

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2011-GS-33-113

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SC Court of Appeals

The State, ... Respondent,

v.

Darryl Wayne Moran, ... Appellant.

RECORD ON APPEAL

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WITNESSES

MARTIN BELL

Marion County Sheriff

FITZLEE H MCEACHIN

ARREST WARRANT NUMBER

M395834

M395835

ACTION OF GRAND JURY

True Bill

M. J. Wat

Foreperson of Grand Jury

Date: 05-05-11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-33-0113

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

MAY

TERM

2011

THE STATE

vs.

DARRYL WAYNE MORAN

Indictment for

SOLICITATION TO COMMIT A MURDER;
CONSPIRACY

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MARION COUNTY

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARION)

SOLICITATION TO COMMIT A MURDER;
CONSPIRACY

At a Court of General Sessions, convened on MAY 5 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- SOLICITATION TO COMMIT A MURDER

That Darryl Wayne Moran did in Marion County on or about October 1, 2009 did solicit another person to commit the felony of murder for them, by paying money to kill one Randy Parrott, in violation of Section 17-25-0030 of the Code of Laws of South Carolina (1976), as amended.

COUNT TWO- CONSPIRACY

That Darryl Wayne Moran did in Marion County on or about October 1, 2009 combine with themselves, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Solicitation to Commit Murder, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Marion

VS.

Darryl Wayne Moran

AKA:

Race: White Sex: M Age: 46

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Marion, SC 29571

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [REDACTED]

75437

McEachin, Fizzle H

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 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 2 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 1 day☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS 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
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-33-0113

A/W#: M395835

A CERTIFIED COPY OF THE

Date of Offense: 10/1/2009 ORIGINAL FILED IN THIS OFFICE

S.C. Code § : 16-17-0410 BOOK PAGE

CDR Code #: 0049

SENTENCED IN COURT, MARION COUNTY
SOUTH CAROLINA☒ CONVICTED OF or ☐ PLEADS

Clerk of Court/ Deputy Clerk

Court Reporter: Kristal Smith

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2180Sentence Date: 8-5-14

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PTUP days/hours Public Service EmploymentObtain 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 FundOther: No contact directly or indirectly with victim.☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF MARION	)	INDICTMENT NO.: 2011-GS-33-0113
	)	
State of South Carolina,	)	
	)	
-vs-	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR A NEW TRIAL
Darryl Moran	)	
	)	
Defendant	)	
	)	

This matter originally came before the court during the week of August 4, 2014, when the Defendant, Darryl Moran ("Moran"), was tried before a jury in Marion County, South Carolina on one count of Solicitation to Commit a Felony and one count of Conspiracy. Moran was tried with a Co-Defendant, James Herring ("Herring"), who was charged with one count of Solicitation to Commit a Felony. After the State's case-in-chief, Moran made a Motion for Directed Verdict on both counts, arguing that there was insufficient evidence for the case against him to go to the jury. This Court denied his Motion for Directed Verdict and sent the case to the jury. After meaningful deliberation, the jury returned not guilty verdicts on the Solicitation to Commit a Felony charges as to both Defendants, and a guilty verdict on the Conspiracy charge against Moran. Moran was then sentenced to two (2) years in the South Carolina Department of Corrections.

This present matter came before the court on August 11, 2014 upon Moran's timely Motion for a New Trial. He argues that there was insufficient evidence of a conspiracy and as such, he should have been granted a Directed Verdict. Furthermore, Moran argues that because he was found not guilty of Solicitation to Commit a Felony at the same trial, his conviction for Conspiracy is inconsistent and cannot stand.

DOB
6-10-15

LAW

In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. Creech v. S. Carolina Wildlife & Marine Res. Dep't, 328 S.C. 24, 28-29, 491 S.E.2d 571, 573 (1997). When ruling on a criminal Moran's motion for a directed verdict, a trial court is concerned with the existence of evidence, not its weight. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998)(citing State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997)). If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly and logically deduced, the case should be submitted to the jury. State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1995).

"The common law crime known as 'conspiracy' is defined as a combination between two or more persons for the purposes of accomplishing an unlawful object or lawful object by unlawful means." S.C. Code Ann. § 16-17-410. "In criminal conspiracy, it is not necessary to prove an overt act. The gist of the crime is the unlawful combination. The crime is then complete, even though nothing further is done." State v. Grueling, 257 S.C. 515, 523, 186 S.E.2d 706, 709 (1972). To prove conspiracy it must be shown that "one or more of the parties engaged in the conspiracy have committed some act to effect the object as alleged in the indictment." Ralph King Anderson, Jr.'s 2007 South Carolina Requests to Charge – Criminal § 2-40. "Once the agreement has been reached, the crime of conspiracy has been committed ... [t]he actus reus of conspiracy is the agreement, the evidence must prove the agreement, not the object thereof." State v. Crawford, 362 S.C. 627, 691, 608 S.E.2d 886, 893 (Ct. App. 2005).

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ANALYSIS

Moran argues that there was no direct or substantial circumstantial evidence that would have reasonably tended to prove his guilt and thus he was entitled to a Directed Verdict as to the Conspiracy charge. Furthermore, although Moran acknowledges that no overt act is necessary for the crime of Conspiracy, Moran argues that an act is required for a finding of guilt on the charge. Here, he argues that there was no evidence of any act on his part in regards to the crime of Conspiracy.

During the State's case, the Solicitor elicited testimony from several witnesses to establish Moran's guilt as to the Conspiracy charge. First, Jenny Rabon, the girlfriend of the victim, Randy Parrot, who was also the ex-wife of Moran, testified that she and Moran separated in May 2009. After living in an apartment for a time, Ms. Rabon began living with the victim. Ms. Rabon testified that subsequent to the separation, she encountered Moran's friend and co-Defendant Herring in multiple locations, including her work place, her apartment complex's parking lot, and an open house that she was hosting. She stated that Herring had no reason to be at any of these locations.

Moran's stepson, James Carlyle Rabon, Jr., testified that he moved into Moran's home after his parent's separation. Mr. Rabon testified that during this time, Moran found out where Ms. Rabon was living and that he Moran, along with another individual, traveled to that location. Once there, the three hid in the woods and surveyed the property all night and into the next morning. Mr. Rabon also testified that while living in Moran's home, he overheard a conversation between Moran and Herring, wherein he heard statements made by Moran along the lines of "how much would it cost" and "would he take less". Mr. Rabon testified that Moran also asked him where he could obtain a gun silencer and if he knew anyone that could "F***

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Randy (victim) up". Mr. Rabon testified that he left the house the day following the conversation because he understood the conversation to mean that Moran wanted to hurt Mr. Parrot.

The jury further heard testimony from Keith Caulder. Mr. Caulder testified that Herring approached him at his home and asked him if he would kill someone for \$3000. Caulder also testified that the killing should be made to look like a robbery.

CONCLUSION

After reviewing the testimony, both parties' submissions, and the applicable case law, this court finds that Moran was not entitled to a Directed Verdict on the Conspiracy charge. Although the court does agree that there was not an overt act in this case, the court finds that the testimony provides both direct and circumstantial evidence of a conspiracy from which the Jury could have determined guilt. The Jury, taking all the testimony and evidence into consideration, could reasonably have found that Moran conspired with Herring to harm Mr. Parrot. As such, Moran was not entitled to a Directed Verdict and is not entitled to a New Trial.

Furthermore, Moran argues that he is entitled to a new trial because his not guilty verdict on the Solicitation charge precludes a finding of guilt on the Conspiracy charge. This court finds that a finding of guilt on the Conspiracy charge and a finding of not guilty on the Solicitation charge does not make the verdicts inconsistent. Solicitation to Commit a Felony requires the actor, with the intent that another person commit a crime, have enticed, advised, invited, ordered or otherwise encouraged that person to commit a crime. See State v. Smith, 316 S.C. 53, 447 S.E.2d 175 (1993). The Jury, weighing the evidence and testimony in this case, could have reasonably found that Moran conspired with Herring, but never acted to solicit someone to carry

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out the plan. Therefore, Moran's verdicts were not inconsistent and he is not entitled to a new trial.

Accordingly, and based upon the foregoing, it is therefore ORDERED, ADJUDGED AND DECREED that Moran's Motion for a New Trial is hereby **DENIED**

IT IS SO ORDERED.



The Honorable D. Craig Brown
Presiding Circuit Court Judge

October 28, 2014
Florence, South Carolina

Dec
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STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT

State of South Carolina,)

CASE NO. 2011-GS-33-113

v.)

MOTION
(New Trial)

Darryl Wayne Moran,)

Defendant.)

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YOU WILL PLEASE TAKE NOTICE that the Defendant, through undersigned counsel, will move for a new trial pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure and pursuant to South Carolina Code of Laws 17-23-110:

CASE BACKGROUND

The Defendant in the above-captioned matter was charged in a two-count indictment with Count One charging him with solicitation to commit a murder pursuant to South Carolina Code of Laws 17-25-30 and Count Two charging him with conspiracy pursuant to South Carolina Code of Laws 16-17-410. The case proceeded to trial beginning on August 4, 2014. The Defendant's co-Defendant, James Herring, was acquitted of solicitation to commit a murder. The Defendant was also acquitted of solicitation to commit a murder; however, the Defendant was found guilty of conspiracy. The co-Defendant was not indicted for conspiracy.

The State's case largely rested on testimony about statements allegedly made by the co-Defendant to Keith Douglas Caulder requesting that Mr. Caulder assist in a homicide, along with testimony of this Defendant's former stepson, James Carrlie Rabon, Jr. Mr. Rabon testified he heard the Defendant discuss getting someone to harm his ex-wife's boyfriend and, further, that the Defendant had asked him about where to get a silencer. There was no forensic evidence whatsoever. When law enforcement waited where the co-Defendant was to meet Caulder, the

person he had recruited to commit the crime, no one appeared. So essentially there was testimony by Keith Caulder, who did not directly implicate this Defendant, and testimony of the Defendant's stepson, who recounted overhearing conversations related to the alleged offense.

LAW – ARGUMENT

The evidence was insufficient to sustain the jury's conviction as there was no substantial evidence which reasonably tended to prove the guilt of this Defendant or from which guilt might be fairly and logically deduced. Therefore, the Defendant moves for a new trial and bases his motion upon the following:

1) The Defendant was entitled to a directed verdict at the end of the State's case. Pursuant to South Carolina Code of Laws 16-17-410, the common law crime known as conspiracy is defined as the combination of two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means. In order to become a party to a conspiracy, a person must combine with someone else to affect the object of a conspiracy by the means agreed upon. A mere mental purpose cannot justify a conviction of conspiracy. It is necessary that the conspiracy or agreement to commit the offense alleged in the indictment be established. The State is also required to prove that one or more of the parties who engaged in the conspiracy has committed some act to affect the object of the conspiracy as alleged in the indictment. While an overt act, which is defined by Black's Law Dictionary as an open, manifest act for which criminality may be implied, is not required, that does not mean an act is not required. In every criminal offense there must be concurrent act and intent. See Ralph King Anderson Jr., South Carolina Request to Charge- Criminal 2007 § 2-40. In this case there were mere conversations and no act. While discussing potential action may raise suspicion, it does not rise to the level necessary to allow the case to go to the jury.

2) A new trial should be granted because, under the unique facts of this case, the jury's finding that the Defendant and co-Defendant were not guilty on the count of solicitation to commit a murder requires that this Defendant be found not guilty of conspiracy. The State's theory of the case is that this Defendant, through the co-Defendant, sought out someone to kill his ex-wife's boyfriend. The co-Defendant supposedly discussed that with Mr. Caulder. Solicitation to commit a murder requires that the actor, with the intent that another person commit a crime, have enticed, advised, invited, ordered or otherwise encouraged that person to commit a crime. See State v. Smith, 316 S.C. 53, 447 SE 2d 175 (1993). The alleged conspiracy, meaning the agreement and the act that is required for a conspiracy, under the unique facts of this case required that the jury believe that the co-Defendant sought to entice Mr. Caulder to participate in this crime. Therefore, the failure of the jury to convict on that count precludes a conviction for conspiracy.

Also, the Defendant was entitled to a directed verdict at the end of the State's case on the solicitation to commit a murder count and allowing that count to go to the jury may have allowed the jury to reach a compromise on their verdict. It is unknown what the jury discussed; however, allowing the count of solicitation to commit a murder to go to the jury would potentially confuse the jury.

3) A new trial should be granted because a conviction of a conspiracy in this case violates Wharton's Rule, which is recognized in South Carolina pursuant to State v. Wells, 249 S.C. 249, 153 SE 2d 904 (1967). Wharton's Rule states that where cooperation or concert between two or more persons is essential to the commission of a substantive crime and there is no ingredient of an alleged conspiracy that is not present in the substantive crime, it is held that persons necessarily involved cannot be charged with conspiracy to commit the substantive offense and also with the substantive crime itself. This is the very situation we have here with the

Defendant being charged with conspiracy related to the same conduct with which he was charged with the crime of solicitation to commit a murder.

Therefore, based upon the forgoing, and arguments of counsel, the Defendant is entitled to a new trial.

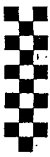


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August 11, 2014

ATTORNEY FOR DEFENDANT



STATE OF SOUTH CAROLINA

COUNTY OF MARION

STATE OF SOUTH CAROLINA,

vs.

DARRYL MORAN,

Defendant.

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT
INDICTMENT NO.: 2011-GS-33-0113STATE'S MEMORANDUM IN
OPPOSITION OF DEFENDANT'S
MOTION FOR NEW TRIALINTRODUCTION

During the week of August 4, 2014, co-defendants Darryl Moran and James Earl Herring were tried before a jury in Marion County, South Carolina. Mr. Herring was tried under Indictment Number 2014-GS-33-298 (having been re-indicted to correct victim's name – original indictment number 2010-GS-33-0155) for a single count of Solicitation to Commit a Felony. Mr. Moran (hereinafter "Defendant") was tried under Indictment Number 2011-GS-33-0113 on two separate counts; Count One was for Solicitation to Commit a Felony, and Count Two was for Conspiracy. In order to understand why the indictments of the co-defendant's were not identical, it is necessary to look at the timeline of how the events leading up to the trial of this case transpired.

The offenses alleged in the Indictments of Mr. Herring and the Defendant took place in October 2009. It was during this period in time that Mr. Herring was arrested. He was arrested on October 13, 2009, and charged with the crime of Solicitation to Commit a Felony. His case was presented and true billed by the Grand Jury for Marion County during the May 2010 term. During this same period of time Marion County Sheriff's Office and

S.L.E.D. continued their investigation of the case, and on November 12, 2010 Darryl Moran was arrested and charged with Solicitation to Commit a Felony and Conspiracy. His case was presented and true billed by the Grand Jury for Marion County during the May 2011 term. The Defendant was not arrested until a year after his co-defendant, and was not indicted until a year after his co-defendant. By the time law enforcement arrested the Defendant, they had enough evidence to charge him with two crimes.

On August 4th and 5th, 2014, the co-defendants were tried jointly, and the jury returned not guilty verdicts on the two Solicitation charges, and guilty on the Conspiracy charge against the Defendant. On August 11, 2014, the State received the Defendant's Motion for New Trial. The Defendant's motion is based on three separate grounds:

1. That Defendant was entitled to a directed verdict on the Conspiracy charge as the evidence was insufficient to allow the jury to decide the case.
2. That the Defendant is entitled to a new trial based on the fact that both defendants were found not guilty of Solicitation to Commit a Felony and, therefore, the Defendant cannot be found guilty of Conspiracy.
3. That the Defendant's conviction on the Conspiracy count violates *Wbarton's Rule*.

The Defendant's arguments all fail, as will be discussed more thoroughly below.

ARGUMENT

- I. **The evidence was sufficient to allow the jury to decide the Conspiracy charge.**

The Defendant argues that mere conversations coupled with no act do not rise to the level necessary to allow the case to go to the jury. However, the law in this state is clear. "In criminal conspiracy it is not necessary to prove an overt act. The gist of the crime is the unlawful combination. The crime is then complete, even though nothing further is done."

State v. Gameling, 257 S.C. 515, 523, 186 S.E.2d 706, 709 (1972). "Once the agreement has been reached, the crime of conspiracy has been committed ... [t]he actus reus of conspiracy is the agreement, the evidence must prove the agreement, not the object thereof." *State v. Crawford*, 362 S.C. 627, 691, 608 S.E.2d 886, 893 (S.C.App. 2005). In the Defendant's case, all that need be shown by the evidence is that there was an agreement between the Defendant and another person. The evidence in the instant case is that Defendant approached at least two separate individuals about committing a murder. There is ample evidence that the Defendant and co-defendant reached an agreement. This was evinced by the testimony of James C. Rabon and Keith Caulder.

The facts in the instant case are nearly identical to the facts in *State v. Prince*, 316 S.C. 57, 447 S.E.2d 177 (1993). In *Prince*, a witness testified that the Defendant solicited him to find someone to murder the victim on his behalf and later told the witness he had found someone else to do the killing. The Court held that those facts alone were sufficient to send the case to the jury. *Id.*, 316 S.C. at 65. In the case at bar, the evidence is that the Defendant requested that the co-defendant find someone to kill the victim. Following the reasoning in *Prince*, the Court here properly submitted the case to the jury.

For the foregoing reasons, the Defendant's first argument fails.

II. Failure of the jury to convict on other counts does not preclude a conviction for Conspiracy.

The Defendant's second argument, as to why a new trial is appropriate, is because the co-defendant was not convicted of the offense of Solicitation to Commit a Felony then the Defendant cannot be convicted of the offense of Conspiracy. This argument fails for a couple of different reasons. First, there is no requirement that the object of the conspiracy, to wit: Solicitation to Commit a Felony, ever be accomplished. "A conspiracy to commit a

crime does not merge with the completed offense.” *State v. Crawford*, 362 S.C. at 639. A conspiracy “is a distinct offense in itself and punishable as such, notwithstanding that the object of the conspiracy has been accomplished.” *State v. Ferguson*, 221 S.C. 300, 304, 70 S.E.2d 355, 356 (1952). Therefore, it does not matter whether or not the crime of solicitation ever occurred, when determining if a defendant is guilty of conspiracy, because the object (Solicitation) does not have to be accomplished in order to prove the conspiracy. *See Crawford*, 362 S.C. at 691.

Additionally, while the State presented evidence that the Defendant and co-defendant conspired to commit the offense of Solicitation, there was also evidence from a witness, James C. Rabon, that the Defendant asked him to locate a silencer, and asked if he knew anyone that would “mess the victim up”. The jury could have logically reasoned that the Defendant and Mr. Rabon had conspired to commit a crime just as easily as the Defendant and co-defendant, and this evidence would have been sufficient to justify the jury’s verdict. The fact that Mr. Rabon was not named in the indictment, nor was he charged, has no bearing on the guilt of the Defendant. The only requirement is that the State present evidence that the Defendant and some other person entered into an agreement.

Furthermore, to the extent that Defendant’s argument can be read to suggest that he is entitled to a new trial based on the verdicts being inconsistent, that argument also fails. The South Carolina Supreme Court abolished the rule prohibiting inconsistent verdicts in *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991).

III. Wharton’s rule does not apply to the facts and circumstances of this case.

The Defendant’s final argument is that a new trial should be granted because a conviction for conspiracy violates Wharton’s Rule. The State of South Carolina has not

adopted Wharton's Rule. *See State v. Wells*, 249 S.C. 249, 153 S.E.2d 904 (1967); *see also, State v. Cranford*, 362 S.C. at 639, 608 S.E.2d at 892. To the extent that our courts choose to adopt Wharton's Rule, it does not apply in this case. Wharton's Rule states that where

co-operation between two or more persons is essential to the commission of a substantive crime and there is no ingredient of an alleged conspiracy that is not present in the substantive crime, it is held that the persons necessarily involved cannot be charged with conspiracy to commit the substantive offense and also with the substantive crime itself.

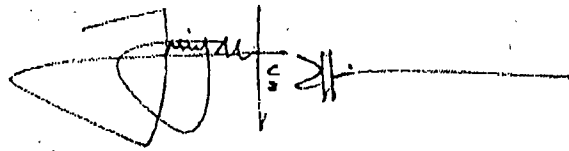
The common example that is given in the cases that discuss Wharton's rule is the crime of adultery. In *State v. Cranford*, *supra*, the Court stated "if the substantive offense requires by definition the **concerted action** of two persons, ... then the persons cannot be convicted of conspiracy to commit the offense." *Id.*, 362 S.C. at 639 (emphasis added). The crime of Solicitation does not require a "concerted action" by more than one individual.

"Solicitation is a common law offense whereby it is only necessary that the actor, with intent that another person commit a crime, have enticed, advised, invited, ordered, or otherwise encouraged that person to commit a crime." *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175 (1993). By way of example, if an individual approached an undercover officer and requested that the officer sell him a controlled substance, then the individual would be guilty of solicitation, but the officer would be guilty of nothing. Applying that same logic to this case, the Defendant approached multiple individuals about committing a murder. The Defendant is guilty of solicitation, but the people he approached would not be guilty of solicitation. Therefore, the crime of solicitation only requires one actor, and as such Wharton's Rule does not apply.

CONCLUSION

The evidence in the case was sufficient to go to the jury, the jury considered the case, and the jury returned a verdict of guilty upon considering all of the testimony. In sum, the Defendant's arguments for a new trial fail based on the reasons set forth above, and the State respectfully requests that the Court deny Defendant's Motion for a New Trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'FitzLee H. McEachin', with a long horizontal line extending to the right.

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August 22, 2014
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STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT

State of South Carolina,)

CASE NO. 2011-GS-33-113

v.)

REPLY TO STATE'S MEMORANDUM
IN OPPOSITION TO DEFENDANT'S
MOTION FOR NEW TRIAL

Darryl Wayne Moran,)

Defendant.)

_____)

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2014 AUG 28 PM 1:49

MARION COUNTY SC
CLERK OF COURT
JERRY R. JONES

The Defendant, through undersigned counsel, replies to the State's Memorandum
Opposition to Defendant's Motion for New Trial by way of the following:

1. The State is incorrect regarding the sufficiency of the evidence. The evidence was insufficient and there was no direct or substantial circumstantial evidence that reasonably tended to prove the guilt of the Defendant. A directed verdict should have been granted on the Conspiracy count of the indictment. The State points to language from State v. Greuling, 257 S.C. 515, 186 S.E. 2d 706 (1972) as indicative of the fact that an overt act is not necessary. However, the State misses the point in that, while an overt act, that being an open, manifest act for which criminality may be implied, is not required, does not mean that an act is not required. In every criminal offense there must be a concurrent act and intent. See Ralph King Anderson, Jr.'s 2007 South Carolina Requests to Charge – Criminal § 2-40, a copy of which is attached. As was clear by the testimony, there were mere conversations and no act. Discussing potential action does not rise to the level of the proof necessary to establish that an agreement was reached, but only raises suspicion at most. Again, the Defendant craves reference to Judge Anderson's Request to Charge, which clearly states that "A mere mental purpose cannot justify a conviction of conspiracy ... and one or more of the parties engaged in

the conspiracy have committed some act to effect the object as alleged in the indictment." Therefore, based upon this failure of evidence, a new trial should be granted on the Conspiracy count.

2. The State is incorrect that failure of the jury to convict on the count of Solicitation to Commit a Murder does not preclude a conviction for conspiracy. Under the facts of this case, as was brought out during the trial of the case, the State's theory was that this Defendant, along with his co-Defendant, conspired to harm the alleged victim in the case. This is not so much an inconsistent verdict as the State would have you believe, but a failure of proof. There was suspicion that there was a solicitation to commit a murder, in that the co-Defendant allegedly discussed doing so with another individual; however, that never came to fruition as law enforcement appeared at the supposed meeting spot and the co-Defendant did not. This meeting was to occur over a year before the Defendant was arrested. This Defendant was entitled to a directed verdict on the Solicitation to Commit a Murder count and the fact that the State failed in that manner further complicated allowing the case to go to the jury on the Conspiracy count. The Defendant was not connected with Mr. Caulder, whom the co-Defendant allegedly spoke with about harming the alleged victim. Further, the Defendant asking about a silencer, as was alleged, is still too tenuous and speculative a connection. There was not any direct evidence or substantial circumstantial evidence which reasonably tended to prove the guilt of the Defendant in this case. Therefore, this Defendant was entitled to a directed verdict on both counts and a new trial should be granted on the Conspiracy count.

3. The State is incorrect that Wharton's Rule does not apply and is further incorrect that South Carolina does not recognize Wharton's Rule. See State v. Ferguson, 221 S.C. 300, 70 S.E. 2d 355 (1952) in which it was held that it is true that in some cases where concerted action is necessary, the State cannot charge a Defendant in the same indictment with a conspiracy and the substantive crime. The reason it applies in this particular case is that, based upon the evidence introduced at trial, the State's theory was necessarily that this Defendant solicited the co-Defendant in some form or fashion to participate in harming the alleged victim. Wharton's Rule would prohibit the Defendant who allegedly solicited the co-Defendant from also being charged with conspiracy. This Defendant had no contact with the third party that was allegedly solicited by the co-Defendant. Therefore, because of the violation of Wharton's Rule, a new trial should be granted on the Conspiracy count.

Therefore, based upon the foregoing and the Defendant's prior motion, the Defendant requests that a new trial be granted.


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August 27, 2014

FILED

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2014 AUG 28 P 1:49

MARION COUNTY SC
SHERIFF R. RHODES
CLERK OF COURT

§ 2-40 Conspiracy

Section 16-17-410 of the South Carolina Code of Laws provides:

The common law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means.

Hence, the gravamen of the offense of conspiracy is an agreement or combination.

Ralph King Anderson, Jr.

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The word "conspire" is defined substantially as follows: If two or more persons agree acting upon a common purpose to commit a criminal act, they conspire. A conspiracy is a combination between two or more persons to do an unlawful act or to do a lawful act by criminal or unlawful means. There can be no conspiracy when one individual acts by and for himself only. In order to become a party to a conspiracy, a person must combine with someone else to effect the object of a conspiracy by the means agreed upon. A mere mental purpose cannot justify a conviction of conspiracy. A common design is the essence of the charge of conspiracy.

In order to establish conspiracy, it is necessary first that the conspiracy or agreement to commit the offense alleged in the indictment be established. Second, to prove further as alleged in the indictment that one or more of the parties engaged in the conspiracy have committed some act to effect the object as alleged in the indictment. Although the offense of conspiracy may be complete without proof of an overt act, such acts may nevertheless be shown since from them an inference may be drawn as to the existence and object of the conspiracy. To constitute conspiracy, it is not necessary that two or more persons should meet and enter into an express or formal agreement for the doing of the unlawful act or that they should directly by words or in writing unite between themselves or otherwise what the unlawful object is to be or the details thereof or the means by which the unlawful combination is to be made effective. To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. It is sufficient if two or more persons in any manner or through any contrivance positively or tacitly, come to a mutual understanding to accomplish a common and unlawful design. When an unlawful end is sought to be effected and two or more persons actuated by the common purpose of accomplishing that end work together in any way in furtherance of the unlawful scheme, each of such persons becomes a member of the conspiracy. The success or failure of a conspiracy is immaterial, but before any person can be found guilty of conspiracy, it must appear beyond a reasonable doubt that the conspiracy was formed as alleged in the indictment and that the particular defendant was an active party to it. Although the offense of conspiracy may be committed without proof of overt acts, such acts may nevertheless be shown.

Evidence of direct contact or an explicit agreement between the defendants need not be shown. It is sufficient to show that each defendant knew or had reason to know of the scope of the conspiracy and that each defendant had reason to believe his own benefits were dependent upon the success of the entire venture. Realization of profit or gain is not an element of the crime of conspiracy.

Offenses

The conspiracy itself constitutes the offense and it must be made to appear from the evidence beyond a reasonable doubt, before the defendant may be convicted, that he was a party to the conspiracy. Despite the mere fact that the defendant may be engaged in the performance of any of the acts charged in the indictment, such as overt acts, you are not authorized to convict by reason of that fact alone. It is necessary to show that the defendant was a party to the conspiracy, an unlawful agreement, before he is guilty of the offense charged. Each party to a conspiracy must be actuated by an intent to promote the common design. If the persons pursue by their hand the same unlawful object, one performing one act and the other, another act, all with the view toward attainment of the object they are pursuing, the conclusion is warranted that they are engaged in the conspiracy to effect that object. There must be intentional participation in the transaction with a view and purpose to further the common design, and if a person, understanding the unlawful character of the transaction, encourages, advises, or in any manner with a purpose to forward the enterprise of the scheme, assists in its prosecution, he becomes a conspirator. Joint assent and joint participation in the conspiracy may be found, like any other fact, as an inference from the facts proved.

The evidence and proof of the conspiracy may be circumstantial. In every criminal offense, there must be concurrent an act and intent. Conspiracy is an offense requiring specific intent or purpose which must be shown to exist beyond a reasonable doubt. In determining the question of the defendant's guilt, you are to consider all the facts and circumstances in the case which touch the conduct of the defendant.

> S.C. Code Ann. § 16-17-410 (2003) "A conspiracy is an agreement between two or more persons to commit a crime which is not a misdemeanor."

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION) CASE NO. 2011-GS-33-113
) CASE NO. 2014-GS-33-298

STATE OF SOUTH CAROLINA,)
)
)
Plaintiff,)

-vs-

TRANSCRIPT OF RECORD

DARRYL MORAN AND)
JAMES HERRING JR.,)
)
Defendants.)

August 4-5, 2014
Marion, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge; and a jury

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

FITZLEE MCEACHIN, Esquire
Attorney for the Plaintiff

DAVID BANNER, Esquire
Attorney for the Defendant Darryl Moran

HENRY M. ANDERSON JR., Esquire
Attorney for the Defendant James Herring Jr.

KRYSTAL J. SMITH
Court Reporter

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1 as follows.

2 That Darryl Wayne Moran did in Marion County on or about
3 October 1, 2009, did solicit another person to commit the
4 felony of murder for them by paying money to kill one Randy
5 Parrott in violation of Section 17-25-30 of the Code of Laws
6 of South Carolina.

7 Count II is a charge of conspiracy. It alleges that Mr.
8 Darryl Wayne Moran did in Marion County on or about October 1,
9 2009, combine with themselves and/or with other persons for
10 the purpose of accomplishing a criminal or unlawful object or
11 an object that is neither criminal nor unlawful through
12 criminal or unlawful means, to wit: solicitation to commit
13 murder in violation of Section 16-17-410 of the South Carolina
14 Code of Laws.

15 The State has also called the case of the State of South
16 Carolina versus James Earl Herring Jr. and this indictment
17 alleges in Count I that he has violated -- or charged him with
18 the solicitation to commit a felony and the indictment reads
19 that James Earl Herring Jr. did in Marion County on or about
20 October 12, 2009, solicit another person to commit the felony
21 of murder for him by paying money to kill one Randy Parrott in
22 violation of common law and Section 17-25-30 of the Code of
23 Laws of South Carolina.

24 Ladies and gentlemen, these documents that I hold in my
25 hands are the indictments that charges these individuals with

1 defendants, selected you believing that you would be fair and
2 impartial to each of them as a juror.

3 What I am going to do is I'm going to have you serve on
4 this particular jury. It's not going to be a long trial, but
5 I am going to have you serve on this jury. After this
6 particular trial has concluded though, I will give you
7 protection for the remainder of the week.

8 JUROR NUMBER 178: Okay.

9 THE COURT: But I'm going to ask that you stay with us
10 right now and serve on this --

11 JUROR NUMBER 178: All right.

12 THE COURT: -- particular jury.

13 JUROR NUMBER 178: All right.

14 THE COURT: Thank you, Mr. Legette.

15 (Whereupon, the juror returns to the jury room.)

16 THE COURT: All right. Any exception or objection to
17 anything that I have done with regards to Juror Number 178,
18 Mr. Legette, by the State?

19 MR. MCEACHIN: No objection or exception.

20 THE COURT: Mr. Anderson?

21 MR. ANDERSON: No, sir.

22 THE COURT: Mr. Banner?

23 MR. BANNER: No, sir, Your Honor.

24 THE COURT: All right. If you will, bring me the jury
25 and we'll start the trial of this case.

1 MR. MCEACHIN: Your Honor, we do have one thing. There's
2 one matter we need to take up.

3 THE COURT: Hold up a minute. Hold up a minute.

4 MR. MCEACHIN: Your Honor, I'm going to raise it and
5 hopefully it will speed up the process. There had been some
6 discussion about the prior record. Mr. Parrott is my first
7 witness in this case and I thought it might be -- I want to
8 make sure everything flows smoothly.

9 THE COURT: Okay.

10 MR. MCEACHIN: It's better to go ahead and address this
11 now. I have provided both defense counsel -- as a matter of
12 fact, Judge, I'll hand you this entire stack. These would be
13 the NCICs for the witnesses in this case. The top one is the
14 one for Mr. Parrott.

15 Your Honor, as the Court may note, it appears he had a
16 2002 conviction for criminal domestic violence. Obviously, I
17 don't think there's an objection. That certainly wouldn't be
18 admissible under the rules based on the fact that it's a
19 misdemeanor offense. It doesn't carry more than one year and
20 it's not a crime of dishonesty.

21 In 2002, he had a CDV high and aggravated which was noll
22 prossed, but it looks like it was noll prossed upon the plea
23 to a pointing and presenting firearms charge on November 5th,
24 2003. At least, that's when his probation status was started.
25 I think we can presume part of this record happened at least

1 at the latest point that was when the conviction took place.

2 Your Honor, under Rule 609 of the South Carolina Rules of
3 Evidence, the Court has outlined which crimes are and are not
4 admissible to impeach a witness's credibility based on prior
5 convictions and, Your Honor, I specifically point out to the
6 Court that under 609(b) any evidence older than ten years or
7 any conviction that was more than ten years from the date in
8 which the moving parties attempting to admit it would be
9 inadmissible. Clearly, November the 5th of 2003 is more than
10 ten years from today's date and, as a result, I would argue
11 that the pointing and presenting a firearm charge from 2003 is
12 inadmissible to attack the character and credibility of Mr.
13 Parrott.

14 THE COURT: Mr. Anderson?

15 MR. ANDERSON: I agree with that, Your Honor.

16 THE COURT: Mr. Banner?

17 MR. BANNER: Your Honor, I don't have any position on
18 that. I don't object to the State's position.

19 THE COURT: Okay. Easy enough.

20 MR. MCEACHIN: Thank you, Judge. That's all the State
21 has prior to beginning this case.

22 MR. ANDERSON: Your Honor, since we're on break, do you
23 want to take up everybody's?

24 THE COURT: Might as well.

25 MR. ANDERSON: Your Honor, I think the only other one

1 that would apply based on my review is Keith Caulder.

2 THE COURT: Okay.

3 MR. ANDERSON: And, Your Honor, from looking at his, it
4 looks like he's got a breach of trust with fraudulent intent
5 in 2009 where he received three years suspended to three
6 years' probation. That probation was later revoked, Your
7 Honor, and that was revoked in 2010. And then, Your Honor,
8 also he pled guilty to a giving false information in 2014. I
9 think both of those are impeachable.

10 MR. MCEACHIN: If I understand Mr. Anderson correctly,
11 he's saying that the 2009 conviction, not the probation
12 violation, but the conviction for a breach of trust, as well
13 as the 2014 conviction for giving false information are
14 admissible. The State has no objection and believes that that
15 would conform with the rule, Your Honor.

16 THE COURT: All right. Mr. Banner, you got anything on
17 that?

18 MR. BANNER: Nothing to add, Your Honor. I agree.

19 THE COURT: All right. The Court agrees as well.
20 Anything else?

21 MR. ANDERSON: Your Honor, I don't believe anyone else
22 has anything that could be impeached by my review of their
23 prior record.

24 MR. MCEACHIN: And I agree. At the time, Your Honor,
25 should Mr. Herring choose to take the stand, I believe there

1 is some information on his record which would be admissible.

2 THE COURT: All right. We'll -- okay. All right. I
3 think everybody is on the same page. Anything else, Mr.
4 McEachin?

5 MR. MCEACHIN: No, sir, Your Honor.

6 THE COURT: Mr. Anderson?

7 MR. ANDERSON: No, sir.

8 THE COURT: Mr. Banner?

9 MR. BANNER: No, Your Honor.

10 THE COURT: All right. Now, if you'll bring me the jury,
11 please, sir.

12 (Whereupon, the jury enters the courtroom at 3:45 p.m.)

13 THE COURT: All right. All of the jurors are present.
14 Madam Clerk, if you would, swear the jury, please.

15 THE CLERK: I need for you all to stand and raise your
16 right hand, please.

17 (Whereupon, the jurors comply.)

18 THE CLERK: Do you solemnly swear or affirm to take the
19 evidence presented in this case and a true verdict give, so
20 help you God?

21 THE JURY: I do.

22 THE CLERK: Thank you.

23 THE COURT: All right. Ladies and gentlemen, we are
24 about to try the case of the State of South Carolina versus
25 Darryl Wayne Moran and James Earl Herring Jr.

1 Now, before we begin the trial of this case, I want to
2 tell you all that this trial will probably be different from
3 what you might expect. Many people do not have the chance to
4 attend actual court sessions as you are doing now and may
5 think from watching television or movies or reading books that
6 trials are always full of high drama, intense action, and
7 riveting circumstances.

8 Now, while all of these things may be true at times, this
9 trial is not for entertainment. It is a fundamental part of
10 our democracy, a search for the truth in an effort to make
11 sure that justice is done between the parties before the
12 Court. Searching for the truth and making sure that justice
13 is done is often slow, deliberate, and repetitive, the
14 opposite of what you may have seen on television or in movies
15 or read in books.

16 This courtroom is a place of honor dedicated to the
17 protection and preservation of citizens' rights through what
18 many have called the greatest justice system ever created.
19 The attorneys appearing before you are advocates for the
20 parties that they represent, but first and foremost, they are
21 officers of the court sworn to uphold the integrity and
22 fairness of our judicial system and to help you in the search
23 for the truth. You should expect them to be professional,
24 competent, and ethical in the representation of their clients'
25 interest.

1 Now, what I will now say to you, ladies and gentlemen, is
2 intended to serve as an introduction to the trial of this
3 case. These remarks are not a charge on the law in this case.
4 I will instruct you on the law applicable to this case at the
5 end of the trial before you retire to consider your verdict.
6 This is merely an explanation of the procedure that we will
7 follow in the trial of this case so that you may better
8 understand what may be happening.

9 The defendant or the defendants in this case are charged
10 by an indictment filed in this court. With regards to Mr.
11 Darryl Wayne Moran, he is charged by indictment with the
12 offense of solicitation to commit a murder, as well as
13 conspiracy. Mr. James Earl Herring Jr. is charged with the
14 offense by indictment of solicitation to commit a felony as
15 well. The elements of these offenses will be explained to you
16 later. The indictments, ladies and gentlemen, in this case
17 are simply the charging documents by which this case or these
18 cases are brought into this court and they are not -- they are
19 not in any sense evidence of any of the allegations that it
20 contains.

21 The defendants have pled not guilty to the charges in
22 these indictments and, therefore, the State of South Carolina
23 has the burden of proving each of the elements of the
24 indictment beyond a reasonable doubt, and it will be your
25 duty, ladies and gentlemen, to decide whether the State has

1 met that burden.

2 Your purpose as jurors is to find and determine the
3 facts. You are the sole judge of the facts. If at any time I
4 make any comment regarding the facts, you must disregard it.
5 You are to determine the facts from the testimony you hear and
6 the other evidence introduced in court. It is up to you to
7 determine the inferences which you feel may properly be drawn
8 from the evidence. It is especially important that you
9 perform your duty of determining the facts diligently and
10 conscientiously because ordinarily there is no way to correct
11 an erroneous determination of the facts by a jury.

12 On the other hand and with equal emphasis, the same law
13 that makes you the judge of the facts makes me the judge of
14 the law. The law as given by the Court is the only law that
15 you may consider. You must accept and follow it, even though
16 you may disagree with it. I cannot tell you what the facts
17 are and you, ladies and gentlemen, cannot disagree with me
18 about what the law is or should be.

19 Your job is to take the law as I give it to you and apply
20 it to the facts as you find them from the testimony of the
21 witnesses and any other evidence that is introduced. After
22 doing that, you will render your verdict, a true and just
23 verdict, under the solemn oath that you just took as jurors.

24 Now, until I tell you to begin your deliberations, you
25 must not discuss this case with anyone, including your fellow

1 jurors, friends, family members, and anyone involved in the
2 case. The attorneys and parties in this case have been
3 advised that they are not to talk to you at all. So if you
4 see someone involved in the case and they do not even say
5 hello, they are not being unfriendly; they are simply
6 following this Court's instructions.

7 Now, during your deliberations, you may only discuss the
8 case in the jury room with your fellow jurors because they
9 have seen and heard the same evidence that you have. However,
10 you must not discuss the case with anyone other than your
11 fellow jurors until you have returned a verdict and the case
12 is at the end.

13 I remind you that you must decide this case based solely
14 on the evidence presented here in this courtroom. This means
15 that during the trial, you must not conduct any independent
16 research about this case, the facts of the case, the evidence
17 presented in the case or the people or the organizations
18 involved in any way in the case.

19 Please do not try to find out information from any source
20 outside of this courtroom. In other words, you must not look
21 at dictionaries or other reference materials, search the
22 internet, websites or blogs, or use any other electronic tools
23 to get information about this case to help you decide the
24 case. You may not use computers, telephones, cell phones,
25 smart phones, tablets, the internet or other tools of

1 technology with communication capabilities at any time while
2 you are in the courtroom or during your deliberations.

3 Now, during your breaks for meals or overnight, if
4 necessary, you may use these devices. However, you must not
5 use these devices to communicate with anyone about the case
6 until the case is over. This means you must not use phone
7 calls, emails, text messages, instant messages, Twitter, or
8 any blog, chat room or website, including Facebook, Google
9 Plus, Myspace, Linked, YouTube, or any social media websites
10 to send or receive information about this case. This includes
11 information about a party, a witness, an attorney or a court
12 officer, news accounts about the case, research on topics
13 raised, any topics you may think would be helpful in deciding
14 the case, or any testimony presented by any witness.

15 Now, during the trial, do not read, listen to, or watch
16 any news reports about the case, if there are any. This
17 includes anything that may be in the newspapers or on the
18 internet, radio, or television. You must not consider
19 anything that you may have read or heard about this case
20 outside of this courtroom, whether before or during the trial.
21 Information on television, radio, the internet or from other
22 sources might be wrong or incomplete.

23 In our judicial system, it is important that you are not
24 influenced by anything or anyone outside of this courtroom.
25 If you become aware of another juror's violation of these

1 instructions, please inform the Court immediately.

2 It is important, ladies and gentlemen, that you keep an
3 open mind and not decide any issue in this case until all of
4 the evidence has been presented, the parties have made their
5 closing arguments, and I have instructed you on the law in
6 this case. It is your solemn responsibility to determine the
7 guilt or innocence of the defendants, and your verdict must be
8 based solely on the evidence as it is presented to you in this
9 trial and on the law as I instruct you during and at the close
10 of the trial.

11 Now, in just a moment, the solicitor will make what is
12 called an opening statement in which the solicitor will
13 explain to you the issues in this case or at least what he
14 believes the issues are in this case. The attorneys for the
15 defendants may also make an opening statement, although they
16 are not required to do so.

17 Now, what the attorneys tell you during their opening
18 statements is not evidence in this case. It is only their
19 contention as to what the issues are. The evidence in this
20 case will be presented to you by the testimony of sworn
21 witnesses and/or by exhibits that may be introduced into
22 evidence.

23 Now, from time to time during the trial, you may hear one
24 the attorneys say something like, "Your Honor, I believe that
25 we have a question of law or a matter of law to discuss with

1 you," or, "Your Honor, may we approach the bench?" or
2 sometimes I myself might find it necessary to excuse you from
3 the courtroom for a short while so the attorneys and I can
4 discuss a matter of law.

5 The reason for this is because you are the judge of the
6 facts and sometimes when I am discussing matters of law with
7 the attorneys, it may be necessary for me to make some comment
8 as to the facts in connection with ruling whether or not a
9 particular law applies. I am not supposed to tell you what I
10 think the facts are so I will excuse you from the courtroom
11 while these discussions take place so that in no way will you
12 be influenced by anything that I might say or do in connection
13 with the facts.

14 Now, in determining what the true facts are in this case,
15 you must decide whether or not the testimony of the witnesses
16 is believable. It will be my responsibility to rule as a
17 matter of law as to whether certain testimony is admissible or
18 not, but once the testimony is admitted, whether or not you
19 believe it is solely for you to determine.

20 Now, in deciding whether to believe a witness, you have
21 the right to consider the interest of any witness, the bias of
22 any witness, the prejudice of any witness, the opportunity for
23 the witness to have seen the matters and things about which
24 the witness may testify, and the way the witness acts on the
25 witness stand.

1 You have the right to consider anything that is in the
2 record that will help you evaluate the testimony of the
3 witnesses. That means, ladies and gentlemen, that it is your
4 duty to pay close attention to these witnesses, to observe the
5 witnesses, to listen to the witnesses, and to pay close
6 attention to the attorneys and to the Court. Please don't let
7 your thoughts wander, but give strict attention to the
8 testimony in this case so that at the end of the testimony,
9 after the arguments of counsel and the charge on the law by
10 the Court, you will then be in a position to determine what
11 the true facts are and to apply the law to those facts and
12 thus render a true and just verdict.

13 Now, later in this case, ladies and gentlemen, a
14 foreperson will be selected to preside over deliberations in
15 the jury room. It will be the foreperson's added duty to
16 preside in the jury room and be the jury's spokesperson here
17 in court. It will also be the foreperson's duty to write the
18 verdict, but I will give the foreperson further instructions
19 about that at the conclusion of the case.

20 Now, in order to preserve everyone's rights, I will give
21 the parties an opportunity to object to anything that I have
22 said. Any exceptions or objections to anything that I have
23 said to the jury by the State?

24 MR. MCEACHIN: No, sir, Your Honor.

25 THE COURT: Mr. Anderson?

1 MR. ANDERSON: No, sir.

2 THE COURT: Mr. Banner?

3 MR. BANNER: No, sir, Your Honor.

4 THE COURT: Ladies and gentlemen, we will now begin the
5 trial of this case. Mr. McEachin, you are recognized for
6 opening statements.

7 OPENING STATEMENT ON BEHALF OF THE STATE

8 MR. MCEACHIN: Thank you very much, Your Honor. May it
9 please the Court. Mr. Anderson. Mr. Banner.

10 Ladies and gentlemen, of the jury, this case is about a
11 vengeful husband. That's me summing it up and putting it as
12 concisely as I possibly can to you folks. That's what this
13 case is about. That's why those two men are sitting over --
14 seated over there. That's why Randy Parrott is seated right
15 there. That's why we're all here today because of a vengeful
16 husband, Darryl Moran.

17 In October of 2009, almost five years ago, Mr. Moran,
18 along with Mr. Herring, plotted -- and I use that word
19 specifically -- plotted to kill Randy Parrott. Why in the
20 world would they want to do that? Well, because Mr. Parrott,
21 after Mr. Moran and his wife had separated, started seeing his
22 wife. That's why. That's why they wanted to kill Mr.
23 Parrott.

24 So what did Mr. Moran do? He enlisted the services of
25 Mr. Herring and that's what started this whole thing, and

1 that's why five years later we're all sitting here together in
2 this courtroom. And ultimately, you as jurors in this case
3 have to decide whether or not Mr. Herring and Mr. Moran
4 actually did what the State suggests they did.

5 Now, the judge has already explained to you what the
6 indictment in the case is, and an indictment is simply the
7 notice document that puts the parties on notice of what
8 they're charged with. And the charges in this case with
9 regard to both defendants is solicitation to commit murder,
10 and my obligation, as the attorney representing the State and
11 the County of Marion, I have to prove to you that that's what
12 those two individuals did beyond a reasonable doubt.

13 And beyond a reasonable doubt is the highest standard
14 known in the law. It's not like a civil case where you only
15 kind of have to prove your case. You only have to slightly
16 prove your case on the other side. It is the highest standard
17 the law recognizes here.

18 So that's what I have to prove to you folks. I have to
19 prove to you that Darryl Moran solicited the help of others to
20 commit the murder of Randy Parrott. I have to prove to you
21 that James Herring solicited others to kill Randy Parrott.
22 And I have to do it beyond a reasonable doubt.

23 So as you sit there and you contemplate and think about
24 this, remember a couple of things. The act itself doesn't
25 have to be committed. Obviously, if that were the case, we

1 would be here on a murder charge, not a solicitation to commit
2 murder.

3 In essence, what I have to show you is that a person
4 enticed another person, advised, invited or ordered another
5 person to do a crime. I don't have to show you a crime was
6 committed because, again, if the crime were committed, you
7 folks would be sitting here listening to a murder case and not
8 a solicitation case.

9 So what you have to do is decide whether or not what
10 occurred is a solicitation, and the way you make that decision
11 is through evidence. And the judge already hit on it a little
12 bit with you, but evidence comes in two forms: It comes in
13 the form of exhibits, which is what I like to call hard
14 evidence, things that you can see, you can touch, you can feel
15 and taste in some instances, and that you can smell. Those
16 are exhibits.

17 The other form of evidence is through testimony, and that
18 comes from this chair right here. And the testimony is going
19 to come from people who witnessed things that transpired. And
20 what I can tell you in advance is there are very few exhibits
21 you're going to see in this case. This isn't an exhibit-
22 driven case. This is a case that is driven by the testimony
23 of the people who saw, who observed, who were then there
24 present when this plot was hatched.

25 And once you hear the evidence in this case, you're going

1 to determine that it was a vengeful husband who was upset that
2 his wife had left. She decided after she left she was going
3 to see another man and the way he was going to get back at her
4 was he was going to kill that other man. That's what the
5 evidence is going to show you folks and, if you agree with me
6 at the end of this trial, if you agree that that is what the
7 evidence is and that is what the testimony has shown, then
8 there's only one reasonable verdict you can return, and that
9 is a verdict of guilty.

10 Now, I didn't talk to you about the conspiracy charge
11 that Mr. Moran is also charged with and I'll talk to you about
12 that more at the end of the trial, but it's similar to a
13 solicitation charge. But what it is is he simply -- we simply
14 have to show that he along with somebody else conspired to
15 commit a crime. Well, again, the crime that they conspired to
16 commit in this case is the solicitation to commit murder.

17 So at the end of the trial, I'm going to come back over
18 here and I'm going to ask all of you after you've heard all of
19 the evidence to return a verdict that speaks the truth, which
20 is a verdict of guilty. Thank you in advance for your time,
21 effort, and consideration of all we've put into this case, and
22 I thank you on behalf of the State of South Carolina and I
23 thank you on behalf of the County of Marion, and I thank you
24 on behalf of Randy Parrott.

25 THE COURT: Mr. Anderson?

1 OPENING STATEMENT ON BEHALF OF THE DEFENDANT HERRING

2 MR. ANDERSON: It has to happen to someone. I represent
3 James Herring. A lot of times I'll come up here and I'll talk
4 to a jury, I'll sit there and kind of give a blueprint like
5 the judge did and like Mr. McEachin did, and I'll tell them
6 about what they may see and what they may hear.

7 But the more I thought about this case -- as you've
8 already heard from the State, this case is pushing five years.
9 The more I thought about this case, I thought to myself, you
10 know what? This is really a case about what they don't have.

11 Now, you already heard the State say that they've got the
12 burden of proof in this case. Of course, they do. Mr.
13 McEachin has already said Mr. Parrott is alive. Otherwise,
14 we'd be here on a murder case. You're not going to hear
15 anybody come up and say somebody took a shot at him. You're
16 not going to hear anybody come over here and say, hey,
17 somebody tried to run me over with a car. You're not going to
18 hear anyone say they tried to blow me up, blow my house up,
19 blow my car up.

20 You're not going to hear any tapes. No one was ever
21 mic'd up or wired up. You're not going to hear anyone say
22 that, you know, such and such tried to solicit me to kill Mr.
23 Parrott. You're not going to hear that.

24 You're not going to hear or see, in my opinion, any
25 evidence of any payments or money that was paid to do

1 something. I don't think there's any of that that y'all will
2 see.

3 And the judge said something earlier that I think is very
4 important. The judge I think indicated to y'all that y'all
5 are the judges of the facts and he is the judge of the law.
6 He can't cross over -- cross this white rail right here and
7 say, you know, I think the facts say this. He can't do that.
8 That's totally up to the twelve of y'all -- thirteen of y'all.

9 Vice versa, you can't come over here and go, Judge,
10 you're wrong. This is what the law is. No, no. That's his
11 domain. That's his domain just like this is your domain.

12 And the State said you're going to hear evidence from
13 this stand, which is true. You will hear evidence. However,
14 when I get to cross examine the witness, when I get to ask the
15 witness questions, that's also evidence. When Mr. Banner --
16 when he gets to ask questions of the witness, that is
17 evidence. Now, I submit to you the State's questions might be
18 kind of easy -- kind of easy to answer. My questions
19 hopefully will be a little bit harder, but nonetheless, the
20 answer is evidence.

21 Now, one of the things you're also going to be allowed to
22 do is judge the credibility of witnesses. Well, how do you do
23 that? Well, just use your common sense as to whether or not
24 someone is believable, and I think that as you hear certain
25 witnesses testify, you'll be able to say to yourself, well,

1 you know, I don't know about that. That's kind of a stretch.
2 I don't think that's reasonable.

3 And no matter what, at the end of the day the State
4 doesn't have any pictures. The State doesn't have any
5 confessions. The State doesn't have any wiretaps. The State
6 doesn't have any money transfers. I don't think the State is
7 going to come in here and say, hey, I've got a tape recording
8 of Randy -- excuse me -- of James and Mr. Moran saying certain
9 things. You're not going to hear that. There's not, like,
10 any tapes or any wiretaps or anything like that.

11 You're not going to hear a lot of things in this case and
12 that is also evidence. And I'll point that out to you at the
13 closing of this case what you haven't heard and what you
14 haven't seen.

15 I said earlier it has to happen to someone. I'll tell
16 you this. It has to happen somewhere and it has to happen
17 sometime, but I'm going to go into a little bit of that later
18 in my closing argument. But I think at the end of the day the
19 State has got a theory, but they can't prove that theory. I
20 think after you hear everything, you'll agree with me that
21 James is not guilty.

22 THE COURT: Mr. Banner?

23 MR. BANNER: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes, sir.

1 OPENING STATEMENT ON BEHALF OF DEFENDANT MORAN

2 MR. BANNER: Ladies and gentlemen, this is going to be a
3 relatively short trial which should be done sometime tomorrow.
4 I'm going to do everything in my ability and power to move it
5 along as quickly as possible.

6 But as you can certainly understand and I'm sure you are
7 fully aware, this is probably two of the most important days
8 in Darryl Moran's life, today and tomorrow, because he's been
9 charged and accused of two very serious crimes. As Mr.
10 Anderson said, the State does not have sufficient evidence to
11 convict him.

12 A little bit about Darryl. He's lived in Marion for
13 about 15 or 16 years. He's been self-employed all of his
14 adult life doing land clearing-type work. He was married to
15 Jennie Moran, who I understand is going to testify in this
16 case. They were married for about twelve years, living here
17 in Marion, and then one day she decided to leave the home.
18 Darryl and Jennie have a son who is going to be a junior in
19 high school, Dalton, that lives with Darryl.

20 The State wants you to believe that he's an -- a vengeful
21 husband. What did Darryl do when his wife of twelve years
22 left he and his son at home? He did the right thing. He's
23 forced to go hire a lawyer to represent him in a divorce and
24 also he's forced to use his money, his hard-earned money, to
25 hire a private investigator to go and do surveillance on his

1 estranged wife and Mr. Parrott. He went to the investigator's
2 office and, believe it or not, with him was also Ms. Moran's
3 older son from another marriage, who went and met with the
4 private investigator as well, and I believe he's going to be a
5 witness in this case. Darryl Moran is not an -- a vengeful
6 husband. He did the right thing when he was faced with this
7 situation when Ms. Moran left him, left this marriage, and
8 left the house.

9 As you've heard His Honor tell us and you've heard the
10 lawyers say, the State has the burden of proof in this case.
11 It's the highest standard that there is. Beyond any
12 reasonable doubt convince each one of you -- each one of you
13 that these crimes were committed beyond a reasonable doubt.

14 The State is going to parade a number of witnesses up
15 here on this stand who are going to testify, and I submit to
16 you, ladies and gentlemen, at the end of this trial there will
17 not be any physical evidence that you see, there will not be
18 any testimony that you hear from any witness that proves the
19 crime of solicitation of committing a crime, which the State
20 says a person encourages, entices, orders, commands someone to
21 commit a crime.

22 I submit to you you won't hear any testimony and you
23 won't see any evidence that anybody can say Darryl Moran
24 specifically did those acts to prove this case. So I ask that
25 you keep an open mind throughout the trial and we're going to

RANDY PARROTT - DIRECT BY MR. MCEACHIN

1 move it along as quickly as we can. And at the end of this
2 case, there will be sufficient information for you and
3 sufficient evidence for you to be able to return a verdict of
4 not guilty for Darryl Moran.

5 THE COURT: Mr. McEachin?

6 MR. MCEACHIN: Thank you.

7 THE COURT: Call your first witness.

8 MR. MCEACHIN: The State would call Mr. Randy Parrott to
9 the stand.

10 THE CLERK: Mr. Parrott, if you'll come up here, please.
11 Raise your right hand and place your left hand on the Bible.
12 Do you solemnly swear or affirm to tell the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. You can take a seat in the
16 witness stand.

17 RANDY PARROTT, being first duly
18 sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. MCEACHIN:

21 Q: Randy, if you don't mind, would you please state your
22 full name for the record?

23 A: Kelly Randall Parrott.

24 Q: And I've been calling you Randy. Do you go by the name
25 Randy?

RANDY PARROTT - DIRECT BY MR. MCEACHIN

- 1 A: Randy is my nickname.
- 2 Q: Okay. But you -- you're known by others as Randy; is
- 3 that correct?
- 4 A: Yes, that is correct.
- 5 Q: And, Randy, how old are you?
- 6 A: Fifty-eight.
- 7 Q: And where do you currently reside?
- 8 A: 4015 Hoffmeyer Road, Darlington.
- 9 Q: And how long have you lived over on Hoffmeyer Road in
- 10 Darlington?
- 11 A: Twelve years.
- 12 Q: All right. Prior to that, where did you live?
- 13 A: Prior to that, I lived on Alligator Road.
- 14 Q: In Florence County?
- 15 A: Florence County.
- 16 Q: Okay. Now, Randy, what do you do for a living?
- 17 A: I'm in construction.
- 18 Q: And how long have you been in the construction business?
- 19 A: Pretty much all of my life.
- 20 Q: Okay. So for the better part of your adult life at least
- 21 you've been in construction?
- 22 A: Yes, that's correct.
- 23 Q: You do residential construction?
- 24 A: I do residential, yes.
- 25 Q: All right. Do you do any commercial?

RANDY PARROTT - DIRECT BY MR. MCEACHIN

1 A: No. I stick pretty much to residential.

2 Q: Okay. And you've been doing that for the better part of
3 your adult life and let me ask you this. Are you currently
4 married?

5 A: No.

6 Q: Currently seeing anybody?

7 A: Yes.

8 Q: And, if you don't mind, please tell this jury who you're
9 seeing?

10 A: Jennie Rabon.

11 Q: All right. And you call her Jennie Rabon. Was she known
12 as something else when you first met her?

13 A: Jennie Moran.

14 Q: Jennie Moran?

15 A: Yes.

16 Q: And when did you and Jennie first meet one another?

17 A: Probably sometime in 2009, early 2009 maybe.

18 Q: And that's when y'all first met? How did y'all come to
19 meet one another?

20 A: Through -- I worked construction and did punch lists for
21 realtors.

22 Q: Okay. If you don't mind, just explain to the jury what a
23 punch list is?

24 A: A punch list is when someone sells a home and they have a
25 few things wrong and I would go in and fix the electrical,

RANDY PARROTT - DIRECT BY MR. MCEACHIN

1 plumbing, carpentry work, anything like that. That's a punch
2 list, and they have to do that in order to sell their home.
3 That was my type work.

4 Q: And how was it that you come to meet -- come to have met
5 Jennie doing that kind of work? What did she do?

6 A: She was a realtor.

7 Q: Okay. So that's how y'all met?

8 A: Yes.

9 Q: Now, let me ask you this. Y'all have been seeing each
10 other since that time?

11 A: Yes.

12 Q: For five years now?

13 A: Five years.

14 Q: Okay. Do -- do you or have you ever met James Earl
15 Herring?

16 A: No.

17 Q: Do you know who he is?

18 A: I know him by name.

19 Q: Okay. You know who he is now, but did you know who he
20 was prior to October of 2009?

21 A: Absolutely not.

22 Q: All right. And what about Darryl Moran?

23 A: Don't know him.

24 Q: Ever met him before?

25 A: No.

RANDY PARROTT - DIRECT BY MR. MCEACHIN

1 Q: Don't know who he is?

2 A: Don't know who he is.

3 Q: Never had any sort of arguments or altercations with him
4 prior to October 2009?

5 A: Not to my knowledge, no.

6 Q: Okay. Don't know either of those two fellows right
7 there?

8 A: No.

9 MR. MCEACHIN: Thank you. Please answer any questions
10 the defense attorneys may have for you.

11 THE COURT: Mr. Anderson, cross examination.

12 CROSS EXAMINATION

13 BY MR. ANDERSON:

14 Q: Prior to 2009, had you ever seen James Herring?

15 A: No, sir.

16 Q: In 2009, had you seen him?

17 A: No, sir.

18 Q: 2010?

19 A: No, sir.

20 Q: 2011?

21 A: No, sir.

22 Q: Never saw him outside of your house?

23 A: No.

24 Q: Never saw him in your driveway?

25 A: No.

RANDY PARROTT - CROSS BY MR. ANDERSON

1 Q: Never saw him looking down the scope of a pistol or a
2 rifle at you?

3 A: No, sir.

4 Q: I think earlier you said you live in Darlington County?

5 A: That's correct.

6 Q: You've been living in Darlington County -- if you've been
7 there about twelve years, that would be 2002 you might have
8 moved to Darlington County?

9 A: Somewhere in there, yes.

10 MR. ANDERSON: That's all the questions I have, Judge.

11 THE COURT: Mr. Banner?

12 MR. BANNER: Thank you.

13 CROSS EXAMINATION

14 BY MR. BANNER:

15 Q: Mr. Parrott, you testified you've never met Darryl Moran;
16 correct?

17 A: Not to my knowledge.

18 Q: Don't know him?

19 A: Don't know him.

20 Q: As far as you know, he's never been on your property?

21 A: No, not that I know.

22 Q: He certainly has never confronted you?

23 A: No.

24 Q: You've never had an altercation with him?

25 A: No.

RANDY PARROTT - CROSS BY MR. BANNER

- 1 Q: He's never threatened you?
- 2 A: No.
- 3 Q: Now, during the time that you were seeing his wife, they
- 4 were going through a divorce; correct?
- 5 A: No.
- 6 Q: Okay. You are aware of the fact that a private
- 7 investigator was hired to do some surveillance tape at your
- 8 house; correct?
- 9 A: Yes.
- 10 Q: All right. In fact, you got mad with the private
- 11 investigator, didn't you? For doing -- for taking that
- 12 surveillance tape; correct?
- 13 A: That -- that's really not what it was about.
- 14 Q: Okay. That tape was shown at a hearing in Family Court;
- 15 correct?
- 16 A: I have no idea.
- 17 Q: Okay. You know that Ms. Moran has a son named Dalton;
- 18 correct?
- 19 A: Heard of him.
- 20 Q: Okay. Which is her child with Darryl Moran; correct?
- 21 A: I've heard that.
- 22 Q: Okay. Dalton doesn't come to your house, does he?
- 23 A: I don't know him.
- 24 Q: Okay. And you know that Darryl Moran has full custody of
- 25 their son, Dalton; correct?

RANDY PARROTT - CROSS BY MR. BANNER

1 A: Yes.

2 Q: Okay.

3 MR. BANNER: Thank you, Your Honor. That's all I have.

4 THE COURT: Any redirect?

5 MR. MCEACHIN: No redirect, Your Honor.

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

7 THE WITNESS: Thank you.

8 MR. MCEACHIN: Your Honor, I'm going to step right in the
9 hall and get my next witness.

10 (Whereupon, there is a pause in the proceedings until the
11 witness enters the courtroom.)

12 MR. MCEACHIN: Your Honor, the State would call Jennie
13 Rabon to the stand.

14 THE CLERK: Ms. Rabon, would you come around, please, and
15 let me swear you in? Place your left hand on the Bible and
16 raise your right hand, please. Do you solemnly swear or
17 affirm the evidence you give in the trial of this case shall
18 be the truth, the whole truth, and nothing but the truth, so
19 help you God?

20 THE WITNESS: Yes.

21 THE CLERK: Thank you. You may have a seat in the
22 witness box.

23 JENNIE RABON, being first duly sworn,
24 testifies as follows:

25 DIRECT EXAMINATION

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 BY MR. MCEACHIN:

2 Q: Jennie, if you would, please state your full name for the
3 record?

4 A: Jennie Lynn Rabon.

5 Q: And, Jennie, my mom told me never to ask this question of
6 a woman, but I'm going to have to in this case. Could you
7 please tell the jury how old you are?

8 A: Forty-two.

9 Q: And where do you currently reside?

10 A: 4015 Hoffmeyer Road in Darlington.

11 Q: And who do you reside there with?

12 A: Randy Parrott.

13 Q: And how long have you lived with Randy over on Hoffmeyer?

14 A: Since July of 2009.

15 Q: Since July of 2009?

16 A: Mm-hmm.

17 Q: Okay. When did you and Randy first meet one another?

18 A: We first met --

19 Q: If you remember.

20 A: I would say maybe March of 2009.

21 Q: And when you first met him, you were married at the time?

22 A: Yes.

23 Q: And can you tell the jury who you were married to?

24 A: I was married to Darryl Moran.

25 Q: And do you see Darryl Moran seated in the courtroom here

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 today?

2 A: Yes.

3 Q: Okay. What -- if you don't mind, would you let the court
4 reporter know what he's wearing?

5 A: He's wearing a striped shirt.

6 Q: Okay.

7 MR. MCEACHIN: Please have the record reflect, Your
8 Honor, that the witness has identified the defendant, Darryl
9 Moran.

10 THE COURT: So noted for the record.

11 MR. MCEACHIN: Thank you.

12 BY MR. MCEACHIN:

13 Q: And if you don't mind, tell the jury when you had first
14 -- when you and Darryl first met, if you can remember that?

15 A: We met probably in '88 maybe.

16 Q: And y'all began a relationship?

17 A: Not in '88. We did not.

18 Q: When did you y'all begin a relationship?

19 A: '94.

20 Q: All right. And did y'all eventually get married?

21 A: '96.

22 Q: Y'all got married in 1996? And do y'all have any
23 children together?

24 A: One.

25 Q: And what's your child's name?

JENNIE RABON - DIRECT BY MR. MCEACHIN

- 1 A: His name is Dalton.
- 2 Q: Okay. So during the course of your marriage, where did
3 y'all live?
- 4 A: We lived in Horry and in Marion County.
- 5 Q: Okay. And at some point during the marriage, did it
6 start to deteriorate? Did the marriage finally deteriorate?
- 7 A: Yes.
- 8 Q: And when did that begin occurring?
- 9 A: About 2009. January -- February.
- 10 Q: So the first part of 2009?
- 11 A: Yes.
- 12 Q: And as a result of the deterioration, did y'all
13 ultimately decide that -- did somebody in the relationship
14 decide that a separation was necessary?
- 15 A: Yes.
- 16 Q: Who made that decision?
- 17 A: I did.
- 18 Q: And what -- or I guess more aptly put -- when did y'all
19 separate from one another?
- 20 A: We separated in May of 2009.
- 21 Q: You separated in May of 2009? And did you move out or
22 did he move out?
- 23 A: I did.
- 24 Q: And when you moved out, where did you move?
- 25 A: I moved to Huntington Apartments in Florence.

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 Q: Okay. So you didn't move to Hoffmeyer Road? You moved
2 to Huntington Apartments?

3 A: That's correct.

4 Q: And that was in I believe you said May of 2009?

5 A: May of 2009.

6 Q: And how -- were you living with anybody at the Huntington
7 Apartments?

8 A: No.

9 Q: Just -- just yourself?

10 A: Just me.

11 Q: Okay. And how long did you live at Huntington
12 Apartments?

13 A: Until July of 2009.

14 Q: Okay. And that's when you said you moved to Hoffmeyer
15 Road?

16 A: That is correct.

17 Q: Okay. And what prompted your move to Hoffmeyer Road?

18 A: I moved to Hoffmeyer Road to be with Randy.

19 Q: Okay. And that's why you decided to move to Hoffmeyer
20 Road?

21 A: Yes.

22 Q: Now, during this period of time during your separation,
23 did you still have contact with Darryl?

24 A: No.

25 Q: Okay. No contact with him at all?

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 A: No.

2 Q: All right. And is that because of how the situation
3 ended when you left?

4 A: Yes.

5 Q: All right. Now, I also want to ask you do you know an
6 individual by the name of James Herring?

7 A: I do.

8 Q: And do you know him by something else?

9 A: Red.

10 Q: You know him by the nickname Red?

11 A: Yes.

12 Q: And do you see Red here today?

13 A: Yes.

14 Q: And, if you could, please point him out?

15 A: He's sitting right there with the blue shirt.

16 Q: With the blue shirt on?

17 A: Mm-hmm.

18 MR. MCEACHIN: Your Honor, once again, please have the
19 record reflect that the witness has identified James Earl
20 Herring Jr.

21 THE COURT: So noted for the record.

22 MR. MCEACHIN: Thank you.

23 BY MR. MCEACHIN:

24 Q: And, Jennie, if you don't mind, tell the jury how you
25 know Red?

JENNIE RABON - DIRECT BY MR. MCEACHIN

- 1 A: As a friend.
- 2 Q: How long have you known him for?
- 3 A: Since 1998.
- 4 Q: Okay. So for quite some time then. How did you come to
- 5 meet him?
- 6 A: I met him because of the business that my husband,
- 7 Darryl, did at the time led us to Marion County and that's how
- 8 I met Red because he became an employee.
- 9 Q: Okay. So he was working for Darryl's business?
- 10 A: For Darryl's business. That is correct.
- 11 Q: And that was in 1998?
- 12 A: '98, yes.
- 13 Q: So that's when y'all finally moved to Marion County?
- 14 A: We moved to Marion County in '98.
- 15 Q: Okay. And before that I think you said y'all were in
- 16 Horry County?
- 17 A: Horry County, mm-hmm.
- 18 Q: Now, if you could, explain to the jury just -- you called
- 19 -- I believe you said you and -- you and Red were in a friend-
- 20 type relationship?
- 21 A: Mm-hmm.
- 22 Q: How often would you get to see Red?
- 23 A: Weekly.
- 24 Q: Okay. On a weekly basis?
- 25 A: Mm-hmm.

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 Q: Would y'all do stuff together?

2 A: Often.

3 Q: What would y'all do?

4 A: We would plant flowers. We would work in the yard. Put
5 up Christmas lights.

6 Q: And during this period of time, he was -- he was working
7 for Darryl?

8 A: Yes.

9 Q: And how long did -- did this friendship last? For how
10 long had it gone for? From '98 until when?

11 A: Until right now.

12 Q: Okay. So it's kind of been an ongoing thing?

13 A: To be a friend of his, yes, until this incident occurred.

14 Q: Okay. So I think you said until now, but maybe it was
15 '98 until 2009?

16 A: Yeah, 2009. That's correct.

17 Q: Okay. Now, in 2009, going back a minute to May when you
18 moved out of the marital residence, you said you didn't talk
19 with Darryl anymore. Did you still talk to James or to Red?

20 A: Yes.

21 Q: And let me ask you this. Once you had moved out, would
22 you have occasion to see Red?

23 A: I would.

24 Q: And what type of places would you see him?

25 A: I saw him at Huntington Apartment Complex in the parking

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 lot twice.

2 Q: That's where you were living?

3 A: That's where I was living.

4 Q: Did you invite him there?

5 A: No.

6 Q: Where was he in the parking lot?

7 A: Sitting in a car or the truck.

8 Q: Okay. Where else would you see him?

9 A: At an open house that I was doing on Park Avenue in
10 Florence.

11 Q: And that reminds me. I totally forgot to ask you. What
12 do you do for a living?

13 A: I was a realtor at the time.

14 Q: At the time, you were a realtor selling real estate?

15 A: That's correct.

16 Q: And Park Avenue in Florence -- would it be fair to say
17 that's about 25 miles from here?

18 A: Yes. Probably about 25, yes.

19 Q: And he appeared at this open house you were having?

20 A: He did.

21 Q: Did he speak to you at the open house?

22 A: Yes.

23 Q: Let me ask you about the open house. Is that something
24 that's posted all over the place? How do you find out about
25 an open house?

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 A: Real Estate Weekly.

2 Q: Okay. So you'd have to actually look to find out where
3 an open house is being held?

4 A: That is correct.

5 Q: And would it list the realtor who was having the open
6 house?

7 A: It would.

8 Q: And he showed up at the open house?

9 A: He did.

10 Q: On these occasions, do you remember what kind of vehicle
11 he was driving?

12 A: When he came to the open house, he was driving Darryl's
13 brother's truck.

14 Q: Darryl's brother's truck?

15 A: Yes.

16 Q: All right. And did he say why he had come to the open
17 house?

18 A: He was in the area.

19 Q: He just stopped by?

20 A: Just stopped by.

21 Q: And at that time, he was living in Marion County; is that
22 right?

23 A: He might have been living in Dillon. I don't know if he
24 was living in Marion County or Dillon County.

25 Q: Okay. But he was in the area and he just stopped by?

JENNIE RABON - DIRECT BY MR. MCEACHIN

- 1 A: That is correct.
- 2 Q: Now, in addition to the open house and Huntington
- 3 Apartments, did you see him anywhere else?
- 4 A: He walked in at Exit Goldstar Realty twice.
- 5 Q: Okay. Did he say why?
- 6 A: Stopping by for a visit.
- 7 Q: Okay. And did you find all these visits at your
- 8 apartments and Exit Goldstar Realty and this open house -- did
- 9 you find those to be strange?
- 10 A: I did find them very strange.
- 11 Q: And why did you find those to be strange?
- 12 A: It was not his character to show up at these particular
- 13 places.
- 14 Q: Okay. So he just -- he just showed up?
- 15 A: Mm-hmm.
- 16 Q: Did you ever invite him to any of these places?
- 17 A: Never.
- 18 Q: He always showed up on his own?
- 19 A: He'd show up on his own.
- 20 Q: Now, going back to Randy for a minute, y'all had been
- 21 together since about July of 2009?
- 22 A: July of 2009.
- 23 Q: Okay. Y'all are still currently together?
- 24 A: We are.
- 25 Q: And you said you live on Hoffmeyer -- on Hoffmeyer Road;

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 is that right?

2 A: Yes.

3 Q: If you can, would you describe to the jury kind of how --
4 where y'all's house is situated on Hoffmeyer and how it's
5 situated off of the road?

6 A: There is -- on Hoffmeyer Road, there is, like, an old
7 abandoned house and it looks like you're turning into that old
8 abandoned house onto a dirt road, and the dirt road kind of
9 turns and veers. There's farms, old barns on both sides.
10 When you're going down, there's a field and there's woods and
11 going around and down and we're back there at the very back of
12 that dirt road.

13 Q: Would there -- would there be any other houses back
14 there?

15 A: No other houses, no.

16 Q: And I'm not asking you precisely, but would you tell this
17 jury about how far off of Hoffmeyer Road y'all's house is
18 located?

19 A: I'd say about a mile.

20 Q: Where -- and where's the nearest house from y'all?

21 A: On the actual road at Hoffmeyer.

22 Q: So I mean it's -- y'all -- your nearest neighbor is a,
23 mile away?

24 A: That's right.

25 Q: And I think you said there are a couple of old barns

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 going back towards y'all's house?

2 A: Yes.

3 Q: And there's some woods?

4 A: There's some woods.

5 Q: Is there a field or anything?

6 A: There's a field before you get to our house. There's a
7 field on the -- if you're going in, there's a field. There's
8 some on the left and the woods are on the right.

9 Q: And that's where y'all have lived the past five years?

10 A: Mm-hmm.

11 Q: Or four and some change?

12 A: Yes.

13 Q: Prior -- well, let me ask you this. Did y'all have
14 occasion to meet with law enforcement in October of 2009?

15 A: We did.

16 Q: And you can't tell me anything they said, but if you
17 don't mind, tell the jury how that particular meeting came
18 about?

19 A: I got a phone call on my cell phone stating that my --

20 MR. ANDERSON: Objection. Hearsay, Your Honor.

21 MR. MCEACHIN: Okay. You can't say what --

22 THE COURT: Objection sustained. Go ahead.

23 BY MR. MCEACHIN:

24 Q: You can't say what anybody told you.

25 A: Okay.

JENNIE RABON - DIRECT BY MR. MCEACHIN

1 Q: Where did they come meet you?

2 A: They came to 4015 Hoffmeyer Road to the house.

3 Q: Okay. And law enforcement came to see you there? Was
4 Randy there as well?

5 A: He was not.

6 Q: Okay. Did he eventually come to the house?

7 A: He did.

8 Q: All right. Prior to law enforcement coming and seeing
9 y'all that day, did y'all have any idea anything was going on?

10 A: No.

11 Q: Okay. And I believe you indicated that was in October of
12 2009?

13 A: That was in October of 2009.

14 Q: Do you remember roughly when? The first part of October
15 or the last part of October?

16 A: The first part.

17 Q: Okay. And, of course, after they came to visit you,
18 everything else transpired after that; is that correct?

19 A: That is correct.

20 Q: Okay. Eventually, did you -- did you get a divorce from
21 -- or did Darryl get a divorce from you?

22 A: Yes. December of 2009.

23 Q: Okay.

24 A: I'm sorry. Excuse me. December of 2010.

25 Q: December of 2010?

JENNIE RABON - DIRECT BY MR. MCEACHIN

- 1 A: Yes.
- 2 Q: Okay. And you've been with Randy since that time?
- 3 A: Mm-hmm.
- 4 Q: To your knowledge, had Randy ever met Darryl before?
- 5 A: To my knowledge, Randy had never met Darryl before.
- 6 Q: To your knowledge, had Randy ever met Red before?
- 7 A: To my knowledge, he has never met Red.
- 8 Q: Thank you. Please answer any questions the defense
- 9 attorneys may have for you.

10 THE COURT: Mr. Anderson, cross examination.

11 CROSS EXAMINATION

12 BY MR. ANDERSON:

- 13 Q: Ms. Rabon, you currently live over in Darlington County?
- 14 A: Yes, sir.
- 15 Q: And you said you moved out in July of 2009? No, I'm
- 16 sorry. May of 2009. In May of 2009, you left Marion County;
- 17 is that right?
- 18 A: Yes.
- 19 Q: And then moved into an apartment for basically two
- 20 months?
- 21 A: Yes.
- 22 Q: Is that right?
- 23 A: Yes.
- 24 Q: Do apartments only give two month leases?
- 25 A: I don't know what they typically give.

JENNIE RABON - CROSS BY MR. ANDERSON

1 Q: So when you moved in to the Huntington Apartments in May
2 of 2009, did you sign a six-month lease? Year lease? What
3 did you sign?

4 A: I signed a temporary lease, yes.

5 Q: A temporary lease?

6 A: Yes.

7 Q: All right. And then 60 days later, you were living with
8 Mr. Parrott?

9 A: If it was 60 days later, then that is correct.

10 Q: It might have been less than that?

11 A: No. I don't think it was less than that.

12 Q: All right. Maybe July? May, June, July?

13 A: Yes.

14 Q: Two months?

15 A: Two months.

16 Q: Now, you said the marriage fell apart in January or
17 February?

18 A: Mm-hmm.

19 Q: 2009?

20 A: That is correct.

21 Q: And you met Randy in March of 2009?

22 A: Yes. March -- February -- March.

23 Q: Now, how many children do you have?

24 A: I have two.

25 Q: Two?

JENNIE RABON - CROSS BY MR. ANDERSON

- 1 A: Two.
- 2 Q: Boys or girls?
- 3 A: Boys.
- 4 Q: Two boys?
- 5 A: Mm-hmm.
- 6 Q: Do you have one with Mr. Moran?
- 7 A: I do.
- 8 Q: What's his name?
- 9 A: His name is Dalton.
- 10 Q: And does Dalton live with his dad?
- 11 A: Yes, he does.
- 12 Q: How old is Dalton?
- 13 A: Dalton is 16.
- 14 Q: So in 2009, he would have been eleven?
- 15 A: Yes.
- 16 Q: And now he's 16?
- 17 A: Yes.
- 18 Q: And you have another son?
- 19 A: Yes.
- 20 Q: What is his name?
- 21 A: His name is James Carlyle Rabon Jr.
- 22 Q: James?
- 23 A: Carlyle Rabon Jr.
- 24 Q: Did he ever live with you and Mr. Moran?
- 25 A: Yes.

JENNIE RABON - CROSS BY MR. ANDERSON

1 Q: After you left in May of 2009, did he continue to live
2 with Mr. Moran?

3 A: He wasn't living in the household at the time, no.

4 Q: All right. Where was he living?

5 A: He was living with his father.

6 Q: He wasn't living with you?

7 A: He was not.

8 Q: And how old is Mr. Rabon?

9 A: He is 25.

10 Q: So a few years ago in 2009, he was what? Nineteen or 20?

11 A: Mm-hmm.

12 THE COURT: Is that a yes? I need a yes or a no --

13 THE WITNESS: Yes.

14 THE COURT: -- answer, please.

15 THE WITNESS: Yes.

16 BY MR. ANDERSON:

17 Q: Now, earlier Mr. McEachin asked you about James and you
18 referred to him as Red. You said, "I consider him a friend."

19 A: Mm-hmm.

20 Q: Mr. McEachin said when did you meet him and you said
21 1998. When did y'all cease becoming friends? We were still
22 friends. Do you remember saying that?

23 A: I do.

24 Q: You didn't say we were friends up until 2009. You said
25 we were still friends. And then you later corrected yourself

JENNIE RABON - CROSS BY MR. ANDERSON

1 and said, well, when this incident came up, we kind of aren't
2 friends anymore. Do you remember saying that?

3 A: I do.

4 Q: Now, you said that you were friends and then Mr. McEachin
5 said what kind of friends and you said, well, you know, he
6 would help me plant stuff; is that right?

7 A: That is correct.

8 Q: And he would get down on his hands and knees and get the
9 shovel out and dig things up or dig things and plant in your
10 yard?

11 A: Yes.

12 Q: You also said Christmas, putting up ornaments?

13 A: Yes.

14 Q: Is that right?

15 A: Yes.

16 Q: Putting up ornaments. Did he ever help you do anything
17 at Thanksgiving?

18 A: At Thanksgiving?

19 Q: Yes, ma'am. Did he ever help you cook, clean, put up any
20 decorations, anything like that?

21 A: Yes. Over the course of the years and all that, we did
22 all sorts of things together, yes..

23 Q: Was it unusual for him to eat dinner at your house?

24 A: Oh, no, it was not unusual.

25 Q: Unusual for him to talk to you when Mr. Moran was not

JENNIE RABON - CROSS BY MR. ANDERSON

1 around?

2 A: He talked to me when Mr. Moran was not around, yes.

3 Q: Okay. I mean you said y'all were friends?

4 A: Yes.

5 Q: Is it unusual for a friend to come by at work and say,
6 hey, I know you're going through a tough time. Are you okay?

7 Is that unusual?

8 A: In this case, that is unusual.

9 Q: Okay. So for someone who helps you put up Christmas
10 decorations and for someone that helps you plant stuff and for
11 someone that comes by and talks to you, it would be unusual
12 for him just to stop by out of the blue and say, hey, I know
13 you're separated, you're going through a tough time, I'm just
14 checking on you? That's unusual?

15 A: That was unusual.

16 Q: Okay. The Real Estate Weekly magazine also used to come
17 out in the -- in the paper; is that right? The paper used to
18 put out something in Sunday's paper about an open house?

19 A: I'm not sure about Sunday's paper. I just know the Real
20 Estate Weekly.

21 Q: And they put them out in a large number of places?

22 A: They do.

23 Q: A lot of restaurants?

24 A: Yes.

25 Q: A lot of convenience stores?

JENNIE RABON - CROSS BY MR. ANDERSON

- 1 A: Yes.
- 2 Q: Of course, it's -- I mean you don't have to buy them.
- 3 It's free; is that right?
- 4 A: That is right.
- 5 Q: And they want people to come to those open houses?
- 6 A: That is true.
- 7 Q: I mean --
- 8 A: Yes.
- 9 Q: -- you want to sell the house?
- 10 A: That's right, yes.
- 11 Q: When you saw your friend, Red, he never was threatening
- 12 you in any way, shape or form, was he?
- 13 A: No.
- 14 Q: Did you -- when he came in, you didn't see, like, a
- 15 pistol or anything on him, did you?
- 16 A: No.
- 17 Q: He never made any remarks to you, hey, Mr. Parrott's
- 18 going to get what he deserves? He never said that to you, did
- 19 he?
- 20 A: No.
- 21 Q: Earlier when you were describing the house off Hoffmeyer
- 22 Road, that's in Darlington County?
- 23 A: It is in Darlington County, yes.
- 24 Q: And I think earlier when you were actually talking, you
- 25 said "our house." You referred to it as "our house." Do you

JENNIE RABON - CROSS BY MR. ANDERSON

1 and Randy consider it y'all's house?

2 A: We do.

3 Q: I think you indicated to Mr. McEachin that you met with
4 law enforcement in 2009. Is that October of 2009?

5 A: Yes.

6 Q: Did you meet with this investigator right here, Detective
7 Bell?

8 A: I did not.

9 Q: Did you meet with any investigators?

10 A: I did.

11 Q: Did they ever ask you to make a statement?

12 A: No.

13 Q: Did they ever ask you to write down anything?

14 A: No, sir.

15 Q: Did they ever say, now, Ms. Moran, I know this is a
16 trying time, but if anything comes to mind, anything at all,
17 just give us a call and let us know? Did they ever say that
18 to you?

19 A: No.

20 Q: Did they ever say, Ms. Moran, you know, based on
21 everything that we've told you, now that you know everything,
22 is there anything over the last six -- eight months appear to
23 be unusual to you? Did they ever say that? Because if they
24 would have, you would have said, hey, my friend, Red, he was
25 at my apartment complex on two or three separate occasions,

JENNIE RABON - CROSS BY MR. ANDERSON

1 but you never told them that, did you?

2 A: Why would I tell them that?

3 Q: You never said, hey, Red just -- and it's out of
4 character for Red to just -- out of the blue, he just stopped
5 by my realty office. You never told them that, did you?

6 A: Who would I tell that and why would I tell that?

7 THE COURT: Ma'am, if you'll answer the question he's
8 asking. It's your responsibility to answer him. Okay?

9 A: No, I never told anyone that.

10 Q: You never said, hey, that Red -- this is really out of
11 character, but he was at my apartment complex and then later
12 he went by an open house and also came by my realty office.
13 You never said that, did you?

14 A: No.

15 Q: Now, you said you got a divorce in December of 2010? Or
16 was it December of 2009 or December of 2010?

17 A: '10.

18 Q: And Mr. Moran has currently got custody of y'all's son?

19 A: Yes.

20 MR. ANDERSON: That's all the questions I have, Judge.

21 THE COURT: Thank you. Mr. Banner, cross examination.

22 MR. BANNER: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. BANNER:

25 Q: Good afternoon, Ms. Rabon. Have you -- have you taken

JENNIE RABON - CROSS BY MR. BANNER

1 your name back? Rabon?

2 A: Yes.

3 Q: Okay. Were you married to James Carlyle Rabon Sr.?

4 A: Yes.

5 Q: Okay. And that was your name before you married Darryl
6 Moran; correct?

7 A: That is correct.

8 Q: Okay. And as I understand it -- I don't want to beat a
9 dead horse. I know most of this has come out, but as I want
10 to make sure I understand, you were married to Darryl in 1996;
11 is that correct?

12 A: Yes.

13 Q: And y'all were married until -- you said May of 2009 when
14 you left the home; correct?

15 A: That is correct.

16 Q: So about 13 years or so?

17 A: Yes, sir.

18 Q: Okay. And when you left the home, you filed for divorce;
19 correct?

20 A: No.

21 Q: Okay. Your -- at the time, your son, Dalton, and your
22 son, James Carlyle Jr., were living with Darryl Moran;
23 correct?

24 A: Not to my knowledge.

25 Q: Okay.

JENNIE RABON - CROSS BY MR. BANNER

- 1 A: James Carlyle Rabon was not living with Darryl Moran.
- 2 Q: Okay. But Dalton, your son with Darryl --
- 3 A: Dalton was living with Darryle.
- 4 Q: -- was living there?
- 5 A: Yes.
- 6 Q: Okay. And then you were forced -- you hired a lawyer to
- 7 represent you in a divorce proceeding; correct?
- 8 A: Correct.
- 9 Q: Darryl hired a lawyer to represent him in a divorce
- 10 proceeding; correct?
- 11 A: Correct.
- 12 Q: And you know that Darryl went and hired a private
- 13 investigator to perform video surveillance of you and Mr.
- 14 Parrott; correct?
- 15 A: Yes.
- 16 Q: Okay. And you saw that video at a hearing, didn't you?
- 17 A: No.
- 18 Q: Okay. At the Family Court hearing, Darryl was granted
- 19 custody of your son, Dalton; correct?
- 20 A: Yes.
- 21 Q: You were -- you were ordered to pay child support,
- 22 weren't you?
- 23 A: Yes.
- 24 Q: Dalton continues to live with Darryl, doesn't he?
- 25 A: Yes.

JENNIE RABON - CROSS BY MR. BANNER

1 Q: And as I understand your testimony, when you moved in
2 with Mr. Parrott, that was in July of 2009; correct?

3 A: Yes.

4 Q: So you were still married to Darryl Moran?

5 A: Yes.

6 Q: You were divorced in December of 2010?

7 A: Yes.

8 Q: Okay. And as I understand your testimony, you did not
9 have any more contact, any discussions, any conversations
10 whatsoever with Darryl Moran at any point after May of 2009;
11 correct?

12 A: We -- we spoke about Dalton.

13 Q: Okay. That was it?

14 A: That was it.

15 Q: About your child?

16 A: About our child.

17 Q: And about the care of your child?

18 A: The care of our child, yes.

19 Q: Okay. So the only discussions that you had with Darryl
20 between May of 2009 up until today deal solely with Dalton;
21 correct?

22 A: Yes, with Dalton.

23 Q: And you haven't seen Dalton in how many years?

24 A: Seen him or spoke to him?

25 Q: Spoken with him.

JENNIE RABON - CROSS BY MR. BANNER

1 A: I have not spoken with him since May of 2009.

2 Q: And you don't pay child support either, do you?

3 A: No.

4 MR. BANNER: No further questions, Your Honor.

5 THE COURT: Any redirect?

6 MR. MCEACHIN: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. MCEACHIN:

9 Q: You were just asked a number of questions about Dalton.
10 Did you ever try to give Dalton care packages?

11 A: Yes, I did.

12 Q: Okay. And do you know if those ever got to him?

13 A: Yes. I know that one got to him.

14 Q: Okay. And can you tell the jury about that particular
15 care package?

16 A: I sent a care package to Dalton. I call it a care
17 package. It was just a box. With school starting back, it
18 was a Carolina t-shirt, some pencils, cookies from Freeman's,
19 little knick-knacks, and a card in there. And I mailed it to
20 him at Darryl's address. And I Fed-Ex'd it in August and --
21 and in August the same year a few days later, that care
22 package came back to me by Darryl at Walmart in west Florence.

23 Q: And what do you mean it came back to you by Darryl at
24 Walmart?

25 A: I was in Walmart and Darryl was in Walmart and he had

JENNIE RABON - REDIRECT BY MR. MCEACHIN

1 that package in his hand and he was pushing it into my chest
2 and told me that Dalton did not want it.

3 Q: Okay. So he -- he -- do you know how he ended up in
4 Walmart in Florence?

5 A: I do not know.

6 Q: And which -- just out of curiosity, he just happened to
7 be there at the same time you were there?

8 A: Yes.

9 Q: And which Walmart was this in Florence?

10 A: West Florence Walmart.

11 Q: And the West Florence Walmart is closer to the one --
12 closer to your residence on Hoffmeyer Road; is that correct?

13 A: That is correct.

14 Q: And he just happened to be there at the same time?

15 A: Yes.

16 Q: And this care package that you had sent your son -- he
17 had brought it back into the Walmart?

18 A: Into the Walmart.

19 Q: Do you have any idea how he knew you were in Walmart?

20 A: I don't know. I don't have any idea how he knew I was in
21 Walmart.

22 Q: Okay.

23 MR. MCEACHIN: No further questions.

24 THE COURT: Mr. Anderson, anything else?

25 MR. ANDERSON: I don't have any, Your Honor.

1 THE COURT: Mr. Banner?

2 MR. BANNER: No, Your Honor. Thank you.

3 THE COURT: Thank you, ma'am. You may step down.

4 MR. MCEACHIN: Your Honor, may we approach real quick?

5 THE COURT: Yes.

6 (Whereupon, a bench conference is held in the presence of

7 the jury but out of the hearing of the jury off the

8 record.)

9 MR. MCEACHIN: I've got Ms. Floyd ready with the next

10 witness, Your Honor.

11 (Whereupon, there is a pause in the proceedings.)

12 MR. MCEACHIN: Your Honor, I ask that Ms. Rabon be able

13 to be released from her subpoena and be allowed to stay in the

14 courtroom.

15 THE COURT: Any objection, Mr. Anderson?

16 MR. ANDERSON: No, sir, Your Honor.

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

18 THE COURT: All right.

19 THE CLERK: Sir, if you'll come around and let me swear

20 you in, please, sir. Sir, if you'll come around here and put

21 your -- place your left hand on the Bible and raise your right

22 hand. Do you solemnly swear or affirm the evidence you give

23 in the trial of this case shall be the truth, the whole truth,

24 and nothing but the truth, so help you God?

25 THE WITNESS: I do.

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 THE CLERK: Thank you. You may take a seat in the
2 witness box.

3 KEITH CAULDER, being first duly
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. MCEACHIN:

7 Q: Keith, if you would, would you please state your full
8 name for the record?

9 A: Keith Douglas Caulder.

10 Q: And, Keith, how old are you?

11 A: Forty.

12 Q: Forty years old?

13 A: Mm-hmm.

14 Q: Do you have a birthday coming up soon?

15 A: Yeah.

16 Q: When's it coming up?

17 A: A couple days.

18 Q: Okay. So you'll be 41 then?

19 A: Yeah.

20 Q: All right. If you don't mind, would you tell this jury
21 where you currently reside?

22 A: Marion County.

23 Q: And how long have you lived in Marion?

24 A: My whole life.

25 Q: Now, Keith, the reason we're here today is because of a

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 couple of charges that have come up and, before we get into
2 those, I want to ask you a couple of brief questions. Do you
3 know an individual by the name of Darryl Moran?

4 A: No.

5 Q: You ever met him?

6 A: Uh-uh.

7 Q: Never heard of him?

8 A: No.

9 Q: Okay. More particularly, do you know an individual by
10 the name of James Earl Herring Jr.?

11 A: Yes, sir.

12 Q: And do you see him in the courtroom here today?

13 A: Yes, sir.

14 Q: And could you tell the jury what he's wearing?

15 A: It looks like a blue shirt and a white t-shirt.

16 Q: All right.

17 MR. MCEACHIN: And, Your Honor, I just ask that the
18 record reflect that he's identified Mr. Herring.

19 THE COURT: So noted for the record.

20 MR. MCEACHIN: Thank you.

21 BY MR. MCEACHIN:

22 Q: Keith, if you don't mind telling the jury, how -- how did
23 -- do you know him by James or how do you know James?

24 A: As Little Man.

25 Q: Little Man?

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 A: Yeah.

2 Q: Okay. That's what you know him as? That's just a
3 nickname he has?

4 A: Yeah.

5 Q: All right. How do you -- how long have you known Little
6 Man?

7 A: Probably since I was about 15.

8 Q: Fifteen? So that's going on, if my math is right, about
9 25 years?

10 A: Yeah.

11 Q: And how did y'all come to meet one another?

12 A: We just had mutual friends and we met from there and just
13 became friends.

14 Q: All right. And during that 25 years or so you've known
15 him, did y'all have occasion to hang out?

16 A: Yeah, occasionally.

17 Q: And do things together?

18 A: Yeah.

19 Q: And specifically, do you ever recall in or about October
20 of 2009 him coming to your house?

21 A: Yes, sir.

22 Q: And can you please let this jury know how you -- or how
23 he came up --

24 MR. MCEACHIN: I guess strike that, Your Honor.

25 Q: How did you find out he was looking for you?

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 A: My aunt called me and told me that he stopped by about a
2 job.

3 Q: All right.

4 A: So I told her to let him know that I'd be home in about
5 30 minutes. I went home.

6 Q: So when he first came by, you weren't there?

7 A: No.

8 Q: And you -- once you -- once you heard from him, did you
9 go back to the house?

10 A: Yeah.

11 Q: And -- and I think you've already answered you've lived
12 in Marion your whole life.. This house is in Marion County?

13 A: Yes, sir.

14 Q: And when you -- when you went back to the house, was
15 Little Man -- or was Herring already there?

16 A: No. Uh-uh.

17 Q: All right. Did he come by that night?

18 A: I guess about five or ten minutes maybe after I got home.

19 Q: All right. And did y'all speak that night?

20 A: Yes, sir.

21 Q: And what did you speak about?

22 A: He had said something about a job and I asked him what
23 kind of job and that's when he went into detail about somebody
24 had offered him money to kill somebody.

25 Q: All right. So it dealt with killing somebody?

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 A: Mm-hmm.

2 Q: And once he told you that, did he go into some detail?

3 A: Yeah. He said that the guy was -- we was supposed to
4 meet the guy the next morning and the guy was going to give
5 him the money and we were supposed to go to the house and kill
6 somebody and then break in the house and make it look like a
7 robbery, if I'm not mistaken.

8 Q: All right. And this was a conversation you had with
9 James Earl Herring?

10 A: Yes, sir.

11 Q: This all took place at your house in Marion?

12 A: Yes, sir.

13 Q: Now, with regard -- did he say how much money would be
14 involved in the case?

15 A: If I'm not mistaken, it was \$3,000.

16 Q: \$3,000? And that was the price that you would -- you and
17 him were going to get paid that amount or were you going to
18 get paid that amount?

19 A: That's what we were going to split.

20 Q: All right. And he told you about the -- did he tell you
21 about a lot of the details?

22 A: No, not really a lot of the details. Just that he was --
23 somebody in Marion was going to pay him to kill someone and
24 that we were supposed to go to Florence and the guy was going
25 to pay us in advance.

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 Q: Did he say when it was going to happen?
2 A: The following morning.
3 Q: Okay. So he came to you that night and it was going to
4 happen the following morning?
5 A: Mm-hmm.
6 Q: Now, did he describe the property or anything along those
7 lines to you?
8 A: Uh-uh.
9 Q: Did he tell you what the plan was?
10 A: Just other than that we were supposed to kill him and
11 break in the house and make it look like a burglary.
12 Q: Okay. Once he told you this, did he stay at the house?
13 Did he stay there with you until the next morning or what
14 happened? Where did he go?
15 A: No. He got a phone call and said he had to go and he'd
16 call me later.
17 Q: All right. And once he left, what did you do?
18 A: I sat around and thought about it for about an hour and
19 then I went to the Sheriff's Department.
20 Q: So you went to law enforcement once he approached you
21 about doing this killing?
22 A: Mm-hmm.
23 Q: Okay.
24 MR. MCEACHIN: I beg the Court's indulgence for just a
25 moment.

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 Q: Keith, I want to ask you a couple of brief questions, not
2 to embarrass you or anything, but you've been in a little
3 trouble in the past; is that correct?

4 A: I've been in quite a little bit, yeah.

5 Q: Okay. In 2009, you had a breach of trust charge?

6 A: Mm-hmm.

7 Q: You got convicted of that in 2009?

8 A: Mm-hmm.

9 Q: And then this year you had a giving false information
10 charge you were convicted of; is that correct?

11 A: Yes, sir.

12 Q: Okay. And going back for a minute, when he was -- when I
13 say "he", I'm referring to James Herring. When he was talking
14 to you about doing this job or doing this killing, did he say
15 where? And when I say "where", I'm talking about the location
16 of where it was going to -- or where it was to occur.

17 A: Just Florence is all I know.

18 Q: Okay. And did he just -- and I think I may have already
19 asked you this, but I just want to make sure. Did he describe
20 the property or how y'all were going to do it or where y'all
21 were going to go?

22 A: He didn't describe the property. Just that it was a
23 house and that we were supposed to, like I said, make it look
24 like a burglary.

25 Q: Okay. When you went and spoke with law enforcement, did

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 you use any sort of recorder or anything like that?

2 A: I -- yeah. I wrote a statement.

3 Q: Okay.

4 MR. MCEACHIN: Your Honor, may I approach the witness?

5 THE COURT: Yes, sir.

6 BY MR. MCEACHIN:

7 Q: Would it help your -- or refresh your memory if I gave
8 you the statement to look at?

9 A: Yeah, I would assume.

10 Q: Take a minute and look over it.

11 (Whereupon, the witness complies.)

12 Q: All right. Did you have a chance to look at it? Let me
13 grab that back from you. Once y'all got to Florence, what
14 were y'all going to do?

15 A: Park behind a barn and wait for the guy to get home, I
16 guess go in and kill him, and then make it look like a
17 robbery.

18 Q: And make it look like a robbery?

19 A: Yeah.

20 Q: And that was your understanding of what Mr. Herring
21 wanted you to do for him?

22 A: Yes, sir.

23 Q: Did it come across to you that he was joking in any way?

24 A: No. Like I said, I mean after he left, I thought about
25 it and he seemed pretty intent on what he was saying. So

KEITH CAULDER - DIRECT BY MR. MCEACHIN

1 therefore, I took him serious.

2 Q: And that's why you went to law enforcement?

3 A: Mm-hmm.

4 Q: Okay. Do you remember who you spoke with?

5 A: Martin Bell I think was the first person I spoke to.

6 Q: This fellow right here?

7 A: Yes, sir.

8 Q: Okay. Thank you. Please answer any questions Mr.

9 Anderson or Mr. Banner have for you.

10 A: Okay.

11 THE COURT: Mr. Anderson, cross examination.

12 CROSS EXAMINATION

13 BY MR. ANDERSON:

14 Q: Mr. Caulder, you said you do not know Mr. Moran?

15 A: Uh-uh.

16 THE COURT: Is that a no? I need a verbal response.

17 A: No, sir.

18 THE COURT: Thank you.

19 Q: But you do know James Herring?

20 A: Yes, sir.

21 Q: I think you said you've known him since you were about

22 15?

23 A: Yes, sir.

24 Q: If you're almost 41, 25 -- 26 years?

25 A: Yes, sir.

26

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KEITH CAULDER - CROSS BY MR. ANDERSON

1 Q: I think you said that y'all hung out and sometimes y'all
2 would do stuff together?

3 A: Yeah. We'd drink or whatever, go hang out.

4 Q: You had some mutual acquaintances I believe is what you
5 said?

6 A: Yes, sir.

7 Q: Prior to October of 2009, when was the last time y'all
8 had hung out together?

9 A: Probably been four or five years.

10 Q: You said four or five years?

11 A: If I'm not mistaken.

12 Q: Now, Mr. McEachin asked you earlier about some things in
13 your past?

14 A: Mm-hmm.

15 Q: And in -- on July the 28th of 2009, you pled to breach of
16 trust with fraudulent intent; right?

17 A: Yes, sir.

18 Q: And then supposedly my client comes to see you two or
19 three months later in October of 2009; is that right?

20 A: Mm-hmm.

21 THE COURT: Is that a yes?

22 A: Yes, sir.

23 THE COURT: Thank you.

24 Q: You hadn't seen him in four or five years?

25 A: No, sir.

KEITH CAULDER - CROSS BY MR. ANDERSON

1 Q: Now, when you pled to breach of trust with fraudulent
2 intent, you were also ordered to pay restitution; is that
3 right?

4 A: Yes, sir.

5 Q: A little over \$5,000?

6 A: Yes, sir.

7 MR. MCEACHIN: Your Honor, I'm going to object at this
8 point. There may be a matter of law that we need to take up.

9 (Whereupon, a bench conference is held in the presence of
10 the jury but out of the hearing of the jury as follows.)

11 MR. MCEACHIN: That's totally improper, Judge. He's
12 allowed to ask if he was convicted of something, but that's
13 it. He can't get into any details.

14 THE COURT: I'm not going to allow you to go into all the
15 details of it.

16 MR. ANDERSON: Well, my next question was going to be
17 what is breach of trust with fraudulent intent? Can I ask him
18 that?

19 THE COURT: That's for me to -- I mean --

20 MR. MCEACHIN: That's not what the rule allows, Judge.
21 It doesn't let him get into the details of it.

22 MR. ANDERSON: I think it's up to each individual judge
23 as to what he will allow.

24 THE COURT: I'm not going to allow you to go into that.
25 The rule provides -- I mean that you can ask him what he was

KEITH CAULDER - CROSS BY MR. ANDERSON

1 convicted of and what the conviction was and you've done that.

2 I'm not going to allow you to go any further.

3 (Whereupon, the bench conference ends.)

4 BY MR. ANDERSON:

5 Q: In 2014, you -- earlier this year -- June of this year.

6 So about two months ago or three months ago, you pled to

7 giving false information to law enforcement? Basically, you

8 lied to law enforcement?

9 A: Yeah. I was drunk.

10 Q: James calls you in October of 2009, hadn't seen you since
11 sometime in 2004 or 2005; is that right?

12 A: Yes, sir.

13 Q: He comes by your house and he goes, man, have I got a
14 deal for you. I've got a job in Florence that will pay us
15 about \$3,000. Is that what he said?

16 A: I think so. Yes, sir.

17 Q: All we've got to do is ride over there and kill somebody?

18 A: Yes, sir.

19 Q: He hadn't seen you in five years and he doesn't ask you
20 how you've been doing. He doesn't ask you what you've been up
21 to. He doesn't ask you anything at all about you. He just
22 says, hey, I've got a hustle for us, easy money. Let's go
23 kill this guy in Florence tomorrow morning?

24 A: If I'm not mistaken, he said he knew I was one that he
25 could trust.

KEITH CAULDER - CROSS BY MR. ANDERSON

1 Q: He hadn't seen you in four or five years, but still
2 thinks he can trust you?

3 A: Yes, sir.

4 Q: Convicted of a crime two or three months earlier?

5 A: Yeah.

6 Q: Okay. And after -- I'm sorry. I'm sorry. While you and
7 he are discussing the details, suddenly James gets a phone
8 call; is that right?

9 A: Yes, sir.

10 Q: And says I'll get back to you?

11 A: Yes, sir.

12 Q: He never got back to you, did he?

13 A: He called me and I didn't answer the phone.

14 MR. ANDERSON: Your Honor, may I approach the witness?

15 THE COURT: Yes, sir.

16 BY MR. ANDERSON:

17 Q: Did you put that in this statement?

18 A: No, sir.

19 Q: You didn't put that in that statement? You didn't tell
20 this officer right here, hey, he called me back later, but I
21 didn't answer the phone?

22 A: I must not have.

23 Q: I mean I'm sure that when Martin was talking to you he
24 said, Mr. Rabon, take your time when you write that statement;
25 is that right?

KEITH CAULDER - CROSS BY MR. ANDERSON

1 A: You said Mr. who?

2 Q: I'm sorry. Not Mr. Rabon. Mr. Caulder, take your time
3 when you write that statement?

4 A: I'm pretty sure he did.

5 Q: He said anything that comes to mind put in this
6 statement?

7 A: Yes, sir.

8 Q: Take as much time as you need because I want you to write
9 the most complete, detailed statement that you can. Something
10 to that effect; is that right?

11 A: I'm pretty sure he did.

12 Q: But you didn't put that in the statement, did you?

13 A: I must not have.

14 Q: You didn't put in the statement, hey, James and I hadn't
15 seen each other since probably five or six years. You didn't
16 put that in here, did you?

17 A: No, sir.

18 Q: As the time started, it says 10:50; is that right? At
19 the top of the page? You started talking with Mr. --

20 A: That's when I made the statement. Yes, sir.

21 Q: -- Bell at 10:50 p.m.; is that right?

22 A: Yes, sir.

23 Q: And at the bottom of the page, it says finished at 11:07;
24 is that right?

25 A: Yes, sir.

KEITH CAULDER - CROSS BY MR. ANDERSON

1 Q: Same day, October the 12th, 2009. So basically, 17
2 minutes for you to talk with him and get a little bit of
3 information from you and then you to write a 14 -- 15-line
4 statement?

5 A: If I'm not mistaken, we talked for a while before I even
6 got this paper and made a statement.

7 Q: Okay.

8 A: I think it may have been a couple hours.

9 Q: All right. At the top of the statement it says Voluntary
10 Statement, 10/12/2009, Place: Marion County Sheriff's Office;
11 is that right?

12 A: Yes, sir.

13 Q: It started at 10:50 p.m.?

14 A: That's what it says on here.

15 Q: Who filled that out? You or the officer?

16 A: I did. This part here?

17 Q: Yes, sir.

18 A: I did.

19 Q: You didn't put on there that the conversation started at
20 six o'clock or seven o'clock, anything like that, did you?

21 A: No, sir.

22 Q: Did you go to the Sheriff's Office or did someone come
23 see you?

24 A: I went to the Sheriff's Department.

25 Q: I'm just curious. You didn't put in there about the fact

KEITH CAULDER - CROSS BY MR. ANDERSON

1 that he called you later. Did he leave you a voicemail?

2 A: No, sir.

3 Q: Did you take the phone and go, hey, Investigator Bell,
4 right here's where this guy called me back? Did you do that?

5 A: No, sir. It must have slipped my mind.

6 Q: In your statement, it says y'all were supposed to do it
7 at five a.m. the next morning. James didn't show up at five
8 a.m. the next morning, did he?

9 A: No, sir.

10 Q: Was Martin Bell or anyone from Marion County Sheriff's
11 Office -- were they at your house the next morning at five
12 a.m. --

13 A: Yes, sir.

14 Q: -- waiting on Mr. Herring?

15 A: Yes, sir.

16 Q: They were? But Mr. Herring wasn't there, was he?

17 A: No, sir.

18 Q: Mr. Moran wasn't there, was he?

19 A: I never even heard of him.

20 Q: Nobody showed up, did they?

21 A: No, sir.

22 Q: You didn't call him back and tip him off, did you?

23 A: No, sir.

24 MR. ANDERSON: Your Honor, that's all the questions I
25 have at this time.

KEITH CAULDER - CROSS BY MR. BANNER

1 THE COURT: All right. Mr. Banner, cross examination.

2 MR. BANNER: Thank you, Your Honor. Very briefly.

3 CROSS EXAMINATION

4 BY MR. BANNER:

5 Q: Mr. Caulder, good afternoon, sir.

6 A: How are you doing?

7 Q: As I understand it, you've never met Darryl Moran;
8 correct?

9 A: No, sir.

10 Q: You've never spoken to him?

11 A: No, sir.

12 Q: Never even heard of him, have you?

13 A: No, sir.

14 Q: In your voluntary statement that you gave that evening,
15 he's not included in there, is he?

16 A: No, sir.

17 Q: Mr. Herring has never told you anything about Darryl
18 Moran, has he?

19 A: He never said his name that I recall.

20 Q: And Darryl Moran has never come to you to encourage you
21 to commit any crime, has he?

22 A: No, sir.

23 Q: He's never come to you to entice you to commit any crime,
24 has he?

25 A: No, sir.

KEITH CAULDER - CROSS BY MR. BANNER

1 Q: He's never come to you to offer for you to commit any
2 crime, has he?

3 A: No, sir.

4 Q: He's never come to you to order you to commit any crime,
5 has he?

6 A: No, sir.

7 Q: You've never had any dealings with him whatsoever in your
8 entire life, have you?

9 A: No, sir.

10 MR. BANNER: Thank you, Your Honor. That's all I have.

11 MR. MCEACHIN: Very briefly.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. MCEACHIN:

15 Q: Mr. Anderson asked you a number of times about the phone
16 call that James Herring made after he had come to see you.

17 A: Mm-hmm.

18 Q: Do you remember exactly when that was? What time of
19 night it was or anything?

20 A: No, I don't remember exactly what time it was.

21 Q: You don't recall, but you remember not answering?

22 A: Yeah.

23 Q: And you're sure it was him who called you? It was his
24 number?

25 A: Yes, sir. It was the number he had just given me.

KEITH CAULDER - REDIRECT BY MR. MCEACHIN

1 Q: All right. And after -- you said you took some time to
2 think about this and then you went to law enforcement, but you
3 considered it serious enough where you needed to go to law
4 enforcement; is that correct?

5 A: Yes, sir.

6 Q: And you sat down and spoke to Martin Bell about it; is
7 that right?

8 A: Yes, sir. I sat there and talked for several hours, if
9 I'm not mistaken.

10 Q: Since that time, since October of 2009, have you spoken
11 to anybody else about this case?

12 A: Uh-uh.

13 MR. MCEACHIN: Thank you. No further questions.

14 THE COURT: Mr. Anderson?

15 MR. ANDERSON: I don't have any questions, Judge.

16 THE COURT: Mr. Banner?

17 MR. BANNER: No, Your Honor. Thank you.

18 THE COURT: Sir, you may step down. Thank you.

19 MR. MCEACHIN: And, Your Honor, I ask that he be relieved
20 from his subpoena.

21 THE COURT: Any objection, Mr. Anderson?

22 MR. ANDERSON: No, sir.

23 THE COURT: Mr. Banner?

24 MR. BANNER: No, sir.

25 THE COURT: All right. Sir, you are free to leave. You

1 (Whereupon, the proceedings adjourn for the day at 5:15
2 p.m.)

3 AUGUST 5, 2014

4 (Whereupon, the proceedings resume at 9:43 a.m.)

5 THE COURT: All right. Anything from the State before I
6 bring the jury out?

7 MR. MCEACHIN: No, sir, Your Honor.

8 THE COURT: Mr. Anderson?

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

10 THE COURT: Mr. Banner?

11 MR. BANNER: No, Your Honor.

12 THE COURT: Have we got all the jurors?

13 THE BAILIFF: Yes, sir.

14 THE COURT: All right. Let's bring them out, please,
15 sir.

16 (Whereupon, the jury enters the courtroom at 9:44 a.m.)

17 THE COURT: Good morning, ladies and gentlemen. I hope
18 you all had a good evening last night and are ready and
19 prepared to go forward with the trial of this case. At this
20 time, I'm going to recognize Mr. McEachin. Call your next
21 witness, please.

22 MR. MCEACHIN: Thank you very much, Your Honor. The
23 State would call James Carlyle Rabon Jr. to the stand.

24 THE CLERK: Sir, if you would, come around and let me
25 swear you in, please. Put your left hand on the Bible and

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 raise your right hand. Do you solemnly swear or affirm the
2 evidence you give in the trial of this case shall be the
3 truth, the whole truth, and nothing but the truth, so help you
4 God?

5 THE WITNESS: I swear.

6 THE CLERK: Thank you. Have a seat in the witness box.

7 JAMES CARLYLE RABON JR., being first
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. MCEACHIN:

11 Q: Carlyle, I know you're a little soft spoken; so make sure
12 you speak loud enough where I can hear you. That means all
13 the jurors can hear you as well. Okay?

14 A: All right.

15 Q: If you would, please state your full name for the record?

16 A: My name is James Carlyle Rabon Jr.

17 Q: And you go by Carlyle; is that correct?

18 A: Yes, sir.

19 Q: Carlyle, how old are you?

20 A: I'm 25.

21 Q: And what do you do for a living?

22 A: I sell Kirby vacuums.

23 Q: And where do you currently reside?

24 A: In Aynor -- Conway.

25 Q: In Conway? Horry County, South Carolina?

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

- 1 A: Yes, sir.
- 2 Q: Now, back in the first part -- first part of the year in
3 2009, where were you living at that time?
- 4 A: Same place. Conway.
- 5 Q: All right. And at some point during 2009, did you move
6 out of Conway?
- 7 A: Yes. I moved. When my mama left Darryl, I moved in with
8 Darryl with Dalton to be there for him.
- 9 Q: Now, when you say be there with him, who are you
10 referring to?
- 11 A: Dalton.
- 12 Q: And who is Dalton to you?
- 13 A: Dalton is my little brother.
- 14 Q: Okay. So when -- when your mom left the household, you
15 ended up moving in with Darryl?
- 16 A: Yes, sir.
- 17 Q: And that was to be with your brother, Dalton?
- 18 A: Yes, sir.
- 19 Q: And where -- at that time, where was Darryl -- where were
20 Darryl and Dalton living?
- 21 A: 1928 Senator Gasque Road in Marion, South Carolina.
- 22 Q: All right. And that's here in Marion County?
- 23 A: Yes, sir.
- 24 Q: Had you ever lived in that house before?
- 25 A: From the fifth grade until I was 17.

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

- 1 Q: All right. So that was roughly seven -- eight years?
- 2 A: A long time. Yes, sir.
- 3 Q: Okay. And then you moved to Conway?
- 4 A: Mm-hmm.
- 5 Q: And you moved back into the house once your mama left?
- 6 A: Yes, sir.
- 7 Q: To be with your little brother?
- 8 A: Yes, sir.
- 9 Q: How old was Dalton at the time?
- 10 A: Dalton was born in '98 and that was 2009; so he was
- 11 eleven years old.
- 12 Q: Okay. So your mom -- I believe your mom left sometime
- 13 around May of 2009 or thereabouts. How soon after that did
- 14 you move in at the house?
- 15 A: Probably within a couple of weeks.
- 16 Q: Okay. While you were living there with Darryl and
- 17 Dalton, did anybody else move in with y'all?
- 18 A: Yes. James.
- 19 Q: And when you say James, who are you referring to?
- 20 A: Red.
- 21 Q: Red?
- 22 A: Mm-hmm.
- 23 Q: And that's James Herring?
- 24 A: Yes, sir.
- 25 Q: And do you see him seated in the courtroom here today?

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 A: Yes, sir. Right there.

2 Q: And what's he wearing?

3 A: Red.

4 Q: A red shirt?

5 A: Yes, sir.

6 Q: Okay.

7 MR. MCEACHIN: Please have the record reflect the witness
8 has identified the defendant James Herring..

9 THE COURT: So noted for the record.

10 BY MR. MCEACHIN:

11 Q: And I didn't -- didn't ask you earlier, but do you also
12 see Darryl Moran in the courtroom here today?

13 A: Yes, sir. Right there.

14 Q: And what color shirt is he wearing?

15 A: Some kind of plaid shirt.

16 Q: Some kind of plaid shirt?

17 A: Yeah.

18 MR. MCEACHIN: Your Honor, I'd also ask that the record
19 reflect he's identified Darryl Moran.

20 THE COURT: So noted for the record.

21 BY MR. MCEACHIN:

22 Q: And that's -- those are the two men that you were living
23 with that summer?

24 A: Absolutely.

25 Q: Okay. Now, during the summer months of 2009 while you

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 were -- while you were living there, your mother had already
2 left at this point; is that correct?

3 A: Yes, sir.

4 Q: During that time, did Darryl make any comments regarding
5 your mother or anybody she was seeing?

6 A: All the time.

7 Q: And were these comments favorable? Unfavorable?

8 A: Definitely unfavorable.

9 Q: Okay. At any point during that summer, did Darryl ask
10 you to do anything for him or go anywhere with him?

11 A: Yes. He had found where Mama was living. He wanted to
12 show me where that was at. I got in the car with him and my
13 little brother and we drove to Darlington County. We went
14 down the dirt road. We got out and went through a field, went
15 into the woods, and come up on a house, and there Mama's car
16 was.

17 Q: And what time of day or night was this?

18 A: This was night. Midnight, one o'clock, somewhere.

19 Q: Okay. And you said y'all went down a dirt road and
20 through a field and through some woods?

21 A: Yes, sir.

22 Q: So you kind of snuck up on a house?

23 A: Definitely snuck up on the house.

24 Q: All right. And did he indicate to you that that's where
25 your mama was staying?

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 A: Yes, sir.

2 Q: And he -- and that was in Darlington County?

3 A: Yes, sir.

4 Q: Now, while y'all were there, how long did y'all stay

5 there?

6 A: Well, we was supposed to just go there to see if she was

7 there, but then that turned into staying all night long in the

8 woods to videotape her walking out of the house the next

9 morning. So we stayed there probably until nine the next

10 morning.

11 Q: So a long time?

12 A: All night long.

13 Q: Okay. Did y'all finally then leave?

14 A: Yes. We left and went to a private investigator's house.

15 Q: Okay. So after that, y'all went to a private

16 investigator's house?

17 A: Yes, sir.

18 Q: All right. What did y'all -- what did you do after --

19 after y'all went to the private investigator's house?

20 A: After we went to the private investigator's house, he

21 talked to him for a while and I left and went to work.

22 Q: Now, going back to that particular night, do you know how

23 Darryl knew where your mama was living?

24 A: No. I have no clue how he found out where she was

25 living.

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 Q: Okay. Had you ever been there before?

2 A: No.

3 Q: Okay.

4 A: No.

5 Q: You didn't tell Darryl how to get there?

6 A: No.

7 Q: He's the one who knew how to get there?

8 A: Yes.

9 Q: All right. And this -- this place where y'all went, were
10 there a bunch of houses where their house is?

11 A: Absolutely not. They live down, like, a mile driveway.
12 So you've got to -- I sell Kirbys so I knock on doors for a
13 living. There's not too many houses that can hide from me,
14 but theirs could have --

15 Q: Okay.

16 A: -- because it's, like, farm land. You've got to go way
17 back there to find it.

18 Q: So you have to look to find that house?

19 A: Yeah. You don't know it's there from the visuals.
20 You've got to drive.

21 Q: And Darryl is the one who showed y'all how to get there?

22 A: Yes, sir.

23 Q: Okay. After that particular night -- and let me ask you
24 this a minute. Was -- was James Herring with y'all that
25 night?

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 A: No, sir.

2 Q: He wasn't with y'all?

3 A: No, he was not.

4 Q: Now, after that particular night, did you happen to
5 overhear any conversations between Darryl and James?

6 A: One more time?

7 Q: Yeah. I'm sorry. After that particular night, did you
8 happen to overhear any conversations between Darryl and James?

9 A: Yes, sir. The kitchen in the house in Marion is tile; so
10 if anybody has ever had tile, you can't whisper in a tiled
11 room. And just regular talking in there goes. So I mean I
12 would hear Darryl ask Red to talk to him. Will he do it? How
13 much would it cost? Will he do it for \$2,000? Questions of
14 that sort.

15 Q: Okay. And at that time, did you have any idea what he
16 was talking about?

17 A: No. At that particular time, Darryl owned a stumping
18 business; so he all the time had pieces of equipment and stuff
19 that had to be fixed, moved, hauled, whatever. So that's what
20 I really thought he was talking about.

21 Q: Okay. After that, did you realize they were talking
22 about something else?

23 A: When SLED showed up to my house, that's when I knew. I
24 put the pieces of the puzzle together.

25 Q: Okay. Now, before SLED showed up at your house, did

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 Darryl ever ask you anything that concerned you?

2 A: Yes. Darryl asked me if I knew where I could get a
3 silencer. I asked him for what, a 9 or a .45, and it didn't
4 matter. So that was the first thing that really struck me.

5 Q: And that concerned you?

6 A: Yes.

7 Q: All right. Did he ask you to do anything else?

8 A: He asked me -- do you want me to use his terminology? Do
9 you want me to say it as he asked me or do you want me to put
10 it in my own words?

11 Q: I want you for the jury's sake to say exactly how he said
12 it.

13 A: Okay. He asked me do I know anybody who would fuck Randy
14 up.

15 Q: Okay. And did you know anybody?

16 A: No.

17 Q: Okay. After he had asked you these things about somebody
18 that could mess Randy up, as well as the silencer, what, if
19 anything, happened during that period of time that also caused
20 you some concern?

21 A: When -- when the Sheriff's Office came to Darryl's house
22 and had questioned him about this stuff here, that's when I
23 decided I'd leave.

24 Q: All right.

25 A: At that point, I left.

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 Q: Okay. Before you ended up leaving the house, did you
2 have any sort of conversation with Darryl before -- I guess
3 after the Sheriff's Office came but after -- let me make --
4 strike that. Let me make sure I ask you this so you
5 understand. Before you left the house but after the Sheriff's
6 Office had come out to the house, did you and Darryl have a
7 conversation?

8 A: Yes.

9 Q: And please let the jury know what was said in that
10 conversation?

11 A: Okay. The police come to the house and questioned
12 Darryl. It was Martin Bell. Darryl told him that they he
13 said/she said bullshit, that they had nothing that would hold
14 up in court. The plan was somebody was going to hide at the
15 end of Randy's driveway, throw a large object in the driveway.
16 Somebody would be hiding in the woods. When Randy stopped and
17 exited his vehicle to get to whatever was blocking the
18 driveway out of the driveway, somebody was going to jump out
19 and shoot him dead.

20 Q: Shoot him dead?

21 A: Mm-hmm.

22 Q: Okay.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 BY MR. MCEACHIN:

2 Q: And that was what Darryl told you the plan was for Randy?

3 A: Yes, sir. We were sitting in the garage in Marion. I
4 was sitting on the weight bench and he had his foot on the
5 floor jack and his hand on the hammer.

6 Q: And you remember that specifically?

7 A: Specifically. Kind of hard to forget something like
8 that.

9 Q: And after he told you that, is that when you moved out?

10 A: The day afterwards, I was gone.

11 Q: So he had asked you about a silencer?

12 A: Mm-hmm. Yes, sir.

13 Q: He had asked you if there was somebody you knew that
14 could mess him up?

15 A: Yes, sir.

16 Q: And then he told you what the plan was for Randy?

17 A: Yes, sir..

18 Q: And you moved out then?

19 A: Yes, sir.

20 Q: Were you aware at any point in time if James Herring was
21 arrested or not in this case?

22 A: I had -- I had done left the house when I found out he
23 had been arrested for this.

24 Q: Okay. Do you know what, if anything, Darryl did upon
25 James's arrest?

JAMES CARLYLE RABON JR. - DIRECT BY MR. MCEACHIN

1 A: He bailed him out immediately.

2 Q: When you say immediately, how soon are you talking about?

3 A: In and out.

4 Q: Thank you. Please answer any questions Mr. Anderson or
5 Mr. Banner may have for you.

6 THE COURT: Cross examination, Mr. Anderson.

7 CROSS EXAMINATION

8 BY MR. ANDERSON:

9 Q: Now, when you say in and out, what do you mean by in and
10 out as far as my client, James, is concerned?

11 A: To my knowledge, James went to jail and he wasn't there
12 very long before he was out.

13 Q: All right. So if I showed you a warrant that says that
14 my client was arrested on October the 13th, 2009, you wouldn't
15 dispute that, would you?

16 MR. MCEACHIN: Your Honor, if Mr. Anderson is going to
17 question him about the warrant, I have no objection to it
18 being admitted if he's going to ask him specific questions
19 about the warrant.

20 THE COURT: All right. Mr. Anderson?

21 MR. ANDERSON: I'm just asking him if he knew when he was
22 arrested in October of 2009, Your Honor.

23 THE COURT: If he knows, he can answer the question. If
24 he doesn't --

25 BY MR. ANDERSON:

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

- 1 A: No. I do not know he was arrested on that date.
- 2 Q: Okay. Do you remember writing a statement?
- 3 A: Yes, sir.
- 4 Q: Have you seen it lately?
- 5 A: Yes, sir.
- 6 Q: When was the last time you looked at it?
- 7 A: I actually looked at my statement this morning.
- 8 Q: All right. Is that your statement?
- 9 A: Yes, sir.
- 10 Q: Have you looked at it?
- 11 A: I can tell my handwriting.
- 12 Q: All right. Two pages long?
- 13 A: Actually, a page and a half and I marked the others one
- 14 out.
- 15 Q: Put your initials on the part you marked out?
- 16 A: On every one of them, yes, sir, and every word spelled
- 17 wrong.
- 18 Q: All right. When did you write that statement?
- 19 A: That statement was wrote 11:08 a.m. the 28th of September,
- 20 10th.
- 21 Q: September of 2010?
- 22 A: Yes, sir. It was 2010.
- 23 Q: All right. You said September 10th I think. The 28th of
- 24 September of 2010?
- 25 A: Yes, sir.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 Q: So if my client was arrested in October of 2009, it was
2 about eleven months before you wrote this statement?

3 A: Afterwards. I don't know, but if this statement was
4 wrote in 2010 and he was arrested in 2009, it would have been
5 eleven months after he was arrested.

6 Q: Right. Eleven months after he was arrested?

7 A: Mm-hmm.

8 Q: Is that right?

9 A: Yes, sir.

10 Q: And you definitely wrote it in September of 2010?

11 A: Yes, sir.

12 Q: All right. And, of course, we've already established
13 this fact. After James was arrested, he was immediately
14 bailed out?

15 A: He was bailed out pretty soon. Immediately is he didn't
16 stay.

17 Q: All right. Within a day?

18 A: I wouldn't put a date on it. I don't know.

19 Q: Okay. And you moved in, according to your testimony,
20 sometime in May of 2009?

21 A: I would not put a date on it because I don't know the
22 date. Sometime in the summer whenever my mama left.

23 Q: Well, Carlyle, I mean you're very specific about a lot of
24 testimony.

25 A: Yes, sir.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 Q: But you don't want to put a date on anything?

2 A: I haven't put a date on anything so far.

3 Q: Okay. All right. Sometime late spring, early summer of
4 2009?

5 A: Yes, sir.

6 Q: Now, prior to that time, Darryl was your stepdad, was he
7 not?

8 A: Yes, sir.

9 Q: Pretty much raised you for how many years would you say?

10 A: I lived with Darryl since I was four or five years old.

11 Q: And then you moved out when you were --

12 A: Seventeen.

13 Q: So 13 years?

14 A: Mm-hmm.

15 Q: Is that a yes?

16 A: Yes, sir.

17 Q: And then you later moved back in?

18 A: I moved back in after my mother left, as we established.

19 Q: Now, to your knowledge, had Darryl done anything wrong?

20 A: At that time, no. Well, hold on. Let me understand your
21 question. When you say done anything wrong, what does that
22 mean?

23 Q: Caused you -- him and your mom to separate.

24 A: Darryl was the reason I left home.

25 Q: Okay.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 A: Darryl would not allow me to talk to my mother. He would
2 not allow any conversation, communication or visitation. So,
3 therefore, then yes, he had done plenty of wrong to me.

4 Q: But then you moved back in?

5 A: When he come to me in a field and apologized and cried on
6 my shoulder and told me how much he missed me and how he
7 wanted his family to be back together and he begged me to come
8 back to Marion and go out to eat, yes. I missed my mama and I
9 wanted to see her so, yes, I moved back in.

10 Q: But she wasn't home?

11 A: She was at that time. She wasn't -- I went and visited.
12 When she left, I moved in for Dalton's sake, not Darryl's.

13 Q: Okay. So all this is for your stepbrother?

14 A: My half-brother.

15 Q: Your half-brother?

16 A: Yeah.

17 Q: How long did you stay there?

18 A: I did not carry out the full year; so just a few months.

19 Q: So from May until when?

20 A: I want to say -- well, you said Red went to jail in
21 October; correct? Is that what I told you? So I wasn't
22 living there when Red went to jail. So I wouldn't say I moved
23 in from May either. You said May. I didn't. I said I moved
24 in sometime in the summer; so I'm just going to state but a
25 couple months.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 Q: All right. Let me see if I got this straight. When Mr.
2 McEachin was talking to you, you said that your mom left
3 Darryl and that was in about May of 2009 and then you moved in
4 shortly after that?

5 A: Yes, sir.

6 Q: So let's just say June of 2009?

7 A: All right. I could go with June.

8 Q: All right. So you would have been there June, July,
9 August, September, October, and then you left?

10 A: Well, Red got arrested in October; so that -- I probably
11 I left in September.

12 Q: Okay. So you weren't there the latter part of 2009 and
13 you weren't there in 2010?

14 A: Uh-uh.

15 Q: All right.

16 THE COURT: Is that a yes or no?

17 THE WITNESS: Sir?

18 THE COURT: I need a yes or no for the record.

19 THE WITNESS: That was a no.

20 THE COURT: Thank you. I mean I understand what you're
21 saying, but I want it clear for the record.

22 THE WITNESS: I understand.

23 THE COURT: Okay. Thank you.

24 THE WITNESS: I apologize.

25 BY MR. ANDERSON:

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 Q: All right. Now that we've got some semi-dates
2 established, when did the videotape happen?

3 A: It has been five years ago for me to remember dates. I
4 wouldn't know. Like, it happened in the -- in-between the
5 months that I was there, just somewhere in-between those
6 months. I don't know.

7 Q: All right. Did you call your mom and say, hey?

8 A: No, I did not.

9 Q: Darryl just came up there and videotaped you?

10 A: No, I did not.

11 Q: Did you notify Mr. Parrott?

12 A: Yes.

13 Q: You did?

14 A: I called Randy and left ugly voicemails on Randy's phone.

15 Q: All right. So you didn't tell your mom, but you did call
16 Randy and leave an ugly voicemail?

17 A: Yes, sir.

18 Q: And that was sometime between May and -- or June and
19 September of 2009; is that right?

20 A: Yes, sir. My little girl was born August 12th. The
21 videotape happened before that. I moved in in June. That
22 happened somewhere between June and July.

23 Q: All right. And then at some point in time, you heard
24 conversations between Darryl and James?

25 A: Red. Yeah. Yes, sir.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 Q: Red wearing the red shirt?

2 A: Yes, sir.

3 Q: I call him James. Darryl and James. And you heard them
4 talking about -- would you do it? Do you know anybody that
5 would do it? Would they do it for X amount of dollars?
6 Things like that; is that right?

7 A: Yes, sir.

8 Q: And then you left?

9 A: Yes, sir.

10 Q: And then James got arrested?

11 A: Mm-hmm.

12 Q: Is that a yes?

13 A: Yes, sir.

14 Q: And that's when you called law enforcement and said, you
15 know what? There's some crazy stuff going on. I need to give
16 y'all a statement?

17 A: No, sir. They come to me.

18 Q: So you left in August of 2009 and he gets arrested in
19 October of 2009. So November you went to law enforcement?
20 November of 2009, you went to law enforcement and said, whooo,
21 y'all would not believe what I overheard?

22 A: No, sir, I did not.

23 Q: December?

24 A: No, sir.

25 Q: January of 2010?

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 A: No, sir. The reason I hadn't -- the law had already been
2 to the house and questioned Darryl on this occasion; so I
3 didn't think that me calling them and telling them what they
4 just come to the house for would do any good. They was
5 already involved. I felt the need to just leave.

6 Q: February of 2010?

7 A: Never.

8 Q: March?

9 A: Nope.

10 Q: April?

11 A: To answer your question, I never contacted the law. They
12 contacted me.

13 Q: May of 2010?

14 A: No, sir.

15 Q: June?

16 A: No.

17 Q: Summer? July? August?

18 A: No.

19 Q: September?

20 A: No.

21 Q: September of 2010, you finally write a statement?

22 A: Mm-hmm.

23 THE COURT: Is that a yes?

24 Q: Is that a yes?

25 A: Yes, sir.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 THE COURT: Thank you.

2 Q: And that's because you were so concerned about your
3 mother and Randy; is that right?

4 A: That's right.

5 Q: But you didn't do it the preceding ten months?

6 A: No, sir.

7 Q: When supposedly Darryl comes to you and goes, hey, just
8 for giggles, do you know anybody that will fuck Randy up,
9 that's when you called Randy and said, man, you're not going
10 to believe this. This is what this guy's saying.

11 A: No.

12 Q: That's when you called Martin Bell and said, Martin, you
13 won't believe this?

14 A: No, I did not.

15 Q: That's when you called your mom and said, hey, let me
16 tell you what's going on?

17 A: No, sir.

18 Q: You wait nine or ten months and then they have to come to
19 you and get you to write a statement?

20 A: Yes, sir. I didn't feel the need to call the law once
21 Red had already been arrested. That's -- I didn't want to
22 call. If he got arrested for conspiracy to murder and then I
23 called them to tell them what the same reason he just got
24 arrested, I didn't think they would arrest him twice.

25 Q: Okay. You read that statement this morning?

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 A: Yes, sir.

2 Q: Let's talk about the time that you and my client, James,
3 were riding to the store together and James was going to meet
4 him up at the store and fuck him up.

5 A: Mm-hmm.

6 Q: Let's talk about that.

7 A: Okay.

8 Q: When did that happen?

9 A: I don't know the date.

10 Q: You wrote it in your statement.

11 A: I did not write a date in that statement.

12 Q: You don't remember when that was?

13 A: No, sir.

14 Q: All right. But when Red actually got you and physically
15 woke you up, hey, Carlyle, let's ride to the store, I'm going
16 to fuck Red -- I'm going to fuck Randy up --

17 A: No, sir.

18 Q: That's when you said I need to call law enforcement and
19 tell them what's going on?

20 A: No, sir. You're putting words in my statement. I never
21 said Randy -- I mean I never said Red woke me up. I said I
22 was woke up --

23 Q: Okay.

24 A: -- to them talking. Nobody come and physically woke me
25 up.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 Q: Okay. But then he said, hey, come ride with me?

2 A: Yes.

3 Q: I'm going to f- him up?

4 A: Yes.

5 Q: And that's when you called Randy and your mom and told

6 them what was going on?

7 A: No, sir. That's when I says I'll go on one condition and

8 that's we take my vehicle.

9 Q: Okay. Because if they took your vehicle --

10 A: I knew --

11 Q: -- you might be involved in this?

12 A: No. If we take my vehicle, I can control the time that

13 we get there.

14 Q: Okay. And then you took your vehicle so that you could

15 control the time?

16 A: Mm-hmm.

17 Q: Obviously, you would be present because you were driving

18 your vehicle?

19 A: Yes, sir.

20 Q: And I'm sure that various people know what your vehicle

21 looks like?

22 A: Mm-hmm.

23 Q: But my client out of the goodness of his heart says,

24 Carlyle, don't get out of the car. I don't want you to be

25 involved. Isn't that what he said?

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 A: I was told not to get out of the car. I didn't need to
2 be seen.

3 Q: Right.

4 A: Mm-hmm.

5 Q: But you're there and you drove your car?

6 A: Okay.

7 Q: And then you were so concerned that you called Randy and
8 your mama?

9 A: I never called them, no.

10 Q: You're so concerned you called Martin Bell?

11 A: No. I never talked to him either.

12 Q: You were so concerned you said I am never going to do
13 this again?

14 A: I never did it again.

15 Q: Actually, it happened again the next day, didn't it?

16 A: No. Actually, we was requested to come on back home and
17 go back the next morning, but we did not go back the next
18 morning. We went left and sat in the field parked across from
19 Randy's driveway waiting on him to come out.

20 Q: And that's when you called law enforcement?

21 A: No, sir.

22 Q: That's when you called Randy?

23 A: No, sir.

24 Q: That's when you called your mom?

25 A: No, sir.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 Q: Your dad? Did you ever call your dad and tell him what
2 was going on?

3 A: No.

4 Q: The next day when y'all went and waited in his driveway,
5 did you take your car?

6 A: We didn't go the next day.

7 Q: You didn't go the next day?

8 A: No.

9 Q: After you went to the store one day, the next day you
10 didn't go to his driveway?

11 A: No.

12 Q: Really?

13 A: The way it was wrote in the statement, it might seem that
14 way, but the statement -- the statement itself is all mixed
15 up. It was wrote a year later and it was all having to be put
16 down on paper right now. I can't remember seven months in a
17 short period of time; so the way it's wrote on the paper it
18 says that we was requested by Darryl to go home and come back
19 tomorrow and, therefore, when we left, we went and parked
20 across the road from Randy's driveway.

21 Q: Your statement is all mixed up? Is that what you just
22 said?

23 A: I said that there's some parts of my statement that is
24 mixed up.

25 Q: Because it happened several months later?

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 A: Actually, I had wrote it -- Martin Bell come to the house
2 and we talked for probably an hour and he told me to put
3 everything in a paper. If I asked you to write down and
4 repeat everything that you've asked me and I said in a paper,
5 I'm sure you would probably get some of it mixed up too.

6 Q: Several months later, things were all mixed up?

7 A: No. That part.

8 Q: Okay. Well, I'm sure that when Martin Bell came to you,
9 he said, Carlyle, I want to ask you some questions. Did he do
10 that?

11 A: Not at first.

12 Q: Oh, he just walked in and said write me a statement?

13 A: No, sir.

14 Q: Did y'all talk?

15 A: Yes, sir.

16 Q: What did y'all talk about?

17 A: Well; they actually didn't know if I was involved in it
18 or not. So SLED came to the house, came to the front door and
19 the back door, and I asked if I was in trouble. They told me
20 not yet. We're coming in. So they came in. I sat down at
21 the table and answered every question they had for me. And
22 then they asked me if I would write a voluntary statement.

23 Q: All right. When you wrote that statement, did they tell
24 you to take your time?

25 A: Yes, sir.

JAMES CARLYLE RABON JR. - CROSS BY MR. ANDERSON

1 Q: Did they tell you to put as much detail in there as you
2 could?

3 A: Yes, sir.

4 Q: Dates?

5 A: I told them, just like I told you, I can't remember
6 dates.

7 Q: Because it was several months later and things were kind
8 of foggy? Kind of mixed up?

9 A: I didn't understand your question.

10 Q: Because it was several months later?

11 A: Yes, sir.

12 Q: And your memory doesn't get better with time, does it?

13 A: Uh-uh.

14 Q: Is that a no?

15 A: No, sir. Your memory is not going to get better with
16 time.

17 Q: I mean this was five years ago?

18 A: Mm-hmm.

19 Q: Is that a yes?

20 A: Yes, sir.

21 MR. ANDERSON: Judge, that's all the questions I have
22 right now.

23 THE COURT: Mr. Banner, cross examination.

24 MR. BANNER: Thank you, Your Honor.

25 CROSS EXAMINATION

JAMES CARLYLE RABON JR. - CROSS BY MR. BANNER

1 BY MR. BANNER:

2 Q: Mr. Rabon, let's go back to the night when you and Darryl
3 and Grayland went to Mr. Parrott's house.

4 A: Yes, sir.

5 Q: Your mother testified yesterday that she left the home in
6 May of 2009. Do you recall that correctly?

7 A: I remember her leaving.

8 Q: Okay. And you've testified that when she left the home,
9 you moved in with Darryl and Dalton; correct?

10 A: And Red.

11 Q: Okay. Red wasn't living there at the time, was he?

12 A: Red wasn't living there when I moved in? That is
13 incorrect. Red was there when I moved in.

14 Q: Okay.

15 A: Because I didn't move in the day that my mom left. I --
16 like I said, a week or so -- two weeks maybe.

17 Q: Okay. So sometime in May or early June of 2009?

18 A: Actually, it wouldn't have been May at all because my
19 little brother's birthday is in May and I don't remember his
20 birthday that year; so it had to have been in June.

21 Q: Okay. So in -- it was in the summer when you went to Mr.
22 Parrott's house in Darlington County; correct?

23 A: Yes, sir.

24 Q: All right. And you went with Grayland and you went with
25 --

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1 A: Little Grayland.

2 Q: -- Darryl; correct?

3 A: I went with Little Grayland and Darryl, yes.

4 Q: Okay. Little Grayland and Darryl. And Little Grayland
5 is who? Darryl's nephew?

6 A: Yes, sir.

7 Q: All right. So y'all went there that night to see if your
8 mother's car was there; correct?

9 A: Yes, sir.

10 Q: And your mother and Darryl were still married at the
11 time; correct?

12 A: Yes, sir.

13 Q: All right. And you saw your mother's car there; correct?

14 A: Yes, sir.

15 Q: All right. And you stayed there that night?

16 A: Mm-hmm.

17 Q: And then you left from there and you went to the private
18 investigator's office, didn't you?

19 A: Yes, sir.

20 Q: It was you, Darryl, and Little Grayland that went to the
21 private investigator?

22 A: Yes, sir, I think.

23 Q: All right. Gerald and Marion Brown; correct?

24 A: I wouldn't know the private investigator. I didn't -- I
25 was ready to go to work. I didn't try to talk to them. So as

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1 far as names, if I walked into that private investigator's
2 house right now, I wouldn't recognize them.

3 Q: You didn't try to talk to them?

4 A: Not to get to know them. I don't remember any names.

5 Q: You were there?

6 A: I was there.

7 Q: Okay. You made statements while you were there, didn't
8 you?

9 A: I might have. Yes, sir.

10 Q: You might have?

11 A: I'm sure I talked to them.

12 Q: Okay. Do you remember making statements to the private
13 investigator that you wanted to rough up Mr. Parrott?

14 A: No.

15 Q: You don't remember that?

16 A: No, sir.

17 Q: Do you remember making statements that were aggressive
18 towards Mr. Parrott?

19 A: I have.

20 Q: Okay. Do you remember telling the private investigator
21 that?

22 A: No. I've told Randy. I called Randy up and left ugly
23 voicemails, but otherwise I didn't really go around saying I
24 was wanting to mess Randy up.

25 Q: Okay. You never told the private investigator that, did

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1 you?

2 A: Not that I recall. I don't know why this come out and
3 said that.

4 Q: Okay. During that meeting with the private investigator,
5 Darryl never made any comments negative about Randy Parrott,
6 did he?

7 A: Sure.

8 Q: He never threatened him, did he?

9 A: Threatened Randy?

10 Q: Correct.

11 A: He wasn't a threat to Randy in front of him, no.

12 Q: Okay. He did not make any statements, did he?

13 A: Not at that time, no.

14 Q: Correct, but you did, didn't you?

15 A: No. I cannot recall that I did.

16 Q: Let's go back to your statement that you wrote in 2010,
17 which we've established was eleven months after this alleged
18 incident took place; correct?

19 A: Mm-hmm.

20 Q: All right. And that's when SLED and Martin Bell came and
21 saw you; correct?

22 A: Yes, sir.

23 Q: All right. And they met with you and, as we've
24 established, they asked you some questions.

25 A: Mm-hmm.

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1 Q: They wanted to find out what you knew; correct?

2 A: Yes, sir.

3 Q: All right. And then they asked you to write out a
4 statement in detail and take your time; correct?

5 A: Yes, sir.

6 Q: And you did that; correct?

7 A: Yes, sir.

8 Q: All right. You haven't written out any statements about
9 what occurred since September of 2010, have you?

10 A: No, sir.

11 Q: Okay. You didn't have any statements written or any
12 notes between October of 2009 and September of 2010, did you?

13 A: No, sir.

14 Q: Now, as you were asked earlier, you never went to law
15 enforcement at any point between July of 2009 until they came
16 to see you in September of 2010; correct?

17 A: No, sir, I did not.

18 Q: All right. And it's your testimony you did not do that
19 because Mr. Herring had already been arrested and you didn't
20 see the need to do that; correct?

21 A: On two occasions. One is they had come and asked
22 Darryl about the situation. Then after they all had come and
23 asked Darryl about the situation, then Red got arrested. So,
24 therefore, the law had been involved two different times.

25 Q: Okay.

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1 A: So I did not feel the need to go involve myself the third
2 time. I thought two times -- I thought one time would have
3 been good enough.

4 Q: Okay. So you didn't feel the need to go to law
5 enforcement because they had already come and talked with
6 Darryl in October of 2009; correct?

7 A: Yes.

8 Q: Okay. You didn't feel the need to go to law enforcement
9 because Red was arrested in October of 2009; correct?

10 A: Correct.

11 Q: Okay. And from that point on, you never went to law
12 enforcement until they came to you in September of 2010;
13 correct?

14 A: Correct.

15 Q: All right. You never went to law enforcement to say,
16 hey, I've got concerns about what Darryl might do or who he
17 might talk to at any point between then and September of 2010,
18 did you?

19 A: No, sir.

20 Q: Okay. You understand that Darryl wasn't arrested at any
21 point between October of 2009 and September of 2010; correct?

22 A: He wasn't arrested at that point, no, sir.

23 Q: Correct?

24 A: Mm-hmm.

25 Q: Okay. And you never went to law enforcement to express

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1 any concerns that you had at any point while Darryl was still
2 not arrested; correct?

3 A: Yes, sir.

4 Q: Now, you testified that Darryl is in the business of land
5 clearing and excavating; correct?

6 A: Stumping.

7 Q: Stumping? Okay. And he's all the time talking about his
8 work; correct?

9 A: Well, only if a piece of equipment broke.

10 Q: Okay.

11 A: But no. Most of the time, he stayed on the couch.

12 Q: Okay. All right. But he's got to quote -- quote people
13 for work that he's going to do; correct?

14 A: I don't know. I thought he had wood buyers for that.

15 Q: Okay. Well, I mean that's how he earns a living, isn't
16 it?

17 A: He's not a wood buyer. He does the work.

18 Q: Okay. Well, he's got to do the work; correct?

19 A: Yes, sir.

20 Q: Okay. And that's how he's going to earn a living?

21 A: Mm-hmm.

22 Q: He's going to charge people for that work; correct?

23 A: Yes, sir.

24 Q: Okay. All right. Now, when you overheard these
25 conversations that Darryl and Red had, as you testified, all

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1 you heard was how much would it cost, what would he do it for;
2 correct?

3 A: Mm-hmm.

4 Q: Okay.

5 THE COURT: Is that a yes?

6 THE WITNESS: Yes, sir.

7 BY MR. BANNER:

8 Q: All right. And then when you wrote your statement out,
9 you wrote down everything that you remembered in September of
10 2010 about this alleged situation; correct?

11 A: That was incorrect.

12 Q: Okay.

13 A: Because I -- I'm sure anybody would agree with me if I
14 set you down right now and tell you to write everything out
15 that happened within several months, you can sit here and
16 write as long a piece of paper as you want, but I promise you
17 when I leave, you will have something that you forgot to put
18 in there.

19 Q: Okay. All right. So you didn't write out all the
20 statements. You didn't write out a complete statement, did
21 you? After law --

22 A: I wrote out --

23 Q: -- enforcement told you to take your time; correct?

24 A: Yes, sir.

25 Q: And after law enforcement told you to write a complete

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1 statement; correct?

2 A: Mm-hmm.

3 Q: Okay.

4 A: Yes, sir.

5 Q: So you just want this jury to believe bits and pieces of
6 your statement; correct?

7 A: They can believe the whole thing. It's the truth and
8 nothing but the truth.

9 Q: Okay. Mr. Rabon, as I've heard your testimony and I've
10 read your statement, you never heard Darryl Moran offer
11 anybody a dime to hurt Mr. Parrott, did you?

12 A: No, sir.

13 Q: You never heard Mr. Moran offer Mr. Herring anything to
14 hurt Mr. Parrott, did you?

15 A: Yes. Why would Red want me to go and beat up Randy for
16 him?

17 Q: My question is you never heard Mr. Moran offer Mr.
18 Herring anything to hurt Mr. Parrott, did you?

19 MR. MCEACHIN: Objection, Your Honor. We need to
20 approach.

21 THE COURT: Yeah.

22 (Whereupon, a bench conference is held in the presence of
23 the jury but out of the hearing of the jury as follows.)

24 MR. MCEACHIN: I think we're getting into a Bruton issue
25 here and I'm kind of making the objection for Hank more than

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1 anything else. His statement where he states that he told Red
2 to go and do this stuff -- so I mean I'm just trying to avoid
3 a Bruton issue with regard to that and avoid a mistrial
4 altogether. That's what it says in his statement if you start
5 at the bottom of this page. It's the last sentence and the
6 top of the second page. See what I'm saying?

7 THE COURT: Because if he gets into what Darryl told him
8 about Red, it's a Bruton violation.

9 MR. ANDERSON: He's trying to get to Bruton.

10 MR. BANNER: Do what?

11 MR. MCEACHIN: Get to Bruton.

12 THE COURT: Let me read it.

13 MR. MCEACHIN: And he specifically said on direct
14 "somebody." He did not use the name Red.

15 THE COURT: But he's already testified this essentially
16 that Darryl told him --

17 MR. MCEACHIN: But he specifically said "somebody." He
18 did not use the name Red. He used the name somebody. And I
19 explained to him you can't say Red because that's a violation
20 of Bruton. So to ask him now what did Darryl say to him or
21 what did Darryl say about Red, I think that would violate
22 Bruton.

23 THE COURT: I mean that kind of runs into some issues
24 there because each of you have -- your clients -- respective
25 clients are implicating the other. You've got a right to

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1 cross examine him and it does run afoul of Bruton if you ask
2 him questions wherein one implicates the other.

3 MR. BANNER: Well, that certainly wasn't my intent.

4 THE COURT: I understand.

5 MR. BANNER: I didn't want you to think that was
6 intentional.

7 THE COURT: I understand.

8 MR. BANNER: I was just trying to establish that he
9 didn't hire anybody for anything.

10 THE COURT: Okay.

11 (Whereupon, the bench conference ends.)

12 THE COURT: All right. Objection sustained.

13 MR. MCEACHIN: Thank you, Your Honor.

14 MR. BANNER: Thank you, Your Honor. Mr. Rabon, that's
15 all the questions I have for you.

16 THE WITNESS: Thank you.

17 THE COURT: Any redirect?

18 MR. MCEACHIN: Very briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. MCEACHIN:

21 Q: Carlyle, Mr. Anderson asked you a number of times about
22 you contacting either your mom or Randy during this period of
23 time.

24 A: Yes, sir.

25 Q: Had you ever met Randy before?

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1 A: Never.

2 Q: Okay. What was your feeling towards Randy at that
3 particular point in time?

4 A: I was told that Randy had --

5 MR. ANDERSON: Objection, Your Honor. Hearsay.

6 Q: You can't say what anybody told you.

7 THE COURT: All right. The objection is sustained.

8 MR. MCEACHIN: Thank you, Your Honor.

9 BY MR. MCEACHIN:

10 Q: I'm not asking you what anybody told you. I'm asking you
11 what your feelings were towards Randy around the time that you
12 found out your mother was seeing him?

13 A: I didn't like Randy for the fact that he had been married
14 three times and had been to jail for CDV and stuff of that
15 nature.

16 Q: Okay.

17 A: I was scared for my mother at that time.

18 Q: Okay. And you didn't like him?

19 A: No, sir, I did not.

20 Q: And that's why you didn't contact him?

21 A: Exactly.

22 Q: Okay. Now, with regard to -- I know this has already
23 been broached by Mr. Anderson and Mr. Banner. Tell the jury
24 once again why you didn't contact law enforcement?

25 A: Well, once I was living there -- when I was living there

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1 right at the end, the law came and questioned Darryl and that
2 -- and the law was getting involved. I mean that scared me,
3 you know. So then I left and then all of a sudden Red goes to
4 jail over this. So, therefore, I knew that the law was
5 already involved and I did not know what me calling them and
6 telling them anything could do because it seemed that they
7 already knew.

8 Q: So you thought they already had the information they
9 could have gotten from you anyway?

10 A: Absolutely.

11 MR. MCEACHIN: Thank you. No further questions.

12 THE COURT: Recross, Mr. Anderson?

13 RECROSS EXAMINATION

14 BY MR. ANDERSON:

15 Q: Is more information better than less information?

16 A: Yes, sir.

17 MR. ANDERSON: Thank you.

18 THE COURT: Mr. Banner?

19 MR. BANNER: Nothing further, Your Honor.

20 THE COURT: Sir, you may step down. Thank you.

21 MR. MCEACHIN: Your Honor, the State rests.

22 THE COURT: All right. All right. Ladies and gentlemen,
23 there are some matters of law that I need to take up with the
24 lawyers at this time; so I am going to have to ask you to step
25 to your jury room. Do not discuss the case. Do not discuss

1 the case at all until you are instructed to do so.

2 What I am going to ask you to do when you step back there
3 -- I am going to ask you all to select a foreperson. Okay? A
4 foreperson -- an individual to serve as foreperson, which I
5 will give further instructions at the conclusion of the case.
6 I will say this. Ms. Collington cannot be the foreperson.
7 She's been selected as an alternate. The foreperson needs to
8 be selected from the twelve of you that are seated in the box
9 over here. Okay?

10 Once you select a foreperson, please write that
11 individual's name on a piece of paper and give it to the
12 bailiff so he can give it to me as you all come back in the
13 courtroom here shortly. All right?

14 Again, step to the jury room. Select a foreperson. I'll
15 get you back out here as quickly as possible.

16 (Whereupon, the jury exits the courtroom at 10:25 a.m.)

17 THE COURT: All right. Mr. Anderson, any motions?

18 MR. ANDERSON: Yes, sir.

19 THE COURT: I'd be happy to hear from you.

20 MR. ANDERSON: Happy to hear from me, Judge, or just hear
21 from me?

22 THE COURT: Happy to hear from you.

23 MR. ANDERSON: Thank you, Judge. Judge, may it please
24 the Court. I respectfully move on behalf of Mr. Herring for a
25 directed verdict at this time.

1 Your Honor, my client is charged with solicitation to
2 commit a felony. Your Honor, I think solicitation to commit
3 murder is very similar to a conspiracy-type charge, Your
4 Honor, and, of course, with conspiracy it has to be some type
5 of overt act. And, Your Honor, I don't think there's been any
6 overt act committed by my client in this case.

7 Your Honor, if you specifically look at the newly minted
8 indictment -- it was done on July 31st, 2014 -- my client did
9 in Marion County on or about October 12th, 2009, solicit
10 another person to commit the felony of murder for him by
11 paying money to kill one Randy Parrott.

12 Of course, Your Honor, there has been no testimony
13 whatsoever that my client paid anybody any money, that my
14 client received any money, that my client ever received
15 anything for this alleged crime. Your Honor, I don't think
16 any overt act was committed by him, I don't think he received
17 any money, I don't think he gave any money to anybody, and I
18 respectfully ask that the charges against him be dismissed.

19 THE COURT: All right. Now, before I hear from you, Mr.
20 Banner, any response, Mr. McEachin?

21 MR. MCEACHIN: Your Honor, there is no overt act
22 requirement for the crime of solicitation.

23 THE COURT: Sir?

24 MR. MCEACHIN: There is no overt act requirement for the
25 crime of solicitation. Mr. Banner has actually handed me the

1 same case I was going to hand up to the Court. So I won't
2 give him a copy, but this may help the Court. It's the case
3 of State versus Smith, 316 S.C. 53, 447 S.E.2d 175, South
4 Carolina Supreme Court case from 1993.

5 The Court in that case describes the offense of
6 solicitation as a common law offense whereby it is only
7 necessary that the actor with intent that another person
8 commit a crime have enticed, advised, invited, ordered or
9 otherwise encouraged that person to commit a crime. The crime
10 solicited need not be committed.

11 Your Honor, in this case there has been testimony of
12 Keith Caulder, as well as testimony from Mr. Rabon, that there
13 was a discussion of monies being paid for the commission of --
14 at least from Mr. Rabon. I think it can be argued
15 circumstantially that the monies were to be paid for the
16 murder of Randy Parrott. With regard to Mr. Caulder, he
17 directly stated the sum to be paid was going to be \$3,000 to
18 commit the murder. So based on that, Your Honor, I certainly
19 think that that falls well within the definition as defined by
20 the Court of what the crime of solicitation is.

21 Furthermore, Your Honor, Mr. Anderson briefly addressed
22 the new indictment wherein it simply states that on October
23 12th, 2009, Herring had solicited another person to commit the
24 felony of murder for him by paying money to kill one Randy
25 Parrott. That's simply what our argument is, Your Honor. If

1 they had killed Randy Parrott, he would -- they would have
2 been paid for doing it.

3 So I don't see how that -- that particular argument
4 changes the State's position, which is it doesn't require an
5 overt act and, because of that, we respectfully ask that the
6 defense's motion for directed verdict for the crime of
7 solicitation be denied.

8 Furthermore, in the Dorn case, the Court went on to state
9 that asking a person what would it take to take care of
10 somebody would be insufficient evidence of solicitation as a
11 matter of law. That may or may not have indicated whether or
12 not a directed verdict would have been proper. However, Your
13 Honor, once again, in this case with all of the evidence in
14 the case, the fact that there was actually a plan in place,
15 but for Mr. Caulder going to law enforcement the night before
16 it was alleged to have taken place, that would, in fact, be
17 sufficient to establish the -- the elements required for the
18 solicitation crime. Therefore, we respectfully ask that his
19 motion be denied.

20 THE COURT: Hold on a minute.

21 (Whereupon, there is a pause in the proceedings.)

22 THE COURT: All right. Mr. Banner?

23 MR. BANNER: Thank you, Your Honor, if it please the
24 Court. Your Honor, I've provided the State with a copy of the
25 State versus Charlie Dorn Smith case in preparation of our

1 motion for directed verdict. Obviously, the Court has a copy
2 of that.

3 Your Honor, as this case provides -- as the Court well
4 knows, solicitation is a common law offense and it states that
5 it is necessary that the actor with intent that another person
6 commit a crime have enticed, advised, invited, ordered or
7 otherwise encouraged that person, which I believe is the key
8 word, to commit a crime.

9 Your Honor, as the case involves Darryl Moran, Your
10 Honor, we've heard from four witnesses in this case. One was
11 Kelly Parrott, who testified that he did not know Mr. Moran,
12 never had a confrontation with him, didn't even know who he
13 was.

14 Your Honor, we heard from Jennie Moran. There was no
15 testimony of any allegations of any solicitation of a crime as
16 -- as per her testimony. She testified the only contact she
17 had with Mr. Moran after she moved out in 2009 dealt solely
18 with their child.

19 The other two witnesses that we heard from in order for
20 the State to establish any type of solicitation charge against
21 my client were Keith Caulder yesterday. Mr. Caulder clearly
22 testified that he had never heard of Darryl Moran, he had
23 never met him, he had never been approached by him, he had
24 never been asked by him to commit a crime, never been enticed.

25 I went through a litany of these questions, Your Honor.

1 Never been enticed, advised, invited, ordered or otherwise
2 encouraged to commit any kind of crime. So his testimony
3 clearly does not fit the elements that's required for the
4 State to prove.

5 Your Honor, we just heard from Mr. Rabon. In his
6 testimony, he specifically testified on cross examination,
7 Your Honor, that he had never been asked -- or he had never
8 heard Darryl Moran ask anybody to commit a crime against Mr.
9 Parrott. Your Honor, his testimony was this. He overheard
10 statements such as how much would it cost, would he do it, do
11 you know anybody to mess him up.

12 Your Honor, I am no criminal law scholar by any stretch
13 of the imagination --

14 (Whereupon, the jury room door is opened.)

15 MR. MCEACHIN: I'm sorry to interrupt.

16 THE COURT: Hold on.

17 MR. MCEACHIN: I don't want the jury overhearing. I'm
18 sorry.

19 MR. BANNER: But the State versus Smith case, Your Honor,
20 is right on point to this particular situation that we have
21 here and I'm sure the Court knows this case well. When it was
22 tried, Judge Anderson denied the defense's motion for directed
23 verdict. That issue was appealed. It went to the South
24 Carolina Supreme Court, and the South Carolina Supreme Court
25 clearly states on page 4 of its opinion -- and I'll quote.

1 The State's theory was that Smith solicited Andrews to
2 commit a murder. Asking a person, quote, what would it take
3 to take care of somebody, end quote, is insufficient evidence
4 of solicitation as a matter of law. Smith was entitled to a
5 directed verdict.

6 Your Honor, I don't think there can be any more case
7 right on point than what this says in this particular
8 situation that we've got here. There's no evidence that's
9 been brought up that the defendant, Darryl Moran, has
10 approached anybody -- anybody that testified on behalf of the
11 State to commit any crime, asked them, encouraged them,
12 enticed them, paid them. There's been no evidence whatsoever
13 from that witness stand.

14 So, Your Honor, I believe this case is right on point.
15 We would ask the Court to direct a verdict as to Darryl Moran.

16 THE COURT: All right. Mr. McEachin?

17 MR. MCEACHIN: Thank you, Your Honor. Your Honor, the
18 evidence in the case is pretty clear. Keith Caulder testified
19 he was approached by James Herring and asked to commit murder
20 of some fellow over in Florence. That evidence was by Keith
21 Caulder in the case and it was specific to state that he was
22 to commit a murder for somebody.

23 The circumstantial evidence in this case is that
24 individual was Darryl Moran. The testimony by Carlyle Rabon
25 this morning, Your Honor, set out the facts, set out the plot

1 in total with detail about how this was to take place, in
2 addition to the conversation about how much would it take to
3 do this. How much would it take for this to occur?

4 So it's not simply a case like in the Smith case where
5 the only thing that was asked is what it would take to take
6 care of somebody. This case has far more evidence than that.
7 This case shows that a plot was in effect and, fortunately, it
8 wasn't carried out.

9 As I told the jury at the beginning and as I tell the
10 Court now, if it had been, we'd be here on a murder trial,
11 Your Honor, but that's not why there is a crime called
12 solicitation to commit a felony or solicitation to commit a
13 murder. That's when a murder was going to occur, but it was
14 thwarted or stopped beforehand.

15 The evidence in the case, just to review for the Court
16 for purposes of the direct verdict motion, is there was a plot
17 and the plot was very similar if you think about the testimony
18 of both Caulder and the testimony of Mr. Rabon. Both of them
19 indicated a very similar plot and both of them got the
20 information from two totally different sources.

21 The first source was from Mr. Herring, what he told Mr.
22 Caulder. If you remember, the statement was about hiding
23 behind a barn and killing somebody and making it look like a
24 robbery. Well, if you remember the statement by Mr. Rabon
25 this morning, the plot was to hide behind a barn or to throw a

1 piece of wood in the driveway and then to kill somebody.

2 Your Honor, that corroboration, as well as the overt acts
3 of Mr. Moran going and scoping out the residence, scoping out
4 the place where this murder was to occur, is certainly
5 sufficient to defeat a directed verdict motion and, as such,
6 as the Court knows, the State -- looking at the facts in the
7 most -- facts most favorably towards the State, Your Honor, I
8 certainly think we've met our burden with regard to a directed
9 verdict motion and we'd ask that you deny it.

10 THE COURT: All right.

11 MR. BANNER: Your Honor, may I comment just very briefly?

12 THE COURT: Yes.

13 MR. BANNER: Your Honor, that's why I wanted to point out
14 about what was very important about the common law offense of
15 solicitation. It says with intent that another person --
16 yadda, yadda, yadda -- or otherwise encourage that person.
17 Your Honor, that's why it's important that Mr. Caulder's
18 testimony does not implicate Darryl Moran.

19 THE COURT: What about Rabon's testimony?

20 MR. BANNER: It doesn't either, Your Honor, because Mr.
21 Rabon testified that Mr. Moran -- he never heard Mr. Moran
22 offer, entice, encourage anybody to commit any crime. That's
23 why that language is so important in that case.

24 THE COURT: All right.

25 MR. MCEACHIN: And, Your Honor, he did. He asked the

1 question how much would it cost. He talked to the fellow
2 about doing it. It cost \$2,000. And then in a separate
3 incident, they talked about the plot itself. So I certainly
4 think that that would be enticing to be asking how much money
5 it would take.

6 THE COURT: All right. I'm going to step off. I want to
7 read this Smith case. We'll stand down for a few minutes.
8 All right.

9 (Whereupon, there is a break in the proceedings from
10 10:39 a.m. until 11:11 a.m.)

11 THE COURT: All right. In ruling on a directed verdict,
12 case law states that the trial court is concerned with the
13 existence or non-existence of evidence, not its weight. If
14 there is any direct evidence or any substantial circumstantial
15 evidence reasonably -- reasonably tending to prove the guilt
16 of the accused, then the case should be submitted to the jury.
17 The jury weighs the evidence.

18 As it relates to the solicitation charge against Mr.
19 Herring, based upon the testimony of Mr. Caulder, that being
20 that he was approached by Mr. Herring and offered a sum of
21 money, being \$3,000, to commit the offense of murder, the law
22 does not necessitate nor require that such solicitation be
23 accompanied by an overt act. In fact, in State v. Prince, 447
24 S.E.2d 175, which was a 1993 case, that particular case
25 defines solicitation stating that solicitation is a common law

1 offense whereby it is only necessary that the actor with the
2 intent or with intent that another person commit a crime have
3 enticed, advised, invited, ordered or otherwise encouraged
4 that person to commit a crime.

5 The testimony of Caulder certainly satisfies the
6 definition of solicitation and, therefore, viewing the
7 evidence in the light most favorable to the State, the Court
8 is respectfully denying your motion, Mr. Anderson, for a
9 directed verdict on solicitation as it relates to your client.

10 Now, with regards to Mr. Moran, who has been indicted and
11 on trial here for solicitation to commit a murder and
12 conspiracy, I have reviewed this case which was handed to me
13 by Mr. McEachin and cited by Mr. Banner and, in that case, Mr.
14 Banner properly referenced and quoted the case of State v.
15 Smith, wherein our Supreme Court stated that asking a person
16 what would it take to take care of somebody is insufficient
17 evidence of solicitation as a matter of law.

18 In viewing the evidence in the light most favorable again
19 to the State, I will also say that if you take solely the
20 statement that Mr. Rabon testified to -- if you take that
21 individually or by itself, the discussion that he allegedly
22 overheard between Mr. Herring and Mr. Moran -- that that would
23 be more analogous to the case of State v. Smith.

24 However, there is more in this particular case that's
25 been tried over the last day and a half, and that is the

1 testimony by Mr. Caulder as to what he was offered by Mr.
2 Herring to kill someone, but also the testimony of Mr. Rabon
3 and, more importantly, the discussion of Mr. Moran and Mr.
4 Herring, the alleged discussion asking Mr. Herring had he
5 talked to him and, furthermore, would he be willing to take
6 \$2,000.

7 That, coupled with the testimony of Caulder, I believe
8 goes beyond simply the question of what would it take to take
9 care of someone, as it was the case in State v. Smith.
10 Therefore, in viewing the evidence in the light most favorable
11 to the State, the Court is respectfully denying the motion for
12 directed verdict as it relates to solicitation to commit
13 murder.

14 The Court is also denying defendant's motion for directed
15 verdict as it relates to conspiracy based upon what has
16 already been stated and testified to from Mr. Rabon concerning
17 the alleged plot of how Mr. Parrott was to be killed and,
18 therefore, the Court is respectfully denying the motion for
19 directed verdict as to the conspiracy.

20 Anything further from the State at this time?

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

22 THE COURT: Mr. Anderson?

23 MR. ANDERSON: No, sir.

24 THE COURT: Mr. Banner?

25 MR. BANNER: No, sir, Your Honor.

1 THE COURT: Well, let me just say this too. The
2 testimony on the conspiracy went beyond just that Mr. Moran
3 was supposed to allegedly kill him, but that someone else was
4 going to carry out such alleged act. Okay?

5 All right. At this time, I am going to advise each of
6 the defendants of their rights to testify. Mr. Herring, if
7 you would, stand, as well as you, Mr. Moran.

8 (Whereupon, the defendants comply.)

9 THE COURT: Each of you raise your right hand to be
10 sworn. Do you swear to tell the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 THE DEFENDANT MORAN: Yes, sir.

13 THE DEFENDANT HERRING: Yes, sir.

14 THE COURT: All right. Sir, you are Mr. James Earl
15 Herring Jr.?

16 THE DEFENDANT HERRING: Yes, sir.

17 THE COURT: And, sir, you are Mr. Darryl Wayne Moran?

18 THE DEFENDANT MORAN: Yes, sir.

19 THE COURT: All right. At this time, I am going to
20 explain to each of you certain of your rights. If you do not
21 understand anything I say, please let me know. If you want me
22 to explain anything in more detail, please let me know. Do
23 each of you understand, Mr. Herring?

24 THE DEFENDANT HERRING: Yes, sir.

25 THE COURT: Mr. Moran?

1 THE DEFENDANT MORAN: Yes, sir.

2 THE COURT: All right. We have now reached the stage of
3 the trial where you may present your defense. You have the
4 right -- each of you have the right to claim the protections
5 given to you by the Fifth Amendment to the Constitution of the
6 United States. This amendment states in part that no person
7 -- no person shall be compelled in any criminal case to be a
8 witness against himself.

9 This means that you cannot be required to testify in this
10 case. You have the right to testify on your own behalf.
11 However, no one -- no one can make either one of you testify.
12 This is a personal right and no one can waive this right
13 except you. If you decide to testify, you will be subject to
14 the same rules that govern other witnesses and you may be
15 examined and cross examined on any relevant issue in this
16 case.

17 In addition, if you have any convictions involving
18 dishonesty or false statement or for crimes punishable by
19 imprisonment for more than one year and this Court determines
20 that the probative value of admitting this evidence outweighs
21 its prejudicial effect to you, the solicitor will be able to
22 introduce your record to attack your credibility.

23 If you decide to testify, this decision on your part must
24 be freely, voluntarily, and intelligently made with knowledge
25 of the protections given to you by the Fifth Amendment and the

1 consequences of your decision to testify. If you decide not
2 to testify, I will instruct the jurors that they cannot --
3 that they cannot give the fact that you did not testify any
4 consideration whatsoever and that there is to be absolutely no
5 prejudice to you because you did not testify.

6 It is left entirely up to you whether or not you testify.
7 You may talk with your attorney, your family, your friends,
8 your relatives or anyone else, but the final decision will be
9 left entirely up to you. Do you understand what I have
10 explained to you, Mr. Herring?

11 THE DEFENDANT HERRING: Yes, sir.

12 THE COURT: Mr. Moran?

13 THE DEFENDANT MORAN: Yes, sir.

14 THE COURT: Do you have any questions about what I have
15 explained to you, Mr. Herring?

16 THE DEFENDANT HERRING: No, sir.

17 THE COURT: Mr. Moran?

18 THE DEFENDANT MORAN: No, sir.

19 THE COURT: Have you discussed with your lawyer whether
20 or not you should testify, Mr. Herring?

21 THE DEFENDANT HERRING: No, sir, I haven't. We haven't
22 done that.

23 THE COURT: Sir?

24 THE DEFENDANT HERRING: No, sir, I haven't discussed
25 whether I would or wouldn't.

1 THE COURT: All right. How about you, Mr. Moran?
2 THE DEFENDANT MORAN: Yes, sir.
3 THE COURT: All right. Mr. Moran, do you need -- excuse
4 me. Mr. Herring, do you need some time to talk to your lawyer
5 about it?
6 THE DEFENDANT HERRING: Yes, sir. I've been to see him.
7 I don't want to testify.
8 THE COURT: All right. You've indicated, Mr. Moran, that
9 you've talked to your lawyer. Do you need any more time to
10 talk to him about it?
11 THE DEFENDANT MORAN: No, sir.
12 THE COURT: All right. Do you wish to testify?
13 THE DEFENDANT MORAN: No, sir.
14 THE COURT: All right. Anything further, Mr. Anderson?
15 MR. ANDERSON: No, sir.
16 THE COURT: Mr. Banner?
17 MR. BANNER: No, sir.
18 THE COURT: As it relates to your clients and their right
19 to testify? All right. All right. Each of you may be
20 seated. Thank you. Anything before we resume the trial of
21 the case?
22 MR. BANNER: Your Honor, may we approach --
23 THE COURT: Yes.
24 MR. BANNER: -- real quick?
25 (Whereupon, a bench conference is held off the record.)

1 THE COURT: Can the lawyers come back here for just a
2 minute, please?

3 (Whereupon, there is a break in the proceedings from
4 11:33 a.m. until 11:57 a.m.)

5 THE COURT: All right. I met with the lawyers back in
6 chambers. We had an opportunity to go through the charge.
7 Any exception or objection to the charge from the State?

8 MR. MCEACHIN: None by the State, Your Honor.

9 THE COURT: Mr. Anderson?

10 MR. ANDERSON: No, sir.

11 THE COURT: Mr. Banner?

12 MR. BANNER: No, sir, Your Honor.

13 THE COURT: All right. Anything before I bring the jury
14 out, Mr. McEachin?

15 MR. MCEACHIN: No, sir, Judge.

16 THE COURT: Mr. Anderson?

17 MR. ANDERSON: No, sir.

18 THE COURT: Mr. Banner?

19 MR. BANNER: No, Your Honor.

20 THE COURT: If you would, bring me the jury, please, sir.

21 (Whereupon, the jury enters the courtroom at 11:58 a.m.)

22 THE COURT: All right. It looks like this young lady
23 here has got a piece of paper. Who is my foreperson? You
24 kind of slid it up here on me. Mr. Collins? All right. I'm
25 going to ask that you and this gentleman right here switch

1 seats.

2 (Whereupon, the jurors comply.)

3 THE COURT: All right. Mr. Collins, that is your
4 assigned seat throughout the remainder of this trial. Ms.
5 Collington, that is your seat. Okay? You all are the only
6 two people that got assigned seats. The rest of you can sit
7 wherever you so desire as you come in and out of the
8 courtroom. Okay?

9 All right. At this time, I'm going to recognize defense
10 counsel, Mr. Anderson.

11 MR. ANDERSON: Your Honor, if it please the Court, Mr.
12 Herring would rest.

13 THE COURT: All right. Mr. Banner, you're so recognized.

14 MR. BANNER: Thank you, Your Honor. If it please the
15 Court, Mr. Moran would rest.

16 THE COURT: All right. Any renewing of anything, Mr.
17 Anderson?

18 MR. ANDERSON: Yes, sir, Your Honor. I renew the
19 previous motions I made earlier.

20 THE COURT: Mr. Banner?

21 MR. BANNER: Thank you, Your Honor. On behalf of Mr.
22 Moran, we also renew our prior motion for a directed verdict.

23 THE COURT: All right. As previously ruled upon by the
24 Court, the Court's rulings as it relates to those issues
25 remain the same. They remain the same.

1 Ladies and gentlemen, you have heard all of the testimony
2 that you're going to hear in this case. Now, the only -- that
3 which remains at this time are closing arguments. Closing
4 arguments will first be by the State, followed by Mr. Anderson
5 and Mr. Banner.

6 I remind you closing arguments, arguments of counsel, is
7 not evidence in this case. It's not evidence in this case.
8 Mr. McEachin, you're so recognized for closing argument.

9 MR. MCEACHIN: Thank you very much, Your Honor. May it
10 please the Court. Mr. Anderson. Mr. Banner.

11 CLOSING ARGUMENT ON BEHALF OF THE STATE

12 MR. MCEACHIN: Mr. Foreman and ladies and gentlemen of
13 the jury, I told you yesterday afternoon when we started the
14 trial of this case that the State's theory of the case is that
15 this case is simply one of those cases about a vengeful
16 husband, that husband being Darryl Moran. I told you
17 yesterday that Mr. Moran and Mr. Herring came together with
18 this plot, and the plot was directed and the victim in the
19 case was to be Randy Parrott, who is seated right here.

20 You've heard from four witnesses in the State's case.
21 Those are the witnesses who saw, that heard, and did in
22 essence set forth the facts and circumstances surrounding this
23 alleged plot. And I told you to listen carefully to what each
24 of them had to say because the judge is going to tell you
25 something very important here in a little bit.

1 He's going to tell you that when dealing with testimony
2 of witnesses, the credibility -- we often use the term
3 believability as well -- is left up to you as the jurors in
4 this case. That means that you folks get to decide whether
5 you believe whether or not -- whether you believe what was
6 said from this stand or whether you don't believe it, and
7 that's up to you folks. So let's talk a little bit about the
8 testimony in this case, at least as I remember it and we'll
9 see if you remember it the same way.

10 The first witness that took the stand was Randy Parrott,
11 our victim in the case. He was the target of this murder, the
12 individual that James Herring went and saw Keith Caulder
13 about, and the individual that Darryl Moran talked to James
14 Herring about. Mr. Randy Parrott was the first person to take
15 the stand.

16 What did Mr. Parrott tell you? He doesn't know either of
17 those fellows. He doesn't know them from Adam's household.
18 He has no idea who they are. Well, why is that significant?
19 Why is that important? Well, if he doesn't know these fellows
20 and he doesn't have -- has never had anything to do with them,
21 why would they have a motive to kill him? What has he ever
22 done? What has he ever done to either of those two men that
23 would warrant this plot to kill him?

24 What's he done? He hasn't done anything. Well, then how
25 would Darryl Moran have a motive or why in the world would he

1 have a motive to kill Randy Parrott? And that answer came
2 from our second witness, Ms. Jennie Rabon.

3 Ms. Rabon was the second witness in this case. You heard
4 from Ms. Rabon that she was married to Mr. Moran for a
5 substantial period of time. I think it was over ten years
6 that they were married. They had marital difficulties
7 beginning around January or February of 2009. And then in I
8 believe May of 2009, she moved out. In the interim, between
9 the time when the difficulties were starting and when she
10 moved out, she met Randy Parrott and in July of 2009 moved in
11 with him.

12 Now, the defense attorneys spent a good bit of time
13 attacking Ms. Rabon's credibility. Y'all may remember that.
14 They were asking her about a child. They went after her about
15 the marriage.

16 What you need to understand as jurors in this case is the
17 decision in this case has nothing to do with whether or not
18 Ms. Rabon was a good mother or whether or not Ms. Rabon was a
19 good wife. Those decisions have been decided by a Family
20 Court. They've been decided by another judge at another time
21 and another place. And the most important thing is she is not
22 the victim in this case. They don't want her dead. Her
23 friend and her ex-husband -- they don't want her dead. They
24 want this fellow they've never met before dead and who had
25 never met them before dead.

1 Why do you think that is? What do you think the motive
2 behind that is? As I told you, this case was about a vengeful
3 husband. Maybe it was because if he couldn't have her, nobody
4 could have her. Or maybe it was just, well, that's fine. She
5 likes him now. Well, I'm going to make her pay. I'm going to
6 make her hurt. So I'm going to get rid of him. Is that
7 motive in a case where you're trying to get somebody killed?
8 You better believe it is. You better believe it is.

9 Then you heard from Keith Caulder yesterday. And I'll
10 tell you this right now, folks. But for Keith Caulder, Randy
11 Parrott may not be with us today. He may not be with us
12 today. We may be trying a murder trial today.

13 Because what did Keith Caulder tell you? He told you
14 this man right here, Red, James Earl Herring, came to his
15 house looking for him to do a job. What was that job? To
16 kill Randy Parrott. That was the job. Somebody was going to
17 pay us money. Somebody was going to pay us money, \$3,000, to
18 kill Randy Parrott. Who was that somebody? Darryl Moran, the
19 vengeful ex-husband. That's who it was.

20 Keith Caulder doesn't know anybody. The only person in
21 this entire courtroom that Keith Caulder knew is James
22 Herring. He didn't know Darryl Moran. He didn't know my
23 client. He didn't know my client's wife. The only person in
24 this entire courtroom he knew was James Herring.

25 So what benefit or what motive would he have to testify

1 the way he testified yesterday? He doesn't have any friends
2 to benefit. He doesn't have any enemies to punish. That's
3 important for you to consider when you're thinking about the
4 credibility of somebody. Did they have a motive, a reason,
5 some sort of bias to testify the way that they did?

6 Keith Caulder said, look, I thought about it. He wanted
7 me to kill somebody. I went to law enforcement. That was the
8 first domino. That's what started this whole case. That's
9 what started it, ladies and gentlemen. Because he was
10 concerned about somebody he didn't even know, he went to law
11 enforcement and said, look, here's what's happening. I got
12 approached by James Herring. I got offered to be paid money
13 to kill somebody.

14 What motive did he have to come in here and testify? He
15 doesn't know this man. He doesn't know Randy Parrott. He
16 doesn't have any reason to make that stuff up. It's important
17 to think about this when you look at the credibility of
18 witnesses.

19 Finally, this morning you heard from Carlyle, also known
20 as James Rabon Jr., and Carlyle took the stand and he told you
21 pretty much the story of his life from about January of 2009
22 through the time he left the Moran residence. He had been
23 living in Conway, South Carolina. When his mother moved out
24 of the house with Mr. Moran, he moved in to take care of his
25 younger brother. That's what he told you.

1 During that time he was in there with his younger
2 brother, he heard all the things that transpired from the
3 witness stand. Mr. Moran asked him did he know somebody that
4 could get somebody that could fuck Randy Parrott up. Do you
5 know where I can get a silencer for either a 9 or a .45?
6 Ladies and gentlemen, you don't look for a silencer for a gun
7 unless you intend to do harm. You want to be secretive and
8 you want to do harm.

9 What else did they do that was secretive? Carlyle told
10 you they snuck up to his house, a mile off the road from
11 anything else. We snuck up to his house. We snuck through
12 the woods and we snuck through a field and we stayed there all
13 night and we watched that house.

14 Well, what other testimony do we hear that dealt with
15 people finding out where people were? How about Mr. Herring?
16 What did Ms. Rabon say? He showed up at five places. Well,
17 really three places, but five different times. He was
18 uninvited. She had no idea why he was there.

19 Two times at her business? Okay. I can see why somebody
20 may show up at a business looking for somebody. That makes
21 sense. Well, how about an open house? He just showed up,
22 just driving in. I'm in the area. That's starting to sound a
23 little suspect to me.

24 And then finally, two times he was sitting outside of her
25 apartment. Does it sound like he was keeping tabs on her for

1 somebody? Because that's what it sounds like to me.

2 But the most important thing out of that thing that shows
3 that these individuals knew what these folks' schedule was was
4 when she was in Walmart. She had just sent a care package.
5 The Walmart in Florence is near their home. She had sent a
6 care package. He shows up in Florence at the same Walmart and
7 has the care package in his hands in Walmart. That is -- I
8 can't even think of a coincidence where that could possibly
9 occur. How did he know she was there? How did he know to
10 have the care package with him?

11 This was thought out. It was calculated. And had it
12 been carried out, Randy Parrott wouldn't be with us today.
13 Fortunately, he is. Fortunately, Caulder came to the witness
14 stand and told us what happened and got law enforcement
15 involved.

16 So what you folks have to decide in this case -- what you
17 have to decide is if you believe what Carlyle told you is
18 true. He went into some detail. It wasn't just, yeah, we
19 heard -- we heard he was going to kill him. No. We were
20 going to hide behind a barn. We were going to throw something
21 in the driveway. We were going to wait for him to get out of
22 the car and then we were going to shoot him dead. That's not
23 just, oh yeah, we're going to kill him. That's thought out.
24 That's calculated. That's a murder plot.

25 Y'all have to decide whether y'all believe that. Does

1 anybody else's evidence corroborate it? Does anybody else's
2 testimony corroborate that? Yeah. Caulder. What did Caulder
3 say? He told you the same thing. We're going to go to this
4 guy's house and hide behind a barn and then we're going to
5 kill him.

6 Well, are there any barns around there? Yes. Jennie
7 Rabon told you there are two barns right when you come in the
8 driveway. That's called corroborating evidence. It fits
9 together like the pieces of a puzzle.

10 And I'll tell you when the defense attorneys get up to do
11 their closing arguments, if they choose to do them, they're
12 going to try and tell you one particular thing -- one
13 particular thing here, and what you have to do as jurors in
14 cases -- you have to look at the big picture. You have to
15 look at all of the evidence to be able to know how it fits
16 together. If you look at one single piece of evidence and see
17 there may be a flaw in that, then that may create a problem,
18 but that's not what your job is as jurors. It's to use your
19 common sense and to put the pieces of the puzzle together and
20 to look at the picture that it presents as a whole.

21 And if you do that, if you do that, there's only one
22 reasonable thing that you can conclude and that is that Darryl
23 Moran wanted Randy Parrott dead, and he used his buddy, James
24 Herring, who was living with him, to try to accomplish that.
25 And because of that and because that's what the evidence in

1 this case shows, I'm going to ask you folks to return a
2 verdict that speaks the truth in this case, and that verdict
3 is that Darryl Moran and James Earl Herring Jr. are guilty of
4 the offenses they have been charged with. Both of them are
5 guilty of solicitation to commit murder, as the judge is going
6 to charge you on the law of that, as well as Mr. Moran being
7 guilty of conspiracy.

8 I represent the State and the County and the victim in
9 this case. That's what I'm asking you for. Please return a
10 verdict of guilty in this case. Thank you for your time and
11 your effort and consideration you've put into this matter.
12 Mr. Parrott appreciates it and I appreciate it and the State
13 of South Carolina appreciates it and the County of Marion
14 appreciates it.

15 THE COURT: Mr. Anderson?

16 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT HERRING

17 MR. ANDERSON: In my opening, I told you that it had to
18 happen with someone. That someone was James Herring. I told
19 you that it had to happen somewhere. We're in Marion. We're
20 in the Marion County Courthouse that's on South Main Street.
21 And it had to happen sometime. How about August the 5th of
22 2014? Now, what am I talking about? I'm talking about
23 finding Mr. Herring not guilty.

24 My mom loves sweets. I mean she is -- she's really what
25 I like to refer to as a chocoholic. She loves chocolate. And

1 the State wants you to believe the tiny bits and pieces. And
2 let me ask you a question.

3 If I got you a multi-colored blue cupcake for your
4 birthday and I said happy birthday and you opened up this
5 cupcake and said, man oh man, it's my birthday, I love me some
6 cake, and you took a bite and on the inside of that cupcake
7 was ants or roaches or -- God forbid -- maggots, would you go,
8 you know what? I bet that icing is still good. I can still
9 eat the icing. Or would you go, you know, I don't believe I
10 want any of that. I'm just going to disregard the whole
11 thing?

12 Now, in my opening I said this was a case about what you
13 were going to hear, but it's also a case about what you
14 haven't heard. It's also a case about my questions and the
15 answers to my questions.

16 Randy Parrott, the first one to testify. Randy, do you
17 know James? No, I don't. Ever seen James? No, I haven't.
18 Ever seen him on your land? No, I haven't. Ever seen him
19 anywhere near you? No, I haven't. Ever met him? No, I
20 haven't. Easy enough. Obviously, nothing has ever happened
21 to Mr. Parrott.

22 Then, Jennie testifies. James was my friend. He used to
23 help me plant. He used to help me put up Christmas
24 decorations. Worked for my husband, Darryl, for years. If my
25 wife left me, I would probably ask a friend of mine will you

1 check on her to see how she's doing. If I was a friend, I
2 might go check on somebody to see how they were doing. How
3 unusual is that? Did my client make any threats to her?
4 You'll get what's coming to you, and that guy you're seeing,
5 he'll get what's coming to him too. That didn't happen.

6 Let me ask you another question. Mr. McEachin said, you
7 know, if Ms. Moran -- her character I guess was attacked in
8 cross examination. Or not Ms. Moran. I'm sorry. If Darryl
9 was such a bad guy, he's capable of committing these acts --
10 these crimes, why does he still have custody of their son? If
11 he's this terrible monster that employs people like my client,
12 why has he still got custody of their son? I don't know.

13 Then, probably my favorite witness is Mr. Caulder. Mr.
14 Caulder, who a few months before this alleged incident pleads
15 guilty to breach of trust and not just breach of trust, but
16 breach of trust with fraudulent intent. In July of 2009, he
17 pleads guilty to breach of trust with fraudulent intent.

18 And then suddenly, James -- James, who hadn't seen him in
19 five years, rolls on up. He doesn't say how you been. He
20 doesn't say are you going through a hard time. He doesn't
21 say, hey, I missed you. Let's get together and go out and
22 have something to drink. Let's get something to eat. He
23 doesn't say any of that. Nothing. Hasn't seen him in five
24 years, rolls up and says, hey, we got an easy job for me and
25 you in the morning. I'll come get you at five and we'll make

1 \$3,000. We just got to kill somebody. Are you good with
2 that?

3 Is that the way it happened? That's the way it happened?
4 He hasn't seen him in five years and suddenly he just rolls up
5 to him and says, hey, let's go kill somebody in the morning
6 and I'll split \$3,000 with you? Really?

7 I mean then he said, well, he considered me trustworthy.
8 Really, Mr. Caulder? Well, what person did you kill earlier
9 four or five years ago that he would think you're trustworthy
10 with? I didn't hear that.

11 And then to top it off, what happened to him earlier this
12 year? I can't remember when it was, but I think it was maybe
13 June of this year. What does he do? Giving false information
14 to law enforcement -- to a police officer.

15 Now, folks, if he'll commit a breach of trust with
16 fraudulent intent and he'll lie to a cop, what do you think
17 he'll do to you all? Maybe stretch a little bit?

18 You know who we didn't hear from? And since I'm calling
19 Mr. Caulder out, I would love to have talked to somebody from
20 law enforcement because I would have said, you know, you can
21 verify what people say through other means. For example, when
22 he called my aunt and my aunt told me that James wanted to see
23 me, how hard would it have been for somebody from law
24 enforcement to go, "Mrs. Smith, did James call you and ask you
25 where Mr. Caulder was?" "Yeah." "And did James show up a few

1 minutes later?" "Yeah, he did." "Okay. Well, thank you."

2 How hard would that have been for law enforcement to do?

3 Mr. Caulder says he called me the next morning and I had
4 a missed call. Can I see your phone? Can I take a picture of
5 that call just to verify it? How hard would that have been?

6 He was coming the next morning at five a.m. Law
7 enforcement was there waiting for him. Well, did he show up?
8 Did he show up at five a.m.? No, he didn't.

9 Another thing I would like to have asked law enforcement
10 is, you know, since we're talking about believability and
11 credibility, when my client, James, was arrested, where was he
12 living? Was he living with Darryl? Or was he living over in
13 Dillon with his wife? Where's the warrant? What does the
14 address say on the warrant? Where did you pick him up? I
15 would have loved to have asked that question, but law
16 enforcement wasn't up there.

17 Another thing I'd like to ask law enforcement is, you
18 know, when you're talking to these people, what do you tell
19 them? How did you write a statement for them? Before you do,
20 can I get you anything to drink? Are you comfortable? Is it
21 too cold or too warm? What can I get you? You want something
22 to eat?

23 What I want you to do is write me a statement and just
24 take as much time as you need when you write the statement.
25 Take your time. Put as much information in there as you can.

1 I want it to be truthful and I want it to be accurate with as
2 much information as you can. You know, because -- God forbid
3 -- this case might come to trial in five years and you might
4 need to refresh your recollection. You might need to remember
5 what -- what really happened. So take your time and do the
6 best you can. And Mr. Caulder said we talked for hours before
7 I wrote my statement and then he wrote about eleven or twelve
8 lines.

9 What about law enforcement talking with Mr. Rabon --
10 Carlyle? How long did they talk? What did he tell him?
11 Because what I thought was funny is when I was talking to
12 Carlyle -- well, that statement is confusing. You know, it
13 was a while before I wrote it. It was confusing. You can't
14 -- you can't -- you can't take it the way I wrote it. Well,
15 how am I supposed to take it? It was confusing because it was
16 written, you know, ten or eleven months after the fact and
17 that was four or five years ago, you know, and you can't just
18 take it line for line. You've got to add stuff into it.

19 Folks, the truth is the truth is the truth. You don't
20 have to add anything to the truth. It is what it is.

21 My client doesn't have a thing to prove here. Nothing.
22 Not a thing. He's not on trial. The judge will tell you the
23 fact that he hasn't testified -- you can't even hold -- you
24 can't talk about that back there in the back. The burden of
25 proof is on the State. The State told you that in their

1 opening statement. The burden of proof is on us. We have to
2 convince you beyond a reasonable doubt.

3 Well, what's a reasonable doubt? I think the judge will
4 say a reasonable doubt is any doubt that would cause a
5 reasonable person to hesitate to act. I don't have to give
6 you 20 reasonable doubts. I don't have to give you five
7 reasonable doubts. I can just simply give you one reasonable
8 doubt. One is enough.

9 At the end of the day -- and it has been a short trial.
10 At the end of the morning -- I should say the end of the
11 morning -- I don't think the State has proven it. I don't
12 think they've proven it beyond a reasonable doubt.

13 I'd like to have asked law enforcement, hey, did anybody
14 ever take you out there at this place in Darlington? Did
15 anybody show you these barns? Did Carlyle show you where he
16 supposedly spent the night in the woods? Did anybody ever do
17 that? No. Hey, did you ever go out there and check out this
18 dirt road and check out these, quote, barns? Did you ever do
19 that? No. I guarantee you if they had, we would have heard
20 about it.

21 It only takes one reasonable doubt. At the end of the
22 day, the State hasn't proven its case. At the end of the day,
23 I want a good cupcake. I don't want something that's got
24 maggots in it. I don't want something that's got ants in it.
25 I want something that I can eat the whole thing and swallow it

1 hook, line, and sinker, and not bits and pieces. Thank you.

2 THE COURT: Mr. Banner?

3 MR. BANNER: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 CLOSING ARGUMENT ON BEHALF OF DEFENDANT MORAN

7 MR. BANNER: Ladies and gentlemen, yesterday afternoon, I
8 made a couple of bold statements. One was that I was going to
9 do everything in my power to move this case along as quickly
10 as possible. I lived up to that end of the bargain.

11 The other bold statement I made was that the State, who
12 has the highest burden of proof beyond a reasonable doubt, is
13 going to parade witnesses up on this witness stand who
14 testify. I said that you're not going to see any evidence.
15 You're not going to hear any testimony to support the elements
16 of a solicitation to commit a felony.

17 And I submit to you that I don't think that the State has
18 proved their case. You've not seen any evidence and you've
19 not heard any testimony to support their case. I'll try not
20 to be redundant. Mr. Anderson has covered it very well.

21 But you heard testimony yesterday from Mr. Parrott, the
22 supposed victim, and as it relates to Mr. Moran, he never knew
23 him, didn't know who he was, never spoken to him, never had a
24 confrontation with him, never had any issues with him
25 whatsoever.

1 You heard testimony from Jennie Moran or Jennie Rabon
2 now. She testified they were married since -- from 1996 to
3 May of 2009, about 13 years. They have a child together,
4 Dalton, who is going into the eleventh grade now. He lives
5 with Darryl.

6 She left the home in May of 2009 and has not spoken to
7 her son. Apparently, she testified she has not had any
8 contact or any discussions with her husband -- ex-husband,
9 Darryl Moran, since May of 2009 other than to maybe talk about
10 their son.

11 The State wants to make you believe that this is a case
12 of an -- a vengeful husband. An -- a vengeful husband? It
13 sounds to me more like he should be the father of the year.
14 He went and hired a lawyer in Family Court because his wife
15 left the home. He went and hired a private investigator to do
16 what needed to be done in order to prove their case. He went
17 to court and the Court awarded custody to him of his child and
18 ordered Ms. Rabon to pay child support, which she admitted on
19 the stand yesterday she doesn't pay. So is this a case of an
20 -- a vengeful husband or a vindictive ex-wife?

21 In just a few moments, the most important part of this
22 case is going to happen and that's when His Honor is going to
23 charge us all on the law and what the law says. And as he's
24 going to tell you, you have the opportunity to take the facts
25 and the testimony and the evidence that's been presented in

1 this case and apply it to the law. The Court can't invade
2 your province of the facts and you are not allowed to invade
3 the province of the law.

4 And the judge is going to charge us on the law of
5 solicitation, which says a person with intent that another
6 person commit a crime by enticing, advising, inviting,
7 ordering or otherwise encouraging that person to commit a
8 crime. Those are the elements of solicitation.

9 They don't prove their case by the testimony of Mr.
10 Parrott and they don't prove their case by the testimony of
11 Ms. Moran. So what do they do? They bring Keith Caulder to
12 testify and then pointed out Mr. Caulder is a convicted felon,
13 breach of trust. What I think is more important is it's been
14 pointed out he's willing to lie to law enforcement and he's
15 been convicted of it.

16 He comes and testifies on behalf of the State. What does
17 he say as to Darryl Morran? I've never met him. I don't know
18 him. I've never even heard of him. When I asked him those
19 questions -- Mr. Moran never approached you to commit a crime?
20 No. Did Mr. Moran ever entice you to commit a crime? No.
21 Did Mr. Moran ever encourage you or offer you anything to
22 commit a crime or order you to commit a crime? No. Did Mr.
23 -- this supposed meeting you had with Mr. Herring, did Mr.
24 Herring ever bring up his name? No. Mr. Caulder has never
25 even heard of him, never had any dealings whatsoever with

1 Darryl Moran.

2 So the State can't prove their case from the testimony of
3 Mr. Caulder as to Darryl Moran. So this morning they bring in
4 Carlyle Rabon. Mr. Rabon is the son of Jennie Rabon, Darryl
5 Moran's stepson at the time, and he testified he was living
6 somewhere else. When his mother left the home in May of 2009,
7 suddenly Mr. Rabon comes and lives with Darryl and Darryl's
8 son, Dalton.

9 According to his testimony, they go to Mr. Parrott's home
10 I believe sometime in July. They go there to see if Ms.
11 Rabon's vehicle is there, to see if she's there. They find
12 her car. They stay there. What do they do? They immediately
13 go from there to a private investigator's office, where Mr.
14 Moran hired a private investigator to go back and get
15 surveillance tape necessary.

16 Did he take matters into his own hands? No. He did the
17 right thing. He did the right thing.

18 I asked Mr. Rabon on the stand point blank did you ever
19 overhear Darryl Moran entice, encourage, offer anybody
20 anything to commit a crime? His answer was no.

21 Those are the four witnesses that the State put up. In
22 order for the State to prove their case, the elements of their
23 case beyond a reasonable doubt, they've got to be able to
24 prove these particular issues, prove these points. Somebody
25 with intent to commit a crime by enticing, advising, inviting,

1 ordering or otherwise encouraging that person to commit a
2 crime. Well, I submit to you there's been no testimony,
3 there's been no evidence, as I suggested yesterday, that
4 proves their case beyond a reasonable doubt.

5 And I too, like Mr. Anderson, would have loved to have
6 heard from law enforcement. We are in criminal court. We are
7 in a courtroom where Darryl Moran is being charged with a
8 crime that can send him to jail. That's serious. That is a
9 serious matter. As I told you yesterday, this is going to be
10 a short case, but these are the two most important days in
11 Darryl Moran's life. We're in criminal court. The State
12 wants to put him in jail and we have not heard from one single
13 law enforcement officer, not one. This case probably belonged
14 in Family Court again, not in a criminal court.

15 I'm not going to belabor this. I could talk all day. I
16 can't thank you for your time. I can't do that, quite
17 frankly, because you were made to be here, but I can thank you
18 and this man right here, Darryl Moran, can thank each one of
19 you and I want to do that for your active listening and your
20 active intelligence because you were made to be here.

21 So I can't thank you for your time, but you didn't have
22 to listen. You didn't have to pay attention to the evidence,
23 and I watched you in trying this case. I always like to watch
24 the juries and see who's paying attention and who's not. I
25 want to thank each and every one of you on behalf of Darryl

1 Moran for paying attention and being actively involved in this
2 case and listening to the testimony that was presented.

3 And I think when you go back in that jury room to begin
4 your deliberation, it's not going to take you long to talk
5 about what you've heard, and each and every one of you will be
6 able to bring back a verdict. And verdict is Latin for speaks
7 the truth. Speak the truth, and the truth in this case is a
8 not guilty verdict for Darryl Moran on the count of
9 solicitation and a not guilty verdict on the count of
10 conspiracy because the State has failed to prove their case
11 beyond a reasonable doubt.

12 CHARGE ON THE LAW

13 All right. Ladies and gentlemen, it is now my duty as
14 the trial judge under the Constitution of this state to charge
15 and instruct you on the law applicable to this case. It is
16 your duty as jurors to accept and apply the law as I will now
17 state it to you. Furthermore, it is your exclusive duty to
18 decide all the issues of fact in this case, and to determine
19 the effect, value, weight, and truth of the evidence.

20 Both the State and the defendants have a right to expect
21 that you will carefully consider and evaluate the evidence and
22 apply the law of this case to it, so that in the end both the
23 State of South Carolina and the defendants will receive a fair
24 and impartial trial. I want you to understand that when I use
25 the word defendants, I refer to Mr. Darryl Moran and Mr. James

1 Earl Herring Jr.

2 The charges alleged in the indictments are, Count I,
3 solicitation to commit a felony. The felony alleged is
4 murder. Count II, criminal conspiracy as to Mr. Darryl Moran
5 only.

6 Now, to these charges, the defendants have entered pleas
7 of not guilty. These pleas of not guilty places the burden of
8 proof on the State to prove the guilt of the defendants to
9 you, the jury, beyond a reasonable doubt.

10 I charge you that there are two defendants in this case,
11 each of whom is charged with the offense as previously stated.
12 The case of each defendant and the evidence and the law
13 concerning that defendant should be considered separately and
14 individually. Your verdict does not have to be the same for
15 both defendants. The fact that you may find one defendant
16 guilty or not guilty should not control your verdict as to the
17 other defendant.

18 Where more than one person is charged with a crime, if
19 the evidence warrants it, you may convict one and acquit the
20 other, or you may acquit both, or you may convict both. You
21 must take each defendant and consider the evidence as to that
22 defendant and my instructions to you on the law. You will
23 then write a separate verdict of guilty or not guilty for each
24 individual defendant.

25 As I mentioned above, the indictments in this case allege

1 a solicitation to commit a felony as to both defendants and
2 conspiracy as to Mr. Darryl Moran. You must decide each
3 charge separately on the evidence and the law applicable to
4 it, uninfluenced by your decision as to any other charge.

5 The defendants may be convicted or acquitted on any or
6 all of the offenses charged. As stated previously, you will
7 be asked to write a separate verdict of guilty or not guilty
8 for each charge alleged in the indictment as to each
9 defendant.

10 Now, I remind you, ladies and gentlemen, that the fact
11 that the defendants were arrested, charged, and indicted in
12 this case is not evidence in this case and cannot be
13 considered by you as evidence of guilt in this case, nor does
14 it create any presumption or inference of guilt. The
15 indictment is simply the formal written instrument which
16 contains the charges made against the defendants. It is the
17 formal document by which this case is brought into this court.

18 It is vital to understand that the defendants are
19 presumed under the law to be innocent of these charges. The
20 defendants have no obligation to prove their innocence. It is
21 a fundamental rule of our law that a defendant, irrespective
22 of the seriousness of the charges against him, is always
23 presumed innocent of the crimes for which he is charged,
24 unless and until his guilt has been proven by evidence that
25 satisfies you, the jury, beyond a reasonable doubt.

1 The presumption of innocence is not a mere legal theory
2 or a legal phrase. The presumption of innocence is very
3 important and you need to understand that this presumption
4 accompanies the defendants from the time of their arrest and
5 appearance in this court and continues with the defendants
6 even after you retire to the jury room to deliberate. In
7 other words, the defendants receive the benefit of the
8 presumption of innocence until the very end of this trial,
9 when you, the jury, will deliberate upon the evidence and
10 decide whether the State has proven their guilt beyond a
11 reasonable doubt.

12 Now, what is a reasonable doubt in the law? A reasonable
13 doubt is the kind of doubt that would cause a reasonable
14 person to hesitate to act. Proof beyond a reasonable doubt is
15 proof that leaves you firmly convinced of the defendant's
16 guilt.

17 Now, there are very few things in this world that we know
18 with absolute certainty; so even in criminal cases the law
19 does not require proof that overcomes every possible doubt.
20 However, if, based on your consideration of the evidence, you
21 are firmly convinced that the defendant is guilty of the crime
22 charged, you must find him guilty. If, on the other hand, you
23 think there is a real possibility that he is not guilty, you
24 must give him the benefit of the doubt and find him not
25 guilty.

1 Jurors, please understand that reasonable doubt may arise
2 from evidence which has been presented in the case or from the
3 lack of evidence in the case. It is your responsibility to
4 determine whether or not reasonable doubt exists as to the
5 guilt of these defendants.

6 I charge you that the defendants are entitled to every
7 reasonable doubt arising in the whole case. If, upon any
8 issues of fact essential to conviction and a verdict of
9 guilty, you have a reasonable doubt as to how that issue
10 should be resolved, it would be your duty to resolve that
11 reasonable doubt in favor of the defendant.

12 During this trial, you and I have had separate duties to
13 perform. As the trial judge, it is my responsibility to
14 preside over this trial, and I also have the duty to rule upon
15 the admissibility of the evidence offered during the process
16 of this trial. In that regard, you are to consider only the
17 competent evidence before you, and you are to disregard from
18 your mind any testimony ordered stricken from the record of
19 this case during the progress of the trial, if there was any.
20 And you are to consider only the testimony which has been
21 presented from this witness stand, together with any exhibits
22 admitted into the record of this case and any stipulations of
23 counsel made into the record, if there were any.

24 Furthermore, I have the additional duty to charge you on
25 the applicable law of this case and, in that regard, I am the

1 sole judge of the law of this case. It is your duty to accept
2 and apply the law as I state it to you. If you have any
3 preconceived ideas as to what the law is or what the law ought
4 to be, and it does not agree with what I tell you the law is,
5 you are obligated -- you are obligated under your oath to
6 abandon these preconceptions, because you are sworn to accept
7 the law precisely as I state it to you.

8 Now, in this trial, you are the sole and exclusive judge
9 of the facts, and I am the judge of the law. Do not infer
10 that I have any opinion about the facts in this case from
11 anything that I have said during the course of this trial in
12 ruling upon the admissibility of evidence or otherwise, or
13 from anything that I say during the course of this charge to
14 you. In this regard, the law simply does not permit me to
15 have an opinion about the facts. As jurors, it is your duty
16 alone to determine the effect, value, weight, and truth of the
17 evidence presented during the course of this trial.

18 Now, in determining what the facts in this case are, you
19 must judge the credibility, which simply means the
20 believability, of the witnesses and the value of weight to be
21 given to their testimony. You alone must decide the force,
22 effect, and truth of the testimony. In making this decision,
23 there are many things you may, and should, take into
24 consideration, such as the appearance and manner of the
25 witness on the stand, a characteristic often referred to as

1 the demeanor of the witness.

2 Was the witness forthright or hesitant? Was the
3 witness's testimony consistent or did it contain
4 discrepancies? What was the ability of the witness to know
5 the facts about which he or she testified? Did the witness
6 have a cause or reason to be biased and prejudiced in favor of
7 the testimony he or she gave? Was the testimony of the
8 witness corroborated or made stronger by other testimony and
9 evidence or was it made weaker or impeached by such other
10 testimony and evidence?

11 As jurors, please understand you have the right to
12 believe a small portion of a witness's testimony and discard
13 the larger portion or vice versa. You may believe all of a
14 witness's testimony or none. You may believe the testimony of
15 a single witness against that of many witnesses or the other
16 way around.

17 In exercising your mental processes and attempting to
18 decide the truth, the law simply requires that you exercise
19 your good judgment, your common sense, your sense of logic and
20 reason, and your experiences in life. You then apply these
21 attributes to the evidence and apply the law as I state it to
22 you, and thus arrive at a verdict.

23 Now, there are two types of evidence which are generally
24 presented during a trial: direct evidence and circumstantial
25 evidence.

1 Direct evidence is the testimony of a person who claims
2 to have actual knowledge of a fact, such as an eyewitness. It
3 is evidence which immediately establishes the main fact to be
4 proved.

5 Circumstantial evidence is proof of a chain of facts and
6 circumstances indicating the existence of a fact. It is
7 evidence which immediately establishes collateral facts from
8 which the main fact may be inferred. Circumstantial evidence
9 is based on inference and not on personal knowledge or
10 observation.

11 The law makes absolutely no distinction between the
12 weight or value to be given to either direct or circumstantial
13 evidence. Nor is a greater degree of certainty required of
14 circumstantial evidence than of direct evidence. You should
15 weigh all of the evidence in this case. If, after weighing
16 all the evidence, you are not convinced of the guilt of the
17 defendants beyond a reasonable doubt, you must find the
18 defendants not guilty.

19 Now, during the course of this trial, you heard the
20 testimony of an individual who has a -- who had a past
21 criminal record. An individual who has a past criminal record
22 is competent to testify during a trial. A past record does
23 not affect the ability of that witness to testify.

24 The past record may only be considered by you, if at all,
25 in determining the witness's believability. Remember, you are

1 the sole judges of the facts in the case and of the
2 believability of any and all of the witnesses.

3 Now, I instruct you, ladies and gentlemen, and I
4 emphasize that the fact the defendants did not testify is not
5 a factor to be considered by you in any way in your
6 deliberation and in your consideration on the question of
7 their guilt or innocence. It must not be considered by you in
8 any manner whatsoever.

9 A defendant has the constitutional right to remain
10 silent, and the assertion of this right must not be considered
11 by you in your deliberations. I repeat, under your oath, you
12 are to draw no conclusion whatsoever from the fact that the
13 defendants in this case did not testify.

14 The fact that the defendants did not testify should not
15 even be discussed in the jury room. The burden of proof, as I
16 have stated to you, is on the State. The defendants are not
17 required to prove their innocence. The burden of proof
18 remains on the State to prove guilt beyond a reasonable doubt.

19 Now, in order to establish criminal liability, criminal
20 intent is required. For example, the mental state required to
21 be proven by the State for a particular crime might be
22 purpose, intent, knowledge, recklessness, or criminal
23 negligence. Criminal intent must be proven by the State
24 beyond a reasonable doubt. Criminal intent is always a matter
25 that must be determined by the jury from the circumstances.

1 surrounding the situation.

2 There is no way to prove intent, ladies and gentlemen, to
3 a mathematical certainty. There is no way that medical
4 science can dissect a person's brain and determine what the
5 person had in mind; so the law says that criminal intent may
6 be inferred from the circumstances shown to have existed.
7 This is how you make a determination of whether or not the
8 element requiring intent was present. It is not necessary to
9 establish intent by direct and positive evidence, but intent
10 may be established by inference in the same way as any other
11 fact by taking into consideration the acts of the parties and
12 all the facts and circumstances of the case.

13 Criminal intent is a mental state, a conscious
14 wrongdoing. It is up to you to determine what each defendant
15 intended to do based on the circumstances shown to have
16 existed. Criminal intent can arise from action or a failure
17 to act. It may arise from negligence, recklessness, or an
18 indifference to duty or to consequences that is considered by
19 the law to be the equivalent of criminal intent.

20 Now, the defendants in this case, ladies and gentlemen,
21 are charged with solicitation to commit a felony, the alleged
22 felony being murder. The State must prove beyond a reasonable
23 doubt that the defendants asked, enticed, advised, invited,
24 ordered, counseled, persuaded, or otherwise encouraged another
25 person to commit the murder. It must be shown that the

1 defendants intended that the other person commit the murder.

2 Now, in order to prove solicitation, it is not necessary
3 that the State prove that money was actually paid by the
4 defendants, that the person asked to commit the crime actually
5 intended to carry out the crime, that the person asked to
6 commit the crime agreed to do so, or that the crime was ever
7 committed.

8 Solicitation requires only that the defendants have the
9 intent to have someone else commit the crime and that the
10 defendants do an act which is a step toward the commission of
11 the crime. This step may be any conduct, such as giving the
12 other person the means to commit the crime, or words which
13 communicate to another person the idea to commit the crime.
14 Intent means a purpose or aim, or the state of a person's mind
15 which directs the person's actions toward a specific object.

16 Now, the defendant Darryl Moran is charged with
17 conspiracy. The State must prove as it relates to this charge
18 beyond a reasonable doubt that the defendant, Darryl Moran,
19 combined with another for the purpose of committing an
20 unlawful act or of committing a lawful act by unlawful means.

21 There must be a mutual understanding, agreement, or
22 common intention and plan. Mere passive knowledge or a
23 consent to the criminal conduct of another is not enough to
24 make a person a conspirator. There must be guilty knowledge
25 and participation.

1 Similarly, the mere fact that the defendant may have
2 associated with another or met with another and discussed
3 common aims and interests does not necessarily establish proof
4 of the existence of a conspiracy or that the defendant was
5 involved in a conspiracy.

6 On the other hand, it is not necessary that the agreement
7 be a formal one, or that it be in writing, or that the persons
8 hold a meeting and expressly state the terms of the common
9 plan, or that the agreement be stated in words between them.
10 The agreement of a criminal conspiracy may come into being
11 through an implied, mutual understanding. The willful,
12 intentional, and knowing adoption by two or more persons of a
13 common plan is sufficient.

14 No overt act needs to be shown to establish a conspiracy.
15 A conspiracy may be shown by circumstantial evidence and the
16 conduct of the parties.

17 In order to convict the defendant of conspiracy, the
18 State must prove beyond a reasonable doubt not only that the
19 defendant knew of the unlawful conduct, but that the defendant
20 agreed to combine with the other person for the purpose of
21 accomplishing the unlawful conduct.

22 Now, ladies and gentlemen, I am now drawing near the end
23 of my charge and I want you to clearly understand that you are
24 not partisans or advocates for the State of South Carolina or
25 the defendants. It is your duty by your joint deliberations

1 to determine the truth in this case, giving to the defendants
2 the benefit of every reasonable doubt on each and every issue.
3 Then, to the facts which you determine to be true, you should
4 take and apply the law which has been given to you by this
5 Court and thus arrive at a verdict which speaks the truth in
6 this case.

7 In fact, the word "verdict", which has a Latin derivative,
8 means "a true saying." Thus, when you have accomplished these
9 responsibilities, you will have satisfied your oath as jurors
10 and you will have discharged your duty to this Court.

11 Now, once you retire to the jury room, the bailiff will
12 give you -- or give the verdict form to the foreman. When
13 you, the jury -- when you, the jury, arrive at a verdict as to
14 the offenses charged in this case, the foreman will select the
15 verdict as to the charge on the verdict form.

16 If the State has failed to prove the guilt of the
17 defendant -- respective defendant beyond a reasonable doubt,
18 your verdict will be "not guilty." Likewise, if the State has
19 proven the guilt of the defendants beyond a reasonable doubt,
20 your verdict will be "guilty." Now, once a decision has been
21 made, the foreman will check whichever choice is the verdict
22 of the jury as to the charge.

23 The verdict that you render in this case, ladies and
24 gentlemen, must be the verdict of each and every juror. It
25 must be your unanimous verdict. All twelve of you must agree

1 on the verdict which you authorize the foreman to write for
2 the jury.

3 Ladies and gentlemen, I want you to further understand
4 that the order -- the order in which the choices of verdict
5 appear on the verdict form are not suggestive of any verdict
6 on the part of this Court. The verdict in this case is to be
7 determined by you, the jury, not the Court. Furthermore,
8 please understand that even though I will give the verdict
9 form to the foreman, it is not his verdict alone; it is the
10 verdict of all twelve of you and I emphasize again it must be
11 unanimous.

12 I'm going to -- what I'm getting ready to do now is I'm
13 going to ask you to retire to the jury room, but do not begin
14 your deliberations until you are told to do so. The law
15 requires -- the law requires that I now consult with the
16 attorneys to make sure that I have not left anything out of
17 these instructions. After I have consulted with the
18 attorneys, the bailiff will bring the verdict form to you and
19 instruct you to begin your deliberations.

20 Now, also, should you have any questions during your
21 deliberations, you must put them in writing and send them to
22 me by the bailiff. And that will be your responsibility, Mr.
23 Foreman. Any question that you all may have, if you have any,
24 it is your responsibility to reduce it to writing, sign and
25 date whatever question you may send out here.

1 Now, the bailiff, who is seated down here to my right,
2 will be right outside of this jury room. Once you all -- if
3 you have a question, write it down, knock on the door, let him
4 know, give it to him, and he'll get it to me and I'll answer
5 it however I deem appropriate after consultation with the
6 lawyers.

7 But once you've also reached a verdict, write or check
8 whatever verdict that may be as to each defendant, knock on
9 the door, let the bailiff know that you have reached a
10 verdict, and I will get you out or we'll get you back in the
11 courtroom as promptly and quickly as possible.

12 Thank you. Please step to the jury room, but before you
13 do, let me ask this question. Does everybody on the jury feel
14 okay?

15 (Whereupon, there is no response.)

16 THE COURT: All right. I will tell you this. Orders for
17 -- lunch has been ordered. Okay? I know you're probably
18 hungry. Lunch has been ordered.

19 Step to the jury room, but do not begin your
20 deliberations until you are instructed to do so. Can the
21 lawyers approach while they're exiting the courtroom, please?

22 (Whereupon, the jury exits the courtroom at 12:58 p.m.)

23 (Whereupon, a bench conference is held off the record to
24 review the verdict forms.)

25 THE COURT: All right. This is what they sent out with

1 his name on it -- the foreman. I'm going to make that a
2 Court's exhibit.

3 (Whereupon, the jury note regarding the foreman is marked
4 as Court's Exhibit Number 1.)

5 MR. MCEACHIN: Your Honor, the State has no objection to
6 the verdict forms.

7 THE COURT: All right. Having said that, let me ask
8 this. Any exception or objection to the charge by the State?

9 MR. MCEACHIN: No exception or objection, Your Honor.

10 THE COURT: Mr. Anderson?

11 MR. ANDERSON: No, sir.

12 THE COURT: Mr. Banner?

13 MR. BANNER: No, Your Honor.

14 THE COURT: All right. Do they have paper and pencil in
15 there?

16 THE CLERK: No, sir. It's right here.

17 THE COURT: All right.

18 MR. MCEACHIN: And again, Your Honor, no objection to the
19 forms.

20 THE COURT: Nothing written on this note pad? Let me
21 make sure no scribbling has been done.

22 THE CLERK: That's fine.

23 THE COURT: If you'd take them that and the verdict forms
24 and tell them they can begin their deliberations.

25 MR. ANDERSON: What about your alternate, Your Honor?

1 THE COURT: Sir?

2 MR. ANDERSON: Your alternate.

3 THE COURT: Yes. Thank you. Bring me Ms. Collington

4 out, please. Ms. Collington.

5 (Whereupon, jury deliberations begin at 12:59 p.m. and

6 the alternate juror is released.)

7 THE COURT: All right. Anything before we stand down?

8 MR. MCEACHIN: No, sir, Your Honor.

9 THE COURT: Mr. Anderson?

10 MR. ANDERSON: Your Honor, as far as standing down, I

11 mean stay around the courthouse?

12 THE COURT: Yeah. I mean I don't want you all -- if you

13 leave, you need to be in close proximity so you can get back

14 here quickly in case they have a question or something.

15 MR. MCEACHIN: Are we at ease, Your Honor?

16 THE COURT: Yeah.

17 (Whereupon, there is a break in the proceedings from 1:01

18 p.m. until 1:42 p.m.)

19 THE COURT: All right. A few questions were sent out by

20 the foreman, which I have spoken with the lawyers back in

21 chambers about, and I am going to make Court's Exhibit Number

22 2. Any objection, Mr. McEachin?

23 MR. MCEACHIN: No, sir, Your Honor.

24 THE COURT: Mr. Anderson?

25 MR. ANDERSON: No, sir.

1 THE COURT: Mr. Banner?

2 MR. BANNER: No, Your Honor.

3 THE COURT: And I am going to bring the jury out and
4 respond -- where's my charge? -- to their questions
5 respectively.

6 MR. MCEACHIN: Judge?

7 THE COURT: Yes, sir?

8 MR. MCEACHIN: And I'm sorry. I wanted to ask what was
9 Court's Exhibit Number 1?

10 THE COURT: Who they referenced as the foreman --
11 foreperson.

12 MR. MCEACHIN: Oh, right. Thank you.

13 MR. ANDERSON: When they voted on him.

14 THE COURT: Sir?

15 MR. ANDERSON: I said when they voted on him.

16 THE COURT: All right. Anything before I bring the jury
17 in, Mr. McEachin?

18 MR. MCEACHIN: No, sir, Judge.

19 THE COURT: Mr. Anderson?

20 MR. ANDERSON: No, sir.

21 THE COURT: Mr. Banner?

22 MR. BANNER: No, sir.

23 THE COURT: Bring me the jury, please, sir.

24 (Whereupon, the jury enters the courtroom at 1:43 p.m.)

25 THE COURT: All right. Ladies and gentlemen of the jury,

1 Mr. Foreman, I have received a note from you all with various
2 questions on here. I'm going to respond accordingly in the
3 order of your questions, the first question being the
4 definition of conspiracy according to the law. I am going to
5 again charge you on the law of conspiracy.

6 The defendant, Darryl Moran, is charged with conspiracy.
7 The State must prove beyond a reasonable doubt that the
8 defendant combined with another for the purpose of committing
9 an unlawful act or of committing a lawful act by unlawful
10 means.

11 There must be a mutual understanding, agreement or common
12 intention and plan. Mere passive knowledge of or consent to
13 the criminal conduct of another is not enough to make a person
14 a conspirator. There must be guilty knowledge and
15 participation.

16 Similarly, the mere fact that the defendant may have
17 associated with another or met with another and discussed
18 common aims and interests does not necessarily establish proof
19 of the existence of a conspiracy or that the defendant was
20 involved in a conspiracy.

21 On the other hand, it is not necessary that the agreement
22 be a formal one or that it be in writing or that the persons
23 hold a meeting and expressly state the terms of the common
24 plan or that the agreement be stated in words between them.
25 The agreement of a criminal conspiracy may come into being

1 through an implied, mutual understanding.

2 The willful, intentional, and knowing adoption by two or
3 more persons of a common plan is sufficient. No overt act
4 need be shown to establish a conspiracy. A conspiracy may be
5 shown by circumstantial evidence and the conduct of the
6 parties.

7 In order to convict the defendant of conspiracy, the
8 State must prove beyond a reasonable doubt not only that the
9 -- that the defendant knew of the unlawful conduct, but that
10 the defendant agreed to combine with the other person for the
11 purpose of accomplishing the unlawful conduct.

12 That is the definition of conspiracy.

13 Second question. Can you tell us what the punishment may
14 be if found guilty of conspiracy?

15 The answer to that question is no. That is within the
16 Court's purview and is not to be considered by you in
17 determining the guilt or not guilty or innocence of the
18 defendant.

19 The last question. Can we have a copy of the written
20 statements of the witnesses?

21 The written statements, ladies and gentlemen, were not
22 admitted into evidence in the trial of this case. To answer
23 your question, no, you cannot have those written statements.

24 At this time, I'm going to ask you to return to your jury
25 room and continue your deliberations. Thank you.

1 (Whereupon, the jury exits the courtroom at 1:47 p.m.)
2 THE COURT: Here, Krystal.
3 (Whereupon, the jury note is marked as Court's Exhibit
4 Number 2.)
5 THE COURT: All right. Any exception or objection to
6 anything I've said to the jury from the State?
7 MR. MCEACHIN: No, sir, Your Honor.
8 THE COURT: Mr. Anderson?
9 MR. ANDERSON: No, sir.
10 THE COURT: Mr. Banner?
11 MR. BANNER: No, Your Honor.
12 THE COURT: All right. We'll stand at ease with regards
13 to this case.
14 (Whereupon, there is a break in the proceedings from 1:47
15 p.m. until 3:17 p.m.)
16 THE COURT: All right. It's my understanding that we've
17 got a verdict. Before I bring the jury out, let me go ahead
18 and tell you, whatever the verdict is, I remind you to keep
19 your emotions in check. Your failure to do so could warrant
20 you being held in contempt of court, resulting in a fine or
21 incarceration. Anything from the State before I bring the
22 jury out, Mr. McEachin?
23 MR. MCEACHIN: No, sir, Your Honor.
24 THE COURT: Mr. Anderson?
25 MR. ANDERSON: No, sir.

1 THE COURT: Mr. Banner?

2 MR. BANNER: No, sir, Your Honor.

3 THE COURT: All right. If you would, bring me the jury,
4 please.

5 (Whereupon, the jury enters the courtroom at 3:18 p.m.)

6 THE COURT: Madam Clerk?

7 THE CLERK: Ladies and gentlemen of the jury, have you
8 reached a verdict?

9 THE FOREMAN: Yes, ma'am.

10 THE CLERK: Thank you.

11 (Whereupon, the bailiff delivers the verdict forms to the
12 Court.)

13 THE COURT: All right. The verdicts appear to be in
14 order. You may publish the verdicts.

15 VERDICTS BY THE JURY

16 THE CLERK: Thank you, Your Honor. State of South
17 Carolina, County of Marion, versus Darryl Moran, defendant.
18 Indictment Number 2011-GS-33-0113. Verdict Form.

19 As to the charge of solicitation to commit a felony, the
20 alleged felony being murder, we, the jury, unanimously find
21 the defendant, Darryl Moran, not guilty.

22 As to the charge of conspiracy, we, the jury, unanimously
23 find the defendant, Darryl Moran, guilty.

24 This was signed by Robert L. Collins, Foreperson, dated
25 8/5/14.

1 Is this your verdict say you one, say you all?
2 (Whereupon, the jury responds in the affirmative.)
3 THE CLERK: Thank you. State of South Carolina, County
4 of Marion, versus James Earl Herring Jr., defendant.
5 Indictment Number 2014-GS-33-0298. As to the charge of
6 solicitation to commit a felony, the alleged felony being
7 murder, we, the jury, unanimously find the defendant, James
8 Earl Herring, not guilty.
9 Signed Robert L. Collins, Foreperson, dated 8/5/14.
10 Is this your verdict say you one, say you all?
11 (Whereupon, the jury responds in the affirmative.)
12 THE CLERK: Thank you.
13 THE COURT: All right. Anything from the State before I
14 release the jury?
15 MR. MCEACHIN: No, sir, Your Honor.
16 THE COURT: Mr. Anderson?
17 MR. ANDERSON: No, sir, Your Honor.
18 THE COURT: Mr. Banner?
19 MR. BANNER: No, Your Honor.
20 THE COURT: All right. All right. Ladies and gentlemen
21 of the jury, I want to thank you for your service during the
22 course of this trial. I know the lawyers appreciate your
23 attentiveness throughout.
24 And what I am getting ready to do is I am going to
25 release you all for the balance of the week. All right?

1 We've got another case to try, but we have enough jurors to
2 select another jury without requiring that you all stay up
3 here for the remainder of the week.

4 Now, during the course of this trial, I told you all not
5 to talk about the case. All right? I told you to do so. I
6 will tell you this. You can talk about the case now if you so
7 desire. All right? If you so desire, but you can't be made
8 to talk about it. Okay?

9 If somebody asks you to talk about it and you tell them
10 you don't want to talk about it and they won't leave you
11 alone, you let the Clerk's Office know and we will make sure
12 that it gets handled. Okay? But you can talk about it now if
13 you so desire. Okay?

14 Now, anything else, Mr. McEachin?

15 MR. MCEACHIN: No, sir, Your Honor.

16 THE COURT: Mr. Anderson?

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

18 THE COURT: Mr. Banner?

19 MR. BANNER: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, you all
21 have fulfilled your responsibilities. The Court is now going
22 to carry out its responsibility and that is sentencing. You
23 can stay for that if you so desire. If you want to stay, you
24 can remain seated right there. If you want to leave, you are
25 free to leave at this time. So please do so if you wish to

1 leave.

2 (Whereupon, the jury is released at 3:22 p.m. However,

3 all jurors remain in the jury box.)

4 THE COURT: All right. Mr. McEachin, do you have a

5 sentence sheet?

6 MR. MCEACHIN: No. Mr. Jepertinger is bringing it up,

7 Your Honor.

8 THE COURT: Sir?

9 MR. MCEACHIN: Mr. Jepertinger is bringing it up right

10 now, Your Honor.

11 THE COURT: Okay. What we're waiting on is the

12 Solicitor's Office is bringing up a sentence sheet.

13 (Whereupon, there is a pause in the proceedings.)

14 MR. MCEACHIN: Your Honor, may I approach?

15 THE COURT: Yes, sir. All right. Mr. McEachin, if you

16 would, come around. Mr. Banner, if you would, come around

17 with your client.

18 (Whereupon, the defendant and counsel comply.)

19 THE COURT: Let me see -- Ms. Gray, give me the

20 indictments again, please.

21 MR. BANNER: Your Honor, can we address motions once the

22 jury is dismissed?

23 THE COURT: Yeah. I'm going to allow you to do that.

24 MR. BANNER: Thank you.

25 THE COURT: All right. Mr. McEachin?

1 MR. MCEACHIN: Thank you, Your Honor. As the Court is
2 well aware based on the trial of this case, it's Indictment
3 Number 2011-GS-33-113, the State versus Darryl Wayne Moran.
4 The defendant was charged with a two-count indictment,
5 solicitation to commit a felony, as well as conspiracy. The
6 jury returned a -- again, it's a verdict of not guilty on the
7 solicitation charge, but guilty on the conspiracy charge.

8 The facts are before the Court as testified to by the
9 witnesses in this case. I would ask that the Court hear from
10 the victim at the appropriate time, Mr. Randy Parrott, with
11 regard to sentencing issues.

12 THE COURT: All right.

13 MR. MCEACHIN: And certainly anything else the Court
14 needs, I'd be happy to provide the Court.

15 THE COURT: All right. I'll be happy to hear from Mr.
16 Parrott. Sir, if you would, stand right here at the end of
17 this table to address the Court. Please make -- direct any
18 comments to the Court -- to the Court.

19 MR. PARROTT: Your Honor, I think -- I've had five years
20 to think about this and it has been some sleepless nights. I
21 don't know if you ever thought about somebody trying to murder
22 you, looking over your shoulder, but I think Mr. Moran needs
23 some time to think about this. That's all I have to say.

24 THE COURT: All right. Thank you, sir. Anything else,
25 Mr. McEachin?

1 MR. MCEACHIN: No, sir, Your Honor. We simply defer to
2 the Court and also the wishes of the victim in the case.

3 THE COURT: All right. I'd be happy to hear from you,
4 Mr. Banner.

5 MR. BANNER: Thank you, Your Honor, if it please the
6 Court. Your Honor, as you know, Mr. Moran was charged with
7 the conspiracy that he was convicted on almost a year or over
8 a year after the alleged incident took place. He had these
9 charges pending in December of 2010 when his divorce was
10 finalized by the Family Court. At that time, Your Honor, the
11 Family Court saw it fit and appropriate to award full custody
12 of his son to him at that time and, Your Honor, they've
13 continued to live together, obviously, since then.

14 Your Honor, I would say that Mr. Moran has never had any
15 blemish whatsoever on his record. He's never been charged
16 with any crimes. He's certainly never been convicted of any
17 crimes. Your Honor, I think it would be a travesty for Mr.
18 Moran to have to spend any time in prison.

19 Your Honor, he has, again, full custody of his son, who
20 is going in the eleventh grade. Your Honor, at worst I think
21 the appropriate response from the Court would be probation and
22 I think if the Court saw fit for that, Mr. Moran would
23 certainly be a candidate for that.

24 He's -- you know, he's had these charges hanging over his
25 head for almost five years now. He's shown up for court every

1 time. He's been here for every roster meeting and obviously
2 was here for the trial.

3 THE COURT: How much time did he do in jail when he was
4 initially arrested?

5 MR. BANNER: No time, Your Honor.

6 THE COURT: In and out the same day?

7 THE DEFENDANT MORAN: Yes, sir.

8 THE COURT: All right. Mr. Moran, anything you wish to
9 tell me? If you so desire to speak, I'll just tell you I
10 don't want you to say anything that could affect any appellate
11 rights that you may have, but I'd certainly be happy to hear
12 from you if you so desire to say anything.

13 THE DEFENDANT MORAN: Well, I mean, Judge, I've had this
14 -- I've had this for five years knowing it -- you know,
15 knowing that I haven't done anything, you know, and it's just
16 I'm not thinking about myself, but my son.

17 You know, Judge, I mean that's -- that's who I think
18 about, you know. I've tried to do -- I've tried to do right
19 by him on every way I can and that's -- you know, Your Honor,
20 I'll just -- just ask your mercy on it.

21 THE COURT: All right. All right. Anything further from
22 the State?

23 MR. MCEACHIN: No, sir, Your Honor.

24 THE COURT: Defense counsel?

25 MR. BANNER: No, Your Honor. Thank you.

1 SENTENCE BY THE COURT

2 THE COURT: All right. On Indictment 2011-GS-33-113, the
3 defendant is hereby committed to the State Department of
4 Corrections for a period of five years. Provided upon the
5 service of two years, the balance is suspended with probation
6 for three years. I'll give him credit for one day. Good luck
7 to you, Mr. Moran.

8 THE DEFENDANT MORAN: Yes, sir.

9 MR. MCEACHIN: Thank you, Your Honor.

10 THE COURT: Now, ladies and gentlemen, you all are free
11 to go at this time. I'm going to take up some post-trial
12 motions with the lawyers before I conclude this matter. Okay?

13 He needs to stay here with his lawyer while I take up
14 these motions.

15 (Whereupon, the jury exits the courtroom at 3:31 p.m.)

16 MR. MCEACHIN: Your Honor -- and I apologize for not
17 requesting this of the Court. Obviously, as a condition of
18 probation, we'd ask for no contact with the victim.

19 THE COURT: All right. Let me hold -- let me hold the --
20 excuse me -- the sentence sheet back. Did I not give it to
21 you? All right.

22 MR. MCEACHIN: That would be direct or indirect contact,
23 Your Honor.

24 MR. ANDERSON: Your Honor, if it please the Court, my
25 client wanted to ask me a question. Can I step outside with

1 him?

2 THE COURT: Yes, sir. All right. Mr. Banner, I'll be
3 happy to hear from you, sir.

4 MR. BANNER: Thank you, Your Honor. At this time, Your
5 Honor, I'd like to make a motion for the thirteenth juror.
6 This is clearly an inconsistent verdict form that was
7 returned.

8 Your Honor, the defendant, Mr. Moran, was charged with
9 solicitation to commit a felony and charged with conspiracy.
10 Your Honor, clearly there has to be two or more persons
11 involved in a crime for it to be a conspiracy. There was no
12 other defendant charged with conspiracy.

13 Your Honor, by the fact that the co-defendant was found
14 not guilty of solicitation, that clearly -- and as well as Mr.
15 Moran found not guilty for solicitation, that is clearly an
16 inconsistent verdict for this jury to return a finding of
17 guilty for the conspiracy charge.

18 Your Honor, I would like to have ten days, if at all
19 possible, to obtain or look for any case law that supports
20 that. If I could submit that to the Court, if the Court is
21 not -- if the Court doesn't want to have to rule right now.

22 THE COURT: Well, I think under the rules I think you're
23 entitled to it. I'll give you ten days. I'll give you ten
24 days to -- my understanding of the law and my reading of the
25 law is that inconsistent verdicts don't -- I mean exist

1 anymore or exist in this state. The conspiracy charge doesn't
2 say that he conspired -- the indictment doesn't say that he
3 combined or conspired with only this individual.

4 Individuals can be indicted on conspiracy without naming
5 who the conspiracy was with, and my charge to the jury was
6 that they could find him guilty on one charge and not the
7 other, find him not guilty on both charges or find him guilty
8 on each charge..

9 But I'll give you ten days to file any motions that you
10 may so desire --

11 MR. BANNER: Thank you, Your Honor.

12 THE COURT: -- doing that. All right. Any objection to
13 that, Mr. McEachin?

14 MR. MCEACHIN: No, sir, Judge. Thank you. I think he's
15 entitled to it under the rules.

16 THE COURT: Sir?

17 MR. MCEACHIN: I think he's entitled to it under the
18 rules.

19 THE COURT: Yeah, he is under the rules; so I'm going to
20 give him that time he's requested. So I'll give him ten days
21 to file any --

22 MR. MCEACHIN: Thank you, Judge.

23 THE COURT: -- post-trial motions. All right. Thank
24 you. That will conclude this matter.

25 MR. MCEACHIN: Thank you, Judge.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2011-GS-33-113

RECEIVED

SEP 10 2015
SC Court of Appeals

The State,..... Respondent,

v.

Darryl Wayne Moran, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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