

ORIGINAL

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2009-121246

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S.C. Supreme Court

THE STATE,

Petitioner,

v.

RICHARD BILL NILES, JR.

Respondent.

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
BY STATE OF SOUTH CAROLINA**

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1 hole was to explain to them what happened; is that right?

2 A Yeah.

3 Q They told you were a good man; right?

4 A Yeah.

5 Q And they told you that you had shown respect for them
6 and they respected you and they wanted you to tell them what
7 happened; right?

8 A Yes, sir.

9 Q And for an hour you told them things that did happen;
10 right or you wouldn't say nothing; right?

11 A I told them what happened.

12 Q Now, Detective Curry probably spent at least a half an
13 hour trying to tell you about crossroads and the crossroads
14 that you all kept coming to and the crossroads that you were
15 telling him a little bit of the truth and then you would tell
16 him something he completely couldn't believe; is that right?

17 A Yes, sir.

18 Q Okay, now, later on then he told you - he asked you how
19 many children you had; right?

20 A Yes, sir.

21 Q And you told him you had five children; right?

22 A Yes, sir.

23 Q And he told you it was Christmas; right?

24 A Yes, sir.

25 Q You could help yourself and be with your children if you

1 would be more forthcoming and he told you, slapped down two
2 big books on the table; right, and said, "We've got
3 everything. We're just seeing whether or not you're going to
4 tell a lie"; is that right?

5 A Yes, sir.

6 Q Okay, and then he told you that he didn't know why you
7 were being so reluctant to tell the truth because Richard
8 Niles and Mokeia Hammond had already thrown you under the
9 bus; is that right?

10 A Yes, sir.

11 Q And he told you just that; didn't he?

12 A Yes, sir.

13 Q That they had already thrown you under the bus and if
14 you were a smart fellow that what you would do would be to
15 look out for yourself; right?

16 A Yes, sir.

17 Q Okay, they gave a cigarette and left you in a room. You
18 waited a long time; is that right?

19 A Yes, sir.

20 Q And then little by little you told virtually different
21 stories; is that right, totally different stories than you
22 told in the first part of the interview; is that right?

23 A Yes, sir.

24 Q Okay, now, let me ask you, in terms of what you're
25 telling us here today, you pled guilty to manslaughter and

1 pled guilty to armed robbery on Monday; is that right?

2 A Yes, sir.

3 Q And if - and that's in a direct plea deal with the
4 Solicitor's Office; right?

5 A Yes, sir.

6 Q For your testimony, in exchange for your testimony here
7 today; right?

8 A Yes, sir.

9 Q And what that means in real terms is that you're no
10 longer facing 30 years to life; are you?

11 A No, sir.

12 Q You could get ten to 15 for what you're up here saying
13 today.

14 A Yes, sir.

15 Q Which is totally different from what you've always said
16 in the past. Okay, now, let me ask you something, while you
17 were sitting there in that jail cell May 25th, did you write
18 Richard Niles a letter?

19 A Yes, sir.

20 Q And you told him that standup kind of guys do stand up
21 kind of things; right, didn't you?

22 A No, sir, he wrote me first.

23 Q Okay, let me ask you then, let's just stay with what
24 we're talking about right now. Did you tell him that that
25 bitch of his was cooperating with their people; right?

1 A Yes, sir.

2 Q And that they were trying to roll you; right?

3 A Yes, sir.

4 Q And that as far as you were concerned he needed to man
5 up; right?

6 A Yes, sir, to his responsibility.

7 Q Because you were going to man up; is that right?

8 A Confess to what he did.

9 Q Okay, now, let me ask you this, now, so, you're leading
10 them to believe that you're operating on some kind of code of
11 the street; is that right; whereby nobody cooperates with the
12 police; right, that's the page you want them on; isn't it?

13 A Who - no, sir.

14 Q She's 19 and he's 25; is that right?

15 A I don't know how old she is and how old he is.

16 Q And you're 37 years old?

17 A Yes, sir.

18 Q Is that true?

19 A Yes, sir.

20 Q Okay, and as the Solicitor read your record you got this
21 conviction for, you got this felony conviction for drugs in
22 June of 2003 for cocaine; is that right?

23 A Yes, sir.

24 Q And then you've got a conviction of 2003 for maintaining
25 a drug house; right?

1 A Yes, sir.

2 Q And you were found guilty of all of those things; right?

3 A I pleaded guilty.

4 Q You pleaded guilty and you're 37 years old.

5 A Yes, sir.

6 Q And you want to mislead these people into believing that
7 they ought to be operating on some code whereby everybody in
8 the street looks out for everybody in the street, nobody
9 tells the police the truth and that's what you expected them
10 to do and that's what you told him in May of 2008, May 25th;
11 right?

12 A Yes, sir.

13 Q And the ending salutation was "death rather than
14 dishonor." So, they're supposed to be operating off of a
15 code of some sort, some kind of foolishness where you're
16 leading them to believe that they should never say anything
17 at all about the role you played or what was done here
18 because you're keeping quiet?

19 A I'm not keeping quiet.

20 Q You're definitely not. You certainly aren't but you
21 wanted them to believe that; isn't that true?

22 A No, sir.

23 Q Mr. Moore, did you tell the police that on the way to
24 the mall that there was no discussion about what was to take
25 place?

1 A Yes, sir.

2 Q And you told them that. So, now, you're here today
3 saying that someone told you or that Richard Niles told you
4 that there was going to be a robbery. Now, the only thing
5 that you discussed with the police I believe in the interview
6 was that you interpreted that Richard Niles told you that you
7 all were going to hit a lick; right?

8 A Yes, sir.

9 Q Now, the translation of that is a translation that you
10 put on that that you gave the police; is that right? Richard
11 Niles never told you that he was going to the mall to rob
12 anybody; did he? I mean, he can speak English. Did he tell
13 you that?

14 A Well, I mean, what happened at the mall?

15 Q No, no, I'm not asking you that. I'm asking you did
16 Richard Niles tell you that he was going to rob anybody?

17 A Yeah.

18 Q What did he say?

19 A That he was going to do a lick.

20 Q He's going to do a lick?

21 A Yeah.

22 Q Okay, did he tell you, "Mr. Moore, or Ervin, let's go
23 to the mall and rob somebody"?

24 A It was the Best Buy.

25 Q Okay, or Best Buy and rob somebody? Now, again, did you

1 tell both detectives, including the gentleman sitting right
2 there, that you couldn't hear what was being said between
3 Niles and Salter on the phone?

4 A I said I couldn't hear all of it, pieces of it.

5 Q Did you tell them and it's on tape, did you clearly tell
6 them that you couldn't hear what was being said. You said
7 that; didn't you? Yes or no?

8 A I told - yeah.

9 Q Yeah, you did, you absolutely did, but now you come
10 here today and testify that you heard what was being said.
11 Now, which is it?

12 A Like I told you, man, I heard some of it.

13 Q You heard some of it?

14 A Yeah.

15 Q You told both detectives that day that you heard two
16 gunshots?

17 A Yes, sir.

18 Q And they asked you, they asked you at least five times
19 how many gunshots you heard and you said you heard bang,
20 bang.

21 A Bang, bang.

22 Q And that's what you said?

23 A Yeah.

24 Q And that's what's in your, in your statement; isn't it?

25 A Yes, sir.

1 Q You come here today and you testify that you heard ten
2 shots?

3 A Altogether.

4 Q Did you tell the police when they were asking you about
5 this on the statement that, "I heard two shots and then I
6 heard ten shots altogether," or is this ten shot thing
7 nowhere near your statement? It isn't; is it?

8 A No, sir.

9 Q You never said that; did you?

10 A No, sir.

11 Q So, now, you want the jury to believe that when you're
12 in jeopardy of going to jail that all the facts change, but
13 now when you're testifying to the police or when you're
14 giving a sworn statement you can't remember nothing, none of
15 this is clear to you. You testified, you gave a statement
16 that when you left the mobile home that you got away from
17 Mr. Niles and Ms. Mokeia the first chance you got; didn't you
18 tell them that?

19 A Yes, ma'am - I mean, yes, sir.

20 Q But now you come here today and you testify that you
21 know he went back to the mobile home and you know how - where
22 he got the gun and you know what happened and you know - how
23 do you know that?

24 A Because I know where he put the gun when he got out the
25 car.

1 Q How do you know whether or not he went back? Did you
2 see him go back?

3 A No, sir.

4 Q So this is part of a made up testimony again on behalf
5 of, in the interest of and to save Ervin Moore.

6 Mr. Moore, did, did the officers tell you that they
7 could completely make this case without your testimony and
8 that the only reason you were in that room was just to
9 verify, they just wanted to verify whether or not you were
10 going to tell the truth; is that right?

11 A Yes, sir.

12 Q And you told three different versions of the truth that
13 same day; is that right?

14 A Yes, sir.

15 Q And then you want Mokeia Hammond and Richard Niles to
16 believe some kind of foolishness that you tell them that
17 everybody ought to be - I'm trying to think how you put it,
18 they ought to be real you said. Is that what you said?

19 A Yes, sir, I was just responding to what he wrote me
20 back.

21 Q And you told him that they had to be, that real people
22 do real things; right and that you wouldn't cooperate with
23 them people, that that woman he had was cooperating with
24 people and you wanted to know whether or not he was
25 cooperating with people; is that right?

1 A Yes, sir.

2 Q Okay, now, all of this in an attempt to mislead; is that
3 correct and you're trying to mislead people today; aren't
4 you?

5 A No, sir; no, sir.

6 Q Well, now, Officer Curry asked you three or four times,
7 "Mr. Moore, how do you know who shot first at the parking
8 lot?" You said, you tried to offer him an explanation and
9 you couldn't figure up anything and you said, "Well, the
10 reason I know is because he told me that back at the trailer
11 park." Is that what you told them?

12 A Yes, sir.

13 Q Okay, you come to court today to testify as far as this
14 deal with the Solicitor's Office and you tell them and you
15 tell the Court and you tell the jury and everybody in here
16 that you know exactly what the sequencing of the shooting
17 was. You been practicing this for the last couple of days?

18 A No, sir.

19 Q What changed between the interview and now?

20 A Ain't nothing changed.

21 Q You got this plea deal in your pocket; right? You got
22 the plea deal in your pocket.

23 MR. BARR: Judge, on the basis of prior inconsistent
24 statement we would like to ask the jury be allowed to view
25 the tape.

1 THE COURT: Well, let me see. We've got a matter of
2 law we need to take up before we proceed. So, I'm going to
3 excuse the jury back to the jury room for just a moment.
4 Thank you very much.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right, Mr. Barr, what statement did
8 he deny making that's on the tape?

9 MR. BARR: Your Honor, I think he has denied
10 stating what he told the police officer at least four or five
11 different times. He's denied ---

12 THE COURT: No, I mean, I've heard him - that's what
13 I was paying close attention to. You said, ``Now, during
14 your interview isn't it true you told the police that you
15 heard two shots," and he said, ``Yes, that's what I told
16 them." ``And now, you're changing your story today," and
17 he's more or less admitting that he's made a prior
18 inconsistent statement. What specifically inconsistent
19 statement did he make on the tape that he is denying that he
20 made because I don't recall any.

21 MR. BARR: Your Honor, I think if I recall properly
22 that he is denying the number of bullets, the shooting
23 itself, the number of shots that were made. I think he's
24 denying the discussions that he had with, alleged discussions
25 that he had with Niles and Hammond. I think he's saying that

1 those discussions, in fact, took place. I think he's, in
2 essence, denying, like I said, several things that are
3 material with regard to actual facts about going to the
4 parking lot, the phone calls.

5 THE COURT: Yeah, but, I mean, he, under your cross
6 examination he admitted that in his prior interview he told
7 the police something different than what he's testifying to
8 now.

9 MR. BARR: Your Honor, he's also saying at this
10 point that he heard conversations between Niles and Salter.

11 THE COURT: Yes, but he also, but he admitted that in
12 the interview with the police that he did not, that he told
13 them.

14 MR. BARR: Your Honor, he is still saying that he
15 heard those conversations.

16 THE COURT: But the question is not whether or not he
17 is now saying he heard those conversations. The question is
18 whether or not he admits to making a prior inconsistent
19 statement. As I understand if he made a prior inconsistent
20 statement and he admits in his testimony that what he told
21 the police in that prior inconsistent statement is different
22 than what he is saying now then you don't bring in the prior
23 inconsistent statement. You only bring it in when he denies
24 having made the statement in the first place.

25 MR. BARR: Your Honor, I think he's still denying

1 the conversations with regard to what went on with phone
2 calls, Your Honor, and that's crucial, that's crucial to my
3 client's ---

4 THE COURT: Well, you're going to have to lay a
5 little bit more foundation. I mean, I will allow you to go
6 back in your cross examination and specifically question him
7 on that point but as far as I can determine thus far he has
8 admitted to the prior inconsistent statements. Now, I'll
9 allow you to continue your cross-examination and if he made a
10 prior inconsistent statement and if in his testimony now he
11 denies having made that statement. at any point in time then
12 you can bring it in but I think at this point in time he has
13 admitted to the - in other words with the ten shots and the
14 two shots, you said, "Didn't you tell the police that you
15 only heard two shots," and he says, "Yes, that's what I
16 told the police," and now you're - and he's admitting that
17 he's making a different statement now, but I think the only
18 way you get in the prior inconsistent statement if he denies
19 ever having made that prior inconsistent statement, but I'll
20 allow you to continue with your cross-examination.

21 MR. BARR: The Court's indulgence, Your Honor.

22 THE COURT: All right.

23 MR. BARR: Thank you, Your Honor.

24 THE COURT: All right.

25 MS. ELDER: And Your Honor, can we approach for a

1 moment, please?

2 THE COURT: All right.

3 (Whereupon a bench conference was held.)

4 THE COURT: All right, ladies and gentlemen, those of
5 you who are in the, in the audience, before we bring the jury
6 back in there has been some rumblings, some disagreements
7 when certain things are said, some giggling when other things
8 are said. I'm not pointing any fingers, but if in the future
9 I hear anything coming out of the audience we will clear the
10 courtroom from everybody.

11 All right, anything before we bring the jury back in?

12 MS. ELDER: No, sir, Your Honor.

13 THE COURT: Anything from the Defense before we bring
14 the jury back in?

15 MR. BARR: Nothing.

16 MR. HAZZARD: Not on behalf of Defendant Hammond, Your
17 Honor.

18 THE COURT: All right, and not only in my prior
19 warning, if I hear anything else, whoever is deemed to have
20 caused the disruption will be held in contempt. All right,
21 let's bring the jury back in.

22 MS. ELDER: Thank you, Your Honor.

23 (Whereupon, the following takes place in the presence of
24 the jury.)

25 THE COURT: Ladies and gentlemen of the jury, we

1 appreciate your patience. We are ready now to resume the
2 trial of the case. Mr. Barr, you can continue with your
3 cross examination.

4 MR. BARR: Thank you, Your Honor.

5 BY MR. BARR:

6 Q Mr. Moore, did you tell Detective Curry and the other
7 detectives that you didn't know who shot first at the Best
8 Way [sic] Store?

9 A I told them I didn't, I didn't see Richard shoot first
10 but.

11 Q Did you tell them that you do not know, you did not know
12 or you do not now, you did not know at that time who shot
13 first at the Best Way [sic] parking lot?

14 A Say it again.

15 Q Did you tell the detectives in the interview that you
16 did not know of your own personal knowledge, did not see who
17 shot first at the parking lot?

18 A Yeah.

19 Q You told them that.

20 A Yeah.

21 Q Do you know today who shot first?

22 A Yeah.

23 Q What puts you in a position to know today better than
24 you knew then?

25 A Because Richard told me he shot first when he jumped

1 back in the car.

2 Q Did you tell the detectives that day that you didn't
3 have a conversation with Richard on either coming up or on
4 the way back to the mobile home park?

5 A No.

6 Q You did not tell them that?

7 A No.

8 Q Let's be very clear, you did not tell the detectives
9 that you did not have a conversation with Richard Niles going
10 back to the mobile or going to the mobile home park?

11 A Yeah, I told them.

12 Q You just said no and now you're saying yes. Are you
13 getting hand signals or something from somebody on the floor?

14 A No.

15 Q Okay, did you tell the detectives during the interview
16 that you never saw a handgun?

17 A Yeah.

18 Q Are you testifying here today that you did see a
19 handgun?

20 A Yes.

21 Q What makes - how do you come about now saying that you
22 saw a handgun when you told them that you did not?

23 A I seen it when he got back in the car.

24 Q Did you tell the detectives that you saw a handgun
25 during the interview either the first part or second part at

1 the mall?

2 A I told them I seen the handgun when he, when he jumped
3 back in the car.

4 Q Do you deny telling the officers that what you heard was
5 bang, bang, and there was glass in your eye and you fell back
6 in the car under the seat and that that's all you saw?

7 A Yep.

8 Q So, you're denying having told them that?

9 A I mean, look ---

10 Q Just answer yes or no, please?

11 A No.

12 MS. ELDER: Objection, Your Honor. He has a right to
13 explain.

14 THE COURT: Yes, answer the question first. After he
15 answers the question then he can explain.

16 A Say your question again.

17 Q Do you deny telling the officers both parts of the
18 interview, did you see an actual, did you deny telling them
19 that you did not see an actual handgun when, in fact, it was
20 your recollection was that you heard bang, bang and that
21 there was glass in your eye and you fell under the seat?

22 A Yeah.

23 Q Sir?

24 A Yeah.

25 Q Yes meaning?

1 A Yes meaning I told them.

2 Q You told them what?

3 A That I seen the handgun when he jumped back in the car.

4 Q Okay, is that going to be in your statement?

5 A Yeah.

6 Q It's going to be in your statement that you said that
7 you saw a handgun in Mr. Niles' hand when he got back in the
8 car at the Best Way - Best Buy parking lot?

9 A Yeah.

10 Q And you're here today denying that what you told the
11 police officers was that what you heard was bang, bang and
12 there was glass in your eyes and you were under the seat?

13 A Yeah.

14 THE COURT: Your Honor, I think it's totally
15 inconsistent.

16 THE COURT: All right, let me see the attorneys up
17 here.

18 (Whereupon, a bench conference was held in the presence
19 but out of the hearing of the jury.)

20 Q Mr. Moore, I'll try to be clear. In your statement to
21 the police, the statement you made in the room you and two
22 detectives, including this gentleman here, did you tell them
23 based on what you saw at the scene in the car or out of the
24 car at Best Way [sic] parking lot, did you tell them that you
25 didn't see a gun, that you did not see a gun?

1 A I told them I didn't see a gun till he got back in the
2 car.

3 Q Now, I'll try to be as clear as I can. Are you saying
4 that you told them that you saw a gun when he got back in the
5 car?

6 A Yes, sir.

7 Q And are you saying that you told them you saw a 357 ---

8 A Yes, sir.

9 Q --- caliber gun?

10 A Yes, sir.

11 Q And is that in your statement?

12 A Yes, sir.

13 Q Or is that what you're saying here today?

14 A Yes, sir.

15 Q At what point in your statement did you tell them that?

16 A I don't know what point but I know I told them.

17 MR. BARR: Your Honor, might I take it up outside
18 the presence ---

19 THE COURT: All right, I think - no, let's just bring
20 them back up.

21 (Whereupon, a bench conference was held in the presence
22 but out of the hearing of the jury.)

23 MR. BARR: The Court's indulgence, Your Honor.

24 THE COURT: All right.

25 BY MR. BARR:

1 Q Mr. Moore, moving along, did you tell the police in your
2 interview that there was drugs under the driver's seat in
3 Mr. Salter's car and that he got those drugs out and showed
4 them to you?

5 A Yes, sir.

6 Q And you told them that?

7 A Yes, sir..

8 Q Did you tell the police that those drugs went into a bag
9 with Richard Niles?

10 A When?

11 Q I'm asking you. On direct examination you told Ms.
12 Elder that Mr. Salter showed you the drugs and they came from
13 under the driver's seat?

14 A Yes, sir.

15 Q In a bag?

16 A Yes, sir..

17 Q Did you tell the police that in your interview?

18 A Yes, sir, a Ziploc sandwich bag.

19 Q Okay, so, you're saying today that you told the police
20 that Mr. Salter showed you some drugs, came out of a Ziploc
21 sandwich bag in the car?

22 A Yes, sir.

23 Q And did you tell the police then after he showed you the
24 drugs that you got out of the car and then passed Richard
25 Niles on the way to the car?

1 A Yes, sir.

2 Q And you're saying that that's in your statement?

3 A Yes, sir.

4 Q To the police?

5 A Yes, sir.

6 Q And you're saying that you told the police that Richard
7 Niles got drugs from Mr. Salter?

8 A Yes, sir.

9 Q And that's in your statement?

10 A Yes, sir.

11 Q And you know that absolutely?

12 A Yes, sir.

13 Q Okay, did you tell the police that Richard Niles put a
14 gun under - in a Nike shoe box and put it under a mobile home
15 park ---

16 A A trailer.

17 Q --- in a mobile home, in a mobile home park?

18 A Yes, sir.

19 Q Okay, did you tell the police that he later went back
20 and got that weapon?

21 A Yes, sir.

22 Q And all that's in your statement?

23 A Yes, sir.

24 Q Okay, and you're saying today under oath that you told
25 all of those things to the police in that statement that you

1 made to the police?

2 A Yes, sir.

3 Q Okay, I have no further questions of this witness,
4 again, just the motion.

5 THE COURT: All right, sir. I'm going to go ahead
6 and deny it at this time. We'll continue with the cross
7 examination. Mr. Hazzard.

8 MR. HAZZARD: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. HAZZARD:

11 Q Ervin Junior Moore, I believe you told Ms. Elder that
12 you're from Greensboro?

13 A Yes, sir.

14 Q She asked you where you lived; right?

15 A Yeah.

16 Q Okay, so, you drove down here for this hearing today?

17 A No, I'm a resident at J. Reuben Long.

18 Q Oh, you're a resident at the detention center?

19 A Yes, sir.

20 Q And those clothes you're wearing you wore those into the
21 detention center when you were arrested?

22 A No, sir.

23 Q You bought them after you were at the detention center?

24 A No, sir.

25 Q Someone brought them to the detention center for you?

- 1 A Yes, sir.
- 2 Q Your mother, your wife?
- 3 A No, sir.
- 4 Q Family member?
- 5 A Yes, sir.
- 6 Q What family member, sir?
- 7 A Cousin.
- 8 Q Your cousin, what's your cousin's name?
- 9 A Tyrone Moore.
- 10 Q Tyrone Moore, he brought, bought that for you, brought
- 11 it to you so you could look good in court; right?
- 12 A Yes, sir.
- 13 Q Okay, now, are you an addict or a user?
- 14 A No, sir.
- 15 Q You're not an addict?
- 16 A No, sir.
- 17 Q Not a user?
- 18 A No, sir, of what?
- 19 Q Are you a dealer?
- 20 A Yes, sir.
- 21 Q You're a drug dealer, okay. Now we're getting
- 22 somewhere. Because you were dealing back in June of 2000
- 23 when you were convicted of felony cocaine possession; right?
- 24 A Yes, sir.
- 25 Q Okay, and you were dealing in June of 2003 when you were

1 maintaining the crack house; right?

2 A Yes, sir.

3 Q Okay, tell me what all goes into maintaining a crack
4 house if you would.

5 MS. ELDER: Objection, Your Honor, relevancy.

6 THE COURT: All right, what's the relevance?

7 MR. HAZZARD: What is the relevance?

8 THE COURT: Uh-huh.

9 MR. HAZZARD: I think it goes to his believability and
10 credibility, Your Honor.

11 THE COURT: Okay, I sustain their motion - the
12 objection.

13 MR. HAZZARD: Okay.

14 BY MR. HAZZARD:

15 Q But in 2003 you were maintaining a crack house as part
16 of your job as a drug dealer; correct?

17 A Yes, sir.

18 Q Okay, and then you drop off the grid for four years.
19 What were you doing for a living between June of 2003 and
20 April of 2007?

21 A Working.

22 Q Working where, sir?

23 A Different jobs.

24 Q Tell me what they are, tell me what they were.

25 A Restaurant.

- 1 Q Which one?
- 2 A Bojangles'.
- 3 Q Where located, sir?
- 4 A South Elm Eugene Street, Greensboro, North Carolina.
- 5 Q In Greenville, North Carolina?
- 6 A Greensboro.
- 7 Q Greensboro, North Carolina, and how long did you hold
- 8 that job, sir?
- 9 A Until I got - I was off and on.
- 10 Q Off and on?
- 11 A Yeah.
- 12 Q At that job?
- 13 A Yes, sir.
- 14 Q What, they lay you off?
- 15 A No, sir.
- 16 Q So, you'd quit and come back?
- 17 A Yes, sir.
- 18 Q Did you work anywhere else between June of 2003 and
- 19 April of 2007?
- 20 A Yes, sir.
- 21 Q Where, sir, please?
- 22 A A door hanger.
- 23 Q A door hanger?
- 24 A Advertising.
- 25 Q For advertising?

- 1 A Yeah.
- 2 Q Advertising for whom, sir?
- 3 A Passing out flyers.
- 4 Q Passing out flyers?
- 5 A Yes, sir.
- 6 Q For whom, sir?
- 7 A A dude named John.
- 8 Q A dude named John. Does John have a last name or a
9 business?
- 10 A Yeah, he's got a business. His name is John Watson.
- 11 Q John Watson, and what's the name of John Watson's
12 business, sir.
- 13 A Door advertising, that's the name of it.
- 14 Q Door advertising?
- 15 A Yeah.
- 16 Q And where was this, sir?
- 17 A He was out of Raleigh, North Carolina.
- 18 Q Out of Raleigh, North Carolina?
- 19 A Yes, sir.
- 20 Q Okay, so, then at some point you moved to Raleigh?
- 21 A No, sir.
- 22 Q So you were driving from Greensboro to Raleigh to work?
- 23 A No, sir, he was coming from Raleigh to Greensboro.
- 24 Q He would come from Raleigh to Greensboro?
- 25 A Yes, sir.

1 Q Okay, so, you were working for John, and at this point I
2 take it that you had stopped doing drugs; is that correct or
3 were you still ---

4 A I wasn't never on drugs.

5 Q You weren't ever on drugs?

6 A Marijuana.

7 Q Okay, when were you on marijuana, sir?

8 A When?

9 Q Yes.

10 A It was about '91.

11 Q From '91 until when?

12 A Got locked up.

13 Q From '91 until - and when were you locked up, December
14 of 2007?

15 A Yeah, when I was working at Bojangles'.

16 Q When you were working at Bojangles'?

17 A Yeah.

18 Q And that was in?

19 A '07.

20 Q That was where, in Greensboro?

21 A Greensboro.

22 Q Okay.

23 A That's where I got arrested at. That's where the police
24 came and got me off my job.

25 Q Yes, sir. So, you had a marijuana problem or issue for

1 16 years; correct?

2 A No, sir.

3 Q So, it's not a problem?

4 A No, sir.

5 Q Getting it and doing it then is not a problem?

6 A It wasn't the whole 16 years I was smoking weed every
7 day.

8 Q You were or were not, sir?

9 A I wasn't.

10 Q Okay, you weren't, but much like your jobs off and on
11 over 16 years then obtaining, using marijuana; correct?

12 A Yes, sir.

13 Q Were you selling marijuana or just using it?

14 A Using.

15 Q Just using. So, you were selling cocaine and
16 maintaining a crack house but you used marijuana?

17 A Yes, sir.

18 Q Okay, and that's the smart way to do it, right, don't
19 get high on your own supply; correct?

20 A Yes, sir.

21 Q Okay, now, what caused you to get out of the crack and
22 cocaine business?

23 A What caused me to get out of it?

24 Q Yes, sir.

25 MS. ELDER: Your Honor, I'm going to object again for

1 relevancy at this point. He's impeached him with prior
2 record. That's what the rules provide.

3 MR. HAZZARD: Your Honor ---

4 THE COURT: All right, overruled. I'm going to allow
5 him to go forward. Go ahead.

6 MR. HAZZARD: Thank you, Your Honor.

7 A Say - repeat the question again.

8 Q Yes, sir, sure. What caused you - you were convicted of
9 maintaining the crack house in 2003. I'm trying to figure
10 out what caused you - I mean, because you can make money
11 doing that; right?

12 A Made money.

13 Q Yes, yes, more money than you made working at
14 Bojangles'; right?

15 A Yes, sir.

16 Q Okay, so, I'm trying to figure out what caused an
17 entrepreneur such as yourself to get out of the lucrative
18 crack house business in 2003 such that you ended up working
19 at Bojangles' in 2007?

20 A I couldn't get caught with, with another charge, another
21 drug charge.

22 Q You couldn't get caught with another charge?

23 A Another crack charge, cocaine charge.

24 Q You couldn't get caught with another crack or a cocaine
25 charge; is that what you're saying?

1 A Yes, sir.

2 Q Okay, fair enough, fair enough. Now, June 2003 you're
3 convicted of maintaining the crack house. At what point were
4 you free of the justice system from this charge?

5 A It was a couple of years.

6 Q So, a couple of years after this charge until you were
7 totally free of the justice system?

8 A Yes, sir.

9 Q Okay, so, now, we're up around maybe June of '05; is
10 that correct?

11 A Yes, sir.

12 Q I mean, I'm not trying to put words in your mouth. I
13 want you to tell the jury the truth as you know it. So, does
14 it seem like '05 would be right as far as when you were
15 finished with all your legal obligations stemming from these
16 two charges?

17 A Yes, sir.

18 Q Okay, okay, now, after you finished all your obligations
19 and this is in North Carolina; right?

20 A Yes, sir.

21 Q Okay, so, you're not in South Carolina. You're not in
22 Trio. You're not in Salters; correct?

23 A No, sir.

24 Q Okay, and you're living up there in North Carolina. You
25 are now free of your obligations, okay, in '05. What did you

1 do for a living between '05 and April of '07?

2 A Went back to work at Bojangles'.

3 Q Okay, so, you worked at Bojangles' for that one and a
4 half to two year period; correct?

5 A Yeah.

6 Q Okay, now, how did you find yourself in Trio, South
7 Carolina, on April 9th of 2007?

8 A I got family down there.

9 Q You have family down there. So, you were visiting?

10 A Yes, sir.

11 Q Okay, and at what point had you come down to visit? How
12 long before April 8th, 2007, did you arrive in Trio?

13 A About a day.

14 Q About a day. So, around April 7th or April 8th you came
15 down to visit family; right?

16 A Yes, sir.

17 Q Okay, okay, then on April 9th - I'll put it this way.
18 On April 9th that's when you run into Richard and Mokeia;
19 right?

20 A Yes, sir.

21 Q Okay, now, they're driving a car. What were you
22 driving?

23 A I was at the store that's right by my house.

24 Q You was on - you were at the store right by your house.
25 So, you were on foot?

- 1 A Yes, sir.
- 2 Q Okay, did you drive down from Greensboro?
- 3 A No, sir.
- 4 Q Did you walk down from Greensboro?
- 5 A No, sir.
- 6 Q How did you get from Greensboro to Trio?
- 7 A Somebody brought me down there.
- 8 Q Somebody brought you down?
- 9 A Yes, sir.
- 10 Q Who brought you down, sir?
- 11 A A friend.
- 12 Q And does this friend have a name, sir?
- 13 A Kim Reardon.
- 14 Q Kim Reardon brought you down.
- 15 A Yes, sir.
- 16 Q Okay, and this is a female?
- 17 A Yes, sir.
- 18 Q She live in Trio?
- 19 A No, sir.
- 20 Q Where does she live?
- 21 A Greensboro.
- 22 Q Okay, she have family in Trio?
- 23 A No, sir.
- 24 Q So, she just out of the goodness of her heart gave you a
- 25 ride?

- 1 A Yes, sir.
- 2 Q To a place where she doesn't know anybody?
- 3 A She done been down there before.
- 4 Q Okay, so, can we say this is your girlfriend,
- 5 significant other?
- 6 A Baby mama.
- 7 Q Baby mama, baby mama, there we go. Okay, so, you come
- 8 down with your baby mama and you go walk to the store near
- 9 your house.
- 10 A Near my aunt house.
- 11 Q Near your aunt's house. That's right. That's not the
- 12 house you grew up in.
- 13 A No, sir.
- 14 Q All right, you run into Rich Boy here and his girlfriend
- 15 and it's your testimony to this jury that they just said,
- 16 "Okay, come on with us." I mean, how did you - just tell
- 17 me, how did you end up getting in the car?
- 18 A They pulled up and said they was going to the beach.
- 19 Q And you asked to go I take it?
- 20 A Yeah, because it was boring, it's country.
- 21 Q Okay, so, you asked to go. They didn't ask you to go;
- 22 did they?
- 23 A Yeah.
- 24 Q Which is it, sir?
- 25 A Yeah, they asked me, man.

1 Q Did they ask you to go or did you ask to go?

2 A Richard, yeah.

3 Q Excuse me?

4 A Yeah, Richard asked me to come.

5 Q He asked you to go?

6 A Yeah.

7 Q Okay, okay, so, even though they're going and you've
8 testified that you asked to go because it was boring ---

9 A It was boring.

10 Q --- now he asked you to go?

11 A He asked me did I want to ride and I said yeah.

12 Q Okay, no problem, sir. So, now, you get in the car.

13 You ride up here and it's your testimony - well, let me ask
14 you, what time was that?

15 A I'm going to say about, probably about in the afternoon.

16 Q Okay, what time was that? Can you be more specific?

17 A About two something.

18 Q About two something in the afternoon, okay, and I
19 believe you testified to Ms. Elder that you all got to the
20 beach. How far a ride is it from Trio to the beach roughly
21 because I've never been to Trio. I don't know.

22 A Probably about 50 some miles I think.

23 Q About 50 something miles. About how long does that
24 normally take driving at a moderate rate?

25 A Probably about a hour.

1 Q About an hour, okay. So, two something in the afternoon
2 you get in the car; is that correct?

3 A I don't know what time it was but I know I got in the
4 car with them.

5 Q You don't know what time it was. Do you own a watch?

6 A No.

7 Q So, sometime that afternoon, you don't know when?

8 A Sometime in the afternoon.

9 Q But you don't know when?

10 A No.

11 Q Okay, and your testimony, your story before this jury is
12 that at some point you all are riding around the beach or
13 you're riding in the backseat. You're a passenger because
14 you ain't in the game no more; right?

15 A No, sir.

16 Q No, you're not in the game. You work at Bojangles'.

17 A I was working at Bojangles'.

18 Q That's right, but sometime in the afternoon you're
19 watching Richard go around and make his deals; right?

20 A Yes, sir.

21 Q And what were his deals? Was he buying weed or selling
22 weed or buying or whatever? What was he, what was he doing?

23 A He was selling crack.

24 Q He was selling crack, okay. That's what your testimony
25 is?

1 A Yeah.

2 Q And I'm am sure that you told Officer Curry and Officer
3 Crosby all about that, that he was riding around making drug
4 deals, right, and selling crack?

5 A Yes, sir.

6 Q Okay, and that was back in December of '07; right, that
7 you told them that?

8 A Yes, sir

9 Q Okay, and so, he's giving out drugs and receiving money;
10 correct?

11 A Yes, sir.

12 Q Okay, how many deals did you see him do, how many times
13 did the car stop?

14 A I don't know because when we started in motion I ain't
15 even get out the car.

16 Q Okay, well, how many times did the car stop with you in
17 it?

18 A Went to about five, about four or five motels.

19 Q About four or five motels and how do you know he's
20 making sales?

21 A That we would - he would - we were talking about it.

22 Q You were talking about it. Okay, and what were you
23 talking about, the fact that he was making sales; is that, is
24 that correct?

25 A Yeah, we were just talking.

1 Q You were just talking and what was he telling you about
2 these sales?

3 A He wasn't telling me nothing. He was just like he was
4 making money, man.

5 Q And did you see the money he was making?

6 A Yeah.

7 Q How much money?

8 A I'd say a couple of hundreds.

9 Q Couple of hundreds?

10 A Yeah.

11 Q So, he was - so, he had some hundred dollar bills on
12 him, no question about it.

13 A Twenties, whatever.

14 Q He had twenties on up; right?

15 A Money is money.

16 Q Money is money, that's right, and he a businessman and
17 he making his money; right?

18 A That's what he been doing.

19 Q That what he been doing but you ain't in the game no
20 more; right?

21 A No.

22 Q That's right. Now, after this four or five or could've
23 possibly have been more stops?

24 A It was - that was about it.

25 Q I'm sorry?

1 A That was about it, about five.

2 Q It was about five stops?

3 A Yeah.

4 Q And he's picking up money on every one?

5 A Yeah, might be 20 here or 30 there or 20 here or ten,
6 whatever. Whoever wanted some he was going to serve them.

7 Q Uh-huh, and he got hundreds on him by the time he was
8 done; right?

9 A Yeah.

10 Q Right, but yet, it's your testimony to this jury that he
11 runs out of weed and he going to have to go steal it from
12 somebody. How much money did you have on you that day?

13 A I ain't bring no money out with me that day.

14 Q You didn't bring a dime; did you?

15 A No.

16 Q Why were you going to the store without any money, back
17 in Trio you were going to the store by your aunt's house.

18 A It's a little store where everybody go to.

19 Q Where everybody, I don't care. What you just going to
20 sit around the store and watch other people buy stuff?

21 A Nah.

22 Q Okay, so, what were you going to do at the store? Were
23 you going to rob that?

24 A I ain't rob nobody.

25 Q Okay, I'll ask you as simply and plainly as I can. What

1 were you going to do at the store with no money?

2 A I was just hanging out.

3 Q You were just going to hang out, watch other people
4 live?

5 A I could have went in that store and got anything I
6 wanted.

7 Q Really, with no money?

8 A With no money.

9 Q I bet you could have. I bet you could have because
10 that's how you roll; isn't it?

11 A Because everybody like me.

12 Q Because everybody likes you. That's right. So, what
13 time did, after, after all the weed allegedly has been smoked
14 because you're such a good buddy that they hadn't seen in so
15 long, after all this weed has been smoked and it's time to
16 find some more, you say Rich Boy calls someone on the phone;
17 right?

18 A Yep.

19 Q But you can't really hear the conversation; correct?

20 A Yes, sir.

21 Q Because the music is up; right?

22 A Yes, sir.

23 Q The music is bumping; right?

24 A Yes, sir.

25 Q Because you all are in - you all ain't in Trio now. You

1 all, you all at the beach. It's April. It's warm. You
2 ain't in Trio. You having a good time; aren't you?

3 A Nope.

4 Q You weren't having a good time?

5 A Nah.

6 Q You were miserable sitting in that backseat; weren't
7 you?

8 A Yes, sir.

9 Q Yeah, because you ain't had no money, you wasn't in the
10 life anymore, you weren't in the game. It was miserable;
11 wasn't it?

12 A Wasn't that miserable.

13 Q Wasn't that miserable, okay. So, what time was this
14 phone call to pick up some more drugs?

15 A I don't know what time it was.

16 Q You don't know, got no idea; do you?

17 A I know he called about five or six people though.

18 Q He called about five or six people about drugs or just
19 five or six phone conversations?

20 A About drugs, about whatever.

21 Q Okay, so, you could hear that? Yes or no could you hear
22 that?

23 A I heard some of it.

24 Q You heard some of it. Always, always just enough to be
25 helpful to the Prosecution; right?

1 A You wasn't there, man.

2 Q You're right. I wasn't. I wasn't, wasn't there and
3 wouldn't have been there. You're absolutely right about
4 that. So, anyway, you don't know what time the Rich Boy
5 called Mr. Salter; do you?

6 A Nope.

7 Q No, so, you can't tell and you can't help the jury with
8 that so that we can match up the phone records from the phone
9 because that would be a little too simple; wouldn't it?

10 A But he called him back.

11 Q But he called him back, okay, and how many times did you
12 say in your truth that Rich Boy called Salter or Salter
13 called him?

14 A Probably, I know he called him probably about four or
15 five times.

16 Q You think so?

17 A Yeah.

18 Q The Rich Boy called Salter four or five times?

19 A Yes, sir.

20 Q Okay. Let me make sure I make a note of that.

21 MR. HAZZARD: The Court's indulgence, Your Honor.

22 THE COURT: All right.

23 BY MR. HAZZARD:

24 Q And do you have any idea how many times that Salter,
25 Mr. Salter would have called Rich Boy?

1 A I think just one time.

2 Q You think just one time?

3 A Yes, sir.

4 Q And around what time was that?

5 A Right before it got dark.

6 Q Right before it got dark, okay, all right, now, you have
7 an agreement with the State in this case; right?

8 A Yes, sir.

9 Q Okay, and let me make sure I got this right because what
10 you are saying to this jury is that the statement that you're
11 giving today is consistent with what you told the police,
12 Detective Curry, Detective Crosby and whoever else back in
13 December of '07; right?

14 A Yes, sir.

15 Q But no changes, no modifications; right?

16 A No, sir.

17 Q No, okay, now, I'm a little confused because your deal
18 now, you were facing 30 to life on murder; right?

19 A Yes, sir.

20 Q And you were facing time for armed robbery. You were
21 facing time for unlawful possession of a firearm during the
22 commission of a felony; is that right?

23 A Yes, sir.

24 Q Okay, and now they've taken that 30 to life off the
25 table and all you're facing is ten to 15, wrap everything up

1 in one big bow; right?

2 A Yes, sir.

3 Q You sound like you got a question. You might want to -
4 your attorney right back there you need to talk to him about
5 it for a second? Are you sure?

6 A I said yes, sir.

7 Q So you know?

8 A Yeah.

9 Q You're facing ten to 15?

10 A Yes, sir.

11 Q So, by your testimony here today you bought at least 15
12 to 20 years of your life back; right?

13 A Yes, sir.

14 Q All right, now, and your testimony is the same now as it
15 was in the statement you gave back in December; right,
16 according to you?

17 A Yes, sir.

18 Q Yes, is that a yes?

19 A Yeah, sure.

20 Q Okay, well, then tell me this, when did you all reach
21 this agreement, you and the Prosecution?

22 A Last week.

23 Q Last week. Last week, today is March, March 11th, I
24 believe, 2009, and you're saying you all reached this
25 agreement last week. What day last week, sir? Today is

1 Wednesday. I know time gets away from you when you're in
2 jail. Today is Wednesday. What day last week?

3 A Sunday, I think.

4 Q Sunday, four days ago, the day before this trial was
5 scheduled to start; right?

6 A Yes, sir.

7 Q Yes, sir. Now, if your testimony was the same today as
8 the statement you gave in December of '07 how come nobody
9 offered you ten years back in December of '07 when you gave a
10 statement? You telling the truth now like you were then;
11 right, right, aren't you?

12 A Yes, sir.

13 Q And yet, there wasn't nothing out there for you in
14 December of '07; was there?

15 A No, sir.

16 Q But now one day before trial, oh, buddy, all of a sudden
17 we got us a new best friend; right?

18 A Yes, sir.

19 Q I mean, did you go to the Prosecution and tell them that
20 you wanted to help them or did they come to you?

21 A I don't know who did what. My lawyer worked it out.

22 Q You don't know who did what? Did you call the
23 Prosecution?

24 A No, sir.

25 Q So, you didn't go to them; right?

- 1 A No, sir.
- 2 Q They came looking to you for help; right?
- 3 A I went through my lawyer.
- 4 Q You went through your lawyer. So, you told your lawyer
- 5 you wanted some help; is that correct?
- 6 A No, sir.
- 7 Q So, you didn't tell Mr. - who is your lawyer? This your
- 8 lawyer back here, Mr. Truslow?
- 9 A Yes, sir.
- 10 Q This man right here?
- 11 A Yes, sir.
- 12 Q So, you didn't tell him you wanted any help?
- 13 A No, sir.
- 14 Q Okay, well, you said you went through your lawyer. I
- 15 mean, help me out here. Explain it to me. How did you hook
- 16 up with the Prosecution? How did you all become new best
- 17 friends. Tell me that.
- 18 A They came and see me.
- 19 Q Who came to see you, sir?
- 20 A The Prosecution.
- 21 Q Who, which one, both of them?
- 22 A Yes, sir.
- 23 Q These two folks right there?
- 24 A Yes, sir.
- 25 Q Yes?

1 A Yes, sir.

2 Q When did they come to see you, on Sunday?

3 A Yes, sir.

4 Q They came out to the jail to talk to you on Sunday; is
5 that right?

6 A Yes, sir.

7 Q Okay, now we're getting somewhere, and you didn't call
8 them and ask them to come; did you?

9 A No, sir.

10 Q No, but now all this time these charges are pending and
11 according to you your story is exactly the same. You're
12 telling them your truth but yet nobody got any love for you;
13 do they? Was Mr. Richardson out at the jail helping you out
14 in December of '07?

15 A No, sir.

16 Q Was Ms. Elder out at the jail helping you January of
17 '08?

18 A No, sir.

19 Q Anybody from the Prosecutor's office come and see you
20 between December of '07 up until, what's that, March 8th ---

21 A No.

22 Q --- of 2009?

23 A No, sir.

24 Q Yeah, they needed some help; didn't they. Is that what
25 they told you that they needed some help?

1 A No, sir.

2 Q What did they tell you?

3 A They wanted the facts.

4 Q They wanted the facts. You already gave the facts
5 according to you. They already had the facts according to
6 you; right, right?

7 A Yes, sir.

8 Q Because you're saying you told them the truth back in
9 December of '07. Speaking of which, how is it that you were
10 just footloose and fancy free from April 9th of '07 till
11 sometime in December of '07. Where did you go?

12 A I was locked up.

13 Q You were locked up between April 9th of '07 and December
14 of '07?

15 A I was in Greensboro.

16 Q You were in Greensboro locked up?

17 A Yes, sir. No, I was in Greensboro working.

18 Q You were in Greensboro working.

19 A Yes, sir.

20 Q So, you got out of this area as quick as you could;
21 didn't you?

22 A The same day, I mean, the next day.

23 Q You didn't go back, you didn't go back to Trio where
24 everybody knows your name; did you?

25 A Yes, sir.

1 Q You did, and stayed for how long?

2 A About two days.

3 Q About two days?

4 A Yes, sir.

5 Q And then the block was hot. You had to go; didn't you?

6 A No, sir.

7 Q No, no. Now, I'm a little confused. Nobody, no family,
8 no friends ever called you in Greensboro and said there's
9 some concern about this shooting that occurred, police are
10 asking questions, nobody said that.

11 A Yes, sir

12 Q They did? Well, did you come back and talk to the
13 police in May of '07?

14 A No, sir.

15 Q June of '07?

16 A No, sir, I was working.

17 Q You were working?

18 A That's where they pick me up off my job. I wasn't
19 running. If I was running I wouldn't even went to Greensboro.

20 Q Uh-huh.

21 A I would have been somewhere else.

22 Q You would've been somewhere else. How were you going to
23 go somewhere else? You ain't had no money. Was Kim Reardon
24 going to give you money to go somewhere else, your baby's
25 mama?

1 A Probably would if I would've asked her.

2 Q Probably would because that's how you roll, isn't it,
3 living off ---

4 A If I was running from anything I wouldn't have went back
5 to Greensboro.

6 THE COURT: All right, excuse me, make sure you don't
7 speak at the same time. The court reporter can only pick up
8 one at a time. All right?

9 MR. HAZZARD: Yes, sir.

10 THE COURT: All right.

11 BY MR. HAZZARD:

12 Q Even though you knew that there were questions and issues
13 regarding this case you weren't in the interview room or you
14 weren't out in the hall waiting to give your statement to the
15 police on April 12th of '07 like these two were; were you?

16 A No, sir.

17 Q No, and you were in Greensboro ---

18 A Working.

19 Q --- living with your baby's mama?

20 A I was living with my aunt, 300 Milburn.

21 Q Got you. Got you, okay. All right, what do you hope
22 to get out of your testimony here today, sir?

23 A I mean, I'm just trying to get back to my family.

24 Q And you'll do whatever it takes to do that; won't you?

25 A Yes, sir.

1 Q All right, thank you.

2 MR. HAZZARD: No further questions.

3 THE COURT: All right, redirect.

4 MS. ELDER: Thank you, Your Honor.

5 REDIRECT EXAMINATION (By Ms. Elder)

6 Q Mr. Moore, I want to ask you about the letter that
7 Mr. Barr was asking you about. You indicated that you wrote
8 Richard Niles while you were incarcerated?

9 A Yes, ma'am.

10 Q What was that in response to?

11 A He had wrote me.

12 Q What did he tell you?

13 A I forgot what it said. I threw it away.

14 Q Did he initiate contact with you?

15 A Yeah, talking about his brother wanted to talk to me or
16 something.

17 Q Okay, and did he talk about this? Did he talk - ask you
18 if you cooperated or talked to the police?

19 A No, we ain't talk about this. He just talked about his
20 brother wanted to talk to me and then he had something,
21 ``Real niggers do real things,'' and that's what I wrote on
22 the note back to him.

23 Q Okay, is that a phrase he used that you wrote back?

24 A Yes, yes, ma'am.

25 Q In reaching this agreement with us to testify were you

1 preparing with Mr. Truslow to come to trial this week?

2 A Yes, ma'am.

3 Q And prior to Sunday you were coming to trial?

4 A Yes, ma'am.

5 Q And in the course of that preparation did your lawyer
6 tell you you wouldn't have to testify, you didn't have to
7 take the stand if you were on trial; did you?

8 A No, ma'am.

9 Q And you've been in jail; correct?

10 A Yes, ma'am.

11 Q So, you don't know if I called Mr. Truslow or if Mr.
12 Truslow called me; do you?

13 A I don't know who called who, no, ma'am.

14 Q Okay, you just know we came out there to talk to you
15 Sunday?

16 A Yes, ma'am, and I was happy.

17 Q Okay, and the statements that we went over before and
18 your testimony ---

19 A Yes, ma'am.

20 Q --- you signed a written agreement with us about your
21 deal here today; right?

22 A Yes, ma'am.

23 Q Part of that written agreement it deals with what
24 happens if you get on the stand and lie; doesn't it?

25 A Yes, ma'am.

1 Q And if you get up on the stand and you lie what happens
2 to that agreement?

3 A It ain't no good.

4 Q It goes out the window?

5 A Yes, ma'am.

6 Q And what you facing?

7 A Thirty.

8 Q Facing murder, aren't you?

9 A Yes, ma'am.

10 MS. ELDER: No further questions, Your Honor.

11 THE COURT: All right, sir.

12 MR. BARR: Just a, just a couple, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. BARR:

15 Q Mr. Moore, I believe Attorney Hazzard asked you about
16 the drug business, being in the drug business, being out of
17 the drug business. What is the street value of a pound of
18 marijuana?

19 A Where I'm from?

20 Q Just in the general, in the drug trade?

21 A I don't know about down here but in North Carolina it
22 was about 650, 675.

23 Q And based on your dealings with Mr. Niles just on that
24 one day, one afternoon and all of these drug sales that he
25 had met and done would you estimate that he had probably

1 twice, three times of that in his pocket that afternoon?

2 A I don't know how much he had in his pockets. I know he
3 had some money.

4 Q He had a lot of money; didn't he?

5 A Yeah.

6 Q Okay, and you had no money at all?

7 A I had a couple of dollars. I ain't going to say I ain't
8 had no money at all.

9 Q Can you offer us any reason why you think that Mr. Niles
10 would want to rob somebody for \$675 of street marijuana, then
11 have to go out and sell it and he's got a pocket full of
12 money?

13 A I don't know what happened.

14 Q You don't know what happened. You were there but you
15 don't know what happened. Let me suggest this to you. Would
16 it be fair to say that you asked Mr. Niles to help you get
17 some marijuana; didn't you?

18 A Yeah, but not to ---

19 Q Didn't you ask Mr. ---

20 MS. ELDER: Your Honor, if he could explain his
21 answer. He just cut him off.

22 THE COURT: Yeah, I'm going to allow him to explain
23 his answer if he wants to.

24 MR. BARR: Yes, sir?

25 A Yeah, we wanted some weed to smoke.

1 Q Now, you said you wanted some weed to smoke, but now,
2 didn't you ask Mr. Niles before you all ever even left
3 Salters you asked Mr. Niles to help you get some marijuana;
4 didn't you?

5 A Yeah.

6 Q As a matter of a fact, you asked for a specific type of
7 marijuana; didn't you?

8 A I don't even know what Mr. Salter was selling.

9 Q Sir?

10 A How did I ask for some type of marijuana?

11 Q Did you ask for a specific type of marijuana?

12 A No, sir.

13 Q But you asked for some marijuana?

14 A Yes.

15 Q Okay, now, isn't it true, Mr. Moore, that you asked for
16 marijuana because you intended to sell the marijuana, you
17 intended to sell the marijuana back in North Carolina; isn't
18 that true?

19 MS. ELDER: Objection, Your Honor.

20 A Why would I come down here and pay higher.

21 THE COURT: Hold for a second. We have an objection.

22 MS. ELDER: Your Honor, I think we're going beyond
23 recross.

24 MR. BARR: I don't think it's beyond recross, Your
25 Honor. We were asking him about being a drug dealer and drug

1 sales and he talked specifically about this being a deal for
2 marijuana.

3 THE COURT: Okay, I'm going to allow it. Go ahead.

4 MR. BARR: All right. The Court's indulgence, Your
5 Honor.

6 BY MR. BARR:

7 Q So, before you left Salters you asked him to help you
8 get some marijuana?

9 A Yeah.

10 Q You did. And did he tell you then that he knew someone
11 who could get you some marijuana?

12 A Yeah.

13 Q And point in fact is he then made a call before you left
14 Salters; isn't that true?

15 A Before he left Salters?

16 Q Before he left Salters.

17 A He ---

18 Q Did you not tell Officer Curry and Officer Crosby that
19 Mr. Salter made a - I mean, Mr. Niles made a phone call
20 before he left Trio?

21 A Before we left Trio?

22 Q Yes, and on the way to the beach?

23 A No, that was riding on the beach.

24 Q Okay, but Mr. Niles made these phone calls in response
25 to your request for help in getting some marijuana?

1 A Yeah.

2 Q Okay, so, in this whole process of getting the marijuana
3 did Mr. Niles ever tell you that Mr. Salter was going to give
4 you the marijuana on credit?

5 A No, I wasn't looking for no credit, wasn't nobody
6 looking for no credit. We were going to ---

7 Q Well, let me ask you something. Mr. Niles has a pocket
8 full of money and you need some marijuana and he's going to
9 make you - a connection for you and you don't have any money
10 ---

11 A Why would I come down here and get some marijuana for a
12 higher price when I can stay in Greensboro and get it
13 cheaper?

14 Q Well, I don't know. I can't answer those kinds of
15 questions but I just want to keep it straight so that the
16 jury will understand that if you're going to be truthful in
17 your testimony that the truth of the matter is you asked to
18 come to the beach and asked for a connection to get some
19 marijuana; is that true?

20 A Nah, that's you putting words, you're trying to put
21 words in my mouth, man.

22 Q No, no, I asked you earlier and I'll ask you again,
23 didn't you ask Mr. Niles to help you get some marijuana?

24 A Yeah, to smoke.

25 Q Did you have any money to pay for it?

1 A Yeah, I had a - I told you I had a couple of dollars in
2 my pocket. It wasn't like I was broke.

3 Q You testified earlier, you know, when you were
4 testifying when Mr. Hazzard was asking you questions, you
5 didn't have any money. So, now you're going to change
6 again?

7 A Now, you're just twisting your, you're just twisting
8 your questions around, man.

9 Q I don't think there's any twisting about that;
10 Mr. Moore. You were trying to buy something and you didn't
11 have any money. So, what's your next option? Mr. Moore, how
12 long did the Prosecution spent talking to you on Sunday?

13 A An hour and a half.

14 Q Hour and a half, and then it was decided that you were
15 going to do this deal?

16 A Yes, sir.

17 Q And all those street rules went out the window?

18 A Yes, sir.

19 Q It's time now to save Ervin Moore; is that right?

20 A Your client the one that man up.

21 Q Thank you.

22 MS. ELDER: No, further questions, Your Honor. We
23 would ask that this witness be excused.

24 THE COURT: All right, any objection?

25 MR. BARR: Your Honor, I would simply renew an

1 earlier motion.

2 THE COURT: All right, the motion is denied. All
3 right, you're excused. You may step down.

4 MR. HAZZARD: No objection on behalf of Defendant
5 Hammond.

6 THE COURT: All right, thank you very much.

7 All right, let's go ahead and take about a ten-minute
8 break. That was kind of a long witness. It'll give us an
9 opportunity to stretch our legs, use the restroom, whatever
10 the case may be. So, I'll excuse you back to the jury room,
11 let you rest for a little while. We'll bring you back out in
12 about ten minutes.

13 (Whereupon, the following takes place outside the
14 presence of jury.)

15 THE COURT: All right, anything before we break?

16 MS. ELDER: No, sir, Your Honor.

17 MR. BARR: No, sir, Your Honor.

18 THE COURT: All right.

19 MR. HAZZARD: Your Honor ---

20 THE COURT: We'll stand in recess about - yes, sir,
21 I'm sorry.

22 MR. HAZZARD: It is my - my client has brought to my
23 attention if you recall I asked the Court about letting her
24 stay out on bond. You said you would reconsider the matter
25 if the bondsman made an appearance. It is my understanding

1 at this point at this late time the bondsman has made an
2 appearance. As a result I want to bring the matter back for
3 the Court's attention.

4 THE COURT: Okay, given where we are in the point of
5 the case, I was considering it if he came in before we had
6 even started the case. Now, that we've started the case I'm
7 not going to allow her to stay out on bond.

8 MR. HAZZARD: Thank you for your consideration, Your
9 Honor.

10 THE COURT: All right, thank you very much. All
11 right, let's stand in recess for about ten minutes.

12 OFF THE RECORD

13 (On the record.)

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Thank you, very much. Please be seated.
17 Anything from the State before we bring the jury back in?

18 MS. ELDER: No, sir, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. BARR: Nothing from Defendant Niles, Your Honor.

21 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
22 Your Honor.

23 THE COURT: All right, let's bring the jury back in.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

1 THE COURT: All right, ladies and gentlemen, welcome
2 back. The State can call its next witness.

3 MS. ELDER: Your Honor, the State would call
4 Investigator Willie Brown.

5 THE COURT: All right.

6 Whereupon, Willie Brown was called to the stand, duly
7 sworn by the clerk and testified as follows:

8 THE CLERK: Thank you. Please be seated. Please
9 state your full name, spell your last name for the Court.

10 MR. BROWN: All right, Willie Brown.

11 MS. ELDER: Excuse me, Your Honor.

12 THE COURT: All right.

13 DIRECT EXAMINATION

14 BY MS. ELDER:

15 Q Investigator Brown, where are you employed?

16 A I'm employed at the Williamsburg County Sheriff's Office.

17 Q In what capacity?

18 A An investigator.

19 Q And what are some of your duties there?

20 A We investigate anywhere from petty crimes to major crimes
21 such as murder, homicide, anything dealing criminal.

22 Q And do you assist other agencies ---

23 A That's ---

24 Q --- in items that may happen in your jurisdiction?

25 A That's correct.

1 Q And did you have an opportunity to assist Horry County
2 or Myrtle Beach, particularly Myrtle Beach Police Department,
3 in executing a search warrant on April 13th, 2007?

4 A Yes, ma'am, I did.

5 Q And was that in Williamsburg County?

6 A Yes, ma'am.

7 Q Do you know that to be the home of Martha Niles?

8 A That's correct.

9 Q And did you execute that search warrant?

10 A Yes, ma'am.

11 Q And you went along with investigators from Myrtle Beach
12 Police Department; is that correct?

13 A That's correct.

14 Q And were pictures and things taken while you all were
15 executing the search warrant?

16 A Yes, ma'am, it was.

17 Q If you could take a look at what's been marked for
18 identification as State's Exhibit 115, 116, 117, 118, 119,
19 121, 122, 124, 125, 126, 127 and 128. Could you just look
20 at those items, please?

21 A (Complies with request.) Yes, ma'am.

22 Q Are those from the search warrant that you executed in
23 Williamsburg County?

24 A Yes, ma'am, it was.

25 MS. ELDER: Your Honor, at this time I'd like to move

1 those exhibits I specifically enumerated into evidence.

2 MR. BARR: That would be without objection, Your
3 Honor, with regard to Defendant Niles.

4 MR. HAZZARD: Without objection with regard to Mokeia
5 Hammond.

6 THE COURT: All right, you're going to need to give
7 me those numbers again.

8 MS. ELDER: Yes, sir, that would be State's Exhibit
9 115, 116, 117, 118, 119, 121, 122, 124, 125, 126, 127 and
10 128.

11 THE COURT: All right, State's Exhibits 115, 116,
12 117, 118, 119, 121, 122, 124, 125, 126, 127 and 128 admitted
13 into evidence without objection.

14 MS. ELDER: Thank you, Your Honor.

15 (Whereupon, State's Exhibit Numbers 115, 116, 117, 118,
16 119, 121, 122, 124, 125, 126, 127 and 128 [Photographs]
17 admitted into evidence and appropriately marked.)

18 BY MS. ELDER:

19 Q And if you'll take a look at what's been marked State's
20 Exhibit 129. Do you recall also having the collection of
21 four shell casings from that search warrant?

22 A Yes, ma'am.

23 Q And is that the shell casings that were identified as
24 being taken from that residence?

25 A That's correct.

1 MS. ELDER: Your Honor, at this time I'd like to
2 introduce State's Exhibit 129.

3 THE COURT: Any objection?

4 MR. BARR: Without objection.

5 MR. HAZZARD: Without objection.

6 THE COURT: State's Exhibit 129 admitted into
7 evidence without objection.

8 (Whereupon, State's Exhibit Number 129 [Shell Casings]
9 admitted into evidence and appropriately marked.)

10 BY MS. ELDER:

11 Q And just briefly through some of these pictures, State's
12 Exhibit 115 if you'd identify what that appears to be.

13 A It's a letter from Suncom to the - Mr. Richard Niles.

14 Q And 116 what does that appear to be?

15 A This is a room key that have the label of 105 on it
16 which we assume was a hotel room key.

17 Q And 117 can you identify what that is?

18 A Yes, ma'am, the square, what this is is a digital scale
19 that was located inside this bag and has some type of residue
20 across the top of it.

21 Q And what kind of - do you know what that scale, what
22 those scales may be for?

23 A Commonly used for narcotics to weigh different types of
24 narcotics.

25 Q And 119?

1 A This is a Hertz receipt in reference to a vehicle which
2 was a Ford, the date it was rented out and the mileage on,
3 for the vehicle that was recently purchased for them.

4 Q And whose name was that rented out in?

5 A Mrs. Martha Niles.

6 Q 121?

7 A This was a - what it is is a scented candle and it had
8 paraphernalia and also marijuana seeds located in the little
9 baggies.

10 Q And those little baggies, have you seen items like that
11 before?

12 A Yes.

13 Q And from your experience what are they used for?

14 A To contain drugs, different types of drug, marijuana,
15 cocaine, crack.

16 Q And 122?

17 A This is a container containing shell casing and also a
18 nickel and a penny.

19 Q 124?

20 A That was money that was recovered from the vehicle that
21 the subject was in. I'm sorry, and we were able to seize
22 that from them also.

23 Q And 126?

24 A Which is another digital scale commonly known to be used
25 to weigh drugs, different types of drugs and stuff.

1 Q Now, Investigator Brown, after you executed the search
2 warrant did you have any involvement, any other involvement
3 in this case?

4 A Yes, ma'am, we received information that we needed to
5 respond to Mr. Verdell Barr's office where one of the
6 suspects or both, two suspects may be at and we responded
7 there and to try to make contact with them to execute the
8 warrant on them.

9 Q And did you, in fact, do that?

10 A Yes, ma'am.

11 Q And do you - are you on a task force of any sort or were
12 you just responding?

13 A Yes, I'm with the U.S. Marshals Special Task Force.

14 Q All right, so, the U.S. Marshals Task Force responded?

15 A That's, that's correct.

16 MS. ELDER: No further questions, Your Honor.

17 THE COURT: All right, Mr. Barr.

18 CROSS EXAMINATION

19 BY MR. BARR:

20 Q Officer Brown, I believe that's what's been marked
21 State's Exhibit Number 124, the money, excuse me. Let me
22 find it. How much money was actually seized from the
23 residence?

24 A I believe it was right at \$700, a little over \$700.

25 Q Over \$700.

1 A Yes, sir.

2 Q That was there just lying, lying there; is that right?

3 That's what you photographed?

4 A That's correct.

5 Q A little over \$700?

6 A Yes, sir.

7 Q Okay, all right, now, you said that you searched the
8 entire, the entire residence; is that right, and the items
9 listed there are the only things that you actually, that you
10 actually seized; is that correct?

11 A That's correct.

12 Q Other than the drug paraphernalia and the seeds, the
13 marijuana seeds did you seize any other form of narcotics?

14 A Not to my knowledge.

15 Q Not to your knowledge?

16 A No, sir.

17 Q Do you have any knowledge of a pound of marijuana being
18 seized or anything like that?

19 A During the execution of the search warrant once we
20 executed the search warrant and secured the premises then we
21 got the tip to leave, Officer Jeff Scott continued to search
22 and I'm not aware of a pound of marijuana being seized.

23 Q Okay, okay, all right, now, you said you got this tip
24 and that tip came from the U.S. Marshals you said?

25 A I believe so.

1 Q Okay, did you all have Mr. Niles under surveillance at
2 that time?

3 A Not far as I know of, no, sir.

4 Q Okay, all right, okay, nothing further, Your Honor.

5 THE COURT: All right, Mr. Hazzard.

6 MR. HAZZARD: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. HAZZARD:

9 Q Good afternoon, Officer Brown, that's the - what's the
10 proper title, sir?

11 A Investigator.

12 Q Investigator Brown, now, you executed or were present
13 when the search warrant was executed on Mrs. Martha Niles'
14 home?

15 A That's correct.

16 Q Okay, did you find anything in the execution of that
17 search warrant that indicated that Mokeia Hammond ever owned
18 or possessed a pistol?

19 A No, sir.

20 Q Find anything that indicated that Mokeia Hammond ever
21 fired a pistol at anyone?

22 A No, sir.

23 Q Found anything that indicated that Mokeia Hammond ever
24 shot and killed anyone?

25 A No, sir.

1 Q Found anything that indicated that Mokeia Hammond ever
2 robbed anyone?

3 A No, sir.

4 Q All right, thank you.

5 MR. HAZZARD: No further questions.

6 THE COURT: Redirect.

7 MS. ELDER: Your Honor, I would ask that Investigator
8 Brown be excused.

9 THE COURT: All right, any objection?

10 MR. HAZZARD: No objection.

11 MR. BARR: No objection from us.

12 THE COURT: All right, sir, you may step down.
13 You're excused, free to go. Thank you.

14 Call your next witness.

15 MS. ELDER: Your Honor, the State would call Agent
16 Whitler.

17 THE COURT: All right.

18 Whereupon, Kenneth H. Whitler was called to the stand,
19 duly sworn by the clerk and testified as follows:

20 THE CLERK: Thank you. Please be seated. Please
21 state your name and spell your last name for the Court.

22 MR. WHITLEY: My name is Kenneth H. Whitler and the
23 last name is spelled W-H-I-T-L-E-R.

24 DIRECT EXAMINATION

25 BY MS. ELDER:

1 Q Agent Whitler, where are you employed?

2 A I'm employed by the South Carolina Law Enforcement
3 Division. That's also known as SLED. I'm in the
4 forensic services department, which is the laboratory
5 section, and I'm a firearms, tool mark examiner in the
6 lab.

7 Q And do you have any special certification in firearms,
8 tool markings?

9 A There's no degree in firearms identification. You have
10 to learn it from other qualified examiners. When I was
11 employed by the FBI laboratory I underwent their training
12 period which takes about two years and successfully
13 completed, you know, their requirements and was certified
14 by the lab. I'll call it a certification. They have a
15 test, series of tests they give you and if you pass them all
16 then they give you a piece of paper that says you're
17 authorized to conduct examinations for the FBI. In 1997
18 I retired and came to work for SLED doing basically the
19 same job, examining bullets and cartridge cases and
20 firearms.

21 Q And have you testified before in court?

22 A Yes, I have. I've testified approximately 200 times in
23 various state, federal and territorial courts.

24 Q And have you been qualified as an expert in the area of
25 firearms and tool marking identification?

1 A Yes.

2 Q And has that been in courts of General Sessions?

3 A Yes.

4 Q And do you maintain your certification or your training
5 on a regular basis?

6 A Well, we have proficiency tests yearly, a couple of them
7 and we also have our work is also 100 percent peer review
8 which means another qualified examiner has to agree with your
9 conclusion, actually look at the evidence and come up with
10 the same conclusion.

11 Q Okay, and that's before you can even issue a report; is
12 that correct?

13 A That's correct.

14 Q And did you have an opportunity to examine some items
15 for - that were submitted by the Myrtle Beach Police
16 Department in reference to suspects Richard Niles and Mokeia
17 Hammond?

18 A I had evidence that was submitted by Myrtle Beach, and
19 yes, it was in connection with Niles, Hammond and a - and
20 Salter.

21 Q As a victim; is that correct?

22 A As a victim, yes.

23 MS. ELDER: Your Honor, at this time I would ask
24 that Mr. Whitler be designated an expert in the area of
25 forensic examination of firearm and tool marking

1 identification.

2 THE COURT: Any questioning?

3 MR. BARR: Your Honor, the Defendant Niles
4 would stipulate to Mr. Whitler's qualifications as an
5 expert.

6 THE COURT: All right.

7 MR. HAZZARD: The Defendant Hammond so stipulates
8 to his eminent qualifications as an expert, Your
9 Honor.

10 THE COURT: All right, I find Mr. Whitler qualified
11 and is an expert in the field of forensic examination of what
12 was it?

13 MS. ELDER: Firearms.

14 THE COURT: Firearms.

15 MS. ELDER: And tool markings, Your Honor.

16 BY MS. ELDER:

17 Q Agent Whitler, I'm going to hand you a series of
18 items. If you could take a look at those for me, please.
19 State's Exhibit 29, State's Exhibit 27, State's Exhibit 10,
20 State's Exhibit 25, State's Exhibit 24, State's Exhibit 23,
21 State's Exhibit 19, State's Exhibit 91 and State's Exhibit
22 26, if you'd just take your time and look at those items,
23 please.

24 A Yes, I have. I've seen all of this.

25 Q And were those submitted to you for analysis?

1 A Yes, ma'am.

2 Q And did you, in fact, conduct an analysis on those
3 items?

4 A Yes, I did.

5 Q And did you make certain findings in relation to those
6 exhibits?

7 A Yes.

8 Q And I want to go through. Did you prepare a
9 report?

10 A Yes, I did.

11 Q Have you got that with you?

12 A Yes, ma'am.

13 Q And will that assist you in recalling what your analysis
14 was?

15 A Yes, my memory is not good enough to remember all
16 this.

17 Q Could you take me through the items that you analyzed
18 and what your findings were?

19 A Okay, Item 18, I'll just start at the beginning, which
20 is State's Exhibit 26 is a Smith & Wesson 40 caliber pistol
21 and it was test fired in order to obtain test-fired bullets
22 and cartridge cases so that I could compare it to the
23 submitted bullets and cartridge cases that were submitted by
24 the police department. The items that - let's see, State's
25 Exhibit 23 consists of six fired 40 S and W cartridges,

1 cartridge cases, excuse me. This pistol, State's Exhibit 26
2 pistol, is a 40 S and W caliber pistol. I compared those
3 cartridge cases or these cartridge cases to test-fired
4 cartridge cases from this pistol and determined that these
5 cartridge cases were fired by this pistol. So, that would be
6 the State's Exhibit 23 cartridge cases were fired by the
7 State's Exhibit 26 pistol.

8 Q And tell me a little bit about how you made that
9 determination.

10 A Basically, we have a - what is called a comparison
11 microscope which allows you to look at two objects at the
12 same time and what you can do is when you look in the
13 microscope the objects look like they're side by side and
14 what you look for are the striated markings on your test
15 cartridge cases to see if they're reproduced on the submitted
16 cartridge cases. In this case they were. There was
17 sufficient agreement and I was able to say those cartridge
18 cases were fired by that gun.

19 Q So, just for the jury clarification State's Exhibit 23
20 that has been identified as removed from the victim's vehicle
21 matches or were fired from State's Exhibit 26, the weapon
22 that has been previously identified as the victim, in the
23 victim's car; is that correct?

24 A That's correct.

25 Q And could you continue with that, your analysis,

1 please?

2 A Okay, then, okay, this, State's Exhibit 27 is a 40
3 caliber fired bullet. State's Exhibit 91, I think that's 91,
4 has four items in it which are - consists of a bullet jacket
5 fragment, a second bullet jacket, bullet, fired bullet jacket
6 and two fired bullets that are 40 caliber bullets. The
7 State's Exhibit 27 bullet, fired bullet and two of the
8 bullets in this State's Exhibit 91 package were identified as
9 being fired by this pistol and they're the ones that, like I
10 said, two of the bullets are 40 caliber bullets and they are
11 put in my report, they're noted as Items 50 and 51 as being
12 fired by this pistol.

13 Q And again, for the jury's clarification you've
14 identified State's Exhibit 27 which is - has been previously
15 identified as the bullet from the parking lot as matching or
16 being fired from State's Exhibit 26; correct?

17 A That's correct.

18 Q And you've also identified two projectiles in State's
19 Exhibit 91?

20 A That's correct.

21 Q As being also fired from State's Exhibit 26?

22 A And the other two items that were in here I said two of
23 these items were bullets. The other two items which were a
24 bullet jacket fragment and a fired bullet jacket were not
25 fired by this pistol. They had different rifling

1 characteristics.

2 Q And tell me about that, what does that mean, different
3 rifling characteristics?

4 A When a firearm barrel is made it has grooves cut in the
5 barrel and this is called rifling and its purpose is to make
6 the bullet spin so it will stabilize and be more accurate.
7 Different manufacturers use different rifling in their
8 barrels. Some - the rifling will either go right or left and
9 then there's a number of them. They can be anywhere from two
10 to some barrels have 22 grooves in them. So, for our
11 purposes, if you have a pistol barrel that has six grooves in
12 it and your bullet has - was fired from a firearm that had
13 five grooves, then that bullet could not have been fired by
14 that gun. That's what we call a class characteristic. It
15 has the wrong rifling characteristics. In this case these
16 two jacket, the jacket fragment and the jacket have different
17 rifling characteristics or class characteristics, meaning the
18 caliber may be wrong, also. So, they were not - it indicates
19 that due to their class characteristics being wrong they
20 could not have been fired by this pistol.

21 Q And again, for the jury's clarification, you're
22 referring to State's Exhibit 91 and those are four
23 projectiles that have been previously, and a bullet fragment
24 that have been previously identified as coming from the
25 suspect's vehicle?

1 A Okay, and then - and that's all of the items - excuse me,
2 let me back up. I've looked at the wrong - those two jacket
3 fragments were inconclusive with the - wait a minute. Let's
4 see what we've got here. Usually they have these out, 48
5 through 51.

6 Q Would it help you to take those out, open the package?

7 A Let's see 48, 48 - yes, let me correct that. I was
8 looking at the, the two - two of the bullets - let me rephrase
9 all this so we - two of the bullets that I previously said
10 were fired by the gun were fired by the gun. The other two
11 which I called a bullet jacket fragment and a bullet jacket
12 this is just part of the bullet was inconclusive, meaning it
13 could have been fired by this gun or by another gun barrel
14 with similar rifling characteristics. They had the same
15 rifling characteristics but they didn't have enough individual
16 characteristics that were sufficient to allow me to say they
17 were fired by that gun and not another one. So, that's what
18 we call inconclusive means it could have been fired by that
19 gun or it could have been fired by another gun.

20 Q So, State's Exhibit 91, two of those items were fired by
21 State's Exhibit 26 and two were inclusive.

22 A That's correct.

23 Q And those have been previously identified as coming from
24 the suspect's vehicle.

25 A Okay, the - okay, in State's Exhibit 19 it consists of

1 five containers and the easiest way I guess to do this is
2 going to be that they contain my items 42 through 46. Item 42
3 is a fired bullet which is most consistent with being a 38
4 special or 357 magnum caliber bullet used in those cartridges.
5 It could not have been fired by this pistol due to differences
6 in class characteristics. The item 43 is a fired bullet
7 jacket fragment, and again, it had - it was inconclusive with
8 the pistol meaning it had the same general class
9 characteristics but they weren't sufficient enough to allow me
10 to identify the bullet jacket as being fired by this pistol.

11 Item 45 or 44 and 45 are two lead fragments and this
12 inside a jacket bullet the core is usually made of lead and
13 when the bullet if it breaks up you get pieces of jacket and
14 you can have pieces of lead found. The lead never comes in
15 contact with the barrel of a firearm. So, it will not have
16 any marks of value for identifying it to a particular firearm.
17 So, these pieces of lead had no marks of value and they were
18 unsuitable for identification, and because they were torn up
19 there's no way to determine what kind of bullet they could
20 have come from.

21 The last item is item 46 and it is a fired bullet jacket,
22 and again it was inconclusive with the State's Exhibit 26
23 pistol, the 40 S and W pistol.

24 Q So, in item - State's Exhibit 19 that has been
25 previously identified as being collected from the victim's

1 vehicle you were able to identify one item that was
2 consistent with a 38.

3 A That's right.

4 Q And not being fired from item 26?

5 A Yes. That's 46 and then item 47 is also or is a fired
6 bullet and it's consistent with being the bullet from a 38
7 special, 357 magnum cartridge. Again, it is not - couldn't
8 have been fired by the State's Exhibit 26 pistol due to
9 differences in caliber. 38 caliber is smaller than a 40.

10 Q And that was State's Exhibit 106 that has been
11 previously identified as the projectile removed from the
12 victim, Salter, during the autopsy?

13 A Okay, and then I also, inter-compared the State's
14 Exhibit 106 bullet and the other 38 special or 357 caliber
15 bullet that I told you about before. I compared them to each
16 other and again there was insufficient agreement to allow me
17 to say they were fired by the same gun but they could have
18 been fired by the same gun. Again, it was an inconclusive
19 result, just because the bullets just did not mark that well.

20 State's Exhibit 129 consists of my items 52 through 55,
21 and these are fired cartridge cases and they are 38 special
22 caliber cartridge cases. So, again, I compared them to each
23 other and again they didn't mark enough - give me enough
24 agreement of the marks to enable me to say they were all
25 fired by the same gun, but they could have been fired by the

1 same gun. They were not fired by the State's Exhibit 26 40
2 caliber pistol because due to differences in caliber. These
3 cartridges will not even - you put them in the gun they would
4 slide down the barrel.

5 Q And you're referring to what's been marked as State's
6 Exhibit 129 having been previously identified as being
7 obtained from a search warrant in Williamsburg County and
8 these are - let me make sure I understand, these are fired
9 casings?

10 A Fired cartridge cases, that's correct.

11 Q And that means it's already somebody has shot them out
12 of a weapon?

13 A Yes, and the last thing we have - well, State's Exhibit
14 24 is a magazine, a Smith and Wesson magazine for a 40 S and
15 W caliber. It's the kind of magazine you would use in this
16 pistol and the last thing is State's Exhibit 25 are four
17 unfired 40 S and W caliber cartridges and these - the State's
18 Exhibit 25 and these are the caliber of cartridge that you
19 would use in the State's Exhibit 26 pistol.

20 Q And those are unfired.

21 A These are unfired.

22 MS. ELDER: One moment, Your Honor.

23 THE COURT: All right.

24 BY MS. ELDER:

25 Q Do different firearms leave different casings, maybe and

1 let me reword my question. When I fire a weapon will casings
2 sometimes expel in certain weapons and stay in certain
3 weapons?

4 A A pistol is designed such as State's Exhibit 26 is
5 designed to eject the fired cartridge case when it is fired
6 and reload the chamber with another unfired cartridge. A
7 revolver on the other hand has a cylinder which until you
8 continue shooting and the cartridge case stays in the gun
9 until you stop shooting and open up the cylinder and
10 physically remove the cartridge case from it. With a pistol
11 you - it's done automatically for you. You pull the trigger,
12 if the gun is functioning properly the cartridge case is
13 thrown out of the gun and a new cartridge inserted in the
14 chamber. With a revolver you put the cartridges in, you
15 close it up, you pull the trigger and you can continue
16 pulling the trigger as long as you want. Eventually you'll
17 stop shooting because the ammunition will be used up, but the
18 cartridge cases will remain in the gun until you open it up
19 and physically remove them.

20 Q So, if I was standing here shooting State's Exhibit 26
21 those casings would expel as I shoot or eject?

22 A They should be ejected from the gun ---

23 Q If it's working properly.

24 A If it's working properly, nothing's blocking the
25 ejection port, yes.

1 Q And if I were standing here shooting a 38 revolver those
2 casings would remain in it till I physically removed them.

3 A That's correct.

4 MS. ELDER: That's all the questions I have, Your
5 Honor.

6 THE COURT: All right, Mr. Barr.

7 MR. BARR: I have a few.

8 CROSS EXAMINATION

9 BY MR. BARR:

10 Q So, Mr. Whitler, I suppose a best summary of your
11 testimony would be with regard to State's Exhibit 26, which
12 would be the 40 caliber Smith and Wesson, there were at least
13 two positive matches for ejected, I guess it would be, shell
14 casings or cartridges or spent bullets I suppose and then two
15 others that would be inconclusive?

16 A Not quite. Actually there were three bullets and six
17 cartridge cases I believe.

18 Q Three bullets and six cartridge cases that would be
19 consistent with being either fired by or ammunition that
20 would be compatible with State's Exhibit 26.

21 A Well, yeah, there were three bullets and six cartridge
22 cases were fired. The fired components were fired by the
23 gun.

24 Q Okay.

25 A Then there were the four unfired cartridges, I think it

1 was the last exhibit, Exhibit 25, which are the correct
2 caliber for use in that pistol.

3 Q Okay, all right, so, the possibility of six rounds spent
4 and four not, four available, I guess?

5 A Right.

6 Q Okay.

7 A Yes, and then we had the two bullet, the bullet jacket
8 fragment and the other bullet jacket ---

9 Q That are inconclusive.

10 A Yeah, so, that would be another two shots.

11 Q Yes, sir, okay, okay, and then we had, as I understand
12 your testimony, the bullet removed from the deceased would
13 have been fired by a 38 caliber weapon?

14 A Two of the bullets were, were 38 caliber and they
15 couldn't have been fired by the pistol. The State's Exhibit
16 ---

17 Q They could have been fired by the ---

18 A Exhibit ---

19 Q --- Smith and Wesson.

20 A --- 26 pistol.

21 Q Yeah, the 26 pistol. So, they would have been fired by
22 another?

23 A They had to be fired by another firearm.

24 Q Now, as I understand your report you're saying that it
25 would have been fired or could have been fired by what or

1 what caliber bullet?

2 A There were two bullets. They were my items 42 and 47 if
3 you have a copy of the report ---

4 Q Yes.

5 A --- that I said were consistent with bullets loaded in
6 some 38 specials.

7 Q Some 38s.

8 A 357 magnum caliber cartridges.

9 Q Cartridges.

10 A A 357 magnum is really just a 38, a 38 special with a
11 longer cartridge case. The bullet diameters are the same.

12 Q Okay.

13 A So, it's very hard to differentiate whether it was
14 strictly a 38 special or 357 because the cartridges are just
15 basically the same cartridge but one is longer in order to
16 keep from putting the higher powered 357 magnum cartridge
17 into a lower pressure 38 special firearm.

18 Q Okay, okay.

19 A But we have two of those bullets that we couldn't
20 identify to each other but we could definitely say they
21 weren't fired by the Smith and Wesson 40 caliber pistol.

22 Q Okay, all right.

23 MR. BARR: I have no further questions. Thank you.

24 THE COURT: All right.

25 Mr. Hazzard.

1 MR. HAZZARD: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. HAZZARD:

4 Q Good afternoon, Agent Whitler. How are you, sir?

5 A Pretty good, sir.

6 Q All right, now, all this evidence you got there and all
7 the stuff you looked through up there, do you have any
8 evidence based on your examination that would indicate that
9 Mokeia Hammond ever possessed a firearm?

10 A Are you asking me if I can look at fired components and
11 tell who held the gun? No, I can't, sir.

12 Q Do you have any information based on your investigation
13 and analysis that indicates that Mokeia Hammond ever shot
14 anyone with a firearm?

15 A No, sir, all I have are the fired components that I
16 examined. That's all I know.

17 Q Okay, do you have any information and evidence based on
18 your investigation that indicates that Mokeia Hammond ever
19 robbed anybody, sir?

20 A No, sir, I don't. Like I said all I've done is
21 examined the fired bullets and cartridge cases in this case
22 and I've done no other investigation. I'm strictly in the
23 lab.

24 Q Yes, sir. Thank you very much, Agent Whitler.

25 MR. HAZZARD: No further questions, Your Honor.

1 THE COURT: Thank you. Redirect?

2 MS. ELDER: No, sir, Your Honor. We would ask that
3 Agent Whitler be excused.

4 THE COURT: Any objection?

5 MR. BARR: No objection, Your Honor.

6 MR. HAZZARD: No objection, Your Honor.

7 THE COURT: All right, Mr. Whitler, you're free to
8 go. Thank you very much.

9 How long is your next one?

10 MR. RICHARDSON: Your Honor, we have two more.

11 MR. HAZZARD: Your Honor, may we approach?

12 THE COURT: Yeah, come on up.

13 (Whereupon, a bench conference was held in the presence
14 but out of the hearing of the jury.)

15 THE COURT: You can call your next witness.

16 MR. RICHARDSON: Officer Rhonda Nobles.

17 Whereupon, Rhonda Nobles was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Thank you. Please be seated. Please
20 state your full name, spell your last name for the Court.

21 MS. NOBLES: My name is Rhonda Nobles, N-O-B-L-E-S.

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q Thank you, Officer Nobles. I'm going to try and be
25 brief. If you could tell us where you're employed, how long

1 and in what capacity.

2 A I'm with the Myrtle Beach Police Department, the
3 communications supervisor. I've been there 25 years.

4 Q And as communications supervisor are you a records
5 custodian for the City of Myrtle Beach Police Department,
6 their call center?

7 A I am.

8 Q And the call center what kind of calls come in there?

9 A All calls, 911 are transferred to us from the county 911
10 center and we get regular calls.

11 Q And in the normal course of business at the Myrtle Beach
12 Police Department do you record incoming calls?

13 A We record all incoming calls.

14 Q And was that the practice back on April 9th of 2007?

15 A It was.

16 Q And how are those recordings made?

17 A They recorded on the system that's called New Freedom
18 and it archives the calls and we can get the calls from the
19 archives.

20 Q And what is - is that what's done to preserve the phone
21 conversations?

22 A They are.

23 Q And is it typical to record the entire phone
24 conversation?

25 A It is, sir.

1 Q The recording device that you all use, New Freedom, that
2 was the one you had in operation back in April 2007?

3 A It is.

4 Q Was it capable of taking those telephone calls and
5 putting them in a place where you could play them back and
6 transfer them to another device or medium?

7 A Yes, sir.

8 Q And how do you know this?

9 A I know that because that's what I do.

10 Q And how long have you been doing this?

11 A I've been doing the communications part for about six
12 years now.

13 Q What kind of experience do you have in operating this
14 New Freedom device?

15 A I was trained on the device by a lieutenant that's no
16 longer with the department and since then I've been doing all
17 the audio recordings from the telephone and 911.

18 Q Ever had any trouble operating the device?

19 A No, sir.

20 Q Let me show you what's been marked State's Exhibit for
21 ID 130. Do you recognize this item? Sorry about that.

22 A That's all right. Yes, sir, I do.

23 Q And how do you recognize that item?

24 A This is the kind of disk we use to put all recordings.

25 Q Have you had an opportunity to review this item?

1 A I have.

2 Q And does it appear that those tracks on this, what is
3 this item? You said it's a CD?

4 A It's a CD, yes, sir.

5 Q The recordings on this CD do they appear to be a true
6 and accurate recording of the phone conversations between one
7 of your operators and other individuals on April 9th, 2007?

8 A Yes, sir.

9 Q And do you recognize the operator's voice?

10 A I do, sir. That's Office McGriff.

11 Q And who made these copies?

12 A I did.

13 MR. RICHARDSON: Your Honor, at this time the State
14 would seek to put into evidence State's Number 130.

15 THE COURT: Any objection?

16 MR. BARR: No objections.

17 MR. HAZZARD: No objections, Your Honor.

18 THE COURT: State's Exhibit Number 130 admitted into
19 evidence with objection.

20 (Whereupon, State's Exhibit Number 130 [911 Call - CD]
21 admitted into evidence and appropriately marked.)

22 MR. RICHARDSON: Permission to publish.

23 THE COURT: All right.

24 BY MR. RICHARDSON:

25 Q Office Nobles, you said you did listen to this.

1 A Yes, sir.

2 Q With particular attention to track number seven?

3 A Yes, sir.

4 (Whereupon, State's Exhibit Number 130 played in open
5 court.)

6 BY MR. RICHARDSON:

7 Q Officer Nobles, that recorded, that phone conversation
8 took place April the 9th, 2007?

9 A It did.

10 Q In the evening?

11 A Yes, sir.

12 Q And that's the extent of your involvement in this case;
13 correct?

14 A Yes, sir, it is.

15 Q Officer Nobles, thank you for your cooperation.

16 A Thank you.

17 Q Please answer any questions the Defense may have.

18 CROSS EXAMINATION

19 BY MR. BARR:

20 Q Officer Nobles, this is as far as your concern just a
21 call taken in the normal course of business on a normal day;
22 right?

23 A Yes, sir.

24 Q You know - you don't know anything about the truth or
25 veracity of what's going on or not, you gave her standard

1 instructions as to what to do in a case of a stolen vehicle;
2 is that correct?

3 A Yes, sir.

4 Q All right.

5 MR. BARR: No further questions.

6 THE COURT: Mr. Hazzard.

7 MR. HAZZARD: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. HAZZARD:

10 Q Okay, now, that call was between your operator and an
11 individual who introduced themselves or identified themselves
12 as Martha Niles; correct?

13 A Yes, sir.

14 Q Okay, now, Mokeia Hammond didn't make that call;
15 correct?

16 A No, sir.

17 Q Okay, nothing about that call. Okay, nothing further.

18 MR. HAZZARD: No further questions.

19 A Thank you.

20 THE COURT: Any redirect?

21 MR. RICHARDSON: No, sir, Your Honor.

22 I'd just ask that Officer Nobles be excused to return to
23 her duties.

24 THE COURT: All right, any objections?

25 MR. BARR: No objection.

1 MR. HAZZARD: No objection, Your Honor.

2 THE COURT: All right, thank you for being with us.
3 You're free to go.

4 A Thank you.

5 THE COURT: All right, you can call your next
6 witness.

7 MR. RICHARDSON: Officer - calls Lieutenant Raul Denis.

8 Whereupon, Raul Denis was called to the stand, duly
9 sworn by the Clerk and testified as follows:

10 THE CLERK: Please be seated. Please state your full
11 name, spell your last name for the Court.

12 MR. DENIS: My name is Raul Denis. My last name is
13 D-E-N-I-S.

14 DIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q Good afternoon, Lieutenant Denis?

17 A Hello, how are you?

18 Q Could you please tell us about your place of employment,
19 how long and in what capacity?

20 A I'm a lieutenant with the Horry County Police
21 Department, been with the county police since 1996.

22 Q Okay, and currently what are your duties?

23 A Currently I'm a watch commander which puts me in charge
24 of pretty much every police officer on duty at, you know, at
25 any given time. At the time of this particular incident I

1 was a sergeant over a squad.

2 Q That was back in April of 2007?

3 A Yes, sir.

4 Q And as sergeant over a squad where was that squad
5 located?

6 A This squad was located on what we consider the south
7 precinct, which includes everything from Lake Arrowhead south
8 to the Georgetown county line.

9 Q Would that area include Murrells Inlet mall?

10 A Yes, sir, it would.

11 Q And what kind of calls come into the south precinct?

12 A Anything and anything you can imagine if, you know,
13 anyone calls for a police officer they're going to get one.

14 Q And at the time one of your duties was it to supervise
15 patrol officers? You said you were over a group of patrol
16 officers?

17 A Yes, sir, yes, sir, we would supervise, basically we're
18 there with them while everything occurs. We listen to the
19 radio, you know, follow them on calls, oversee the reports,
20 that kind of thing.

21 Q So, you oversee the reports?

22 A Yes, sir.

23 Q Does that mean you review the report?

24 A Yes, sir, we do.

25 Q What type of reports?

1 A Every one of them.

2 Q Incident report?

3 A Exactly, yes.

4 Q And those types of reports, incident reports in
5 particular, what's contained in those?

6 A Well, the basic information of the complaint being made,
7 who's making it, when and where, what time and, you know,
8 pretty much the if, when, where, what and how of an incident.

9 Q And upon your review of an incident report how and if by
10 any manner do you signify that you've reviewed that report?

11 A You sign it or initial it. At the bottom there's an
12 actual supervisor's block that indicates review.

13 Q Back on April 10th, 2007, was there an officer named
14 Felix Negrón working on your shift?

15 A Yes, sir, there was.

16 Q And who was assigned to assist shift supervisors?

17 A Well, his shift supervisor was actually Sergeant
18 Chatfield, but either - what happens is in the course of one
19 shift is a 12 hour shift and obviously it runs into the next
20 shift. So, if there's paperwork left behind because of the
21 number of calls that day or the sergeant was tied up, if
22 there's a major incident the supervisor has to go to that
23 major incident, which would preclude him obviously from going
24 back to the office to take care of paperwork and whatnot.
25 So, the oncoming guy who doesn't really have anything going

1 on goes over there and reviews all the paperwork from that,
2 you know, whatever is left over and approves it or oversees
3 it to make sure that, you know, if anything needs to be done
4 it gets done.

5 Q And from time to time you said Sergeant Chatfield was
6 over him, would you all sign off on each other's squads?

7 A Yes, sir.

8 Q Did you ever have the opportunity to sign off on review
9 of a report done by Officer Negron?

10 A Yes, I did.

11 Q Did you bring some paperwork with you today?

12 A Yes, sir, I brought a copy of the report.

13 MR. RICHARDSON: Your Honor, I'm going to have this
14 marked for identification purposes.

15 THE COURT: All right.

16 MR. RICHARDSON: The Court's indulgence, Your Honor.

17 THE COURT: All right.

18 BY MR. RICHARDSON:

19 Q Lieutenant Denis, I'm going to present to you what's
20 been marked for identification purposes as State's Exhibit
21 131. Do you recognize this document?

22 A Yes, sir, this is a copy of the report that we're
23 speaking about, the report involving this incident which
24 Officer Negron completed that, that day or actually that
25 evening.

1 Q And how do you recognize it as being that report?

2 A Well, I am looking at it. It shows the complainant's
3 name, describes the incident, plus I see my initials on it
4 and what I wrote on the bottom of the report.

5 Q Is it a true and accurate copy of a report that you
6 signed off on?

7 A Yes, sir, it is.

8 MR. RICHARDSON: Your Honor, at this time the State
9 would seek to introduce State's 131 into evidence.

10 THE COURT: Any objection?

11 MR. BARR: Without objection.

12 MR. HAZZARD: Without objection, Your Honor.

13 THE COURT: State's Exhibit 131 admitted into
14 evidence without objection.

15 MR. RICHARDSON: And publish.

16 THE COURT: All right.

17 (Whereupon, State's Exhibit 131 [Report of Officer
18 Negron] admitted into evidence and appropriately marked.)

19 BY MR. RICHARDSON:

20 Q Lieutenant Denis, I'm just going to ask you a few
21 questions about that document and State's 131 what type of
22 crime is being reported?

23 A A stolen car, a stolen vehicle.

24 Q Is that vehicle identified in any way?

25 A Yes, sir, it's described in the report. It's

1 Court to start back at 9:30. We have someone coming from
2 Columbia in the morning, Your Honor.

3 THE COURT: All right, well, it's 5:15. It's a good
4 time for us to break for the evening.

5 Ladies and gentlemen of the jury, we're going to go
6 ahead and call that a day. Please be back in your jury room
7 tomorrow morning at 9:30, leave your pads, pencils here in
8 the jury box. A bailiff will take them up. I caution you
9 again please do not watch any news accounts, read any
10 newspaper accounts, listen to any radio accounts or conduct
11 any independent investigations whatsoever into this case. Do
12 not discuss this case even among yourselves at this point in
13 time. I thank you for being with us today and I look forward
14 to seeing you again tomorrow. Hope everyone has a happy,
15 nice evening and we'll see you at 9:30 tomorrow morning.
16 Thank you very much.

17 (Whereupon, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Anything before we break?

20 MS. ELDER: No, sir, Your Honor.

21 MR. BARR: Your Honor, might we have a sidebar?

22 THE COURT: Yeah, come on up.

23 (Whereupon, a bench conference was held.)

24 THE COURT: All right, we'll stand in recess until
25 9:30 tomorrow morning.

1 OFF THE RECORD

2 (On the record, Thursday, March 12, 2009.)

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right, anything from the State before
6 we bring in the jury?

7 MS. ELDER: No, sir, Your Honor.

8 THE COURT: Anything from the Defense?

9 MR. BARR: No, sir, Your Honor.

10 MR. HAZZARD: Your Honor, a couple of matters before we
11 begin. The Defense - Defendant Hammond had on her witness
12 list the decedent's girlfriend or ex-girlfriend, Rachael
13 Ramlochan. I spoke with her yesterday evening with regard to
14 scheduling purposes and I indicated I did not intend to call
15 her as a witness and would release her from the subpoena.
16 She indicated, therefore, that she would like to be able to
17 come and watch the trial and I indicated that as I would be
18 releasing her from the subpoena I would think that she would
19 be allowed to.

20 THE COURT: All right, as long as she's not going to
21 be used as a witness or is under subpoena in any way unless
22 there's some objection.

23 MS. ELDER: No, Your Honor.

24 MR. HAZZARD: Okay.

25 THE COURT: All right, that'll be fine.

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA In The Court of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MOKEIA HAMMOND,

APPELLANT

THE STATE,

RESPONDENT,

V.

RICHARD BILL NILES, JR.,

APPELLANT

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1 MR. HAZZARD: Okay, secondly, Your Honor, the Defendant
2 Hammond has a witness, Officer Salina Mann, of the Conway
3 Police Department. It's my understanding that when we get to
4 the defense case that we will continue in the same order.
5 Mr. Barr will present his defense case and then I would
6 present mine; correct?

7 THE COURT: That's the way I've assumed it unless you
8 know of any reason as to why we should not proceed in that
9 fashion.

10 MR. HAZZARD: No, sir, but - I'm sorry.

11 MR. BARR: I'd certainly be willing to change that
12 if it ---

13 THE COURT: Okay, well, let's keep it in the same
14 order we're going then just for ---

15 MR. HAZZARD: Well, what I need to ask for a request of
16 the Court Salina Mann has a dentist appointment at two p.m.
17 that she's been waiting on for a couple of weeks and I told
18 her I'm not sure how long things will take. I don't know how
19 much longer the State's case is or how long Mr. Barr's case
20 would be. I would, therefore, ask if the State does indeed
21 finish before lunch that we be allowed to put Officer Mann up
22 out of order so that she can make that dentist appointment if
23 at all possible.

24 THE COURT: Okay, unless there's some objection I
25 don't - I'm not opposed to doing it that way. We will

1 certainly work around her schedule.

2 MR. HAZZARD: Okay.

3 THE COURT: We'll either call her out of order or if
4 they don't want to call her out of order then we'll certainly
5 break or whatever to give her time for when she can be here
6 and testify.

7 MR. HAZZARD: Thank you, Your Honor. The last thing I
8 want to verify, I believe that Mr. Barr placed a document in
9 evidence much earlier in the trial; is that
10 correct?

11 THE COURT: Well, it was as I recall he did. It was
12 originally - yes, it's Defendant Niles Exhibit One but I
13 think it was the same thing as an exhibit that was marked by
14 the State but was not put into evidence.

15 MR. RICHARDSON: That's correct, Your Honor. It was
16 marked for identification purposes and was not used and I
17 believe Mr. Barr had it marked as a defense exhibit.

18 THE COURT: Right, and it came in as Defendant Niles
19 Exhibit One.

20 MR. HAZZARD: Okay, and my understanding of the law is
21 that when you have a multiple Defendant case when any
22 Defendant puts evidence in all Defendants lose the right to
23 final close; is that correct?

24 MR. RICHARDSON: State v. Crow, Your Honor.

25 THE COURT: Yeah, but isn't there some exception for

1 murder?

2 MR. RICHARDSON: No, sir, State v. Crow was actually a
3 murder case. It was a murder and a felony murder case as a
4 matter of a fact.

5 THE COURT: Okay, all right, yeah, I agree with you.
6 That is my understanding is the law but I was thinking there
7 was or maybe it was a capital case.

8 MR. BARR: That would be capital, yeah, capital
9 case.

10 MR. RICHARDSON: Might be a capital case.

11 THE COURT: Okay, all right, and maybe then I'm
12 thinking of a capital case then. All right, that's fine.

13 Okay, so, I was thinking of a capital case. So, yeah,
14 that would be correct.

15 MR. HAZZARD: Okay.

16 THE COURT: All right, anything further?

17 MR. HAZZARD: Nothing further on behalf of Defendant
18 Hammond, Your Honor.

19 THE COURT: All right, let's bring the jury in.

20 (Whereupon, the following takes place in the presence
21 the jury.)

22 THE COURT: All right, ladies and gentlemen, welcome
23 back. I hope everyone had a good evening. We're getting
24 ready to resume the trial of this case. The reason we have
25 not had you in here before now this morning is we have a

1 flashing light right over the Solicitor's table and we were
2 hoping to get it fixed before we could start the trial but it
3 looks like it might be a while before they can get somebody
4 over here to fix it. So, we've agreed to go ahead and resume
5 the trial of the case. If any of you finds that flashing
6 light to be too distracting to where it impedes your ability
7 to pay attention to what's going on in the trial, like a
8 dripping faucet, if there was a dripping faucet I would just
9 stop until we got it fixed because I wouldn't be able to pay
10 any attention. So if any - if it distracts any of you in any
11 way please raise your hand and let me know and we'll make
12 whatever arrangement we can. I know it's a little discerning
13 but some people are able to put it out of their minds better
14 than others and I hope you can, but if you can't please do
15 not hesitate to let me know that it is distracting you and
16 keeping you from paying attention to the witnesses. All
17 right, the State can call their next witness.

18 MS. ELDER: Thank you, Your Honor, the State would
19 call Agent Catherine Leisy.

20 Whereupon, Catherine Leisy was called to the stand, duly
21 sworn by the clerk and testified as follow:

22 THE CLERK: Thank you. Please be seated. Please
23 state your full name, spell your last name for the Court.

24 MS. LEISY: Yes, ma'am, Catherine Leisy, L-E-I-S-Y.

25 DIRECT EXAMINATION

1 BY MS. ELDER:

2 Q Agent Leisy, where are you employed?

3 A I'm employed by the South Carolina Law Enforcement
4 Division, also known as SLED.

5 Q And in what capacity?

6 A I am a forensic scientist assigned to the DNA and
7 serology unit.

8 Q And what are some of your obligations and
9 responsibilities in that unit?

10 A My responsibilities include processing forensic cases,
11 generating reports based on the results and conclusions drawn
12 and testifying to those reports as necessary.

13 Q And have you, in fact, testified before?

14 A Yes, I have.

15 Q Have you been qualified as an expert in DNA analysis?

16 A I have.

17 Q And how many analyses do you perform in a given year?

18 A In a given year I could process anywhere between 150 to
19 250 cases, which would include possibly several thousand
20 actual samples of DNA.

21 Q And how long have you been doing this?

22 A I've been employed with SLED for approximately three
23 years and prior to my employment in SLED I worked as a
24 forensic DNA analyst at a private forensic laboratory for
25 approximately four years.

1 Q Did you receive any special training or degrees to make
2 you qualified for your job?

3 A I have a bachelor of science degree in genetic
4 engineering from Cedar Crest College in Allentown,
5 Pennsylvania. I have received in-house training that allows
6 me to use the techniques used by SLED. I also attend annual
7 training, either conferences or training specific to
8 instrumentation used to maintain my continuing education.

9 MS. ELDER: Your Honor, at this time I would like to
10 move Agent Leisy ---

11 A Leisy.

12 MS. ELDER: --- Leisy into, as an expert in the area
13 of forensic DNA analysis.

14 THE COURT: Any questions or objections?

15 MR. BARR: No objection.

16 MR. HAZZARD: No questions, no objections, Your Honor.

17 THE COURT: All right, I find Ms. Leisy to be an
18 expert qualified to give an opinion in the area of forensic
19 DNA analysis.

20 BY MS. ELDER:

21 Q Agent Leisy, did you receive some samples to test from
22 the Myrtle Beach Police Department in reference to an
23 incident date of April 9th, 2007, individual suspects listed
24 as Richard Niles and Mokeia Hammond?

25 A Yes, I did.

1 Q And did you perform analysis on those items?

2 A I did.

3 Q I'm going to hand you three items. State's Exhibit 86,
4 85 and 90. Are those the items that you received and
5 analyzed?

6 A Yes, they are.

7 Q And just briefly tell me when you receive something in
8 your lab how - do you mark it in any special way to identify
9 that you're the one who used it, manipulated, analyzed it?

10 A The containers that the items arrive in are given my
11 initials and are also given the specific case number and item
12 numbers that SLED has assigned to these items as identifying
13 marks.

14 Q And do you do those in order to protect the sample?

15 A That's correct so that it can be later identified as
16 belonging to this particular case.

17 Q And if any samples that you receive appear to be
18 tampered with would you process it?

19 A No, I would not. If the outside seal of the container
20 were tampered with or had not been sealed properly the item
21 would not be processed.

22 Q And did you issue a report after analyzing those three
23 items that I just handed you?

24 A Yes, I did.

25 Q And do you have that report with you?

1 A I do.

2 Q And would it assist you to refer to that when I ask you
3 your questions?

4 A Yes, it would.

5 Q In particular I want to talk about item State's Exhibit
6 85. It's indicated four cigarette filters removed from the
7 suspect's vehicle. Could you tell me what you did to
8 processes those items and any findings that you made?

9 A When processing evidence items for DNA the first step is
10 what we call extraction where we're simply removing DNA from
11 that particular item. Once DNA has been removed we perform
12 an amplification step where we're copying the specific
13 locations in DNA that we're interested in testing. Once we
14 have the DNA copied we then generate what is known as a DNA
15 profile. Once I have a DNA profile generated from a piece of
16 evidence I can compare that profile to the profile of a known
17 individual and compare to determine whether or not that
18 individual could have contributed the DNA that was obtained
19 from that piece of evidence.

20 Q And did you have a known sample shown in Exhibit 90 from
21 Defendants Mokeia Hammond and Richard Niles to compare to?

22 A Yes, I did.

23 Q And did you later obtain one from Ervin Moore?

24 A I did.

25 Q Now could you tell me about any findings that you made

1 in reference to those State's Exhibit 85, the four cigarette
2 filters located in the suspect vehicle?

3 A The DNA profile developed from the cigarette butt
4 labeled SLED item 1.3 matches the DNA profile of Richard
5 Niles, Jr. The probability of randomly selecting an
6 unrelated individual having a DNA profile matching this item
7 is approximately one in 1.5 quadrillion. The DNA profile
8 developed from cigarette butt labeled SLED item 1.4 is a
9 mixture of at least two individuals. The DNA profile
10 developed from the major contributor to this mixture also
11 matches the DNA profile of Richard Niles, Jr. Mokeia Hammond
12 cannot be excluded as a possible contributor to this mixture.
13 Ervin Moore is excluded, and the DNA profiles developed from
14 cigarette butts, excuse me, labeled SLED items 1.1 and 1.2
15 are mixtures of at least two individuals. Neither Richard
16 Niles, Jr., nor Mokeia Hammond can be excluded as possible
17 contributors. Ervin Moore is excluded as a contributor.

18 Q And tell me the difference between the 1.3 was a match
19 to Defendant Richard Niles but the other, the other two, in
20 particular 1.1 and 1.2 Mokeia Hammond and Richard Niles could
21 not be excluded but you're not matching?

22 A That's correct.

23 Q Help explain that to me a little bit.

24 A For items 1.1 and 1.2 I have a mixture and if - unless
25 you have what we call a primary contributor or a major

1 contributor, meaning one person contributed significantly
2 more DNA allowing you to pull out their individual profile,
3 you can't make a match if you have a consistent contribution.
4 So, for these particular items I can't determine an
5 individual profile from these mixtures but I can't exclude
6 either Mr. Niles or Ms. Hammond as possible contributors to
7 the profile that I developed.

8 Q But you can exclude people?

9 A Correct, it is possible to exclude.

10 Q All right, I want you to take a look at State's Exhibit
11 86. In particular there is a swab from the - on - I believe
12 you've identified it as SLED item two, it's identified as, I
13 believe, agency item 15 and State's Exhibit 86, a swab of the
14 red plastic cup removed from the center console of the
15 suspect vehicle. Did you analyze that?

16 A I did.

17 Q And what were your findings in that regard?

18 A The DNA profile developed from the swab from the plastic
19 cup from the vehicle center console matches the DNA profile
20 of Richard Niles, Jr.

21 Q The next item is your item number three, a swab from the
22 rim of a red plastic cup removed from the near left front
23 seat of the suspect vehicle. That is item number 16 in
24 State's Exhibit 86. Did you analyze that?

25 A Yes, I did.

1 Q And what were your findings?

2 A The DNA profile developed from a swab from a cup found
3 near the left front seat of the vehicle is a mixture of at
4 least two individuals. Richard Niles, Jr., and Mokeia
5 Hammond cannot be excluded as possible contributors. Ervin
6 Moore is excluded as a contributor.

7 Q And item seven, your item number seven is a swab from a
8 red plastic cup straw from the left rear floorboard of
9 suspect's vehicle. That's identified in State's Exhibit 86
10 as item number 17. Can you tell me if you did an analysis on
11 that?

12 A Yes, I did.

13 Q And what were your findings?

14 A The partial DNA profile developed from a straw on the
15 left rear floorboard matches the DNA profile of Ervin Moore.

16 Q Now, also, in State's Exhibit 86 you received three
17 additional swabs that indicated blood; is that correct?

18 A That is correct.

19 Q Now, I would like to take those one at a time. Your
20 item number four, which is indicated as a swab from the back
21 of the left front seat of the suspect's vehicle, did you
22 analyze that?

23 A Yes, I did.

24 Q And what were your findings?

25 A The DNA profile developed from a swab from the back of

1 the left front seat of the vehicle matches the DNA profile of
2 Mokeia Hammond. The probability of randomly selecting an
3 unrelated individual having a DNA profile matching this item
4 is approximately one in 1 quadrillion.

5 Q And you also on your item number five also contained in
6 State's Exhibit 86 is indicated as a swab from the headrest
7 of the right front seat of the suspect's vehicle. Did you
8 analyze that?

9 A I did.

10 Q And what were your findings?

11 A The DNA profile developed from the headrest of the right
12 front seat of the vehicle is a mixture of at least two
13 individuals. The DNA profile developed from the major
14 contributor to this mixture matches the DNA profile of Ervin
15 Moore. The probability of randomly selecting an unrelated
16 individual having a DNA profile matching the major
17 contributor to this item is approximately one in 68
18 quadrillion. Richard Niles, Jr., and Mokeia Hammond are
19 excluded as contributors to this item.

20 Q All right, and the final swab contained in State's
21 Exhibit 86 is indicated as a swab from the left rear seat of
22 the suspect's vehicle. Did you do an analysis on that?

23 A Yes, I did.

24 Q And what were your findings?

25 A The DNA profile developed from the swab from the left

1 rear seat of the vehicle matches the DNA profile of Richard
2 Niles, Jr.

3 Q And what were the possibilities on that?

4 A The probability of randomly selecting an unrelated
5 individual having a DNA profile matching this item is
6 approximately one in 1.5 quadrillion.

7 MS. ELDER: Thank you, Your Honor. The State has no
8 further questions.

9 THE COURT: All right, Mr. Barr.

10 CROSS EXAMINATION

11 BY MR. BARR:

12 Q Ms. Leisy, the items you've testified to earlier, are
13 those the only items submitted to you for analysis in this
14 case?

15 A No, there were other items submitted.

16 Q Okay, does the report contain that information?

17 A Yes, it does.

18 Q Okay, okay.

19 MR. BARR: All right, I have no further questions.

20 THE COURT: All right, Mr. Hazzard.

21 MR. HAZZARD: Very briefly, Your Honor.

22 CROSS EXAMINATION

23 BY MR. HAZZARD:

24 Q Good morning, ma'am. How are you?

25 A Good morning, sir.

1 Q All of the items that Ms. Elder asked you about were
2 taken from the Ford Fusion; right?

3 A The description that I received was just that it was
4 taken from a suspect's vehicle. I don't have specific
5 knowledge of what vehicle it was taken from other than that.

6 Q Okay, so, nothing that we're talking about here today
7 that matches Mokeia Hammond came out of anything considered
8 to be the victim's vehicle; right?

9 A Based on the paperwork and information that I received,
10 no.

11 Q All right, and you mentioned one and I might not have
12 been paying attention close enough and I apologize. You
13 mentioned one batch wherein you said Ervin Moore was the
14 major contributor and then there was obviously then a minor
15 contributor but that both Mokeia Hammond and Richard Niles
16 were excluded as being that minor contributor; is that
17 correct?

18 A That is correct.

19 Q So, then, Ervin Moore had someone else's blood on him at
20 some point or his blood got mixed with someone else's, not
21 either of these two people; right?

22 A I can't determine whether or not it was mixed with other
23 blood. I just know that in that particular sample there is
24 DNA from at least one person other than Ervin Moore that is
25 not either Mr. Niles or Ms. Hammond.

1 Q All right, thank you very much.

2 THE COURT: Anything on redirect?

3 MS. ELDER: Yes, just one quick question.

4 REDIRECT EXAMINATION

5 BY MS. ELDER:

6 Q You also received a blood sample from the victim, James
7 Salter; is that correct?

8 A Yes, I did.

9 Q And you analyzed on item number six, I believe, that he
10 is - I'm sorry, not to - item number five you compared that
11 to the victim, James Salter; is that correct?

12 A That is correct.

13 Q And he was excluded from that as a contributor as well;
14 is that correct?

15 A He was excluded, yes.

16 MS. ELDER: No further questions, Your Honor.

17 THE COURT: All right, you may step down.

18 A Thank you, sir.

19 THE COURT: Thank you.

20 MS. ELDER: Your Honor, we would ask that this
21 witness be excused.

22 THE COURT: Any objection?

23 MR. BARR: No objections.

24 MR. HAZZARD: No objections, Your Honor.

25 THE COURT: The witness is excused. Thank you very

1 much for being here.

2 A Thank you.

3 THE COURT: All right, ladies and gentlemen of the
4 jury, I'm going to excuse you back to the jury room briefly.
5 I think our light repairman is here. So, it'll give you an
6 opportunity to stretch your legs while we get the light
7 fixed. Thank you very much. If everyone else would please
8 remain seated while the jury is excused.

9 (Whereupon, the following takes place outside the
10 presence of jury.)

11 THE COURT: All right, we'll stand in recess until he
12 gets it fixed.

13 MS. ELDER: Thank you, Your Honor.

14 THE COURT: Thank you.

15 OFF THE RECORD

16 (On the record.)

17 (Whereupon, the following takes place outside the
18 presence of the jury and.

19 THE COURT: Anything from the State before we bring
20 the jury back in?

21 MS. ELDER: No, sir, Your Honor.

22 THE COURT: Anything from the Defense?

23 MR. BARR: No, Your Honor.

24 MR. HAZZARD: No, Your Honor.

25 THE COURT: All right, please bring the jury back in.

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

3 THE COURT: All right, ladies and gentlemen, welcome
4 back. State, you can call your next witness.

5 MS. ELDER: Your Honor, the State would call Dr. Erin
6 Presnell.

7 THE COURT: All right.

8 Whereupon, Susan Erin Presnell was called to the stand,
9 duly sworn by the clerk and testified as follows:

10 THE CLERK: Thank you. Please be seated. Please
11 state your full name, spell your last name for the Court.

12 MS. PRESNELL: My name is Susan Erin Presnell. The last
13 name is P-R-E-S-N-E-L-L.

14 DIRECT EXAMINATION

15 BY MS. ELDER:

16 Q Dr. Presnell, where are you employed?

17 A I work at the Medical University of South Carolina in
18 Charleston as a forensic pathologist.

19 MS. ELDER: Your Honor, at this time we at the State
20 will move Dr. Presnell an expert in the area of forensic
21 pathology. It is my understanding that Defense Niles and
22 Defense Hammond will stipulate to that.

23 THE COURT: Any questions?

24 MR. BARR: That is correct, Your Honor.

25 MR. HAZZARD: So stipulated, Your Honor.

1 THE COURT: All right, I find this witness to be
2 qualified as an expert in the field of forensic pathology.

3 MS. ELDER: Thank you, Your Honor.

4 BY MS. ELDER:

5 Q Now, Dr. Presnell, you indicated that you're a forensic
6 pathologist at MUSC?

7 A Yes.

8 Q And what do you do as a forensic pathologist?

9 A Well, like I kind of always explain, everyone is getting
10 a little more familiar with forensic pathology with the CSI
11 shows and all, but forensic pathology is actually a
12 subspecialty of the broad field pathology, which is the study
13 of disease, and most pathologists actually examine tissues
14 that are taken off by another physician like say a skin
15 biopsy or a breast biopsy or if somebody has a surgery and
16 they remove a portion of an organ that tissue goes to the
17 pathologist. They look at it, look under the microscope,
18 diagnose disease like it's cancer or it's not cancer.
19 Forensic pathology is a subspecialty of that where we're not
20 looking at a single piece of tissue. We're looking at a
21 whole, a whole person, a decedent, somebody that's passed on.
22 The procedure that we examine them is, of course, the
23 autopsy. We look externally and internally. We look for
24 disease, but in addition to that, we also look for traumas
25 and interpret traumas and ultimately come up with the cause

1 and manner of death.

2 Q And did your lab have an opportunity to perform an
3 autopsy on the victim, James Michael Salter?

4 A Yes, an autopsy was performed on Mr. Salter on
5 April 10th, 2007.

6 Q And was a report generated as a result of that autopsy?

7 A Yes.

8 Q And do you have a copy of that with you?

9 A I do.

10 Q And would it assist you to refer to that as I ask you
11 your questions?

12 A Yes, it would.

13 Q I want to go to the final diagnosis. I believe that is
14 the second to the last page and could you go through those,
15 this diagnosis or the findings of the autopsy?

16 A Well, again, this autopsy was performed in 2007. I
17 mean, it was performed by a colleague and I have - who has
18 since moved to Michigan. I've reviewed the materials and the
19 pictures and the entire report, and basically what this case
20 boils down to is that there was a single gunshot wound. It
21 entered into the right side of his chest. It passed between
22 rib number five and six and also caused a fracture of rib
23 number six and it went into the chest, went through the right
24 lung, went up to the pulmonary artery. The pulmonary artery
25 is the main vessel leaving the heart. All the blood coming

1 back to the heart leaves through the pulmonary artery to go
2 to the lungs to be oxygenated. So, the bullet hit the right
3 pulmonary artery, hit a rib and kind of bounced back into the
4 right lung where the bullet was recovered. Because it struck
5 the pulmonary artery there was a lot - there was massive
6 bleeding, basically exsanguination or bleeding to that and
7 bleeding into the chest cavity and ultimately caused his
8 death.

9 Q Were there any other injuries noted?

10 A He had - well, he had an abrasion or a scratch on his
11 knee and he also had two small lacerations on his lower lip
12 which may or may not - and a laceration is caused by some
13 type of blunt injury causing the skin to split. Now, that
14 may or may not have been a blunt injury from some altercation
15 or it may have been through intubation. He had a lot of
16 resuscitative measures that were attempted on him and
17 including intubation where they put the endo-trach - a tube
18 down into your airway to try to breathe for you and
19 occasionally you get some oral injury with that. So, other
20 than the couple of scratches on the left knee and the two
21 small lacerations on the lower lip the only other injury was
22 the gunshot wound.

23 Q Okay, and when you were indicating the placement of the
24 wound I just want to make sure. I don't know if they were
25 able to see it. Could you stand and point that out?

1 A Approximately in the mid right chest on the side.

2 Q It was on the side?

3 A Yes, yes.

4 Q And you indicated that a projectile was removed from the
5 autopsy; is that correct?

6 A Yes, ma'am.

7 Q Okay, and was Dr. Caplan employed at MUSC at one time?

8 A Dr. Caplan was the pathologist at that time.

9 Q Okay, Doctor, like you'd to take a look at State's
10 Exhibit 106. There's a sticker on there. Is that a normal
11 sticker that would come from your lab?

12 A Yes, this is the autopsy sticker with our - with the
13 name and the autopsy number and it's also inscribed bullet,
14 yes.

15 MS. ELDER: One moment, Your Honor?

16 THE COURT: All right.

17 BY MS. ELDER:

18 Q In part of an autopsy do you do a tox report as well?

19 A Yes, we do. We collect blood and urine if available to
20 run a screen for drugs and alcohol.

21 Q And did you make any findings in reference to that in
22 regards to this victim?

23 A Yes, the toxicology lab found THC which is marijuana as
24 well as some resuscitative drugs.

25 Q Nothing to the level that would cause his death?

1 A No.

2 Q And was there a conclusion made as to the cause of
3 death?

4 A The cause of death was the gunshot wound to the right
5 side of the chest.

6 Q And was there a conclusion as to the manner of death?

7 A The manner of death is homicide.

8 MS. ELDER: No further questions, Your Honor.

9 THE COURT: All right, Mr. Barr.

10 MR. BARR: I have no questions of this witness, Your
11 Honor.

12 THE COURT: All right, Mr. Hazzard.

13 CROSS EXAMINATION

14 BY MR. HAZZARD:

15 Q Good morning, ma'am.

16 A Good morning.

17 Q Is there anything in the report you reviewed or any
18 investigation that you did that would indicate that Mokeia
19 Hammond in any way, shape or form did anything that led to
20 the death of James Salter?

21 A No, I'm not familiar with any of the case history.

22 Q Okay. Thank you.

23 MR. HAZZARD: No further questions.

24 THE COURT: Anything on redirect?

25 MS. ELDER: No, Your Honor. We would ask that Dr.

1 Presnell be excused at this time.

2 THE COURT: Any objection?

3 MR. BARR: Without objection.

4 MR. HAZZARD: No objection.

5 A Thank you.

6 THE COURT: All right, Dr. Presnell, you're excused.
7 Thank you very much for being here. All right, you can call
8 your next witness.

9 MS. ELDER: Your Honor, at this time the State of
10 South Carolina would rest.

11 THE COURT: All right, all right, ladies and
12 gentlemen of the jury, the State has presented its case in
13 chief in the trial of this case and now is the portion in the
14 trial in which I must take up some legal matters. It's
15 procedural legal matters that I need to take up with the
16 attorneys. So, I'm going to excuse you back to the jury room
17 while we deal with these matters of law. As I said before,
18 it's not that we're hiding anything from you. It's just that
19 when we discuss matters of law it often requires us to
20 discuss factual issues and we don't want anything that the
21 attorneys or I may say to influence you in determining what
22 the facts of this case are because you and you alone are the
23 factual finders of this case. So, I'm going to excuse you
24 back to the jury room while we discuss these legal matters
25 and I'll bring you back out in just a minute. Thank you very

1 much.

2 (Whereupon, the following takes place outside the
3 presence the jury.)

4 THE COURT: All right, anything further from the
5 State?

6 MS. ELDER: No, sir, Your Honor, and in reference to
7 the Defendants testifying they have no record.

8 THE COURT: All right, anything from the Defense?

9 MR. BARR: Your Honor, at this time on behalf of
10 Defendant Niles, we would ask the Court grant a directed
11 verdict based on the fact that the State has not met the
12 burden of proving beyond a reasonable doubt to the point that
13 the jury could reasonably believe that the Defendant is
14 guilty of murder or armed robbery or use of a weapon during
15 the commission of a violent crime. Your Honor, at best the
16 State has presented one witness who says that he may have
17 been present. He cannot or did not assert that he actually
18 saw the Defendant commit a wrongful killing and that there
19 was any malice aforethought. I don't think he testified to
20 the extent that a jury could find that Mr. Niles robbed or
21 with a weapon robbed Mr. Salter. I don't think that it would
22 be a reasonable finding also that at any point that Mr. Niles
23 engaged in any kind of plan or scheme in order to accomplish
24 the killing of Mr. Salter, and for those reasons, Your Honor,
25 we feel as if the State's case, taken in the best possible

1 light to them, would not present a jury question.

2 THE COURT: All right, your motion is noted. I deny
3 it. I think that there is enough testimony to go to the jury
4 on that part.

5 MR. BARR: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. HAZZARD: Your Honor, at this time make a motion
8 for a directed verdict on behalf of Mokeia Hammond. As the
9 Court has heard, Your Honor, there is no witness that the
10 State has presented that has indicated in any way, shape or
11 form that Mokeia Hammond directly committed any of the crimes
12 for which she is charged, no witness indicated that she
13 directly robbed anyone while armed, no witness testified that
14 she directly possessed a handgun, no witness indicates or
15 testifies that she directly fired a shot that led to the
16 death of James Salter and that being an unlawful killing.
17 That would then bring us to the issue, therefore, of
18 accomplice liability, okay, where the felony murder rule or
19 the hand of one is the hand of all. I would submit that then
20 is the only way that the State could have these charges, you
21 know, go forward. Well, in looking at the testimony the only
22 witness that I recall from the State who gives any testimony
23 whatsoever regarding what occurred that day among the three
24 Codefendants is Ervin Moore and what I recall Ervin Moore
25 saying is that at some point in time he heard Rich Niles say

1 "I'm going to hit a lick," or something to that effect. I
2 do not recall hearing any testimony indicating that Mokeia
3 Hammond heard that statement. I do not remember hearing any
4 testimony that would indicate that Mokeia Hammond even knew
5 whatever that terminology or that slang is supposed to mean.
6 I do not recall hearing any testimony indicating that as a
7 result of hearing this slang phraseology that Mokeia Hammond
8 in any way, shape, or form indicated that she was and knew of
9 a plan to commit a robbery or indicated that she was part of
10 a plan to commit a robbery. In fact, from what I recall
11 hearing, the light most favorable, taken in the light most
12 favorable to the State the only evidence is Ervin Moore says
13 at some point Rich Niles said, "I'm going to hit a lick,"
14 no indication whatsoever, A, as to whether Mokeia Hammond
15 heard those words, B, whether she would have any idea what
16 those words meant because I do not believe that we will be
17 involved with the conceit that every member of a certain
18 ethnic group happens to know and recognize any gutter street
19 slang that is thrown out there, but I don't personally recall
20 hearing anything from Ervin Moore or any other witness
21 indicating that Mokeia Hammond specifically knew of any plan
22 to rob anyone.

23 Now, as to the issue of them going there for the purpose
24 of committing a drug deal, as this Court is well aware, Your
25 Honor, based on Gore versus Leeke, the felony murder rule

1 does not apply to matters that are mala prohibita, which the
2 transaction of drugs is illegal because the State says it is
3 illegal. It is not a mala in se crime, something such as
4 stealing or robbing or killing, okay, and Gore versus Leeke
5 very clearly states that in order for the felony murder rule
6 to apply the action that the accomplice is involved in has to
7 be a knowing accomplice or action regarding a mala in se.
8 So, our point is if they cannot show and we submit they have
9 not by any stretch of the imagination shown that Mokeia
10 Hammond knew of a plan to rob anyone. Then the fact that she
11 was merely there for the purpose of a drug transaction
12 without more does not bring this into something that will
13 pass a directed verdict, Your Honor.

14 THE COURT: All right, let me hear from the State on
15 that.

16 MR. RICHARDSON: Your Honor, the State is not moving
17 forward on felony murder based on the mere drug transaction.
18 The statements, the testimony that was taken was that Richard
19 Niles sits beside Mokeia Hammond on the cell phone. Ervin
20 Moore who is in the backseat does hear him order the
21 marijuana and then say to the car in general, "We're going
22 to, we, we're going to hit a lick. We're going to do a
23 robbery." That was the testimony, Your Honor. Ms. Hammond
24 is there as the getaway driver. This was not about a drug
25 transaction. The pretense was a drug transaction but what,

1 what was planned was the robbery. The shoebox is upfront
2 that has the pistol in it. Ms. Hammond lives with Mr. Niles.
3 That's evidenced from the, from the mail that's at the house,
4 the address that's on the mail that's found in the car, the
5 same address as Mr. Niles, same address as Mr. Niles' mother.
6 Your Honor, we have a classic case of the hand of one, hand
7 of all here, as the charge states. While only one hand pulls
8 the trigger, while only one bullet is used, only one victim,
9 both Defendants can be equally guilty of the murder, of the
10 homicide, when they're engaged in an act. There is clear
11 evidence that there was a common plan to do a robbery. We've
12 had a Defendant say he knew about it, he was in the car, he
13 wasn't even the getaway driver. His job was even more
14 minute. He was just to get out and check to see if the
15 property was there. Mokeia Hammond sat behind the wheel
16 ready to drive away and she did just that. She did her job.
17 She's involved in the drug business with Mr. Niles earlier in
18 the day. Your Honor, they don't act alone. They're always
19 acting together. They're acting in the drug business.
20 They're acting in ordering these drugs together. They're
21 acting in this drug robbery that turns into a felony murder,
22 Your Honor.

23 THE COURT: All right.

24 MR. RICHARDSON: And the State is - she knows Ervin, she
25 knows that Mr. Moore is the lookout man, going to check to

1 see the drugs there, and the Court, in the light most
2 favorable to the State, is, is - should be concerned with the
3 existence of any evidence, not about its weight, Your Honor.

4 THE COURT: All right, all right, Mr. Hazzard, I note
5 your motion. I'm going to deny the motion for a directed
6 verdict. Anything else?

7 MR. BARR: Your Honor, ask at this time prior to the
8 jury coming back in that the Court on the record queries Mr.
9 Niles as to his rights as a Defendant to testify.

10 THE COURT: All right, yeah, I was going to do both
11 Mr. Niles and Ms. Hammond. If I could get both of you to
12 stand, please.

13 (Complies with request.)

14 THE COURT: If I could get you to raise your right
15 hand.

16 (Mr. Niles and Ms. Hammond sworn by Court.)

17 THE COURT: All right, sir, and your full name.

18 MR. NILES: Richard Bill Niles, Jr.

19 THE COURT: All right, and ma'am?

20 MS. HAMMOND: Mokeia Shanell [spelled phonetically]
21 Hammond.

22 THE COURT: All right, you can put your hands down
23 now.

24 All right, Mr. Niles, Ms. Hammond, at this time I'm
25 going to explain to you your rights as Defendants in this

1 case and whether or not to testify or not testify in this
2 case. If you do not understand anything I say, please let me
3 know. If you want me to explain anything in more detail
4 please let me know. If you want to take a break and speak
5 with your attorney please let me know. Do you understand
6 that so far, Mr. Niles?

7 MR. NILES: Yes, sir.

8 THE COURT: All right, Ms. Hammond?

9 MS. HAMMOND: Yes, sir.

10 THE COURT: All right, now, we've now reached the
11 stage in the trial where you may present your defense. You
12 have the right to claim the protection given to you by the
13 Fifth Amendment of the United States Constitution. This
14 amendment states in part that no person shall be compelled in
15 any criminal case to be a witness against himself. This
16 means that you cannot be required to testify in this case.
17 You have the right to testify on your own behalf. However,
18 no one can make you testify. This is a personal right and no
19 one can waive this right except for you. If you decide to
20 testify you will be subject to the same rules that govern
21 other witnesses and you may be examined and cross-examined on
22 any relevant issue in this case. In addition, if you have
23 any convictions involving dishonesty or false statement or
24 for crimes punishable by imprisonment for more than one year
25 and this Court determines that the probative value of

1 admitting this evidence outweighs its prejudicial effect to
2 you, the Solicitor will be able to introduce your record to
3 attack your credibility. If you decide to testify this
4 decision on your part must be freely, voluntarily and
5 intelligently made with knowledge of the protections given to
6 you by the Fifth Amendment and the consequences of your
7 decision to testify. If you decide not to testify I will
8 instruct the jurors that they cannot give the fact that you
9 did not testify any consideration whatsoever and that there
10 is to be absolutely no prejudice to you because you did not
11 testify. It is left entirely up to you whether or not you
12 testify. You may talk with your attorney, your family and
13 friends or anyone else, but the final decision will be left
14 entirely up to you. Do you understand what I have explained
15 to you thus far? Mr. Niles?

16 MR. NILES: Yes, sir.

17 THE COURT: And do you understand what I've explained
18 to you thus far, Ms. Hammond?

19 MS. HAMMOND: Yes, sir.

20 THE COURT: All right, do either of you have any
21 questions that you want to ask me, Mr. Niles?

22 MR. NILES: No, I do not, sir.

23 THE COURT: Do you, Ms. Hammond?

24 MS. HAMMOND: No.

25 THE COURT: Do either of you want to discuss this

1 matter with your attorney or with any family or friends at
2 this time, Mr. Niles?

3 MR. NILES: No, I do not, sir.

4 THE COURT: Ms. Hammond?

5 MS. HAMMOND: No, Sir.

6 THE COURT: All right, Mr. Niles, do you wish to
7 testify in this case?

8 MR. NILES: Yes, I do, sir.

9 THE COURT: All right, Ms. Hammond, do you wish to
10 testify in this case?

11 MS. HAMMOND: No, sir.

12 THE COURT: All right, is there anything further,
13 Mr. Barr, that you want placed on the record?

14 MR. BARR: Nothing, Your Honor.

15 THE COURT: All right, is there anything that you
16 want placed on the record?

17 MR. HAZZARD: Note the Defendant's objection to the
18 denial of the directed verdict motion for the purposes of
19 appeal.

20 THE COURT: All right. All right, thank you very
21 much. You may be seated. All right, anything from the State
22 before we call the jury back in?

23 MS. ELDER: Nothing from the State, Your Honor.

24 THE COURT: Anything from the Defendants? Mr. Barr,
25 anything, anything before we bring the jury back in?

1 MR. BARR: Nothing from Defendant Niles, Your Honor.

2 THE COURT: Anything from the Defendant Hammond?

3 MR. HAZZARD: No, Your Honor.

4 THE COURT: All right, let's bring the jury back in.

5 (Whereupon, the following takes place in the presence of
6 the jury.)

7 THE COURT: All right, ladies and gentlemen, welcome
8 back. Mr. Barr, you can call your first witness.

9 MR. BARR: Your Honor, the Defense calls Salina
10 Mann.

11 THE COURT: All right.

12 Whereupon, Salina Mann was called to the stand, duly
13 sworn by the clerk and testified as follows:

14 THE CLERK: Thank you. Have a seat. Please state
15 your full name and spell your last name for the Court.

16 MS. MANN: Salina Mann, last name is M-A-N-N.

17 DIRECT EXAMINATION

18 BY MR. BARR:

19 Q Ms. Mann, what do you do for a living?

20 A Police officer.

21 Q Okay, all right, now, where do you work?

22 A Currently at Conway Police Department.

23 Q Okay, were you formerly employed with the Myrtle Beach
24 Police Department?

25 A Yes, I was.

1 Q Did you participate in the investigation of the incident
2 involving James Salter?

3 A Yes, I did.

4 Q What role did you play in that investigation?

5 A I was one of the investigators assigned to assist with
6 the case.

7 Q Okay, now, as a part of this investigation did you at
8 some point interview the roommates of James Salter?

9 A Yes, I did.

10 Q You did?

11 A Uh-huh.

12 Q Did you interview a Sean Lundy in connection with this
13 incident?

14 A Yes.

15 Q Okay, as a part of that interview or did you do the
16 interview alone?

17 A No, I had another detective with me.

18 Q Who was that detective?

19 A I believe Mike Curry.

20 Q Okay, and Mike Curry was also one of the chief
21 investigators in this case?

22 A Yes.

23 Q Okay, now, as a part of that investigation did you
24 question Mr. Lundy about being at the Best Buy parking lot?

25 A Yes, I did.

1 Q Okay, did he indicate to you that ---

2 MR. RICHARDSON: Objection, Your Honor. He's asking for
3 hearsay now, did he indicate.

4 THE COURT: All right.

5 Q Did you determine, did you determine whether or not he
6 was there at the Best Buy parking lot?

7 A Yes.

8 Q During this incident?

9 A Yes.

10 Q Okay, and that was at the date and time that this
11 incident allegedly occurred?

12 A Yes.

13 Q Okay. Thank you so much.

14 THE COURT: Mr. Hazzard.

15 CROSS EXAMINATION

16 BY MR. HAZZARD:

17 Q Good morning, ma'am. How are you doing?

18 A Good. How are you?

19 Q I'm doing all right. Now, as a part of your
20 investigation and as a result of your investigation did you
21 make a determination or find information indicating the type
22 of vehicle that Mr. Lundy was operating?

23 A Yes.

24 Q And what type of vehicle did your investigation
25 indicate?

1 A A red Durango.

2 Q A red Durango, an SUV type vehicle?

3 A A Durango would be classified as an SUV, red in color.

4 Q Okay, and your investigation indicated that Mr. Lundy
5 and the Durango, the SUV were present in the parking lot at
6 the time of the incident; correct?

7 A Yes.

8 Q All right, thank you. Please answer any questions the
9 State may have.

10 MS. ELDER: Just a moment, Your Honor.

11 THE COURT: All right.

12 MR. RICHARDSON: Your Honor, the State has no questions
13 of this witness.

14 THE COURT: All right. Mr. Barr, anything on
15 redirect as ---

16 MR. BARR: Nothing on redirect, Your Honor, from
17 Defendant Niles.

18 THE COURT: All right, you may step down. Thank you.

19 A Thank you.

20 MR. HAZZARD: Your Honor, as Detective Mann is my
21 witness I would ask that she be excused. She has an
22 appointment with the dentist this afternoon.

23 THE COURT: Any objections from the State?

24 MR. RICHARDSON: None from the State, Your Honor.

25 THE COURT: Mr. Barr?

1 MR. BARR: None.

2 THE COURT: All right, you're excused. Thank you
3 very much.

4 All right, Mr. Barr, you can call your next witness.

5 MR. BARR: Your Honor, the Defense calls Mr. Richard
6 Niles.

7 THE COURT: All right, Mr. Niles, if you would please
8 come forward.

9 Whereupon, Richard Bill Niles, Jr., was called to the
10 stand, duly sworn by the clerk and testified as follows:

11 THE CLERK: Thank you. Please be seated. Please
12 state your full name and spell your last name for the Court.

13 MR. NILES: Richard Niles, Richard Bill Niles, Jr.,
14 Niles, N-I-L-E-S.

15 DIRECT EXAMINATION (By Mr. Barr)

16 Q Thank you, Mr. Niles. Mr. Niles, how old are you, sir?

17 A 25.

18 Q 25?

19 A Yes, sir.

20 Q Okay, now, you are from where?

21 A I am from Williamsburg, Salters, South Carolina.

22 Q Okay, what is your address?

23 A 360 Salters, Seabrook Road, Salters, South Carolina.

24 Q Okay, what is the last grade you completed in school?

25 A I completed 12th grade at Wil Lou Gray Opportunity

1 School, military school.

2 Q Okay, now, as far as your background is concerned, have
3 you ever been incarcerated for commission of any crime of
4 violence?

5 A No violent crimes but I have been for marijuana.

6 Q For simple possession of marijuana?

7 A Simple possession, yes, sir.

8 Q Okay, all right, now, do you have any other record of
9 arrest or incarceration other than in this case?

10 A No, I do not.

11 Q Okay, all right, now, do you know or did you know the
12 decedent, James Salter?

13 A Yes, I did.

14 Q How did you come to know him?

15 A We met a night at a club on Myrtle Beach, Red Rooster.

16 Q Okay, and the meeting at the club that night how did
17 that occur?

18 A I was standing up over the balcony and he approached me
19 asking me, he, he was, he introduced himself to me and he
20 introduced himself as Spice and that's when he, you know, we
21 conversated.

22 Q Okay, now, so, you knew him as Spice?

23 A Yes, sir.

24 Q Did you know him by any other names?

25 A Not until later on in the - our relationship.

1 Q Okay, and then you came to know him as who?

2 A They called him James but, you know, his friends was
3 calling him Jay.

4 Q Okay, so, you called him Jay or at any point did you
5 call him Jase?

6 A No, I called him Spice.

7 Q You called him Spice?

8 A Yes, sir.

9 Q So, you knew him as Spice?

10 A Yes, sir.

11 Q So, now, how long did you and Spice know each other?

12 A Well, we came to get to know each other I would say
13 possibly for about close to a year, about six to nine months.

14 Q Close to a year. Okay, now, during this year that you
15 knew Spice or James what kinds of things did you all do?

16 A Well, we did some drugs, some drug relationships, you
17 know, business-wise and went out a couple of times together.

18 Q Okay, so, you all did drug transactions?

19 A Yes, we did.

20 Q Okay, now, were you ever a guest in his home?

21 A Yes, a couple of times.

22 Q Where does he live?

23 A I can't say exactly where he live but I know it's over
24 there next Masters. It's like, in like a condo area.

25 Q Okay, okay. So, what kind of home does he have or did

1 he have?

2 A It was a pretty nice sized house where him and some
3 roommates had a house. It was like a three bedroom upstairs,
4 a car garage.

5 Q Okay, and did he have a car garage?

6 A Yes, he did.

7 Q Okay, what was in the living room?

8 A Well, when you first come into the house he has like on
9 the left-hand, on the right-hand side it's the door to the
10 garage. Then he has like a - it's a couch facing the
11 television. It's a room on the other side over there and on
12 the upstairs you got two more rooms.

13 Q Okay, now, during the course of this year that you new
14 Spice or James Salter, did you all ever have a conflict?

15 A No, we didn't.

16 Q Did you ever have an argument or push and shove
17 disagreement?

18 A No, we didn't.

19 Q Did you all ever have a dispute over money?

20 A No, we did not.

21 Q Did you all exchange large sums of money and large sums
22 of drugs?

23 A Yes, we have.

24 Q Was there ever any problems about getting paid or being
25 paid back?

1 A No, it hasn't.

2 Q Or anything like that?

3 A No, it hasn't.

4 Q Okay, now, let me ask you, do you feel as if - well, let
5 me ask you this first. In your opinion what is the street
6 value, what would have been the street value at that point of
7 a pound of marijuana?

8 A Okay, well, it's like you get two prices of a pound of
9 marijuana. You got regular kind of weed and you've got
10 exotic. The type that me and James dealt with was some
11 exotic and I'd say like for a regular pound you probably pay
12 for like 600, 650. You probably get a deal for like five or
13 for some exotic you probably pay probably about the least
14 about 1200.

15 Q So, about \$1,200 would've been the street value of a
16 pound of exotic marijuana?

17 A Yes, sir.

18 Q Do you feel as if you had gone to James and said,
19 "Well, James, my supply is low. Let me have a pound of
20 marijuana," that he would have given it to you?

21 A Yes, he, well, he probably wouldn't have give it to me
22 like he just hand in hand but probably like on a half deal or
23 probably be like, "Well, just, just give me this right here
24 back on it when you make this or whatever."

25 Q Okay, did you do that kind of thing for him?

1 A Yes.

2 Q Had you recently extended some drugs to Spice?

3 A Yes, I have.

4 Q And when was that?

5 A It was a week before the accident. I gave him a certain
6 amount of marijuana. I was - I expected for him to give me
7 5,000 back ---

8 Q For the ---

9 A For the, what he had got, weed I gave him..

10 Q For the amount of marijuana that you had given him?

11 A Yes.

12 Q Did you see any need to hassle him about it?

13 A No, sir.

14 Q Did you feel confident that at any point that you could
15 have gotten either a comparable value of marijuana or the
16 \$5,000 had you asked him for it?

17 A Yes, sir.

18 Q Okay, and he was the type of guy if you asked him for it
19 he would have given it to you?

20 A Yeah, James, he was a straight up guy.

21 Q He was just a straight up guy.

22 A Yes, sir.

23 Q Okay, all right, okay, now, in terms of your dealings
24 with Ervin Moore how did you come to know Ervin Moore?

25 A Well, I met him through relatives of the family. I

1 didn't know him like grew up with him but like relatives of
2 the family that's how I get to knew him.

3 Q Okay, was there a point when you gave Ervin Moore a ride
4 to Myrtle Beach?

5 A Yes, on that specific day.

6 Q How did that come to happen?

7 A Well, during the time me and my fiancée Mokeia we was --
8 my plan was we was going to the baseball field. I had some,
9 I had like a little small amount of marijuana that I was
10 going to smoke, a little bit of, a little bit of liquor and I
11 stopped by the store to get some cigars. When I got to the
12 store to got some cigars that's when he was coming across the
13 street approaching me. He asked me, he say, he asked me did
14 I had any weed. I was like, "No, I do not." I say, I say,
15 "No, I don't have none at the time." I said, I said, "How
16 much you trying to get?" And he was like, "I'm trying to
17 get some, you know, I mean, to go back to North Carolina
18 with." I was like, "How much you trying to get?" He was
19 like, "A pound." He said, "At the least I want a pound."
20 I said, "Well, I ain't got none at the time," and that's
21 when he was like, "Well, you ain't know nobody?"

22 During the time of the conversation that's when Spice
23 called me and he was letting me know he was like, he was
24 like, "Rich Boy," that's how he called me, he was like,
25 "Rich Boy, I got your money," and he was like, "I got some

1 nuggets, too." I was like, "Well, I ain't had no plan on
2 coming to the beach today, you know what I mean." I say,
3 "Me and my fiancé we was going to chill." He was like,
4 "Well, I got the money for you. So, whenever you come
5 through he said just holler at me." He said, "I've got
6 some nuggets, too, you know what I mean, you trying to get
7 anything." So, that's when I was like, "You know, speaking
8 of it, man," I say, "My peoples trying to get something he
9 wanted to take back to North Carolina." I said, "As a
10 matter of a fact I'm going to let you all talk." So, I
11 gave, I gave Ervin the telephone and they were speaking on
12 the phone as I was going in the store. I came back out of
13 the store with the cigars and it didn't take no longer than
14 probably about two minutes to go in the store to get the
15 cigars. So, by the time I came back out of the store I'd say
16 about, he probably was on the phone for like another minute
17 or two. So, they probably was on the phone for probably
18 about, about five minutes at the most and he gave me the
19 phone back and he was like, I say, "He's still on the
20 phone," and he was like, "Nah." So, I called him back and
21 he was like, I say, "What you all talked about?" He was
22 like, "He say he wanted to get some weed. So," he said,
23 "Just call me when you get the beach."

24 So, I hung up the phone. As our way to the beach we was
25 smoking, we was smoking blunts, but during the time I was

1 high. So, I fell asleep. So, when I woke up again in
2 Pawleys Island we were putting, we was about to put some gas
3 in the car.

4 Q Let me stop you there.

5 A Okay.

6 Q At any point in that discussion did either James Salter
7 or Ervin Moore speak to Mokeia Hammond about what you all
8 were talking about or what you all had planned to do?

9 A No, they didn't.

10 Q Okay, so, Mokeia Hammond other than being your fiancée
11 and you all are riding together and she's driving ---

12 A Uh-huh.

13 Q --- there was no discussion with Mokeia Hammond or
14 between Mokeia Hammond and Ervin Moore or between Mokeia
15 Hammond and James Salter?

16 A No, it wasn't.

17 Q Okay, now, do you as best you can recall when Mr. Salter
18 had the conversation, the telephone conversation with
19 Mr. Ervin Moore, do you know whether or not Mokeia Hammond
20 was privy to that?

21 A During the conversation when Ervin Moore and Spice was
22 on the phone?

23 Q Yes. When he gave, when you gave him this phone where
24 was he?

25 A Oh, he was standing at the store door beside me - well,

1 it's a glass door at the store.

2 Q Okay.

3 A So, he was like standing at the door.

4 Q Okay?

5 A Standing at the, at the gas tank.

6 Q And where would Mokeia Hammond had been at that point?

7 A She was sitting in the car.

8 Q She was in the car?

9 A Yes, she was.

10 Q Okay, so, she - there was no close proximity, they were
11 not in close proximity to each other?

12 A No, they wasn't.

13 Q Okay, now, during the ride from Salters, South Carolina,
14 to Myrtle Beach did the three of you have a conversation
15 about doing any kind of robbery when you all got to the
16 beach?

17 A No, we didn't.

18 Q Okay, did you tell either Mokeia Hammond or Ervin Moore
19 that, "When we get to the beach we're going to hit a lick"?

20 A No, I did not.

21 Q Okay, now, after you got to the beach was there any
22 discussion between you and Ervin Moore and Mokeia Hammond in
23 the car about hitting some sort of lick or committing a
24 robbery?

25 A No, I didn't.

1 Q Did you ever tell Ervin Moore that you wanted him to go
2 into a car and verify whether or not James Salter had a pound
3 of marijuana?

4 A No, sir.

5 Q And come back and let you know?

6 A No, sir.

7 Q That never happened?

8 A No, sir.

9 Q Okay, did you have any reason at all to rob James Salter
10 of a pound of marijuana worth 600 to \$1000 or so?

11 A I had no reason to do that, sir.

12 Q Okay, again, could you simply have just asked him for it
13 and he would have given it to you?

14 A Well, like I said earlier, he probably wouldn't have
15 just gave it to me but he probably would have gave it to me
16 like half, half on the deal or he probably would have gave it
17 to me but be like, "Well, give me this right here back on
18 it," because, you know, we was dealing like that for so
19 long.

20 Q And on that same day he called and offered you the
21 repayment of \$5,000 that you had advanced him; is that
22 correct?

23 A Yes, sir.

24 Q And again, as far as your belief about him, you believed
25 or is it your belief that if he called you and told you that

1 he was going to give you \$5,000 that he, in fact, would have
2 done that?

3 A Yes, he would have, sir.

4 Q And there would have been no need to rob him?

5 A No reason, sir.

6 Q Okay, now, if you would please describe the contact
7 between you and Mr. Salter after you got to the beach?

8 A Okay, while I was on the beach me - I made a couple of
9 stops at some motels, a couple of houses, and during the
10 process of that Spice called me, and he was like, "Yo, where
11 you at?" I was like, "I told you, you know what I mean,
12 when I get down there I was going to holler at you." I
13 said, "I got to make a couple of moves right now." I said,
14 "But as soon as I get done I'm going to call you," and he
15 was like, "All right." So, that's when he hung up the
16 phone. That's when I hung up the phone and I made a couple
17 of more moves, and later on I called him back, and I was
18 like, I was like, "I'm about done what I'm doing." I said,
19 "Just give me like a couple of minutes or two, you know what
20 I mean, I'll hit you back." So, I'd say probably it didn't
21 take me a couple of minutes. It probably took me about 30
22 more minutes or better that's when he called me back.

23 Q So, you wasn't anxious to go have a meeting with Mr.
24 Salter?

25 A No, sir; no, sir.

1 Q You were doing other things?

2 A Yes, sir.

3 Q And making money doing it?

4 A Yes, sir.

5 Q Okay, now, approximately how much money did you have as
6 best you can recall at that time?

7 A Well, on the way to the beach I probably had about at
8 the most, I know, I know I probably had about four to \$500 at
9 the most on me, and during the process of the transaction
10 that I was making I'm quite sure I had like a couple of
11 thousands on me after that.

12 Q Okay, all right, did you ever ask Mr. Moore whether or
13 not he could pay for this marijuana that he was going to get
14 from Mr. Salter?

15 A I never asked him that.

16 Q Okay, but now, was it intended to be as best you could
17 recall the exotic type; is that correct?

18 A Yes.

19 Q So, that would have been worth say \$1200?

20 A Yes.

21 Q And do you know whether or not Mr. Moore had \$1200?

22 A No, I didn't.

23 Q Okay, all right, and you didn't ask him?

24 A No, I didn't.

25 Q Okay, all right, now, again, let's go back to the

1 discussion between you and Mr. Salter about meeting at the
2 Best Buy parking lot?

3 A Okay, well, I called him back on the way. As a matter
4 of a fact he called me during the time when I was - I was
5 about to call him back and let him know that I was on the way
6 next to the side to, I was going to go to his house because
7 that's where I would usually split, that's where I usually
8 meet him at at his house or we be usually meet like at a
9 motel or something. That's when he was like, "Meet me at,"
10 I was like, "Meet me at Masters." I was like, "Meet me at
11 Masters," and he was like, "Nah, I don't want to meet at
12 Masters because they got cameras out there," and he said,
13 "Meet me at Best Buy." I said, "Well, all right, I'll
14 meet you at Best Buy," and that's when I approached at Best
15 Buy after I hung up the phone on him, after I done hung up
16 the phone we approached that Best Buy. I sat there for
17 probably about five minutes at the most. That's when he, he
18 called me back, and he was like, "Where you at?" I was
19 like, "I'm at Best Buy. Where you at?" And he's like,
20 "Where you parked at?" I was like, "Where you?" And he
21 was like, "I'm pulling in Best Buy at the time."

22 Q Okay, let me stop you for a second and I'm going to show
23 you what's been marked as State's Exhibit Number Six, which I
24 believe is the Best Buy parking lot and I'll turn this so
25 that the jury can see it. Now, if this is the front entrance

1 to the Best Buy and this is the parking lot, where did you
2 park and where did he park?

3 A We parked at?

4 Q Yes.

5 A If I'm not mistaken or let me make sure I'm right now.

6 Q This is the front of the store. This is the parking
7 lot.

8 A Okay, I was right over here.

9 Q Right in there?

10 A Uh-huh.

11 Q So, you parked right in front of the store?

12 A Yes, I did.

13 Q Okay, so, now, you didn't try to park down over here or
14 ---

15 A No, I didn't.

16 Q --- over here and all of these places are available;
17 right?

18 A Yes, sir.

19 Q So, you're going to park right in front of the store?

20 A Yes, sir.

21 Q Okay, you didn't see any reason to hide; did you?

22 A No reason to, sir.

23 Q And no reason to park out of sight. You pull up and
24 park right in front of the store?

25 A Yes, sir.

1 Q Okay, and he pulls up, what, right next to you?

2 A No, he, he pulled over - he - well, before, before he
3 pulled, before he parked he called me. He, he asked, he
4 said, "Where," he said, "Where you parked?" He said,
5 "What you driving?" He said, "What you parked at?" I
6 told him, I say, "Make the first left soon as you come in
7 that Best Buy," and he was like, "All right." That's when
8 he pulled in, and I was like, "I'm," he said, "What you
9 driving?" I said, "I'm driving a gray car." He was like,
10 "A Fusion?" I was like, "Yeah." I said, "I see the
11 Mustang right there in front of me," and he was like, "All
12 right." So, he, he backed in across from me, and that's
13 when we pulled out and I backed up beside him.

14 Q Okay, okay, so, you all are side by side?

15 A Yes.

16 Q Right then and there in the, in the parking lot?

17 A Yes.

18 Q Okay, then what happened?

19 A I was like noticing the parking lot. That's, that's,
20 that's what I do when I'm usually doing like transaction or
21 any other thing, you know, I was noticing the parking lot.
22 So, as I was looking around I seen, I seen a SUV that was
23 like it pulled up like right before he pulled up, right
24 before he pulled up it parked like, okay, we was parked, we
25 backed in, we was backing in and it was like the truck was

1 like over here on this side.

2 Q Okay.

3 A Because it was a couple of - it was some empty spaces
4 right there beside us. So, it was like it wasn't, it was
5 obvious that it was, you know what I mean, the car was just
6 parking, it was just parking up right there, we was pulling
7 in right there.

8 Q Okay, all right, all right, but you couldn't identify
9 who was in the SUV; could you?

10 A No, I couldn't.

11 Q All right, now, if you would tell us then what happened?

12 A Okay, that's when - after I pulled up beside them that's
13 when Ervin Moore, Ervin got out of the car and he got into
14 the car with him and my seat was laid back and that's when me
15 and Mokeia we was, we was conversating and we was talking
16 about what we was going to do after we get married, planning
17 the honeymoon or whatever and that's when she glanced over to
18 the passenger, to the side and she was like, ``Baby, they
19 fighting,'' and I like, ``They fighting?'' That's when I
20 looked over. When I was looking over that's when I seen they
21 were tussling in the car. That's when he tried to get out
22 the car. That's when Ervin tried to get out of the car and
23 heard, I heard myself and James, Spice was like, ``You ain't
24 getting out this car with my weed without no money.'' So,
25 during that time that's when Ervin, that's when Ervin hopped

1 in, Ervin opened the back door. He went to hop in the car
2 and that's when I heard and that's when I seen Spice reaching
3 under his seat. I seen him pulling out a gun.

4 Q Okay, now, let's just be honest, Mr. Niles, did you, did
5 you shoot Mr. Salter or shoot at Mr. Salter at least?

6 A Yes, yes, I did.

7 Q You did?

8 A Yes, I did.

9 Q Okay, and you haven't been straightforward about that in
10 the past; have you?

11 A No, I wasn't.

12 Q Okay, Mr. Salter first shoot at you or shoot in the
13 direction of the car?

14 A Well, when he was getting out, when Ervin was getting
15 out of the car and Salter was reaching underneath his seat I
16 seen him pulling the gun and that's when he start firing off
17 as Ervin was jumping in the back seat and when he pulled the
18 door to that's when he was shooting in, he was shooting in
19 the car. That's when my fiancée she started screaming. She
20 ducked in my lap. She was screaming. So, while he was
21 shooting in the car, yes, I did had a gun. So, I grabbed my,
22 I grabbed my pistol and that's when I shot two times. My
23 eyes was closed. I wasn't even looking. I shot two times.
24 I went pow, pow. I wasn't trying to hit nobody.

25 Q And there was gunfire coming into the car?

1 A Yes, there was.

2 Q Constantly?

3 A Yes, there was.

4 Q Okay, now, let me ask you this, what then happened
5 immediately thereafter?

6 A Soon as the gunshots went off?

7 Q Yes.

8 A Okay, well, as I was saying, I was leaning back in the
9 car and I shot two times.

10 Q Okay, all right.

11 A I was just trying to just get him to stop shooting.
12 That's all I was trying to do. I didn't know my fiancée got
13 shot or nothing. That's the first thing came to my head, you
14 know.

15 Q Okay, so, did you then tell Ms. Hammond to drive, drive
16 and drive away?

17 A I told her to mash the gas.

18 Q Yes, sir, you did.

19 A As she mashed the gas I grabbed the steering wheel and I
20 was controlling the steering wheel because she was still
21 ducked. I wasn't knowed - I didn't know that she got shot or
22 anything, so.

23 Q So, she mashed the gas and you controlled the steering
24 wheel and you all sped away?

25 A Yes, we did.

1 Q Okay, now, let me ask you this, where did you go after
2 you left the Best Buy parking lot?

3 A Okay, when we got in front of the Best Buy parking lot
4 she was still mashing the gas. So, that's when I whipped the
5 steering wheel hard as I could instead of going towards the
6 store side that's when I whipped it hard as I could so to
7 make it turn. I was like, "Is you all right?" And she was
8 like, "Yeah." I was like, "You ain't hit?" So, that's
9 when she lift up and I was like grabbed the steering wheel,
10 and as she was grabbing the steering wheel we was going in
11 the back of the restaurant then on the grass part. So,
12 that's, that's how we got behind the restaurant coming across
13 the grass and everything.

14 Q Now, where did you all go at that point?

15 A We went down it's the Highway 501. We went dead in
16 traffic, 501 and that's when we went to a trailer park to
17 some people house I knew that I usually do business with.

18 Q Okay, and that's why you went to the trailer park?

19 A Yes.

20 Q Okay, and did you leave the car there at the trailer
21 park?

22 A Yes, I did.

23 Q Okay, got out of the car and left the car there at the
24 trailer park?

25 A Yes, I did.

1 Q Okay, did you - was Mr. Moore with you guys, all three
2 of you in the car at that time?

3 A Yes.

4 Q Okay, now, this is a rental car as I understand?

5 A Yes, it is.

6 Q Is that right?

7 A Yes, sir.

8 Q The car is rented in whose name?

9 A My mother's name.

10 Q Your mother's name; right?

11 A Yes.

12 Q And you all had rented the car the previous week to
13 travel; is that right?

14 A Yes.

15 Q Okay, did you call your mother at that point?

16 A Yes, I did.

17 Q And what did you tell her?

18 A I specifically said, I was like, "Mom," I say, "Call
19 and report the car stolen," and that's when she was like,
20 "What happened?" I said, "Don't worry about that," and I
21 hung up the phone on her.

22 Q Okay, so, what you did was you called your mother and
23 told her to report the car stolen?

24 A Yes, I did.

25 Q That's right, and you didn't give her any facts and

1 circumstances about why she should report the car stolen.

2 A No, I didn't whatsoever.

3 Q But you told her to report it stolen?

4 A Yes, I did.

5 Q Okay, all right, so, now, would it be fair to say at
6 that point you're in a state of panic?

7 A Yes, I was.

8 Q Okay, all right, now, you didn't call the police; did
9 you?

10 A No, I didn't.

11 Q Okay, all right, now, with regard to what happened next,
12 after you called and asked your mother to report the car
13 stolen you left the car there in the trailer park?

14 A Yes.

15 Q Is that right?

16 A Yes.

17 Q Okay, now, with regard to Mr. Moore, did he travel with
18 you or let me ask you this. Where did you all go at that
19 point?

20 A Okay, we got out of the car. That's when I grabbed my
21 backpack. It was in the backseat of the car. One was in the
22 backseat and one was in the trunk.

23 Q Okay.

24 A So, I grabbed one out of the backseat and I grabbed the
25 one out of the trunk.

1 Q Okay.

2 A During that time as I was grabbing the stuff I was
3 calling a cab I usually, I usually call to make moves on the
4 beach. So, that's when I called the cab and I told them to
5 meet me at the trailer park where he usually come pick me up
6 at or where he usually meet me at. So, that's when they came
7 to the trailer park, I tell them you will see, you will see
8 me walking.

9 Q Okay.

10 A So, as we were walking towards the road that's when the
11 cab came in and we got in the cab, left the trailer park and
12 we went to Sea Banks Motel. That's - when we got to Sea
13 Banks Motel that's when we got, we got out of the cab and
14 that's when we splitted up.

15 Q So, that's when the three of you split up?

16 A Yes, well, that's when me and my fiancée and Ervin split
17 up.

18 Q Okay, but your fiancée, Ms. Hammond stayed with you?

19 A Yes, she did.

20 Q Did you see Mr. Moore anymore that day?

21 A No, I didn't.

22 Q Did you all have any contact anymore that day?

23 A No, we didn't.

24 Q Did you have any discussion with him that day?

25 A No, we didn't.

1 Q After, after the incident?

2 A No, we didn't.

3 Q Did you tell him that you were going to go back to the
4 mobile home park and get a gun or move a gun or hide a gun or
5 anything?

6 A No, we didn't.

7 Q You didn't have such a conversation?

8 A No, we didn't.

9 Q Okay, and as a matter of a fact you never saw him again
10 period; did you?

11 A No, I didn't.

12 Q Okay.

13 A I would like to go back on something. When we left ---

14 MS. ELDER: Objection, Your Honor, objection.

15 Q Just please just answer the questions.

16 A Okay.

17 Q Okay, now, again, did you and Mr. Moore have any
18 discussions at that point about the shooting?

19 A When we left the scene I was, I was, I was fussing at
20 him. I was like, "Man, what you, what you, why you pulling
21 something like that off, man," and that's when he was like,
22 "What you mean, man?" He was like, "What you mean?" I
23 say, "Man, you ain't had to do that, man. You ain't had to
24 do that," now, I mean, because I was upset at the time
25 because I was like, "Yo, man, you could have got my old, you

1 could have got my old lady killed, man." I said, "Man, you
2 put, you put lives on the line at the time, man." I said,
3 "Yo, man," I said, "That's messed up." I was using foul
4 languages at the time, yes, I was.

5 Q Okay.

6 A Because I was seriously upset, you know what I mean,
7 because I was, I'm in a conflict with somebody who I do
8 business with, you know, and we never had no problems
9 whatsoever, you know, and it really pissed me off because he
10 got me shooting at this man who I do business with and he got
11 this man shooting into my car who can hit my fiancée as well
12 as me, you know what I mean?

13 Q Okay, all right, now, do you know whether or not your
14 mother came to Myrtle Beach or whether she called in this
15 report that same day?

16 A She called it in.

17 Q Okay, now ---

18 A To my knowledge she called it in.

19 Q Okay, okay, now, your mother was charged in this
20 incident just like you were; wasn't she?

21 A Yes, she was.

22 Q Okay, but she's since died; right?

23 A Yes, she has.

24 Q How did she die?

25 A A car accident.

1 Q When did she die?

2 A Well, it was told to me April, it was told to me
3 January 11th, but she passed January the 10th, the 10th of
4 January.

5 Q Of this year.

6 A Yes, sir.

7 Q Okay, and that's the day or the day or so before we were
8 scheduled to try this case?

9 A Yes, sir.

10 Q All right, now, let me ask you this, two or three days
11 later you showed up at my office; is that right?

12 A Yes, that's correct.

13 Q Okay, now, were you there to seek legal counsel about
14 this incident?

15 A No, no, I did not come there for that.

16 Q All right.

17 MR. BARR: The Court's indulgence, Your Honor.

18 THE COURT: All right.

19 BY MR. BARR:

20 Q I'm going to show you this document and ask you whether
21 or not you recognize it.

22 A Yes, yes, I do.

23 Q Would you identify it for me if you would, please?

24 A It was a settlement for 15,000.

25 Q Okay, now, what's the date on that document?

1 A It's the 19th.

2 Q Okay, so, you were there at my office that day regarding
3 the settlement of an accident, bodily injury accident; is
4 that right?

5 A Yes, sir.

6 Q Okay, and you were there because we'd received a check
7 and we were handling the financial portion of the
8 transaction; is that right?

9 A Yes, sir.

10 Q Okay, now, under this settlement I believe you were to
11 receive \$15,000; is that right?

12 A Yes, sir.

13 Q So, this would have been additional money that you all

14 ---

15 MS. ELDER: Objection, Your Honor. I don't see the
16 relevancy at this point. I think he's established his point.

17 THE COURT: All right, well, let's come on up for a
18 second.

19 (Whereupon, a bench conference was held in the presence
20 but out of the hearing of the jury.)

21 THE COURT: All right, Mr. Barr.

22 MR. BARR: Thank you, Your Honor.

23 BY MR. BARR:

24 Q Mr. Niles.

25 A Yes, sir.

1 Q Let's, let's go then - you were arrested I believe that
2 day in the parking at my office; is that correct?

3 A Yes, that's correct.

4 Q And taken into custody?

5 A Yes, sir.

6 Q And you were brought to the Myrtle Beach Police
7 Department; is that correct?

8 A Yes, I was.

9 Q Okay, you were transferred - you were first taken to the
10 Williamsburg County Detention Center; is that right?

11 A Yes, sir.

12 Q And then transported to the ---

13 A Yes, sir.

14 Q --- Myrtle Beach Detention Center?

15 A Yes, sir.

16 Q Okay, now, during the course of being at the Myrtle
17 Beach Detention Center did you give a statement to the
18 detectives who interviewed you?

19 A At Myrtle Beach?

20 Q At Myrtle Beach.

21 A Yes, I did.

22 Q Okay, now, the statement that you gave you didn't tell
23 the truth about what happened; did you?

24 A No, I didn't.

25 Q You were given one statement or you gave one statement

1 and you wasn't candid and you didn't tell the truth in that
2 statement; did you?

3 A No, I didn't.

4 Q Okay, now, were you told near the end of that statement
5 that your mother was present in the building?

6 A Yes, I was.

7 Q And were you told by the detectives that they would see
8 or try to see whether or not you could speak with your
9 mother?

10 A Yes, they did.

11 Q Okay, at some point did you ask that interview with the
12 detectives be terminated? Did you say, "I don't want to
13 talk anymore"?

14 A Yes, I did.

15 Q Did you also say that, "I want to speak to my lawyer?"

16 A Yes, I did.

17 Q Were you allowed to speak to your attorney?

18 A No, I didn't.

19 Q Okay, now, at some point that same day did you resume
20 giving a second statement to the detectives?

21 A Yes, I was; yes, I did.

22 Q And why, why did you do that?

23 A The reason, the reason I did that is because that's when
24 I, I had - was told at the end of it that my mom was there
25 and that was the whole purpose of me going back giving

1 another statement.

2 Q Okay, now, in the second statement that you give, that
3 you gave you didn't tell the truth that time either; did you?

4 A No, I fully didn't.

5 Q Okay, did you give either the name Ervin Moore or of
6 James Salter in that interview?

7 A No, I didn't.

8 Q As a matter of a fact you intentionally gave a false
9 name for even Moore; didn't you?

10 A Yes, I did.

11 Q And you referred to him as what?

12 A Keith.

13 Q Keith, okay, so, you were trying to protect all the
14 parties involved in this?

15 A Yes, I was.

16 Q At least that's what you thought.

17 A Yes, I was.

18 Q Okay, now, at some point did you also conclude that
19 interview or that statement?

20 A Yes.

21 Q Okay, now, did you at some point while you were
22 incarcerated get a letter from Ervin Moore?

23 A Yes, I did.

24 Q Okay, did you first send him a letter?

25 A No, I didn't.

1 Q Okay, all right, okay, now, with regard to the
2 statement, both first and second statements the information
3 you provided to the police at that point was incorrect?

4 A Yes, it was.

5 Q Okay, now, regarding your testimony here today have you
6 truthfully answered all of the questions that I've asked you?

7 A Yes, I have.

8 Q To the best of your ability?

9 A Yes, I did.

10 Q Okay, all right, please answer any questions that the
11 other attorneys or that the Court may have for you at this
12 time.

13 A Yes, sir.

14 THE COURT: Mr. Hazzard.

15 MR. HAZZARD: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. HAZZARD:

18 Q Good morning, Mr. Niles.

19 A Good morning.

20 Q All right, sir, I'm going to hand you a document that -
21 well, before I do that let me ask you this. Now, you
22 indicated that when you all got to the mobile home park you
23 called the cab; is that correct?

24 A Yes.

25 Q Can you be mistaken on that? Isn't it true that

1 actually Mokeia called the cab when you got there?

2 A It's possible that that happened.

3 Q Okay.

4 A Yeah.

5 Q So, you're not really clear. You just know one of the
6 two of you all called a cab?

7 A Yes.

8 Q Okay, thank you. No further questions.

9 THE COURT: All right, cross.

10 CROSS EXAMINATION

11 BY MS. ELDER:

12 Q What kind of business were you doing here at the beach?

13 A Well, honestly, I was, I was in the business of selling
14 drugs.

15 Q So, on April 9th when you testified that you were going
16 from motel to motel or house to house you were selling dope;
17 right?

18 A Yes, I was.

19 Q And how long you been selling dope?

20 A Well, I was selling dope for a while.

21 Q And your girlfriend with you?

22 A Well, in my transactions I don't allow her to know what
23 I'm doing in the drug thing because I don't want her to be of
24 fear of any of that.

25 Q She's driving you around and you're slinging drugs at

1 the beach and she don't know what you're doing?

2 A Okay, during that time on the beach, during the time on
3 the beach while I was staying on the beach she wasn't with me
4 any of the times when I make transactions.

5 Q So, on April the 9th, 2007, when you all drove up to the
6 beach from Salters she wasn't with you?

7 A Yes, she was.

8 Q Okay, you testified to Mr. Barr that earlier that day
9 you were stopping from hotel to hotel, house to house ---

10 A Uh-huh.

11 Q --- who was driving?

12 A She was.

13 Q So, she was there on the 9th?

14 A Yes, she was.

15 Q And you were selling dope?

16 A Yes.

17 Q Where was your gun?

18 A Well, my gun was in a black bag.

19 Q Where?

20 A Underneath my seat.

21 Q Where did the gun come from?

22 A Where did it come from?

23 Q Yeah?

24 A Well, it came from a friend of mine from - I met.

25 Q Who, what friend?

1 A His name is, well, I call him Black. That's who I know
2 him as Black. He's from up north.

3 Q And how long you had the gun?

4 A Approximately probably about, I'd say probably about,
5 about a year.

6 Q What, what kind of gun is it?

7 A What kind of gun is it?

8 Q That's right.

9 A It's a, it's a revolver.

10 Q Thirty-eight?

11 A No, it wasn't.

12 Q What is it?

13 A It's, I'm not going to lie, to be exact was a 357.

14 Q Okay, put 38 bullets in it?

15 A No, I didn't.

16 Q What did you carry in it?

17 A 357 bullets.

18 Q It's a longer revolver; is that correct?

19 A Yes.

20 Q I want to get some basic facts down so I can understand.
21 How long are you testifying before Mr. Salter was killed and
22 murdered did you know him?

23 A Before he was killed?

24 Q That's correct.

25 A Did I testify here?

1 Q Today. Yeah, let's, let's start with today.

2 A Okay, I knew him ---

3 Q Then we'll go back to all the others.

4 A Okay, I knew Mr. Salter for about six to nine months,
5 probably it was close to a year.

6 Q Close to a year?

7 A Yes.

8 Q And where would you all conduct business at supposedly?

9 A Talking about during the time of our relationship?

10 Q That's correct.

11 A Several places. I have went - I went to his house, at
12 his house a couple of times. I went to - he came to the
13 motels I was at a couple of times.

14 Q Now, are you saying that he was selling for you?

15 A Well, he, he, he made a couple of moves for me plenty of
16 times, yes, he did. We did transactions.

17 Q And the day April 9th, whose idea was it to get
18 marijuana?

19 A It was Ervin's.

20 Q Ervin's, solely Ervin's idea?

21 A Yes.

22 Q So, you called the victim?

23 A He called me.

24 Q He just happened to know that the person in the car with
25 you wanted some dope?

1 A No, when he called me, I was - during the time me and
2 Ervin was talking about, Ervin, Ervin had asked me did he -
3 he wanted some weed. Ervin asked me did I have some weed.
4 That's when during the conversation that's when Salter called
5 me, which I know him as Spice. He called me and was letting
6 me know that he had the money that he owed me and he said,
7 "I got the money that you owe - I owe you." So, he was
8 like that's when he was, that's when he said, "I got some
9 nuggets, too."

10 Q So, the time had just happened to be right, Ervin Moore
11 just said, "I want some, I want some pot," and about that
12 same time James Salter called say, "I got some"; right?

13 A Yes.

14 Q Now, you testified that today, let's just start, like I
15 said, let's start with the story today. You testified that
16 you went to the Best Buy parking lot and Ervin Moore got out?

17 A Yes; yes, ma'am.

18 Q And Ervin Moore got into the car with Salter?

19 A Yes, ma'am.

20 Q For the purpose of what?

21 A To make the - his transaction.

22 Q Well, I thought you were there to get your money?

23 A No, the purpose of us meeting at Best Buy was first him
24 and Ervin, Spice and Ervin was going to do their business and
25 after that that's when me and Spice was going to talk.

1 Q And how much money was he supposedly bringing to you
2 that day?

3 A He told me he had - he said, "I had the \$5,000 for
4 you."

5 Q So, you hooked up Ervin Moore with somebody he didn't
6 know, James Salter, supposedly to do a transaction and you
7 never got out the car for that?

8 A No, I didn't.

9 Q And supposedly James Salter had in his car \$5,000 that
10 he owed you but you didn't get out of the car to check that
11 out first?

12 A No, I didn't.

13 Q You were going to let them do some minor marijuana sale
14 first before you got over there.

15 A Yes.

16 Q Then you're saying that Ervin Moore got into some
17 physical altercation?

18 A Yes, ma'am.

19 Q And jumped back in your car?

20 A Yes, ma'am.

21 Q Where did he jump back at?

22 A In the backseat.

23 Q And what happened than?

24 A That's when as he was jumping in the backseat that's
25 when - I, I was already looking because my fiancée said they

1 were there fighting over there. That's when I was looking
2 over there. As Ervin was getting out of the car Jason made
3 the comment, he was like, ``You ain't getting out this car
4 with my weed, man, '' and that's when Ervin was getting out of
5 the car he was opening my back door. After, after, while he
6 was opening my back door I seen Spice pulling out the gun and
7 he started firing.

8 Q All right, well, let me ask you this, you said you were
9 backed in?

10 A Yes, ma'am.

11 Q And you were on the passenger side?

12 A Yes, ma'am.

13 Q Right?

14 A Yes, ma'am.

15 Q And were your windows up or down?

16 A They were down - they were up.

17 Q They were up?

18 A Yes, ma'am.

19 Q And James Salter's vehicle was on the driver's side?

20 A Yes, ma'am.

21 Q Of your vehicle?

22 A Yes, ma'am.

23 Q Was it backed in or was it pulled up?

24 A Backed in.

25 Q So, his passenger door was to your driver's side door?

1 A Yes, ma'am.

2 Q And your girlfriend Mokeia Hammond was in the driver's
3 seat?

4 A Yes, ma'am.

5 Q Right?

6 A Yes, ma'am.

7 Q And you said, you testified you were kicked back in, you
8 had your seat ---

9 A Laid back, yes, ma'am.

10 Q --- reclined?

11 A Yes, ma'am.

12 Q How did you see James Salter's gun?

13 A Okay, when my fiancée said that - she said they was over
14 there fighting that's when I sat up and started looking into
15 the car. That's when I seen them tussling. That's when I
16 seen Ervin trying to get out of the car and then that's when
17 Spice made the comment saying, "Man, you ain't getting out
18 of this car with my weed." As he was saying that Irvin was
19 getting out of the car. When he was getting out of the car
20 getting into the backseat of my car that's when I seen Spice
21 pull out his gun.

22 Q And was the door of the victim's car open, closed,
23 window down, window up, what?

24 A His door was open.

25 Q And Ervin Moore was getting out running to the back of

1 your car and ---

2 A Well, he, he actually didn't have to run. He was just
3 getting out of the passenger side of Spice's car and getting
4 in the back seat of my car.

5 Q All right, they're all parked close?

6 A Yes, right in this parking lot. This is parking lot and
7 this is the next parking lot, we were right there beside each
8 other.

9 Q All right, well, so, James Salter's passenger door
10 wasn't flung wide open because it would have hit your car.

11 A No, actually ---

12 Q Okay.

13 A --- it wouldn't have hit my car because we was like
14 parked in the right distance from each other.

15 Q Okay, now, you're parked a distance from each other.

16 A No, we were parked in the same, okay, it's like, okay,
17 you all know how a parking lot look, okay, you got this
18 parking lot right here, then you have this parking lot right
19 there. It's, it's in space where you can park where some one
20 can open their door wide enough where they don't hit another
21 car. That's sometimes you can ---

22 Q As long as it's not flung straight out?

23 A No, you have some parking spaces that are wider than
24 some of them.

25 Q All right, so, you were - you're testifying you were in

1 one of the wide spaces in the parking lot?

2 MR. BARR: Your Honor, I'm going to object to this
3 line of questioning.

4 THE COURT: Hold, hold, hold for a ---

5 MR. BARR: He's, he's testified that he's in one
6 parking space, the next vehicle was in the next parking
7 space. There's no wide and narrow parking space. All the
8 parking spaces are the same.

9 MS. ELDER: Well, I know that, Your Honor.

10 THE COURT: All right.

11 MS. ELDER: But that's not what he's testifying to.

12 MR. BARR: No, no.

13 THE COURT: All right, well, I'm going to allow it.
14 This is cross examination. I'm going to allow it.
15 Overruled, go ahead.

16 BY MS. ELDER:

17 Q So, you were in - side by side in the parking space?

18 A Yes, ma'am.

19 Q Okay.

20 A Yes, ma'am.

21 Q And there - was there a wider space than others?

22 A I can't speak on that behalf. The only thing I can tell
23 you is his door was wide enough where it wouldn't hit my car.

24 Q But you could clearly see over your girlfriend, Mokeia,
25 while he had his door open and Ervin was exiting out you

1 could clearly see him reach, pull a gun and start shooting?

2 A Yes, because I sitted up. That's was my purpose in
3 sitting up to see what was going on in the car.

4 Q And was the car Mokeia was driving on or off?

5 A It was on.

6 Q And when you saw the gun what'd you do?

7 A When I seen his gun?

8 Q That's right.

9 A Well, Ervin was jumping in the back of the car at that
10 time and when I seen the gun by the time I seen the gun he
11 started firing. When I seen, when I seen him pulled out the
12 gun, soon as he pulled it out, he start releasing, soon as he
13 pulled it out.

14 Q And did Mokeia take off?

15 A No, she didn't.

16 Q She just sat there?

17 A She panicked.

18 Q All right, what did you do?

19 A When I seen him shooting, when I, when I seen him
20 shooting the gun I reached down for mine.

21 Q So, you had time, you saw him get the gun, pull it up,
22 point it, start shooting, then you saw - you had enough time
23 to reach under your seat, open your bag and get your gun out?

24 A Okay, my bag it was open at the time. It was open at
25 the time because my - I keeps it open to where I can grab it

1 at any time.

2 Q So, it's real accessible to you; right?

3 A Basically, it is.

4 Q Because that's what you do when you deal drugs; right,
5 carry a weapon?

6 A Yes, ma'am.

7 Q Ervin have a gun?

8 A Not to my knowledge he didn't.

9 Q Okay, and you didn't hear any shots fired from Ervin
10 Moore; did you?

11 A No.

12 Q What does hit a lick mean in the drug trade?

13 A Okay, well, it's - you got different phrases in hitting
14 a lick in the drug trade. You can do like, okay, you can
15 have like this type of drugs and say, "Well, I got this dude
16 who want to buy this right here." "I got a lick for you."
17 I can mix it up with some like babbage type of weed, he
18 making it look like it's a mix some exotic and you can pay
19 for more of it. Then you got the phrase you can use as,
20 "I'm going to rob somebody," as well.

21 Q All right, so, in Myrtle Beach, South Carolina, you know
22 that hitting a lick in the drug trade means, "I'm going to
23 rob somebody"?

24 A I mean, well ---

25 Q Do you know that?

1 A I wouldn't say why - I mean, I wouldn't say - I can't
2 answer that honestly.

3 Q Okay, now, let's go back to April 13th, 2007. You were
4 arrested?

5 A Yes, ma'am.

6 Q Okay, and you went and talked to investigators; right?

7 A Yes, ma'am.

8 Q And it was recorded?

9 A Yes, ma'am.

10 Q And they explained to you what your rights were and all
11 that stuff; right?

12 A Yes, ma'am.

13 Q And you went ahead and talked to them?

14 A Yes, ma'am.

15 Q Do you know what you were charged with at the time or
16 had you been charged?

17 A Well, at the knowledge they were saying that I was an
18 accessory to a murder.

19 Q Okay, have you been served a warrant?

20 A No, I wasn't.

21 Q Okay, but you were in custody?

22 A Yes, ma'am.

23 Q Do recall them asking you do you know James Salter?

24 A Yes, ma'am.

25 Q What did you say?

1 A Yes, I mean, honestly, I didn't say - I did not say yes
2 at the time because I didn't know him as that name.

3 Q Okay, so, isn't it true that when they asked you at the
4 initial part of that interview if you knew James Salter, if
5 that name rang a bell you said no; right?

6 A I can't be exact on that.

7 Q You don't remember?

8 A Honestly, no, I don't.

9 Q How many times did they ask you if you knew James Salter
10 in the first part of your interview?

11 A I can't recall.

12 Q You ever remember them asking you have you ever had
13 contact with James Salter and your response was no?

14 A I can't recall that question.

15 Q Of course. They asked you do you recognize his name and
16 you responded, "I don't know the name"?

17 A I can't ---

18 Q Do remember that?

19 A I can't recall.

20 Q Okay, "Do you know what happened at Best Buy?" Do you
21 remember them asking you that question and you responded, "I
22 don't know nothing about Best Buy?"

23 A Yes, I do remember that question.

24 Q Oh, we've got one. You have a nickname?

25 A Yes, I do.

1 Q What's that?

2 A Rich Boy.

3 Q Do you recall detectives asking you, "Now, your
4 nickname is Rich Boy; right," and your response was, "No,
5 they don't call me Rich Boy."

6 A Yes, I do remember that question.

7 Q All right, did you respond that way?

8 A I can't recall how I responded but I remember that
9 question.

10 Q Do you recall again, "Have you" - officers asking you,
11 "And you never talked to James Salter before," and you
12 responded, "I ain't never heard the name before, honest, I
13 swear to God, man"?

14 A I can't recall saying all that.

15 Q Do you recall saying anything about dealing drugs with a
16 person of a different color?

17 A No, I can't recall that question.

18 Q So, you don't remember, "If I have, I mean, the only
19 time I have to say I have conversated with them, no, a man, a
20 color off, not my color probably in the club or something,
21 no, I mean, it don't go no further than that"?

22 A No, I don't recall all that.

23 Q Do you recall officers asking you, "So, you were there
24 just to buy a little weed," and you responded, "I wasn't
25 there period. That's what I'm saying"?

1 A I can't recall. It's possibly that I said that though.
2 I'm not going to deny it.

3 Q Do you deny saying, ``See, that's the thing I'm telling
4 you, dead serious, man, I am being honest with you. I was
5 not there''?

6 A I can't recall that but it's possible that I said it
7 though.

8 Q And I believe they asked you about a dude that drives a
9 white Mustang, and you said what - they asked you what's the
10 dude that drives the white Mustang while selling drugs. Do
11 you recall you said, ``I don't know no dude with no white
12 Mustang. I'm telling you the truth''?

13 A That's possible that I said that.

14 Q They asked you about a gun and you told them, ``I'm
15 going to tell you the truth. I ain't never had no gun, man,
16 never. I ain't never went to Best Buy.'' Do you recall
17 saying that?

18 A Yes.

19 Q ``I don't know no James Salter,'' you kept saying that.
20 Is that correct?

21 A It's possible that I did.

22 Q But you don't recall today? Do you remember
23 investigators asking you about why your fingerprints would be
24 on that car?

25 A I can't recall.

1 Q All right.

2 A But it's possible that they asked that question.

3 Q And you told them, "My fingerprints ain't on that
4 car," talking about the white Mustang?

5 A It is possible that I told them that, too.

6 Q Then you stop the interview because you say, "I want a
7 lawyer," the investigators stop that interview; right?

8 A Yes, ma'am.

9 Q You go back and about 25 minutes later you want to talk
10 to the police again; right?

11 A Yes, ma'am.

12 Q Why did you want to come back and talk to them?

13 A Because during the ending of the interview they made a
14 statement saying that my mom was here.

15 Q Yeah, I wanted to ask you about that. What did you tell
16 them about, initially tell them about the car?

17 A About what car?

18 Q About the Focus that you and your girlfriend were riding
19 in when you went to the Best Buy and James Salter was
20 murdered? What did you tell them about the car?

21 A What did I told them about it?

22 Q Uh-huh, the first time?

23 A Could you like say like ---

24 Q Sure.

25 A --- in a different way or something?

1 Q Did you tell investigators that, ``Somebody stole my
2 mama's car, she left it, she left us at the house Monday and
3 somebody stole her car''?

4 A Yes, I did.

5 Q Did you also tell them, ``She came back to the house
6 upset and said her car had been stolen at Murrells Inlet
7 Mall''?

8 A Yes, I did.

9 Q And you were referring to the Ford Focus; right?

10 A Yes, ma'am.

11 Q All right, so, now, you come back to investigators with
12 a second story. Now, you are admitting you were at Best Buy;
13 right?

14 A Yes, ma'am.

15 Q And you are now also remembering that you know the
16 victim; right?

17 A Yes, ma'am, it's possible.

18 Q Do you recall telling them when they asked you where did
19 you first meet this guy from you said, ``At the Red Rooster
20 Club''; right?

21 A Yes, ma'am, it's possible that I did said that.

22 Q And that that was only about two months prior to this
23 incident?

24 A It's possible that I said that as well.

25 Q So, today, if you knew him a year, back in April of '07

1 you had only known him two months?

2 A It's possible that I said that but today, I mean, I'm
3 under oath. So, I'm being straight up, honest the truth.

4 Q And when you started talking to them about the incident
5 at Best Buy you told them that James Salter came up with a
6 passenger; isn't that correct?

7 A If I'm not mistaken I believe I did said that.

8 Q And you also said there was some Explorer there?

9 A I said that, too.

10 Q And they asked you was someone in the car with them.
11 You said, "Yeah, some, he had somebody in the car with him
12 sitting in the passenger seat"; right?

13 A In, in what, in which, which vehicle?

14 Q In the victim's car?

15 A Spice?

16 Q Yes.

17 A I told them that someone was sitting in there with
18 him?

19 Q That's correct.

20 A I can't recall saying that but it's possible that I did
21 said it.

22 Q You even went so far as to describe this person who was
23 sitting with James Salter in his passenger seat. You recall
24 that?

25 A I can't recall all that but it's possible I said that.

1 Q Do you recall when officers said, ``So, you were there
2 in the Best Buy parking lot. What were you going to get from
3 him," referring to James Salter, and you responded, ``I told
4 him, he say he would give me what was, what it was, a QP or
5 something like that"?

6 A It is possible that I said that as well.

7 Q And you went further to say, ``I ain't got the money for
8 all that, man, you know what I mean? He was like, `Well,
9 I'll make you a deal. I say I give you half a pound,' and
10 you were like, `I ain't got no money for all that.'"
11 Remember that?

12 A I don't, I don't recall saying that.

13 Q You don't recall saying that?

14 A No, but it's possible ---

15 Q Do you deny that you said that?

16 A No, it's possible that I said it, no.

17 Q Now, you also after investigators repeatedly told you
18 that we had people that knew there was somebody else in the
19 car with you, you said you met one of your boys at the beach?

20 A Repeat that and say that again, now.

21 Q After a period of time in this interview you told
22 officers you did have somebody else in the car with you and
23 your girlfriend; is that right?

24 A Yes, ma'am, it's possible.

25 Q And that you had met him at the beach?

1 A If I'm not mistaken I believe I did said that.

2 Q And that his name was Keith?

3 A Yes, ma'am.

4 Q And then later you said, "No, no; there wasn't a third
5 person with us"; do you remember that?

6 A It's possible that I said that as well.

7 Q So, you took Ervin Moore out completely during the
8 course of the interview?

9 A It's possible.

10 Q How long had you known Ervin Moore?

11 A Well, as I said earlier on, I said, well, I knew him
12 through a family member. That's how, that's how I met him
13 through a family member. So, I can't - I knew him for a
14 couple of years, yes, I do.

15 Q Okay, do you recall telling officers, "No gun was in
16 our car at all"?

17 A It is possible that I said that as well.

18 Q "I ain't lying, no lies, swear to God, there ain't no
19 gun in that car, man, I'm being straight"?

20 A It is possible that I said that as well.

21 Q Do recall telling officers what you talked about with -
22 what your intentions were when you were going to Best Buy?

23 A Repeat that?

24 Q Do you recall telling officers what your intentions were
25 when you went to the Best Buy parking lot that night after

1 you admitted that you had gone to Best Buy?

2 A I can't recall exactly what I said.

3 Q Do recall saying, "I mean, it was like he, referring to
4 the victim, wanted me to spend money, you know what I mean.
5 Basically at the same time I wasn't trying to spend no money.
6 I wanted to see what I was smoking before I had just got
7 something, you know what I mean?"

8 A It is possible that I said that.

9 Q You tell officers you didn't get close to James Salter's
10 car at all?

11 A It's possible that I said that as well.

12 Q You tell officers you ain't never been in James Salter's
13 house?

14 A I can't recall that but it's possible that I said that.

15 Q Do recall telling officers that you didn't even have any
16 contact with Salter because you felt it bad because you saw
17 some Explorer and his passenger in the seat with him and you
18 just left the parking lot?

19 A It's possible that I said that.

20 Q You didn't tell him anything about Ervin Moore getting
21 out of the car either; did you?

22 A It's possible that I didn't.

23 Q You also recall saying about when you were talking about
24 Ervin Moore you referred to him as Keith, "I would've heard
25 if he shot a gun. I know that much." You remember saying

1 that?

2 A I don't recall but it's possible that I said it.

3 Q And you repeatedly said, ``I don't know nothing about no
4 gun''?

5 A It's possible that I said that as well.

6 Q Now, this is your second interview when you came back,
7 which this is all from the second interview. They asked you
8 about a white Mustang again and you said, ``I ain't never
9 been in that car, never seen the car before.'' You remember
10 saying that?

11 A It's possible that I did.

12 Q You know your fingerprint was on it?

13 A It's possible that it was.

14 Q Well, okay. Do recall denying, ``That you ain't never
15 had a gun''?

16 A Yes, it's possible.

17 MR. BARR: Objection, Your Honor. Asked and
18 answered.

19 THE COURT: Sustained.

20 MR. BARR: She's asked these questions three times.

21 THE COURT: Sustained.

22 Q You remember officers toward the end of that second
23 interview say, ``How much were you going to buy'?

24 A Repeat that again.

25 Q During the end of your second interview, the second part

1 of this interview where you had asked to come back and talk
2 to officers they asked you the questions how much were you
3 going to buy?

4 A I don't recall that question but it's possible that they
5 asked me that.

6 Q Do you recall saying, "I mean, he tell me he would give
7 me a deal on a QP or a half a pound or something like that,
8 but I like, man, I ain't got no money for that. I like, just
9 get me, all I wanted was a plug or two. That's what I told
10 him," talking about the victim? Do you recall saying that?

11 A It's possible that I said that as well.

12 Q Nowhere in that interview did you tell them that Ervin
13 Moore was the one who wanted the pot; right?

14 A It's possible that I didn't.

15 Q But today that's the story; right?

16 A Yes, ma'am.

17 Q Nowhere in that interview did you tell them that Ervin
18 Moore was tussling with James Salter; did you?

19 A I don't think I did gave that statement.

20 Q Nowhere in that interview did you say you fired shots in
21 the Best Buy parking lot; did you?

22 A No, I did not give that statement as well.

23 Q What did you do with the gun?

24 A I got rid of it.

25 Q Got rid of it how?

- 1 A I torched it, tore it apart, pieces.
- 2 Q Where did you put it?
- 3 A I didn't put it anywhere. I was just throwing pieces.
- 4 Q As you were driving away?
- 5 A No, not after I was driving away, after, it was like
- 6 after I got out of Myrtle Beach.
- 7 Q So, you had the gun with you when you went to the
- 8 Patrick's Mobile Home Park?
- 9 A Yes, I did..
- 10 Q When you got out of the car did you get anything from
- 11 the car?
- 12 A Did I got anything out of the car?
- 13 Q That's correct.
- 14 A Yes, I got two my bags out of the car.
- 15 Q Did your girlfriend Mokeia Hammond get anything out of
- 16 the car?
- 17 A I can't recall.
- 18 Q What about Ervin Moore?
- 19 A I can't recall that either.
- 20 Q What happened to the dope?
- 21 A The marijuana?
- 22 Q Yes.
- 23 A He had that with him already.
- 24 Q Who is he?
- 25 A Ervin.

1 Q So, now you recall he had the dope?

2 A He got out of Spice car with it.

3 Q And when he got to Patrick's Mobile Home Park what
4 happened to it?

5 A He had already had it stashed on him I guess. He never
6 left it in the car if it wasn't found in there.

7 Q Did you get injured in this exchange?

8 A Not to my knowledge I didn't.

9 Q How was it that blood that was identified one and three
10 point something quadrillion was taken from the back behind
11 the driver seat of that car you were riding in?

12 A Like I said, I don't - I can't recall that I did get hit
13 by anything but I don't know why it would be in the backseat
14 of the car besides me going in the backseat of the car
15 getting my backpack.

16 Q What did you do - you said you had a revolver;
17 right?

18 A Yes, ma'am.

19 Q What did you do with the casings that were left from the
20 shots that you fired?

21 A I threw them away.

22 Q So, the ones they found in your house in Williamsburg
23 County where were those fired from?

24 A They were fired probably, I don't know probably a couple
25 of months before that even happened.

- 1 Q And you just kept the fired casings in your house?
- 2 A It's possible that I did.
- 3 Q You don't know?
- 4 A It's possible that I did.
- 5 Q What were you shooting at before?
- 6 A Oh, in the yard.
- 7 Q In the yard?
- 8 A Yes, ma'am.
- 9 Q And you were arrested when?
- 10 A I can't recall exactly what date I was arrested but if
- 11 I'm not mistaken it was like three days or four after the
- 12 accident happened.
- 13 Q When you gave your statement you were incarcerated?
- 14 A Yes, ma'am.
- 15 Q Did you get served with warrants after your statement?
- 16 A Yes, ma'am.
- 17 Q What did you get served with warrants for?
- 18 A I got one warrant for murder.
- 19 Q Did your girlfriend get served with a warrant?
- 20 A Later on I found that out, yes, she did.
- 21 Q What did she get served with a warrant for; do you know?
- 22 A If I'm not mistaken it was for murder as well.
- 23 Q Your mother get served with a warrant?
- 24 A To my knowledge she did.
- 25 Q Do you know what she got served with a warrant for?

1 A Honestly, no, I don't.

2 Q Connected to this offense, connected to this case;
3 correct?

4 A Who, my mother?

5 Q Yes.

6 A Yes.

7 Q We'll get back to that in a minute. Tell me - I want to
8 go back to the parking lot because I'm a little confused.
9 You said you didn't start shooting and you were the only one
10 shooting back but you didn't start shooting until the victim
11 had shot first. Where were you shooting at?

12 A I couldn't say because I had my eyes closed when I
13 started firing.

14 Q All right, so, you're in the passenger seat?

15 A Yes, ma'am.

16 Q Your girlfriend is next to you and the victim's car is
17 right here. So, you just held up a gun and closed your eyes
18 and started shooting; is that right?

19 A Well, as, as - when I started firing I lifted my arm up
20 like this right here. I know it was facing out of the
21 window. I know that much because that's when he - that's -
22 because - the glass was already shot out. So, that's when I
23 was leaning back in my chair and I just, I just closed my
24 eyes and fired off two times.

25 Q Across your girlfriend?

1 A No, I leaned back. I was shooting out of the backseat
2 of the car out of the passenger window.

3 Q Where Ervin Moore was trying to get into your car at?

4 A He was already into the car.

5 Q How many times did you shoot?

6 A I shot twice.

7 Q And then what happened?

8 A That's when I told my fiancée to mash the gas and
9 I grabbed the steering wheel and we start pulling out.

10 Q Did you shoot anymore?

11 A No, I didn't.

12 Q So, you only shot bang, bang and drove off.

13 A Yes.

14 Q And you were - had your eyes closed when you were
15 shooting across the back seat.

16 A I wasn't shooting across the backseat. I was shooting
17 on - I was shooting in the backseat as I was laying back in
18 the passenger seat out of the window.

19 Q Okay, so, you had two people to your left, you had your
20 girlfriend and then you had your boy Ervin Moore and you were
21 shooting in between them but you didn't look to see where you
22 were aiming, you just started shooting?

23 A My fiancée she was laying on my lap at the time because
24 of the shooting of the gun coming towards my car. Ervin, he
25 dived into the car. So, when he - as, as he was shooting I

1 was leaning back in the seat and I just let off two shots.

2 Q Today at your trial is the first time you have ever told
3 this story; isn't it?

4 A Yes, it is.

5 Q You never told police since you were arrested in '07
6 you, your girlfriend, Ervin Moore, your mother all arrested
7 and put in jail and not once in the course of almost two
8 years have you come to their aid and said, "You know what,
9 he shot first, it's all a big mistake," not once?

10 MR. BARR: Objection, Your Honor. This is
11 argumentative. There's no question.

12 Q Did you?

13 THE COURT: Hold it. Come on up here for a minute.

14 (Whereupon, a bench conference was held in the presence
15 but out of the hearing of the jury.)

16 BY MS. ELDER:

17 Q Did you answer the question?

18 A No, I didn't. Could you repeat that, please, ma'am?

19 Q In the course of two years you've not made this
20 statement; right?

21 A No, ma'am.

22 Q Where have you been for two years?

23 A In J. Reuben Long.

24 Q Where has your girlfriend been?

25 A She was home.

1 Q She was locked up for a period of time.

2 A Yes, ma'am.

3 Q Your mom was locked up, too?

4 A Yes, she was.

5 MS. ELDER: One moment, Your Honor.

6 THE COURT: All right.

7 MS. ELDER: No further questions, Your Honor.

8 THE COURT: All right, Mr. Barr, anything on redirect?

9 MR. BARR: Nothing further, Your Honor.

10 THE COURT: All right, you may step down.

11 A Thank you, sir.

12 THE COURT: All right, let me see the attorneys.

13 (Whereupon, a bench conference was held in the presence
14 but out of the hearing of the jury.)

15 THE COURT: All right, ladies and gentlemen, this is
16 a good time for us to go ahead and break for lunch. I
17 understand that we do have lunch ordered. I don't know if
18 it's here yet, but it should be here shortly. So, we're
19 going to go ahead and take a little break. As a matter of a
20 fact we'll break for lunch. Certainly if anybody wants to
21 stretch their legs, get a deputy or something, if anybody
22 wants to go outside and stretch their legs or whatever the
23 case may be. We're probably going to break until about two
24 o'clock. So, we're going to have a nice little break but I
25 don't want you to miss your lunch that we've got on the way.

1 If you finish your lunch and you're ready and you've got
2 somewhere to go or whatever I'll allow you to leave, but
3 please be back in the jury room say by ten till two; okay?
4 So, make sure you're back in your jury room by ten till two.
5 Please do not discuss this case even among yourselves at this
6 point in time. If you've taken any notes please leave your
7 pads and pencils here in the jury box and I'll excuse you at
8 this time and we'll bring you back out at about two o'clock.
9 Everybody else please remain seated while the jury is
10 excused.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, I guess I probably should have
14 done it before they left, but I understand that, Mr. Barr,
15 you have rested now?

16 MR. BARR: Yes, Your Honor, the Defendant Niles
17 rests.

18 THE COURT: All right, we'll stand in recess until
19 two o'clock.

20 MR. RICHARDSON: Thank you, Your Honor.

21 MS. ELDER: Thank you, Your Honor.

22 THE COURT: Thank you.

23 OFF THE RECORD

24 (On the record.)

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: Thank you very much. Please be seated.
3 All right, when we recessed the Defendant Niles had rested
4 his case. Mr. Hazzard, during my initial questioning your
5 client had said she did not wish to testify in this case. Is
6 that still her decision?

7 MR. HAZZARD: I believe it is, Your Honor, but I've
8 discussed with her the fact that I do want to place that on
9 the record. Again, I want the Court to have a new colloquy
10 with her ---

11 THE COURT: All right.

12 MR. HAZZARD: --- since we're now at a different stage
13 of the proceeding.

14 THE COURT: All right, all right, Ms. Hammond, if you
15 would please stand, raise your right hand.

16 (Whereupon, the Mokeia Hammond is sworn by the Court.)

17 THE COURT: All right, now, do you remember my
18 earlier instructions, you can put your hand down. Do you
19 remember my earlier instructions regarding your right to
20 testify?

21 MS. HAMMOND: Yes, sir.

22 THE COURT: All right, do you want me to go through
23 those instructions again with you?

24 MS. HAMMOND: No, sir.

25 THE COURT: All right, is there anything about my

1 earlier instructions to you that you do not understand, do
2 not remember or have any questions about it?

3 MS. HAMMOND: No, sir.

4 THE COURT: Is there anything that you want to ask me
5 or ask your attorney at this time?

6 MS. HAMMOND: No, sir.

7 THE COURT: All right, do you intend or do you wish
8 to testify at this point in time?

9 MS. HAMMOND: No, sir.

10 THE COURT: All right.

11 All right, Mr. Hazzard, is there anything further you
12 want to put on the record?

13 MR. HAZZARD: With regard to this matter, no, Your
14 Honor.

15 THE COURT: All right, you may be seated. Thank you
16 very much.

17 MS. HAMMOND: Thank you.

18 THE COURT: Do you have any other witnesses or
19 Defense that you want to put up on your client's behalf.

20 MR. HAZZARD: At this time the Defendant Mokeia Hammond
21 rests, Your Honor.

22 THE COURT: All right, well, before we bring the jury
23 in is there any motions at this point in time?

24 MR. HAZZARD: Yes, sir, Your Honor. On behalf of the
25 Defendant Mokeia Hammond at this point the Defense renews its

1 motion for a directed verdict. I've handed up to the Court
2 and provided to counsel a couple of cases, State versus
3 Buckmon and State versus Lollis, and with regard to those two
4 cases, Your Honor, the main, the gravamen of the two cases
5 specifically is that they say first of all where the State
6 attempts to prove its case through solely circumstantial
7 evidence that that evidence must be substantial. It says a
8 Defendant is entitled to a directed verdict when the State
9 fails to produce evidence of the offense charged. If there
10 is any direct evidence or substantial circumstantial evidence
11 reasonably tending to prove the guilt of the accused the
12 Court must find the case was properly submitted to the jury.
13 Accordingly, a trial judge should grant a directed verdict
14 motion when the evidence merely raises a suspicion that the
15 accused is guilty. Now, the facts in Buckmon are somewhat
16 similar to the facts we have here today. It was a multiple
17 Defendant case, a case involving statements from un-indicted
18 alleged co-conspirators involving their part in the criminal
19 enterprise, statements to the effect or testimony to the
20 effect that certain other co-conspirators, not the appellant,
21 made statements that before the robbery, because it was a
22 robbery resulting in a murder, that before the robbery one of
23 the codefendants said, you know, "We're going to get some
24 cheese tonight," and the testimony was that cheese meant
25 money. A cellmate of another of the codefendants testified

1 that he and a codefendant discussed the crime after the fact.
2 and that the codefendant told him certain facts, there were
3 two pistols involved, that the codefendant was out to get
4 paid that night, that the codefendant was the lookout, the
5 codefendant told the cellmate that he had told his
6 co-conspirators to take her out if necessary, that he ran
7 after the victim was shot, that he kept the gun but threw the
8 other gun away and that he was going to hit a lick. So, all
9 of this evidence was submitted and the Supreme Court said
10 with regard to this particular appellant, you know, who made
11 none of these statements, did none of these things, the Court
12 said that the trial court erred in failing to direct a
13 verdict of acquittal on the charges against the appellant.
14 They said specifically, "No direct evidence was adduced at
15 trial linking the appellant to the crimes of murder and armed
16 robbery." The State's case depended entirely on
17 circumstantial evidence. When a directed verdict motion is
18 made in a criminal case where the State relies exclusively on
19 circumstantial evidence it says, "The trial judge must
20 submit the case to the jury if there is any substantial
21 circumstantial evidence reasonably tending to prove the guilt
22 of the accused or from which guilt may be fairly and
23 logically deduced." However the Court said in reviewing the
24 directed verdict motion, "The Court is concerned with the
25 existence of evidence, not its weight."

1 Now, even in this case even viewing the circumstantial
2 evidence in the light most favorable to the State the
3 evidence does not reasonably tend to prove the appellant's
4 guilt, specifically saying that all it did was raise a mere
5 suspicion of guilt.

6 With regard to the other case cited, the Lollis case,
7 Your Honor, that is the case where a husband and wife were
8 both charged with arson in the second degree. Specifically
9 what happened was their home burned down. On the day their
10 home burned down the investigator went out and talked with
11 the wife and the wife admitted that she had basically torched
12 the house and that she had done it by leaving a pan of hot
13 grease on a hot eye on the stove leaving it on, but that she
14 had first removed most of their valuables and put it in a
15 storage unit somewhere else on the property. Now, the
16 husband always said that he did not in any way, shape or form
17 have the knowledge or the plan nor did he participate in the
18 plan and then the wife, in fact, stated that, that the
19 husband did not have knowledge of the plan nor did he
20 participate in the plan. However, the case still went to
21 trial regardless, and in this case as well the State, the
22 Court said, "Even viewing the circumstantial evidence in the
23 light most favorable to the State the evidence presented does
24 not reasonably tend to prove Lollis' guilt," pointing that,
25 first, the wife had admitted that she had committed a crime

1 without him and without his knowledge and that the State
2 presented no evidence of an agreement between them. I would
3 submit to you in this case there is no evidence of an
4 agreement between Ms. Hammond and Mr. Niles to combine,
5 conspire and to commit an armed robbery. Again, to my
6 recollection the only evidence on this issue is
7 circumstantial having come from Ervin Moore because my
8 recollection is Ervin Moore does not say Mokeia Hammond heard
9 this statement regarding hitting a lick, does not verify that
10 she acted in some fashion as if she heard it, does not
11 indicate that she nodded in agreement, does not indicate that
12 she stated anything as a result to indicate her affirmation
13 to the crime itself. So, therefore, we're not talking about
14 direct evidence. We're talking about circumstantial
15 evidence, and as such it has to be substantial according to
16 our Supreme Court, and to have the statement merely be a
17 statement was made in the car to hitting a lick and nothing
18 more, Your Honor, I would submit that clearly merely raises a
19 suspicion of guilt, and as such, as merely raising a
20 suspicion of guilt, pursuant to State v. Lollis, 541 SE2d 254
21 and Lollis is spelled L-O-L-L-I-S, and State v. Buckmon, and
22 Buckmon is spelled for the court reporter B-U-C-K-M-O-N, and
23 that's 555 SE2d 402, we would submit that a directed verdict
24 should be granted in this regard.

25 THE COURT: All right, let me hear from the State.

1 MR. RICHARDSON: Thank you, Your Honor. May it please
2 the Court, I am in possession of those cases that Mr. Hazzard
3 pointed out and all due respect I think he missed the mark on
4 those cases. Both these cases, in both these cases not one
5 witness puts these Defendants at the scene of the crime, do
6 anything in furtherance. We have direct evidence that
7 Ms. Hammond drove the vehicle there. We had direct evidence
8 from the stand Mr. Ervin saying they openly discussed pulling
9 a rip, she's the getaway driver. I believe in ---

10 THE COURT: Well, now, he didn't say she was the
11 getaway driver.

12 MR. RICHARDSON: Well, said she was the driver and they
13 - and that they discussed we are going to hit a lick.

14 THE COURT: All right, now, when he - are you saying
15 his testimony was that Ms. Hammond discussed it or that ---

16 MR. RICHARDSON: That Richard Niles said, "We're going
17 to hit a lick."

18 THE COURT: And that's it. There was no further
19 input from Ms. Hammond.

20 MR. RICHARDSON: No, sir, but he, he indicated where
21 they were going to rob, if my recollection is correct, they
22 indicated that he was going to rob the boy at Best Buy.

23 THE COURT: All right.

24 MR. RICHARDSON: Mokeia Hammond drives on to Best Buy.
25 At that point Mokeia Hammond is sitting right beside Richard

1 Niles. At that point she has become a part and parcel of the
2 crime at that point, Your Honor. In the Buckmon case the
3 statements were codefendants saying, "I did this. I did
4 that," people had seen the codefendants with Buckmon earlier
5 that evening. No one saw them at the scene. Nobody ID'd
6 them at the scene. Here we actually had the codefendant
7 testify. So, the facts probably would've been different if
8 we would - in Buckmon if one of the codefendants would have
9 actually testified and said this is what we did, this is what
10 happened.

11 In Lollis, Your Honor, this was a, he's right, there was
12 no evidence. I'm very familiar with this case, that the
13 biggest piece of evidence that the State had in there was the
14 mere fact that the husband in the case had a key to the
15 storage shed where the stuff was stored. The State's case
16 actually fell apart during the middle of that. They didn't
17 have anybody to put Mr. Lollis at the scene assisting in any
18 way to burn the house down, didn't have him buying any
19 gasoline, didn't have him getting matches or anything, didn't
20 have him driving his wife away from the scene like we do
21 here, Your Honor.

22 That gun's in the front seat. Even by Mr. Niles own
23 testimony it's open where, where it's easy access, certainly
24 a driver can see it, Your Honor, certainly a driver sitting
25 there ready to get away and that's indeed what she did by all

1 the testimony.

2 THE COURT: All right.

3 MR. RICHARDSON: And the State - the State would put
4 forth that the burden is upon the Defense to show that there
5 was no evidence, and in this case the State has met its
6 burden in the light considered most favorable to the State.

7 MR. HAZZARD: Your Honor, and very briefly ---

8 THE COURT: All right.

9 MR. HAZZARD: ---- the facts stated or the allegations
10 made by counsel again simply raise a mere suspicion of guilt.
11 You know, as much as he wants to say that Richard Niles'
12 words were, "We are going to commit a robbery," I don't
13 recall that. I recall the allegation being made by Mr. Moore
14 that Richard Niles got off the phone and then said, "I'm
15 going to hit a lick." I don't recall anything about any
16 robbery being said.

17 As far as arguing this matter, it seems the State's
18 biggest point is that Mokeia Hammond happens to be there with
19 Rich Niles. You know, again, no evidence or testimony,
20 whatsoever regarding specificity of knowledge, no evidence or
21 testimony whatsoever regarding doing anything differently to
22 aid and abet as the result of the statement, nothing
23 whatsoever. It's simply they were in the car together all
24 day. This statement is allegedly made by Richard Niles, and
25 then the incident occurs, and it just so happens she is

1 there. Again, I would submit that simply is a - merely
2 raises a suspicion of guilt. There's a reason why the
3 Supreme Court says there must either be direct evidence or
4 substantial circumstantial evidence, Your Honor, and that
5 without that, without either of those two, without direct
6 evidence or substantial circumstantial evidence the matter
7 must be decided by this Court on a directed verdict.

8 THE COURT: All right, motion is noted. However, I'm
9 going to deny it. Anything further?

10 MR. HAZZARD: Nothing further on behalf of Defendant
11 Hammond.

12 THE COURT: Anything further from Defendant Niles?

13 MR. BARR: Nothing further, Your Honor.

14 THE COURT: All right, are you all going to be
15 putting up anything in reply?

16 MS. ELDER: No, sir, Your Honor, we are not.

17 THE COURT: All right, so, I guess we can just go
18 ahead and bring the jury in and start closing arguments?

19 MR. HAZZARD: Your Honor, before we do that I'd like to
20 find out what the Court's intended charges are.

21 THE COURT: Yeah, what I'm going to do, let's see,
22 I've got them, got them drawn up. Let's take - well, it
23 won't take about ten minutes. Let me go ahead and I can
24 print them out for you, let you take a look at them before
25 you start your closing arguments and we'll have a brief

1 conference before we start closing arguments; okay?

2 MS. ELDER: Thank you, Your Honor.

3 MR. RICHARDSON: Yes, sir, Your Honor.

4 THE COURT: All right, be back in just a second.

5 OFF THE RECORD

6 (On the record.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, has the State had a chance to
10 go over my proposed charges?

11 MS. ELDER: Yes, sir, we have.

12 THE COURT: All right, any challenges or requested
13 additions?

14 MS. ELDER: Yes, sir, there is.

15 THE COURT: All right, let me hear from you. I'll go
16 ahead.

17 MS. ELDER: Your Honor, in the - it doesn't really
18 matter to the State where but in the charge for murder in
19 reference to the felony murder there is if one intentionally
20 kills another during the commission of a felony, I didn't see
21 anywhere in the charge that the Court identified that armed
22 robbery is indeed a felony. We would ask that that be
23 identified either there or in the armed robbery charge.

24 THE COURT: All right.

25 MS. ELDER: I believe Your Honor identified it as a

1 violent crime but not a felony.

2 THE COURT: Yeah, all right, any objection to in the
3 charge for murder adding that armed robbery - that where it
4 says it can be inferred from.

5 MR. BARR: No, sir.

6 THE COURT: Malice from commission of a felony just
7 adding that armed robbery is a felony.

8 MR. BARR: Yes, sir, there's no objection.

9 MR. HAZZARD: Your Honor, the Defendant Hammond would
10 prefer so as it doesn't draw too much attention to that
11 particular part of the charge that you specify in the armed
12 robbery charge that armed robbery is a felony because when
13 you say, you know, commission of a felony where a murder
14 occurs, you know, considered to be what it is then you say,
15 "Oh, by the way armed robbery is a felony," it almost makes
16 it seem as if you are commenting on the fact that the armed
17 robbery did in fact occur, but now, if you place that
18 definitional part in the armed robbery part of the charge
19 then it defines the armed robbery within its and places it
20 within its proper perspective, and as the Court indicated the
21 jury will actually have a copy of these, of this charge with
22 them for their review.

23 THE COURT: All right.

24 MS. ELDER: And Your Honor, I have no problem with
25 that if that's the positioning, if we could get the armed

1 robbery charged first or the possession of a weapon during a
2 violent crime and the armed robbery charged prior to the
3 murder.

4 MR. HAZZARD: No objection.

5 THE COURT: Well, what difference does that make?

6 MS. ELDER: Well, Your Honor, we're asking them to go
7 through or charge them with murder and indicating that they
8 can infer malice with a felony and then we're not telling
9 them that armed robbery is a felony until after we've given
10 them the charge murder.

11 THE COURT: Yeah, but I don't know. I think - how
12 about just where it says possession of a weapon during the
13 commission of a violent crime I have murder and armed robbery
14 are both violent crimes and felonies, just adding it there.

15 MS. ELDER: That's fine, Your Honor.

16 THE COURT: All right, so, on page 19 of 29 the last
17 paragraph before hand of one it'll just read murder and armed
18 robbery are both violent crimes and felonies. All right.

19 MS. ELDER: Your Honor, in the charge for armed
20 robbery we would ask somewhere I believe on page, probably on
21 page 17 maybe the second paragraph that the Court instruct
22 the jury that contraband or narcotics can be considered
23 personal property of another.

24 THE COURT: All right, any objection to that?

25 MR. HAZZARD: I would submit that that is an improper

1 commentary on the facts of the case, Your Honor. I mean, the
2 law speaks for itself. The law is the law but to start
3 talking about, ``Oh, by the way I want you all to know that
4 narcotics can be considered, you know, property," I think
5 that's treading really, really close to commenting on the
6 facts of the case.

7 THE COURT: All right, how is that not commenting on
8 the facts of the case?

9 MS. ELDER: Well, Your Honor, it's an illegal
10 substance and the testimony in the case has been that the
11 robbery occurred over narcotics. So, certainly, we think the
12 jury should know that any - whether it be legal or illegal
13 property can be considered personal property.

14 MR. HAZZARD: Your Honor, the testimony spoke for itself
15 with regard to Mr. Moore saying that, and in fact, Mr. Niles
16 saying that Mr. Salter possessed the alleged substance, that
17 Mr. Moore and Mr. Salter tussled over it and that depending
18 upon who the jury chooses to believe either Mr. Niles or
19 Mr. Moore took it. So, I think that takes care of itself.
20 The jury can draw whatever inference from the testimony that
21 they want but to specify that, ``I want you all to know that
22 narcotics are considered to be personal property," I would
23 think would be an impermissible commentary on the facts of
24 the case.

25 THE COURT: All right, I'm going to sustain your

1 objection. I'm just going to leave it as is.

2 MS. ELDER: Your Honor, finally on the jury verdict
3 portion on the last page.

4 THE COURT: All right.

5 MS. ELDER: Your Honor, the indication is that in the
6 charge in reference to Defendant Mokeia Hammond the only
7 limitation on your verdict is that you cannot find her guilty
8 of any crime unless you likewise find Richard Niles guilty of
9 that crime. We certainly foresee a circumstance based on the
10 arguments that have been presented to the jury and the
11 testimony that one of the codefendants has, in fact, pled
12 guilty to armed robbery. I think they can find both of these
13 Defendants guilty of armed robbery based on his testimony and
14 plea. Now, I understand that they're saying at this point
15 that Richard Niles had a gun and Ervin didn't, but that
16 affects the murder. It doesn't affect the robbery and the
17 testimony from Ervin Moore was that he got in the car, but
18 the testimony from Richard Niles is he got in the car and
19 there was a scuffle and he got back in the car with the dope
20 and they heard, "You ain't getting out of my car without
21 giving me money." I think they certainly can base a
22 decision on hand of one hand of all for the armed robbery.
23 So, I'd ask that that be stricken and I'd also ask that the
24 limitation that you placed in reference to Richard Niles and
25 the possession of a weapon during a firearm be put in for

1 Mokeia Hammond.

2 THE COURT: All right, let me hear from you on that.

3 MR. BARR: Your Honor, I think the State's position
4 throughout the trial has been, especially in their argument
5 against directed verdict, has been that Ms. Hammond has been
6 acting in concert with Mr. Niles and to make that change
7 would be to extend the argument to say that Ms. Hammond now
8 could have been acting in concert with Mr. Moore. I don't
9 think that that's a valid, a valid argument, Your Honor.

10 THE COURT: Well, but I think they're right. I think
11 Mr. Moore has pled guilty to armed robbery in this, in this
12 case. So, conceivably she could be the hand - that could
13 have been the hand of one is the hand of all. Although, if
14 he didn't possess a firearm - let me think - let's think
15 about this for a minute. You've got Mr. Moore who didn't
16 possess a firearm.

17 MS. ELDER: He doesn't have to to be guilty of armed
18 robbery if he made ---

19 THE COURT: All right, but let's say he's not - he
20 doesn't possess a firearm how can you get, convict Ms.
21 Hammond without convicting Mr. Niles?

22 MS. ELDER: Well, Your Honor, Mr. Moore pled guilty
23 to armed robbery which indicates that either ---

24 THE COURT: Armed robbery without, without possession
25 - I mean, but he didn't - he wasn't armed with a deadly

1 weapon.

2 MS. ELDER: And under armed robbery he doesn't have
3 to be as in - if he expressed or led the victim to believe he
4 was armed. That could certainly happen under armed robbery
5 as well. Armed robbery ---

6 THE COURT: Yeah, but we don't have anything in the
7 record to indicate that. The only use of a deadly weapon
8 that we have involving this case is Mr. Niles' gun.

9 MS. ELDER: Well, and I asked him, I believe I asked
10 him if Mr. Moore had a gun and he said he didn't see one.

11 THE COURT: Right, but the only deadly weapon you've
12 got is Mr. Niles' gun. So, even though you've got Mr. Moore
13 pleading guilty to armed robbery, the armed - he pled guilty
14 I'm assuming to armed robbery under the fact that he
15 committed a robbery in concert with Mr. Niles while Mr. Niles
16 was armed with a deadly weapon, that that was the armed part
17 of the armed robbery.

18 MS. ELDER: But I don't - I think the jury is
19 confronted with a codefendant who pled guilty to armed
20 robbery and manslaughter and that's the information that they
21 have.

22 MR. HAZZARD: And that was the State's choice, Your
23 Honor.

24 MS. ELDER: And I think they can make ---

25 MR. HAZZARD: They chose to take that plea.

1 THE COURT: Hold it for a second. All right, go
2 ahead.

3 MS. ELDER: And I think they can make a finding and
4 Mr. Moore testified that this was a plan, a joint plan.

5 THE COURT: And I understand that but we're talking
6 about my instructions here that says you can only find
7 Ms. Hammond guilty if you find Mr. Niles guilty.

8 MS. ELDER: Correct.

9 THE COURT: How can you find Ms. Hammond guilty of
10 armed robbery, of murder or of possession of a deadly weapon
11 during the commission of a violent crime if Mr. Niles is
12 found not guilty on all three. Under your theory that she
13 can be found guilty because Mr. Moore pled guilty, he doesn't
14 have a deadly weapon in his possession and he didn't plead
15 guilty to possession of a weapon during the commission of a
16 violent crime. He pled guilty to manslaughter and he pled
17 guilty to armed robbery, the armed - the armed part of the
18 armed robbery the only evidence to support that charge and as
19 a recall from his guilty plea is the fact that Mr. Niles had
20 a gun.

21 MS. ELDER: That's correct, Your Honor, but they're
22 putting forward a case that certainly would imply from
23 Mr. Niles' testimony that and even from their cross of
24 Mr. Niles that he's the one who got in the car with the
25 purpose to rip him off.

1 THE COURT: Exactly.

2 MS. ELDER: So, they certainly - the jury can
3 certainly infer from that cross that he had a weapon. I
4 mean, I understand that that's not testified to but that
5 certainly was the argument that was presented.

6 THE COURT: No, there's nothing to indicate that Mr.
7 Moore had a weapon, absolutely nothing, and I know he's pled
8 guilty to armed robbery, but his guilty plea was under this
9 joint hand of one - I mean, basically he was admitting the
10 hand of one is the hand of all and that's what Mr. Niles went
11 there to do and, "That's why I'm pleading guilty to armed
12 robbery. I knew we were going to rob him. I knew he had a
13 gun but I didn't know he was going to kill him," and so,
14 we've got that's why he pled guilty to manslaughter. I'm
15 trying to think how you can convict Ms. Hammond of any of
16 these crimes without convicting Mr. Niles because the only
17 theory you have against her is the hand of one is the hand of
18 all. Now, you have to have a hand in there. That hand is
19 Mr. Niles. It's not Mr. Moore.

20 MS. ELDER: Well, Your Honor, again, I don't want to,
21 I don't want to continue too long on argument but the fact is
22 that they've established or they at one point they said that
23 Mr. Moore or argued that Mr. Moore was the one doing the lick
24 because he was going to get the marijuana without the -
25 without money and that, in fact, Mr. Niles testified that

1 Ms. Hammond heard them argue about it and then Mr. Salter
2 said, ``You're not getting out of the car with my dope," and
3 he jumps back in the car and they start firing. They
4 certainly are implying there was a robbery.

5 THE COURT: A robbery..

6 MS. ELDER: Yes, sir.

7 THE COURT: Not an armed robbery.

8 MS. ELDER: Yes sir, I understand that but they can
9 also, a jury certainly from the information, from the
10 pathologist, the shot that killed Mr. Salter was under here.

11 THE COURT: Right..

12 MS. ELDER: It is not a random shot, Your Honor. It
13 is - it - certainly would indicate or draw the inference that
14 it was somebody in close proximity or in the car. Now, I
15 know that Mr. Ervin, Mr. Moore did not have a gun but a jury
16 can certainly infer from the testimony that he was in the
17 car, he was the one doing the robbery and he shot him because
18 that shot, where the shot is, the pathologist testified to is
19 not just a headshot or a shoulder shot. It is under his
20 right arm. So, I think from the facts they can certainly
21 infer, they can believe part of this, part of that, part of
22 nothing.

23 THE COURT: No, just, just cite me any piece of
24 evidence that indicates Mr. Moore shot and killed the victim.

25 MS. ELDER: There's ---

1 THE COURT: There's no evidence.

2 MS. ELDER: No, sir; no, sir.

3 THE COURT: So, therefore, there is no evidence that
4 Mr. Moore was armed. Therefore, you cannot use his
5 conviction of armed robbery to say Ms. Hammond the hand of
6 one is the hand of all because the only way he got armed
7 robbery was through his contention that Mr. Niles was the one
8 that was armed. So, I don't see how you can convict
9 Ms. Hammond of armed robbery, even though Mr. Moore pled
10 guilty to it, he didn't plead guilty to it under the
11 admission that he was armed. He pled guilty to it under an
12 admission that Mr. Niles was armed. So, you're going to have
13 to have Mr. Niles armed to do it.

14 MS. ELDER: Yes, sir.

15 THE COURT: So, I think I'm going to leave it as is
16 on that regard.

17 MS. ELDER: Your Honor, in reference to the adding in
18 the possession of a firearm exception to Ms. Hammond's
19 charge.

20 THE COURT: Well, that's what I was kind of thinking
21 that that was kind of included in that.

22 MS. ELDER: Okay.

23 THE COURT: Is that you could not find her guilty of
24 any of the crimes unless you likewise found the Defendant and
25 then with him saying you can't find him guilty of possession

1 of a firearm unless you find him guilty of one of these other
2 two that it covered that. I mean, it does to me. If you all
3 don't think it does I'll add that in there.

4 MS. ELDER: Well, I'm sure the verdict form will
5 probably be ---

6 THE COURT: Well, I was just going to let them write
7 on the back of the indictment, each indictment guilty or not
8 guilty. If you want me to add that additional in there I
9 will. I just thought it was a little bit - or just as clear
10 this way but if you want me to add in there that the only
11 limitations on the verdict regarding Ms. Hammond that you
12 cannot find this Defendant guilty of any crime unless you
13 likewise find the Defendant Richard Bill Niles, Jr., guilty
14 of that same crime; likewise, you cannot find her guilty of
15 being in possession of a weapon during the commission of a
16 violent crime without also finding her guilty of murder or
17 armed robbery or both.

18 MS. ELDER: That's fine, Your Honor. We'll withdraw
19 that request.

20 MR. HAZZARD: I mean, it's kind of like going around
21 your, you know, your elbow to get your other shoulder because
22 by the way you originally have it written logically deducted
23 it has to be that way because in order to find ---

24 THE COURT: Well, now that I look at it, the way I
25 say the only limitation is that she cannot be found guilty

1 unless you find Mr. Niles guilty I guess conceivably a jury
2 could come back and find him guilty of murder or armed
3 robbery and possession of a firearm and then just her guilty
4 of possession of a firearm without the other two and that
5 wouldn't be a proper verdict. So, I think we are going to
6 need to add that in there or I'll add that portion to that
7 paragraph. All right, anything else, anything further from
8 the State?

9 MS. ELDER: No, Your Honor.

10 THE COURT: All right, Mr. Barr, any exceptions,
11 additions or challenges?

12 MR. BARR: Yes, Your Honor, I'd ask that the Court
13 considers charging both involuntary manslaughter and
14 voluntary manslaughter as a lesser included of murder.

15 THE COURT: All right, let me hear the State on that.

16 MS. ELDER: Your Honor, I don't think there was
17 absolutely any evidence of anything that would come close to
18 voluntary manslaughter, let alone involuntary manslaughter.
19 He's requested self defense, and ---

20 THE COURT: Yeah, let me look at involuntary. I know
21 voluntary manslaughter with heat of passion or ---

22 MS. ELDER: A lawful activity.

23 THE COURT: --- or provocation. I don't ---

24 MR. HAZZARD: Provocation is they're shooting at you.

25 MR. BARR: Your Honor, both looking at the facts and

1 circumstances of the case I think it's possible that the jury
2 could infer that, you know, the situation got out of hand,
3 and in the heat of passion, that's when the crime was
4 committed and provocation was, ``You shot at me. Now I'm
5 going to shoot at you.''

6 THE COURT: No, I think that the evidence of this
7 case is one of two things happened, either the victim started
8 shooting and Mr. Niles was acting in self-defense or
9 Mr. Niles started shooting or killed the victim during the
10 commission of an armed robbery. I don't - like I say, let me
11 look over the involuntary manslaughter charge right quick.
12 I'm not going to charge voluntary manslaughter. Let me see
13 what involuntary says.

14 No, I don't see where that ---

15 MR. BARR: Your Honor, the second option under
16 involuntary manslaughter the unintentional killing of another
17 without malice while engaged in a lawful activity with
18 reckless disregard for the safety of others, unintentional
19 meaning that the Defendant did not intend for anybody to be
20 killed or for them to be serious or anybody to be seriously
21 injured. I can foresee a situation where the jury could
22 perceive that there was no malice between Mr. Niles and
23 Mr. Salter and Mr. Salter was killed and that at the same
24 time Mr. Niles may not have been engaging in anything
25 unlawful, that maybe Mr. Moore was engaging in something

1 unlawful and that that could possibly be conceived by the
2 jury.

3 THE COURT: Okay, no, I don't think that fits this
4 case. I'm going to deny your motion.

5 MR. BARR: Thank you.

6 THE COURT: All right, anything else?

7 MR. HAZZARD: Yes, sir, Your Honor. A little guidance
8 from the Court, looking at page 16 of the instructions the
9 start of the first full paragraph, the second sentence starts
10 with, "Malice may be inferred from conduct showing a total
11 disregard for human life". The second sentence there says,
12 "Inferred malice may also arise when the deed is done with a
13 deadly weapon." Now, I thought back in the day because I'm
14 getting a little long in the tooth but I thought back in the
15 day there was a case Sandstrom versus Montana or Montana
16 versus Sandstrom that said that that deadly weapon inference
17 was impermissible burden shifting. Has that been changed or
18 repealed or ---

19 THE COURT: I'm not aware that it has, no. If you
20 can show me something that says it has but I'm not aware that
21 ---

22 MR. HAZZARD: Okay, so, my position would be if that is
23 the correct proposition of the law and I'm not sure it is
24 I'll be ready to argue it first thing in the morning, Your
25 Honor, I can promise you that is that I thought I in reading

1 that case sometime ago it said when you try to infer malice
2 by the use of a deadly weapon that's an improper and
3 impermissible shifting of the burden of proof, but like I say
4 I won't, won't ---

5 THE COURT: Well, let me hear from the State on that.

6 MS. ELDER: I'm not, I'm not aware of that, Your
7 Honor. This is a charge that's typically given in the courts
8 and I believe it's in the judges' charge book across the
9 state that it's being used in this manner.

10 THE COURT: That's where I got it from. I got it
11 straight out of our charge book.

12 MR. HAZZARD: I will be ready to address that first
13 thing in the morning.

14 Also, the start of the second full paragraph or the
15 third total paragraph says, "If one intentionally kills
16 another during the commission of a felony the inference of
17 malice may arise." The concern I've got there, Judge, is
18 that's like treading really close to the whole issue of
19 felony murder rule, and if you're talking felony murder rule
20 then I would submit that the Defendant Hammond is entitled to
21 the charge with regard to mala in se versus mala prohibita
22 because I don't, I can foresee a situation where the jury
23 does not believe Mr. Moore, they do not believe an armed
24 robbery was taking place, they believe that it was a drug
25 deal but that Mr. Niles intentionally killed Mr. Salter

1 during the commission of a felony, that felony being the drug
2 deal and then the inference of malice for the purpose of
3 determining murder may arise, when the law from the Gore v.
4 Leeke with regard to mala in se versus mala prohibita would
5 definitely indicate that that would not be proper.

6 THE COURT: Yeah, okay, I understand your motion.
7 I'm going to deny it and leave that charge as is. All right,
8 anything else?

9 (No response.)

10 THE COURT: All right, we ready to begin closing
11 arguments? I don't want to waste this time. I'd say -- how
12 long is it going to take you to close?

13 MS. ELDER: With all three, Your Honor, if it's
14 anything like openings that was - I think it was right at
15 about an hour and a half, two hours.

16 THE COURT: All right, what do you all want to do?
17 Do you want to do it all tomorrow morning?

18 MR. BARR: Your Honor, we had discussed not breaking
19 it up for the benefit of having the jury better understand.

20 THE COURT: Well, I'm going to tell you right now if
21 we start - wait until tomorrow morning we're going to stay
22 straight through until we get a verdict. I'm not ---

23 MR. HAZZARD: Yes, sir.

24 MS. ELDER: The State would have no objection.

25 THE COURT: I mean, because we, we cut short the

1 other day and we're cutting short an hour and a half today.

2 MR. HAZZARD: No objection.

3 THE COURT: So, an hour and a half out the other day,
4 an hour and a half today that's three hours or it was an hour
5 the other day. Yeah, when was it we broke?

6 MR. RICHARDSON: We were about to cut short the other
7 day, Your Honor, but ---

8 MS. ELDER: And we didn't. We ended up calling a
9 witness.

10 MR. RICHARDSON: --- and we ended up pushing it till
11 right at five o'clock.

12 MS. ELDER: Yes, sir.

13 MR. RICHARDSON: The day we had Officer Allen.

14 THE COURT: Okay.

15 MS. ELDER: We had talked about it but we ended up
16 not doing it, Your Honor.

17 THE COURT: All right, well, let's, let's start at
18 9:00 o'clock tomorrow morning. Be here ready to get going at
19 nine o'clock; okay?

20 MS. ELDER: Your Honor, if we could have the
21 Defendants rest on the record in front of the jury so we
22 don't have any issues arise with regard to that.

23 THE COURT: Okay, any opposition to doing that?

24 MR. HAZZARD: No, Your Honor.

25 THE COURT: Go ahead, bring the jury in, we'll have

1 them rest and then we'll start tomorrow morning.

2 (Whereupon, the following takes place in the presence of
3 the jury.)

4 THE COURT: Ladies and gentlemen, welcome back. I hope
5 everyone had a good lunch, and I apologize for keeping you so
6 long back in the jury room, but we were attending to some
7 legal matters before we brought you back out, and at the time
8 you last left the courtroom Mr. Barr had just finished
9 calling his last witness; is that correct?

10 MR. BARR: That is correct, Your Honor.

11 THE COURT: All right, and your client rests on the
12 record; is that correct?

13 MR. BARR: Yes, Your Honor.

14 THE COURT: All right, likewise, Mr. Hazzard, your
15 client?

16 MR. HAZZARD: Your Honor, at this time the Defendant
17 Mokeia Hammond rests.

18 THE COURT: All right, thank you very much. Any
19 reply from the State?

20 MS. ELDER: No, sir, Your Honor. There will be no
21 reply.

22 THE COURT: All right, all right, so, ladies and
23 gentlemen, you have now heard all of the testimony and
24 evidence you're going to hear in this case. We're now to the
25 part of the trial where the attorneys will give their closing

1 arguments and I'll instruct you a little bit further on that
2 when they begin that. It's - to keep from breaking up the
3 closing arguments, procedurally what'll happen is the
4 attorneys will give their closing arguments. I'll charge you
5 on the law and you'll begin your deliberations; and so,
6 rather than breaking up the closing arguments and the jury
7 charge it's a good time for us to break for the day and we'll
8 come back tomorrow morning and I'll ask you to be back in
9 jury room at 9:00 o'clock tomorrow morning and then when we
10 bring you out of the jury room it'll be for the purposes of
11 the parties making their closing arguments. I'll charge you
12 on the law and you'll be able to begin your deliberations..
13 At this point in time it's still too early to begin your
14 deliberations. Don't talk about this case with anyone even
15 among yourselves. Don't conduct any independent
16 investigations. Don't watch any news accounts or try to do
17 any research on your own, but I'll excuse you for the
18 remainder of the day and I ask that you please be back in the
19 jury room at 9:00 a.m., 9:00 o'clock tomorrow morning. Thank
20 you very much. Everyone else please remain seated while the
21 jury is excused.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, anything further from the
25 State?

1 MS. ELDER: Nothing from the State, Your Honor.

2 THE COURT: Any from the Defendants?

3 MR. BARR: Nothing from the Defendant Niles, Your
4 Honor.

5 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
6 Your Honor.

7 THE COURT: All right, we'll stand in recess till
8 nine o'clock tomorrow morning.

9 MS. ELDER: Thank you, Your Honor.

10 MR. RICHARDSON: Thank you.

11 THE COURT: Thank you.

12 OFF THE RECORD

13 (On the record, Friday, March 13, 2009.)

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Anything from the State before we bring
17 in the jury?

18 MS. ELDER: No, sir, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. BARR: Nothing from the Defendant Niles, Your
21 Honor.

22 THE COURT: All right, sir.

23 MR. HAZZARD: There are a couple of housekeeping
24 matters, Your Honor. I looked over the charge you provided
25 us yesterday evening.

1 THE COURT: Right.

2 MR. HAZZARD: Direct the Court's attention to page 11
3 of 29 where it talks about prior inconsistent statements.
4 The Defendant Hammond would request that the Court specify
5 that the prior, the issue of prior inconsistent statement
6 deal specifically with Ervin Moore and with Mr. Niles because
7 it says a witness and the Defendant. It doesn't specify
8 which one.

9 THE COURT: All right, I see what you're saying. So,
10 there's been evidence presented that a witness in this case
11 and the Defendant Niles, I'll insert that.

12 MR. HAZZARD: Okay.

13 THE COURT: Any objection?

14 MS. ELDER: No, we're just going to say witness and
15 defendant Niles.

16 THE COURT: Right, that a witness.

17 MS. ELDER: I would object to, yes.

18 THE COURT: Yeah.

19 MS. ELDER: I would object to just putting Moore in
20 there.

21 THE COURT: Yeah, well, and that first sentence what
22 I'll do is I'll put, "There has been evidence presented that
23 a witness in this case and the Defendant Richard Bill Niles,
24 Jr., made prior statements which are not consistent with
25 their present testimony."

1 MR. HAZZARD: Okay.

2 The second thing, I mentioned to the Court a question of
3 malice and impermissive burden shifting. I was thinking of
4 State versus Lowry, that's L-O-W-R-Y, 657 SE2d 760, that's a
5 2008 case that talks about Sandstrom v. Montana talking about
6 the use of a firearm as proof of malice, and in this case and
7 in the charge the Court has provided the Court's charge
8 specifically says an inference. In that case they were
9 talking about a charge where the judge said use of a firearm
10 basically as proof of malice and that that impermissibly
11 shifted the burden. So, there's no impermissive burden
12 shifting issue here.

13 THE COURT: All right.

14 MR. HAZZARD: Wanted to clear that up. Also wanted to
15 make sure for the record that Defendant Hammonds' objection
16 to the Court's failure to charge the mala in se precept from
17 Gore versus Leeke is noted for the record.

18 THE COURT: All right, thank you.

19 MR. HAZZARD: Nothing further, Your Honor.

20 THE COURT: All right, all right, just for the
21 education of those that are in the audience when we start the
22 closing arguments and when I start the charge to the jury
23 nobody is going to be able to come into the courtroom or
24 leave the courtroom. So, if you don't want to sit through
25 the whole closing, I don't want anybody's - I don't want any

1 distraction during the closing argument or to the charge of
2 the law to the jury. So, if you don't want to be here
3 throughout the whole closing arguments and jury charge you
4 need to go ahead and leave now and I'll also ask that no one
5 be allowed in during the closing arguments. Yes, sir.

6 MR. HAZZARD: Your Honor, I would think that more
7 likely than not the entire closing arguments are going to be
8 fairly lengthy and that the jury may very well want a very
9 brief break in between the closing argument and the charge.

10 THE COURT: All right, well, we may and that might be
11 the case. I'm just going to say that during the closing
12 arguments and during the closing charge nobody will be able
13 to leave. Now, certainly if we take a break you'll be able
14 to come and go then but we'll just have to see how much time
15 is involved and whether or not they'll need a break then.
16 Okay? Anything before we bring the jury back in?

17 MS. ELDER: No, sir, Your Honor.

18 THE COURT: All right, let's bring the jury in.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: Ladies and gentlemen, welcome back. I
22 hope everyone had a restful evening. As I told you when we
23 broke yesterday you have now heard all of the testimony and
24 all of the evidence to be presented in this case has been
25 presented. Now is the time of the trial where the attorneys

1 make their closing arguments. Like their opening statements,
2 these closing arguments are not evidence. They are simply
3 the attorney's opinion as to what the evidence in this case
4 has shown and their opinion as to what facts can be drawn
5 from that evidence. If at any time during their closing
6 arguments these attorneys make a statement that disagrees
7 with what you perceive the facts to be then you're to
8 disregard their statements because these statements are not
9 evidence. It is simply their account as to what they feel
10 has been shown in this case.

11 All right, Mr. Barr.

12 MR. BARR: Thank you, Your Honor. If it pleases
13 the Court?

14 THE COURT: Yes, sir.

15 MR. BARR: Fellow attorneys.

16 Good morning, members of the jury panel.

17 I'd like to begin by thanking you for being so attentive
18 throughout this long trial. I've noticed you paying
19 attention and on behalf of Defendant Niles I appreciate you
20 being so attentive and I appreciate all that you've done in
21 this process.

22 I told you at the very beginning of this that this would
23 be a long case, that it would be difficult, that you would
24 sit a long time and we have. You've seen, I believe,
25 probably close to 130 exhibits. We've had four days of

1 witnesses presenting evidence in this case and you've sat
2 through all of this. I still want you to look for the truth.
3 We talked about justice. Justice is now in your hands. This
4 is the phase of the trial whereby you get to decide this.
5 You get to decide what's factual and what's believable. The
6 Judge will tell you that all of these exhibits and all of
7 what's been talked about it will be at your disposal, you can
8 take it into the jury room with you. You can review it. You
9 can look at it again. You can talk about it as you
10 deliberate in this case.

11 Now that all the evidence is in, I want you to look at
12 the evidence a little bit differently. There's been a lot of
13 conflicting statements. There's been a lot of conflicting
14 stories. I want you to look at the evidence at this point in
15 terms of what's consistent, what's believable, what in your
16 gut tells you that this is right. I want you to consider the
17 credibility of witnesses and the Judge will tell you that you
18 can believe all of what one witness says, none, a part of.
19 You have the right to judge what you think is, in fact, true
20 in this case.

21 With regard to Defendant Niles I want you to be
22 reminded of the standard of proof, proof beyond a reasonable
23 doubt. I want you to look at and consider every single
24 element of the crime or crimes alleged and the Judge will
25 instruct you on how to look at it but I want you to consider

1 whether or not the State has met the burden of proving beyond
2 a reasonable doubt that Richard Niles unlawfully killed James
3 Salter. I want you to seriously consider whether or not with
4 the incoming gunfire coming into his car whether or not
5 Richard Niles had a right to defend himself at that point. I
6 want you to consider whether or not there was any malice
7 between Richard Niles and James Salter. I think the evidence
8 has showed or has shown that Richard Niles and James Salter
9 had known each other for a while. We're not absolutely
10 certain just how long but they had been exchanging drugs and
11 selling drugs and Niles has been into Salter's home. They
12 know each other well enough, I think, over a period of time
13 that I don't think that we could say that Niles harbored any
14 malice toward Salter or the inverse.

15 Now, I'm not going to try to tell you that I'm trying to
16 convince you that I want you to condone what Niles was doing,
17 selling drugs. I'm not going to tell you that I want you to
18 say this is okay. It's not. I'm not going to try and
19 convince you that anything good happened in Best Buy parking
20 lot. I think you've heard enough this week to realize that
21 we could have had three dead people in that parking lot but
22 for the grace of God.

23 I want you to understand that I'm not offering excuses.
24 Certainly Niles has gotten caught up in the glamour of the
25 street sale of illicit drugs and I don't think it'll

1 eventually benefit society, you, him, anybody, and I pray and
2 I'll ask him take a different direction in life, but I don't
3 think that Niles went to the Best Buy parking lot with any
4 intention to harm Salter or anyone else in any way and I
5 don't think the evidence has pointed to that. I'd ask you as
6 you consider these exhibits to consider this one, State's
7 Exhibit Number Six, the Best Buy parking lot. I don't think
8 it is reasonable to believe that if Niles and his fiancée are
9 in control of their vehicle they have an intention to rob Mr.
10 Salter, if there's any plan to rob Mr. Salter that they would
11 drive up to the Best Buy parking lot and park directly in
12 front of the store during the daytime with an intention to
13 rob someone. It doesn't make any sense. So, I don't want
14 you to believe that because it doesn't. I want you to
15 consider the two stories that you've heard, Niles and
16 Ervin's. Truth be told both of them lied and in their
17 initial statements to the police. They did. Both of them
18 testified in a way in court during this trial that would be
19 considered self-serving. They did, but I want you to
20 consider as you deliberate the fact that Niles' story is
21 consistent with what the neutral witnesses say, people who
22 are going home no matter what happens today, people who don't
23 have an ulterior motive. If you look at what the neutral
24 witnesses say then I think you see a consistency between what
25 they say and what Niles says. Both Niles and Ervin say that

1 they had been riding around all day and Niles has a
2 substantial sum of money. It appears as if the arrangement
3 was, "Let's buy a pound of marijuana." The testimony says
4 it could be \$700, it could be as much as \$1200, so we average
5 and we say maybe \$1,000 for a pound of marijuana, and Ervin
6 says, "We need marijuana to smoke." A pound of marijuana
7 is more than a user quantity. I want you to believe that
8 this is a drug sale and I want you to believe that Richard
9 Niles would have no reason whatsoever in a drug sale to try
10 and steal the drugs when he could have paid for them. He and
11 Mr. Salter know each other. They're engaged in a business
12 where they're making money. There's no logical reason why
13 Niles would screw that up for \$675, \$700 or \$1000 or \$1200
14 just off the cuff.

15 You heard the phone calls going back and forth, heard of
16 the phone calls going back and forth between Niles and
17 Salter. So, they're talking to each other. Niles testified
18 that Salter is going to give him some \$5000 or some sum of
19 money.

20 You heard the evidence presented by the detectives.
21 Salter has \$2600 in his car at that time. Would it be
22 logical for Niles to rob Salter of an item that's worth \$1000
23 that he has to then go out and sell because he can't smoke a
24 \$1000 worth of marijuana or would it be more reasonable to
25 just take the \$2600 but the money is left. It's not, it's

1 not taken. This is not about Niles wanting to rob Salter of
2 drugs.

3 I want you to consider Moore and Niles. Moore is 37
4 years old. He is a career criminal, list of convictions.
5 He's here in South Carolina from North Carolina we think to
6 pick up drugs. Moore testifies before you as a person who
7 has made a deal with the State that, "If I don't have to
8 risk going to prison for 30 years or the rest of my life and
9 you can guarantee me I can get ten to 15," then the day
10 before the trial starts, "I'll testify as a State's witness
11 against the other Defendants."

12 Now, without even looking at the credibility comparison,
13 you heard Moore testify from this witness stand he'd say
14 whatever he needed to say to get to go home. Now, that's
15 exactly the same version that his statement and I questioned
16 him about it from his interview with the detectives.

17 "Mr. Moore, how many children have you got?" "I've got
18 five." "You love your children?" "Yes." I said it and
19 I will say it again, that this notion that this is a robbery
20 by Niles is planted in these conversations with the
21 detectives.

22 Compare Niles. Niles is 25 years old. He has virtually
23 no criminal history, convicted of simple possession of
24 marijuana. At the time this robbery was supposed to have
25 occurred he and Ervin estimates that he probably had \$3,000

1 in his pocket. He has no motive to rob James Salter. He
2 just doesn't. Again, I want you to look for the consistency
3 between the neutral witnesses and what the conflicting
4 statements were between the Defendants.

5 Ms. Hooper, Ms. Hooper and I want you as you consider
6 her testimony take with you Defense Exhibit Number One. Take
7 it into deliberations with you and read it because Ms. Hooper
8 says that, "I'm parked, I'm parked right here and I'm
9 backing out and I can see clearly what's going on here. What
10 I saw was I saw Mr. Salter leaning over the back seat or
11 leaning over his seat firing into the vehicle, the Ford Focus
12 five or six times," and I don't want to misquote Ms. Hooper.
13 I think what she said in the statement, please read it, but
14 she said, "I heard the shots and then I saw," and that's
15 what the statement says.

16 Now, Ms. Hooper didn't testify that same way here in
17 court but she said, "I talked to my husband who is a police
18 officer and that's the person I talked to and I talked with
19 him after this." I'm not going to get any further into
20 that.

21 Mr. Watts testified five or six shots. Mr. Watt says
22 what Ms. Hooper said which is consistent with what Richard
23 Niles said, five or six shots. Now the story is not only
24 consistent with the neutral witnesses, lay witnesses but the
25 professional witnesses.

1 Mr. Whitler, the forensic specialist, he says the clip
2 carries ten, six spent cartridges, four remaining that were
3 found. It's all here, with a capacity of ten. Do the math.
4 It adds up. All of the forensic evidence, the scientific
5 evidence is consistent with the Niles' version.

6 I want you to consider also the Niles' statement. Now,
7 the Judge may give you instructions that you might disregard
8 the Niles' statement, either in part or in whole, and I won't
9 give the Judge's instructions. The Judge will give his own
10 instructions but I will tell you the testimony was and I
11 remind you that when Niles was giving his statement he asked,
12 "May I see my attorney? I don't want to talk anymore."
13 His statement was ended.

14 Now, even before the statement began the
15 detective testified that Niles says, "No, I don't want to
16 sign a waiver. I'm not going to sign it." These are
17 significant rights that citizens have. The Miranda warning
18 is not, "I tell you that you have a constitutional right not
19 to incriminate yourself and to have an attorney present when
20 I question you but I'm going to read this to you and then
21 let's just forget it, let's just go on." Ladies and
22 gentlemen, the Miranda warning, the spirit and the essence of
23 the thing is that you have a right, the Fifth Amendment of
24 the United States Constitution says you have a right not to
25 incriminate yourself and you have a right not to give any

1 information that may incriminate you. If you listen to
2 what's being read to you it says everything you say is going
3 to be used against you. It says you have a Sixth Amendment
4 right to counsel. You have a right to have a lawyer. It's
5 not, "I read you the notion that you have a right to have a
6 lawyer and then I just question you anyway." That's not how
7 it works.

8 I want you to consider again that it may be possible
9 that the police tells Mr. Moore, "Well, look, Mr. Moore, we
10 know that old boy flipped out and we know you all had to
11 shoot him but tell us what happens at the shooting. This is
12 your chance to get out of a deep hole and to help yourself."
13 Well, sometimes when you think that you're getting into
14 someone else's head and you're maneuvering them they might
15 very well be maneuvering you. "Well, maybe I will listen to
16 enough of what you're saying and I will find out what you're
17 suggesting that I should say and then I'll say it if that's
18 what you want to hear." Now, is that Moore's version of
19 what happened? Or maybe this career criminal is slicker than
20 the police thinks he is. "Okay, I'll say what they want to
21 hear and at the same time I'll tell those young folks, they
22 don't know any better, I'll tell them let's just hold the
23 line, let's be real, let's stand together, let's go all the
24 way together, I will manipulate them. I'll write Niles a
25 letter and I'll tell him are you a real stand up man like I

1 am. I heard that bitch of yours working with the people so
2 that you can believe that I'm with you, but my real option to
3 save my own hide at any cost whatsoever, wheresoever,
4 whenever it becomes necessary."

5 I'm going to ask you not to believe the suggestion that
6 Richard Niles was in the car of James Salter, and I'm
7 going to ask you to believe that - to not believe that simply
8 on the basis of common sense. Detective Iannone testified
9 that he lifted a partial fingerprint of Mr. Niles' left index
10 finger and he did this analysis, that sort of thing and
11 then eventually he told you he didn't even do the analysis,
12 Detective Allen did the analysis.

13 Now, I asked Detective Allen in your presence,
14 "Detective Allen, how did you get the left partial print of
15 the left index finger, nothing else?" Detective Allen and
16 Detective Iannone would have you believe that weather
17 conditions, all of these things play a part in being able to
18 lift prints or to not lift prints, that type of thing. I
19 would ask you to just believe what appears to be logical that
20 there was no fingerprints taken from the white Mustang
21 because they say we use the same process on the white Mustang
22 that we use on the Ford Focus and we got seven or so highly
23 defined prints from all throughout the Focus. You saw the
24 evidence. The white Mustang ends up a ways down from the
25 Best Buy parking lot still running, it's on the curb, would

1 you actually believe that no fingerprint could be lifted from
2 that car when it was not out in the weather, it's taken
3 directly to the police compound, the keys still in the car,
4 how did Mr. Salter get in the car without his fingerprint
5 being on the keys, the door, no fingerprint from the driver
6 of the car in his own car? I'll ask you to believe the car
7 was just not tested. You can lift seven prints with that
8 degree of definition from the car out in the weather days
9 later at the trailer park. So, if the weather and the wind
10 and the conditions are the defining factors then the good
11 print should have come from the white Mustang but you can't
12 say that Richard Niles did anything to James Salter unless
13 you can somehow paint the notion that he had some contact
14 with James Salter. I'm going to ask you simply not to
15 believe that because it's impossible.

16 I'm, I'm not going to talk much longer but I want you to
17 consider that Richard Niles had no motive whatsoever to shoot
18 James Salter. There's been no evidence presented that
19 Richard Niles harbored any malice towards James Salter.
20 There's been no evidence presented that Richard Niles had any
21 evil intent with regard to James Salter. There's been no
22 evidence presented that there was a plan or a conspiracy,
23 let's say no evidence presented that identified a time and a
24 place where there was a conspiracy between Mokeia Hammond and
25 Ervin, Richard Niles to harm James Salter, and I believe if

1 it had been they wouldn't pull up right in front of the Best
2 Buy parking lot and say, ``Let's, let's do it right here
3 while the people are coming in and out of the store and
4 everybody can see what we're doing.'' I don't think that
5 Ervin Moore is being candid about that part. I believe that
6 if he was in the car with Richard Niles and Mokeia Hammond
7 and they pulled up in front of the Best Buy parking lot and
8 parked right in front of the store door and the plan was to
9 rob James Salter he would have said, ``Hey, no, let's, let's
10 move, all of these other parks out here, let's go out here by
11 the road somewhere where, where all of these people aren't
12 coming in and out of the store that's going to be witnesses
13 that see what we do and they're going to tell. Let's not do
14 it like that.''

15 I don't think there's been any sound evidence presented
16 that you could rely on to say beyond a reasonable doubt that
17 Richard Niles had a weapon, used it during the commission of
18 a violent crime. I think the evidence will tend to show that
19 Richard Niles probably did shoot James Salter but he wasn't
20 trying to rob him. I don't think there's any evidence that's
21 going to show that he was trying to rob him. I don't think
22 there's any evidence that's presented that you can rely on
23 beyond a reasonable doubt that's going to say there was an
24 armed robbery.

25 Ladies and gentlemen of the jury, Ervin Moore says he

1 admits to being guilty of voluntary manslaughter and armed
2 robbery and I think he admits that because he is guilty and
3 I think he knows that and I think that the justice that we
4 seek is with Ervin Moore and I would ask that on behalf of
5 Richard Niles that you find that the truth is that no one in
6 the car had any intention of robbing James Salter but Ervin
7 Moore and that you would bring back a verdict that speaks the
8 truth. Thank you, again, so much for your service.

9 THE COURT: Mr. Hazzard.

10 MR. HAZZARD: Thank you, Your Honor.

11 Good morning. I'm not going to talk too long because I
12 don't have a great deal to say. As you know I represent
13 Mokeia Hammond seated right over there. When this trial
14 began what Mr. Richardson here, the very able prosecutor,
15 very able, both Mr. Richardson and Ms. Elder are very, very
16 able and I can honestly say as a taxpayer here in Horry
17 County I'm very proud to have them working for me, but what
18 they told you to begin with was that this was a Bonnie and
19 Clyde situation, that Rich Boy Niles and Mokeia Hammond were
20 rolling around the countryside robbing and stealing and
21 raising all kind of havoc. Well, I think we see now after
22 four days of testimony that that is not true, no question
23 about that, we all see that but the State has a certain
24 scenario that they've presented to you and that that scenario
25 as they put up through Ervin Moore was that for reasons

1 satisfactory only to himself Rich Boy decided that he was
2 going to - what phrase did they use? Hit a lick, pull a rip,
3 some foolishness like that, meaning to rob Mr. Salter and
4 that this crime would go down around 6:30 to 7:00 p.m. on an
5 April afternoon in the middle of a busy Best Buy parking lot.

6 First of all, let's take a look. Richard Niles tells
7 you that he and Mokeia are just riding around on an afternoon
8 in Trio, South Carolina, that he tells you quite honestly had
9 a little bit of marijuana, he was going to go stop at a
10 convenience store, get a little something to drink, go down
11 to the baseball field, which I would presume is a good
12 deserted spot, hang out, commune with nature, smoke some
13 marijuana, drink a little bit, relax and enjoy our day. We
14 get to the convenience store and this is not in dispute, and
15 we run into Ervin Niles, I mean run into Ervin Moore. Now,
16 this is where the stories start to divert because Ervin Moore
17 says that he did want to go along with them to the beach and
18 that's fine, that's fine. Apparently nobody really wants to
19 be in Trio in the middle of the day. I understand. Never
20 been there. I'm sure it's a wonderful place, but what does
21 Rich Boy tell you? He says, "Ervin asked me about getting
22 some marijuana," okay. Did Ervin eventually after much
23 prompting admit that? Yes, he did. Rich Boy also tells you
24 that James Salter, his compatriot, his business partner
25 happened to call around that same time and he said, "Look, I

1 don't have much marijuana on me. Here talk to this man. I
2 know he's probably got some." So, according to Richard
3 Niles there is a discussion between Mr. Salter and Mr. Ervin
4 Moore. The importance of that is this, when they get to the
5 Best Buy parking lot, okay, even Ervin Moore says, "I got
6 out of the car and I went and I got into Mr. Salter's car,"
7 and according to Ervin Moore the reason for doing that was
8 because he was supposed to check and see if the drugs were
9 there. Now, remember this is the State's scenario of what
10 happened. I would submit to you, ladies and gentlemen, that
11 is absolutely without belief because according to the State's
12 version Ervin Moore had never talked to James Salter, Ervin
13 Moore had never made a deal with James Salter, Ervin Moore
14 didn't know who James Salter was but yet when they get to the
15 Best Buy parking lot he's supposed to go and get in the car
16 with someone he had never spoken with, doesn't know, never
17 had any dealings with and according to their version this
18 person that Ervin Moore doesn't know from Adam is allowed
19 into the car. To put it in perspective it is as if any one
20 of us has a friend who lends another person that we don't
21 know \$1000 and then we are hanging out with our friends and
22 our friend says, "Remember I told you I lent Jimmy that
23 \$1000." "Well, yeah." "Okay, well, we're going to go run
24 around, do some shopping or whatever but I've got to stop by
25 Jimmy's house pick up the money." "All right, fine."

1 You get to Jimmy's house and then the friend says, "All
2 right, I know you don't know Jimmy, but you go on, I'm going
3 to sit here in the car. You go on upstairs and get the money
4 from him." I guarantee you any one of us our response would
5 be, "Are you crazy? This person doesn't know me from Adam.
6 How are they going to give me money?" How are they going to
7 have me knock on the door and go, "Hey, I'm here for Bill.
8 He says you owe him \$1000. Now I'm here to see if you've got
9 it." Does that make any sense? But that's the State's
10 scenario. That's the State's scenario as to how Ervin Moore
11 ended up in the car.

12 Now, what does Richard Niles tell you? Ervin Moore
13 talked to James Salter. They apparently, being, they being
14 James Salter and Ervin Moore apparently reached an agreement
15 as to the purchase of a pound of marijuana. Now, the
16 question has been raised as to did Richard Niles know that
17 Ervin Moore didn't have any money? Remember, Richard Niles
18 knows that Ervin Moore used to be in the game back in the
19 day. Remember Ervin Moore is the guy that was running the
20 crack house. So, there's no reason for Richard Niles to say,
21 "Well, you know, okay, well, let me check and see if you have
22 money, if you want to" - that's like a friend of mine
23 calling me up and saying, "Well, let's go to dinner." I
24 presume if they are asking me to dinner they have money, no
25 reason for me to ask, but Richard Niles tells you that Ervin

1 Moore says, "I want to get hold of a quantity of
2 marijuana," talked with James Salter. They then go to the
3 Best Buy, and remember, at this point James Salter has talked
4 to the man on the phone. So, he has some knowledge that he's
5 going to meet with someone new who knows Richard Niles. So,
6 that's why Ervin Moore ends up in the car, okay. That's why.

7 Now, why does the State have to have it the other way?
8 Why does it have to be a plan to rob? Because that is the
9 only way that they could convict this young lady of anything.
10 Remember, virtually every witness, you've got 122 exhibits.
11 You've heard from approximately 30 witnesses. Remember, I
12 asked virtually every one of them, "Does your investigation
13 indicate any evidence whatsoever that Mokeia Hammond either
14 possessed a gun, fired a gun, killed anyone or robbed
15 anyone," and what did each of the State's witnesses say?
16 No. So, we know Mokeia Hammond never possessed a gun, never
17 fired a gun, never killed anyone and never robbed anyone.
18 That's not up to dispute. So, what the State is trying to
19 hang their hat on is this scenario or this issue of the hand
20 of one is the hand of all and that's, that's nice. That's a
21 solid proposition of the law, but what it requires and what I
22 believe the Judge will inform you and charge you is that it
23 requires a specific plan and that's where Ervin Moore comes
24 in. He's the one that gives them the plan.

25 Now, there's been a lot of talk as to whether what Ervin

1 Moore said on this witness stand is consistent with Ervin
2 Moore's statement to the police in December of '07. Ladies
3 and gentlemen, I don't think there's any question that he
4 gave two different stories, and if you want to know whether
5 he gave two different stories think of this. If he had told
6 them the same thing in December of '07 why is it that he
7 doesn't enter a guilty plea, isn't sentenced, doesn't reach
8 an agreement with the State until the day before this trial
9 begins? What did he testify? Sunday, March 8th, 2009, the
10 prosecution comes out to see him, and I say, "Okay," I
11 think Mr. Barr asked him, "Well, how long did they talk to
12 you?" "They talked to me for 90 minutes." Now, ladies
13 and gentlemen, I don't know about any other body, anybody
14 else's world, but my world is a pretty simple one. The truth
15 don't ever take 90 minutes. If they believed what he had to
16 say all they had to say was, "Okay, this is what you said
17 December of '07. We believe that's the truth. Just get on
18 the stand and say it." They could have saved themselves
19 another 89 minutes and 45 seconds and been on about their
20 day, but no, they've got to talk for 90 minutes about this
21 story to make it conform, to make it be some kind of plan to
22 rob because remember without that plan there is no
23 conspiracy, without that conspiracy Mokeia Hammond hasn't
24 done anything, but even with, even with that, even with -
25 because the State, I think, is going to make a big deal about

1 Mokeia Hammond was there, she was there with Rich Boy, they
2 were riding around all day, they were doing drug deals, they
3 were smoking marijuana, she was there. That's nice, but I
4 believe the law says and I believe the Judge will tell you
5 that merely being present at the scene of a crime is not
6 sufficient to convict anyone as a principal, as someone who
7 is aiding and abetting. Okay, I believe that Your Honor is
8 going to charge you that. I believe he's going to say a
9 Defendant's presence where a crime is being committed or even
10 mere association with the person who commits a crime does not
11 make a Defendant an accomplice or an aider or abetter of the
12 person who was committing a crime. So, even if they go with
13 that, "Well, she was there. She was driving. She was
14 there," that's not enough. So, they've got to have Ervin
15 Moore. They've got to have this agreement. They've got to
16 have it be a robbery. That's why it's got to be a robbery,
17 ladies and gentlemen, because without that they can't convict
18 anyone, by the law they cannot convict anyone, and I'm very
19 concerned about this case. I'm very concerned because even
20 with all the State's witnesses having said that Mokeia
21 Hammond did nothing wrong, even with all of that, I'm very
22 concerned because people sometimes have a reason to say, I
23 mean, what they do, as Mr. Barr indicated, what this
24 gentleman here did and the lifestyle that this young lady at
25 that point in time chose to lead was misguided and wrong, and

1 I'm very fearful that a jury might say, ``Well, they did
2 something wrong. So, let's convict them anyway.'' Ladies
3 and gentleman, Richard Niles got on this witness stand under
4 oath and testified that he is a drug dealer and that he deals
5 drugs, that he moves a large quantity of drugs. Believe me,
6 there will be another court, another judge sometime soon who
7 will address that issue because it doesn't get much simpler
8 than that. They've got him under oath saying it and they've
9 got him under oath admitting that she assisted. So, I don't
10 want there to be a mentality of we've got to round up the
11 posse and mete out justice regardless of the law. Let's
12 stick with the facts of this case, the charges on this case
13 because their justice for the other things they have done
14 wrong will be here fairly quickly, trust me.

15 I submit to you that what really happened in this case
16 is that Ervin Moore wanted to get back in the game, simple as
17 that because he testified been smoking marijuana a long time.
18 I think he said 19 years. ``Had my felony drug conviction
19 for cocaine. I've had my conviction for being the proprietor
20 of a crack house, but I'm not in the game anymore. I'm just
21 working at Bojangles,'' but he has someone, he's so broke he
22 can't even drive down from Greensboro. Remember that
23 testimony. He's got to have his baby mama bring him, okay,
24 to see his relatives and he's walking to the convenience
25 store. He ain't got no car and he runs into Rich Boy, big

1 man, but remember there's about a 10 or 11 year difference in
2 their ages. So, back in the day when Richard was coming up
3 Ervin was the man. He was the man, but now life has taken
4 him a slightly different path. He's been in trouble, in and
5 out of trouble with the law. So, he's kind of busted in the
6 game, probably lost his connections and now he comes back to
7 Salters, South Carolina, and Rich Boy is the big man in town
8 now. So, he wants to hang out with Rich Boy and he wants to
9 get back in the game. "So, can you help me out? Can you
10 help me get my startup? Can you help me get a pound of
11 marijuana?" Rich Boy says, "Okay, I'll make a call," or
12 in fact, Salter called him and he said, "Here, here is the
13 phone, talk to this guy," and that's where it begins, but I
14 would submit to you, ladies and gentlemen, Ervin Moore has a
15 malignant heart, a heart devoid of social consciousness, bent
16 on mischief, ill will, because a couple of times despite the
17 fact that he was well-prepared to testify as to what to say,
18 because remember we had to talk to him for 90 minutes to tell
19 him what to say or to get him, to get him to where he could
20 testify. Despite that I think a couple of times he kind of
21 let his true nature slip and he let you see it because I
22 asked him, I said, "Well, how much money did you have when
23 you went to the convenience store?" "I didn't have any
24 money." "Okay, so, you were just going to sit outside the
25 convenience store or you were just going to sit there watch

1 other people buy stuff," and what did he say, "I could go
2 in there and get whatever I want. I don't need money," and
3 I asked him, I said, "Well, how? I mean, they're going to
4 give it to you on credit, you got family members to run the
5 store," and if you think back to it, he never answered that
6 question. He never answered it but I submit to you that
7 that's how he thinks, that if he wants something he can take
8 it, and I submit to you that's what happened when he came
9 across James Salter. He saw something he wanted. He was
10 going to take it and that was simple as that and his last
11 words to you were, "You know, I'll do anything it takes."

12 Now, the witnesses who testified for the State all, all
13 have incredible training and expertise in their jobs.
14 There's not a single one of them, well, for the most part,
15 the vast majority of them have great training and expertise
16 in their jobs. Let me put it that way and I'll explain that
17 in a second but that's why when they get on that stand and
18 they say that they did a thorough investigation into this
19 case over an almost two-year period, and they tell you there
20 is no evidence to indicate that Mokeia Hammond committed a
21 crime, that's why I submit that is the strongest evidence
22 that we could have. It's not that they did a shoddy job.
23 It's not that they sat around the police department and ate
24 doughnuts and didn't do an investigation. No, you got 122
25 exhibits worth of investigations here but not anything says

1 and not anyone says Mokeia Hammond committed a crime. Even
2 Ervin Moore, the person they tied their case to about this
3 supposed conspiracy, this agreement, this combination to rob
4 does he say that, does he say, "We were in the car and we
5 talked amongst ourselves and agreed that this was how it was
6 going to go down?" No. What he says is, "Well, Rich Boy
7 was in the front and he was talking to the boy on the phone
8 and then he hung the phone up, then he turned around to me
9 and he said, 'I'm going to hit a lick.'" There's nothing
10 else about, "He made this announcement and then Mokeia
11 said, 'Well, oh, well, how are we going to do it,'" and
12 Ervin said, "Well, what's my part going to be in it," none
13 of that because that's the interesting thing. Remember Ervin
14 Moore saying he was the person who was supposed to get out
15 and go check, see if the drugs were there. He never
16 testifies that they even discussed that. He said Richard was
17 on the phone, he hung the phone up and then he turned around
18 and said, "I'm going to hit a lick supposedly." See, so,
19 my grandmother told me a long time ago when I was a kid, "If
20 you want to know which way the wind is blowing you don't look
21 at the big oak tree. You look at the leaves on the tree, the
22 little things are what's going to point you towards the
23 truth." Those kinds of inconsistencies let you know that
24 Ervin Moore's statement is made up at a whole part and cannot
25 be believed and is not worthy of belief.

1 I believe that the Judge will also indicate to you as a
2 part of the law that mere association with someone who
3 commits a crime does not make someone guilty of that crime.
4 Mere association does not make one guilty. So, I want you to
5 remember that when you go back in your jury room as well.

6 Now, I've heard the prosecutor say before that, "Well,
7 don't blame us if we have to use someone like Ervin Moore as
8 a witness because if you're going to convict the devil you've
9 got to go to hell to get your witnesses." Well, in this
10 particular case I want you to think of exactly who is the
11 devil here, who is the devil here. Is it this young lady
12 here? Or is it the career drug dealer Ervin Moore, the
13 person who actually got out and got in the car and tussled
14 with James Salter? Who is it? Now, I think that when we
15 have this Bible here. the witnesses place their hand on it
16 and they raise their right hand and they swear to tell the
17 truth and you take an oath as jurors and that oath says, you
18 know, "So help me God that I will well and truly try the
19 issues in this case and a true verdict render," that this
20 book that the oaths are taken on also says in 1st Timothy,
21 "Let no one, let no one in our society be convicted by the
22 word of one." Let that one who is accusing come back with
23 two or three more, and why, so that we will know that the
24 truth is done and that justice is done in our society. The
25 only person who alleges in any way that Mokeia Hammond has

1 done wrong is Ervin Moore and yet you've heard a chorus of
2 other State witnesses that say we have nothing to indicate
3 that this young lady has committed any crime and the crimes
4 that she has committed that have been discussed they will be
5 addressed. You can trust and believe that, but that's for
6 another judge and another courtroom and another day in the
7 near future, not for you, not for you.

8 Now, very briefly to wrap up, there are certain issues
9 in the State's case that I do not understand but I did want
10 to bring them to your attention. There was a lot of talk,
11 some talk in my opening statement and I always try to be
12 truthful with the jury and I always try to deliver what I
13 tell you. So, I don't want there to be any misconceptions.
14 In my opening statement I indicated that one of James
15 Salter's roommates was present in the Best Buy parking lot.
16 Now, this is not a huge point in the case but I try to bring
17 things home and be truthful about what I say, never try to
18 mislead you. Now, the State and Mr. Barr say the roommate
19 was present in the Best Buy parking lot driving an SUV. For
20 some reason the State felt the need to try to dispute that.
21 They were asking witnesses, "Did you see an SUV?" I think
22 Mr. Richardson even referred to it as the magical or mythical
23 SUV. Okay, you might remember Detective Selina Mann got on
24 the stand and said, "I was part of the investigation of that
25 when I was with the Myrtle Beach Police Department. I'm now

1 with the Conway Police Department, and yes, as a part of my
2 investigation I determined Sean Lundy, a roommate of James
3 Salter, was present in the Best Buy parking lot driving a red
4 Durango SUV. Now, what is strikingly strange about this to
5 me is that as I questioned the witnesses for the State any
6 time I had an incident report I wanted to ask them about what
7 did I say? I'm going to - because I don't try to trick
8 anybody. So, I say, "I've got this report that the State
9 gave me. So, take a look at it. Let me make sure that's the
10 same report you have." So, the vast majority of information
11 I have in this case comes from the State. So, they knew
12 about the SUV. They knew about all of that. So, why the
13 need to call it magical, mythical, make you think it didn't
14 exist, make you think Mr. Lundy wasn't there, I do not know.
15 I do not know.

16 Now, the second thing is the phantom fingerprint. Now,
17 I really hate to do that because I don't want to cast an
18 aspersion on Corporal Allen. I think she is a very fine
19 woman. I think she tries to do her job very well. However,
20 you may recall she's up there looking at the fingerprints,
21 looking at these prints and she says she saw a, she saw a
22 picture, a blown up picture of a fingerprint and she
23 initially thought it was a palm print. She initially thought
24 it was a palm print. Now, I'm not an expert in fingerprints,
25 but she's supposed to be and that kind of concerns me. If

1 I'm a car salesman I would like to think I could tell the
2 difference between a subcompact and a hummer, okay? So, that
3 gives me some concern and then what gives me also concern
4 about this fingerprint business is this whole notion that
5 only one found fingerprint of Richard Niles could be taken
6 from that Mustang. Now, as I walked out to my car this
7 morning I saw that we are starting to have pollen season show
8 up and it struck me that anyone who lives in the south and
9 has lived through pollen season knows exactly how easy it is
10 to have fingerprints show up on your car. So, maybe they're
11 dusting with the wrong thing. Maybe they ought to use pollen
12 instead of something else because I tell you what your
13 fingerprints can clearly be seen, especially on the trunk
14 area because, you know, you put the key and you lift the
15 trunk, oh, you've got a good set of four right there, easy,
16 but they say, no, couldn't get a single print from the
17 Mustang with the exception of a partial print of Mr. Niles,
18 but we got 32 prints off of and inside of the Ford Fusion.
19 I want to say it was 15 prints off of the vehicle itself and
20 17 prints off of the objects within the vehicle, for a total
21 of 32, and if I misspeak I'm not trying to mislead you but
22 that's my recollection, and of course, you'll have that
23 information in there with you. Isn't it much more believable
24 that what occurred is simply one part got misplaced or
25 mislabeled, simple as that, because, again, I don't think

1 that the Myrtle Beach Police Department is trying to deceive
2 or lie to you citizens. They do a fine, fine, fine job but
3 we're all human. We all make mistakes, simple as that, and
4 what causes me to believe this whole mislabeling thing may
5 exist is you may remember a very, very, very small matter, I
6 believe it was crime scene specialists Iannone testified
7 about a bunch of different pictures and one of the ones he
8 testified about is in here somewhere for your review but you
9 may remember and you may see it and it'll be in the jury room
10 if you want to look at it was a picture of a receipt from a
11 hotel room, okay, and Ms. Elder asked him about it and he
12 said, "Yes, I got that out of the Ford Fusion, the same with
13 all of these other pictures in evidence," and I got up and I
14 said, "Well, wait a minute now, wait a minute. Just let me
15 clarify. You're saying that receipt came out of the Ford
16 Fusion," and he again said, "Let me check my notes," and
17 he said yes. Well, Ms. Elder being the fine prosecutor that
18 she is she immediately caught what was wrong with that and
19 clarified him that that receipt, that picture and the receipt
20 may have come from somewhere else. Why is that fairly
21 significant? Because the receipt is from the check-in and
22 checkout of the hotel room where Mokeia and Richard went
23 after they left the car at the mobile home park, after. So,
24 they knew, Ms. Elder, kudos to her, she caught it and she
25 quickly corrected it, but see, that's how human nature is and

1 that's how mistakes can be made; and so, I submit to you that
2 the mislabeling of a fingerprint can just as easily happen,
3 no question about that, but again, I still have concerns to
4 wrap up because I've talked with friends and they have said,
5 ``Well, Gee, I don't know, Ron.'' One of my friends who's an
6 attorney, I've known her for 20 years. We were in law school
7 together. I was talking very briefly about the facts of the
8 case and she shocked me. She shocked me. This is someone
9 who has been to law school and everything, and she said,
10 ``No, I don't know. I'd have a really hard time not
11 convicting somebody who didn't take the stand," and I about
12 fell out of my chair. I would submit to you, ladies and
13 gentlemen, what can Mokeia Hammond add? I know that you
14 would like to sit here for another eight hours listening to
15 testimony back and forth. I know you would, but really what
16 can she add? Twenty some odd State witnesses have sat up
17 here and said, ``She didn't rob anybody, she didn't shoot
18 anybody, she didn't kill anybody, okay.'' Richard Niles has
19 told you about their activities on that day. What more can
20 she add? So, if you, if you have a problem with her not
21 testifying that's on me. That ain't on her. She's got
22 nothing to hide, but she also would have nothing more that
23 she could say to add to this.

24 The issue of the drug deals, and as I said, there'll be
25 another court and another day for that. So, don't let that

1 sway your judgment, and the third thing is I'm always fearful
2 that someone on the jury panel is like my mother because my
3 mother is 70 years old and she lives in Columbia but she
4 spends one to two weeks with me down here every month and
5 there are two things that my mother is going to read
6 everyday. One is the Bible. The other is the newspaper, and
7 she is going to read the newspaper from cover to cover, and
8 we will be sitting on weekends at the breakfast table and I
9 will have the sports section. She'll have the local section
10 and she will at some point rattle the paper and she will read
11 about some heinous crime that has been committed and the fact
12 that someone has been arrested and she will invariably say,
13 ``Well, thank God they caught him," or, ``Thank God they
14 caught her," and I look up and I put the sports section down
15 and I say, ``Mom, they - why do you say thank God they caught
16 him?" ``Well, I mean, this horrible crime occurred and they
17 made an arrest. Thank God they got him or her off the
18 street." Well, I say, ``Mamma, they're innocent until
19 proven guilty. My goodness gracious," and then she always
20 kind of blushes and she'll giggle a little and she'll say,
21 ``Oh, you're right. You're right." I go back to reading
22 the sports section. She goes back to reading the local
23 section. Then about two minutes later she goes, ``Well, it
24 is a horrible crime. It's a good thing they got him," and
25 that's fine for my mother to do at the breakfast table. All

1 of us have our own opinions, all of us have those rights. At
2 the breakfast table you have that bias, but when you raise
3 your right hand to God and you say, "I will well and truly
4 try the issues of this case and a true verdict render so help
5 me God," you promise to leave and you commit to leave all of
6 those biases and preconceptions and misinformed notions
7 behind and to go strictly with the law as this Court gives it
8 to you and the evidence and the weight that you wish to place
9 on that evidence, you know.

10 Now, the Judge will tell you that your verdict must be
11 unanimous and there's no question that it must. However, I
12 do want you to understand and realize that while you must
13 listen to and carefully consider the point of view of each of
14 your fellow jurors you must not ever give away your vote.
15 Your vote is sovereign and sacred to you. Okay, it belongs
16 to each and every one of you individually and if you're in
17 that jury room and nine of you think that these two young
18 people are guilty and three of you think they are not guilty
19 those three of you are to hold fast to your belief after
20 having considered and given due credence to the point of view
21 of your fellow jurors, but hold fast to your belief, and by
22 the same token, if nine of you think Mokeia is not guilty and
23 three of you just think she is for some odd reason, then you
24 three are entitled to hold fast to your sovereign vote and do
25 not give it away, but I will tell you this, if you're in that

1 jury room and you've thought about it and you've talked about
2 it and you've reasoned about it and you've argued about it,
3 and the 12 of you reasonable people cannot come to an
4 agreement then I would submit to you that is the truest form
5 of reasonable doubt, and if that is what's going on then by
6 your oath you must write a verdict of not guilty. I thank
7 you for your time and your attention.

8 THE COURT: Mr. Richardson.

9 MR. RICHARDSON: Thank you, Your Honor.

10 Folks, Bonnie and Clyde, Mokeia Hammond and Richard
11 Niles, young lovers living the criminal lifestyle, doing what
12 they want when they want, whoever they want. They're two
13 sides of the same coin. One does not act without the other's
14 knowledge. One doesn't go anywhere without the other. You
15 can bet one's not going to commit a crime without the other
16 one helping out. Together they are guilty and together they
17 must be put away.

18 On April 9th, 2007, together in the car, Mokeia Hammond
19 and Richard Niles rode to Myrtle Beach, had Ervin Moore in
20 the back. Mokeia Hammond sat right beside Richard Niles by
21 everyone's testimony as he made that call to James Salter and
22 said, "Hey, man, I want to buy a pound, a pound of weed,"
23 and she sat there right beside him with the gun right up at
24 his feet that he keeps at home, the home they share, as he
25 hangs up the phone and says, "We're going to hit a lick."

1 We're going to rob him. I ain't buying it. We're going to
2 rob him, and then she drives him to the robbery place, the
3 place they've agreed to go to and see James Salter, the place
4 that Richard Niles has said, "I'm going to go rob him."
5 She drive him to the incident and murder location. Right
6 there she's aiding and abetting but she doesn't stop there.
7 She waits there in the car ready to run when the crime is
8 committed and she does just that. Hand-in-hand together they
9 were in on this crime and hand-in-hand together they must
10 face the consequences of their crime and they must be found
11 guilty, guilty for the armed robbery of James Salter and
12 guilty for the felony murder of James Salter.

13 In a few moments Judge Culbertson is going to start
14 giving you some instructions. Number one he's going to tell
15 you you are the triers of fact. It's your job to weigh all
16 the evidence and all the testimony that you have heard here
17 this week and you take that and you do your job, you try and
18 seek justice. You try and render a true and just verdict but
19 he's going to assist you because he'll give you the law.
20 He'll tell you he's the judge of the law and he'll give you
21 the law to apply to those facts. He's going to talk to you
22 about armed robbery. He's going to tell you that armed
23 robbery is the taking of another's property, doesn't matter
24 if that property is stereo speakers, marijuana. It's the
25 taking of another's property by force with the use of a

1 weapon. Folks, that's a no-brainer here. We know marijuana
2 was stolen. We know force was used and a weapon because it
3 was a 38-caliber projectile fired from a handgun that killed
4 James Salter. That's an easy one. The use of a weapon
5 during a crime of violence, that, too, is easy. It's a real
6 simple crime. The Judge is going to tell you both armed
7 robbery and murder are violent crimes and they are felonies
8 and that if you use a weapon during them, well, there's your
9 crime.

10 He'll talk to you about murder, about it being the
11 killing of another human being with malice aforethought.
12 Folks, we have a killing. Young James Salter has been dead
13 for almost two years now from that gunshot wound, but what's
14 malice? Well, it can be inferred or express. Express, "I
15 hate you, I'm going to kill you," easy, but that malice can
16 be inferred. It can be inferred by the use of a deadly
17 weapon such as that handgun that fires the 38-caliber
18 projectile. It can be inferred by the fact that that killing
19 takes place during the commission of a felony, here an armed
20 robbery. Folks, that one's an easy one, too. We know we've
21 got a murder.

22 The Judge is going to talk to you about mere presence
23 and they may want to belabor it but it just says that if
24 you're present at a crime scene doesn't mean you're guilty.
25 We don't have that here. Mokeia Hammond was not only

1 present, she was aiding and abetting. She was in on the
2 plan.

3 The Judge is going to talk to you about that hand of one
4 hand of all. Sounds a little bit hokey. Maybe, maybe a
5 little bit difficult, but like eye for an eye but it's the
6 hand of one hand of all, and that law is basically that if
7 two or more persons join together with a plan or a scheme to
8 commit a criminal act and they're both present in furtherance
9 of committing that act, then the hand of one is the hand of
10 all. In other words, the one person that's in on that act,
11 while another person is in on that act they are criminally
12 responsible for what, everything done by that secondary
13 person in furtherance of that initial plan or scheme. In
14 this case they planned the armed robbery. They planned to
15 use the pistol. They planned to put a gun to James Salter
16 and the natural and probable consequence of that when you
17 point a loaded firearm at somebody that you might have to
18 kill them, they may want to defend themselves just like James
19 Salter tried; and so, in conspiring on that armed robbery
20 they ultimately conspired for the murder, the hand of one is
21 the hand of all.

22 The Judge is going to talk to you about reasonable
23 doubt. That's a biggie. We've all heard it. Perhaps you've
24 heard it on a television show, maybe Law and Order, or maybe
25 you've read a John Grisham novel or a James Patterson novel

1 has reasonable doubt in it, but what exactly is it? You're
2 in luck. The Judge is going to give you instructions. He'll
3 tell you that to prove someone guilty beyond a reasonable
4 doubt the State must give you evidence that leaves you firmly
5 convinced of their guilt, not to lose every bit of doubt that
6 has ever been, but that leaves you firmly convinced of the
7 guilt of Mokeia Hammond and Richard Niles, and folks, we have
8 to do that by using the competent, relevant and admissible
9 evidence. That's the State's job. That's my job. That's
10 Ms. Elder's job. Not to mislead you, not to distract you,
11 not to put witnesses on the stand that have no meaning to
12 this case, that are on the periphery, it's to give you the
13 admissible, relevant and competent evidence that will assist
14 you in weighing this evidence and rendering a true and just
15 verdict. That's what we've done. That's what we've done.
16 So, let's take a look at the evidence.

17 You had Ervin Moore to take the stand. Ervin Moore took
18 the stand and testified to you, to accept the consequences of
19 his actions on that day. Now, to hear Mr. Niles tell the
20 story he didn't do anything wrong, and yet, Mr. Moore is here
21 to tell you his guilt. He knows that armed robbery was going
22 to take place, didn't know Richard had a gun, but he knew the
23 armed robbery was going to take place, and he took his guilt.
24 He's going to prison. He told you, and he told you he knew
25 that if he lied on the stand all deals were off. He's facing

1 a longer prison sentence. So, what did he tell you? He told
2 you on April 9th, 2008, he sat in Trio, South Carolina. The
3 Defendants came by and picked him up, "Hey, man, you want to
4 smoke some weed? Come ride with us. We're heading to the
5 beach. We're going to do business," not big business as the
6 defense attorneys try to allege. Mr. Moore tells you they go
7 from hotel to hotel, hand to hand drug deals, and Mr. Moore
8 tells you they end up with a couple of hundred dollars.

9 Now, Mr. Barr asked him, "Couldn't it have been
10 \$3500," is Mr. Barr's words that try to inflate that money.
11 But Mr. Moore says, "No, it was a couple of hundred dollars,
12 saw some twenties, didn't see a big stack, saw some
13 twenties," a couple of hundred dollars, and they run out of
14 marijuana. That's all right. Rich Boy Good over there he's
15 got a plan; and so, he begins calling. Ervin Moore is
16 sitting in the backseat. Rich Niles and Mokeia Hammond are
17 up front, Mokeia is driving. So, he calls James Salter,
18 orders up some marijuana, agrees to be at the Best Buy.
19 Maybe it's James Salter that says meet at the Best Buy.
20 He's trying to protect himself on this drug deal. We know he
21 was trying to protect himself in other ways with the gun, and
22 when he hangs up the phone with James Salter he turns to him,
23 tells everybody in that car, Mokeia Hammond is sitting right
24 beside him that gun right up between his legs, "I'm not
25 going to buy. I'm going to hit a lick. We're going to do a

1 robbery," and when they get to Best Buy Ervin Moore told you
2 he did just as he was directed. He was the man that was
3 instructed, "You go check to see if the marijuana is
4 there." You see, Rich Niles didn't want to get out of the
5 car with that gun, didn't want to flash that gun, didn't want
6 to take the chance of going over there to try and steal
7 something that wasn't theirs. So, he had to have somebody to
8 check it out and he had to have time to ready that handgun,
9 make sure it's loaded, that revolver, but Ervin does what he
10 says and he gets in the car with James. Why does James let
11 him in? Because they're there to buy marijuana. That is
12 what James is there to do, to sell marijuana. He's not going
13 to be overly picky and they're there to steal that marijuana,
14 not the cash in the backseat. They don't know about that.
15 They've ordered a pound of marijuana. So, Ervin gets back
16 out of the car, walks back around that Ford Fusion and Rich
17 Niles is getting out, getting ready, he says, he's got the
18 marijuana, and Ervin gets in the backseat right where his DNA
19 is found, and he sees Rich Niles walk back around the Ford
20 Fusion back to the Ford Mustang and lean up against the car.
21 My, my, isn't that where you would leave your fingerprint if
22 you lean on the car one time, but he leans on the car and
23 Ervin is back over here, and he hears bam, bam, and it shocks
24 him, it shocks him. The next thing he knows everything is
25 happening fast and furious. Big old Rich Niles is jumping

1 through the backseat, through, behind the driver's seat
2 landing on top of him. The next thing he knows bullets are
3 whizzing in, bam, bam, bam, glass is flying everywhere. You
4 saw the pictures. Glass is flying everywhere, all in those
5 seats. Ervin tells you, "I got cut in the eye. I'm
6 bleeding." Only goes to figure everybody else is getting
7 cut, too, but, "Drive, drive, drive," and they do just that
8 and Ervin is in shock. He says they bounce over the curb, up
9 over the curb into Logan's roadhouse. At this point he's on
10 the floor covering that eye, Rich Niles on top of him, "What
11 did you do, man? Are you crazy," and what does Richard
12 Niles tell him as Mokeia is driving him away from the murder
13 scene. "Man, I had to kill him. He went for his gun."
14 The audacity of James Salter to try to defend himself, the
15 audacity of him trying to go back and defend himself, and so,
16 Rich Niles had to shoot him. Ervin tells you about how they
17 ditched the car. It's marked up. They have to get it away.
18 They ditch it in a trailer park. Ervin is shot, bleeding and
19 Rich Niles calls a cab and then calls his mamma. "Mamma,
20 report the car stolen." We know that's accurate. You heard
21 that 911 call. Mamma is crying. What else did he tell her?
22 What else did her son tell her? And he goes on to the hotel
23 with them because he's got to get away. As soon as he can
24 though he gets away from them. He stays through the night.
25 He's got glass in his eye. He figures that Rich Niles goes

1 back to get the gun that he ditched over at the travel park,
2 and we know he got it back because the gun is gone when the
3 police arrive the next day to get the Ford Fusion and he gets
4 out of town until he's arrested. How do we know Ervin
5 Moore's story is accurate? Folks, it's the same story he
6 told in December of 2007 when he was arrested. There were no
7 deals in place. None. The police talked to him for about an
8 hour and a half. Mr. Hazzard wants to talk about the
9 prosecution talking to Mr. Moore for 90 minutes, an hour and
10 a half. Folks, it takes 90 minutes to watch a video of your
11 statement that lasted 90 minutes, and it's the same story he
12 tells today and he tells you from the stand when they began
13 that interview back in December of 2007 he tried to deny
14 things at first and then he was confronted with the evidence,
15 the evidence that been collected, the evidence against
16 Richard Niles, the evidence against Mokeia Hammond and the
17 evidence against himself and he says, ``Okay, I'll tell you
18 what happened,`` and it's the same story he told you when he
19 took this stand and accepted his guilt for his actions and
20 told you what happened on April 9th of 2007, but what else
21 corroborates Ervin Moore's story? What else corroborates his
22 testimony? Every bit of physical evidence, every bit of
23 testimony of those lay witnesses that were on the scene.

24 First, we have a dying declaration of James Salter. You
25 all remember the police officers two of them said they

1 extracted James from that Mustang and he's laying on the
2 ground gasping they ask him, "Who shot you," and he said,
3 "A couple of black dudes." Ervin Moore got out of the car,
4 checked on the dope, that's one, and then Richard Niles
5 approached on the passenger side and shot him, that's two.
6 That's a couple.

7 We have Angie Hooper. She tells you she is starting to
8 back her van out when she hears fireworks. Now, common sense
9 tells you you don't hear and automatically facing the place
10 where you can see exactly what you're hearing at the same
11 time. You hear pop, pop, those first two shots, fireworks,
12 where is it coming from? She turns and looks and she sees
13 the return fire. Like Mr. Barr said, five or six shots.
14 Well, we know Mr. Salter fired six shots and she sees those
15 five or six shots, but she heard the fireworks first. So,
16 who fired first? Richard Niles.

17 Let's go on over to Logan's Roadhouse. Mr. Watts,
18 Mr. Watts doesn't have anything to gain by his testimony
19 other than to tell you what he saw that day. Mr. Watts, who
20 is not even from the area, tells you what he saw that day.
21 He says he and his wife and their grandchildren were coming
22 out of Logan's Restaurant with a clear view of the Best Buy.
23 They hear what they think are fireworks, that initial pop,
24 pop, and they turn and look. What do they see? They see a
25 heavysset black male running, jumping from that Mustang over

1 to the Ford Fusion, not a tiny little fellow like Ervin
2 Moore. You saw him. He's a tiny thing but a heavyset black
3 male. Mr. Niles is a good bit bigger than Mr. Moore. What
4 else does Mr. Watts see? He sees a black female driving.
5 That's Mokeia Hammond. Once again by everybody's testimony
6 she's driving. When that car hops the curb, curb over in
7 Logan's Roadhouse Mr. Watts is close. What does he get a
8 view of? He sees two individuals in that car. Like Ervin
9 Moore told you he's down in the floorboard covering that eye
10 saying, "What did you do?" He sees a heavyset black male
11 in the back. It's happening fast. All you can tell is it's
12 a heavyset black male. Once again, not a tiny guy like Ervin
13 Moore but a big old fellow with black female driver. Ervin
14 Moore's story is the one that's adding up. Ervin Moore's
15 story is the one that's corroborated. Mr. Watts tell you
16 where they all are by his testimony but what else tells us
17 where everybody is sitting in the vehicle in that Ford Fusion
18 after this murder.

19 DNA, by everyone's testimony Mokeia Hammond is driving.
20 So, where is her blood found, her blood DNA, one in some
21 quadrillion chance of it being someone else's. It's in the
22 driver's seat. All that flying glass you're going to get
23 cut. Mokeia Hammond's blood is found in the driver's seat.
24 Where is Ervin Moore's found? Folks, you all remember this
25 diagram, this little blood smear here, maybe a handprint

1 where Ervin Moore reaches up after he's cupped that bloody
2 eye, grabs it to get out, where is it? My, oh, my, it's on
3 the passenger side of that Ford Fusion right where he said he
4 was. That's not a surprise. He told you, but where is
5 Richard Niles' DNA found? Is it found in the front seat like
6 he testified. He's in the front seat, all that flying glass,
7 none of his blood up front but it's in the back right behind
8 the driver, right where Gene Watts saw him, right where Ervin
9 Moore told you he was. Ervin Moore's story adds up. It's
10 corroborated. What other scientific evidence do we have
11 telling us where Richard Niles was? We have that
12 fingerprint.

13 Now, the Defense wants to agree with all of our experts
14 except these fingerprint guys because they know it is
15 severely detrimental to their case. Mr. Niles has said he's
16 never gotten out of the car. I mean, I think his first
17 statement to police was, "I've never even seen a white
18 Mustang. I don't deal with white people." Even in his
19 second statement, never got out of the car and even on his
20 testimony never got out of the car. So, they have to explain
21 away that fingerprint, must be a mistake. Folks, it's not a
22 mistake. We've got two fingerprints, only one was usable.
23 It's not that there weren't any fingerprints on the car.
24 We've got one usable fingerprint off that white Mustang
25 right where Richard Niles was. This isn't a car he's at all

1 the time. He leaves one fingerprint. Yeah, he's got a
2 bunch of them in the Ford Fusion. He's been driving it for a
3 few days. It's a rental car he's had. He's been getting in
4 and out. His fingerprints are all over there. He gets out
5 after he ditches the car. His fingerprints are all over
6 there. They're on glass bottles he's got in there, but that
7 fingerprint on that Ford Mustang right where he puts his hand
8 as he levels the pistol, "Give me your dope, boy. Give me
9 your dope," and he takes that marijuana up under his arm,
10 goes to turn, he's grabbing a gun. "The audacity he's
11 going to defend himself." Bam, bam, and he turns to jump in
12 the Ford Fusion right behind him. Where else do we find
13 fingerprints? Well, it's not a fingerprint. It's a palm
14 print and it's on the driver's side of that Ford Fusion near
15 the windshield on the doorpost just like if you're turning
16 from a vehicle after shooting somebody, murdering them, and
17 you run into it as you brace yourself to go jump around and
18 jump in the back seat to get away. "Drive, girl, drive,"
19 aiding and abetting, "You've got to get me out of here."
20 The robbery went bad.

21 Folks, that gunshot, let's talk about it for a second.
22 You heard Dr. Presnell explain exactly where the gunshot was,
23 where all the wounds were found on James Salter, and I say
24 all the wounds because there's one little bit of abrasions to
25 his lip but there's one gunshot wound. It's not through his

1 arm. It's not in his back. It's not on his left side or in
2 his head. It's under his arm in the rib cage. Folks, I
3 would submit to you if I'm sitting in my car seat and I go to
4 reach for a gun what's open, my rib cage. That's where the
5 fatal shot is. That's where the kill shot is. That's where
6 Richard Niles launched that first 38 projectile and killed
7 James Salter. Now, to hear Richard Niles' testimony he is
8 laid back in a seat firing behind a driver's seat only after
9 James Salter is laid across the seat with that wound, down
10 and firing. So, I guess Mr. Niles not only has 38 bullets,
11 they're magic because somehow they slid up under the seat
12 without causing damage and hopped into his rib cage.
13 Mr. Niles' story doesn't make sense. Ervin Moore's testimony
14 does.

15 What else do we have on the gun? Mr. Salter's defense,
16 you heard Agent Whitler, you heard the testimony about where
17 shell casings are found and there are six shell casings in
18 James Salter's gun. He's got an automatic, spits them out as
19 he shoots. There's two in the backseat, one over here on the
20 floorboard, another a little bit closer in between the seats
21 and in the ashtray, and folks, I submit to you when you get
22 shot, uh, it takes a second to recover even with adrenaline.
23 You pull your weapon and you see the Defendant Niles jumping
24 in that backseat. Where are you going to shoot first? Back
25 towards your attacker, the man who's killed you, given you

1 the mortal wound; and so, James reaches back, bam, first shot
2 strikes the upper doorpost and fragments, bam, he blows out
3 the window, glass is going everywhere, cuts Ervin Moore, cuts
4 Richard Niles, cuts Mokeia Hammond, they start to take off.
5 Those two shell casings are down. Bam, bam, bam, he's
6 shooting the car as it's pulling out. He's trying to get
7 some manner of defense. He's working on adrenaline. He's
8 trying to fight back. Folks, we know that's about how it
9 happened because where the shell casings are. The last shot
10 I believe he even shoots off his rearview mirror. He's going
11 into shock already and he drives out, and we find those 40
12 caliber shell casings from his gun, but what happened to the
13 38. We find a 38 projectile in his chest. We find another
14 38 projectile right there in the floorboard of his car. Bam,
15 bam, we find yet another 38 over on the other side of the
16 Ford Fusion, maybe, maybe just like Ervin Moore said.
17 Richard Niles fires again when he gets in the car and he -
18 when he's jumping in maybe he fired because that back window,
19 the side window is blown out, too, and it hits that van,
20 lands on the side, and Ervin Moore told you he heard about
21 ten shots total, six from James Salter. We know that, four
22 more from Richard Niles, and what do we find, what do we find
23 in Williamsburg County in the Defendant's house? Four, four
24 38 shell casings. Like Agent Whitler said, an automatic, it
25 spits those shells out, but the guns that shoots 38s those

1 tend to be revolvers, it's like luggage, folks, you take
2 those shell casings with you, maybe a souvenir of his first
3 kill, but we find this, those four 38 caliber shell casings
4 in his home, not on Ervin Moore.

5 Folks, whose story is corroborated by the testimony?
6 Whose story is corroborated by the evidence? It's Ervin
7 Moore's. He took the stand. Yeah, he entered a proffer,
8 yeah. He's going to do ten to 15 years. Yes, he's got a
9 record, but he told you, "If I lie I know the deal's off,
10 but I've also got a conscience. I'm ready to face my guilt.
11 My story is corroborated."

12 How about the Richard Niles? Well, folks, it doesn't
13 add up. His testimony does not add up. He gives one story
14 when he's arrested, "Didn't know anybody there, never been
15 to Best Buy, don't know white people, don't deal with them, I
16 don't know nothing." Then the police confront him with the
17 evidence. He needs a minute. He says, "I want to speak
18 with my attorney." The police say, "That's fine," and
19 they let him go on back, but he gets back in that jail cell
20 and he starts thinking, "Whew, they found the stolen car,
21 hmm, they got my fingerprints, hmm, they got a witness that
22 put me there, got to come up with something. Let me speak
23 with the officers again," and he comes out and gives a
24 second statement.

25 Now this time it's changed a little bit. "Okay, maybe

1 I was at Best Buy, but I didn't stop, and maybe I knew James
2 Salter, but it's only two months, and yeah, I had called him
3 just like the phone records say, but it was to buy a quarter
4 pound of marijuana," not Ervin Moore. As a matter of a fact
5 he never mentions Ervin Moore. He gives out a third suspect.
6 He calls him Keith, and now he's had two years, two years to
7 review all the evidence and say, got to explain this away.
8 He's had four days of trial where he's listened to all the
9 testimony, and then yesterday he tries to take the stand and
10 explain it away and it still doesn't add up. There's no way
11 he could be firing the gun from the back seat and that shot
12 land where he said it did. There's no way his DNA gets in
13 the backseat, his bloody DNA with him sitting up front.
14 Folks, it's the testimony who has everything to gain by
15 standing up here and trying to tell you a new story. Ervin
16 Moore is facing the consequences of his actions and it's time
17 that Mokeia Hammond and Richard Niles do the same. Together,
18 together they planned this robbery and what else do we find
19 in Williamsburg County?

20 Mr. Barr made a big deal about we didn't find a pound of
21 marijuana, that marijuana that was stolen but in the
22 Defendant's vehicle, not the one they reported stolen, but
23 the other vehicle what do we find? \$701, could it have come
24 from a marijuana sale? I don't know, but Mr. Barr elicited
25 the testimony that a pound of marijuana goes for about 650,

1 700. The only testimony as to any business dealings that
2 James Salter and Richard Niles had comes from somebody who
3 has got everything to gain, somebody who has had two years to
4 figure out a story. This is a relationship that is not
5 corroborated, no cell phone records, nothing. The only
6 business relationship they had was James was willing to sell
7 him some marijuana, and the Defendant wants you to believe
8 that he was there to pick up \$5,000 and yet he lets this guy
9 he barely knows, Ervin Moore, get out to go buy a pound of
10 marijuana first. Folks, that's what doesn't make sense. If
11 I'm owed \$5,000 you can bet I'm not going to go to somebody's
12 house and say, "Whew, tell you what, instead of picking up
13 my \$5,000 that you have for me right now, would you mind
14 giving this guy \$600 worth of marijuana or \$700 worth of
15 marijuana first." I'm going to get my money first. This is
16 drug money. I don't want the police to arrive and not - and
17 me not get paid. Folks, Mr. Niles' story does not make
18 sense. It doesn't make sense and you should not believe it.

19 I don't want to get any more long-winded than I have
20 been, folks. Together these two Defendants planned the
21 robbery. Mokeia Hammond sat right beside Richard Niles and
22 as he told both her and Ervin Moore, "I'm going to rob that
23 kid, James Salter." They weren't at Best Buy when he came
24 up with plan. He already had the gun up front. He tells
25 them, "We're going to rob him. We're going to hit a lick.

1 So, let's go, " and Mokeia does what? She drives him to the
2 murder scene, sits behind the wheel ready to go. She doesn't
3 go in to get CDs. She sits right there ready to go because
4 you've got to have a getaway driver. The hand of one is the
5 hand of all. Hand in hand they preplan this crime, this
6 armed robbery, and she is guilty for every act that took
7 place during that armed robbery. She is guilty of the murder
8 just as Richard Niles is. Together hand in hand they are
9 guilty.

10 Folks, like I said they are two sides of the same coin.
11 Put them away.

12 THE COURT: All right, ladies and gentlemen, that
13 concludes the closing arguments portion of this trial. We
14 been going at it a little while. I think I'm going to go
15 ahead and give you a little break before I charge you with
16 the law because that's going to take a little while also.
17 So, I'll excuse you back to the jury room to stretch your
18 legs, use the restroom, get a little something to drink.
19 We'll take about a 10, 15 minute break and then I'll bring
20 you back in to charge you with the law. Please do not
21 discuss this case even among yourselves at this time. It's
22 still too early for deliberations until after I've instructed
23 you on the law. So, please do not discuss this case. If you
24 have taken any notes still leave your notepads here in the
25 jury box, but I'll excuse you and bring you back in in a

1 short while. Thank you very much.

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

4 THE COURT: All right, anything before we take a
5 little recess?

6 MS. ELDER: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. BARR: No, sir.

9 MR. HAZZARD: No, Your Honor.

10 THE COURT: All right, let's stand in recess for
11 about 10 minutes, okay?

12 OFF THE RECORD

13 (On the record.)

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Thank you very much. Please be seated.
17 Anything from the State before we bring the jury in?

18 MR. RICHARDSON: Nothing from the State, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. BARR: Nothing from the Defendant Niles, Your
21 Honor.

22 MR. HAZZARD: Nothing on behalf of Defendant Mokeia
23 Hammond, Your Honor.

24 THE COURT: All right, thank you very much. Let's
25 bring the jury in.

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

3 THE COURT: All right, ladies and gentlemen, welcome
4 back.

5 All of the testimony and other evidence to be presented
6 in this case has now been presented and now is the time of
7 the trial when I charge you with the law to be applied in
8 this case. I'll give you a copy of these instructions in
9 written form and during your deliberations you may refer to
10 the instructions to guide your decision-making. However, you
11 must consider the instructions as a whole and not follow some
12 and ignore others. Please return the written instructions to
13 the Court at the time your verdict is rendered.

14 Now, I remind you that the fact that the Defendants in
15 this case were arrested, charged and indicted is not evidence
16 in this case and cannot be considered by you as evidence of
17 guilt in this case nor does the Defendants' arrest, charge
18 and indictment create any presumption or inference of guilt.
19 These documents are simply the formal written instruments
20 which contain the charges made against the Defendants. They
21 are the formal documents by which this case is brought into
22 this Court. The indictments in this case allege several
23 different crimes against each Defendant. These charges are
24 murder, armed robbery and possession of a weapon during the
25 commission of a violent crime. Each indictment charges a

1 separate and distinct offense. You must decide each
2 indictment separately on the evidence and the law applicable
3 to it uninfluenced by your decision as to any other
4 indictment. A Defendant may be convicted or acquitted on any
5 or all of the offenses charged. You'll be asked to write a
6 separate verdict of guilty or not guilty for each Defendant
7 on each indictment. There are two Defendants in this case.
8 Each of whom is charged with murder, armed robbery and
9 possession of a weapon during the commission of a violent
10 crime. The case of each Defendant and the evidence and the
11 law concerning that Defendant should be considered separately
12 and individually. Your verdict does not have to be the same
13 for both Defendants. The fact that you may find one
14 Defendant guilty or not guilty should not control your
15 verdict as to the other Defendant. Where more than one
16 person is charged with a crime, if the evidence warrants it,
17 you may convict one and acquit the other or you may acquit
18 both or you may convict both. It will depend upon your view
19 of the testimony and evidence. You must take each Defendant
20 and consider the evidence as to that Defendant and my
21 instructions to you on the law. You will then write a
22 separate verdict for each crime of guilty or not guilty for
23 each individual Defendant.

24 Now, the Defendants have pled not guilty to these
25 indictments and that plea puts the burden on the State to

1 prove the Defendants guilty. A person charged with
2 committing a criminal offense in South Carolina is never
3 required to prove his or her innocence. I charge you that it
4 is an important rule of the law that the Defendant in a
5 criminal trial no matter what the seriousness of the charge
6 may be will always be presumed to be innocent of the crime
7 for which the indictment was issued unless guilt has been
8 proven by evidence satisfying you of that guilt beyond a
9 reasonable doubt. This presumption of innocence does not end
10 when you begin your deliberations but it accompanies the
11 Defendant throughout the trial until you reach a verdict of
12 guilt based on evidence satisfying you of that guilt beyond a
13 reasonable doubt. The presumption of innocence is like a
14 robe of righteousness placed about the shoulders of the
15 Defendant which remains with the Defendant until it has been
16 stripped from the Defendant by evidence satisfying you of the
17 Defendant's guilt beyond a reasonable doubt. The presumption
18 of innocence is not a mere legal theory. It is not just a
19 legal phrase. It is a substantial right to which every
20 Defendant is entitled unless you the jury are satisfied from
21 the evidence of the Defendant's guilt beyond a reasonable
22 doubt.

23 Now, what is reasonable doubt in the law? A reasonable
24 doubt is the kind of doubt that would cause the reasonable
25 person to hesitate to act. Proof beyond a reasonable doubt

1 is proof that leaves you firmly convinced of the Defendant's
2 guilt. We know very few things in this world with absolute
3 certainty and in criminal cases the law does not require
4 proof that overcomes every possible doubt. If based on your
5 consideration of the evidence you are firmly convinced that
6 the Defendant is guilty of the crime charged you must find
7 the Defendant guilty. If on the other hand you think there
8 is a real possibility that the Defendant is not guilty you
9 must give the Defendant the benefit of the doubt and find the
10 Defendant not guilty. I remind you that during this trial
11 you and I have certain duties to perform. As the trial judge
12 it is my responsibility to preside over the trial of this
13 case and I also have the duty to rule on the admissibility of
14 the evidence offered during the trial. You are to consider
15 only the competent evidence before you. If there was any
16 testimony ordered stricken from the record in this case
17 during this trial you must disregard that testimony. You are
18 to consider only the testimony which has been presented from
19 the witness stand and any exhibits which have been made a
20 part of the record in this case.

21 I have the additional duty to charge you with the law
22 applicable to this case. As the presiding judge I am the
23 sole judge of the law of this case and it is your duty as
24 jurors to accept and apply the law as I now state it to you.
25 If you already have any idea as to what the law is or what

1 the law ought to be and it does not agree with what I now
2 tell you the law is you must disregard your idea of what the
3 law is or ought to be because you are sworn to accept the law
4 and apply the law exactly as I state it to you. In every
5 case tried in this court before a jury the jury becomes the
6 sole and exclusive judge of the facts in the case. A trial
7 judge cannot intimate, state, comment on or make any
8 statement to a trial jury about the facts in a case. Since
9 you the jury are the sole judge of the facts of this case you
10 are not to infer from what I have said during the progress of
11 this trial, in ruling upon admissibility of evidence or
12 otherwise or anything that I say now during the course of
13 these instructions to you that I have any opinion about the
14 facts in this case. The law does not allow me to have an
15 opinion about the facts in this case. This is a matter
16 solely for you the jury to determine. As jurors it is your
17 duty to determine the effect, value, weight and truth of the
18 evidence presented during the trial.

19 Now, there are two types of evidence which are generally
20 presented during a trial, direct evidence and circumstantial
21 evidence. Direct evidence is the testimony of a person who
22 claims to have actual knowledge of a fact such as an
23 eyewitness. It is evidence which immediately establishes the
24 main fact to be proved. Circumstantial evidence is proof of
25 a chain of facts and circumstances indicating the existence

1 of a fact. It is evidence which immediately establishes
2 collateral facts from which the main fact may be inferred.
3 Circumstantial evidence is based on inference and not on
4 personal knowledge or observation. The law makes absolutely
5 no distinction between the weight or value to be given to
6 either direct or circumstantial evidence, nor is it a greater
7 degree of certainty required of circumstantial evidence than
8 of direct evidence. You should weigh all of the evidence in
9 the case. After weighing all of the evidence if you are not
10 convinced of the Defendant's guilt beyond a reasonable doubt
11 you must find the Defendant not guilty. Now, necessarily,
12 you must determine the credibility of witnesses who have
13 testified in this case. Credibility simply means
14 believability. It becomes your duty as jurors to analyze and
15 to evaluate the evidence and determine which evidence
16 convinces you of its truth. In determining the believability
17 of witnesses who have testified in this case you may believe
18 one witness over several witnesses or several witnesses over
19 one witness. You may believe a part of the testimony of a
20 witness and reject the remaining part of the testimony of
21 that same witness. You may believe the testimony of a
22 witness in its entirety or reject the testimony of a witness
23 in its entirety. You may consider whether any witness has
24 exhibited to you any interest, bias, prejudice or other
25 motive in this case. You may also consider the appearance

1 and manner of a witness while on the witness stand.

2 Now, there has been evidence presented that a witness in
3 this case and the Defendant Richard Bill Niles, Jr., made
4 prior statements which are not consistent with their present
5 testimony. You may use this evidence to decide whether to
6 believe the witness and or believe the Defendant. You may
7 also use evidence of the earlier contradictory statements to
8 determine the truth of those statements. It is up to you to
9 decide whether to believe the earlier statements or the
10 testimony given at trial. If a witness is shown to have
11 knowingly testified untruthfully concerning any material
12 matter you may consider this in determining whether to trust
13 the witness's testimony as to other matters. You may reject
14 all testimony of that witness or give all or part of the
15 testimony the weight you think it deserves.

16 A person who has a past criminal record is competent to
17 testify during a trial. A past record does not affect the
18 ability of that witness to testify. The past record may only
19 be considered by you if at all in determining the witness's
20 believability. Remember you are the sole judges of the facts
21 in the case and of the believability of any or all of the
22 witnesses.

23 Now, the rules of evidence ordinarily do not permit
24 witnesses to testify to opinions or conclusions. An
25 exception to this rule exists for witnesses we call expert

1 witnesses. A witness who by education or experience has
2 become expert in some art, science profession or calling may
3 state an opinion as to relevant and material matter in which
4 the witness claims to be an expert and may also state the
5 reasons for the opinion. You should consider any expert
6 opinion received in evidence in this case and like any other
7 evidence give it the weight you think it deserves. If you
8 decide that the opinion of an expert witness is not based on
9 sufficient education and experience or if you conclude that
10 the reasons given in support of the opinion are not sound or
11 that the opinion is outweighed by other evidence you may
12 disregard the opinion entirely. An expert witness's
13 testimony is to be given no greater weight than that of any
14 other witness simply because the witness is an expert.
15 Further, you are not required to accept an expert's opinion
16 even though it is not contradicted.

17 Now, in this case the Defendant Mokeia Hammond has
18 chosen not to testify. I instruct you and emphasize that the
19 fact that the Defendant did not testify is not a factor to be
20 considered by you in any way in your deliberation and in your
21 consideration on the question of the guilt or innocence of
22 the Defendant. It must not be considered by you in any
23 manner whatsoever. A Defendant has the constitutional right
24 to remain silent and the assertion of this right must not be
25 considered by you in your deliberations. I repeat, under

1 your oath you are to draw no conclusion whatsoever from the
2 fact that this Defendant did not testify. The fact that this
3 Defendant did not testify should not even be discussed in the
4 jury room. The burden of proof, as I have stated to you, is
5 on the State. The Defendant is not required to prove her
6 innocence. The burden of proof remains on the State to prove
7 guilt beyond a reasonable doubt.

8 Now, the Defendants are charged with murder. To convict
9 the Defendants of this charge the State must prove beyond a
10 reasonable doubt that the Defendants killed another person
11 with malice aforethought. Malice is hatred, ill will or
12 hostility towards another person. It is the intentional
13 doing of a wrongful act without just cause or excuse and with
14 an intent to inflict an injury or under circumstances that
15 the law will infer an evil intent. Malice aforethought does
16 not require that malice exists for any particular time before
17 the act is committed but malice must exist in the mind of the
18 Defendant just before and at the time of the act it is
19 committed. Therefore, there must be a combination of the
20 previous evil intent and the act. Malice aforethought may be
21 express or inferred. These terms express and inferred do not
22 mean different kinds of malice but merely the manner in which
23 malice is shown to exist. It may be shown to exist either by
24 direct evidence or by inference from the facts and
25 circumstances which are proved. Express malice is shown when

1 a person speaks words which express hatred or ill will for
2 another or when the person prepared beforehand to do the
3 act which was later accomplished. For example, lying in
4 wait for a person or any other act of preparation going to
5 show that the deed was within the Defendant's mind would be
6 express malice. Malice may be inferred from conduct
7 showing a total disregard for human life. Inferred malice
8 may also arise when the deed is done with a deadly weapon.
9 A deadly weapon is any article, instrument or substance
10 which is likely to cause death or great bodily harm.
11 Whether an instrument has been used as a deadly weapon
12 depends on the facts and circumstances of each case.
13 If one intentionally kills another during the commission
14 of a felony the inference of malice may arise. If facts are
15 proved beyond a reasonable doubt sufficient to raise an
16 inference of malice to your satisfaction this inference
17 would simply be an evidentiary fact to be taken into
18 consideration by you along with all other evidence in the
19 case and you may give it the weight that you think, excuse
20 me, and you may give it the weight that you decide it should
21 receive.

22 The Defendants are also charged with armed robbery. In
23 order to prove this offense the State must first prove beyond
24 a reasonable doubt that the Defendants took personal property
25 from the person or presence of another person. Property is

1 in the presence of a person if it is within the person's
2 reach, inspection, observation or control so that the person
3 could if not overcome with violence or prevented by fear keep
4 possession of the property. The State must also prove beyond
5 a reasonable doubt that the Defendants carried the property
6 away intending to permanently deprive the owner of the
7 property and to keep the property for the Defendant's own
8 use. The slightest removal of the property or the complete
9 possession of the property, even for an instant by the
10 Defendants is sufficient to show a taking and carrying away
11 of the property. The taking and carrying away of the
12 property must have been done with violence or by putting the
13 owner of the property in fear of violence.

14 Finally, the State must prove beyond a reasonable doubt
15 that the Defendant was armed with a deadly weapon during the
16 robbery. A deadly weapon is any article, instrument or
17 substance which is likely to cause death or great bodily
18 harm. Whether an instrument has been used as a deadly weapon
19 depends on the facts and circumstances of each case. A
20 pistol or gun may be a deadly weapon.

21 The Defendants are also charged with possession of a
22 weapon during the commission of a violent crime. To convict
23 the Defendants of this charge the State must prove beyond a
24 reasonable doubt that the Defendants were in possession of a
25 firearm or visibly displayed what appeared to be a firearm

1 during the commission of a violent crime. A firearm means
2 any machine gun, automatic rifle, revolver, pistol or any
3 weapon which will, which will, is designed to or may be
4 readily converted to expel a projectile. In order to find
5 the Defendants guilty of possession of a weapon during
6 commission of a violent crime you must first find the
7 Defendants guilty of either committing a violent crime or
8 attempting to commit a violent crime. Murder and armed
9 robbery are both violent crimes and felonies. Now, if a
10 crime is committed by one - excuse me, if a crime is
11 committed by two or more people who are acting together in
12 committing a crime the act of one is the act of all. A
13 person who joins with another to commit an unlawful act is
14 criminally responsible for everything done by the other
15 person which happens as a probable or natural consequence of
16 the acts done in carrying out the common plan and purpose.
17 If two or more people are together, acting together,
18 assisting each other in committing the offense, the act of
19 one is the act of all or as it is sometimes said the hand of
20 one is the hand of all. Prior knowledge that a crime is
21 going to be committed without more is not sufficient to make
22 a person guilty of that crime. Mere knowledge that another
23 person is going to commit a crime, even if the Defendant is
24 present when the crime is committed is not sufficient to
25 convict a person as a principal. Guilt as a principal is

1 shown by actual or constructive presence at the scene as a
2 result of a prior arrangement. Therefore, a finding of a
3 prior arranged plan or common scheme is necessary for a
4 finding of guilt as a principal. The State must prove
5 beyond a reasonable doubt by competent evidence the theory of
6 the hand of one is the hand of all. A principal in a crime
7 is one who either actually commits the crime or who is
8 present aiding, abetting, assisting in the committing of the
9 crime. When a person does an act in the presence of and with
10 the assistance of another the act is done by both. Where two
11 or more acting with a common plan or intent are present at
12 the commission of a crime it does not matter who actually
13 commits the crime, all are guilty, the hand of one is the
14 hand of all. Present at the commission of a crime means to
15 be sufficiently near to aid and abet and assist in the
16 commission of the crime. However, mere presence at the scene
17 of a crime is not sufficient to convict one as a principal on
18 the theory of aiding and abetting. Intent is also a
19 necessary element for there must have been a common design or
20 intent to commit the crime and the crime must have been
21 committed pursuant thereto with the person aiding and
22 abetting by some overt act. Intent means intending the
23 result which actually occurs, not accidentally or
24 involuntarily. Intent may be shown by acts and conduct of
25 the Defendant and other circumstances from which you may

1 naturally and reasonably infer intent. The State must prove
2 these elements beyond a reasonable doubt. Now, mere presence
3 at the scene is not sufficient to prove someone guilty of a
4 crime. A Defendant's presence where a crime is being
5 committed or mere association with a person who commits a
6 crime does not make a Defendant an accomplice or an aider and
7 abettor of the person committing the crime. The burden is on
8 the State to prove every element of the crime charged. If
9 you find after reviewing all of the evidence that the State
10 has proved that the Defendant was only present at the scene
11 of the crime and that they have not proved beyond a
12 reasonable doubt any other participation in the crime then
13 you must find the Defendant not guilty. The law is that
14 proof of being at the scene of the crime is not sufficient to
15 find someone guilty.

16 Now, the Defendant Richard Bill Niles, Jr., has raised
17 the defense of self-defense. Self-defense is a complete
18 defense and if it is established you must find the Defendant
19 not guilty. The State has the burden of disproving
20 self-defense by proof beyond a reasonable doubt. If you have
21 a reasonable doubt of the Defendant's guilt after considering
22 all of the evidence, including the evidence of self-defense,
23 then you must find the Defendant not guilty. On the other
24 hand if you have no reasonable doubt of the Defendant's guilt
25 after considering all of the evidence, including the evidence

1 of self-defense, then you must find the Defendant guilty.
2 The following elements are required to establish
3 self-defense. First the Defendant must be without fault in
4 bringing on the difficulty. If the Defendant's conduct was
5 the type which was reasonably calculated to and did provoke a
6 deadly assault the Defendant would be at fault in bringing on
7 the difficulty and would not be entitled to an acquittal
8 based on self-defense. The second element of self-defense is
9 that the Defendant was actually in imminent danger of death
10 or serious bodily injury or that the Defendant actually
11 believed he was in imminent danger of death or serious bodily
12 injury. If the Defendant was actually in imminent danger it
13 must be shown that the circumstances would have warranted a
14 person of ordinary firmness and courage to strike the fatal
15 blow to prevent death or serious bodily injury. If the
16 Defendant believed he was in imminent danger of death or
17 serious bodily injury it must be shown that a reasonably
18 prudent person of ordinary firmness and courage would have
19 had the same belief. In deciding whether the Defendant
20 actually was or believed he was in imminent danger of death
21 or serious bodily injury you should consider all of the facts
22 and circumstances surrounding the crime, including the
23 physical condition and characteristics of the Defendant and
24 the victim. The Defendant does not have to show that he was
25 actually in danger. It is enough if the Defendant believed

1 he was in imminent danger and a reasonably prudent person of
2 ordinary firmness and courage would have had the same belief.
3 The Defendant has the right to act on appearances, even
4 though the Defendant's beliefs may have been mistaken. It
5 is for you to decide whether the Defendant's fear of
6 immediate danger of death or serious bodily injury was
7 reasonable and would have been felt by an ordinary person in
8 the same situation.

9 A final element of self-defense is that the Defendant
10 had no other probable way to avoid the danger of death or
11 serious bodily injury than to act as the Defendant did in
12 this particular instance. A person cannot be required to
13 make an exact calculation as to the degree or amount of force
14 which may be needed to avoid death or serious bodily harm.
15 Therefore, in self-defense the Defendant has the right to use
16 the force needed to avoid death or serious bodily harm. The
17 force used in self-defense does not have to be limited to the
18 degree or amount of force used by the victim. The Defendant
19 has the right to use so much force as appeared to be
20 necessary for complete self protection and which a person of
21 ordinary reason and firmness would have believed to be needed
22 to prevent death or serious bodily harm. Under the law of
23 self-defense the Defendant may take another's life in the
24 defense of others. The right to intervene to protect another
25 person is subject to the same rights and limitations as the

1 right of self-defense. The Defendant may take the life of a
2 person who assaults a friend, relative or bystander if that
3 friend, relative or bystander would've had the right of
4 self-defense. To show that the person being defended has the
5 right of self-defense it must first be shown that the person
6 being defended and the Defendant were both without fault in
7 bringing about the difficulty. If the conduct of the person
8 defended or if the Defendant was the type which was
9 reasonably calculated to and did provoke a deadly assault the
10 person would be at fault in bringing on the difficulty and
11 would not have the right of self-defense. Therefore, the
12 Defendant would not have the right to use deadly force in
13 defending that person. The defense of another person is
14 excusable if the Defendant had reasonable grounds to believe
15 and in good faith did believe that the person being defended
16 was in imminent danger of death or serious bodily harm from
17 the victim. In deciding whether the person defended actually
18 was or that the Defendant actually believed the person was in
19 imminent danger of death or serious bodily injury you should
20 consider all the facts and circumstances surrounding the
21 crime. In order to be entitled to defend another the person
22 defended must have had no other probable way to avoid the
23 danger of death or serious bodily injury than to act as the
24 Defendant did in this particular instance.

25 Now, there are several possible verdicts which you may

1 find for each Defendant in this case. No significance should
2 be given to the order in which I state these possible
3 verdicts to you. I simply must state one possible verdict
4 first, another second and so on. As to the Defendant,
5 Richard Bill Niles, Jr., you may find this Defendant guilty
6 or not guilty on one, two or all three of the charges against
7 him. The only limitation on your verdict is that you cannot
8 find this Defendant guilty of being in possession of a weapon
9 during the commission of a violent crime without also finding
10 him guilty of either murder or armed robbery or both.

11 As to the Defendant Mokeia Hammond you may find her
12 guilty or not guilty on one, two or all three of the charges
13 against her. The only limitations on your verdict regarding
14 this Defendant is that you cannot find this Defendant guilty
15 of any crime unless you likewise find the Defendant Richard
16 Bill Niles, Jr., guilty of that same crime. Further, you
17 cannot find this Defendant guilty of being in possession of a
18 weapon during the commission of a violent crime without also
19 finding her guilty of either murder or armed robbery or both.

20 Ladies and gentlemen, your verdict must be a unanimous
21 one. Mr. Foreman, when the jury agrees on a verdict you will
22 write the verdict on the back of the indictment of that
23 particular charge and sign your name as foreperson. When the
24 jury has reached a verdict on all charges for both
25 Defendants, knock on the jury room door and inform the

1 bailiff that you have reached a verdict. At that time we'll
2 receive you back into the courtroom. So, we have, here are
3 the indictments and on the face of the indictment you will
4 see that there is a portion on each indictment for burglary.
5 When you reach a decision on that particular indictment for
6 that particular Defendant you'll either write guilty or not
7 guilty in the verdict portion, sign your name and date the
8 verdict form. When you've reached a decision on all of the
9 indictments for all of the Defendants knock on the door and
10 tell the bailiff that you have reached a verdict.

11 Now, I'm going to return you to your jury room at this
12 point in time, but still it is not time to begin your
13 deliberations. I have to go over with the attorneys to see
14 if they have any challenges to my instructions, any
15 additional charges or anything of that nature. If they do,
16 I'll bring you back in and will charge you. If they don't
17 I'll send word with the exhibits back to the jury room that
18 you can begin your deliberations.

19 Now, I understand that we have got lunch ordered for
20 you. When lunch arrives I will leave it entirely up to you.
21 If you want to stop your deliberations and eat lunch without
22 deliberating you can do that. If you want to continue your
23 deliberations while you're eating lunch I'll allow you to do
24 that. The only restriction is that you do not deliberate
25 this case while anyone else is in the jury room. When

1 someone is delivering the lunch to you or one of the bailiffs
2 is bringing you something to drink or whatever the case may
3 be cease your deliberations while someone else is in the jury
4 room and deliberate only when it is - when the jury is in the
5 room. Other than that it'll be up to you to decide when and
6 how you want to deliberate in this case. So, I'll excuse you
7 back to the jury room but please do not begin any
8 deliberations until I instruct you to do so. If you brought
9 pads and if you took notes you will be allowed to take those
10 pads and notes back to the jury room with you. However,
11 remember my prior instructions. Your notes are for you
12 personally. Your notes are not to be used to influence any
13 other juror because some jurors take notes better than
14 others. Some remember better than others. So, your notes
15 are personal to you to refresh your memory during the
16 deliberation process. Thank you very much and you may now go
17 back to the jury room.

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

20 THE COURT: All right, we've already discussed my
21 closing charges to some degree on a prior record. Is there
22 anything different that has not been raised heretofore that
23 you think needs to be charged or challenged?

24 MS. ELDER: No, sir, Your Honor.

25 MR. RICHARDSON: Nothing from the State.

1 THE COURT: Any from the Defense?

2 MR. BARR: Nothing from the Defendant Niles.

3 MR. HAZZARD: Your Honor, just renew the objection
4 regarding the failure to charge the mala in se precept from
5 Gore v. Leeke.

6 THE COURT: All right, your challenges is noted.
7 It's denied. Anything before we allow them to begin their
8 deliberations?

9 MS. ELDER: No, sir, Your Honor.

10 THE COURT: All right, if we can go ahead and get the

11 ----

12 MR. HAZZARD: Your Honor ---

13 THE COURT: Yes.

14 MR. HAZZARD: --- just out of an abundance of
15 precaution I want to make sure that the jury is sure on the
16 protocol for lunch, specifically if they decide to have lunch
17 and not deliberate that none of them can deliberate, not like
18 four can - everybody is eating but four is sitting over here
19 talking about the case while the other eight are eating and
20 not talking about it. I just want to make sure they know
21 that, you know, either everybody is deliberating or nobody is
22 deliberating.

23 THE COURT: All right, let's bring the jury back in
24 and I will make that plain to them.

25 MR. RICHARDSON: And Your Honor, we have reviewed all

1 the exhibits.

2 THE COURT: All right, good.

3 (Whereupon, the following takes place in the presence
4 the jury.)

5 THE COURT: Ladies and gentlemen, I may have been
6 somewhat delinquent in my instructions to you on deliberating
7 during lunch and I wanted to make sure that everyone clearly
8 understands or understood that if you choose to deliberate
9 during your lunch break then everyone must deliberate during
10 that lunch break. If you choose not to deliberate during
11 lunch then no one can deliberate during lunch, none of the
12 jurors. In other words it's got to be a joint decision where
13 all 12 of you will participate during deliberations while you
14 eat lunch or that none of you will participate in
15 deliberations while you eat lunch. In other words we can't
16 have some deliberating and others not; okay? And I just
17 wanted to make that sure. I don't think I explained that
18 properly to you and I apologize for that, but other than that
19 we'll send you back to the jury room with the evidence, the
20 instructions and the indictments and allow you to begin your
21 deliberations. Thank you very much.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, anything before they begin
25 deliberations?

1 MR. RICHARDSON: No, sir, Your Honor.

2 MR. BARR: No, Sir.

3 MR. HAZZARD: Nothing from Defendant Hammond.

4 THE COURT: All right, now, these - the indictments
5 that I'm sending back I think I've been given copies of the
6 indictments. Are these sufficient? They - are these the
7 ones we want to send back or do we have the originals?

8 MS. ELDER: Where are the original indictments?

9 THE CLERK: I think you have the originals.

10 THE COURT: These are - this is what I was given and
11 I don't know that - they don't look like they contain
12 original signatures or stamps.

13 MR. HAZZARD: Your Honor, can we review those?

14 THE COURT: Yes, if you want to come take a look at
15 them. Wait a minute. I've got them right here. They were
16 stuck under the jury list. Sure do. I had them stuck with
17 Mr. Moore's sentencing sheet from when he pled guilty. Yes,
18 these are the originals here. They were with Mr. Moore's and
19 his sentencing sheet.

20 MR. HAZZARD: No objection to the form of the Hammond
21 indictments/verdict form on behalf of Defendant Mokeia
22 Hammond, Your Honor.

23 MR. BARR: None on Defendant Niles.

24 MS. ELDER: None from the State, Your Honor.

25 THE COURT: All right, all right, there being no

1 objection from the State or either Defendant regarding these
2 indictments we'll go ahead and send the indictments, the jury
3 charge, the exhibits with instructions that the jury can
4 begin their deliberations.

5 All right, we'll stand in recess until the jury has
6 reached a verdict.

7 (Whereupon, deliberations begin at 12:08 p.m.)

8 OFF THE RECORD

9 (On the record.)

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 (Question from jury at 12:30 p.m.)

13 THE COURT: All right, do we need your clients here
14 or not? I've gotten a request from the jury.

15 MR. BARR: I would waive my client's presence, Your
16 Honor.

17 MR. HAZZARD: Waive as well, Your Honor.

18 THE COURT: All right, I've gotten a note from the
19 foreman of the jury that says, "Please provide the testimony
20 and transcripts of the two eyewitnesses Hooper and Watts."
21 I was going to let them know first of all that I cannot
22 provide them with a transcripts because we don't have that
23 capability. I will allow them to listen to the testimony of
24 the two witnesses, the recorded testimony but they'll need to
25 listen to the entire testimony, the direct, the cross, the

1 redirect or whatever the case may be. The question is do we
2 want to call them back in or I was thinking about just
3 writing that in response on their note saying that
4 transcripts are not available, recorded testimony can be
5 played back or the entire testimony of these witnesses can be
6 played back if the jury chooses and for them to let us know
7 and if they want to hear them we'll bring them back in, set
8 it up and play it for them.

9 MS. ELDER: Your Honor, I don't have any objection to
10 sending a note back there. My understanding is though if
11 they only want to hear sections of testimony they would have
12 the option of doing that rather than hearing the entire
13 testimony. I don't know what there is they're looking for
14 but ---

15 THE COURT: Well, I don't know what they're looking
16 for either. It just says, "Please provide the testimony,"
17 and that's why when they said the testimony to me it leaves
18 they want to hear what these witnesses had and they're not
19 giving any indication as to whether or not they want to hear
20 the direct, the cross or anything. They just said the
21 testimony. So ---

22 MR. HAZZARD: I would submit to the Court notify them
23 that obviously the transcript is not available but they are
24 allowed to listen to the testimony of both witnesses in their
25 entirety.

1 MR. BARR: I would concur.

2 THE COURT: Any objection? Or how about if I just
3 put it and said on the response note, it says, "Please
4 provide the testimony and transcripts of the two eyewitnesses
5 Hooper and Watts." I just put transcripts are not
6 available. You can hear the recorded testimony, the court
7 reporter's recorded testimony.

8 MS. ELDER: That's sufficient for the State, Your Honor.

9 MR. HAZZARD: No objection.

10 MR. BARR: No objection.

11 THE COURT: All right.

12 I think what I'm going to do is I'm going to put you may
13 listen to the recorded testimony in open court.

14 MS. ELDER: Yes, sir.

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: So, they could come back in here and
17 listen to it. I don't want them to think they can take
18 anything back there.

19 MR. HAZZARD: For clarification that note would be made
20 a Court's Exhibit; right?

21 THE COURT: Yeah, I'm going to make this as a Court's
22 Exhibit, be Court's Exhibit Two, I believe; isn't it?

23 (Whereupon, Court's Exhibit Two [Question from Jury]
24 marked.)

25 THE COURT: All right, the note dated 3-13-09,

1 "Please provide the testimony and transcripts of the two
2 eyewitnesses, Hooper and Watts, signed David Kahanamoku,
3 whatever, the foreman's name. I have written, if you want to
4 inspect it you can, I have written, "Transcripts are not
5 available. You may listen to the recorded testimony in open
6 court. Please let the bailiff know what you want to do."
7 Agreeable?

8 MS. ELDER: Yes, sir.

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: We'll mark that on the back Court's
11 Exhibit Two.

12 MR. HAZZARD: No objection to the form of the Court's
13 response.

14 THE COURT: All right, and let's go ahead and take
15 that and find out what they want to do or just give them the
16 note. I'm assuming they will contact the bailiff if they
17 want to come back in.

18 OFF THE RECORD

19 (On the record.)

20 (Question from jury at 1:34 p.m.)

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, during the, during our lunch
24 break I got two requests from the jury. Number one, the
25 request was, "Please bring in the easel from the courtroom

1 so we can display the large, larger pictures more easily."
2 I just directed the bailiff to take the easel into the, into
3 the jury room for them. We'll mark that as Court's Exhibit
4 Four.

5 (Whereupon, Court's Exhibit Four [Question from Jury]
6 marked.)

7 THE COURT: The next request states, "We would like
8 to hear the testimony of the two eyewitnesses, Hooper and
9 Watts." So, I think we'll bring them in and have that
10 testimony played back for them; okay? They bringing your
11 clients in?

12 MR. HAZZARD: That's correct, Your Honor.

13 MR. BARR: They said it would be a minute or so.

14 THE COURT: Oh, here they come.

15 I think first Ms. Hooper's testimony was first and
16 you're ready to go on that?

17 REPORTER: Yes, sir.

18 THE COURT: All right, anything before we bring
19 the jury back in?

20 MR. RICHARDSON: No, sir, Your Honor.

21 MR. BARR: No, sir.

22 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
23 Your Honor.

24 THE COURT: All right, let's bring the jury in.

25 (Whereupon, the following takes place in the presence of

1 the jury.)

2 THE COURT: All right, ladies and gentlemen, welcome
3 back. I understand that you would like to hear the testimony
4 of the two witnesses, Angie Hooper and Gene Watts; is that
5 correct?

6 FOREPERSON: Correct.

7 THE COURT: All right, as I told you when I sent back
8 we do not have printed transcripts. So, there's nothing to
9 read, but we can play back their taped testimony and we'll do
10 that for you. If you have trouble hearing the testimony then
11 our court reporter can read back the testimony. I prefer to
12 play back the testimony if you can understand what is being
13 said and you should be able to. I know you'll be able to -
14 the question will be whether or not we can get the volume
15 loud enough for you to hear. If not then let me know and
16 we'll read what needs to be read; okay?

17 All right, thank you very much. The first, the first,
18 we'll take Ms. Hooper first and then Mr. Watts after that.

19 (Whereupon, testimony of Angie Hooper played in open
20 court.)

21 THE COURT: All right, ladies and gentlemen, that is
22 the testimony of Ms. Hooper. Now we'll fast forward until we
23 get to the testimony of Mr. Watts.

24 (Whereupon, testimony of Eugene Watts played in open
25 court.)

1 THE COURT: All right, ladies and gentlemen, that's
2 the testimony of Mr. Watts. I'll excuse you back to the jury
3 room to resume your deliberations. Thank you very much.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, I'm going to mark this
7 question, this will be Court's Exhibit, Court's Exhibit Five.

8 (Court's Exhibit Five [Question from Jury] marked.)

9 THE COURT: We'll stand in recess until they have a
10 verdict or have another question; all right?

11 MS. ELDER: Thank you, Your Honor.

12 MR. RICHARDSON: Thank you, Your Honor.

13 OFF THE RECORD

14 (On the record.)

15 (Question from Jury at 3:00 p.m.)

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right, we've received two questions
19 from the jury. I don't - they were both given to me, I don't
20 know which order.

21 First question, number one, "Can the Defendant be
22 guilty of armed robbery if doubt exists as to his actual
23 knowledge of it prior to the act of robbery," and I think
24 the answer to that is no, that you've got to have - if there
25 is doubt as to whether or not the Defendant knew there was a

1 robbery that was going to take place then you can't have
2 armed robbery. Anything further from the State, from the
3 Defense on that?

4 I'll read it to you again, ``Can the Defendant be guilty
5 of armed robbery if doubt exists as to his actual knowledge
6 of it prior to the act of robbery?''

7 MS. ELDER: Reasonable doubt, I assume.

8 THE COURT: It just says doubt. ``Can the Defendant
9 be guilty of armed robbery if doubt exists as to his actual
10 knowledge of it prior to the act of robbery?''

11 MR. RICHARDSON: Your Honor, without drawing any undue
12 inference to any particular charge, I mean, they could be
13 recharged on reasonable doubt. They could be recharged on
14 armed robbery or the Defendant can be found guilty of one,
15 two, three charges or none of the charges.

16 THE COURT: Well, but I mean, let's respond to their
17 question. They've asked a question ---

18 MR. RICHARDSON: Well, they're not talking about a -
19 whether it's a reasonable doubt or not. They're just saying
20 a doubt.

21 MS. ELDER: We would ask that that question be
22 answered with the charging of armed robbery, the recharge of
23 armed robbery.

24 THE COURT: No, with doubt and all of that, I'd
25 recharge them on reasonable doubt, armed robbery, yeah, I

1 mean, I could do it that way.

2 MR. HAZZARD: Your Honor, I would submit that you can
3 respond appropriately to their question and then refer them
4 because they do have your charge in the jury room with them
5 and then refer them to those specific sections. So, respond
6 appropriately to their question, answer their question as the
7 Court wishes to do to give them answer and then to refer them
8 to those particular sections, the charge of armed robbery,
9 the charge of reasonable doubt.

10 MS. ELDER: Your Honor, I don't know that - I think
11 it is, there's certainly questions in my mind as to exactly
12 what they're asking and I think that question could be
13 interpreted a couple of different ways as far as doubt,
14 reasonable doubt, if it's doubt he knew before armed robbery
15 happened or just prior to it happening. I would - I have no
16 problem with as Mr. Hazzard says to respond by only saying
17 please see juror instruction A, B and C for the answer to
18 this question and refer them back to the charge, but I don't
19 know that it would be appropriate for the Court to say yes or
20 no because that's a determination that they're going to have
21 to make based on the charge.

22 THE COURT: All right, then I can just say please
23 refer to the Court's instructions as to reasonable doubt and
24 as to armed robbery.

25 MS. ELDER: We'd have no objection to that, Your

1 Honor.

2 THE COURT: Okay.

3 MR. BARR: The Defendant Niles would not object to
4 that, Your Honor.

5 THE COURT: All right. Let's see. All right, I
6 wrote, "Please refer to the Court's instructions for
7 reasonable doubt and armed robbery."

8 Now, the next question, "Can the Defendant be found
9 guilty of murder and not guilty of armed robbery?"

10 MS. ELDER: Your Honor, my suggestion again if we're
11 going to be consistent in what we're sending back there I
12 believe that was covered. I can't remember on what page of
13 Your Honor's instructions, but I think it was toward the very
14 end where you indicated there's no - you can find the
15 Defendant guilty of one, two, one of these charges, both of
16 these charges, three of these charges and none of them. I
17 believe that's, without looking at it, was something of that
18 nature.

19 THE COURT: I guess on that one I would say, "Please
20 refer to the Judge's instructions regarding murder" - well,
21 let's - let me see. I've got it here.

22 MS. ELDER: Sounds to me like they're asking about
23 that last page that Your Honor gave as far as the jury
24 verdict itself.

25 THE COURT: See, I'm not so sure. I'm thinking it

1 might be that. I'm thinking they're also wondering can we
2 find him guilty of murder if we - if the only grounds of
3 malice is armed robbery. In this case if they're using armed
4 robbery to show malice or to infer malice what other basis do
5 we have? So, I think I'm going to say or I'll get it, refer
6 to the Court's instructions on murder and jury verdict.

7 MS. ELDER: The State would have no objection to
8 that, Your Honor.

9 MR. BARR: Your Honor, this is a bit perplexing
10 because if they're asking whether or not in this particular
11 case whether or not they would have to say that Mr. Niles was
12 in the process of robbing Mr. Salter when the death occurred
13 whether or not they could find him guilty of murder without
14 saying that he was actually robbing Mr. Salter at that time
15 ---

16 THE COURT: Well, let me ask the State on that, what,
17 what do we have in evidence to indicate malice other than the
18 State's argument that there was an armed robbery?

19 MS. ELDER: There's use of a deadly weapon, Your
20 Honor.

21 MR. BARR: All right.

22 THE COURT: Okay, yeah, you've got the use of a
23 deadly weapon.

24 MR. BARR: But again, the weapon is being used in a
25 robbery.

1 MS. ELDER: Your Honor, if they - Your Honor, they
2 could very well believe that there was no robbery and there
3 was some argument between Ervin Moore and the victim and Mr.
4 Niles jumps in with his gun and starts shooting first. I
5 mean, they very well can believe that, that it not be armed
6 robbery at the point of the robbery but that it becomes a
7 dangerous situation in the use of a deadly weapon or deadly
8 force.

9 MR. BARR: But there's nothing in the record to
10 support that. Nobody put up any evidence that said that
11 happened.

12 MS. ELDER: Well, sure, they did. Ervin Moore said
13 he got in the car and they got up and said he was trying to
14 get out of the car, he never had a gun and he was trying to
15 get out of the car with the dope without paying for it,
16 that's not an armed robbery if you believe that, it's a
17 strong arm robbery.

18 THE COURT: Yeah, I agree. I think I'm just going to
19 put so it's kind of in conformity with the other that,
20 "Please refer to the Court's instructions regarding murder
21 and jury verdict."

22 MR. HAZZARD: I would also ask that the jury be
23 instructed to refer back also to the Court's instructions on
24 reasonable doubt because they mention a doubt and a doubt
25 exists.

1 THE COURT: That's on the other question.

2 MS. ELDER: Right.

3 THE COURT: And I put on there to refer to the
4 instructions on reasonable doubt. So, on the first question,
5 "Can the Defendant be guilty of armed robbery if doubt
6 exists as to his actual knowledge of it prior to the act of
7 robbery," I'm answering by saying, "Please refer to the
8 Court's instructions for reasonable doubt and armed
9 robbery." Where it says, "Can the Defendant be found
10 guilty of murder and not guilty of armed robbery," I'm
11 putting, "Please refer to the Court's instructions for
12 murder and jury verdict."

13 MR. BARR: Again, Your Honor, I have a concern
14 because what they're asking is can the Defendant Niles be
15 found guilty of murder if he didn't go to this scenario with
16 the intention, if he had no idea that, that Moore is going to
17 rob Salter then can he be found guilty of murder separate and
18 apart from that. Again ---

19 THE COURT: Well, I think your argument is is that he
20 cannot be found guilty of murder unless they also find him
21 guilty of armed robbery.

22 MR. BARR: Yes.

23 THE COURT: And I don't know that that's the case. I
24 don't think that's the law.

25 MR. BARR: Well, not necessarily the law but in this

1 particular case is that what the jury is actually asking.

2 THE COURT: Okay.

3 No, I just say let's go with the way I've got it. We'll
4 do it this way. I'll note your objection to my response, but
5 I'll go ahead and mark it this way. All right?

6 MR. BARR: Okay.

7 THE COURT: All right, the first one, "Can the
8 Defendant be guilty of armed robbery if doubt exists as to
9 his actual knowledge of it prior to the act of robbery?"
10 "Please refer to the Court's instructions for reasonable
11 doubt and armed robbery." Mark that as Court's Exhibit Six.

12 (Whereupon, Court's Exhibit Number Six [Question from
13 jury] marked.)

14 THE COURT: The next question, can the Defendant be
15 found guilty of murder and not guilty of armed robbery,
16 please refer to the Court's instructions for murder and jury
17 verdict, be Court's Exhibit Seven.

18 (Whereupon, Court's Exhibit Seven [Question from Jury]
19 marked.)

20 THE COURT: Any objections to me just sending the
21 notes back in that regard?

22 MS. ELDER: No, sir, Your Honor.

23 MR. HAZZARD: No, Your Honor.

24 THE COURT: All right, Mr. Barr?

25 MR. BARR: Just the earlier objection.

1 THE COURT: Subject, subject to your earlier
2 objections, all right.

3 All right, if you'd take that back and we'll stay -
4 stand in recess unless there's another question or if the
5 jury has - reaches a verdict.

6 MS. ELDER: Thank you, Your Honor.

7 THE COURT: Thank you.

8 OFF THE RECORD

9 (On the record.)

10 (Question from jury at 5:12 p.m.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Thank you very much. Please be seated.

14 All right, the jury has come back with another question.

15 States, "What is the definition of aiding and abetting?"

16 So, I have pulled the definition and my initial information

17 is just to advise them on the law of aiding and abetting

18 which states that, "A person who is present at the scene of

19 the crime and intentionally or through a common plan aided,

20 abetted or assisted in the commission of that crime through

21 some overt act is guilty as an accomplice. To be liable as

22 an accomplice the Defendant must have knowledge of the

23 principal's criminal conduct. Mere presence at the scene of

24 the crime is not sufficient to establish guilt as an

25 accomplice. Intentionally means willfully, intending the

1 result which actually occurs, not accidentally or
2 involuntarily." That came straight from the charge book.
3 Anything from the State on - in regards to that response?

4 MS. ELDER: Your Honor, I would, in addition to that
5 I would also ask the Court to instruct them to also refer to,
6 in addition to that definition refer to Your Honor's
7 instruction of hand of one and mere presence, not necessarily
8 recharge them on those but also just as we did before also
9 see Court's prior instructions on hand of one and mere
10 presence because they're so interrelated.

11 THE COURT: All right, anything from the Defense?
12 I'm inclined to do that, to - the question is just tell them
13 to refer to that or to bring them back in? Let me hear from
14 the Defense.

15 MR. HAZZARD: Well, if you intend to send in the
16 written definition then, you know, they're on the same
17 standing with all three things. They have the written
18 definition in writing and then they have the reference to the
19 charge in writing and that would be appropriate.

20 I would ask simply consideration of should they be
21 given the definition of what the term overt means.

22 THE COURT: They haven't asked for it. That's why,
23 why I haven't. So, I'll do that. I've got this written
24 instruction for aiding and abetting. Let's mark that as
25 Court's Exhibit Eight.

1 (Whereupon, Court's Exhibit Number Eight [Question from
2 Jury] marked.)

3 THE COURT: I'll send in, in response what is the
4 definition of adding and abetting, I'll put, "Please refer
5 to Court's instructions regarding hand of one and mere
6 presence and attached instructions on aiding and abetting."
7 Is that sufficient?

8 MS. ELDER: It is from the State, Your Honor.

9 MR. HAZZARD: No objection, Your Honor.

10 MR. BARR: No objection.

11 THE COURT: All right.

12 All right, we'll make this Court's Exhibit Nine.

13 (Whereupon, Court's Exhibit Number Nine [Question from
14 Jury] marked.)

15 THE COURT: All right, we'll give this to them.
16 There you go. We'll stand in recess till there's another
17 question or a verdict.

18 MS. ELDER: Thank you, Your Honor.

19 THE COURT: Thank you.

20 OFF THE RECORD

21 (On the record.)

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 (Verdict reached at 5:53 p.m.)

25 THE COURT: Thank you very much. Please be seated.

1 All right, I understand the jury has reached a verdict.
2 Anything from the State before we bring the jury in?

3 MS. ELDER: No, sir, Your Honor.

4 THE COURT: Anything from the Defendants?

5 MR. BARR: No, sir.

6 MR. HAZZARD: No, sir, Your Honor.

7 THE COURT: All right, I want to caution everybody.
8 This jury has had a very difficult job. There'll be no
9 displays of emotion one way or the other when the verdict is
10 received. If you agree with it, keep it to yourself. If you
11 disagree with it, keep it to yourself because any - I don't
12 want anything to reflect on this jury because they've had
13 a very difficult time in dealing with this case.

14 All right, please bring the jury in.

15 (Whereupon, the following takes place in the presence of
16 the jury.)

17 THE COURT: All right, ladies and gentlemen, welcome
18 back. Mr. Foreman, has the jury reached a verdict on all
19 charges as to both Defendants?

20 FOREMAN: We have, Your Honor.

21 THE COURT: All right, if you'd please give the
22 verdicts to the Clerk or to the bailiff. Thank you.

23 (Complies with request and Court reviews.)

24 THE COURT: All right, all right, I'll ask the Clerk
25 to please publish the verdicts.

1 THE CLERK: This is indictment number 2008-4119, the
2 State of South Carolina versus Mokeia Hammond, indicted for
3 armed robbery, the verdict is guilty.

4 Indictment number 2007-GS-26-3362, State of South
5 Carolina versus Mokeia Hammond, indicted for murder, the
6 verdict is not guilty.

7 2008-GS-26-4118, State of South Carolina versus Mokeia
8 Hammond, indicted for possession of a weapon during the
9 commission of a violent crime, the verdict is not guilty.

10 This is indictment number 2008-GS-26-4116, the State
11 versus Richard Bill Niles, Jr., indicted for possession of a
12 weapon during the commission of a violent crime the verdict
13 is guilty.

14 This is indictment number 2008-GS-26-4117, the State of
15 South Carolina versus Richard Bill Niles, Jr., indicted for
16 armed robbery, the verdict is guilty.

17 This is indictment number 2007-GS-26-3363, the State of
18 South Carolina versus Richard Bill Niles, Jr., indicted for
19 murder, the verdict is guilty.

20 David Kahanamoku, foreman, dated this date, March the
21 13th, 2007.

22 Ladies and gentlemen of the jury, is this, if this is
23 your verdict so signify by raising your right hand.

24 (All jurors raise right hand.)

25 THE CLERK: Thank you.

1 THE COURT: All right, any polling of the jury by the
2 State?

3 MS. ELDER: None from the State, Your Honor.

4 THE COURT: Any from the Defense?

5 MR. BARR: Yes, Your Honor, we'd ask the jury be
6 polled.

7 THE COURT: All right, Mr. Hazzard, do you request a
8 polling of the jury?

9 MR. HAZZARD: Yes, Your Honor.

10 THE COURT: All right, let's poll the jury as to both
11 Defendants.

12 THE CLERK: When I call your name please stand. I'll
13 ask you two questions. After you answer, please be seated.

14 David P. Kahanamoku, is this your verdict?

15 MR. KAHANAMOKU: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 MR. KAHANAMOKU: Yes, ma'am.

18 THE CLERK: Thank you.

19 Linda L. Rivers, is this your verdict?

20 MS. RIVERS: Yes, ma'am.

21 THE CLERK: Is it still your verdict?

22 MS. RIVERS: Yes, ma'am.

23 THE CLERK: Thank you.

24 Leanora A. Webster, is this your verdict?

25 MS. WEBSTER: Yes, ma'am.

1 THE CLERK: Is it still your verdict?
2 MS. WEBSTER: Yes, ma'am.
3 THE CLERK: Thank you.
4 Sandy Espinal, is this your verdict?
5 MS. ESPINAL: Yes, ma'am.
6 THE CLERK: Is it still your verdict?
7 MS. ESPINAL: Yes, ma'am.
8 THE CLERK: Thank you.
9 Bryan Shriver, is this your verdict?
10 MR. SHRIVER: Yes, ma'am.
11 THE CLERK: Is it still your verdict?
12 MR. SHRIVER: Yes, ma'am.
13 THE CLERK: Thank you.
14 Kevin Boatwright, is this your verdict?
15 MR. BOATWRIGHT: Yes, ma'am.
16 THE CLERK: Is it still your verdict?
17 MR. BOATWRIGHT: Yes, ma'am.
18 THE CLERK: Thank you.
19 Meghan - never mind.
20 Chellen Butler, is this your verdict?
21 MS. BUTLER: Yes, ma'am.
22 THE CLERK: Is it still your verdict?
23 MS. BUTLER: Yes, ma'am.
24 THE CLERK: Thank you.
25 Donna Lagore, is this your verdict?

1 MS. LAGORE: Yes, ma'am.
2 THE CLERK: Is it still your verdict?
3 MS. LAGORE: Yes, ma'am.
4 THE CLERK: Thank you.
5 Mary Brockmeier, is this your verdict?
6 MS. BROCKMEIER: Yes, ma'am.
7 THE CLERK: Is it still your verdict?
8 MS. BROCKMEIER: Yes, ma'am.
9 THE CLERK: Thank you.
10 Warren Kemp, is this your verdict?
11 MR. KEMP: Yes, ma'am.
12 THE CLERK: Is it still your verdict?
13 MR. KEMP: Yes, ma'am.
14 THE CLERK: Thank you.
15 Martyce Lewis, is this your verdict?
16 MS. LEWIS: Yes, ma'am.
17 THE CLERK: Is it still your verdict?
18 MS. LEWIS: Yes, ma'am.
19 THE CLERK: Thank you.
20 Randolph Conrad, is this your verdict?
21 MR. CONRAD: Yes, ma'am.
22 THE CLERK: Is it still your verdict?
23 MR. CONRAD: Yes, ma'am.
24 THE CLERK: Thank you.
25 THE COURT: Ladies and gentlemen of the jury, I want

1 to sincerely thank you for your service in this case and for
2 you service as jurors this week. This concludes your service
3 not only for this case but for this week and I want to thank
4 you for your service in this case. We could not function as
5 a court without you. We could not resolve these matters
6 without you and this is the way our judicial system works and
7 I want to thank you for your participation and your
8 willingness to serve. I know it's not easy. I know it's not
9 convenient but you have certainly fulfilled a very vital and
10 important service to this state, to this community, to this
11 county, and I want to thank you for your service. You're
12 free to go and please have a nice remainder of the day and a
13 nice weekend. You're free to go at this time.

14 (Jury exits courtroom.)

15 THE COURT: All right, any post-trial motions at this
16 time?

17 MS. ELDER: None from the State, Your Honor.

18 MR. HAZZARD: At this time, Your Honor, on behalf of
19 Defendant Hammond I would make a motion for a new trial. It
20 seems that the form of the verdict is somewhat inconsistent.
21 My understanding of the Clerk's reading of the verdict is
22 that the jury found her guilty of armed robbery but not
23 guilty of murder and not guilty of possession of a firearm.
24 It seems somewhat inconsistent in that in order to find her
25 guilty of an armed robbery based on the judge's instructions

1 they would have to find that there was a plan or a scheme to
2 commit the robbery. So, they're saying based on the way I
3 understand it that there was a plan to commit an armed
4 robbery and during the commission of the armed robbery a
5 death occurs which then kicks in the whole issue of the hand
6 of one and the hand of all, hand of one is the hand of all
7 and the felony murder rule. So, I would submit it seems
8 inconsistent, to me it's an inconsistent verdict almost as if
9 they reached a compromise that we'll find her guilty of armed
10 robbery but not of murder, and as a compromise verdict I
11 would submit that it would need to be set aside by this Court
12 and a new trial ordered.

13 THE COURT: All right, let me hear from the State on
14 that.

15 MS. ELDER: Your Honor, in reference to inconsistent
16 verdicts the rule of inconsistent verdicts was abolished back
17 in State v. Alexander, that was a 1991 case, 303 SC 377 and
18 401 SE2d 146. It was then again restated back in State
19 versus Nichols, 325 SC 111, 41 SE2d 118 and in State versus
20 Garrett, 350 SC 613, 567 SE2d 523. Of course, the State's
21 position is I do not think these are inconsistent verdicts.
22 I think it is very plausible that they could have had enough
23 evidence to attribute her to the armed robbery but not have
24 found her guilty of hand of one with the murder. I think
25 that's very plausible.

1 THE COURT: I agree with that, but how do you get
2 guilty of armed robbery but not guilty of possession of
3 a weapon during the commission of a violent crime?

4 MS. ELDER: Your Honor, I think it's very plausible
5 to consider that - I'm sorry, Your Honor, let me get to the
6 charge itself, that they were in possession of a firearm or
7 displayed a firearm during a violent crime, they may very
8 well find out that she, in fact, thought there was an armed
9 robbery and they just didn't get it to the point, Your Honor,
10 of convicting her. It sounded like to me that they didn't
11 get her to point of convicting her with the murder and the
12 weapon, but again, even if the Court concludes that it is an
13 inconsistent verdict, those cases that I have cited certainly
14 indicate that that is not a basis for a new trial and based
15 on ---

16 THE COURT: What do those cases say?

17 MS. ELDER: Your Honor, they - it says that,
18 especially in Alexander it says that, "We're abolishing the
19 rule prohibiting inconsistent verdicts in this state," and
20 those were cases requesting new trials indicating that very
21 rarely, when they set this aside they, in their dicta they
22 said that very rarely is this ever a grounds in the past for
23 a new trial and because of that and because of all the
24 controversy surrounding it they abolished the rule
25 prohibiting inconsistent verdicts in the state.

1 THE COURT: Oh, I thought you said the subsequent
2 cases reinstated it.

3 MS. ELDER: Yes - no, no, no, Your Honor, they
4 restated.

5 THE COURT: Oh, restated Alexander.

6 MS. ELDER: Yes, sir.

7 THE COURT: Okay, okay.

8 MS. ELDER: Garrett and Nichols both cite that being
9 that inconsistent verdicts is not, is not sufficient to
10 justify a new trial.

11 THE COURT: All right, all right, have you got those
12 cases?

13 MS. ELDER: I've only got one copy but I'll be glad
14 to pass them up, Your Honor.

15 THE COURT: All right, I'll give them back to you.
16 Let me see it for a second. Thank you.

17 All right, after review of the cases submitted by the
18 State I deny your motion.

19 Anything else, any other post-trial motions at this
20 time?

21 MR. HAZZARD: None at this time on behalf of Defendant
22 Hammond.

23 MR. BARR: None at this time, Your Honor, on behalf
24 of Defendant Niles.

25 THE COURT: All right, now, in with the verdict forms

1 came a note from the jury that just said, "We have reached a
2 verdict." I'm going to go ahead and put that as Court's
3 Exhibit Ten into the record.

4 (Whereupon, Court's Exhibit Ten [Note from Jury]
5 marked.)

6 THE COURT: All right, anything from the Defense
7 before we sentence?

8 MR. BARR: Yes, Your Honor, on behalf of Defendant
9 Niles, Your Honor, like to point out to the Court, also like
10 to acknowledge the presence of his father. They've been here
11 most of the week, family members. His mother was a party to
12 this action and she died last month. So, she's not here. He
13 has a sister who has been here most of the week and his aunt
14 and they're here.

15 Your Honor, Mr. Niles, as you probably know quite well
16 by now, is 25 years old. He has substantially no criminal
17 record. He, I believe, had one prior conviction for
18 possession of marijuana. He has worked for Jacobs Plumbing
19 as an apprentice plumber for a period of time recently. He
20 has a 12th grade education, born in Williamsburg County in
21 the Trio area and, Your Honor, he's had some difficulties in
22 life but I would ask that the Court considers every possible
23 leniency in sentencing Mr. Niles. I acknowledge that he's
24 made some mistakes. He's made a lot of mistakes. I think
25 being only 25 years old there's a possibility of redemption

1 in Mr. Niles' situation, and for that reason I would ask the
2 Court consider giving him the minimal sentence in this case.
3 Thank you.

4 THE COURT: All right, I'll give everybody an
5 opportunity to speak a little bit later.

6 Anything, Mr. Hazzard, before and I'll give you an
7 opportunity to speak a little bit later. I just want to know
8 if there's any reason as to why we cannot impose sentence at
9 this time.

10 MR. HAZZARD: No, Your Honor.

11 THE COURT: All right, anything, anything from the
12 State as to why we cannot impose sentence at this time?

13 MR. RICHARDSON: No, sir, Your Honor.

14 THE COURT: All right.

15 All right, all right, Mr. Barr, I've heard from you. Is
16 there anything that Mr. Niles would like to say or anybody
17 want to say anything on his behalf?

18 MR. NILES: Yes, I do, Your Honor, would like to say
19 something.

20 THE COURT: All right.

21 MR. NILES: First, I would like to apologize for the
22 accident of Spice, well, better known as Mr. Salter. I truly
23 admit for the crime that I did for the accident of his death,
24 but during that time, Your Honor, I was only defending my
25 family and my life as well, Your Honor, and I commit thee, I

1 honestly admit with all my heart and I apologize deeply to
2 the Salter's family. I give them my deepest sympathy for
3 that, and most of all I'm asking them to please forgive me
4 for the wrong that I've did in you all's life and the sadness
5 that I've caused. I really do ask for forgiveness. In order
6 for Christ to forgive me I ask that deeply. During the life
7 that I was living, yes, I was carrying a possession of a
8 firearm and during that time I did not had Christ in my life,
9 but for the two years that I did did in J. Reuben Long my
10 life has really been changed around, and I can really and
11 honestly I thank God for the two years that I did in J.
12 Reuben Long because even though I lost my mother during that
13 time, you know, God said hisself he say he will pull the
14 closest thing from you to draw you near back to him, you
15 know, and I come today, you know, asking for sympathy and,
16 yes, I am asking for mercy upon my life like how Israel
17 called out for mercy, the mercy that God showed them in
18 Israel, and I ask truly to please have mercy upon me. Yes,
19 sir, like I said before I was wrong for the crimes that I did
20 in the future, in the past, but I ask please, please allow me
21 to see daylight again, sir.

22 THE COURT: All right, sir, anybody want to say
23 anything on your behalf?

24 MR. NILES: Yes, Judge, Your Honor, my name is
25 Minister Niles.

1 THE COURT: If you'd please come around forward
2 please?

3 REVERAND NILES: Yes, Judge, Your Honor, my name is
4 Minister Niles.

5 THE COURT: Yes, sir.

6 REVERAND NILES: And this is my baby boy and he never
7 give me no trouble and I can say to Richie he's a good, he's
8 a good young guy. He's a good young man. He's a likeable
9 person in the community, out of the community. I sings
10 gospel all over and people always ask me where I'm going,
11 ``When are Richie coming to join your group.'' I say,
12 ``Well, he's incarcerated now, but just as soon as God say so
13 he will,'' and I'm asking the Court this afternoon to have
14 mercy upon Richie sentence that you're giving out this
15 afternoon. May God bless Richie, stay with the Lord, God
16 bless each and every one of you in this courtroom and I want
17 to ask the Salter's family forgive us for this accident what
18 happened as we continue and go on with a new life ahead of
19 us. God bless you and have mercy upon him this afternoon,
20 please, sir.

21 THE COURT: All right, thank you very much.
22 Anybody else?

23 MS. WILLIAMS: My name is Pastor Verdie L. Williams and
24 I want to say to the Court this afternoon Richie my nephew is
25 a good boy and I know some of you are probably expecting me

1 to say that, but I have a lot of nephews, but it always have
2 been something special about Richie, and I know Richie was
3 saved but he went back in the world because he got saved
4 under me during the time that he have been seeking the Lord.
5 I'm the pastor of Powerhouse of God Ministry. I have founded
6 three churches, overseer over the other two and the pastor
7 over one, and I'm asking the Court this evening to please
8 have mercy upon Richie's life, please. They have been
9 through a lot because the mother died to an auto accident on
10 the 10th of January and that was very hard for them and to
11 the Salter's family you all have my condolences. I know your
12 heart is still heavy. I can understand that. It was an
13 accident but I'm asking you all to forgive Richie, please.
14 When you all been going through you all's troubles I've been
15 praying for you all because I can imagine how it was. I've
16 never been there but I can imagine how it was. So, Judge,
17 I'm just asking you to please, sir, have mercy upon his life
18 this evening and I want to say to the juror, thank God for
19 you all. You all had a hard time, but I know you all reach
20 what you all had to do. God bless you all.

21 THE COURT: Thank you, ma'am.

22 Anybody else on behalf of Mr. Niles?

23 (No response.)

24 THE COURT: All right, Mr. Hazzard, anything you
25 would like to say? Anything in mitigation before I impose

1 sentence on your client?

2 MR. HAZZARD: Your Honor, as the Court well knows
3 Mokeia is 21 years old. She was 19, and actually she's 20
4 years old because her next birthday is in April. She was 19
5 when this incident, or later this month, but she was 19 when
6 this, when this incident occurred, Your Honor. She has, she
7 has, she is a high school dropout, Your Honor, and I asked
8 her when I spoke with her about it. I said, "Why did you
9 drop out of high school," and she said, "I don't know, just
10 doing what other kids were doing," simple as that.

11 She is an extremely intelligent young lady. Once she
12 figured out that you can't get far in life as a high school
13 dropout, she immediately went to work and has held a series
14 of different jobs. At the time this incident occurred she
15 was a desk clerk at a hotel at the beach.

16 From the day she left high school she has always been
17 employed in some form or fashion. She has never been a
18 deadbeat or anything like that. As the Court well knows,
19 Mokeia has absolutely no prior record whatsoever not even as
20 a juvenile, never been in trouble with the law one day, Your
21 Honor, but I think that I won't refer to Mr. Niles as a bad
22 influence. I think both of them got caught up into a
23 lifestyle, what I refer to as a rap music video, you know,
24 living fast and selling drugs and things of that nature and
25 thinking that that was the way to get ahead, and a lot of

1 times as the Court well knows children are too smart for
2 their own good by half and I think that's what happened here.
3 Based on the minimal if any role that she played in this
4 event, based on her age, based on the fact that she has no
5 prior record whatsoever, Your Honor, we would respectfully
6 ask for the minimum sentence and any and all mercy that the
7 Court can give. I know that her mother and other family
8 members are present, and if the Court sees fit I would ask
9 that they be allowed to address the Court if they, if they so
10 wish.

11 THE COURT: All right, I'll hear from your client or
12 anyone that wants to speak on her behalf.

13 MR. HAZZARD: My client indicates that she is not
14 emotionally in a state where she can address the Court, Your
15 Honor.

16 THE COURT: All right, does anyone want to speak on
17 her behalf?

18 MR. HAZZARD: This is her mother, Your Honor.

19 THE COURT: All right, please give me your name.

20 MS. HAMMOND: Melinda Hammond.

21 THE COURT: All right, Ms. Hammond.

22 MS. HAMMOND: I just want to say that I love my
23 daughter very much and I know, you know, things been bad for
24 both of them in their life, you know, lifetime, but she's a
25 very smart girl, and you know, I appreciate her, you know,

1 for who she is and I would just like the Court to be, you
2 know, lenient on her because she's, she's a good person, you
3 know, just like Mr. Hazzard was saying she has some good
4 qualities in her life and some of the good decisions she made
5 in her life and I was behind her one hundred percent and some
6 of them, you know, I wasn't but I still love her for who she
7 is and I just want to thank the Court, sorry for the family
8 over here, and I thank the jury for what they have done and I
9 just want to have mercy on her, please, sir. Thank you.

10 THE COURT: Thank you very much.

11 All right, anybody else want to speak on behalf of the
12 Defendants?

13 (No response.)

14 THE COURT: All right, do the victims or anybody on
15 the victim's behalf want to say anything?

16 MR. RICHARDSON: Your Honor, I'll begin with a very
17 short address and then I believe we do have a couple of
18 members of James' family who wish to address the Court.

19 THE COURT: All right.

20 MR. RICHARDSON: Your Honor, on April 9th, 2007, James
21 Salter was 24 years old. He will always be 24 years old. He
22 won't draw another breath, won't celebrate another birthday.

23 The family doesn't come here nor does the State seeking
24 retribution. They wanted justice and we appreciate the
25 jury's service in this, Your Honor.

1 With regard to Ms. Hammond, she was young. She was 19.
2 Your Honor, 19 is an adult in the eyes of the law. 19 is an
3 adult in the eyes of all of our government. 19 year olds
4 are expected to have jobs. 19 year olds are expected to know
5 what they're doing, and here she chose to lead the fast and
6 dangerous lifestyle that she was living, chose to be with Mr.
7 Niles, sat there right beside him as he planned that armed
8 robbery. She drove him to the scene. At any time she could
9 have got out of the car but she chose not to. She chose to
10 drive away from that scene. She chose to hide the car so as
11 to hide out with Mr. Niles afterwards until they were
12 arrested.

13 Your Honor, with respect to Ms. Hammond, the State would
14 just seek a sentence that shows justice.

15 With regard to Mr. Niles, once again, nothing is going
16 to bring James Salter back. This was a senseless, senseless
17 crime. James Salter was killed over one pound of marijuana,
18 600, \$1500 worth of marijuana. That was the value of his
19 life to these Defendants. Your Honor, the State just asks
20 for a sentence that takes that into consideration, the
21 senselessness of this crime, the value that was placed on
22 human life in regard to this crime.

23 THE COURT: All right, I'll hear from anybody on the
24 victim's behalf.

25 MR. RICHARDSON: Your Honor, this is James' father.

1 THE COURT: All right, sir, your name.

2 MR. RICHARDSON: Ricky Salter.

3 MR. SALTER: Richard Salter, Your Honor, James'
4 father.

5 THE COURT: All right, all right, Mr. Salter.

6 MR. SALTER: Your Honor, I'm going to do my best to
7 convey to you the impact James' death has made on all of us.
8 Please understand that we'll never be able to righteously
9 describe the feelings of pain that and loss that we have all
10 been trying to live with since April 9th of 2007, but I'll do
11 my best.

12 James is in this room here today. He's in each of us
13 sitting here and he's in our hearts and our souls and
14 everywhere we go. He's here to see that we carry out the
15 process of justice for him. We speak on behalf of James
16 Michael Salter, the solicitors, the people that present the
17 evidence, the evidence itself all speak for him. The jury
18 and the victims' advocate speak for James. In a sense I am
19 speaking for James, the void in all of our lives from the
20 loss of James will never be filled. The pain is
21 indescribable, but with time the degree of pain does change.
22 Instead of hurting constantly it now just hurts most of the
23 time. The dark cloud of pain weighs us down. The pain is
24 real, both physical and mental. Our family is not whole any
25 longer and despite our efforts will never be again.

1 My daughter, I'd like to speak for her, and she says
2 that, ``James was and will always be my big brother.'' This
3 is on behalf of Jessica. ``To know that someone could
4 actually murder my only brother, my dad's only son is
5 sickening to know that someone killed a man with such an
6 amazing personality, a man with the biggest grin in the world
7 and a man who is loved by so many makes me physically ill.
8 It shows me that they did not know the James I knew, that we
9 all knew. It also shows me how pathetic and disgusting
10 people can be.

11 On April 9th, 2007, our lives became a never-ending
12 nightmare, to see and hear my dad say that James had been
13 shot and killed it was unbearable. I felt anger,
14 frustration, sadness and loss and I still do. I was 16 at
15 the time of his death. My sister had just turned 18.
16 Teenagers should be focused on school, not their brother's
17 murder investigation. Having to actually go to therapy was
18 embarrassing for me but I saw no other option. I thought it
19 would help relieve the pain. I learned nothing will ever
20 make this situation better. The entire truth will never be
21 heard because my big brother isn't here to tell it. This is
22 not reversible even though so many of us have prayed for just
23 that. I cannot tell you how many times I've asked for my
24 brother back. Of course it will never happen. A lot of
25 things will never be the same. My father, Richard Salter,

1 will never be the same. He is mentally, physically,
2 emotionally drained and I see how this has affected him every
3 day. He is not the same person he was when his son was
4 alive. My dad is a very respectable and honorable man and it
5 kills me to see him in such horrendous pain. He doesn't
6 deserve it, just like James did not deserve to be killed.

7 It's very hard to listen to all the lies and bite my
8 tongue but it will make no difference if my voice is heard.
9 What is done is done, and all I ask for is the respect that
10 James deserves, the respect he was not given on April 9th,
11 2007. My brother is James Michael Salter and I am honored to
12 be his little sister and be able to speak on behalf of him."

13 Sir, I have watched my wife, Susan, and my two
14 daughters, Jennifer and Jessica, suffer though this loss.
15 Jennifer and Jessica have struggled to finish high school.
16 They have delayed starting college as previously planned
17 because they're trying to deal with the grief. They have
18 both attended therapy to try to learn how to lessen the pain.
19 Susan has been hospitalized twice with stress induced
20 symptoms that have been severely aggravated by James' murder.
21 I myself have spoken with counselors to help me cope with the
22 loss of my son.

23 I find it difficult to see the joy life had prior to
24 losing James, but this pain is not confined to just our
25 family. His co-workers have and still express their sympathy

1 and grief whenever I see them at Costco. His friends often
2 let me know how much he is still missed by them and everyone
3 who happened to cross paths with James. James lost his life.
4 That is forever. His death was undeserved and disrespectful.
5 We will not get to see him grow into the great man he was
6 destined to be had he been given a chance.

7 Had he been given a chance to change, that chance was
8 taken away from him, sir. James Michael was my only son, my
9 daughter's only brother. We lost a grandson, an uncle and a
10 nephew and we all lost a friend, sir. I just ask that you do
11 what you feel is right.

12 MR. RICHARDSON: Your Honor, we have one more.

13 THE COURT: All right.

14 MR. RICHARDSON: It's James' big sister.

15 THE COURT: Ma'am, your name?

16 MS. WOLD: Elaine Wold.

17 THE COURT: Elaine?

18 MS. WOLD: Wold.

19 THE COURT: Wold?

20 MS. WOLD: Wold, W-O-L-D.

21 THE COURT: All right.

22 MS. WOLD: Your Honor, first of all I would like to
23 thank you for taking the time to listen to us today. There
24 are no words that can explain ---.

25 MR. RICHARSON: Your Honor, Ms. Wold just asks that I

1 read this for her.

2 THE COURT: All right.

3 MR. RICHARDSON: ``There are no words that can explain
4 the pain that our family has endured since April 9th, 2007.
5 On that terrible night my mom and dad received the worst
6 phone call any parent can possibly get. They were told that
7 their only son, my little and only brother, was shot and
8 didn't make it. I was four and a half months pregnant at the
9 time with James's niece that will never get to meet the uncle
10 that my other three children and my niece have grown up,
11 grown to love and adore.

12 The kids ask us all the time why Uncle James died.
13 Thank God they understand as best as any eight year old and
14 six year old can that he is in heaven watching over all of us
15 that love him so much. When we go to my mom's we get to see
16 him in the family room watching over everyone, make sure all
17 of us are safe. James spent his last Christmas with us, with
18 all of us in Minnesota. We thank God every day that we were
19 able to spend that time with him. We've learned that we need
20 to cherish every moment that we have with each other because
21 we never know when our loved ones are going to be taken from
22 us forever. My mom and I talk about James and our memories
23 of him almost every day. Our lives are not complete without
24 him. There's a constant pain in our chest that just is
25 impossible to explain. Everything reminds us of the loss

1 that we have suffered through. We've cried about his death
2 over and over again in the past two years and I am confident
3 that those tears will not stop anytime soon.

4 We are a very close family and now we are missing a very
5 important link to make us complete. James made some
6 mistakes, and they cost him the ultimate price, his life.
7 The James that we all knew was a very loving, respectful,
8 honest, not afraid to give you a hug or say, "I love you
9 mom," and he loved his family very much. Life without his
10 smile, his bright blue eyes and hearing his voice on the
11 phone leaves an empty feeling in our hearts. James Michael
12 Salter is our son, our brother, uncle and grandson and he
13 will be forever missed."

14 THE COURT: Anyone else want to speak on behalf of
15 the victim?

16 MR. RICHARDSON: No, sir, Your Honor.

17 THE COURT: All right, with regard to Mr. Niles, any
18 prior record?

19 MR. RICHARDSON: Your Honor, neither Defendant has any
20 prior record.

21 THE COURT: All right, Mr. Niles, Ms. Hammond, if you
22 would please stand.

23 (Complies with request.)

24 THE COURT: All right, Mr. Niles, on the charge of
25 murder the sentence of the Court is that you be confined to

1 the State Department of Corrections for a period of 30 years.
2 You'll be given credit for time served. On the charge of
3 armed robbery, the sentence of the Court is that you be
4 confined to the State Department of Corrections for a period
5 of 30 years, be given credit for time served, and on the
6 charge of possession of a weapon during the commission of a
7 violent offense the sentence of the Court is that you be
8 confined to the State Department of Corrections for five
9 years, be given credit for time served and these sentences
10 will run concurrently.

11 Ms. Hammond, on the charge of armed robbery the sentence
12 of the Court is that you be confined to the State Department
13 of Corrections for a period of 15 years. You'll be given
14 credit for time served.

15 MS. ELDER: Thank you, Your Honor.

16 MR. RICHARDSON: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. BARR: Thank you, Your Honor.

19 (Adjourned.)

20

21

22

23

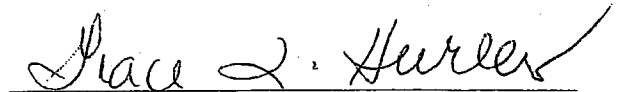
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Mokeia Hammond and Richard Bill Niles, Jr., held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on March 9 through 13th, 2009.

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



Grace L. Hurley, CVR-CM

Official Reporter

July 23, 2009.

WITNESSES

S Mann Myrtle Beach Police Department

The State of South Carolina

County of Horry

CERTIFIED COPY

2009 MAR 18 PM 3:09

Donna Elder

85221-1

COURT OF GENERAL SESSIONS

OCTOBER, 2008 TERM

ARREST WARRANT NUMBER

CAW2008GS2604119

CDR: 0139 16-11-0330(A)

DOA: 4/14/2007

THE STATE

vs.

Mokeia Hammond

/ F

[REDACTED]

[REDACTED] 2055603797

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: West, Orrie E.

Indictment for

Armed Robbery

J. Gregory Hembree, Solicitor

ORIGINAL

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury

Date:

OCT 30 2008

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

FILED
HORRY COUNTY
2009 MAR 18 PM 4:07
MELANIE HUGHES
CLERK OF COURT

At a Court of General Sessions, convened on October 30, 2008, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Mokeia Hammond did in Horry County on or about April 9, 2007, while armed with a deadly weapon, to wit: , take and carry away personal property of James Salter from of in the immediate presence of James Salter with intent to deprive James Salter of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY
2009 MAR 18 PM 3:09

MANN/MBPD

FILED WITNESSES

HORRY COUNTY

2009 MAR 18 PM 4:08

MELVINE HIGGINS
CLERK OF COURT

DOCKET NO. 2007-GS-26-3362

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

85221-1

DEE

COURT OF GENERAL SESSIONS

AUGUST

TERM 2007

THE STATE

vs.

MOKEIA HAMMOND B/F

~~XXXXXXXXXX~~ 29590-3797

DOB: ~~XXXXXXXXXX~~

SSN: ~~XXXXXXXXXX~~

ARREST WARRANT NO.

K-003227

CDR: 0116 16-03-0010,0020

CDR:

DOA: 04/14/2007

ACTION OF GRAND JURY

TRUE BILL

AUG 23 2007

Foreman of Grand Jury

VERDICT

Not Guilty

David Kahanamoku

Foreman of Petit Jury Date: 3/13/09

ATTORNEY: ORRIE WEST

INDICTMENT FOR:

MURDER

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

Trial
Judge Benjamin
Culbertson
Grace Gully, CR

COUNTY OF
STATE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

SENTENCE SHEET

In disposition of the said Indictment comes how the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs

and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina

Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 211418

Sentence Date: March 13, 2009

Clerk of Court/ Deputy Clerk

Court Reporter: Grace Hurley

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT FOR:
MURDERFILED
HORRY COUNTY
2009 MAR 18 PM 4:00
MELANIE L. WOODS
CLERK OF COURT

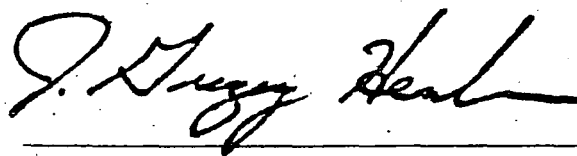
At a Court of General Sessions, convened on August 23, 2007, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That MOKEIA HAMMOND did in Horry County, on or about April 9, 2007, along with codefendants, willfully, feloniously, and intentionally kill the victim, James Michael Salter, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about April 9, 2007 in Horry County, in violation of Section 16-3-10, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

756

WITNESSES
Mann Myrtle Beach Police Department

FILED
Horry County
2009 MAR 18 PM 3:09
MELANIE J. JONES
CLERK OF COURT

ARREST WARRANT NUMBER

CAW2008GS2604118
CDR: 0549 16-23-0490
DOA: 4/14/2007

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 10/30/2008

VERDICT

Not Guilty

Foreperson of Petit Jury David Kahanamoku
Date: 3/13/09

DOCKET NO. 2008-GS-26- 04118

The State of South Carolina
County of Horry

Donna Elder 85221-1

COURT OF GENERAL SESSIONS

OCTOBER, 2008 TERM

THE STATE

vs.

Mokeia Hammond
/ F
[REDACTED]
[REDACTED] 295903797
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: West, Orrie E.

Indictment for

Possession of Weapon During Commission of
Violent Crime

J. Gregory Hembree, Solicitor

ORIGINAL

CERTIFIED COPY

2009 MAR 18 PM 3:09

Melanie Jones
CLERK OF COURT

Vrial
Judge Benjamin
Culbertson
Grace Hurley, CL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 30, 2008, the Grand Jurors of
Horry County present upon their oath:

FILED
Horry County
2009 MAR 18 PM 4:07
CLERK OF COURT
MELISSA SUGGINS
and Jurors of

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME.

CDR: 0549 16-23-0490

That Mokeia Hammond did in Horry County, on or about April 9, 2007, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HOMBREE
FIFTEENTH CIRCUIT SOLICITOR

2009 APR 10 PM 3:09

MANN MBPDY

FILED
HORRY COUNTY
2009 MAR 18 PM 4:09
MELANIE HUSGINS
CLERK OF COURT

ARREST WARRANT NO. _____

K-003227

CDR: 0116 16-03-0010,0020

CDR: _____

DOA: 04/14/2007

ACTION OF GRAND JURY

TRUE BILL

AUG 23 2007

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date: _____

DOCKET NO. 2007-GS-26-

3362

THE STATE OF SOUTH CAROLINA COPY

COUNTY OF

HORRY

85221-1

DEE

COURT OF GENERAL SESSIONS

AUGUST

TERM 2007

THE STATE

vs.

MOKEIA HAMMOND

B/F

[REDACTED]
[REDACTED] SC 29590-3797

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: ORRIE WEST

INDICTMENT FOR:
MURDER

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

**INDICTMENT FOR:
MURDER**

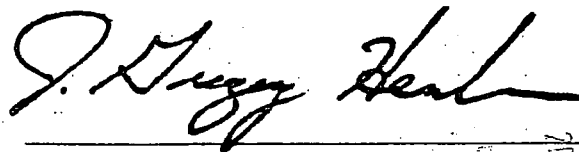
FILED
HORRY COUNTY
2009 MAR 18 PM 4:07
MELANIE HUGHES
CLERK OF COURT

At a Court of General Sessions, convened on August 23, 2007, the Grand Jurors of Horry County present upon their oath:

MURDER
CDR: 0116 16-03-0010,0020

That MOKEIA HAMMOND did in Horry County, on or about April 9, 2007, along with codefendants, willfully, feloniously, and intentionally kill the victim, James Michael Salter, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about April 9, 2007 in Horry County, in violation of Section 16-3-10, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

2009 MAR 18 PM 3:09
MELANIE HUGHES
CLERK OF COURT
CERTIFIED COPY

WITNESSES

S Mann Myrtle Beach Police Department

ARREST WARRANT NUMBER

CAW2008GS2604117

CDR: 0139 16-11-0330(A)

DOA: 4/14/2007

ACTION OF GRAND JURY

James Wilbur
Foreperson of Grand Jury
Date: OCT - 3 0 2008

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Horry

Donna Elder

85221-2

COURT OF GENERAL SESSIONS

OCTOBER, 2008 TERM

THE STATE

VS.

Richard Bill Niles Jr

B/ M

SALES SC 295903516

DOB:

SSN:

ATTORNEY: Barr, Verdell

Indictment for

Armed Robbery

J. Gregory Hambree, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

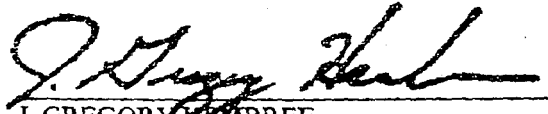
At a Court of General Sessions, convened on October 30, 2008, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Richard Bill Niles Jr did in Horry County on or about April 9, 2007, while armed with a deadly weapon, to wit: , take and carry away personal property of James Salter from or in the immediate presence of James Salter with intent to deprive James Salter of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

S Mann Myrtle Beach Police Department

The State of South Carolina

County of Horry

Donna Elder

85221-2

COURT OF GENERAL SESSIONS

OCTOBER, 2008 TERM

ARREST WARRANT NUMBER

CAW2008GS2604116

CDR: 0549 16-23-0490

DOA: 4/14/2007

THE STATE

VS.

ACTION OF GRAND JURY

TRUE BILL

James W. Wilkins
Foreperson of Grand Jury

Date: OCT 30 2008

Richard Bill Niles Jr

B/ M

295903516

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Barr, Verdell

VERDICT

Indictment for

Possession of Weapon During Commission of a
Violent Crime

J. Gregory Hembree, Solicitor

ORIGINAL

Foreperson of Petit Jury

Date:

762

04-08-2009

02:50:51 p.m.

horry county solicitor

8439156461

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Horry)

At a Court of General Sessions, convened on October 30, 2008, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Richard Bill Niles Jr did in Horry County, on or about April 9, 2007, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY85221-2DEE

COURT OF GENERAL SESSIONS

AUGUSTTERM 2007

THE STATE

vs.

RICHARD BILL NILES, JR.

B/M

[REDACTED]
[REDACTED] SC 29590-3516DOB: [REDACTED]SSN: [REDACTED]ARREST WARRANT NO. K-003228CDR: 0116 16-03-0010,0020CDR:DOA: 04/14/2007

ACTION OF GRAND JURY

AUG 23 2007Foreman of Grand Jury

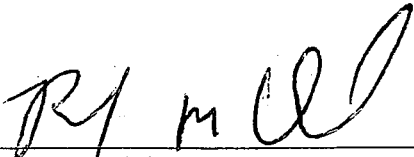
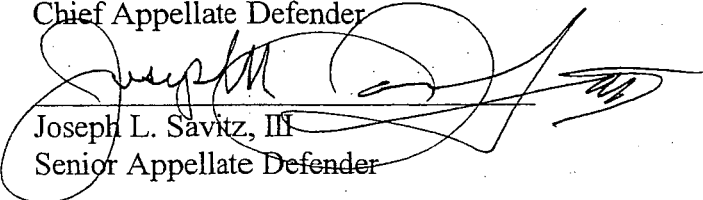
VERDICT

Foreman of Petit Jury Date: ATTORNEY: BOBBY FREDERICKINDICTMENT FOR:
MURDER**ORIGINAL**J. GREGORY HEMBREE, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANTS

Counsel for appellants certify that this Consolidated Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 14, 2010


Robert M. Dudek
Chief Appellate Defender
Joseph L. Savitz, III
Senior Appellate Defender

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

ATTORNEYS FOR APPELLANTS

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Richard Bill Niles, Jr., Appellant.

Appellate Case No. 2009-121246

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Published Opinion No. 5034
Heard February 14, 2012 – Filed September 12, 2012

REVERSED

Robert Michael Dudek, South Carolina Commission on
Indigent Defense, of Columbia and Reid T. Sherard, of
Nelson Mullins Riley & Scarborough, LLP, of
Greenville, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Brendan J. McDonald, all of Columbia,
for Respondent.

WILLIAMS, J.: On appeal, Richard Bill Niles, Jr. (Niles) argues the circuit court erred in declining to charge the jury on voluntary manslaughter because there was evidence that Niles was not the first aggressor. Niles asserts the circuit court incorrectly reasoned Niles was either acting in self-defense or shot the decedent

during the commission of an armed robbery. Because voluntary manslaughter and self-defense are not mutually exclusive, Niles contends he was entitled to a charge on voluntary manslaughter. We agree and reverse.

FACTS/PROCEDURAL HISTORY

On April 9, 2007, James Salter (Salter) was shot in a Best Buy parking lot in Myrtle Beach, South Carolina. Salter later died from his injuries. Niles, his fiancée Mokeia Hammond (Hammond), and Ervin Moore (Moore) were arrested and charged with murder, armed robbery, and possession of a firearm during the commission of a violent crime. Moore entered into a plea agreement with the State whereby Moore pled guilty to armed robbery, voluntary manslaughter, and possession of a firearm during the commission of a violent crime in exchange for his testimony against Niles and Hammond. Niles and Hammond were tried jointly on March 9, 2009.

At Niles' and Hammond's trial, Moore testified that on April 9, 2007, Niles and Hammond picked up Moore and headed to the beach where the trio "made a couple of drug sales at a couple of motels." Moore stated, "[W]e were smoking blunts in the car . . . [and when] we ran out of weed . . . we said we wanted to get some more weed." Moore maintained Niles "made a couple of phone calls," and they "ended up in the Best Buy parking lot." Moore testified Niles said "he was going to do a lick," which Moore understood to mean they were going to rob the drug dealer, later identified as Salter. Moore stated his job in the robbery was "to identify the weed" for Niles.

Upon arriving at the Best Buy parking lot, Moore exited his vehicle and got into Salter's vehicle. Moore stated Salter pulled a large ziploc bag of marijuana out from under his seat so Moore could see it. Moore maintained that by the time he inspected the marijuana, exited Salter's vehicle, and returned to the vehicle with Hammond, Niles had exited their vehicle. Moore testified he informed Niles that he saw the marijuana and stated, "The next thing I knew, I just heard two shots and I seen [Niles], he jumped back in the back seat behind [Hammond]." Moore further stated "after . . . [Niles] jumped in [the vehicle], after them two shots then the other guy fired a shot." Moore testified that after both Niles and Salter continued to fire shots at each other, Hammond drove out of the parking lot.

Though Moore testified on direct examination "the other guy didn't shoot until after [Niles] shot," on cross-examination, Moore admitted he did not actually see

Niles shoot first. Moore stated he originally testified Niles shot first because Niles admitted he shot first when Niles jumped back into the vehicle.

Niles testified in his own defense. He denied he told Moore he was "going to do a lick" and testified Moore asked him to purchase a pound of marijuana for him. Niles affirmed that when they pulled into the Best Buy parking lot, Moore got out of the vehicle and into Salter's vehicle. Niles testified he was talking to Hammond about their upcoming wedding when Hammond suddenly told him, "Baby, they are fighting." Niles stated he looked over to Salter's vehicle and observed Moore and Salter "tussling in the car." Niles stated he noticed Moore trying to exit Salter's vehicle and heard Salter state to Moore, "[Y]ou ain't getting out of this car with my weed without no money." Niles maintained that when Moore exited Salter's vehicle and jumped into the vehicle with Niles and Hammond, Salter pulled out a gun and began shooting at the vehicle that Niles, Hammond, and Moore occupied. Niles testified, "I grabbed my pistol and that's when I shot two times." Niles maintained he was being shot at constantly by Salter and he shot back.

The circuit court charged the jury on self-defense, but it refused Niles' request to charge the jury on voluntary manslaughter. The circuit court refused the voluntary manslaughter charge reasoning that "either the victim started shooting and Mr. Niles was acting in self-defense or Mr. Niles started shooting . . . [and] killed the victim during the commission of an armed robbery."

Niles was convicted of murder, armed robbery, and possession of a firearm during the commission of a violent crime.¹ Niles received a thirty-year sentence for murder and armed robbery and a five-year sentence for the conviction of possession of a firearm during the commission of a violent crime, all to be served concurrently. Niles appeals.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. *Id.* If any evidence supports a jury charge, the circuit court should grant the request. *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). To warrant

¹ While Niles was convicted of all charges, Hammond was only convicted of armed robbery and sentenced to fifteen years imprisonment.

reversal, a circuit court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. *Id.*

LAW/ ANALYSIS

Niles argues the circuit court erred in failing to charge the jury on voluntary manslaughter because conflicting testimony was presented to support a jury charge on voluntary manslaughter.

To the contrary, the State asserts a jury charge of voluntary manslaughter was not appropriate in this case. The State argues only two scenarios are possible from the evidence presented at trial: (1) Salter shot first and Niles acted in self-defense by returning fire; or (2) Niles shot at Salter first, committing murder during the commission of an armed robbery. The State contends that Niles failed to present evidence showing legal provocation or sudden heat of passion, which are both prerequisites to support a charge on voluntary manslaughter. We agree with Niles.

"The evidence presented at trial determines the law to be charged to the jury." *State v. Hernandez*, 386 S.C. 655, 660, 690 S.E.2d 582, 585 (Ct. App. 2010). "To warrant a court's eliminating the offense of [voluntary] manslaughter, it should very clearly appear that there is *no evidence whatsoever* tending to reduce the crime from murder to [voluntary] manslaughter." *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) (emphasis added). In determining whether the evidence requires a charge of voluntary manslaughter, the circuit court views facts in a light most favorable to the defendant. *State v. Byrd*, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996).

"Voluntary manslaughter is the unlawful killing of a human being in [a] sudden heat of passion upon sufficient legal provocation." *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). Both sufficient legal provocation and heat of passion must be present at the time of the killing to support a jury instruction on voluntary manslaughter. *Hernandez*, 386 S.C. at 660, 690 S.E.2d at 585.

Furthermore, a court is permitted to charge a jury on both voluntary manslaughter and self-defense if supported by the evidence. In *State v. Gilliam*, 296 S.C. 395, 396-97, 373 S.E.2d 596, 597 (1988), our supreme court held a jury charge on self-defense and voluntary manslaughter are not mutually exclusive, stating:

Both self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if

supported by the evidence. The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter.

(internal citation omitted).

Here, we find Niles' testimony that Salter fired the first shot at him, and he subsequently returned fire provides sufficient evidence to support a jury charge on voluntary manslaughter. Viewing the evidence in a light most favorable to Niles, we believe a jury could find Niles acted in a heat of passion upon sufficient legal provocation, thus supporting a voluntary manslaughter jury charge.

I. Legal Provocation

First, we find there is evidence, albeit conflicting, that Salter sufficiently provoked Niles.

An unprovoked attack with a deadly weapon or an overt threatening act can constitute sufficient legal provocation to support a jury charge on voluntary manslaughter. *State v. Starnes*, 388 S.C. 590, 597-98, 698 S.E.2d 604, 608 (2010). In *Gilliam*, our supreme court found adequate legal provocation to support a jury charge on voluntary manslaughter from the defendant's testimony that the victim made threatening statements to the defendant, drew a gun, and shot at the defendant. *Gilliam*, 296 S.C. at 396-97, 373 S.E.2d at 597. Further, in *State v. Linder*, 276 S.C. 304, 306-07, 278 S.E. 2d 335, 337 (1981), our supreme court held the evidence supported a jury charge on voluntary manslaughter when, under the defendant's version of the facts, a patrolman began shooting at the defendant before the defendant reached for his weapon, returned fire, and killed the patrolman.

Here, Niles testified:

[W]hen [Moore] was getting out of the car and Salter was reaching underneath his seat I seen him pulling the gun and that's when he start[ed] firing off as [Moore] was jumping in the back seat and when he pulled the door to that's when . . . [Salter] was shooting in the car. That's when my fiancé[e] started screaming. [Hammond] ducked in my lap. She was screaming. So, while [Salter]

was shooting in the car . . . I grabbed my pistol and that's when I shot two times.

We find Niles' testimony provided evidence that he shot Salter after Salter pulled a gun and began shooting at Niles. Accordingly, viewing the evidence in a light most favorable to Niles, we find his version of the facts provided sufficient legal provocation to support a jury charge on voluntary manslaughter. *See State v. Pittman*, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2008) ("This court has previously held that an overt, threatening act or a physical encounter may constitute sufficient legal provocation."); *see also State v. Gadsden*, 314 S.C. 229, 233, 442 S.E.2d 594, 597 (1994) ("In determining whether the evidence required a charge of voluntary manslaughter, we view the facts in a light most favorable to the defendant.").

II. Heat of Passion

Second, we find evidence was presented at trial to show Niles acted in a heat of passion when he shot Salter.

To mitigate murder to voluntary manslaughter, sudden heat of passion, while it need not dethrone reason entirely, must be such that would "naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *State v. Lowry*, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (internal quotation marks and citation omitted). "However, even when a person's passion is sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary person would have cooled, the killing would be murder and not manslaughter." *Hernandez*, 386 S.C. at 661, 690 S.E.2d at 585 (internal quotation marks and citation omitted). "Whether an accused cooled off prior to a violent act must be determined by a review of all the circumstances surrounding the event and the people involved." *Id.*

Niles testified that after Salter began shooting at his vehicle, Niles reached for his gun and returned fire. He stated:

So, while he was shooting in the car . . . I grabbed my pistol and that's when I shot two times. My eyes were closed. I wasn't even looking. I shot two times. I went

pow, pow. I wasn't trying to hit nobody . . . I was just trying to get him to stop shooting. That's all I was trying to do. I didn't know if my fiancé[e] got shot or nothing. That's the first thing that came to my head, you know.

From Niles' testimony, we find there is evidence Niles acted in a sudden heat of passion. Looking at the totality of the circumstances, there is no evidence Niles had a period of time to cool down or reflect before reaching for his gun and firing back at Salter. *See State v. Knoten*, 347 S.C. 296, 307-09, 555 S.E.2d 391, 397-98 (2001) (holding it is error to refuse a jury charge on voluntary manslaughter when viewing the evidence in the light most favorable to the defendant, there is no evidence that a significant period of time elapsed between the attack of the defendant by the decedent and the defendant's fatal blows). Further, Niles' testimony that grabbing the gun and returning fire was the "the first thing that came to . . . [his] mind" supports that he was acting on impulse upon being shot at by Salter. *See Starnes*, 388 S.C. at 598, 698 S.E.2d at 609 (holding to constitute sudden heat of passion to warrant a jury charge of voluntary manslaughter, a defendant's fear immediately following an attack or threatening act must cause the defendant to lose control and create an uncontrollable impulse to do violence).

Accordingly, viewing the evidence in the light most favorable to Niles, we find evidence sufficient to support a charge on voluntary manslaughter; therefore, the circuit court erred in failing to charge the jury on voluntary manslaughter. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (holding that if there is any evidence to support a jury charge, the circuit court should grant the request).

III. Prejudice

Furthermore, the error of the circuit court in failing to charge the jury with voluntary manslaughter prejudiced Niles. "The [circuit] court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *State v. Harrison*, 343 S.C. 165, 173, 539 S.E.2d 71, 75 (Ct. App. 2000). However, even if the circuit court "refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (internal citation omitted). The party complaining of the circuit court's refusal to give the requested instruction bears the burden of demonstrating prejudice to warrant a reversal. *Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc.*, 316 S.C. 292, 299, 450 S.E.2d 41, 45 (1994).

We find Niles met his burden of showing he was prejudiced by the circuit court's refusal to give the requested jury instruction. Here, the circuit court failed to give any instruction on voluntary manslaughter. The jury charges the circuit court gave regarding self-defense, murder, armed robbery, and possession of a firearm during the commission of a violent crime do not cover the substance of voluntary manslaughter, nor do they explain the elements of voluntary manslaughter. Based on the evidence presented at trial, viewed in a light most favorable to the defendant, a jury could have found Niles guilty of voluntary manslaughter. Therefore, Niles was prejudiced by the circuit court's failure to instruct the jury on voluntary manslaughter. *See Harrison*, 343 S.C. at 175, 539 S.E.2d at 76 (holding defendant was prejudiced when based on the evidence at trial, a different verdict might have been reached if the jury had been charged with the instruction requested by the defendant).

Because the circuit court erred in refusing to charge the jury on voluntary manslaughter and that error prejudiced Niles, we reverse the circuit court. *See Harrison*, 343 S.C. at 173, 539 S.E.2d at 75 ("To warrant reversal, a [circuit court's] refusal to give a requested jury charge must be both erroneous and prejudicial.")

CONCLUSION

Accordingly, the circuit court's decision is

REVERSED.

THOMAS and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2009-121246

THE STATE,

RESPONDENT,

V.

RICHARD BILL NILES, JR.,

APPELLANT

PETITION FOR REHEARING

Comes now Respondent, above named, by and through the Attorney General of South Carolina, and pursuant to Rule 221(a), SCACR, hereby respectfully petitions this Court for rehearing.

INTRODUCTION

On April 9, 2007, James Salter was shot in a Best Buy parking lot in Myrtle Beach. (R. 153, 172). He later died from his injuries. (R. 534-35). Richard Niles ("Appellant"), his fiancé, Mokeia Hammond and a third party, Ervin Moore, were each charged with murder, armed robbery and possession of a firearm during the commission of a violent crime. (R. 118, 392). Appellant and Hammond invoked their respective rights to trial by jury, while Moore pled guilty to charges of voluntary manslaughter, robbery and possession of a firearm during the

commission of a violent crime.¹ (R. 16, 391-93). Appellant was convicted on all charges while Hammond was convicted of armed robbery.² (R. 741).

STATEMENT OF THE CASE

Appellant was indicted during the August 2007 and October 2008 terms of court pursuant to indictment numbers: #2007-GS-26-3362 (murder), #2008-GS-26-4118 (possession of a firearm during the commission of a violent crime) and #2008-GS-26-4119 (armed robbery). (R. 773-77). On March 9, 2009, Appellant and Hammond's cases were called to trial before the Honorable Benjamin H. Culbertson. (R. 16). Appellant was represented by Verdell Barr. Four days later, Appellant was convicted of murder, armed robbery and possession of a firearm during the commission of a violent crime. (R. 744). Appellant received a thirty (30) year sentence for both the murder and armed robbery charges, in addition to a five (5) year sentence for the weapons charge, all to be served concurrently. (R. 764). Thereafter, Appellant filed a timely notice of appeal and on August 23, 2010, filed a final brief appealing only his murder conviction arguing the trial court erred in refusing to charge voluntary manslaughter. Br. of App. at 11; Br. of App. at 3. In the conclusion of his brief, Appellant requested his murder conviction be reversed and remanded for a new trial on the murder indictment, while the State asked that his murder conviction be affirmed. Br. of App. at 11; Br. of Resp. at 15. On September 12, 2012 this Court reversed and remanded finding Niles' testimony that Victim fired first after which Niles subsequently returned fire constituted evidence of voluntary manslaughter and therefore entitled Niles to a jury charge on voluntary manslaughter. See State v. Niles, No. 5034 (Ct. App.

¹ The terms of Moore's plea agreement allowed him to plead to armed robbery, voluntary manslaughter and possession of a firearm during the commission of a violent crime in exchange for his testimony against both Appellant and Hammond. (R. 391).

² Hammond was acquitted on the charges of both murder and possession of a firearm during the commission of a violent crime. (R. 741). On appeal, Hammond's armed robbery charge was affirmed via an unpublished opinion. See State v. Hammond, No. 2011-UP-476 (Ct. App. filed October 26, 2011).

filed on September 12, 2012). The State now seeks rehearing to: (1) clarify that only Niles' *murder conviction* was reversed and remanded in the Court's opinion; (2) highlight that Niles' testimony, "I was just trying to get him to stop shooting" did not amount to evidence of sudden heat of passion and therefore, Niles was not entitled to an instruction on voluntary manslaughter; and (3) show that even if Niles was entitled to an instruction on voluntary manslaughter, any error was necessarily harmless in light of the fact the jury clearly believed Moore's testimony, that Niles shot the victim in the course of an armed robbery, since it convicted Niles of armed robbery.

STANDARD OF REVIEW

"[A] petition for rehearing must 'state with particularity the points supposed to have been overlooked or misapprehended by the court.'" Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011) (quoting Rule 221(a), SCACR). Similarly, "[t]he purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, Appellate Practice in South Carolina 309 (1999)).

ARGUMENTS

I. The Only Conviction Appealed by Niles was his Murder Conviction and therefore Niles' Armed Robbery and Firearms Convictions Still Stand

The State seeks clarification from this Court as to whether its opinion merely reversed Niles' murder conviction, which was the only conviction that was appealed, or reversed and remanded Niles' additional unappealed convictions, the armed robbery and firearms conviction. Initially, the State notes the opinion only vaguely addresses this stating in its conclusion that the trial court's "decision" was reversed. While the State presumes the Court uses such language

simply because the only conviction which was before the Court was the murder conviction³, the State respectfully asks that the Court clarify this. Specifically, because Appellant only appealed from the murder conviction, the unappealed convictions are law of the case. See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding an unappealed ruling, right or wrong, becomes the law of the case). Further, because the trial court's purported failure to charge the jury on voluntary manslaughter would have no effect on the jury's decision to convict Niles on the armed robbery or the firearms charge, the State submits Niles' remaining convictions should remain in tact.

II. Niles Testimony Regarding the Shooting did not Establish that Niles was Acting in the Sudden Heat of Passion

In its opinion, this Court found Niles established sudden heat of passion based upon the following testimony:

So, while he was shooting in the car . . . I grabbed my pistol and that's when I shot two times. My eyes were closed. I wasn't even looking. I shot two times. I went pow, pow. I wasn't trying to hit nobody . . . I was just trying to get him to stop shooting. That's all I was trying to do. *I didn't know if my fiancé got shot or nothing. That's the first thing that came into my head, you know.*

(R. 569) (emphasis added). In response, the State notes Niles' testimony, even when viewed in the light most favorable to Niles, fails to amount to "an uncontrollable impulse to do violence" which as this Court is well aware, is the definition of sudden heat of passion. See State v. Byrd, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996) (explaining the sudden heat of passion "must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.").

³ See State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) ("Appellate courts like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.").

In the present case, Niles' testimony merely established that after seeing the victim shoot at the car, Niles' *initially fearing that his fiancé got shot*, returned fire simply to get the victim to *stop shooting*. (R. 569). In other words, even Niles' own testimony only establishes that upon seeing the victim fire at the car, Niles returned fire not because he had an uncontrollable impulse to violence to the victim, but because he feared for the safety of his fiancé and wanted the victim to stop shooting. (R. 569). Understanding, this Niles testimony simply does not establish the proper *mens rea* for voluntary manslaughter—a lesser included offense of murder which reduces a defendant's culpability in light of the facts and circumstances of the case—and instead only demonstrates Appellant's *mens rea* was that of self-defense or defense of others, both of which are justification defenses.⁴ Thus, the State maintains that in reviewing Niles' testimony and subsequently concluding that such testimony amounted to evidence of sudden heat of passion, the Court overlooked or misapprehended the substance of Niles' testimony since it merely referenced the *mens rea* for a justification defense and not that of an excuse defense such as voluntary manslaughter.⁵ Specifically, Niles' testimony does not establish an uncontrollable impulse to do violence to the victim because, in the words of Niles he was not aiming at the victim, did not intend to shoot him, but only wanted the shooting to stop because he feared for his fiancé's safety and his safety when he fired at the victim. (R. 569). In light of this testimony, Niles simply did not possess the proper *mens rea* required for a finding of sudden heat of passion

⁴ See State v. Dickey, 394 S.C. 491, 515-16, 716 S.E.2d 97, 109-10 (2011) (Beatty dissenting) (quoting State v. Starnes, 388 S.C. 590, 598-99, 698 S.E.2d 604, 609 ("Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter-it will not justify it. This is the distinction between voluntary manslaughter and self-defense.")).

⁵ This was a clear concern of the Starnes Court who explained that testimony regarding one's fear alone could not, by itself, give rise to a finding of sudden heat of passion. Starnes, 590 S.C. at 599-600, 698 S.E.2d at 609. Continuing, the Starnes Court elaborated on its concern stating, that if it held that fear alone could amount to sudden heat of passion, it "would impermissibly blend the elements of voluntary manslaughter and self-defense" and "would render voluntary manslaughter a lesser-included offense of self-defense, for where there is an intentional killing based on fear alone, a defendant would be entitled to a voluntary manslaughter charge." Id.

and therefore, the State asks this Court to allow for rehearing on this ground, or in the alternative, to substitute an opinion consistent with the aforementioned analysis.

III. Even if Niles' Testimony Established that he was Entitled to an Instruction on Voluntary Manslaughter, the Trial Court's Failure to Charge the Jury was Harmless Error in light of the fact the Jury Convicted Niles of Armed Robbery Meaning it did not find Niles' Testimony Credible

In its opinion, this Court, citing to State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000) found the trial court's failure to charge voluntary manslaughter was prejudicial error because a different verdict might have been reached had the jury been charged on voluntary manslaughter. However, this is at odds with what the jury actually found—that Niles was committing an armed robbery when he shot and killed the victim, James Salter. Specifically, as the basis of Niles' voluntary manslaughter charge would be solely based upon his own testimony as to how the events occurred, the fact that both Niles and Hammond were convicted of armed robbery necessarily meant the jury simply did not believe Niles' testimony regarding his version of events.

At trial, Niles testified he observed Moore and Salter fighting. (R. 569). Niles then claimed Moore fled the car at which point Salter emerged stating, “[y]ou ain’t getting out this car with my weed without no money[.]” Following this exchange, Salter allegedly reached for his gun and fired at the car. (R. 569). Niles then testified that he reached in his bag, grabbed his gun and fired two shots at Salter because “he was trying to get him to stop shooting.” (R. 569).

By contrast, Moore described the incident differently, explaining that after identifying the marijuana and passing Niles on his return to the car, he watched as Niles stood alongside Salter's car. (R. 399). Moore then described Niles leaning into Salter's window, hearing two shots, after which, Niles, with the marijuana and a .357 in hand, dove into the backseat behind Hammond.

(R. 399-400, 402, 403, 406). According to Moore, Salter returned fire, and Niles fired again. (R. 400). During the exchange of gunfire, Moore explained that Niles shot Salter.⁶ (R. 402-03).

Thus, the evidence presented clearly required the jury to answer, as a threshold matter, one key question—whether Niles was involved in the armed robbery. Upon answering this question, the evidence presented would then lead the jury to one of two conclusions, either Niles murdered Salter during the course of an armed robbery or Niles had nothing to do with the armed robbery and was caught in the crossfire.

Here, because the jury answered the question by finding Niles and Hammond guilty of armed robbery, the jury necessarily determined Niles' version of events was not credible. Understanding this, Niles testimony that Salter fired first prompting him to return fire, the testimony which provided the basis for the Court's decision that Niles was entitled to a charge on voluntary manslaughter, was not credible testimony in the eyes of the jury. Accordingly, there is simply nothing in the record to suggest the jury would have convicted Niles of voluntary manslaughter when the jury clearly believed Moore's testimony that Niles shot the victim during the course of a robbery. As such, the State submits this Court overlooked or misapprehended the fact that the jury convicted both Niles and Hammond of armed robbery.

CONCLUSION

In light of the aforementioned arguments, the State respectfully asks this Court to affirm both the ruling of the trial court and Appellant's murder conviction.

Respectfully Submitted,

ALAN WILSON
Attorney General

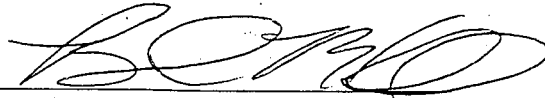
JOHN W. McINTOSH
Chief Deputy Attorney General

⁶ Hammond, the only other living eyewitness elected not to testify at trial. R. at 532.

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

BRENDAN J. McDONALD
Assistant Attorney General

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

A handwritten signature in black ink, appearing to read 'B. McDonald', written over a horizontal line.

Brendan McDonald
ATTORNEY(S) FOR RESPONDENTS

September 26, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2009-121246

THE STATE,

RESPONDENT,

v.

RICHARD BILL NILES, JR.,

APPELLANT

PROOF OF SERVICE

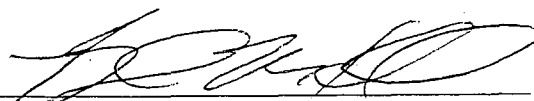
I, Brendan McDonald, counsel for the Respondent, certify that I have served the within *Petition for Rehearing*, on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Esq., SCCID/Division of Appellate Defense
1330 Lady St., Ste. #401
Columbia, SC 29201

Reid T. Sherard, Esq.
Nelson, Mullins, Riley & Scarborough, LLP
P.O. Box 10084
Greenville, SC 29603

I further certify that all parties required by Rule to be served have been served.

This 26th day of September, 2012.


BRENDAN J. McDONALD

Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305
ATTORNEY FOR RESPONDENT

September 26, 2012.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

RICHARD BILL NILES, JR.,

APPELLANT

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 5034

RETURN TO RESPONDENT'S PETITION FOR REHEARING

Pursuant to the letter dated September 27, 2012 from the Clerk of Court, Appellant Richard Bill Niles, Jr., by and through his undersigned counsel, files his Return to the State's Petition for Rehearing (the "Petition").

The Court heard oral argument on the appeal on February 14, 2012 and issued Published Opinion No. 5034 on September 12, 2012. The Court's ruling is correct as to the matters presented by the Petition and should not be revisited.

I. The Court of Appeals Did Not Overlook or Misapprehend Any Points When Correctly Reversing Appellant's Convictions.

As the Court of Appeals correctly recognized in its opinion of reversal, Appellant was entitled to a jury instruction of voluntary manslaughter. When reversing, the Court was

explicitly aware Appellant “was convicted of murder, armed robbery, and possession of a firearm during the commission of a violent crime.” (Opinion p. 2). With such knowledge, the Court ended the “Facts/Procedural History” section of the Opinion by simply noting “Niles appeals.” (*Id.* at p. 3). After analyzing the application of law to facts, the Court stated “we reverse the circuit court . . . [a]ccordingly, the circuit court’s decision is **REVERSED**.” (*Id.* at p. 8) (emphasis in original).

The State argues that Appellant’s armed robbery and firearm convictions should stand. This argument fails to acknowledge the Court’s reversal, and further fails to acknowledge that the failure to charge voluntary manslaughter infected the entire jury instruction. It is undisputed that the facts which supported the charges on armed robbery and the firearm charge were part of the same transaction which led to the murder charge. All the charges are inextricably entwined, and because it was error not to charge voluntary manslaughter, Appellant is entitled to a new trial on all three convictions.

II. The Court of Appeals Did Not Overlook or Misapprehend Any Points When Correctly Determining the Record Contained Some Evidence of Sudden Heat of Passion.

“Whether a voluntary manslaughter charge is warranted turns on the facts. If the facts disclose any basis for the charge, the charge must be given. *State v. Starnes*, 388 S.C. 590, 597-598, 698 S.E.2d 604, 608 (2010). Stated another way, “[t]o warrant a court’s eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.” *State v. Lowry*, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993). This is such an important tenet of law it applies even if the defendant does not want a jury instruction for manslaughter due to fear of a compromise verdict. *State v. Nichols*, 325 S.C. 111, 118, 481 S.E.2d 118, 122 (1997).

“Trial courts often struggle with the difficult interplay between murder and the lesser-included offense of voluntary manslaughter, especially where a defendant claims he acted in self-defense,” and this case is no exception. *Starnes*, 388 S.C. at 597-598, 698 S.E.2d at 608. In *Starnes*, the Supreme Court took the opportunity to “reaffirm the principle that a person’s fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion.” *Id.* at 598, 609.

In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in a light most favorable to the defendant. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Here, the Court of Appeals found evidence in the record supporting a manslaughter charge. (Opinion at pp. 5-7). That the evidence was conflicting makes no difference. *See Knoten*, 347 S.C. at 305-306, 555 S.E.2d at 396. As the assistant solicitor put it so aptly at trial, “[the jury] can believe part of this, part of that, part of nothing.” (R. p. 634, ll. 20-22).

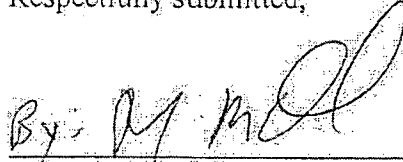
III. The Court of Appeals Did Not Overlook or Misapprehend Any Points When Correctly Determining the Trial Court’s Error Was Not Harmless.

Since no voluntary manslaughter charge was given when there was evidence of same in the record, the charges actually given in this case did not “sufficiently cover[] the substance of the request.” *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011). “It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge.” *Id.* at 549-550, 603. The Petition’s attempt to require the jury’s decision to be broken down into a progression analysis is misguided and without authority.

CONCLUSION

Rehearing is only proper where the Court overlooks or misapprehends specific points. For the reasons stated above, and based on the arguments, points, and authorities in Appellant's brief and oral argument, the Court did not overlook or misapprehend any point, and therefore should deny the Petition.

Respectfully submitted,

By: 

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October 8, 2012

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

RICHARD BILL NILES, JR.,

APPELLANT

Appeal from Horry County
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 5034

CERTIFICATE OF SERVICE

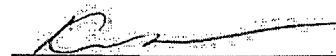
The undersigned attorney hereby certifies that a true copy of the Return to the Petition for Rehearing in the above-entitled case has been served upon Brendan J. McDonald, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of October, 2012.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day
of October, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

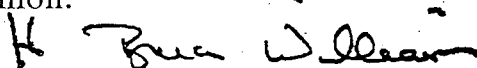
The South Carolina Court of Appeals

The State, Respondent,
v.
Richard Bill Niles, Jr., Appellant.

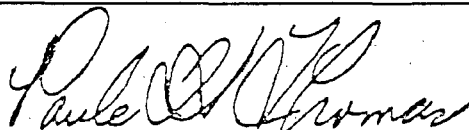
Appellate Case No. 2009-121246

ORDER

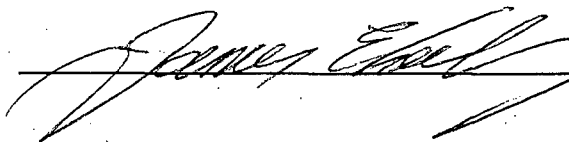
After careful consideration of the Petition for Panel Rehearing, the Court has decided to issue a substituted opinion. It is, therefore, ordered that the Petition for Panel Rehearing be denied and the earlier opinion, Op. No. 5034, be withdrawn and substituted with the attached opinion.



J. Williams



J. Thomas



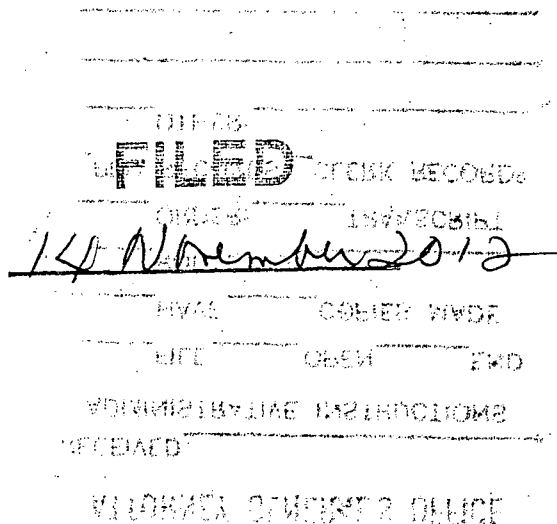
J. Lockemy

Columbia, South Carolina

cc:

Robert Michael Dudek

Brendan Jackson McDonald
Reid T. Sherard



**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Richard Bill Niles, Jr., Appellant.

Appellate Case No. 2009-121246

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Published Opinion No. 5034
Heard February 14, 2012 – Filed September 12, 2012
Withdrawn, Substituted and Refiled November 14, 2012

REVERSED AND REMANDED

Robert Michael Dudek, South Carolina Commission on
Indigent Defense, of Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Brendan J. McDonald, all of Columbia,
for Respondent.

WILLIAMS, J.: On appeal, Richard Bill Niles, Jr. (Niles) argues the circuit court erred in declining to charge the jury on voluntary manslaughter because there was evidence that Niles was not the first aggressor. Niles asserts the circuit court incorrectly reasoned Niles was either acting in self-defense or shot the decedent during the commission of an armed robbery. Because voluntary manslaughter and

self-defense are not mutually exclusive, Niles contends he was entitled to a charge on voluntary manslaughter.¹ We reverse and remand.

FACTS/PROCEDURAL HISTORY

On April 9, 2007, James Salter (Salter) was shot in a Best Buy parking lot in Myrtle Beach, South Carolina. Salter later died from his injuries. Niles, his fiancé Mokeia Hammond (Hammond), and Ervin Moore (Moore) were arrested and charged with murder, armed robbery, and possession of a firearm during the commission of a violent crime. Moore entered into a plea agreement with the State whereby Moore pled guilty to armed robbery, voluntary manslaughter, and possession of a firearm during the commission of a violent crime in exchange for his testimony against Niles and Hammond. Niles and Hammond were tried jointly on March 9, 2009.

At Niles' and Hammond's trial, Moore testified that on April 9, 2007, Niles and Hammond picked up Moore and headed to the beach where the trio "made a couple of drug sales at a couple of motels." Moore stated, "[W]e were smoking blunts in the car . . . [and when] we ran out of weed . . . we said we wanted to get some more weed." Moore maintained Niles "made a couple of phone calls," and they "ended up in the Best Buy parking lot." Moore testified Niles said "he was going to do a lick," which Moore understood to mean they were going to rob the drug dealer, later identified as Salter. Moore stated his job in the robbery was "to identify the weed" for Niles.

Upon arriving at the Best Buy parking lot, Moore exited his vehicle and got into Salter's vehicle. Moore stated Salter pulled a large ziploc bag of marijuana out from under his seat so Moore could see it. Moore maintained that by the time he inspected the marijuana, exited Salter's vehicle, and returned to the vehicle with Hammond, Niles had exited their vehicle. Moore testified he informed Niles that he saw the marijuana and stated, "The next thing I knew, I just heard two shots and I seen [Niles], he jumped back in the back seat behind [Hammond]." Moore further stated "after . . . [Niles] jumped in [the vehicle], after them two shots then the other guy fired a shot." Moore testified that after both Niles and Salter continued to fire shots at each other, Hammond drove out of the parking lot.

¹ Niles did not appeal his convictions for armed robbery and possession of a firearm during the commission of a violent crime.

Though Moore testified on direct examination "the other guy didn't shoot until after [Niles] shot," on cross-examination, Moore admitted he did not actually see Niles shoot first. Moore stated he originally testified Niles shot first because Niles admitted he shot first when Niles jumped back into the vehicle.

Niles testified in his own defense. He denied he told Moore he was "going to do a lick" and testified Moore asked him to purchase a pound of marijuana for him. Niles affirmed that when they pulled into the Best Buy parking lot, Moore got out of the vehicle and into Salter's vehicle. Niles testified he was talking to Hammond about their upcoming wedding when Hammond suddenly told him, "Baby, they are fighting." Niles stated he looked over to Salter's vehicle and observed Moore and Salter "tussling in the car." Niles stated he noticed Moore trying to exit Salter's vehicle and heard Salter state to Moore, "[Y]ou ain't getting out of this car with my weed without no money." Niles maintained that when Moore exited Salter's vehicle and jumped into the vehicle with Niles and Hammond, Salter pulled out a gun and began shooting at the vehicle that Niles, Hammond, and Moore occupied. Niles testified, "I grabbed my pistol and that's when I shot two times." Niles maintained he was being shot at constantly by Salter and he shot back.

The circuit court charged the jury on self-defense, but it refused Niles' request to charge the jury on voluntary manslaughter. The circuit court refused the voluntary manslaughter charge reasoning that "either the victim started shooting and Mr. Niles was acting in self-defense or Mr. Niles started shooting . . . [and] killed the victim during the commission of an armed robbery."

Niles was convicted of murder, armed robbery, and possession of a firearm during the commission of a violent crime.² Niles received a thirty-year sentence for murder and armed robbery and a five-year sentence for the conviction of possession of a firearm during the commission of a violent crime, all to be served concurrently. Niles appeals.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. *Id.* If any evidence supports a jury charge, the circuit court should grant the request.

² While Niles was convicted of all charges, Hammond was only convicted of armed robbery and sentenced to fifteen years' imprisonment.

State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). To warrant reversal, a circuit court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. *Id.*

LAW/ANALYSIS

Niles argues the circuit court erred in failing to charge the jury on voluntary manslaughter because conflicting testimony was presented to support a jury charge on voluntary manslaughter.

To the contrary, the State asserts a jury charge of voluntary manslaughter was not appropriate in this case. The State argues only two scenarios are possible from the evidence presented at trial: (1) Salter shot first, and Niles acted in self-defense by returning fire; or (2) Niles shot at Salter first, committing murder during the commission of an armed robbery. The State contends that Niles failed to present evidence showing legal provocation or sudden heat of passion, which are both prerequisites to support a charge on voluntary manslaughter. We agree with Niles.

"The evidence presented at trial determines the law to be charged to the jury." *State v. Hernandez*, 386 S.C. 655, 660, 690 S.E.2d 582, 585 (Ct. App. 2010). "To warrant a court's eliminating the offense of [voluntary] manslaughter, it should very clearly appear that there is *no evidence whatsoever* tending to reduce the crime from murder to [voluntary] manslaughter." *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) (emphasis added). In determining whether the evidence requires a charge of voluntary manslaughter, the circuit court views facts in a light most favorable to the defendant. *State v. Byrd*, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996).

"Voluntary manslaughter is the unlawful killing of a human being in [a] sudden heat of passion upon sufficient legal provocation." *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). Both sufficient legal provocation and heat of passion must be present at the time of the killing to support a jury instruction on voluntary manslaughter. *Hernandez*, 386 S.C. at 660, 690 S.E.2d at 585.

Furthermore, a court is permitted to charge a jury on both voluntary manslaughter and self-defense if supported by the evidence. In *State v. Gilliam*, 296 S.C. 395, 396-97, 373 S.E.2d 596, 597 (1988), our supreme court held a jury charge on self-defense and voluntary manslaughter are not mutually exclusive, stating:

Both self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence. The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter.

(internal citation omitted).

Here, we find Niles' testimony that Salter fired the first shot at him, and he subsequently returned fire provides sufficient evidence to support a jury charge on voluntary manslaughter. Viewing the evidence in a light most favorable to Niles, we believe a jury could find Niles acted in a heat of passion upon sufficient legal provocation, thus supporting a voluntary manslaughter jury charge.

I. Legal Provocation

First, we find there is evidence, albeit conflicting, that Salter sufficiently provoked Niles.

An unprovoked attack with a deadly weapon or an overt threatening act can constitute sufficient legal provocation to support a jury charge on voluntary manslaughter. *State v. Starnes*, 388 S.C. 590, 597-98, 698 S.E.2d 604, 608 (2010). In *Gilliam*, our supreme court found adequate legal provocation to support a jury charge on voluntary manslaughter from the defendant's testimony that the victim made threatening statements to the defendant, drew a gun, and shot at the defendant. *Gilliam*, 296 S.C. at 396-97, 373 S.E.2d at 597. Further, in *State v. Linder*, 276 S.C. 304, 306-07, 278 S.E. 2d 335, 337 (1981), our supreme court held the evidence supported a jury charge on voluntary manslaughter when, under the defendant's version of the facts, a patrolman began shooting at the defendant before the defendant reached for his weapon, returned fire, and killed the patrolman.

Here, Niles testified:

[W]hen [Moore] was getting out of the car and Salter was reaching underneath his seat I seen him pulling the gun and that's when he start[ed] firing off as [Moore] was jumping in the back seat and when he pulled the door to that's when . . . [Salter] was shooting in the car. That's

when my fiancé started screaming. [Hammond] ducked in my lap. She was screaming. So, while [Salter] was shooting in the car . . . I grabbed my pistol and that's when I shot two times.

We find Niles' testimony provided evidence that he shot Salter after Salter pulled a gun and began shooting at Niles. Accordingly, viewing the evidence in a light most favorable to Niles, we find his version of the facts provided sufficient legal provocation to support a jury charge on voluntary manslaughter. *See State v. Pittman*, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2008) ("This court has previously held that an overt, threatening act or a physical encounter may constitute sufficient legal provocation."); *see also State v. Gadsden*, 314 S.C. 229, 233, 442 S.E.2d 594, 597 (1994) ("In determining whether the evidence required a charge of voluntary manslaughter, we view the facts in a light most favorable to the defendant.").

II. Heat of passion

Second, we find evidence was presented at trial to show Niles acted in a heat of passion when he shot Salter.

To mitigate murder to voluntary manslaughter, sudden heat of passion, while it need not dethrone reason entirely, must be such that would "naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *State v. Lowry*, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (internal quotation marks and citation omitted). "However, even when a person's passion is sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary person would have cooled, the killing would be murder and not manslaughter." *Hernandez*, 386 S.C. at 661, 690 S.E.2d at 585 (internal quotation marks and citation omitted). "Whether an accused cooled off prior to a violent act must be determined by a review of all the circumstances surrounding the event and the people involved." *Id.*

Niles testified that after Salter began shooting at his vehicle, Niles reached for his gun and returned fire. He stated:

So, while he was shooting in the car . . . I grabbed my pistol and that's when I shot two times. My eyes were closed. I wasn't even looking. I shot two times. I went pow, pow. I wasn't trying to hit nobody . . . I was just trying to get him to stop shooting. That's all I was trying to do. I didn't know if my fiancé got shot or nothing. That's the first thing that came to my head, you know.

From Niles' testimony, we find there is evidence Niles acted in a sudden heat of passion. Looking at the totality of the circumstances, there is no evidence Niles had a period of time to cool down or reflect before reaching for his gun and firing back at Salter. *See State v. Knoten*, 347 S.C. 296, 307-09, 555 S.E.2d 391, 397-98 (2001) (holding it is error to refuse a jury charge on voluntary manslaughter when in viewing the evidence in the light most favorable to the defendant, there is no evidence that a significant period of time elapsed between the attack of the defendant by the decedent and the defendant's fatal blows). Further, Niles' testimony that grabbing the gun and returning fire was the "the first thing that came to . . . [his] mind" supports that he was acting on impulse upon being shot at by Salter. *See Starnes*, 388 S.C. at 598, 698 S.E.2d at 609 (holding to constitute sudden heat of passion to warrant a jury charge of voluntary manslaughter, a defendant's fear immediately following an attack or threatening act must cause the defendant to lose control and create an uncontrollable impulse to do violence).

Accordingly, viewing the evidence in the light most favorable to Niles, we find evidence sufficient to support a charge on voluntary manslaughter; therefore, the circuit court erred in failing to charge the jury on voluntary manslaughter. *See State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (holding that if there is any evidence to support a jury charge, the circuit court should grant the request).

III. Prejudice

Furthermore, the error of the circuit court in failing to charge the jury with voluntary manslaughter prejudiced Niles. "The [circuit] court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *State v. Harrison*, 343 S.C. 165, 173, 539 S.E.2d 71, 75 (Ct. App. 2000). However, even if the circuit court "refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (internal citation omitted). The party complaining of the circuit court's refusal to give the requested instruction

bears the burden of demonstrating prejudice to warrant a reversal. *Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc.*, 316 S.C. 292, 299, 450 S.E.2d 41, 45 (1994).

We find Niles met his burden of showing he was prejudiced by the circuit court's refusal to give the requested jury instruction. Here, the circuit court failed to give any instruction on voluntary manslaughter. The jury charges the circuit court gave regarding self-defense, murder, armed robbery, and possession of a firearm during the commission of a violent crime do not cover the substance of voluntary manslaughter, nor do they explain the elements of voluntary manslaughter. Based on the evidence presented at trial, viewed in a light most favorable to the defendant, a jury could have found Niles guilty of voluntary manslaughter. *See Harrison*, 343 S.C. at 175, 539 S.E.2d at 76 (holding defendant was prejudiced when based on the evidence at trial, a different verdict might have been reached if the jury had been charged with the instruction requested by the defendant). Therefore, Niles was prejudiced by the circuit court's failure to instruct the jury on voluntary manslaughter. *See id.*, 343 S.C. at 173, 539 S.E.2d at 75 ("To warrant reversal, a [circuit court's] refusal to give a requested jury charge must be both erroneous and prejudicial.").

CONCLUSION

Based on the foregoing, we find the circuit court erred in refusing to charge the jury on voluntary manslaughter, and thus, we **REVERSE** Niles' conviction for murder and remand for a new trial.

Accordingly, the circuit court's decision is

REVERSED AND REMANDED.

THOMAS and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BILL NILES, JR.,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the court erred by refusing to charge voluntary manslaughter based on evidence appellant was shot at and returned fire where the court incorrectly reasoned that appellant was either acting in self-defense or shot the decedent during the commission of an armed robbery since voluntary manslaughter and self-defense are not mutually exclusive?

STATEMENT OF THE CASE

Appellant was indicted at the August 23, 2007 term of the Horry County Grand Jury for the offenses of murder, armed robbery, and possession of a weapon during the commission of a violent crime. R. 766 -777. His case was called to trial on March 9, 2009, before the Honorable Benjamin H. Culbertson and a jury. R. 1.

Appellant was tried together with co-defendant Mokeia Hammond. Verdell Barr represented appellant. Ron Hazzard represented co-defendant Hammond. Donna Elder and Brad Richardson were the assistant solicitors. R. 1.

On March 13, 2009, jury found appellant guilty on all three counts. The jury found co-defendant Hammond not guilty on the charge of murder, guilty of armed robbery and not guilty on the charge of possession of a weapon during a violent crime. R. 741, ll. 1-19.

Judge Culbertson sentenced appellant to thirty years imprisonment for murder, thirty years imprisonment for armed robbery and five years imprisonment for possession of a weapon during the commission of a violent crime. The judge sentenced co-defendant Hammond to fifteen years imprisonment for armed robbery. R. 763, l. 24 - 764, l. 14.

This appeal follows.

ARGUMENT

The court erred by refusing to charge voluntary manslaughter based on evidence appellant was shot at and returned fire where the court incorrectly reasoned that appellant was either acting in self-defense or shot the decedent during the commission of an armed robbery since voluntary manslaughter and self-defense are not mutually exclusive.

Relevant Facts

Myrtle Beach Police Officer Ryan Wood responded to a “shots fired call” on April 9, 2007, in the “Coastal Grand Mall area.” R. 152, l. 1 – 153, l. 10. The shooting occurred in the parking lot near the Best Buy. R. 153, l. 11 – 154, l. 5.

Wood found the decedent “slumped over the driver’s seat.” R. 156, l. 22 – 157, l. 4. The decedent was able to tell Wood his name, and “he was kind of going in and out of consciousness.” The decedent told Wood he had been shot by “a couple of black dudes.” R. 157, ll. 8-19.

On cross-examination, Wood acknowledged that the decedent never said “Rich Boy,” appellant’s nick name, shot him. Neither did he say: “Mokeia Hammond shot me.” R. 168, ll. 10-13. The obvious import of this, as defense counsel later argued, was that this case involved a drug deal where appellant knew the decedent, and that appellant would not have planned an armed robbery in broad daylight near the Best Buy. Further, the decedent would have named appellant as the shooter to Officer Wood if he thought appellant had shot him. The defense evidence, as will be seen infra was that alleged accomplice Ervin Moore decided to turn a “normal drug deal” into a robbery attempt without the knowledge of appellant. R. 652, l. 2 – 653, l. 21.

Ervin Moore pled guilty to voluntary manslaughter "and robbery and gun possession" as an accomplice in this case. R. 391, l. 13 – 392, l. 1. Moore was originally charged with murder and armed robbery. R. 392, ll. 2-21.

Moore said on April 9, 2007, he was at a store in Trio, South Carolina "a little boring little town from where my family is from. So, I got in the car with them [appellant and Hammond and] came to the beach." Hammond apparently was driving. R. 394, ll. 13-20.

Moore said on the way to the beach appellant "made a couple of drug sales at a couple of motels." Moore claimed: "We were smoking blunts in the car and while we [were] riding on the beach we were smoking blunts. We ran out of weed and we said [decided] we wanted to get some more weed. R. 394, l. 21 – 395, l. 2. Moore maintained appellant "made a couple of phone calls" and we "ended up in the Best Buy parking lot." R. 395, l. 4-7.

Moore claimed he did not know who appellant was talking to on the phone. R. 395, ll. 3-21. Moore also maintained appellant said "he was going to do a lick." R. 395, ll. 23-24. Moore said he understood this meant they were going to rob the drug dealer. R. 396, ll. 1-18.

Moore said when they got to the Best Buy he "got out of the car and got in the other car, the white mustang [the decedent's car]" R. 397, ll. 3-6. Moore testified his job was "to identify the weed" for appellant. R. 397, ll. 3-16.

Moore said the decedent pulled the marijuana out from under his seat so Moore could see it. R. 397, ll. 20-22. Moore stated the pound of marijuana which was in a "big Ziploc bag." R. 398, ll. 2-7.

Moore said after he inspected the marijuana he got out of the decedent's car and got back into the car with Hammond. Appellant was outside the car at this time. R. 398, ll. 8-23. Moore said he informed appellant he had seen the drugs, and "the next thing I knew I just heard two shots and I seen Richard [appellant], he jumped back in the back seat behind Mokeia. He didn't go in the front seat. He jumped in the back seat where I was at." R. 399, l. 1 - 400, l. 2.

Moore maintained: "[A]fter he [appellant] jumped in, after them two shots then the other guy fired a shot and he fired a shot between, I mean, through the driver's door on Mokeia's car." R. 400, ll. 3-6. Moore said "everybody was shook up . . . stunned. Then after that Richard shot some more and then he shot some more, I mean, by the, by the victim shooting he shot the back window out where I was sitting at and glass went, a piece of glass flew in my eye." Moore stated that at this point Hammond drove out of the parking lot with much of the glass shot out. R. 400, ll. 3-25.

Moore claimed on direct-examination that "the other guy didn't shoot until after Richard shot." R. 403, ll. 3-4. On cross-examination by defense counsel Barr Moore admitted that he lied to the police about the shooting. R. 423, ll. 12-14. Moore acknowledged he told the police: "I didn't see Richard shoot first." Moore said he was testifying appellant shot first "because Richard told me he shot first when he jumped back in the car." R. 429, l. 6 - 430, l. 5.

Moore also said appellant had a couple hundred dollars with him from drug sales that day. At the same time, Moore alleged appellant set up the drug robbery. R. 431, ll. 1-13.

Appellant testified in his own defense. He said he had "no reason" to attempt to rob the decedent for marijuana. He denied he told either Hammond or Moore that "we're going to do a lick." R. 561, ll. 18-20.

Appellant testified that Moore asked him to attempt to purchase "a pound" of marijuana for him. R. 558, ll. 6-21. Appellant said he spoke to the decedent and planned to meet him at the Best Buy. R. 564, l. 25 – 567, l. 17.

Appellant recalled that Moore got out of his car and got into the car with the decedent. Appellant said he was talking with Hammond about their upcoming wedding. Hammond suddenly told him, "Baby, they are fighting." Appellant said he looked over and saw "they were tussling in the car." Appellant said he noticed Moore trying to get out of the car and he heard the decedent say, "You ain't getting out of this car with my weed without no money." R. 568, l. 11 – 569, l. 24.

Appellant remembered Moore then jumped back into his car, and "I seen him pull out a gun." [T]hat's when he [the decedent] started firing off as Ervin was jumping in the back seat and when he pulled the door that's when he was shooting in, he was shooting in the car." Hammond was screaming while these shot were fired at them, "So, while he was shooting in the car, yes, I did have a gun. So, I grabbed my, I grabbed my pistol and that's when I shot two times. My eyes was closed. I wasn't even looking. I shot two times. I went pow, pow. I wasn't trying to hit nobody." R. 568, l. 11 – 569, l. 24. Appellant was being shot at "constantly," and he shot back. R. 569, l. 25 – 570, l. 9.

Defense counsel Barr argued in closing that appellant and "Mr. Salter [the decedent] know each other. They're engaged in a business where they're making money. There's no logical reason Niles would screw that up . . . Counsel also argued, "[I] don't think that Niles

went to the Best Buy Parking lot with any intention to harm Salter [the decedent] or anyone else in any way and I don't think the evidence has pointed to it." R. 652, l. 2 – 653, l. 21.

Counsel for co-defendant Hammond complained about the jury verdict finding her guilty of armed robbery where the jury acquitted her of murder thereby finding the homicide was not the natural consequence of a planned robbery under the principle of the "hand of one is the hand of all." He moved for a new trial on that basis. The judge refused to grant a new trial noting that inconsistent verdicts did not entitle Hammond to a new trial. R. 746, l. 15 – 748, l. 18.

Request to charge

The judge agreed to charge self-defense. Defense counsel Barr also requested that the judge charge the jury on voluntary manslaughter based on evidence the decedent shot at him and he shot back. R. 637, l. 10 – 638, l. 5. The judge ruled he was not going to charge voluntary manslaughter, and he reasoned that "either the victim started shooting and Mr. Niles was acting in self-defense or Mr. Niles started shooting or killed the victim during the commission of an armed robbery."¹ R. 638, ll. 6-13.

Discussion

"It is well settled that self-defense and voluntary manslaughter are not mutually exclusive, and both issues should be submitted to the jury if supported by the evidence." State v. Wiggins, 330 S.C. 538, 549 n. 18, 500 S.E.2d (1998); State v. Nichols, 325 S.C. 111, 118, 481 S.E.2d 118, 122 (1997); State v. Gilliam, 296 S.C. 395, 396, 373 S.E.2d 596, 597 (1988).

The rationale for this rule is that the jury may fail to find all of the elements for self-defense but still find a sufficient legal provocation and heat of passion to conclude the defendant was only guilty of voluntary manslaughter. See, State v Gilliam, 296 S.C. at 396-397, 373 S.E.2d at 597. It is elementary that a person is going to be in fear when they are being shot at and fear can constitute a basis for heat of passion to support a voluntary manslaughter instruction. State v Wiggins, 330 S.C. at 549, 500 S.E.2d at 495.

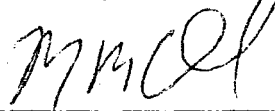
Here, defense counsel correctly argued that appellant being shot at provided the heat of passion and sufficient legal provocation necessary for voluntary manslaughter. The judge erred by reasoning appellant either shot back at the decedent in self-defense, and that the jury could acquit him by reason of self-defense based on that evidence, or the jury could only find him guilty of murder based on the planned armed robbery. See State v Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993). Appellant is entitled to a new trial.

¹ Defense counsel asked for an instruction on involuntary manslaughter. However, since appellant said he shot back intentionally he was not entitled to that instruction and it is not an issue on appeal.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed and this case remanded to the Horry County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
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ATTORNEY FOR APPELLANT.

August 23, 2010

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 23, 2010



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

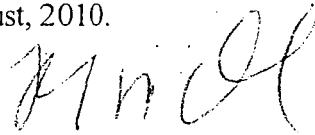
V.

RICHARD BILL NILES, JR.,

APPELLANT

CERTIFICATE OF SERVICE

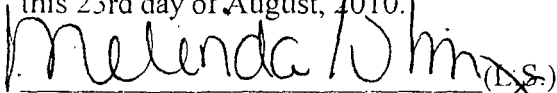
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Brendon J. McDonald, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 23rd day of August, 2010.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 23rd day of August, 2010.



Notary Public for South Carolina

My Commission Expires: October 30, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BILL NILES, JR.,

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QUESTION PRESENTED

- I. Whether the trial court erred in declining to charge voluntary manslaughter where there was evidence Appellant was initially fired upon after which, he returned fire?

INTRODUCTION

On April 9, 2007, James Salter was shot in a Best Buy parking lot in Myrtle Beach. (R. 153, 172). He later died from his injuries. (R. 534-35). Appellant, Richard Niles, his fiancé, Mokeia Hammond and a third party, Ervin Moore, were charged with murder, armed robbery and possession of a firearm during the commission of a violent crime. (R. 118, 392). Appellant and Hammond invoked their respective rights to trial by jury, while Moore pled guilty to charges of voluntary manslaughter, robbery and possession of a firearm during the commission of a violent crime.¹ (R. 16, 391-93). Appellant was convicted on all charges while Hammond was convicted of armed robbery.² (R. 741).

STATEMENT OF THE CASE

Niles ("Appellant") was indicted during the August 2007 and October 2008 terms of court pursuant to indictment numbers: 2007-GS-26-3362 (murder), 2008-GS-26-4118 (possession of a firearm during the commission of a violent crime) and 2008-GS-26-4119 (armed robbery). (R. 773-77). On March 9, 2009, Appellant and Hammond's cases were called to trial before the Honorable Benjamin H. Culbertson. (R. 16). Appellant was represented by Verdell Barr. Four days later, Appellant was convicted of murder, armed robbery and possession of a firearm during the commission of a violent crime. (R. 744). Appellant received a thirty (30) year sentence for both the murder and armed robbery charges, in addition to a five (5) year sentence for the weapons charge, all to be served

¹ The terms of Moore's plea agreement allowed him to plead to armed robbery, voluntary manslaughter and possession of a firearm during the commission of a violent crime in exchange for his testimony against both Appellant and Hammond. (R. 391).

² Hammond was acquitted on the charges of both murder and possession of a firearm during the commission of a violent crime. (R. 741).

concurrently. (R. 764). Thereafter, on March 19, 2009, Appellant filed a timely Notice of Appeal.

STATEMENT OF THE FACTS

At trial, the State painted the picture that Appellant and Hammond, who were tried jointly, acted as a modern-day Bonnie and Clyde, with Hammond as the getaway driver and Appellant as the robber. (R. 123). In support of this theory, the State offered Ervin Moore's testimony, who stated Appellant, shortly before the robbery, announced to the trio, "we're going to do a lick³" which Moore understood to mean, "we're going to commit a robbery." (R. 396). Getting into the specifics of the plan, Moore testified he was supposed to make sure the marijuana was in the car, at which point Appellant would get out of the car and demand the money from Salter. (R. 396-98). Hammond would serve as the getaway driver. (R. 396-98).

In his testimony, Moore described the incident in detail, stating that upon Salter's entering the parking lot and pulling beside Appellant's vehicle, he got out of the car to identify the marijuana. (R. 397-98). Moore explained that after identifying the marijuana and passing Appellant on his return to the car, he watched as Appellant stood alongside Salter's car. (R. 399). Moore then described Appellant leaning into Salter's window, hearing two shots, after which, Appellant, with the marijuana and a .357 in hand, dove into the backseat behind Hammond. (R. 399-400, 402, 403, 406). Moore then testified that Salter returned fire, and Appellant fired back. (R. 400). During the exchange of gunfire, Moore explained that Appellant shot Salter. (R. 402-03). Moore then stated that

³ According to Urban Dictionary, a lick is defined as: "any instance when you come upon easy money, whether you jack it, hustle it, or barter for it." See www.urbandictionary.com entry entitled "lick." Alternate definitions include "stealing from someone." See www.urbandictionary.com entry entitled "lick" definition number three.

the trio fled the Best Buy parking lot in Appellant's car, retreating to a nearby trailer park.⁴ (R. 400). There, Appellant reportedly called his mother and asked her to report the car stolen.⁵ (R. 400). According to Moore, Appellant then hid the stolen marijuana and gun before getting a cab to an area hotel. (R. 401, 405). Hammond accompanied Appellant, leaving Moore behind. (R. 405).

Corroborating Moore's testimony regarding the aftermath of the incident, the State presented eyewitness testimony from Angie Hooper and Harold Watts. Watts, a passerby in an adjacent parking lot, stated he heard gunfire and saw a heavy-set black male matching Appellant's description run from a white car and jump into the rear driver's side door of a dark car.⁶ (R. 227). The dark car then sped out of the parking lot. (R. 227, 228). Watts further noted the driver of the getaway car was a female. (R. 229). Angie Hooper, whose minivan was hit by a stray bullet, echoed Watt's testimony but instead described the female driver simply as a "dark figure." (R. 206). The State further corroborated Moore, Hooper and Watts' testimony through forensic evidence taken from the cars of Salter and Niles. Specifically, Appellant's fingerprints were found on top of Salter's car. (R. 328). Additionally, DNA evidence taken from the driver's seat of Appellant's car was consistent with that of Hammond to a probability of one in one quadrillion. (R. 526-27).

Meanwhile, Appellant, testifying in his own defense, rejected Moore's version of the incident explaining there was no agreement between anyone to do "a lick." (R. 560-

⁴ Moore testified that on the way to the trailer park, Appellant admitted he fired the initial shots. (R. 402).

⁵ In response to her son's request, Martha Niles reported the car stolen. (R. 510). She was later charged for her role in the incident, but died prior to trial. (R. 576).

⁶ While the car was actually a rental car rented to Appellant's mother, Martha, the State, for purposes of convenience, will refer to the car as Appellant's. Furthermore, while there is a discrepancy in the record as to whether the car is gray, dark gray or black, there is no question that the car involved in the incident was the car rented to Martha Niles.

61). Instead, Appellant explained, he was simply trying to connect Moore, whom he claimed was looking to buy marijuana, with Salter, who was looking to sell marijuana. (R. 558-59).

Describing the incident, Appellant stated that upon Salter's arrival at the scene, Moore emerged from Appellant's car and got into Salter's white Mustang, presumably in an effort to purchase the marijuana. (R. 568, 587). At that time, Hammond, who was seated next to Appellant, allegedly informed Appellant that Moore and Salter were fighting. (R. 568). Appellant then testified to hearing Salter yell, "[y]ou ain't getting out this car with my weed without no money" after which Salter allegedly reached for his gun and fired at the car. (R. 569). Continuing, Appellant explained that he reached in his bag, which he often kept open with his gun exposed, and fired two shots at Salter, because "he was trying to get him to stop shooting." (R. 569). After the incident, Appellant admitted to leaving the car in a nearby trailer park.⁷ (R. 571-72).

Following the close of evidence, Appellant asked the trial court to charge, in addition to self-defense, the lesser-included offense of voluntary manslaughter arguing, the gunshots could serve as sufficient legal provocation and "the jury could infer that . . . the situation got out of hand and [the crime] was committed in the heat of passion. (R. 637). The trial court denied Appellant's request, finding the evidence showed that either Salter began firing and Appellant was acting in self-defense, or Appellant started shooting during the course of an armed robbery, which the trial judge implied, would result in Appellant being guilty of murder. (R. 638).

⁷ On cross-examination, Appellant admitted, that to his knowledge, Moore did not have a gun. (R. 594).

STANDARD OF REVIEW

In criminal cases, appellate courts sit only to review errors of law and are bound by the factual findings of the trial court unless they are found to be clearly erroneous. State v. Hernandez, 386 S.C. 655, 659, 690 S.E.2d 582, 584 (Ct. App. 2010). Generally, the trial court is required only to charge the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). To warrant reversal, the trial court's refusal to give a requested instruction must be both erroneous and prejudicial. Burroughs v. Worsham, 352 S.C. 382, 392, 574 S.E.2d 215, 220 (Ct. App. 2002).

ARGUMENT

- I. The trial court did not err in failing to instruct the jury regarding voluntary manslaughter as there was no evidence presented showing either sufficient legal provocation or sudden heat of passion

Appellant maintains the trial court committed reversible error by failing to charge the jury on the lesser-included offense of manslaughter. Specifically, Appellant contends his testimony that Salter shot first, after which Appellant returned fire, supported a charge for voluntary manslaughter, especially in light of the fact that self-defense and voluntary manslaughter are not mutually exclusive. The State, while agreeing that self-defense and voluntary manslaughter are not mutually exclusive, disagrees with the proposition that the trial court should have charged voluntary manslaughter in this instance. Appellant failed to present evidence showing either sufficient legal provocation or sudden heat of passion, both prerequisites to receiving a charge on voluntary manslaughter. See State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) (finding heat of passion and sufficient legal provocation must both be present at the time of killing to reduce murder

to voluntary manslaughter). Accordingly, Appellant was not entitled to an instruction on voluntary manslaughter. See State v. Hernandez, 386 S.C. 655, 660, 690 S.E.2d 582, 585 (Ct. App. 2010) (holding a jury instruction should not be given unless justified by the evidence).

The evidence presented at trial determines the law upon which the jury will be charged. State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004). The trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). However, the trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Additionally, the trial court must charge the jury on a lesser-included offense if "there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater." State v. Drafts, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986). Conversely, the trial court may eliminate instructing the jury on a lesser-included offense where there is no evidence tending to reduce the crime from the greater offense to the lesser. State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). "In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in a light most favorable to the defendant." Pittman, 373 S.C. at 572-73, 647 S.E.2d at 168.

As noted in Cole, "[v]oluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." 338 S.C. at 101, 525 S.E.2d at 513. Thus, "[b]oth heat of passion and sufficient legal provocation must be present at the time of the killing" to reduce murder to voluntary manslaughter. Id.

“Provocation necessary to support a voluntary manslaughter charge must come from some act of or related to the victim in order to constitute sufficient legal provocation.” State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001). To mitigate murder to manslaughter, the sudden heat of passion “must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.” State v. Byrd, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996).

At trial, Appellant testified he observed Moore and Salter fighting. (R. 569). Appellant then claimed Moore fled the car at which point Salter emerged stating, “[y]ou ain’t getting out this car with my weed without no money[.]” Following this exchange, Salter allegedly reached for his gun and fired at the car. (R. 569). Appellant then testified that he reached in his bag, grabbed his gun and fired two shots at Salter because “he was trying to get him to stop shooting.” (R. 569).

By contrast, Moore described the incident differently, explaining that after identifying the marijuana and passing Appellant on his return to the car, he watched as Appellant stood alongside Salter’s car. (R. 399). Moore then described Appellant leaning into Salter’s window, hearing two shots, after which, Appellant, with the marijuana and a .357 in hand, dove into the backseat behind Hammond. (R. 399-400, 402, 403, 406). According to Moore, Salter returned fire, and Appellant fired again. (R. 400). During the exchange of gunfire, Moore explained that Appellant shot Salter. (R. 402-03).

Thus the evidence presented clearly requires the jury to answer, as a threshold matter, one key question—whether Appellant was involved in the armed robbery. Upon

answering this question, the evidence presented would then lead the jury to one of two conclusions, either Appellant murdered Salter during the course of an armed robbery or Appellant had nothing to do with the armed robbery, was caught in the crossfire and was acting in self-defense when he shot Salter. Here, regardless of one's interpretation of the facts, there is simply no evidence supporting a charge on voluntary manslaughter.

A. Version One: Appellant was involved in the Armed Robbery

Believing Moore's testimony, Appellant was in the process of committing armed robbery when he shot and killed Salter. Accordingly, Salter was acting lawfully in defending himself against a crime, meaning Appellant did not act upon sufficient legal provocation and therefore, is not entitled to an instruction on voluntary manslaughter. See Shuler, 344 S.C. at 632, 545 S.E.2d at 819 (holding a victim's attempts to resist or defend himself from crime do not constitute sufficient legal provocation); State v. Tyson, 283 S.C. 375, 379, 323 S.C. 770, 772 (1984) (holding no sufficient legal provocation where the victim was defending himself against an armed robber and was killed in the attempt).

Furthermore, even if one were to assume Salter's shooting at Appellant constituted sufficient legal provocation, there is no evidence suggesting Appellant acted in the sudden heat of passion. As noted above, and explained in Pittman, the Supreme Court of South Carolina describes a sudden heat of passion as emotion which, "while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." 373 S.C. at 574, 647 S.E.2d at 169.

Expanding upon the emotions which may illicit a sudden heat of passion, this Court, in State v. Dickey, 380 S.C. 384, 400-01, 669 S.E.2d 917, 926 (Ct. App. 2008) concluded that fear for one's safety could lead "to an uncontrollable impulse to do violence." Likewise, appellate courts in this state have found, in addition to fear, arguments and physical threats can translate to a sudden heat of passion. Dickey, 380 S.C. at 401-02, 669 S.E.2d at 926.

In the present case, Appellant's testimony that he wanted Salter to stop shooting does not describe an emotional response tantamount to "an uncontrollable impulse to do violence." Instead, Appellant merely stated "he was just trying to get [Salter] to stop shooting." Appellant never admitted he was scared for his safety. Likewise, there was no evidence presented indicating an argument or any exchange of threats between Appellant and Salter occurred. In fact, Appellant failed to offer evidence explaining *why* he fired the gun. (R. 570). Accordingly, under this version of the facts, the trial court was correct in declining to instruct the jury voluntary manslaughter.

B. Version Two: Appellant was not involved in the Armed Robbery

Similarly, were the jury to believe Appellant's testimony, that he returned fire on Salter in an effort to defend himself, there would be no evidence supporting a charge on voluntary manslaughter. Instead, as the trial court correctly pointed out, the evidence would only suggest self-defense, an issue upon which the trial court would later instruct the jury.

As pointed out by Appellant, "it is well settled that self-defense and voluntary manslaughter are not mutually exclusive and both issues should be submitted to the jury *if supported by the evidence.*" State v. Wiggins, 330 S.C. 538, 549 n.18, 500 S.E.2d 489,

495 n.18 (1998) (emphasis added). However, in the present case, no evidence exists supporting a charge on voluntary manslaughter. As explained in State v. Gilliam, 296 S.C. 395, 396, 373 S.E.2d 596, 597 (1988) the rationale for this rule is that the jury could, in some situations, fail to find all the requisite elements of self defense, but find sufficient legal provocation and heat of passion thereby allowing a jury to convict a defendant of voluntary manslaughter. Under these facts, the State submits there is no evidence by which a jury could come to the conclusion described in Gilliam as the evidence presented could lead the jury to only one of two conclusions—murder or self-defense.

In order to be entitled to an instruction on self-defense, evidence must be presented on each of the following elements: (1) the person asserting self defense must be without fault in bringing on the difficulty; (2) the person claiming self defense must be in actual imminent danger of losing his life or sustaining serious bodily injury, or he must actually believe he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if a defense is based upon the belief of imminent danger, defendant must show a reasonably prudent person of ordinary firmness and courage would entertain the belief he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the person asserting the defense must have no other probable means of avoiding the danger to his own life or well being than to act as he did in the particular situation. State v. Dickey, 380 S.C. 384, 393-94, 669 S.E.2d 917, 922 (Ct. App. 2008).

In the present case, only two inferences can be drawn from the evidence presented with regard to bringing on the difficulty. Believing Moore's testimony, Appellant, in an

effort to rob Salter, shot at Salter causing Salter to fire back, meaning there was no sufficient legal provocation as addressed in the previous section. Conversely, one could believe Appellant's testimony in which case Appellant was simply a witness to an armed robbery and was fired upon meaning he did not bring on the difficulty.

The same analysis goes in assessing the second prong of self-defense, whether Appellant was in actual imminent danger of losing his life or sustaining serious bodily injury. Specifically, the jury was presented with two scenarios. Believing Moore's testimony, that Appellant shot first during an armed robbery, Appellant, for self-defense purposes, could not be in imminent danger for his life as he was the aggressor. However, were the jury to believe Appellant's testimony, that Salter fired first, then Appellant was clearly in imminent danger of losing his life as Salter was firing at Appellant with a .40 caliber handgun at close range.⁸

Moving to the final prong of self-defense, whether the person asserting the defense had any other probable means of avoiding the danger to his own life or well being than to act as he did in the particular situation, the evidence would lead the jury to one of two conclusions. First, were the jury to believe Moore's testimony regarding the incident, Appellant, as the perpetrator of the crime, could have obviously avoided the danger to his own life. On the other hand, were the jury to believe Appellant's testimony, that he was stuck in the crossfire due to his being an unknowing witness to an armed robbery, then Appellant, who was in the passenger seat and had no means to extract himself from the situation, had no other alternative than to act as he did.

⁸ As the facts in this self-defense analysis clearly demonstrate, the third prong of self defense, the objective reasonableness of Appellant's belief regarding his fear for his life, need not be analyzed as Appellant's being fired at from close range obviously amounts to imminent danger of losing his life.

Accordingly, were the jury to believe Appellant's testimony regarding the incident, Appellant could only have acted in self-defense. There was no evidence supporting a charge on voluntary manslaughter. Appellant's testimony simply did not allege facts from which a jury could properly infer either sufficient legal provocation or a sudden heat of passion, and thus, under these facts, the trial court properly declined to charge the jury on voluntary manslaughter.

CONCLUSION

As there was no evidence presented supporting a charge on voluntary manslaughter, the State respectfully asks this Court to affirm both the ruling of the trial court and Appellant's conviction.

Respectfully Submitted,

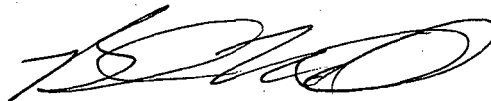
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August 23, 2010.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina,

Respondent,

v.

Richard Niles,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.

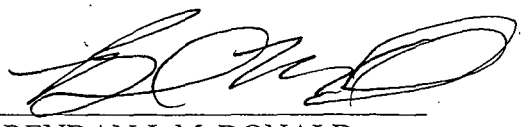
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PROOF OF SERVICE

I, Brendan J. McDonald, Counsel for Respondent, certify that I have this date served the **Final Brief of Respondent**, dated August 23, 2010, on Appellant by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

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