

VOL. V of VI

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2013-CP-40-00233

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SC SUPREME COURT

Melinda Richmond, #331874,

Petitioner,

v.

State of South Carolina,

Respondent.

APPELLATE CASE NO. 2015-001289

APPENDIX

William M. Saltzman
Merritt, Webb, Wilson & Caruso, PLLC
Post Office Box 24109
Columbia, SC 29224
(803) 255-0655
Attorney for Petitioner

Alan Wilson, Attorney General
J. Clayton Mitchell, Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Attorneys for Respondent

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1 from Columbia, Chapin?

2 A Yes, ma'am.

3 Q All right. Up I-26 I believe towards Spartanburg,
4 is that right, westbound?

5 A Towards Newberry, yes.

6 Q Towards Newberry. Where your grandchildren live?

7 A My mom.

8 Q Your mom lives in Prosperity?

9 A Yes.

10 Q Your mom lives also? So you are familiar with the
11 interstate leading up to Prosperity?

12 A A little bit.

13 Q You visit your mom, I imagine?

14 A Yes.

15 Q You run into Tenisha in Chapin. She says to you, I
16 don't have anywhere to go. So you say, come with
17 me, we'll go down to Columbia and in the morning
18 Frank can give you a ride back to your mom's house
19 in Chapin?

20 A No, to Newberry. She was in Chapin and she didn't
21 have a ride. And she said she didn't have anywhere
22 to go. And I told her that I could see if Frank
23 could give her a ride home in the morning to
24 Newberry.

25 Q Okay. You were in here when Ms. McClinton

1 testified, correct?

2 A Yes, I was.

3 Q Do you recall her testifying that she lived with
4 her grandmother and her father in Chapin, South
5 Carolina?

6 A I do.

7 Q Okay. So you agree that when you ran into her she
8 was near home?

9 A She was in Chapin.

10 Q How far is Chapin from Newberry?

11 A About 20 minutes.

12 Q How far is Chapin from Columbia?

13 A About 20 minutes.

14 Q So you didn't feel like you could give her a ride
15 20 minutes out to Newberry from Chapin?

16 A No, actually I really just didn't want to be alone.
17 I thought, you know, it would be okay. I didn't
18 see any harm in her hanging out. She wanted to
19 hang out with me, and I didn't see any harm in
20 that. There was no --

21 Q Are you denying that you two discussed buying --
22 looking for some crack to smoke together?

23 A There was no -- there was no plans to look for any.
24 There was no plans period. We were just --

25 Q But you testified when your lawyer was asking you

- 1 questions that you were on this massive crack
2 cocaine binge during this four days, Tuesday to
3 that Friday?
- 4 A I didn't really have to look for it. It was there.
- 5 Q Well, Frank was giving you money to get it, right?
- 6 A I had money. I had the crack before that. That is
7 how we got the car was by leaving Frank some crack
8 for the car, so --
- 9 Q So you had permission to buy -- to use Frank's
10 truck -- van -- or, excuse me, Toyota Camry, and he
11 gave you crack to use it? It was a crack rental?
- 12 A That is -- that is more or less -- yes, crack.
13 Chris had given him some so he could use the car.
- 14 Q Now, back on the late hours of May 4th, 2007, into
15 the early morning hours of May 5th, 2007, what time
16 was it that Bruce came over to Frank's house?
- 17 A It was late in the morning.
- 18 Q So would it have been before midnight on May 4th or
19 after midnight on May 5th?
- 20 A It was after midnight.
- 21 Q Okay. So we're talking about May 5th then?
- 22 A Yes.
- 23 Q You testified when your lawyer was asking you
24 questions that you were not expecting Bruce?
- 25 A No, I wasn't.

1 Q Well, didn't you go to the Western Inn to buy drugs
2 from Bruce?

3 A No.

4 Q You didn't go to his brother's room, Room 118?

5 A Not to find Bruce. Bruce was not a dealer. Bruce
6 was just his brother.

7 Q Well, then how is it that you came in contact with
8 Bruce, at Will's house, the crack house?

9 A Yes, when we went to get some. There was nothing
10 in the Western at that time. It was late in the
11 morning. And so we went to Will's because that is
12 a known place where the crack dealers would be.
13 And when I pulled up there, Bruce was out there.
14 He was out, right in the front.

15 Q Okay.

16 A I asked him if he knew where we could get some, and
17 he sold some of what he had.

18 Q So he sold you \$30 worth of crack at that point?

19 A Yes.

20 Q And that is Frank's \$30?

21 A Yes.

22 Q That he had lent you and Tenisha McClinton when he
23 got called out to work, is that correct?

24 A He gave it -- he asked me to go get him some crack.

25 Q And then do you remember whether or not you gave

1 Bruce Thompson a ride to the Western Inn?

2 A Yes, I did.

3 Q And you dropped him off at the Western Inn?

4 A Yes, I did.

5 Q He knew that you and Tenisha were going to Frank's
6 house to smoke the crack?

7 A Yes, I suppose he did.

8 Q So he knew where you were going?

9 A Yes.

10 Q You testified in direct examination that, he must
11 have heard I was going to Frank's house. You told
12 him you were going to Frank's house, isn't that
13 true?

14 A I said -- well, it must have been mentioned. I
15 didn't specifically tell him that I was going. I
16 mean, I don't remember outright telling him that.
17 It must have come up in conversation, sure.

18 Q So, I mean, you were trying to paint a picture that
19 Bird was stalking you?

20 A He was. He was.

21 Q Following you around?

22 A Yes. He had done stuff like that. He had showed
23 up at rooms like 148 where I was trying to go that
24 night and caused a lot of chaos there. He showed
25 up at another fellow's house. It was like where I

1 would go he would try to show up. He just -- he
2 claimed that he had feelings for me and was
3 pursuing it.

4 Q Do you recall being asked on May 5th, 2007, by
5 Heidi Scott at approximately 1:30 in the afternoon:
6 have you and Bird been in a relationship
7 before?

8 Answer: I think that we have feelings for
9 each other. I care for him. We dated for a couple
10 of days.

11 A Yes, I did.

12 Q Is that the truth?

13 A Yes, I did.

14 Q So when Bruce gets there, to Frank's house, you,
15 Frank and Tenisha are already upstairs in Frank's
16 bedroom smoking crack, correct?

17 A Yes.

18 Q Bruce knocks on the door. Who goes and opens the
19 door for him?

20 A I did.

21 Q And you let him into Frank's house?

22 A I did.

23 Q And he came -- did he go upstairs at that point to
24 smoke the rest of the crack with you guys?

25 A He came upstairs with everyone.

1 Q And that is when he put that 40-dollar piece of
2 crack on the plate?

3 A Yes, he sat it --

4 Q Like the community crack plate?

5 A Yes.

6 Q Was there any arrangements -- you indicated prior
7 in your direct examination that Bruce was not a
8 drug dealer, he was not there to sell drugs. He
9 just put a 40-dollar rock on the plate, is that
10 right?

11 A He said he had just come over to party with us,
12 yes.

13 Q Then all of a sudden the rock goes missing, his
14 crack rock goes missing, is that right?

15 A Some of it came up missing, yes. And there was
16 some missing off the plate. It was noticed that
17 the plate was short, yes.

18 Q And you started accusing Frank of taking it,
19 correct?

20 A I -- it was possible that I was.

21 Q Well, you were very concerned of Frank's safety at
22 this point because you are scared of Bruce, right?

23 A I'm scared of Bruce and his actions, yes.

24 Q So you wanted to save and spare Frank from Bruce so
25 he could put the crack back before Bruce finds it

1 missing?

2 A I wanted -- yes, I wanted to get the crack back or
3 get money or something to pay to satisfy Bruce so
4 that nothing would come of it. I wanted to try to
5 keep it --

6 Q Well, if you were trying to save Frank from Bruce
7 and you are trying to convince him to put the crack
8 back, how -- why would you need money? Why would
9 you need to pay Bruce with the money that he
10 doesn't even know it is missing?

11 A Because he -- Bruce did say his was missing. He --
12 that is the reason that I confronted Frank.

13 Q I'm going to bring your attention to your
14 statement. And I'll give you a copy so you can
15 read along.

16 MS. SHIPLEY: Beg the Court's indulgence, Your
17 Honor.

18 (Pause.)

19 Q And this is the statement you testified on direct
20 that you signed, correct?

21 A Yes, I said I signed it.

22 Q Go to Page 4, please. The very first line, can you
23 read that for the jury? Read it out loud?

24 A The very first paragraph here?

25 Q Yes, read the whole paragraph for the jury.

1 A I went down to let him in. Tenisha and Frank
2 stayed upstairs still smoking. Bird and I went
3 back upstairs. Bird sat down on the bed and put
4 his crack on the plate with the crack that was
5 already -- that we had already -- excuse me -- that
6 we already had. I noticed that a big piece of
7 crack had disappeared --

8 MS. GRIPP: Objection.

9 THE COURT: Wait, wait, wait.

10 MS. GRIPP: Improper impeachment.

11 THE COURT REPORTER: I'm sorry?

12 MS. SHIPLEY: Improper impeachment? It is a
13 prior consistent statement under the rule.

14 THE COURT: I know the rule. Go ahead.

15 Q Please continue.

16 A I noticed that a big piece of crack had
17 disappeared. I accused Frank. Frank got upset
18 about that and he went downstairs. We all followed
19 Frank downstairs. We all accused Frank of stealing
20 the crack. I asked Frank to go upstairs with me.
21 I thought he would admit to stealing the crack if I
22 had talked to him alone. I saw the little plastic
23 container with the crack on it. I took it
24 downstairs and showed Bird and Tenisha. Bird said,
25 that was my crack.

1 Q Okay. So Bird -- you brought it to Bird's
2 attention that Frank took your crack, right? You
3 said, I noticed the crack went missing?

4 A I noticed that some was missing off the plate.

5 Q Okay. And then when you found it and Frank's
6 little crack pipe, or wherever he had it hidden,
7 you brought it to Bruce's attention to say, hey, I
8 found your missing crack; your crack was missing
9 and here it is, he took it from you?

10 A No, there was -- this was some crack on a pipe,
11 which was just a small amount. What was missing
12 was a large amount. On the pipe you can only --
13 which was testified to earlier, I believe -- you
14 can only break off little pieces and put it on the
15 pipe. This was -- there was two different kinds of
16 crack on the plate. Some was hard and yellow.
17 Some was soft and white. Bruce's was the soft and
18 white. When I took that downstairs and showed him
19 how some was sat on Frank's pipe and it was
20 Bruce's. That is why Bruce identified it as his
21 crack.

22 Q So you brought it to Bruce's attention?

23 A That the crack was on the pipe?

24 Q Yes?

25 A Yes.

1 Q You were the one that noticed it was missing, not
2 Bruce, correct?

3 A At first, yes.

4 Q So at that point you decide you are going to get
5 money, even though your friend Bruce is here to
6 party with you guys and share his crack cocaine,
7 you take it upon yourself to take money from Frank
8 West, isn't that true?

9 A No, at first I asked him to give the crack back.
10 Frank said that he did not have it. That is why he
11 had emptied his pockets out trying to show me that
12 he didn't have any, any crack, that he didn't put
13 any to the side.

14 That is when I told him that, you know, well,
15 then he'll have to pay Bird for what was missing,
16 because even though he came over to smoke it with
17 us, I'm sure he wasn't too happy about the fact
18 that some of his came up missing.

19 Q And that is when you grabbed \$50 of Frank's from
20 the dresser, correct?

21 A I don't remember how much it was.

22 Q Well, read your statement.

23 MR. SECOR: Objection. She is entitled to
24 answer the question.

25 THE COURT: Hold on. What did you say?

1 MR. SECOR: She is entitled to answer the
2 question.

3 THE COURT: Let her answer the question.

4 A I don't remember how much money I had grabbed.
5 And, no, it wasn't on the dresser. He had sat it
6 down on the bed as he was emptying his pockets. I
7 reached over towards the bed to grab -- I had not
8 even grabbed anything. As I was going to grab it
9 is when Frank grabbed me.

10 Q Read the second to last sentence of the first
11 paragraph you were reading from earlier, where it
12 says, I grabbed.

13 A I grabbed Frank's \$50 that was sitting on the
14 table. When I grabbed the money, that is when
15 Frank started to attack me. Then I hollered for
16 Bird.

17 Q So you grabbed the money. He didn't want you
18 taking his money, right?

19 A As I was going to grab the money, he grabbed me.
20 No, he didn't want me to take his money.

21 Q You said in your statement, I grabbed it. You had
22 it in your possession?

23 A I already testified to the fact that I -- these
24 statements were distorted and not my wording, and
25 so I'm giving my testimony at this point.

1 Q Okay. So these words that you are reading, they
2 are not your words?

3 A No, ma'am.

4 Q Heidi Scott just came up with this in thin air?

5 A I don't believe everything is. I think there is a
6 lot of ad lib and a lot of distortion involved in
7 the statements. I do.

8 Q But you --

9 A I don't think, I know there is.

10 Q So, but you still went ahead and signed it
11 indicating that, I have made the foregoing
12 statement freely, voluntarily, without fear,
13 threats, promise or reward or hope of reward of any
14 kind, and this is to certify that I have read or
15 had read to me the foregoing statement made of six
16 pages and a true copy has been given to me, this
17 5th day of May, 2007?

18 A Yeah. I'll also repeat the fact that I had been up
19 since Wednesday morning and had been on numerous
20 drugs. I was in a state of shock. I had just
21 witnessed a horrible incident. I was not lucid. I
22 was passing out. I was even noticed by one of the
23 investigators to be shaking and swaying on my feet.

24 Q That is when you were hungry, but still thinking
25 about what you did to Frank?

1 A I didn't say that either, because there would be no
2 reason for me to because I didn't -- I didn't.

3 Q So Ms. Reed-Enzor misheard you?

4 A I believe she did.

5 Q Okay. And also Investi -- or Detective Mazerolle,
6 or Deputy Mazerolle when he pulled you and
7 Ms. McClinton over -- he must have misheard you
8 about Bird doing it?

9 A I -- I don't recall. I didn't say Bird did it. I
10 said where Bird was located. But I noticed from
11 Monday to Wednesday that the detective had some
12 different things to say, so --

13 Q And so do you, ma'am. Now, you indicated that at
14 that point when you went to grab Frank's money and
15 he grabbed you, that he was in a fit of rage, is
16 that right?

17 A Yes, ma'am.

18 Q And that he lifted you up, shoved you against the
19 dresser, hit your head on the back of the dresser,
20 had you pinned by the arms and your back, and that
21 is when you yelled for help?

22 A Yes.

23 Q Do you remember what you answered on the day this
24 happened when you were asked, what did Frank do to
25 you?

1 A I'm sure I said the exact same thing that I just
2 told you.

3 Q No, actually you said, he pushed me and then he
4 grabbed me by my arms while he was standing in
5 front of me. He held my arms back to the dresser.

6 No mention of any rage, ma'am.

7 MS. GRIPP: Is there a question in that?

8 Q Is there?

9 A Again, I refer to how I feel about the statement.

10 Q You testified when your attorney was asking you
11 questions that, at that point when you hollered for
12 help, that Tenisha and Bruce came upstairs and
13 said, don't -- you don't hit a lady. And that at
14 that point Bruce hit Frank and then Tenisha took
15 over and just started wailing on Frank. Is that
16 right?

17 A I said that Bruce pulled Frank off of me and threw
18 him to the side. Frank fell back on the bed. As
19 he came up, Tenisha started to hit him, yes.

20 Q And then you also said you saw a beer bottle flying
21 in the air?

22 A Throughout all of the midst of the chaos that was
23 going on, there was a beer bottle that was -- that
24 was throwed across the room. I remember seeing the
25 beer bottle. I don't remember seeing anybody use

1 the beer bottle, I just remember the beer bottle
2 being throwed across the room, yes, ma'am.

3 Q Was that around the same time that you saw the TV
4 flying through the room?

5 A The TV did come flying across the room, yes, it
6 did.

7 Q So at this point Frank is still in a state of rage?

8 A They were fighting. They were all fighting. Frank
9 and Tenisha -- Frank was fighting with Tenisha.

10 Q All right. Now, was Frank fighting Tenisha or was
11 Frank defending himself from Tenisha?

12 A No, he was fighting her at the time.

13 Q Well, you testified earlier that she got on top of
14 him when he is on the bed and started wailing On
15 him?

16 A No, I said as he came back up she started hitting
17 him. He was standing up.

18 Q All right. And you testified that everybody in the
19 room is fighting except for you, you are just
20 standing there watching?

21 A At this point I was just kind of standing back,
22 yes, ma'am.

23 Q Okay. So you're not anywhere near Frank at this
24 point, right?

25 A Not in the beginning, but I did -- I did get in

1 there and try to -- I was actually trying to get
2 them to stop. I put myself in the middle of it. I
3 did.

4 Q You said, I was just standing there, according to
5 what you said to your lawyer, I was scared of
6 everybody involved. Everybody was in a rage. They
7 are much larger. They are scary people. I
8 remember trying to stop, begging them all just to
9 stop. Is that right?

10 A Yes.

11 Q Were you telling them to stop, or were you getting
12 in the middle of it telling them to stop?

13 A At first I was just begging them to stop, but then
14 there was a point where I did actually try to get
15 them to stop. I tried to get in the middle of it.

16 Q Well, when was it that the victim lunged at you
17 again? You testified when your lawyer asked you
18 questions that at that point you are in shock,
19 there is so much confusion going on, and that is
20 when Frank lunged at me.

21 A When I tried to stop it is when he lunged at me.

22 Q And that is when you grabbed the knife?

23 A That is when I grabbed the knife.

24 Q Where was the knife?

25 A The knife was to my left side. I don't remember --

1 Q Well, where were you standing in the room? I have
2 no idea where you are in the room.

3 A I don't -- I don't -- to be honest with you, I
4 don't remember exactly where we were standing.

5 Q Okay. Did you grab it from a dresser?

6 A No, it was on the floor.

7 Q So you reached down as Frank is coming at you,
8 attacking you, you reach down and grab the knife?

9 A Yes, ma'am.

10 Q Then you testified on direct that, I went to stab
11 him and I couldn't do it, so I threw the knife
12 down?

13 A Yes.

14 Q I'm going to bring your attention to your statement
15 on Page Number 5.

16 Question, beginning with, did Frank move.
17 Please read your answer to the jury.

18 A Yes, he started to move. I hollered that, he
19 is starting to move. Tenisha came up from
20 downstairs and told me to go downstairs and help
21 Bird get shit together so we could go. I went
22 downstairs. I heard Tenisha holler and a bunch of
23 banging. Bird and I went back upstairs. When we
24 went up -- back upstairs Frank looked like he was
25 trying to crawl away. He was on his knees. And

1 Tenisha was saying, get him, get him, don't let him
2 move. He got me.

3 Q And then:

4 Question: What did he mean by, he got me?
5 What was your answer?

6 A I guess she meant that Frank slugged her.
7 Then I saw a knife in the bedroom. I picked it up.
8 Tenisha kept telling me to make him shut up. I was
9 so scared. I took the knife and I stabbed him in
10 his back. I was standing over him and I held the
11 knife and stabbed him in his back. I started
12 freaking out and dropped the knife down. Tenisha
13 kept telling me to hold him. Tenisha was holding
14 his head. She told me that she lost her nail. I
15 seen the blood. Tenisha was telling me to chill
16 out because I was freaking out. She kept holding
17 his head while I was on his back. Tenisha said,
18 hold him, hold him. I said, do we need to kill him
19 to shut him up? I was holding him down, and I seen
20 the blood pour from his head. Frank was still
21 hollering, help, help, and making a lot of noise
22 banging on stuff.

23 Q And then the next question:

24 Who sliced Frank's throat?

25 A I don't know. I didn't. I don't even know

1 exactly when it happened, I just know that I
2 stabbed him in his back.

3 Q And the last question:

4 Did you see anyone else pick up the knife?

5 A No.

6 Q In your statement on the day of the incident when
7 this would be more fresh in your memory, you make
8 no mention whatsoever of Frank coming at you when
9 you get the knife, isn't that true?

10 A It is not on the statement.

11 Q You testified in direct examination that you got
12 the knife, you went to stab him and couldn't do it,
13 then you dropped it, and then you went downstairs.
14 But in your statement on the date of the incident,
15 you are alone with Frank upstairs when this is
16 happening because Tenisha had to come up the stairs
17 from downstairs because she is helping Bruce gather
18 the victim's belongings, right?

19 A That is what it says on the statement, yes, ma'am.

20 Q You also then testified that, at that point you
21 started gathering your things. Is that right?

22 A After --

23 Q You left the room and you went and started
24 gathering your things?

25 A I went downstairs.

1 Q And by that point Bruce and Tenisha run out of the
2 house. Correct?

3 A They keep running down the stairs and hollered for
4 me to, let's go.

5 Q So it was Tenisha that said, let's go, let's go?

6 A I'm pretty sure. I just remember them hollering,
7 let's go.

8 Q So when was it that you grabbed the white blanket
9 and wrapped the knife in it?

10 A I don't remember.

11 MS. SHIPLEY: Beg the Court's indulgence.

12 THE COURT: Okay.

13 (Pause.)

14 Q Do you remember indicating that it was prior to you
15 guys leaving that you grabbed the white blanket and
16 you wrapped the knife in it?

17 A I don't remember.

18 Q You indicated on your direct examination that Bruce
19 and Tenisha left the house before you did, right?

20 A Yes, I did.

21 Q And they are calling for you, let's go, let's go?

22 A Yes.

23 Q You testified then that you want this jury to
24 believe that Bruce got in the driver's seat,
25 correct?

- 1 A Yes.
- 2 Q And this is a Toyota Camry?
- 3 A Yes.
- 4 Q Would you agree with me that it is a pretty compact
5 sedan?
- 6 A It is -- it is a -- yes, a mid-sized car.
- 7 Q Okay. And that at that point Tenisha is already in
8 the front passenger's seat of the vehicle by the
9 time you get to them?
- 10 A Yes, she was.
- 11 Q And that rather than you just jumping in the back
12 seat, you have Tenisha, who is a relatively large
13 woman, scoot over and sit on the console between --
- 14 A Yes.
- 15 Q -- the driver's seat and the passenger's seat?
- 16 A Yes, ma'am. The back was -- had all kind of stuff
17 in it. At this point the back was full of stuff.
- 18 Q So Bruce is able to drive this vehicle away with
19 Tenisha McClinton sitting on the gear shift?
- 20 A She was kind of sharing the seat with me and
21 half -- yes, we were squished in the front.
- 22 Q All right. So you go from there. Bruce takes
23 you -- and meanwhile, while you are upstairs with
24 Frank and Tenisha is upstairs with Frank, you are
25 the one that says, Bruce is concerned about robbing

1 him? Isn't that right?

2 A Did I say that then?

3 Q Well, I can't keep track. When did you say it?

4 A I don't know. Would you rephrase your question,
5 please, in a way that I can understand, ma'am?

6 Q It is your second statement to Investigator Gwyn,
7 State's Number 7, and it is on Page 4. The
8 question to this answer is actually on the
9 preceding page, Page 3, when your asked by
10 Investigator Gwyn:

11 What did Bird do after that?

12 And your answer on Page 4, the very first
13 answer, what -- please read it for the jury.

14 A That is when Tenisha jumped in and started
15 man-handling him and Bird started getting Frank's
16 things. He was more worried about robbing him than
17 anything else.

18 Q Because you are the one that told the police Bruce
19 was robbing him, correct?

20 A That's what Bruce was doing. Bruce was getting his
21 stuff together and taking it and loading it up in
22 the car.

23 Q So he is taking the DVD player and all kinds of
24 like ammunition, all those types of things from
25 Frank's house?

- 1 A I wasn't sure exactly what it was he was taking. I
2 just seen him gathering different stuff, and that
3 is the same time things were getting thrown around
4 and --
- 5 Q So things are getting thrown around, but he has got
6 his hands full of the victim's belongings?
- 7 A He was in and out. And this was in the process he
8 was -- yes.
- 9 Q How many trips did Mr. Thompson make to the car
10 loading it up with the victim's belongings?
- 11 A I wasn't -- I didn't count.
- 12 Q But he did leave the apartment at times to load up
13 the car?
- 14 A He would have had to.
- 15 Q At that point he drives you to the trailer on
16 Rembert Martin Parkway, correct?
- 17 A Yes, ma'am.
- 18 Q And that is where you and Tenisha were provided
19 with a change of clothing, right?
- 20 A Yes.
- 21 Q And you showered?
- 22 A No, I didn't take a shower.
- 23 Q You are denying you took a shower?
- 24 A I didn't take a shower.
- 25 Q I'm going to bring your attention to the first

1 statement you gave to Sergeant Scott on May 5th,
2 2007, on Page 6. And it is the first question:

3 What happened next?

4 Please tell the jury your answer.

5 A We left in Frank's car. Bird took us to some
6 people's trailer and I changed clothes and washed
7 up real good.

8 Q Question: Did you change your clothes?

9 What was your answer?

10 A Yes.

11 Q I didn't mean to interrupt. What was your answer?

12 A Yes.

13 Q Question: Where are the clothes that you were
14 wearing when you stabbed Frank?

15 A I carried them back out to the car in a
16 plastic bag.

17 Q And do you recall telling them that the lady of the
18 house provided you with the plastic bags?

19 A Yes, she did. I sat the -- I sat all the clothes
20 on the bed in her bedroom and she put stuff into
21 the plastic bag and she left it sitting beside the
22 door of the trailer. When I went to get in the car
23 I took the bag with me.

24 Q Do you recall testifying on direct examination that
25 you claimed you laid the clothes, your clothes, on

1 the bathroom floor and that the woman of the house
2 packaged your clothes?

3 A That's what I said, she packaged the clothes. I
4 just -- I don't remember exactly where I sat the
5 clothes. I know that she packaged the clothes and
6 put them in the bag and left them beside the door,
7 yes, ma'am.

8 Q All right. And do you recall telling someone in
9 your statement concerning, getting in an argument
10 with the man of the trailer, the house, about he
11 was offering to dump the clothes for you and you
12 said, no, I'll take care of my own clothes? Do you
13 recall that answer you gave to the police?

14 A I don't recall that answer, no, but --

15 Q Well, let's find it then.

16 A Okay.

17 Q It is on Page 3 of the second statement you gave to
18 Sergeant Gwyn, Brien Gwyn, Investigator Gwyn. And
19 it is six lines up, where it says, I put my things
20 in. Can you please read that to the jury?

21 A I put my things in a bag, and the Indian guy
22 grabbed the bag and said, there is a dumpster out
23 back that he could put it in, and told him -- I
24 told him no, I could get my stuff. And he got mad
25 at me.

1 Q Keep going.

2 A Continue?

3 Q Please.

4 A We left and they thought we were coming back with
5 some crack. Before we left the lady looked at me
6 and said I could come back there, it was a safe
7 haven. We went and got gas and when Bird got out I
8 got in the driver's seat. I took Bird and dropped
9 him off at Room 118 by his brother's room. And
10 when I drove around the corner, that is when the
11 cops go -- go us.

12 Q The cops got us? Or go -- it says go us.

13 A Yes.

14 Q So you admit that this lady did tell you it was a
15 safe haven?

16 A Yes.

17 Q Does it refresh your memory now that you told the
18 man that wanted to take your stuff to the
19 dumpster --

20 A No, I still don't recall that.

21 Q But you recall the safe haven part?

22 A I recall her saying that, yes.

23 Q All right. Then in your direct examination you
24 were asked about how you wanted to go get help,
25 that is why you left Bruce Thompson at the hotel.

1 Is that right?

2 A Is that why I left him at the hotel?

3 Q Yes, ma'am?

4 A That is why I got into the driver's seat. That was
5 my -- that is why I wanted to leave the trailer.

6 That is what was on my mind. I don't know --

7 Q And get help for yourself or for who?

8 A For myself at that point, yeah, I was scared.

9 Q You were concerned about yourself?

10 A Yes, I was.

11 Q You testified that you have training in nursing, is
12 that right?

13 A Yes.

14 Q That -- what was it, two years of nursing? And
15 then from -- I believe -- tell me how many years
16 you were a nurse's assistant?

17 A About nine years in nursing.

18 Q Did it ever occur to you to give Frank West help?

19 A Yes. That is also when I wanted to get -- but,
20 like I said, I did not know the extent of his
21 injury. I did not know he was in the shape that he
22 was in.

23 Q Well, let's talk about what you knew then. Page 3,
24 statement to Investigator Gwyn.

25 Question: Did you see Tenisha stab Frank?

1 Please tell the jury what you answered.

2 A I saw her slash his throat. I didn't see her
3 stab him.

4 Q So as a nurse for nine years, or a nurse's
5 assistant for nine years, someone's throat being
6 slashed, isn't that pretty severe?

7 A Yes, it would be.

8 Q So you were not aware of the extent of Mr. West's
9 injuries at that point?

10 A No, I still wasn't aware of all of his injuries.
11 But I knew he needed help. I knew he was hurt.
12 And I was concerned. I wanted to find out, which
13 is why I wanted -- one of the main things I was
14 asking the cops, how was Frank. And getting myself
15 help, I would have been getting Frank help at the
16 same time.

17 Q Did you ever ask the people at the trailer for
18 help?

19 A No, I was scared of the man at the trailer.

20 Q So everybody -- your just terrified of everybody?

21 A At that point, yes, I was.

22 Q Even though the woman of the house is assuring you
23 that this is a safe haven, you are safe here, you
24 are scared of her?

25 A I wasn't really scared of her, I was scared of him.

1 Q Even though he is trying to help you dispose of the
2 bloody clothes?

3 A I don't think he was trying to help in a friendly
4 manner. He wasn't acting really friendly, not
5 towards me anyway, but then -- like I was crying,
6 and I don't think anybody was too happy with me at
7 that point. I wasn't acting up to par, you know.

8 Q All right. So you basically deny everything that
9 Officer Mazerolle testified to about what you said
10 to him, correct? About Bird doing it? When he
11 brings the knife -- do you remember his testimony?
12 He finds the knife, brings it into the car, and he
13 said that you start saying, I tried to take that
14 knife away from Bird before he started attacking
15 the victim?

16 A I do not recall the conversation, no, I don't.

17 Q All right. I believe in a prior hearing you
18 testified Tenisha said all of that, is that what
19 your testimony is?

20 A I remember Tenisha talking about it. I don't
21 remember exactly what Tenisha had said either. I
22 just know what I said. And all I was saying is,
23 where was Bird was located. I was being asked and
24 I was telling them what I knew.

25 Q From there you are -- and that is about 6:30 in the

1 morning. Do you dispute the time that the deputy
2 wrote on his report?

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

4 Q All right. So if he documented that day that it
5 was at 6:30 that he stopped you and Ms. McClinton,
6 would that be accurate?

7 A I can't honestly answer that, considering, once
8 again, how I feel about the statements that -- and
9 how the detectives handled everything, I couldn't
10 tell you.

11 Q Oh. So the part that you -- and you are even
12 disputing the times that they are documented?

13 A I told you I don't know what time it was.

14 Q Okay. Well, 6:30 is when he documents that you are
15 stopped behind the Western Inn Hotel. You are then
16 taken, after -- according to your own testimony,
17 you are in the car about a half hour, then you are
18 taken to headquarters?

19 A Yes, ma'am.

20 Q So that is the right timeline?

21 A It is.

22 Q I'm not trying to put words in your mouth.

23 A No, I understand.

24 Q At that point you are taken to headquarters. And
25 you indicated that as soon as you got there, about

1 15 minutes later Investigator Martin is already
2 questioning you?

3 A Yes, ma'am.

4 Q So if Mazerolle is not lying about the fact that he
5 stopped you at 6:30, you are on the scene for 30
6 minutes, so that puts us to 7:00 a.m., and you are,
7 let's say it is about a 15-minute drive to the
8 Sheriff's Department from the hotel, because it is
9 an early morning on a Saturday, so you get to the
10 headquarters at 7:15, and then 15 minutes later, at
11 7:30, this man is questioning you?

12 A I don't know the exact timeline, but I know
13 Mr. Martin was the first one to start questioning
14 me.

15 Q He was not notified about anything until 8:10 a.m.,
16 okay?

17 A I don't know what the timeline would have been.

18 Q So this whole time you are being questioned by this
19 man right here, you are miserable, you are crying,
20 you are upset, you are asking how Frank is doing,
21 you are just high on crack, you hadn't slept since
22 Wednesday, you committed -- or attempted suicide on
23 Tuesday, you smoked marijuana, Prozac, Xanax,
24 didn't drink, didn't sleep, all that is what was
25 going on with you at this time?

1 A Yes -- no Prozac, but, yeah.

2 Q Defense Exhibit Number 5. Do you recall Captain
3 Redmond testifying just a few minutes ago about the
4 fact that you reported to him or someone in his --
5 under his supervision, do you use drugs, Number 7
6 on that form. What kind? Cocaine. When is the
7 last time? A week ago.

8 A (Nods affirmatively.)

9 Q This is the information you give on May 5th, 2007,
10 correct?

11 A Yes.

12 Q The day you are booked in at the jail?

13 A (Nods affirmatively.)

14 Q Do you agree?

15 A Yes.

16 Q And you are telling people that you haven't
17 smoked --- or taken cocaine in a week?

18 A That's what it says I said.

19 Q So they are lying too?

20 A I don't -- I don't know what I said that morning,
21 to be honest with you.

22 Q Then at the bottom when it is talking about
23 placement recommendation, you are telling this jury
24 you were on suicide watch and you were in some sort
25 of observation. Tell the jury whether or not the

1 box or the space next to observation is marked
2 or --

3 MS. GRIPP: Objection. She didn't testify she
4 was on watch.

5 THE COURT: Well, that would be a factual
6 issue for the jury to decide. Go ahead.

7 MS. SHIPLEY: My apologies.

8 Q Medical intake, observation, is what you said in
9 your direct.

10 A It is not -- it is not -- I just know where they
11 put me is in one of the medical observation rooms,
12 and when I asked why I was in there, because that
13 is C Unit, which is where I was -- had to stay for
14 quite a while and that is where all the mental
15 people in the hospital -- or in the jail are kept.
16 So it is not a very -- it is not a very nice unit
17 to be on, to be honest with you. So when I asked
18 why I was put on that unit, I was told because they
19 had me under observation.

20 Q Tell the jury at the very bottom of this form what
21 your pulse was.

22 A Eighty-seven.

23 Q That is normal, isn't it?

24 A Yes, it is.

25 Q What was your blood pressure?

1 A 129 over 84.

2 Q That is normal too, isn't it?

3 A Yes, it is.

4 Q So would you agree with me as an experienced nurse
5 or nurse's assistant that that is inconsistent with
6 anxiety symptoms?

7 A Yes.

8 Q Do you deny telling Reed-Enzor that you were -- I
9 don't want to put words in your mouth -- do you
10 agree that you told Reed-Enzor you were hungry?

11 A I was hungry, so I'm sure -- I mean, I'm sure I
12 could have said that.

13 Q Okay. But you dispute that you said, I keep seeing
14 what I did to that man?

15 A I could have said, I keep seeing what happened,
16 because still until this day -- I was treated for a
17 long time for post-traumatic stress syndrome. I
18 have been seeing a counselor in mental health. I
19 have really horrible nightmares reoccurring. Not
20 so bad anymore, but I still do. There is not a day
21 that goes by when I'm not haunted by everything
22 that has gone on.

23 Q You also indicated that you kept passing out during
24 Sergeant Scott's interview of you?

25 A I did.

1 Q How many times did you pass out?

2 A I remember nodding out about three times.

3 Q And one time you say that that happened in the
4 presence of Heidi Scott and Mr. Martin?

5 A Yes, it did.

6 Q Investigator Martin? Then at 1:30 when you are
7 done -- when your statement is given at 1:30 to
8 Sergeant Scott, she testified it lasted about an
9 hour. Do you dispute that, that it lasted about an
10 hour?

11 A To be honest with you, I couldn't tell you the
12 exact time it took place.

13 Q Okay. So if she is right, because she is paying
14 attention to this, 1:30, an hour later would be
15 2:30, correct?

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

17 Q All right. So you testified that you were in
18 custody for ten hours, is that right?

19 A Yes.

20 Q Okay. It is actually eight hours. And you were
21 also fed before you gave your statement, the second
22 statement?

23 A No, I was not fed until the whole thing was over,
24 right before I was transported to the jail.

25 Q So it is your testimony that Reed-Enzor did not sit

1 down with you at lunch and eat her lunch with you
2 at lunch time?

3 A No, she didn't.

4 Q That it didn't happen until after 2:30?

5 A It didn't happen until after all the questioning
6 was over.

7 Q And you admit that that is your signature on every
8 single last document that has been introduced by
9 the State?

10 A Yes.

11 Q And you trust Investigator Brien Gwyn, right?

12 A I did.

13 Q You called for him? You asked for him?

14 A No.

15 Q So if he wasn't even there, how would he know you
16 were asking for him?

17 A I don't know.

18 Q And it is your testimony that -- do you recall in a
19 pretrial hearing that you testified he picked you
20 up from the jail and took you to headquarters,
21 Region 1 Headquarters, alone?

22 A He took me, yes.

23 Q Okay. So he was in what you believe to be his
24 personal car, is that right?

25 A He was in a car that wasn't a cop car. Not that

1 I -- I mean, it wasn't marked or anything. It
2 wasn't a patrol car.

3 Q All right. And so you deny another investigator by
4 the name of John Baker was with him?

5 A He wasn't in the car with us, no, he wasn't.

6 Q And this is after you claim you were transported to
7 the courthouse?

8 A Yes, I was took to the courthouse first.

9 Q And that the interrogation techniques used by
10 Investigator Gwyn and Investigator Baker were, your
11 words, good guy/bad guy?

12 A That is -- yes, that is how --

13 Q And you want this jury to believe that that is
14 intimidating?

15 A It was to me.

16 Q And I believe you testified that you don't trust
17 Gwyn anymore because he is a liar?

18 A I don't think I said that.

19 Q Or you don't trust law enforcement because they are
20 all liars?

21 A I don't think --

22 Q Something to that effect?

23 A -- I said that neither. I think I said that the
24 statements were distorted, there is a lot of ad lib
25 and untruths and -- but, I don't think I outright

1 called anyone a liar. But my honest opinion, I
2 have a very -- I'm very leery now. No, I don't
3 have much -- much for the justice system, no.

4 Q So when Ms. McClinton testified that her statements
5 were verbatim what she said to the police, that is
6 just not the case for you?

7 A No, it wasn't.

8 Q Okay.

9 MS. SHIPLEY: No further questions, Your
10 Honor.

11 MS. GRIPP: Court's indulgence.

12 (Pause.)

13 REDIRECT EXAMINATION

14 BY MS. GRIPP:

15 Q Just a couple of questions. What was Frank's job?

16 A He was a deliverer for medical supplies.

17 Q Okay. And how much did you weigh at the time?

18 A I believe when I -- my first time getting weighed
19 at the medical was, I was 112 pounds.

20 Q Okay. And you testified that Bruce Thompson and
21 Tenisha McClinton left and said, let's go. And how
22 long did it take you to leave the house after that?

23 A I was right behind them.

24 Q Okay. And once you went downstairs, did you ever
25 go back upstairs?

1 A Not that I recall.

2 Q And the statements that you have just gone into
3 detail with, why are those statements different
4 than your testimony today?

5 A Why are they different?

6 Q (Nods affirmatively.)

7 A I'm not -- I'm not sure I know.

8 Q Did you say all those things?

9 A No, I didn't.

10 Q Okay. The statements that you said -- you agree
11 that you spoke to them?

12 A Yes.

13 Q Okay. Were those your words?

14 A No, those weren't my words.

15 Q All right.

16 MS. GRIPP: No further questions.

17 MS. SHIPLEY: Nothing, Your Honor.

18 THE COURT: All right, ma'am, you can step
19 down.

20 (Witness steps down.)

21 MR. O'NEIL: Beg the Court's indulgence, Your
22 Honor.

23 (Pause.)

24 MS. GRIPP: We call Patty Rickborn.

25 THE BAILIFF: Place your left hand on the

1 Bible, raise your right hand, and face the clerk.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the
4 testimony you are about to give in this case will
5 be the truth, the whole truth, and nothing but the
6 truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Have a seat in the witness box,
9 and state your full name for the record, please.

10 (Witness seated.)

11 THE WITNESS: Patty Rickborn, R-I-C-K-B-O-R-N.

12 PATTY RICKBORN,

13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GRIPP:

16 Q Ms. Rickborn, can you tell me your occupation?

17 A I'm a private investigator.

18 Q How long have you done that?

19 A Over 20 years. Well, I have been a private
20 investigator since 1992.

21 Q What kind of investigations do you do?

22 A Criminal defense for major crimes in the Richland
23 County Public Defender's Office.

24 Q Did you work on this case specifically?

25 A I did.

1 Q Okay. How long have you worked on the case?

2 A Over a year.

3 Q Did you at any time have occasion to meet with
4 Tenisha McClinton?

5 A I have.

6 Q Okay. When was that?

7 A I met with her the first time on October 30th.

8 Q Okay. Did she tell you -- without saying exactly
9 what she said, what was the crux of your
10 conversation about?

11 A I spoke with her about the events that occurred on
12 the night that Frank West was killed.

13 Q Okay. And what did she tell you occurred?

14 A She told me that --

15 MS. SHIPLEY: Objection. Hearsay.

16 MS. GRIPP: Prior inconsistent statement, Your
17 Honor.

18 THE COURT: Wait a minute. Y'all come up.

19 (WHEREUPON, a bench conference was held
20 in the presence of the jury but out of
21 the hearing of the jury.)

22 Q Did she tell you what happened on May 5th?

23 A She told me that Melinda Richmond came to Chapin
24 South Carolina where she was was living with her
25 grandmother, Tenisha McClinton was living with her

1 grandmother. And they went out and smoked some
2 crack, smoked a lot of crack, ran out of crack, and
3 they were going to go into Columbia. And at that
4 time Tenisha went on to the apartment of Frank West
5 with Melinda Richmond.

6 Q And then what happened?

7 A When they got to the apartment Frank was asleep and
8 he woke up shortly thereafter. They smoked all the
9 crack they had previously, so they wanted to buy
10 some more. And Frank gave them some more money to
11 go buy some more crack. When they returned Frank
12 had gotten a phone call and he needed to go to work
13 for about an hour. And he did this. During the
14 time he was gone Tenisha and Melinda went to a
15 house on Latonea Drive and met with a man whose
16 nickname is Bird. Bruce Thompson is his name. And
17 they bought some crack and returned to the
18 apartment where Melinda was living with Frank West
19 at Farrington Apartments.

20 Q And then what did she say happened?

21 A She said that they smoked that crack, and Frank
22 came back from work, they smoked the crack. And
23 they all three decided they wanted to get more. So
24 they called Bird, Bruce Thompson. He came to the
25 apartment and brought more crack.

1 When he got to the apartment, Tenisha and
2 Melinda and Frank were upstairs just talking and
3 hanging out.

4 Shortly thereafter Melinda and Tenisha went
5 downstairs, and there Bruce Thompson, Tenisha
6 McClinton and Melinda smoked some more crack and
7 hung out and talked.

8 A short time passed and Melinda went upstairs
9 while Frank was still upstairs. Tenisha told me
10 that she and Frank heard fighting and yelling,
11 arguing.

12 Q That she and Frank heard that?

13 A I'm sorry, I mean she and Bruce Thompson heard
14 Frank and Melinda upstairs fighting. And so they
15 both rushed up the stairs.

16 So when she got upstairs, she saw marks on
17 Melinda through this area, and she believed that
18 Frank had been hitting her.

19 So Tenisha told me she took a beer bottle and
20 hit Frank over the head with it. And about that
21 same time, Bruce Thompson hit Frank in the face
22 with his fist. And Frank went to the ground.

23 She told me he didn't stay on the ground very
24 long. He was dazed for a moment and he got back
25 up.

1 She told me at this time that Bruce Thompson
2 is kind of going around the house collecting things
3 to steal and that Frank is on his feet angry and
4 fighting both Melinda and Tenisha.

5 She told me that she, Tenisha, had a beer
6 bottle which she told me never broke. And she told
7 me that Melinda had the knife they had been cutting
8 crack with earlier. And that Frank was steady
9 fighting. And Tenisha told me it was her belief
10 that Melinda was acting in self-defense.

11 Q What did she tell you that Melinda was doing at
12 that time?

13 A She told me that she was just wildly stabbing in
14 the area of Frank, and Frank was fighting at the
15 time.

16 Q Okay. And did she ever tell you that she stabbed
17 Frank West?

18 A No, she did not tell me she ever stabbed Frank
19 West.

20 Q Did you ask her that?

21 A Yes, I did.

22 Q And what was her response?

23 A She said no, she never had the knife and she never
24 stabbed Frank West. She never cut him in any way.
25 The bottle never broke.

1 Q Did you suggest to her what answers she should
2 give?

3 A No. No.

4 Q Okay. Did you force her to talk to you?

5 A No.

6 Q And you had an opportunity prior to this to review
7 the evidence in this case, correct?

8 A I'm sorry? I'm sorry?

9 Q Prior to this, you had an opportunity to read over
10 the evidence in this case?

11 A Yes, I reviewed the discovery.

12 Q And is that consistent with any of the statements
13 previously given?

14 A No, it was not.

15 MS. GRIPP: Beg the Court's indulgence.

16 (Pause.)

17 THE COURT: Cross?

18 MS. SHIPLEY: Are you done?

19 CROSS-EXAMINATION

20 BY MS. SHIPLEY:

21 Q Good morning, Ms. Rickborn.

22 A Good morning.

23 Q Ms. Rickborn, you are employed by the Richland
24 County Public Defender's Office?

25 A No, ma'am.

1 Q Are you -- you were retained by them to investigate
2 this matter?

3 A Well, I was hired to investigate this matter, I
4 wasn't retained.

5 Q Okay, you are a private investigator?

6 A Investigator, uh-huh.

7 Q Tell the jury how much you make an hour.

8 A To the Public Defender's Office? \$50 an hour.

9 Q Okay. So you bill them -- how about for your time
10 here in court?

11 A I don't charge for in-court time.

12 Q You don't charge -- no charge for testimony?

13 A None.

14 Q How many hours did you invest in this case?

15 A I don't have my bill figure, but I will say
16 approximately 150.

17 Q So a total of three hours?

18 A Three hours?

19 Q I'm sorry, you said 150 dollars?

20 A I thought you said how much time did I invest?

21 Q Yes, how much time?

22 A I think probably maybe 150 hours.

23 Q 150 hours, okay.

24 A Right.

25 Q So you made quite a bit on this case, then? \$50

- 1 bucks an hour at 150 hours -- I'm terrible at math.
- 2 A Yes, me too. I was going to ask you.
- 3 Q I don't know.
- 4 A I haven't --
- 5 Q That is a lot of time.
- 6 A It is a lot of time on a case.
- 7 Q Now, for a year you have been on the case?
- 8 A Probably a little over a year.
- 9 Q So you investigated and interviewed Teresa Brown?
- 10 A I did not interview Teresa Brown.
- 11 Q Oh, you didn't talk to Teresa Brown?
- 12 A I couldn't locate her.
- 13 Q Oh, okay. So you don't know anything about what
- 14 she reported to 9-1-1 about the victim saying
- 15 Melinda Richmond killed him?
- 16 A I do know. I heard the 9-1-1 tape.
- 17 Q Oh, so you heard the 9-1-1 tape. But you never
- 18 actually spoke to Ms. Brown?
- 19 A No, I didn't.
- 20 Q Okay. So when was it that you talked to Macey
- 21 Dylan Nichols?
- 22 A I did not interview him.
- 23 Q Oh, you didn't speak to him either?
- 24 A No.
- 25 Q Okay. Did you ever speak to Larry Scheper?

- 1 A No, I didn't.
- 2 Q All right. What about Sergeant Heidi Scott?
- 3 A No, I didn't talk to her.
- 4 Q Investigator Brien Gwyn?
- 5 A I left many messages, but he never returned my
- 6 calls.
- 7 Q He never called you back?
- 8 A No, he didn't.
- 9 Q Investigator Rob Martin?
- 10 A No, I did not have any questions for Mr. --
- 11 Investigator Martin.
- 12 Q The lead investigator of this case?
- 13 A No, I didn't.
- 14 Q No questions for him?
- 15 A I didn't.
- 16 Q Did you ever talk to Clay Nichols, Dr. Clay
- 17 Nichols?
- 18 A No.
- 19 Q The pathologist in this case?
- 20 A I'm not a medical expert. I do --
- 21 Q But you are a private investigator?
- 22 A I am.
- 23 Q You are investigating defenses for your client?
- 24 A Right.
- 25 Q So it is important to find out from the man who

1 performed the autopsy what caused the death of this
2 person, right?

3 A I reviewed the autopsy.

4 Q Okay. But you didn't have any questions for
5 Dr. Nichols?

6 A Certainly not.

7 Q Did you have any questions for Gray Amick, the DNA
8 expert?

9 A No, I didn't.

10 Q Did you ever look at Melinda's jeans that she was
11 wearing?

12 A I did not see the jeans. I saw the photographs of
13 the evidence.

14 Q All right. So basically the only person you have
15 spoken to is Ms. McClinton, is that correct?

16 A No, that is not correct.

17 Q Well, who did you speak to in this case?

18 A I spoke to Ms. McClinton and I spoke to Ms.
19 Miyakazi.

20 THE COURT REPORTER: I'm sorry, who?

21 A Miyakazi.

22 Q The lady from --

23 A M-I-Y-A-K-A-Z-I.

24 Q The lady from the trailer?

25 A Yes.

1 Q Did the lady from the trailer talk to you about
2 this case?

3 A She did.

4 Q And did she indicate to you whether or not she
5 packaged the clothes for Ms. Richmond?

6 A She did not.

7 Q She denied that?

8 A She didn't say she packaged any clothes.

9 Q Okay. So she didn't say she did that. Okay.

10 A No.

11 Q Did she say whether or not she provided a safe
12 haven for Ms. Richmond?

13 A No, she did not say that.

14 Q Did you ever talk to her husband?

15 A He was present, but I did not speak with him.

16 Q He didn't wish to speak to you?

17 A No, I think he wished to speak to me, but all the
18 questions that I had for him I asked Ms. Miyakazi
19 in his presence.

20 Q Okay.

21 A I believe Mr. Miyakazi was high at the time, so I
22 didn't question him.

23 Q All right. But Ms. Miyakazi was cooperative with
24 you?

25 A Yes.

1 Q Did she tell you how Ms. Richmond showered at her
2 house?

3 A She did.

4 Q So did she tell you how she had to clean up the
5 bathroom?

6 A She didn't tell me about that.

7 Q She didn't tell you that?

8 A No.

9 Q Did she tell you how she gave Ms. Richmond some
10 clothes to change into?

11 A She did.

12 Q And a grocery bag to put her bloody clothes in?

13 A She didn't tell me that.

14 Q She didn't tell you that part?

15 A Huh-uh.

16 Q All right, when you went to meet with
17 Ms. McClinton -- what day was that again?

18 A It was October 30th. I believe it was a Thursday.

19 Q 2008?

20 A 2008, yes.

21 Q Okay. So a week before the trial, about a week and
22 a half or two before the trial?

23 A As soon as I was asked to interview her.

24 Q And you went up to the Department of Corrections,
25 right?

- 1 A Uh-huh.
- 2 Q And that is where she is in prison for 30 years?
- 3 A Yes, she is.
- 4 Q For murder, committing her part of this murder?
- 5 A Yes.
- 6 Q And did you identify yourself to Ms. McClinton as
7 being Melinda Richmond's private investigator?
- 8 A Yes.
- 9 Q And she agreed to still talk to you?
- 10 A She did, uh-huh.
- 11 Q Was she cooperative with you?
- 12 A Yes.
- 13 Q And so basically you testified when you were asked
14 by Ms. Gripp that -- and correct me if I'm wrong
15 because I really did have trouble hearing you --
16 did you say Ms. McClinton denied a beer bottle
17 being broken?
- 18 A She did.
- 19 Q She denied that?
- 20 A Yes, she did.
- 21 Q Okay. And did you have an opportunity to look at
22 the crime scene photographs?
- 23 A I did.
- 24 Q In the case?
- 25 A I did.

- 1 Q And clearly there is a beer bottle broken, right?
- 2 A I know, yes. Yes.
- 3 Q Did she admit to you that she had cuts on her
- 4 hands?
- 5 A She said she thought she had some scratches.
- 6 Q Okay. Did she admit to you that she had actually
- 7 picked up the knife after Melinda Richmond and
- 8 stabbed Mr. West?
- 9 A No, she didn't.
- 10 Q She didn't tell you that?
- 11 A No.
- 12 Q And according to your direct testimony,
- 13 Ms. McClinton told you that all during the time
- 14 that Frank West is fighting both her and Ms.
- 15 Richmond?
- 16 A She did.
- 17 Q Bruce Thompson is where?
- 18 A Running around collecting things, CD players,
- 19 things to steal.
- 20 Q And he is downstairs doing that?
- 21 A She didn't say. I think she just said he was all
- 22 over the apartment taking things.
- 23 Q Did she at any time say whether or not Ms. Melinda
- 24 Richmond had to intervene between the victim and
- 25 Bruce Thompson or herself?

1 A No.

2 Q To defend them from Mr. West?

3 A No.

4 Q Did she ever indicate whether or not she observed
5 the victim after he had been stabbed and his throat
6 had been slit standing at the top of his staircase
7 lifting his right leg, or I'm not sure which leg
8 actually, lifting a leg in a manner as if he was
9 going to kick Melinda?

10 A She didn't describe it that in depth. She just
11 said he was fighting the whole time.

12 Q And did she indicate whether or not Mr. West was
13 acting in self-defense?

14 A She didn't say whether he was acting in
15 self-defense.

16 Q Did you have an opportunity to view the autopsy
17 photographs in this case?

18 A I did.

19 Q And do you -- would you concur that the stab wounds
20 to Mr. -- well, first of all, how many stab wounds
21 does Mr. West have to his right hand?

22 A I don't remember the exact number.

23 Q Okay. How many defensive wounds did Mr. West have?

24 A I don't remember.

25 Q So you are not aware of how many defensive wounds

1 he had?

2 A I really --

3 MS. GRIPP: I object. She is not qualified as
4 an expert.

5 THE COURT: She is not?

6 MS. GRIPP: She is not qualified as an expert
7 in defensive wounds.

8 THE COURT: Well, it is cross-examination. I
9 am going to let her answer the question.

10 Q So you don't remember -- do you remember the cause
11 of death in this case?

12 A I believe that the spleen was lacerated. That is
13 what was the ultimate cause of death.

14 Q Just one spleen injury?

15 A I'm not sure, but I think that was what was listed
16 as perhaps the ultimate --

17 Q If I were to tell you it was all 24 stab wounds
18 that led to the death of this man, would you
19 disagree with that?

20 A I wouldn't be surprised about that.

21 Q You also indicated that when you were interviewing
22 Ms. McClinton, she told you that Melinda had the
23 knife?

24 A Yes.

25 Q And that she was going like that(indicating)?

1 A Flailing wildly.

2 Q But she -- now you say that she did not actually
3 see the knife hit Mr. West?

4 A She did not tell me that.

5 Q Okay. She didn't tell you whether she saw it hit
6 or not?

7 A She didn't.

8 Q Okay. All she -- let me make this clear. I want
9 to make sure I understand your testimony. Tell
10 this jury what Tenisha McClinton told you
11 concerning Melinda having the knife.

12 A She told me that Melinda had the knife because she
13 had it earlier when they were cutting the crack.
14 And she told me that when Frank was standing up he
15 was fighting and flailing and that Melinda was just
16 kind of wildly flashing the knife. She told me
17 that later --

18 Q And so Mr. West would have been facing Ms. Richmond
19 at this point?

20 A That's the way she described it to me.

21 Q Okay. All right. And I believe the term you used
22 was wildly stabbing Frank?

23 A Flailing.

24 Q Flailing. My apologies. And did Ms. McClinton
25 ever admit to you to picking up that knife?

1 A Never.

2 Q Never admitted it?

3 A Never.

4 Q Thank you.

5 MS. SHIPLEY: No further questions.

6 REDIRECT EXAMINATION

7 BY MS. GRIPP:

8 Q Ms. Rickborn, who determines what kind of work you
9 do on a case?

10 A The attorney that I'm working for on the case.

11 Q That would be me?

12 A In this case, you.

13 Q And why did you not speak to Dylan Nichols, Teresa
14 Brown and Larry Scheper?

15 A I was unable to locate current addresses for them,
16 or I went to addresses that I was told, and they
17 did not live there at the time.

18 Q Okay. So tell me what your attempts were to locate
19 these individuals?

20 A I went to every address that I could locate through
21 search engines all the way back to Newberry
22 addresses, every relative that I could get a
23 relationship to. I traveled to Newberry and
24 questioned them about the locations. I contacted
25 family members of Larry Scheper in Beaufort. As

1 many people as I could think to contact who would
2 know where these people were.

3 Q And what attempt did you find -- did you attempt to
4 make to find Teresa Brown?

5 A I originally, of course, went to Farrington
6 Apartments and asked them if they had a forwarding
7 address after these people moved in. Ultimately I
8 subpoenaed records from their main office in
9 Florida. This was quite a while back. I did get
10 some information that her husband was working at
11 the Department of Corrections, so I tried to get
12 some information from the Department of Corrections
13 where they may be living, but he was only employed
14 there for a month and a half, right at the time --
15 right at the time of the incident. And they did
16 not know where he went from there.

17 Q Okay. And Mr. Miyakazi, you said that he was high.
18 Can you explain that? I know you said that you
19 thought he was high. Can you explain his demeanor,
20 what you saw, what your personal assessment of
21 Mr. Miyakazi was?

22 A I thought he was high, and I thought he was kind of
23 menacing.

24 Q Okay. And she asked you about the DNA. Did you
25 have an opportunity to look at the DNA prior to

1 interviewing Tenisha?

2 A No.

3 Q Why is that?

4 A Well, I'm not a DNA expert, so I didn't want to
5 review it.

6 Q Okay. Were you aware that we didn't have DNA at
7 that point?

8 A As a matter of fact I knew we got DNA on the week
9 before trial.

10 Q And getting paid for this case, does it matter
11 whether we win or lose?

12 A No, I get paid either way.

13 Q Okay. And would you solicit information that would
14 be inaccurate?

15 A Never.

16 Q Why is that?

17 A Because I'm an ethical private investigator.

18 MR. O'NEIL: Beg the Court's indulgence, Your
19 Honor.

20 (Pause.)

21 MS. GRIPP: No further questions, Your Honor.

22 THE COURT: All right.

23 RECROSS-EXAMINATION

24 BY MS. SHIPLEY:

25 Q Just one last question. Where does Larry Scheper

1 live?

2 A I don't know where Larry Scheper lives, although I
3 had information from a relative in Beaufort that he
4 was living in Farrington Apartments. And when I
5 went there originally, the manager at the
6 apartments told me that Larry Scheper and Dylan
7 Nichols and any of the parties who had been
8 involved at the time didn't live there anymore, and
9 she didn't want me knocking on doors because she
10 didn't want anyone to know what occurred at that
11 apartment.

12 Q Would it surprise you to know that Mr. Scheper was
13 here and testified that he lives at the same
14 address as he did on May 5th, 2007?

15 A Not now it wouldn't.

16 Q Thank you.

17 MS. SHIPLEY: No further questions.

18 THE COURT: All right, thank you, ma'am. You
19 can step down.

20 (Witness steps down.)

21 MS. GRIPP: The Defense rests.

22 THE COURT: Okay, Madam Forelady and ladies
23 and gentlemen of the jury, the Defense has rested,
24 so we're going to take a break. And we are going
25 to provide you with a menu and ask y'all while you

1 are at break to decide what you would prefer to
2 eat. We're not making you go out into the rain.
3 How about that? Please don't talk about the case
4 yet. We'll get back with you shortly.

5 (WHEREUPON, the jury retires to the jury
6 room at 12:07 p.m.)

7 MR. O'NEIL: Your Honor, at this time the
8 Defense would renew its directed verdict motion and
9 stand on our previous arguments made in the case.

10 THE COURT: Okay.

11 MR. O'NEIL: And we would also renew all our
12 previous objections and motions, specifically our
13 motion for a mistrial, Your Honor, based on
14 Ms. Gripp's voice as a violation of Ms. Richmond's
15 Fifth Amendment right to due process, Sixth
16 Amendment right to effective assistance of counsel,
17 Your Honor.

18 THE COURT: All right. I deny them all.
19 Okay. Are y'all going to put something up in
20 reply?

21 MS. SHIPLEY: No, sir. We were going to call
22 someone. I think we're fine. We'll just go into
23 closing.

24 THE COURT: Okay. Let's take a short break,
25 come back and deal with the charge talk.

1 (WHEREUPON, a break was taken.)

2 MS. SHIPLEY: Voluntary intoxication, hand of
3 one is hand of all, and then your typical expert
4 witness, eyewitness testimony, and so forth.
5 Specifically just voluntary intoxication, hand of
6 one hand of all.

7 THE COURT: Do y'all object to those?

8 MR. O'NEIL: Yes, Your Honor, we object to the
9 hand of one is the hand of all. We have no problem
10 with voluntary intoxication.

11 THE COURT: Tell me why, how, what legal
12 basis?

13 MR. O'NEIL: I don't think there is evidence
14 in the record of any acting in concert on
15 Ms. Richmond's part as it relates to any other
16 Co-Defendant in this case. I don't think --

17 THE COURT: What about Ms. McClinton's
18 testimony that in fact Ms. Richmond jumped on him
19 first?

20 MR. O'NEIL: I agree, yes, Your Honor.

21 THE COURT: That is in the record, right?

22 MR. O'NEIL: Yes, Your Honor, but -- I agree
23 that Ms. McClinton testified that Ms. Richmond
24 jumped on the victim first. My argument is that
25 there is no -- there is nothing in the record that

1 indicates any acting in concert between those two
2 individuals, that anything Ms. McClinton may have
3 done was directly related -- the reason why
4 Ms. McClinton may have done anything was in any way
5 related to what Ms. Richmond said or Ms. Richmond
6 did led to two separate individuals attacking
7 one -- another individual, from what is in the
8 record at this point. There is no record that they
9 acted in concert, though, no agreement between the
10 two. I believe there has to be something explicit
11 or implicit evidence that there was an agreement
12 between Ms. Richmond and Ms. McClinton to --

13 THE COURT: Well, I thought Ms. McClinton came
14 up and said, I heard them -- I heard the struggle,
15 went up there, and it looked like he had his hand
16 on her, popped him in the head with a beer bottle,
17 Bird, or whatever his name was, punched him in the
18 face, and Ms. Richmond jumped on his back and
19 started stabbing him?

20 MR. O'NEIL: Yes, sir.

21 THE COURT: It all seems to arise out of the
22 same -- if I can use an analogy -- the same little
23 mustard seed.

24 MR. O'NEIL: I don't disagree with that, Your
25 Honor. What I would say is that those activities

1 are, if you believe Ms. McClinton, they are coming
2 to the aid of Ms. Richmond, not acting in concert
3 with Ms. Richmond, not any kind of agreement
4 between the two. I think the hand of one, hand of
5 all requires some type of acting in concert. It
6 also requires some kind of agreement, Your Honor.

7 MS. SHIPLEY: How about, hold him, hold him,
8 and she holds him? And how about, do we need to
9 kill him?

10 THE COURT: No, no. I am going to charge hand
11 of one is the hand of all.

12 MR. O'NEIL: Your Honor, if Your Honor charges
13 that I would ask, if you want to get to ours, I
14 would ask you to charge mere presence as well.

15 THE COURT: Yes, I think that is actually
16 included in my hand of one. Here is what I --
17 well, they want me to charge voluntary
18 manslaughter.

19 MS. SHIPLEY: I don't think there is any
20 evidence to support that charge, Your Honor. If
21 anything, as an officer of the court, self-defense
22 would be appropriate.

23 THE COURT: I don't think self-defense is
24 appropriate.

25 MS. SHIPLEY: All right.

1 THE COURT: Who --

2 MS. SHIPLEY: Well, I mean, she is claiming
3 that he was coming at her, charging at her, and
4 that's when she picked up the knife.

5 THE COURT: But she never struck the fatal
6 blow.

7 MS. SHIPLEY: That's true, she said she never
8 had to kill him.

9 MR. O'NEIL: Well, Your Honor --

10 THE COURT: Do you want self-defense? I don't
11 think -- your client doesn't claim self-defense.

12 MS. SHIPLEY: Your Honor, you are right in
13 that her direct testimony was that, I couldn't -- I
14 couldn't stab him.

15 THE COURT: Threw the knife down.

16 MS. SHIPLEY: And I threw the knife down.

17 MR. O'NEIL: Your Honor, I would say that in
18 determining whether to charge the jury or not is
19 not based totally on what Ms. Richmond said, Your
20 Honor, but as to the whole totality of the evidence
21 in this record. But besides that, Your Honor, I
22 think I would --

23 THE COURT: Okay. Tell me where the
24 self-defense is.

25 MR. O'NEIL: Your Honor, at this point I would

1 ask for a moment to confer --

2 THE COURT: Okay.

3 MR. O'NEIL: -- with Ms. Gripp on this point.

4 (Pause.)

5 MS. GRIPP: Your Honor, while I do think there
6 is evidence in the record for it, I think we are
7 not requesting a self-defense charge.

8 THE COURT: Okay. I don't think there is
9 evidence in the record for it.

10 MR. O'NEIL: Your Honor, I would -- could I
11 approach?

12 THE COURT: Yes. What you got?

13 MR. O'NEIL: I do have case law as it relates
14 to voluntarily manslaughter, State v. Dickey.

15 THE COURT REPORTER: State versus what, I'm
16 sorry?

17 MR. O'NEIL: State v. Dickey.

18 THE COURT: Dickey. D-I-C-K-E-Y.

19 MR. O'NEIL: That is a South Carolina Court of
20 Appeals case that just came out October 29th of
21 2008. The case was tried in the Newberry
22 courthouse, Your Honor.

23 I think it addresses squarely on voluntary
24 manslaughter. I bring Your Honor's attention to
25 Page 7 of that case, Your Honor.

1 THE COURT: All right.

2 MR. O'NEIL: It says, the law to be charged
3 must be determined from the evidence presented at
4 the trial and determined whether the evidence
5 required the charge of voluntary manslaughter. The
6 Court must view the facts in the light more
7 favorable to the Defendant. It cites the State v.
8 Byrd.

9 It also says, for a Court to refuse to charge
10 a jury on manslaughter, there must be no evidence
11 in the record tending to reduce the crime of murder
12 to manslaughter.

13 In order to get manslaughter, Your Honor,
14 there must be legal provocation and also heat of
15 passion.

16 And State v. Dickey goes on to examine
17 specifically what heat of passion means. That is
18 on Page 8, the last paragraph of that, Your Honor.

19 I would first contend that there is evidence
20 in the record that there is legal provocation, Your
21 Honor.

22 I would direct Your Honor to our Request to
23 Charge 2.2 that says, physical assault or combat or
24 a very emotional argument can be considered a legal
25 provocation, Your Honor. I think there is evidence

1 in the record there was a physical assault by
2 Mr. West to Ms. Richmond. I think she indicated
3 essentially what Mr. West did by grabbing her arm
4 and throwing her into the dresser. She also
5 indicated that there was an argument between those
6 two involved.

7 THE COURT: Is there not an intervening
8 factor?

9 MR. O'NEIL: I'm sorry, Your Honor?

10 THE COURT: Did not the other two
11 Co-Defendants come up, hit him in the head with a
12 beer bottle, punch him in the face? Is that not an
13 intervening factor?

14 MR. O'NEIL: Well, Your Honor, I think that
15 would go to whether or not -- that would be a jury
16 question about whether or not there was a cooling
17 off period, Your Honor. That is a question for the
18 jury to decide, whether or not there has been a
19 cooling off period between the provocation and the
20 heat of passion.

21 THE COURT: Wait a minute. Your client says
22 she didn't strike a blow.

23 MR. O'NEIL: Yes, Your Honor, but --

24 THE COURT: The only -- the only testimony
25 we've had that she struck a blow was from

1 McClinton.

2 MR. O'NEIL: Yes, Your Honor.

3 THE COURT: The man is laying on the -- on his
4 face face-down on the ground and she grabs the
5 knife and jumps on him, says, I got to kill him,
6 starts stabbing him in the back. That is the only
7 evidence. How do you get voluntary manslaughter
8 out of that?

9 MR. O'NEIL: Your Honor, all the jury needs to
10 consider is whether or not she had legal
11 provocation. Legal provocation is the grabbing of
12 Ms. Richmond's arm and throwing her into the
13 dresser.

14 THE COURT: You think that is enough to get
15 voluntary manslaughter?

16 MR. O'NEIL: That enough for legal
17 provocation, Your Honor. The next question becomes
18 whether or not she is -- whether or not there is
19 any evidence of heat of passion. And State v.
20 Dickey squarely addresses that on Page 8 of that.

21 It said that, in the last paragraph, it says:
22 Furthermore, contrary to Dickey's argument, fear
23 can constitute a basis for heat of passion to
24 support a voluntary manslaughter. It cites State
25 v. Wiggins, Your Honor, where State v. Wiggins held

1 that: When evidence showed appellant was in a
2 heated argument with the victim and was afraid for
3 his life because the victim physically threatened
4 him, such evidence, if believed, would tend to show
5 appellant acted in the heat of passion, Your Honor.

6 So if you have heat of passion, you have legal
7 provocation, and everything else is a jury
8 question, Your Honor.

9 THE COURT: All right. By McClinton's
10 testimony, out of McClinton's testimony, that is
11 the only testimony that she truck a blow.

12 MR. O'NEIL: Her --

13 THE COURT: You can't just combine -- you
14 know, you are saying I should take what your client
15 says about being afraid and combining it -- even
16 though she denies ever striking a fatal blow, and
17 take that and combine it with what McClinton says
18 about her -- is there anything in what McClinton's
19 testimony was that gets you a voluntary
20 manslaughter charge?

21 MR. O'NEIL: No, Your Honor. I'm not saying
22 that. What I'm saying is --

23 THE COURT: Well, I'm just asking. Is there?

24 MR. O'NEIL: No.

25 THE COURT: Okay.

1 MR. O'NEIL: What I'm saying is that the law
2 to be charged to the jury doesn't have to be
3 determined from one particular witness, it has to
4 be determined from every witness that testified.
5 The jury can believe what Tenisha McClinton said,
6 part of what Ms. McClinton said and part of what
7 Ms. Richmond says and come to the conclusion that
8 there was legal provocation and heat of passion,
9 Your Honor. I think the test is that the evidence
10 must be viewed in the light most favorable to the
11 Defense.

12 THE COURT: Yes, sir, I know.

13 MR. O'NEIL: And it must be the totality of
14 the evidence, Your Honor. Melinda's statement
15 established voluntary manslaughter, the heat of
16 passion and legal provocation part of it, Your
17 Honor. And they can believe --

18 THE COURT: What does the State say?

19 MS. SHIPLEY: Well, Your Honor, in her written
20 statement to the police she is indicating that she
21 is being attacked, but Ms. McClinton said that the
22 threat was gone by the time she threw the beer
23 bottle. She basically disabled Mr. West by hitting
24 him with the beer bottle in the head and that Mr.
25 Thompson punched him and that he was disabled at

1 that point. He was no longer a threat. There was
2 not ever -- there was no testimony on the record
3 that any threats were made to this Defendant by the
4 victim at all. That he was grabbing -- he grabbed
5 her arm to get her from taking his money and that
6 when the Co-Defendants come upstairs, he lets go of
7 her arm. That is the testimony from Ms. McClinton.

8 THE COURT: What about in the statements?

9 MS. SHIPLEY: And also her.

10 MR. O'NEIL: Your Honor, first of all, threats
11 are not necessary. All we need is legal
12 provocation. An assault can be legal provocation.

13 Secondly, Your Honor, it is not an issue of
14 whether or not Ms. McClinton says this and
15 Ms. Richmond said that. That is a credibility
16 issue. That is an issue that the jury must
17 resolve.

18 The standard for charging law to the jury is
19 whether or not there is any evidence, not whether
20 or not there is a conflict in the evidence. If
21 there is any evidence that could reduce the charge
22 to murder, whether you take part of what
23 Ms. Richmond says and part of what Ms. McClinton
24 says, the jury has all the province to believe part
25 of what Ms. McClinton says and part of what Ms.

1 Richmond says.

2 THE COURT: Well, which part -- you know, your
3 client says that she was cooled down, she was
4 crying the whole time.

5 MR. O'NEIL: Your Honor, her testimony was
6 that she was scared of everybody involved the whole
7 time. When they asked her -- as a matter of fact,
8 the Solicitor even cross-examined her on that
9 point. She was scared of both Frank and everybody
10 involved the whole time.

11 THE COURT: Okay.

12 MR. O'NEIL: You take that, coupled with
13 her -- the statements that are in evidence that
14 Ms. Richmond gave earlier to the police, that she
15 stabbed Frank West in those two statements, and you
16 take what Ms. McClinton said, that she stabbed
17 Frank West, coupled with her testimony about heat
18 of passion and legal provocation, that gets you
19 voluntary manslaughter, Your Honor. They can
20 believe that -- they can believe the portion of
21 Ms. Richmond's statement that said she stabbed
22 Frank in the back, coupled with her testimony today
23 that says that -- she also mentioned in her
24 statement that she was assaulted.

25 THE COURT: Okay. But there is an intervening

1 action, right?

2 MR. O'NEIL: There -- but voluntary
3 manslaughter --

4 THE COURT: In any scenario?

5 MR. O'NEIL: But voluntary manslaughter
6 doesn't require any intervening action, Your Honor,
7 it requires a cooling down. If the victim -- if
8 the Defendant cooled down, that would negate
9 voluntary manslaughter, but that is a jury
10 question, Your Honor, about whether or not -- at
11 this stage of the proceeding the Court --

12 THE COURT: Cooling down is -- I don't think
13 the Defendant ever cooled down is in there. But
14 how about the sufficient legal provocation?

15 MR. O'NEIL: Your Honor, I cite in mine the
16 only thing that is needed was sufficient legal
17 provocation. I think they cited -- I think it is
18 2.2, Your Honor -- I think they cited State v.
19 Andrews. The only thing that is needed for legal
20 provocation, they give examples of legal
21 provocation, it is like physical assault or like
22 physical aggression, Your Honor. Any one of those
23 two things in evidence will constitute legal
24 provocation.

25 And also I think Ms. Richmond on direct

1 testimony and actually on cross testified that Mr.
2 West charged at her and at that point she grabbed
3 the knife, Your Honor.

4 THE COURT: Which statement was that? Which
5 one was that?

6 MR. O'NEIL: She said that today on direct and
7 on cross, Your Honor.

8 MS. SHIPLEY: No, she denied stabbing him on
9 her direct and cross.

10 MR. O'NEIL: Your Honor --

11 MS. SHIPLEY: She absolutely denied stabbing
12 the man.

13 MR. O'NEIL: Your Honor, that is not what I
14 said, Your Honor. What I said is that Melinda
15 stated that Frank charged at her, and that is when
16 she grabbed the knife. I never -- that is what I
17 just said.

18 MS. SHIPLEY: Sufficient legal provocation
19 needs to exist at the time of the fatal blow. It
20 was gone. The Defendant was being protected by her
21 Co-Defendants at that point. They were wailing on
22 the victim and he was disabled on the ground.

23 MR. O'NEIL: There has been a great variance
24 in the actual timeline in this case, and that is a
25 question for the jury to decide what happened when,

1 because there is various statements in
2 Ms. Richmond's testimony as to when did everybody
3 start beating on Mr. West and when did everything
4 occur. That is a jury question. It has already
5 been established that this is an ongoing -- ongoing
6 altercation. And the timeline has been varied from
7 everybody's testimony. There has been no precise
8 timeline as to when everything occurred.

9 THE COURT: Well, I think -- does not
10 everybody agree there was no stabbing, no fatal
11 blow struck until McClinton and Bird were in the
12 room?

13 MR. O'NEIL: Correct, Your Honor. But there
14 has been testimony that, in addition to all that,
15 the testimony from Ms. Rickborn is that Ms. Tenisha
16 McClinton said that Ms. Richmond was fighting with
17 Frank and that at that point she was waving the
18 knife wildly.

19 THE COURT: Who said that?

20 MR. O'NEIL: Ms. Rickborn.

21 THE COURT: Wait a minute. All she is
22 doing -- that is -- that was impeachment testimony.
23 That is not -- she is not a witness to the -- to
24 what occurred.

25 MR. O'NEIL: Yes, sir. I didn't mean to imply

1 that she was.

2 THE COURT: I know. And I don't -- you know,
3 I thought about that. How can you -- how does
4 that -- how can you use that to get a jury charge?

5 MR. O'NEIL: I'm not resting my whole argument
6 on jury charges on Ms. Rickborn. I am saying that
7 is in addition to all the other evidence that is in
8 the record, Your Honor.

9 THE COURT: Yes, but that doesn't go to what
10 happened, that just goes to what McClinton said.

11 MR. O'NEIL: Yes, Your Honor.

12 MS. SHIPLEY: That just goes to McClinton's
13 credibility.

14 THE COURT: Yes.

15 MS. SHIPLEY: But, Your Honor, just -- I don't
16 think there is any dispute, let's say -- because
17 let's disregard Ms. Richmond's testimony because
18 she is completely denying stabbing him on her
19 direct and cross. She said she tried to but she
20 couldn't so she dropped the knife. So let's
21 disregard her testimony.

22 Focus then on the witnesses in the room, which
23 would be McClinton. McClinton said that when she
24 heard banging around, heard Melinda yell help, so
25 she and Bird ran upstairs. When she got up there

1 she never saw the victim assaulting this woman.
2 She simply said, I saw him holding her arm. She
3 told me he had hit her, but I didn't see it.

4 THE COURT: Well, I know. But let's just say
5 that, yes, the victim grabbed her and threw her up.
6 The worst --

7 MS. SHIPLEY: Right.

8 THE COURT: The worst case scenario is that he
9 grabbed her arm and threw her repeatedly against
10 the chest of drawers. Then in come McClinton
11 and --

12 MS. SHIPLEY: Thompson.

13 THE COURT: And Thompson. Ms. Scott, it is
14 pretty interesting, there is actually a third party
15 that interrupts the flow of the legal provocation.

16 MR. O'NEIL: Your Honor, I would add one
17 thing. Your Honor, if you look at State v. Dickey,
18 I think that sheds whether or not there is any
19 intervening cause. In State v. Dickey what
20 happened was a security guard was working at
21 Cornell Arms, Your Honor, and essentially there was
22 was argument between the security guard and the
23 decedent upstairs in the upstairs portion of the
24 building, Your Honor. The victims essentially come
25 downstairs in the elevator. Dickey follows them

1 down the steps. They get outside of the building,
2 and then the victims are leaving. The victims may
3 have said something to Dickey. At that point the
4 victims turn around and Dickey essentially shoots
5 the victim, Your Honor.

6 In that case the Court still said that
7 voluntary manslaughter was an appropriate charge in
8 that case, Your Honor, when he had time to come all
9 the way downstairs. And there have been several
10 intervening acts between then and when the actual
11 blow was fired, Your Honor, in that case.

12 I think what the State is trying to tell you
13 that, in total disregard with what Ms. Richmond
14 said, because she denies stabbing Mr. West on the
15 stand, but, Your Honor, that is exactly what the
16 Court cannot do. The evidence -- if you view the
17 evidence in the light most favorable to the
18 Defendant, and the jury, as Your Honor will
19 instruct them, can believe part of any testimony or
20 all of any testimony, Your Honor. They can believe
21 part of what Ms. Rickborn stated about the striking
22 and all Ms. McClinton said about Ms. Richmond
23 striking the fatal blow, Your Honor, and get
24 voluntary manslaughter.

25 I think Dickey in this case actually stated,

1 he maintained that he was calm throughout the whole
2 incident, but yet the Court said that they would
3 point to witness testimony as to whether he was
4 calm or not, and therefore voluntary was still an
5 appropriate charge, Your Honor. Because the test
6 is whether or not there is any evidence, not
7 whether or not there is a conflict of evidence or
8 credibility in evidence at this point.

9 THE COURT: No, that is not -- you are missing
10 my point. My point is that the intervening action
11 of the third parties terminate sufficient legal
12 provocation.

13 MR. O'NEIL: Your Honor, as I was listening,
14 that that -- I don't see any case law that stands
15 for that proposition.

16 THE COURT: I am going to do a little research
17 right now. How long are y'all going to argue?

18 MR. O'NEIL: Ms. Gripp will be handling ours.

19 THE COURT: Twenty minutes? Right in that
20 neighborhood?

21 MS. SHIPLEY: Probably about 30, Your Honor.
22 No more than 40.

23 THE COURT: All right. I think we're going to
24 let them eat before we argue and charge, but I
25 don't want them -- you know, they are going to sit .

1 back there and eat, and so you all can have what,
2 about eight minutes for lunch? Would that be good
3 for you?

4 MS. SHIPLEY: Perfect. I don't eat lunch.

5 THE COURT: Why don't we just count on doing
6 it around, you know, 1:30, quarter of 2:00, is that
7 all right? It will give y'all time to get a little
8 something. Is that enough time?

9 MR. O'NEIL: Yes, Your Honor.

10 THE COURT: Y'all tell me.

11 MS. SHIPLEY: Plenty.

12 THE COURT: Okay. All right.

13 (Pause.)

14 THE COURT: What about the manslaughter?

15 MR. O'NEIL: Your Honor, I would like to put
16 on the record, I did some research over the lunch
17 break about 30 minutes to see if I could find any
18 case that stood for the proposition that an
19 intervening cause would negate qualification. I
20 was unable to do so.

21 It is our position that legal provocation
22 is -- what matters is the state of mind of the
23 actual individual Defendant in the case. Whether
24 or not other individuals actually intervened with
25 Ms. Richmond is immaterial to that person's state

1 of mind or legal provocation. And if it goes to
2 anything it will only go to whether or not the
3 Defendant had a time to cool off, and that is a
4 jury question, Your Honor.

5 I did find another case that stood for the
6 proposition that the jury could believe part of
7 what the Defendant testified to and not part of
8 what the Defendant testified to and is still
9 entitled to involuntary manslaughter -- I
10 apologize, voluntary manslaughter.

11 THE COURT: Well, I have read -- I reviewed
12 the statements. And I tell you, I'm having a real
13 hard time finding where the sufficient legal
14 provocation is. And I have read her statements. I
15 have read Tenisha McClinton's statements.

16 MR. O'NEIL: Your Honor, there is a couple
17 from her testimony in court. That is where the
18 legal provocation is coming from.

19 MS. SHIPLEY: Your Honor --

20 MR. O'NEIL: And she -- if I might --

21 THE COURT: So you want me to take part of
22 what she said in court and combine it with part of
23 what she said in her statement, part of what
24 someone else said --

25 MR. O'NEIL: If I could approach, I would hand

1 you State v. Smith, which is 403 S.E.2d 162. And I
2 bring your attention to the second page, Your
3 Honor, on the last paragraph. It says:

4 The State argues that any error by the trial
5 judge is harmless because according to the
6 Defendant's version of what happened he shot the
7 victim accidentally not in self-defense or under
8 circumstances that would justify a manslaughter
9 charge. We reject this argument for two reasons.
10 The jury is free to believe a portion of the
11 testimony of a witness and disbelieve another
12 portion. And it cites Smith v. Safe-Co. It says:

13 The jury could have believed the Defendant
14 when he said he was coming to the defense of Cooks
15 but disbelieved him when he said shot the victim by
16 accident.

17 THE COURT: Okay. I mean, all right, I'm
18 looking at the May 5th statement of the Defendant.
19 And it is on the fourth page of that where:

20 They all accuse Frank of stealing the crack.
21 I asked Frank to go upstairs. I thought he would
22 admit stealing the crack if I talked to him alone.
23 I found a green plastic container with the crack in
24 it. I took it downstairs and showed Bird and
25 Tenisha. Bird said, that is my crack. I went back

1 upstairs and told Frank what Bird said. I told
2 Frank he had to pay Bird for that. I grabbed
3 Frank's \$50. It was sitting on the table. When I
4 grabbed the money, that is when Frank started to
5 attack me. I hollered for Bird. He pushed me. He
6 grabbed me by the arms. And he was standing in
7 front of me. He held my arms back to the dresser.
8 I hollered for Bird. They came upstairs. Bird
9 grabbed Frank, pushed him back.

10 Now, in a couple of instances -- and then what
11 happened was in this statement:

12 Tenisha started beating Frank. Frank fell
13 back. Tenisha was on top hitting him. From there
14 all three of us were holding him, hitting him and
15 kicking him. I told -- I think Frank was trying to
16 get away.

17 Now, where is the sufficient legal
18 provocation?

19 Your Honor, what I'm saying is that sufficient
20 legal provocation is not established merely from
21 that statement. She testified today at trial
22 different from what that statement says. That is a
23 credibility issue to the jury to resolve whether or
24 not they believe what is in that statement is true
25 because she has already -- she has already gave

1 the jury a reason why what is in that statement is
2 not what she -- what happened on that day. She
3 said she was frantic. That is a question for the
4 jury to resolve whether or not what she said today
5 on the stand is true. And if you believe what she
6 said today on the stand is true, she has legal
7 provocation. Not only did she say that he pushed
8 her, in that instance she said after all this
9 occurred and after Bird and Tenisha intervened, he
10 lunged at -- Mr. West lunged at her again.

11 And then, Your Honor, I would posit that that
12 is sufficient legal provocation, Your Honor.

13 MS. SHIPLEY: Your Honor, she denied stabbing
14 him on the stand today.

15 MR. O'NEIL: And, Your Honor, my only response
16 to that is State v. Smith says you can believe part
17 of what --

18 THE COURT: I know. I know what -- I know the
19 law. I mean, that is not -- you know -- in that
20 statement she grabbed his money and then he grabbed
21 her. Okay. Is there something illegal in that?

22 MR. O'NEIL: Your Honor, I think involuntary
23 manslaughter requires you to not be involved in
24 illegal activity. I think voluntary manslaughter
25 doesn't have that requirement.

1 THE COURT: I think it does. I think that the
2 exercise of a legal right, no matter how offensive
3 it is to another, is never sufficient legal
4 provocation for voluntary manslaughter.

5 MR. O'NEIL: I'm sorry, Your Honor, I
6 apologize?

7 THE COURT: I think that the exercise -- that
8 the law is that the exercise of a legal right is
9 never a sufficient act to give you -- to provoke
10 you into committing voluntary manslaughter.

11 MR. O'NEIL: Your Honor, but she testified
12 today on the stand that she didn't even grab -- she
13 never grabbed the money. She was grabbing for the
14 money, and that is when Frank -- Frank grabbed her
15 at that point. That was her testimony on direct
16 and on cross.

17 MS. SHIPLEY: Wrong. On direct she said she
18 grabbed the money and that is when he grabbed her.
19 And then on cross she changed her story.

20 MR. O'NEIL: Well, Your Honor, if she changed
21 her story on cross it is still a credibility issue,
22 Your Honor. And if there is evidence in the
23 record, there is evidence in this record. That is
24 a credibility issue that the jury has to resolve.

25 THE COURT: Any other statements, you know --

1 and in both her statements he is lying on his
2 stomach on the ground and she is holding him down.

3 MR. O'NEIL: I don't disagree with what the
4 statement says, Your Honor. I just say that is
5 jury -- that is a question for the jury to
6 reconcile the credibility of those statements.
7 Once again, it is whether or not there is any
8 evidence, not whether or not there is
9 non-contradictory evidence, Your Honor.

10 MS. SHIPLEY: According to State v. Pittman,
11 whether or not there is a cooling off period is a
12 matter for the Court to determine.

13 MR. O'NEIL: Your Honor, that is not what we
14 are arguing about in this case. I mean, the
15 question became whether or not there is legal
16 provocation, Your Honor. I don't think the issue
17 of a cooling off can be decided by a matter of law,
18 as a matter of law there is no cooling off period.

19 THE COURT: Well. All right. Anything else?
20 I have -- out of abundance of caution and for the
21 benefit of the accused, I'll charge voluntary
22 manslaughter. I am not going to charge assault and
23 battery with intent to kill. Anything you want?

24 MR. O'NEIL: I just want to put on the record
25 what our argument on that is. I think it is a

1 proximity -- I'm sorry, a proximate cause argument,
2 Your Honor. I think there is testimony in the
3 record that, from Clay Nichols that the victim only
4 suffered one such injury to his back, that he would
5 not expect that to be fatal. So I think the jury
6 could reconcile the testimony that at least in one
7 of those statements Ms. Richmond only stabbed the
8 Defendant one time and it barely went within the
9 Defendant -- I'm sorry, the victim at that point.

10 So the jury could decide it is assault and
11 battery with intent to kill and not murder, it is
12 not proximate cause.

13 THE COURT: You are bending over backwards. I
14 can't go along with that.

15 MR. O'NEIL: Yes, sir.

16 THE COURT: I am not going to charge this
17 Number Four that you handed up. You can argue
18 whatever -- make your argument.

19 MR. O'NEIL: Yes, sir.

20 THE COURT: Here is what I'm going to do. The
21 general -- what I'm going to charge are the duties
22 of the judge and the jury, the charge of direct and
23 circumstantial evidence, credibility of witnesses.
24 Do you want something on expert witnesses?

25 MS. SHIPLEY: Yes, sir, Your Honor.

1 THE COURT: All right. Presumption of
2 innocence, reasonable doubt, statement by a
3 Defendant, the hand of one is the hand of all,
4 voluntary intoxication is not a defense, murder,
5 voluntary manslaughter. Okay?

6 MS. GOOD: Your Honor, under the voluntary
7 manslaughter, are you charging -- giving the
8 charges that the Defense handed up, or do you have
9 your own?

10 THE COURT: No, I have my own. Do you want me
11 to -- do you want to hear it?

12 MS. SHIPLEY: No, sir.

13 MS. GOOD: No, sir, we were just asking.

14 THE COURT: All right.

15 MR. O'NEIL: Ms. Gripp would like to hear it.
16 I think she is going to address that with the jury.

17 THE COURT: All right. It says: If you find
18 the State has failed to prove beyond a reasonable
19 doubt the Defendant committed murder, you may
20 consider whether the State has proved beyond a
21 reasonable doubt that the Defendant committed
22 voluntary manslaughter.

23 To prove voluntary manslaughter, the State
24 must prove beyond a reasonable doubt that the
25 Defendant took the life of another in sudden heat

1 of passion based on sufficient legal provocation.

2 Both heat of passion and sufficient legal
3 provocation must be present at the time of the
4 killing to constitute voluntary manslaughter.

5 Sudden heat of passion may for a time affect a
6 person's self-control and temporarily disturb a
7 person's reason.

8 Sudden heat of passion must be of the type
9 that would make an ordinary person unable to coolly
10 reflect on his actions and would produce an
11 uncontrollable impulse to do violence.

12 Sufficient legal provocation must be the type
13 that would make a person of ordinary reason and
14 caution to become enraged and to lose control
15 temporarily.

16 The provocation needed for voluntary
17 manslaughter must come from some act of or related
18 to the victim. Words alone, however vulgar or
19 insulting are not enough to be legal provocation.
20 Where a death is caused by the use of a deadly
21 weapon, the words must be accompanied by some overt
22 threatening act which could have produced the heat
23 of passion.

24 The exercise of a legal right, no matter how
25 offensive it is to another, is never sufficient

1 legal provocation for voluntary manslaughter.

2 If heat of passion has cooled or if there was
3 enough time between the provocation, if any, and
4 the killing for the passion of a reasonable person
5 to cool, a killing would not be voluntary
6 manslaughter.

7 In deciding whether a reasonable person would
8 have had enough time to cool off, you should
9 consider all of the circumstances surrounding the
10 killing.

11 You may consider the nature of the
12 provocation, if any, the Defendant's mental or
13 physical state, and circumstances and relationships
14 between the parties.

15 Okay?

16 MS. SHIPLEY: Thank you, Your Honor.

17 MR. O'NEIL: Does Your Honor have a charge on
18 the voluntariness of the Defendant's statement?

19 THE COURT: Yes. Yes. I'll go through all
20 that, and then I will read that whole thing.

21 MS. SHIPLEY: Can you repeat the part about
22 exercising a legal right, what words you use?

23 THE COURT: Sufficient -- hang on.

24 MS. SHIPLEY: Sufficient legal provocation.

25 THE COURT: Exercise of a legal right, no

1 matter how offensive it is to another, is never
2 sufficient legal provocation for voluntary
3 manslaughter.

4 MS. SHIPLEY: Thank you, Your Honor.

5 THE COURT: All right.

6 MS. SHIPLEY: Your Honor, I'm waiving the
7 State's right to open on the law. I am just going
8 to combine it together at the end.

9 THE COURT: Okay. Ms. Gripp, have you got the
10 microphone working?

11 MR. O'NEIL: Your Honor, we would just ask
12 that our Requests to Charge be made a Court's
13 Exhibit.

14 THE COURT: Yes. Have you given one to the
15 court reporter?

16 MR. O'NEIL: No, Your Honor.

17 THE COURT: All right, I've got it right here.
18 (Defendant's Request to Charge marked as
19 Court Exhibit 9.)

20 THE COURT: Do you want to look at the verdict
21 form?

22 MR. O'NEIL: Yes, Your Honor.

23 (Pause.)

24 MS. SHIPLEY: No objection from the State to
25 the verdict form.

1 MR. O'NEIL: No objection.

2 THE COURT: Let's bring the jury. Tap on that
3 microphone.

4 (WHEREUPON, the jury came into open
5 court at approximately 2:10 p.m.)

6 THE BAILIFF: The jury is seated, Your Honor.

7 THE COURT: Thank you very much. Ladies and
8 gentlemen, I hope that lunch was good. There might
9 be enough for each of you to have dinner. That was
10 a lot of food, wasn't it?

11 You remember Monday, if you can remember back
12 that far, I told you that there were five parts to
13 the trial, or I broke it down into five parts. The
14 first part were the opening statements, the second
15 part was the presentation of the testimony and the
16 evidence, the third part are the closing arguments
17 of the attorneys.

18 Well, we have completed the first two parts.
19 And now we are going to move on into the closing
20 arguments of the attorneys.

21 You all have been a great jury, and I can't
22 compliment you enough for your attendance and the
23 attention that you have given to the trial of this
24 case. So we thank you very much for that in
25 advance. And I ask you to continue to pay close

1 attention through the arguments of these fine
2 attorneys.

3 Thank you very much.

4 CLOSING STATEMENT

5 MS. GRIPP: On May 5th, 2007, Tenisha
6 McClinton brutally stabbed and murdered Frank West.
7 She said it here. Well, kind of.

8 When we started this case we told you that
9 blaming Melinda Richmond --

10 THE COURT REPORTER: I'm sorry, I can't hear
11 you.

12 MS. GRIPP: At the beginning of this case we
13 told you that blaming Melinda Richmond would be
14 easy, but it is not right. The person who is
15 guilty of this murder is Tenisha McClinton.

16 We ask that you look at the hard questions.
17 We ask that you ask the hard questions. From the
18 first day, from the very first hour of this case
19 the State, the government had made up their mind
20 that Melinda Richmond was guilty.

21 This is a very emotional case. And I don't
22 think that anybody would dispute that. The first
23 piece of evidence that we heard was the 9-1-1 tape
24 of Frank West and he is giving information.

25 And what does he tell you? At 5:18 in the

1 morning he says the only information that he has,
2 Melinda Richmond. He says, Toyota Camry, light in
3 color, '94. Can he say it is Tenisha McClinton?
4 No. He doesn't know her name. Can he say it is
5 Bruce Thompson? No. He doesn't have his name.

6 When they ask where did they go, he responds,
7 the Western. Not she, but they.

8 It is only understandable that people would be
9 angry about this case. Frank West did not deserve
10 to die.

11 But what does the forensic evidence say to
12 you? The forensic evidence tells you that Tenisha
13 McClinton was caught in this case red-handed,
14 literally red-handed, full of blood.

15 Tenisha McClinton, after she had washed off,
16 after she changed her clothes, still had blood on
17 the inside of her legs. Whose blood was that? She
18 said it was Frank West's blood. She still has
19 blood on her new clothes, the ones she changed into
20 after she cleaned up. The blood on the inside of
21 her ankle, because she was leaning over him,
22 stabbing him multiple times.

23 The State wants to explain the lack of blood
24 on Melinda's clothes as somehow consistent with
25 their theory of the case, but it is not the case.

1 If you look at her clothes -- I will grab them --
2 it doesn't comport with what Tenisha says.

3 Tenisha says that she saw Melinda stabbing
4 Frank West in the back. Well, Frank West was
5 stabbed in the upper left side of his back. Left
6 side. Where would her blood be? On the bottom of
7 her pants? No. It would be all over the front of
8 her shirt.

9 This is the T-shirt that she was wearing. It
10 would be all over the front of the top left side of
11 her shirt. That is not where the blood is.

12 If you look at Tenisha McClinton's shirt, it
13 is covered, covered in blood. Her pants are
14 covered in blood. Her pants on the inside, right
15 through here and in the seat are soaked in blood.
16 How do you get it in the seat of your pants? She
17 got it there when she was sitting on him stabbing
18 him multiple times.

19 And the State wants you to believe that
20 Melinda doesn't have any blood on her hands because
21 she showered. Well, if she showered, don't you
22 think they would have been able to have somebody up
23 here to say she had wet hair or they would have
24 brought in the other people to say, yeah, we saw
25 her and she was cleaned up and showered at that

1 point.

2 But all we have is Tenisha. Where is Bruce?
3 We don't hear from Bruce. They don't want you to
4 hear from Bruce, because Bruce isn't going to
5 support their story.

6 The police want you to believe a lot of
7 things. They want you to believe that out of thin
8 air they picked Melinda Richmond from all the other
9 white females in Columbia, South Carolina. They
10 want you to believe Corporal Mazerolle, who had
11 notes up here so that he could refresh his
12 recollection, wants you to believe that he
13 remembered a passenger in a traffic stop four to
14 six months prior to the incident.

15 When I asked about Tenisha McClinton, he had
16 to look that up. He didn't remember the passenger
17 in the car with a murder suspect. He does not
18 recall that, he got the information from the 9-1-1
19 tape, the only information that Frank West could
20 tell them.

21 Now, what evidence did they collect and what
22 evidence did they take? Investigator Livingston
23 testified that the reason that they collect
24 evidence and test it is to solve the crime. They
25 didn't test this evidence until October 31st. They

1 had solved the crime. They solved the crime that
2 day. They decided that the crime was solved May
3 5th.

4 Let's talk about their star witness, Tenisha
5 McClinton. She says she is not a liar. But it is
6 a ridiculous idea to think she's been telling the
7 truth.

8 Her first statement, first statement at 6:29,
9 she says, Bruce Thompson did it. She says she is
10 going along with Melinda. She says, Bruce Thompson
11 did it.

12 Her first written statement she gives at 9:28.
13 At 9:28 she says, Bruce Thompson did it. That is
14 the statement that the State ripped up in front of
15 you and told you to completely disregard it. What
16 they are doing is they are asking you to completely
17 disregard the fact that Tenisha McClinton lied.

18 And then she at some point in there between
19 her first and second statement, the other route
20 they are taking, then she is put in handcuffs and
21 placed on a bench outside of Melinda Richmond's
22 interrogation room.

23 She says -- she says that she could hear
24 Melinda Richmond telling them, and the way she said
25 it was, she was pinning it on me. From that point

1 on, Melinda Richmond did it.

2 Her second statement at 9:30 -- we don't
3 really know what is in that statement because it is
4 not written down anywhere. They are going to take
5 the word there was a statement given, Harris did
6 it.

7 The third statement she made at 3:00 p.m.,
8 Melinda Richmond did it. Why did she say that?
9 She knows she is already in for it. She has to
10 bring someone else in. She is so mad, she wants
11 revenge. There is no -- there is no way out for
12 her. Her hands are bloody. Her clothing is
13 bloody. Her hands are cut. But she still doesn't
14 say -- this is -- this is the statement that the
15 State wants to tell you is a true statement. Look
16 at the statement and tell me where it says, I
17 stabbed Frank West. She never stated that.

18 Her guilty plea, April 2008, she never says, I
19 stabbed Frank West. The first time we hear that
20 story is when she testified. And even when she is
21 testifying, I just want to make clear, she doesn't
22 really say, I stabbed Frank West, she says, I must
23 have stabbed him, I had my hands on him.

24 What else is she going to say? She is not
25 going to say, I stabbed him because I remember

1 stabbing him and I was lying about the statement at
2 9:28, I was lying about the statement at 1:30, I
3 was lying about the statement at 3:00 p.m., I was
4 lying in front of the judge in April of 2008. She
5 didn't say that.

6 It doesn't help her to say Melinda Richmond
7 didn't do it. She is already doing her 30 years.
8 Why would she plead guilty if she didn't stab him?
9 She made a deal with the State. She got the
10 minimum she possibly could have gotten, just 30
11 years, no parole, no probation. Every single day
12 of that 30 years. And if she didn't make that deal
13 to testify against Melinda, she was facing life.
14 She had two options. She took the easier way out.

15 She doesn't remember saying that in her
16 statement. Well, she remembers -- she testified
17 she remembers quite clearly everything that
18 happened before and everything that happened after
19 the stabbing, she just doesn't remember the
20 stabbing. Probably because she doesn't want to
21 remember the fact that she stabbed Frank West 24
22 times -- 24 times.

23 I asked her about her guilty plea. She
24 remembers everything up to the point where she said
25 or didn't say that she stabbed Frank West. But

1 everything after it she can remember, but she
2 couldn't remember that night.

3 The thing I want to talk to you about, they
4 make a big deal about Melinda Richmond under
5 arrest. Well, that doesn't tell you anything. Who
6 else's DNA is going to be on it but hers? Out of
7 the 100, nearly 140 pieces of evidence actually
8 tested, the one item has her DNA on it. Positive
9 for DNA, McClinton and Mr. West, nail scrapings
10 under her nails, jean shorts, the cuttings from the
11 Hilfiger shirt, the one that they think Melinda
12 Richmond was wearing. You saw that shirt. It is
13 huge. It is not a nightgown. That shirt wouldn't
14 fit Melinda Richmond.

15 What is positive for the DNA of Frank West?
16 Cutting from the black sweatshirt. That is the one
17 that Bruce Thompson they say was wearing, not
18 Melinda Richmond. He has blood on him too. The
19 bathroom floor, the knife, jean shorts, the black
20 T-shirt, the Hilfiger shirt, the white and blue
21 shirt, blue jeans.

22 Positive for Tenisha McClinton's DNA? The
23 sink cabinet, the sink cabinet that she says she
24 was nowhere near, not that she did not wash up, but
25 she was not anywhere near the sink or the bathroom.

1 The black sweatshirt, her shoes, the front of the
2 right dashboard at the front of the center upper
3 console in front.

4 And this is really interesting. I think they
5 are telling you it corroborates Melinda Richmond's
6 statements. What does she say? She says they all
7 get into the front. Well, of course they all get
8 in the front. That is where this blood comes from.
9 Tenisha McClinton has blood. She goes up to the
10 door. There is blood on the door handle. She
11 opens the door. She pulls it open. Her DNA is on
12 the inside of that doorframe. She gets in. She
13 pulls over on the center console. If she was
14 bloody at the time that the State would suggest she
15 is in the front, she would have also had Corporal
16 Mazarolle's car soaked in blood. If she was
17 bleeding that bad, she would have been bloody in
18 the cop car as well. She is not.

19 You also, as you see in the pictures, that she
20 was bloody all over that as well. She is not
21 bleeding from the top at this point.

22 Once again, Melinda Richmond's DNA. Tenisha
23 McClinton or Dr. Amick. Now, who are you going to
24 believe? Are you going to believe Tenisha
25 McClinton or Dr. Amick's examination of all the

1 blood?

2 Are you going to believe Dr. Nichols where all
3 of the wounds would be or are you going to believe
4 Tenisha McClinton? She says that she saw her
5 stabbing him five or six times in the back. Then
6 she was all bloody at that point. Her shirt is not
7 covered in blood.

8 Let's talk about the State's confessions.
9 Tenisha McClinton says she was only scared. She
10 was really scared because she knew when they were
11 interrogating her that she could tell something was
12 wrong.

13 Well, can you imagine what one would feel like
14 if you were being interrogated for hours on end,
15 whether eight or whether it is ten hours, and you
16 hadn't done this? How scared would one person be?

17 There are three police officers. They are
18 trained individually to ensure confessions. They
19 are trained. Could you imagine collectively what
20 three of them could do against one person? One
21 person who hadn't slept in days, one person who was
22 traumatized by what occurred, one person who was
23 high on crack, one person who has been taking Xanax
24 and drinking. Eight hours? Eight hours'
25 interrogation. And that first day after eight

1 hours they have one alleged confession.

2 Reed-Enzor, Officer Reed-Enzor says all day
3 long Melinda Richmond is shaking --- shaking and
4 swaying on her feet. She appeared that she was
5 coming down from something. And she doesn't
6 normally ask people questions, but she thought she
7 might be in need of medical attention. Why would
8 she add that to her notes if it wasn't true?

9 Then what the State wants you to believe at
10 11:20 when she is first -- when the State says she
11 is first read her rights by Investigator Martin,
12 she is fine, she is totally fine, she is not
13 shaking, she is not swaying on her feet. Twenty
14 minutes later.

15 Now, the second statement she gives to a
16 friend, or what she thinks is a friend,
17 Investigator Gwyn. She testified that she trusted
18 him. She thought he was a good guy. He fed her
19 candy. He brought her in a car, took her away from
20 the jail, calmed her down. He was protecting her
21 against the other guy, the good cop/bad cop. It is
22 a cliché for a reason. These are tactics that they
23 are trained to use, used to ensure confessions.

24 They don't want you to know what happens
25 during these interrogations. If they wanted you to

1 know what happened, they would record them. Notice
2 that it is not that they don't have the ability to,
3 they don't have the equipment. They have it. They
4 have it for, let's say, drug transactions. They
5 can use it for that. Can they use them to show you
6 what it is actually like to be interrogated for
7 eight hours? No, they can't do that. It is not
8 their policy. It is also not their policy to let
9 you write down what happened because that would not
10 be policy either. It would be less work for her.

11 They don't want you to write it out, they want
12 to tell you what happened. They want to make sure
13 that they can get a conviction with that statement.
14 And if what you say isn't correct, it is just not
15 worth it.

16 Everyone has a breaking point. And given the
17 fact that these officers are experienced and they
18 are trained -- you know, we're not saying she
19 didn't speak to the police. What we're saying is
20 that what she said exactly isn't on here. You can
21 take all of these statements collectively between
22 Tenisha McClinton and Melinda Richmond and you tell
23 me where you get eight hours from. That does not
24 reflect that.

25 The State is fond of saying things like, the

1 Defense likes to use smoke and mirrors, the Defense
2 likes to muddy the waters so you can't really see
3 the facts in this case.

4 Well, the facts in this case, I can't change
5 them. I'm not an illusionist. They are ugly, they
6 are ugly facts. You have four people smoking
7 crack, including Frank West, including Bruce
8 Thompson, Tenisha McClinton, Melinda Richmond.
9 They are not all bad people, but they are all
10 addicted to crack. You have one person stabbed and
11 you have one person who stabbed him.

12 And the State also likes to say things like, I
13 don't pick my witnesses, they come with the facts.
14 But that is not entirely true either, is it?
15 Because if the State wanted to, they could call
16 Bruce Thompson. They could call the Miyakazis.
17 They could call somebody other than three people
18 who didn't see what happened and then law
19 enforcement, which is who they have called.

20 My investigator got up here and she told you
21 that she spent 150 hours investigating this case.
22 Well, the police spent 48 hours investigating the
23 case. And I think I'm stretching with that. We've
24 got May 5th and the investigation that was done.
25 We've got one statement from May 7th. And then

1 October 31st we get the DNA. October 31st, 2008.
2 And I believe that is about all of the work that
3 they did on this case.

4 Collecting evidence is a way to solve crimes,
5 but that is not how they did it here. The only
6 reason they got this evidence is to try to convict
7 Melinda Richmond. They didn't care who committed
8 this crime.

9 The judge is going to charge you on a number
10 of things. And one of the things he is going to
11 charge you on is something called the hand of one
12 is the hand of all. And that means if one person
13 is guilty, then everyone is acting together, it
14 means everybody is guilty.

15 Well, ladies and gentlemen, under that theory,
16 given the fact that this is a true statement, Bruce
17 Thompson is guilty of murder. Because she didn't
18 say that she does much different than Bruce
19 Thompson. She never says in the statement or the
20 plea, judge, that I stabbed him. She didn't say
21 that. She says, I hit him with a beer bottle.
22 Well, she says he hit him with a fist. That would
23 make him guilty of murder. But he is not guilty of
24 murder. He is guilty of accessory after the fact.

25 You know who else is guilty of accessory after

1 the fact? That would be the Miyakazis. They
2 weren't charged either. The only person that they
3 are really interested in is Melinda Richmond.

4 Voluntary manslaughter is the taking of a life
5 with legal provocation in sudden heat of passion.

6 Murder is the unlawful killing of another with
7 malice aforethought.

8 Given the state of the facts in this case,
9 malice aforethought is difficult to come by.

10 Premeditation. Now, they didn't tell you that
11 premeditation can happen in a matter of seconds.
12 And they can. Did they start this evening out to
13 kill Frank West? No. Why would she do that? Why
14 would she say, we have to kill him? She is living
15 with Frank West. They were roommates. They are
16 friends. They are saying he is buying her crack.
17 At the point when they say that, she hadn't done
18 anything wrong. She accused him of taking some
19 crack, but she didn't hit him. She didn't kick him
20 at that point. Then all of a sudden, they need to
21 kill him? That doesn't make any sense. Why does
22 she need to kill Frank West? Frank West was her
23 friend.

24 Melinda Richmond testified that Frank West was
25 enraged. Everybody was high on crack. He was

1 fighting. Everybody was fighting. He lunged at
2 her and she grabbed the knife. She didn't stab
3 him. She grabs the knife and then she dropped it
4 and she runs downstairs. But he is already
5 bleeding at that point. He was already bleeding at
6 the point when they beat him -- and by "they" I
7 mean Tenisha McClinton and Bruce Thompson -- when
8 they beat him in the head repeatedly with a beer
9 bottle and their fist. He was bleeding from the
10 face, bleeding from his head.

11 That is the heat of passion. That is mutual
12 assault. That fight that occurred between Frank
13 and Tenisha McClinton and Bruce Thompson and
14 Melinda Richmond, that is the heat of passion. So
15 if you believe -- let's say you do believe -- that
16 she did tell the cops, I picked up the knife, but I
17 stabbed him once in the back.

18 Well, once in the back does not make her
19 guilty of murder. It doesn't. She doesn't have
20 malice at that time. She has no reason to want him
21 dead. That was what Tenisha McClinton wanted. Why
22 did Tenisha McClinton kill him? Maybe because she
23 wasn't taking her medication, maybe because she was
24 high on crack, maybe because she was crack mad.
25 But the facts don't change what she did. And that

1 doesn't make Melinda Richmond guilty of murder.

2 The forensic evidence doesn't make her guilty
3 of murder. The blood on her pants, the majority of
4 the blood on her pants is on the left side. Her
5 left side where she gets in the car beside Tenisha
6 McClinton covered in blood, beside her legs that
7 are covered in blood.

8 I'm not saying to you that the lifestyle that
9 Melinda Richmond was leading was a good lifestyle.
10 I'm not saying this wasn't a tragic event. What I
11 am saying is Melinda Richmond is not guilty.

12 (2:41 p.m.)

13 CLOSING STATEMENT

14 MS. SHIPLEY: Good afternoon, ladies and
15 gentlemen. The right answer is the easy answer in
16 this case. Why are we here trying Melinda
17 Richmond? Because she is just as guilty of
18 murdering Frank West as Tenisha McClinton.

19 There is a theory of law called the hand of
20 one is the hand of all. And when two people began
21 attacking a man and one of them picks up a knife
22 and begins to stab him and the other one takes over
23 and finishes stabbing, they are both guilty.

24 In an armed robbery scenario, you go to rob
25 the convenience store, you are with your buddy, and

1 your buddy has a gun. Your plan is just to snatch
2 money from the cash register and your friend
3 decides to kill the clerk. Well, that makes you
4 just as guilty of murder, even though you didn't
5 fire the bullet or fire the gun. Why? Because
6 when you enter a store with a gun to rob the store,
7 it is a natural and probable consequence that
8 someone is going to get hurt, that someone could
9 die.

10 And just as Melinda Richmond and Tenisha
11 McClinton stabbed Frank West multiple, multiple
12 times, it was a natural and probable consequence
13 that Frank West would bleed to death. Not in my
14 opinion, the opinion of a renowned pathologist who
15 has served this community, has done over 5,000
16 autopsies, and he told you it is his expert opinion
17 that Frank West died from the combination of all 24
18 stab wounds. And that is it.

19 Wishful thinking that only one was inflicted
20 by that woman. Wishful thinking. And I'm going to
21 get into that in more detail.

22 Ladies and gentlemen, I'm going to begin with
23 the law. Because the State of South Carolina has
24 the burden of proof in this case, and it is a
25 burden that we welcome, I'm permitted to go over

1 the law with you.

2 Now, should I say something that differs from
3 what Judge Miller instructs you, then by all means
4 disregard what I say, it is not intentional, he is
5 the expert on the law.

6 Also, anything that Ms. Gripp may have
7 mischaracterized or misrepresented, not
8 intentionally, I'm not saying that, but he is the
9 expert of the law. He wears that black robe for a
10 reason. So listen to the law as he instructs it.

11 Now, I indicated that the State of South
12 Carolina has the burden of proof, and we have the
13 burden of proving Melinda Richmond guilty beyond a
14 reasonable doubt.

15 Now, what does that term mean? Well, in
16 perfect common sense words, it is what you decide
17 is reasonable. That is why we have selected 14
18 reasonable people here with Ms. Richmond to judge
19 her for her conduct on May 5th, 2007. So you
20 decide what is reasonable.

21 Now, there are some definitions to guide you
22 so if you have any questions.

23 Proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced of the Defendant's
25 guilt. There are very few things in this world

1 that we know with absolute certainty. And in
2 criminal cases, the law does not require proof that
3 overcomes every possible doubt.

4 So, ladies and gentlemen, you don't have to be
5 absolutely certain. That is not what is imposed on
6 the State of South Carolina to prove someone
7 guilty.

8 If based on your consideration of the evidence
9 you are firmly convinced that the Defendant is
10 guilty of the crime charged, you must find him
11 guilty.

12 If, on the other hand, you think there is a
13 real possibility that he is not guilty or she is
14 not guilty, you must give her the benefit of the
15 doubt and find her not guilty.

16 And that is just the legal definition, because
17 it is a term of art of reasonable doubt in South
18 Carolina.

19 You may doubt that the sun is going to rise
20 tomorrow, but that would be an unreasonable doubt.
21 So how on earth is the State supposed to convince
22 the 14 of you, or the 12 ultimately, of the
23 Defendant's guilt beyond a reasonable doubt?

24 And we did that in this case with different
25 types of evidence. We have direct evidence and we

1 have circumstantial evidence.

2 Direct evidence is what a person senses, what
3 they hear, what they see, what they smell, what
4 they taste, and what they feel. That is direct
5 evidence. Someone witnessing an event.

6 And the direct witnesses in this case, ladies
7 and gentlemen, are Larry Scheper, Teresa Brown, and
8 Dylan Nichols, Macey Dylan Nichols. They were
9 witnesses when they saw what they did and heard
10 what they heard.

11 Circumstantial evidence -- and I thought when
12 I went to law school, oh, they just have a
13 circumstantial case, they have got a weak case.
14 Well, I was wrong. Circumstantial evidence carries
15 just as much weight under the law in South Carolina
16 and this country as direct evidence.

17 Guess what, ladies and gentlemen? DNA is
18 circumstantial evidence. An example of
19 circumstantial evidence, you have a murder scene,
20 you don't know who did it. The victim is dead and
21 couldn't report to the police who did it or report
22 to the neighbor who did it. And there is blood --
23 a drop of blood. They swab it, they analyze it,
24 and it turned out it is not the victim's blood, it
25 is somebody else's blood. And then they find the

1 suspect and they interview that suspect. And that
2 suspect denies being there. Well, your DNA is
3 there. No one saw you. There was no direct
4 witnesses seeing you leave it there. The victim is
5 no longer allowed to testify to that. So that is
6 circumstantial evidence that shows the man was
7 there and cut himself and left his DNA at the
8 victim's residence. That is an example of
9 circumstantial evidence.

10 It is basically a chain of circumstances when
11 linked together leads you to one possible and
12 reasonable conclusion.

13 Judge Miller is going to instruct you there
14 are two types of evidence that are generally
15 presented during a trial: Direct evidence and
16 circumstantial evidence.

17 Direct evidence is the testimony of a person
18 who asserts or claims to have actual knowledge of a
19 fact, such as an eyewitness.

20 Circumstantial evidence is a chain of facts
21 and circumstances indicating the existence of a
22 fact.

23 The law makes absolutely no distinction
24 between the weight or the value to be given to
25 either direct or circumstantial evidence, nor is a

1 greater degree of certainty required of
2 circumstantial evidence than that of direct
3 evidence.

4 You should weigh all of the evidence in the
5 case. After weighing all of the evidence, if you
6 are not convinced of the Defendant's guilt beyond a
7 reasonable doubt, you must find the Defendant not
8 guilty.

9 If, on the other hand, you are convinced of
10 the Defendant's guilt beyond a reasonable doubt,
11 then you must find the Defendant guilty.

12 And that is the definition.

13 There are two charges that Judge Miller is
14 going to instruct you on. We are here for a murder
15 case. Melinda Richmond is charged with murder.
16 Her Co-Defendant, Tenisha McClinton, pled guilty to
17 murder.

18 Murder, defined by the South Carolina Code,
19 is: The unlawful killing of any person with malice
20 aforethought, either express or implied.

21 Correction, there is no premeditation required
22 for murder. Aforethought is basically an -- like
23 an aforethought. Just at the moment of the fatal
24 blow. So when you pick up a knife and you decide
25 to stab someone, that is enough premeditation. It

1 doesn't have to be a week in advance or planning,
2 you know, an hour in advance. It can be the moment
3 you pick up a murder weapon and you decide at that
4 moment, I'm going to put this in someone's body,
5 and that is the malice aforethought right there.
6 It doesn't have to last for an hour. It can last
7 the moment the murder weapon is picked up, or the
8 moment the trigger is pulled on a gun.

9 Express or implied. Express. What did the
10 person say? Because you can't cut someone's head
11 open and figure out what was going on in their
12 mind, was there malice in their mind, were there
13 malicious intentions in their mind.

14 Well, the law permits you to use the evidence
15 available. Express malice. You think we need to
16 kill him before he calls the cops? That is express
17 malice. That came out of the words of the mouth of
18 that woman, Melinda Richmond. She expressed malice
19 in her own words.

20 Then you may also infer malice by her conduct.
21 By arming herself with a weapon to inflict serious
22 injury on another, that you can also infer malice.

23 Malice in its popular sense used to define
24 malice, and I just say it is malicious. The term
25 malice conveys meaning of hatred, ill-will or

1 hostility towards another. Malice is a term
2 imparting wickedness and excluding just cause or
3 excuse.

4 For instance, you are acting in self-defense,
5 okay? Ladies and gentlemen, Judge Miller is not
6 going to utter the words self-defense to you in
7 this case. It does not apply as a matter of law.
8 No excuse. It is something that springs from
9 wickedness, depravity, a heart devoid of social
10 duty, fatally bent on mischief. Malice may be
11 implied from the willful, deliberate and
12 intentional doing of an unlawful act without just
13 cause or excuse or from the use of a deadly weapon.
14 The knife.

15 As I indicated earlier, the length and time,
16 no premeditation in South Carolina. Malice may not
17 exist for any appreciable period of time before the
18 commission of the act. I should say commission, by
19 the way. Indeed, it may be conceived at the very
20 moment the fatal blow is struck. So Tenisha and
21 Melinda didn't have to have a little conference
22 before what they did to Frank in order for this
23 malice to appreciate in their mind.

24 I said earlier in closing -- I mean,
25 opening -- you might have been confused at the

1 beginning of the trial -- why are we here when we
2 have someone taking responsibility for the death of
3 Frank West? Why are we doing that to poor Melinda?

4 Well, ladies and gentlemen, under the hand of
5 one -- the hand of one is the hand of all. And
6 basically the law, theory of law, if a crime is
7 committed by two or more persons who are acting
8 together in the commission of an offense, the act
9 of one is the act of both or all. Two people can
10 be guilty of killing another or of murder when only
11 one of the two had a pistol and only one bullet.
12 If both are together, acting together, assisting
13 each other in the commission of the offense, the
14 law says that under those circumstances the act of
15 one is the act of all, and as is sometimes said,
16 the hand of one is the hand of all.

17 So when Tenisha is telling Melinda, hold him
18 down, hold him, then she said, do we need to kill
19 him, do we need to kill him, they are acting in
20 concert together to kill Frank, at least inflict
21 serious bodily injury. That is acting together.

22 Mere presence at a crime scene, the judge will
23 instruct you, is not enough. They have to be
24 participating. So when Tenisha McClinton and the
25 Defendant herself tells you Bruce Thompson is

1 downstairs robbing the victim, he is not
2 participating in the stabbing of Frank West, and
3 that is why the Defendant Bruce Thompson was
4 indicted for accessory after the fact of murder.
5 That was not an easy answer. But it was the right
6 answer because legally that is his culpability in
7 this case. Accomplice liability. The hand of one
8 is the hand of all. That two or more people
9 combined together to commit an unlawful act and a
10 crime is committed by one of the actors as a
11 probable and natural consequence of the act done in
12 pursuance of the common design all present and
13 participating -- key word, participating -- in the
14 unlawful undertaking are as guilty as the one who
15 committed the act.

16 So let's say you believe Melinda, that she
17 didn't stick that knife in Frank's back. The fact
18 that she helped hold him down while Tenisha stabbed
19 him is enough to convict her of murder.

20 I submit to you she did more than that. Under
21 the law of -- Judge Miller will charge you with the
22 law of voluntary manslaughter. Do not mistake it
23 for a skinny minute if she is guilty of murder.
24 That is up to you to decide if you think this was
25 in heat of passion. And I'll explain the law to

1 you. Judge Miller will do a better job. It is
2 your province and your verdict and it will not be
3 questioned or disturbed. I don't want you to think
4 because I'm explaining this to you I believe it.

5 Okay, voluntary manslaughter is one of the
6 options that your going to have back there in the
7 jury room. It is the unlawful killing of another
8 without malice. That means without. Should we
9 kill him because he is going to call the cops.
10 Without that evil intent it is in the sudden heat
11 of passion upon sufficient legal provocation.

12 So, ladies and gentlemen, both heat of
13 passion, it has got to be in crux of it. And legal
14 provocation, sufficient legal provocation, has to
15 exist at the exact same time that the fatal blow is
16 struck.

17 I submit to you that doesn't apply in this
18 case. Why? This is why. When Frank West grabbed
19 onto Melinda's hand or arm when she was taking his
20 money -- because she testified on direct
21 examination with her own lawyer that she grabbed
22 his \$50 -- then he grabbed her arm, judge Miller is
23 going to instruct you that the exercise of a legal
24 right such as defending your own personal property,
25 cash, money, is never sufficient legal provocation

1 to allow voluntary manslaughter. The fact that
2 Frank was holding onto her, he was exercising a
3 legal right to prevent her from taking his
4 property. But if you don't agree with that, and it
5 is totally up to you, there still has to be sudden
6 heat of passion.

7 Well, that is lacking here. Do you know why?
8 Because she yells for help. Bruce Thompson and
9 Tenisha McClinton go upstairs to help her. And
10 remember Tenisha McClinton's testimony that, yes, I
11 didn't see Frank hit her, but I saw him, you know,
12 holding her arm. And he let go as soon as Bruce
13 and I walked in. And that is when Bruce punched
14 him and I hit him over the head with a beer bottle.
15 And the threat was no longer there for
16 Ms. Richmond. It is gone. There is no more
17 threat. There are people there breaking it up for
18 her. And in her own words she is standing there
19 watching them while they are on him. She is just
20 standing there. So where is the heat of passion?
21 Then she picks up a knife after he is completely
22 disabled by Bruce and Melinda, and Bruce takes off
23 to go downstairs to rob the man, and Melinda -- I
24 mean, Tenisha -- is telling Melinda, hold him, hold
25 him. And she climbs onto his back while he is

1 laying on his stomach on the floor and picks up the
2 knife and begins to repeatedly stab him in the
3 back. Where is the heat of passion? There is
4 none, ladies and gentlemen.

5 Another definition of voluntary manslaughter
6 is the unlawful killing of a human being in sudden
7 heat of passion upon sufficient legal provocation.
8 Heat of passion alone will not suffice to reduce
9 the murder to voluntary manslaughter. Both the
10 heat of passion and sufficient legal provocation
11 must be present at the time of the killing. The
12 sudden heat of passion upon sufficient legal
13 provocation which mitigates a felonious killing to
14 manslaughter, while it need not dethrone reason
15 entirely or shut out knowledge and volition, it
16 must be such as would naturally disturb the sway of
17 reason and render the mind of an ordinary person
18 incapable of cool reflection and produce what,
19 according to human experience, may be called an
20 uncontrollable impulse to do violence.

21 And a typical scenario, ladies and gentlemen,
22 this is sort of like a man coming home and finding
23 his wife in bed with another man. He is outraged.
24 He is betrayed. He goes ballistic. That is the
25 heat of passion. Where is that in this case? It

1 doesn't exist.

2 The biggest issue in this case -- and that is
3 why you jurors are so important in every case is
4 that you decide what happened that night. You are
5 the judges of the facts. Each one of you wears a
6 black robe just like Judge Miller. You are the
7 judges of the facts. And you decide who is telling
8 the truth, who is believable. It is your province,
9 and no one will disturb it.

10 There are five factors, though, that I'd like
11 to share with you that you can use to determine
12 whether or not to believe a witness.

13 Credibility of a witness is the only issue in
14 this case. Who do you believe? Because you can't
15 believe everybody. Somebody is lying and somebody
16 is telling the truth.

17 Demeanor of the witness on the witness stand.
18 There was no coincidence that this witness box is
19 right here before you. It is so that you, as
20 reasonable people, can use your common sense and
21 everyday experiences dealing with others in your
22 life, you know when someone is telling the truth
23 and when they are not. That is why this box is
24 right here for you to decide who to believe and who
25 not to believe.

1 Ask yourself, was the witness forthright or
2 hesitant when answering questions from either side?

3 Was the testimony of the witness consistent?
4 Consistency is an issue that we'll get to in more
5 detail.

6 Was the testimony of the witness corroborated?
7 An example -- and just so you know, all the
8 witnesses in this case were sequestered. Judge
9 Miller ordered that nobody can sit in here and
10 listen to each other testify so that there won't
11 be -- they won't taint each other's testimony. So
12 I just want you to know that when Mazerolle was
13 testifying, obviously Tenisha didn't hear it. She
14 was in prison. That is where murderers go, prison.
15 She had on blue eye shadow. Well, that is just a
16 great perk for the rest of her 30 years in prison.
17 But, ladies and gentlemen, she had no idea what
18 Officer Mazerolle testified to.

19 And she got up here after he did and said,
20 yes, when the cop brought the knife to the car,
21 Melinda said Bird, he was attacking the victim and
22 was mad about the crack cocaine. Bird did it. She
23 and I started talking in the back seat of that car
24 and I went along with the story to blame Bird and
25 put it all on Bird.

1 Well, that corroborates Officer Mazerolle,
2 doesn't it?

3 Did the witness have reason to be biased or
4 prejudiced?

5 Does the witness have a stake in the outcome
6 of this case?

7 And there is only one person that has a stake
8 in this case besides the victim of Frank West that
9 wants justice. That woman right there. She
10 doesn't want to accept responsibility for her
11 actions. She has got a stake in the outcome of the
12 case. She doesn't want to go to prison where
13 murderers belong.

14 You heard from several witnesses in this case.
15 Teresa Brown. No dog in this fight. She liked
16 Frank West. She provided him with food, leftovers,
17 because he was lonely.

18 Macey Dylan Nichols. They tell you when Frank
19 comes to their house -- at first Teresa didn't
20 recognize him, he was covered in blood. But he is
21 able to have the wherewithal to tell her what he
22 knew and what he knows. Mr. Nichols told you that
23 he heard a woman's voice saying, let's go.

24 Larry Scheper then hears the car take off in
25 the back parking lot. Larry Scheper tells me he

1 sees a black female, black male and a white female
2 running out of Mr. West's house and that eventually
3 the victim came out and went to the neighbor's
4 house where he called. And he too corroborates
5 Macey Nichols by saying, I heard a female's voice
6 saying, let's go.

7 Tenisha McClinton told you that was her
8 saying, let's go. So what does that tell you,
9 ladies and gentlemen? She was out before Melinda
10 Richmond. Why would she have to say, let's go, if
11 Ms. Richmond is already outside, right?

12 Deputy Michael Leahy reports to the scene.
13 And he tells you when he gets there there was
14 absolutely no information dispatched on 9-1-1. And
15 I don't know, I can't explain it, typically should
16 report it to the officers responding, but the fact
17 that the victim reported, Melinda Richmond, 1994
18 Toyota Camry, going to the Western Inn, that was
19 not dispatched to the officers responding. And you
20 heard that not only from Leahy, you heard that from
21 Mazerolle and you heard that from Cavanah. So they
22 didn't have a clue who they were looking for. They
23 just knew it was a white female. They didn't have
24 Melinda Richmond's name.

25 This isn't some conspiracy against Melinda,

1 poor little Melinda. The victim is leaning up
2 against the wall over by Apartment D where Teresa
3 Brown lives, and as soon as the officers arrived,
4 that is when Mr. West begins to collapse.

5 And you heard from the officers that the
6 moment his body touched the sidewalk, blood poured
7 out of his body. And all they could hear the man
8 say was, I can't breathe.

9 What he told Teresa Brown, who relayed
10 everything to 9-1-1, was a dying declaration. And
11 it is trustworthy. It is trustworthy. He is
12 trying to tell people who did this to him. And he
13 did know Bird. Their client admits it.
14 Ms. Richmond admits it. She introduced Bird to
15 Frank West. And you never heard Frank mention
16 Bird's name. He didn't ever say -- he didn't say
17 Bird period. And you heard them say also that he
18 didn't say Tenisha McClinton.

19 Well, I asked Ms. Richmond, you have manners,
20 right, when you introduce two people to smoke crack
21 together? Do you let them know who each other are
22 if you are going to share a crack pipe? She
23 admitted she introduced Frank to Bird as Bird.

24 Well, it is reasonable to conclude she would
25 have introduced Tenisha to Frank as well. I doubt

1 Frank is going to let some stranger in his house
2 without asking who you are.

3 When Ray Livingston arrived, he met with
4 Michael Mazerolle, and he reported in his report he
5 got there at 6:30 in the morning. And what did the
6 Defendant say?

7 Bird did it. Bird had the knife. I took it
8 away. Bird did it. The Defendant saw -- admitted
9 she wrapped the knife up in the white blanket,
10 according to her statement, and that is the white
11 blanket in the back seat of the car.

12 Ray Livingston gets to the most bloody crime
13 scene he has ever responded to in his career at the
14 Richland County Sheriff's Department. And he tells
15 you there was just blood everywhere. And he
16 collected out of all of that six swabs, and we'll
17 get to Dr. Amick's reason later as to why he didn't
18 analyze them, but basically signs of a struggle in
19 the bedroom belonging to Frank and the hallway. No
20 sign of struggle on the first floor. That
21 corroborates Tenisha McClinton that that is where
22 it happened because you heard her say it all was in
23 the bedroom. And then it led out to the hallway
24 because Frank was trying to get away. That
25 corroborates her version.

1 And in the statement, I forget where it is
2 because there is so much of it, you are welcome to
3 read the statement, but at one point I believe
4 Ms. Richmond tells officers that Bruce Thompson
5 told her -- and, by the way, if you don't call a
6 witness, the State has the burden of proof,
7 correct? The Defendant Bruce Thompson is a charged
8 Defendant and he has the Fifth Amendment right to
9 remain silent. The State cannot compel somebody
10 that has charges pending to take the witness stand
11 and say anything. He has a Fifth Amendment right,
12 and that was invoked by his lawyer, Josh Kendrick.
13 The Defense could not call him either. But the
14 Defense, once they -- they don't have to prove a
15 thing, ladies and gentlemen. And that is the way
16 it should be. That once they put up a case, they
17 can subpoena people just like the State can. Okay?
18 I was getting to the fact that -- Bruce told me --
19 or somewhere in the statement said -- Bruce told me
20 he looked up and saw Tenisha slit his throat.

21 Well, ladies and gentlemen, I think we made
22 abundantly clear that the staircase, there is no
23 way that if you are at the bottom of the staircase,
24 the stairs go up and then to the right, there is no
25 way that would have happened.

1 And then also in her statement she said that
2 Bruce told her he saw her stabbing him, not only
3 slitting his throat but stabbing him in the leg.

4 Well, ladies and gentlemen, I asked
5 Dr. Nichols was a single stab wound, was there a
6 single stab wound? No, not to any of the leg.

7 Officer Gerald was asked to respond to the
8 trailer on Rembert Martin Parkway and he
9 encountered the Miyakazis, don't even know their
10 name, their own witness, their private investigator
11 told you that Ms. Miakhazi confirmed that Melinda
12 Richmond showered in her house and that she
13 provided her with a change of clothes and a bag to
14 put her bloody clothes in and did that with Tenisha
15 McClinton too.

16 And McClinton told you she changed clothes in
17 that house and she told you that she didn't shower
18 because she wanted to get home.

19 The Defendant's blood, Tenisha McClinton is on
20 the sink cabinet below it and the victim's blood,
21 Frank West, is in the corner of that room. That
22 could have come off either suspect. I don't know.

23 He secured the scene for Patricia Reed-Enzor
24 to go collect it. And the DNA card, that you will
25 be able to take with you to the jury room, will

1 confirm that the swab from the cabinet under the
2 sink belonged to Tenisha McClinton.

3 And I showed her the photograph asking her is
4 this the bathroom, and she said yes.

5 Item Number 17. Yes, it is McClinton. Right
6 there. Item Number 16, swab, stains. Rembert
7 Martin, victim's blood. But, nonetheless, that
8 explains why when Reed-Enzor started collecting
9 nail scrapings she said that, and I believe the
10 Defense said, she wrote it up here, that Bruce
11 Thompson had caked matter under the nail.

12 Well, they have had the DNA report for as long
13 as I have, and that DNA report shows that that
14 matter is his own DNA, so I don't know what that
15 was about. But, anyhow, that was Bruce Thompson's
16 own DNA right there.

17 They also told you that -- or put on there
18 that Reed-Enzor documented in the record that
19 Melinda Richmond's hands were clean.

20 Well, she told you in her statement to
21 Investigator Heidi Scott what happened next.

22 Answer: We left in Frank's car. Bird took us
23 to some people's trailer and I changed clothes and
24 washed up real good.

25 So the fact that Tenisha is bloody, a mess is

1 because she never showers, she just changes
2 clothes.

3 Bruce Thompson denied touching the man and
4 that the DNA underneath the nail scrapings don't
5 match that caked matter, it might have been
6 obviously his own blood. That is what the DNA
7 proved. And then her hands are clean as a whistle.
8 That corroborates Tenisha McClinton.

9 You then heard from Christy Benson, a chain
10 witness, that said about DNA in line with victim
11 investigator Stan Richards that, I just wanted to
12 show you two photographs and move on from there.

13 Investigator Stan Richards told you that when
14 he began looking in that vehicle there were two
15 bags of clothes in that car, the white plastic bag
16 with the capri jeans and the dark black T-shirt or
17 blue T-shirt that was found stuck under the
18 passenger seat.

19 Now, doesn't that sound like the person that
20 is in the passenger seat would have stuffed it in
21 there? Tenisha McClinton's clothes, they are Size
22 13, they fit her. She identified them as being her
23 clothes. That is coming from, so your aware, Item
24 44 on this chart, victim's blood and her blood all
25 over it. All over it.

1 Then in State's 138, there was that black bag
2 with the long jeans, Size 5, Melinda Richmond's
3 jeans. She admits that she was wearing jeans. She
4 admits she was wearing a light blue T-shirt. I
5 don't know where the Tommy Hilfiger T-shirt came
6 from. She never explained that. But it is her
7 underwear we know because of intimate DNA.

8 And, ladies and gentlemen, the DNA
9 corroborates Tenisha McClinton because she is the
10 only one that got cut after she stabbed Frank West.
11 She never got injured stabbing him. She is the
12 first one that grabbed the knife and the knife was
13 dry. DNA, not cutting, and blood all over the
14 place corroborates Tenisha McClinton was cut and
15 bleeding all over the place and it clearly shows
16 Frank West was bleeding all over the place.

17 So what is significant on the DNA found in
18 this case is on the crotch of her underwear because
19 it is packaged with these pants. Just in case she
20 didn't admit those were her jeans, circumstantial
21 evidence would have shown that they were because it
22 is not unreasonable for you to conclude that when
23 you have panties in a bag and pants, that the
24 person, same person was wearing both. It is
25 reasonable. But she admitted they are her pants.

1 This is Item Number 45.7 on that chart. There
2 are seven swabs. Six of seven swabs, all of them
3 except Number .6 is Frank West's blood. The
4 Defense will have you believe that this blood got
5 over here on that pant leg -- look at it, ladies
6 and gentlemen. It goes from the top of the left
7 thigh into the inside of the thigh like so. They
8 will have you believe that that got there when
9 Melinda got in the front seat of the Toyota Camry
10 and made Tenisha move over.

11 Well, then why isn't there any blood on this
12 side of the pants? Does that appeal to your common
13 sense? Or does this appeal to your common sense?
14 She was straddling the man as he is laying on the
15 ground on his stomach, on the floor on his stomach.
16 This is around his back. The inside of her leg is
17 touching his skin. There is blood obviously coming
18 from his back.

19 Dr. Nichols testified that there were
20 superficial wounds, they were not going to squirt
21 out blood, and it is not going to get all over her
22 T-shirt, even though there is some on the light
23 blue T-shirt belonging to Frank West. The majority
24 of it is in the crotch or inside of her leg. That
25 corroborates this woman was straddling the man and

1 that she stabbed him and was sitting on him and
2 that blood was on his back and it was running off
3 the side of his back onto her thigh.

4 One stab wound? No. Tenisha McClinton told
5 you she saw her stab him five or six times. What
6 does Dr. Nichols tell you? He counted seven stab
7 wounds to the back. Seven. But that doesn't mean,
8 ladies and gentlemen, that she couldn't have
9 inflicted the injuries on the right side of Frank's
10 neck and on the left side of Frank's neck.

11 What did Dr. Nichols tell you? The
12 combination of all the injuries on Mr. West's body
13 contributed to his bleeding to death.

14 And here is the T-shirt she admits to wearing.
15 And there is the blood. And this item is
16 44-point -- bear with me -- it is 45.6, the light
17 blue. It has got Frank's blood on it, on Item .5.
18 The physical evidence doesn't lie, ladies and
19 gentlemen, people lie. People with a stake in this
20 case, in the outcome lie.

21 False confessions. Typically a false
22 confession doesn't follow a denial. Ladies and
23 gentlemen, it is going to be up to you to determine
24 whether or not these statements that were given to
25 law enforcement by Melinda Richmond were voluntary

1 or not. And you have to make that determination
2 before you can consider the statements.

3 Ask yourself the following questions: Did the
4 Defendant make the statement? Did the Defendant --
5 was she warned of her constitutional rights? She
6 admits she was warned, ladies and gentlemen. There
7 is two of them before each statement. She admits
8 she signed it. But now she is claiming that it was
9 done after she gave the statement, that Tenisha
10 McClinton told you, no, it was done beforehand.
11 Did the Defendant knowingly and intelligently waive
12 the constitutional requirements? She admits she
13 waived the constitutional rights. She admits that
14 is her signature. Was the statement given
15 voluntarily? She is not contesting the fact that
16 she gave a statement. She is contesting the
17 contents of the statement. Because, see, some
18 facts in her statement help her and others hurt
19 her, like it is a safe haven. She will admit to
20 that, but, you know, being accused of saying --

21 MS. GRIPP: Mischaracterizing the evidence.

22 MS. SHIPLEY: It is closing argument.

23 THE COURT: Her inference from the facts. I
24 don't think she is mischaracterizing.

25 MS. SHIPLEY: So, ladies and gentlemen, she is

1 admitting to some things, but not all of it, that
2 was made to the officers. I submit to you her
3 statements are verbatim just like McClinton. This
4 is not some giant conspiracy against Melinda
5 Richmond. These law enforcement officers are not
6 going to risk their careers just to get her. And
7 Melinda -- Tenisha McClinton corroborates the
8 officers that she was advised of her rights, she
9 was not threatened in any way, not coerced in any
10 way.

11 Question: They didn't let me use the bathroom
12 because they didn't want me to wash off the
13 evidence, but as soon as I submitted my samples,
14 they let me use the bathroom.

15 That is not coercion, that is not improper.
16 They were treating her respectfully.

17 Rob Martin told you, what would I gain if I
18 was hostile towards Melinda Richmond, she would
19 shut down. He explained he wanted the flow of
20 conversation to continue. McClinton told you
21 herself the first statement she gave, everything
22 leading up to the stabbing was true, you know, how
23 they met in Chapin, recall that statement, going to
24 the gas station buying crack. And then the actual
25 stabbing she claimed that Bird did it. She admits

1 that is a lie. And then after the stabbing when
2 talks about where they went and showered or changed
3 clothes. She said that is the truth. So in her
4 first statement the stabbing, what she described as
5 stabbing and pinning it on me, she said was a lie,
6 I went along with it -- Melinda went along with it
7 and I went along with her story. When she found
8 out that Frank had died her conscience got to her.
9 And she has got a conscience. She did the right
10 thing and she told the truth. And she accepted
11 responsibility as best that she could. Obviously
12 we believe she stabbed Frank multiple times too.
13 They both have dirty hands. And I don't know why
14 she can't admit to herself that she did more than
15 she did or why she is saying that she doesn't
16 remember, but she is admitting to you, ladies and
17 gentlemen, that she picked up that knife and that
18 is how she got the cuts on her hand. She admitted
19 to that.

20 She is in prison for 30 years. She is 24
21 years old. She will not get out until she is 54.
22 That is just a great deal. What a bargain. Let's
23 go lie. And if she is lying, why did you never
24 hear her utter the words, Melinda Richmond slit his
25 throat. I mean, make it really good. Thirty years

1 is a long time. Make it a real good lie, make it
2 worth it. She never once said that that woman slit
3 the man's throat. That is credibility. That shows
4 she is being truthful.

5 Heidi Scott fed Melinda Richmond before the
6 statement. She basically gave her her own food.
7 They sat in the cafeteria or lunch break room and
8 then they went and did the statement.

9 And it is the lunch hour, ladies and
10 gentlemen. And it makes sense why Tenisha
11 McClinton didn't eat until later, because she was
12 with a different investigator. Heidi Scott fed the
13 woman when Reed-Enzor asked her or because she is
14 shaking. She never asked for medical attention.
15 She says, I'm hungry and I can't stop seeing what I
16 did to him. What I did. She never once asked for
17 medical attention.

18 Dr. Amick explained to you that he was briefed
19 about the facts in this case, had a homicide review
20 meeting with Investigator Martin and other people
21 from the Sheriff's Department, and that once he
22 realized that all three individuals admitted to
23 being at the crime scene, well, that is why he
24 didn't analyze the six swabs Livingston collected
25 from the scene. What is that going to prove, that

1 Tenisha was in the house? Well, she already told
2 us that. He was trying to focus on the most
3 probative value, probative evidence, such as
4 Melinda Richmond's jeans and Tenisha McClinton's
5 jeans covered in blood.

6 Becky told you when she drove down from
7 Virginia for her uncle's bond hearing -- she
8 doesn't know that woman, never met her in her life,
9 had no clue Frank was involved in drugs, none
10 whatsoever -- and she simply is being introduced to
11 the judge at the hearing, and that woman turns
12 around and mouthed, I'm sorry.

13 So May 5th, 2007, at 6:30 in the morning she
14 is telling Mazerolle Bird did it. He had the
15 knife. I had to take it away from him.

16 Then between 10:20 and 11:00 a.m. when
17 Reed-Enzor is doing the nail scrapings:

18 Are you okay?

19 I'm hungry, and I keep seeing what I did.

20 Meanwhile, she is consenting to providing DNA,
21 so she is being cooperative. Reed-Enzor is not
22 investigating this case. She is a crime scene
23 investigator. It is his job. She just reports it
24 to him.

25 This is what she told me: I keep seeing what

1 I did.

2 Some evidence of a guilty conscience, ladies
3 and gentlemen -- Bird.

4 Then to Martin at 11:21, after he Mirandized
5 her, she admits that is her signature. Bird goes
6 upstairs. I heard him thumping and yelling. I was
7 scared. I go upstairs. Frank was all bloody and
8 he looked at me. It was like Bird lost his mind
9 and wouldn't stop. Frank wouldn't shut up. She
10 was acting erratic. I'm saying, don't kill him.
11 Bird had a knife. I got it away from him. Bird
12 kept kicking Frank. Frank kept fighting. Bird
13 told me to get up because I was begging him to
14 stop. I left and went downstairs. Bird told me to
15 start taking things from the apartment. I took the
16 white blanket and I do not remember what else.
17 Tenisha was with me. She wanted to get out. I got
18 blood on my clothes trying to get Bird off of
19 Frank.

20 So she is admitting blood on her clothes. She
21 had to explain how it got there.

22 Frank was using me as a sheild. I saw Bird
23 stick Frank with the knife in the back and choke
24 him with the forearm.

25 No evidence of any contusions to Mr. West's

1 neck, by the way, with that kind of assault.

2 I saw a lot of blood come from Frank's neck.
3 I tried to take the knife from Bird. I didn't stab
4 Frank or cut him.. I didn't hold Frank. Frank was
5 trying to clutch to me, trying to get me to help.
6 Tenisha didn't help. And she had blood all over
7 her.

8 She doesn't explain how it got on Tenisha.

9 No, didn't call the police. Bird had us
10 scared. Then went to the Western Inn, gas station
11 on the way, Exxon on Piney Grove Road. Bird had a
12 white T-shirt and baggy shorts and skull cap. And
13 they gave us clothes -- referring to the trailer
14 people.

15 All right. That is all on May 5th. And then
16 at 1:34 p.m. to Heidi Scott, and I'm referring you
17 to the statement that she provided to Heidi Scott.
18 On Page Five.

19 What did she mean by, he got me?

20 Well, I guess she meant Frank slugged her.
21 Then I saw a knife. I picked it up. Tenisha kept
22 telling me to make him shut up. I was so scared.
23 I took the knife and I stabbed him in the back. I
24 was standing over him and held the knife and
25 stabbed him in the back. I started freaking out

1 and I dropped the knife. Tenisha kept telling me
2 to hold on. Tenisha was holding his head. She
3 told me she lost the nail. I seen the blood.
4 Tenisha was telling me to chill out because I was
5 freaking out. She kept holding his head while I
6 was on his back.

7 That's participation.

8 Tenisha said, hold him, hold him. And I said,
9 do we need to kill him to shut him up?

10 Evidence of malice. Expressed.

11 I was holding him down. Then I see blood
12 pouring from his head. Frank was still hollering,
13 help, help, and making a lot of noise banging on
14 stuff.

15 Question: Who sliced Frank's throat?

16 Answer: I don't know. I didn't. I don't
17 even know when exactly it happened. I just know
18 that I stabbed him in his back.

19 And also does not articulate how many times.

20 Question: Did you see anyone else pick up the
21 knife?

22 No.

23 And we know all 24 injuries are from a knife.

24 Now, that is all done in one day, ladies and
25 gentlemen. That is a lot of different

1 inconsistencies. That is evidence of some are not
2 being truthful.

3 Then on May 7th, 2007, because she is the one
4 that is asking Investigator -- for Investigator
5 Brien Gwyn, because they are familiar with one
6 another she is asking for him, so he goes to the
7 jail to see if she still wants to talk, and she
8 agrees to talk to him.

9 She waives her rights again, never asked for a
10 lawyer, and it says on Page 2:

11 I went upstairs. I told Frank I was going to
12 give Bird money. Frank grabbed me, shoved me
13 against the dresser. I screamed for Bird and he
14 and Tenisha came upstairs. Bird shoved me to the
15 side and Tenisha started wailing on him
16 immediately. It didn't take long while Tenisha was
17 beating him before Frank was covered in blood.
18 Frank kept trying to get up and both Bird and
19 Tenisha started kicking him and hit him in the head
20 with a King Cobra beer bottle. They told me to
21 hold him.

22 Participation.

23 I lay on top of him begging him to stop moving
24 and to be still. After I was on top of him she
25 told me not to let him move.

1 Restricting him. That is participation.

2 They went downstairs. While they were
3 downstairs -- so she is left alone with the man --
4 Frank got up and made it to the stairs, and I
5 yelled for them. Tenisha and Bird came back up and
6 started hitting and pushing and beating on him.
7 Bird was not so much beating on him at this point.

8 She even admits he was not participating in
9 stabbing.

10 As he started gathering up Frank's personal
11 belongings. Tenisha was beating on him and seemed
12 to enjoy it.

13 So the second statement is now making it look
14 like Tenisha is just loving it. Loving every
15 minute, making it really good for Tenisha.

16 She was actually smiling when she was doing
17 it. I was downstairs with Bird collecting my stuff
18 to leave and Bird was getting more of Frank's
19 things. I heard more banging. Tenisha hollered
20 for Bird to come up. I go up with Bird, and he was
21 like in my doorway, and Tenisha told me to hold
22 him, don't let him move. I looked around and I saw
23 the knife on the ground next to me, and I grabbed
24 the knife and started to stab him.

25 And then this is what she is minimizing, her

1 role in the second statement.

2 And I couldn't make it go in that far. Then
3 it went in and I wanted to throw up. So I threw
4 the knife down and Tenisha said, all right, stupid
5 bitch, go downstairs and get your S together. I
6 stepped over Frank and went downstairs. I looked
7 back one more time when I saw Tenisha grab Frank's
8 hair, pull his head back and slice his throat. And
9 I just dropped my head and started going
10 downstairs.

11 Ladies and gentlemen, it is just getting worse
12 for Tenisha in this statement than in this one.

13 After putting my stuff in the camouflage bag I
14 started back up the stairs and Frank was standing
15 on the top of the steps. Frank had his right leg
16 raised up like he wanted to kick someone and looked
17 at me and said, just please kill me.

18 He is asking for it, basically, in this
19 statement.

20 Bird was behind me. We turned to walk
21 downstairs. I told Bird, we have to kill him.

22 Evidence of malice.

23 We just looked at each other and left.

24 Tenisha came out last.

25 That is not what the neighbors said.

1 Bird was driving the car. And he said he knew
2 a place where we could go.

3 That's where they changed their clothes. What
4 a coincidence she wanted to talk to the police
5 again. She realized what she told Heidi ain't
6 going to help her. Let's try to put it more on
7 Tenisha. What she doesn't realize is that in South
8 Carolina the hand of one is the hand of all. And
9 it doesn't matter if all she did was hold Frank
10 down to support Tenisha, it does not matter if
11 Tenisha inflicted all the injuries, which I deny.
12 It does not matter that she assisted in
13 participating in holding Frank West's body.

14 Then lastly, when she mouthed -- on May 11 she
15 mouthed, I'm sorry.

16 The Defendant voluntarily ingested crack
17 cocaine. Judge Miller is going to instruct you
18 voluntary intoxication is not a defense. You can
19 get as high as a kite and when you commit a crime,
20 when you commit a murder, you are just as guilty.
21 It does not excuse it.

22 Tenisha McClinton pled guilty. So why are we
23 all here, was asked of you this morning or the
24 first day of the trial by Mr. O'Neil. Because,
25 ladies and gentlemen, we all sip from the same cup

1 of justice. McClinton gave three statements.

2 Well, there were only two written statements.

3 They said that in the 9-1-1 call the victim
4 said Melinda's name because he didn't know Tenisha.
5 Why are they all blaming Melinda, poor little
6 Melinda.

7 Bruce Thompson was indicted for accessory
8 after the fact in October of '08. You heard from
9 the investigator about the conclusions of -- at the
10 homicide review meeting by the DNA expert.
11 Tenisha, they told you Tenisha had blood all over
12 her jeans. Never once mentioned all the blood on
13 Melinda's jeans on the inside of her thigh. They
14 never mentioned how their client is the one that
15 said Bruce was more concerned about robbing the
16 victim. Melinda had cuts on her hand. Bruce had
17 caked matter under his nails, which is his own DNA.
18 Melinda's hands are clean. Well, they failed to
19 mention the shower she took, which their own
20 witness confirmed.

21 False confessions happen all the time. The
22 statements are not in Melinda's handwriting, so
23 therefore it couldn't possibly be her words. But
24 you heard from Melinda Richmond that everything in
25 her statement was verbatim what she told the

1 police. They are not going to change their
2 practices for everybody. Melinda Richmond states
3 in questioning she was on a crack binge and her
4 hands were shaking and she was unsteady on her
5 feet, yet, okay, she is hungry, has an appetite.

6 And then about the easy answer not always
7 being right answers. Well, in this case it is the
8 right answer. Holding both people responsible for
9 the death of Frank West is the right thing.

10 And then they kept asserting self-defense
11 claims in their questioning of Melinda on direct
12 examination, how he came at her, which is why she
13 picked up the knife.

14 As I said to you, as a matter of law, Judge
15 Miller will not instruct you on the law of
16 self-defense in this case because it does not
17 apply.

18 Then again blaming it all on Tenisha despite
19 the fact, you know, calling her a liar, she admits
20 to the lies she made, but she also -- if she is
21 like, like I said earlier, why not just say, I saw
22 her slit the man's throat. She never does that.

23 Melinda Richmond is guilty for the following
24 reasons.

25 (Plays 9-1-1 tape.)

1 MR. O'NEIL: For the record we renew our
2 previous objection.

3 MS. SHIPLEY: It is not done, Your Honor.
4 (Tape continues.)

5 MS. SHIPLEY: Tenisha McClinton took
6 responsibility. She is guilty to murder as
7 charged. And I ask that you do the same and find
8 her responsible and convict her of murder.

9 Thank you.

10 THE COURT: All right, ladies and gentlemen,
11 we have completed the first three parts of the
12 trial. I'm going to give you the charge on the law
13 in just a minute. Before we do that, I'm going to
14 ask you if you want to please just stand in place
15 and stretch for about 10 or 15 seconds and then we
16 will sit down and go through the law.

17 (Pause.)

18 JURY CHARGE

19 THE COURT: Ladies and gentlemen of the jury,
20 during this trial you and I have certain duties to
21 perform. And as the trial judge it is my
22 responsibility to preside over the trial of the
23 case and rule on the admissibility of the evidence
24 that is offered during the trial. It is also my
25 duty to charge you the law that is applicable to

1 the case. And it is your duty as jurors to accept
2 and apply the law as I now state it to you.

3 As I told you in my opening comments, if you
4 think you have any idea as to what the law is or
5 what the law should be and it conflicts with what I
6 now tell you the law is, you have sworn an oath to
7 set aside your own view and apply the law precisely
8 as I give it to you.

9 In every case tried in this court before a
10 jury you, the jury, are the sole and exclusive
11 judges of the facts. And a trial judge is not
12 allowed by law to have any opinion about the facts
13 of the case. So don't think by anything that I may
14 have said or done throughout the course of the
15 trial that I have an opinion. I do not have an
16 opinion about the facts. You all are the sole
17 judges of the facts.

18 I would instruct you that the fact that the
19 Defendant was arrested, charged and indicted in
20 this case is not evidence of guilt, nor does it
21 create any presumption or inference of guilt. And
22 these documents are simply the formal written
23 instruments which contain the charge made against
24 the Defendant. And they serve as the documents by
25 which the case is processed and brought into court

1 for trial.

2 Now, necessarily, your job as jurors is to
3 determine the credibility or believability of
4 witnesses who have testified in the case. And it
5 becomes your duty as jurors to evaluate the
6 evidence and decide which evidence convinces you
7 that it is true.

8 Now, in determining the believability of the
9 witnesses, you may believe one witness over several
10 or several over one. You may believe a part of the
11 testimony of a witness and reject the remaining
12 part. You may believe the testimony of a witness
13 in its entirety or reject that same testimony in
14 its entirety. And you may consider whether the
15 witness has an interest in the result of the trial,
16 whether the witness is prejudiced towards either
17 the State or the Defendant, the opportunity for the
18 witness to have seen the matters and things about
19 which that witness has testified, and the way the
20 witness acts on the witness stand are what we call
21 a witness's demeanor.

22 Now, the rules of evidence ordinarily do not
23 permit witnesses to testify to opinions or
24 conclusions. An exception to this rule exists for
25 witnesses that we call experts. And a witness who

1 by education and experience has become expert in
2 some art, science or profession may give an opinion
3 as to the subject the witness has been qualified as
4 an expert in and may also give the reasons for that
5 opinion.

6 And you, the jury, should consider any expert
7 opinion given by a witness and, like any other
8 evidence in the case, give it the weight that you
9 think it deserves.

10 Now, the Defendant has pled not guilty to the
11 indictment in this case. And that plea puts the
12 burden on the State to prove the Defendant guilty.
13 A person charged with committing a criminal offense
14 in South Carolina is never required to prove
15 themselves innocent. And I charge you that it is a
16 cardinal and an important rule of the law that a
17 Defendant in a criminal case will always be
18 presumed to be innocent of the crime for which an
19 indictment has issued unless and until the State
20 has produced evidence to satisfy each of you of
21 guilt beyond a reasonable doubt.

22 Now, what is a reasonable doubt? And a
23 reasonable doubt is a kind of doubt which would
24 cause a reasonable person to hesitate to act.
25 Reasonable doubt may arise from the evidence which

1 is in the case or from the lack or absence of
2 evidence in a case. And you, the jury, must
3 determine whether or not reasonable doubt exists as
4 to the guilt of the Defendant.

5 The State has the burden of proving each and
6 every element of a crime beyond a reasonable doubt,
7 and any reasonable doubt that you may have in your
8 deliberations should be resolved in favor of the
9 Defendant.

10 Now, there are two types of evidence which are
11 generally presented during a trial, and they are
12 direct evidence and circumstantial evidence.

13 Direct evidence is the testimony of a person
14 who claims to have actual knowledge of a fact, such
15 as an eyewitness. It is evidence which immediately
16 establishes the main fact to be proved.

17 Circumstantial evidence is proof of a chain of
18 facts and circumstances indicating the existence of
19 a fact and it is evidence which immediately
20 establishes collateral facts from which the main
21 fact may be inferred.

22 Circumstantial evidence is based on inference
23 and not on personal knowledge of observation. The
24 law makes absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence, nor is a greater degree of
2 certainty required of circumstantial evidence than
3 of direct evidence. And you, the jury, should
4 weigh all of the evidence in this case, and after
5 weighing all of the evidence if you are not
6 convinced of the guilt of the Defendant beyond a
7 reasonable doubt, you must find him not guilty.

8 Now, a statement or several statements alleged
9 to have been made by the Defendant have been
10 admitted into evidence in this case. And while the
11 Court has determined that the statement is
12 admissible, I instruct you that you, the jury, make
13 the ultimate decision of whether or not the
14 Defendant made the statement. And if the Defendant
15 did make the statement, you must determine whether
16 the statement was made by the Defendant voluntarily
17 and of his own free will.

18 That means that the statement was not caused
19 by pressure, force, fear, threats, coercion or
20 intimidation or by hope or a promise of leniency or
21 a reward of any kind.

22 And in determining whether the statement was
23 voluntary, you should consider both the
24 characteristics of the Defendant and the details of
25 the questioning.

1 Some of the factors that you consider are the
2 age of the Defendant, the Defendant's education or
3 lack of education, the Defendant's mental ability
4 or capacity, the Defendant's IQ or intelligence,
5 the Defendant's background and environment, the
6 place and length of detention, the nature of the
7 questioning, and the advice or lack thereof to the
8 Defendant of her rights, constitutional rights,
9 including but not limited to the right to remain
10 silent, that any statement could be used against
11 her in a court of law, the right to have a lawyer
12 present, and that if she could not afford a lawyer
13 a lawyer would be appointed to represent her
14 without any cost, that she could stop making a
15 statement at any time.

16 You must carefully consider all of the
17 surrounding circumstances before you give any
18 weight to an alleged statement.

19 The State has the burden of proving beyond a
20 reasonable doubt that the alleged statement was
21 voluntary. And if you determine that it was
22 voluntary, you may give the statement any further
23 consideration that you deem proper.

24 You must decide what weight, if any, should be
25 given to the statement, and if you determine the

1 alleged statement was not a free and voluntary
2 statement of the Defendant, you should not consider
3 the statement at all.

4 Now, if a crime is committed by two or more
5 people who are acting together in committing a
6 crime, the act of one is the act of all. A person
7 who joins with another to accomplish an illegal
8 purpose is criminally responsible for everything
9 done by the other person which occurs as a natural
10 consequence of the acts done in carrying out that
11 common plan and purpose.

12 For example, two people can be guilty of
13 killing another person when only one of the two has
14 a gun, there was only one bullet, and only one of
15 the two fired the shot that caused the death. If
16 two or more people are acting together and they are
17 together assisting each other in committing the
18 offense, the act of one is the act of all, or as it
19 is sometimes said, the hand of one is the hand of
20 all.

21 Now, a principal in a crime is one who either
22 actually commits the crime or is present aiding,
23 abetting or assisting in committing the crime. And
24 when a person does an act in the presence of and
25 with the assistance of another, the act is done by

1 both.

2 Where two or more acting with a common plan or
3 intent are present at the commission of a crime, it
4 does not matter who actually commits the crime, all
5 are guilty. The hand of one is the hand of all.

6 And present at the commission of a crime means
7 to be sufficiently near to aid and abet and assist
8 in the commission of the crime. However, I tell
9 you that mere presence at the scene of a crime is
10 not sufficient to convict one as a principal on the
11 theory of aiding and abetting. Intent is also a
12 necessary element. For there must have been a
13 common design or intent to commit the crime and the
14 crime must have been committed pursuant thereto
15 with the person aiding and abetting by some overt
16 act.

17 An intent means intending the result which
18 actually occurs, not accidentally or involuntarily.
19 Intent may be shown by acts and conduct of the
20 Defendant and other circumstances from which you
21 may naturally and reasonably infer intent.

22 And of course the State must prove these
23 elements beyond a reasonable doubt.

24 I would also tell you that voluntary
25 intoxication is not a defense to a crime. A person

1 who voluntarily becomes intoxicated is just as
2 responsible for the acts committed while
3 intoxicated as when the person is not intoxicated.

4 Now, the Defendant has been charged with
5 murder. And the State must prove beyond a
6 reasonable doubt that the Defendant killed another
7 person with malice aforethought.

8 Malice is hatred, ill-will or hostility
9 towards another person. It is the intentional
10 doing of a wrongful act without just cause or
11 excuse and with an intent to inflict an injury or
12 under circumstances that the law will infer an evil
13 intent.

14 Malice aforethought does not require that
15 malice exists for any particular time before the
16 act is committed -- excuse me -- but malice must
17 exist in the mind of the Defendant just before and
18 at the time the act is committed. Therefore, there
19 must be a combination of the previous evil intent
20 and the act.

21 And malice aforethought may be express or
22 inferred. These terms, express and inferred, do
23 not mean different kinds of malice, but they merely
24 mean the manner in which malice may be shown to
25 exist. That is either by direct evidence or by an

1 inference from the facts and circumstances which
2 have been proved.

3 Express malice is shown when a person speaks
4 words which express hatred or ill-will for another
5 or when the person prepared beforehand to do the
6 act which was later accomplished.

7 Malice may be inferred from conduct showing a
8 total disregard for human life.

9 Inferred malice may also arise when the deed
10 is done with a deadly weapon.

11 And a deadly weapon is any article, instrument
12 or substance which is likely to cause death or
13 great bodily harm. Whether an instrument has been
14 used as a deadly weapon depends on the facts and
15 circumstances of each case.

16 And the following are examples of instruments
17 which may be deadly weapons: A pistol, a shotgun,
18 a rifle, a dirk, a dagger, a knife, a slingshot,
19 metal knuckles, a razor, gasoline, fire bomb,
20 molotov cocktail.

21 Now, if you find that the State has failed to
22 prove jurisdiction that the Defendant committed
23 murder, you may consider whether the State has
24 proved beyond a reasonable doubt that the Defendant
25 committed voluntary manslaughter.

1 To prove voluntary manslaughter the State must
2 prove beyond a reasonable doubt that the Defendant
3 took the life of another in the sudden heat of
4 passion based on sufficient legal provocation.

5 Both heat of passion and sufficient legal
6 provocation must be present at the time of the
7 killing to constitute voluntary manslaughter.

8 Sudden heat of passion may for a time affect a
9 person's self control and temporarily disturb a
10 person's reason.

11 Sudden heat of passion must be the type that
12 would make an ordinary person unable to coolly
13 reflect on his actions and would produce an
14 uncontrollable impulse to do violence.

15 Sufficient legal provocation must be the type
16 that would make a person of ordinary reason and
17 caution become enraged and to lose control
18 temporarily.

19 The provocation needed for voluntary
20 manslaughter must come from some act of or related
21 to the victim. Words alone, however vulgar or
22 insulting, are not enough to be legal provocation.
23 And where death is caused by the use of a deadly
24 weapon, the words must be accompanied by some overt
25 threatening act which could have produced the heat

1 of passion.

2 I would also tell you that the exercise of a
3 legal right, no matter how offensive it is to
4 another, is never sufficient legal provocation for
5 voluntary manslaughter.

6 Now, if the heat of passion had cooled or if
7 there was enough time between the provocation, if
8 any, and the killing for the passion of a
9 reasonable person to cool, the killing would not be
10 voluntary manslaughter.

11 And in deciding where a reasonable person
12 would have had enough time to cool off, you should
13 consider all of the circumstances surrounding the
14 killing.

15 And you may consider the nature of the
16 provocation, if any, the Defendant's mental and
17 physical state, and the circumstances and
18 relationships between the parties.

19 Now, ladies and gentlemen, we have prepared a
20 verdict form which we'll send back into the jury
21 room with you. You are going to have to decide --
22 you've got a couple of things to decide on.

23 The verdict form shows that -- the first thing
24 you must decide is whether or not the State has
25 proven beyond a reasonable doubt the offense of

1 murder.

2 If you find that they have, then you simply
3 check: Guilty. Madam Forelady, you sign your
4 name, date it, indicate that to the bailiffs, and
5 we will receive you back.

6 If you decide that they have not met their
7 burden, then you would go down to the voluntary
8 manslaughter section.

9 And if you find that they have met their
10 burden beyond a reasonable doubt, you would check:
11 Guilty.

12 If you find that they have not, you would
13 check: Not guilty. Sign your name, and indicate
14 that to the bailiffs, and we'll receive you back in
15 the courtroom.

16 Now, I want to tell you, ladies and gentlemen,
17 all 12 of you must agree on your verdict. It has
18 to be unanimous. Your verdict cannot be based on
19 sympathy, passion, prejudice emotion or any other
20 consideration which is not in evidence in this
21 case.

22 Please remember, you have no enemies to punish
23 and you have no friends to reward here in the
24 courtroom.

25 Ladies and gentlemen, I am going to go over my

1 charge that I have just given you -- I'm finished,
2 I know that makes you happy -- go over my charge
3 with the attorneys and make sure I did not misstate
4 something or omit something.

5 And when we send then the verdict form back
6 into the jury room with all of the evidence, then
7 you may begin your deliberations. So please just
8 hold off for just -- it should be a very, very
9 short time.

10 I want to caution you that some of the
11 evidence -- I guess we may -- you may not want to
12 touch it because of potential contamination, but I
13 guess we can send some gloves back in there if you
14 feel the need. If you want to, Madam Forelady, let
15 me know and I'll get y'all some gloves so you can
16 handle the evidence if that is what you so desire.
17 And I think y'all can recognize which evidence that
18 is.

19 Okay. At this time I would ask everyone, with
20 the exception of the alternates, to retire to the
21 jury room. We will get with you very shortly.

22 (WHEREUPON, the jury retires to the jury
23 room at 4:02 p.m.)

24 THE COURT: Did y'all wave goodbye?

25 Ms. Brennen, Mr. Moore, I want to thank you all for

1 your service. You all are just as qualified, just
2 as good a juror as any one of those 12 who are back
3 there. I wish after what you have been through
4 this week, having performed this civic duty, I wish
5 I could send you back there and let you deliberate
6 with them. The law only allows 12. I hope you can
7 understand that had something happened to someone
8 that we needed you all here to step in.

9 And I hope I didn't make a liar out of myself.
10 I hope that you feel a sense of pride in performing
11 your civic duty as citizens of Richland County and
12 indeed the whole state.

13 Thank you for your service. And you all are
14 free to go, you are free to stay, you are free to
15 talk about the case, not talk about it, whatever
16 you want to do.

17 We thank you very much for your service.
18 Thank you.

19 (WHEREUPON, the alternates were excused.)

20 THE COURT: All right, any exception or
21 objections except for those -- other than those we
22 have already talked about?

23 MS. SHIPLEY: None from the State.

24 MR. O'NEIL: We renew our previous exceptions
25 and objections, Your Honor.

1 THE COURT: Okay. All right. I ask y'all to
2 get together and make sure we have got all the
3 evidence and get them working.

4 (Pause.)

5 THE COURT: Is the Defense okay with sending
6 the tape player in? I think it is in evidence. Of
7 course it would be subject to previous objections,
8 but, I mean, I think they are entitled.

9 MS. SHIPLEY: We don't have to. They can come
10 back if they want to hear the tape.

11 MR. SECOR: If it is in evidence. They are
12 allowed to have it.

13 (WHEREUPON, the exhibits were sent to
14 the jury at 4:21 p.m.)

15 THE COURT: The jury wants a surgical mask.

16 MS. SHIPLEY: Is Hepatitis C airborne? It has
17 been dried out over a year ago. I don't know. I
18 have no clue. That is what the jury wants.

19 MR. SECOR: I'll see if I can find some.

20 THE BAILIFF: They changed their mind, they
21 are not going to handle any of the stuff.

22 (WHEREUPON, a break was taken.)

23 THE COURT: All right, they have got a
24 question. They sent a note saying: Could you
25 please cue the tape so we may listen to it? Thank

1 you. Signed, the forelady.

2 MS. SHIPLEY: The 9-1-1 tape?

3 THE COURT: Yes.

4 MS. SHIPLEY: Okay.

5 THE COURT: What --

6 MS. SHIPLEY: I stopped it after I made it. I
7 just stopped it. Anna rewound it.

8 THE COURT: You rewound it? She broke it.
9 Put it in, the cassette. I will ask Christy to get
10 the machine and bring it in here and let you put it
11 at the beginning, is that all right?

12 MS. SHIPLEY: All right.

13 THE COURT: All right, if she tells them there
14 are a couple of blank spots in the middle of the
15 tape.

16 MR. SECOR: Yes, sir.

17 THE COURT: Okay.

18 MR. O'NEIL: Thank you, Your Honor.

19 (Cassette cued and sent back to the
20 jury.)

21 (WHEREUPON, a break was taken.)

22 (WHEREUPON, the following takes place at
23 5:48 p.m.)

24 THE COURT: We need the Defendant.

25 (WHEREUPON, the Defendant enters the

1 courtroom at 5:52 p.m.)

2 THE COURT: All right, we've got a question.
3 It reads: Could we get the exact wording from the
4 definitions of murder and voluntary manslaughter?
5 Thank you. Signed, the forelady.

6 So we'll just recharge them on those two. Is
7 that good with everybody?

8 MS. SHIPLEY: Yes, sir.

9 MR. O'NEIL: Yes, Your Honor.

10 THE COURT: All right.

11 (WHEREUPON, the jury came into open
12 court at approximately 5:54 p.m.)

13 THE BAILIFF: The jury is seated, Your Honor.

14 THE COURT: All right. Is everybody doing all
15 right?

16 THE JURY: Yes, sir.

17 THE COURT: I got your note. And what I
18 intend to do is to just recharge you on the law of
19 murder and manslaughter, voluntary manslaughter.
20 Is that what y'all are --

21 THE JURY: (Nods affirmatively.)

22 THE COURT: Okay. I want to tell you, if you
23 want any other part of the charge I'll be happy to
24 do that, you just let me know.

25 THE JURY: (Nods affirmatively.)

1 THE COURT: Okay. The Defendant is charged
2 with murder. The State must prove beyond a
3 reasonable doubt that the Defendant killed another
4 person with malice aforethought.

5 Malice is hatred, ill-will or hostility
6 towards another person. It is the intentional
7 doing of a wrongful act without just cause or
8 excuse and with an intent to inflict an injury or
9 under circumstances that the law will infer an evil
10 intent.

11 Malice aforethought does not require that
12 malice exist for any particular length of time
13 before the act is committed, but malice must exist
14 in the mind of the Defendant just before and at the
15 time the act is committed. Therefore, there must
16 be a combination of the previous evil intent and
17 the act.

18 Malice aforethought may be express or
19 inferred. These terms, express and inferred, do
20 not mean different kinds of malice, but merely the
21 manner in which malice may be shown to exist. That
22 is either by direct evidence or by inference from
23 the facts and circumstances which are proved.

24 Express malice is shown when a person speaks
25 words which express hatred or ill-will for another

1 or when the person prepared beforehand to do the
2 act which was later accomplished.

3 Malice may be inferred from conduct showing a
4 total disregard for human life.

5 Inferred malice may also arise when the deed
6 is done with a deadly weapon. And a deadly weapon
7 is any article, instrument or substance which is
8 likely to cause death or great bodily harm.
9 Whether an instrument has been used as a deadly
10 weapon depends on the facts and circumstances of
11 each case.

12 The following are examples of instruments
13 which may be deadly weapons: A pistol, a shotgun,
14 a rifle, a dirk, a dagger, a knife, a slingshot,
15 metal knuckles, a razor, gasoline, a fire bomb or
16 molotov cocktail, and lighter fluid.

17 Now, if you find that the State has failed to
18 prove beyond a reasonable doubt that the Defendant
19 committed murder, you may consider whether the
20 State has proved beyond a reasonable doubt that the
21 Defendant committed voluntary manslaughter.

22 To prove voluntary manslaughter, the State
23 must prove beyond a reasonable doubt that the
24 Defendant took the life of another in the sudden
25 heat of passion based on sufficient legal

1 provocation.

2 Both heat of passion and sufficient legal
3 provocation must be present at the time of the
4 killing to constitute voluntary manslaughter.

5 Sudden heat of passion may for a time affect a
6 person's self-control and temporarily disturb a
7 person's reason.

8 The sudden heat of passion must be the type
9 that would make an ordinary person unable to coolly
10 reflect on his or her actions and would produce an
11 uncontrollable impulse to do violence.

12 Sufficient legal provocation must be the type
13 that would make a person of ordinary reason and
14 caution become enraged and to lose control
15 temporarily.

16 The provocation needed for voluntary
17 manslaughter must come from some act of or related
18 to the victim. Words alone, however vulgar or
19 insulting, are not enough to be legal provocation.
20 Where death is caused by the use of a deadly
21 weapon, the words must be accompanied by some overt
22 threatening act which could have produced the heat
23 of passion.

24 Now, the exercise of a legal right, no matter
25 how offensive it is to another, is never sufficient

1 legal provocation for voluntary manslaughter.

2 If the heat of passion had cooled or if there
3 was enough time between the provocation, if any,
4 and the killing for the passion of a reasonable
5 person to cool, the killing would not be voluntary
6 manslaughter.

7 In deciding whether a reasonable person would
8 have had enough time to cool off, you should
9 consider all the circumstances surrounding the
10 killing. You may consider the nature of the
11 provocation if any, the Defendant's mental and
12 physical state, and the circumstances and
13 relationships between the parties.

14 If you all need anything else, just let me
15 know and I'll be happy to give it to you.

16 All right. Thank you very much.

17 (WHEREUPON, the jury retires to the jury
18 room at 6:00 p.m.)

19 THE COURT: Okay. Any exceptions or
20 objections to the recharge?

21 MS. SHIPLEY: None from the State.

22 MR. O'NEIL: No, Your Honor.

23 THE COURT: All right. Just be at ease.

24 (WHEREUPON, a break was taken.)

25 THE COURT: All right, we have a verdict.

1 THE BAILIFF: Are you ready for the jury?

2 THE COURT: Yes, sir, please.

3 (WHEREUPON, the jury came into open
4 court at approximately 6:07 p.m.)

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: All right. Thank you.

7 Madam Forelady, I understand you have reached
8 a verdict?

9 FORELADY: (Nods affirmatively.)

10 THE COURT: Would you hand it to the bailiff,
11 please?

12 (Forelady hands to bailiff, who hands to
13 clerk, who hands to the Court.)

14 (Court views verdict.)

15 THE COURT: All right. You can publish that
16 for me.

17 THE CLERK: The State of South Carolina versus
18 Melinda Richmond. Indictment 2007-GS-40-4073.

19 As to the charge of murder: We, the jury,
20 unanimously find the Defendant, Melinda Richmond,
21 guilty.

22 Signed, Lilia Gonzalez, Foreperson.
23 November 14th, 2008.

24 THE COURT: All right. If this is your
25 verdict, would you please signal by raising your

1 right hand?

2 (WHEREUPON, all jurors raise their hand.)

3 THE COURT: All right, thank you.

4 Anything further from the jury?

5 MR. O'NEIL: No, Your Honor.

6 THE COURT: Anything from the State?

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

8 THE COURT: All right. Madam Forelady and
9 ladies and gentlemen of the jury, I want to thank
10 you so much for your service this week.

11 We, the court system, your court system, and
12 it belongs to you, wouldn't work without folks who
13 are willing to make the sacrifices that you made
14 this week. So we thank you very much for your
15 service.

16 You are free to talk about this case now to
17 whoever you want to. You are free to say, no, I
18 don't want to talk about it. So if somebody talks
19 to you and persists and they won't leave you alone,
20 you just let the Clerk of Court know who it is and
21 we'll take care of it for you, because we don't
22 want any of you to suffer any embarrassment or
23 harassment or humiliation or any distress as a
24 result of your service.

25 With that, you are free to go. Again, it has

1 gotten dark, so we have the officers who will
2 escort you across the street if you'd like.

3 And thank you very much. Have a very pleasant
4 weekend. Thank you.

5 (WHEREUPON, the jury was excused.)

6 THE COURT: All right, while she is -- does
7 anybody have any motions they want to make?

8 MR. O'NEIL: Yes, Your Honor. At this time we
9 will renew all our previous motions and objections,
10 Your Honor.

11 And at this time we would ask for a new trial
12 based on our previous objections and -- subject to
13 our previous objections, but not limited to our
14 motion for a mistrial based on Ms. Gripp's voice
15 and our objection to the admission of the 9-1-1
16 tape, Your Honor.

17 THE COURT: All right.

18 MR. O'NEIL: And the statements as well, Your
19 Honor.

20 THE COURT: Okay. Well, I'm going to deny
21 your motions. And I do want to put -- I mean, I do
22 want to say on the record that I had to turn down
23 the volume of the microphones during her closing
24 statement because her voice was causing the
25 microphones to feedback, or whatever. So I

1 appreciate your position on that, but I don't think
2 that it rose to that level.

3 Okay, we will just be at ease for a second
4 while we get the paperwork filled out.

5 (Pause.)

6 THE COURT: Okay. Come on around.

7 (Defendant complies.)

8 THE COURT: I think if the victim wants to
9 come around she --

10 MS. SHIPLEY: Yes, sir, I'd like for the
11 victims to be able to address the judge, Your
12 Honor.

13 (Pause.)

14 MS. SHIPLEY: Is there any way we can make an
15 exception, Your Honor?

16 THE COURT: Who all?

17 MS. SHIPLEY: It is just Linda and Becky.
18 That's it.

19 THE COURT: Can we accommodate them this one
20 time since I'm from out of town?

21 DEPUTY: Okay.

22 MS. SHIPLEY: Thank you so much. Come on,
23 Linda.

24 (Victim's family approaches.)

25 THE COURT: Let me ask first, how long has

1 Ms. Richmond been incarcerated? Since May 5th?

2 MS. GRIPP: 2007.

3 THE COURT: Okay. I will be happy to hear
4 from the victims.

5 MS. SHIPLEY: The Defendant's prior record is
6 DUS from '06 here in Chapin, South Carolina. And
7 then a prostitution conviction. There is a second
8 degree battery from Louisiana, but there is no
9 disposition. It just says fugitive.

10 And that appears to be the extent of her prior
11 criminal history.

12 THE COURT: Okay.

13 MS. SHIPLEY: Your Honor, first Becky Roberson
14 would like to address the judge, Your Honor.

15 THE COURT: Okay. Yes, ma'am?

16 MS. ROBERSON: Actually my aunt wrote a
17 letter.

18 MS. SHIPLEY: This would be Frank's sister.

19 THE COURT: Okay.

20 MS. SHIPLEY: What is her name?

21 MS. ROBERSON: Judy.

22 MS. SHIPLEY: Judy.

23 THE COURT: All right.

24 MS. ROBERSON: "I am Frank West's sister Judy.
25 I live in California. Because of health issues I

1 have not been able to come out to the trial, but I
2 wanted you to know what kind of person Frank was
3 and what was taken away from us and our family.

4 Frank was my baby brother. And I never
5 expected my younger brother to die before I did.
6 Frankie is what I have always called him, and he
7 was very special to me, my sister, my older
8 brother, and all our children. Frankie loved kids,
9 I think particularly because he was a kid at heart.
10 He loved to have fun, to tease us and just to be
11 around his family, especially if there was good
12 food being served. He loved home-cooked meals and
13 family gatherings. It was a joy to watch him eat
14 because he just got so much pleasure eating good
15 food, especially around the holidays.

16 He loved spending time with family as much as
17 his work and time schedule would allow. When
18 Frankie could not be with us physically he called
19 often. I talked to him every weekend of every
20 month of the year. We usually let him call us as
21 he was often on-call at work and we were not sure
22 when he was available to talk.

23 We as a family are all very close. I talked
24 to my sister every week also, as well as my niece
25 Becky. If I do not call for some reason, my niece

1 calls to check on me. Just because we are in
2 different parts of the country does not mean we do
3 not love each other and care about each other.

4 The day Frankie was killed was my youngest
5 daughter's graduation from college. When I did not
6 get a call, I thought he figured we were
7 celebrating with our daughter out of town and we
8 would call on Sunday. Obviously he did not call
9 Sunday either. I called my niece Becky, who also
10 talked to Frankie every week, sometimes more than
11 once to ask us -- she called to ask if I had talked
12 to him. I started to have bad feelings that
13 something had happened.

14 On Tuesday after he was killed on Saturday I
15 received the most heart-breaking call I think I
16 ever received. My niece -- my niece asked that I
17 get someone to hold my hand as she knew that this
18 was going to be very hard for me. Somehow I knew
19 he was gone and I would never get to see him again.
20 So I already was crying before I ever got back to
21 the phone where she proceeded to tell me how sorry
22 she was to tell me my sweet baby brother had been
23 murdered. And it was very hard for me to believe
24 that someone could take his life, much less the
25 life of Frankie. He was a very kind-hearted,

1 loving person. He loved to make friends and be
2 around friends. He loved Nascar and going to races
3 when possible. He loved going to the mountains,
4 especially in Virginia, just to relax because of
5 the fresh, cool air and feeling closer to God. He
6 loved being with family most of all.

7 We all loved him and still do. He cannot be
8 taken away from us. Even though he is no longer
9 with us physically, he is still with each of us in
10 our hearts where he will always stay.

11 As she contemplates her life now -- I'm trying
12 to rearrange a little bit here of what she is
13 saying -- contemplates -- as Melinda contemplates
14 her life and what she has accomplished in life, my
15 aunt wants her to think about what she has done by
16 taking the life of my uncle.

17 The world is not a better place because of his
18 loss. It is a much sadder place. What is so
19 amazing is that Frankie would not want us to hate
20 Melinda for this, but that he would want us to show
21 her that she has time still even in prison to make
22 something of her life, to better herself.

23 My aunt says she forgives Melinda because it
24 is something that Frank would want her to do and it
25 is something that God would want her to do.

1 She does think she needs to be punished for
2 what she has done. She needs to spend time away
3 from society to think about what she has done by
4 taking his life. And also think about what she has
5 done to her own life, to her own family, to her own
6 friends by her actions.

7 Ask God to forgive you and he will show you
8 the way to a better life no matter where you live
9 it.

10 And she signs it: I am and always will be,
11 Frankie's sister Judy.

12 I want to reiterate what Judy is saying. We
13 do forgive you. We don't understand. We do
14 forgive Melinda for what she did. And Tenisha.
15 But we do feel like she should pay for what she
16 did. I do want her to spend the rest of her life
17 thinking about what she did. And I want her to do
18 something with her life. She can do something
19 whether she is in society or whether she is in
20 prison. She can teach others what drugs will do to
21 you. Drugs make the most wonderful people in the
22 world the most awful people sometimes. Think about
23 that.

24 Other than -- like I say, I hope -- I hope and
25 pray that maybe one day we can all be in heaven

1 together discussing how beautiful God is and how
2 beautiful things are.

3 THE COURT: All right. Thank you very much,
4 ma'am.

5 MS. LINDA: I want to reiterate what my aunt
6 said and what Becky said. Frankie was -- he was
7 only three years older than me, so he was like a
8 big brother. We done a lot of playing together.
9 We were -- we loved him, and we're sorry. And I
10 myself say I forgive you for what you have done,
11 Melinda, and to Tenisha. And it is hard. It is
12 hard to stand up here. I never thought in all my
13 years as a person that I would be in this that
14 someone I love could be brutally murdered the way
15 he was. And I hope and pray you never have to go
16 through this, that someone you love is taken away
17 from you. I hope and pray you never have to go
18 through this.

19 And I would like to see you become a positive
20 in society. Tell young people what drugs will do
21 to you. Help young people turn away from that
22 crime, that just get away from it. Just -- I hope
23 and pray you will make a positive out of a
24 negative.

25 THE COURT: All right, ma'am. Thank you very

1 much.

2 MS. SHIPLEY: Your Honor, we offered the same
3 exact plea offer to Ms. Richmond as we did to
4 Ms. McClinton. We wanted to treat both of them
5 equally, fairly. She rejected the plea offer. I'm
6 not asking you to punish her for exercising her
7 absolute right to go to trial, but this did put the
8 family through a very difficult trial. Tina Boyd,
9 Frank's daughter, is here today with us. She
10 wasn't able to make it to trial because she has two
11 small kids and her husband fighting for our country
12 in Iraq. But she had to hear that 9-1-1 tape.
13 That was the first time she heard it was during the
14 closing argument. And it was extremely difficult
15 for her.

16 We respectfully request that you take that
17 into account, that this family has gone through a
18 very difficult week. And we respectfully request a
19 higher sentence than Ms. McClinton, who did take
20 responsibility via guilty plea.

21 THE COURT: All right. Thank you.

22 MS. SHIPLEY: Thank you, Your Honor.

23 THE COURT: I will be happy to hear from you.

24 MS. GRIPP: May it please the Court? Your
25 Honor, my client wrote an extensive letter. I will

1 not read the whole letter, I would just like to
2 briefly touch upon what it says.

3 I'm hoping only for understanding and not for
4 pity. I cannot --

5 THE COURT REPORTER: Can you speak in the
6 microphone?

7 MS. GRIPP: I cannot speak for all, but I feel
8 like I speak for some and say that what becomes of
9 us is not always a law breaking of our own choice.
10 And I think that that speaks for everybody involved
11 in this case. Your Honor. I think that the
12 families are absolutely right. Crack cocaine,
13 these drugs make people do things that they
14 wouldn't ordinarily do.

15 Your Honor, my client is 39 years old. She
16 was 37 at the time this happened. She has two
17 children. She has two grandchildren.

18 Your Honor, I don't know that we can really
19 know what factually happened that night, but I
20 can -- I think I can agree that no one was really
21 in their right mind.

22 Your Honor, my client wishes me to tell you
23 she has grown up in a very abusive household from a
24 very young age. She was physically, emotionally,
25 sexually abused by someone close to her. And that

1 because of that abuse she turned to drugs. She was
2 on drugs at age 11. By age 14 she was using
3 cocaine and living on the streets, Your Honor. She
4 was pregnant at 18 and started to make a new life
5 for herself. She got clean. She got an education.
6 She got her GED, Your Honor. She was engaged when
7 she was about 20 years old. And she was deeply in
8 love. And that person was taken away from her.
9 She saw that person murdered in front of her and
10 has grieved, as I know the family is. She
11 understands what they are feeling. I think that
12 she has expressed from the beginning absolute
13 remorse.

14 Your Honor, I do not think that her invoking
15 her right to trial should somehow --

16 THE COURT: I will not punish her for going to
17 trial.

18 MS. GRIPP: That's fine. She wants to say to
19 the family that she is extremely remorseful from
20 the very beginning, Your Honor.

21 Your Honor, as far as the charge is concerned,
22 she has had years of sobriety, she became a nurse's
23 aid, she was raising her kids. And as many addicts
24 have, she turned back to drugs.

25 Your Honor, we understand what happened to

1 Frank was a horrible, horrible thing. And, Your
2 Honor, in 30 years she will be 67 years old. She
3 is a conscientious person. She does have skills.
4 She does wish to better not only her ownself, but
5 society. She expressed that wish to me.

6 She has taken on Bible study, Your Honor,
7 during the Detention Center. She obviously became
8 a very sober and devoid person at this time. I
9 think the person on May 5th, 2007, is not the same
10 person that is standing before you today.

11 Co-counsel would like to address the Court.

12 THE COURT: All right. Yes, sir?

13 MR. SECOR: Just briefly, Your Honor. I just
14 want to say that the sentiments expressed here by
15 Mr. West's family are some of the most eloquent and
16 heartfelt things I have heard in court from a
17 victim's family member. I can only hope that if I
18 were ever in your position that I would have the
19 love in my heart to be able to say those types of
20 things. So it is -- I think it is tremendous to
21 hear those things from y'all, and we do appreciate
22 it.

23 And I just respectfully request, Your Honor,
24 take those things into consideration.

25 THE COURT: Okay.

1 MR. O'NEIL: Your Honor, I would say that I
2 have not been acquainted with Ms. Richmond as long
3 as Ms. Gripp has been, but through my dealings with
4 her I have always known her to be personable and
5 friendly.

6 I would say, not in this courtroom, I was in
7 front of another circuit court judge, and she said
8 that in sentences what she tries to do is determine
9 the difference between truly misguided and truly
10 evil. I would say that I think Melinda falls into
11 that first category, truly misguided.

12 And I echo the sentiments of Frank's family.
13 I think this is a terrible outcome for everybody
14 involved. And I just ask for the Court's mercy at
15 this point.

16 THE COURT: All right. Anything you want to
17 tell me?

18 THE DEFENDANT: Yes, sir. May I speak to the
19 family also?

20 THE COURT: Through me.

21 THE DEFENDANT: I just want to express how
22 sorry I am that they lost -- our loss of Frank.
23 And that in my letter I had already -- I found God.
24 I didn't know God. I wasn't raised in a religious
25 home. I found God while I was in prison. And it

1 is the greatest thing that has ever happened to me.
2 A big part of me died that night too. And a part
3 that I don't think I ever want to know again. I do
4 intend to devote my life to helping others that
5 were lost -- that are lost. Not only through my
6 testimony and my experiences with drugs, but also
7 in any other way that I can. I wrote that in this
8 letter.

9 I pray for Frank's family every night and I
10 will continue to do that. Frank loved them very
11 much. And he did speak of them often. And I hope
12 that Frank is at peace.

13 I'm so sorry that this happened like it did.

14 THE COURT: Okay. Anything else?

15 MS. GRIPP: No, sir.

16 THE COURT: All right. I do want to thank
17 y'all for being here. And it is pretty rare and
18 very moving when a victim's family can be
19 forgiving. So I appreciate that too.

20 Like I say, this was a gruesome homicide.
21 And -- well, I don't have to -- I sentence her to
22 40 years in prison.

23 Good luck.

24 MR. SECOR: Thank you, Your Honor.

25 THE COURT: All right.

1 MS. SHIPLEY: Thank you, Your Honor.

2 MS. GOOD: Thank you, Your Honor.

3 MS. GRIPP: Thank you, Your Honor.

4 MR. O'NEIL: Thank you, Your Honor.

5 (WHEREUPON, the proceedings were concluded.)

6

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10 (END OF TRANSCRIPT)

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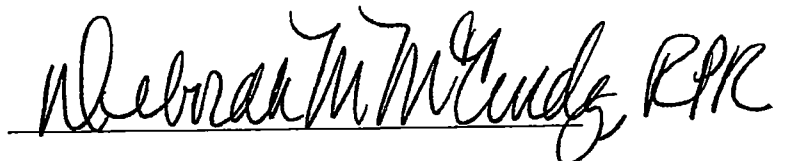
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 10th, 12th, 13th and 14th days of November, 2008..

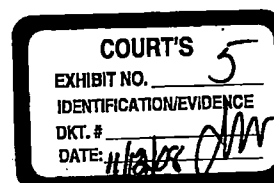
I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 9, 2010



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

1. At this point, I am asking that the Court continue the trial until I am able to return from the doctor's office
 - a. I feel that I need to go to the doctor's and be seen
 - b. I also do not want to leave my client while the trial is proceeding
 - c. If the Court is not inclined to pause the trial for this afternoon, I would ask for a jury instruction.
 - i. I do not want the jury to see that I am not next to my client. I would never intentionally abandon my client during trial, but I feel that it's necessary
2. Renewing our objections under the 5th, 6th, and 14th amendments.
3. Due process violation
 - a. Need to put on the record that the Clerk of Court came up to me at least twice, during my cross examinations to tell me to get closer to the microphone
 - b. The judge has turned up the volume all the way
4. Cannot adequately represent my client
 - a. My co-counsel is not prepared to handle the bulk of the witnesses
5. Prejudicial effect on the trial, in particular, the defense
 - a. It's a perfect advantage to the State
 - b. They essentially have a defense attorney that is gagged
6. A criminal defense attorney is a voice for their client
 - a. It's important to have voice inflections
 - b. It's important to be able to emphasize words
 - c. It's important to have certain tones in one's voice
 - d. All I can do at this time is whisper.
7. I have done everything I can think to help my voice return
8. At this point, I must see a doctor





Michelle G. Archer, MD

Dutch Fork Family Practice

320 Harbison Blvd. Suite 230
Columbia, SC 29212
(803) 732-8370
Fax (803) 732-8373

November 12, 2008

RE: Carolyn Gripp
DOB: 4/6/1979

To Whom It May Concern:

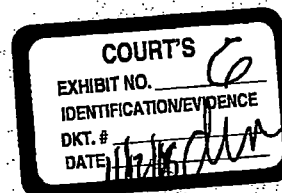
Ms. Gripp was seen and evaluated at Dutch Fork Family Practice on November 12, 2008. She was diagnosed with acute sinusitis and laryngitis. She has been put on vocal cord rest for two days as her laryngitis will worsen with continued use of her voice.

Please feel free to contact us with any questions or concerns.

Sincerely,

Debra J Prosser
Debra J Prosser MSN, RN, CS, FNP

Michelle G. Archer
Michelle G. Archer, MD



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Number: 2007-GS40-04073

The State of South Carolina,)

vs.)

NOTICE OF MOTION
AND MOTION FOR
NEW TRIAL

C.C.C. & G.S.

2:30 NOV 24 PM 4:30

Melinda Richmond,)
Defendant.)

TO: THE HONORABLE JUDGE EDWARD W. MILLER:

Cc: Elizabeth Levy, First Assistant Solicitor
Vanessa Shipley, Assistant Solicitor

YOU WILL PLEASE TAKE NOTICE that counsel will move before this Court on Monday, December 1, 2008 at 9:30 a.m. or, as soon thereafter as this matter may be heard, for an order for a new trial for the above-named Defendant. The defendant, by and through her undersigned counsel, requests the Court to grant a New Trial on the above referenced indictment based upon the following:

The defendant was arrested on or about May 5, 2007 and charged with Murder. On November 10, 2008, the defendant was called to trial. On November 11 2008, Counsel developed severe laryngitis due to acute sinusitis. On this date, Counsel could do no more than whisper. She had no tone to her voice at all. Trial resumed on November 12, 2008, at which time Counsel requested a mistrial or in the alternative a brief continuance to allow Counsel to see a doctor and see if her voice would return. Defense counsel made no previous motions for a continuance. Assistant Solicitor, Vanessa Shipley objected to a continuance or a mistrial, citing that the trial had already begun, the victim's family was

from Virginia and the defendant had two other attorneys. No other witnesses were otherwise unavailable or out of state.

Counsel for the defense asserted that co-counsel was neither prepared nor able to effectively represent the defendant in this case. Prior to trial, lead counsel spent approximately forty (40) hours meeting with the defendant with fourteen (14) attorney-client meetings and numerous telephone conversations. Co-counsel, Deon O'Neil, had only met the defendant once the week before trial. Co-Counsel, Casey Secor, met the defendant for the first time on November 10, 2008. Lead Counsel had prepared the bulk of the witnesses and the closing arguments. Lead Counsel spent over fifty (50) hours meeting with experts and the private investigator in this case; including visits to the incident location, reviewing the discovery and photographs, speaking with witnesses and viewing the physical evidence prior to trial. Lead Counsel spent countless hours preparing this case for trial, including researching and preparing all pretrial matters as well as writing memorandums in this case. The Honorable Judge Edward W. Miller denied all motions for a mistrial or a continuance.

On November 12, 2008, Lead Counsel became more ill throughout the day and felt it necessary to see a doctor regarding her condition. Counsel for the defense requested a two hour recess to allow Lead Counsel to go to the doctor. The Honorable Judge Edward Miller denied this request and the trial continued for approximately two hours while Lead Counsel attended a doctor's appointment. Counsel was diagnosed with laryngitis due to acute sinusitis. Lead Counsel was prescribed antibiotics, steroids and two days voice rest. A note reflecting this diagnosis from Irmo Family Practice was entered into the record as a

Court's Exhibit. As a result of this diagnosis, Counsel for the Defense again moved for a mistrial or a continuance to allow her voice to recover. The Honorable Judge Edward Miller denied these motions.

The Court Reporter stated that she had difficulty hearing Counsel, despite the fact that Counsel was standing directly in front of the witness stand. When Counsel for the Defense asked if there was an audio recording of the trial, the Court Reporter stated that she was not sure that her recording equipment would pick up Counsel's voice. At this point, Defense Counsel moved to allow another Court Reporter with recording equipment to sit in the trial to make a proper audio recording of the proceedings. Defense counsel had already made arrangements with Ray Schwartz Court Reporting to immediately begin recording as soon as the Court would allow. In the alternative, Defense Counsel requested that a video recording of the trial be allowed to preserve the record. Counsel had video recording equipment in the courtroom and was ready to begin recording immediately. The Honorable Judge Edward W. Miller denied these requests. (Pinnock Aff.; *see also* Brown Aff.)

On November 12, 2008, Lead Counsel felt it necessary to preserve a fair and accurate representation of her voice. (Exhibit 1, Shealy Aff.) A video recording of Lead Counsel was made on November 14, 2008, after closing arguments. (Exhibit 2, Hines Aff.)

On November 14, 2008, Defendant was convicted of Murder. The Honorable Judge Edward W. Miller sentenced her to forty (40) years in prison. On November 13, 2008, Lead Counsel for the defense was told by Mr. Coward, the bailiff sitting in the jury box, that although he could hear lead counsel, he was unable to make out what was being said

due to the deficiencies in her voice. The Clerk of Court repeatedly requested that lead counsel move closer to the microphone in hopes that The Court may better hear what was said. Several witnesses were forced to ask Counsel to repeat questions during cross and direct examination. Throughout the trial and during sentencing, the Court Reporter asked Lead Counsel to repeat what was said.

The Court's denial of counsel's motions has infringed on Counsel's ability to demonstrate prejudice. The transcript of these proceedings cannot begin to tell the story of how deficient counsel's performance was as a result of the loss of her voice. The Court abused its discretion in refusing to grant a brief continuance in a case of such significance. The Court further abused its discretion in not permitting Counsel to make an adequate record of the proceedings. Counsel has attached affidavits attesting to the condition of Lead Counsel's voice at various points during the trial. No client should spend what will likely be the rest of her natural life in prison¹ where she was represented by a lawyer with no voice.

Defense counsel intends to enter the audio and video recordings as Exhibits One (1) and Two (2) at the hearing of this motion. If the Court should choose to rule on the basis of this motion without a hearing, defense counsel will enter these exhibits with the Richland County Clerk of Court. Defense counsel also requests that all Court Reporter's audio recordings of State v. Melinda Richmond be preserved.

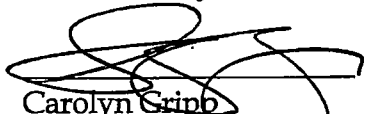
Furthermore, defense counsel renews all previous objections and specifically objects under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S.

¹ This client was 38 years old and was sentenced to 40 years.

Constitution. Defense counsel asserts that the defendant was denied her right to counsel and confrontation under the Fifth, Sixth and Fourteenth Amendments. The defendant was denied Due Process based on her lack of access to the courts under the Fifth and Fourteenth Amendments. The defendant was denied her right to a complete appellate record (*Griffin v. Illinois*, 351 U.S. 12 (1956)). The defendant was denied her right to present a complete defense, and was denied equal protection under the Fifth, Sixth and Fourteenth Amendments.

Based on the facts set out above, counsel moves that the Court set aside the Defendant's conviction and sentence and grant her a new trial.

ISO MOVE:



Carolyn Gripp
Assistant Public Defender
Date: November 24, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Number: 2007-GS40-04073

The State of South Carolina,)
))
))

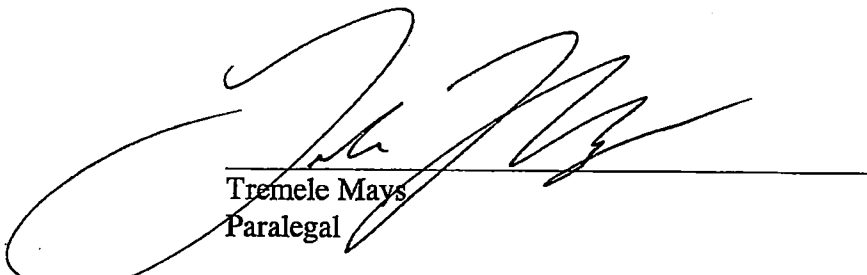
vs.)
))
))

Melinda Jo Richmond,)
Defendant.)

CERTIFICATE OF SERVICE

FILED
2008 NOV 24 PM 1:10
C.C.C. & G.S.

I certify that on this date I served the Motion for a New Trial in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor Vanessa Shipley, by delivering said copy to her office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main Street, Columbia, South Carolina 29201, and leaving it with her clerk or other person of authority at said office.


Tremele Mays
Paralegal

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 24th day of November, 2008

State of South Carolina

County of Richland

Before the undersigned, an officer duly commissioned by
the laws of South Carolina on this 21 day of November
2008, personally appeared Tracy E. Pinnock
who having been first duly sworn depose and say:

C.C.C. & G.S.

2008 NOV 26 PM 4:43

211-370

While observing the trial of State v. Richmond on November 13,
2008 thru November 14, 2008, there were many times during the trial
that Carolyn Gripp; attorney for the defendant's, voice could not be
heard in the court room. During the cross examination of Tanisha
McClinton, the court reporter asked Ms. Gripp to repeat herself 3
times. Also, during the direct examination testimony by this same
witness Ms. Gripp posed an objection that was barely audible and we
were seated less than 3 feet from her at the time. Tanisha McClinton
also requested that Ms. Gripp repeat herself 5 times during the cross
examination.

During the testimony of Heidi Scott, Ms. Scott requested Ms.
Gripp to repeat herself at least once during her cross examination.
During the direct of Ms. Scott, MS. Gripp was attempting to pose an
objection to a witness statement, however, the judge could not hear the
objection and this is when Mr. Casey Secor stood and made the objection
again to stop the witness from answering before the judge made a
ruling. Also, the court reporter could not hear the basis for her
objection and this had to be repeated as well. Before the cross
examination of Ms. Scott, Ms. Gripp positioned herself in front of a
microphone approximately 5 feet from the court reporter. Before
starting the examination, Ms. Gripp asked the court reporter if she

could hear her. The reporter's response to the question was "we'll see."

During the testimony of Brian Gwen, Ms. Gripp attempted to object to the witness answering certain questions, however, at this point in the trial, her voice was extremely weak and she could barely provide a whisper. The court reporter also, during the cross examination of Mr. Gwen stopped Ms. Gripp during her line of questions and was asking for her to repeat what she just said. Again, Ms. Gripp was standing approximately 5 feet from the court reporter and she was having difficulties hearing her.

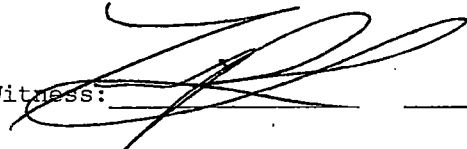
There were also times, during the trial that Ms. Gripp would attempt to speak in the direction of the jury. At these times the court reporter would stop her and request that she turn in the other direction because there was a need to see her lips moving when speaking.

An attempt was made, as mentioned before, to place Ms. Gripp in front of a microphone to ensure that everyone involved in the case could hear her voice adequately. However, the microphone, on many occasions, began to ring so loudly that the judge had to adjust the volume. This fixed the problem when it was addressed, but no one in the court room could hear what she was saying as the ringing occurred.

During closing arguments there was an attempt to set up microphones and podiums for Ms. Gripp to use during her closing. However, when this was being attempted, the court reporter informed Ms. Gripp and Mr. Secor that the position of the microphone and podium (facing the jury) would have to change and that Ms. Gripp could not face the jury during her closing. This was because she, the court reporter, would have to see Ms. Gripps lips in order to record what was said. Also, not even 30seconds into the closing by Ms. Gripp the court

reporter interrupted her, stopping the argument, because she could not hear. Also, the microphone began to ring just as before, and even though the judge adjusted the volume to stop the problem, less than 30seconds after he fixed it the ringing started again.

For the 2 full days that I observed this trial, Ms. Gripp could barely be heard and I was sitting about 3-4 feet behind her at most moments. The members of the jury seemed as though they were straining to hear, if they could at all. And the judge and court reporter were also having a problem hearing Ms. Gripp because her voice was extremely weak.

Witness: 

Tracy E. Pinnack

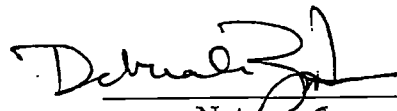
Sworn and subscribed before me
this 21st day of November, 2008.

Margie E. Johnson
4-24-16

Affidavit

I, Ryan Harris Sigal, work as a clerk in the Richland County Public Defenders Office. I observed almost the entirety of the State v. Melinda Richmond trial. During the majority of the trial the lead counsel for the defense, Ms. Carolyn Gripp, was only able to speak in a whisper. Ms. Gripp had to use a microphone to examine and cross-examine the witnesses, as well as any other time she addressed the court. During the course of the trial, Ms. Gripp was very difficult to hear and the court reporter and multiple witnesses asked Ms. Gripp to repeat herself multiple times. When Ms. Gripp had to whisper into the microphone it was very hard to understand and the jury was noticeably leaning in attempting to hear what Ms. Gripp was saying. Ms. Gripp's whispering made it difficult to follow what she was saying, which in turn made it difficult to understand the direction and point of her questioning.

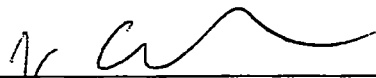
 , Affiant
Ryan Harris Sigal, Affiant

 , Notary
Notary Expires: 12/3/2017

affidavit

Affidavit

I was present in the courtroom on Wednesday November 12, 2008 and Friday November 14, 2008 during the State v. Melinda Richmond trial. During the course of the time I spent in the courtroom, I observed that Carolyn Gripp was severely limited in her ability to speak. She spoke in a low whisper and had to clear her throat numerous times to just be able to speak in a low whisper. The direct and cross examinations I saw while in the courtroom had her standing right next to the witnesses and speaking into a microphone. If I had not been sitting directly behind the defendant's table I do not think I would have been able to hear her. Also, the witnesses had to repeatedly ask her to repeat what she said, even when she stood right next to them.


Clarke Newton

J.


Notary Expires: 12/03/17

STATE OF SOUTH CAROLINA)
 RICHLAND COUNTY)

C.C.C. & G.S.

2008 NOV 24 PM 4:44

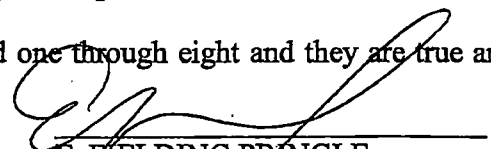
2008 NOV 24

AFFIDAVIT OF ELIZABETH FIELDING PRINGLE

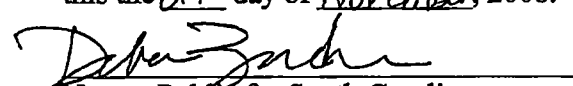
Elizabeth Fielding Pringle after being duly sworn, do depose and state:

1. My name is Elizabeth Fielding Pringle. I am more than eighteen years of age. I currently reside at 317 Crown Point Rd., Columbia, SC 29209.
2. I am the Deputy Public Defender for Richland County.
3. During the term of court for November 17, 2008, I witnessed portions of the trial of *State v. Melinda Richmond* and spoke with lead counsel Ms. Gripp throughout the trial.
4. On Tuesday, November 11, 2008, Ms. Gripp telephoned me to inform me that she had total laryngitis and to discuss how she would proceed with her trial. At that time, Ms. Gripp could only whisper. Although I could hear her on the phone, she had no tone to her voice at all. We spoke very briefly as she was trying to rest her voice.
5. On Wednesday November 12, 2008 I observed Ms. Gripp perform the cross examination of one of the responding officers. This officer testified at length on direct.
6. During Ms. Gripp's cross of this officer I was sitting on the bench directly behind the bar behind defense counsel's table. Ms. Gripp was standing at the microphone directly in front of defense counsel's table. I could not hear her questions and could not understand her. I could make out a few words every few sentences but otherwise couldn't hear her. The officer leaned forward throughout his cross and asked her to repeat herself several times. The court reporter also asked her to repeat questions throughout her cross. The officer dominated the cross examination due to his ability to speak with volume.
7. On Thursday evening after court recessed at 6:00 P.M., I spoke with Ms. Gripp. She had no voice at this point and was crying and in pain.

I have read the foregoing paragraphs numbered one through eight and they are true and correct to the best of my knowledge.


 E. FIELDING PRINGLE

Sworn to and subscribed before me
 this the 24th day of November, 2008.


 Notary Public for South Carolina

My commission expires December 3, 2017.

State of South Carolina

County of Richland

Affidavit

I, Bridget Brown, work as a law clerk for the Richland County Public Defender's Office. Throughout the week of November 10th, 2008, I observed the State v. Melinda Richmond trial. Ms. Carolyn Gripp served as lead counsel for the defense; however her ability to communicate effectively to the courtroom was hindered by an upper-respiratory illness which caused Ms. Gripp to lose her voice. Ms. Gripp's voice continued to deteriorate as the trial progressed, making it very difficult to hear Ms. Gripp when she spoke.

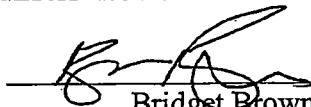
On Friday, November 14, 2008 Ms. Gripp presented her closing arguments to the courtroom. At this point in the trial Ms. Gripp's voice was so inaudible that the court reported requested that Ms. Gripp stand within the court reporter's line of vision so that she could read Ms. Gripp's lips.

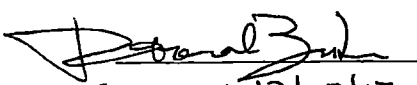
Furthermore, before Ms. Gripp could proceed with her closing statements the microphone had to be moved so that it stood alongside the podium in order for the courtroom to hear Ms. Gripp.

Ms. Gripp began her closing statements in a soft, raspy voice. A minute into her argument, the court reporter interrupted Ms. Gripp because she could not hear her.

I sat one row behind counsel for the defense and had difficulty hearing Ms. Gripp. She spoke in what I would describe as a forced whisper and her voice would trail off toward the end of her sentences such that the ends of her sentences were essentially inaudible. Additionally, Ms. Gripp had to pause to clear her throat several times throughout her closing statements.

Ms. Gripp's inability to speak in a normal tone and at an acceptable volume level made it difficult to hear what she was saying and, more importantly, to understand her line of reasoning.

 Affiant
Bridget Brown, Affiant

 Notary
Expires: 12/03/17, Notary

STATE OF SOUTH CAROLINA)
SESSIONS)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL

Warrant Numbers: J557057

The State of South Carolina,)

vs.)

AFFIDAVIT

Melinda Richmond,)

Defendant.)

C.C.C. & G.S.

2008 NOV 24 PM 4:11

FILED

I, Kris Hines, am an assistant public defender in Richland County. I observed Carolyn Gripp's closing argument on Friday, November 14, 2008 in the Melinda Richmond trial. Ms. Gripp's closing argument was whispered to the jury and was barely audible in the courtroom. At times, it was impossible to understand what she was saying. The rest of time, I had to strain to hear what she was saying.

I have also viewed the video recording Ms. Gripp made on Friday, November 14, 2008 at 4:45 p.m. after the closing argument. Ms. Gripp's voice on the video fairly and accurately reflects the state of her voice during the closing argument earlier that day.

Kris Hines

Kris Hines

Columbia, SC

This 21 day of November, 2008.

SWORN TO AND SUBSCRIBED before me

this 21 day of November, 2008.

Margaret J. Rogers

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES : 08-06-2017

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA)

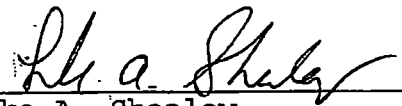
Warrant# J557057

VS.)

AFFIDAVIT

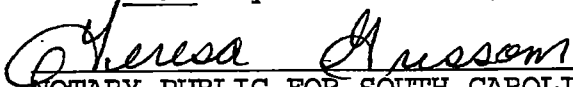
Melinda Richmond)

I, Luke Shealey, observed Carolyn Gripp during the first day of trial on November 12th, 2008. She was extremely sick and her voice was not audible in court. Her voice as recorded on tape is exactly how her voice sounded in court that day.


 Luke A. Shealey
 Assistant Public Defender

Columbia, SC
 This 21st day of November, 2008.

SWORN TO AND SUBSCRIBED before me
 this 21 day of November, 2008.


 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES : 6-08-09

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
The State of South Carolina)
-v-)
MELINDA RICHMOND,)
Defendant)

IN THE COURT OF GENERAL SESSIONS

RESPONSE TO DEFENDANT'S MOTION
FOR NEW TRIAL

INDICTMENT: 2007-GS-40- 4079

C.C.E. & G.S.

2008 DEC - 8 AM 9:50

FILED

TO: THE HONORABLE EDWARD W. MILLER

Cc: Carolyn Gripp, Attorney for the Defendant

Melinda Richmond, through her attorney Carolyn Gripp, filed a motion for a new trial on November 24, 2008 and attached a number of affidavits to the motion indicating there were problems hearing Ms. Gripp during the trial.

IN RESPONSE TO THE MOTION FOR NEW TRIAL, attached please find an affidavit signed by Ms. Ellen Reynolds, alternate juror in the trial against Melinda Richmond for Murder the week of November 10, 2008. Ms. Reynolds is in the best position to describe whether or not she could hear Ms. Carolyn Gripp during the trial as she sat on the last row of the jury box. All of the affidavits submitted by the defense were from individuals seated in various parts of the courtroom. It is the position of the State that the only people whose ability to hear Ms. Gripp during the trial that matters, are the jurors themselves. They are the ones who decided Melinda Richmond's guilt based on the evidence presented at trial.

It should be noted that the Honorable Judge Miller instructed the jury during the trial that if they had any difficulty hearing Ms. Gripp that they should raise their hand. At no time did any of the jurors raise their hand.

The State of South Carolina respectfully requests that the motion for a new trial be denied again as it was previously denied at the conclusion of the trial on November 14, 2008.

Respectfully submitted,


Vanessa C. Shipley
Assistant Solicitor
Fifth Judicial Circuit

This 8th day of December, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
	)	<u>SUPPLEMENTAL</u>
COUNTY OF RICHLAND	)	RESPONSE TO DEFENDANT'S MOTION
	)	FOR NEW TRIAL
The State of South Carolina	)	
	)	INDICTMENT: 2007-GS-40- 4073
-v-	)	
	)	
MELINDA RICHMOND,	)	
Defendant	)	

C.C.C. & G.S.

2008 DEC 11 PM 12:08

FILED

TO: THE HONORABLE EDWARD W. MILLER
Cc: Carolyn Gripp, Attorney for the Defendant

Melinda Richmond, through her attorney Carolyn Gripp, filed a motion for a new trial on November 24, 2008 and attached a number of affidavits to the motion indicating there were problems hearing Ms. Gripp during the trial.

IN RESPONSE TO THE MOTION FOR NEW TRIAL, attached please find affidavit signed by Mr. Douglass Moore, alternate juror in the trial against Melinda Richmond for Murder the week of November 10, 2008. Mr. Moore, like Ms. Ellen Reynolds, is also in the best position to describe whether or not he could hear Ms. Carolyn Gripp during the trial as he sat on the last row of the jury box. Mr. Moore indicates that he had no problems hearing Ms. Carolyn Gripp.

Also attached, please find affidavits from Inv. Robert Martin, who was seated at the State's table for the entire trial and Ms. Becky Roberson and Ms. Linda Haugh, relatives of the murder victim, who were seated in the gallery of the courtroom. They all confirm that they too could hear and understand Ms. Carolyn Gripp.

Again, it should be noted that the Honorable Judge Miller instructed the jury during the trial that if they had any difficulty hearing Ms. Gripp that they should raise their hand. At no time did any of the jurors raise their hand.

The State of South Carolina respectfully requests that the motion for a new trial be denied again as it was previously denied at the conclusion of the trial on November 14, 2008.

Respectfully submitted,


Vanessa C. Shipley
Assistant Solicitor
Fifth Judicial Circuit

This 11th day of December, 2008
Columbia, South Carolina

The State of South Carolina

W. Barney Giese
Solicitor

John P. Meadors
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
Post Office Box 192
1701 Main Street
Columbia, South Carolina 29202

Phone
(803) 576-1800

Fax (803) 576-1718

November 26, 2008

Ms. Ellen Reynolds
4246 Sandwood Drive
Columbia, S.C. 29206

Re: State of South Carolina vs. Melinda Richmond

Dear Ms. Reynolds,

I am in receipt of a motion for a new trial filed by the defense in the trial in which you were seated as an alternate juror. The basis for the motion for a new trial is that the defense believes that they jury could not hear lead counsel Ms. Carolyn Gripp, due to her laryngitis.

Enclosed, please find an affidavit form as well as a pre-paid envelope. It would be greatly appreciated if you could briefly state whether or not you had any difficulty hearing or understanding Ms. Gripp during any portion of the trial.

You are in no way obligated to submit this affidavit if you do not wish to do so.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vanessa C. Shipley".

Vanessa C. Shipley
Assistant Solicitor
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND)
The State of South Carolina)

AFFIDAVIT OF _____

-v-)

INDICTMENT: 2007-GS-40- 4073.

MELINDA RICHMOND,
Defendant)

I, Ellen S. Reynolds, do swear and attest to the following:

It could hear Ms Gupp & it was on the last row. As a matter of fact, she asked me after the trial if we could hear her. It told us we could hear her. Also she had two other lawyers with her. If she were really concerned, she would have asked them to take over the questioning. Also she did not get close enough to the microphone.

Ellen S. Reynolds
Affiant Signature

This 30th day of November, 2008
Columbia, South Carolina

The State of South Carolina

W. Barney Giese
Solicitor

John P. Meadors
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
Post Office Box 192
1701 Main Street
Columbia, South Carolina 29202

Phone
(803) 576-1800

Fax (803) 576-1718

November 26, 2008

Mr. Douglas Moore
113 Eagles Ridge Drive
Blythewood, S.C. 29016

Re: State of South Carolina vs. Melinda Richmond

Dear Ms. Reynolds,

I am in receipt of a motion for a new trial filed by the defense in the trial in which you were seated as an alternate juror. The basis for the motion for a new trial is that the defense believes that they jury could not hear lead counsel, Ms. Carolyn Gripp, due to her laryngitis.

Enclosed, please find an affidavit form as well as a pre-paid envelope. It would be greatly appreciated if you could briefly state whether or not you had any difficulty hearing or understanding Ms. Gripp during any portion of the trial.

You are in no way obligated to submit this affidavit if you do not wish to do so.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vanessa C. Shipley".
Vanessa C. Shipley
Assistant Solicitor
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND)
The State of South Carolina)AFFIDAVIT OF Douglas Moore

-v-)

INDICTMENT: 2007-GS-40-4073.

MELINDA RICHMOND,
Defendant)

I, Douglas Moore, do swear and attest to the following:

I had no difficulty in following Ms. GRIPP during witness examination and cross examination during the M. Richmond trial.

If there were issues with her speaking, the court recorder and witness asked for a clarification during the 5 or 6 times that her statements or questions were hard to hear.

Sincerely,

DJ Moore
Affiant Signature

This 8th day of November, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND)
The State of South Carolina)

AFFIDAVIT OF ROBERT MARTIN

INDICTMENT: 2007-GS-40-4073.

-v-)

MELINDA RICHMOND,)
Defendant)

I, Robert Martin, do swear and attest to the following:

During the week of November 10th to November 14th 2008 I was present at the murder trial of Melinda Richmond. I sat at the prosecution table on the end closest to the defense table. I sat approximately 10-15 feet from where Ms. Carolyn Gripp was seated. Prior to trial, Deon O'Neil made several motions as to why the 911 tape should have been suppressed. He presented case law Crawford vs. Washington to support his motions. He also would present the opening statement to the jury and seemed to have a clear grasp on the issues in the case. He would also later cross examine all of the lay witnesses. The court was closed in observance of Veteran's day. Court reconvened on that Wednesday and Carolyn Gripp claimed to have lost her voice. She and Deon O'Neill made motions for a continuance and a mistrial. Judge Miller made arrangements to use the court room microphones and speakers to make her voice more audible. He also instructed the jury to signal him if at anytime they could not hear Ms. Gripp. The jury never indicated that they could not hear Ms. Gripp during the trial. The court reporter would ask Gripp to repeat herself a few times, usually when Grip was not facing her. During the trial Casey Secor would cross examine the professional witnesses. He also appeared to have a grasp on issues of this case. He and Deon O'Neil were present during the trial. Ms. Gripp gave the closing argument. During her closing her voice became so loud that it was causing feed back on the microphones. Judge Miller had to turn the microphones off. After the jury was charged and left the court room Judge Miller commented to Ms Gripp that it seemed that she got her voice back. Alternate jurors were dismissed. They came to the court room to hear the results of the case. I spoke to Mrs. Ellen Reynolds. She was an alternate and sat on the back row farthest from Ms. Gripp. Mrs. Reynolds said that she could hear Ms. Gripp just fine during the trial. I could hear Ms. Gripp and she had two co-counsel members that were seated beside her that would also use their voice on her behalf.



Robert Martin
Richland County Sheriff's Department

This 8 day of December, 2008
Columbia, South Carolina



Notary Public for South Carolina

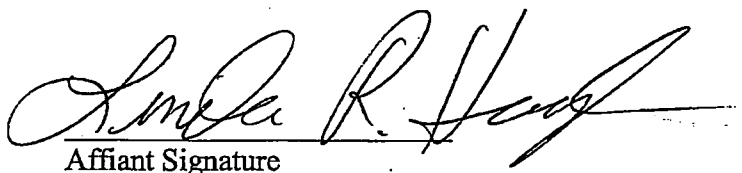
My commission expires

10/4/2017

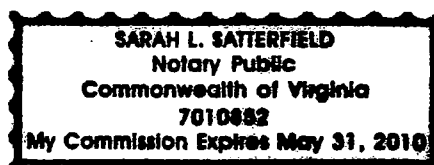
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	AFFIDAVIT OF <u>LINDA R. HAUGH</u>
The State of South Carolina	)	
	)	INDICTMENT: 2007-GS-40- 4073.
-v-	)	
	)	
MELINDA RICHMOND,	)	
Defendant	)	

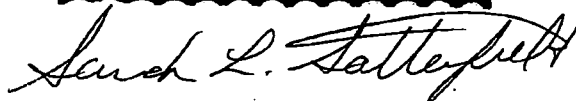
I, Linda R. Haugh, do swear and attest to the following:

During the trial of Melinda Richmond I did not have any problems hearing or understanding Melinda Richmond's head attorney Ms. Carolyn Gripp, or any of the attorneys' involved in the case. I am the victim's niece, so I was seated fairly close to the Jury. I feel that the defendant did receive a fair trial.


Affiant Signature

This 4th day of December, 2008
Columbia, South Carolina





STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	AFFIDAVIT OF <u>BECKY M. ROBERSON</u>
The State of South Carolina	)	
	)	INDICTMENT: 2007-GS-40- 4073.
-v-	)	
	)	
MELINDA RICHMOND,	)	
Defendant	)	

I, Becky M. Roberson, do swear and attest to the following:

During the trial of Melinda Richmond I did not have any problems hearing or understanding Melinda Richmond's head attorney Ms. Carolyn Gripp, or any of the attorneys' involved in the case. I am the victim's niece, so I was seated fairly close to the Jury. I feel that the defendant did receive a fair trial.

Becky M. Roberson
Affiant Signature

This 26th day of November, 2008
Columbia, South Carolina

STATE OF VIRGINIA
City of Chesapeake, to-wit:

The foregoing document was signed before me, Barbara Ruth Garrett,
by Becky M. Roberson this 26th day of November, 2008.

Barbara Ruth Garrett
Notary Public

Notary Public
Commonwealth of Virginia
Barbara Ruth Garrett
My Commission Expires 12/31/2012
Reg. # 216330

BOOK 220 PAGE 98

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The State of South Carolina,)

vs.)

Melinda Richmond,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

FIFTH JUDICIAL CIRCUIT

Indictment No.: 2007-GS-40-4073

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

2009 MAR 11 PM 2:57

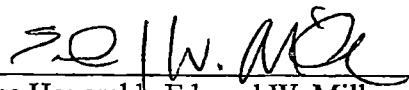
FILED

This matter comes before the Court upon Defendant's Notice of Motion and Motion For New Trial upon the conviction of Defendant on November 14, 2008 pursuant to Rule 29 of South Carolina Rules of Criminal Procedure.

The Defendant submitted various arguments to the Court that were supported by several affidavits, and the State has responded with the same. After careful consideration of all the submissions and upon full consideration of the Defendant's Motion, this Court finds that there is no evidence to support the Defendant's contention that their presentation in court was not audible to and understandable by the jury. The Court does not find the Defendant to have suffered any prejudice as a result of Defense Counsel's vocal condition.

THEREFORE, it is ORDERED ADJUDGED AND DECREED that the Defendant's Motion For New Trial is DENIED.

IT IS SO ORDERED.


The Honorable Edward W. Miller
Thirteenth Judicial Circuit

Dated: 3/6/09
Richland, South Carolina



FORM 5

2013-CP-400-0233

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

Melinda Jo Richmond

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
 FILED
 2013 JAN 14 PM 4:23
 JEANNETTE M. MERIDIE
 C.C.P. G.S.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Leath Correctional Institute
2. Name and location of Court which imposed sentence Richland County Court
Columbia, S.C.
3. Name(s) of co-defendant(s) (if any) Bruce Thompson, Tenisha McClinton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS40-04013
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 14, 2008, forty years in prison
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Richland County
- ii. Court of Appeals
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. motion for new trial denied
- ii. appeal dismissed
- iii. _____
- (c) the date of each such result:
- i. March 11, 2009
- ii. July 2, 2012
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) denied my right to counsel and confrontation
 (b) denied due process
 (c) denied right to a complete defense (on back)

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

- (a) 4th, 5th, 6th, and 14th Amendment
 (b) lack to access of courts under the 5th and 14th Amendment
 (c) During my trial my counsel became (on back)

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

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

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

(a) the specific nature thereof:

- i. motion for new trial
 ii. _____
 iii. _____
 iv. _____

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

- i. Richland County Circuit Court
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

yes

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

(a) which grounds have been presented:

i. same as on questions 10 and 11

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

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

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

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

- i. Wanda Carter P.O. Box 11589 Columbia, S.C. 29211-1589
- ii. Carolyn Gripp 1701 Main St. Columbia, S.C. 29201
- iii. _____

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

- i. Appeal
- ii. arraignment, plea, trial, sentencing
- iii. _____

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

new trial, reduced sentence

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

NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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

Melinda Richmond

SWORN to and subscribed before me this 8
day of January, 2013

Sandra S. Dicker (L.S.)
Notary Public

My Commission Expires: 10-31-2019

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

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

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

Melinda Richmond
Applicant

SWORN or affirmed to and subscribed before me this
8 day of January, 2013.

Sandra S. Dodson
Notary Public

My Commission Expires: 10-31-2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Melinda Jo Richmond, #331874,

Applicant,

v.

State of South Carolina,

Respondent.

Case No. 2013-CP-400-023

RETURN

RICHLAND COUNTY
FILED
2013 MAY -8 AM 9:13
JESSIE W. MCBRIDE
C.C.P. & G.S.

Respondent, making its Return to the application for post-conviction relief filed January 11, 2013 would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the July 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-4073). Applicant was represented by: Carolyn R. Gripp, Casey M. Secor, and E. Deon O'Neil, Esquires. On November 10, 2008, Applicant proceeded to trial before the Honorable Edward W. Miller and a jury. On November 14, 2008, the jury convicted Applicant as indicted. Judge Miller sentenced Applicant to forty years imprisonment.

Applicant filed a notice of appeal and an appeal was perfected on her behalf. Following the submission of an Anders Brief, the South Carolina Court of Appeals dismissed the appeal. State v. Richmond, Opinion No. 2012-UP-418 (S.C. Ct. App. filed July 11, 2012). The Remittitur was sent on July 27, 2012.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Melinda Jo Richmond, #331874,

Applicant,

v.

State of South Carolina,

Respondent.

Case No. 2013-CP-400-029

RETURN

RICHLAND COUNTY
FILED
2013 MAY -8 AM 9:13
JESNETTE W. McBRIDE
C.C.P. & G.S.

Respondent, making its Return to the application for post-conviction relief filed January 11, 2013 would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the July 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-4073). Applicant was represented by: Carolyn R. Gripp, Casey M. Secor, and E. Deon O'Neil, Esquires. On November 10, 2008, Applicant proceeded to trial before the Honorable Edward W. Miller and a jury. On November 14, 2008, the jury convicted Applicant as indicted. Judge Miller sentenced Applicant to forty years imprisonment.

Applicant filed a notice of appeal and an appeal was perfected on her behalf. Following the submission of an Anders Brief, the South Carolina Court of Appeals dismissed the appeal. State v. Richmond, Opinion No. 2012-UP-418 (S.C. Ct. App. filed July 11, 2012). The Remittitur was sent on July 27, 2012.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina

Department of Corrections, Applicant's appellate records, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

1229

II.

In her current Application, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. "Denied my right to counsel and confrontation"
 - a. "During my trial counsel became very ill and at one point left the court to go to the doctor. Continued to ask for mis-trial or continuance and was denied she then attempted to defend me on medication and with no voice."
2. "Denied due process"
3. "Denied right to a complete defense"
4. "Denied right to a complete appellate record"
5. "Denied equal protection"
6. "Inappropriate use of Allen charge"

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

Respondent interprets the Applicant's first allegation as one of ineffective assistance of counsel. In a post-conviction relief action, an applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, an applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. An applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, an applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In allegations two through six, Applicant alleges various direct appeal issues. Respondent submits that these claims should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976). These allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, Respondent requests that these allegations be summarily dismissed.

V.

Respondent requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

May 3, 2013.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

2013-CP-400-0233

RICHLAND COUNTY
FILED
2013 MAY -8 AM 9:13
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Melinda Jo Richmond, 331874

Applicant,

vs

State of South Carolina,

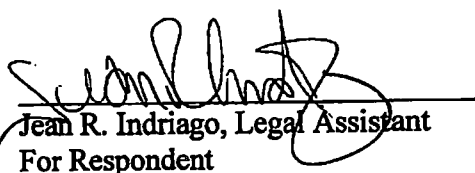
Respondent.

) AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

William Martin Saltzman, Esquire
Merritt, Webb, Wilson & Caruso, PLLC
PO Box 11879
Columbia, SC 29211

DATED this 3rd day of May, 2013.


Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Melinda Jo Richmond, #331874

Case No. 2013-CP-400-0233

Applicant,

v.

State of South Carolina,

Respondent.

**AMENDMENT AND SUPPLEMENT
TO APPLICATION FOR
POST-CONVICTION RELIEF**

Applicant, Melinda Jo Richmond, amends and supplements her Application for Post-Conviction Relief filed January 11, 2013 to include the following grounds and supporting facts:

RICHLAND CO. FILED
2013 JUL 29 PM 1:16
JEANETTE W. BRIDGE
C.C.P. & G.

I.

Appellate Counsel, Wanda H. Carter's failure to raise significant and obvious issues on appeal constitutes ineffective assistance of appellate counsel. Applicant was prejudiced when Appellate Counsel did not appeal the viable issues of: 1) whether the trial court erred in denying Applicant's Notice of Motion and Motion for New Trial filed on November 24, 2008, and 2) whether the trial court unduly prejudiced Applicant and contributed to ineffective assistance of counsel by compelling Applicant's Lead Trial Counsel to proceed with the trial while suffering from laryngitis and on medication.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). The Applicant must show that appellate counsel's performance was deficient and that she was prejudiced by the deficiency. Thrift v. State, 302 S.C. 535, 537 (1990). When there is a claim of ineffective assistance of counsel based upon failure to raise viable issues, the

SCANNED

court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir.).

Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Here, Applicant's Lead Trial Counsel's voice was significantly hindered throughout the trial as a result of suffering from severe laryngitis due to acute sinusitis. Trial was called on November 10, 2008. The Lead Trial Counsel's laryngitis began on November 11, 2008, where she could only whisper and had no tone of voice. On November 12, 2008, Lead Trial Counsel requested a mistrial, or in the alternative, a brief continuance to allow Lead Trial Counsel to see a doctor in order to see if her voice would return. The trial court denied all motions for a mistrial or a continuance.

Throughout the day on November 12, 2008, Lead Trial Counsel became more ill and felt necessary to see a doctor regarding her condition. Lead Trial Counsel requested a two hour recess to allow her to go to a doctor. The trial court denied the request and the trial proceeded for approximately two hours while Lead Trial Counsel attended a doctor's appointment. The doctor prescribed Lead Trial Counsel antibiotics, steroids and two days of rest for her voice. As a result of the diagnosis, Lead Trial Counsel moved for a mistrial or a continuance to allow her voice to recover. The trial court denied the motions. Lead Trial Counsel subsequently proceeded with the trial while on medication.

On November 14, 2008, Applicant was convicted for murder and was sentenced to forty (40) years in prison. The Lead Trial Counsel's significantly diminished voice unduly prejudiced the outcome of the case. The court reporter and bailiff stated they had difficulty hearing Lead Trial Counsel even though Lead Trial Counsel was standing directly in front of the witness stand. The Lead Trial Counsel's inaudible voice and use of medication prejudiced the outcome of the trial because trial counsel was unable to effectively communicate.

On November, 24, 2008, Applicant filed a post-trial Notice of Motion and Motion for New Trial based on Lead Trial Counsel's debilitating medical issues during trial. The trial court denied Applicant's motion by order dated March 6, 2013. Applicant filed a Notice of Appeal on December 9, 2009. However, Appellate Counsel failed to raise the issues of 1) whether the trial court erred in denying Applicant's Notice of Motion and Motion for New Trial, and 2) whether the trial court unduly prejudiced Applicant and contributed to ineffective assistance of counsel by compelling Applicant's Lead Trial Counsel to proceed with the trial while suffering from laryngitis and on medication. Appellate Counsel only raised the issue whether the trial court erred in failing to instruct the jury on self-defense. The Court of Appeals dismissed Applicant's appeal on July 11, 2012.

Appellate Counsel's performance was deficient and Applicant was unduly prejudiced by the deficiency. The issues concerning the trial court's denial of Applicant's Notice of Motion and Motion for New Trial, as well as the trial court's failure to grant a recess, continuance or new trial based on trial counsel's illness were significant and obvious issues that have been raised on appeal. Lead Trial Counsel acknowledged her debilitating illness at trial on numerous occasions and repeatedly requested continuances, a recess and/or a new trial, to no avail. The trial court acknowledged trial counsel's illness but decided to proceed with the trial, with or without Lead Trial Counsel.

The trial court's denial of Lead Trial Counsel's requests put Applicant at a significant disadvantage. Lead Trial Counsel was the most prepared person to defend Applicant. Applicant's Secondary Counsel were not as familiar with case as Lead Trial Counsel nor were Secondary Counsel prepared to question a majority of the witnesses. Lead Trial Counsel was essentially forced to defend Applicant while enduring a painful bout of laryngitis and on medication. As such, Lead Trial Counsel was unable to effectively assist applicant at trial. Lead Trial Counsel repeatedly preserved the issues concerning her illness for appeal. However,

Appellate Counsel failed to raise the issues on appeal. The issues concerning Lead Trial Counsel's illness and the trial court's failure to grant a recess, continuance or new trial were significant and obvious issues on appeal. Furthermore, the ignored issues were clearly stronger than those actually raised on appeal. Appellate Counsel's failure raise such viable issues on appeal constitute ineffective assistance of appellate counsel. Therefore, Applicant respectfully requests this court to grant a new trial.

II.

Trial Counsels' failure to call co-defendant, Bruce Thompson, constitutes an ineffective assistance of counsel. Applicant was of the information and belief that co-defendant's testimony would have revealed evidence in favor of Applicant. However, Applicant's Trial Counsels chose not to call co-defendant as a witness. As a result, Applicant was unduly prejudiced by Trial Counsels' failure to call co-defendant as a witness. Therefore, Applicant respectfully requests this court to grant a new trial.

III.

Applicant reserves the right to further amend the Application for Post Conviction Relief if relevant findings are made in discovery.

MERRITT, WEBB, WILSON & CARUSO, PLLC

By: 

William M. Saltzman

SC Bar No. 78373

E-Mail Address: wsaltzman@merrittwebb.com

1122 Lady Street, 4th Floor

Columbia, SC 29211

Tel: (803) 255-0655

Attorney for Melinda Jo Richmond

Columbia, South Carolina
July 29, 2013

CERTIFICATE OF SERVICE

I, the undersigned attorney of the law offices of Merritt, Wilson, Webb & Caruso, PLLC, attorney for Melinda Jo Richmond, do hereby certify that I have served all counsel in this action with a copy of the pleading specified below, by e-mailing and mailing a copy of the same by United States Mail, postage prepaid to the following addresses:

Pleadings: Amendment and Supplement to Application for Post-Conviction Relief

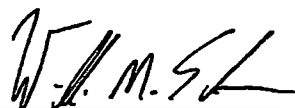
Counsel Served:

Mary S. Williams
 Assistant Attorney General
 PO Box 11549
 Columbia, South Carolina 29211-1549
 mwilliams2@scag.gov

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

2013 JUL 29 PM 1:16

RICHLAND COUNTY
 FILED



William M. Saltzman
 Attorney for Melinda Jo Richmond

July 29, 2013

State of South Carolina)	In the Court of Common Pleas
County of Richland)	Fifth Judicial Circuit
	2013-CP-40-0233

Melinda Richmond,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

April 1, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

William M. Saltzman, xsquire
Attorney for Applicant

J. Clayton Mitchell, III, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
P-1	Motion for New Trial		27
P-2	Anders Brief		63

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 1:42 p.m.)

THE COURT: Yes, sir.

MR. MITCHELL: Your Honor, may it please the Court?

THE COURT: Certainly.

MR. MITCHELL: This is *Melinda Richmond v. the State of South Carolina*, Case No. 2013-CP-40-00233. Ms. Richmond was indicted in July of 2007 for murder. She was represented on these charges by Ms. Carolyn Gripp -- who's now Ms. Sutherland -- Casey Secor, and Deon O'Neil. Ms. Richmond proceeded to trial on November 10th of 2008 before Judge Miller. She was convicted on November 14th and was sentenced to 40 years in prison.

Applicant filed a notice of appeal and was represented by Ms. Wanda Carter on appeal. And she submitted an -- a brief pursuant to *Anders*. The Court of Appeals then dismissed her appeal on -- in July of 2012.

Ms. Richmond filed this application for postconviction relief January 11th of 2013, where she's alleged various aspects of ineffective assistance of -- of both, I think, trial and appellate counsel. Mr. -- or -- William Saltzman is on the case now; was appointed to represent Ms. Richmond. He is present here today.

He's filed an amended application, I believe, maybe like a year or so ago, where he's going to go forward on

1 ineffective assistance of appellate counsel. I think
2 that's the issue we've narrowed it down to for the hearing
3 today.

4 And I will note that Ms. Richmond is present. And I
5 will turn it over to attorney at this time. Thank you.

6 THE COURT: All right. Be glad to hear from you, Mr.
7 Saltzman.

8 MR. SALTZMAN: May it please the Court? Just to
9 narrow down the issues where -- the issues are ineffective
10 trial counsel, as well as ineffective appellate counsel.

11 THE COURT: Oh, it's both? Okay. All right. All
12 right.

13 MR. SALTZMAN: Okay.

14 THE COURT: Do I have a file on that? Is ---

15 MR. MITCHELL: Yeah.

16 THE COURT: --- is that ---

17 MR. MITCHELL: That's it ---

18 THE COURT: --- the file?

19 MR. MITCHELL: --- right there, Your Honor.

20 THE COURT: All right. If both sides are ready to
21 proceed, then you may call your first witness.

22 MR. SALTZMAN: Okay. If -- if I may, I'd like to give
23 a brief opening.

24 THE COURT: Okay. That'd be great.

25 MR. SALTZMAN: November 14th, 2008, Ms. Richmond was

1 convicted of murder and sentenced to 40 years in prison.
2 During the trial her lead counsel, Ms. Carolyn Sutherland,
3 formerly Carolyn Gripp, suffered from laryngitis, which was
4 brought on by acute sinusitis. Ms. Sutherland continued to
5 try the case while enduring the laryngitis. She had no
6 tone -- tone of voice at all. The witnesses, the court
7 reporter, and the jury had difficulty hearing Ms.
8 Sutherland.

9 Ms. Sutherland's cocounsel on the case were not as
10 prepared to handle Ms. -- Ms. Sutherland's assignment, the
11 vital portions of the case. Motions were made for a
12 mistrial or continuance, as well as a posttrial motion for
13 a new trial. However, the trial court denied those
14 motions.

15 The issues concerning the trial court's decision to
16 proceed with the case -- with the case with Ms.
17 Sutherland's laryngitis, as well as the issues surrounding
18 Ms. Sutherland's -- Ms. Sutherland's laryngitis, were all
19 proved -- were all preserved for appeal. However,
20 appellate counsel failed to raise those issues in the
21 Anders brief.

22 And I today will show the Court how Ms. Richmond's
23 trial counsel, as well as her appellate counsel, were
24 ineffective in their representation.

25 I'd like -- the applicant would like to call the first

1 witness, Ms. Carolyn Sutherland ---

2 THE COURT: Okay.

3 MR. SALTZMAN: --- who I believe is in Memphis,
4 Tennessee. And we were going to call her via phone.

5 MR. MITCHELL: Your Honor, she just called me back
6 just two seconds ago. So I'm going to -- for the record,
7 we're going to proceed to take Ms. Sutherland's testimony
8 through telephone-conference means. We -- we both agreed
9 that this is a proper way to do this, since she has now
10 moved to Memphis and could not be available for this
11 hearing today. She's agreed to testify and is prepared to
12 do so.

13 THE COURT: Okay.

14 MR. MITCHELL: I'm going to call her now, and then I
15 think we'll approach the court reporter, if that makes it
16 any easier, with the speaker.

17 (Off the record briefly.)

18 THE COURT: All right. Anything while we're waiting
19 on that?

20 MR. MITCHELL: I think the -- we discussed this
21 earlier about how to swear Ms. Sutherland. And I -- I
22 think the parties can agree to have her sworn over the
23 phone. Is that suitable to you?

24 MR. SALTZMAN: The applicant consents to that. Yes.

25 THE COURT: All right.

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 8

1 (Off the record briefly.)

2 CAROLYN SUTHERLAND, having been first duly sworn,
3 testified telephonically as follows:

4 THE COURT: And I think the way we're going to proceed
5 now is the attorneys are going to begin asking you
6 questions.

7 DIRECT EXAMINATION

8 BY MR. SALTZMAN:

9 Q Okay, Ms. Sutherland. This is Attorney William
10 Saltzman. Now, are -- are you the same Carolyn Gripp from
11 the -- the -- Ms. Richmond's case?

12 A Yes, I am.

13 Q Okay. And where do you live now?

14 A Memphis, Tennessee.

15 Q Okay. Where'd you go to law school?

16 A University of South Carolina.

17 Q When did you become licensed to practice law in South
18 Carolina?

19 A 2005.

20 Q When'd you begin working for the Richland County
21 Public Defender's Office?

22 A I believe I started as a law clerk in 2003 and then as
23 an attorney in 2005 when I passed the bar.

24 Q Okay. What was your position at the public defender's
25 office?

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 9

1 A I was an assistant public defender

2 Q What types of cases did you handle?

3 A In the beginning I handled misdemeanor cases and
4 magistrate-level offenses and then worked my way up to the
5 highest-level offenses, including murder cases.

6 Q Okay. How many cases did you try before working on
7 Ms. Richmond's case?

8 A You know, I -- I knew you were going to ask that. I
9 -- I don't recall. I'm going to guess somewhere around
10 four or five felony cases and probably seven or eight
11 magistrate-level trials.

12 Q Okay. So when did you begin working on Ms. Richmond's
13 case?

14 A As soon as she was brought in for a bond hearing.

15 Q Okay. And do you recall what year that was?

16 A I don't. But it -- she had just been arrested. So
17 it's -- I'm going to say 2008.

18 Q Okay. Can we agree it was in 2007 -- May of 2007?

19 A That could -- it could be. Yes.

20 Q And how were you assigned to Ms. Richmond's case as
21 lead counsel?

22 A Doug Strickler assigned all cases in the office. And
23 as one of the more senior attorneys in the office, I was
24 assigned this case.

25 Q Okay. And what was your assignment in trying Ms.

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 10

1 Richmond's case?

2 A I was lead counsel.

3 Q Okay. How much time did you spend preparing on -- on
4 Ms. Richmond's case?

5 A Many, many hours. I met with her -- I think, in my
6 motion for a new trial, it said 14 times. I spent
7 countless hours with the investigator, which, you know,
8 reviewing discovery, drafting motions, talking to
9 witnesses; spoke with cocounsel.

10 I had gone through a couple of cocounsels before Deon
11 O'Neil. I spent a significant amount of time preparing for
12 her case. I knew it was going to trial.

13 Q Okay. Who assisted you in preparing for the trial?

14 A Deon O'Neil assisted me as second chair. Casey Secor
15 assisted me. We had a -- a couple of law clerks, I'm sure,
16 assisting, perhaps in some other research. I also had
17 Patty Rickburn as the investigator.

18 THE COURT REPORTER: I'm sorry. Who?

19 Q Oh, could you please repeat that -- those names?

20 A Deon O'Neil was the second chair. Attorney Casey
21 Secor, S-e-c-o-r, was also on the case. And we had two law
22 clerks, probably. I -- I don't recall who or what their
23 names were or what, if anything, they did. And then, I --
24 I had Patty Rickburn as the investigator.

25 Q Okay. Now, who -- who do you believe was the most

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 11

1 prepared person to defend Ms. Richmond?

2 A I was.

3 Q Okay. And why do you say that?

4 A Because I had her case from the get-go. I met with
5 her many times. We had pored over discovery together. We
6 talked about witnesses. We talked about motions. We
7 discussed every detail of her case.

8 I don't believe that any of the other counsel met her
9 prior to trial. Or if they did, it probably was a week or
10 so before trial.

11 Q All right. So when did Ms. Richmond's trial begin?

12 A In November of 2009, I believe.

13 Q Okay. I believe it was November of 2008. Do you
14 recall?

15 A I'm sorry. 2008. Yes. I've got my years advanced
16 one -- one more year.

17 Q Okay. So how -- how did you feel physically leading
18 up to the trial?

19 A I had the flu the week before the trial. And then
20 that Monday I felt better; I was recovering. And then, I
21 think, Tuesday was a holiday. And on that day I lost my
22 voice. And then from there on, it -- it went downhill.

23 Q Okay. And -- and what do you mean by -- by "going
24 downhill"? How -- how did you feel with -- as far as your
25 voice is concerned?

DIRECT EXAMINATION BY MR. SALTZMAN - CAROLYN SUTHERLAND 12

1 A I had a very sore voice I -- a sore throat. It was
2 very red and raw. And I had a lot of drainage. I had a
3 sinus infection at the time. I could not speak. It hurt
4 to speak.

5 Q Okay.

6 A I was -- I don't know if you want more details or not.

7 Q Okay. Well, how -- how painful was it?

8 A It was not that painful if I didn't speak. Speaking
9 was painful, and every day on, it became more painful.

10 Q Okay.

11 A Yeah. I ---

12 Q So ---

13 A --- I -- I mean, not to be dramatic, but I -- it -- it
14 did bring me to tears at the end of the day.

15 Q Okay. Have -- have you had this type of condition
16 before?

17 A I had had laryngitis as a result of sinus infections
18 before. Yes. I've never had laryngitis for that long a
19 period. It's usually -- there's an -- it goes away in
20 about a day or two.

21 Q And so how did you feel when court resumed on November
22 the 12th, 2008?

23 A I felt poorly.

24 Q Okay. Was it the same condition? Was it ---

25 A Yes. All that sore throat -- that's all describing