

VOLUME THREE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

CARMEN LATRICE RICE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2011-199412

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Falisha Hallmon talking about the switched up

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **FORELADY:** Proceed.

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

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

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

9 Mr. Mobley.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 When we talk about lawyer expectations

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

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

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

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

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

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

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

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

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

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

18 **MR. MEADORS:** Objection.

19 **THE COURT:** Sustained.

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

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

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

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

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

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

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

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

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

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

1 she is. She fools them every single time.

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

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

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

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

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

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

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

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

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

5 MR. MEADORS: Objection.

6 THE COURT: Sustained.

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

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

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

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

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

25 Alana Quattlebaum talked to Iris about it. And

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

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

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

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

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

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

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

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

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

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

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

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

1 didn't look.

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

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

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

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

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

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

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

1 that bullet was destroyed. They botched that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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4 as to how expensive the test was, part of which they
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22 That's what they're supposed to do.

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

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

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

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

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

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

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

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

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

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

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1 in the back seat of the vehicle.

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

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

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

1 analyzed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 They know you expect to see a murder weapon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 Now, let's go to the rest of her testimony.

2 Did she ever see a gun on Carmen Rice before they
3 went out supposedly? Did she ever see a gun on
4 Carmen Rice later? Did she see any blood on Carmen
5 Rice? No, she did not.

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

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

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

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

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

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

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

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

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

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

25 Well, at that point, she becomes the best

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 What he cleared was his desk because, as he

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

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

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

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

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

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

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

1 this Nikki person.

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

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

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

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1 misidentified the person twice in the same process.

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

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

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

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

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

1 Well, Mr. Lupton says, It's all of a sudden.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 I'm asking you not to do that.

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

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

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

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

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

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

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

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

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

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

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

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

4 (The jury retires to the jury room.)

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

7 (Brief Recess.)

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

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

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

11 (The jury returns to the courtroom.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 Hilda brought it to law enforcement.

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

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

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

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

25 Turnely got up here and testified, asked him on

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 That's trying to twist the testimony around on that.

2 That's not a reasonable doubt.

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

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

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

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

1 Court's indulgence.

2 THE COURT: Yes, sir.

3 (Pause.)

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

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

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

1 jail. People make mistakes.

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

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

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

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

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

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

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

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

1 there. Why is he asking about that?

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

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

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

1 squad, too. But -- well we've been around and come
2 back, now we're going to keep plotting, keep
3 looking, trying to solve. The witness gives up and
4 talks about where Carmen lives. And Iris and takes
5 them to 2124 Braham Street.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Judge, I'm sorry.

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

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

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

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

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

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

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

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

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

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

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

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

11 One, I don't want say a good thing, my
12 birthday's on 9/11, but the one thing that came out
13 of 9/11, it gives everybody a reference point,
14 doesn't it? Remember my dad said he remembered when
15 Kennedy was shot, we all unfortunately have a
16 reference point and that helps in this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 meant for it to go down that way.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 It's often said during criminal trials, ladies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Now, generally, ladies and gentlemen, there are

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Criminal intent is a mental state. It is a
4 conscious wrongdoing. It is up to you, as a jury,
5 to determine what the defendant intended to do based
6 on the circumstances shown to have existed.

7 Criminal intent can arise from action or a failure
8 to act. It may arise from negligence, recklessness
9 or an indifference to duty or to consequences such
10 that it is considered by the law to be the
11 equivalent of criminal intent.

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

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

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

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

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

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

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

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

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

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

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

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

1 keep possession of the property.

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

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

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

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

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

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

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

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

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

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

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

25 Intent means intending the result which

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Counsel, anything else?

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

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

1 matters, but...

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

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

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

13 (The jury retires to the jury room.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 (Pause.)

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

8 MR. MOBLEY: That's correct.

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

11 (A recess transpired.)

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

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

19 THE COURT: They just said her testimony.

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

21 THE COURT: That was the note.

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

1 think --

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

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

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

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

12 (Pause.)

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

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

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

1 defense, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Madame Forelady, you indicated that's all the

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1 jury wanted to hear; is that right?

2 **FORELADY:** Yes, sir?

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

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

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

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

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

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

18 (Pause.)

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

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

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

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

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

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

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

7 **FORELADY:** Thank you.

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

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

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

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

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

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

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

19 (A recess transpired.)

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

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

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

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

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

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

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

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

1 something, it becomes even more difficult.

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

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

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

1 evidence in this case.

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

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

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

25 Ladies and gentlemen, once again, I just

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

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

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

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

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

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

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

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

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

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1 (A recess transpired.)

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

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

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

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

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

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

14 **FORELADY:** We have.

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

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

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

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

1 find the defendant guilty.

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

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

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

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

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

13 Madame Clerk, thank you.

14 Mr. Mobley, anything further from the defense?

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

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

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

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

24 Dianne Mancini, were these your verdicts?

25 **JUROR:** Yes.

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1 THE CLERK: Are they still your verdicts?

2 JUROR: Yes.

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

5 JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes.

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

10 JUROR: Yes.

11 THE CLERK: Are they still your verdicts?

12 JUROR: Yes.

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

15 JUROR: Yes.

16 THE CLERK: Are they still your verdicts?

17 JUROR: Yes.

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

20 JUROR: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes.

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

25 JUROR: Yes.

1 THE CLERK: Are they still your verdicts?

2 JUROR: Yes.

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

5 JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes.

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

10 JUROR: Yes.

11 THE CLERK: Are they still your verdicts?

12 JUROR: Yes.

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

15 JUROR: Yes.

16 THE CLERK: Are they still your verdicts?

17 JUROR: Yes.

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

20 JUROR: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes.

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

25 JUROR: Yes.

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

2 **JUROR:** Yes.

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

5 **JUROR:** Yes.

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

7 **JUROR:** Yes.

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

10 **THE COURT:** Thank you.

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

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

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

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

1 given this case.

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

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

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

18 (The jury was excused.)

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

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

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

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

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

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

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

14 Anything else before we go into sentencing?

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

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

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

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

20 (Pause.)

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

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

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

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

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

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

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

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

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

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

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

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

12 Mr. Mobley.

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

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

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

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

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

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

10 THE COURT: Thank you, sir.

11 Anything further, Mr. Meadors, from the State?

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

13 THE COURT: Thank you, sir.

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

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

22

23

END OF PROCEEDINGS

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

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

November 11, 2005


Stacy L. Sheppard
Circuit Court Reporter

WITNESSES

(S) LT. SMITH- RCSD

ARREST WARRANT NUMBER

G845795

ACTION OF GRAND JURY

TRUE BILL

person of Grand Jury

MAR 17 2004

VERDICT

person of Petit Jury

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2004

82

THE STATE
vs.

CARMEN RICE

Indictment for

MURDER

SC Code: 16-3-10

CDR Code:0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1001-B

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

At a Court of General Sessions, convened on March 17, 2004, the Grand Jurors of Richland County present upon their oath:

MURDER

That Carmen Rice did in Richland County on or about October 25, 2001, feloniously, willfully and with malice aforethought, kill one Bernard Brennan by means of a gunshot and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

WITNESSES

(S) LT. SMITH - RCSD

ARREST WARRANT NUMBER

5796

ACTION OF GRAND JURY

TRUE BILL

person of Grand Jury

MAR 17 2004

VERDICT

person of Petit Jury

DOCKET NO. 2004-GS-40-8755

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2004

82

THE STATE

vs.

CARMEN RICE

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

After being fully advised as to my

to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 17, 2004, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Carmen Rice did in Richland County on or about October 25, 2001, commit robbery by feloniously taking from the person or presence of Bernard Brennan by means of force or intimidation goods or monies of Bernard Brennan such goods or monies describes as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

INDICTMENT/CASE#:

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

2004

-GS-

40

8754

AW#:

6845795

Date of Offense:

10-25-01

S.C. Code §:

16-3-10

CDR Code #:

0 1 1 1 1 1 6

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John Meadows

Solicitor

Defendant

Attorney for Defendant

Test Lupton

WHEREFORE, the Defendant is committed to the State Department of Corrections, ☐ County Detention Center, for a determinate term of _____ 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: 04 - 65 - 40 - 8755☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2905 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara W. Scott

Clerk of Court/ Deputy Clerk

Court Reporter:

Raymond

PTUP

_____ days/hours Public Service Employment

Obtain GEO

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:

Sentence Date:

2 1 1 1 3 1 3
4-8-05

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE VS.)
Carmen Leticia Qui)
AKA:)
Race: Black Sex: Female Age:)
DOB: SS#:)
Address:)
City, State, Zip)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

2004 -GS- INDICTMENT/CASE#: 8755
AW#: 6845796
Date of Offense: 10-25-01
S.C. Code §: 16-11-330(A)
CDR Code #: 0 1 1 3 1 9
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery
in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 1 1 3 1 9
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

John Meadors Solicitor John Meadors Defendant John Meadors Attorney for Defendant
Ted Lupton Chris Hart

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 04-GS-40-8754
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ set by SCDPPPS

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:

Recipient:	
*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Barbara A. Scott
Clerk of Court/Deputy Clerk
Court Reporter: Shippard

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Reginald L. L...
Judge Code: 21711313
Sentence Date: 4-8-05

2009 CP4000234

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Carmen L. Rice 308637
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

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

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

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

- Place of detention Carmelle Griffin Graham: 4450 Broadriver Road, Columbia, South Carolina 29210
- Name and location of Court which imposed sentence Richland County; 1701 Main Street; Columbia, South Carolina 29210
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - G 845 795 MRD \ 2004 - GS-40-8754
 - G 845 796 AR > 05 - GS-40-8755
 -
- The date upon which sentence was imposed and the terms of the sentence:
 - April 8, 2005
 -
 -

5. Check whether a finding of guilty was made

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appellate Defense

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Pending Decision

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

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

(a) See attached

(b) _____

(c) _____

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

(a) Ineffectiveness of counsel

(b) Judicial Violation

(c) Search, Seizure and Investigator's violation of procedure

(d) Miranda Improperly done.

(e) Incomplete Discovery / Brady prior to trial

(f) Sentence on basically on hearsay; no tangible evidence.

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

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. Appellate Court 1122 Lady Street, Columbia, S.C. 29203
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? pending
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

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

- i. John T. Mobley, & Chris Heart
1331 Richland Street
- ii. Columbia, S.C. 29201

iii. _____

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

- i. Trial
- ii. _____
- iii. _____

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

Overturning / Reduction of Sentence

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

No

THE STATE OF SOUTH CAROLINA In The General Session Court
The County of Richland

Indictment # G 845795 MRD / 2005
G 845796 AR / Cas
40-8754

The State of D.C.
vs
Carmin L. Rice

ATTACHMENT TO POST
CONVICTION RELIEF FORM
Number Nine (9)

The Defendant hereby submit ineffectiveness
of counsel based on the two (2) prong
test

1. The attorney did not provide the
Defendant a complete Motion of Discovery
and Brady with All Favorable Material
in accordance to Maryland vs. Brady 378
with sufficient time to prepare rebuttal.

2. The attorney did not insist on the
suppression of uncreditable witnesses state-
ment or testimony.

3. The Defendant was charged
and convicted on hearsay of witness-
es in a case of four (4) years old.
Whereas witnesses to her behalf not

She could recall evidents or whereabouts.

4. No tangible evidents was presented at the trial.

5. Witness for the prosecution did not pick the Defendant out of line-up, however pick out the prosecution chief witness.

6. The Defendant Miranda Reyes was not given to her during the time of the investigator's questioning. The Defendant was given false information as to why she was being questioned at the beginning of interrogation by investigators when came to the Defendant's home.

7. All witnesses for the prosecution was in jail / detention / and or prison and was coerced into testifying.

7. The Rule of Evidence 708 was
violated in a way at the trial.

Whereas, let the Courts be aware that
additional amendment will be applied
upon receipt of the Defendant's transcript.

Sworn to and subscribed before me this
8th day of January 2009
Jeanette Jones-Sault L.S.
Notary Public.

My Commission Expires _____

My Commission Expires August 25, 2015

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

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

Carmen Rice

SWORN to and subscribed before me this 8
day of September, 19 2009
Jennifer Jones-Scott (L.S.)
Notary Public
My Commission Expires August 25, 2015
My Commission Expires: _____

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

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

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

Carmen Rice
Applicant

SWORN or affirmed to and subscribed before me this
day of September, 19 2009
Jennifer Jones-Scott
Notary Public
My Commission Expires August 25, 2015
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
)
 Rice, Carmen Latrice, 00308637,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2009CP4000234

RETURN

JEANETTE W. MURPHY
 C.C.P. & C.S.

2009 JUL -7 AM 9:39

RICHLAND COUNTY
 FILED

The Respondent, making its Return to the Application for Post-Conviction Relief filed January 14, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by John Mobley, Esquire and Chris Hart, Esquire. On April 8, 2005, after a jury trial with the Honorable Reginald I. Loyd, the Applicant was convicted and sentenced to the following:

Case Number	Charge	Offense Description	Life	No
3-04	2004GS4008754	0116 16-03-0020 * 30 - L/D * Murder / Murder (victim: Bernard Brennan)	☐	☐
11-05	2005GS408755	0538 16-21-0080(2) * 5 * Vehicle / Poss., conceal, sell, or dispose of stolen vehicle, value \$1,000 - \$5,000	☐	☐

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. %%%%, Op. No. %%%% (S.C. Ct. App. filed %%%%).

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

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

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

- (a) Ineffectiveness of counsel
- (b) Judicial Violation
- (c) Search, Seizure and Investigator's violation of procedure
- (d) Miranda Improperly done.
- (e) Incomplete Discovery / Brady prior to trial
- (f) Sentence on basically on hearsay; no tangible evidence.

2

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

Overturning / Reduction of Sentence

The STATE OF SOUTH Carolina In The General Session Court
The County of Richland

Indictment # G 845795 MRO 2005
G 845796 AR / G 845
.40-2754

The State of S.C.

vs

Carmen L. Rice

ATTACHMENT TO POST
CONVICTION REVIEW FORM
Number Nine (9)

The Defendant hereby submit ineffectiveness
of counsel based on the two (2) prong
test

1. The attorney did not provide the
Defendant a complete Murray of Discovery
and Brady with All Favorable Material
in accordance to Maryland vs Brady 378
with sufficient time to prepare rebuttal.

2. The attorney did not insist on the
suppression of uncreditable witnesses state-
ment or testimony.

3. The Defendant was charged
and convicted on hearsay of witness-
es in a case of four (4) year old,
whereas witnesses in her behalf was

she could recall evidence or whereabouts.

4. No tangible evidence was presented at the trial.

5. Witness for the prosecution did not pick the Defendant out of line-up, however pick out the prosecution chief witness.

6. The Defendant Miranda O'Quinn was not given to her during the time of the investigators questioning. The Defendant was given false information as to why she was being questioned at the beginning of interrogation by investigators when came to the Defendant's home.

7. All witnesses for the prosecution was in jail / detention / and in prison and was coerced into testifying.

7. The Rule of Evidence 708 was
disputed in chief at the trial.

Whereas, let the Courts be aware that
additional amendment will be applied
upon receipt of the Defendants' transcripts.

Sworn to and Subscribed before me this
8th day of January, 2009
Jennifer Jones-Scott LS
Notary Public

My Commission Expires

My Commission Expires August 25, 2013

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that

"there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VI.

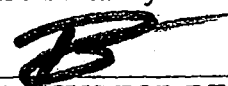
WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 30, 2009

State of South Carolina

Court of Common Pleas

County of Richland

2009-CP-40-00234

Carmen Latrice Rice

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

June 6, 2011

Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge.

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

Mark Schnee, Esquire

Attorney for the Applicant

Brian T. Petrano, Esquire

Attorney for the State

Daphne D. Helms

Circuit Court Reporter

I N D E X

Witness

Carmen Latrice Rice

Direct Examination by Mr. Schnee.....5
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Arletta Frierson

Direct Examination by Mr. Schnee.....15
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Lashawn Roberts

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John T. Mobley

Direct Examination by Mr. Petrano.....27
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EXHIBITS

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
C-1	Sworn statement of Arletta Frierson, April 3, 2006	16	
C-2	Sworn statement of Arletta Frierson, April 17, 2006	16	

1 The Court: All right. Are you ready to go?

2 Mr. Petrano: Your Honor, if I may approach, I have a
3 packet for Ms. Rice.

4 The Court: All right.

5 Mr. Petrano: And, Your Honor, I do apologize. I don't
6 know why my office decided to not -- they're not -- oh, they
7 did double-side it. This is that thick. May it please the
8 Court?

9 The Court: Yes, sir.

10 Mr. Petrano: This is 2009-CP-40-00234, Ms. Carmen
11 Latrice Rice. She filed an application on January 14th,
12 2009. It was a Richland County case, a jury trial in front
13 of Judge Lloyd. That trial was on April 8, 2005. She was
14 represented by Mr. Mobley and Mr. Hart, both of the private
15 bar. Just for the record, Mr. Mobley is here and present.

16 She was indicted by the March 2004 term of the Richland
17 County grand jury. That's 2004-GS-40-08754. That was for
18 murder. Mr. Bernard Brennan was the victim, and 8755 was
19 armed robbery, same victim. She received a life sentence,
20 life for the murder and 30 for the armed robbery.

21 There was a direct appeal, and that was affirmed by the
22 -- on December 4th, 2008, opinion number 4300. I believe it
23 was a very lengthy Court of Appeals opinion which you have in
24 your packet and then just a denial of cert., I believe, from
25 the South Carolina Supreme Court. On that, I will turn it

1 over to Mr. Schnee, the applicant's current counsel of
2 record. Thank you, Judge.

3 The Court: All right.

4 Mr. Schnee: Thank you, Your Honor. May it please the
5 Court? Our first witness I call is Carmen Rice.

6 The Court: If you'll come up here and -- there's not a
7 clerk in here, is there, Mr. Dye?

8 Carmen Latrice Rice, after being duly sworn,
9 testified as follows:

10 The Court: Have a seat and tell us your full name,
11 please.

12 The Witness: Carmen Latrice Rice.

13 Direct Examination

14 By Mr. Schnee:

15 Q. Good morning. How long were you being represented by
16 John Mobley?

17 A. If I'm not mistaken, I think it was around---

18 The Court: I need you to speak up, please, ma'am.

19 The Witness: I think maybe around the middle of 2004 to
20 2005, if I'm not mistaken.

21 By Mr. Schnee:

22 Q. So a little over a year prior to trial?

23 A. I don't think it was that long, no.

24 Q. Okay. You met with him a number of times?

25 A. Yes, sir.

- 1 Q. Okay.
- 2 A. A couple of times.
- 3 Q. Did you ever get a copy of your discovery?
- 4 A. No, sir.
- 5 Q. Did you ever go through the discovery?
- 6 A. No, sir.
- 7 Q. When it came time for trial, did you ever discuss
- 8 testifying or not testifying?
- 9 A. Yes, sir.
- 10 Q. Okay. You didn't testify in trial.
- 11 A. No, sir.
- 12 Q. Why is that?
- 13 A. Mr. Mobley stated that it was best that I not testify.
- 14 Q. Did he say why?
- 15 A. No, sir. I don't remember off the bat.
- 16 Q. Okay. Did you want to testify?
- 17 A. I mean, if I had to -- I mean, if he wanted me to, I
- 18 would have.
- 19 Q. Okay. What would you have testified about?
- 20 A. I would have stated that I had no involvement in the
- 21 murder or the armed robbery of Mr. Brennan.
- 22 Q. Did you, in fact, have any involvement?
- 23 A. No, sir, I did not.
- 24 Q. Okay. Okay. Now, your co-defendant testified against
- 25 you?

1 A. Yes, sir.

2 Q. Okay. What was her name?

3 A. Iris Bryant.

4 Court Reporter: Spell the last name, please.

5 The Witness: Bryant.

6 By Mr. Schnee:

7 Q. B-R-Y-A-N-T. How long have you known her?

8 A. I knew her for maybe around six months before whatever.

9 Q. Okay. While you were in jail awaiting trial, what
10 involvement did you have with her there?

11 A. Well, altercations. All the time she would argue with
12 me, throw slander, say stuff, and I asked to get moved to
13 another, you know, detention center, and they wouldn't move
14 me.

15 Q. Okay. You were in the same dorm with her.

16 A. Yes, sir, same unit.

17 Q. To your knowledge, did Ms. Bryant ever say that she was
18 planning on testifying against you?

19 A. To my knowledge? No, sir.

20 Q. Okay. Did she ever say that she was going to lie to get
21 the deal for---

22 A. Yes.

23 Mr. Petrano: I'm going to object to that. That would
24 be hearsay.

25 The Court: Sustained.

Carmen L. Rice - direct exam by Mr. Schnee

8

1 **Mr. Schnee:** Judge, we would argue that it would not be
2 hearsay. It would be a statement against interest for Ms.
3 Bryant to acknowledge that she will or has committed perjury.

4 **Mr. Petrano:** My reply to that, of course, is a
5 statement against interest is a hearsay exception when the
6 witness is -- the declarant is unavailable. There's no
7 showing that Ms. Bryant is unavailable.

8 **Mr. Schnee:** Well, I have no idea where Ms. Bryant is.
9 I have no way of subpoenaing her.

10 **The Court:** Well, have you attempted to locate her?

11 **Mr. Schnee:** I have -- I have tried contacting her last
12 known address. There has been no answer anywhere that I know
13 of.

14 **The Court:** All right. My ruling remains.

15 By Mr. Schnee:

16 Q. During the trial there was a letter from Alana
17 (phonetic) Quattlebaum?

18 A. Yes, sir.

19 Q. Okay. Was that ever entered into evidence?

20 A. No, sir.

21 Q. Do you have any idea why?

22 A. No, sir.

23 **Mr. Schnee:** No further questions, Your Honor.

24 **The Court:** All right.

25

Cross-Examination

By Mr. Petrano:

Q. You say you had no involvement with the murder or the armed robbery; right? Did I get that right?

A. Yes, sir.

Q. Now, tell us about your involvement that night because obviously you don't contest that you were -- you did go out to eat. You did play pool. Were you wearing the orange sweater? All the stuff that happened in trial, was any of that accurate?

A. No.

Q. Okay. So the lady from the restaurant who comes in and recognizes you as the one in the orange -- and I'm saying orange sweater. I think it might have been called a pullover. So that wasn't you. You weren't there.

A. No, sir, that wasn't me.

Q. So you weren't with Ms. Bryant at all that evening.

A. No, sir.

Q. Okay. If I may ask, where were you, if you recall? I know it was a while ago.

A. Yeah. I mean; it's been a long time ago. What, ten years ago?

Q. Okay. And at the time, prior to the trial, I know you said you didn't get any discovery or go over the discovery, but you were obviously aware that you were being charged with

1 murder and armed robbery of Mr. Brennan; right?

2 A. Because I was incar -- they charged me with it, yeah.

3 Q. All right. And so in that paperwork and those charges,
4 you at least knew that the State was arguing that on a
5 particular date that you were indeed a part of the armed
6 robbery and murder?

7 A. Yes, sir.

8 Q. Okay. So did you tell your lawyer what you really did
9 do that date? I mean, if you weren't there and you weren't
10 with Ms. Bryant, you weren't at the club, you didn't go to
11 Calloway's - I think it's called Calloway's - did you tell
12 them your story and all that?

13 A. Yes, sir.

14 Q. Okay. So what did you tell him?

15 A. I can't remember.

16 Q. Okay. You told them I had nothing to do with any of
17 this at the time.

18 A. Yes, I told them I had nothing to do with it.

19 Q. And at trial when people are testifying, taking the
20 stand and saying I saw her at the -- I think they point you
21 out and they say I saw her at the restaurant. Ms. Bryant
22 says I saw her shoot the victim.

23 A. Uh-huh.

24 Q. The victim begged for his life. All that happens at
25 trial. You're tugging at his arm and you're saying that's

1 not true.

2 A. Yes, sir. I'm saying that's not true.

3 Q. And did you return that .357 you had been issued---

4 A. Yes, sir---

5 Q. ---from work?

6 A. ---I did.

7 Q. Tell us about that. Since you didn't testify, so we
8 didn't really get that whole story, when were you issued that
9 gun, why, and then when did you return it?

10 A. Okay. Well, on the job that I worked at, we would --
11 every day they would give us a different weapon to use when
12 it's on the job. So---

13 Q. If I may pause you -- I'm sorry to interrupt.

14 A. Yes, sir.

15 Q. Is it -- when you say a different weapon, it's the same
16 caliber though every day; right?

17 A. Yes, sir.

18 Q. You still get the .357 revolver---

19 A. Yes, sir.

20 Q. ---with .38 special shells; right?

21 A. I had .357 HollowPoints.

22 Q. Okay. And so go on. I'm sorry to interrupt.

23 A. Yes, sir. So when I turned my -- when I turned my
24 weapon in, I think it was Lieutenant Hinch (phonetic) --
25 there was one of them in there that received it. Do you see

1 what I'm saying? So...

2 Q. And so when the State tried to argue that you were given

3 .38's ammunition to go in that .357, you told your lawyer:

4 No, no, I had gotten .357 HollowPoints.

5 A. Yes, sir. I told him I had .357 HollowPoints.

6 Q. And you had never been in that Mercedes?

7 A. No, sir.

8 Q. Nothing further. Thank you, ma'am.

9 A. Yes, sir.

10 The Court: Anything? Anything further, Mr. Schnee?

11 Mr. Schnee: Just very briefly, Your Honor.

12 Redirect Examination

13 By Mr. Schnee:

14 Q. The discussion of the .357, that was issued because you
15 were a security guard.

16 A. Yes, sir.

17 Q. And that was a job requirement for you to have.

18 A. Yes, sir.

19 Q. Okay. And I know it was a big issue during testimony.

20 Your attorneys tried to keep some of those records out from
21 the security company?

22 A. I'm not sure---

23 Q. Do you remember that?

24 A. No, sir.

25 Q. All right.

1 A. I'm not sure.

2 Q. All right. I know it's been awhile.

3 A. Yeah.

4 Q. But you're certain you turned in your revolver.

5 A. I know for a fact that I turned in -- turned it in.

6 That's for a fact.

7 Mr. Schnee: Okay. No further questions.

8 Recross Examination

9 By Mr. Petrano:

10 Q. I just have one question. Ms. Rice, you look like
11 you've got something on the tip of your tongue. Is there
12 anything else you want to say here?

13 A. No, sir.

14 Mr. Petrano: Okay. I'm sorry. Thank you.

15 The Court: All right. Thank you. You may step down.

16 The Witness: Yes, sir. Thank you.

17 The Court: Go right back there by Mr. Schnee.

18 Mr. Schnee: May it please the Court? We call Arletta
19 Frierson, and I understand Your Honor's ruling on the hearsay
20 exception in that regard. I would like to argue that it
21 would be -- fall under Rule 801 as an admission by a party
22 opponent. If Your Honor is going to maintain the same
23 ruling, I would like the Court's indulgence to proffer this
24 testimony.

25 The Court: I don't know what this person is going to

colloquy

14

1 say. Raise your right hand, if you would.

2 Arletta Frierson, after being duly sworn, testified
3 as follows:

4 The Court: All right. So this witness is going to
5 testify to what?

6 Mr. Schnee: That she had been housed with the
7 co-defendant, Iris Bryant, and Iris Bryant admitted multiple
8 times that she had lied and was going to lie about her
9 testimony in order to get a deal from the State.

10 Mr. Petrano: Your Honor, I have a reply. Your Honor,
11 the exception that's being argued for the hearsay that is a
12 statement by a party opponent, Your Honor -- Your Honor, this
13 -- today obviously Ms. Bryant is not a party opponent, and
14 then even if the argument is, well, counsel should have
15 argued such and such, even at the trial, the criminal trial,
16 Ms. Bryant was not a party opponent. Quite simply, she was a
17 co-defendant who was brought in to testify. So that
18 exception is just not applicable at all.

19 The Court: So she wasn't tried at the same time, was
20 she?

21 Mr. Petrano: She ultimately pled guilty, but she had a
22 charge---

23 The Court: All right. She wasn't tried when this case
24 was---

25 Mr. Petrano: No, it was not a joint trial.

1 The Court: So you want to proffer something.

2 Mr. Schnee: Well, if Your Honor is not going to
3 consider it substantive evidence, I would like to proffer it
4 in case I have to appeal this decision.

5 The Court: All right. Well, I'll let him do that. My
6 ruling stands.

7 Mr. Schnee: Yes, Your Honor.

8 Direct Examination

9 By Mr. Schnee:

10 Q. Good morning.

11 A. Good morning.

12 The Court: Ma'am, I need you to speak up now because
13 I've got to hear you; okay?

14 The Witness: Okay.

15 Court Reporter: Will you state your name?

16 The Witness: Arletta Frierson.

17 Court Reporter: Will you spell your first name?

18 The Witness: A-R-L-E-T-T-A.

19 Court Reporter: Last name?

20 The Witness: F-R-I-E-R-S-O-N.

21 By Mr. Schnee:

22 Q. Prior to just this morning, have we ever met before?

23 A. No.

24 Q. Okay. Back in 2000 -- in April of 2006, did you write
25 two letters or two statements?

1 A. Yes, I did.

2 Q. Okay. If I may approach, Your Honor? Are those the two
3 statements that you wrote?

4 A. Yes, it is.

5 Q. Okay. They were notarized?

6 A. Yes, sir.

7 Mr. Schnee: Okay. Your Honor, I'll have these marked
8 as Applicant's 1 and 2, and I would move them into evidence.

9 The Court: All right.

10 Mr. Petrano: Your Honor, same objection. It's hearsay
11 within hearsay---

12 The Court: Well, I understand, but I mean---

13 Mr. Petrano: I just wanted to note it for the record,
14 Judge.

15 The Court: You're just marking them for identification;
16 right?

17 Mr. Schnee: I would like to have them made a part of
18 the record.

19 The Court: Well---

20 Mr. Schnee: If that means they have to be a court
21 exhibit, that will be fine.

22 The Court: All right. We'll do that. Make them a
23 court exhibit.

24 (Court's exhibits 1 and 2 were marked for identification
25 only.)

1 By Mr. Schnee:

2 Q. Now, Ms. Frierson, you were incarcerated with Iris
3 Bryant?

4 A. Yes, I was.

5 Q. Okay. Did you have any conversations with her about her
6 charges and what she was doing with them?

7 A. Yes, we had conversations.

8 Q. Okay. Could you describe some of those conversations?

9 A. Well, I mean, I was at Alvin S. Glenn, and that's when
10 we first started talking about it. When her and Carmen used
11 to have their little altercations, she just basically said
12 that -- she did say that Carmen had nothing to do with it and
13 she stated a couple of times that if Carmen kept on with her
14 nonsense that she said she held -- she said she held Carmen's
15 life in her hand. She said the only thing she had to do was
16 to tell the truth and Carmen could be set free.

17 Q. Do you remember if she said that more than once or one
18 time?

19 A. She said it a lot of times.

20 Q. Were you friends with her?

21 A. She's actually -- that's my cousin.

22 Q. That's your cousin?

23 A. Yes, it is.

24 Q. Did you ever talk to her after she ended up testifying?

25 A. A couple of times I have.

1 Q. Okay. And has she said anything else about her
2 testimony in terms of whether it was truthful or not?

3 A. After she testified? I can't recall that she actually
4 said anything about it, but before she did, but I can't
5 actually recall what happened after.

6 Q. Okay. Did she tell you why she wanted to testify
7 against Carmen?

8 A. She was trying to get a deal.

9 Q. Okay. Did she dislike Carmen or...

10 A. I'm not for sure she disliked her. I just think that
11 she was just trying to go home to her kids, so she was trying
12 to do what she needed to do for herself.

13 Q. Okay. I appreciate you being here. Thank you.

14 A. Uh-huh.

15 The Court: Cross-examination, Mr. Petrano?

16 Mr. Petrano: For proffer only, I just have a couple of
17 questions, Your Honor.

18 Cross-Examination

19 By Mr. Petrano:

20 Q. Ms. Frierson, you were transported to the trial for Ms.
21 Rice; correct?

22 A. I don't remember that.

23 Mr. Petrano: Your Honor, may I approach the witness?

24 The Court: Sure.

25 Mr. Petrano: Your Honor, so you can follow along, I'm

1 turning to page 974 in the trial transcript.

2 By Mr. Petrano:

3 Q. And, Ms. Frierson, I know you said you don't recall it,
4 and I'm just offering this to see if it sounds familiar. If
5 you don't recall it, that's fair. I'm pointing out line 6.

6 A. Okay. I see that.

7 Q. And do you recall being brought over or anything from
8 Alvin S. Glenn down here to the courthouse? It would have
9 been this same courthouse?

10 A. I don't remember that.

11 Q. Okay. And you said there had been some situations
12 between Ms. Rice and Ms. Bryant while at Alvin S. Glenn,
13 basically - stop me if I'm wrong here - Ms. Rice attacking
14 Ms. Bryant?

15 A. No, I didn't say that. I said they just had -- they had
16 altercations.

17 Q. Do you know the specifics of the altercations?

18 A. Just regular like little arguments that they -- I can't
19 actually say who started it, but they had little arguments
20 between each other, little bickering, but basically -- but it
21 was mostly to do with what was going on with their situation
22 with the trial.

23 Q. How long were you at Alvin S. Glenn?

24 A. I don't remember. I think I might have been there a
25 couple of months.

1 Q. And you had been charged with what? A number of
2 forgeries?

3 A. Yes.

4 Q. And then you had served time before for some forgeries
5 as well back in '06?

6 A. Yes.

7 Q. Nothing further. Thank you, ma'am.

8 A. Uh-huh.

9 The Court: Anything?

10 Mr. Schnee: Just very briefly.

11 Redirect Examination

12 By Mr. Schnee:

13 Q. Have I offered you any assistance in any of your
14 charges?

15 A. No.

16 Mr. Schnee: Okay. No further questions.

17 Examination by the Court

18 Q. Ms. Frierson, where is Ms. Bryant?

19 A. I'm not sure. I haven't seen her for maybe about three
20 years.

21 Q. Has she got family here in Columbia?

22 A. Yes, sir.

23 Q. Who is here in Columbia?

24 A. I think right now -- I think her grandmother is here.

25 Q. Her grandmother? Who else? Children?

1 A. Yes.

2 Q. Her children are here in Columbia?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes, sir.

6 Q. And who else?

7 A. (Pause.)

8 Q. Does she have brothers and sisters here in Columbia?

9 A. I'm not sure where they stay at. I mean, I'm not sure
10 if they're here in Columbia or not. I know the last that I
11 heard that they had moved. Some of her siblings had moved,
12 so I'm not real sure---

13 Q. Some of them -- some of them are still here.

14 A. Yes.

15 The Court: All right. Thank you. You may step down.

16 Mr. Schnee: I call Lashawn Roberts to the stand.

17 The Court: This is the same---

18 Mr. Schnee: A similar proffer, yes, sir.

19 Mr. Petrano: Just for the record, I renew my
20 objections. Thank you.

21 Lashawn Roberts, after being duly sworn, testified
22 as follows:

23 Bailiff: Tell us your name.

24 The Witness: Lashawn Roberts.

25 Court Reporter: Will you spell your first name?

1 **The Witness: L-A-S-H-A-W-N.**

2 Direct Examination

3 By Mr. Schnee:

4 Q. Good morning.

5 A. Good morning.

6 Q. Prior to you coming here, have we ever met?

7 A. No, sir.

8 Q. Okay. And you're incarcerated for murder?

9 A. Yes, sir.

10 Q. Serving what sentence?

11 A. Thirty years.

12 Q. Okay. Have I offered to help you out in any way with
13 your charges?

14 A. No, sir.

15 Q. Do you remember being incarcerated with Iris Bryant?

16 A. Yes, sir.

17 Q. Okay. Where was that?

18 A. At Lee Correctionals on Laurel Quad 2 upstairs.

19 Q. Okay. And you had conversations with her?

20 A. Yes, sir.

21 Q. How much interaction did you have with her?

22 A. We lived together, so basically it was every day because
23 she was a dorm worker, so she usually hang out in the
24 bathroom. We would usually hang out in the bathroom and just
25 talk.

1 Q. Okay. Did she ever talk about her charges?

2 A. Yes, sir.

3 Q. Did she talk about Carmen Rice at all?

4 A. Yes, sir.

5 Q. Have you ever met Carmen Rice?

6 A. Not until '06, October of '06.

7 Q. Okay. Is this before or after you had a conversation
8 with Iris Bryant?

9 A. I met Carmen after Iris Bryant.

10 Q. Okay. What types of things did Iris Bryant say?

11 A. When Iris Bryant came on our unit, she was bragging that
12 she had a murder charge. So we were like -- everybody is
13 like, "Whatever, whatever," because Iris is a big booster
14 kid. She likes to lie. So when we started hanging around
15 and talking, she started telling me about how that night
16 happened, that Carmen had nothing to do with it, and at this
17 point I never knew who Carmen was. She would just say,
18 "Carmen had nothing to do with it, but I had to do what I had
19 to do."

20 She would say -- she indicated that her and a dude were
21 sitting in the car and her -- there was another dude. It was
22 three people: Her, two dudes. And she jumped up and the
23 dude hit him upside the head, and that's how the man got
24 killed. So when they got scared, they started pistol-
25 whipping him upside the head.

1 Okay. I was like -- Iris would tell us all this, but we
2 think Iris be lying until I met Carmen and I realized -- I
3 was like this girl was telling me that she was actually a
4 part of this crime and wasn't bragging about it.

5 Q. Okay. And how many times did Iris talk about this?

6 A. She only talked about it with me. We had a real deep
7 conversation because it was weighing down on her because she
8 couldn't sleep. We stayed in the bathroom and we would talk
9 all night because she asked me how could I stay in the
10 building or how could I do this and how could I do this with
11 knowing that somebody's life had been taken.

12 Q. So it was just one conversation?

13 A. It was just one conversation.

14 Mr. Schnee: Okay. That's all I have, Your Honor.

15 The Court: All right. Mr. Petrano?

16 Mr. Petrano: For proffer only, Your Honor.

17 Cross-Examination

18 By Mr. Petrano:

19 Q. Ms. Roberts, I'm a little confused. You pled guilty to
20 the murder of Amber Bone; correct?

21 A. Yes, sir.

22 Q. And that was with Ms. Wannamaker?

23 A. Yes, sir.

24 Q. All right. I got one question. When did you plead
25 guilty?

1 A. When did I plead guilty?

2 Q. Yeah.

3 A. 1998.

4 Q. Okay. How were you at Alvin S. Glenn then?

5 A. I never was. I said I was at Lee, Laurel Quad 2
6 upstairs.

7 Q. I just want to make it clear that you were never at---

8 A. Iris at Lee.

9 Q. And she was at Lee before or after the trial?

10 A. She was in there -- actually she had been incarcerated
11 twice.

12 Q. Okay. And so this was in '06 when you met Ms. Rice.

13 When did you meet Ms. Bryant?

14 A. I met Ms. Bryant in '04.

15 Q. All right. And that was at Lee.

16 A. Yes, sir.

17 Q. All right. And she was there, according to you,
18 incarcerated on other charges, but the murder was a pending
19 charge.

20 A. Yes, sir.

21 Mr. Petrano: Thank you, ma'am. Nothing further.

22 The Court: All right.

23 Mr. Schnee: No questions, Your Honor.

24 The Court: Thank you. You may step down.

25 Mr. Schnee: Judge, there's one other issue. There's a

colloquy

26

1 piece of evidence being held by Jim Truitt in the clerk of
2 court... He's in jury qualifications. He told me as soon as
3 he's done with that, he'll be able to get it. Other than
4 that one piece of information and my client's testimony about
5 that, that's the entire presentation I would have.

6 The Court: Can we move on? Are you going to call Mr.
7 Mobley?

8 Mr. Petrano: I sure am.

9 The Court: Do you mind if we move on to Mr. Mobley at
10 this point and address---

11 Mr. Schnee: No. Absolutely. That's what I was hoping
12 we would do.

13 The Court: All right. So you'll have no objection to
14 -- nobody has any objection to dealing with Mr. Truitt's
15 situation when Mr. Mobley is finished.

16 Mr. Petrano: I only ask that even if Mr. Truitt and the
17 actual item are not available if the issue could be addressed
18 on cross by Mr. Schnee, by the applicant, while Mr. Mobley is
19 here. Does that make sense? I don't want it to be a
20 surprise later after we're done with Mobley.

21 Mr. Schnee: No. There's -- I'll certainly bring it up
22 and ask him about his knowledge of it.

23 The Court: All right.

24 Mr. Petrano: Your Honor, the State calls Mr. John
25 Mobley.

1 John T. Mobley, after being duly sworn, testified
2 as follows:

3 **The Court:** All right. Tell us your full name, Mr.
4 Mobley.

5 **The Witness:** John Terrance Mobley.

6 Direct Examination

7 By Mr. Petrano:

8 Q. Mr. Mobley, just for the record, you've been present
9 here this morning throughout the allegations?

10 A. Yes, sir.

11 Q. All right. Sir, I'm going to ask you some background
12 questions, and then we're going to jump right to the meat of
13 it; okay?

14 A. Okay.

15 Q. If you could, tell us when you were -- when you first
16 started practicing law.

17 A. I believe I -- in 1993 I was sworn in, November of 1993.

18 Q. Okay. And so at the time you represented Ms. Rice,
19 about how many years of experience would you have had?

20 A. I'm not sure what year I started representing Ms. Rice,
21 but if---

22 Q. Does 12 sound about right?

23 A. Depending on what year it was.

24 Q. Okay. And your experience, sir, is it a mix of criminal
25 and civil? Mostly criminal? Mostly civil?

1 A. At the time while I did practice in criminal and
2 personal injury litigation, the majority of my practice was
3 criminal defense.

4 Q. Okay. And had you handled any other capital cases? And
5 I don't mean death penalty. I just mean---

6 A. Murder, yes.

7 Q. Okay.

8 A. Yes, sir.

9 Q. Do you recall your representation of this applicant?

10 A. I do. Correct.

11 Q. And could you kind of explain -- were you appointed?
12 Retained?

13 A. No. Basically -- yeah, I mean, I do recall, but she
14 actually had a prior attorney and I think it was Brooks
15 Funderburk, but I cannot recall specifically who it was who
16 had been appointed. He'd had the case for some time. Her
17 husband was someone I knew from my neighborhood a long time
18 ago, and he was in the military, had called me and said his
19 wife was charged with murder. He didn't know much about it.
20 And I agreed to pick up representation of the case.

21 At that point the case had already been at least
22 scheduled for trial at least once or so and -- but so I would
23 have only had, you know, maybe six months or so at best to
24 prepare for trial on that one but I mean which is not a
25 problem.

1 Q. And on that note, were you denied a continuance request
2 or anything like that?

3 A. No. I mean, you know, actually me and the prosecutor,
4 Ted Lupton, didn't have an issue with that. I mean, she was
5 in jail on bond. I mean, she was in jail on a bond that she
6 couldn't make and, you know, that was just the deal. I mean,
7 it was not a problem. I got the discovery from him, and me
8 and Mr. Hart prepared for trial.

9 Q. You said you got discovery from Ted. Did you review
10 that with the applicant?

11 A. On numerous occasions. On numerous occasions. I mean,
12 I had some very, very frank talks with Ms. Rice from the
13 beginning. Her prior attorney had indicated to me that she
14 told him a lot of things that just were not true and did not
15 pan out in his preparation of her defense, and the first
16 thing I told Ms. Rice was, "We do not have a whole lot of
17 time. Do not waste my time by sending me on wild goose
18 chases because if you tell me something, I'll try to check it
19 out. So don't waste my time; it's only going to hurt you."

20 So I sat down and discussed with her any potential defenses,
21 you know, including alibi and things along those lines.

22 Q. And, sir, as you well know, the moment that P.C.R.
23 application was filed - I believe it was 17-27-130 -
24 privilege is waived. Could you please tell us what defenses,
25 if any, were discussed?

1 A. I mean, you know, there are only going to be a few
2 different defenses to murder. I mean, there's going to be
3 alibi, that you were, you know, someplace else and could not
4 have committed the crime at which point I try to get the
5 names of witnesses or anything I can use to corroborate that
6 alibi. There's self-defense. There's, you know, a lesser
7 charge of voluntary or involuntary manslaughter or insanity.
8 But generally Ms. Rice was not able to give me anything
9 except for the, you know, "It wasn't me. Everybody-else-was-
10 kind-of-lying type thing," you know, and what hurt Ms. Rice's
11 case -- and obviously it's been a long time and a very -- you
12 know, and I'm going to try to recall the details as best I
13 can. It's been a long time. I can tell you I did not read
14 that extensive transcript. It was a huge file.

15 I recall it was a cold case, and basically the Richland
16 County Sheriff's Department had what was called a Cold Case
17 Department where cases that were a number of years old and --
18 and all the leads that are dried up or unsolved got sent to a
19 team of generally retired investigators that kind of
20 volunteered and only worked part-time, wanted to help try to
21 track leads down and make progress because the murder was
22 unsolved.

23 The basic facts were that the alleged or -- well, the
24 victim. I can't say alleged because he was clearly killed.
25 The victim in the case was found dead in his Mercedes on an

1 abandoned -- well, not abandoned road but a dark road. He
2 had been shot in the head from behind, and that's how they
3 found his body, and they didn't really have any leads on the
4 case. They all kind of dried up.

5 One of the big problems with the guy is that he was just
6 a flagrant philanderer where he just was constantly meeting
7 women and picking up women. I mean, the witnesses they
8 interviewed all testified to that effect. He'd be -- you
9 know, he'd pull up to the side of somebody on the street and
10 try to pick them up or the drive-through at McDonald's and he
11 was constantly meeting women and picking women up, and that's
12 why it was difficult to really identify any suspects because
13 he was always -- there were just many people that he was
14 doing that with for such a long time period.

15 When the case really broke, there was some detail about
16 a friend of Carmen's and a telephone call from a phone booth
17 that kind of tied Carmen to it. She gave some corroboration,
18 some details that led them to her, and actually -- I know.
19 There was an issue -- they talked about D.S.S. records and
20 they got some D.S.S. records with Carmen's name on it because
21 she apparently applied for D.S.S. assistance and that's how
22 they developed her as a suspect. They corroborated that with
23 her friend's testimony, a friend who she was hanging out with
24 that night.

25 So there was -- yeah, there was a lesbian friend with

1 some braids who were, you know -- and, anyway, that's how
2 they identified Carmen and Iris, and that's kind of how the
3 case broke.

4 Q. Then there was---

5 A. Then there was -- I'm sorry. Go ahead.

6 Q. No. I'm sorry, sir.

7 A. And then there was, of course, the ballistics with the
8 weapon and her working with the security company and, you
9 know, so...

10 Q. If I saw correctly, she did not have a prior -- any
11 prior record, anything significant.

12 A. To the best that I can recall.

13 Q. Okay. With a situation like that, sir, she has
14 indicated that your advice was to not take -- for her to not
15 take the stand. Do you remember any discussion along those
16 lines?

17 A. Well, I can tell you I discuss that with every single
18 client, and I always make it clear, number one, that it's
19 absolutely their right to testify if they want to and I will
20 give them my opinion as to whether they should but that the
21 final decision needs to be theirs. And one of the first
22 things I tell every client is: If you talk to ten different
23 lawyers, you will get ten different opinions as to whether a
24 client should testify or not. You know, in the O.J. Simpson
25 trial it was argued -- the lawyers argued about it -- F. Lee

1 Bailey and Johnny Cochran, two great lawyers, arguing about
2 whether or not he should testify or not.

3 My opinion is always that unless I absolutely need a
4 client to testify, I advise they not do it. When I say need,
5 if there's some element of a defense or some critical fact or
6 testimony that's critical to our defense that I need them
7 for, I advise them against testifying because even -- once
8 their testimony is out, they are subject to cross-
9 examination. Oftentimes criminal defendants do not make the
10 best witnesses. It's been my experience that the jurors can
11 often make opinions about your credibility and what kind of
12 person you are and base their decision based on that rather
13 than the State -- you know, instead of the State's evidence,
14 and I felt that the evidence was questionable enough that it
15 was triable without her testimony and that her testimony --
16 all she would say is that it wasn't her and everybody is
17 lying basically, and she couldn't give anything concrete
18 about her whereabouts that I could actually corroborate.

19 So based on that and based on some of the testimony of
20 her associates and friends that really had nothing to gain by
21 lying against her, I felt it was best that she not testify,
22 but once again I always make it clear to her that it's her
23 choice, and she didn't have to make a final decision until,
24 you know, until the conclusion or towards the end of the
25 trial.

1 Q. And, sir, were there any plea offers in this case?

2 A. I'm certain there was. I cannot recall specifically
3 what it was. I discussed it with Ms. Rice, but based on the
4 amount of time, she wasn't going to take it. And just so
5 we're clear, I mean, you know, the reason I'm not clear on
6 exactly what it was is because plea negotiations are often
7 kind of fluid. There will be numbers going back and forth,
8 you know, and oftentimes you won't get one until pretty close
9 to the trial. And so it's not always in writing. You know,
10 there will be what if -- what about -- what if we reduce the
11 charge? What if we adjust the time, you know -- you know,
12 things along those lines. And it's so fluid that I can't
13 tell you exactly concretely what it would have been because
14 it's an ongoing process.

15 Q. But if I'm hearing you right, she was maintaining her
16 innocence all along.

17 A. That is correct.

18 Q. All right. And if I'm hearing you correctly that there
19 was some allusions to an alibi but nothing concrete?

20 A. That is correct.

21 Q. I noticed Ms. Frierson was mentioned during the trial.
22 Do you recall that?

23 A. Ms. Frierson?

24 Q. Yeah, the young lady who just testified.

25 A. I do not recall that, sir.

1 **Mr. Petrano:** Okay. May I approach, Your Honor?

2 **The Court:** You may.

3 By Mr. Petrano:

4 Q. And I understand you responded in the negative. I'm
5 just going to offer this, see if it refreshes anything.

6 A. Sure.

7 Q. Just for the record, once again, I'm turning to page
8 974, looking around line 6.

9 A. Okay. Well, it appears she was clearly brought to the
10 courthouse.

11 Q. And it just looks like, the way I'm following along here
12 - and you stop me - the strategy is basically to discredit
13 the State's witnesses?

14 A. That would be correct.

15 Q. And some of what we heard earlier here as far as Ms.
16 Bryant making up stories, that's nothing new to you, is it?

17 A. No. I mean, we crossed -- I crossed her pretty
18 extensively on different versions, different stories, the
19 fact that she was facing life in prison just like my client
20 was and that, you know, I knew she wrote several different
21 letters to law enforcement that gave different versions and
22 things along those lines. So, yeah, I mean, that's not --
23 that's nothing earth-shattering.

24 **Mr. Petrano:** I think I've got just a couple more, if I
25 may, if you will indulge me, Your Honor. That's it, Your

1 Honor. Thank you.

2 The Court: All right. Mr. Schnee?

3 Mr. Schnee: Thank you, Your Honor. May it please the
4 Court?

5 Cross-Examination

6 By Mr. Schnee:

7 Q. Good morning.

8 A. Good morning.

9 Q. Okay. You said you thought you had about six months to
10 prepare for the trial?

11 A. That's only an estimation.

12 Q. I understand.

13 A. It might not have been that long, quite frankly.

14 Q. Okay. But the trial was, I guess, April of '05.

15 A. If you say so. I mean, I'm not -- I mean, details like
16 that, dates, I'm not going to be able to tell you because
17 it's been a number of years, sir.

18 Q. I absolutely understand. So sometime late in '04 you
19 were involved.

20 A. I cannot tell you the dates at all. I can tell you I
21 had---

22 Q. Broad estimation.

23 A. That is -- I mean, if you told me '03, I wouldn't
24 disagree with you. I mean...

25 Q. Okay.

1 A. I try lots of cases.

2 Q. Do you have a copy of the transcript of record?

3 A. Yes, sir.

4 Q. If you could just flip to the very cover, it has the
5 date of the trial on it.

6 A. I mean, I was -- I mean, I was -- I mean, the Court can
7 -- it's April '05.

8 Q. Okay.

9 A. I mean, if you guys can stipulate -- I don't think
10 that's a fact that's in dispute.

11 Q. Absolutely not. You talked about this being a cold
12 case.

13 A. Yes, sir.

14 Q. Okay. I believe it was sometime in 2001, the incident
15 in the trial.

16 A. Okay.

17 Q. You mentioned -- this is all going towards I guess your
18 advice to my client not to testify.

19 A. Okay.

20 Q. You said one of the problems with her testimony would be
21 a lack of corroboration for her whereabouts?

22 A. That -- yeah. I mean, any time you have an alibi,
23 that's something you want to be able -- I'd like to be able
24 to establish. Exactly correct.

25 Q. Okay.

1 A. I mean, that would have been one -- I'm not going to --
2 I'm not going to sit here and tell you that was the only
3 factor. What I'm saying, sir, is that when I discuss
4 testifying or a client's decision to testify, it's a
5 discussion and it's not really based on one factor like that.
6 It's based on a number of factors. It's based on, you know,
7 whether I can corroborate anything they're telling me. It's
8 based on the State's -- the quality of the State's case.
9 It's based on how I think they'll testify and hold up on
10 cross-examination. It's based on whether or not -- how
11 critical their testimony is, you know, to our defense. So
12 it's based on a number of those factors, you know. So, I
13 mean -- now, I will tell you I cannot sit here and describe
14 for you every single factor that was involved, but those are
15 examples of things that I would have discussed with Ms. Rice
16 based on the entire case.

17 Q. Okay. But you would agree with me that if we're talking
18 about four years from the actual incident until your meeting
19 with her talking about testifying, if it was an innocuous,
20 normal night, it would be pretty tough to have specifics.

21 A. It would depend on the person and it would depend on the
22 time, sir.

23 Q. Do you remember what you did four years ago?

24 Mr. Petrano: Objection.

25 The Witness: If you tell me what day and what time, I

1 might be able to find out.

2 The Court: Sustained. That's not---

3 Mr. Schnee: I'm just---

4 The Witness: I mean---

5 The Court: He's testified that it depends on the person
6 and depends on the time.

7 The Witness: You know, if you ask me what I was doing,
8 you know, April the 26th, you know, at 10:00 a.m. in the
9 morning, I would go back and look at my calendar and see if I
10 was working that day, if I was in court, I had appointments,
11 things like that. Now, if you asked me what I was doing at
12 4:00 Saturday afternoon four years ago, I would tell you the
13 chances are I have no idea.

14 By Mr. Schnee:

15 Q. All right. Fair enough. Regarding a discussion of
16 alibi, did she give you any names or people or -- to
17 interview?

18 A. I'm reasonably certain she did not---

19 Q. Okay.

20 A. ---because that would have been the first question I
21 asked for a murder.

22 Q. Okay.

23 A. And I'm -- and I'm -- and I'm reasonably certain that,
24 you know, once again, as I indicated to you or in my direct
25 testimony, that based on the statements made by her prior

1 trial counsel about how she kind of sent him on wild goose
2 chases, I wanted to establish with Ms. Rice early on that we
3 were not going to have that kind of relationship, that I was
4 not going to be doing that, and to the best that I recall, I
5 asked her pointblank and to the best that I recall her answer
6 was, "No, I don't have anything that I can give you to
7 eliminate that."

8 Q. Okay. Okay.

9 A. And that was not out of me trying to be rude to her.
10 That was just me saying we don't have time to screw around.
11 You just tell me yes or no so I can move forward.

12 Q. I absolutely understand. If I could have you turn to
13 page 717 in the transcript.

14 A. Sure.

15 Q. It's the testimony of Sara Dennis. Okay?

16 A. Okay. I'm on page 717, sir.

17 Q. Okay. There's a discussion about a letter that's
18 introduced. It's marked State's 56.

19 A. Okay.

20 Q. All right. This was a letter purported to be from my
21 client to Sara Dennis describing what amounts to in the
22 testimony as a creation of an alibi for her being down in
23 Florida. Do you recall any of that at all?

24 A. I do not recall it, sir.

25 Q. Okay.

1 A. But I'm not going to disagree with the transcript. I
2 just do not recall that detail.

3 Q. Okay. Did you ever discuss that letter specifically
4 with Ms. Rice to see if it actually was her handwriting?

5 A. With Ms. -- and this is a letter from who to who?

6 Q. From Carmen Rice to Sara Dennis.

7 A. I mean, I would have discussed anything like that with
8 my client and actually, you know, I mean, I'm -- when you
9 talk about alibis, you know, I mean, certain details are
10 going to come back to me. All right? You know, to the best
11 that I recall, there was some discussion about, you know,
12 Carmen being, you know, in Florida or something like that at
13 one point, but, I mean -- and I think, you know, where things
14 break down is when you can't give me names or numbers or
15 people I can identify to corroborate what you're saying and
16 things along those lines, but I do -- I think -- I do believe
17 that there was some issue with her leaving the state at some
18 point and maybe being in Florida, but, you know, if I'm
19 mistaken, you can correct me, but to answer your question
20 specifically, anything like that, you know, that I received I
21 either would have showed it to her or discussed it with her.

22 Q. Okay. So based on common practice you think you showed
23 it to her, but you don't---

24 A. I mean, I would have at a minimum discussed it with her.

25 Q. Okay.

1 A. And just so you understand, I mean, my answer -- I mean,
2 when you have a file that's that huge, I mean, I always tell
3 clients if they want a copy they can have a copy, but
4 generally, I mean, in a case like that, a lot of information
5 is really just -- it's kind of just investigators' documents,
6 their files and things that really aren't relevant to the
7 trial, in my opinion, or to the defense of the crime, just
8 them documenting things they've done, things they've checked
9 out. And a lot of times it's just not -- clients don't have
10 the patience to read through it, and a lot of times it's just
11 -- from a time standpoint it's not time-effective to sit down
12 and read every single page to them, but I mean -- but I
13 always make sure I discuss anything significant in the case
14 with them and make sure that the file is available if they
15 want to have a copy of it, so...

16 Q. Okay.

17 A. And I would have assumed, I mean, if that was a big deal
18 she would have asked for a copy and I would have given her a
19 copy or you know...

20 Q. Okay. You would agree, based on what you recall, Iris
21 Bryant's testimony was pretty vital to the State?

22 A. I would agree.

23 Q. Okay. Pretty much the only direct evidence in the case?

24 A. She was their strongest witness.

25 Q. Okay. And there was -- I believe you talked about it

1 briefly on direct about the ballistics of the guns? You
2 tried very hard to keep those security company records out.

3 A. Yeah. To the best that I can recall, sir, the security
4 company was in shambles.

5 Q. Right.

6 A. And even the investigator reports document how a lot of
7 the recordkeeping was bad based on mismanagement, based on
8 the condition and the manner in which a company -- the agency
9 was being run. And, I mean, they tried to get those records
10 in under the Business Exception. I argued that they were not
11 -- you know, that the records had to be kept in a manner that
12 were reliable, and based on the testimony, they were not,
13 based on, you know, records being missing and disorganized
14 and things along those lines.

15 Q. Okay.

16 A. To no success with Judge Lloyd's...

17 Q. The only other question I have is regarding jury
18 charges.

19 A. Okay.

20 Q. Do you recall if you asked for a mere presence charge?

21 A. I mean, I can -- I cannot recall. I mean, the
22 transcript is going to speak for itself. I know I asked --
23 there was some discussion about a lesser charge which Judge
24 Lloyd wouldn't give but, you know, the record is going to
25 speak for itself as to whether I asked for that or not.

1 Q. Okay.

2 A. You know, so that's my answer.

3 Mr. Schnee: All right. I have no further questions,
4 Judge.

5 The Court: All right. Mr. Petrano?

6 Redirect Examination

7 By Mr. Petrano:

8 Q. Sir, if a client tells you -- I'm speaking generically.
9 If a client tells you for a homicide case that they were
10 nowhere near and they don't know anything about it, that kind
11 of takes out self-defense and lesser charges and insanity
12 even sometimes, doesn't it?

13 A. Correct.

14 Mr. Petrano: All right. Nothing further, Judge. Thank
15 you.

16 The Court: Anything?

17 Mr. Schnee: No, sir.

18 The Court: All right. Thank you, Mr. Mobley.

19 The Witness: Thank you, sir. Gentlemen.

20 The Court: Do y'all have any objection to Mr. Mobley
21 being excused?

22 Mr. Petrano: Not at all.

23 Mr. Schnee: No, sir.

24 The Court: Mr. Mobley, you're free to leave.

25 The Witness: Thank you, Your Honor.

1 **Mr. Petrano:** Your Honor, I'm just going to retrieve my
2 copy.

3 **The Court:** Sure. Don't hurt him now.

4 **Mr. Petrano:** Your Honor, that's the State's response.
5 I have some argument, if need be.

6 **The Court:** Well, we've got to deal with Truitt.

7 **Mr. Petrano:** Yes, sir.

8 **The Court:** Mr. Dye, can you step down to the jury
9 assembly room and ask Mr. Truitt to come down here?

10 **Bailiff:** I will, sir.

11 **The Court:** If he's taking roll, he can get somebody
12 else to call the name.

13 **Mr. Petrano:** And I know he has the box in his office.
14 I've looked through it before, so I know it's available.

15 (Pause in proceedings)

16 **Bailiff:** He's on his way, Judge.

17 (Pause in proceedings. Mr. Truitt enters the
18 courtroom.)

19 **The Court:** All right. Mr. Truitt, apparently you are a
20 critical aspect of this trial, and as much as you have tried
21 to avoid being available, claiming some sort of immunity by
22 virtue of jury qualification, we got you. What is Mr. Truitt
23 -- why is he here, Mr. Schnee?

24 **Mr. Schnee:** I believe he's the person with the key to
25 the evidence room. There's a letter that I would like to

1 present that was made a part of the trial.

2 **The Court:** All right. Have you got a copy of the
3 letter or...

4 **Mr. Truitt:** Mr. Schnee just told me about it this
5 morning. I told him I had to go to jury qualification, so I
6 haven't had a chance to look at it. I probably have got it.
7 I just need to have time to go look at it and find it.

8 **The Court:** So what is it we're doing with him?

9 **Mr. Schnee:** I would like him to retrieve a copy of the
10 letter.

11 **The Court:** How long is it going to take you to do it?
12 Why did you wait 'til today to tell him?

13 **Mr. Schnee:** I tried to find him on Friday but...

14 **The Court:** You've been around here long enough to know
15 that Fridays are not Mr. Truitt's number one priority.

16 **Mr. Schnee:** Oh, I understand that.

17 **The Court:** After about 11:00 on Monday, you're going to
18 have a hard time finding him.

19 **Mr. Schnee:** Well, hopefully I get lucky usually and run
20 into him in the hallways.

21 **Mr. Truitt:** What exhibit?

22 **Mr. Schnee:** It is State's number 56.

23 **Mr. Petrano:** If I may, Your Honor, just for
24 completeness, if it's possible and not too much trouble, if
25 we could just get the whole box. I could spare a clerk if

1 you need a hand.

2 Mr. Truitt: All right. I'll go get it, Judge.

3 The Court: Do you want -- do you want somebody to come
4 down there and help you?

5 Mr. Truitt: No, sir. I've got it.

6 The Court: They can bring the box if you want and save
7 yourself some wear on the old back.

8 Mr. Truitt: I'm not that old. I'll be right back.

9 The Court: And I emphasize and underline old.

10 Mr. Truitt: I'll be back.

11 Mr. Petrano: Your Honor, if I may step out for one
12 moment and use the personal break.

13 (Pause in proceedings)

14 The Court: Are we ready to go?

15 Mr. Schnee: My client is reviewing the letter, if we
16 could just have one minute.

17 (Pause in proceedings)

18 The Court: What is it we need Mr. Truitt for? Is he
19 here?

20 Mr. Schnee: Yeah, he's right there.

21 The Court: Right in front of me.

22 Mr. Truitt: I wouldn't desert you, Judge.

23 The Court: What do y'all want Mr. Truitt for? Let's
24 deal with Mr. Truitt.

25 Mr. Schnee: The only thing---

1 The Court: He's the keeper of the evidence and that---

2 Mr. Schnee: That's correct.

3 The Court: Mr. Petrano, will you stipulate that this is
4 evidence that has been in the custody of---

5 Mr. Petrano: Oh, yeah. It's got the stamp and
6 everything. I got no objection to---

7 The Court: With James Dog Truitt.

8 Mr. Petrano: Item 56, there's no objection by the
9 State, Judge. It's part of the trial. Just for the record,
10 I believe this is on page 708 and 7---

11 Mr. Schnee: 717.

12 Mr. Petrano: 718.

13 The Court: What letter -- is this a letter from Ms.
14 Rice to---

15 Mr. Schnee: To one of the witnesses at trial, yes, Your
16 Honor.

17 The Court: About being in Florida?

18 Mr. Schnee: Yes, Your Honor.

19 The Court: All right. All right. They have stipulated
20 that that letter was introduced at trial and was State's
21 Exhibit 56.

22 Mr. Schnee: Yes, Your Honor.

23 The Court: And it has been in the custody of Mr. Truitt
24 as the evidence custodian for the County of Richland, court
25 administrator, County of Richland, assistant to the deputy

1 and the sheriff of Richland.

2 Mr. Truitt: Judge, would you like me to make a copy of
3 that?

4 The Court: I don't know.

5 (An off-the-record discussion takes place between the
6 Court and the clerk, and the attorneys have an off-the-record
7 discussion between themselves.)

8 The Court: Do you need a copy of it?

9 Mr. Schnee: No, thank you.

10 The Court: What are we doing?

11 Mr. Schnee: Your Honor, the reason I wanted her to
12 review it was because of -- and I think Mr. Petrano will
13 agree that there was testimony that my client had written
14 that woman, Sara Dennis, a letter saying tell them I was in
15 Florida at these times. That's essentially what the witness
16 testified to. The letter clearly shows that hope -- the only
17 statement is hopefully you can tell them I was in Florida.
18 It doesn't give any dates at all, and Mr. Mobley objected to
19 the witness's testimony saying that the letter should be
20 speaking for itself.

21 The Court: I read that.

22 Mr. Schnee: So that's pretty much where we are with it,
23 Your Honor.

24 The Court: All right. So what's the purpose of -- what
25 are y'all saying? He was ineffective for failing to do

1 something?

2 Mr. Schnee: No, Your Honor.

3 The Court: Ineffective because he did something.

4 Mr. Schnee: In that regard, attempting to be effective
5 and failing, but that's not his responsibility. That's why I
6 wanted to see the letter and exactly what was in it.

7 The Court: All right. So the letter is not an issue at
8 this point?

9 Mr. Schnee: Not at this point, Your Honor.

10 The Court: All right. Can Mr. Truitt take the box back
11 and---

12 Mr. Schnee: Yes, he can.

13 The Court: ---and put it under...

14 Mr. Schnee: I have finished usurping his time.

15 The Court: All right. Mr. Truitt, thank you for
16 bringing that.

17 Mr. Truitt: Yes, sir.

18 The Court: Have you got everything?

19 Mr. Truitt: Yes, sir, I've got everything.

20 The Court: All right. So y'all don't -- are you
21 getting this down, Madam Court Reporter? Y'all don't need
22 Mr. Truitt or the evidence from the trial any further.

23 Mr. Schnee: Correct, Your Honor.

24 Mr. Truitt: Thank you, sir.

25 The Court: All right. Anything further?

1 **Mr. Schnee:** I have no further witnesses, Your Honor.

2 **The Court:** Did you want to make any kind of -- I'm not
3 real sure what you're saying here today, Mr. Schnee, in terms
4 of what -- I know you're trying to introduce evidence from
5 these two females that testified that indicate that after the
6 fact they came forward and provided information that may
7 affect the credibility of one of the witnesses who testified
8 at trial.

9 **Mr. Schnee:** Yes, Your Honor, and that would be my
10 primary argument. Really, the only witness that offered any
11 direct evidence that Carmen Rice was involved in any way was
12 the co-defendant, Iris Bryant. There was clearly some
13 circumstantial evidence dealing with some problematic
14 identifications and sketches. The whole issue with the
15 handgun, could it have even been that gun or not -- where is
16 the gun that no one knows about---

17 **The Court:** Are you making any claims with respect to
18 the services rendered by Mr. Mobley? And I read the -- I
19 read the petition and the -- I mean, the application and the
20 application seems to allege some claims. The only one I've
21 heard is that Ms. Rice indicates she didn't -- she was never
22 provided copies of the discovery. Now, Mr. Mobley has
23 testified, well, he may or may not have provided her with
24 some of the discovery, all of the discovery or any of the
25 discovery, but he clearly reviewed every bit of the discovery

1 with her and anything she asked for he would have provided.

2 I mean, is that still an issue?

3 **Mr. Schnee:** Other than what my client testified to, no,
4 Your Honor. In terms of Mr. Mobley, if you look through the
5 transcript, you'll find that there was no request for a mere
6 presence charge. Clearly the fact that the co-defendant is
7 saying I was in the car and then Carmen Rice is the one that
8 did all the shooting, had the jury believed the opposite or
9 thought that she was lying only partway, that could have been
10 an appropriate charge and resulted in an acquittal.

11 **The Court:** Well, wasn't the defense that she wasn't
12 there?

13 **Mr. Schnee:** The defense is that she wasn't there, yes,
14 Your Honor.

15 **The Court:** Well, then...

16 **Mr. Schnee:** But it's up to the jury to determine what
17 actually happened.

18 **The Court:** All right. So failing to ask for a mere
19 presence.

20 **Mr. Schnee:** Other than that, Your Honor, I would argue
21 that the witnesses I brought in with the two documents I have
22 entered in as Court exhibits, I would argue they constitute
23 new evidence with -- regarding the veracity and credibility
24 of really the only witness that could say anything about
25 Carmen Rice being there or having any participation.

1 **The Court:** All right.

2 **Mr. Schnee:** My argument is that should give her a new
3 trial.

4 **The Court:** Mr. Petrano, what do you want? Anything?

5 **Mr. Petrano:** Yes, Judge. I've got a few arguments
6 here. Just one moment, Your Honor. If it pleases the Court,
7 I don't want to put opposing counsel on the spot, but my
8 response has two different avenues. Is this newly-discovered
9 evidence as far as the witnesses and what was proffered or is
10 that ineffective assistant of counsel? I need to know which
11 way to steer my reply. I'm not trying to put you on the
12 spot, but I've got to know the claims.

13 **Mr. Schnee:** Well, Your Honor, the notarized statements
14 are from 2006 which would be post-trial. So obviously at
15 that point Mr. Mobley had no way of knowing that and---

16 **The Court:** Well, Ms. Frierson was available at the time
17 of trial, and she testified that she -- these statements were
18 made prior to the trial to her; right?

19 **Mr. Schnee:** Right, and for some reason---

20 **The Court:** That information was available at the time
21 of the trial; correct?

22 **Mr. Schnee:** At least some of it was, Your Honor, but
23 for -- from what I can read in the transcript is that Mr.
24 Mobley was not allowed to call the witness.

25 **The Court:** I don't know about that.

1 Mr. Petrano: Your Honor, I'm going to go ahead and
2 address it both ways.

3 The Court: All right.

4 Mr. Petrano: Your Honor, if what was proffered is being
5 put forth as newly-discovered evidence, the State submits
6 that it is not newly-discovered. It was obviously known all
7 along. If you look at the cross-examination of Ms. Bryant,
8 that's the whole strategy is to try to bring in her different
9 statements. She had made somewhat inconsistent statements
10 throughout the investigation. She is cross-examined in
11 detail on those.

12 Then the letters and the hearsay at that point was a
13 statement against interest related to Ms. Rice. All that was
14 brought up by Mr. Mobley and quite effectively, I submit. It
15 was a very thorough cross-examination. That's what their
16 case was in their closing argument.

17 Your Honor, you get a chance to read a lot of these when
18 it comes to P.C.R.'s. Your Honor, it's the State's argument
19 that that is one of the finest cross-examinations and closing
20 arguments that we've seen in Richland County in awhile in a
21 non-capital case, non-death-penalty case. He goes through
22 everything and tries to work that in as strategy, so it can't
23 be newly-discovered.

24 If it is newly-discovered, the State submits -- and this
25 is kind of a new one I'm trying, Judge. Newly-discovered

1 evidence, I don't think, should be a P.C.R. issue. It's a
2 Rule 29(b). It should be done in the general sessions court
3 with a trial judge. I think that's what 29(b) is all about.
4 I think it's more appropriate there with the parties who are
5 originally involved and who can articulate the nuances of the
6 supposed newly-discovered evidence. I don't think it really
7 works well in P.C.R. It gets to be kind of dicey and
8 difficult to do, and I submit, Your Honor -- and I know that
9 there's case law out there that does address newly-discovered
10 evidence and collateral attack in P.C.R., but I think that
11 I'm moving to dismiss that as it should have been a claim
12 brought forth in 29(b) of the rules of criminal procedure. I
13 hope that makes sense. One final note on the alleged
14 newly-discovered evidence: I don't think it's material and
15 it is obviously cumulative, that being Lanier versus Lanier.
16 That's the standard, Your Honor, for newly-discovered
17 evidence.

18 Back to ineffective assistance of counsel, once again I
19 kind of peppered my newly-discovered evidence reply, but if
20 you look at the cross-examination and the closing arguments,
21 it just can't be ineffective assistance of counsel regarding
22 the alleged statements by Ms. Bryant. That was an attempt
23 and a strategy throughout the trial. Your Honor, just so the
24 record is clear, the State submits this is -- I know that
25 you've already ruled on it and they were accepted as

1 proffers. I just wanted to point out a specific---

2 The Court: I have ruled but---

3 Mr. Petrano: I just want to state the rule for the
4 record is 804(b)(3) just so I can make sure it was in the
5 record. And also if the Court of Appeals or the Supreme
6 Court was to find that you erred in your ruling, I believe
7 that would be an abuse-of-discretion standard that the
8 testimony should have been allowed. I would like to just
9 address that momentarily, Judge. Ms. Frierson has got
10 forgeries.

11 The Court: Mr. Petrano, let me say I'm not foreclosing
12 the possibility that I might reconsider that ruling before I
13 rule, rule that it was admissible and I have considered it
14 and either rejected it or accepted it, so...

15 Mr. Petrano: Thank you, and that was actually my next
16 topic after this one, but thank you, Judge. My point being
17 that - back to where I was - that Ms. Frierson, she's not a
18 reliable witness. The credibility of the witness offering
19 the hearsay statements is, of course, material. She's got a
20 number of forgeries. She was Ms. Bryant's cousin. There's
21 obviously a level of bias there, but she's an admitted liar
22 with the forgeries. I don't think her testimony is reliable.

23 And as far as Ms. Roberts, she came into effect after
24 the trial. She was at Lee. She had already been
25 incarcerated for the murder of Ms. Bone by the time that this

1 trial had occurred. So whatever happened at Alvin S. Glenn,
2 which is the meat of Ms. Bryant's alleged statements
3 regarding Ms. Rice, Ms. Roberts really couldn't have been
4 privy to that. She was in Lee.

5 **The Court:** Well, I think her statements were that when
6 I was at Lee two years after the trial or a year after the
7 trial, whenever it was, that she came in and made some
8 statement to me that she had lied when she testified. I
9 don't think that has anything to do with Alvin S. Glenn. I
10 mean, my question is: Clearly Ms. Bryant, I think, is
11 available, and why Mr. Schnee wouldn't have attempted to
12 bring her in -- unless for strategic reasons he didn't want
13 to bring her in. I just have a hard time getting around this
14 hearsay.

15 **Mr. Petrano:** Well -- and I'm trying to argue in the
16 alternative in the sense that---

17 **The Court:** I understand all that.

18 **Mr. Petrano:** Even if she was brought here -- let's just
19 say she was brought here and she took the fifth, for whatever
20 reason; I don't know. If she executed some privilege or
21 she's dead -- let's say she was not available. I'm just
22 trying to articulate an argument in reply to the alleged
23 hearsay, even if it was admissible. I hope I'm making sense.

24 **The Court:** All right. Anything you want to say in
25 response?

1 **Mr. Petrano:** Oh, I have one further issue. Mere
2 presence: That was given to the jury, page 1128, and it was
3 mentioned and discussed right around page 991, give or take.
4 So I think that that was given to the jury, and I think on
5 1128 you'll see it's offered specifically -- if I may have
6 one moment. It's offered as to the aiding and abetting. I'm
7 looking at line 16.

8 **The Court:** What page?

9 **Mr. Petrano:** 1128. But that being said, I want to
10 point out that counsel explained -- and I think we can take
11 judicial notice that Mr. Mobley is on C.N.N. He's a well-
12 respected member of the bar here, a defense attorney. He
13 explained that once you are going for an alibi, it's well
14 known that the lessers are kind of off the table. It's kind
15 of hard to argue insanity, self-defense, lesser included, if
16 your strategy is I wasn't even around there. I think that's
17 a valid strategy, and I'll just point out that even if mere
18 presence wasn't offered, I don't think that's really an error
19 as far as prejudice is concerned with the Strickland
20 standard, and I'm only saying that assuming that Your Honor
21 thought that that was deficient performance.

22 **The Court:** All right.

23 **Mr. Petrano:** You've got everything else. Thank you,
24 Judge.

25 **Mr. Schnee:** Very briefly, Your Honor. To address the

1 Rule 29 issue, it would be quite impossible to go in front of
2 the same trial judge at this point since he's no longer a
3 judge and---

4 **The Court:** Well, that in itself is not -- I mean, we
5 have -- we have mechanisms for when a trial judge is no
6 longer available: Death, retirement, people who would step
7 in in an instance like that. That happens all the time. Go
8 ahead.

9 **Mr. Schnee:** In the P.C.R. statute itself, newly-
10 discovered evidence is one of the statutory grounds for a
11 post-conviction relief. So I would argue the rules of
12 procedure in that regard wouldn't apply. As for the -- if
13 we're going to discuss the reliability of Ms. Frierson, she
14 said Iris Bryant is her own cousin and she's saying her own
15 cousin lied to get a deal. I don't find that to be less
16 credible. I would imagine that would be more credible, and
17 she probably cares more about Iris Bryant than she would
18 about Carmen Rice.

19 As for whether it's ineffective assistance of counsel,
20 it's somewhat unclear from the record why Ms. Frierson was
21 not called to the stand in terms of exactly what the ruling
22 that she could or could not say... That was clearly a
23 decision by Mr. Mobley not to call her. If he knew about all
24 the specifics that Ms. Bryant was saying in the jail at the
25 time, then I think that is extremely relevant and should have

1 been called and brought to the attention of the jury. The
2 more witnesses you can bring in is not merely cumulative;
3 they had different experiences with Ms. Bryant.

4 Cross-examining a witness saying, well, you lied about
5 this and you lied about this is entirely different than
6 bringing in a witness to say: I heard her say this. It is a
7 lie that she testified to the facts, and I think that's a
8 very big distinction. I also think it would have been a very
9 big distinction for the jury.

10 Clearly at the time of trial she was a party opponent.
11 I think the failure to put forth evidence to impeach her and
12 show that she was clearly lying I think is ineffective
13 assistance of counsel. I think she still would be considered
14 a party opponent in this proceeding, and I would argue that
15 under Rule 801 unavailability is not a requirement in order
16 to produce testimony. That would be from Ms. Roberts who
17 clearly afterwards has heard Ms. Bryant say numerous times or
18 in one very in-depth conversation that she lied to get a
19 deal. I would argue that that would be considered new
20 evidence and I think it should be admitted into this record,
21 and I ask Your Honor to do that.

22 The Court: All right.

23 Mr. Petrano: Just very briefly, I just want to make
24 sure I heard right. And, again, you're saying Ms. Bryant is
25 a party opponent?

1 **Mr. Schnee:** For my client, yes, Your Honor.

2 **Mr. Petrano:** Your Honor, the State obviously disagrees
3 with that. Respectfully, I don't see how that works at all.
4 At the time of the trial it was the State versus Ms. Rice. I
5 don't see how a State's witness who was not a joint trial --
6 I think there are cases that say -- if you look at Bruton,
7 basically Bruton is implying that a co-defendant could be a
8 party opponent for the purposes of the hearsay exceptions if
9 there was a joint trial, but there's not a joint trial here.
10 So they're not a party at all and they certainly are not an
11 opponent. It's merely a witness, and that goes to the
12 availability.

13 **Ms. Bryant** was available. So the hearsay exception, the
14 statement against interest, once again, only applies to an
15 unavailable witness. You can look at 613 and maybe try to
16 get it in that way, but she explains the inconsistencies.
17 She's there on the stand - Ms. Bryant. The hearsay doesn't
18 -- doesn't get to come in that way as a statement against
19 interest or unavailable witness who was there at the trial.
20 I hope I'm articulating that and hearing the applicant's
21 argument correctly. Thank you.

22 **The Court:** All right. Thank y'all. I'll take it under
23 advisement.

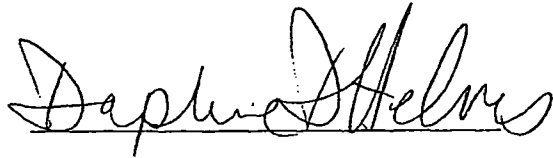
24 **Mr. Schnee:** Thank you, Your Honor.

25 (Whereupon, the proceedings were concluded.)

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 6th of June, 2011.

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

April 19, 2012

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

Thank You
Curtis Trueson

Sworn before me on April 3, 2006.
Kathy L. Barnes

my contact phone #s are
803-663-1611
803-442-3939

419 BRADLEYVILLE Rd.
APT. G-474



I, Aletta Fairson, contest that all statements are true, told to me between Nov. 12th, 04 until Jan. 05. Iris Bryant did state that Carmen Rice had nothing to do w/ the crime she is convicted of. Iris stated that she would do whatever it took to clear herself because she has three children to go home to and that the guilty sometimes suffer with the innocent. She continuously stated that she held Carmen's life in her hand. Iris Bryant has also said that if she tells the truth all involved would be set free, that Carmen Rice wasn't involved at all. All these ~~statements~~ statements are true, not only told to me but to Alicia Quattlebaum, Alicia Mildea, Amanda Dixon and several others.

x Aletta R. Fairson

Sworn before me on April 17, 2006

My commission expires on

My Commission Expires August 12, 2015

Harley R. Barnes

BACK *SR* FILED *2011*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2009CP4000234

Carmen Latrice Rice, 00308637,
Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,
Respondent.

RICHLAND COUNTY
FILED
2011 AUG 22 PM 3:09
JEANETTE W. MCBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 14, 2009. The Respondent made a Return on July 7, 2009 and an Amended Return on March 11, 2010. An evidentiary hearing into the matter was convened on June 6, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Mark Schnee, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on her own behalf. The Applicant's trial counsel, John T. Mobley, Esquire also testified.¹ This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the records from the direct appeal, and the Applicant's records from the South Carolina Department of Corrections.

¹ The Applicant also proffered the testimony of two other witnesses, LaShawn D. Roberts, #00262970 and Arlette R. Frierson, #00248140, this Court sustained the Respondent's Rule 804(b)(3), SCRE objection which is discussed in detail in a later portion of this Order.

BOOK

100-203

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. She was represented at trial by John Mobley, Esquire and Chris Hart, Esquire. After a jury trial in front of the Honorable Reginald I. Loyd, the Applicant was convicted and sentenced to life in prison for Murder (2004GS4008754) and thirty (30) years concurrent for Armed Robbery (2004GS4008755).

A timely Notice of Appeal was filed on Applicant's behalf, and the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Carmen Rice, Op. No. 4300 (S.C. Ct. App. filed December 4, 2008) (cert. denied) (the Remittitur was dated December 8, 2008).² The factual and procedural background, as explained in the appellate decision is as follows:

On the evening of October 25, 2001, Carmen Rice and Iris Bryant (Bryant) joined Bernard Brennan (Brennan) at the Varsity in Columbia, where Brennan was playing pool with his friend, Alton Page. Brennan told Page one of the women was his cousin from New York and the other was her friend from Beaufort. Eventually, Brennan, Rice, and Bryant went to Calloway's to eat.

After their meal, Brennan and the two women left Calloway's together. They drove in his Mercedes to an isolated section of Richland County, near the intersection of Fairfield Road and Interstate 20.

Later that night, Deputy Tom Lyons found Brennan's Mercedes in a ditch on Crawford Road. Brennan was still buckled in his seatbelt, the engine was running,

² State v. Rice was overruled by State v. Byers regarding a method of error preservation, nothing material to the issue(s) at hand. "To the extent State v. Rice stands for the proposition that preservation of an error in admitting evidence can only be accomplished if trial counsel follows the precise procedure of making an objection followed by a motion to strike, we overrule that proposition." State v. Byers, 710 S.E.2d 55 (S.C. 2011).

and the vehicle was in gear. Brennan had been shot five times in the back and died as a result of the shooting. His wallet was missing.

The police learned Bryant was involved in the murder and robbery after receiving information from one of Bryant's friends. Bryant subsequently implicated Rice in the murder and robbery.

In her testimony at Rice's trial, Bryant confirmed she and Rice had planned to rob Brennan but denied any complicity in a plan to murder him. Bryant claimed Rice unexpectedly shot Brennan from the backseat with the weapon Rice was issued by her employer. After the shooting, Rice removed Brennan's wallet and wiped down the car. Then the two women fled.

Prior to trial, Bryant had given investigators multiple statements implicating other individuals in the robbery and murder. At Rice's trial, she confessed she lied in those previous interviews because she was afraid she would be charged with murder if she admitted being at the crime scene. Rice attempted to impeach Bryant's testimony with a prior inconsistent statement Bryant made to Alana Quattlebaum, a fellow prisoner. The import of Bryant's statement to Quattlebaum was that a woman named Nikki, rather than Rice, actually killed Brennan.³

Brennan's friend, Alton Page, testified he could not identify either of the individuals he saw with Brennan on the night of the murder, but he recalled that one of them wore a "bright orange top."

Heidi Feagin was a waitress at Calloway's in October of 2001. Feagin served Brennan and the two women on October 25, and recognized Brennan as a "regular customer." She described one of the women as having a stocky or medium build and wearing a bright orange top. The other woman was thinner and younger. Before trial, Feagin was shown a photographic lineup of six women. The array included

³ Rice sought to introduce testimony that Bryant's cousin, Tiki, committed the crimes. However, Bryant's initial statements to police did not mention Tiki, but instead named Nikki as the person involved. Trial counsel referred to her as "some other girl" and "some other person" in questioning Bryant about her prior statements to police. Whether Tiki and Nikki were the same person remains unresolved.

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only Bryant's photograph. Feagin did not identify Bryant, but instead selected two other women as Brennan's companions.

The investigation ultimately led to Rice's indictment and trial for the armed robbery and murder of Bernard Brennan. The jury returned a verdict of guilty and Rice was sentenced to life imprisonment for murder and thirty years, concurrent, for armed robbery. At the time of Rice's trial, Bryant had been charged with murder and armed robbery.

State v. Rice.

In her original PCR application the Applicant made the following allegations:

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

- (a) Ineffectiveness of counsel
- (b) Judicial Violation
- (c) Search, Seizure and Investigator's violation of procedure
- (d) Miranda Improperly done.
- (e) Incomplete Discovery / Brady prior to trial
- (f) Sentence on basically on hearsay; no tangible evidence.

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

Overturning / Reduction of Sentence

The STATE OF SOUTH Carolina In The General Session Court
The County of Richland

Indictment # G 845795 MBD 2005
G 845796 AR G5
-40-895

The State of D.C.

vs

Carmen L. Rice

ATTACHMENT TO POST
CONVICTION RELIEF FORM
Number Nine (9)

The Defendant hereby submit ineffectiveness
of counsel based on the two (2) prong
test

1. The attorney did not provide the
Defendant a complete Motion of Discovery
and Brady with All Favorable Material
in accordance to Maryland vs Brady 378
with sufficient time to prepare rebuttal.

2. The attorney did not insist on the
suppression of uncreditable witnesses state-
ment or testimony.

3. The Defendant was charged
and convicted on hearsay of witness-
es in a case of four (4) years old,
whereas witnesses to her behalf was

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she could recall evidents or whereabouts.

4. No tangible evidents was presented at the trial.

5. Witness for the prosecution did not pick the Defendant Out of line-up, however pick Out the prosecution Chief witness.

6. The Defendant Miranda Regate was not given to her during the time of the investigators questioning. The Defendant was given false information as to why she was being question at the beginning of interrogation by investigators when came to the Defendant's home.

7. All witnesses for the prosecution was in jail / detention / and or prison and was coerced into testifying.

7. The Rule of Evidence 708 was
violated in chief at the trial.

Whereas, let the Courts be aware that
additional amendment will be applied
upon receipt of the Defendants transcript.

Sworn to and subscribed before me this
8th day of January 2009
Jennifer Jones-Scott L.S.
Notary Public.

My Commission Expires

My Commission Expires August 25, 2015

At the evidentiary hearing, Applicant proceeded in general on the allegations stated in the application for post-conviction relief, i.e. that her conviction and sentence were the result of ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

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testimony accordingly. The relevant findings of facts and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified and explained at the PCR hearing that trial counsel represented her and that they met several times. She claimed that she did not get a copy of the discovery materials from her trial counsel and that they never reviewed all of the discovery together. The Applicant explained that she did not testify at trial because of trial counsel's advice. She said that had she testified at trial she would have told the Court that she was not wearing the clothes that the witnesses claimed that she was wearing, and that she had no involvement with the murder or the armed robbery. She further explained that she was issued a "new" gun every day for work and that she had turned in her gun. The Applicant said her gun was a 357 Magnum with hollow point ammunition,⁴ and she was adamant that she had returned it. She also testified that she was not at the club that evening and she had nothing to do with the crime. She said that she had a history with the co-defendant and that the two shared a unit at the detention center.

After the Applicant testified, she proffered the testimony of LaShawn D. Roberts, #00262970 and Arlette R. Frierson, #00248140. Their testimony was related to one or more supposed hearsay statement(s) against interest from the codefendant (who testified at the trial).⁵

⁴ At trial, it was explained that either a .357 Magnum or a .38 Special was used. (Trial transcript, p. 756).

⁵ To be clear, the proffered testimony suggested that the co-defendant made statements to other inmates (both before and after the Applicant's trial) that the Applicant had nothing to do with this crime, and that she (the co-defendant) admitted she was lying when she testified that the Applicant was the murderer. This Court notes for the purposes of the record that the proffered witnesses were not credible. On a final note, it appears that one of the witnesses the Applicant proffered at the PCR hearing was listed as a potential witness at the trial, but did not testify. (Trial transcript, p. 21 L. 7 – 8, p. 974 L. 6). In addition, the appellate court addressed some of the issue(s) with the co-defendant's statements:

The evidence Rice asserted in support of introducing the third-party guilt testimony implicated Nikki at times, and Tiki at times, with no clarification as to whether they were the same individual. The record is void of facts or circumstances, other than Bryant's inconsistent statements, linking anyone other than Rice to Brennan's murder. The proffered evidence casts a mere "bare suspicion" on Nikki

Carmen Latrice Rice, Order of Dismissal (2009CP4000234)

This Court sustained the Respondent's Rule 804(b)(3), SCRE objection because there had been no showing that the co-defendant (Iris Bryant) herself was unavailable for the purposes of a Rule 804, SCRE hearsay exception. It is the hearsay proponent's burden to demonstrate unavailability of the declarant. State v. Kinlock, 338 S.C. 385 (2000). The Applicant additionally argued that the co-defendant's statement was admissible as a statement by a party-opponent. Because this was not a joint trial, the co-defendant was not a party at the trial and is not a party for the PCR hearing. Therefore, the opposing party for the purposes of Rule 801(d)(2), SCRE is the State.⁶ The Court did not allow the statement to be admitted as one against a party-opponent.

Trial counsel testified that he became involved in the case when the Applicant's husband contacted him. He explained that by the time he represented the Applicant the case had been set for trial and he had about six (6) months to prepare. Trial counsel said that he and the Applicant reviewed the discovery materials on several occasions and he asked her for her version of events. He said he explained to her that there are only a few typical defense strategies for murder, i.e. alibi, self-defense, lesser included offenses, insanity, etc. This was a "cold-case," unsolved murder here in the local area. Trial counsel told this Court the facts as the State presented them during trial. He explained that there were DSS records that corroborated the State's case. Trial counsel said that he advised the Applicant that it was her right to testify but that he generally advised against doing so because the evidence was questionable as is was and her testimony would do very little to help her case because it would be a general denial of having any involvement with the murder; she was not able to offer anything concrete as to her whereabouts.

or Tiki and fails to connect either to the murder by way of the facts and circumstances surrounding the crime.

State v. Rice, 375 S.C. 302, 322, 652 S.E.2d 409, 419.

⁶ Rule 801(d)(2)(B), SCRE does not apply.

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Trial counsel explained that there were no offers that the Applicant expressed any interest with because she insisted she was innocent. He told this Court that the Applicant did not relay any names or any substantive alibi in their discussions. He explained that his strategy was to discredit the State's witnesses. He also testified that he had discussed the letter with the Applicant and that he tried to keep the records out from the Applicant's employer:

The admitted documents contained the following information: Rice was issued a weapon and qualified by SLED to shoot a .357 Magnum-type gun; her last working day was October 30, 2001; SLED was notified of Rice's termination from ABS; Rice was listed among employees terminated in the last ninety days on November 29, 2001; and Rice had not returned equipment assigned to her, including her weapon, as of November 29, 2001. Two ABS employees with supervisory authority over Rice corroborated this evidence. **Furthermore, the testimony of the records custodian and corroborating witnesses underwent vigorous cross-examination.**

State v. Rice, 375 S.C. 302, 332, 652 S.E.2d 409, 424 (emphasis added).

Trial counsel explained that the essence of the State's case was the testimony from the co-defendant (Iris Bryant). He said that some defenses are not really applicable when a defendant at trial claims he/she was not present and had nothing to do with the crime, i.e. insanity, self-defense, etc. Nevertheless, the record reflects that mere presence was a concept that was presented to the jury. (Trial transcript, p. 1128).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington,

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Even when there has been a guilty plea the two prong analysis applies, the applicant must still prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to carry her burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond her review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Trial counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that she was prejudiced by counsel's performance.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in her application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet her burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the

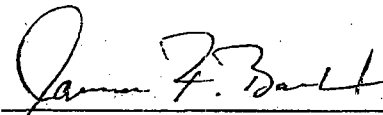
doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of her right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17 day of August, 2011.



The Honorable James R. Barber, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.