2003SIGNED: Istara Bostick

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

NOTARY PUBLIC FOR SOUTH CAROLINA

## STATEMENT OF

Conert Rastick

(continued)

DATE: 8-1-03 TIME: 1515what Iris wanted you to do?

A: "Forty-five" (Quincy) was nearby after Iris just talked to me alone. I went and asked "Forty-five" if he wanted to rob the dude. He said he didn't care we didn't do it because I was drinking and I didn't know who the dude was. I was afraid the dude might have a gun.

Or where did Quincy live?

A: At Crescent Manor but he don't stay out there no more.

Q: What else do you recall about Quincy or talking?

A: Talked to daddy's house is a

This statement was made in the presence of \_\_\_\_\_  
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 1 DAY OF Aug 2003

NOTARY PUBLIC FOR SOUTH CAROLINA

SIGNED: Isaac Rastick

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

## STATEMENT OF

Carroll Rustick

(continued)

DATE: 8-1-03 TIME: 1515

blue duplex next to a green duplex. It is right across the street from the church, right behind the Amco. I don't know Tasha's last name. I think they moved from there. Tasha was about (22) or (23) years old. She was light-skinned. Quincy was about the same age. He was dark-skinned.

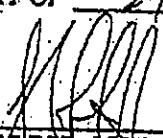
Q: Do you have any idea where they went?  
A: No.

Q: Did Eric have a gun?  
A: No, not that I know of. She was probably counting on me getting one.

This statement was made in the presence of \_\_\_\_\_  
of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 1 DAY OF Aug, 2003


SIGNED: Isaac Rustick

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Carmen L. Rice #308637,

Applicant,

vs.

State

) COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT  
)

) Case No. 2017-CP-40-6361  
)

**CERTIFICATE OF SERVICE**

I certify that on this date, March 7, 2023, I served the Applicants' First Amended PCR Application in the above-noted case on the attorney for the State, South Carolina Attorney General's Office, by mailing a copy of the Amendment to:

Office of the Attorney General  
Assistant Attorney General D. Russell Barlow, II  
PO Box 11549,  
Columbia, SC 29211

and by emailing this filing to [russbarlow@scag.gov](mailto:russbarlow@scag.gov).

RICHLAND COUNTY  
FILED  
2023 MAR 21 AM 9:30  
CLERK OF COURT  
COURT HOUSE  
COLUMBIA, SC



Arthur K. Aiken  
Aiken & Hightower, P.A.  
PO Box 90707  
Columbia, SC 29290  
Tel: 803-799-5205  
Fax: 803-799-5206  
Email: [art@aikenandhightower.com](mailto:art@aikenandhightower.com)

Columbia, South Carolina  
March 7, 2023



***First PCR Action: 2009-CP-40-0234***

Applicant subsequently filed an application for PCR on January 14, 2009, in which she alleged the following grounds for relief:

1. "Ineffectiveness of counsel"
2. "Judicial violation"
3. "Search, seizure, and investigator's violation of procedure"
4. "Miranda improperly done"
5. "Incomplete discovery/Brady prior to trial"
6. "Sentence (sic) on basically hearsay; no tangible evidence"

Respondent filed its Return on July 7, 2009. An evidentiary hearing was convened at the Richland County Courthouse on June 6, 2011. Applicant was present at the hearing and represented by Mark Schnee, Esquire. Brian T. Petrano, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On August 22, 2011, the Honorable James R. Barber, III, issued the Order of Dismissal denying Applicant's application for post-conviction relief.

Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on behalf of Applicant. Respondent, through Assistant Attorney General Robert Corney, made a Return to the Petition on January 4, 2012. The South Carolina Supreme Court thereafter entered an order transferring the case to the South Carolina Court of Appeals. On May 21, 2014, the South Carolina Court of Appeals entered an order granting the Petition for Writ of Certiorari and ordering further briefing.

Applicant, through appellate counsel, filed a Brief of Petitioner on June 24, 2014. The Respondent, through Assistant Attorney General J. Clayton Mitchell, filed the Brief of Respondent on November 24, 2014. On April 5, 2015, the South Carolina Court of Appeals entered its order affirming the denial of post-conviction relief. Applicant made a timely petition for rehearing on April 16, 2015. On May 19, 2015, the Court of Appeals denied the petition for rehearing.

Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on June 15, 2015. The Return to the Petition was made by Respondent on July 30, 2015. On November 4, 2015, the South Carolina Supreme Court entered its order denying the Petition for Writ of Certiorari. The remittitur was returned to the circuit court on November 9, 2016.

**2:16-2610-RBH-MGB**

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on July 13, 2016. Applicant set forth the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. The Court of Appeals erred in finding that if trial counsel was deficient for failing to call (Arletta) Frierson as a witness, petitioner failed to show prejudice because the testimony was merely cumulative when the PCR judge did not rule on the merits of the ineffective assistance of counsel claim and did not find the testimony merely cumulative. (Petitioner's Question Three on PCR Certiorari in S.C. Supreme Court).
2. No physical evidence was pointing to me as the person that committed the crime.
  - a. They had DNA and fingerprints, but none matched mine.
  - b. Petitioner asserts this issue was raised in the direct appeal and cert petition in the post-conviction relief appeal.
3. The trial court erred by ruling a prior inconsistent statement concerning third party guilt admissible.
  - a. Because this was a murder trial where someone was deceased and another incarcerated for life due to false statements by the state's key witness.
4. Feagin was given a photo line-up of all individuals including the subject(me Carmen) and I wasn't picked out until placed in court on trial between two attorneys charged with murder and armed robbery.

Respondent filed its Return and Motion for Summary Judgment on November 28, 2016. On July 31, 2017, the Honorable Mary Gordon Baker issued the Report and Recommendation that Respondent's Motion for Summary Judgment be granted, and Applicant's petition be denied. Applicant filed her objection to the Report and Recommendation on August 11, 2017.

On September 26, 2017, the Honorable R. Bryan Harwell, United States District Judge, adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgement and dismissed Applicant's petition.

**CURRENT ACTION BEFORE THIS COURT**

In her *second* and current application for post-conviction relief, Applicant alleges she is being held in custody unlawfully on the following grounds:

1. "Appeal Counsel's ineffective representation"
  - a. "Counsel failed to properly insist and/or present evidence that Rice had no physical or direct evidence linking her to crime and appeal counsel further failed to raise such issue on appeal which resulted in a procedural default in Applicant's habeas corpus"
2. "Judge's failure to insure (sic) Carmen Rice received fair trial"
3. "Violation of Carmen Rice's constitutional rights-other and further violations discovered in this case including newly found issues"

Respondent filed its Return and Motion to Dismiss on February 19, 2019, requesting that the PCR Application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive applications. On March 6, 2019, Applicant filed her response to Respondent's Return and Motion to Dismiss and/or Proposed Conditional Order of Dismissal. The court issued a Conditional Order of Dismissal on May 22, 2019, provisionally denying and dismissing the PCR Application while giving Applicant twenty days from the *date* of service of said Order in which to show why the dismissal should not become final. The Conditional Order of Dismissal was properly served on Applicant, and, in response, she filed her Opposition to Conditional Order of Dismissal on June 18, 2019.

After reviewing the documents filed in this action, the court issued an order finding that the PCR Application should be summarily dismissed in part and that an evidentiary hearing should be scheduled as to the allegation of newly discovered evidence *only*. On June 23, 2021, Respondent filed an Amended Return addressing the newly discovered evidence claim.



On May 21, 2023, Applicant, through counsel, filed a First Amended PCR Application to allege the following:

1. Brady Violation<sup>1</sup>
  - a. "The State violated Rice's rights under the US and South Carolina Constitutions by failing to turn over to the defense the attached statements of witnesses, and the failure to turn over those statements prejudiced Rice's defense."

**MOTION TO STRIKE APPLICANT'S FIRST AMENDED PCR APPLICATION**

Respondent submits that Applicant's First Amended PCR Application should be stricken from the record as it exceeds the scope of Judge Newman's order granting this successive evidentiary hearing. After Judge Newman issued the Conditional Order of Dismissal, Applicant filed her Opposition to Conditional Order of Dismissal. In Applicant's filing, she references copies of statements from two individuals: one statement allegedly from Stacey Earle, who claims she was pressured to sign a formal statement against Applicant by law enforcement while in prison in Florida; and the other being allegedly from Holly Jo Thompson who claims a witness who testified at trial was her cellmate and her statements should have never been used. Judge Newman found that Applicant's filing raised a question of fact that necessitated an evidentiary hearing solely on the newly discovered evidence claim regarding the two statements by Stacey Earle and Holly Jo Thompson and denied all other claims.

Respondent submits that Applicant's First Amended PCR Application exceeds the scope of Judge Newman's order and raises procedurally barred claims.

---

<sup>1</sup> Respondent interprets the allegations set forth in Applicant's First Amended PCR Application as Brady v. Maryland, 373 U.S. 83 (1963) violations.

**WHEREFORE,** Respondent respectfully requests that this Court strike the  
aforementioned First Amended PCR Application from the record.

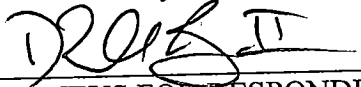
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

D. RUSSELL BARLOW, II  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

March 22, 2023

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Carmen L. Rice #308637

CA NO.. 2017-CP-40-006361

Applicant

vs.

SECOND AMENDED PCR  
APPLICATION

State.,

Respondent

2023 JUL 10 AM 11:00  
JENNIFER W. McBRIDE  
C.O.P. & J.S.  
RICHLAND COUNTY  
FILED

10. state concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Rice amends her response to item 10 to add the following:

d. Rice raises **Ineffective Assistance of Counsel and Prosecutorial Misconduct** by suppression of exculpatory evidence. Rice defense attorneys same as trial attorneys violated her due process rights under the United States Constitution, South Carolina Constitution and Title 17 - Criminal Procedures Chapter 27- Uniform Post-conviction Procedure Act Section 17-27-130. Waiver of attorney-client privilege by allegation of ineffective prior counsel; access to files.

Rice defense attorneys failed to disclosed to her and the court the exculpatory materials that would have exonerated her.

Therefore, Rice can show in *Strickland v. Washington*, 466 U.S. 687 (1984), that her defense counsels deprived her of the *Sixth and Fourteenth Amendment* right to ineffective assistance of counsel at trial.

*Rice can show that defense counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning, as the counsel' guaranteed the defendant by the Sixth Amendment. Second, Rice can show that the deficient performance prejudiced the defense because counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.*

The facts of the exculpatory material would have establish "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. (A reasonable probability is a probability sufficient to undermine confidence in the outcome.)"

The integrity of our criminal justice system and the fairness of the adversary criminal process is assured only if an accused is represented by an effective attorney. See *United States v. Morrison*, 449 U.S. 361, 364 (1981). Absent the effective assistance of counsel, 'a serious risk of injustice infects the trial itself.' *Cuyler v. Sullivan* 446 U.S. 335, 343 (1980) Thus, a defendant is constitutionally entitled to have effective counsel acting in the role of an advocate. *Anders v. California*, 386 U.S. 738, 743 (1967)

11. State concisely and in the same order the facts which support each of the grounds set forth in(10);

Rice amends her response to Item 11 to add the following:

In addition to defense counsels failed to raise the exculpatory materials which was filed on October 14, 2004. **Note:** Rice trial court was April 4, 2005.

The ineffective of assistance of counsel occurred as following:

November 2003-2005 Rice defense trial attorney John Mobley and Chis Hart failed to raise the exculpatory material; *ineffective assistance of counsel*

In 2007 rice is represented by attorney Robert Dudek, appointed by appeals court; he failed to raise the exculpatory statement; *ineffective assistance of counsel*,

2009-2011 Rice first PCR she was represented by attorney Mark Schnee, appointed by indigent commission; he failed to raise the exculpatory statement, *ineffective assistance of counsel*,

2015 Rice is represented by attorney Katherine Hudgins, indigent commission, writ of certiorari; she failed to raise the exculpatory statement; *ineffective assistance of counsel*,

2017 Rice is represented by Katherine Hudgins attorney appointed by indigent commission, habeas corpus; she failed to raise the exculpatory material; *ineffective assistance of counsel*,

2019 Rice is represented by Gregory Collins, appointed by indigent commission, PCR; he failed to raise the exculpatory statement; *ineffective assistance of counsel*,

2021 Rice is represented by Art Aiken, appointed by indigent commissions, PCR; attorney Aiken amended Rice's PCR application to include exculpatory materials but he failed to raise in the PCR application INEFFECTIVE ASSISTANCE OF COUNSEL outlining the above chronological order of ineffective assistance of counsel starting with Rice defense-trial attorneys. Rice denied of her constitutional Sixth Amendment right to effective assistance of counsel has been deny to this very day.

Rice defense trial attorneys failed to disclosed exculpatory material to her. The exculpatory statements are new discovered evidence to Rice. She were made aware of them in October 2022.

Unfortunately every attorney after Rice defense attorneys John Mobley and Chris Hart failed to look into Rice records and discover the exculpatory material. Therefore, the exculpatory material were not raise causing ineffective assistance of counsel against Rice. As a result violations of Rice constitutional due process rights.

Rice defense trial attorneys failed to called the witnesses in the exculpatory material; they should have called Nathaniel Hallman, Lamont Bostics, Renee Bostics, Rita Bostics, Alexander Sharpe and Troy Stevenson who was riding with Nathaniel Hallman the night he pick up Iris Bryant when she and her cousin Tika Bethel( aka Nikki, Tina) committed the murder and arm robbery.

Rice defense trial attorney should have requested that Iris Bryant and her cousin Tika Bethel(aka Nikki, Tina) be tested DNA/Forensic since there were DNA in the front and back sit as the court trial transcript stated.

Rice was given DNA test and it came back NO MATCH.

Rice defense trial attorney should have question more in depth of Alton Page the witness in the pool hall that was shooting pool with the victim. The defense attorney asked Mr. Page how tall was the two females. The trial court record will reflect that Mr. Page stated that the two females

were a few inches shorter than him. He stated that he was 5'9. That would bring the two females in the ranges of 5'7 or 5'6.  
Rice is 4'11.

The right to be represented by counsel is by far the most important of a defendant's constitutional rights because it affects the ability of a defendant to assert a myriad of other rights as Justice Sutherland explained in *Powell v. Alabama*.

19. State clearly the relief you seek in filing this application:

Rice amends her response to Item 19 as follows:

Rice prays for an order vacating her convictions and sentences



Carmen L. Rice #308637

Reynolds Q2-5B

Leath Correctional

2809 Airport Rd

Greenwood, SC 29649

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Carmen L. Rice, #308637,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT  
)

) CASE NO. 2017-CP-40-6361  
)

) **MOTION TO STRIKE**  
) **SECOND AMENDED PCR APPLICATION**  
)

JEFFETTE W. McBRIDE  
Clerk of Court  
C.O.P. & G.S.

2017 JUL 12 AM 9:29

RICHLAND COUNTY  
FILED

In response to Applicant's Second Amended PCR Application filed on July 10, 2017, Respondent would respectfully show this Court:

#### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to the Richland County Clerk of Court orders of commitment. In October 2004, the Richland County Grand Jury indicted Applicant for Armed Robbery (2004-GS-40-8755) and Murder (2004-GS-40-8754). John T. Mobley and Christopher R. Hart, Esquires, represented Applicant. Deputy Solicitor John P. Meadors and Assistant Solicitor Theodore N. Lupton prosecuted the case. On April 4, 2005, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd. Applicant was found guilty as indicted. Judge Lloyd sentenced Applicant to imprisonment for concurrent terms of thirty years for armed robbery and life without parole for murder.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, perfected the appeal. In Applicant's appeal Appellate Counsel Dudek raised the following issues:

1. Whether the Court erred by refusing to allow defense witnesses

Alana Quattlebaum to testify that co-defendant Iris Bryant told her in jail that Nikki was with her when the decedent was killed, and that Nikki shot the decedent, since Bryant on a prior occasion told the police Nikki was present, and Bryant later testified that admission was a lie, and she denied at trial making this statement to Quattlebaum, since this was an admissible prior inconsistent statement, and the judge's reason for excluding it as evidence of third-party guilt was also erroneous?

2. Whether the Court erred by allowing Investigator Smith to testify he was told by another law enforcement official that appellant did not want to submit to her fingerprints being taken, since this testimony was hearsay and was very prejudicial?
3. Whether the Court erred by allowing waitress Heidi Feagin to make an in-court identification of appellant, where she previously was not only unable to identify appellant, she also misidentified two other women in the photo array, since the judge erroneously ruled appellant opened the door to this unreliable in-court identification by cross-examining Feagin?
4. Whether the Court erred by admitting records and the attendant testimony from the security company where appellant was employed under the business records exception, since the records were not "trustworthy" within the meaning of Rule 803(6), SCRE, where the company went bankrupt and the custodian of the records and other evidence indicated that the poor bookkeeping made it possible for thirty-three guns not to be accounted for, including one the state strongly insinuated belonged to appellant, and the probative value of this "bad employment acts" and gun evidence was also outweighed by its unduly prejudicial effect under Rule 403, SCRE?
5. Whether the Court erred by refusing to give a curative instruction where the solicitor argued that the jury should convict appellant to give decedent's wife and the decedent justice, since this was an improper appeal to the sympathy and passion of the jury?

The South Carolina Court of Appeals affirmed Applicant's conviction in a published opinion on October 5, 2007. State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007). Applicant filed a Petition for Rehearing on November 26, 2007. On January 2, 2008., the Court of Appeals denied Applicant's Petition for Rehearing. Thereafter, Applicant filed a Petition for Writ of Certiorari on April 2, 2008. On December 4, 2008, the South Carolina Supreme Court entered its letter order



denying certiorari. The Remittitur was returned to the lower court on December 8, 2008.

***First PCR Action and Subsequent Appeal: 2009-CP-40-0234***

Applicant subsequently filed an application for PCR on January 14, 2009, in which she alleged the following grounds for relief:

1. "Ineffectiveness of counsel"
2. "Judicial violation"
3. "Search, seizure, and investigator's violation of procedure"
4. "Miranda improperly done"
5. "Incomplete discovery/Brady prior to trial"
6. "Sentence (sic) on basically hearsay; no tangible evidence"

With Applicant's application was an "Attachment to Post Conviction Relief Form Number Nine (9)" in which Applicant expounded on her allegations to include (verbatim):

1. The attorney did not provide the Defendant a complete Motion of Discovery and Brady with all favorable material in accordance to Maryland v. Brady . . . with sufficient time to prepare rebuttal.
2. The attorney did not insist on the suppression of incredible witnesses statement or testimony.
3. The Defendant was charged and convicted on hearsay of witnesses in a case of four (4) years old whereas witnesses in her behalf nor she could recall evidence or whereabouts.
4. No tangible evidence was presented at the trial.
5. Witness for the prosecution did not pick the Defendant out of any lineup, however pick out the prosecution chief witness.
6. The Defendant Miranda Rights was not given to her during the time of the investigator's questioning. The Defendant was given false information as to why she was being questioned at the beginning of interrogation by investigators who came to the Defendant's home.
7. All witnesses for the prosecution was in jail/detention/and or prison and was coerced into testifying.
8. The Rule of Evidence 708 was violated . . . at the trial.

Respondent filed its Return on July 7, 2009, and an Amended Return on March 11, 2010.

An evidentiary hearing was convened at the Richland County Courthouse on June 6, 2011, before the Honorable James R. Barber, III. Applicant was present at the hearing and represented

by Mark Schnee, Esquire. Brian T. Petrano, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the evidentiary hearing, Applicant, John T. Mobley, Esquire, Arletta Frierson, and LaShawn Roberts testified. Judge Barber had before him the records of the Richland County Clerk of Court, Applicant's trial transcript, the complete records from the direct appeal, and Applicant's records from the SCDC. On August 22, 2011, the Honorable James R. Barber, III, issued the Order of Dismissal denying Applicant's application for post-conviction relief.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on behalf of Applicant and raised the following issues:

1. Did the PCR judge erroneously find that the statement of Arletta Frierson that Iris Bryant the co-defendant and the State's main witness at trial, told her that the petitioner had nothing to do with the murder of Bernard Brennan was inadmissible hearsay when the statement of Frierson was admissible as impeachment testimony not hearsay pursuant to Rule 801(d)(1)?
2. In finding that the statement of Arletta Frierson was inadmissible, did the PCR judge err in failing to make findings of fact and conclusion of law as to allegation that trial counsel was ineffective for failing to call Arletta Frierson as a witness at trial to testify that the co-defendant and the State's main witness, Iris Bryant, admitted that petitioner had nothing to do with murder of Bernard Brennan?
3. Did the PCR judge err in refusing to make findings of fact and conclusions of law as to the allegations that the testimony of La Shawn Roberts that the co-defendant and the State's main witness, Iris Bryant, admitted that petitioner had nothing to do with the murder of Bernard Brennan constituted newly discovered evidence?

Respondent, through Assistant Attorney General Robert Corney, made a Return to the Petition on January 4, 2012. The South Carolina Supreme Court thereafter entered an order transferring the

case to the South Carolina Court of Appeals. On May 21, 2014, the South Carolina Court of Appeals entered an order granting the Petition for Writ of Certiorari and ordering further briefing.

Applicant, through appellate counsel, filed a Brief of Petitioner on June 24, 2014. The Respondent, through Assistant Attorney General J. Clayton Mitchell, filed the Brief of Respondent on November 24, 2014. On April 5, 2015, the South Carolina Court of Appeals entered its order affirming the denial of post-conviction relief. Applicant filed a timely Petition for Rehearing on April 16, 2015. On May 19, 2015, the Court of Appeals denied the petition for rehearing.

Applicant then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on June 15, 2015. Respondent filed its Return to the Petition on July 30, 2015. On November 4, 2015, the South Carolina Supreme Court entered its order denying the Petition for Writ of Certiorari. The Remittitur was returned to the lower court on November 9, 2016.

**2:16-2610-RBH-MGB**

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on July 13, 2016. Applicant set forth the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. The Court of Appeals erred in finding that if trial counsel was deficient for failing to call (Arletta) Frierson as a witness, petitioner failed to show prejudice because the testimony was merely cumulative when the PCR judge did not rule on the merits of the ineffective assistance of counsel claim and did not find the testimony merely cumulative. (Petitioner's Question Three on PCR Certiorari in S.C. Supreme Court).
2. No physical evidence was pointing to me as the person that committed the crime.
  - a. They had DNA and fingerprints, but none matched mine.
  - b. Petitioner asserts this issue was raised in the direct appeal and cert petition in the post-conviction relief appeal.
3. The trial court erred by ruling a prior inconsistent statement concerning third party guilt admissible.

- a. Because this was a murder trial where someone was deceased and another incarcerated for life due to false statements by the state's key witness.
4. Feagin was given a photo line-up of all individuals including the subject(me Carmen) and I wasn't picked out until placed in court on trial between two attorneys charged with murder and armed robbery.

Respondent filed its Return and Motion for Summary Judgment on November 28, 2016.

On January 5, 2017, Applicant filed her objection to the Return and Motion for Summary Judgment. On March 27, 2017, Applicant filed a notarized letter written by SCDC inmate #299956, Holly Jo Thompson. On July 31, 2017, the Honorable Mary Gordon Baker issued the Report and Recommendation that Respondent's Motion for Summary Judgment be granted and Applicant's petition be denied. Applicant filed her objection to the Report and Recommendation on August 17, 2017. On August 31, 2017, Respondent filed its Reply to Objections to Report and Recommendation of the Magistrate Judge.

On September 26, 2017, the Honorable R. Bryan Harwell, United States District Judge, adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgement and dismissed Applicant's petition.

#### **CURRENT ACTION BEFORE THIS COURT**

In her *second* and current application for post-conviction relief, Applicant alleges she is being held in custody unlawfully on the following grounds:

1. "Appeal Counsel's ineffective representation"
  - a. "Counsel failed to properly insist and/or present evidence that Rice had no physical or direct evidence linking her to crime and appeal counsel further failed to raise such issue on appeal which resulted in a procedural default in Applicant's habeas corpus"
2. "Judge's failure to insure (sic) Carmen Rice received fair trial"
3. "Violation of Carmen Rice's constitutional rights-other and further violations discovered in this case including newly found issues"

Respondent filed its Return and Motion to Dismiss on February 19, 2019, requesting that the PCR Application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive applications. On March 6, 2019, Applicant filed her response to Respondent's Return and Motion to Dismiss and/or Proposed Conditional Order of Dismissal. The court issued a Conditional Order of Dismissal on May 22, 2019, provisionally denying and dismissing the PCR Application while giving Applicant twenty days from the *date* of service of said Order in which to show why the dismissal should not become final. The Conditional Order of Dismissal was properly served on Applicant, and, in response, she filed her Opposition to Conditional Order of Dismissal on June 18, 2019. In Applicant's Opposition to Conditional Order of Dismissal, she included a letter purportedly written by SCDC inmate #299956 Holly Jo Thompson with no date and another letter from Stacie Earle dated November 22, 2016.

On July 1, 2019, the Honorable Jocelyn Newman issued an Order of Partial Dismissal finding "Applicant's allegations of general ineffective representation (numbered 1 above), the judge's failure to ensure fairness (numbered 2 above), and the violation of her constitutional rights (a portion of number 3 above), the Court finds that Applicant has failed to show sufficient reason why the Conditional Order of Dismissal should not become final." (Judge Newman's Order of Partial Dismissal filed July 1, 2019). However, after reviewing Applicant's supplement to the application for PCR, Judge Newman granted an evidentiary hearing as to the allegation of newly discovered evidence *only*. On June 23, 2021, Respondent filed an Amended Return addressing the newly discovered evidence claim.

***APPLICANT'S FIRST AMENDED PCR APPLICATION AND RESPONDENT'S MOTION TO STRIKE***

On March 21, 2023, Applicant, through counsel, filed a First Amended PCR Application to allege the following:

1. Brady Violation<sup>1</sup>
  - a. "The State violated Rice's rights under the US and South Carolina Constitutions by failing to turn over to the defense the attached statements of witnesses, and the failure to turn over those statements prejudiced Rice's defense."

Attached to the First Amended PCR Application were statements from Nathaniel Hallman dated July 13, 2003, July 14, 2003, October 27, 2003, and Lamont Bostick (Isaac) dated August 1, 2003.

On March 24, 2023, Respondent filed its first Motion to Strike the entire contents of the First Amended PCR Application because it exceeds the scope of Judge Newman's order granting the successive evidentiary hearing.

#### APPLICANT'S SECOND AMENDED PCR APPLICATION

On July 10, 2023, Applicant filed her Second Amended PCR Application with the following allegations:

1. Ineffective Assistance of Counsel and Prosecutorial Misconduct By Suppression of Exculpatory Evidence in Violation of Applicant's Due Process Rights<sup>2</sup>
  - a. "November 2003-2005 Rice defense trial attorney John Mobley and Chis Hart failed to raise the exculpatory material; ineffective assistance of counsel"
  - b. "In 2007 rice is represented by attorney Robert Dudek, appointed by appeals court; he failed to raise the exculpatory statement; ineffective assistance of counsel,"
  - c. "2009-2011 Rice first PCR she was represented by attorney Mark Schnee, appointed by indigent commission; he failed to raise the exculpatory statement, ineffective assistance of counsel,"

<sup>1</sup> Respondent interprets the allegations set forth in Applicant's First Amended PCR Application as Brady v. Maryland, 373 U.S. 83 (1963) violations.

<sup>2</sup> Respondent notes that Applicant asserts that the exculpatory evidence was filed on October 14, 2004, approximately five months and twenty-one days before trial. (See Applicant's Second Amended PCR Application, p. 2).

- d. "2015 Rice is represented by attorney Katherine Hudgins, indigent commission, writ of certiorari; she failed to raise the exculpatory statement; ineffective assistance of counsel,"
  - e. "2017 Rice is represented by Katherine Hudgins attorney appointed by indigent commission, habeas corpus; she failed to raise the exculpatory material; ineffective assistance of counsel,"
  - f. "2019 Rice is represented by Gregory Collins, appointed by indigent commission, PCR; he failed to raise the exculpatory statement; ineffective assistance of counsel,"
  - g. "2021 Rice is represented by Art Aiken, appointed by indigent commissions, PCR; attorney Aiken amended Rice's PCR application to include exculpatory materials but he failed to raise in the PCR application
  - h. "INEFFECTIVE ASSISTANCE OF COUNSEL outlining the above chronological order of ineffective assistance of counsel starting with Rice defense-trial attorneys. Rice denied of her constitutional Sixth Amendment right to effective assistance of counsel has been deny to this very day."
2. Newly Discovered Evidence
    - a. "Rice defense trial attorneys failed to disclosed exculpatory material to her. The exculpatory statements are new discovered evidence to Rice. She were made aware of them in October 2022."
  3. Trial Counsel Failed to Call Witnesses
    - a. "Rice defense trial attorneys failed to called the witnesses in the exculpatory material; they should have called Nathaniel Hallman, Lamont Bostics, Renee Bostics, Rita Bostics, Alexander Sharpe and Troy Stevenson"
  4. Trial Counsel Failed to Request DNA Samples of Other People
    - a. "Rice defense trial attorney should have requested that Iris Bryant and her cousin Tika Bethel (aka Nikki, Tina) be tested DNA/Forensic since there were DNA in the front and back sit as the court trial transcript stated."
  5. Trial Counsel Failed to Properly Cross-Examine Alton Page
    - a. "Rice defense trial attorney should have question more in depth of Alton Page the witness in the pool hall that was shooting pool with the victim. The defense attorney asked Mr. Page how tall was the two females. The trial court record will reflect that Mr. Page stated that the two females were a few inches shorter than him. He stated that he was 5'9. That

would bring the two females in the ranges of 5'7 or 5'6. Rice is 4'11."<sup>3</sup>

**MOTION TO STRIKE APPLICANT'S SECOND AMENDED PCR APPLICATION**

Respondent submits that Applicant's Second Amended PCR Application should be stricken from the record as it, too, exceeds the scope of Judge Newman's order granting this successive evidentiary hearing. Importantly, after Judge Newman issued the Conditional Order of Dismissal, Applicant filed her Opposition to Conditional Order of Dismissal. In Applicant's filing, she references copies of statements from two individuals: one statement allegedly from Stacie Earle, who claims she was pressured to sign a formal statement against Applicant by law enforcement while in prison in Florida; and the other allegedly from Holly Jo Thompson who claims a witness who testified at trial was her cellmate and her statements should have never been used. Judge Newman dismissed all the other allegations as noted *supra*. Judge Newman found that Applicant's filing raised a question of fact that necessitated an evidentiary hearing solely on the newly discovered evidence claim regarding the two statements by Stacie Earle and Holly Jo Thompson and denied all other claims.

Here, Applicant raises allegations of Ineffective Assistance of Trial Counsel, Ineffective Assistance of Appellate Counsel, Ineffective Assistance of PCR Counsel, Ineffective Assistance of Habeas Counsel, Prosecutorial Misconduct, Trial Counsel Failed to Call Witnesses, Trial Counsel Failed to Request DNA Samples of Other People, and Trial Counsel Failed to Properly Cross-Examine Alton Page.

Respondent submits that Applicant's Second Amended PCR Application *far exceeds* the narrow scope of Judge Newman's order and raises procedurally barred claims.

---

<sup>3</sup> Respondent notes that per SCDC, Carmen Rice's height is listed as 5'01"—not 4'11". See <https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000308637>.



**WHEREFORE,** Respondent respectfully requests that this Court strike the  
aforementioned Second Amended PCR Application from the record.

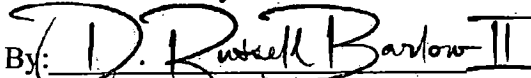
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General

D. RUSSELL BARLOW, II  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

July 11, 2023

|                          |   |                       |
|--------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA  | ) |                       |
|                          | ) | COURT OF COMMON PLEAS |
| County of Richland       | ) | 2017-CP-40-06361      |
|                          | ) |                       |
| CARMEN RICE,             | ) |                       |
|                          | ) |                       |
| APPLICANT,               | ) |                       |
|                          | ) |                       |
| vs.                      | ) | TRANSCRIPT OF RECORD  |
|                          | ) |                       |
| STATE OF SOUTH CAROLINA, | ) |                       |
|                          | ) |                       |
| RESPONDENT,              | ) |                       |

July 17, 2023  
Columbia, South Carolina

BEFORE:

THE HONORABLE DIEDRE L. JEFFERSON, JUDGE.

APPEARANCES:

TIMOTHY GRIFFITH, ESQ.  
Attorney for the Applicant

D. RUSSELL BARLOW, II, ASSISTANT SOLICITOR  
Attorney for the State

KAREN AMBROZIAK  
Official Court Reporter

**C O N T E N T S**  
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ABDULLAH MUSTAFA

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**APPLICANT'S EXHIBITS**

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> |
|-----------|--------------------|-----------|-----------|
| 1         | letter             | 13        | 13        |
| 2         | statement          | 20        |           |

1           MR. BARLOW: Your Honor, I have the completed file  
2 packet here with the return, her application, their first  
3 amended application, their second amended application and  
4 the motion to strike the first and motion to strike the  
5 second.

6           THE COURT: You can hand that up. Thank you.

7           This is Carmen Latrice Rice versus the State of South  
8 Carolina 2017-CP-40-6361. She's before the Court on an  
9 application for Post Conviction Relief. The State's  
10 return and motion to dismiss was filed February 19th -- is  
11 that '20. I can't make out that year. Is that 2023.  
12 What year was your return and motion to dismiss filed?

13          MR. BARLOW: February 19th, 2019.

14          THE COURT: 2019. I thought that was, but I just  
15 wasn't sure.

16          MR. BARLOW: Your Honor, I also have a copy of her  
17 first PCR, her first PCR appeal and her habeas, if you'd  
18 like that.

19          THE COURT: Sure. So she's already had a Post  
20 Conviction Relief hearing and appealed that?

21          MR. BARLOW: Correct, Your Honor.

22          THE COURT: And it was -- the decision of the court  
23 was affirmed.

24          MR. BARLOW: Yes, ma'am.

25          THE COURT: Is that the basis of your motion to

1 dismiss?

2 MR. BARLOW: Well, no, ma'am, the basis of the  
3 motion -- our motion to dismiss was -- we filed a motion  
4 to dismiss, the conditional discharge order was filed and  
5 Ms. Smith -- I'm sorry, Ms. Carmen Rice, she filed a  
6 supplement to the conditional order and Judge Newman found  
7 that the two items within that supplemental filing, which  
8 was a letter from Holly Jo Thompson and a letter from  
9 Ms. Stacy Burrell, was a prima facie showing that she did  
10 an evidentiary showing on those two items, and she  
11 dismissed the rest of the application, to include a  
12 constitutional violations claim and I believe all other  
13 claims. And that order is in that packet I gave you.

14 THE COURT: The first one or the second one?

15 MR. BARLOW: In the return, the first one. It is --  
16 should be the fifth one, Your Honor, looks like the fifth  
17 one back from the return. It's an order of partial  
18 dismissal.

19 THE COURT: Ms. Rice needs to come have a seat.

20 MR. GRIFFITH: Your Honor, before calling her, I'd  
21 like to call Ms. Holly Jo Thompson.

22 THE COURT: She needs to sit with you.

23 Ma'am, go sit with your lawyer.

24 Okay. Judge Newman's order is quite clear in the  
25 parameters for any further hearings regarding Ms. Rice's

1 case. And to cite the applicable portions, it's on page  
2 two of three of her order where she dismisses any claims  
3 with prejudice regarding her claims of ineffective  
4 assistance of counsel, the judge's failure to ensure  
5 Carmen Rice received a fair trial, in violation of Carmen  
6 Rice's Constitutional rights and further violations  
7 discovered in this case, including newly found issues.

8 As to one and two, that being ineffective assistance  
9 of counsel and violation of her Constitutional rights,  
10 which are enumerated -- actually, let's see this. Number  
11 one and number two and a portion of number three, Judge  
12 Newman dismissed those claims and found the Applicant had  
13 failed to show sufficient reason why the conditional order  
14 of dismissal should not become final.

15 She limited, however, any additional hearing in this  
16 matter as to the Applicant's contention that she is  
17 entitled to a new trial based on newly discovered  
18 evidence. She found that by supplementing her original  
19 PCR application, she made the requisite prima facie  
20 showing that she may be entitled to relief, citing Welch  
21 versus McDougal. Then she goes on to hold it at a  
22 minimum, there is a genuine issue of material fact as to  
23 the timeliness of this allegation.

24 So, therefore, an evidentiary hearing should be  
25 conducted as to this portion of her PCR application and

1 she ordered that an evidentiary hearing be convened as to  
2 the Applicant's allegation of newly discovered evidence  
3 only, and she underscored only, and dismissed the  
4 remainder of the allegation.

5 Is the State ready to proceed?

6 MR. BARLOW: Yes, we are, Your Honor.

7 THE COURT: Mr. Griffith, is the Applicant ready to  
8 proceed?

9 MR. GRIFFITH: Yes, Your Honor.

10 THE COURT: Okay. You may do so.

11 MR. GRIFFITH: I would call Ms. Holly Jo Thompson,  
12 Your Honor.

13 THE COURT: Yes.

14 MR. BARLOW: Briefly.

15 THE COURT: Ma'am, take a seat for me real quick.

16 MR. BARLOW: As to motion to strike, the amendments,  
17 there's two of them. So subsequently --

18 THE COURT: Okay. What date is the first motion to  
19 strike dated?

20 MR. BARLOW: That is March 24th, 2023.

21 THE COURT: And when is the second motion to strike?

22 MR. BARLOW: July 12th, 2023.

23 THE COURT: And what is the substance of each of  
24 those motions?

25 MR. BARLOW: Your Honor, in the first amended

1 application, Ms. Rice was claiming that the statements of  
2 Nathan Hallman and Lamont Bostic are newly discovered  
3 evidence.

4 These are statements that were given to the police  
5 back in 2003. Your Honor, our contention is that it's not  
6 newly discovered evidence. It fails under anything  
7 because it was within her discovery the entire time.  
8 She's had it for nearly two decades, if not longer, and it  
9 fails -- it could have been discovered had she looked.

10 THE COURT: And then what is the substance of your  
11 second motion to strike?

12 MR. BARLOW: Your Honor, the second amended  
13 application includes claims of ineffective assistance of  
14 trial counsel, ineffective assistance of appellate  
15 counsel, ineffective assistance of PCR counsel,  
16 ineffective assistance of habeas counsel, prosecutorial  
17 misconduct, trial counsel failed to call witnesses, trial  
18 counsel failed to request DNA samples, other people and  
19 trial counsel failed to properly cross-examine Bolton  
20 Page.

21 THE COURT: But she's already had a PCR and it's been  
22 upheld?

23 MR. BARLOW: Correct, Your Honor.

24 THE COURT: The denial?

25 MR. BARLOW: Correct, Your Honor.



1 THE COURT: So what -- that intends to then to  
2 circumvent and have another bite beyond the statute of  
3 limitations.

4 MR. BARLOW: Right, one bite at the apple as it were,  
5 Your Honor.

6 THE COURT: Okay, Mr. Griffith, I'll be glad to hear  
7 from you on the State's motion to strike both of those  
8 amendments. I think Judge Newman's order is very clear as  
9 to what the scope of this hearing is.

10 I don't even know that these motions are germane  
11 because she's already effectively ruled that she can't go  
12 into any of that. She's summarily already dismissed it,  
13 so it's almost moot.

14 MR. BARLOW: I agree.

15 MR. GRIFFITH: May it please the Court, Your Honor.

16 THE COURT: Yes.

17 MR. GRIFFITH: Ms. Rice's contention as to the first  
18 amended application is all of these statements --

19 THE COURT: When did she first file this amended  
20 application? What's dispositive is whether they were  
21 filed before or after Judge Newman's rulings.

22 MR. BARLOW: All of the filings were after Judge  
23 Newman's rulings.

24 THE COURT: Judge Newman's rulings are the law of the  
25 case. She didn't appeal it and she already limited it to

1 the scope of this hearing. I don't think she can  
2 circumvent Judge Newman's ruling by trying to do a  
3 superfluous amendment.

4 It sort of doesn't end going around with Judge -- she  
5 had a bite at the apple. She gets one within a year.  
6 It's almost like somebody rules against you, the court  
7 appeals it. You appeal it, the supreme says it's affirmed  
8 that you get a do-over. It just doesn't work that way.  
9 Our rules aren't designed that way.

10 MR. GRIFFITH: I understand, Your Honor. However,  
11 Ms. Rice's contention on these --

12 THE COURT: What's the date of her first amended  
13 complaint?

14 MR. GRIFFITH: On the first amended complaint, Your  
15 Honor, on these --

16 THE COURT: Application, rather, I'm sorry.

17 MR. GRIFFITH: Application are that this is --

18 THE COURT: What's the date of the first amended  
19 application?

20 MR. BARLOW: Your Honor --

21 THE COURT: What date was it filed?

22 MR. BARLOW: March 7th, 2023.

23 THE COURT: And then what was the date of the second  
24 amended application? What date?

25 MR. BARLOW: July 10th, 2023.

1 THE COURT: And who filed those?

2 MR. BARLOW: The first one, Your Honor, was prior PCR  
3 counsel, Art Aiken, and then the second one was filed by  
4 Mr. Griffith.

5 THE COURT: Okay. Mr. Griffith, you may continue.

6 MR. GRIFFITH: Your Honor, she contends that the  
7 information contained in the first amended application was  
8 information that she was never made aware of. She  
9 contends that if it was in her discovery, it was never  
10 shown to her and she was not privy or aware of this  
11 information until many years later. So she would contend  
12 that that then is new evidence.

13 THE COURT: I think you know in good faith that's not  
14 a valid argument. Yeah.

15 MR. GRIFFITH: Thank you, Your Honor.

16 THE COURT: What about the second -- I mean, the --  
17 these things existed in 2003. If I take Mr. Barlow's  
18 word, which I have no reason not to, these items were  
19 contained in the discovery at the time of her original  
20 case and the time of her original investigation.

21 And who represented her in her original trial?

22 MR. BARLOW: Your Honor, she was represented by  
23 Mr. John Mobley and Chris Hart.

24 THE COURT: I find it difficult to believe that  
25 either one of them did not go thoroughly go through the

1 discovery with her, every page of it, just for this  
2 purpose, PCR.

3 MR. BARLOW: Your Honor --

4 THE COURT: If I were to allow that argument, then  
5 everybody, you know, within half an hour would get a  
6 judgment. Every time you got a ruling you didn't like,  
7 you'd just find a new way to reinvent filing a new PCR  
8 application, and the rules don't operate that way.

9 MR. GRIFFITH: I understand, Your Honor. I believe  
10 having heard Your Honor's ruling on that, she would still  
11 ask that the court hear on the newly discovered evidence  
12 that Judge Newman mentioned in her order, the two letters,  
13 Your Honor.

14 THE COURT: Does the State have any exception to  
15 that? I don't think any of your objections regarding  
16 strike -- well, your motions to strike deal with any of  
17 that.

18 MR. BARLOW: No. Judge Newman ruled that those are  
19 what the evidentiary hearing was and on, Your Honor, I'm  
20 happy -- we actually Ms. Holly Jo Thompson, who allegedly  
21 wrote one of these letters here to, also, testify.

22 THE COURT: I think that the procedural history of  
23 this case is very clear and I am bound by Judge Newman's  
24 ruling, which was not appealed. And she's been very clear  
25 as to what the scope of this hearing is to be. I think

1 we're all clear about that.

2 MR. BARLOW: Thank you, Your Honor.

3 THE COURT: Are we ready to proceed?

4 MR. GRIFFITH: We would call Ms. Holly Jo Thompson.

5 THE COURT: Ma'am, if you would come to the witness  
6 stand and be sworn.

7 HOLLY JO THOMPSON, after being duly  
8 sworn, testified as follows:

9 THE COURT: State your name for the record, spelling  
10 your last name for the court reporter.

11 THE WITNESS: My name is Holly Jo Thompson,  
12 T-H-O-M-P-S-O-N.

13 THE COURT: How do you spell Jo?

14 THE WITNESS: J-O.

15 THE COURT: Thank you.

16 You may proceed.

17 MR. GRIFFITH: Your Honor, if I may approach the  
18 witness?

19 THE COURT: You may.

20 DIRECT EXAMINATION:

21 BY MR. GRIFFITH:

22 Q Let me show you this, Ms. Thompson. Ms. Thompson, do  
23 you recognize that at all?

24 A Yes, I do.

25 Q Did you, in fact, write that document?

1 A Yes, I did.

2 Q Do you remember when you wrote it?

3 A Yes, I do.

4 Q Do you remember where you were when you wrote it?

5 A I was in SCDC. It's not the first one I ever wrote.

6 Q Okay.

7 MR. GRIFFITH: Your Honor, Ms. Rice would like to  
8 enter this as Plaintiff's Exhibit 1?

9 THE COURT: Show to it counsel.

10 MR. BARLOW: Your Honor, I've seen it.

11 THE COURT: Any objection?

12 MR. BARLOW: None, Your Honor.

13 THE COURT: Mark it as Applicant's 1 without  
14 objection.

15 (WHEREUPON, Applicant's Exhibit No. 1 was marked for  
16 identification and received into evidence.)

17 BY MR. GRIFFITH:

18 Q And Ms. Thompson, having seen this document again,  
19 are the statements that you made in here true?

20 A Yes, sir, they are.

21 Q And would you mind reading that for the court?

22 MR. BARLOW: Your Honor, I'm going to object to her  
23 reading that into the record. The letter itself is  
24 nothing but hearsay. She writes what someone told her  
25 that someone else said and we don't -- unless we have the

1 person that actually told her this here to testify to it,  
2 I'm going to object to her reading it.

3 MR. GRIFFITH: If it please the court?

4 THE COURT: So when you allowed it to be admitted,  
5 was it just for the purpose of --

6 MR. BARLOW: Just for the record.

7 THE COURT: Of corroborating that she wrote the  
8 statement?

9 MR. BARLOW: Yes, sir.

10 THE COURT: Yes, sir. I'll hear any response.

11 MR. GRIFFITH: If it please the court, Your Honor,  
12 I'm asking her as the person who wrote the letter to read  
13 her own letter.

14 THE COURT: I'm capable of reading, aren't I? And  
15 it's been admitted into the record, right?

16 MR. GRIFFITH: Yes.

17 THE COURT: For purposes that she created the  
18 document.

19 MR. GRIFFITH: She's the person that wrote this  
20 letter, Your Honor. I would argue that it should be put  
21 into the record as she wrote it whether --

22 THE COURT: Well, it's already been admitted as an  
23 exhibit, so why would I need her to read it? That's why  
24 I'm confused. I'll read it. It's already been admitted  
25 as an exhibit, so we're sort of fighting over something

1 that doesn't really matter, right?

2 MR. BARLOW: Thank you, Your Honor.

3 THE COURT: You need to leave that with the court  
4 reporter. It's been marked as an exhibit, has it not?

5 MR. GRIFFITH: Well, I'm going to need it later.

6 THE COURT: Well, you just remember to put it back so  
7 I'll be able to read it.

8 MR. GRIFFITH: I have no further questions for this  
9 witness, Your Honor.

10 THE COURT: You may proceed, Mr. Barlow.

11 MR. BARLOW: Briefly, may it please the Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION:

14 BY MR. BARLOW:

15 Q Good morning, Ms. Thompson, how are you?

16 A I'm fine, sir.

17 Q And Ms. Thompson, when did you write that letter?

18 A That one was wrote within the last seven-and-a-half  
19 years. It is the second one that I have written. The  
20 first was given to the police, Felicia Hallman, who was my  
21 roommate in county at the time.

22 Q Let me ask you this. I just want to be clear.  
23 You're telling me that this statement was written  
24 seven-and-a-half years ago?

25 A I had wrote one for the police.



1 Q I'm talking about the statement that you saw today?

2 A No, this one was written within the last  
3 seven-and-a-half years.

4 Q So it's been about seven-and-a-half years since you  
5 wrote that?

6 A Yes.

7 Q And you are currently, also, incarcerated, correct?

8 A Yes, I am.

9 Q And where are you incarcerated?

10 A Lee Correctional Institution.

11 Q Were you employed prior to your incarceration?

12 A No.

13 Q Why are you incarcerated?

14 A I was convicted of murder in 2016.

15 MR. BARLOW: Thank you. Nothing further, Your Honor.

16 THE COURT: Any redirect of the witness? .

17 MR. GRIFFITH: No further questions, Your Honor.

18 THE COURT: Any objection to the witness being  
19 excused from the Applicant?

20 MR. GRIFFITH: Any objection to what?

21 THE COURT: Any exception to the witness being  
22 excused?

23 MR. GRIFFITH: No objection, Your Honor.

24 THE COURT: Any exceptions?

25 MR. BARLOW: None, Your Honor.

1 THE COURT: Ma'am, you're excused.

2 We need that exhibit.

3 MR. GRIFFITH: Pardon?

4 THE COURT: We need the exhibit. Thank you. I  
5 appreciate it. I just need to make a copy of it. We'll  
6 give it right back to you.

7 Call your next witness.

8 MR. GRIFFITH: Your Honor, I would now call the  
9 plaintiff, Ms. Carmen Rice.

10 THE COURT: Ms. Rice, if you'd come to the stand and  
11 be sworn. Raise your right hand for me.

12 CARMEN RICE, after being duly sworn,  
13 testified as follows:

14 THE COURT: Have a seat and state your full name for  
15 the record, spelling your last name for the court  
16 reporter.

17 THE WITNESS: My name is Carmen Latrice Rice.

18 THE COURT: Spell your last name, please.

19 THE WITNESS: R-I-C-E.

20 THE COURT: You may proceed.

21 MR. GRIFFITH: May I approach the witness, Your  
22 Honor?

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION:

25

1 BY MR. GRIFFITH:

2 Q First, Ms. Rice, you heard Ms. Thompson talk about  
3 this. How did this come into your possession?

4 A Well, back in 2003 when I was in the county jail,  
5 Holly Thompson was roommates with Felicia Hallman and when  
6 Felicia Hallman got sentenced, I found out through  
7 Mr. Mobley that she had wrote a statement against me. And  
8 I knew that her and Holly was roommates. So Holly came to  
9 me and told me that --

10 MR. BARLOW: Your Honor, objection to the hearsay.

11 THE COURT: Sustained, hearsay. You cannot tell what  
12 someone else said to her. It's an out-of-court statement  
13 offered for the truth.

14 BY MR. GRIFFITH:

15 Q So how did this actually get put into your hand? Who  
16 put this in your hand?

17 A Holly Thompson placed that into my hand.

18 Q Okay. So the lady that wrote?

19 A Yeah, the lady that wrote it, yes, sir.

20 Q Can you remember when that was?

21 A Like she said, maybe around seven years ago.

22 Q All right. And do you recognize this?

23 A Yes, sir.

24 Q What is that?

25 A It's the letter from a lady named Stacy Earl.

1 Q And how did that come into your possession?

2 A She placed it in my possession.

3 Q Do you remember when she gave it to you?

4 A She gave it to me in 2016.

5 Q Okay.

6 A Okay.

7 MR. GRIFFITH: Your Honor, the State is aware of  
8 this. I'd like to enter this as Plaintiff's Exhibit --

9 MR. BARLOW: Your Honor, I'm going to object to that  
10 one being entered. We do not have Ms. Earl here. It's  
11 not notarized. It's not an affidavit. It's just a letter  
12 written by someone named Stacy Earl. Unless Mr. Griffith  
13 has Ms. Earl here to testify, I'm going to object to it  
14 being admitted.

15 THE COURT: What's the basis of the objection?

16 MR. BARLOW: Authentication.

17 THE COURT: And hearsay?

18 MR. BARLOW: And hearsay, yes, ma'am.

19 THE COURT: Would you like to respond to the  
20 objection?

21 MR. GRIFFITH: Your Honor, Ms. Rice has testified  
22 that this was placed in her hand and she can tell when it  
23 was placed in her hand. She told us when, where. And,  
24 Your Honor, we would like to enter as a piece of something  
25 that she actually had in her hand, Your Honor.

1 THE COURT: The objection is sustained.  
2 Authentication and hearsay. It's an out-of-court  
3 statement offered by someone other than the witness,  
4 offered for its truth. The objection is sustained. It  
5 will be marked as Applicant's No. 2 ID only.

6 THE WITNESS: Your Honor --

7 THE COURT: No, ma'am. You're not able to speak.

8 THE WITNESS: Okay.

9 THE COURT: Except when being questioned.

10 COURT REPORTER: Your Honor.

11 THE COURT: Oh, I'm sorry, that was you.

12 COURT REPORTER: Yes, that was me. You want me to  
13 mark it?

14 THE COURT: Yes, as Applicant's 2 for ID only.

15 COURT REPORTER: I need to get that back. He took  
16 off with it.

17 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for  
18 identification only.)

19 BY MR. GRIFFITH:

20 Q All right. Ms. Rice?

21 A Yes, sir.

22 Q Why are you in prison?

23 A I'm in prison for a crime I did not commit.

24 Q All right. What was that?

25 A Armed robbery and murder.

1 Q Okay. When were you convicted?

2 A I was convicted in 2005. It was a cold case that  
3 occurred in 2001.

4 Q So four years after --

5 A Yes, sir.

6 Q -- the event occurred?

7 A That's correct.

8 Q The evidence was fairly circumstantial, wasn't it?

9 A The evidence was based on a statement that a female  
10 by the name of Iris Bryant, who had been a known drug user  
11 and informant for the police who had gotten in trouble and  
12 wanted a plea bargain. So her and another guy, who also  
13 was in trouble concocted this story, you know, to cover  
14 themselves.

15 I took DNA. I did everything I could to prove that I  
16 did not commit this crime. I've given DNA and I asked why  
17 it wasn't Iris Bryant, who stated that her cousin, Tetha  
18 was with her, Tetha Bethel was the one that committed the  
19 crime, why wasn't she able to take DNA? To this day, her  
20 DNA sample has never been taken. I've given forensics.  
21 I've given DNA evidence --

22 Q Slow down just a little.

23 A Yes, sir, I'm sorry.

24 Q Go ahead.

25 A I've done everything that I could to prove to the

1 courts that --

2 MR. BARLOW: Your Honor, I'm going to object. This  
3 is way beyond the scope of the two letters that this  
4 evidentiary hearing was based on.

5 MR. GRIFFITH: If it please the Court, we're  
6 attempting to get to those.

7 THE COURT: And you need to limit your scope. The  
8 only thing Judge Newman ruled was appropriate was one, the  
9 timeliness of her application and whether, in fact, newly  
10 discovered evidence existed. What I'm hearing now is the  
11 substance of her original PCR appeal.

12 MR. GRIFFITH: I understand, Your Honor.

13 THE COURT: The objection is sustained.

14 MR. BARLOW: Thank you.

15 BY MR. GRIFFITH:

16 Q So as to this newly discovered evidence, your  
17 contention is, what do you want to tell us about it?

18 A Well, my contention is, you know, these statements  
19 that -- you know, Mr. Mobley was my attorney during the  
20 time and I only had him for a short period of time, so I  
21 didn't get to see these exculpatory statements that was  
22 placed in my file in 12/14/2004, I think. I didn't get to  
23 see these statements from Lamont Bostic and Nataniel  
24 Hallman. I know he went over --

25 MR. BARLOW: Your Honor, I'm going to object. She's

1     testifying to stuff that is not in evidence and is not  
2     permitted within the scope of Judge Newman's order.

3             THE COURT:   Mr. Griffith.

4             MR. GRIFFITH:  I understand, Your Honor.  We need to  
5     limit --

6             THE COURT:  The objection is sustained.

7             Ma'am, I need both you and Mr. Griffith to be clear,  
8     this is not a new PCR.

9             THE WITNESS:  Yes, ma'am.

10            THE COURT:  You're not getting another bite at the  
11     apple.  You've already had a full PCR hearing.  The Court  
12     of Appeals has already reviewed that.  They sustained the  
13     conviction.  They found that there was no deficiencies in  
14     your counsel at that time.  You do not get a do-over, so  
15     to speak.  Judge Newman's order is very clear.  She  
16     dismissed your PCR, except to consider the timeliness of  
17     your application, which was on a conditional order of  
18     dismissal, and your allegations that there was newly  
19     covered evidence.  So I need you both to stay within the  
20     parameters of Judge Newman's order.

21            Now, in addition to that, I think I just heard  
22     somebody's phone go off.  If there are any phones that are  
23     on, they need to be turned off.

24            Thank you.  You may continue.

25            MR. GRIFFITH:  Thank you, Your Honor.



1 THE COURT: You're welcome.

2 BY MR. GRIFFITH:

3 Q Ms. Rice, as to these two letters, the one from  
4 Ms. Thompson.

5 A Yes, sir.

6 Q She placed that into your hand; is that correct?

7 A Correct.

8 Q And did you actually speak to her when she gave to it  
9 you?

10 A Yes, she placed it into my hand because she was  
11 talking about how I had been done wrong and how they done  
12 me and how the investigators had previously spoken to her  
13 because she had been questioned about it --

14 MR. BARLOW: Objection, hearsay.

15 THE COURT: Sustained, hearsay. She cannot say what  
16 someone else said.

17 BY MR. GRIFFITH:

18 Q We want to keep it on these two letters, okay?

19 A Yes.

20 Q So that particular letter that she gave you, is that  
21 something you knew about already?

22 A I knew her name was in my discovery.

23 Q All right. Now, the second letter that you say --  
24 you testified that it was handed to you; is that correct?

25 A Yes, sir.

1 Q Okay. Now, who handed it to you?

2 A Stacy Earl handed it to me. And investigation was --  
3 when the case was opened back up in 2001, the courts paid  
4 for a reinvestigation into the case. So I was hoping that  
5 she would be here because she was looking forward to being  
6 here. So I don't know why she's not here. I'm wondering  
7 did anybody go seek her out because the funding was paid  
8 for into the reinvestigation.

9 MR. GRIFFITH: I have no further questions, Your  
10 Honor.

11 MR. BARLOW: Thank you, Your Honor. May it please  
12 the court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION:

15 BY MR. BARLOW:

16 Q Ms. Rice, the letter that Ms. Thompson wrote that you  
17 said she handed, how old was that again?

18 A It was maybe around seven years ago, as she said.

19 Q So you did not discover that letter within the last  
20 year?

21 A No, I had the letter in my possession.

22 Q So it is not newly discovered evidence?

23 A Yes, it is newly discovered evidence. Because when I  
24 filed my second PCR, I filed that PCR around 2017. And  
25 then '17, '18, somewhere around in there, Covid hit, so it

1 back up everything, but I had that letter since around  
2 that time.

3 Q Is this the first time Ms. Thompson has ever written  
4 a letter for you?

5 A No, she's never written a letter to me. She's  
6 written one with the sheriff's department and it's in my  
7 discovery.

8 Q You did not use a letter in your federal habeas from  
9 her?

10 A Did I use a letter on my federal habeas for --

11 Q Yes, ma'am.

12 A -- Holly Thompson?

13 Q Yes, ma'am.

14 A I'm not certain. I don't recall, but I may have.

15 MR. BARLOW: Your Honor, may I have a moment?

16 THE COURT: Yes, sir.

17 MR. BARLOW: May I approach?

18 THE COURT: You may.

19 BY MR. BARLOW:

20 Q Ma'am, I'm going to show you something real quick.

21 A Yes, sir.

22 Q Do you recognize this letter?

23 A Yes, sir, I do. She wrote me two of them.

24 Q Can you tell me what you used that letter for?

25 A Well, obviously, it must have been for habeas if

1 that's what you said it was. Because that -- is that what  
2 it is, habeas, the packet?

3 Q I'm asking you. Do you recall -- do you recognize  
4 that letter?

5 A Yes, sir, it's a letter that Holly wrote, Holly  
6 Thompson.

7 Q So you did use a letter from Holly Thompson in your  
8 federal habeas?

9 A I mean, if that's what you say -- I don't know what  
10 the rest of the package is. I just know it says filed and  
11 dated. I don't see anything that says federal habeas.

12 Q Let me ask you, do you recognize that letter?

13 A Yes, sir, I do.

14 Q Did you use that in your federal habeas?

15 A If you say I did, I'm not sure. I don't know. I  
16 know it says to the Honorable Clerk of Court. It don't  
17 say anything about habeas.

18 MR. BARLOW: Your Honor, for your reference, in the  
19 federal habeas packet I handed you, they're marked with  
20 the two gray tabs.

21 Nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MR. GRIFFITH: No redirect, Your Honor.

24 THE COURT: Ma'am, you may step down.

25 Anything further from the Applicant?

1 MR. GRIFFITH: Your Honor, we would call Ms. Elder.

2 THE COURT: Is the witness present?

3 MR. GRIFFITH: I believe so. I'm sorry, Your Honor.  
4 She's here for support.

5 Your Honor, we would call must Minister Mustafa.

6 THE COURT: Sir, if you'll come forward to be sworn.  
7 Raise your right hand, please.

8 ABDULLAH MUSTAFA, after being duly  
9 sworn, testified as follows:

10 THE COURT: If you would have a seat for me, sir, and  
11 state your full name for the record, spelling your first  
12 and last name for the court reporter.

13 THE WITNESS: Abdullah Siheem Mustafa,  
14 A-B-D-U-L-L-A-H, M-U-S-T-A-F-A.

15 THE COURT: You may proceed.

16 MR. GRIFFITH: May it please the Court?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION:

19 BY MR. GRIFFITH:

20 Q Mr. Mustafa, when did you first become aware of  
21 Ms. Rice's plight?

22 A It was September of last year, 2022.

23 Q Okay. I'm sorry, what organization do you work with?

24 A I'm the chairman of Prison Voices of South Carolina.

25 Q All right. What do they do?

1 A It's an advocate organization that advocates for  
2 folks who have been wrongfully convicted.

3 Q Have you -- you've been working with Ms. Rice for how  
4 long then?

5 A Since September of 2022.

6 Q So --

7 A There was other organizations that got me involved.

8 Q Okay.

9 A They called me up and asked me would I assist them in  
10 looking at Ms. Rice's case. At the time, I had pretty  
11 much retired from the human rights work that I had been  
12 doing, but I decided to take on the task and I did. I  
13 had -- she sent me her discovery and I began to -- my  
14 colleagues and I began to look into it and we realized  
15 that this young lady was done wrong. She was wrongfully  
16 convicted.

17 Q And did you see the two letters that we're here for  
18 today?

19 A I seen the two letters. I, also, seen exculpatory  
20 statements that she was never even aware of that her  
21 attorney never made her aware of.

22 MR. BARLOW: Your Honor, I'm going to object. It's  
23 going outside the scope of this hearing.

24 THE WITNESS: Well, he asked me a question, so I'm --

25 THE COURT: He's objected and that's within the rules

1 and until I rule on the objection, I have to ask you to  
2 refrain from answering.

3 Do you have any response to the objection?

4 MR. GRIFFITH: No, Your Honor, I'm trying to stay  
5 within the scope.

6 THE COURT: The objection is sustained. You have to  
7 remain in the scope of Judge Newman's ruling.

8 BY MR. GRIFFITH:

9 Q So these two letters, how did you become aware of  
10 them?

11 A I became aware of the letters by looking into her  
12 profile, her documents, just like I became aware of all  
13 the other documents that was in there.

14 Q Okay.

15 A States the other letter again and exculpatory  
16 statements and all the other statements.

17 Q But staying within these two documents right here --

18 A Whoa, whoa, whoa, you're asking me to stay in the  
19 confines of something and then question me, you can't keep  
20 me confined.

21 THE COURT: Yes, sir, we have to because there's a  
22 judge's order.

23 THE WITNESS: Can I see the judge's order?

24 THE COURT: Sure.

25 Can y'all give him a copy of the order?

1 THE WITNESS: You know, you --

2 THE COURT: Sir, we're required --

3 THE WITNESS: I mean, you got me here, you're asking  
4 questions.

5 THE COURT: Don't speak over me, sir. We have rules  
6 we have to abide by. There are rules of procedure and I  
7 am bound by another judge's order that was not appealed.  
8 So we're limited within the scope of what this hearing is  
9 about and the testimony that can be taken. So when  
10 Mr. Barlow objects, that's within the rules. When  
11 Mr. Griffith responds, that's within the rules. Maybe he  
12 needs to ask you more directed questions.

13 THE WITNESS: Perhaps so, because let's make it real  
14 clear, I only have one creator and that's God. And I'm  
15 about justice, that's what I'm about. When I look into  
16 this young lady's file, that's when I see an injustice.  
17 So you can't keep me confined because I serve God. I  
18 don't know who y'all serve, but I serve God. So let's  
19 make that clear. If you're going to ask me something,  
20 don't confine me because I don't serve no man or no woman.

21 BY MR. GRIFFITH:

22 Q Now, the first letter from Ms. Thompson, where did  
23 you get that letter?

24 A Inside of her box with the other statements.

25 Q Did it come from Ms. Rice or did it come from the



1 discovery packet?

2 A Everything was inside of the box, the discovery  
3 packets, as well as many other documents.

4 Q Now, on the --

5 A I think it was with -- those two statements, I'm  
6 clear about it, again, was with those exculpatory  
7 statements.

8 Q And the second letter, this letter, do you remember  
9 seeing this letter?

10 A Yeah, I remember seeing it.

11 Q That was our Exhibit No. 2, which is for the record  
12 only.

13 Do you remember when you received that letter?

14 A I received everything when I received her documents  
15 in September of -- actually, it was in October is when I  
16 received her documents, October 2022. And when I received  
17 everything --

18 Q Okay.

19 A -- I gave it to her attorney, her prior attorney,  
20 Mr. Aiken, Attorney Aiken, okay. And I, also, gave some  
21 documents to the AG office, okay, which was exculpatory  
22 statements.

23 Q Okay. So now as to those two letters, are you aware  
24 whether or not they were in her original discovery packet  
25 that was used at trial are you aware?

1       A       No, I'm not aware of that, not aware of that.

2       MR. GRIFFITH: All right. I have no questions, Your  
3 Honor.

4       THE COURT: Any questions, Mr. Barlow?

5       MR. BARLOW: None from the State, Your Honor.

6       THE COURT: Any objection to the witness being  
7 excused from the Applicant?

8       MR. GRIFFITH: No, Your Honor.

9       THE COURT: From the State?

10      MR. BARLOW: None, Your Honor.

11      THE COURT: Sir, you're excused.

12      You may proceed.

13      MR. GRIFFITH: We have no further witnesses.

14      THE COURT: The State may proceed.

15      MR. BARLOW: Your Honor, if I could have been a brief  
16 recess five minutes. We'll be at ease five minutes.

17      (WHEREUPON, a short break was taken.)

18      THE COURT: The State may proceed.

19      MR. BARLOW: Thank you, Your Honor. The State has no  
20 witnesses.

21      THE COURT: I'll be glad to hear argument.

22      MR. GRIFFITH: Nothing further, Your Honor.

23      THE COURT: Do you have closing argument?

24      MR. GRIFFITH: Your Honor, we would contend that both  
25 of these letters are newly discovered evidence and --

1 THE COURT: Tell me how they meet the standard of  
2 newly discovered evidence when it's -- and my excuse my  
3 parenthetic for stating them in any order, somebody told  
4 me that, somebody told me that somebody told me.

5 MR. GRIFFITH: Your Honor --

6 THE COURT: And I also need to know how, if any,  
7 difference it would have made in her conviction reviewing  
8 the appeal from Judge Lloyd's trial which was affirmed in  
9 opinion 4300 October 5th, 2007.

10 I guess I'm at a loss as to how any of this evidence  
11 that she claims is newly discovered would have exculpated  
12 her or would have somehow furthered the State's interest  
13 in convicting her.

14 MR. GRIFFITH: If the State and/or her attorneys had  
15 investigated these letters at the time --

16 THE COURT: That's about performance, that's not  
17 about newly discovered evidence. There's a strict  
18 standard on newly discovered evidence.

19 MR. GRIFFITH: If these had been admitted during the  
20 trial could possibly have made a difference in the outcome  
21 of the trial.

22 THE COURT: But is that the newly discovered evidence  
23 standard or is that about performance of counsel? And if  
24 that were the case, where are they today? Why haven't you  
25 secured their appearance so the court can hear firsthand?

1 And what assurance would you have that they would have  
2 appeared at trial and that they would have testified  
3 consistently with what someone said they said.

4 MR. GRIFFITH: I can't talk about 20 years ago, Your  
5 Honor, but these two letters were not in her original  
6 discovery.

7 THE COURT: What are you saying when you say they  
8 were not in her original? Well, these two letters are  
9 hearsay. They weren't exculpatory. There was no duty to  
10 turn them over. They never would have been admissible at  
11 trial.

12 So I'm trying to figure out the best that could have  
13 been done. I'm just trying to figure out how this would  
14 have proven to be exculpatory and what appreciable  
15 difference it would have made whether it was or wasn't in  
16 her original discovery.

17 MR. GRIFFITH: Your Honor, had her attorneys had  
18 these letters in their possession and knowledge of these  
19 letters, they could have done further investigation, found  
20 these people, produced them at trial, if possible, which  
21 would --

22 THE COURT: But what evidence do you have that they  
23 would have said what this contends they would have said?  
24 How were these people's statements, if any, used to  
25 convict her? I read the record and there's no indication

1 of that.

2 The gravamen of her conviction was not what people  
3 said, what they might have said, could have said. We  
4 don't deal in hypothetical or speculation. We deal in,  
5 you know, what is empirical, what actually exists. And so  
6 what I'm trying to figure out is, let's just say, for  
7 example, they had called Ms. Thompson as a witness, what  
8 would she have been able to testify to?

9 MR. GRIFFITH: They could have elicited from her more  
10 information as to how she obtained her --

11 THE COURT: Like what? She never would have been  
12 able to testify about this letter.

13 MR. GRIFFITH: Had she had -- her attorney had the  
14 opportunity to speak with her and knew about this, he  
15 could have contacted --

16 THE COURT: I keep hearing could have. So if he had  
17 contacted her, what assurances do you have for me that she  
18 would have spoken with him?

19 MR. GRIFFITH: None, Your Honor.

20 THE COURT: Or that she would have said what you say  
21 she said if she was as self-interested as you say she was?  
22 And then on top of that, if she came to court, if she was  
23 subpoenaed, she could not have been compelled to testify.  
24 She would have been advised of her 5th Amendment right  
25 against self-incrimination. She would have been appointed

1 a lawyer.

2 You have to go beyond what somebody might have said.  
3 The record has to have -- for it to be newly discovered  
4 evidence, you can't deal in hypothetical or speculation.  
5 That's what I'm trying to -- because you keep talking  
6 about these statements and I'm trying to figure out how do  
7 they lead to the ultimate evidentiary standard of newly  
8 discovered evidence or that they would have made a  
9 difference in the outcome. And her trial transcript was  
10 voluminous.

11 It was sent to me. I asked for everything to be sent  
12 to me in advance. I feel I owe it to both the Applicant  
13 and State to read it ahead of time and not hear things  
14 cold. I don't think that's fair to y'all, frankly, it's a  
15 little selfish. I don't think it's fair to me either  
16 because I need to have a point of reference when we start  
17 talking about a case.

18 MR. GRIFFITH: Nothing further, Your Honor.

19 THE COURT: No, I asked these questions because  
20 legitimately --

21 MR. GRIFFITH: I can't give a good answer to that.

22 THE COURT: Okay. Did you all make any attempts to  
23 contact or to locate Iris Bryant?

24 MR. GRIFFITH: The investigator prior to my taking  
25 the case, Your Honor, Mr. Aiken, that is to say the

1 attorney, I think he made inquiry as to these folks, but  
2 was unable to locate. And the State has informed me that  
3 the other person, Iris, one of them you couldn't find her.

4 THE COURT: One is Iris Bryant.

5 And what's the other?

6 MR. BARLOW: Your Honor, Stacy Earl and Holly Jo  
7 Thompson. And I can say for the record, Your Honor, I ran  
8 Ms. Earl to see because she was incarcerated at the time  
9 that Ms. Rice was incarcerated at the initial proceedings  
10 when she was arrested. Subsequent to that, in my  
11 investigation, I have not been able to locate an address  
12 for her. She has an NCIC. I think that runs up to about  
13 2021, and then it kind of drops off. Your Honor, just  
14 so --

15 THE COURT: You're telling me that you made attempts  
16 to corroborate whether, in fact, she was incarcerated in  
17 Quincy, Florida, from '98 to 2000?

18 MR. BARLOW: We did not do that, Your Honor. What we  
19 did was she was incarcerated with Ms. Rice when Ms. Rice  
20 was arrested at, I believe, Alvin S. Glenn.

21 THE COURT: Okay.

22 MR. BARLOW: And subsequent to that, she was  
23 convicted and sent to Lee.

24 THE COURT: Okay.

25 MR. BARLOW: And --

1 THE COURT: And you've made attempts since -- when  
2 was her release?

3 MR. BARLOW: Your Honor, her NCIC is 23 pages, so  
4 it's pretty lengthy. This was 2000 --

5 THE COURT: What's the last conviction showing?

6 MR. BARLOW: Her last conviction -- give me one  
7 second, Your Honor. I'm sorry, I said 2021. It's 2018  
8 and that's when it dropped off.

9 THE COURT: And what was her last conviction?

10 MR. BARLOW: It was possession of drugs, cocaine.

11 THE COURT: And what happened as a result of that  
12 conviction?

13 MR. BARLOW: It was nolle prossed and that's all it  
14 says.

15 THE COURT: And so what was the conviction prior to  
16 that?

17 MR. BARLOW: It was failure to stop for blue light,  
18 use of vehicle without permission, so both of those were  
19 dismissed.

20 THE COURT: And that was in '18, as well?

21 MR. BARLOW: That was in '18, as well, yes, ma'am.

22 THE COURT: And what was the conviction prior to  
23 that?

24 MR. BARLOW: It appears she was at Kirkland for sell  
25 of a weapon, stolen gun.



1 THE COURT: What year was that?

2 MR. BARLOW: That was -- and she got two years in  
3 2016.

4 THE COURT: So she would have maxed that out in 23  
5 years?

6 MR. BARLOW: Yes, ma'am.

7 THE COURT: So, hypothetically, she would have gotten  
8 out '17, beginning of '18?

9 MR. BARLOW: Yes, and she was arrested in January  
10 of 2018 and May of 2018, but those were nolle prossed.  
11 She had one prior to that, which was also in 2016, was  
12 unlawful carrying of a weapon reasonable care pointing and  
13 presenting.

14 THE COURT: So you have no ability to contact or  
15 locate her?

16 MR. BARLOW: No, ma'am. We actually tried to find  
17 her address and verify it and we were not successful.

18 MR. GRIFFITH: If it pleases the court, Your Honor?

19 THE COURT: Yes, sir.

20 MR. GRIFFITH: Ms. Rice has handed me an address for  
21 Ms. Earl, but she doesn't know how old it is.

22 THE COURT: That might be an address that the State  
23 had.

24 MR. GRIFFITH: I just got it.

25 MR. BARLOW: I do not have her parole paperwork on

1 me, Your Honor. That is one thing I failed to bring.  
2 She's not on parole at this time, but it's a Columbia  
3 address.

4 THE COURT: What's that address? Where's the address  
5 located that you have, Mr. Griffith?

6 MR. GRIFFITH: I have no idea how old this is, Your  
7 Honor.

8 THE COURT: Uh-huh.

9 MR. GRIFFITH: But it says 2906 Weston, W-E-S-T-O-N,  
10 Avenue, and it says Cola, South Carolina, which I assume  
11 is Columbia, South Carolina 29203.

12 THE WITNESS: It's 5906.

13 MR. GRIFFITH: Oh, it's 5906 Weston Avenue.

14 THE COURT: Can we find somebody in the building with  
15 probation and parole?

16 You can continue making your argument while we locate  
17 them.

18 MR. BARLOW: Your Honor, my argument is that --

19 THE COURT: I'm sorry, I apologize.

20 Mr. Griffith, had you concluded your argument?

21 MR. GRIFFITH: I have.

22 Yes, sir, Mr. Barlow.

23 MR. BARLOW: Your Honor, my argument to this is to  
24 Ms. Thompson's statement, the age of it, she has used it  
25 previously in previous filings. It's not newly discovered

1 evidence. They were housed together.

2 I can't imagine that they have not had discussions  
3 about this since they've been housed together. It is,  
4 also, not exculpatory. It's a hearsay statement of  
5 someone who was rooming with someone at that time. I  
6 guess, it was the codefendant.

7 And then as to Ms. Earl's statement, Your Honor, I'm  
8 not sure how Ms. Earl's statement has any relevance to the  
9 case. I've not seen a statement that Ms. Earl supposedly  
10 or allegedly wrote and signed while she was in prison in  
11 Florida when she was allegedly, you know, forced or  
12 coerced into writing it. I've not seen this letter that  
13 was a statement against Ms. Rice that she said she did it.  
14 I'm not seeing that. I'm not sure how that would have any  
15 relevance even at trial.

16 THE COURT: Anything further, Mr. Griffith?

17 MR. GRIFFITH: Nothing, Your Honor.

18 THE COURT: As I've already indicated, Judge Newman's  
19 order was very clear and concise regarding what scope of  
20 this hearing would be -- what the scope of this hearing  
21 would be.

22 One was the timeliness of the application and the  
23 other was newly discovered evidence only and she  
24 underlined and underscored the term only. This court is  
25 bound by that ruling. It was never appealed and,

1       therefore, the scope of this hearing is very clear.

2             In Lanier versus Lanier is the most -- well, I don't  
3       know if it's the most recent case, but it certainly is  
4       instructive regarding how the court is to judge newly  
5       discovered evidence. And that is Lanier at 3464 SC --  
6       actually, bear with me one second.

7             I think there's a more current case on the issue, but  
8       the elements are the same. For someone to meet their  
9       burden regarding newly discovered evidence, they must  
10      establish four factors, that being consistent with the  
11      requirements of Rule 60(b)(2).

12            That is, first, it will probably change the result if  
13      a new trial is granted. Second, that it has been  
14      discovered since the trial. Third, that it could not have  
15      been discovered before the trial. And four, it's material  
16      to the issue, and last is not merely cumulative or  
17      impeaching. That's five-part test is mandated by our  
18      supreme court precedent.

19            I'm going to take the matter under advisement and  
20      think about it and review the record again in light of the  
21      testimony, but I have to be really frank. I'm a little --  
22      I really am at a loss as to how what has been presented to  
23      the court today meets those elements, especially in light  
24      of the record that was presented at the time of trial.

25            And while it is, as Mr. Griffith has indicated,

1     circumstantial in nature, our courts have been very clear  
2     that there's no distinction between direct and  
3     circumstantial evidence except to the extent that when the  
4     State relies on circumstantial evidence, it has to -- it  
5     has to rise above speculation and conclusively point to  
6     the guilt of the defendant beyond a reasonable doubt, but  
7     that does not mean that the State is held to a higher  
8     standard when using circumstantial evidence.

9             And when looking at this record regarding her  
10    conviction, I am at a loss as to how it's not just  
11    cumulative or impeaching or would it have made a  
12    difference in the outcome of the trial, looking at the  
13    first element, which is will probably change the result if  
14    a new trial is granted.

15            But I'm going to think about it a little bit and look  
16    at the record again. I'll issue an order -- either I'll  
17    deny or grant it, but in any event, the State will be  
18    directed to provide the court with a proposed order within  
19    ten days of my ruling and they will be required to send a  
20    copy of that to Mr. Griffith at the same time it's  
21    transmitted to the court.

22            MR. BARLOW: Thank you, Your Honor.

23            MR. GRIFFITH: Thank you, Your Honor.

24            THE COURT: You're welcome.

25            Wait a minute before she goes.

1           Thank you for accommodating me. Can you look up  
2 someone in your records, Ms. Stacy Earl?

3           PROBATION AGENT: She was on probation or parole?

4           THE COURT: She was on parole. And tell me if you  
5 have any record of her in your system.

6           PROBATION AGENT: If you'll just give me a minute.  
7 It's going to take a minute to log on.

8           MR. BARLOW: If you need any birth date or anything,  
9 I can provide it.

10          THE COURT: The State will provide it to you.

11          Yes, ma'am.

12          PROBATION AGENT: Your Honor, her case closed back in  
13 2016. The last address we have for her is 33 Edwards  
14 Street in Sumter, South Carolina 29150.

15          THE COURT: And that was in Sumter?

16          PROBATION AGENT: Yes, Your Honor.

17          THE COURT: And that was in 2016?

18          PROBATION AGENT: Yes, ma'am, she was revoked. She  
19 didn't do well on parole.

20          THE COURT: Tell me something. So we had that she  
21 had -- she was sent to Kirkland in 2016 for sale of stolen  
22 firearm and she received two years. So what do your  
23 records reflect?

24          PROBATION AGENT: She had a forgery back in 2013.  
25 That is the last one she was on that was revoked. Prior

1 to that, she was out on community supervision.

2 THE COURT: When was that?

3 PROBATION AGENT: That was back in 2010 to 2012.

4 Judge Cooper revoked 275 days on July 30th, 2010. She  
5 didn't complete the community supervision. The indictment  
6 was from 2006 for that 2010 case.

7 THE COURT: So what was she -- what did you all have  
8 her for in 2016 where you have the Edwards Street address  
9 in Sumter?

10 PROBATION AGENT: She was on for forgery. And that  
11 last one, that CSP, she got out of prison for, that was  
12 felony driving under the influence with death results.

13 THE COURT: And what year was that?

14 PROBATION AGENT: That was on six indictments. She  
15 did prison time, she got out on CSP in 2010.

16 THE COURT: So tell me what your last contact was  
17 with her.

18 PROBATION AGENT: Yes, ma'am. Just give me a second,  
19 Your Honor.

20 THE COURT: Take your time.

21 PROBATION AGENT: It looks like they had contact back  
22 in 2000 -- they didn't have contact -- she had new  
23 charges. She had law enforcement contact. It looked like  
24 they had -- last time somebody actually had contact with  
25 her was probably when she had a hearing back in 2014 and

1       they picked her up.

2               She was arrested. They did a warrant in 2015. She  
3       had some pending charges. I think she possibly absconded  
4       supervision. It's kind of hard when the case is this old  
5       to get all the --

6               THE COURT: You're saying, basically, she absconded.  
7       And then what contact did you have with her in 2016 when  
8       you had the Sumter address? Was that because she was on  
9       probation or was she on CSP?

10              PROBATION AGENT: She was on regular probation at  
11       that time, Your Honor, for that forgery charge.

12              THE COURT: And she would have absconded on these  
13       other charges, this other CSP?

14              PROBATION AGENT: The CSP was closed already. So  
15       it's like she did the CSP. It expired. She didn't  
16       absconded. She got off and then she got more probation.  
17       Like, the indictments from 2013 for the forgery charge,  
18       Judge Hayes in Sumter sentenced her to probation and then  
19       she ended up violating that.

20              THE COURT: She absconded.

21              PROBATION AGENT: Yes, ma'am.

22              THE COURT: So, basically, she's never complied with  
23       probation and y'all haven't had any contact with her? .

24              PROBATION AGENT: Not for that last one.

25              THE COURT: The last time you had contact with her,



1 she was actually physically living in Sumter in 2016 where  
2 she was sentenced by Judge Hayes and then she absconded?

3 PROBATION AGENT: Well, it was before 2016. It was  
4 2013.

5 THE COURT: So what happened to the 2016 probation  
6 case?

7 PROBATION AGENT: It's a 2013 indictment case, so she  
8 was on -- I think they gave her three years.

9 THE COURT: So it was 2013 --

10 PROBATION AGENT: Indictment to 2016 --

11 THE COURT: So she pled in 2016?

12 PROBATION AGENT: Yes, ma'am. He gave her three  
13 years probation, but she didn't complete that. She was  
14 supposed to be on from 2013 to 2016, but she didn't  
15 complete it, so she ended up getting revoked in 2015.

16 THE COURT: And what happened when she was revoked in  
17 2015?

18 PROBATION AGENT: I don't see how much time she got  
19 on here, but it was a closed rev, so that means they were  
20 revoked.

21 THE COURT: So they just revoked the case in total  
22 and she wouldn't have came out on CSP?

23 PROBATION AGENT: No. She could have came out on  
24 a -- but she didn't come out on anything because she would  
25 have been back on some type of probation if she did.

1           THE COURT:  So the last address you all have is the  
2   Sumter?

3           PROBATION AGENT:  Yes, ma'am.

4           THE COURT:  Have you ever had a Columbia address for  
5   her?

6           PROBATION AGENT:  Let me see.  Had to because the  
7   agent that was on here -- I can see if I can find a  
8   history if it still shows.  The agent that had contact  
9   with her, as well, he works in our office.

10          THE COURT:  Do you think it's possible that her  
11   Sumter probation could have been transferred to Columbia?

12          PROBATION AGENT:  Absolutely.  If Agent Smith was on  
13   here, what might would have happened is if they tried to  
14   transfer it or she absconded or didn't come through, we  
15   end up sending the case back to Sumter for the violation,  
16   so that's more than likely what happened.

17          THE COURT:  Because she never reported?

18          PROBATION AGENT:  Yes, ma'am.

19          THE COURT:  So she never actually was in Columbia for  
20   y'all to have an address for her?

21          PROBATION AGENT:  No, ma'am.  I don't see -- well,  
22   the way our system is set up, ma'am, we can't -- it's not  
23   showing the history.  It used to show the history of  
24   addresses, but the new system it won't give us the prior  
25   history.  It used to give us all the histories, but now,

1 it just won't give us that. It just give us the last one,  
2 especially since she's been off for so long.

3 THE COURT: But based on what you're seeing right  
4 now, she would have been placed on probation in Sumter?

5 PROBATION AGENT: Yes, ma'am.

6 THE COURT: Since there's a Columbia agent  
7 referenced, there was an attempt to transfer it here, but  
8 it never took place because she absconded and y'all sent  
9 it back to Sumter?

10 PROBATION AGENT: That's what it says.

11 THE COURT: So it does not look like y'all ever had a  
12 Columbia address for her?

13 PROBATION AGENT: No, ma'am. It looks very brief.  
14 It looks like -- and it, also, has some agents on here  
15 from Lexington. I don't know what, if she moved around,  
16 but she definitely was trying to get to Columbia at some  
17 point, the last case. Because Agent Smith is on this --

18 MR. BARLOW: I, also, found something on Lexington,  
19 but it didn't pan out.

20 THE COURT: You tried finding --

21 MR. BARLOW: Yes, ma'am.

22 THE COURT: Looks like the last known address for her  
23 would have been in Sumter, South Carolina, and she never  
24 made it to Columbia.

25 MR. BARLOW: Yes, ma'am.

1           THE COURT: So I don't know that there's any validity  
2 to that Columbia address you have, Mr. Griffith. Frankly,  
3 based on what I've heard, I'm not sure you would have been  
4 able to -- people have to want to be found to find them.

5           MR. GRIFFITH: I don't think she wanted to be found.

6           THE COURT: Well, she was just transient, which is,  
7 essentially, the same thing.

8           All right. Anything further based on what probation  
9 has been generous to accommodate and provide us with?

10          MR. GRIFFITH: Nothing from the plaintiff, Your  
11 Honor.

12          THE COURT: From the State?

13          MR. BARLOW: Your Honor, I would just, also, comment  
14 as to Ms. Earl, her record spans North Carolina, South  
15 Carolina, Florida, so she does move around.

16          THE COURT: And that spans from what year to what  
17 year? You said it was 22 pages, correct?

18          MR. BARLOW: Yes, ma'am. It starts in 19, I believe  
19 it was 98, to 2018 -- excuse me, Your Honor. It is  
20 earlier than that. It is 1992 to 2018.

21          THE COURT: This may sound morose, but did you all  
22 check with DHEC to see if she's --

23          MR. BARLOW: That I did not do, Your Honor. It did  
24 not even cross my mind.

25          THE COURT: It's possible she may have met her

1       demise.

2               MR. BARLOW: I could do that. I just -- it got weird  
3 with me because she had charges from all these years --

4               THE COURT: It's weird when somebody does that and  
5 they just drop off the face of the earth because that has  
6 been their history.

7               MR. GRIFFITH: Unless she --

8               THE COURT: People can straighten up, but if she had  
9 straightened up, probation would have found her and they  
10 would have brought her in and dealt with absconding  
11 supervision, because there's a warrant still in the  
12 system.

13              So we would have found her by now, either driving,  
14 working somewhere, she would be located that. It just  
15 makes me wonder -- and, again, I don't mean to sound  
16 morose, but it just makes me wonder if something happened.

17              MR. BARLOW: I did not think about that.

18              THE COURT: Unfortunately, just based on my  
19 experience, it happens a lot, so maybe we need check that,  
20 as well.

21              All right. Thank you very much. Have a good day.

22              PROBATION AGENT: Thank you, Your Honor.

23              THE COURT: Just for the record before we adjourn,  
24 probation said she, also, has a warrant for California.

25              PROBATION AGENT: No, she was born.

1 THE COURT: She was born in California.

2 PROBATION AGENT: Just in case she goes out there.

3 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA       )  
                                          )  
COUNTY OF RICHLAND            )

I, Karen Ambroziak, Official Court Reporter for the  
5th Judicial Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate and  
complete Transcript of Record of the proceedings had and  
evidence introduced in the trial of the captioned case,  
relative to appeal, in the Court of Common Pleas for  
Richland County, South Carolina, on the 17th day of July,  
2023.

April 7, 2024

Karen Ambroziak

Karen Ambroziak, RPR  
Circuit Court Reporter

I Holly Jo Thompson 299956,  
do hereby attest that ~~one~~  
Felisha Hallman wrote  
statements against Carmen  
Rice After spending time  
with Carmen's codefendant  
~~Eris Brint~~ who also wrote  
statements on Carmen.  
Know this because Hallman  
was my roommate at the  
time. She talked about  
what she was going to  
write. Her statements/  
testimony should never  
have been used. Hallman  
did all this to get off of  
her charges





November 22, 2016

To whom this concerns:

I was incarcerated from 1998-2000 at Gadsden Corr. Inst. in Quincy, Fl. I've never known Ms. Rice although I was approached by 2 detectives concerning her case which I have no knowledge of. I was told to sign a paper that I did not understand. I never wrote anything but only stated clearly that I did not know her. I was informed that if I did not sign the paperwork with my signature that I would be charged with withholding state's evidence to a capital crime and subpoenaed to Judicial Court. During her crime I was imprisoned in the state of Florida.

*Harvey Farte*



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Carmen L. Rice, #308637,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT  
)

) CASE NO. 2017-CP-40-06361  
)

**ORDER OF DISMISSAL**

2023 NOV 15 AM 11:27  
JANETTE W. MCBRIDE  
C.C.P., G.S., & F.C.

RICHLAND COUNTY  
FILED

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Trial Counsel:

Date of Hearing:

Court Reporter:

Hon. Deadra L. Jefferson

Timothy L. Griffith, Esq.

D. Russell Barlow II, Esq.

Christopher Hart, Esq.

John T. Mobley, Esq.

July 17, 2023

Karen Ambroziak

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Carmen Latrice Rice (Applicant) on October 18, 2017, alleging she is entitled to post-conviction relief based on newly or after-discovered evidence. An evidentiary hearing into the matter was convened on July 17, 2023 at the Richland County Courthouse. The Applicant was present and represented by Timothy L. Griffith, Esquire. D. Russell Barlow II, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on her own behalf, and additional testimony was provided by Holly Jo Thompson<sup>1</sup> (Thompson) and Abdullah S. Mustafa (Mustafa). The Court had before it the trial transcript, the Richland County Clerk of Court records, the records from the direct appeal, the records from Applicant's first PCR hearing, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

<sup>1</sup> SCDC Inmate #299956.

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**RECEIVED**

DEC 04 2023

S.C. SUPREME COURT

### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to the Richland County Clerk of Court orders of commitment. In October 2004, the Richland County Grand Jury indicted Applicant for Armed Robbery<sup>2</sup> (2004-GS-40-8755) and Murder<sup>3</sup> (2004-GS-40-8754). John T. Mobley, Esquire and Christopher R. Hart, Esquire represented Applicant at trial. Deputy Solicitor John P. Meadors and Assistant Solicitor Theodore N. Lupton prosecuted the case. On April 4, 2005, Applicant proceeded to a jury trial before the Honorable Reginald I. Lloyd. Applicant was found guilty as indicted. Judge Lloyd sentenced Applicant to imprisonment for concurrent terms of thirty (30) years for Armed Robbery and life without parole for Murder.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, perfected the appeal. In Applicant's appeal Appellate Counsel Dudek raised the following issues:

1. Whether the Court erred by refusing to allow defense witnesses Alana Quattlebaum to testify that co-defendant Iris Bryant told her in jail that Nikki was with her when the decedent was killed, and that Nikki shot the decedent, since Bryant on a prior occasion told the police Nikki was present, and Bryant later testified that admission was a lie, and she denied at trial making this statement to Quattlebaum, since this was an admissible prior inconsistent statement, and the judge's reason for excluding it as evidence of third-party guilt was also erroneous.
2. Whether the Court erred by allowing Investigator Smith to testify he was told by another law enforcement official that appellant did not want to submit to her fingerprints being taken, since this testimony was hearsay and was very prejudicial.

<sup>2</sup> A person who is convicted of or pleads guilty to Armed Robbery must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years. See S.C. CODE ANN. § 16-11-330 (2015). The offense of Armed Robbery is a violent, most serious felony. See S.C. CODE ANN. § 16-1-60 (2015); S.C. CODE ANN. § 17-25-45 (2014).

<sup>3</sup> A person who is convicted of or pleads guilty to Murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. § 16-3-20 (2015). The offense of Murder is a violent, most serious felony. See S.C. CODE ANN. § 16-1-60 (2015); S.C. CODE ANN. § 17-25-45 (2014).



3. Whether the Court erred by allowing waitress Heidi Feagin to make and [sic] in-court identification of appellant, where she previously was not only unable to identify appellant, but she also misidentified two other women in the photo array, since the judge erroneously ruled appellant opened the door to this unreliable in-court identification by cross-examining Feagin.
4. Whether the Court erred by admitting records and the attendant testimony from the security company where appellant was employed under the business records exception, since the records were not "trustworthy" within the meaning of Rule 803(6), SCRE, where the company went bankrupt and the custodian of the records and other evidence indicated that the poor bookkeeping made it possible for thirty-three guns not to be accounted for, including one the state strongly insinuated belonged to appellant, and the probative value of this "bad employment acts" and gun evidence was also outweighed by its unduly prejudicial effect under Rule 403, SCRE.
5. Whether the Court erred by refusing to give a curative instruction where the solicitor argued that the jury should convict appellant to give decedent's wife and the decedent justice, since this was an improper appeal to the sympathy and passion of the jury.

The South Carolina Court of Appeals affirmed Applicant's conviction in a published opinion on October 5, 2007. State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007).

Applicant filed a Petition for Rehearing on November 26, 2007. On January 2, 2008, the Court of Appeals denied Applicant's Petition for Rehearing. On April 4, 2008, Applicant filed a Petition for Writ of Certiorari with the South Carolina Supreme Court. On December 4, 2008, the South Carolina Supreme Court denied Certiorari. The Remittitur was returned to the lower court on December 8, 2008.

***First PCR Action and Subsequent Appeal: 2009-CP-40-0234***

Applicant subsequently filed an application for PCR on January 14, 2009, in which she alleged the following grounds for relief:

1. "Ineffectiveness of counsel"
2. "Judicial violation"
3. "Search, seizure, and investigator's violation of procedure"

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4. "Miranda improperly done"
5. "Incomplete discovery/Brady prior to trial"
6. "Sentence [sic] on basically hearsay; no tangible evidence"

Attached to Applicant's PCR application was an "Attachment to Post Conviction Relief Form Number Nine (9)," in which Applicant expounded on her allegations to include (verbatim):

1. The attorney did not provide the Defendant a complete Motion of Discovery and Brady with all favorable material in accordance to Maryland v. Brady . . . with sufficient time to prepare rebuttal.
2. The attorney did not insist on the suppression of incredible witnesses [sic] statement or testimony.
3. The Defendant was charged and convicted on hearsay of witnesses in a case of four (4) years old whereas witnesses in her behalf nor she could recall evidence or whereabouts.
4. No tangible evidence was presented at the trial.
5. Witness for the prosecution did not pick the Defendant out of any lineup, however pick out the prosecution chief witness.
6. The Defendant Miranda Rights was not given to her during the time of the investigator's questioning. The Defendant was given false information as to why she was being questioned at the beginning of interrogation by investigators who came to the Defendant's home.
7. All witnesses for the prosecution was in jail/detention/and or prison and was coerced into testifying.
8. The Rule of Evidence 708 was violated . . . at the trial.

Respondent filed its Return on July 7, 2009, and an Amended Return on March 11, 2010.

An evidentiary hearing was convened at the Richland County Courthouse on June 6, 2011, before the Honorable James R. Barber, III. Applicant was present at the hearing and represented by Mark Schnee, Esquire. Brian T. Petrano, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the evidentiary hearing, Applicant, John T. Mobley, Esquire, Arletta Frierson, and LaShawn Roberts testified. Judge Barber had before him the records of the Richland County Clerk of Court, Applicant's trial transcript, the complete records from the direct appeal, and Applicant's records from SCDC. On August 22, 2011, Judge Barber issued the Order of Dismissal denying Applicant's application for post-conviction relief.

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Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on behalf of Applicant and raised the following issues:

1. Did the PCR judge erroneously find that the statement of Arletta Frierson that Iris Bryant the co-defendant and the State's main witness at trial, told her that the petitioner had nothing to do with the murder of Bernard Brennan was inadmissible hearsay when the statement of Frierson was admissible as impeachment testimony not hearsay pursuant to Rule 801(d)(1)?
2. In finding that the statement of Arletta Frierson was inadmissible, did the PCR judge err in failing to make findings of fact and conclusion of law as to allegation that trial counsel was ineffective for failing to call Arletta Frierson as a witness at trial to testify that the co-defendant and the State's main witness, Iris Bryant, admitted that petitioner had nothing to do with murder of Bernard Brennan?
3. Did the PCR judge err in refusing to make findings of fact and conclusions of law as to the allegations that the testimony of LaShawn Roberts that the co-defendant and the State's main witness, Iris Bryant, admitted that petitioner had nothing to do with the murder of Bernard Brennan constituted newly discovered evidence?

Respondent, through Assistant Attorney General Robert Corney, made a Return to the Petition on January 4, 2012. The South Carolina Supreme Court thereafter entered an order transferring the case to the South Carolina Court of Appeals. On May 21, 2014, the South Carolina Court of Appeals entered an order granting the Petition for Writ of Certiorari and ordering further briefing.

Applicant, through Appellate Counsel, filed a Brief of Petitioner on June 24, 2014. The Respondent, through Assistant Attorney General J. Clayton Mitchell, filed the Brief of Respondent on November 24, 2014. On April 5, 2015, the South Carolina Court of Appeals affirmed the denial of post-conviction relief in unpublished order State v. Rice, Unpub. Op. 2015-UP-191 (Filed April 8, 2015). Applicant filed a timely Petition for Rehearing on April 16, 2015. On May 19, 2015, the

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Court of Appeals denied the petition for rehearing.

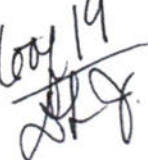
On June 15, 2015, Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. Respondent filed its Return to the Petition on July 30, 2015. On November 4, 2015, the South Carolina Supreme Court entered its order denying the Petition for Writ of Certiorari. The Remittitur was returned to the lower court on November 9, 2016.

***Petition for Writ of Habeas Corpus: 2:16-2610-RBH-MGB***

Applicant filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 on July 13, 2016. Applicant set forth the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. The Court of Appeals erred in finding that if trial counsel was deficient for failing to call (Arletta) Frierson as a witness, petitioner failed to show prejudice because the testimony was merely cumulative when the PCR judge did not rule on the merits of the ineffective assistance of counsel claim and did not find the testimony merely cumulative. (Petitioner's Question Three on PCR Certiorari in S.C. Supreme Court).
2. No physical evidence was pointing to me as the person that committed the crime.
  - a. They had DNA and fingerprints, but none matched mine.
  - b. Petitioner asserts this issue was raised in the direct appeal and cert petition in the post-conviction relief appeal.
3. The trial court erred by ruling a prior inconsistent statement concerning third party guilt admissible.
  - a. Because this was a murder trial where someone was deceased and another incarcerated for life due to false statements by the state's key witness.
4. Feagin was given a photo line-up of all individuals including the subject (me Carmen) and I wasn't picked out until placed in court on trial between two attorneys charged with murder and armed robbery.

Respondent filed its Return and Motion for Summary Judgment on November 28, 2016. On January 5, 2017, Applicant filed her objection to the Return and Motion for Summary Judgment. On March 27, 2017, Applicant filed a notarized letter written by SCDC inmate

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#299956, Holly Jo Thompson. On July 31, 2017, the Honorable Mary Gordon Baker issued the Report and Recommendation that Respondent's Motion for Summary Judgment be granted, and Applicant's petition be denied. Applicant filed her objection to the Report and Recommendation on August 17, 2017. On August 31, 2017, Respondent filed its Reply to Objections to Report and Recommendation of the Magistrate Judge. On September 26, 2017, the Honorable R. Bryan Harwell, United States District Judge, adopted the Magistrate's Report and Recommendation granting Respondent's Motion for Summary Judgment and dismissed Applicant's petition.

#### ALLEGATIONS

In Applicant's current PCR application, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. "Appeal Counsel's ineffective representation"
  - a. "Counsel failed to properly insist and/or present evidence that Rice had no physical or direct evidence linking her to crime and appeal counsel further failed to raise such an issue on appeal which resulted in a procedural default in Applicant's habeas corpus"
2. "Judge's failure to insure [sic] Carmen Rice received fair trial"
3. "Violation of Carmen Rice's constitutional rights-other and further violations discovered in this case including newly found issues"

Respondent filed its Return and Motion to Dismiss on February 19, 2019, requesting that the PCR Application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive applications. On March 6, 2019, Applicant filed her response to Respondent's Return and Motion to Dismiss and/or Proposed Conditional Order of Dismissal. The Honorable Jocelyn Newman issued a Conditional Order of Dismissal on May 22, 2019, provisionally denying and dismissing the PCR Application while giving Applicant twenty (20) days from the *date* of service of said Order to show why the dismissal should not become final. The Conditional Order of Dismissal was properly served on Applicant, and, in

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response, she filed her Opposition to Conditional Order of Dismissal on June 18, 2019. In Applicant's Opposition to Conditional Order of Dismissal, she included a letter purportedly written by SCDC inmate #299956, Holly Jo Thompson, with no date and another letter from Stacie Earle (Earle) dated November 22, 2016.

On July 1, 2019, the Honorable Jocelyn Newman, Chief Administrative Judge for the Fifth Judicial Circuit, issued an Order of Partial Dismissal (Judge Newman's Order) finding

Applicant's allegations of general ineffective representation (numbered 1 above), the judge's failure to ensure fairness (numbered 2 above), and the violation of her constitutional rights (a portion of number 3 above) . . . has failed to show sufficient reason why the Conditional Order of Dismissal should not become final.

However, after reviewing Applicant's supplement to the application for PCR, Judge Newman granted an evidentiary hearing as to the allegation of newly discovered evidence *only*. On June 23, 2021, Respondent filed an Amended Return addressing the newly discovered evidence claim.

***APPLICANT'S FIRST AMENDED PCR APPLICATION***

On March 21, 2023, Applicant, through Counsel, filed a First Amended PCR Application to allege the following:

1. Brady Violation
  - a. "The State violated Rice's rights under the US and South Carolina Constitutions by failing to turn over to the defense the attached statements of witnesses, and the failure to turn over those statements prejudiced Rice's defense."

Attached to the First Amended PCR Application were statements from Nathaniel Hallman dated July 13, 2003, July 14, 2003, October 27, 2003, and Lamont Bostick (Isaac) dated August 1, 2003.

***APPLICANT'S SECOND AMENDED PCR APPLICATION***

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*[Signature]*

On July 10, 2023, Applicant filed her Second Amended PCR Application with the following allegations:

1. Ineffective Assistance of Counsel and Prosecutorial Misconduct By Suppression of Exculpatory Evidence in Violation of Applicant's Due Process Rights
  - a. "November 2003-2005 Rice defense trial attorney John Mobley and Chis Hart failed to raise the exculpatory material; ineffective assistance of counsel"
  - b. "In 2007 rice is represented by attorney Robert Dudek, appointed by appeals court; he failed to raise the exculpatory statement; ineffective assistance of counsel,"
  - c. "2009-2011 Rice first PCR she was represented by attorney Mark Schnee, appointed by indigent commission; he failed to raise the exculpatory statement, ineffective assistance of counsel,"
  - d. "2015 Rice is represented by attorney Katherine [sic] Hudgins, indigent commission, writ of certiorari; she failed to raise the exculpatory statement; ineffective assistance of counsel,"
  - e. "2017 Rice is represented by Katherine [sic] Hudgins attorney appointed by indigent commission, habeas corpus; she failed to raise the exculpatory material; ineffective assistance of counsel,"
  - f. "2019 Rice is represented by Gregory Collins, appointed by indigent commission, PCR; he failed to raise the exculpatory statement; ineffective assistance of counsel,"
  - g. "2021 Rice is represented by Art Aiken, appointed by indigent commissions, PCR; attorney Aiken amended Rice's PCR application to include exculpatory materials but he failed to raise in the PCR application INEFFECTIVE ASSISTANCE OF COUNSEL outlining the above chronological order of ineffective assistance of counsel starting with Rice defense-trial attorneys. Rice denied of her constitutional Sixth Amendment right to effective assistance of counsel has been deny to this very day."
2. Newly Discovered Evidence
  - a. "Rice defense trail attorneys failed to disclosed exculpatory material to her. The exculpatory statements are new



discovered evidence to Rice. She were made aware of them in October 2022."

3. Trial Counsel Failed to Call Witnesses
  - a. "Rice defense trial attorneys failed to called the witnesses in the exculpatory material; they should have called Nathaniel Hallman, Lamont Bostics, Renee Bostics, Rita Bostics, Alexander Sharpe and Troy Stevenson"
4. Trial Counsel Failed to Request DNA Samples of Other People
  - a. "Rice defense trial attorney should have requested that Iris Bryant and her cousin Tika Bethel(aka Nikki, Tina) be tested DNA/Forensic since there were DNA in the front and back sit as the court trial transcript stated."
5. Trial Counsel Failed to Properly Cross-Examine Alton Page
  - a. "Rice defense trial attorney should have question more in depth of Alton Page the witness in the pool hall that was shooting pool with the victim. The defense attorney asked Mr. Page how tall was the two females. The trial court record will reflect that Mr. Page stated that the two females were a few inches shorter than him. He stated that he was 5'9. That would bring the two females in the ranges of 5'7 or 5'6. Rice is 4'11."

#### SUMMARY OF TESTIMONY FROM PCR EVIDENTIARY HEARING

##### *Holly Jo Thompson's Testimony*

On direct examination, Thompson testified that she wrote the letter shown to her and that it was not the first letter she had ever written.<sup>4</sup> Thompson testified that the statements she wrote in the letter were true.<sup>5, 6</sup>

On cross-examination, Thompson testified that she wrote the letter approximately seven

<sup>4</sup> The letter was admitted into evidence as Applicant's Exhibit Number one (1) without objection.

<sup>5</sup> Unlike the letter Applicant used in her federal *habeas*, Thompson's letter submitted to the Court was undated and not notarized.

<sup>6</sup> Respondent objected to Thompson testifying to the contents of the letter based on hearsay. The Court sustained Respondent's objection. The substance of the letters were statements purportedly made by Felisha Hallman and Iris Bryant. Hallman and Bryant were not present or available to testify and be subject to cross examination. However, the letter was admitted into record for review purposes. While the Court sustained the objection, the witness was not precluded from testifying to the substance of any matter within her personal knowledge that may have been contained within her letters.

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[Signature]

and a half years ago while incarcerated. Thompson testified that the first letter she ever wrote was before Applicant's trial, and she had turned it into Richland County Sheriff's Department. Thompson testified that she was not employed prior to her conviction, and she was convicted of murder in 2017.

*Applicant's Testimony*

On direct examination, Applicant testified that Thompson gave her the letter when she wrote it about seven years ago. Applicant was shown Stacie Earle's letter, and she testified that Earle gave her the letter in 2016.<sup>7, 8</sup>

On cross-examination, Applicant testified Thompson gave her the letter about seven years ago. Applicant testified that she could not recall if she used a similar letter in her federal *habeas* action. Applicant further testified that it was possible Thompson had written two letters for her.

*Abdullah S. Mustafa's Testimony*

On direct examination, Mustafa testified that he was the chairman of Prison Voices of South Carolina, which advocates for people who have been wrongfully convicted. Mustafa testified that he had been involved in Applicant's case since September 2022, and decided to help Applicant after reading the letters. Mustafa further testified he did not receive the letters from Applicant, but discovered them in her discovery packet. Mustafa testified that upon discovering the letters, he provided them to Applicant's prior attorney and Respondent. Mustafa testified that he had no knowledge of whether the letters were in Applicant's discovery at trial.

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<sup>7</sup> A copy of Stacie Earle's letter is dated November 22, 2016, but is not notarized. The Court was not provided with the original letter.

<sup>8</sup> Respondent objected to Ms. Earle's letter being admitted into evidence on the legal basis of authentication and hearsay. The Court agreed with Respondent and sustained the objection. The letter was marked as Applicant's two (2) for ID purposes only. Ms. Earle was not present to testify and be subject to cross examination regarding the authenticity of the letter and the substance of its purported content.

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Ms. Earle (5906 Weston Avenue, Columbia, SC 29203) but likewise had no previous success in contacting her at that address.

Additionally, Respondent noted in closing that the contents of Ms. Earle's letter alleged Earle signed a statement against Applicant before trial; however, the record is void of such statement. Even assuming *arguendo* that Earle was present to authenticate the letter, the letter is hearsay, and Applicant did not provide this Court with the original letter or a copy of the affidavit Earle allegedly signed against Applicant. Our Supreme Court has "repeatedly held a PCR applicant *must produce the testimony* of a favorable witness or *otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing" in order to prevail on this type of claim. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); see, e.g., Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (holding that "pure conjecture" as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different); Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness' testimony does not satisfy PCR applicant's burden).

Accordingly, this Court finds Applicant has failed to meet her burden, and the evidence presented does not constitute newly discovered evidence. Importantly, even if the evidence constituted newly discovered evidence, it was immaterial to Applicant's guilt or innocence, and would not change the result if Applicant was granted a new trial. Therefore, Applicant's application for PCR is **DENIED** and **DISMISSED**.

#### ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony

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and a half years ago while incarcerated. Thompson testified that the first letter she ever wrote was before Applicant's trial, and she had turned it into Richland County Sheriff's Department. Thompson testified that she was not employed prior to her conviction, and she was convicted of murder in 2017.

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On direct examination, Applicant testified that Thompson gave her the letter when she wrote it about seven years ago. Applicant was shown Stacie Earle's letter, and she testified that Earle gave her the letter in 2016.<sup>7, 8</sup>

On cross-examination, Applicant testified Thompson gave her the letter about seven years ago. Applicant testified that she could not recall if she used a similar letter in her federal *habeas* action. Applicant further testified that it was possible Thompson had written two letters for her.

***Abdullah S. Mustafa's Testimony***

On direct examination, Mustafa testified that he was the chairman of Prison Voices of South Carolina, which advocates for people who have been wrongfully convicted. Mustafa testified that he had been involved in Applicant's case since September 2022, and decided to help Applicant after reading the letters. Mustafa further testified he did not receive the letters from Applicant, but discovered them in her discovery packet. Mustafa testified that upon discovering the letters, he provided them to Applicant's prior attorney and Respondent. Mustafa testified that he had no knowledge of whether the letters were in Applicant's discovery at trial.

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<sup>7</sup> A copy of Stacie Earle's letter is dated November 22, 2016, but is not notarized. The Court was not provided with the original letter.

<sup>8</sup> Respondent objected to Ms. Earle's letter being admitted into evidence on the legal basis of authentication and hearsay. The Court agreed with Respondent and sustained the objection. The letter was marked as Applicant's two (2) for ID purposes only. Ms. Earle was not present to testify and be subject to cross examination regarding the authenticity of the letter and the substance of its purported content.

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### STANDARD OF REVIEW

The PCR Act provides that a person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A) (2014). In a post-conviction relief action, "[t]he applicant has the burden of establishing [her] entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRCPP; see Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

To obtain a new trial based on after discovered evidence under S.C. Code Ann. § 17-27-20(A)(4) (2014), a PCR applicant must show the evidence:

1. would probably change the result if a new trial is had;
2. has been discovered since the trial;
3. could not have been discovered before trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when

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considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)); see also, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

Additionally, the "credibility of newly-discovered evidence . . . is a matter for determination by the circuit judge to whom it is offered." State v. Mayfield, 235 S.C. 11, 34, 109 S.E.2d 716, 729 (1959); Harris, 391 S.C. at 544-45, 706 S.E.2d at 529 ("The credibility of newly-discovered evidence is for the trial court to determine."); see e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment.").

#### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the post-conviction relief hearing. This Court further had the opportunity to observe each witness who testified at the evidentiary hearing, and closely evaluate their credibility, and the Court has weighed their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-80 (2014).

At the outset of the evidentiary hearing, Respondent requested to be heard on the two (2)

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Motions to Strike Applicant's two (2) Amended PCR applications. Respondent maintained that Judge Newman's Order was very limited in scope and that Applicant's amended PCR applications exceeded the scope of Judge Newman's Order. As an initial matter, the Court finds that Judge Newman's Order is very clear and is the law of the case because Applicant did not appeal Judge Newman's Order. Accordingly, the Court finds that Respondent's Motions to Strike are moot because Judge Newman's Order is the law of this case, and the amended PCR applications exceed the scope of that Order. The Court proceeds on the merits of the sole issue of whether the Thompson and Earle letters are after-discovered evidence and timely presented to the Court pursuant to the PCR Act.

***Allegation of After-Discovered Evidence***

Upon conducting and completing its analysis, the Court finds Applicant has failed to meet the requisite burden of proof regarding after-discovered evidence under S.C. Code Ann. § 17-27-20(A)(4) (2014) and further failed to establish any constitutional violations or deprivations that would entitle Applicant to relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

As aforementioned, it is a "fixed rule that the credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered." State v. Parker, 249 S.C. 139, 141, 153 S.E.2d 183, 184 (1967); c.f. Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the

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smoke of the battle is by [her] very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

As an initial matter, the Court does not find Applicant's and Thompson's testimony credible. The determination of whether new evidence is credible for the purposes of a new trial rests with the trial court. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). In particular, "our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citing Porter, 269 S.C. at 621, 239 S.E.2d at 643). "When testimony is in direct conflict and depends largely on the credibility of the new evidence, the trial judge is charged with the duty of assessing the evidence." State v. Deese, 266 S.C. 534, 538 225 S.E.2d 175, 176 (1976) (citing State v. Fowler, 264 S.C. 149, 155, 213 S.E.2d 447, 450 (1975)).

Applicant contends that Thompson's letter was given to her approximately seven (7) years ago, Thompson testifying to the same.<sup>9</sup> Additionally, Thompson testified she had written a letter to the same effect before trial and provided it to Richland County Sheriff's Department. Applicant testified she knew who Thompson was as her name was included in the discovery around the time of trial. The record provides that Thompson was referred to multiple times while lead investigator Stan Smith was on the stand at Applicant's trial. See Trial Tr. p. 829, ll. 5 – 19; pp. 864, l. 19 – 865, l. 5; pp. 865, l. 24 – 866, l. 18; pp. 886, l. 14 – 887, l. 5. As well, Applicant used a letter written by Thompson in her federal *habeas* action.<sup>10</sup>

Notably, at Applicant's first PCR evidentiary hearing on June 6, 2011, Applicant called two (2) witnesses to testify regarding allegations that Applicant's co-defendant, Iris Bryant, told them Applicant had nothing to do with the murder for which Applicant is convicted. The PCR

<sup>9</sup> Thompson testified that she had written the second letter within the last seven and one-half years.

<sup>10</sup> See Entry Number 21, filed 3/27/2017, Case No. 2:16-cv-02610-RBH-MGB.

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court ruled their testimony was inadmissible hearsay but allowed Counsel to proffer testimony from Arletta Frierson and Lashawn Roberts. (2011 PCR Tr. p. 15; p. 21). Applicant appealed her 2011 PCR order of dismissal, arguing the PCR court erred in (1) ruling that Arletta Frierson's statement constituted inadmissible hearsay, (2) not making findings of fact and conclusions of law as to the allegation that LaShawn Roberts' testimony constituted newly discovered evidence, and (3) not making findings of fact and conclusions of law regarding whether Trial Counsel was ineffective for failing to call Frierson as a witness. The Court of Appeals affirmed Applicant's convictions finding issues one and two unpreserved and finding Trial Counsel was not ineffective for not calling Frierson to testify. The Court of Appeals reasoned that the testimony Frierson would have provided was merely cumulative to what Alana Quattlebaum testified to at the trial. See State v. Rice, Unpub. Op. 2015-UP-191 (S.C. Ct. App. Filed April 8, 2015).

Here, Applicant is seemingly doing exactly what she did in her first PCR hearing with the exception that she now has two (2) new witnesses. As to Thompson's letter, the Court finds that even if the letters were not available to Applicant before or at the time of trial—or at her first PCR action—and this PCR action was timely filed with Thompson's letter—the letter is immaterial, conclusory in nature lacking substantiation, merely purporting to impeach a State's witness, and would not change the result if Applicant was granted a new trial. In a new trial, Thompson may testify to the fact she wrote the letter, but the knowledge she purports to have that would allegedly exculpate Applicant is inadmissible hearsay. See Rule 801, SCRE. "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE; Sams v. McCaskill, 282 S.C. 481, 319 S.E.2d 344 (Ct. App. 1984) (A statement offered to prove the truth of the statement is inadmissible hearsay).



Moreover, even assuming *arguendo* that Thompson's letter is newly discovered evidence, Applicant failed to demonstrate that this purported evidence satisfies the five-factor test in Clark. Specifically, the Court finds Thompson's letter fails factors one, four, and five. See United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion."). The Court finds Thompson's testimony would not have changed the result of the trial, is not material to guilt or innocence, and at best would have merely been used for impeachment purposes. Thompson's letter is tangentially associated with Applicant's guilt or innocence. Evidence that merely impeaches a witness's credibility does not constitute material evidence of a defendant's guilt or innocence. See State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979).

As well, at the evidentiary hearing, this Court found that Ms. Earle's letter was not admissible because its contents are hearsay and Ms. Earle was not present to authenticate the letter or be subject to cross examination concerning its content. See Rule 901, SCRE; see also State v. Brown, 424 S.C. 479, 818 S.E.2d 735 (2018); State v. Green, 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019), cert. granted, (Jan. 16, 2020) and aff'd as modified, 432 S.C. 97, 851 S.E.2d 440 (2020) (all evidence must be authenticated to be admissible). During the evidentiary hearing, Respondent indicated to the Court that his office had attempted to locate Ms. Earle without success. After a review of Ms. Earle's criminal record, it was discovered that Ms. Earle had been on probation. The Court, *sua sponte*, requested that the Bailiff summon a probation officer for questioning regarding potential contact information for Ms. Earle. The probation officer informed the Court that the last known record of Ms. Earle indicated she was on probation in Sumter, but she absconded from probation, and there is no updated record showing an address or any other way to communicate with Ms. Earle. The probation department also had a Columbia address for



Ms. Earle (5906 Weston Avenue, Columbia, SC 29203) but likewise had no previous success in contacting her at that address.

Additionally, Respondent noted in closing that the contents of Ms. Earle's letter alleged Earle signed a statement against Applicant before trial; however, the record is void of such statement. Even assuming *arguendo* that Earle was present to authenticate the letter, the letter is hearsay, and Applicant did not provide this Court with the original letter or a copy of the affidavit Earle allegedly signed against Applicant. Our Supreme Court has "repeatedly held a PCR applicant *must produce the testimony* of a favorable witness or *otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing" in order to prevail on this type of claim. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); *see, e.g., Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (holding that "pure conjecture" as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different); Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness' testimony does not satisfy PCR applicant's burden).

Accordingly, this Court finds Applicant has failed to meet her burden, and the evidence presented does not constitute newly discovered evidence. Importantly, even if the evidence constituted newly discovered evidence, it was immaterial to Applicant's guilt or innocence, and would not change the result if Applicant was granted a new trial. Therefore, Applicant's application for PCR is **DENIED** and **DISMISSED**.

#### ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony

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in support of the claims. Accordingly, this Court deems these allegations abandoned by the Applicant. Therefore, they are hereby denied and dismissed.

### CONCLUSION

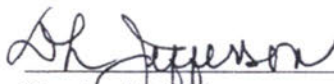
For all the foregoing reasons, this Court finds and concludes Applicant has failed to meet the burden of proof as to any of the allegations advanced in this post-conviction relief action and has not established any constitutional violations or deprivations entitling her to post-conviction relief. Therefore, Applicant's application for post-conviction relief is **DENIED** on all grounds and **DISMISSED WITH PREJUDICE**.

This Court advises the Applicant that she must file and serve a notice of intent to appeal within thirty (30) days from PCR Counsel's receipt of written notice of entry of this Order to secure the appropriate appellate review. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR Counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

### **IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 3<sup>rd</sup> day of November, 2023.

  
Deadra I. Jefferson  
Presiding Judge  
5th Judicial Circuit

Charleston, South Carolina  
At Chambers

**WITNESSES**

(B) LT. SMITH - RCSD */s/*

**ARREST WARRANT NUMBER**

G845796

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date:

MAR 17 2004

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2004-GS-40-8755

**The State of South Carolina**  
**County of Richland**

**COURT OF GENERAL SESSIONS**  
**MARCH TERM 2004**

**82**

**THE STATE**  
**vs.**

**CARMEN RICE**

**Indictment for**

**ARMED ROBBERY**  
SC Code: 16-11-330(A)  
CDR Code: 0139  
Class FEL-A(V)

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.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED,  
*James M. McIndoe*  
CLERK OF COURT & G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA



## INDICTMENT

At a Court of General Sessions, convened on March 17, 2004, the Grand Jurors of Richland County present upon their oath:

## ARMED ROBBERY

That Carmen Rice did in Richland County on or about October 25, 2001, commit robbery by feloniously taking from the person or presence of Bernard Brennan by means of force or intimidation goods or monies of Bernard Brennan such goods or monies describes as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

WARREN B. GIESE, SOLICITOR  
GIESE, TRUE COPY  
ORIGINAL FILED  
JANUARY 20, 1991  
C.C.C.P.&G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA



WITNESSES

(S) LT. SMITH - RCHSD /S

ARREST WARRANT NUMBER

Q845795

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury

Date:

MAR 17 2004

VERDICT

For person of Petit Jury

Date:

DOCKET NO. 2004-GS-40-05754

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2004

82

THE STATE

VS

CARMEN RICE

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class: FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive my rights 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.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
2004/03/17/3  
C.C.C. PLS. AND G.S.  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

INDICTMENT

At a Court of General Sessions, convened on March 17, 2004, the Grand Jurors of Richland County present upon their oath:

**MURDER**

That Carmen Rice did in Richland County on or about October 25, 2001, feloniously, willfully and with malice aforethought, kill one Bernard Brennan by means of a gunshot and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Warren B. Giese*  
 Warren B. Giese, SOLE CLERK  
 C.C.C.P.&G.S.  
 RICHLAND COUNTY  
 SOUTH CAROLINA

CERTIFIED TRUE COPY  
 ORIGINAL FILED  
 3/17/04