

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

William H. Seals, Circuit Court Judge

MOKEIA HAMMOND,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000074

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 9-13, 2009	1
APPLICATION FOR POST-CONVICTION RELIEF	766
RETURN.....	773
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 19, 2017	778
ORDER OF DISMISSAL.....	811
INDICTMENTS	821

Rhonda Nobles - Direct by Mr. Richardson

486

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

3 A It is.

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

7 A Yes, sir.

8 Q And how do you know this?

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

10 Q And how long have you been doing this?

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

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

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

18 Q Ever had any trouble operating the device?

19 A No, sir.

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

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

23 Q And how do you recognize that item?

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

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

1 A I have.

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

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

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

8 A Yes, sir.

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

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

11 Q And who made these copies?

12 A I did.

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

15 THE COURT: Any objection?

16 MR. BARR: No objections.

17 MR. HAZZARD: No objections, Your Honor.

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

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

22 MR. RICHARDSON: Permission to publish.

23 THE COURT: All right.

24 BY MR. RICHARDSON:

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

Rhonda Nobles - Cross by Mr. Barr

488

1 A Yes, sir.

2 Q With particular attention to track number seven?

3 A Yes, sir.

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

6 BY MR. RICHARDSON:

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

9 A It did.

10 Q In the evening?

11 A Yes, sir.

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

14 A Yes, sir, it is.

15 Q Officer Nobles, thank you for your cooperation.

16 A Thank you.

17 Q Please answer any questions the Defense may have.

18 CROSS EXAMINATION

19 BY MR. BARR:

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

23 A Yes, sir.

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

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

3 A Yes, sir.

4 Q All right.

5 MR. BARR: No further questions.

6 THE COURT: Mr. Hazzard.

7 MR. HAZZARD: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. HAZZARD:

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

13 A Yes, sir.

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

16 A No, sir.

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

18 MR. HAZZARD: No further questions.

19 A Thank you.

20 THE COURT: Any redirect?

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

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

24 THE COURT: All right, any objections?

25 MR. BARR: No objection.

Raul Denis - Direct by Mr. Richardson

490

1 MR. HAZZARD: No objection, Your Honor.

2 THE COURT: All right, thank you for being with us.

3 You're free to go.

4 A Thank you.

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

6 witness.

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

8 Whereupon, Raul Denis was called to the stand, duly

9 sworn by the Clerk and testified as follows:

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

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

14 DIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q Good afternoon, Lieutenant Denis?

17 A Hello, how are you?

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

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

22 Q Okay, and currently what are your duties?

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

1 was a sergeant over a squad.

2 Q That was back in April of 2007?

3 A Yes, sir.

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

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

9 Q Would that area include Murrells Inlet mall?

10 A Yes, sir, it would.

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

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

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

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

21 Q So, you oversee the reports?

22 A Yes, sir.

23 Q Does that mean you review the report?

24 A Yes, sir, we do.

25 Q What type of reports?

Raul Denis - Direct by Mr. Richardson

492

1 A Every one of them.

2 Q Incident report?

3 A Exactly, yes.

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

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

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

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

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

15 A Yes, sir, there was.

16 Q And who was assigned to assist shift supervisors?

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

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

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

7 A Yes, sir.

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

10 A Yes, I did.

11 Q Did you bring some paperwork with you today?

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

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

15 THE COURT: All right.

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

17 THE COURT: All right.

18 BY MR. RICHARDSON:

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

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

Raul Denis - Direct by Mr. Richardson

494

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

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

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

7 A Yes, sir, it is.

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

10 THE COURT: Any objection?

11 MR. BARR: Without objection.

12 MR. HAZZARD: Without objection, Your Honor.

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

15 MR. RICHARDSON: And publish.

16 THE COURT: All right.

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

19 BY MR. RICHARDSON:

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

23 A A stolen car, a stolen vehicle.

24 Q Is that vehicle identified in any way?

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

1 specifically described as a 2007 Ford Fusion silver in color
2 and it's also identified as a rental car from the Hertz
3 Company:

4 Q And who's the complainant in that report?

5 A Martha Niles from Salters, South Carolina, it looks
6 like.

7 Q Do you have her address?

8 A Yes, sir, it shows [REDACTED] and it describes
9 her as a black female 55 years of age.

10 Q Is that in Williamsburg County?

11 A I believe Salters is, yes, sir.

12 Q And who's the listed victim on there?

13 A The Hertz Rental Company.

14 Q So, it would be a rental car she's reported?

15 A Right.

16 Q And where did she allege this theft took place?

17 A According to the report she alleges that it was stolen
18 from the mall down in Murrells Inlet, which is Inlet Square
19 Mall and she claims she parked in front of the Stein Mart.

20 Q Was there an allegation as to when this stuff took
21 place?

22 A Yes, sir, according to the report it was stolen at six
23 o'clock on the 9th of April, 2007.

24 Q And to your knowledge was this vehicle ever recovered?

25 A Yes, sir, that's how I became involved in this. Officer

Raul Denis - Cross by Mr. Barr

496

1 Negrón had called me on the incident because it was at the
2 end of the shift and, you know, advised me that this was
3 taking place and that this was the vehicle that was used in
4 the homicide that occurred in Myrtle Beach which was being
5 investigated. Obviously that left me in a position to figure
6 out what had happened and what we needed to do with this
7 report. I called my supervisors from the investigations
8 division and found out that our detectives were already
9 working with the Myrtle Beach detectives, namely a Detective
10 Cox that works for our department. So, I called him and I
11 said, "Hey, this, this is what's going on. We have Ms.
12 Niles trying to report this car stolen," and basically he
13 told me don't do anything, "Just fax a copy of the report to
14 the Myrtle Beach Police Department and I'll go up there and
15 get it," and that's what I did.

16 Q And that is the extent of your knowledge in this
17 matter?

18 A Yes, sir.

19 Q Lieutenant Denis, thank you. If you'll just answer any
20 questions Mr. Barr, Mr. Hazzard may have.

21 CROSS EXAMINATION

22 BY MR. BARR:

23 Q Lieutenant, do you have a recollection as to whether or
24 not this report was called in or whether or not there was
25 actually an appearance at the department to make this report?

1 A No, sir, I don't specifically and the report doesn't
2 indicate one way or another whether it was taken over the
3 phone or in person which would lead me to think it was taken
4 in person but I couldn't say either way.

5 Q But there's no indication on the report ---

6 A No, sir, not ---

7 Q --- as to whether or not it was called in?

8 A --- not specifically, no.

9 Q Okay, all right. Thank you so much.

10 CROSS EXAMINATION (By Mr. Hazzard)

11 Q Okay, sir, does Mokeia Hammond's name appear anywhere on
12 that report?

13 A No, sir.

14 Q Okay, and your involvement do you have any indication
15 that Mokeia Hammond ever possessed a gun?

16 A No, sir, I've never heard Ms. Hammond's name until you
17 mentioned it.

18 Q Okay, so, you have no indication that Mokeia Hammond
19 ever shot anyone?

20 A No, sir.

21 Q No information in this investigation indicating that
22 Mokeia Hammond ever robbed anyone?

23 A In this investigation is that your question?

24 Q Yes.

25 A I'm not familiar with the investigation, sir.

Raul Denis - Cross by Mr. Hazzard

498

1 Q Okay, okay.

2 A My extent was this report and that's it.

3 Q Okay, so, no information whatsoever regarding Mokeia
4 Hammond; right?

5 A No, sir, my involvement in this case is just this
6 report.

7 Q Okay, well, let's not leave it like that. You got any
8 involvement with her in any other report?

9 A No, sir, not to my knowledge.

10 Q All right, just wanted to make sure.

11 MR. HAZZARD: No further questions.

12 THE COURT: Anything on redirect?

13 MR. RICHARDSON: No, sir, Your Honor. I'd just ask that
14 Lieutenant Denis may return to his duties, be excused.

15 THE COURT: Any objection?

16 MR. BARR: No objection.

17 MR. HAZZARD: No objection.

18 THE COURT: All right, Lieutenant Denis, you're free
19 to go. Thank you very much for being here.

20 A Thank you, Your Honor.

21 THE COURT: Any more today?

22 MS. ELDER: No, Your Honor, that would be the
23 witnesses that we have available today.

24 THE COURT: All right.

25 MS. ELDER: Just start back at - we would ask the

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

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

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

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

19 THE COURT: Anything before we break?

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

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

22 THE COURT: Yeah, come on up.

23 (Whereupon, a bench conference was held.)

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

1 OFF THE RECORD

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

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

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

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

8 THE COURT: Anything from the Defense?

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

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

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

23 MS. ELDER: No, Your Honor.

24 MR. HAZZARD: Okay.

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

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

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

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

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

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

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

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

1 certainly work around her schedule.

2 MR. HAZZARD: Okay.

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

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

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

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

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

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

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

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

1 murder?

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

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

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

10 MR. RICHARDSON: Might be a capital case.

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

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

15 MR. HAZZARD: Okay.

16 THE COURT: All right, anything further?

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

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

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

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

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

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

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

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

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

25 DIRECT EXAMINATION

1 BY MS. ELDER:

2 Q Agent Leisy, where are you employed?

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

5 Q And in what capacity?

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

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

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

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

14 A Yes, I have.

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

16 A I have.

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

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

21 Q And how long have you been doing this?

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

Catherine Leisy - Direct by Ms. Elder

506

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

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

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

11 A Leisy.

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

14 THE COURT: Any questions or objections?

15 MR. BARR: No objection.

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

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

20 BY MS. ELDER:

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

25 A Yes, I did.

- 1 Q And did you perform analysis on those items?
- 2 A I did.
- 3 Q I'm going to hand you three items. State's Exhibit 86,
4 85 and 90. Are those the items that you received and
5 analyzed?
- 6 A Yes, they are.
- 7 Q And just briefly tell me when you receive something in
8 your lab how - do you mark it in any special way to identify
9 that you're the one who used it, manipulated, analyzed it?
- 10 A The containers that the items arrive in are given my
11 initials and are also given the specific case number and item
12 numbers that SLED has assigned to these items as identifying
13 marks.
- 14 Q And do you do those in order to protect the sample?
- 15 A That's correct so that it can be later identified as
16 belonging to this particular case.
- 17 Q And if any samples that you receive appear to be
18 tampered with would you process it?
- 19 A No, I would not. If the outside seal of the container
20 were tampered with or had not been sealed properly the item
21 would not be processed.
- 22 Q And did you issue a report after analyzing those three
23 items that I just handed you?
- 24 A Yes, I did.
- 25 Q And do you have that report with you?

1 A I do.

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

4 A Yes, it would.

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

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

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

22 A Yes, I did.

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

24 A I did.

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

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

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

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

22 A That's correct.

23 Q Help explain that to me a little bit.

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

Catherine Leisy - Direct by Ms. Elder

510

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

8 Q But you can exclude people?

9 A Correct, it is possible to exclude.

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

16 A I did.

17 Q And what were your findings in that regard?

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

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

25 A Yes, I did.

1 Q And what were your findings?

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

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

12 A Yes, I did.

13 Q And what were your findings?

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

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

18 A That is correct.

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

23 A Yes, I did.

24 Q And what were your findings?

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

Catherine Leisy - Direct by Ms. Elder

512

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

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

9 A I did.

10 Q And what were your findings?

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

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

23 A Yes, I did.

24 Q And what were your findings?

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

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

3 Q And what were the possibilities on that?

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

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

9 THE COURT: All right, Mr. Barr.

10 CROSS EXAMINATION

11 BY MR. BARR:

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

15 A No, there were other items submitted.

16 Q Okay, does the report contain that information?

17 A Yes, it does.

18 Q Okay, okay.

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

20 THE COURT: All right, Mr. Hazzard.

21 MR. HAZZARD: Very briefly, Your Honor.

22 CROSS EXAMINATION

23 BY MR. HAZZARD:

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

25 A Good morning, sir.

Catherine Leisy - Cross by Mr. Hazzard

514

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

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

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

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

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

18 A That is correct.

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

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

1 Q All right, thank you very much.

2 THE COURT: Anything on redirect?

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

4 REDIRECT EXAMINATION

5 BY MS. ELDER:

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

8 A Yes, I did.

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

12 A That is correct.

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

15 A He was excluded, yes.

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

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

18 A Thank you, sir.

19 THE COURT: Thank you.

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

22 THE COURT: Any objection?

23 MR. BARR: No objections.

24 MR. HAZZARD: No objections, Your Honor.

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

1 much for being here.

2 A Thank you.

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

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

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

13 MS. ELDER: Thank you, Your Honor.

14 THE COURT: Thank you.

15 OFF THE RECORD

16 (On the record.)

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

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

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

22 THE COURT: Anything from the Defense?

23 MR. BARR: No, Your Honor.

24 MR. HAZZARD: No, Your Honor.

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

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

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

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

7 THE COURT: All right.

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

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

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

14 DIRECT EXAMINATION

15 BY MS. ELDER:

16 Q Dr. Presnell, where are you employed?

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

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

23 THE COURT: Any questions?

24 MR. BARR: That is correct, Your Honor.

25 MR. HAZZARD: So stipulated, Your Honor.

Susan Erin Presnell - Direct by Ms. Elder

518

1 THE COURT: All right, I find this witness to be
2 qualified as an expert in the field of forensic pathology.

3 MS. ELDER: Thank you, Your Honor.

4 BY MS. ELDER:

5 Q Now, Dr. Presnell, you indicated that you're a forensic
6 pathologist at MUSC?

7 A Yes.

8 Q And what do you do as a forensic pathologist?

9 A Well, like I kind of always explain, everyone is getting
10 a little more familiar with forensic pathology with the CSI
11 shows and all, but forensic pathology is actually a
12 subspecialty of the broad field pathology, which is the study
13 of disease, and most pathologists actually examine tissues
14 that are taken off by another physician like say a skin
15 biopsy or a breast biopsy or if somebody has a surgery and
16 they remove a portion of an organ that tissue goes to the
17 pathologist. They look at it, look under the microscope,
18 diagnose disease like it's cancer or it's not cancer.

19 Forensic pathology is a subspecialty of that where we're not
20 looking at a single piece of tissue. We're looking at a
21 whole, a whole person, a decedent, somebody that's passed on.
22 The procedure that we examine them is, of course, the
23 autopsy. We look externally and internally. We look for
24 disease, but in addition to that, we also look for traumas
25 and interpret traumas and ultimately come up with the cause

1 and manner of death.

2 Q And did your lab have an opportunity to perform an
3 autopsy on the victim, James Michael Salter?

4 A Yes, an autopsy was performed on Mr. Salter on
5 April 10th, 2007.

6 Q And was a report generated as a result of that autopsy?

7 A Yes.

8 Q And do you have a copy of that with you?

9 A I do.

10 Q And would it assist you to refer to that as I ask you
11 your questions?

12 A Yes, it would.

13 Q I want to go to the final diagnosis. I believe that is
14 the second to the last page and could you go through those,
15 this diagnosis or the findings of the autopsy?

16 A Well, again, this autopsy was performed in 2007. I
17 mean, it was performed by a colleague and I have - who has
18 since moved to Michigan. I've reviewed the materials and the
19 pictures and the entire report, and basically what this case
20 boils down to is that there was a single gunshot wound. It
21 entered into the right side of his chest. It passed between
22 rib number five and six and also caused a fracture of rib
23 number six and it went into the chest, went through the right
24 lung, went up to the pulmonary artery. The pulmonary artery
25 is the main vessel leaving the heart. All the blood coming

Susan Erin Presnell - Direct by Ms. Elder

520

1 back to the heart leaves through the pulmonary artery to go
2 to the lungs to be oxygenated. So, the bullet hit the right
3 pulmonary artery, hit a rib and kind of bounced back into the
4 right lung where the bullet was recovered. Because it struck
5 the pulmonary artery there was a lot - there was massive
6 bleeding, basically exsanguination or bleeding to that and
7 bleeding into the chest cavity and ultimately caused his
8 death.

9 Q Were there any other injuries noted?

10 A He had - well, he had an abrasion or a scratch on his
11 knee and he also had two small lacerations on his lower lip
12 which may or may not - and a laceration is caused by some
13 type of blunt injury causing the skin to split. Now, that
14 may or may not have been a blunt injury from some altercation
15 or it may have been through intubation. He had a lot of
16 resuscitative measures that were attempted on him and
17 including intubation where they put the endo-trach - a tube
18 down into your airway to try to breathe for you and
19 occasionally you get some oral injury with that. So, other
20 than the couple of scratches on the left knee and the two
21 small lacerations on the lower lip the only other injury was
22 the gunshot wound.

23 Q Okay, and when you were indicating the placement of the
24 wound I just want to make sure. I don't know if they were
25 able to see it. Could you stand and point that out?

1 A Approximately in the mid right chest on the side.

2 Q It was on the side?

3 A Yes, yes.

4 Q And you indicated that a projectile was removed from the
5 autopsy; is that correct?

6 A Yes, ma'am.

7 Q Okay, and was Dr. Caplan employed at MUSC at one time?

8 A Dr. Caplan was the pathologist at that time.

9 Q Okay, Doctor, like you'd to take a look at State's
10 Exhibit 106. There's a sticker on there. Is that a normal
11 sticker that would come from your lab?

12 A Yes, this is the autopsy sticker with our - with the
13 name and the autopsy number and it's also inscribed bullet,
14 yes.

15 MS. ELDER: One moment, Your Honor?

16 THE COURT: All right.

17 BY MS. ELDER:

18 Q In part of an autopsy do you do a tox report as well?

19 A Yes, we do. We collect blood and urine if available to
20 run a screen for drugs and alcohol.

21 Q And did you make any findings in reference to that in
22 regards to this victim?

23 A Yes, the toxicology lab found THC which is marijuana as
24 well as some resuscitative drugs.

25 Q Nothing to the level that would cause his death?

Susan Erin Presnell - Cross by Mr. Hazzard

522

1 A No.

2 Q And was there a conclusion made as to the cause of
3 death?

4 A The cause of death was the gunshot wound to the right
5 side of the chest.

6 Q And was there a conclusion as to the manner of death?

7 A The manner of death is homicide.

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

9 THE COURT: All right, Mr. Barr.

10 MR. BARR: I have no questions of this witness, Your
11 Honor.

12 THE COURT: All right, Mr. Hazzard.

13 CROSS EXAMINATION

14 BY MR. HAZZARD:

15 Q Good morning, ma'am.

16 A Good morning.

17 Q Is there anything in the report you reviewed or any
18 investigation that you did that would indicate that Mokeia
19 Hammond in any way, shape or form did anything that led to
20 the death of James Salter?

21 A No, I'm not familiar with any of the case history.

22 Q Okay. Thank you.

23 MR. HAZZARD: No further questions.

24 THE COURT: Anything on redirect?

25 MS. ELDER: No, Your Honor. We would ask that Dr.

1 Presnell be excused at this time.

2 THE COURT: Any objection?

3 MR. BARR: Without objection.

4 MR. HAZZARD: No objection.

5 A Thank you.

6 THE COURT: All right, Dr. Presnell, you're excused.
7 Thank you very much for being here. All right, you can call
8 your next witness.

9 MS. ELDER: Your Honor, at this time the State of
10 South Carolina would rest.

11 THE COURT: All right, all right, ladies and
12 gentlemen of the jury, the State has presented its case in
13 chief in the trial of this case and now is the portion in the
14 trial in which I must take up some legal matters. It's
15 procedural legal matters that I need to take up with the
16 attorneys. So, I'm going to excuse you back to the jury room
17 while we deal with these matters of law. As I said before,
18 it's not that we're hiding anything from you. It's just that
19 when we discuss matters of law it often requires us to
20 discuss factual issues and we don't want anything that the
21 attorneys or I may say to influence you in determining what
22 the facts of this case are because you and you alone are the
23 factual finders of this case. So, I'm going to excuse you
24 back to the jury room while we discuss these legal matters
25 and I'll bring you back out in just a minute. Thank you very

Motions

524

1 much.

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

4 THE COURT: All right, anything further from the
5 State?

6 MS. ELDER: No, sir, Your Honor, and in reference to
7 the Defendants testifying they have no record.

8 THE COURT: All right, anything from the Defense?

9 MR. BARR: Your Honor, at this time on behalf of
10 Defendant Niles, we would ask the Court grant a directed
11 verdict based on the fact that the State has not met the
12 burden of proving beyond a reasonable doubt to the point that
13 the jury could reasonably believe that the Defendant is
14 guilty of murder or armed robbery or use of a weapon during
15 the commission of a violent crime. Your Honor, at best the
16 State has presented one witness who says that he may have
17 been present. He cannot or did not assert that he actually
18 saw the Defendant commit a wrongful killing and that there
19 was any malice aforethought. I don't think he testified to
20 the extent that a jury could find that Mr. Niles robbed or
21 with a weapon robbed Mr. Salter. I don't think that it would
22 be a reasonable finding also that at any point that Mr. Niles
23 engaged in any kind of plan or scheme in order to accomplish
24 the killing of Mr. Salter, and for those reasons, Your Honor,
25 we feel as if the State's case, taken in the best possible

1 light to them, would not present a jury question.

2 THE COURT: All right, your motion is noted. I deny
3 it. I think that there is enough testimony to go to the jury
4 on that part.

5 MR. BARR: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. HAZZARD: Your Honor, at this time make a motion
8 for a directed verdict on behalf of Mokeia Hammond. As the
9 Court has heard, Your Honor, there is no witness that the
10 State has presented that has indicated in any way, shape or
11 form that Mokeia Hammond directly committed any of the crimes
12 for which she is charged, no witness indicated that she
13 directly robbed anyone while armed, no witness testified that
14 she directly possessed a handgun, no witness indicates or
15 testifies that she directly fired a shot that led to the
16 death of James Salter and that being an unlawful killing.
17 That would then bring us to the issue, therefore, of
18 accomplice liability, okay, where the felony murder rule or
19 the hand of one is the hand of all. I would submit that then
20 is the only way that the State could have these charges, you
21 know, go forward. Well, in looking at the testimony the only
22 witness that I recall from the State who gives any testimony
23 whatsoever regarding what occurred that day among the three
24 Codefendants is Ervin Moore and what I recall Ervin Moore
25 saying is that at some point in time he heard Rich Niles say,

1 "I'm going to hit a lick," or something to that effect. I
2 do not recall hearing any testimony indicating that Mokeia
3 Hammond heard that statement. I do not remember hearing any
4 testimony that would indicate that Mokeia Hammond even knew
5 whatever that terminology or that slang is supposed to mean.
6 I do not recall hearing any testimony indicating that as a
7 result of hearing this slang phraseology that Mokeia Hammond
8 in any way, shape, or form indicated that she was and knew of
9 a plan to commit a robbery or indicated that she was part of
10 a plan to commit a robbery. In fact, from what I recall
11 hearing, the light most favorable, taken in the light most
12 favorable to the State the only evidence is Ervin Moore says
13 at some point Rich Niles said, "I'm going to hit a lick,"
14 no indication whatsoever, A, as to whether Mokeia Hammond
15 heard those words, B, whether she would have any idea what
16 those words meant because I do not believe that we will be
17 involved with the conceit that every member of a certain
18 ethnic group happens to know and recognize any gutter street
19 slang that is thrown out there, but I don't personally recall
20 hearing anything from Ervin Moore or any other witness
21 indicating that Mokeia Hammond specifically knew of any plan
22 to rob anyone.

23 Now, as to the issue of them going there for the purpose
24 of committing a drug deal, as this Court is well aware, Your
25 Honor, based on Gore versus Leeke, the felony murder rule

1 does not apply to matters that are mala prohibita, which the
2 transaction of drugs is illegal because the State says it is
3 illegal. It is not a mala in se crime, something such as
4 stealing or robbing or killing, okay, and Gore versus Leeke
5 very clearly states that in order for the felony murder rule
6 to apply the action that the accomplice is involved in has to
7 be a knowing accomplice or action regarding a mala in se.
8 So, our point is if they cannot show and we submit they have
9 not by any stretch of the imagination shown that Mokeia
10 Hammond knew of a plan to rob anyone. Then the fact that she
11 was merely there for the purpose of a drug transaction
12 without more does not bring this into something that will
13 pass a directed verdict, Your Honor.

14 THE COURT: All right, let me hear from the State on
15 that.

16 MR. RICHARDSON: Your Honor, the State is not moving
17 forward on felony murder based on the mere drug transaction.
18 The statements, the testimony that was taken was that Richard
19 Niles sits beside Mokeia Hammond on the cell phone. Ervin
20 Moore who is in the backseat does hear him order the
21 marijuana and then say to the car in general, ``We're going
22 to, we, we're going to hit a lick. We're going to do a
23 robbery.'' That was the testimony, Your Honor. Ms. Hammond
24 is there as the getaway driver. This was not about a drug
25 transaction. The pretense was a drug transaction but what,

Motions

528

1 what was planned was the robbery. The shoebox is upfront
2 that has the pistol in it. Ms. Hammond lives with Mr. Niles.
3 That's evidenced from the, from the mail that's at the house,
4 the address that's on the mail that's found in the car, the
5 same address as Mr. Niles, same address as Mr. Niles' mother.
6 Your Honor, we have a classic case of the hand of one, hand
7 of all here, as the charge states. While only one hand pulls
8 the trigger, while only one bullet is used, only one victim,
9 both Defendants can be equally guilty of the murder, of the
10 homicide, when they're engaged in an act. There is clear
11 evidence that there was a common plan to do a robbery. We've
12 had a Defendant say he knew about it, he was in the car, he
13 wasn't even the getaway driver. His job was even more
14 minute. He was just to get out and check to see if the
15 property was there. Mokeia Hammond sat behind the wheel
16 ready to drive away and she did just that. She did her job.
17 She's involved in the drug business with Mr. Niles earlier in
18 the day. Your Honor, they don't act alone. They're always
19 acting together. They're acting in the drug business.
20 They're acting in ordering these drugs together. They're
21 acting in this drug robbery that turns into a felony murder,
22 Your Honor.

23 THE COURT: All right.

24 MR. RICHARDSON: And the State is - she knows Ervin, she
25 knows that Mr. Moore is the lookout man, going to check to

1 see the drugs there, and the Court, in the light most
2 favorable to the State, is, is - should be concerned with the
3 existence of any evidence, not about its weight, Your Honor.

4 THE COURT: All right, all right, Mr. Hazzard, I note
5 your motion. I'm going to deny the motion for a directed
6 verdict. Anything else?

7 MR. BARR: Your Honor, ask at this time prior to the
8 jury coming back in that the Court on the record queries Mr.
9 Niles as to his rights as a Defendant to testify.

10 THE COURT: All right, yeah, I was going to do both
11 Mr. Niles and Ms. Hammond. If I could get both of you to
12 stand, please.

13 (Complies with request.)

14 THE COURT: If I could get you to raise your right
15 hand.

16 (Mr. Niles and Ms. Hammond sworn by Court.)

17 THE COURT: All right, sir, and your full name.

18 MR. NILES: Richard Bill Niles, Jr.

19 THE COURT: All right, and ma'am?

20 MS. HAMMOND: Mokeia Shanell [spelled phonetically]
21 Hammond.

22 THE COURT: All right, you can put your hands down
23 now.

24 All right, Mr. Niles, Ms. Hammond, at this time I'm
25 going to explain to you your rights as Defendants in this

Motions

530

1 case and whether or not to testify or not testify in this
2 case. If you do not understand anything I say, please let me
3 know. If you want me to explain anything in more detail
4 please let me know. If you want to take a break and speak
5 with your attorney please let me know. Do you understand
6 that so far, Mr. Niles?

7 MR. NILES: Yes, sir.

8 THE COURT: All right, Ms. Hammond?

9 MS. HAMMOND: Yes, sir.

10 THE COURT: All right, now, we've now reached the
11 stage in the trial where you may present your defense. You
12 have the right to claim the protection given to you by the
13 Fifth Amendment of the United States Constitution. This
14 amendment states in part that no person shall be compelled in
15 any criminal case to be a witness against himself. This
16 means that you cannot be required to testify in this case.
17 You have the right to testify on your own behalf. However,
18 no one can make you testify. This is a personal right and no
19 one can waive this right except for you. If you decide to
20 testify you will be subject to the same rules that govern
21 other witnesses and you may be examined and cross-examined on
22 any relevant issue in this case. In addition, if you have
23 any convictions involving dishonesty or false statement or
24 for crimes punishable by imprisonment for more than one year
25 and this Court determines that the probative value of

1 admitting this evidence outweighs its prejudicial effect to
2 you, the Solicitor will be able to introduce your record to
3 attack your credibility. If you decide to testify this
4 decision on your part must be freely, voluntarily and
5 intelligently made with knowledge of the protections given to
6 you by the Fifth Amendment and the consequences of your
7 decision to testify. If you decide not to testify I will
8 instruct the jurors that they cannot give the fact that you
9 did not testify any consideration whatsoever and that there
10 is to be absolutely no prejudice to you because you did not
11 testify. It is left entirely up to you whether or not you
12 testify. You may talk with your attorney, your family and
13 friends or anyone else, but the final decision will be left
14 entirely up to you. Do you understand what I have explained
15 to you thus far? Mr. Niles?

16 MR. NILES: Yes, sir.

17 THE COURT: And do you understand what I've explained
18 to you thus far, Ms. Hammond?

19 MS. HAMMOND: Yes, sir.

20 THE COURT: All right, do either of you have any
21 questions that you want to ask me, Mr. Niles?

22 MR. NILES: No, I do not, sir.

23 THE COURT: Do you, Ms. Hammond?

24 MS. HAMMOND: No.

25 THE COURT: Do either of you want to discuss this

Motions

532

1 matter with your attorney or with any family or friends at
2 this time, Mr. Niles?

3 MR. NILES: No, I do not, sir.

4 THE COURT: Ms. Hammond?

5 MS. HAMMOND: No, Sir.

6 THE COURT: All right, Mr. Niles, do you wish to
7 testify in this case?

8 MR. NILES: Yes, I do, sir.

9 THE COURT: All right, Ms. Hammond, do you wish to
10 testify in this case?

11 MS. HAMMOND: No, sir.

12 THE COURT: All right, is there anything further,
13 Mr. Barr, that you want placed on the record?

14 MR. BARR: Nothing, Your Honor.

15 THE COURT: All right, is there anything that you
16 want placed on the record?

17 MR. HAZZARD: Note the Defendant's objection to the
18 denial of the directed verdict motion for the purposes of
19 appeal.

20 THE COURT: All right. All right, thank you very
21 much. You may be seated. All right, anything from the State
22 before we call the jury back in?

23 MS. ELDER: Nothing from the State, Your Honor.

24 THE COURT: Anything from the Defendants? Mr. Barr,
25 anything, anything before we bring the jury back in?

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

2 THE COURT: Anything from the Defendant Hammond?

3 MR. HAZZARD: No, Your Honor.

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

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

7 THE COURT: All right, ladies and gentlemen, welcome
8 back. Mr. Barr, you can call your first witness.

9 MR. BARR: Your Honor, the Defense calls Salina
10 Mann.

11 THE COURT: All right.

12 Whereupon, Salina Mann was called to the stand, duly
13 sworn by the clerk and testified as follows:

14 THE CLERK: Thank you. Have a seat. Please state
15 your full name and spell your last name for the Court.

16 MS. MANN: Salina Mann, last name is M-A-N-N.

17 DIRECT EXAMINATION

18 BY MR. BARR:

19 Q Ms. Mann, what do you do for a living?

20 A Police officer.

21 Q Okay, all right, now, where do you work?

22 A Currently at Conway Police Department.

23 Q Okay, were you formerly employed with the Myrtle Beach
24 Police Department?

25 A Yes, I was.

1 Q Did you participate in the investigation of the incident
2 involving James Salter?

3 A Yes, I did.

4 Q What role did you play in that investigation?

5 A I was one of the investigators assigned to assist with
6 the case.

7 Q Okay, now, as a part of this investigation did you at
8 some point interview the roommates of James Salter?

9 A Yes, I did.

10 Q You did?

11 A Uh-huh.

12 Q Did you interview a Sean Lundy in connection with this
13 incident?

14 A Yes.

15 Q Okay, as a part of that interview or did you do the
16 interview alone?

17 A No, I had another detective with me.

18 Q Who was that detective?

19 A I believe Mike Curry.

20 Q Okay, and Mike Curry was also one of the chief
21 investigators in this case?

22 A Yes.

23 Q Okay, now, as a part of that investigation did you
24 question Mr. Lundy about being at the Best Buy parking lot?

25 A Yes, I did.

1 Q Okay, did he indicate to you that ---

2 MR. RICHARDSON: Objection, Your Honor. He's asking for
3 hearsay now, did he indicate.

4 THE COURT: All right.

5 Q Did you determine, did you determine whether or not he
6 was there at the Best Buy parking lot?

7 A Yes.

8 Q During this incident?

9 A Yes.

10 Q Okay, and that was at the date and time that this
11 incident allegedly occurred?

12 A Yes.

13 Q Okay. Thank you so much.

14 THE COURT: Mr. Hazzard.

15 CROSS EXAMINATION

16 BY MR. HAZZARD:

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

18 A Good. How are you?

19 Q I'm doing all right. Now, as a part of your
20 investigation and as a result of your investigation did you
21 make a determination or find information indicating the type
22 of vehicle that Mr. Lundy was operating?

23 A Yes.

24 Q And what type of vehicle did your investigation
25 indicate?

1 A A red Durango.

2 Q A red Durango, an SUV type vehicle?

3 A A Durango would be classified as an SUV, red in color.

4 Q Okay, and your investigation indicated that Mr. Lundy

5 and the Durango, the SUV were present in the parking lot at

6 the time of the incident; correct?

7 A Yes.

8 Q All right, thank you. Please answer any questions the

9 State may have.

10 MS. ELDER: Just a moment, Your Honor.

11 THE COURT: All right.

12 MR. RICHARDSON: Your Honor, the State has no questions

13 of this witness.

14 THE COURT: All right. Mr. Barr, anything on

15 redirect as ---

16 MR. BARR: Nothing on redirect, Your Honor, from

17 Defendant Niles.

18 THE COURT: All right, you may step down. Thank you.

19 A Thank you.

20 MR. HAZZARD: Your Honor, as Detective Mann is my

21 witness I would ask that she be excused. She has an

22 appointment with the dentist this afternoon.

23 THE COURT: Any objections from the State?

24 MR. RICHARDSON: None from the State, Your Honor.

25 THE COURT: Mr. Barr?

1 MR. BARR: None.

2 THE COURT: All right, you're excused. Thank you
3 very much.

4 All right, Mr. Barr, you can call your next witness.

5 MR. BARR: Your Honor, the Defense calls Mr. Richard
6 Niles.

7 THE COURT: All right, Mr. Niles, if you would please
8 come forward.

9 Whereupon, Richard Bill Niles, Jr., was called to the
10 stand, duly sworn by the clerk and testified as follows:

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

13 MR. NILES: Richard Niles, Richard Bill Niles, Jr.,
14 Niles, N-I-L-E-S.

15 DIRECT EXAMINATION (By Mr. Barr)

16 Q Thank you, Mr. Niles. Mr. Niles, how old are you, sir?

17 A 25.

18 Q 25?

19 A Yes, sir.

20 Q Okay, now, you are from where?

21 A I am from Williamsburg, Salters, South Carolina.

22 Q Okay, what is your address?

23 A [REDACTED], Salters, South Carolina.

24 Q Okay, what is the last grade you completed in school?

25 A I completed 12th grade at Wil Lou Gray Opportunity

1 School, military school.

2 Q Okay, now, as far as your background is concerned, have
3 you ever been incarcerated for commission of any crime of
4 violence?

5 A No violent crimes but I have been for marijuana.

6 Q For simple possession of marijuana?

7 A Simple possession, yes, sir.

8 Q Okay, all right, now, do you have any other record of
9 arrest or incarceration other than in this case?

10 A No, I do not.

11 Q Okay, all right, now, do you know or did you know the
12 decedent, James Salter?

13 A Yes, I did.

14 Q How did you come to know him?

15 A We met a night at a club on Myrtle Beach, Red Rooster.

16 Q Okay, and the meeting at the club that night how did
17 that occur?

18 A I was standing up over the balcony and he approached me
19 asking me, he, he was, he introduced himself to me and he
20 introduced himself as Spice and that's when he, you know, we
21 conversated.

22 Q Okay, now, so, you knew him as Spice?

23 A Yes, sir.

24 Q Did you know him by any other names?

25 A Not until later on in the - our relationship.

1 Q Okay, and then you came to know him as who?

2 A They called him James but, you know, his friends was
3 calling him Jay.

4 Q Okay, so, you called him Jay or at any point did you
5 call him Jase?

6 A No, I called him Spice.

7 Q You called him Spice?

8 A Yes, sir.

9 Q So, you knew him as Spice?

10 A Yes, sir.

11 Q So, now, how long did you and Spice know each other?

12 A Well, we came to get to know each other I would say
13 possibly for about close to a year, about six to nine months.

14 Q Close to a year. Okay, now, during this year that you
15 knew Spice or James what kinds of things did you all do?

16 A Well, we did some drugs, some drug relationships, you
17 know, business-wise and went out a couple of times together.

18 Q Okay, so, you all did drug transactions?

19 A Yes, we did.

20 Q Okay, now, were you ever a guest in his home?

21 A Yes, a couple of times.

22 Q Where does he live?

23 A I can't say exactly where he live but I know it's over
24 there next Masters. It's like, in like a condo area.

25 Q Okay, okay. So, what kind of home does he have or did

1 he have?

2 A It was a pretty nice sized house where him and some
3 roommates had a house. It was like a three bedroom upstairs,
4 a car garage.

5 Q Okay, and did he have a car garage?

6 A Yes, he did.

7 Q Okay, what was in the living room?

8 A Well, when you first come into the house he has like on
9 the left-hand, on the right-hand side it's the door to the
10 garage. Then he has like a - it's a couch facing the
11 television. It's a room on the other side over there and on
12 the upstairs you got two more rooms.

13 Q Okay, now, during the course of this year that you new
14 Spice or James Salter, did you all ever have a conflict?

15 A No, we didn't.

16 Q Did you ever have an argument or push and shove
17 disagreement?

18 A No, we didn't.

19 Q Did you all ever have a dispute over money?

20 A No, we did not.

21 Q Did you all exchange large sums of money and large sums
22 of drugs?

23 A Yes, we have.

24 Q Was there ever any problems about getting paid or being
25 paid back?

1 A No, it hasn't.

2 Q Or anything like that?

3 A No, it hasn't.

4 Q Okay, now, let me ask you, do you feel as if - well, let
5 me ask you this first. In your opinion what is the street
6 value, what would have been the street value at that point of
7 a pound of marijuana?

8 A Okay, well, it's like you get two prices of a pound of
9 marijuana. You got regular kind of weed and you've got
10 exotic. The type that me and James dealt with was some
11 exotic and I'd say like for a regular pound you probably pay
12 for like 600, 650. You probably get a deal for like five or
13 for some exotic you probably pay probably about the least
14 about 1200.

15 Q So, about \$1,200 would've been the street value of a
16 pound of exotic marijuana?

17 A Yes, sir.

18 Q Do you feel as if you had gone to James and said,
19 "Well, James, my supply is low. Let me have a pound of
20 marijuana," that he would have given it to you?

21 A Yes, he, well, he probably wouldn't have give it to me
22 like he just hand in hand but probably like on a half deal or
23 probably be like, "Well, just, just give me this right here
24 back on it when you make this or whatever."

25 Q Okay, did you do that kind of thing for him?

- 1 A Yes.
- 2 Q Had you recently extended some drugs to Spice?
- 3 A Yes, I have.
- 4 Q And when was that?
- 5 A It was a week before the accident. I gave him a certain
- 6 amount of marijuana. I was - I expected for him to give me
- 7 5,000 back ---
- 8 Q For the ---
- 9 A For the, what he had got, weed I gave him.
- 10 Q For the amount of marijuana that you had given him?
- 11 A Yes.
- 12 Q Did you see any need to hassle him about it?
- 13 A No, sir.
- 14 Q Did you feel confident that at any point that you could
- 15 have gotten either a comparable value of marijuana or the
- 16 \$5,000 had you asked him for it?
- 17 A Yes, sir.
- 18 Q Okay, and he was the type of guy if you asked him for it
- 19 he would have given it to you?
- 20 A Yeah, James, he was a straight up guy.
- 21 Q He was just a straight up guy.
- 22 A Yes, sir.
- 23 Q Okay, all right, okay, now, in terms of your dealings
- 24 with Ervin Moore how did you come to know Ervin Moore?
- 25 A Well, I met him through relatives of the family. I

1, didn't know him like grew up with him but like relatives of
2 the family that's how I get to knew him.

3 Q Okay, was there a point when you gave Ervin Moore a ride
4 to Myrtle Beach?

5 A Yes, on that specific day.

6 Q How did that come to happen?

7 A Well, during the time me and my fiancée Mokeia we was --
8 my plan was we was going to the baseball field. I had some,
9 I had like a little small amount of marijuana that I was
10 going to smoke, a little bit of, a little bit of liquor and I
11 stopped by the store to get some cigars. When I got to the
12 store to got some cigars that's when he was coming across the
13 street approaching me. He asked me, he say, he asked me did
14 I had any weed. I was like, "No, I do not." I say, I say,
15 "No, I don't have none at the time." I said, I said, "How
16 much you trying to get?" And he was like, "I'm trying to
17 get some, you know, I mean, to go back to North Carolina
18 with." I was like, "How much you trying to get?" He was
19 like, "A pound." He said, "At the least I want a pound."
20 I said, "Well, I ain't got none at the time," and that's
21 when he was like, "Well, you ain't know nobody?"

22 During the time of the conversation that's when Spice
23 called me and he was letting me know he was like, he was
24 like, "Rich Boy," that's how he called me, he was like,
25 "Rich Boy, I got your money," and he was like, "I got some

Richard Bill Niles, Jr. - Direct by Mr. Barr

544

1 nuggets, too." I was like, "Well, I ain't had no plan on
2 coming to the beach today, you know what I mean." I say,
3 "Me and my fiancé we was going to chill." He was like,
4 "Well, I got the money for you. So, whenever you come
5 through he said just holler at me." He said, "I've got
6 some nuggets, too, you know what I mean, you trying to get
7 anything." So, that's when I was like, "You know, speaking
8 of it, man," I say, "My peoples trying to get something he
9 wanted to take back to North Carolina." I said, "As a
10 matter of a fact I'm going to let you all talk." So, I
11 gave, I gave Ervin the telephone and they were speaking on
12 the phone as I was going in the store. I came back out of
13 the store with the cigars and it didn't take no longer than
14 probably about two minutes to go in the store to get the
15 cigars. So, by the time I came back out of the store I'd say
16 about, he probably was on the phone for like another minute
17 or two. So, they probably was on the phone for probably
18 about, about five minutes at the most and he gave me the
19 phone back and he was like, I say, "He's still on the
20 phone," and he was like, "Nah." So, I called him back and
21 he was like, I say, "What you all talked about?" He was
22 like, "He say he wanted to get some weed. So," he said,
23 "Just call me when you get the beach."

24 So, I hung up the phone. As our way to the beach we was
25 smoking, we was smoking blunts, but during the time I was

1 high. So, I fell asleep. So, when I woke up again in
2 Pawleys Island we were putting, we was about to put some gas
3 in the car.

4 Q Let me stop you there.

5 A Okay.

6 Q At any point in that discussion did either James Salter
7 or Ervin Moore speak to Mokeia Hammond about what you all
8 were talking about or what you all had planned to do?

9 A No, they didn't.

10 Q Okay, so, Mokeia Hammond other than being your fiancée
11 and you all are riding together and she's driving ---

12 A Uh-huh.

13 Q --- there was no discussion with Mokeia Hammond or
14 between Mokeia Hammond and Ervin Moore or between Mokeia
15 Hammond and James Salter?

16 A No, it wasn't.

17 Q Okay, now, do you as best you can recall when Mr. Salter
18 had the conversation, the telephone conversation with
19 Mr. Ervin Moore, do you know whether or not Mokeia Hammond
20 was privy to that?

21 A During the conversation when Ervin Moore and Spice was
22 on the phone?

23 Q Yes. When he gave, when you gave him this phone where
24 was he?

25 A Oh, he was standing at the store door beside me - well,

1 it's a glass door at the store.

2 Q Okay.

3 A So, he was like standing at the door.

4 Q Okay?

5 A Standing at the, at the gas tank.

6 Q And where would Mokeia Hammond had been at that point?

7 A She was sitting in the car.

8 Q She was in the car?

9 A Yes, she was.

10 Q Okay, so, she - there was no close proximity, they were
11 not in close proximity to each other?

12 A No, they wasn't.

13 Q Okay, now, during the ride from Salters, South Carolina,
14 to Myrtle Beach did the three of you have a conversation
15 about doing any kind of robbery when you all got to the
16 beach?

17 A No, we didn't.

18 Q Okay, did you tell either Mokeia Hammond or Ervin Moore
19 that, ``When we get to the beach we're going to hit a lick''?

20 A No, I did not.

21 Q Okay, now, after you got to the beach was there any
22 discussion between you and Ervin Moore and Mokeia Hammond in
23 the car about hitting some sort of lick or committing a
24 robbery?

25 A No, I didn't.

1 Q Did you ever tell Ervin Moore that you wanted him to go
2 into a car and verify whether or not James Salter had a pound
3 of marijuana?

4 A No, sir.

5 Q And come back and let you know?

6 A No, sir.

7 Q That never happened?

8 A No, sir.

9 Q Okay, did you have any reason at all to rob James Salter
10 of a pound of marijuana worth 600 to \$1000 or so?

11 A I had no reason to do that, sir.

12 Q Okay, again, could you simply have just asked him for it
13 and he would have given it to you?

14 A Well, like I said earlier, he probably wouldn't have
15 just gave it to me but he probably would have gave it to me
16 like half, half on the deal or he probably would have gave it
17 to me but be like, "Well, give me this right here back on
18 it," because, you know, we was dealing like that for so
19 long.

20 Q And on that same day he called and offered you the
21 repayment of \$5,000 that you had advanced him; is that
22 correct?

23 A Yes, sir.

24 Q And again, as far as your belief about him, you believed
25 or is it your belief that if he called you and told you that

1 he was going to give you \$5,000 that he, in fact, would have
2 done that?

3 A Yes, he would have, sir.

4 Q And there would have been no need to rob him?

5 A No reason, sir.

6 Q Okay, now, if you would please describe the contact
7 between you and Mr. Salter after you got to the beach?

8 A Okay, while I was on the beach me - I made a couple of
9 stops at some motels, a couple of houses, and during the
10 process of that Spice called me, and he was like, ``Yo, where
11 you at?'' I was like, ``I told you, you know what I mean,
12 when I get down there I was going to holler at you.'' I
13 said, ``I got to make a couple of moves right now.'' I said,
14 ``But as soon as I get done I'm going to call you,'' and he
15 was like, ``All right.'' So, that's when he hung up the
16 phone. That's when I hung up the phone and I made a couple
17 of more moves, and later on I called him back, and I was
18 like, I was like, ``I'm about done what I'm doing.'' I said,
19 ``Just give me like a couple of minutes or two, you know what
20 I mean, I'll hit you back.'' So, I'd say probably it didn't
21 take me a couple of minutes. It probably took me about 30
22 more minutes or better that's when he called me back.

23 Q So, you wasn't anxious to go have a meeting with Mr.
24 Salter?

25 A No, sir; no, sir.

1 Q You were doing other things?

2 A Yes, sir.

3 Q And making money doing it?

4 A Yes, sir.

5 Q Okay, now, approximately how much money did you have as
6 best you can recall at that time?

7 A Well, on the way to the beach I probably had about at
8 the most, I know, I know I probably had about four to \$500 at
9 the most on me, and during the process of the transaction
10 that I was making I'm quite sure I had like a couple of
11 thousands on me after that.

12 Q Okay, all right, did you ever ask Mr. Moore whether or
13 not he could pay for this marijuana that he was going to get
14 from Mr. Salter?

15 A I never asked him that.

16 Q Okay, but now, was it intended to be as best you could
17 recall the exotic type; is that correct?

18 A Yes.

19 Q So, that would have been worth say \$1200?

20 A Yes.

21 Q And do you know whether or not Mr. Moore had \$1200?

22 A No, I didn't.

23 Q Okay, all right, and you didn't ask him?

24 A No, I didn't.

25 Q Okay, all right, now, again, let's go back to the

1 discussion between you and Mr. Salter about meeting at the
2 Best Buy parking lot?

3 A Okay, well, I called him back on the way. As a matter
4 of a fact he called me during the time when I was - I was
5 about to call him back and let him know that I was on the way
6 next to the side to, I was going to go to his house because
7 that's where I would usually split, that's where I usually
8 meet him at at his house or we be usually meet like at a
9 motel or something. That's when he was like, "Meet me at,"
10 I was like, "Meet me at Masters." I was like, "Meet me at
11 Masters," and he was like, "Nah, I don't want to meet at
12 Masters because they got cameras out there," and he said,
13 "Meet me at Best Buy." I said, "Well, all right, I'll
14 meet you at Best Buy," and that's when I approached at Best
15 Buy after I hung up the phone on him, after I done hung up
16 the phone we approached that Best Buy. I sat there for
17 probably about five minutes at the most. That's when he, he
18 called me back, and he was like, "Where you at?" I was
19 like, "I'm at Best Buy. Where you at?" And he's like,
20 "Where you parked at?" I was like, "Where you?" And he
21 was like, "I'm pulling in Best Buy at the time."

22 Q Okay, let me stop you for a second and I'm going to show
23 you what's been marked as State's Exhibit Number Six, which I
24 believe is the Best Buy parking lot and I'll turn this so
25 that the jury can see it. Now, if this is the front entrance

1 to the Best Buy and this is the parking lot, where did you
2 park and where did he park?
3 A We parked at?
4 Q Yes.
5 A If I'm not mistaken or let me make sure I'm right now.
6 Q This is the front of the store. This is the parking
7 lot.
8 A Okay, I was right over here.
9 Q Right in there?
10 A Uh-huh.
11 Q So, you parked right in front of the store?
12 A Yes, I did.
13 Q Okay, so, now, you didn't try to park down over here or
14 ---
15 A No, I didn't.
16 Q --- over here and all of these places are available;
17 right?
18 A Yes, sir.
19 Q So, you're going to park right in front of the store?
20 A Yes, sir.
21 Q Okay, you didn't see any reason to hide; did you?
22 A No reason to, sir.
23 Q And no reason to park out of sight. You pull up and
24 park right in front of the store?
25 A Yes, sir.

1 Q Okay, and he pulls up, what, right next to you?

2 A No, he, he pulled over - he - well, before, before he
3 pulled, before he parked he called me. He, he asked, he
4 said, "Where," he said, "Where you parked?" He said,
5 "What you driving?" He said, "What you parked at?" I
6 told him, I say, "Make the first left soon as you come in
7 that Best Buy," and he was like, "All right." That's when
8 he pulled in, and I was like, "I'm," he said, "What you
9 driving?" I said, "I'm driving a gray car." He was like,
10 "A Fusion?" I was like, "Yeah." I said, "I see the
11 Mustang right there in front of me," and he was like, "All
12 right." So, he, he backed in across from me, and that's
13 when we pulled out and I backed up beside him.

14 Q Okay, okay, so, you all are side by side?

15 A Yes.

16 Q Right then and there in the, in the parking lot?

17 A Yes.

18 Q Okay, then what happened?

19 A I was like noticing the parking lot. That's, that's,
20 that's what I do when I'm usually doing like transaction or
21 any other thing, you know, I was noticing the parking lot.
22 So, as I was looking around I seen, I seen a SUV that was
23 like it pulled up like right before he pulled up, right
24 before he pulled up it parked like, okay, we was parked, we
25 backed in, we was backing in and it was like the truck was

1 like over here on this side.

2 Q Okay.

3 A Because it was a couple of - it was some empty spaces
4 right there beside us. So, it was like it wasn't, it was
5 obvious that it was, you know what I mean, the car was just
6 parking, it was just parking up right there, we was pulling
7 in right there.

8 Q Okay, all right, all right, but you couldn't identify
9 who was in the SUV; could you?

10 A No, I couldn't.

11 Q All right, now, if you would tell us then what happened?

12 A Okay, that's when - after I pulled up beside them that's
13 when Ervin Moore, Ervin got out of the car and he got into
14 the car with him and my seat was laid back and that's when me
15 and Mokeia we was, we was conversating and we was talking
16 about what we was going to do after we get married, planning
17 the honeymoon or whatever and that's when she glanced over to
18 the passenger, to the side and she was like, ``Baby, they
19 fighting,'' and I like, ``They fighting?'' That's when I
20 looked over. When I was looking over that's when I seen they
21 were tussling in the car. That's when he tried to get out
22 the car. That's when Ervin tried to get out of the car and I
23 heard, I heard myself and James, Spice was like, ``You ain't
24 getting out this car with my weed without no money.'' So,
25 during that time that's when Ervin, that's when Ervin hopped

1 in, Ervin opened the back door. He went to hop in the car
2 and that's when I heard and that's when I seen Spice reaching
3 under his seat. I seen him pulling out a gun.

4 Q Okay, now, let's just be honest, Mr. Niles, did you, did
5 you shoot Mr. Salter or shoot at Mr. Salter at least?

6 A Yes, yes, I did.

7 Q You did?

8 A Yes, I did.

9 Q Okay, and you haven't been straightforward about that in
10 the past; have you?

11 A No, I wasn't.

12 Q Okay, Mr. Salter first shoot at you or shoot in the
13 direction of the car?

14 A Well, when he was getting out, when Ervin was getting
15 out of the car and Salter was reaching underneath his seat I
16 seen him pulling the gun and that's when he start firing off
17 as Ervin was jumping in the back seat and when he pulled the
18 door to that's when he was shooting in, he was shooting in
19 the car. That's when my fiancée she started screaming. She
20 ducked in my lap. She was screaming. So, while he was
21 shooting in the car, yes, I did had a gun. So, I grabbed my,
22 I grabbed my pistol and that's when I shot two times. My
23 eyes was closed. I wasn't even looking. I shot two times.
24 I went pow, pow. I wasn't trying to hit nobody.

25 Q And there was gunfire coming into the car?

- 1 A Yes, there was.
- 2 Q Constantly?
- 3 A Yes, there was.
- 4 Q Okay, now, let me ask you this, what then happened
- 5 immediately thereafter?
- 6 A Soon as the gunshots went off?
- 7 Q Yes.
- 8 A Okay, well, as I was saying, I was leaning back in the
- 9 car and I shot two times.
- 10 Q Okay, all right.
- 11 A I was just trying to just get him to stop shooting.
- 12 That's all I was trying to do. I didn't know my fiancée got
- 13 shot or nothing. That's the first thing came to my head, you
- 14 know.
- 15 Q Okay, so, did you then tell Ms. Hammond to drive, drive
- 16 and drive away?
- 17 A I told her to mash the gas.
- 18 Q Yes, sir, you did.
- 19 A As she mashed the gas I grabbed the steering wheel and I
- 20 was controlling the steering wheel because she was still
- 21 ducked. I wasn't knowed - I didn't know that she got shot or
- 22 anything, so.
- 23 Q So, she mashed the gas and you controlled the steering
- 24 wheel and you all sped away?
- 25 A Yes, we did.

1 Q Okay, now, let me ask you this, where did you go after
2 you left the Best Buy parking lot?

3 A Okay, when we got in front of the Best Buy parking lot
4 she was still mashing the gas. So, that's when I whipped the
5 steering wheel hard as I could instead of going towards the
6 store side that's when I whipped it hard as I could so to
7 make it turn. I was like, "Is you all right?" And she was
8 like, "Yeah." I was like, "You ain't hit?" So, that's
9 when she lift up and I was like grabbed the steering wheel,
10 and as she was grabbing the steering wheel we was going in
11 the back of the restaurant then on the grass part. So,
12 that's, that's how we got behind the restaurant coming across
13 the grass and everything.

14 Q Now, where did you all go at that point?

15 A We went down it's the Highway 501. We went dead in
16 traffic, 501 and that's when we went to a trailer park to
17 some people house I knew that I usually do business with.

18 Q Okay, and that's why you went to the trailer park?

19 A Yes.

20 Q Okay, and did you leave the car there at the trailer
21 park?

22 A Yes, I did.

23 Q Okay, got out of the car and left the car there at the
24 trailer park?

25 A Yes, I did.

1 Q Okay, did you - was Mr. Moore with you guys, all three
2 of you in the car at that time?

3 A Yes.

4 Q Okay, now, this is a rental car as I understand?

5 A Yes, it is.

6 Q Is that right?

7 A Yes, sir.

8 Q The car is rented in whose name?

9 A My mother's name.

10 Q Your mother's name; right?

11 A Yes.

12 Q And you all had rented the car the previous week to
13 travel; is that right?

14 A Yes.

15 Q Okay, did you call your mother at that point?

16 A Yes, I did.

17 Q And what did you tell her?

18 A I specifically said, I was like, "Mom," I say, "Call
19 and report the car stolen," and that's when she was like,
20 "What happened?" I said, "Don't worry about that," and I
21 hung up the phone on her.

22 Q Okay, so, what you did was you called your mother and
23 told her to report the car stolen?

24 A Yes, I did.

25 Q That's right, and you didn't give her any facts and

1 circumstances about why she should report the car stolen.

2 A No, I didn't whatsoever.

3 Q But you told her to report it stolen?

4 A Yes, I did.

5 Q Okay, all right, so, now, would it be fair to say at
6 that point you're in a state of panic?

7 A Yes, I was.

8 Q Okay, all right, now, you didn't call the police; did
9 you?

10 A No, I didn't.

11 Q Okay, all right, now, with regard to what happened next,
12 after you called and asked your mother to report the car
13 stolen you left the car there in the trailer park?

14 A Yes.

15 Q Is that right?

16 A Yes.

17 Q Okay, now, with regard to Mr. Moore, did he travel with
18 you or let me ask you this. Where did you all go at that
19 point?

20 A Okay, we got out of the car. That's when I grabbed my
21 backpack. It was in the backseat of the car. One was in the
22 backseat and one was in the trunk.

23 Q Okay.

24 A So, I grabbed one out of the backseat and I grabbed the
25 one out of the trunk.

1 Q Okay.

2 A During that time as I was grabbing the stuff I was
3 calling a cab I usually, I usually call to make moves on the
4 beach. So, that's when I called the cab and I told them to
5 meet me at the trailer park where he usually come pick me up
6 at or where he usually meet me at. So, that's when they came
7 to the trailer park, I tell them you will see, you will see
8 me walking.

9 Q Okay.

10 A So, as we were walking towards the road that's when the
11 cab came in and we got in the cab, left the trailer park and
12 we went to Sea Banks Motel. That's - when we got to Sea
13 Banks Motel that's when we got, we got out of the cab and
14 that's when we splitted up.

15 Q So, that's when the three of you split up?

16 A Yes, well, that's when me and my fiancée and Ervin split
17 up.

18 Q Okay, but your fiancée, Ms. Hammond stayed with you?

19 A Yes, she did.

20 Q Did you see Mr. Moore anymore that day?

21 A No, I didn't.

22 Q Did you all have any contact anymore that day?

23 A No, we didn't.

24 Q Did you have any discussion with him that day?

25 A No, we didn't.

Richard Bill Niles, Jr. - Direct by Mr. Barr

560

1 Q After, after the incident?

2 A No, we didn't.

3 Q Did you tell him that you were going to go back to the
4 mobile home park and get a gun or move a gun or hide a gun or
5 anything?

6 A No, we didn't.

7 Q You didn't have such a conversation?

8 A No, we didn't.

9 Q Okay, and as a matter of a fact you never saw him again
10 period; did you?

11 A No, I didn't.

12 Q Okay.

13 A I would like to go back on something. When we left ---

14 MS. ELDER: Objection, Your Honor, objection.

15 Q Just please just answer the questions.

16 A Okay.

17 Q Okay, now, again, did you and Mr. Moore have any
18 discussions at that point about the shooting?

19 A When we left the scene I was, I was, I was fussing at
20 him. I was like, ``Man, what you, what you, why you pulling
21 something like that off, man," and that's when he was like,
22 ``What you mean, man?" He was like, ``What you mean?" I
23 say, ``Man, you ain't had to do that, man. You ain't had to
24 do that," now, I mean, because I was upset at the time
25 because I was like, ``Yo, man, you could have got my old, you

1 could have got my old lady killed, man." I said, "Man, you
2 put, you put lives on the line at the time, man." I said,
3 "Yo, man," I said, "That's messed up." I was using four
4 languages at the time, yes, I was.

5 Q Okay.

6 A Because I was seriously upset, you know what I mean,
7 because I was, I'm in a conflict with somebody who I do
8 business with, you know, and we never had no problems
9 whatsoever, you know, and it really pissed me off because he
10 got me shooting at this man who I do business with and he got
11 this man shooting into my car who can hit my fiancée as well
12 as me, you know what I mean?

13 Q Okay, all right, now, do you know whether or not your
14 mother came to Myrtle Beach or whether she called in this
15 report that same day?

16 A She called it in.

17 Q Okay, now ---

18 A To my knowledge she called it in.

19 Q Okay, okay, now, your mother was charged in this
20 incident just like you were; wasn't she?

21 A Yes, she was.

22 Q Okay, but she's since died; right?

23 A Yes, she has.

24 Q How did she die?

25 A A car accident.

Richard Bill Niles, Jr. - Direct by Mr. Barr

562

1 Q When did she die?

2 A Well, it was told to me April, it was told to me
3 January 11th, but she passed January the 10th, the 10th of
4 January.

5 Q Of this year.

6 A Yes, sir.

7 Q Okay, and that's the day or the day or so before we were
8 scheduled to try this case?

9 A Yes, sir.

10 Q All right, now, let me ask you this, two or three days
11 later you showed up at my office; is that right?

12 A Yes, that's correct.

13 Q Okay, now, were you there to seek legal counsel about
14 this incident?

15 A No, no, I did not come there for that.

16 Q All right.

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

18 THE COURT: All right.

19 BY MR. BARR:

20 Q I'm going to show you this document and ask you whether
21 or not you recognize it.

22 A Yes, yes, I do.

23 Q Would you identify it for me if you would, please?

24 A It was a settlement for 15,000.

25 Q Okay, now, what's the date on that document?

1 A It's the 19th.

2 Q Okay, so, you were there at my office that day regarding
3 the settlement of an accident, bodily injury accident; is
4 that right?

5 A Yes, sir.

6 Q Okay, and you were there because we'd received a check
7 and we were handling the financial portion of the
8 transaction; is that right?

9 A Yes, sir.

10 Q Okay, now, under this settlement I believe you were to
11 receive \$15,000; is that right?

12 A Yes, sir.

13 Q So, this would have been additional money that you all
14 ---

15 MS. ELDER: Objection, Your Honor. I don't see the
16 relevancy at this point. I think he's established his point.

17 THE COURT: All right, well, let's come on up for a
18 second.

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

21 THE COURT: All right, Mr. Barr.

22 MR. BARR: Thank you, Your Honor.

23 BY MR. BARR:

24 Q Mr. Niles.

25 A Yes, sir.

Richard Bill Niles, Jr. - Direct by Mr. Barr

564

- 1 Q Let's, let's go then - you were arrested I believe that
2 day in the parking at my office; is that correct?
- 3 A Yes, that's correct.
- 4 Q And taken into custody?
- 5 A Yes, sir.
- 6 Q And you were brought to the Myrtle Beach Police
7 Department; is that correct?
- 8 A Yes, I was.
- 9 Q Okay, you were transferred - you were first taken to the
10 Williamsburg County Detention Center; is that right?
- 11 A Yes, sir.
- 12 Q And then transported to the ---
- 13 A Yes, sir.
- 14 Q --- Myrtle Beach Detention Center?
- 15 A Yes, sir.
- 16 Q Okay, now, during the course of being at the Myrtle
17 Beach Detention Center did you give a statement to the
18 detectives who interviewed you?
- 19 A At Myrtle Beach?
- 20 Q At Myrtle Beach.
- 21 A Yes, I did.
- 22 Q Okay, now, the statement that you gave you didn't tell
23 the truth about what happened; did you?
- 24 A No, I didn't.
- 25 Q You were given one statement or you gave one statement

1 and you wasn't candid and you didn't tell the truth in that
2 statement; did you?

3 A No, I didn't.

4 Q Okay, now, were you told near the end of that statement
5 that your mother was present in the building?

6 A Yes, I was.

7 Q And were you told by the detectives that they would see
8 or try to see whether or not you could speak with your
9 mother?

10 A Yes, they did.

11 Q Okay, at some point did you ask that interview with the
12 detectives be terminated? Did you say, "I don't want to
13 talk anymore"?

14 A Yes, I did.

15 Q Did you also say that, "I want to speak to my lawyer"?

16 A Yes, I did.

17 Q Were you allowed to speak to your attorney?

18 A No, I didn't.

19 Q Okay, now, at some point that same day did you resume
20 giving a second statement to the detectives?

21 A Yes, I was; yes, I did.

22 Q And why, why did you do that?

23 A The reason, the reason I did that is because that's when
24 I, I had - was told at the end of it that my mom was there
25 and that was the whole purpose of me going back giving

1 another statement.

2 Q Okay, now, in the second statement that you give, that
3 you gave you didn't tell the truth that time either; did you?

4 A No, I fully didn't.

5 Q Okay, did you give either the name Ervin Moore or of
6 James Salter in that interview?

7 A No, I didn't.

8 Q As a matter of fact you intentionally gave a false
9 name for even Moore; didn't you?

10 A Yes, I did.

11 Q And you referred to him as what?

12 A Keith.

13 Q Keith, okay, so, you were trying to protect all the
14 parties involved in this?

15 A Yes, I was.

16 Q At least that's what you thought.

17 A Yes, I was.

18 Q Okay, now, at some point did you also conclude that
19 interview or that statement?

20 A Yes.

21 Q Okay, now, did you at some point while you were
22 incarcerated get a letter from Ervin Moore?

23 A Yes, I did.

24 Q Okay, did you first send him a letter?

25 A No, I didn't.

1 Q Okay, all right, okay, now, with regard to the
2 statement, both first and second statements the information
3 you provided to the police at that point was incorrect?

4 A Yes, it was.

5 Q Okay, now, regarding your testimony here today have you
6 truthfully answered all of the questions that I've asked you?

7 A Yes, I have.

8 Q To the best of your ability?

9 A Yes, I did.

10 Q Okay, all right, please answer any questions that the
11 other attorneys or that the Court may have for you at this
12 time.

13 A Yes, sir.

14 THE COURT: Mr. Hazzard.

15 MR. HAZZARD: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. HAZZARD:

18 Q Good morning, Mr. Niles.

19 A Good morning.

20 Q All right, sir, I'm going to hand you a document that -
21 well, before I do that let me ask you this. Now, you
22 indicated that when you all got to the mobile home park you
23 called the cab; is that correct?

24 A Yes.

25 Q Can you be mistaken on that? Isn't it true that

Richard Bill Niles, Jr. - Cross by Mr. Hazzard

568

1 actually Mokeia called the cab when you got there?

2 A It's possible that that happened.

3 Q Okay.

4 A Yeah.

5 Q So, you're not really clear. You just know one of the
6 two of you all called a cab?

7 A Yes.

8 Q Okay, thank you. No further questions.

9 THE COURT: All right, cross.

10 CROSS EXAMINATION

11 BY MS. ELDER:

12 Q What kind of business were you doing here at the beach?

13 A Well, honestly, I was, I was in the business of selling
14 drugs.

15 Q So, on April 9th when you testified that you were going
16 from motel to motel or house to house you were selling dope;
17 right?

18 A Yes, I was.

19 Q And how long you been selling dope?

20 A Well, I was selling dope for a while.

21 Q And your girlfriend with you?

22 A Well, in my transactions I don't allow her to know what
23 I'm doing in the drug thing because I don't want her to be of
24 fear of any of that.

25 Q She's driving you around and you're slinging drugs at

1 the beach and she don't know what you're doing?

2 A Okay, during that time on the beach, during the time on
3 the beach while I was staying on the beach she wasn't with me
4 any of the times when I make transactions.

5 Q So, on April the 9th, 2007, when you all drove up to the
6 beach from Salters she wasn't with you?

7 A Yes, she was.

8 Q Okay, you testified to Mr. Barr that earlier that day
9 you were stopping from hotel to hotel, house to house ---

10 A Uh-huh.

11 Q --- who was driving?

12 A She was.

13 Q So, she was there on the 9th?

14 A Yes, she was.

15 Q And you were selling dope?

16 A Yes.

17 Q Where was your gun?

18 A Well, my gun was in a black bag.

19 Q Where?

20 A Underneath my seat.

21 Q Where did the gun come from?

22 A Where did it come from?

23 Q Yeah?

24 A Well, it came from a friend of mine from - I met.

25 Q Who, what friend?

Richard Bill Niles, Jr. - Cross by Ms. Elder

570

1 A His name is, well, I call him Black. That's who I know
2 him as Black. He's from up north.

3 Q And how long you had the gun?

4 A Approximately probably about, I'd say probably about,
5 about a year.

6 Q What, what kind of gun is it?

7 A What kind of gun is it?

8 Q That's right.

9 A It's a, it's a revolver.

10 Q Thirty-eight?

11 A No, it wasn't.

12 Q What is it?

13 A It's, I'm not going to lie, to be exact was a 357.

14 Q Okay, put 38 bullets in it?

15 A No, I didn't.

16 Q What did you carry in it?

17 A 357 bullets.

18 Q It's a longer revolver; is that correct?

19 A Yes.

20 Q I want to get some basic facts down so I can understand.
21 How long are you testifying before Mr. Salter was killed and
22 murdered did you know him?

23 A Before he was killed?

24 Q That's correct.

25 A Did I testify here?

- 1 Q Today. Yeah, let's, let's start with today.
- 2 A Okay, I knew him ---
- 3 Q Then we'll go back to all the others.
- 4 A Okay, I knew Mr. Salter for about six to nine months,
- 5 probably it was close to a year.
- 6 Q Close to a year?
- 7 A Yes.
- 8 Q And where would you all conduct business at supposedly?
- 9 A Talking about during the time of our relationship?
- 10 Q That's correct.
- 11 A Several places. I have went - I went to his house, at
- 12 his house a couple of times. I went to - he came to the
- 13 motels I was at a couple of times.
- 14 Q Now, are you saying that he was selling for you?
- 15 A Well, he, he, he made a couple of moves for me plenty of
- 16 times, yes, he did. We did transactions.
- 17 Q And the day April 9th, whose idea was it to get
- 18 marijuana?
- 19 A It was Ervin's.
- 20 Q Ervin's, solely Ervin's idea?
- 21 A Yes.
- 22 Q So, you called the victim?
- 23 A He called me.
- 24 Q He just happened to know that the person in the car with
- 25 you wanted some dope?

1 A No, when he called me, I was - during the time me and
2 Ervin was talking about, Ervin, Ervin had asked me did he -
3 he wanted some weed. Ervin asked me did I have some weed.
4 That's when during the conversation that's when Salter called
5 me, which I know him as Spice. He called me and was letting
6 me know that he had the money that he owed me and he said,
7 ``I got the money that you owe - I owe you.'' So, he was
8 like that's when he was, that's when he said, ``I got some
9 nuggets, too.''

10 Q So, the time had just happened to be right, Ervin Moore
11 just said, ``I want some, I want some pot,'' and about that
12 same time James Salter called say, ``I got some''; right?

13 A Yes.

14 Q Now, you testified that today, let's just start, like I
15 said, let's start with the story today. You testified that
16 you went to the Best Buy parking lot and Ervin Moore got out?

17 A Yes; yes, ma'am.

18 Q And Ervin Moore got into the car with Salter?

19 A Yes, ma'am.

20 Q For the purpose of what?

21 A To make the - his transaction.

22 Q Well, I thought you were there to get your money?

23 A No, the purpose of us meeting at Best Buy was first him
24 and Ervin, Spice and Ervin was going to do their business and
25 after that that's when me and Spice was going to talk.

1 Q And how much money was he supposedly bringing to you
2 that day?

3 A He told me he had - he said, ``I had the \$5,000 for
4 you.''

5 Q So, you hooked up Ervin Moore with somebody he didn't
6 know, James Salter, supposedly to do a transaction and you
7 never got out the car for that?

8 A No, I didn't.

9 Q And supposedly James Salter had in his car \$5,000 that
10 he owed you but you didn't get out of the car to check that
11 out first?

12 A No, I didn't.

13 Q You were going to let them do some minor marijuana sale
14 first before you got over there.

15 A Yes.

16 Q Then you're saying that Ervin Moore got into some
17 physical altercation?

18 A Yes, ma'am.

19 Q And jumped back in your car?

20 A Yes, ma'am.

21 Q Where did he jump back at?

22 A In the backseat.

23 Q And what happened than?

24 A That's when as he was jumping in the backseat that's
25 when - I, I was already looking because my fiancée said they

Richard Bill Niles, Jr. - Cross by Ms. Elder

574

1 were there fighting over there. That's when I was looking
2 over there. As Ervin was getting out of the car Jason made
3 the comment, he was like, ``You ain't getting out this car
4 with my weed, man, '' and that's when Ervin was getting out of
5 the car he was opening my back door. After, after, while he
6 was opening my back door I seen Spice pulling out the gun and
7 he started firing.

8 Q All right, well, let me ask you this, you said you were
9 backed in?

10 A Yes, ma'am.

11 Q And you were on the passenger side?

12 A Yes, ma'am.

13 Q Right?

14 A Yes, ma'am.

15 Q And were your windows up or down?

16 A They were down - they were up.

17 Q They were up?

18 A Yes, ma'am.

19 Q And James Salter's vehicle was on the driver's side?

20 A Yes, ma'am.

21 Q Of your vehicle?

22 A Yes, ma'am.

23 Q Was it backed in or was it pulled up?

24 A Backed in.

25 Q So, his passenger door was to your driver's side door?

1 A Yes, ma'am.

2 Q And your girlfriend Mokeia Hammond was in the driver's
3 seat?

4 A Yes, ma'am.

5 Q Right?

6 A Yes, ma'am.

7 Q And you said, you testified you were kicked back in, you
8 had your seat ---

9 A Laid back, yes, ma'am.

10 Q --- reclined?

11 A Yes, ma'am.

12 Q How did you see James Salter's gun?

13 A Okay, when my fiancée said that - she said they was over
14 there fighting that's when I sat up and started looking into
15 the car. That's when I seen them tussling. That's when I
16 seen Ervin trying to get out of the car and then that's when
17 Spice made the comment saying, ``Man, you ain't getting out
18 of this car with my weed.'' As he was saying that Irvin was
19 getting out of the car. When he was getting out of the car
20 getting into the backseat of my car that's when I seen Spice
21 pull out his gun.

22 Q And was the door of the victim's car open, closed,
23 window down, window up, what?

24 A His door was open.

25 Q And Ervin Moore was getting out running to the back of

1 your car and ---

2 A Well, he, he actually didn't have to run. He was just
3 getting out of the passenger side of Spice's car and getting
4 in the back seat of my car.

5 Q All right, they're all parked close?

6 A Yes, right in this parking lot. This is parking lot and
7 this is the next parking lot, we were right there beside each
8 other.

9 Q All right, well, so, James Salter's passenger door
10 wasn't flung wide open because it would have hit your car.

11 A No, actually ---

12 Q Okay.

13 A --- it wouldn't have hit my car because we was like
14 parked in the right distance from each other.

15 Q Okay, now, you're parked a distance from each other.

16 A No, we were parked in the same, okay, it's like, okay,
17 you all know how a parking lot look, okay, you got this
18 parking lot right here, then you have this parking lot right
19 there. It's, it's in space where you can park where some one
20 can open their door wide enough where they don't hit another
21 car. That's sometimes you can ---

22 Q As long as it's not flung straight out?

23 A No, you have some parking spaces that are wider than
24 some of them.

25 Q All right, so, you were - you're testifying you were in

1 one of the wide spaces in the parking lot?

2 MR. BARR: Your Honor, I'm going to object to this
3 line of questioning.

4 THE COURT: Hold, hold, hold for a ---

5 MR. BARR: He's, he's testified that he's in one
6 parking space, the next vehicle was in the next parking
7 space. There's no wide and narrow parking space. All the
8 parking spaces are the same.

9 MS. ELDER: Well, I know that, Your Honor.

10 THE COURT: All right.

11 MS. ELDER: But that's not what he's testifying to.

12 MR. BARR: No, no.

13 THE COURT: All right, well, I'm going to allow it.

14 This is cross examination. I'm going to allow it.

15 Overruled, go ahead.

16 BY MS. ELDER:

17 Q So, you were in - side by side in the parking space?

18 A Yes, ma'am.

19 Q Okay.

20 A Yes, ma'am.

21 Q And there - was there a wider space than others?

22 A I can't speak on that behalf. The only thing I can tell
23 you is his door was wide enough where it wouldn't hit my car.

24 Q But you could clearly see over your girlfriend, Mokeia,
25 while he had his door open and Ervin was exiting out you

Richard Bill Niles, Jr. - Cross by Ms. Elder

578

1 could clearly see him reach, pull a gun and start shooting?

2 A Yes, because I sitted up. That's was my purpose in
3 sitting up to see what was going on in the car.

4 Q And was the car Mokeia was driving on or off?

5 A It was on.

6 Q And when you saw the gun what'd you do?

7 A When I seen his gun?

8 Q That's right.

9 A Well, Ervin was jumping in the back of the car at that
10 time and when I seen the gun by the time I seen the gun he
11 started firing. When I seen, when I seen him pulled out the
12 gun, soon as he pulled it out, he start releasing, soon as he
13 pulled it out:

14 Q And did Mokeia take off?

15 A No, she didn't.

16 Q She just sat there?

17 A She panicked.

18 Q All right, what did you do?

19 A When I seen him shooting, when I, when I seen him
20 shooting the gun I reached down for mine.

21 Q So, you had time, you saw him get the gun, pull it up,
22 point it, start shooting, then you saw - you had enough time
23 to reach under your seat, open your bag and get your gun out?

24 A Okay, my bag it was open at the time. It was open at
25 the time because my - I keeps it open to where I can grab it

1 at any time.

2 Q So, it's real accessible to you; right?

3 A Basically, it is.

4 Q Because that's what you do when you deal drugs; right,
5 carry a weapon?

6 A Yes, ma'am.

7 Q Ervin have a gun?

8 A Not to my knowledge he didn't.

9 Q Okay, and you didn't hear any shots fired from Ervin
10 Moore; did you?

11 A No.

12 Q What does hit a lick mean in the drug trade?

13 A Okay, well, it's - you got different phrases in hitting
14 a lick in the drug trade. You can do like, okay, you can
15 have like this type of drugs and say, ``Well, I got this dude
16 who want to buy this right here.'' ``I got a lick for you.'' .
17 I can mix it up with some like babbage type of weed, he
18 making it look like it's a mix some exotic and you can pay
19 for more of it. Then you got the phrase you can use as,
20 ``I'm going to rob somebody,'' as well.

21 Q All right, so, in Myrtle Beach, South Carolina, you know
22 that hitting a lick in the drug trade means, ``I'm going to
23 rob somebody''?

24 A I mean, well ---

25 Q Do you know that?

Richard Bill Niles, Jr. - Cross by Ms. Elder

580

1 A I wouldn't say why - I mean, I wouldn't say - I can't
2 answer that honestly.

3 Q Okay, now, let's go back to April 13th, 2007. You were
4 arrested?

5 A Yes, ma'am.

6 Q Okay, and you went and talked to investigators; right?

7 A Yes, ma'am.

8 Q And it was recorded?

9 A Yes, ma'am

10 Q And they explained to you what your rights were and all
11 that stuff; right?

12 A Yes, ma'am.

13 Q And you went ahead and talked to them?

14 A Yes, ma'am.

15 Q Do you know what you were charged with at the time or
16 had you been charged?

17 A Well, at the knowledge they were saying that I was an
18 accessory to a murder.

19 Q Okay, have you been served a warrant?

20 A No, I wasn't.

21 Q Okay, but you were in custody?

22 A Yes, ma'am.

23 Q Do recall them asking you do you know James Salter?

24 A Yes, ma'am.

25 Q What did you say?

- 1 A Yes, I mean, honestly, I didn't say - I did not say yes
2 at the time because I didn't know him as that name.
- 3 Q Okay, so, isn't it true that when they asked you at the
4 initial part of that interview if you knew James Salter, if
5 that name rang a bell you said no; right?
- 6 A I can't be exact on that.
- 7 Q You don't remember?
- 8 A Honestly, no, I don't.
- 9 Q How many times did they ask you if you knew James Salter
10 in the first part of your interview?
- 11 A I can't recall.
- 12 Q You ever remember them asking you have you ever had
13 contact with James Salter and your response was no?
- 14 A I can't recall that question.
- 15 Q Of course. They asked you do you recognize his name and
16 you responded, "I don't know the name"?
- 17 A I can't ---
- 18 Q Do remember that?
- 19 A I can't recall.
- 20 Q Okay, "Do you know what happened at Best Buy?" Do you
21 remember them asking you that question and you responded, "I
22 don't know nothing about Best Buy?"
- 23 A Yes, I do remember that question.
- 24 Q Oh, we've got one. You have a nickname?
- 25 A Yes, I do.

Richard Bill Niles, Jr. - Cross by Ms. Elder

582

1 Q What's that?

2 A Rich Boy.

3 Q Do you recall detectives asking you, ``Now, your
4 nickname is Rich Boy; right,'' and your response was, ``No,
5 they don't call me Rich Boy.''

6 A Yes, I do remember that question.

7 Q All right, did you respond that way?

8 A I can't recall how I responded but I remember that
9 question.

10 Q Do you recall again, ``Have you'' - officers asking you,
11 ``And you never talked to James Salter before,'' and you
12 responded, ``I ain't never heard the name before, honest, I
13 swear to God, man''?

14 A I can't recall saying all that.

15 Q Do you recall saying anything about dealing drugs with a
16 person of a different color?

17 A No, I can't recall that question.

18 Q So, you don't remember, ``If I have, I mean, the only
19 time I have to say I have conversated with them, no, a man, a
20 color off, not my color probably in the club or something,
21 no, I mean, it don't go no further than that''?

22 A No, I don't recall all that.

23 Q Do you recall officers asking you, ``So, you were there
24 just to buy a little weed,'' and you responded, ``I wasn't
25 there period. That's what I'm saying''?

1 A I can't recall. It's possibly that I said that though.
2 I'm not going to deny it.

3 Q Do you deny saying, ``See, that's the thing I'm telling
4 you, dead serious, man, I am being honest with you. I was
5 not there''?

6 A I can't recall that but it's possible that I said it
7 though.

8 Q And I believe they asked you about a dude that drives a
9 white Mustang, and you said what - they asked you what's the
10 dude that drives the white Mustang while selling drugs. Do
11 you recall you said, ``I don't know no dude with no white
12 Mustang. I'm telling you the truth''?

13 A That's possible that I said that.

14 Q They asked you about a gun and you told them, ``I'm
15 going to tell you the truth. I ain't never had no gun, man,
16 never. I ain't never went to Best Buy.'' Do you recall
17 saying that?

18 A Yes.

19 Q ``I don't know no James Salter,'' you kept saying that.
20 Is that correct?

21 A It's possible that I did.

22 Q But you don't recall today? Do you remember
23 investigators asking you about why your fingerprints would be
24 on that car?

25 A I can't recall.

- 1 Q All right.
- 2 A But it's possible that they asked that question.
- 3 Q And you told them, ``My fingerprints ain't on that
- 4 car,'' talking about the white Mustang?
- 5 A It is possible that I told them that, too.
- 6 Q Then you stop the interview because you say, ``I want a
- 7 lawyer,'' the investigators stop that interview; right?
- 8 A Yes, ma'am.
- 9 Q You go back and about 25 minutes later you want to talk
- 10 to the police again; right?
- 11 A Yes, ma'am.
- 12 Q Why did you want to come back and talk to them?
- 13 A Because during the ending of the interview they made a
- 14 statement saying that my mom was here.
- 15 Q Yeah, I wanted to ask you about that. What did you tell
- 16 them about, initially tell them about the car?
- 17 A About what car?
- 18 Q About the Focus that you and your girlfriend were riding
- 19 in when you went to the Best Buy and James Salter was
- 20 murdered? What did you tell them about the car?
- 21 A What did I told them about it?
- 22 Q Uh-huh, the first time?
- 23 A Could you like say like ---
- 24 Q Sure.
- 25 A --- in a different way or something?

1 Q Did you tell investigators that, ``Somebody stole my
2 mama's car, she left it, she left us at the house Monday and
3 somebody stole her car''?

4 A Yes, I did.

5 Q Did you also tell them, ``She came back to the house
6 upset and said her car had been stolen at Murrells Inlet
7 Mall''?

8 A Yes, I did.

9 Q And you were referring to the Ford Focus; right?

10 A Yes, ma'am.

11 Q All right, so, now, you come back to investigators with
12 a second story. Now, you are admitting you were at Best Buy;
13 right?

14 A Yes, ma'am.

15 Q And you are now also remembering that you know the
16 victim; right?

17 A Yes, ma'am, it's possible.

18 Q Do you recall telling them when they asked you where did
19 you first meet this guy from you said, ``At the Red Rooster
20 Club''; right?

21 A Yes, ma'am, it's possible that I did said that.

22 Q And that that was only about two months prior to this
23 incident?

24 A It's possible that I said that as well.

25 Q So, today, if you knew him a year, back in April of '07

1 you had only known him two months?

2 A It's possible that I said that but today, I mean, I'm
3 under oath. So, I'm being straight up, honest the truth.

4 Q And when you started talking to them about the incident
5 at Best Buy you told them that James Salter came up with a
6 passenger; isn't that correct?

7 A If I'm not mistaken I believe I did said that.

8 Q And you also said there was some Explorer there?

9 A I said that, too.

10 Q And they asked you was someone in the car with them.
11 You said, ``Yeah, some, he had somebody in the car with him
12 sitting in the passenger seat''; right?

13 A In, in what, in which, which vehicle?

14 Q In the victim's car?

15 A Spice?

16 Q Yes.

17 A I told them that someone was sitting in there with
18 him?

19 Q That's correct.

20 A I can't recall saying that but it's possible that I did
21 said it.

22 Q You even went so far as to describe this person who was
23 sitting with James Salter in his passenger seat. You recall
24 that?

25 A I can't recall all that but it's possible I said that.

1 Q Do you recall when officers said, ``So, you were there
2 in the Best Buy parking lot. What were you going to get from
3 him,' referring to James Salter, and you responded, ``I told
4 him, he say he would give me what was, what it was, a QP or
5 something like that''?

6 A It is possible that I said that as well.

7 Q And you went further to say, ``I ain't got the money for
8 all that, man, you know what I mean? He was like, `Well,
9 I'll make you a deal. I say I give you half a pound,' and
10 you were like, `I ain't got no money for all that.'''

11 Remember that?

12 A I don't, I don't recall saying that.

13 Q You don't recall saying that?

14 A No, but it's possible ---

15 Q Do you deny that you said that?

16 A No, it's possible that I said it, no.

17 Q Now, you also after investigators repeatedly told you
18 that we had people that knew there was somebody else in the
19 car with you, you said you met one of your boys at the beach?

20 A Repeat that and say that again, now.

21 Q After a period of time in this interview you told
22 officers you did have somebody else in the car with you and
23 your girlfriend; is that right?

24 A Yes, ma'am, it's possible.

25 Q And that you had met him at the beach?

Richard Bill Niles, Jr. - Cross by Ms. Elder

588

1 A If I'm not mistaken I believe I did said that.

2 Q And that his name was Keith?

3 A Yes, ma'am.

4 Q And then later you said, ``No, no, there wasn't a third
5 person with us''; do you remember that?

6 A It's possible that I said that as well.

7 Q So, you took Ervin Moore out completely during the
8 course of the interview?

9 A It's possible.

10 Q How long had you known Ervin Moore?

11 A Well, as I said earlier on, I said, well, I knew him
12 through a family member. That's how, that's how I met him
13 through a family member. So, I can't - I knew him for a
14 couple of years, yes, I do.

15 Q Okay, do you recall telling officers, ``No gun was in
16 our car at all''?

17 A It is possible that I said that as well.

18 Q ``I ain't lying, no lies, swear to God, there ain't no
19 gun in that car, man, I'm being straight''?

20 A It is possible that I said that as well.

21 Q Do recall telling officers what you talked about with -
22 what your intentions were when you were going to Best Buy?

23 A Repeat that?

24 Q Do you recall telling officers what your intentions were
25 when you went to the Best Buy parking lot that night after

1 you admitted that you had gone to Best Buy?

2 A I can't recall exactly what I said.

3 Q Do recall saying, ``I mean, it was like he, referring to
4 the victim, wanted me to spend money, you know what I mean.

5 Basically at the same time I wasn't trying to spend no money.

6 I wanted to see what I was smoking before I had just got
7 something, you know what I mean?''

8 A It is possible that I said that.

9 Q You tell officers you didn't get close to James Salter's
10 car at all?

11 A It's possible that I said that as well.

12 Q You tell officers you ain't never been in James Salter's
13 house?

14 A I can't recall that but it's possible that I said that.

15 Q Do recall telling officers that you didn't even have any
16 contact with Salter.. because you felt it bad because you saw
17 some Explorer and his passenger in the seat with him and you
18 just left the parking lot?

19 A It's possible that I said that.

20 Q You didn't tell him anything about Ervin Moore getting
21 out of the car either; did you?

22 A It's possible that I didn't.

23 Q You also recall saying about when you were talking about
24 Ervin Moore you referred to him as Keith, ``I would've heard
25 if he shot a gun. I know that much.'' You remember saying

Richard Bill Niles, Jr. - Cross by Ms. Elder

590

1 that?

2 A I don't recall but it's possible that I said it.

3 Q And you repeatedly said, ``I don't know nothing about no
4 gun''?

5 A It's possible that I said that as well.

6 Q Now, this is your second interview when you came back,
7 which this is all from the second interview. They asked you
8 about a white Mustang again and you said, ``I ain't never
9 been in that car, never seen the car before.'' You remember
10 saying that?

11 A It's possible that I did.

12 Q You know your fingerprint was on it?

13 A It's possible that it was.

14 Q Well, okay. Do recall denying, ``That you ain't never
15 had a gun?''

16 A Yes, it's possible.

17 MR. BARR: Objection, Your Honor. Asked and
18 answered.

19 THE COURT: Sustained.

20 MR. BARR: She's asked these questions three times.

21 THE COURT: Sustained.

22 Q You remember officers toward the end of that second
23 interview say, ``How much were you going to buy'?

24 A Repeat that again.

25 Q During the end of your second interview, the second part

1 of this interview where you had asked to come back and talk
2 to officers they asked you the questions how much were you
3 going to buy?

4 A I don't recall that question but it's possible that they
5 asked me that.

6 Q Do you recall saying, ``I mean, he tell me he would give
7 me a deal on a QP or a half a pound or something like that,
8 but I like, man, I ain't got no money for that. I like, just
9 get me, all I wanted was a plug or two. That's what I told
10 him,' ' talking about the victim? Do you recall saying that?

11 A It's possible that I said that as well.

12 Q Nowhere in that interview did you tell them that Ervin
13 Moore was the one who wanted the pot; right?

14 A It's possible that I didn't.

15 Q But today that's the story; right?

16 A Yes, ma'am.

17 Q Nowhere in that interview did you tell them that Ervin
18 Moore was tussling with James Salter; did you?

19 A I don't think I did gave that statement.

20 Q Nowhere in that interview did you say you fired shots in
21 the Best Buy parking lot; did you?

22 A No, I did not give that statement as well.

23 Q What did you do with the gun?

24 A I got rid of it.

25 Q Got rid of it how?

- 1 A I torched it, tore it apart, pieces.
- 2 Q Where did you put it?
- 3 A I didn't put it anywhere. I was just throwing pieces.
- 4 Q As you were driving away?
- 5 A No, not after I was driving away, after, it was like
- 6 after I got out of Myrtle Beach.
- 7 Q So, you had the gun with you when you went to the
- 8 Patrick's Mobile Home Park?
- 9 A Yes, I did.
- 10 Q When you got out of the car did you get anything from
- 11 the car?
- 12 A Did I got anything out of the car?
- 13 Q That's correct.
- 14 A Yes, I got two my bags out of the car.
- 15 Q Did your girlfriend Mokeia Hammond get anything out of
- 16 the car?
- 17 A I can't recall.
- 18 Q What about Ervin Moore?
- 19 A I can't recall that either.
- 20 Q What happened to the dope?
- 21 A The marijuana?
- 22 Q Yes.
- 23 A He had that with him already.
- 24 Q Who is he?
- 25 A Ervin.

1 Q So, now you recall he had the dope?

2 A He got out of Spice car with it.

3 Q And when he got to Patrick's Mobile Home Park what
4 happened to it?

5 A He had already had it stashed on him I guess. He never
6 left it in the car if it wasn't found in there.

7 Q Did you get injured in this exchange?

8 A Not to my knowledge I didn't.

9 Q How was it that blood that was identified one and three
10 point something quadrillion was taken from the back behind
11 the driver seat of that car you were riding in?

12 A Like I said, I don't - I can't recall that I did get hit
13 by anything but I don't know why it would be in the backseat
14 of the car besides me going in the backseat of the car
15 getting my backpack.

16 Q What did you do - you said you had a revolver;
17 right?

18 A Yes, ma'am.

19 Q What did you do with the casings that were left from the
20 shots that you fired?

21 A I threw them away.

22 Q So, the ones they found in your house in Williamsburg
23 County where were those fired from?

24 A They were fired probably, I don't know probably a couple
25 of months before that even happened.

Richard Bill Niles, Jr. - Cross by Ms. Elder

594

- 1 Q And you just kept the fired casings in your house?
- 2 A It's possible that I did.
- 3 Q You don't know?
- 4 A It's possible that I did.
- 5 Q What were you shooting at before?
- 6 A Oh, in the yard.
- 7 Q In the yard?
- 8 A Yes, ma'am.
- 9 Q And you were arrested when?
- 10 A I can't recall exactly what date I was arrested but if
- 11 I'm not mistaken it was like three days or four after the
- 12 accident happened.
- 13 Q When you gave your statement you were incarcerated?
- 14 A Yes, ma'am.
- 15 Q Did you get served with warrants after your statement?
- 16 A Yes, ma'am.
- 17 Q What did you get served with warrants for?
- 18 A I got one warrant for murder.
- 19 Q Did your girlfriend get served with a warrant?
- 20 A Later on I found that out, yes, she did.
- 21 Q What did she get served with a warrant for; do you know?
- 22 A If I'm not mistaken it was for murder as well.
- 23 Q Your mother get served with a warrant?
- 24 A To my knowledge she did.
- 25 Q Do you know what she got served with a warrant for?

1 A Honestly, no, I don't.

2 Q Connected to this offense, connected to this case;
3 correct?

4 A Who, my mother?

5 Q Yes.

6 A Yes.

7 Q We'll get back to that in a minute. Tell me - I want to
8 go back to the parking lot because I'm a little confused.
9 You said you didn't start shooting and you were the only one
10 shooting back but you didn't start shooting until the victim
11 had shot first. Where were you shooting at?

12 A I couldn't say because I had my eyes closed when I
13 started firing.

14 Q All right, so, you're in the passenger seat?

15 A Yes, ma'am.

16 Q Your girlfriend is next to you and the victim's car is
17 right here. So, you just held up a gun and closed your eyes
18 and started shooting; is that right?

19 A Well, as, as - when I started firing I lifted my arm up
20 like this right here. I know it was facing out of the '
21 window. I know that much because that's when he - that's -
22 because - the glass was already shot out. So, that's when I
23 was leaning back in my chair and I just, I just closed my
24 eyes and fired off two times.

25 Q Across your girlfriend?

1 A No, I leaned back. I was shooting out of the backseat
2 of the car out of the passenger window.

3 Q Where Ervin Moore was trying to get into your car at?

4 A He was already into the car.

5 Q How many times did you shoot?

6 A I shot twice.

7 Q And then what happened?

8 A That's when I told my fiancée to mash the gas and
9 I grabbed the steering wheel and we start pulling out.

10 Q Did you shoot anymore?

11 A No, I didn't.

12 Q So, you only shot bang, bang and drove off.

13 A Yes.

14 Q And you were - had your eyes closed when you were
15 shooting across the back seat.

16 A I wasn't shooting across the backseat. I was shooting
17 on - I was shooting in the backseat as I was laying back in
18 the passenger seat out of the window.

19 Q Okay, so, you had two people to your left, you had your
20 girlfriend and then you had your boy Ervin Moore and you were
21 shooting in between them but you didn't look to see where you
22 were aiming, you just started shooting?

23 A My fiancée she was laying on my lap at the time because
24 of the shooting of the gun coming towards my car. Ervin, he
25 dived into the car. So, when he - as, as he was shooting I

1 was leaning back in the seat and I just let off two shots.

2 Q Today at your trial is the first time you have ever told
3 this story; isn't it?

4 A Yes, it is.

5 Q You never told police since you were arrested in '07
6 you, your girlfriend, Ervin Moore, your mother all arrested
7 and put in jail and not once in the course of almost two
8 years have you come to their aid and said, "You know what,
9 he shot first, it's all a big mistake," not once?

10 MR. BARR: Objection, Your Honor. This is
11 argumentative. There's no question.

12 Q Did you?

13 THE COURT: Hold it. Come on up here for a minute.

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

16 BY MS. ELDER:

17 Q Did you answer the question?

18 A No, I didn't. Could you repeat that, please, ma'am?

19 Q In the course of two years you've not made this
20 statement; right?

21 A No, ma'am.

22 Q Where have you been for two years?

23 A In J. Reuben Long.

24 Q Where has your girlfriend been?

25 A She was home.

1 Q She was locked up for a period of time.

2 A Yes, ma'am.

3 Q Your mom was locked up, too?

4 A Yes, she was.

5 MS. ELDER: One moment, Your Honor.

6 THE COURT: All right.

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

8 THE COURT: All right, Mr. Barr, anything on redirect?

9 MR. BARR: Nothing further, Your Honor.

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

11 A Thank you, sir.

12 THE COURT: All right, let me see the attorneys.

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

15 THE COURT: All right, ladies and gentlemen, this is
16 a good time for us to go ahead and break for lunch. I
17 understand that we do have lunch ordered. I don't know if
18 it's here yet, but it should be here shortly. So, we're
19 going to go ahead and take a little break. As a matter of a
20 fact we'll break for lunch. Certainly if anybody wants to
21 stretch their legs, get a deputy or something, if anybody
22 wants to go outside and stretch their legs or whatever the
23 case may be. We're probably going to break until about two
24 o'clock. So, we're going to have a nice little break but I
25 don't want you to miss your lunch that we've got on the way.

1 If you finish your lunch and you're ready and you've got
2 somewhere to go or whatever I'll allow you to leave, but
3 please be back in the jury room say by ten till two; okay?
4 So, make sure you're back in your jury room by ten till two.
5 Please do not discuss this case even among yourselves at this
6 point in time. If you've taken any notes please leave your
7 pads and pencils here in the jury box and I'll excuse you at
8 this time and we'll bring you back out at about two o'clock.
9 Everybody else please remain seated while the jury is
10 excused.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, I guess I probably should have
14 done it before they left, but I understand that, Mr. Barr,
15 you have rested now?

16 MR. BARR: Yes, Your Honor, the Defendant Niles
17 rests.

18 THE COURT: All right, we'll stand in recess until
19 two o'clock.

20 MR. RICHARDSON: Thank you, Your Honor.

21 MS. ELDER: Thank you, Your Honor.

22 THE COURT: Thank you.

23 OFF THE RECORD

24 (On the record.)

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: Thank you very much. Please be seated.
3 All right, when we recessed the Defendant Niles had rested
4 his case. Mr. Hazzard, during my initial questioning your
5 client had said she did not wish to testify in this case. Is
6 that still her decision?

7 MR. HAZZARD: I believe it is, Your Honor, but I've
8 discussed with her the fact that I do want to place that on
9 the record. Again, I want the Court to have a new colloquy
10 with her ---

11 THE COURT: All right.

12 MR. HAZZARD: --- since we're now at a different stage
13 of the proceeding.

14 THE COURT: All right, all right, Ms. Hammond, if you
15 would please stand, raise your right hand.

16 (Whereupon, the Mokeia Hammond is sworn by the Court.)

17 THE COURT: All right, now, do you remember my
18 earlier instructions, you can put your hand down. Do you
19 remember my earlier instructions regarding your right to
20 testify?

21 MS. HAMMOND: Yes, sir.

22 THE COURT: All right, do you want me to go through
23 those instructions again with you?

24 MS. HAMMOND: No, sir.

25 THE COURT: All right, is there anything about my

1 earlier instructions to you that you do not understand, do
2 not remember or have any questions about it?

3 MS. HAMMOND: No, sir.

4 THE COURT: Is there anything that you want to ask me
5 or ask your attorney at this time?

6 MS. HAMMOND: No, sir.

7 THE COURT: All right, do you intend or do you wish
8 to testify at this point in time?

9 MS. HAMMOND: No, sir.

10 THE COURT: All right.

11 All right, Mr. Hazzard, is there anything further you
12 want to put on the record?

13 MR. HAZZARD: With regard to this matter, no, Your
14 Honor.

15 THE COURT: All right, you may be seated. Thank you
16 very much.

17 MS. HAMMOND: Thank you.

18 THE COURT: Do you have any other witnesses or
19 Defense that you want to put up on your client's behalf.

20 MR. HAZZARD: At this time the Defendant Mokeia Hammond
21 rests, Your Honor.

22 THE COURT: All right, well, before we bring the jury
23 in is there any motions at this point in time?

24 MR. HAZZARD: Yes, sir, Your Honor. On behalf of the
25 Defendant Mokeia Hammond at this point the Defense renews its

Motions

602

1 motion for a directed verdict. I've handed up to the Court
2 and provided to counsel a couple of cases, State versus
3 Buckmon and State versus Lollis, and with regard to those two
4 cases, Your Honor, the main, the gravamen of the two cases
5 specifically is that they say first of all where the State
6 attempts to prove its case through solely circumstantial
7 evidence that that evidence must be substantial. It says a
8 Defendant is entitled to a directed verdict when the State
9 fails to produce evidence of the offense charged. If there
10 is any direct evidence or substantial circumstantial evidence
11 reasonably tending to prove the guilt of the accused the
12 Court must find the case was properly submitted to the jury.
13 Accordingly, a trial judge should grant a directed verdict
14 motion when the evidence merely raises a suspicion that the
15 accused is guilty. Now, the facts in Buckmon are somewhat
16 similar to the facts we have here today. It was a multiple
17 Defendant case, a case involving statements from un-indicted
18 alleged co-conspirators involving their part in the criminal
19 enterprise, statements to the effect or testimony to the
20 effect that certain other co-conspirators, not the appellant,
21 made statements that before the robbery, because it was a
22 robbery resulting in a murder, that before the robbery one of
23 the codefendants said, you know, "We're going to get some
24 cheese tonight," and the testimony was that cheese meant
25 money. A cellmate of another of the codefendants testified

1 that he and a codefendant discussed the crime after the fact
2 and that the codefendant told him certain facts, there were
3 two pistols involved, that the codefendant was out to get
4 paid that night, that the codefendant was the lookout, the
5 codefendant told the cellmate that he had told his
6 co-conspirators to take her out if necessary, that he ran
7 after the victim was shot, that he kept the gun but threw the
8 other gun away and that he was going to hit a lick. So, all
9 of this evidence was submitted and the Supreme Court said
10 with regard to this particular appellant, you know, who made
11 none of these statements, did none of these things, the Court
12 said that the trial court erred in failing to direct a
13 verdict of acquittal on the charges against the appellant.
14 They said specifically, "No direct evidence was adduced at
15 trial linking the appellant to the crimes of murder and armed
16 robbery." The State's case depended entirely on
17 circumstantial evidence. When a directed verdict motion is
18 made in a criminal case where the State relies exclusively on
19 circumstantial evidence it says, "The trial judge must
20 submit the case to the jury if there is any substantial
21 circumstantial evidence reasonably tending to prove the guilt
22 of the accused or from which guilt may be fairly and
23 logically deduced." However the Court said in reviewing the
24 directed verdict motion, "The Court is concerned with the
25 existence of evidence, not its weight."

Motions

604

1 Now, even in this case even viewing the circumstantial
2 evidence in the light most favorable to the State the
3 evidence does not reasonably tend to prove the appellant's
4 guilt, specifically saying that all it did was raise a mere
5 suspicion of guilt.

6 With regard to the other case cited, the Lollis case,
7 Your Honor, that is the case where a husband and wife were
8 both charged with arson in the second degree. Specifically
9 what happened was their home burned down. On the day their
10 home burned down the investigator went out and talked with
11 the wife and the wife admitted that she had basically torched
12 the house and that she had done it by leaving a pan of hot
13 grease on a hot eye on the stove leaving it on, but that she
14 had first removed most of their valuables and put it in a
15 storage unit somewhere else on the property. Now, the
16 husband always said that he did not in any way, shape or form
17 have the knowledge or the plan nor did he participate in the
18 plan and then the wife, in fact, stated that, that the
19 husband did not have knowledge of the plan nor did he
20 participate in the plan. However, the case still went to
21 trial regardless, and in this case as well the State, the
22 Court said, ``Even viewing the circumstantial evidence in the
23 light most favorable to the State the evidence presented does
24 not reasonably tend to prove Lollis' guilt," pointing that,
25 first, the wife had admitted that she had committed a crime

1 without him and without his knowledge and that the State
2 presented no evidence of an agreement between them. I would
3 submit to you in this case there is no evidence of an
4 agreement between Ms. Hammond and Mr. Niles to combine,
5 conspire and to commit an armed robbery. Again, to my
6 recollection the only evidence on this issue is
7 circumstantial having come from Ervin Moore because my
8 recollection is Ervin Moore does not say Mokeia Hammond heard
9 this statement regarding hitting a lick, does not verify that
10 she acted in some fashion as if she heard it, does not
11 indicate that she nodded in agreement, does not indicate that
12 she stated anything as a result to indicate her affirmation
13 to the crime itself. So, therefore, we're not talking about
14 direct evidence. We're talking about circumstantial
15 evidence, and as such it has to be substantial according to
16 our Supreme Court, and to have the statement merely be a
17 statement was made in the car to hitting a lick and nothing
18 more, Your Honor, I would submit that clearly merely raises a
19 suspicion of guilt, and as such, as merely raising a
20 suspicion of guilt, pursuant to State v. Lollis, 541 SE2d 254
21 and Lollis is spelled L-O-L-L-I-S, and State v. Buckmon, and
22 Buckmon is spelled for the court reporter B-U-C-K-M-O-N, and
23 that's 555 SE2d 402, we would submit that a directed verdict
24 should be granted in this regard.

25 THE COURT: All right, let me hear from the State.

Motions

606

1 MR. RICHARDSON: Thank you, Your Honor. May it please
2 the Court, I am in possession of those cases that Mr. Hazzard
3 pointed out and all due respect I think he missed the mark on
4 those cases. Both these cases, in both these cases not one
5 witness puts these Defendants at the scene of the crime, do
6 anything in furtherance. We have direct evidence that
7 Ms. Hammond drove the vehicle there. We had direct evidence
8 from the stand Mr. Ervin saying they openly discussed pulling
9 a rip, she's the getaway driver. I believe in ---

10 THE COURT: Well, now, he didn't say she was the
11 getaway driver.

12 MR. RICHARDSON: Well, said she was the driver and they
13 - and that they discussed we are going to hit a lick.

14 THE COURT: All right, now, when he - are you saying
15 his testimony was that Ms. Hammond discussed it or that ---

16 MR. RICHARDSON: That Richard Niles said, ``We're going
17 to hit a lick.''

18 THE COURT: And that's it.. There was no further
19 input from Ms. Hammond.

20 MR. RICHARDSON: No, sir, but he, he indicated where
21 they were going to rob, if my recollection is correct, they
22 indicated that he was going to rob the boy at Best Buy.

23 THE COURT: All right.

24 MR. RICHARDSON: Mokeia Hammond drives on to Best Buy.
25 At that point Mokeia Hammond is sitting right beside Richard

1 Niles. At that point she has become a part and parcel of the
2 crime at that point, Your Honor. In the Buckmon case the
3 statements were codefendants saying, "I did this. I did
4 that," people had seen the codefendants with Buckmon earlier
5 that evening. No one saw them at the scene. Nobody ID'd
6 them at the scene. Here we actually had the codefendant
7 testify. So, the facts probably would've been different if
8 we would - in Buckmon if one of the codefendants would have
9 actually testified and said this is what we did, this is what
10 happened.

11 In Lollis, Your Honor, this was a, he's right, there was
12 no evidence. I'm very familiar with this case, that the
13 biggest piece of evidence that the State had in there was the
14 mere fact that the husband in the case had a key to the
15 storage shed where the stuff was stored. The State's case
16 actually fell apart during the middle of that. They didn't
17 have anybody to put Mr. Lollis at the scene assisting in any
18 way to burn the house down, didn't have him buying any
19 gasoline, didn't have him getting matches or anything, didn't
20 have him driving his wife away from the scene like we do
21 here, Your Honor.

22 That gun's in the front seat. Even by Mr. Niles own
23 testimony it's open where, where it's easy access, certainly
24 a driver can see it, Your Honor, certainly a driver sitting
25 there ready to get away and that's indeed what she did by all

Motions

608

1 the testimony.

2 THE COURT: All right.

3 MR. RICHARDSON: And the State - the State would put
4 forth that the burden is upon the Defense to show that there
5 was no evidence, and in this case the State has met its
6 burden in the light considered most favorable to the State.

7 MR. HAZZARD: Your Honor, and very briefly ---

8 THE COURT: All right.

9 MR. HAZZARD: --- the facts stated or the allegations
10 made by counsel again simply raise a mere suspicion of guilt.
11 You know, as much as he wants to say that Richard Niles'
12 words were, "We are going to commit a robbery," I don't
13 recall that. I recall the allegation being made by Mr. Moore
14 that Richard Niles got off the phone and then said, "I'm
15 going to hit a lick." I don't recall anything about any
16 robbery being said.

17 As far as arguing this matter, it seems the State's
18 biggest point is that Mokeia Hammond happens to be there with
19 Rich Niles. You know, again, no evidence or testimony
20 whatsoever regarding specificity of knowledge, no evidence or
21 testimony whatsoever regarding doing anything differently to
22 aid and abet as the result of the statement, nothing
23 whatsoever. It's simply they were in the car together all
24 day. This statement is allegedly made by Richard Niles, and
25 then the incident occurs, and it just so happens she is

1 there. Again, I would submit that simply is a - merely
2 raises a suspicion of guilt. There's a reason why the
3 Supreme Court says there must either be direct evidence or
4 substantial circumstantial evidence, Your Honor, and that
5 without that, without either of those two, without direct
6 evidence or substantial circumstantial evidence the matter
7 must be decided by this Court on a directed verdict.

8 THE COURT: All right, motion is noted. However, I'm
9 going to deny it. Anything further?

10 MR. HAZZARD: Nothing further on behalf of Defendant
11 Hammond.

12 THE COURT: Anything further from Defendant Niles?

13 MR. BARR: Nothing further, Your Honor.

14 THE COURT: All right, are you all going to be
15 putting up anything in reply?

16 MS. ELDER: No, sir, Your Honor, we are not.

17 THE COURT: All right, so, I guess we can just go
18 ahead and bring the jury in and start closing arguments?

19 MR. HAZZARD: Your Honor, before we do that I'd like to
20 find out what the Court's intended charges are.

21 THE COURT: Yeah, what I'm going to do, let's see,
22 I've got them, got them drawn up. Let's take - well, it
23 won't take about ten minutes. Let me go ahead and I can
24 print them out for you, let you take a look at them before
25 you start your closing arguments and we'll have a brief

1 conference before we start closing arguments; okay?

2 MS. ELDER: Thank you, Your Honor.

3 MR. RICHARDSON: Yes, sir, Your Honor.

4 THE COURT: All right, be back in just a second.

5 OFF THE RECORD

6 (On the record.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, has the State had a chance to
10 go over my proposed charges?

11 MS. ELDER: Yes, sir, we have.

12 THE COURT: All right, any challenges or requested
13 additions?

14 MS. ELDER: Yes, sir, there is.

15 THE COURT: All right, let me hear from you. I'll go
16 ahead.

17 MS. ELDER: Your Honor, in the - it doesn't really
18 matter to the State where but in the charge for murder in
19 reference to the felony murder there is if one intentionally
20 kills another during the commission of a felony, I didn't see
21 anywhere in the charge that the Court identified that armed
22 robbery is indeed a felony. We would ask that that be
23 identified either there or in the armed robbery charge.

24 THE COURT: All right.

25 MS. ELDER: I believe Your Honor identified it as a

1 violent crime but not a felony.

2 THE COURT: Yeah, all right, any objection to in the
3 charge for murder adding that armed robbery - that where it
4 says it can be inferred from.

5 MR. BARR: No, sir.

6 THE COURT: Malice from commission of a felony just
7 adding that armed robbery is a felony.

8 MR. BARR: Yes, sir, there's no objection.

9 MR. HAZZARD: Your Honor, the Defendant Hammond would
10 prefer so as it doesn't draw too much attention to that
11 particular part of the charge that you specify in the armed
12 robbery charge that armed robbery is a felony because when
13 you say, you know, commission of a felony where a murder
14 occurs, you know, considered to be what it is then you say,
15 "Oh, by the way armed robbery is a felony," it almost makes
16 it seem as if you are commenting on the fact that the armed
17 robbery did in fact occur, but now, if you place that
18 definitional part in the armed robbery part of the charge
19 then it defines the armed robbery within its and places it
20 within its proper perspective, and as the Court indicated the
21 jury will actually have a copy of these, of this charge with
22 them for their review.

23 THE COURT: All right.

24 MS. ELDER: And Your Honor, I have no problem with
25 that if that's the positioning, if we could get the armed

1 robbery charged first or the possession of a weapon during a
2 violent crime and the armed robbery charged prior to the
3 murder.

4 MR. HAZZARD: No objection.

5 THE COURT: Well, what difference does that make?

6 MS. ELDER: Well, Your Honor, we're asking them to go
7 through or charge them with murder and indicating that they
8 can infer malice with a felony and then we're not telling
9 them that armed robbery is a felony until after we've given
10 them the charge murder.

11 THE COURT: Yeah, but I don't know. I think - how
12 about just where it says possession of a weapon during the
13 commission of a violent crime I have murder and armed robbery
14 are both violent crimes and felonies, just adding it there.

15 MS. ELDER: That's fine, Your Honor.

16 THE COURT: All right, so, on page 19 of 29 the last
17 paragraph before hand of one it'll just read murder and armed
18 robbery are both violent crimes and felonies. All right.

19 MS. ELDER: Your Honor, in the charge for armed
20 robbery we would ask somewhere I believe on page, probably on
21 page 17 maybe the second paragraph that the Court instruct
22 the jury that contraband or narcotics can be considered
23 personal property of another.

24 THE COURT: All right, any objection to that?

25 MR. HAZZARD: I would submit that that is an improper

1 commentary on the facts of the case, Your Honor. I mean, the
2 law speaks for itself. The law is the law but to start
3 talking about, "Oh, by the way I want you all to know that
4 narcotics can be considered, you know, property," I think
5 that's treading really, really close to commenting on the
6 facts of the case.

7 THE COURT: All right, how is that not commenting on
8 the facts of the case?

9 MS. ELDER: Well, Your Honor, it's an illegal
10 substance and the testimony in the case has been that the
11 robbery occurred over narcotics. So, certainly, we think the
12 jury should know that any - whether it be legal or illegal
13 property can be considered personal property.

14 MR. HAZZARD: Your Honor, the testimony spoke for itself
15 with regard to Mr. Moore saying that, and in fact, Mr. Niles
16 saying that Mr. Salter possessed the alleged substance, that
17 Mr. Moore and Mr. Salter tussled over it and that depending
18 upon who the jury chooses to believe either Mr. Niles or
19 Mr. Moore took it. So, I think that takes care of itself.
20 The jury can draw whatever inference from the testimony that
21 they want but to specify that, "I want you all to know that
22 narcotics are considered to be personal property," I would
23 think would be an impermissible commentary on the facts of
24 the case.

25 THE COURT: All right, I'm going to sustain your

1 objection. I'm just going to leave it as is.

2 MS. ELDER: Your Honor, finally on the jury verdict
3 portion on the last page.

4 THE COURT: All right.

5 MS. ELDER: Your Honor, the indication is that in the
6 charge in reference to Defendant Mokeia Hammond the only
7 limitation on your verdict is that you cannot find her guilty
8 of any crime unless you likewise find Richard Niles guilty of
9 that crime. We certainly foresee a circumstance based on the
10 arguments that have been presented to the jury and the
11 testimony that one of the codefendants has, in fact, pled
12 guilty to armed robbery. I think they can find both of these
13 Defendants guilty of armed robbery based on his testimony and
14 plea. Now, I understand that they're saying at this point
15 that Richard Niles had a gun and Ervin didn't, but that
16 affects the murder. It doesn't affect the robbery and the
17 testimony from Ervin Moore was that he got in the car, but
18 the testimony from Richard Niles is he got in the car and
19 there was a scuffle and he got back in the car with the dope
20 and they heard, ``You ain't getting out of my car without
21 giving me money.'' I think they certainly can base a
22 decision on hand of one hand of all for the armed robbery.
23 So, I'd ask that that be stricken and I'd also ask that the
24 limitation that you placed in reference to Richard Niles and
25 the possession of a weapon during a firearm be put in for

1 Mokeia Hammond.

2 THE COURT: All right, let me hear from you on that.

3 MR. BARR: Your Honor, I think the State's position
4 throughout the trial has been, especially in their argument
5 against directed verdict, has been that Ms. Hammond has been
6 acting in concert with Mr. Niles and to make that change
7 would be to extend the argument to say that Ms. Hammond now
8 could have been acting in concert with Mr. Moore. I don't
9 think that that's a valid, a valid argument, Your Honor.

10 THE COURT: Well, but I think they're right. I think
11 Mr. Moore has pled guilty to armed robbery in this, in this
12 case. So, conceivably she could be the hand - that could
13 have been the hand of one is the hand of all. Although, if
14 he didn't possess a firearm - let me think - let's think
15 about this for a minute. You've got Mr. Moore who didn't
16 possess a firearm.

17 MS. ELDER: He doesn't have to to be guilty of armed
18 robbery if he made ---

19 THE COURT: All right, but let's say he's not - he
20 doesn't possess a firearm how can you get, convict Ms.
21 Hammond without convicting Mr. Niles?

22 MS. ELDER: Well, Your Honor, Mr. Moore pled guilty
23 to armed robbery which indicates that either ---

24 THE COURT: Armed robbery without, without possession
25 - I mean, but he didn't - he wasn't armed with a deadly

1 weapon.

2 MS. ELDER: And under armed robbery he doesn't have
3 to be as in - if he expressed or led the victim to believe he
4 was armed. That could certainly happen under armed robbery
5 as well. Armed robbery ---

6 THE COURT: Yeah, but we don't have anything in the
7 record to indicate that. The only use of a deadly weapon
8 that we have involving this case is Mr. Niles' gun.

9 MS. ELDER: Well, and I asked him, I believe I asked
10 him if Mr. Moore had a gun and he said he didn't see one.

11 THE COURT: Right, but the only deadly weapon you've
12 got is Mr. Niles' gun. So, even though you've got Mr. Moore
13 pleading guilty to armed robbery, the armed - he pled guilty
14 I'm assuming to armed robbery under the fact that he
15 committed a robbery in concert with Mr. Niles while Mr. Niles
16 was armed with a deadly weapon, that that was the armed part
17 of the armed robbery.

18 MS. ELDER: But I don't - I think the jury is
19 confronted with a codefendant who pled guilty to armed
20 robbery and manslaughter and that's the information that they
21 have.

22 MR. HAZZARD: And that was the State's choice, Your
23 Honor.

24 MS. ELDER: And I think they can make ---

25 MR. HAZZARD: They chose to take that plea.

1 THE COURT: Hold it for a second. All right, go
2 ahead.

3 MS. ELDER: And I think they can make a finding and
4 Mr. Moore testified that this was a plan, a joint plan.

5 THE COURT: And I understand that but we're talking
6 about my instructions here that says you can only find
7 Ms. Hammond guilty if you find Mr. Niles guilty.

8 MS. ELDER: Correct.

9 THE COURT: How can you find Ms. Hammond guilty of
10 armed robbery, of murder or of possession of a deadly weapon
11 during the commission of a violent crime if Mr. Niles is
12 found not guilty on all three. Under your theory that she
13 can be found guilty because Mr. Moore pled guilty, he doesn't
14 have a deadly weapon in his possession and he didn't plead
15 guilty to possession of a weapon during the commission of a
16 violent crime. He pled guilty to manslaughter and he pled
17 guilty to armed robbery, the armed - the armed part of the
18 armed robbery the only evidence to support that charge and as
19 a recall from his guilty plea is the fact that Mr. Niles had
20 a gun.

21 MS. ELDER: That's correct, Your Honor, but they're
22 putting forward a case that certainly would imply from
23 Mr. Niles' testimony that and even from their cross of
24 Mr. Niles that he's the one who got in the car with the
25 purpose to rip him off.

State v. Niles, Hammond

618

1 THE COURT: Exactly.

2 MS. ELDER: So, they certainly - the jury can
3 certainly infer from that cross that he had a weapon. I
4 mean, I understand that that's not testified to but that
5 certainly was the argument that was presented.

6 THE COURT: No, there's nothing to indicate that Mr.
7 Moore had a weapon, absolutely nothing, and I know he's pled
8 guilty to armed robbery, but his guilty plea was under this
9 joint hand of one - I mean, basically he was admitting the
10 hand of one is the hand of all and that's what Mr. Niles went
11 there to do and, ``That's why I'm pleading guilty to armed
12 robbery. I knew we were going to rob him. I knew he had a
13 gun but I didn't know he was going to kill him,'' and so,
14 we've got that's why he pled guilty to manslaughter. I'm
15 trying to think how you can convict Ms. Hammond of any of
16 these crimes without convicting Mr. Niles because the only
17 theory you have against her is the hand of one is the hand of
18 all. Now, you have to have a hand in there. That hand is
19 Mr. Niles. It's not Mr. Moore.

20 MS. ELDER: Well, Your Honor, again, I don't want to,
21 I don't want to continue too long on argument but the fact is
22 that they've established or they at one point they said that
23 Mr. Moore or argued that Mr. Moore was the one doing the lick
24 because he was going to get the marijuana without the -
25 without money and that, in fact, Mr. Niles testified that

1 Ms. Hammond heard them argue about it and then Mr. Salter
2 said, ``You're not getting out of the car with my dope," and
3 he jumps back in the car and they start firing. They
4 certainly are implying there was a robbery.

5 THE COURT: A robbery.

6 MS. ELDER: Yes, sir.

7 THE COURT: Not an armed robbery.

8 MS. ELDER: Yes sir, I understand that but they can
9 also, a jury certainly from the information, from the
10 pathologist, the shot that killed Mr. Salter was under here.

11 THE COURT: Right.

12 MS. ELDER: It is not a random shot, Your Honor. It
13 is - it - certainly would indicate or draw the inference that
14 it was somebody in close proximity or in the car. Now, I
15 know that Mr. Ervin, Mr. Moore did not have a gun but a jury
16 can certainly infer from the testimony that he was in the
17 car, he was the one doing the robbery and he shot him because
18 that shot, where the shot is, the pathologist testified to is
19 not just a headshot or a shoulder shot. It is under his
20 right arm. So, I think from the facts they can certainly
21 infer, they can believe part of this, part of that, part of
22 nothing.

23 THE COURT: No, just, just cite me any piece of
24 evidence that indicates Mr. Moore shot and killed the victim.

25 MS. ELDER: There's ---

1 THE COURT: There's no evidence.

2 MS. ELDER: No, sir; no, sir.

3 THE COURT: So, therefore, there is no evidence that
4 Mr. Moore was armed. Therefore, you cannot use his
5 conviction of armed robbery to say Ms. Hammond the hand of
6 one is the hand of all because the only way he got armed
7 robbery was through his contention that Mr. Niles was the one
8 that was armed. So, I don't see how you can convict
9 Ms. Hammond of armed robbery, even though Mr. Moore pled
10 guilty to it, he didn't plead guilty to it under the
11 admission that he was armed. He pled guilty to it under an
12 admission that Mr. Niles was armed. So, you're going to have
13 to have Mr. Niles armed to do it.

14 MS. ELDER: Yes, sir.

15 THE COURT: So, I think I'm going to leave it as is
16 on that regard.

17 MS. ELDER: Your Honor, in reference to the adding in
18 the possession of a firearm exception to Ms. Hammond's
19 charge.

20 THE COURT: Well, that's what I was kind of thinking
21 that that was kind of included in that.

22 MS. ELDER: Okay.

23 THE COURT: Is that you could not find her guilty of
24 any of the crimes unless you likewise found the Defendant and
25 then with him saying you can't find him guilty of possession

1 of a firearm unless you find him guilty of one of these other
2 two that it covered that. I mean, it does to me. If you all
3 don't think it does I'll add that in there.

4 MS. ELDER: Well, I'm sure the verdict form will
5 probably be ---

6 THE COURT: Well, I was just going to let them write
7 on the back of the indictment, each indictment guilty or not
8 guilty. If you want me to add that additional in there I
9 will. I just thought it was a little bit - or just as clear
10 this way but if you want me to add in there that the only
11 limitations on the verdict regarding Ms. Hammond that you
12 cannot find this Defendant guilty of any crime unless you
13 likewise find the Defendant Richard Bill Niles, Jr., guilty
14 of that same crime; likewise, you cannot find her guilty of
15 being in possession of a weapon during the commission of a
16 violent crime without also finding her guilty of murder or
17 armed robbery or both.

18 MS. ELDER: That's fine, Your Honor. We'll withdraw
19 that request.

20 MR. HAZZARD: I mean, it's kind of like going around
21 your, you know, your elbow to get your other shoulder because
22 by the way you originally have it written logically deducted
23 it has to be that way because in order to find ---

24 THE COURT: Well, now that I look at it, the way I
25 say the only limitation is that she cannot be found guilty

1 unless you find Mr. Niles guilty I guess conceivably a jury
2 could come back and find him guilty of murder or armed
3 robbery and possession of a firearm and then just her guilty
4 of possession of a firearm without the other two and that
5 wouldn't be a proper verdict. So, I think we are going to
6 need to add that in there or I'll add that portion to that
7 paragraph. All right, anything else, anything further from
8 the State?

9 MS. ELDER: No, Your Honor.

10 THE COURT: All right, Mr. Barr, any exceptions,
11 additions or challenges?

12 MR. BARR: Yes, Your Honor, I'd ask that the Court
13 considers charging both involuntary manslaughter and
14 voluntary manslaughter as a lesser included of murder.

15 THE COURT: All right, let me hear the State on that.

16 MS. ELDER: Your Honor, I don't think there was
17 absolutely any evidence of anything that would come close to
18 voluntary manslaughter, let alone involuntary manslaughter.
19 He's requested self defense, and ---

20 THE COURT: Yeah, let me look at involuntary. I know
21 voluntary manslaughter with heat of passion or ---

22 MS. ELDER: A lawful activity.

23 THE COURT: --- or provocation. I don't ---

24 MR. HAZZARD: Provocation is they're shooting at you.

25 MR. BARR: Your Honor, both looking at the facts and

1 circumstances of the case I think it's possible that the jury
2 could infer that, you know, the situation got out of hand,
3 and in the heat of passion, that's when the crime was
4 committed and provocation was, "You shot at me. Now I'm
5 going to shoot at you."

6 THE COURT: No, I think that the evidence of this
7 case is one of two things happened, either the victim started
8 shooting and Mr. Niles was acting in self-defense or
9 Mr. Niles started shooting or killed the victim during the
10 commission of an armed robbery. I don't - like I say, let me
11 look over the involuntary manslaughter charge right quick.
12 I'm not going to charge voluntary manslaughter. Let me see
13 what involuntary says.

14 No, I don't see where that ---

15 MR. BARR: Your Honor, the second option under
16 involuntary manslaughter the unintentional killing of another
17 without malice while engaged in a lawful activity with
18 reckless disregard for the safety of others, unintentional
19 meaning that the Defendant did not intend for anybody to be
20 killed or for them to be serious or anybody to be seriously
21 injured. I can foresee a situation where the jury could
22 perceive that there was no malice between Mr. Niles and
23 Mr. Salter and Mr. Salter was killed and that at the same
24 time Mr. Niles may not have been engaging in anything
25 unlawful, that maybe Mr. Moore was engaging in something

1 unlawful and that that could possibly be conceived by the
2 jury.

3 THE COURT: Okay, no, I don't think that fits this
4 case. I'm going to deny your motion.

5 MR. BARR: Thank you.

6 THE COURT: All right, anything else?

7 MR. HAZZARD: Yes, sir, Your Honor. A little guidance
8 from the Court, looking at page 16 of the instructions the
9 start of the first full paragraph, the second sentence starts
10 with, ``Malice may be inferred from conduct showing a total
11 disregard for human life''. The second sentence there says,
12 ``Inferred malice may also arise when the deed is done with a
13 deadly weapon.'' Now, I thought back in the day because I'm
14 getting a little long in the tooth but I thought back in the
15 day there was a case Sandstrom versus Montana or Montana
16 versus Sandstrom that said that that deadly weapon inference
17 was impermissible burden shifting. Has that been changed or
18 repealed or ---

19 THE COURT: I'm not aware that it has, no. If you
20 can show me something that says it has but I'm not aware that
21 ---

22 MR. HAZZARD: Okay, so, my position would be if that is
23 the correct proposition of the law and I'm not sure it is
24 I'll be ready to argue it first thing in the morning, Your
25 Honor, I can promise you that is that I thought I in reading

1 that case sometime ago it said when you try to infer malice
2 by the use of a deadly weapon that's an improper and
3 impermissible shifting of the burden of proof, but like I say
4 I won't, won't ---

5 THE COURT: Well, let me hear from the State on that.

6 MS. ELDER: I'm not, I'm not aware of that, Your
7 Honor. This is a charge that's typically given in the courts
8 and I believe it's in the judges' charge book across the
9 state that it's being used in this manner.

10 THE COURT: That's where I got it from. I got it
11 straight out of our charge book.

12 MR. HAZZARD: I will be ready to address that first
13 thing in the morning.

14 Also, the start of the second full paragraph or the
15 third total paragraph says, "If one intentionally kills
16 another during the commission of a felony the inference of
17 malice may arise." The concern I've got there, Judge, is
18 that's like treading really close to the whole issue of
19 felony murder rule, and if you're talking felony murder rule
20 then I would submit that the Defendant Hammond is entitled to
21 the charge with regard to mala in se versus mala prohibita
22 because I don't, I can foresee a situation where the jury
23 does not believe Mr. Moore, they do not believe an armed
24 robbery was taking place, they believe that it was a drug
25 deal but that Mr. Niles intentionally killed Mr. Salter

1 during the commission of a felony, that felony being the drug
2 deal and then the inference of malice for the purpose of
3 determining murder may arise, when the law from the Gore v.
4 Leeke with regard to mala in se versus mala prohibita would
5 definitely indicate that that would not be proper.

6 THE COURT: Yeah, okay, I understand your motion.
7 I'm going to deny it and leave that charge as is. All right,
8 anything else?

9 (No response.)

10 THE COURT: All right, we ready to begin closing
11 arguments? I don't want to waste this time. I'd say -- how
12 long is it going to take you to close?

13 MS. ELDER: With all three, Your Honor, if it's
14 anything like openings that was - I think it was right at
15 about an hour and a half, two hours.

16 THE COURT: All right, what do you all want to do?
17 Do you want to do it all tomorrow morning?

18 MR. BARR: Your Honor, we had discussed not breaking
19 it up for the benefit of having the jury better understand.

20 THE COURT: Well, I'm going to tell you right now if
21 we start - wait until tomorrow morning we're going to stay
22 straight through until we get a verdict. I'm not ---

23 MR. HAZZARD: Yes, sir.

24 MS. ELDER: The State would have no objection.

25 THE COURT: I mean, because we, we cut short the

1 other day and we're cutting short an hour and a half today.

2 MR. HAZZARD: No objection.

3 THE COURT: So, an hour and a half out the other day,
4 an hour and a half today that's three hours or it was an hour
5 the other day. Yeah, when was it we broke?

6 MR. RICHARDSON: We were about to cut short the other
7 day, Your Honor, but ---

8 MS. ELDER: And we didn't. We ended up calling a
9 witness.

10 MR. RICHARDSON: --- and we ended up pushing it till
11 right at five o'clock.

12 MS. ELDER: Yes, sir.

13 MR. RICHARDSON: The day we had Officer Allen.

14 THE COURT: Okay.

15 MS. ELDER: We had talked about it but we ended up
16 not doing it, Your Honor.

17 THE COURT: All right, well, let's, let's start at
18 9:00 o'clock tomorrow morning. Be here ready to get going at
19 nine o'clock; okay?

20 MS. ELDER: Your Honor, if we could have the
21 Defendants rest on the record in front of the jury so we
22 don't have any issues arise with regard to that.

23 THE COURT: Okay, any opposition to doing that?

24 MR. HAZZARD: No, Your Honor.

25 THE COURT: Go ahead, bring the jury in, we'll have

1 them rest and then we'll start tomorrow morning.

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

4 THE COURT: Ladies and gentlemen, welcome back. I hope
5 everyone had a good lunch, and I apologize for keeping you so
6 long back in the jury room, but we were attending to some
7 legal matters before we brought you back out, and at the time
8 you last left the courtroom Mr. Barr had just finished
9 calling his last witness; is that correct?

10 MR. BARR: That is correct, Your Honor.

11 THE COURT: All right, and your client rests on the
12 record; is that correct?

13 MR. BARR: Yes, Your Honor.

14 THE COURT: All right, likewise, Mr. Hazzard, your
15 client?

16 MR. HAZZARD: Your Honor, at this time the Defendant
17 Mokeia Hammond rests.

18 THE COURT: All right, thank you very much. Any
19 reply from the State?

20 MS. ELDER: No, sir, Your Honor. There will be no
21 reply.

22 THE COURT: All right, all right, so, ladies and
23 gentlemen, you have now heard all of the testimony and
24 evidence you're going to hear in this case. We're now to the
25 part of the trial where the attorneys will give their closing

1 arguments and I'll instruct you a little bit further on that
2 when they begin that. It's - to keep from breaking up the
3 closing arguments, procedurally what'll happen is the
4 attorneys will give their closing arguments. I'll charge you
5 on the law and you'll begin your deliberations; and so,
6 rather than breaking up the closing arguments and the jury
7 charge it's a good time for us to break for the day and we'll
8 come back tomorrow morning and I'll ask you to be back in
9 jury room at 9:00 o'clock tomorrow morning and then when we
10 bring you out of the jury room it'll be for the purposes of
11 the parties making their closing arguments. I'll charge you
12 on the law and you'll be able to begin your deliberations.
13 At this point in time it's still too early to begin your
14 deliberations. Don't talk about this case with anyone even
15 among yourselves. Don't conduct any independent
16 investigations. Don't watch any news accounts or try to do
17 any research on your own, but I'll excuse you for the
18 remainder of the day and I ask that you please be back in the
19 jury room at 9:00 a.m., 9:00 o'clock tomorrow morning. Thank
20 you very much. Everyone else please remain seated while the
21 jury is excused.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, anything further from the
25 State?

1 MS. ELDER: Nothing from the State, Your Honor.

2 THE COURT: Any from the Defendants?

3 MR. BARR: Nothing from the Defendant Niles, Your
4 Honor.

5 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
6 Your Honor.

7 THE COURT: All right, we'll stand in recess till
8 nine o'clock tomorrow morning.

9 MS. ELDER: Thank you, Your Honor.

10 MR. RICHARDSON: Thank you.

11 THE COURT: Thank you.

12 OFF THE RECORD

13 (On the record, Friday, March 13, 2009.)

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

16 THE COURT: Anything from the State before we bring
17 in the jury?

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

19 THE COURT: Anything from the Defense?

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

22 THE COURT: All right, sir.

23 MR. HAZZARD: There are a couple of housekeeping
24 matters, Your Honor. I looked over the charge you provided
25 us yesterday evening.

1 THE COURT: Right.

2 MR. HAZZARD: Direct the Court's attention to page 11
3 of 29 where it talks about prior inconsistent statements.
4 The Defendant Hammond would request that the Court specify
5 that the prior, the issue of prior inconsistent statement
6 deal specifically with Ervin Moore and with Mr. Niles because
7 it says a witness and the Defendant. It doesn't specify
8 which one.

9 THE COURT: All right, I see what you're saying. So,
10 there's been evidence presented that a witness in this case
11 and the Defendant Niles, I'll insert that.

12 MR. HAZZARD: Okay.

13 THE COURT: Any objection?

14 MS. ELDER: No, we're just going to say witness and
15 defendant Niles.

16 THE COURT: Right, that a witness.

17 MS. ELDER: I would object to, yes.

18 THE COURT: Yeah.

19 MS. ELDER: I would object to just putting Moore in
20 there.

21 THE COURT: Yeah, well, and that first sentence what
22 I'll do is I'll put, "There has been evidence presented that
23 a witness in this case and the Defendant Richard Bill Niles,
24 Jr., made prior statements which are not consistent with
25 their present testimony."

1 MR. HAZZARD: Okay.

2 The second thing, I mentioned to the Court a question of
3 malice and impermissive burden shifting. I was thinking of
4 State versus Lowry, that's L-O-W-R-Y, 657 SE2d 760, that's a
5 2008 case that talks about Sandstrom v. Montana talking about
6 the use of a firearm as proof of malice, and in this case and
7 in the charge the Court has provided the Court's charge
8 specifically says an inference. In that case they were
9 talking about a charge where the judge said use of a firearm
10 basically as proof of malice and that that impermissibly
11 shifted the burden. So, there's no impermissive burden
12 shifting issue here.

13 THE COURT: All right.

14 MR. HAZZARD: Wanted to clear that up. Also wanted to
15 make sure for the record that Defendant Hammonds' objection
16 to the Court's failure to charge the mala in se precept from
17 Gore versus Leeke is noted for the record.

18 THE COURT: All right, thank you.

19 MR. HAZZARD: Nothing further, Your Honor.

20 THE COURT: All right, all right, just for the
21 education of those that are in the audience when we start the
22 closing arguments and when I start the charge to the jury
23 nobody is going to be able to come into the courtroom or
24 leave the courtroom. So, if you don't want to sit through
25 the whole closing, I don't want anybody's - I don't want any

1 distraction during the closing argument or to the charge of
2 the law to the jury. So, if you don't want to be here
3 throughout the whole closing arguments and jury charge you
4 need to go ahead and leave now and I'll also ask that no one
5 be allowed in during the closing arguments. Yes, sir.

6 MR. HAZZARD: Your Honor, I would think that more
7 likely than not the entire closing arguments are going to be
8 fairly lengthy and that the jury may very well want a very
9 brief break in between the closing argument and the charge.

10 THE COURT: All right, well, we may and that might be
11 the case. I'm just going to say that during the closing
12 arguments and during the closing charge nobody will be able
13 to leave. Now, certainly if we take a break you'll be able
14 to come and go then but we'll just have to see how much time
15 is involved and whether or not they'll need a break then.
16 Okay? Anything before we bring the jury back in?

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

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

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

21 THE COURT: Ladies and gentlemen, welcome back. I
22 hope everyone had a restful evening. As I told you when we
23 broke yesterday you have now heard all of the testimony and
24 all of the evidence to be presented in this case has been
25 presented. Now is the time of the trial where the attorneys

1 make their closing arguments. Like their opening statements,
2 these closing arguments are not evidence. They are simply
3 the attorney's opinion as to what the evidence in this case
4 has shown and their opinion as to what facts can be drawn
5 from that evidence. If at any time during their closing
6 arguments these attorneys make a statement that disagrees
7 with what you perceive the facts to be then you're to
8 disregard their statements because these statements are not
9 evidence. It is simply their account as to what they feel
10 has been shown in this case.

11 All right, Mr. Barr.

12 MR. BARR: Thank you, Your Honor. If it pleases
13 the Court?

14 THE COURT: Yes, sir.

15 MR. BARR: Fellow attorneys.

16 Good morning, members of the jury panel.

17 I'd like to begin by thanking you for being so attentive
18 throughout this long trial. I've noticed you paying
19 attention and on behalf of Defendant Niles I appreciate you
20 being so attentive and I appreciate all that you've done in
21 this process.

22 I told you at the very beginning of this that this would
23 be a long case, that it would be difficult, that you would
24 sit a long time and we have. You've seen, I believe,
25 probably close to 130 exhibits. We've had four days of

1 witnesses presenting evidence in this case and you've sat
2 through all of this. I still want you to look for the truth.
3 We talked about justice. Justice is now in your hands. This
4 is the phase of the trial whereby you get to decide this.
5 You get to decide what's factual and what's believable. The
6 Judge will tell you that all of these exhibits and all of
7 what's been talked about it will be at your disposal, you can
8 take it into the jury room with you. You can review it. You
9 can look at it again. You can talk about it as you
10 deliberate in this case.

11 Now that all the evidence is in, I want you to look at
12 the evidence a little bit differently. There's been a lot of
13 conflicting statements. There's been a lot of conflicting
14 stories. I want you to look at the evidence at this point in
15 terms of what's consistent, what's believable, what in your
16 gut tells you that this is right. I want you to consider the
17 credibility of witnesses and the Judge will tell you that you
18 can believe all of what one witness says, none, a part of.
19 You have the right to judge what you think is, in fact, true
20 in this case.

21 With regard to Defendant Niles I want you to be
22 reminded of the standard of proof, proof beyond a reasonable
23 doubt. I want you to look at and consider every single
24 element of the crime or crimes alleged and the Judge will
25 instruct you on how to look at it but I want you to consider

1 whether or not the State has met the burden of proving beyond
2 a reasonable doubt that Richard Niles unlawfully killed James
3 Salter. I want you to seriously consider whether or not with
4 the incoming gunfire coming into his car whether or not
5 Richard Niles had a right to defend himself at that point. I
6 want you to consider whether or not there was any malice
7 between Richard Niles and James Salter. I think the evidence
8 has showed or has shown that Richard Niles and James Salter
9 had known each other for a while. We're not absolutely
10 certain just how long but they had been exchanging drugs and
11 selling drugs and Niles has been into Salter's home. They
12 know each other well enough, I think, over a period of time
13 that I don't think that we could say that Niles harbored any
14 malice toward Salter or the inverse.

15 Now, I'm not going to try to tell you that I'm trying to
16 convince you that I want you to condone what Niles was doing,
17 selling drugs. I'm not going to tell you that I want you to
18 say this is okay. It's not. I'm not going to try and
19 convince you that anything good happened in Best Buy parking
20 lot. I think you've heard enough this week to realize that
21 we could have had three dead people in that parking lot but
22 for the grace of God.

23 I want you to understand that I'm not offering excuses.
24 Certainly Niles has gotten caught up in the glamour of the
25 street sale of illicit drugs and I don't think it'll

1 eventually benefit society, you, him, anybody, and I pray and
2 I'll ask him take a different direction in life, but I don't
3 think that Niles went to the Best Buy parking lot with any
4 intention to harm Salter or anyone else in any way and I
5 don't think the evidence has pointed to that. I'd ask you as
6 you consider these exhibits to consider this one, State's
7 Exhibit Number Six, the Best Buy parking lot. I don't think
8 it is reasonable to believe that if Niles and his fiancée are
9 in control of their vehicle they have an intention to rob Mr.
10 Salter, if there's any plan to rob Mr. Salter that they would
11 drive up to the Best Buy parking lot and park directly in
12 front of the store during the daytime with an intention to
13 rob someone. It doesn't make any sense. So, I don't want
14 you to believe that because it doesn't. I want you to
15 consider the two stories that you've heard, Niles and
16 Ervin's. Truth be told both of them lied and in their
17 initial statements to the police. They did. Both of them
18 testified in a way in court during this trial that would be
19 considered self-serving. They did, but I want you to
20 consider as you deliberate the fact that Niles' story is
21 consistent with what the neutral witnesses say, people who
22 are going home no matter what happens today, people who don't
23 have an ulterior motive. If you look at what the neutral
24 witnesses say then I think you see a consistency between what
25 they say and what Niles says. Both Niles and Ervin say that

Closing Argument by Mr. Barr

638

1 they had been riding around all day and Niles has a
2 substantial sum of money. It appears as if the arrangement
3 was, ``Let's buy a pound of marijuana.'' The testimony says
4 it could be \$700, it could be as much as \$1200, so we average
5 and we say maybe \$1,000 for a pound of marijuana, and Ervin
6 says, ``We need marijuana to smoke.'' A pound of marijuana
7 is more than a user quantity. I want you to believe that
8 this is a drug sale and I want you to believe that Richard
9 Niles would have no reason whatsoever in a drug sale to try
10 and steal the drugs when he could have paid for them. He and
11 Mr. Salter know each other. They're engaged in a business
12 where they're making money. There's no logical reason why
13 Niles would screw that up for \$675, \$700 or \$1000 or \$1200
14 just off the cuff.

15 You heard the phone calls going back and forth, heard of
16 the phone calls going back and forth between Niles and
17 Salter. So, they're talking to each other. Niles testified
18 that Salter is going to give him some \$5000 or some sum of
19 money.

20 You heard the evidence presented by the detectives.
21 Salter has \$2600 in his car at that time. Would it be
22 logical for Niles to rob Salter of an item that's worth \$1000
23 that he has to then go out and sell because he can't smoke a
24 \$1000 worth of marijuana or would it be more reasonable to
25 just take the \$2600 but the money is left. It's not, it's

1 not taken. This is not about Niles wanting to rob Salter of
2 drugs.

3 I want you to consider Moore and Niles. Moore is 37
4 years old. He is a career criminal, list of convictions.
5 He's here in South Carolina from North Carolina we think to
6 pick up drugs. Moore testifies before you as a person who
7 has made a deal with the State that, "If I don't have to
8 risk going to prison for 30 years or the rest of my life and
9 you can guarantee me I can get ten to 15," then the day
10 before the trial starts, "I'll testify as a State's witness
11 against the other Defendants."

12 Now, without even looking at the credibility comparison,
13 you heard Moore testify from this witness stand he'd say
14 whatever he needed to say to get to go home. Now, that's
15 exactly the same version that his statement and I questioned
16 him about it from his interview with the detectives.
17 "Mr. Moore, how many children have you got?" "I've got
18 five." "You love your children?" "Yes." I said it and
19 I will say it again, that this notion that this is a robbery
20 by Niles is planted in these conversations with the
21 detectives.

22 Compare Niles. Niles is 25 years old. He has virtually
23 no criminal history, convicted of simple possession of
24 marijuana. At the time this robbery was supposed to have
25 occurred he and Ervin estimates that he probably had \$3,000

1 in his pocket. He has no motive to rob James Salter. He
2 just doesn't. Again, I want you to look for the consistency
3 between the neutral witnesses and what the conflicting
4 statements were between the Defendants.

5 Ms. Hooper, Ms. Hooper and I want you as you consider
6 her testimony take with you Defense Exhibit Number One. Take
7 it into deliberations with you and read it because Ms. Hooper
8 says that, "I'm parked, I'm parked right here and I'm
9 backing out and I can see clearly what's going on here. What
10 I saw was I saw Mr. Salter leaning over the back seat or
11 leaning over his seat firing into the vehicle, the Ford Focus
12 five or six times," and I don't want to misquote Ms. Hooper.
13 I think what she said in the statement, please read it, but
14 she said, "I heard the shots and then I saw," and that's
15 what the statement says.

16 Now, Ms. Hooper didn't testify that same way here in
17 court but she said, "I talked to my husband who is a police
18 officer and that's the person I talked to and I talked with
19 him after this." I'm not going to get any further into
20 that.

21 Mr. Watts testified five or six shots. Mr. Watt says
22 what Ms. Hooper said which is consistent with what Richard
23 Niles said, five or six shots. Now the story is not only
24 consistent with the neutral witnesses, lay witnesses but the
25 professional witnesses.

1 Mr. Whitler, the forensic specialist, he says the clip
2 carries ten, six spent cartridges, four remaining that were
3 found. It's all here, with a capacity of ten. Do the math.
4 It adds up. All of the forensic evidence, the scientific
5 evidence is consistent with the Niles' version.

6 I want you to consider also the Niles' statement. Now,
7 the Judge may give you instructions that you might disregard
8 the Niles' statement, either in part or in whole, and I won't
9 give the Judge's instructions. The Judge will give his own
10 instructions but I will tell you the testimony was and I
11 remind you that when Niles was giving his statement he asked,
12 "May I see my attorney? I don't want to talk anymore."
13 His statement was ended.

14 Now, even before the statement began the
15 detective testified that Niles says, "No, I don't want to
16 sign a waiver. I'm not going to sign it." These are
17 significant rights that citizens have. The Miranda warning
18 is not, "I tell you that you have a constitutional right not
19 to incriminate yourself and to have an attorney present when
20 I question you but I'm going to read this to you and then
21 let's just forget it, let's just go on." Ladies and
22 gentlemen, the Miranda warning, the spirit and the essence of
23 the thing is that you have a right, the Fifth Amendment of
24 the United States Constitution says you have a right not to
25 incriminate yourself and you have a right not to give any

1 information that may incriminate you. If you listen to
2 what's being read to you it says everything you say is going
3 to be used against you. It says you have a Sixth Amendment
4 right to counsel. You have a right to have a lawyer. It's
5 not, ``I read you the notion that you have a right to have a
6 lawyer and then I just question you anyway.'' That's not how
7 it works.

8 I want .. you to consider again that it may be possible
9 that the police tells Mr. Moore, ``Well, look, Mr. Moore, we
10 know that old boy flipped out and we know you all had to
11 shoot him but tell us what happens at the shooting. This is
12 your chance to get out of a deep hole and to help yourself.''
13 Well, sometimes when you think that you're getting into
14 someone else's head and you're maneuvering them they might
15 very well be maneuvering you. ``Well, maybe I will listen to
16 enough of what you're saying and I will find out what you're
17 suggesting that I should say and then I'll say it if that's
18 what you want to hear.'' Now, is that Moore's version of
19 what happened? Or maybe this career criminal is slicker than
20 the police thinks he is. ``Okay, I'll say what they want to
21 hear and at the same time I'll tell those young folks, they
22 don't know any better, I'll tell them let's just hold the
23 line, let's be real, let's stand together, let's go all the
24 way together, I will manipulate them. I'll write Niles a
25 letter and I'll tell him are you a real stand up man like I

1 am. I heard that bitch of yours working with the people so
2 that you can believe that I'm with you, but my real option to
3 save my own hide at any cost whatsoever, wheresoever,
4 whenever it becomes necessary."

5 I'm going to ask you not to believe the suggestion that
6 Richard Niles was in the car of James Salter, and I'm
7 going to ask you to believe that - to not believe that simply
8 on the basis of common sense. Detective Iannone testified
9 that he lifted a partial fingerprint of Mr. Niles' left index
10 finger and he did this analysis, that sort of thing and
11 then eventually he told you he didn't even do the analysis,
12 Detective Allen did the analysis.

13 Now, I asked Detective Allen in your presence,
14 "Detective Allen, how did you get the left partial print of
15 the left index finger, nothing else?" Detective Allen and
16 Detective Iannone would have you believe that weather
17 conditions, all of these things play a part in being able to
18 lift prints or to not lift prints, that type of thing. I
19 would ask you to just believe what appears to be logical that
20 there was no fingerprints taken from the white Mustang
21 because they say we use the same process on the white Mustang
22 that we use on the Ford Focus and we got seven or so highly
23 defined prints from all throughout the Focus. You saw the
24 evidence. The white Mustang ends up a ways down from the
25 Best Buy parking lot still running, it's on the curb, would

1 you actually believe that no fingerprint could be lifted from
2 that car when it was not out in the weather, it's taken
3 directly to the police compound, the keys still in the car,
4 how did Mr. Salter get in the car without his fingerprint
5 being on the keys, the door, no fingerprint from the driver
6 of the car in his own car? I'll ask you to believe the car
7 was just not tested. You can lift seven prints with that
8 degree of definition from the car out in the weather days
9 later at the trailer park. So, if the weather and the wind
10 and the conditions are the defining factors then the good
11 print should have come from the white Mustang but you can't
12 say that Richard Niles did anything to James Salter unless
13 you can somehow paint the notion that he had some contact
14 with James Salter. I'm going to ask you simply not to
15 believe that because it's impossible.

16 I'm, I'm not going to talk much longer but I want you to
17 consider that Richard Niles had no motive whatsoever to shoot
18 James Salter. There's been no evidence presented that
19 Richard Niles harbored any malice towards James Salter.
20 There's been no evidence presented that Richard Niles had any
21 evil intent with regard to James Salter. There's been no
22 evidence presented that there was a plan or a conspiracy,
23 let's say no evidence presented that identified a time and a
24 place where there was a conspiracy between Mokeia Hammond and
25 Ervin, Richard Niles to harm James Salter, and I believe if

1 it had been they wouldn't pull up right in front of the Best
2 Buy parking lot and say, ``Let's, let's do it right here
3 while the people are coming in and out of the store and
4 everybody can see what we're doing.'' I don't think that
5 Ervin Moore is being candid about that part. I believe that
6 if he was in the car with Richard Niles and Mokeia Hammond
7 and they pulled up in front of the Best Buy parking lot and
8 parked right in front of the store door and the plan was to
9 rob James Salter he would have said, ``Hey, no, let's, let's
10 move, all of these other parks out here, let's go out here by
11 the road somewhere where, where all of these people aren't
12 coming in and out of the store that's going to be witnesses
13 that see what we do and they're going to tell. Let's not do
14 it like that.''

15 I don't think there's been any sound evidence presented
16 that you could rely on to say beyond a reasonable doubt that
17 Richard Niles had a weapon, used it during the commission of
18 a violent crime. I think the evidence will tend to show that
19 Richard Niles probably did shoot James Salter but he wasn't
20 trying to rob him. I don't think there's any evidence that's
21 going to show that he was trying to rob him. I don't think
22 there's any evidence that's presented that you can rely on
23 beyond a reasonable doubt that's going to say there was an
24 armed robbery.

25 Ladies and gentlemen of the jury, Ervin Moore says he

1 admits to being guilty of voluntary manslaughter and armed
2 robbery and I think he admits that because he is guilty and
3 I think he knows that and I think that the justice that we
4 seek is with Ervin Moore and I would ask that on behalf of
5 Richard Niles that you find that the truth is that no one in
6 the car had any intention of robbing James Salter but Ervin
7 Moore and that you would bring back a verdict that speaks the
8 truth. Thank you, again, so much for your service.

9 THE COURT: Mr. Hazzard.

10 MR. HAZZARD: Thank you, Your Honor.

11 Good morning. I'm not going to talk too long because I
12 don't have a great deal to say. As you know I represent
13 Mokeia Hammond seated right over there. When this trial
14 began what Mr. Richardson here, the very able prosecutor,
15 very able, both Mr. Richardson and Ms. Elder are very, very
16 able and I can honestly say as a taxpayer here in Horry
17 County I'm very proud to have them working for me, but what
18 they told you to begin with was that this was a Bonnie and
19 Clyde situation, that Rich Boy Niles and Mokeia Hammond were
20 rolling around the countryside robbing and stealing and
21 raising all kind of havoc. Well, I think we see now after
22 four days of testimony that that is not true, no question
23 about that, we all see that but the State has a certain
24 scenario that they've presented to you and that that scenario
25 as they put up through Ervin Moore was that for reasons

1 satisfactory only to himself Rich Boy decided that he was
2 going to - what phrase did they use? Hit a lick, pull a rip,
3 some foolishness like that, meaning to rob Mr. Salter and
4 that this crime would go down around 6:30 to 7:00 p.m. on an
5 April afternoon in the middle of a busy Best Buy parking lot.

6 First of all, let's take a look. Richard Niles tells
7 you that he and Mokeia are just riding around on an afternoon
8 in Trio, South Carolina, that he tells you quite honestly had
9 a little bit of marijuana, he was going to go stop at a
10 convenience store, get a little something to drink, go down
11 to the baseball field, which I would presume is a good
12 deserted spot, hang out, commune with nature, smoke some
13 marijuana, drink a little bit, relax and enjoy our day. We
14 get to the convenience store and this is not in dispute, and
15 we run into Ervin Niles, I mean run into Ervin Moore. Now,
16 this is where the stories start to divert because Ervin Moore
17 says that he did want to go along with them to the beach and
18 that's fine, that's fine. Apparently nobody really wants to
19 be in Trio in the middle of the day. I understand. Never
20 been there. I'm sure it's a wonderful place, but what does
21 Rich Boy tell you? He says, "Ervin asked me about getting
22 some marijuana," okay. Did Ervin eventually after much
23 prompting admit that? Yes, he did. Rich Boy also tells you
24 that James Salter, his compatriot, his business partner
25 happened to call around that same time and he said, "Look, I

Closing Argument by Mr. Hazzard

648

1 don't have much marijuana on me. Here talk to this man. I
2 know he's probably got some.'" So, according to Richard
3 Niles there is a discussion between Mr. Salter and Mr. Ervin
4 Moore. The importance of that is this, when they get to the
5 Best Buy parking lot, okay, even Ervin Moore says, "I got
6 out of the car and I went and I got into Mr. Salter's car,"
7 and according to Ervin Moore the reason for doing that was
8 because he was supposed to check and see if the drugs were
9 there. Now, remember this is the State's scenario of what
10 happened. I would submit to you, ladies and gentlemen, that
11 is absolutely without belief because according to the State's
12 version Ervin Moore had never talked to James Salter, Ervin
13 Moore had never made a deal with James Salter, Ervin Moore
14 didn't know who James Salter was but yet when they get to the
15 Best Buy parking lot he's supposed to go and get in the car
16 with someone he had never spoken with, doesn't know, never
17 had any dealings with and according to their version this
18 person that Ervin Moore doesn't know from Adam is allowed
19 into the car. To put it in perspective it is as if any one
20 of us has a friend who lends another person that we don't
21 know \$1000 and then we are hanging out with our friends and
22 our friend says, "Remember I told you I lent Jimmy that
23 \$1000.'" "Well, yeah.'" "Okay, well, we're going to go run
24 around, do some shopping or whatever but I've got to stop by
25 Jimmy's house pick up the money.'" "All right, fine."

1 You get to Jimmy's house and then the friend says, "All
2 right, I know you don't know Jimmy, but you go on, I'm going
3 to sit here in the car. You go on upstairs and get the money
4 from him." I guarantee you any one of us our response would
5 be, "Are you crazy? This person doesn't know me from Adam.
6 How are they going to give me money?" How are they going to
7 have me knock on the door and go, "Hey, I'm here for Bill.
8 He says you owe him \$1000. Now I'm here to see if you've got
9 it." Does that make any sense? But that's the State's
10 scenario. That's the State's scenario as to how Ervin Moore
11 ended up in the car.

12 Now, what does Richard Niles tell you? Ervin Moore
13 talked to James Salter. They apparently, being, they being
14 James Salter and Ervin Moore apparently reached an agreement
15 as to the purchase of a pound of marijuana. Now, the
16 question has been raised as to did Richard Niles know that
17 Ervin Moore didn't have any money? Remember, Richard Niles
18 knows that Ervin Moore used to be in the game back in the
19 day. Remember Ervin Moore is the guy that was running the
20 crack house. So, there's no reason for Richard Niles to say,
21 "Well, you know, okay, well, let me check and see if you have
22 money, if you want to" - that's like a friend of mine
23 calling me up and saying, "Well, let's go to dinner." I
24 presume if they are asking me to dinner they have money, no
25 reason for me to ask, but Richard Niles tells you that Ervin

Closing Argument by Mr. Hazzard

650

1 Moore says, "I want to get hold of a quantity of
2 marijuana," talked with James Salter. They then go to the
3 Best Buy, and remember, at this point James Salter has talked
4 to the man on the phone. So, he has some knowledge that he's
5 going to meet with someone new who knows Richard Niles. So,
6 that's why Ervin Moore ends up in the car, okay. That's why.
7 Now, why does the State have to have it the other way?
8 Why does it have to be a plan to rob? Because that is the
9 only way that they could convict this young lady of anything.
10 Remember, virtually every witness, you've got 122 exhibits.
11 You've heard from approximately 30 witnesses. Remember, I
12 asked virtually every one of them, "Does your investigation
13 indicate any evidence whatsoever that Mokeia Hammond either
14 possessed a gun, fired a gun, killed anyone or robbed
15 anyone," and what did each of the State's witnesses say?
16 No. So, we know Mokeia Hammond never possessed a gun, never
17 fired a gun, never killed anyone and never robbed anyone.
18 That's not up to dispute. So, what the State is trying to
19 hang their hat on is this scenario or this issue of the hand
20 of one is the hand of all and that's, that's nice. That's a
21 solid proposition of the law, but what it requires and what I
22 believe the Judge will inform you and charge you is that it
23 requires a specific plan and that's where Ervin Moore comes
24 in. He's the one that gives them the plan.

25 Now, there's been a lot of talk as to whether what Ervin

1 Moore said on this witness stand is consistent with Ervin
2 Moore's statement to the police in December of '07. Ladies
3 and gentlemen, I don't think there's any question that he
4 gave two different stories, and if you want to know whether
5 he gave two different stories think of this. If he had told
6 them the same thing in December of '07 why is it that he
7 doesn't enter a guilty plea, isn't sentenced, doesn't reach
8 an agreement with the State until the day before this trial
9 begins? What did he testify? Sunday, March 8th, 2009, the
10 prosecution comes out to see him, and I say, "Okay," I
11 think Mr. Barr asked him, "Well, how long did they talk to
12 you?" "They talked to me for 90 minutes." Now, ladies
13 and gentlemen, I don't know about any other body, anybody
14 else's world, but my world is a pretty simple one. The truth
15 don't ever take 90 minutes. If they believed what he had to
16 say all they had to say was, "Okay, this is what you said
17 December of '07. We believe that's the truth. Just get on
18 the stand and say it." They could have saved themselves
19 another 89 minutes and 45 seconds and been on about their
20 day, but no, they've got to talk for 90 minutes about this
21 story to make it conform, to make it be some kind of plan to
22 rob because remember without that plan there is no
23 conspiracy, without that conspiracy Mokeia Hammond hasn't
24 done anything, but even with, even with that, even with -
25 because the State, I think, is going to make a big deal about

Closing Argument by Mr. Hazzard

652

1 Mokeia Hammond was there, she was there with Rich Boy, they
2 were riding around all day, they were doing drug deals, they
3 were smoking marijuana, she was there. That's nice, but I
4 believe the law says and I believe the Judge will tell you
5 that merely being present at the scene of a crime is not
6 sufficient to convict anyone as a principal, as someone who
7 is aiding and abetting. Okay, I believe that Your Honor is
8 going to charge you that. I believe he's going to say a
9 Defendant's presence where a crime is being committed or even
10 mere association with the person who commits a crime does not
11 make a Defendant an accomplice or an aider or abetter of the
12 person who was committing a crime. So, even if they go with
13 that, ``Well, she was there. She was driving. She was
14 there,`` that's not enough. So, they've got to have Ervin
15 Moore. They've got to have this agreement. They've got to
16 have it be a robbery. That's why it's got to be a robbery,
17 ladies and gentlemen, because without that they can't convict
18 anyone, by the law they cannot convict anyone, and I'm very
19 concerned about this case. I'm very concerned because even
20 with all the State's witnesses having said that Mokeia
21 Hammond did nothing wrong, even with all of that, I'm very
22 concerned because people sometimes have a reason to say, I
23 mean, what they do, as Mr. Barr indicated, what this
24 gentleman here did and the lifestyle that this young lady at
25 that point in time chose to lead was misguided and wrong, and

1 I'm very fearful that a jury might say, ``Well, they did
2 something wrong. So, let's convict them anyway.'' Ladies
3 and gentleman, Richard Niles got on this witness stand under
4 oath and testified that he is a drug dealer and that he deals
5 drugs, that he moves a large quantity of drugs. Believe me,
6 there will be another court, another judge sometime soon who
7 will address that issue because it doesn't get much simpler
8 than that. They've got him under oath saying it and they've
9 got him under oath admitting that she assisted. So, I don't
10 want there to be a mentality of we've got to round up the
11 posse and mete out justice regardless of the law. Let's
12 stick with the facts of this case, the charges on this case
13 because their justice for the other things they have done
14 wrong will be here fairly quickly, trust me.

15 I submit to you that what really happened in this case
16 is that Ervin Moore wanted to get back in the game, simple as
17 that because he testified been smoking marijuana a long time.
18 I think he said 19 years. ``Had my felony drug conviction
19 for cocaine. I've had my conviction for being the proprietor
20 of a crack house, but I'm not in the game anymore. I'm just
21 working at Bojangles," but he has someone, he's so broke he
22 can't even drive down from Greensboro. Remember that
23 testimony. He's got to have his baby mama bring him, okay,
24 to see his relatives and he's walking to the convenience
25 store. He ain't got no car and he runs into Rich Boy, big

Closing Argument by Mr. Hazzard

654

1 man, but remember there's about a 10 or 11 year difference in
2 their ages. So, back in the day when Richard was coming up
3 Ervin was the man. He was the man, but now life has taken
4 him a slightly different path. He's been in trouble, in and
5 out of trouble with the law. So, he's kind of busted in the
6 game, probably lost his connections and now he comes back to
7 Salters, South Carolina, and Rich Boy is the big man in town
8 now. So, he wants to hang out with Rich Boy and he wants to
9 get back in the game. "So, can you help me out? Can you
10 help me get my startup? Can you help me get a pound of
11 marijuana?" Rich Boy says, "Okay, I'll make a call," or
12 in fact, Salter called him and he said, "Here, here is the
13 phone, talk to this guy," and that's where it begins, but I
14 would submit to you, ladies and gentlemen, Ervin Moore has a
15 malignant heart, a heart devoid of social consciousness, bent
16 on mischief, ill will, because a couple of times despite the
17 fact that he was well-prepared to testify as to what to say,
18 because remember we had to talk to him for 90 minutes to tell
19 him what to say or to get him, to get him to where he could
20 testify. Despite that I think a couple of times he kind of
21 let his true nature slip and he let you see it because I
22 asked him, I said, "Well, how much money did you have when
23 you went to the convenience store?" "I didn't have any
24 money." "Okay, so, you were just going to sit outside the
25 convenience store or you were just going to sit there watch

1 other people buy stuff," and what did he say, "I could go
2 in there and get whatever I want. I don't need money," and
3 I asked him, I said, "Well, how? I mean, they're going to
4 give it to you on credit, you got family members to run the
5 store," and if you think back to it, he never answered that
6 question. He never answered it but I submit to you that
7 that's how he thinks, that if he wants something he can take
8 it, and I submit to you that's what happened when he came
9 across James Salter. He saw something he wanted. He was
10 going to take it and that was simple as that and his last
11 words to you were, "You know, I'll do anything it takes."

12 Now, the witnesses who testified for the State all, all
13 have incredible training and expertise in their jobs.
14 There's not a single one of them, well, for the most part,
15 the vast majority of them have great training and expertise
16 in their jobs. Let me put it that way and I'll explain that
17 in a second but that's why when they get on that stand and
18 they say that they did a thorough investigation into this
19 case over an almost two-year period, and they tell you there
20 is no evidence to indicate that Mokeia Hammond committed a
21 crime, that's why I submit that is the strongest evidence
22 that we could have. It's not that they did a shoddy job.
23 It's not that they sat around the police department and ate
24 doughnuts and didn't do an investigation. No, you got 122
25 exhibits worth of investigations here but not anything says

1 and not anyone says Mokeia Hammond committed a crime. Even
2 Ervin Moore, the person they tied their case to about this
3 supposed conspiracy, this agreement, this combination to rob
4 does he say that, does he say, ``We were in the car and we
5 talked amongst ourselves and agreed that this was how it was
6 going to go down?'' No. What he says is, ``Well, Rich Boy
7 was in the front and he was talking to the boy on the phone
8 and then he hung the phone up, then he turned around to me
9 and he said, `I'm going to hit a lick.''' There's nothing
10 else about, ``He made this announcement and then Mokeia
11 said, `Well, oh, well, how are we going to do it,''' and
12 Ervin said, ``Well, what's my part going to be in it,''' none
13 of that because that's the interesting thing. Remember Ervin
14 Moore saying he was the person who was supposed to get out
15 and go check, see if the drugs were there. He never
16 testifies that they even discussed that. He said Richard was
17 on the phone, he hung the phone up and then he turned around
18 and said, ``I'm going to hit a lick supposedly.'' See, so,
19 my grandmother told me a long time ago when I was a kid, ``If
20 you want to know which way the wind is blowing you don't look
21 at the big oak tree. You look at the leaves on the tree, the
22 little things are what's going to point you towards the
23 truth.'' Those kinds of inconsistencies let you know that
24 Ervin Moore's statement is made up at a whole part and cannot
25 be believed and is not worthy of belief.

1 I believe that the Judge will also indicate to you as a
2 part of the law that mere association with someone who
3 commits a crime does not make someone guilty of that crime.
4 Mere association does not make one guilty. So, I want you to
5 remember that when you go back in your jury room as well.

6 Now, I've heard the prosecutor say before that, ``Well,
7 don't blame us if we have to use someone like Ervin Moore as
8 a witness because if you're going to convict the devil you've
9 got to go to hell to get your witnesses.'' Well, in this
10 particular case I want you to think of exactly who is the
11 devil here, who is the devil here. Is it this young lady
12 here? Or is it the career drug dealer Ervin Moore, the
13 person who actually got out and got in the car and tussled
14 with James Salter? Who is it? Now, I think that when we
15 have this Bible here. the witnesses place their hand on it
16 and they raise their right hand and they swear to tell the
17 truth and you take an oath as jurors and that oath says, you
18 know, ``So help me God that I will well and truly try the
19 issues in this case and a true verdict render,`` that this
20 book that the oaths are taken on also says in 1st Timothy,
21 ``Let no one, let no one in our society be convicted by the
22 word of one.'' Let that one who is accusing come back with
23 two or three more, and why, so that we will know that the
24 truth is done and that justice is done in our society. The
25 only person who alleges in any way that Mokeia Hammond has

1 done wrong is Ervin Moore and yet you've heard a chorus of
2 other State witnesses that say we have nothing to indicate
3 that this young lady has committed any crime and the crimes
4 that she has committed that have been discussed they will be
5 addressed. You can trust and believe that, but that's for
6 another judge and another courtroom and another day in the
7 near future, not for you, not for you.

8 Now, very briefly to wrap up, there are certain issues
9 in the State's case that I do not understand but I did want
10 to bring them to your attention. There was a lot of talk,
11 some talk in my opening statement and I always try to be
12 truthful with the jury and I always try to deliver what I
13 tell you. So, I don't want there to be any misconceptions.
14 In my opening statement I indicated that one of James
15 Salter's roommates was present in the Best Buy parking lot.
16 Now, this is not a huge point in the case but I try to bring
17 things home and be truthful about what I say, never try to
18 mislead you. Now, the State and Mr. Barr say the roommate
19 was present in the Best Buy parking lot driving an SUV. For
20 some reason the State felt the need to try to dispute that.
21 They were asking witnesses, "Did you see an SUV?" I think
22 Mr. Richardson even referred to it as the magical or mythical
23 SUV. Okay, you might remember Detective Selina Mann got on
24 the stand and said, "I was part of the investigation of that
25 when I was with the Myrtle Beach Police Department. I'm now

1 with the Conway Police Department, and yes, as a part of my
2 investigation I determined Sean Lundy, a roommate of James
3 Salter, was present in the Best Buy parking lot driving a red
4 Durango SUV. Now, what is strikingly strange about this to
5 me is that as I questioned the witnesses for the State any
6 time I had an incident report I wanted to ask them about what
7 did I say? I'm going to - because I don't try to trick
8 anybody. So, I say, ``I've got this report that the State
9 gave me. So, take a look at it. Let me make sure that's the
10 same report you have.'' So, the vast majority of information
11 I have in this case comes from the State. So, they knew
12 about the SUV. They knew about all of that. So, why the
13 need to call it magical, mythical, make you think it didn't
14 exist, make you think Mr. Lundy wasn't there, I do not know.
15 I do not know.

16 Now, the second thing is the phantom fingerprint. Now,
17 I really hate to do that because I don't want to cast an
18 aspersion on Corporal Allen. I think she is a very fine
19 woman. I think she tries to do her job very well. However,
20 you may recall she's up there looking at the fingerprints,
21 looking at these prints and she says she saw a, she saw a
22 picture, a blown up picture of a fingerprint and she
23 initially thought it was a palm print. She initially thought
24 it was a palm print. Now, I'm not an expert in fingerprints,
25 but she's supposed to be and that kind of concerns me. If

1 I'm a car salesman I would like to think I could tell the
2 difference between a subcompact and a hummer, okay? So, that
3 gives me some concern and then what gives me also concern
4 about this fingerprint business is this whole notion that
5 only one found fingerprint of Richard Niles could be taken
6 from that Mustang. Now, as I walked out to my car this
7 morning I saw that we are starting to have pollen season show
8 up and it struck me that anyone who lives in the south and
9 has lived through pollen season knows exactly how easy it is
10 to have fingerprints show up on your car. So, maybe they're
11 dusting with the wrong thing. Maybe they ought to use pollen
12 instead of something else because I tell you what your
13 fingerprints can clearly be seen, especially on the trunk
14 area because, you know, you put the key and you lift the
15 trunk, oh, you've got a good set of four right there, easy,
16 but they say, no, couldn't get a single print from the
17 Mustang with the exception of a partial print of Mr. Niles,
18 but we got 32 prints off of and inside of the Ford Fusion.
19 I want to say it was 15 prints off of the vehicle itself and
20 17 prints off of the objects within the vehicle, for a total
21 of 32, and if I misspeak I'm not trying to mislead you but
22 that's my recollection, and of course, you'll have that
23 information in there with you. Isn't it much more believable
24 that what occurred is simply one part got misplaced or
25 mislabeled, simple as that, because, again, I don't think

1 that the Myrtle Beach Police Department is trying to deceive
2 or lie to you citizens. They do a fine, fine, fine job but
3 we're all human. We all make mistakes, simple as that, and
4 what causes me to believe this whole mislabeling thing may
5 exist is you may remember a very, very, very small matter, I
6 believe it was crime scene specialists Iannone testified
7 about a bunch of different pictures and one of the ones he
8 testified about is in here somewhere for your review but you
9 may remember and you may see it and it'll be in the jury room
10 if you want to look at it was a picture of a receipt from a
11 hotel room, okay, and Ms. Elder asked him about it and he
12 said, "Yes, I got that out of the Ford Fusion, the same with
13 all of these other pictures in evidence," and I got up and I
14 said, "Well, wait a minute now, wait a minute. Just let me
15 clarify. You're saying that receipt came out of the Ford
16 Fusion," and he again said, "Let me check my notes," and
17 he said yes. Well, Ms. Elder being the fine prosecutor that
18 she is she immediately caught what was wrong with that and
19 clarified him that that receipt, that picture and the receipt
20 may have come from somewhere else. Why is that fairly
21 significant? Because the receipt is from the check-in and
22 checkout of the hotel room where Mokeia and Richard went
23 after they left the car at the mobile home park, after. So,
24 they knew, Ms. Elder, kudos to her, she caught it and she
25 quickly corrected it, but see, that's how human nature is and

1 that's how mistakes can be made; and so, I submit to you that
2 the mislabeling of a fingerprint can just as easily happen,
3 no question about that, but again, I still have concerns to
4 wrap up because I've talked with friends and they have said,
5 ``Well, Gee, I don't know, Ron.'' One of my friends who's an
6 attorney, I've known her for 20 years. We were in law school
7 together. I was talking very briefly about the facts of the
8 case and she shocked me. She shocked me. This is someone
9 who has been to law school and everything, and she said,
10 ``No, I don't know. I'd have a really hard time not
11 convicting somebody who didn't take the stand," and I about
12 fell out of my chair. I would submit to you, ladies and
13 gentlemen, what can Mokeia Hammond add? I know that you
14 would like to sit here for another eight hours listening to
15 testimony back and forth. I know you would, but really what
16 can she add? Twenty some odd State witnesses have sat up
17 here and said, ``She didn't rob anybody, she didn't shoot
18 anybody, she didn't kill anybody, okay.'' Richard Niles has
19 told you about their activities on that day. What more can
20 she add? So, if you, if you have a problem with her not
21 testifying that's on me. That ain't on her. She's got
22 nothing to hide, but she also would have nothing more that
23 she could say to add to this.

24 The issue of the drug deals, and as I said, there'll be
25 another court and another day for that. So, don't let that

1 sway your judgment, and the third thing is I'm always fearful
2 that someone on the jury panel is like my mother because my
3 mother is 70 years old and she lives in Columbia but she
4 spends one to two weeks with me down here every month and
5 there are two things that my mother is going to read
6 everyday. One is the Bible. The other is the newspaper, and
7 she is going to read the newspaper from cover to cover, and
8 we will be sitting on weekends at the breakfast table and I
9 will have the sports section. She'll have the local section
10 and she will at some point rattle the paper and she will read
11 about some heinous crime that has been committed and the fact
12 that someone has been arrested and she will invariably say,
13 ``Well, thank God they caught him," or, ``Thank God they
14 caught her," and I look up and I put the sports section down
15 and I say, ``Mom, they - why do you say thank God they caught
16 him?" ``Well, I mean, this horrible crime occurred and they
17 made an arrest. Thank God they got him or her off the
18 street." Well, I say, ``Mamma, they're innocent until
19 proven guilty. My goodness gracious," and then she always
20 kind of blushes and she'll giggle a little and she'll say,
21 ``Oh, you're right. You're right." I go back to reading
22 the sports section. She goes back to reading the local
23 section. Then about two minutes later she goes, ``Well, it
24 is a horrible crime. It's a good thing they got him," and
25 that's fine for my mother to do at the breakfast table. All

1 of us have our own opinions, all of us have those rights. At
2 the breakfast table you have that bias, but when you raise
3 your right hand to God and you say, ``I will well and truly
4 try the issues of this case and a true verdict render so help
5 me God, '' you promise to leave and you commit to leave all of
6 those biases and preconceptions and misinformed notions
7 behind and to go strictly with the law as this Court gives it
8 to you and the evidence and the weight that you wish to place
9 on that evidence, you know.

10 Now, the Judge will tell you that your verdict must be
11 unanimous and there's no question that it must. However, I
12 do want you to understand and realize that while you must
13 listen to and carefully consider the point of view of each of
14 your fellow jurors you must not ever give away your vote.
15 Your vote is sovereign and sacred to you. Okay, it belongs
16 to each and every one of you individually and if you're in
17 that jury room and nine of you think that these two young
18 people are guilty and three of you think they are not guilty
19 those three of you are to hold fast to your belief after
20 having considered and given due credence to the point of view
21 of your fellow jurors, but hold fast to your belief, and by
22 the same token, if nine of you think Mokeia is not guilty and
23 three of you just think she is for some odd reason, then you
24 three are entitled to hold fast to your sovereign vote and do
25 not give it away, but I will tell you this, if you're in that

1 jury room and you've thought about it and you've talked about
2 it and you've reasoned about it and you've argued about it,
3 and the 12 of you reasonable people cannot come to an
4 agreement then I would submit to you that is the truest form
5 of reasonable doubt, and if that is what's going on then by
6 your oath you must write a verdict of not guilty. I thank
7 you for your time and your attention.

8 THE COURT: Mr. Richardson.

9 MR. RICHARDSON: Thank you, Your Honor.

10 Folks, Bonnie and Clyde, Mokeia Hammond and Richard
11 Niles, young lovers living the criminal lifestyle, doing what
12 they want when they want, whoever they want. They're two
13 sides of the same coin. One does not act without the other's
14 knowledge. One doesn't go anywhere without the other. You
15 can bet one's not going to commit a crime without the other
16 one helping out. Together they are guilty and together they
17 must be put away.

18 On April 9th, 2007, together in the car, Mokeia Hammond
19 and Richard Niles rode to Myrtle Beach, had Ervin Moore in
20 the back. Mokeia Hammond sat right beside Richard Niles by
21 everyone's testimony as he made that call to James Salter and
22 said, "Hey, man, I want to buy a pound, a pound of weed,"
23 and she sat there right beside him with the gun right up at
24 his feet that he keeps at home, the home they share, as he
25 hangs up the phone and says, "We're going to hit a lick.

Closing Argument by Mr. Richardson

666

1 We're going to rob him. I ain't buying it. We're going to
2 rob him, and then she drives him to the robbery place, the
3 place they've agreed to go to and see James Salter, the place
4 that Richard Niles has said, "I'm going to go rob him."
5 She drive him to the incident and murder location. Right
6 there she's aiding and abetting but she doesn't stop there.
7 She waits there in the car ready to run when the crime is
8 committed and she does just that. Hand-in-hand together they
9 were in on this crime and hand-in-hand together they must
10 face the consequences of their crime and they must be found
11 guilty, guilty for the armed robbery of James Salter and
12 guilty for the felony murder of James Salter.

13 In a few moments Judge Culbertson is going to start
14 giving you some instructions. Number one he's going to tell
15 you you are the triers of fact. It's your job to weigh all
16 the evidence and all the testimony that you have heard here
17 this week and you take that and you do your job, you try and
18 seek justice. You try and render a true and just verdict but
19 he's going to assist you because he'll give you the law.
20 He'll tell you he's the judge of the law and he'll give you
21 the law to apply to those facts. He's going to talk to you
22 about armed robbery. He's going to tell you that armed
23 robbery is the taking of another's property, doesn't matter
24 if that property is stereo speakers, marijuana. It's the
25 taking of another's property by force with the use of a

1 weapon. Folks, that's a no-brainer here. We know marijuana
2 was stolen. We know force was used and a weapon because it
3 was a 38-caliber projectile fired from a handgun that killed
4 James Salter. That's an easy one. The use of a weapon
5 during a crime of violence, that, too, is easy. It's a real
6 simple crime. The Judge is going to tell you both armed
7 robbery and murder are violent crimes and they are felonies
8 and that if you use a weapon during them, well, there's your
9 crime.

10 He'll talk to you about murder, about it being the
11 killing of another human being with malice aforethought.
12 Folks, we have a killing. Young James Salter has been dead
13 for almost two years now from that gunshot wound, but what's
14 malice? Well, it can be inferred or express. Express, "I
15 hate you, I'm going to kill you," easy, but that malice can
16 be inferred. It can be inferred by the use of a deadly
17 weapon such as that handgun that fires the 38-caliber
18 projectile. It can be inferred by the fact that that killing
19 takes place during the commission of a felony, here an armed
20 robbery. Folks, that one's an easy one, too. We know we've
21 got a murder.

22 The Judge is going to talk to you about mere presence
23 and they may want to belabor it but it just says that if
24 you're present at a crime scene doesn't mean you're guilty.
25 We don't have that here. Mokeia Hammond was not only

1 present, she was aiding and abetting. She was in on the
2 plan.

3 The Judge is going to talk to you about that hand of one
4 hand of all. Sounds a little bit hokey. Maybe, maybe a
5 little bit difficult, but like eye for an eye but it's the
6 hand of one hand of all, and that law is basically that if
7 two or more persons join together with a plan or a scheme to
8 commit a criminal act and they're both present in furtherance
9 of committing that act, then the hand of one is the hand of
10 all. In other words, the one person that's in on that act,
11 while another person is in on that act they are criminally
12 responsible for what, everything done by that secondary
13 person in furtherance of that initial plan or scheme. In
14 this case they planned the armed robbery. They planned to
15 use the pistol. They planned to put a gun to James Salter
16 and the natural and probable consequence of that when you
17 point a loaded firearm at somebody that you might have to
18 kill them, they may want to defend themselves just like James
19 Salter tried; and so, in conspiring on that armed robbery
20 they ultimately conspired for the murder, the hand of one is
21 the hand of all.

22 The Judge is going to talk to you about reasonable
23 doubt. That's a biggie. We've all heard it. Perhaps you've
24 heard it on a television show, maybe Law and Order, or maybe
25 you've read a John Grisham novel or a James Patterson novel

1 has reasonable doubt in it, but what exactly is it? You're
2 in luck. The Judge is going to give you instructions. He'll
3 tell you that to prove someone guilty beyond a reasonable
4 doubt the State must give you evidence that leaves you firmly
5 convinced of their guilt, not to lose every bit of doubt that
6 has ever been, but that leaves you firmly convinced of the
7 guilt of Mokeia Hammond and Richard Niles, and folks, we have
8 to do that by using the competent, relevant and admissible
9 evidence. That's the State's job. That's my job. That's
10 Ms. Elder's job. Not to mislead you, not to distract you,
11 not to put witnesses on the stand that have no meaning to
12 this case, that are on the periphery, it's to give you the
13 admissible, relevant and competent evidence that will assist
14 you in weighing this evidence and rendering a true and just
15 verdict. That's what we've done. That's what we've done.
16 So, let's take a look at the evidence.

17 You had Ervin Moore to take the stand. Ervin Moore took
18 the stand and testified to you, to accept the consequences of
19 his actions on that day. Now, to hear Mr. Niles tell the
20 story he didn't do anything wrong, and yet, Mr. Moore is here
21 to tell you his guilt. He knows that armed robbery was going
22 to take place, didn't know Richard had a gun, but he knew the
23 armed robbery was going to take place, and he took his guilt.
24 He's going to prison. He told you, and he told you he knew
25 that if he lied on the stand all deals were off. He's facing

1 a longer prison sentence. So, what did he tell you? He told
2 you on April 9th, 2008, he sat in Trio, South Carolina. The
3 Defendants came by and picked him up, ``Hey, man, you want to
4 smoke some weed? Come ride with us. We're heading to the
5 beach. We're going to do business, '' not big business as the
6 defense attorneys try to allege. Mr. Moore tells you they go
7 from hotel to hotel, hand to hand drug deals, and Mr. Moore
8 tells you they end up with a couple of hundred dollars.

9 Now, Mr. Barr asked him, ``Couldn't it have been
10 \$3500, '' is Mr. Barr's words that try to inflate that money.
11 But Mr. Moore says, ``No, it was a couple of hundred dollars,
12 saw some twenties, didn't see a big stack, saw some
13 twenties, '' a couple of hundred dollars, and they run out of
14 marijuana. That's all right. Rich Boy Good over there he's
15 got a plan; and so, he begins calling. Ervin Moore is
16 sitting in the backseat. Rich Niles and Mokeia Hammond are
17 up front, Mokeia is driving. So, he calls James Salter,
18 orders up some marijuana, agrees to be at the Best Buy.
19 Maybe it's James Salter that says meet at the Best Buy.
20 He's trying to protect himself on this drug deal. We know he
21 was trying to protect himself in other ways with the gun, and
22 when he hangs up the phone with James Salter he turns to him,
23 tells everybody in that car, Mokeia Hammond is sitting right
24 beside him that gun right up between his legs, ``I'm not
25 going to buy. I'm going to hit a lick. We're going to do a

1 robbery," and when they get to Best Buy Ervin Moore told you
2 he did just as he was directed. He was the man that was
3 instructed, "You go check to see if the marijuana is
4 there." You see, Rich Niles didn't want to get out of the
5 car with that gun, didn't want to flash that gun, didn't want
6 to take the chance of going over there to try and steal
7 something that wasn't theirs. So, he had to have somebody to
8 check it out and he had to have time to ready that handgun,
9 make sure it's loaded, that revolver, but Ervin does what he
10 says and he gets in the car with James. Why does James let
11 him in? Because they're there to buy marijuana. That is
12 what James is there to do, to sell marijuana. He's not going
13 to be overly picky and they're there to steal that marijuana,
14 not the cash in the backseat. They don't know about that.
15 They've ordered a pound of marijuana. So, Ervin gets back
16 out of the car, walks back around that Ford Fusion and Rich
17 Niles is getting out, getting ready, he says, he's got the
18 marijuana, and Ervin gets in the backseat right where his DNA
19 is found, and he sees Rich Niles walk back around the Ford
20 Fusion back to the Ford Mustang and lean up against the car.
21 My, my, isn't that where you would leave your fingerprint if
22 you lean on the car one time, but he leans on the car and
23 Ervin is back over here, and he hears bam, bam, and it shocks
24 him, it shocks him. The next thing he knows everything is
25 happening fast and furious. Big old Rich Niles is jumping

1 through the backseat, through, behind the driver's seat
2 landing on top of him. The next thing he knows bullets are
3 whizzing in, bam, bam, bam, glass is flying everywhere. You
4 saw the pictures. Glass is flying everywhere, all in those
5 seats. Ervin tells you, "I got cut in the eye. I'm
6 bleeding." Only goes to figure everybody else is getting
7 cut, too, but, "Drive, drive, drive," and they do just that
8 and Ervin is in shock. He says they bounce over the curb, up
9 over the curb into Logan's roadhouse. At this point he's on
10 the floor covering that eye, Rich Niles on top of him, "What
11 did you do, man? Are you crazy," and what does Richard
12 Niles tell him as Mokeia is driving him away from the murder
13 scene. "Man, I had to kill him. He went for his gun."
14 The audacity of James Salter to try to defend himself, the
15 audacity of him trying to go back and defend himself, and so,
16 Rich Niles had to shoot him. Ervin tells you about how they
17 ditched the car. It's marked up. They have to get it away.
18 They ditch it in a trailer park. Ervin is shot, bleeding and
19 Rich Niles calls a cab and then calls his mamma. "Mamma,
20 report the car stolen." We know that's accurate. You heard
21 that 911 call. Mamma is crying. What else did he tell her?
22 What else did her son tell her? And he goes on to the hotel
23 with them because he's got to get away. As soon as he can
24 though he gets away from them. He stays through the night.
25 He's got glass in his eye. He figures that Rich Niles goes

1 back to get the gun that he ditched over at the travel park,
2 and we know he got it back because the gun is gone when the
3 police arrive the next day to get the Ford Fusion and he gets
4 out of town until he's arrested. How do we know Ervin
5 Moore's story is accurate? Folks, it's the same story he
6 told in December of 2007 when he was arrested. There were no
7 deals in place. None. The police talked to him for about an
8 hour and a half. Mr. Hazzard wants to talk about the
9 prosecution talking to Mr. Moore for 90 minutes, an hour and
10 a half. Folks, it takes 90 minutes to watch a video of your
11 statement that lasted 90 minutes, and it's the same story he
12 tells today and he tells you from the stand when they began
13 that interview back in December of 2007 he tried to deny
14 things at first and then he was confronted with the evidence,
15 the evidence that been collected, the evidence against
16 Richard Niles, the evidence against Mokeia Hammond and the
17 evidence against himself and he says, ``Okay, I'll tell you
18 what happened,`` and it's the same story he told you when he
19 took this stand and accepted his guilt for his actions and
20 told you what happened on April 9th of 2007, but what else
21 corroborates Ervin Moore's story? What else corroborates his
22 testimony? Every bit of physical evidence, every bit of
23 testimony of those lay witnesses that were on the scene.

24 First, we have a dying declaration of James Salter. You
25 all remember the police officers two of them said they

1 extracted James from that Mustang and he's laying on the
2 ground gasping they ask him, ``Who shot you,`` and he said,
3 ``A couple of black dudes.`` Ervin Moore got out of the car,
4 checked on the dope, that's one, and then Richard Niles
5 approached on the passenger side and shot him, that's two.
6 That's a couple.

7 We have Angie Hooper. She tells you she is starting to
8 back her van out when she hears fireworks. Now, common sense
9 tells you you don't hear and automatically facing the place
10 where you can see exactly what you're hearing at the same
11 time. You hear pop, pop, those first two shots, fireworks,
12 where is it coming from? She turns and looks and she sees
13 the return fire. Like Mr. Barr said, five or six shots.
14 Well, we know Mr. Salter fired six shots and she sees those
15 five or six shots, but she heard the fireworks first. So,
16 who fired first? Richard Niles.

17 Let's go on over to Logan's Roadhouse. Mr. Watts,
18 Mr. Watts doesn't have anything to gain by his testimony
19 other than to tell you what he saw that day. Mr. Watts, who
20 is not even from the area, tells you what he saw that day.
21 He says he and his wife and their grandchildren were coming
22 out of Logan's Restaurant with a clear view of the Best Buy.
23 They hear what they think are fireworks, that initial pop,
24 pop, and they turn and look. What do they see? They see a
25 heavysset black male running, jumping from that Mustang over

1 to the Ford Fusion, not a tiny little fellow like Ervin
2 Moore. You saw him. He's a tiny thing but a heavyset black
3 male. . Mr. Niles is a good bit bigger than Mr. Moore. What
4 else does Mr. Watts see? He sees a black female driving.
5 That's Mokeia Hammond. Once again by everybody's testimony
6 she's driving. When that car hops the curb, curb over in
7 Logan's Roadhouse Mr. Watts is close. What does he get a
8 view of? He sees two individuals in that car. Like Ervin
9 Moore told you he's down in the floorboard covering that eye
10 saying, ``What did you do?'' He sees a heavyset black male
11 in the back. It's happening fast. All you can tell is it's
12 a heavyset black male. Once again, not a tiny guy like Ervin
13 Moore but a big old fellow with black female driver. Ervin
14 Moore's story is the one that's adding up. Ervin Moore's
15 story is the one that's corroborated. Mr. Watts tell you
16 where they all are by his testimony but what else tells us
17 where everybody is sitting in the vehicle in that Ford Fusion
18 after this murder.

19 DNA, by everyone's testimony Mokeia Hammond is driving.
20 So, where is her blood found, her blood DNA, one in some
21 quadrillion chance of it being someone else's. It's in the
22 driver's seat. All that flying glass you're going to get
23 cut. Mokeia Hammond's blood is found in the driver's seat.
24 Where is Ervin Moore's found? Folks, you all remember this
25 diagram, this little blood smear here, maybe a handprint

1 where Ervin Moore reaches up after he's cupped that bloody
2 eye, grabs it to get out, where is it? My, oh, my, it's on
3 the passenger side of that Ford Fusion right where he said he
4 was. That's not a surprise. He told you, but where is
5 Richard Niles' DNA found? Is it found in the front seat like
6 he testified. He's in the front seat, all that flying glass,
7 none of his blood up front but it's in the back right behind
8 the driver, right where Gene Watts saw him, right where Ervin
9 Moore told you he was. Ervin Moore's story adds up. It's
10 corroborated. What other scientific evidence do we have
11 telling us where Richard Niles was? We have that
12 fingerprint.

13 Now, the Defense wants to agree with all of our experts
14 except these fingerprint guys because they know it is
15 severely detrimental to their case. Mr. Niles has said he's
16 never gotten out of the car. I mean, I think his first
17 statement to police was, "I've never even seen a white
18 Mustang. I don't deal with white people." Even in his
19 second statement, never got out of the car and even on his
20 testimony never got out of the car. So, they have to explain
21 away that fingerprint, must be a mistake. Folks, it's not a
22 mistake. We've got two fingerprints, only one was usable.
23 It's not that there weren't any fingerprints on the car.
24 We've got one usable fingerprint off that white Mustang
25 right where Richard Niles was. This isn't a car he's at all

1 the time. He leaves one fingerprint. Yeah, he's got a
2 bunch of them in the Ford Fusion. He's been driving it for a
3 few days. It's a rental car he's had. He's been getting in
4 and out. His fingerprints are all over there. He gets out
5 after he ditches the car. His fingerprints are all over
6 there. They're on glass bottles he's got in there, but that
7 fingerprint on that Ford Mustang right where he puts his hand
8 as he levels the pistol, "Give me your dope, boy. Give me
9 your dope," and he takes that marijuana up under his arm,
10 goes to turn, he's grabbing a gun. "The audacity he's
11 going to defend himself." Bam, bam, and he turns to jump in
12 the Ford Fusion right behind him. Where else do we find
13 fingerprints? Well, it's not a fingerprint. It's a palm
14 print and it's on the driver's side of that Ford Fusion near
15 the windshield on the doorpost just like if you're turning
16 from a vehicle after shooting somebody, murdering them, and
17 you run into it as you brace yourself to go jump around and
18 jump in the back seat to get away. "Drive, girl, drive,"
19 aiding and abetting, "You've got to get me out of here."
20 The robbery went bad.

21 Folks, that gunshot, let's talk about it for a second.
22 You heard Dr. Presnell explain exactly where the gunshot was,
23 where all the wounds were found on James Salter, and I say
24 all the wounds because there's one little bit of abrasions to
25 his lip but there's one gunshot wound. It's not through his

Closing Argument by Mr. Richardson

678

1 arm. It's not in his back. It's not on his left side or in
2 his head. It's under his arm in the rib cage. Folks, I
3 would submit to you if I'm sitting in my car seat and I go to
4 reach for a gun what's open, my rib cage. That's where the
5 fatal shot is. That's where the kill shot is. That's where
6 Richard Niles launched that first 38 projectile and killed
7 James Salter. Now, to hear Richard Niles' testimony he is
8 laid back in a seat firing behind a driver's seat only after
9 James Salter is laid across the seat with that wound, down
10 and firing. So, I guess Mr. Niles not only has 38 bullets,
11 they're magic because somehow they slid up under the seat
12 without causing damage and hopped into his rib cage.
13 Mr. Niles' story doesn't make sense. Ervin Moore's testimony
14 does.

15 What else do we have on the gun? Mr. Salter's defense,
16 you heard Agent Whitler, you heard the testimony about where
17 shell casings are found and there are six shell casings in
18 James Salter's gun. He's got an automatic, spits them out as
19 he shoots. There's two in the backseat, one over here on the
20 floorboard, another a little bit closer in between the seats
21 and in the ashtray, and folks, I submit to you when you get
22 shot, uh, it takes a second to recover even with adrenaline.
23 You pull your weapon and you see the Defendant Niles jumping
24 in that backseat. Where are you going to shoot first? Back
25 towards your attacker, the man who's killed you, given you

1 the mortal wound; and so, James reaches back, bam, first shot
2 strikes the upper doorpost and fragments, bam, he blows out
3 the window, glass is going everywhere, cuts Ervin Moore, cuts
4 Richard Niles, cuts Mokeia Hammond, they start to take off.
5 Those two shell casings are down. Bam, bam, bam, he's
6 shooting the car as it's pulling out. He's trying to get
7 some manner of defense. He's working on adrenaline. He's
8 trying to fight back. Folks, we know that's about how it
9 happened because where the shell casings are. The last shot
10 I believe he even shoots off his rearview mirror. He's going
11 into shock already and he drives out, and we find those 40
12 caliber shell casings from his gun, but what happened to the
13 38. We find a 38 projectile in his chest. We find another
14 38 projectile right there in the floorboard of his car. Bam,
15 bam, we find yet another 38 over on the other side of the
16 Ford Fusion, maybe, maybe just like Ervin Moore said.
17 Richard Niles fires again when he gets in the car and he -
18 when he's jumping in maybe he fired because that back window,
19 the side window is blown out, too, and it hits that van,
20 lands on the side, and Ervin Moore told you he heard about
21 ten shots total, six from James Salter. We know that, four
22 more from Richard Niles, and what do we find, what do we find
23 in Williamsburg County in the Defendant's house? Four, four
24 38 shell casings. Like Agent Whitler said, an automatic, it
25 spits those shells out, but the guns that shoots 38s those

Closing Argument by Mr. Richardson

680

1 tend to be revolvers, it's like luggage, folks, you take
2 those shell casings with you, maybe a souvenir of his first
3 kill, but we find this, those four 38 caliber shell casings
4 in his home, not on Ervin Moore.

5 Folks, whose story is corroborated by the testimony?
6 Whose story is corroborated by the evidence? It's Ervin
7 Moore's. He took the stand. Yeah, he entered a proffer,
8 yeah. He's going to do ten to 15 years. Yes, he's got a
9 record, but he told you, ``If I lie I know the deal's off,
10 but I've also got a conscience. I'm ready to face my guilt.
11 My story is corroborated.''

12 How about the Richard Niles? Well, folks, it doesn't
13 add up. His testimony does not add up. He gives one story
14 when he's arrested, ``Didn't know anybody there, never been
15 to Best Buy, don't know white people, don't deal with them, I
16 don't know nothing.''. Then the police confront him with the
17 evidence. He needs a minute. He says, ``I want to speak
18 with my attorney.''. The police say, ``That's fine,' and
19 they let him go on back, but he gets back in that jail cell
20 and he starts thinking, ``Whew, they found the stolen car,
21 hmm, they got my fingerprints, hmm, they got a witness that
22 put me there, got to come up with something. Let me speak
23 with the officers again,' and he comes out and gives a
24 second statement.

25 Now this time it's changed a little bit. ``Okay, maybe

1 I was at Best Buy, but I didn't stop, and maybe I knew James
2 Salter, but it's only two months, and yeah, I had called him
3 just like the phone records say, but it was to buy a quarter
4 pound of marijuana," not Ervin Moore. As a matter of a fact
5 he never mentions Ervin Moore. He gives out a third suspect.
6 He calls him Keith, and now he's had two years, two years to
7 review all the evidence and say, got to explain this away.
8 He's had four days of trial where he's listened to all the
9 testimony, and then yesterday he tries to take the stand and
10 explain it away and it still doesn't add up. There's no way
11 he could be firing the gun from the back seat and that shot
12 land where he said it did. There's no way his DNA gets in
13 the backseat, his bloody DNA with him sitting up front.
14 Folks, it's the testimony who has everything to gain by
15 standing up here and trying to tell you a new story. Ervin
16 Moore is facing the consequences of his actions and it's time
17 that Mokeia Hammond and Richard Niles do the same. Together,
18 together they planned this robbery and what else do we find
19 in Williamsburg County?

20 Mr. Barr made a big deal about we didn't find a pound of
21 marijuana, that marijuana that was stolen but in the
22 Defendant's vehicle, not the one they reported stolen, but
23 the other vehicle what do we find? \$701, could it have come
24 from a marijuana sale? I don't know, but Mr. Barr elicited
25 the testimony that a pound of marijuana goes for about 650,

1 700. The only testimony as to any business dealings that
2 James Salter and Richard Niles had comes from somebody who
3 has got everything to gain, somebody who has had two years to
4 figure out a story. This is a relationship that is not
5 corroborated, no cell phone records, nothing. The only
6 business relationship they had was James was willing to sell
7 him some marijuana, and the Defendant wants you to believe
8 that he was there to pick up \$5,000 and yet he lets this guy
9 he barely knows, Ervin Moore, get out to go buy a pound of
10 marijuana first. Folks, that's what doesn't make sense. If
11 I'm owed \$5,000 you can bet I'm not going to go to somebody's
12 house and say, ``Whew, tell you what, instead of picking up
13 my \$5,000 that you have for me right now, would you mind
14 giving this guy \$600 worth of marijuana or \$700 worth of
15 marijuana first.'' I'm going to get my money first. This is
16 drug money. I don't want the police to arrive and not - and
17 me not get paid. Folks, Mr. Niles' story does not make
18 sense. It doesn't make sense and you should not believe it.

19 I don't want to get any more long-winded than I have
20 been, folks. Together these two Defendants planned the
21 robbery. Mokeia Hammond sat right beside Richard Niles and
22 as he told both her and Ervin Moore, ``I'm going to rob that
23 kid, James Salter.'' They weren't at Best Buy when he came
24 up with plan. He already had the gun up front. He tells
25 them, ``We're going to rob him. We're going to hit a lick.

1 So, let's go, " and Mokeia does what? She drives him to the
2 murder scene, sits behind the wheel ready to go. She doesn't
3 go in to get CDs. She sits right there ready to go because
4 you've got to have a getaway driver. The hand of one is the
5 hand of all. Hand in hand they preplan this crime, this
6 armed robbery, and she is guilty for every act that took
7 place during that armed robbery. She is guilty of the murder
8 just as Richard Niles is. Together hand in hand they are
9 guilty.

10 Folks, like I said they are two sides of the same coin.
11 Put them away.

12 THE COURT: All right, ladies and gentlemen, that
13 concludes the closing arguments portion of this trial. We
14 been going at it a little while. I think I'm going to go
15 ahead and give you a little break before I charge you with
16 the law because that's going to take a little while also.
17 So, I'll excuse you back to the jury room to stretch your
18 legs, use the restroom, get a little something to drink.
19 We'll take about a 10, 15 minute break and then I'll bring
20 you back in to charge you with the law. Please do not
21 discuss this case even among yourselves at this time. It's
22 still too early for deliberations until after I've instructed
23 you on the law. So, please do not discuss this case. If you
24 have taken any notes still leave your notepads here in the
25 jury box, but I'll excuse you and bring you back in in a

Closing Argument by Mr. Richardson

684

1 short while. Thank you very much.

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

4 THE COURT: All right, anything before we take a
5 little recess?

6 MS. ELDER: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. BARR: No, sir.

9 MR. HAZZARD: No, Your Honor.

10 THE COURT: All right, let's stand in recess for
11 about 10 minutes, okay?

12 OFF THE RECORD

13 (On the record.)

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

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

18 MR. RICHARDSON: Nothing from the State, Your Honor.

19 THE COURT: Anything from the Defense?

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

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

24 THE COURT: All right, thank you very much. Let's
25 bring the jury in.

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

3 THE COURT: All right, ladies and gentlemen, welcome
4 back.

5 All of the testimony and other evidence to be presented
6 in this case has now been presented and now is the time of
7 the trial when I charge you with the law to be applied in
8 this case. I'll give you a copy of these instructions in
9 written form and during your deliberations you may refer to
10 the instructions to guide your decision-making. However, you
11 must consider the instructions as a whole and not follow some
12 and ignore others. Please return the written instructions to
13 the Court at the time your verdict is rendered.

14 Now, I remind you that the fact that the Defendants in
15 this case were arrested, charged and indicted is not evidence
16 in this case and cannot be considered by you as evidence of
17 guilt in this case nor does the Defendants' arrest, charge
18 and indictment create any presumption or inference of guilt.
19 These documents are simply the formal written instruments
20 which contain the charges made against the Defendants. They
21 are the formal documents by which this case is brought into
22 this Court. The indictments in this case allege several
23 different crimes against each Defendant. These charges are
24 murder, armed robbery and possession of a weapon during the
25 commission of a violent crime. Each indictment charges a

Charge

686

1 separate and distinct offense. You must decide each
2 indictment separately on the evidence and the law applicable
3 to it uninfluenced by your decision as to any other
4 indictment. A Defendant may be convicted or acquitted on any
5 or all of the offenses charged. You'll be asked to write a
6 separate verdict of guilty or not guilty for each Defendant
7 on each indictment. There are two Defendants in this case.
8 Each of whom is charged with murder, armed robbery and
9 possession of a weapon during the commission of a violent
10 crime. The case of each Defendant and the evidence and the
11 law concerning that Defendant should be considered separately
12 and individually. Your verdict does not have to be the same
13 for both Defendants. The fact that you may find one
14 Defendant guilty or not guilty should not control your
15 verdict as to the other Defendant. Where more than one
16 person is charged with a crime, if the evidence warrants it,
17 you may convict one and acquit the other or you may acquit
18 both or you may convict both. It will depend upon your view
19 of the testimony and evidence. You must take each Defendant
20 and consider the evidence as to that Defendant and my
21 instructions to you on the law. You will then write a
22 separate verdict for each crime of guilty or not guilty for
23 each individual Defendant.

24 Now, the Defendants have pled not guilty to these
25 indictments and that plea puts the burden on the State to

1 prove the Defendants guilty. A person charged with
2 committing a criminal offense in South Carolina is never
3 required to prove his or her innocence. I charge you that it
4 is an important rule of the law that the Defendant in a
5 criminal trial no matter what the seriousness of the charge
6 may be will always be presumed to be innocent of the crime
7 for which the indictment was issued unless guilt has been
8 proven by evidence satisfying you of that guilt beyond a
9 reasonable doubt. This presumption of innocence does not end
10 when you begin your deliberations but it accompanies the
11 Defendant throughout the trial until you reach a verdict of
12 guilt based on evidence satisfying you of that guilt beyond a
13 reasonable doubt. The presumption of innocence is like a
14 robe of righteousness placed about the shoulders of the
15 Defendant which remains with the Defendant until it has been
16 stripped from the Defendant by evidence satisfying you of the
17 Defendant's guilt beyond a reasonable doubt. The presumption
18 of innocence is not a mere legal theory. It is not just a
19 legal phrase. It is a substantial right to which every
20 Defendant is entitled unless you the jury are satisfied from
21 the evidence of the Defendant's guilt beyond a reasonable
22 doubt.

23 Now, what is reasonable doubt in the law? A reasonable
24 doubt is the kind of doubt that would cause the reasonable
25 person to hesitate to act. Proof beyond a reasonable doubt

Charge

688

1 is proof that leaves you firmly convinced of the Defendant's
2 guilt. We know very few things in this world with absolute
3 certainty and in criminal cases the law does not require
4 proof that overcomes every possible doubt. If based on your
5 consideration of the evidence you are firmly convinced that
6 the Defendant is guilty of the crime charged you must find
7 the Defendant guilty. If on the other hand you think there
8 is a real possibility that the Defendant is not guilty you
9 must give the Defendant the benefit of the doubt and find the
10 Defendant not guilty. I remind you that during this trial
11 you and I have certain duties to perform. As the trial judge
12 it is my responsibility to preside over the trial of this
13 case and I also have the duty to rule on the admissibility of
14 the evidence offered during the trial. You are to consider
15 only the competent evidence before you. If there was any
16 testimony ordered stricken from the record in this case
17 during this trial you must disregard that testimony. You are
18 to consider only the testimony which has been presented from
19 the witness stand and any exhibits which have been made a
20 part of the record in this case.

21 I have the additional duty to charge you with the law
22 applicable to this case. As the presiding judge I am the
23 sole judge of the law of this case and it is your duty as
24 jurors to accept and apply the law as I now state it to you.
25 If you already have any idea as to what the law is or what

1 the law ought to be and it does not agree with what I now
2 tell you the law is you must disregard your idea of what the
3 law is or ought to be because you are sworn to accept the law
4 and apply the law exactly as I state it to you. In every
5 case tried in this court before a jury the jury becomes the
6 sole and exclusive judge of the facts in the case. A trial
7 judge cannot intimate, state, comment on or make any
8 statement to a trial jury about the facts in a case. Since
9 you the jury are the sole judge of the facts of this case you
10 are not to infer from what I have said during the progress of
11 this trial, in ruling upon admissibility of evidence or
12 otherwise or anything that I say now during the course of
13 these instructions to you that I have any opinion about the
14 facts in this case. The law does not allow me to have an
15 opinion about the facts in this case. This is a matter
16 solely for you the jury to determine. As jurors it is your
17 duty to determine the effect, value, weight and truth of the
18 evidence presented during the trial.

19 Now, there are two types of evidence which are generally
20 presented during a trial, direct evidence and circumstantial
21 evidence. Direct evidence is the testimony of a person who
22 claims to have actual knowledge of a fact such as an
23 eyewitness. It is evidence which immediately establishes the
24 main fact to be proved. Circumstantial evidence is proof of
25 a chain of facts and circumstances indicating the existence

Charge

690

1 of a fact. It is evidence which immediately establishes
2 collateral facts from which the main fact may be inferred.
3 Circumstantial evidence is based on inference and not on
4 personal knowledge or observation. The law makes absolutely
5 no distinction between the weight or value to be given to
6 either direct or circumstantial evidence, nor is it a greater
7 degree of certainty required of circumstantial evidence than
8 of direct evidence. You should weigh all of the evidence in
9 the case. After weighing all of the evidence if you are not
10 convinced of the Defendant's guilt beyond a reasonable doubt
11 you must find the Defendant not guilty. Now, necessarily,
12 you must determine the credibility of witnesses who have
13 testified in this case. Credibility simply means
14 believability. It becomes your duty as jurors to analyze and
15 to evaluate the evidence and determine which evidence
16 convinces you of its truth. In determining the believability
17 of witnesses who have testified in this case you may believe
18 one witness over several witnesses or several witnesses over
19 one witness. You may believe a part of the testimony of a
20 witness and reject the remaining part of the testimony of
21 that same witness. You may believe the testimony of a
22 witness in its entirety or reject the testimony of a witness
23 in its entirety. You may consider whether any witness has
24 exhibited to you any interest, bias, prejudice or other
25 motive in this case. You may also consider the appearance

1 and manner of a witness while on the witness stand.

2 Now, there has been evidence presented that a witness in
3 this case and the Defendant Richard Bill Niles, Jr., made
4 prior statements which are not consistent with their present
5 testimony. You may use this evidence to decide whether to
6 believe the witness and or believe the Defendant. You may
7 also use evidence of the earlier contradictory statements to
8 determine the truth of those statements. It is up to you to
9 decide whether to believe the earlier statements or the
10 testimony given at trial. If a witness is shown to have
11 knowingly testified untruthfully concerning any material
12 matter you may consider this in determining whether to trust
13 the witness's testimony as to other matters. You may reject
14 all testimony of that witness or give all or part of the
15 testimony the weight you think it deserves.

16 A person who has a past criminal record is competent to
17 testify during a trial. A past record does not affect the
18 ability of that witness to testify. The past record may only
19 be considered by you if at all in determining the witness's
20 believability. Remember you are the sole judges of the facts
21 in the case and of the believability of any or all of the
22 witnesses.

23 Now, the rules of evidence ordinarily do not permit
24 witnesses to testify to opinions or conclusions. An
25 exception to this rule exists for witnesses we call expert

Charge

692

1 witnesses. A witness who by education or experience has
2 become expert in some art, science profession or calling may
3 state an opinion as to relevant and material matter in which
4 the witness claims to be an expert and may also state the
5 reasons for the opinion. You should consider any expert
6 opinion received in evidence in this case and like any other
7 evidence give it the weight you think it deserves. If you
8 decide that the opinion of an expert witness is not based on
9 sufficient education and experience or if you conclude that
10 the reasons given in support of the opinion are not sound or
11 that the opinion is outweighed by other evidence you may
12 disregard the opinion entirely. An expert witness's
13 testimony is to be given no greater weight than that of any
14 other witness simply because the witness is an expert.
15 Further, you are not required to accept an expert's opinion
16 even though it is not contradicted.

17 Now, in this case the Defendant Mokeia Hammond has
18 chosen not to testify. I instruct you and emphasize that the
19 fact that the Defendant did not testify is not a factor to be
20 considered by you in any way in your deliberation and in your
21 consideration on the question of the guilt or innocence of
22 the Defendant. It must not be considered by you in any
23 manner whatsoever. A Defendant has the constitutional right
24 to remain silent and the assertion of this right must not be
25 considered by you in your deliberations. I repeat, under

1 your oath you are to draw no conclusion whatsoever from the
2 fact that this Defendant did not testify. The fact that this
3 Defendant did not testify should not even be discussed in the
4 jury room. The burden of proof, as I have stated to you, is
5 on the State. The Defendant is not required to prove her
6 innocence. The burden of proof remains on the State to prove
7 guilt beyond a reasonable doubt.

8 Now, the Defendants are charged with murder. To convict
9 the Defendants of this charge the State must prove beyond a
10 reasonable doubt that the Defendants killed another person
11 with malice aforethought. Malice is hatred, ill will or
12 hostility towards another person. It is the intentional
13 doing of a wrongful act without just cause or excuse and with
14 an intent to inflict an injury or under circumstances that
15 the law will infer an evil intent. Malice aforethought does
16 not require that malice exists for any particular time before
17 the act is committed but malice must exist in the mind of the
18 Defendant just before and at the time of the act it is
19 committed. Therefore, there must be a combination of the
20 previous evil intent and the act. Malice aforethought may be
21 express or inferred. These terms express and inferred do not
22 mean different kinds of malice but merely the manner in which
23 malice is shown to exist. It may be shown to exist either by
24 direct evidence or by inference from the facts and
25 circumstances which are proved. Express malice is shown when

1 a person speaks words which express hatred or ill will for
2 another or when the person prepared beforehand to do the
3 act which was later accomplished. For example, lying in
4 wait for a person or any other act of preparation going to
5 show that the deed was within the Defendant's mind would be
6 express malice. Malice may be inferred from conduct
7 showing a total disregard for human life. Inferred malice
8 may also arise when the deed is done with a deadly weapon.
9 A deadly weapon is any article, instrument or substance
10 which is likely to cause death or great bodily harm.
11 Whether an instrument has been used as a deadly weapon
12 depends on the facts and circumstances of each case.
13 If one intentionally kills another during the commission
14 of a felony the inference of malice may arise. If facts are
15 proved beyond a reasonable doubt sufficient to raise an
16 inference of malice to your satisfaction this inference
17 would simply be an evidentiary fact to be taken into
18 consideration by you along with all other evidence in the
19 case and you may give it the weight that you think, excuse
20 me, and you may give it the weight that you decide it should
21 receive.

22 The Defendants are also charged with armed robbery. In
23 order to prove this offense the State must first prove beyond
24 a reasonable doubt that the Defendants took personal property
25 from the person or presence of another person. Property is

1 in the presence of a person if it is within the person's
2 reach, inspection, observation or control so that the person
3 could if not overcome with violence or prevented by fear keep
4 possession of the property. The State must also prove beyond
5 a reasonable doubt that the Defendants carried the property
6 away intending to permanently deprive the owner of the
7 property and to keep the property for the Defendant's own
8 use. The slightest removal of the property or the complete
9 possession of the property, even for an instant by the
10 Defendants is sufficient to show a taking and carrying away
11 of the property. The taking and carrying away of the
12 property must have been done with violence or by putting the
13 owner of the property in fear of violence.

14 Finally, the State must prove beyond a reasonable doubt
15 that the Defendant was armed with a deadly weapon during the
16 robbery. A deadly weapon is any article, instrument or
17 substance which is likely to cause death or great bodily
18 harm. Whether an instrument has been used as a deadly weapon
19 depends on the facts and circumstances of each case. A
20 pistol or gun may be a deadly weapon.

21 The Defendants are also charged with possession of a
22 weapon during the commission of a violent crime. To convict
23 the Defendants of this charge the State must prove beyond a
24 reasonable doubt that the Defendants were in possession of a
25 firearm or visibly displayed what appeared to be a firearm

Charge

696

1 during the commission of a violent crime. A firearm means
2 any machine gun, automatic rifle, revolver, pistol or any
3 weapon which will, which will, is designed to or may be
4 readily converted to expel a projectile. In order to find
5 the Defendants guilty of possession of a weapon during
6 commission of a violent crime you must first find the
7 Defendants guilty of either committing a violent crime or
8 attempting to commit a violent crime. Murder and armed
9 robbery are both violent crimes and felonies. Now, if a
10 crime is committed by one - excuse me, if a crime is
11 committed by two or more people who are acting together in
12 committing a crime the act of one is the act of all. A
13 person who joins with another to commit an unlawful act is
14 criminally responsible for everything done by the other
15 person which happens as a probable or natural consequence of
16 the acts done in carrying out the common plan and purpose.
17 If two or more people are together, acting together,
18 assisting each other in committing the offense, the act of
19 one is the act of all or as it is sometimes said the hand of
20 one is the hand of all. Prior knowledge that a crime is
21 going to be committed without more is not sufficient to make
22 a person guilty of that crime. Mere knowledge that another
23 person is going to commit a crime, even if the Defendant is
24 present when the crime is committed is not sufficient to
25 convict a person as a principal. Guilt as a principal is

1 shown by actual or constructive presence at the scene as a
2 result of a prior arrangement. Therefore, a finding of a
3 prior arranged plan or common scheme is necessary for a
4 finding of guilt as a principal. The State must prove
5 beyond a reasonable doubt by competent evidence the theory of
6 the hand of one is the hand of all. A principal in a crime
7 is one who either actually commits the crime or who is
8 present aiding, abetting, assisting in the committing of the
9 crime. When a person does an act in the presence of and with
10 the assistance of another the act is done by both. Where two
11 or more acting with a common plan or intent are present at
12 the commission of a crime it does not matter who actually
13 commits the crime, all are guilty, the hand of one is the
14 hand of all. Present at the commission of a crime means to
15 be sufficiently near to aid and abet and assist in the
16 commission of the crime. However, mere presence at the scene
17 of a crime is not sufficient to convict one as a principal on
18 the theory of aiding and abetting. Intent is also a
19 necessary element for there must have been a common design or
20 intent to commit the crime and the crime must have been
21 committed pursuant thereto with the person aiding and
22 abetting by some overt act. Intent means intending the
23 result which actually occurs, not accidentally or
24 involuntarily. Intent may be shown by acts and conduct of
25 the Defendant and other circumstances from which you may

Charge

698

1 naturally and reasonably infer intent. The State must prove
2 these elements beyond a reasonable doubt. Now, mere presence
3 at the scene is not sufficient to prove someone guilty of a
4 crime. A Defendant's presence where a crime is being
5 committed or mere association with a person who commits a
6 crime does not make a Defendant an accomplice or an aider and
7 abettor of the person committing the crime. The burden is on
8 the State to prove every element of the crime charged. If
9 you find after reviewing all of the evidence that the State
10 has proved that the Defendant was only present at the scene
11 of the crime and that they have not proved beyond a
12 reasonable doubt any other participation in the crime then
13 you must find the Defendant not guilty. The law is that
14 proof of being at the scene of the crime is not sufficient to
15 find someone guilty.

16 Now, the Defendant Richard Bill Niles, Jr., has raised
17 the defense of self-defense. Self-defense is a complete
18 defense and if it is established you must find the Defendant
19 not guilty. The State has the burden of disproving
20 self-defense by proof beyond a reasonable doubt. If you have
21 a reasonable doubt of the Defendant's guilt after considering
22 all of the evidence, including the evidence of self-defense,
23 then you must find the Defendant not guilty. On the other
24 hand if you have no reasonable doubt of the Defendant's guilt
25 after considering all of the evidence, including the evidence

1 of self-defense, then you must find the Defendant guilty.
2 The following elements are required to establish
3 self-defense. First the Defendant must be without fault in
4 bringing on the difficulty. If the Defendant's conduct was
5 the type which was reasonably calculated to and did provoke a
6 deadly assault the Defendant would be at fault in bringing on
7 the difficulty and would not be entitled to an acquittal
8 based on self-defense. The second element of self-defense is
9 that the Defendant was actually in imminent danger of death
10 or serious bodily injury or that the Defendant actually
11 believed he was in imminent danger of death or serious bodily
12 injury. If the Defendant was actually in imminent danger it
13 must be shown that the circumstances would have warranted a
14 person of ordinary firmness and courage to strike the fatal
15 blow to prevent death or serious bodily injury. If the
16 Defendant believed he was in imminent danger of death or
17 serious bodily injury it must be shown that a reasonably
18 prudent person of ordinary firmness and courage would have
19 had the same belief. In deciding whether the Defendant
20 actually was or believed he was in imminent danger of death
21 or serious bodily injury you should consider all of the facts
22 and circumstances surrounding the crime, including the
23 physical condition and characteristics of the Defendant and
24 the victim. The Defendant does not have to show that he was
25 actually in danger. It is enough if the Defendant believed

Charge

700

1 he was in imminent danger and a reasonably prudent person of
2 ordinary firmness and courage would have had the same belief.
3 The Defendant has the right to act on appearances, even
4 though the Defendant's beliefs may have been mistaken. It
5 is for you to decide whether the Defendant's fear of
6 immediate danger of death or serious bodily injury was
7 reasonable and would have been felt by an ordinary person in
8 the same situation.

9 A final element of self-defense is that the Defendant
10 had no other probable way to avoid the danger of death or
11 serious bodily injury than to act as the Defendant did in
12 this particular instance. A person cannot be required to
13 make an exact calculation as to the degree or amount of force
14 which may be needed to avoid death or serious bodily harm.
15 Therefore, in self-defense the Defendant has the right to use
16 the force needed to avoid death or serious bodily harm. The
17 force used in self-defense does not have to be limited to the
18 degree or amount of force used by the victim. The Defendant
19 has the right to use so much force as appeared to be
20 necessary for complete self protection and which a person of
21 ordinary reason and firmness would have believed to be needed
22 to prevent death or serious bodily harm. Under the law of
23 self-defense the Defendant may take another's life in the
24 defense of others. The right to intervene to protect another
25 person is subject to the same rights and limitations as the

1 right of self-defense. The Defendant may take the life of a
2 person who assaults a friend, relative or bystander if that
3 friend, relative or bystander would've had the right of
4 self-defense. To show that the person being defended has the
5 right of self-defense it must first be shown that the person
6 being defended and the Defendant were both without fault in
7 bringing about the difficulty. If the conduct of the person
8 defended or if the Defendant was the type which was
9 reasonably calculated to and did provoke a deadly assault the
10 person would be at fault in bringing on the difficulty and
11 would not have the right of self-defense. Therefore, the
12 Defendant would not have the right to use deadly force in
13 defending that person. The defense of another person is
14 excusable if the Defendant had reasonable grounds to believe
15 and in good faith did believe that the person being defended
16 was in imminent danger of death or serious bodily harm from
17 the victim. In deciding whether the person defended actually
18 was or that the Defendant actually believed the person was in
19 imminent danger of death or serious bodily injury you should
20 consider all the facts and circumstances surrounding the
21 crime. In order to be entitled to defend another the person
22 defended must have had no other probable way to avoid the
23 danger of death or serious bodily injury than to act as the
24 Defendant did in this particular instance.

25 Now, there are several possible verdicts which you may

Charge

702

1 find for each Defendant in this case. No significance should
2 be given to the order in which I state these possible
3 verdicts to you. I simply must state one possible verdict
4 first, another second and so on. As to the Defendant,
5 Richard Bill Niles, Jr., you may find this Defendant guilty
6 or not guilty on one, two or all three of the charges against
7 him. The only limitation on your verdict is that you cannot
8 find this Defendant guilty of being in possession of a weapon
9 during the commission of a violent crime without also finding
10 him guilty of either murder or armed robbery or both.

11 As to the Defendant Mokeia Hammond you may find her
12 guilty or not guilty on one, two or all three of the charges
13 against her. The only limitations on your verdict regarding
14 this Defendant is that you cannot find this Defendant guilty
15 of any crime unless you likewise find the Defendant Richard
16 Bill Niles, Jr., guilty of that same crime. Further, you
17 cannot find this Defendant guilty of being in possession of a
18 weapon during the commission of a violent crime without also
19 finding her guilty of either murder or armed robbery or both.

20 Ladies and gentlemen, your verdict must be a unanimous
21 one. Mr. Foreman, when the jury agrees on a verdict you will
22 write the verdict on the back of the indictment of that
23 particular charge and sign your name as foreperson. When the
24 jury has reached a verdict on all charges for both
25 Defendants, knock on the jury room door and inform the

1 bailiff that you have reached a verdict. At that time we'll
2 receive you back into the courtroom. So, we have, here are
3 the indictments and on the face of the indictment you will
4 see that there is a portion on each indictment for burglary.
5 When you reach a decision on that particular indictment for
6 that particular Defendant you'll either write guilty or not
7 guilty in the verdict portion, sign your name and date the
8 verdict form. When you've reached a decision on all of the
9 indictments for all of the Defendants knock on the door and
10 tell the bailiff that you have reached a verdict.

11 Now, I'm going to return you to your jury room at this
12 point in time, but still it is not time to begin your
13 deliberations. I have to go over with the attorneys to see
14 if they have any challenges to my instructions, any
15 additional charges or anything of that nature. If they do,
16 I'll bring you back in and will charge you. If they don't
17 I'll send word with the exhibits back to the jury room that
18 you can begin your deliberations.

19 Now, I understand that we have got lunch ordered for
20 you. When lunch arrives I will leave it entirely up to you.
21 If you want to stop your deliberations and eat lunch without
22 deliberating you can do that. If you want to continue your
23 deliberations while you're eating lunch I'll allow you to do
24 that. The only restriction is that you do not deliberate
25 this case while anyone else is in the jury room. When

Charge

704

1 someone is delivering the lunch to you or one of the bailiffs
2 is bringing you something to drink or whatever the case may
3 be cease your deliberations while someone else is in the jury
4 room and deliberate only when it is - when the jury is in the
5 room. Other than that it'll be up to you to decide when and
6 how you want to deliberate in this case. So, I'll excuse you
7 back to the jury room but please do not begin any
8 deliberations until I instruct you to do so. If you brought
9 pads and if you took notes you will be allowed to take those
10 pads and notes back to the jury room with you. However,
11 remember my prior instructions. Your notes are for you
12 personally. Your notes are not to be used to influence any
13 other juror because some jurors take notes better than
14 others. Some remember better than others. So, your notes
15 are personal to you to refresh your memory during the
16 deliberation process. Thank you very much and you may now go
17 back to the jury room.

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

20 THE COURT: All right, we've already discussed my
21 closing charges to some degree on a prior record. Is there
22 anything different that has not been raised heretofore that
23 you think needs to be charged or challenged?

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

25 MR. RICHARDSON: Nothing from the State.

1 THE COURT: Any from the Defense?

2 MR. BARR: Nothing from the Defendant Niles.

3 MR. HAZZARD: Your Honor, just renew the objection
4 regarding the failure to charge the mala in se precept from
5 Gore v. Leeke.

6 THE COURT: All right, your challenges is noted.
7 It's denied. Anything before we allow them to begin their
8 deliberations?

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

10 THE COURT: All right, if we can go ahead and get the
11 ---

12 MR. HAZZARD: Your Honor ---

13 THE COURT: Yes.

14 MR. HAZZARD: --- just out of an abundance of
15 precaution I want to make sure that the jury is sure on the
16 protocol for lunch, specifically if they decide to have lunch
17 and not deliberate that none of them can deliberate, not like
18 four can - everybody is eating but four is sitting over here
19 talking about the case while the other eight are eating and
20 not talking about it. I just want to make sure they know
21 that, you know, either everybody is deliberating or nobody is
22 deliberating.

23 THE COURT: All right, let's bring the jury back in
24 and I will make that plain to them.

25 MR. RICHARDSON: And Your Honor, we have reviewed all

Charge

706

1 the exhibits.

2 THE COURT: All right, good.

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

5 THE COURT: Ladies and gentlemen, I may have been
6 somewhat delinquent in my instructions to you on deliberating
7 during lunch and I wanted to make sure that everyone clearly
8 understands or understood that if you choose to deliberate
9 during your lunch break then everyone must deliberate during
10 that lunch break. If you choose not to deliberate during
11 lunch then no one can deliberate during lunch, none of the
12 jurors. In other words it's got to be a joint decision where
13 all 12 of you will participate during deliberations while you
14 eat lunch or that none of you will participate in
15 deliberations while you eat lunch. In other words we can't
16 have some deliberating and others not; okay? And I just
17 wanted to make that sure. I don't think I explained that
18 properly to you and I apologize for that, but other than that
19 we'll send you back to the jury room with the evidence, the
20 instructions and the indictments and allow you to begin your
21 deliberations. Thank you very much.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, anything before they begin
25 deliberations?

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

2 MR. BARR: No, Sir.

3 MR. HAZZARD: Nothing from Defendant Hammond.

4 THE COURT: All right, now, these - the indictments
5 that I'm sending back I think I've been given copies of the
6 indictments. Are these sufficient? They - are these the
7 ones we want to send back or do we have the originals?

8 MS. ELDER: Where are the original indictments?

9 THE CLERK: I think you have the originals.

10 THE COURT: These are - this is what I was given and
11 I don't know that - they don't look like they contain
12 original signatures or stamps.

13 MR. HAZZARD: Your Honor, can we review those?

14 THE COURT: Yes, if you want to come take a look at
15 them. Wait a minute. I've got them right here. They were
16 stuck under the jury list. Sure do. I had them stuck with
17 Mr. Moore's sentencing sheet from when he pled guilty. Yes,
18 these are the originals here. They were with Mr. Moore's and
19 his sentencing sheet.

20 MR. HAZZARD: No objection to the form of the Hammond
21 indictments/verdict form on behalf of Defendant Mokeia
22 Hammond, Your Honor.

23 MR. BARR: None on Defendant Niles.

24 MS. ELDER: None from the State, Your Honor.

25 THE COURT: All right, all right, there being no

Charge

708

1 objection from the State or either Defendant regarding these
2 indictments we'll go ahead and send the indictments, the jury
3 charge, the exhibits with instructions that the jury can
4 begin their deliberations.

5 All right, we'll stand in recess until the jury has
6 reached a verdict.

7 (Whereupon, deliberations begin at 12:08 p.m.)

8 OFF THE RECORD

9 (On the record.)

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

12 (Question from jury at 12:30 p.m.)

13 THE COURT: All right, do we need your clients here
14 or not? I've gotten a request from the jury.

15 MR. BARR: I would waive my client's presence, Your
16 Honor.

17 MR. HAZZARD: Waive as well, Your Honor.

18 THE COURT: All right, I've gotten a note from the
19 foreman of the jury that says, "Please provide the testimony
20 and transcripts of the two eyewitnesses Hooper and Watts."
21 I was going to let them know first of all that I cannot
22 provide them with a transcripts because we don't have that
23 capability. I will allow them to listen to the testimony of
24 the two witnesses, the recorded testimony but they'll need to
25 listen to the entire testimony, the direct, the cross, the

1 redirect or whatever the case may be. The question is do we
2 want to call them back in or I was thinking about just
3 writing that in response on their note saying that
4 transcripts are not available, recorded testimony can be
5 played back or the entire testimony of these witnesses can be
6 played back if the jury chooses and for them to let us know
7 and if they want to hear them we'll bring them back in, set
8 it up and play it for them.

9 MS. ELDER: Your Honor, I don't have any objection to
10 sending a note back there. My understanding is though if
11 they only want to hear sections of testimony they would have
12 the option of doing that rather than hearing the entire
13 testimony. I don't know what there is they're looking for
14 but ---

15 THE COURT: Well, I don't know what they're looking
16 for either. It just says, "Please provide the testimony,"
17 and that's why when they said the testimony to me it leaves
18 they want to hear what these witnesses had and they're not
19 giving any indication as to whether or not they want to hear
20 the direct, the cross or anything. They just said the
21 testimony. So ---

22 MR. HAZZARD: I would submit to the Court notify them
23 that obviously the transcript is not available but they are
24 allowed to listen to the testimony of both witnesses in their
25 entirety.

Question from Jury

710

1 MR. BARR: I would concur.

2 THE COURT: Any objection? Or how about if I just
3 put it and said on the response note, it says, ``Please
4 provide the testimony and transcripts of the two eyewitnesses
5 Hooper and Watts.'' I just put transcripts are not
6 available. You can hear the recorded testimony, the court
7 reporter's recorded testimony.

8 MS. ELDER: That's sufficient for the State, Your Honor.

9 MR. HAZZARD: No objection.

10 MR. BARR: No objection.

11 THE COURT: All right.

12 I think what I'm going to do is I'm going to put you may
13 listen to the recorded testimony in open court.

14 MS. ELDER: Yes, sir.

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: So, they could come back in here and
17 listen to it. I don't want them to think they can take
18 anything back there.

19 MR. HAZZARD: For clarification that note would be made
20 a Court's Exhibit; right?

21 THE COURT: Yeah, I'm going to make this as a Court's
22 Exhibit, be Court's Exhibit Two, I believe; isn't it?

23 (Whereupon, Court's Exhibit Two [Question from Jury]
24 marked.)

25 THE COURT: All right, the note dated 3-13-09,

1 "Please provide the testimony and transcripts of the two
2 eyewitnesses, Hooper and Watts, signed David Kahanamoku,
3 whatever, the foreman's name. I have written, if you want to
4 inspect it you can, I have written, "Transcripts are not
5 available. You may listen to the recorded testimony in open
6 court. Please let the bailiff know what you want to do."
7 Agreeable?

8 MS. ELDER: Yes, sir.

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: We'll mark that on the back Court's
11 Exhibit Two.

12 MR. HAZZARD: No objection to the form of the Court's
13 response.

14 THE COURT: All right, and let's go ahead and take
15 that and find out what they want to do or just give them the
16 note. I'm assuming they will contact the bailiff if they
17 want to come back in.

18 OFF THE RECORD

19 (On the record.)

20 (Question from jury at 1:34 p.m.)

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, during the, during our lunch
24 break I got two requests from the jury. Number one, the
25 request was, "Please bring in the easel from the courtroom

Question from Jury

712

1 so we can display the large, larger pictures more easily."
2 I just directed the bailiff to take the easel into the, into
3 the jury room for them. We'll mark that as Court's Exhibit
4 Four.

5 (Whereupon, Court's Exhibit Four [Question from Jury]
6 marked.)

7 THE COURT: The next request states, "We would like
8 to hear the testimony of the two eyewitnesses, Hooper and
9 Watts." So, I think we'll bring them in and have that
10 testimony played back for them; okay? They bringing your
11 clients in?

12 MR. HAZZARD: That's correct, Your Honor.

13 MR. BARR: They said it would be a minute or so.

14 THE COURT: Oh, here they come.

15 I think first Ms. Hooper's testimony was first and
16 you're ready to go on that?

17 REPORTER: Yes, sir.

18 THE COURT: All right, anything before we bring
19 the jury back in?

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

21 MR. BARR: No, sir.

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

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

25 (Whereupon, the following takes place in the presence of

1 the jury.)

2 THE COURT: All right, ladies and gentlemen, welcome
3 back. I understand that you would like to hear the testimony
4 of the two witnesses, Angie Hooper and Gene Watts; is that
5 correct?

6 FOREPERSON: Correct.

7 THE COURT: All right, as I told you when I sent back
8 we do not have printed transcripts. So, there's nothing to
9 read, but we can play back their taped testimony and we'll do
10 that for you. If you have trouble hearing the testimony then
11 our court reporter can read back the testimony. I prefer to
12 play back the testimony if you can understand what is being
13 said and you should be able to. I know you'll be able to -
14 the question will be whether or not we can get the volume
15 loud enough for you to hear. If not then let me know and
16 we'll read what needs to be read; okay?

17 All right, thank you very much. The first, the first,
18 we'll take Ms. Hooper first and then Mr. Watts after that.

19 (Whereupon, testimony of Angie Hooper played in open
20 court.)

21 THE COURT: All right, ladies and gentlemen, that is
22 the testimony of Ms. Hooper. Now we'll fast forward until we
23 get to the testimony of Mr. Watts.

24 (Whereupon, testimony of Eugene Watts played in open
25 court.)

Question from Jury

714

1 THE COURT: All right, ladies and gentlemen, that's
2 the testimony of Mr. Watts. I'll excuse you back to the jury
3 room to resume your deliberations. Thank you very much.

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

6 THE COURT: All right, I'm going to mark this
7 question, this will be Court's Exhibit, Court's Exhibit Five.

8 (Court's Exhibit Five [Question from Jury] marked.)

9 THE COURT: We'll stand in recess until they have a
10 verdict or have another question; all right?

11 MS. ELDER: Thank you, Your Honor.

12 MR. RICHARDSON: Thank you, Your Honor.

13 OFF THE RECORD

14 (On the record.)

15 (Question from Jury at 3:00 p.m.)

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

18 THE COURT: All right, we've received two questions
19 from the jury. I don't - they were both given to me, I don't
20 know which order.

21 First question, number one, "Can the Defendant be
22 guilty of armed robbery if doubt exists as to his actual
23 knowledge of it prior to the act of robbery," and I think
24 the answer to that is no, that you've got to have - if there
25 is doubt as to whether or not the Defendant knew there was a

1 robbery that was going to take place then you can't have
2 armed robbery. Anything further from the State, from the
3 Defense on that?

4 I'll read it to you again, ``Can the Defendant be guilty
5 of armed robbery if doubt exists as to his actual knowledge
6 of it prior to the act of robbery?''

7 MS. ELDER: Reasonable doubt, I assume.

8 THE COURT: It just says doubt. ``Can the Defendant
9 be guilty of armed robbery if doubt exists as to his actual
10 knowledge of it prior to the act of robbery?''

11 MR. RICHARDSON: Your Honor, without drawing any undue
12 inference to any particular charge, I mean, they could be
13 recharged on reasonable doubt. They could be recharged on
14 armed robbery or the Defendant can be found guilty of one,
15 two, three charges or none of the charges.

16 THE COURT: Well, but I mean, let's respond to their
17 question. They've asked a question ---

18 MR. RICHARDSON: Well, they're not talking about a -
19 whether it's a reasonable doubt or not. They're just saying
20 a doubt.

21 MS. ELDER: We would ask that that question be
22 answered with the charging of armed robbery, the recharge of
23 armed robbery.

24 THE COURT: No, with doubt and all of that, I'd
25 recharge them on reasonable doubt, armed robbery, yeah, I

Question from Jury

716

1 mean, I could do it that way.

2 MR. HAZZARD: Your Honor, I would submit that you can
3 respond appropriately to their question and then refer them
4 because they do have your charge in the jury room with them
5 and then refer them to those specific sections. So, respond
6 appropriately to their question, answer their question as the
7 Court wishes to do to give them answer and then to refer them
8 to those particular sections, the charge of armed robbery,
9 the charge of reasonable doubt.

10 MS. ELDER: Your Honor, I don't know that - I think
11 it is, there's certainly questions in my mind as to exactly
12 what they're asking and I think that question could be
13 interpreted a couple of different ways as far as doubt,
14 reasonable doubt, if it's doubt he knew before armed robbery
15 happened or just prior to it happening. I would - I have no
16 problem with as Mr. Hazzard says to respond by only saying
17 please see juror instruction A, B and C for the answer to
18 this question and refer them back to the charge, but I don't
19 know that it would be appropriate for the Court to say yes or
20 no because that's a determination that they're going to have
21 to make based on the charge.

22 THE COURT: All right, then I can just say please
23 refer to the Court's instructions as to reasonable doubt and
24 as to armed robbery.

25 MS. ELDER: We'd have no objection to that, Your

1 Honor.

2 THE COURT: Okay.

3 MR. BARR: The Defendant Niles would not object to
4 that, Your Honor.

5 THE COURT: All right. Let's see. All right, I
6 wrote, "Please refer to the Court's instructions for
7 reasonable doubt and armed robbery."

8 Now, the next question, "Can the Defendant be found
9 guilty of murder and not guilty of armed robbery?"

10 MS. ELDER: Your Honor, my suggestion again if we're
11 going to be consistent in what we're sending back there I
12 believe that was covered. I can't remember on what page of
13 Your Honor's instructions, but I think it was toward the very
14 end where you indicated there's no - you can find the
15 Defendant guilty of one, two, one of these charges, both of
16 these charges, three of these charges and none of them. I
17 believe that's, without looking at it, was something of that
18 nature.

19 THE COURT: I guess on that one I would say, "Please
20 refer to the Judge's instructions regarding murder" - well,
21 let's - let me see. I've got it here.

22 MS. ELDER: Sounds to me like they're asking about
23 that last page that Your Honor gave as far as the jury
24 verdict itself.

25 THE COURT: See, I'm not so sure. I'm thinking it

Question from Jury

718

1 might be that. I'm thinking they're also wondering can we
2 find him guilty of murder if we - if the only grounds of
3 malice is armed robbery. In this case if they're using armed
4 robbery to show malice or to infer malice what other basis do
5 we have? So, I think I'm going to say or I'll get it, refer
6 to the Court's instructions on murder and jury verdict.

7 MS. ELDER: The State would have no objection to
8 that, Your Honor.

9 MR. BARR: Your Honor, this is a bit perplexing
10 because if they're asking whether or not in this particular
11 case whether or not they would have to say that Mr. Niles was
12 in the process of robbing Mr. Salter when the death occurred
13 whether or not they could find him guilty of murder without
14 saying that he was actually robbing Mr. Salter at that time
15 ---

16 THE COURT: Well, let me ask the State on that, what,
17 what do we have in evidence to indicate malice other than the
18 State's argument that there was an armed robbery?

19 MS. ELDER: There's use of a deadly weapon, Your
20 Honor.

21 MR. BARR: All right.

22 THE COURT: Okay, yeah, you've got the use of a
23 deadly weapon.

24 MR. BARR: But again, the weapon is being used in a
25 robbery.

1 MS. ELDER: Your Honor, if they - Your Honor, they
2 could very well believe that there was no robbery and there
3 was some argument between Ervin Moore and the victim and Mr.
4 Niles jumps in with his gun and starts shooting first. I
5 mean, they very well can believe that, that it not be armed
6 robbery at the point of the robbery but that it becomes a
7 dangerous situation in the use of a deadly weapon or deadly
8 force.

9 MR. BARR: But there's nothing in the record to
10 support that. Nobody put up any evidence that said that
11 happened.

12 MS. ELDER: Well, sure, they did. Ervin Moore said
13 he got in the car and they got up and said he was trying to
14 get out of the car, he never had a gun and he was trying to
15 get out of the car with the dope without paying for it,
16 that's not an armed robbery if you believe that, it's a
17 strong arm robbery.

18 THE COURT: Yeah, I agree. I think I'm just going to
19 put so it's kind of in conformity with the other that,
20 "Please refer to the Court's instructions regarding murder
21 and jury verdict."

22 MR. HAZZARD: I would also ask that the jury be
23 instructed to refer back also to the Court's instructions on
24 reasonable doubt because they mention a doubt and a doubt
25 exists.

Question from Jury

720

1 THE COURT: That's on the other question.

2 MS. ELDER: Right.

3 THE COURT: And I put on there to refer to the
4 instructions on reasonable doubt. So, on the first question,
5 ``Can the Defendant be guilty of armed robbery if doubt
6 exists as to his actual knowledge of it prior to the act of
7 robbery,`` I'm answering by saying, ``Please refer to the
8 Court's instructions for reasonable doubt and armed
9 robbery.`` Where it says, ``Can the Defendant be found
10 guilty of murder and not guilty of armed robbery,`` I'm
11 putting, ``Please refer to the Court's instructions for
12 murder and jury verdict.``

13 MR. BARR: Again, Your Honor, I have a concern
14 because what they're asking is can the Defendant Niles be
15 found guilty of murder if he didn't go to this scenario with
16 the intention, if he had no idea that, that Moore is going to
17 rob Salter then can he be found guilty of murder separate and
18 apart from that. Again ---

19 THE COURT: Well, I think your argument is is that he
20 cannot be found guilty of murder unless they also find him
21 guilty of armed robbery.

22 MR. BARR: Yes.

23 THE COURT: And I don't know that that's the case. I
24 don't think that's the law.

25 MR. BARR: Well, not necessarily the law but in this

1 particular case is that what the jury is actually asking.

2 THE COURT: Okay.

3 No, I just say let's go with the way I've got it. We'll
4 do it this way. I'll note your objection to my response, but
5 I'll go ahead and mark it this way. All right?

6 MR. BARR: Okay.

7 THE COURT: All right, the first one, "Can the
8 Defendant be guilty of armed robbery if doubt exists as to
9 his actual knowledge of it prior to the act of robbery?"
10 "Please refer to the Court's instructions for reasonable
11 doubt and armed robbery." Mark that as Court's Exhibit Six.

12 (Whereupon, Court's Exhibit Number Six [Question from
13 jury] marked.)

14 THE COURT: The next question, can the Defendant be
15 found guilty of murder and not guilty of armed robbery,
16 please refer to the Court's instructions for murder and jury
17 verdict, be Court's Exhibit Seven.

18 (Whereupon, Court's Exhibit Seven [Question from Jury]
19 marked.)

20 THE COURT: Any objections to me just sending the
21 notes back in that regard?

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

23 MR. HAZZARD: No, Your Honor.

24 THE COURT: All right, Mr. Barr?

25 MR. BARR: Just the earlier objection.

Question from Jury

722

1 THE COURT: Subject, subject to your earlier
2 objections, all right.

3 All right, if you'd take that back and we'll stay -
4 stand in recess unless there's another question or if the
5 jury has - reaches a verdict.

6 MS. ELDER: Thank you, Your Honor.

7 THE COURT: Thank you.

8 OFF THE RECORD

9 (On the record.)

10 (Question from jury at 5:12 p.m.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Thank you very much. Please be seated.

14 All right, the jury has come back with another question.

15 States, "What is the definition of aiding and abetting?"

16 So, I have pulled the definition and my initial information

17 is just to advise them on the law of aiding and abetting

18 which states that, "A person who is present at the scene of

19 the crime and intentionally or through a common plan aided,

20 abetted or assisted in the commission of that crime through

21 some overt act is guilty as an accomplice. To be liable as

22 an accomplice the Defendant must have knowledge of the

23 principal's criminal conduct. Mere presence at the scene of

24 the crime is not sufficient to establish guilt as an

25 accomplice. Intentionally means willfully, intending the

1 result which actually occurs, not accidentally or
2 involuntarily." That came straight from the charge book.
3 Anything from the State on - in regards to that response?

4 MS. ELDER: Your Honor, I would, in addition to that
5 I would also ask the Court to instruct them to also refer to,
6 in addition to that definition refer to Your Honor's
7 instruction of hand of one and mere presence, not necessarily
8 recharge them on those but also just as we did before also
9 see Court's prior instructions on hand of one and mere
10 presence because they're so interrelated.

11 THE COURT: All right, anything from the Defense?
12 I'm inclined to do that, to - the question is just tell them
13 to refer to that or to bring them back in? Let me hear from
14 the Defense.

15 MR. HAZZARD: Well, if you intend to send in the
16 written definition then, you know, they're on the same
17 standing with all three things. They have the written
18 definition in writing and then they have the reference to the
19 charge in writing and that would be appropriate.

20 I would ask simply consideration of should they be
21 given the definition of what the term overt means.

22 THE COURT: They haven't asked for it. That's why,
23 why I haven't. So, I'll do that. I've got this written
24 instruction for aiding and abetting. Let's mark that as
25 Court's Exhibit Eight.

Question from Jury

724

1 (Whereupon, Court's Exhibit Number Eight [Question from
2 Jury] marked.)

3 THE COURT: I'll send in, in response what is the
4 definition of adding and abetting, I'll put, ``Please refer
5 to Court's instructions regarding hand of one and mere
6 presence and attached instructions on aiding and abetting.''
7 Is that sufficient?

8 MS. ELDER: It is from the State, Your Honor.

9 MR. HAZZARD: No objection, Your Honor.

10 MR. BARR: No objection.

11 THE COURT: All right.

12 All right, we'll make this Court's Exhibit Nine.

13 (Whereupon, Court's Exhibit Number Nine [Question from
14 Jury] marked.)

15 THE COURT: All right, we'll give this to them.
16 There you go. We'll stand in recess till there's another
17 question or a verdict.

18 MS. ELDER: Thank you, Your Honor.

19 THE COURT: Thank you.

20 OFF THE RECORD

21 (On the record.)

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 (Verdict reached at 5:53 p.m.)

25 THE COURT: Thank you very much. Please be seated.

1 All right, I understand the jury has reached a verdict.

2 Anything from the State before we bring the jury in?

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

4 THE COURT: Anything from the Defendants?

5 MR. BARR: No, sir.

6 MR. HAZZARD: No, sir, Your Honor.

7 THE COURT: All right, I want to caution everybody.

8 This jury has had a very difficult job. There'll be no
9 displays of emotion one way or the other when the verdict is
10 received. If you agree with it, keep it to yourself. If you
11 disagree with it, keep it to yourself because any - I don't
12 want anything to reflect on this jury because they've had
13 a very difficult time in dealing with this case.

14 All right, please bring the jury in.

15 (Whereupon, the following takes place in the presence of
16 the jury.)

17 THE COURT: All right, ladies and gentlemen, welcome
18 back. Mr. Foreman, has the jury reached a verdict on all
19 charges as to both Defendants?

20 FOREMAN: We have, Your Honor.

21 THE COURT: All right, if you'd please give the
22 verdicts to the Clerk or to the bailiff. Thank you.

23 (Complies with request and Court reviews.)

24 THE COURT: All right, all right, I'll ask the Clerk
25 to please publish the verdicts.

Verdict

726

1 THE CLERK: This is indictment number 2008-4119, the
2 State of South Carolina versus Mokeia Hammond, indicted for
3 armed robbery, the verdict is guilty.

4 Indictment number 2007-GS-26-3362, State of South
5 Carolina versus Mokeia Hammond, indicted for murder, the
6 verdict is not guilty.

7 2008-GS-26-4118, State of South Carolina versus Mokeia
8 Hammond, indicted for possession of a weapon during the
9 commission of a violent crime, the verdict is not guilty.

10 This is indictment number 2008-GS-26-4116, the State
11 versus Richard Bill Niles, Jr., indicted for possession of a
12 weapon during the commission of a violent crime the verdict
13 is guilty.

14 This is indictment number 2008-GS-26-4117, the State of
15 South Carolina versus Richard Bill Niles, Jr., indicted for
16 armed robbery, the verdict is guilty.

17 This is indictment number 2007-GS-26-3363, the State of
18 South Carolina versus Richard Bill Niles, Jr., indicted for
19 murder, the verdict is guilty.

20 David Kahanamoku, foreman, dated this date, March the
21 13th, 2007.

22 Ladies and gentlemen of the jury, is this, if this is
23 your verdict so signify by raising your right hand.

24 (All jurors raise right hand.)

25 THE CLERK: Thank you.

Polling of Jury

727

1 THE COURT: All right, any polling of the jury by the
2 State?

3 MS. ELDER: None from the State, Your Honor.

4 THE COURT: Any from the Defense?

5 MR. BARR: Yes, Your Honor, we'd ask the jury be
6 polled.

7 THE COURT: All right, Mr. Hazzard, do you request a
8 polling of the jury?

9 MR. HAZZARD: Yes, Your Honor.

10 THE COURT: All right, let's poll the jury as to both
11 Defendants.

12 THE CLERK: When I call your name please stand. I'll
13 ask you two questions. After you answer, please be seated.

14 David P. Kahanamoku, is this your verdict?

15 MR. KAHANAMOKU: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 MR. KAHANAMOKU: Yes, ma'am.

18 THE CLERK: Thank you.

19 Linda L. Rivers, is this your verdict?

20 MS. RIVERS: Yes, ma'am.

21 THE CLERK: Is it still your verdict?

22 MS. RIVERS: Yes, ma'am.

23 THE CLERK: Thank you.

24 Leanora A. Webster, is this your verdict?

25 MS. WEBSTER: Yes, ma'am.

Polling of Jury

728

1 THE CLERK: Is it still your verdict?
2 MS. WEBSTER: Yes, ma'am.
3 THE CLERK: Thank you.
4 Sandy Espinal, is this your verdict?
5 MS. ESPINAL: Yes, ma'am.
6 THE CLERK: Is it still your verdict?
7 MS. ESPINAL: Yes, ma'am.
8 THE CLERK: Thank you.
9 Bryan Shriver, is this your verdict?
10 MR. SHRIVER: Yes, ma'am.
11 THE CLERK: Is it still your verdict?
12 MR. SHRIVER: Yes, ma'am.
13 THE CLERK: Thank you.
14 Kevin Boatwright, is this your verdict?
15 MR. BOATWRIGHT: Yes, ma'am.
16 THE CLERK: Is it still your verdict?
17 MR. BOATWRIGHT: Yes, ma'am.
18 THE CLERK: Thank you.
19 Meghan - never mind.
20 Chellen Butler, is this your verdict?
21 MS. BUTLER: Yes, ma'am.
22 THE CLERK: Is it still your verdict?
23 MS. BUTLER: Yes, ma'am.
24 THE CLERK: Thank you.
25 Donna Lagore, is this your verdict?

1 MS. LAGORE: Yes, ma'am.
2 THE CLERK: Is it still your verdict?
3 MS. LAGORE: Yes, ma'am.
4 THE CLERK: Thank you.
5 Mary Brockmeier, is this your verdict?
6 MS. BROCKMEIER: Yes, ma'am.
7 THE CLERK: Is it still your verdict?
8 MS. BROCKMEIER: Yes, ma'am.
9 THE CLERK: Thank you.
10 Warren Kemp, is this your verdict?
11 MR. KEMP: Yes, ma'am.
12 THE CLERK: Is it still your verdict?
13 MR. KEMP: Yes, ma'am.
14 THE CLERK: Thank you.
15 Martyce Lewis, is this your verdict?
16 MS. LEWIS: Yes, ma'am.
17 THE CLERK: Is it still your verdict?
18 MS. LEWIS: Yes, ma'am.
19 THE CLERK: Thank you.
20 Randolph Conrad, is this your verdict?
21 MR. CONRAD: Yes, ma'am.
22 THE CLERK: Is it still your verdict?
23 MR. CONRAD: Yes, ma'am.
24 THE CLERK: Thank you.
25 THE COURT: Ladies and gentlemen of the jury, I want

Motions

730

1 to sincerely thank you for your service in this case and for
2 you service as jurors this week. This concludes your service
3 not only for this case but for this week and I want to thank
4 you for your service in this case. We could not function as
5 a court without you. We could not resolve these matters
6 without you and this is the way our judicial system works and
7 I want to thank you for your participation and your
8 willingness to serve. I know it's not easy. I know it's not
9 convenient but you have certainly fulfilled a very vital and
10 important service to this state, to this community, to this
11 county, and I want to thank you for your service. You're
12 free to go and please have a nice remainder of the day and a
13 nice weekend. You're free to go at this time.

14 (Jury exits courtroom.)

15 THE COURT: All right, any post-trial motions at this
16 time?

17 MS. ELDER: None from the State, Your Honor.

18 MR. HAZZARD: At this time, Your Honor, on behalf of
19 Defendant Hammond I would make a motion for a new trial. It
20 seems that the form of the verdict is somewhat inconsistent.
21 My understanding of the Clerk's reading of the verdict is
22 that the jury found her guilty of armed robbery but not
23 guilty of murder and not guilty of possession of a firearm.
24 It seems somewhat inconsistent in that in order to find her
25 guilty of an armed robbery based on the judge's instructions

1 they would have to find that there was a plan or a scheme to
2 commit the robbery. So, they're saying based on the way I
3 understand it that there was a plan to commit an armed
4 robbery and during the commission of the armed robbery a
5 death occurs which then kicks in the whole issue of the hand
6 of one and the hand of all, hand of one is the hand of all
7 and the felony murder rule. So, I would submit it seems
8 inconsistent, to me it's an inconsistent verdict almost as if
9 they reached a compromise that we'll find her guilty of armed
10 robbery but not of murder, and as a compromise verdict I
11 would submit that it would need to be set aside by this Court
12 and a new trial ordered.

13 THE COURT: All right, let me hear from the State on
14 that.

15 MS. ELDER: Your Honor, in reference to inconsistent
16 verdicts the rule of inconsistent verdicts was abolished back
17 in State v. Alexander, that was a 1991 case, 303 SC 377 and
18 401 SE2d 146. It was then again restated back in State
19 versus Nichols, 325 SC 111, 41 SE2d 118 and in State versus
20 Garrett, 350 SC 613, 567 SE2d 523. Of course, the State's
21 position is I do not think these are inconsistent verdicts.
22 I think it is very plausible that they could have had enough
23 evidence to attribute her to the armed robbery but not have
24 found her guilty of hand of one with the murder. I think
25 that's very plausible.

1 THE COURT: I agree with that, but how do you get
2 guilty of armed robbery but not guilty of possession of
3 a weapon during the commission of a violent crime?

4 MS. ELDER: Your Honor, I think it's very plausible
5 to consider that - I'm sorry, Your Honor, let me get to the
6 charge itself, that they were in possession of a firearm or
7 displayed a firearm during a violent crime, they may very
8 well find out that she, in fact, thought there was an armed
9 robbery and they just didn't get it to the point, Your Honor,
10 of convicting her. It sounded like to me that they didn't
11 get her to point of convicting her with the murder and the
12 weapon, but again, even if the Court concludes that it is an
13 inconsistent verdict, those cases that I have cited certainly
14 indicate that that is not a basis for a new trial and based
15 on ---

16 THE COURT: What do those cases say?

17 MS. ELDER: Your Honor, they - it says that,
18 especially in Alexander it says that, "We're abolishing the
19 rule prohibiting inconsistent verdicts in this state," and
20 those were cases requesting new trials indicating that very
21 rarely, when they set this aside they, in their dicta they
22 said that very rarely is this ever a grounds in the past for
23 a new trial and because of that and because of all the
24 controversy surrounding it they abolished the rule
25 prohibiting inconsistent verdicts in the state.

1 THE COURT: Oh, I thought you said the subsequent
2 cases reinstated it.

3 MS. ELDER: Yes - no, no, no, Your Honor, they
4 restated.

5 THE COURT: Oh, restated Alexander.

6 MS. ELDER: Yes, sir.

7 THE COURT: Okay, okay.

8 MS. ELDER: Garrett and Nichols both cite that being
9 that inconsistent verdicts is not, is not sufficient to
10 justify a new trial.

11 THE COURT: All right, all right, have you got those
12 cases?

13 MS. ELDER: I've only got one copy but I'll be glad
14 to pass them up, Your Honor.

15 THE COURT: All right, I'll give them back to you.
16 Let me see it for a second. Thank you.

17 All right, after review of the cases submitted by the
18 State I deny your motion.

19 Anything else, any other post-trial motions at this
20 time?

21 MR. HAZZARD: None at this time on behalf of Defendant
22 Hammond.

23 MR. BARR: None at this time, Your Honor, on behalf
24 of Defendant Niles.

25 THE COURT: All right, now, in with the verdict forms

1 came a note from the jury that just said, ``We have reached a
2 verdict.'' I'm going to go ahead and put that as Court's
3 Exhibit Ten into the record.

4 (Whereupon, Court's Exhibit Ten [Note from Jury]
5 marked.)

6 THE COURT: All right, anything from the Defense
7 before we sentence?

8 MR. BARR: Yes, Your Honor, on behalf of Defendant
9 Niles, Your Honor, like to point out to the Court, also like
10 to acknowledge the presence of his father. They've been here
11 most of the week, family members. His mother was a party to
12 this action and she died last month. So, she's not here. He
13 has a sister who has been here most of the week and his aunt
14 and they're here.

15 Your Honor, Mr. Niles, as you probably know quite well
16 by now, is 25 years old. He has substantially no criminal
17 record. He, I believe, had one prior conviction for
18 possession of marijuana. He has worked for Jacobs Plumbing
19 as an apprentice plumber for a period of time recently. He
20 has a 12th grade education, born in Williamsburg County in
21 the Trio area and, Your Honor, he's had some difficulties in
22 life but I would ask that the Court considers every possible
23 leniency in sentencing Mr. Niles. I acknowledge that he's
24 made some mistakes. He's made a lot of mistakes. I think
25 being only 25 years old there's a possibility of redemption

1 in Mr. Niles' situation, and for that reason I would ask the
2 Court consider giving him the minimal sentence in this case.
3 Thank you.

4 THE COURT: All right, I'll give everybody an
5 opportunity to speak a little bit later.

6 Anything, Mr. Hazzard, before and I'll give you an
7 opportunity to speak a little bit later. I just want to know
8 if there's any reason as to why we cannot impose sentence at
9 this time.

10 MR. HAZZARD: No, Your Honor.

11 THE COURT: All right, anything, anything from the
12 State as to why we cannot impose sentence at this time?

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

14 THE COURT: All right.

15 All right, all right, Mr. Barr, I've heard from you. Is
16 there anything that Mr. Niles would like to say or anybody
17 want to say anything on his behalf?

18 MR. NILES: Yes, I do, Your Honor, would like to say
19 something.

20 THE COURT: All right.

21 MR. NILES: First, I would like to apologize for the
22 accident of Spice, well, better known as Mr. Salter. I truly
23 admit for the crime that I did for the accident of his death,
24 but during that time, Your Honor, I was only defending my
25 family and my life as well, Your Honor, and I commit thee, I

1 honestly admit with all my heart and I apologize deeply to
2 the Salter's family. I give them my deepest sympathy for
3 that, and most of all I'm asking them to please forgive me
4 for the wrong that I've did in you all's life and the sadness
5 that I've caused. I really do ask for forgiveness. In order
6 for Christ to forgive me I ask that deeply. During the life
7 that I was living, yes, I was carrying a possession of a
8 firearm and during that time I did not had Christ in my life,
9 but for the two years that I did did in J. Reuben Long my
10 life has really been changed around, and I can really and
11 honestly I thank God for the two years that I did in J.
12 Reuben Long because even though I lost my mother during that
13 time, you know, God said hisself he say he will pull the
14 closest thing from you to draw you near back to him, you
15 know, and I come today, you know, asking for sympathy and,
16 yes, I am asking for mercy upon my life like how Israel
17 called out for mercy, the mercy that God showed them in
18 Israel, and I ask truly to please have mercy upon me. Yes,
19 sir, like I said before I was wrong for the crimes that I did
20 in the future, in the past, but I ask please, please allow me
21 to see daylight again, sir.

22 THE COURT: All right, sir, anybody want to say
23 anything on your behalf?

24 MR. NILES: Yes, Judge, Your Honor, my name is
25 Minister Niles.

1 THE COURT: If you'd please come around forward
2 please?

3 REVERAND NILES: Yes, Judge, Your Honor, my name is
4 Minister Niles.

5 THE COURT: Yes, sir.

6 REVERAND NILES: And this is my baby boy and he never
7 give me no trouble and I can say to Richie he's a good, he's
8 a good young guy. He's a good young man. He's a likeable
9 person in the community, out of the community. I sings
10 gospel all over and people always ask me where I'm going,
11 ``When are Richie coming to join your group.'' I say,
12 ``Well, he's incarcerated now, but just as soon as God say so
13 he will,'' and I'm asking the Court this afternoon to have
14 mercy upon Richie sentence that you're giving out this
15 afternoon. May God bless Richie, stay with the Lord, God
16 bless each and every one of you in this courtroom and I want
17 to ask the Salter's family forgive us for this accident what
18 happened as we continue and go on with a new life ahead of
19 us. God bless you and have mercy upon him this afternoon,
20 please, sir.

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

22 Anybody else?

23 MS. WILLIAMS: My name is Pastor Verdie L. Williams and
24 I want to say to the Court this afternoon Richie my nephew is
25 a good boy and I know some of you are probably expecting me

1 to say that, but I have a lot of nephews, but it always have
2 been something special about Richie, and I know Richie was
3 saved but he went back in the world because he got saved
4 under me during the time that he have been seeking the Lord.
5 I'm the pastor of Powerhouse of God Ministry. I have founded
6 three churches, overseer over the other two and the pastor
7 over one, and I'm asking the Court this evening to please
8 have mercy upon Richie's life, please. They have been
9 through a lot because the mother died to an auto accident on
10 the 10th of January and that was very hard for them and to
11 the Salter's family you all have my condolences. I know your
12 heart is still heavy. I can understand that. It was an
13 accident but I'm asking you all to forgive Richie, please.
14 When you all been going through you all's troubles I've been
15 praying for you all because I can imagine how it was. I've
16 never been there but I can imagine how it was. So, Judge,
17 I'm just asking you to please, sir, have mercy upon his life
18 this evening and I want to say to the juror, thank God for
19 you all. You all had a hard time, but I know you all reach
20 what you all had to do. God bless you all.

21 THE COURT: Thank you, ma'am.

22 Anybody else on behalf of Mr. Niles?

23 (No response.)

24 THE COURT: All right, Mr. Hazzard, anything you
25 would like to say? Anything in mitigation before I impose

1 sentence on your client?

2 MR. HAZZARD: Your Honor, as the Court well knows
3 Mokeia is 21 years old. She was 19, and actually she's 20
4 years old because her next birthday is in April. She was 19
5 when this incident, or later this month, but she was 19 when
6 this, when this incident occurred, Your Honor. She has, she
7 has, she is a high school dropout, Your Honor, and I asked
8 her when I spoke with her about it. I said, "Why did you
9 drop out of high school," and she said, "I don't know, just
10 doing what other kids were doing," simple as that.

11 She is an extremely intelligent young lady. Once she
12 figured out that you can't get far in life as a high school
13 dropout, she immediately went to work and has held a series
14 of different jobs. At the time this incident occurred she
15 was a desk clerk at a hotel at the beach.

16 From the day she left high school she has always been
17 employed in some form or fashion. She has never been a
18 deadbeat or anything like that. As the Court well knows,
19 Mokeia has absolutely no prior record whatsoever not even as
20 a juvenile, never been in trouble with the law one day, Your
21 Honor, but I think that I won't refer to Mr. Niles as a bad
22 influence. I think both of them got caught up into a
23 lifestyle, what I refer to as a rap music video, you know,
24 living fast and selling drugs and things of that nature and
25 thinking that that was the way to get ahead, and a lot of

1 times as the Court well knows children are too smart for
2 their own good by half and I think that's what happened here.
3 Based on the minimal if any role that she played in this
4 event, based on her age, based on the fact that she has no
5 prior record whatsoever, Your Honor, we would respectfully
6 ask for the minimum sentence and any and all mercy that the
7 Court can give. I know that her mother and other family
8 members are present, and if the Court sees fit I would ask
9 that they be allowed to address the Court if they, if they so
10 wish.

11 THE COURT: All right, I'll hear from your client or
12 anyone that wants to speak on her behalf.

13 MR. HAZZARD: My client indicates that she is not
14 emotionally in a state where she can address the Court, Your
15 Honor.

16 THE COURT: All right, does anyone want to speak on
17 her behalf?

18 MR. HAZZARD: This is her mother, Your Honor.

19 THE COURT: All right, please give me your name.

20 MS. HAMMOND: Melinda Hammond.

21 THE COURT: All right, Ms. Hammond.

22 MS. HAMMOND: I just want to say that I love my
23 daughter very much and I know, you know, things been bad for
24 both of them in their life, you know, lifetime, but she's a
25 very smart girl, and you know, I appreciate her, you know,

1 for who she is and I would just like the Court to be, you
2 know, lenient on her because she's, she's a good person, you
3 know, just like Mr. Hazzard was saying she has some good
4 qualities in her life and some of the good decisions she made
5 in her life and I was behind her one hundred percent and some
6 of them, you know, I wasn't but I still love her for who she
7 is and I just want to thank the Court, sorry for the family
8 over here, and I thank the jury for what they have done and I
9 just want to have mercy on her, please, sir. Thank you.

10 THE COURT: Thank you very much.

11 All right, anybody else want to speak on behalf of the
12 Defendants?

13 (No response.)

14 THE COURT: All right, do the victims or anybody on
15 the victim's behalf want to say anything?

16 MR. RICHARDSON: Your Honor, I'll begin with a very
17 short address and then I believe we do have a couple of
18 members of James' family who wish to address the Court.

19 THE COURT: All right.

20 MR. RICHARDSON: Your Honor, on April 9th, 2007, James
21 Salter was 24 years old. He will always be 24 years old. He
22 won't draw another breath, won't celebrate another birthday.

23 The family doesn't come here nor does the State seeking
24 retribution. They wanted justice and we appreciate the
25 jury's service in this, Your Honor.

Sentencing

742

1 With regard to Ms. Hammond, she was young. She was 19.
2 Your Honor, 19 is an adult in the eyes of the law. 19 is an
3 adult in the eyes of all of our government. 19 year olds
4 are expected to have jobs. 19 year olds are expected to know
5 what they're doing; and here she chose to lead the fast and
6 dangerous lifestyle that she was living, chose to be with Mr.
7 Niles, sat there right beside him as he planned that armed
8 robbery. She drove him to the scene. At any time she could
9 have got out of the car but she chose not to. She chose to
10 drive away from that scene. She chose to hide the car so as
11 to hide out with Mr. Niles afterwards until they were
12 arrested.

13 Your Honor, with respect to Ms. Hammond, the State would
14 just seek a sentence that shows justice.

15 With regard to Mr. Niles, once again, nothing is going
16 to bring James Salter back. This was a senseless, senseless
17 crime. James Salter was killed over one pound of marijuana,
18 600, \$1500 worth of marijuana. That was the value of his
19 life to these Defendants. Your Honor, the State just asks
20 for a sentence that takes that into consideration, the
21 senselessness of this crime, the value that was placed on
22 human life in regard to this crime.

23 THE COURT: All right, I'll hear from anybody on the
24 victim's behalf.

25 MR. RICHARDSON: Your Honor, this is James' father.

1 THE COURT: All right, sir, your name.

2 MR. RICHARDSON: Ricky Salter.

3 MR. SALTER: Richard Salter, Your Honor, James'
4 father.

5 THE COURT: All right, all right, Mr. Salter.

6 MR. SALTER: Your Honor, I'm going to do my best to
7 convey to you the impact James' death has made on all of us.
8 Please understand that we'll never be able to righteously
9 describe the feelings of pain that and loss that we have all
10 been trying to live with since April 9th of 2007, but I'll do
11 my best.

12 James is in this room here today. He's in each of us
13 sitting here and he's in our hearts and our souls and
14 everywhere we go. He's here to see that we carry out the
15 process of justice for him. We speak on behalf of James
16 Michael Salter, the solicitors, the people that present the
17 evidence, the evidence itself all speak for him. The jury
18 and the victims' advocate speak for James. In a sense I am
19 speaking for James, the void in all of our lives from the
20 loss of James will never be filled. The pain is
21 indescribable, but with time the degree of pain does change.
22 Instead of hurting constantly it now just hurts most of the
23 time. The dark cloud of pain weighs us down. The pain is
24 real, both physical and mental. Our family is not whole any
25 longer and despite our efforts will never be again.

1 My daughter, I'd like to speak for her, and she says
2 that, ``James was and will always be my big brother.'' This
3 is on behalf of Jessica. ``To know that someone could
4 actually murder my only brother, my dad's only son is
5 sickening to know that someone killed a man with such an
6 amazing personality, a man with the biggest grin in the world
7 and a man who is loved by so many makes me physically ill.
8 It shows me that they did not know the James I knew, that we
9 all knew. It also shows me how pathetic and disgusting
10 people can be.

11 On April 9th, 2007, our lives became a never-ending
12 nightmare, to see and hear my dad say that James had been
13 shot and killed it was unbearable. I felt anger,
14 frustration, sadness and loss and I still do. I was 16 at
15 the time of his death. My sister had just turned 18.
16 Teenagers should be focused on school, not their brother's
17 murder investigation. Having to actually go to therapy was
18 embarrassing for me but I saw no other option. I thought it
19 would help relieve the pain. I learned nothing will ever
20 make this situation better. The entire truth will never be
21 heard because my big brother isn't here to tell it. This is
22 not reversible even though so many of us have prayed for just
23 that. I cannot tell you how many times I've asked for my
24 brother back. Of course it will never happen. A lot of
25 things will never be the same. My father, Richard Salter,

1 will never be the same. He is mentally, physically,
2 emotionally drained and I see how this has affected him every
3 day. He is not the same person he was when his son was
4 alive. My dad is a very respectable and honorable man and it
5 kills me to see him in such horrendous pain. He doesn't
6 deserve it, just like James did not deserve to be killed.

7 It's very hard to listen to all the lies and bite my
8 tongue but it will make no difference if my voice is heard.
9 What is done is done, and all I ask for is the respect that
10 James deserves, the respect he was not given on April 9th,
11 2007. My brother is James Michael Salter and I am honored to
12 be his little sister and be able to speak on behalf of him."

13 Sir, I have watched my wife, Susan, and my two
14 daughters, Jennifer and Jessica, suffer through this loss.
15 Jennifer and Jessica have struggled to finish high school.
16 They have delayed starting college as previously planned
17 because they're trying to deal with the grief. They have
18 both attended therapy to try to learn how to lessen the pain.
19 Susan has been hospitalized twice with stress induced
20 symptoms that have been severely aggravated by James' murder.
21 I myself have spoken with counselors to help me cope with the
22 loss of my son.

23 I find it difficult to see the joy life had prior to
24 losing James, but this pain is not confined to just our
25 family. His co-workers have and still express their sympathy

1 and grief whenever I see them at Costco. His friends often
2 let me know how much he is still missed by them and everyone
3 who happened to cross paths with James. James lost his life.
4 That is forever. His death was undeserved and disrespectful.
5 We will not get to see him grow into the great man he was
6 destined to be had he been given a chance.

7 Had he been given a chance to change, that chance was
8 taken away from him, sir. James Michael was my only son, my
9 daughter's only brother. We lost a grandson, an uncle and a
10 nephew and we all lost a friend, sir. I just ask that you do
11 what you feel is right.

12 MR. RICHARDSON: Your Honor, we have one more.

13 THE COURT: All right.

14 MR. RICHARDSON: It's James' big sister.

15 THE COURT: Ma'am, your name?

16 MS. WOLD: Elaine Wold.

17 THE COURT: Elaine?

18 MS. WOLD: Wold.

19 THE COURT: Wold?

20 MS. WOLD: Wold, W-O-L-D.

21 THE COURT: All right.

22 MS. WOLD: Your Honor, first of all I would like to
23 thank you for taking the time to listen to us today. There
24 are no words that can explain ---

25 MR. RICHARSON: Your Honor, Ms. Wold just asks that I

1 read this for her.

2 THE COURT: All right.

3 MR. RICHARDSON: ``There are no words that can explain
4 the pain that our family has endured since April 9th, 2007.
5 On that terrible night my mom and dad received the worst
6 phone call any parent can possibly get. They were told that
7 their only son, my little and only brother, was shot and
8 didn't make it. I was four and a half months pregnant at the
9 time with James's niece that will never get to meet the uncle
10 that my other three children and my niece have grown up,
11 grown to love and adore.

12 The kids ask us all the time why Uncle James died.
13 Thank God they understand as best as any eight year old and
14 six year old can that he is in heaven watching over all of us
15 that love him so much. When we go to my mom's we get to see
16 him in the family room watching over everyone, make sure all
17 of us are safe. James spent his last Christmas with us, with
18 all of us in Minnesota. We thank God every day that we were
19 able to spend that time with him. We've learned that we need
20 to cherish every moment that we have with each other because
21 we never know when our loved ones are going to be taken from
22 us forever. My mom and I talk about James and our memories
23 of him almost every day. Our lives are not complete without
24 him. There's a constant pain in our chest that just is
25 impossible to explain. Everything reminds us of the loss

1 that we have suffered through. We've cried about his death
2 over and over again in the past two years and I am confident
3 that those tears will not stop anytime soon.

4 We are a very close family and now we are missing a very
5 important link to make us complete. James made some
6 mistakes, and they cost him the ultimate price, his life.
7 The James that we all knew was a very loving, respectful,
8 honest, not afraid to give you a hug or say, "I love you
9 mom," and he loved his family very much. Life without his
10 smile, his bright blue eyes and hearing his voice on the
11 phone leaves an empty feeling in our hearts. James Michael
12 Salter is our son, our brother, uncle and grandson and he
13 will be forever missed."

14 THE COURT: Anyone else want to speak on behalf of
15 the victim?

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

17 THE COURT: All right, with regard to Mr. Niles, any
18 prior record?

19 MR. RICHARDSON: Your Honor, neither Defendant has any
20 prior record.

21 THE COURT: All right, Mr. Niles, Ms. Hammond, if you
22 would please stand.

23 (Complies with request.)

24 THE COURT: All right, Mr. Niles, on the charge of
25 murder the sentence of the Court is that you be confined to

1 the State Department of Corrections for a period of 30 years.
2 You'll be given credit for time served. On the charge of
3 armed robbery, the sentence of the Court is that you be
4 confined to the State Department of Corrections for a period
5 of 30 years, be given credit for time served, and on the
6 charge of possession of a weapon during the commission of a
7 violent offense the sentence of the Court is that you be
8 confined to the State Department of Corrections for five
9 years, be given credit for time served and these sentences
10 will run concurrently.

11 Ms. Hammond, on the charge of armed robbery the sentence
12 of the Court is that you be confined to the State Department
13 of Corrections for a period of 15 years. You'll be given
14 credit for time served.

15 MS. ELDER: Thank you, Your Honor.

16 MR. RICHARDSON: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. BARR: Thank you, Your Honor.

19 (Adjourned.)

20

21

22

23

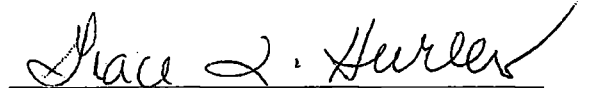
24

25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Mokeia Hammond and Richard Bill Niles, Jr., held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on March 9 through 13th, 2009.

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



Grace L. Hurley, CVR-CM

Official Reporter

July 23, 2009.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

Mokeia Hammond #333772)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

12

1065

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 mark each 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 S.C.D.C. - C.G.G.C.I. Columbia, SC
2. Name and location of Court which imposed sentence Horry County Courthouse - Conway SC
3. Name(s) of co-defendant(s) (if any) Ervin Junior Moore and Richard Bill Niles Jr.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-26-4119 Armed Robbery
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 13, 2009 - 15 years
 - (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?
Judgement of conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.S.C Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 2, 2011
- ii. _____
- 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) Refer to Final Brief
- (b) _____
- (c) _____

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

- (a) Refer to final Brief
- (b) _____
- (c) _____

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. Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals - Columbia S.C.
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. Denied
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. November 2, 2011
- 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. Refer to Final Brief
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. Refer to Final Brief
- 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) N/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. Mr. Ronald Hazzard - P.O. Box 1666 - Conway, SC 29528
- ii. Mr. Joseph Savitz - P.O. Box 11589 - Columbia, SC 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, trial, sentencing
- ii. Appeal
- iii. _____

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

Sentence reduction or lesser charge

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

No

12

1065

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, M#, 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.

Makara Hammel

SWORN to and subscribed before me this 2nd
day of February, 2012.

Kathy R. Barnes
Notary Public

(L.S.)

My Commission Expires: My Commission Expires August 12, 2015

FILED
RICHLAND COUNTY
2012 FEB -9 AM 8:35
MELANIE HUGGINS-WARD
CLERK OF COURT

12

1065

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

I, MAH, 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.

Mokeia Hammond
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of February, 2012.

Kathy R. Barnes
Notary Public

My Commission Expires: My Commission Expires August 12, 2015

FILED
CLERK OF COURT
2012 FEB -9 AM 8:35
MELANIE HUGGINS-WARD

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26- 1065
	)	
Mokeia Hammond, 333772	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed February 9, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the October 2008 term of the Horry County Grand Jury for possession of a weapon during a violent crime (2008-GS-26-4118) and armed robbery (2008-GS-26-4119). Orrie West, Esquire, represented Applicant.

On March 13, 2009, Applicant was tried before Judge Benjamin H. Culbertson and a jury, and found guilty on the armed robbery charge. Judge Culbertson sentenced Applicant to fifteen years imprisonment. Applicant appealed the conviction and his appeal was denied. The Remittitur was dated November 14, 2011.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "refer to final brief"

Applicant seeks "sentence reduction or lesser charge" as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, 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.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

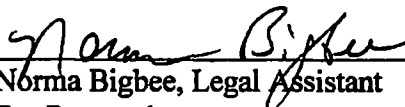
5/24, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-1065
	)	
MOKEIA HAMMOND, #333772	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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 by depositing same in the United States mail, postage prepaid:

Brana J. Williams, Esquire
889 Inlet Square Dr.
Murrells Inlet, SC 29576

DATED this 24th day of May, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2012-CP-26-01065
MOKEIA HAMMOND,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	Post-Conviction Relief
vs.	)	
	)	September 19, 2017
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable William H. Seals
Horry County Courthouse
Conway, South Carolina

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

Brana J. Williams, Esquire
Attorney for Plaintiff

Johnny Ellis James, Jr., Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

I N D E X

2	<u>SEPTEMBER 19, 2017</u>	<u>Pg.</u>
3	Motions	3
4	Ronald William Hazzard	
5	Direct by Ms. Williams	6
6	Cross by James	18
7	Mokeia Hammond	
8	Direct by Williams	26
9	Cross by James	31
10	Certificate of Court Reporter	33

E X H I B I T S

15	<u>No.</u>	<u>ID</u>	<u>EV</u>

(No exhibits marked or admitted.)

1 **(SEPTEMBER 19, 2017 - 11:38 A.M.)**

2 MOTIONS:

3 MR. JAMES: Your Honor, the state calls the matter of
4 Mokeia Hammond versus State of South Carolina. That is docket
5 number 2012-CP-26-1065. Ms. Hammond is present here today in
6 the courtroom and is represented by Ms. Brana J. Williams.
7 There are a couple of issues to attend to in this case.
8 Initially, right now, this case is subject to an order staying
9 it. It was requested that it be stayed pending the resolution
10 of Ms. Mokeia's codefendants' appeals. Ms. Niles appealed to
11 the Court of appeals and was granted relief on a voluntary
12 manslaughter issue. The state I believe requested that stay
13 until the Supreme Court could review the case. The Supreme
14 Court reversed the Court of Appeals and affirmed Mr. Niles'
15 conviction. So, the reason why this case was stayed has long
16 since be resolved. Mr. Niles appeals if any -- and he
17 actually has a separate post-conviction relief matter floating
18 out there that will come up in a future term. Accordingly,
19 the reason for the stay no longer applies and we'd request the
20 Court lift that stay.

21 THE COURT: All right. Any objections?

22 MS. WILLIAMS: We have no objection, Your Honor. It was
23 a mutual agreement that we ---

24 THE COURT: Okay. The stay is lifted.

25 MR. JAMES: Thank you, Your Honor. And as a second

1 matter, as has become an unfortunate habit of mine this week,
2 the state must make a standing motion to dismiss this case.
3 The allegations in the application for post-conviction relief
4 very simply say refer to final brief. Your Honor, the state's
5 interpretation of that is that Ms. Hammond is very simply re-
6 raising the allegations that were directly raised to the Court
7 of Appeals and the Court of Appeals already considered and
8 ruled on those allegations. Specifically, Your Honor, if I
9 recall correctly, those allegations were that the Trial Court
10 erred in denying her motion for directed verdict for want of
11 sufficient evidence. And so additionally to the fact that
12 this has been raised to and ruled upon by the Court of
13 Appeals, allegations that the evidence was not sufficient to
14 support the conviction or expressly prohibited as a ground for
15 post-conviction relief. And, therefore, Your Honor, the State
16 would respectfully motion to dismiss this case in its
17 entirety.

18 THE COURT: All right.

19 Ms. Williams?

20 MS. WILLIAMS: Your Honor, I would respond to that in
21 saying kinda like prior counsel said, my client filled this
22 out. While not artfully as it should be, she does refer to
23 her final brief. Your Honor, basically, it is an ineffective
24 assistance of counsel. I think the state is aware that there
25 is an evidence issue in this -- how do I want to say it -- a

1 volume of evidence issue, if you will. But it is an
2 ineffective argument of assistance of counsel for some
3 failures on the counsel's behalf regarding the evidence or
4 lack thereof. Your Honor, and I think that part the state is
5 aware of. There's nothing other hidden in her application
6 with regard -- it's just challenging what her lawyer did or
7 did not do at trial.

8 THE COURT: And how is the state aware of that?

9 MS. WILLIAMS: Well, he and I have discussed these issues
10 about Mr. Hazzard's questions or lack thereof, if you will. I
11 mean, it's basically a sufficiency -- I mean, it's whether or
12 not he did what he was supposed to do and ask questions.

13 THE COURT: All right.

14 MR. JAMES: Your Honor, we briefly touched on this case
15 and then, of course, I have expressed to her my general
16 practice opinion that just about any allegation you can make
17 in a PCR application can be reframed in light of ineffective
18 assistance of counsel, occasionally to my chagrin, it -- to
19 the extent that she may wish to amend her application at this
20 time to put it in that light, I would ---

21 THE COURT: The amendment is granted. All right.

22 MS. WALTER: Well, thank you, Your Honor. And basically
23 my client's allegation is that her counsel was ineffective in
24 his failure to sufficiently argue the lack of evidence
25 presented. He failed to ask questions of certain co-counsel

1 that was there. The other that did testify, I'm sorry, the
2 other witness that did testify, the other appli -- the other
3 part of her PCR would be in the discussion that she relied on
4 him and she didn't testify. And so that's part of what we're
5 going forth on, just those two issues, really, Your Honor.

6 THE COURT: Anything else you want to put on the record?

7 MR. JAMES: Just a final ruling on the motion to dismiss
8 would be appreciate, Your Honor.

9 THE COURT: I'm gonna deny that motion.

10 MR. JAMES: Thank you, Your Honor.

11 MS. WILLIAMS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 All right. If you'll call your first witness.

14 MS. WILLIAMS: Thank you, Your Honor. I'll call Attorney
15 Ron Hazzard to the stand.

16 RONALD WILLIAM HAZZARD, HAVING BEEN
17 DULY SWORN, TESTIFIED AS FOLLOWS:

18 CLERK: State your name for the Court.

19 MR. HAZZARD: My name is Ronald William Hazzard, last
20 name is spelled H-A-Z-Z-A-R-D.

21 DIRECT EXAMINATION OF RONALD WILLIAM HAZZARD BY MS. WILLIAMS:

22 Q: And Mr. Hazzard, will you tell the first for its
23 edification what you currently as your job?

24 A: I am the Chief Public Defender for Georgetown County and
25 the Fifteenth Judicial Circuit.

1 Q: And do you have recollection or are you familiar with the
2 matter that we're here before the Court today and my client
3 Mokeia Hammond?

4 A: Yes, ma'am.

5 Q: And can you tell the Court your involvement with my
6 client?

7 A: Ms. Hammond was arrested in April of 2007 in this matter.
8 To my understanding Orrie West, the Circuit Public Defender
9 for the Fifteenth Circuit was her counsel of record. I was
10 appointed to represent Ms. Hammond in December of 2008,
11 December 17th, I believe, of 2008. And the matter went to
12 trial, I believe it was March 9th of 2009, approximately 75
13 days after I was appointed.

14 Q: Okay. And Ms. Hammond was one of three codefendants,
15 correct?

16 A: Yes.

17 Q: And just for the Court, she was charged with armed
18 robbery, possession of a weapon during a violent crime,
19 correct, and there was a murder charge as well, correct?

20 A: Yes, ma'am.

21 Q: And that's -- those three charges are what you defended
22 her on?

23 A: Yes, ma'am.

24 Q: Okay. Can you tell the Court kind of in a brief manner
25 how the trial actually took place and like what -- kind of

1 what happened? Meaning the one -- one client -- there were
2 three codefendants, correct?

3 A: Yes, ma'am. Three people were charged.

4 Q: And only one codefendant testified?

5 A: To my recollection Ervin Moore -- well, no, I know that
6 Bill Niles, Richard Niles testified, obviously, and I thought
7 that Ervin Moore had testified.

8 Q: If I were to tell you that both of the codefendants
9 testified, you wouldn't argue with that?

10 A: No.

11 Q: And Ms. Hammond did not testify, correct?

12 A: Correct.

13 Q: Do you recall why you -- did you advise her not to
14 testify?

15 A: I don't think I advised her not to testify. I didn't
16 think there was a need for her to testify right up until the
17 point where Richard Niles jumped on the stand and kind of
18 pulled the rug out from under our defense. It was a little
19 too late at that point.

20 Q: And tell the Court what you mean by that, what you just
21 said, there wasn't enough or you didn't think there was a need
22 for her testify.

23 A: Obviously, Ms. Hammond was found not guilty of murder;
24 she was found not guilty of the gun charge; but she was
25 convicted of the armed robbery. Our defense was that she was

1 present with Mr. Niles and Mr. Moore; however, she had no
2 knowledge of anything. There was no plan for any crime to
3 occur and, obviously, she was not a co-conspirator in any
4 crime. She didn't have a gun, she didn't shoot anybody, and
5 she didn't rob anybody.

6 Q: And the evidence -- the evidence, that was the evidence
7 presented in court, correct?

8 A: Correct. Correct. So, we were good with the way
9 everything, or I was good with the way everything was going.
10 The defense path that I was on was a defense path that neither
11 Mr. Niles nor Ms. Hammond had anything to do with the death of
12 the deced -- of the decedent, the victim. My theory was that
13 it was actually Ervin Moore who had done it and that he ended
14 up testifying against Ms. Hammond and Mr. Niles kind of as a
15 way of saving his own skin. Unbeknownst to me, Verdell Barr
16 put Mr. Niles on the witness stand and had him testify that
17 he, in fact, actually did shoot at a victim, which I think
18 caused me to lose a lot of credibility in the eyes of the jury
19 as far as the theory and theme of the case that we had laid
20 out throughout.

21 Q: Okay. And just so it's not confusing when we're talking
22 about testifying. Do you recall that this was a car incident,
23 correct?

24 A: Yes. Excuse me. Yes, ma'am.

25 Q: And where -- kind of my client was what in the car?

1 Where were the codefendants and briefly kind of what happened
2 so when I discuss this it won't just be vague?

3 A: To my recollection, Ms. Hammond was the driver of the
4 vehicle, Mr. Niles was the front-seat passenger, and Mr. Moore
5 was in the backseat.

6 Q: Okay. And Mr. Niles was basically my client's boyfriend?

7 A: Most definitely.

8 Q: And do you recall the statement talking about doing a
9 lick, doing the lick?

10 A: Vaguely.

11 Q: Because isn't it -- when the trial goes into -- the
12 state's case was that Niles said he was going to do a lick?

13 A: Someone may've testified to that but I thought then and I
14 think now that that was a ludicrous statement.

15 Q: I'm sorry; you thought it was a what?

16 A: Ludicrous statement.

17 Q: Ludicrous statement. And, you did not ask Mr. Niles in
18 his opinion did my client hear that statement, did you?

19 A: I ---

20 Q: If it's not in the transcript, you didn't ask it?

21 A: That would be correct. My thing is I don't believe he
22 ever said it. And the reason I don't believe he ever said it
23 is because the victim, basically worked for Mr. Niles. Mr.
24 Niles provided drugs, the victim sold the drugs and returned
25 the money to Mr. Niles. He had no reason to do a lick or rob

1 a person who worked for him.

2 Q: So, the -- as the testimony comes out, Mr. Niles
3 testifies he's going to do a lick, and Mr. Moore says he
4 barely heard it, correct?

5 A: I recall that being Mr. Moore's testimony. I don't
6 recall Mr. Niles saying he was gonna do a lick.

7 Q: Okay. But Mr. -- would that -- you're correct. Mr.
8 Moore says it and Mr. Moore said, his testimony, he barely
9 heard it, correct?

10 A: Correct.

11 Q: Okay. So, when Mr. Moore is on the stand, it's that --
12 isn't it fair to say that it is that statement that he's going
13 -- Niles said, I'm going to do a lick was the whole crux of
14 why the jury convicted my client, correct?

15 A: That would be the only reason they would have to convict
16 her was Mr. Moore's testimony that supposedly there was some
17 discussion between Mr. Niles and Ms. Hammond in the front seat
18 regarding Mr. Niles' alleged statement of doing a lick and
19 advising her of such. Yes, ma'am.

20 Q: Correct. And the theory the state went under in this
21 case was the hand of one, hand of all, correct?

22 A: I presume so, yes.

23 Q: Okay. So, when Mr. Moore says that, do you recall asking
24 him at all about did Ms. Hammond hear that?

25 A: I don't recall whether I did. If the transcript bears

1 that out, then that is fine.

2 Q: Okay. And if the transcript doesn't show that you didn't
3 ask Mr. Moore, did you think that Ms. Hammond understood what
4 he meant by that, then it's not in the transcript, correct?

5 A: I would never have asked -- or I would not assume I would
6 ask a speculative question like that anyway.

7 Q: Okay. To the best of your recollection, you reviewed
8 this transcript, right?

9 A: To some extent but I didn't read it all.

10 Q: But to the best of your recollection, the only evidence
11 or the basic theory was that statement that Mr. Moore made
12 about Mr. Niles, we're gonna make a lick, correct?

13 A: That he wanted to make a lick and that he advised Ms.
14 Hammond of such, yes.

15 Q: Okay. And so when you objected, you objected to allowing
16 -- I mean, you made a motion a directed verdict, basically,
17 insufficiency of evidence, correct?

18 A: Yes, ma'am.

19 Q: Okay. And that was denied?

20 A: Yes, ma'am.

21 Q: And then at the end of the trial when Ms. Hammond was
22 only found guilty of -- she was found guilty of the armed
23 robbery?

24 A: Yes, ma'am.

25 Q: Not possession of a weapon during a violent crime nor the

1 murder, correct?

2 A: Yes, ma'am; that is correct.

3 Q: Did you -- you did not renew your motion at that time for
4 a verdict based on inconsistency of evidence, correct?

5 A: I actually thought I did. I mean, whatever the
6 transcript shows it shows, but I actually thought that there
7 was quite an argument about how could she be found guilty of
8 armed robbery but yet found not guilty of having a weapon.

9 Q: So, if the transcripts don't show that you made that, did
10 not make that motion, then you indeed did not make it,
11 correct?

12 A: I will agree with whatever the transcript says, ma'am.

13 Q: Okay. So, let me ask you -- let's discuss this. Ms.
14 Hammond did not testify and you said your reasoning was --
15 what did you say?

16 A: I didn't feel there was need for her testify. Although,
17 the decision to testify would've been hers. What I do is I
18 lay it out there, you have the right to testify or not
19 testify, if so choose. I've never told a client not to
20 testify. So, it would've been her decision not to testify.

21 Q: Obviously, and when you -- and I would -- let me ask you
22 this, when you have that discussion with your clients, you
23 discuss whether or not they have a prior record or not, right?

24 A: Correct.

25 Q: Do you recall in this case if Ms. Hammond had a prior

1 record?

2 A: Knowing her, I doubt that she did.

3 Q: So, if I were to tell you she did not have a prior
4 record, you wouldn't dispute that?

5 A: No, not at all.

6 Q: And would you have discussed what the meant for her if
7 she testified or didn't testify?

8 A: Most definitely. I mean, really, there's nothing to
9 discuss in that regard. The discussion is when and individual
10 has a prior record that can be possibly used for the purpose
11 of impeachment. In her case, she did not have a record, so
12 that was not even a matter to discuss.

13 Q: What about the possibility that she could get on the
14 stand and look at the jury and say, I didn't do it, I didn't
15 know about it?

16 A: We would've discussed that as well, yes.

17 Q: Do you think she followed your advice?

18 A: That's a broad question. I mean, can you be a little
19 more specific?

20 Q: Let me ask you this. If my client were to say and did
21 confirm that you guys discussed this and after the discussion
22 your advice would've been I don't think you need to testify in
23 that case, would it be safe to assume that she did indeed
24 follow your advice?

25 A: I never told her not to testify. So, I can't say that's

1 my advice. I definitely thought that we were in a good
2 position because there was virtually -- there literally was no
3 evidence that showed that she affirmatively participated in
4 any kind conspiracy to commit a criminal act. So, it just
5 really would've come down to whether she wanted to testify or
6 not. And since this is now been eight years ago, I will not
7 try to dredge up in my memory what her basis was for choosing
8 not to testify.

9 Q: Certainly. Well, let me ask you this, do you think that
10 knowing that she had no criminal record -- and let's just put
11 this in context. You're a criminal lawyer, a long-standing
12 practicing criminal lawyer.

13 A: Uh-huh, (affirmative response).

14 Q: The advantage to not testifying is simply that -- tell us
15 that advantage.

16 A: Normally, the advantage of that is that you would get the
17 final closing argument. But in this case, once Bill Niles got
18 on the stand, that wrecked it for all of -- well, for both of
19 us. But, and that's one of the reasons why it would not have
20 been an issue in our discussion as far as whether she should
21 testify or not because we weren't gonna have the closing
22 argument anyway. If she testified, she obviously would've
23 opened herself up to probably answering a lot of questions
24 about her relationship with Richard Niles and his criminal
25 dealings, and I don't know, maybe that was part of her

1 decision.

2 Q: So, as you sit here today, do you still believe it was in
3 her best interest not to testify and look at the jury and tell
4 them her version?

5 A: Hindsight being 20/20, obviously, she was convicted of an
6 offense and maybe it would've been different had she
7 testified. So, no, I can't say that it was in her best
8 interest to not testify.

9 MS. WILLIAMS: Court's indulgence for just a moment.
10 Your Honor, may I approach?

11 THE COURT: Yes, ma'am.

12 MR. JAMES: May I ask what it is that you're showing to
13 the witness?

14 MS. WILLIAMS: I'll show you.

15 MR. JAMES: Okay.

16 BY MS. WILLIAMS:

17 Q: Mr. Hazzard, this is part of the transcript. It's Page
18 381 and -- on the testimony of Ervin Moore. Okay? And at
19 Line 16, the question by Ms. Elder, who was the prosecutor,
20 talks about when he was telling you he's hitting this lick,
21 going to rob this vehicle, he was in the front seat? He says,
22 yes, ma'am. Correct?

23 A: Yes.

24 Q: All right. And then the next question, if you'll just
25 read that.

1 A: Starting at Line 19?

2 Q: Yes.

3 A: Prosecution, Question: And was Mokeia Hammond beside him
4 driving? Answer: Yes, ma'am. Question: And you were in the
5 backseat? Answer: Yes, ma'am. Question: And even with the
6 radio, were you able to hear that? Answer: I heard a little
7 bit of it. Question: Okay, you heard enough that you knew
8 what you were going ---

9 Q: So, that was the testimony from Codefendant Moore about
10 a little bit -- he heard a little bit if the statement about
11 doing a lick, correct?

12 A: That was his testimony.

13 Q: Okay. And you don't recall questioning Mr. Moore about
14 did Ms. Hammond hear it?

15 A: I do not recall whether I asked him specifically about
16 that, no, ma'am.

17 Q: Okay. One last question, Mr. Hazzard. In this trial as
18 part of your strategy, Mr. Moore was the one that testified
19 about this doing a lick, correct?

20 A: Yes, ma'am.

21 Q: And so you recall there was -- if I'm hearing you
22 correctly, part of what it was is that there was no discussion
23 on this -- no evidence presented that there had been any
24 discussion of this lick, so to speak, correct?

25 A: My position was the only evidence regarding Bill Niles'

1 allegedly statement about wanting to do a lick, the only
2 evidence of that came from Ervin Moore and that Ervin Moore
3 was actually the one that wanted to do the lick. I mean,
4 remember, the testimony was that Ervin Moore was the one who
5 initially was in the car with the decedent fighting with him.
6 And that our position was that Ervin Moore was the one that
7 wanted the money and wanted the weed that again Richard Bill
8 Niles had no reason to rob someone who basically worked for
9 him. My recollection was they met in the BestBuy parking lot
10 for the purpose of Mr. Niles giving the decedent some more
11 weed and the decedent giving Mr. Niles his money. Basically,
12 a re-up situation is my recollection of it. So that the only
13 one who would profit from robbing anyone would be Ervin Moore.
14 So, basically, our position was that the conversation never
15 occurred between Ervin -- or that the statement was never made
16 by Mr. Niles.

17 MS. WILLIAMS: That's all the questions that I have, Your
18 Honor.

19 THE COURT: All right. Cross?

20 MR. JAMES: I'm gonna try using this podium for a change
21 of pace, if Your Honor doesn't mind.

22 THE COURT: Sure.

23 CROSS EXAMINATION OF RONALD WILLIAM HAZZARD BY MR. JAMES:

24 Q: Good morning, Mr. Hazzard. How are you doing today?

25 A: Good morning, sir.

1 Q: I think it's still morning. It isn't. There's been some
2 discussion of this lick statement and ultimately that provided
3 one of the main foundations of Ms. Hammond's conviction,
4 correct?

5 A: I don't know what the foundation of her conviction was.

6 Q: But that was really the only evidence, or some of the
7 only evidence in the record to support a conviction for armed
8 robbery, correct?

9 A: Correct.

10 Q: Okay. Ervin Moore said that he heard Niles say let's do
11 a lick, correct?

12 A: I don't recall the phraseology whether it was let's do a
13 lick or I'm going to do a lick, something of that nature, but
14 yes apparently the statement was made regarding a lick, yes.

15 Q: All right. Would it have been speculative for him to
16 answer whether or not Mokeia heard that statement?

17 A: Yes.

18 Q: Okay. And so if you'd asked that question, it would've
19 been objectionable, correct?

20 A: Yes.

21 Q: All right. Let's go back up to the top.

22 A: Yes, sir.

23 Q: About how many times did you meet with Ms. Hammond in the
24 course of your representation, if you recall?

25 A: Well, I looked at my notes and I jotted some down if you

1 wish me to look at them, I can refresh my recollection.

2 Q: If it would help you, please refresh your recollection.

3 A: Okay. I was appointed -- the file was opened in the
4 public defender's office April 20th, 2007. That was 11 days
5 after she was arrested. I was appointed December 17th of
6 2008. January 13th of 2009, the second time I tried in
7 contact with her, I left her a voicemail message. January
8 16th of 2009 we had scheduled an office conference; she did
9 not appear. Finally, on February 17th, 2009, she called the
10 office. I called her back on that same date, February 17th,
11 2009. We discussed the case and she provided a different
12 contact number at that time, a cell phone number. Called her
13 back again several times, having finally reached her March 3rd
14 of 2009. Scheduled a trial preparation conference for March
15 5th, and she did not appear. Finally, I had a telephone
16 conference with her on March 6th of 2009 where we ended up
17 going over what you would normally do in a trial preparation
18 conference at great length as far as explaining everything
19 about trial protocol, things of that nature. And then that
20 was a Friday and the trial was that Monday, Monday the 9th.

21 Q: At least in that final meeting, did you discuss the
22 indictments, the offenses charged therein and the elements
23 with her?

24 A: Yes, sir.

25 Q: Okay.

1 A: Albeit by phone, but yes.

2 Q: All right. Did you review the possible punishments that
3 she was facing?

4 A: Yes.

5 Q: Did you explain to her all of her constitutional rights
6 such as right to a jury trial, right to remain silent, right
7 to confront the witnesses?

8 A: Yes, sir. And we had also discussed a proffer agreement
9 that was outstanding and that she rejected. The proffer
10 agreement was one that obviously did not have a sentence range
11 or proposed sentence attached to it. It was simply if you
12 testify for the state, we'll take that into consideration in
13 the disposition of your charges, but we had discussed that and
14 she had rejected that.

15 Q: Okay. Did you explain reasonable doubt to her?

16 A: Yes, sir.

17 Q: And the state's burden?

18 A: Yes, sir.

19 Q: And did she appear to understand everything that you told
20 her?

21 A: Most definitely; she's a very smart woman.

22 Q: All right. Did she seem engaged in the process?

23 A: Well, as best I could tell over the phone, yes, sir.

24 Q: Okay. You've already gone into great detail about the
25 nature of your counsel as to whether or not she should

1 testify, so I won't belabor that point. What if anything did
2 Ms. Hammond tell you about what happened?

3 A: To my recollection, what Ms. Hammond said happened is
4 that she and Mr. Niles -- she and Mr. Niles were dating. They
5 had met up and for some reason I want to say it was in the
6 Salters area, had gotten together, and they were basically
7 going to beach to spend the day together and have some fun.
8 Mr. Niles was gonna do some work on the way. And by work, I
9 mean, re-up various individuals who, you know, he had drug
10 relationships with, that he would give them drugs and he would
11 collect his money from the drugs that he had previously
12 fronted to them. But, Ms. Hammond's position from my
13 understanding was always that, yeah, you get that out of the
14 way and then we can go have some fun so that it was never a
15 matter of, you know, that she was involved in some kind of
16 criminal enterprise. It was just something that he wanted to
17 handle some business while they were at the beach. And that
18 they ran into Ervin Moore just before they left the area that
19 they were in. And once again, I want to say it was Salters.
20 And, that Mr. Moore basically invited himself along, which I'm
21 sure didn't make Ms. Hammond very happy, because again she was
22 supposed to be having a good time with her boyfriend. But,
23 that -- I believe the stop at the BestBuy was actually
24 supposed to be the last stop of the business that Mr. Niles
25 was conducting and that Mr. Moore either was asked by Mr.

1 Niles or Mr. Moore offered to get out of the car, go to the
2 decedent's car and collect the money that the decedent
3 would've had for Mr. Niles, and deliver the marijuana that Mr.
4 Niles had for the decedent. And, from my recollection, Ms.
5 Hammond was sitting in the front seat -- in the driver's seat,
6 and Mr. Niles was sitting in the front passenger seat. And
7 from what she indicated to me, Mr. Moore gets out of the car,
8 goes to the decedent's car. She and Mr. Niles are talking and
9 then she turns and realizes and says, oh, my gosh, they are
10 fighting, meaning the decedent and Mr. Moore. And that
11 subsequently, Mr. Niles then got out of the car, went over
12 there, the decedent starts shooting, and according to his
13 testimony at trial, Mr. Niles shot back and subsequently
14 killed the decedent.

15 Q: Were there any other witnesses to interview as part of
16 this case?

17 A: There were a lot of other individuals who had been
18 interviewed, folks who in the BestBuy parking lot and had
19 different views of things. But, other than, you know, Mr.
20 Moore, Mr. Niles, and Ms. Hammond, there really, to my
21 knowledge wasn't anyone else who, you know, whose testimony
22 would've been, you know, relevant and material to the incident
23 that occurred.

24 Q: Do you have anything, any reason to believe that anything
25 was left out of your Rule 5 and Brady discovery?

1 A: That's a loaded question. With the Fifteenth Circuit
2 Solicitor's office, you are always wondering whether you got
3 everything. For instance, I mean, this young woman was
4 charged with murder and my notes reflect that the week prior
5 to trial, and this is something that -- she's charged in
6 April of 2007. The week before trial in March of 2009, I'm
7 still receiving discovery discs and interview discs and things
8 of that nature, so ---

9 Q: Did you have time to review those materials?

10 A: I had time to review them, yes. And I was able to
11 discuss or inform Ms. Hammond of what was on them during our
12 telephone conference on the Friday before trial on March 6th.

13 Q: All right. After the shooting, or the shoot-out, isn't
14 it true that Ms. Hammond continued to drive the car?

15 A: Well, yeah. I mean, they were -- she did, yes. There
16 was no question about that. Of course, the car was being shot
17 at but, yeah, she did drive the car away from the scene.

18 Q: Okay. And she drove it to, I believe it was a trailer
19 park?

20 A: Yes, sir. That's my recollection.

21 Q: And there the vehicle was abandoned?

22 A: My recollection is that they parked the vehicle behind
23 the trailer. I don't remember the connection between her and
24 the person who owned the trailer but there was some
25 connection. Parked the vehicle behind the trailer, called a

1 cab, and then left that residence in a cab, she and Mr. Niles.

2 Q: Do you recall if there was testimony that Mr. Niles
3 called his mother and ordered her to report the car stolen?

4 A: I vaguely remember that; yes, sir.

5 Q: Okay. Do you recall if all three were still together as
6 a group at that time?

7 A: I don't recall where Mr. -- I mean, I'm assuming they
8 drove Mr. Moore away from the scene because otherwise he
9 would've been left standing in the BestBuy parking lot, but I
10 don't have independent recollection of when they separated
11 company.

12 Q: That's fine. As to Ms. Hammond testifying for herself,
13 her testimony, if she had testified, that could have helped
14 her, correct?

15 A: Hindsight being 20/20, yes, sir, I believe it could've.

16 Q: But it's also true that she was acquitted she was
17 acquitted on two of the charges, the murder and the weapons
18 charge, correct?

19 A: That is correct.

20 Q: And so there is room out of this case that she could've
21 testified and hurt herself, correct?

22 A: Possibly, yes.

23 MR. JAMES: I have no further questions for this witness,
24 Your Honor.

25 THE COURT: All right.

1 Anything further?

2 MS. WILLIAMS: No, sir.

3 THE COURT: All right. Thank you, Mr. Hazzard, you may
4 step down.

5 Call your next witness.

6 MS. WILLIAMS: I'll call my client Mokeia Hammond.

7 MOKEIA HAMMOND, HAVING BEEN DULY

8 SWORN, TESTIFIED AS FOLLOWS:

9 CLERK: State your name for the Court.

10 DIRECT EXAMINATION OF MOKEIA HAMMONG BY MS. WILLIAMS:

11 Q: Mokeia, you're here today for a PCR, right?

12 A: Yes.

13 Q: Okay. Tell the Court why you think you're entitled to a
14 PCR.

15 A: I think I'm entitled to a PCR because I feel as if I
16 wasn't represented properly and I know that some evidence
17 wasn't presented at my trial, some evidence wasn't even
18 brought up, so I feel like I wasn't rightfully granted to what
19 I deserve, basically.

20 Q: Tell me specifically how you were not represented
21 properly.

22 A: Well, I know that some -- Mr. Ronald Hazzard said that at
23 sometimes he tried to contact me, but that was -- I do not
24 recall any of that because that wasn't true. I showed --
25 every roll call, I showed up to and any other times that I --

1 he tried to contact me, I, you know, talked to him or
2 anything. And the proffer agreement, I never remembered. The
3 only proffer agreement that I ever signed and discussed with
4 Ms. Orrie West was when I -- they wanted me to help them find
5 evidence, the gun that Richard Niles used to shoot the victim
6 and I went out to show them where the gun as at but they
7 couldn't find it and that's the only proffer agreement that I
8 had ever signed or discussed with my attorney.

9 Q: All right. Let's do this, at trial when Moore got on the
10 stand and testified, okay, you heard what he said, correct?

11 A: Yes, ma'am.

12 Q: All right. And is it your opinion -- I don't want to put
13 words in your mouth but let me ask you about Mr. Hazzard
14 crossing him about what you knew, what you didn't know with
15 regard to that. Tell the Court what you think about that.

16 A: I think he should've effectively asked him more questions
17 because in one statement as if -- in our transcript on Line
18 38, Line 380 -- Page 380, Line 19 through 24, he said that he
19 heard Richard Niles saying that he was gonna hit a lick. And
20 then at the end on Page 390 in Lines 14 through 23, he said he
21 didn't know what Richard Niles was going for but that's what
22 happened. So, I feel like he should've been questioned more
23 in depth of -- if he's saying that he heard it but he -- the
24 music was up loud and he didn't really hear anything, then he
25 change his story and say he didn't know what -- which -- Niles

1 is on, what they would want him for. So, I feel like he
2 should've been questioned more because if he's changing his
3 story, then obviously he's lying, so for me to be involved, it
4 -- he should've just been questioned more on that because he
5 was changing his stories and he never testified that it was a
6 plan, he never testified that I heard anything, he never
7 testified that I was even involved in any kind of way in this
8 criminal plan or whatever. He was saying that they had going
9 on and my lawyer never asked him those questions.

10 Q: Okay. Did your lawyer ask those questions of Mr. Niles?
11 Tell me about that.

12 A: I -- to my recollection, I think I recall that maybe he
13 did ask him was I -- was there any plan or did I agree to do
14 anything, and Richard Niles, they testified that no, there was
15 not any plan and I did not agree with them to do any kind of
16 thing that -- whatever came out this situation, I was not in
17 agreeance with anything.

18 Q: Okay. But he didn't ask that question of Mr. Moore, did
19 he?

20 A: No, ma'am.

21 Q: Now, and let's talk about this. Is this your only
22 criminal conviction?

23 A: Yes, ma'am.

24 Q: And it is a conviction for armed robbery?

25 A: Yes, ma'am.

1 Q: All right. But you didn't testify, correct?

2 A: No, ma'am.

3 Q: Tell me about that.

4 A: I do recall when me and Mr. Ronald Hazzard had a meeting
5 in the side room of the courtroom and he told me that it was
6 best if I didn't testify, but I didn't really know the legal
7 terms around anything. This is my first time in trouble so I
8 really just went with what he said. If I knew now that it
9 would probably be best if I had testify and defend myself,
10 maybe I would've but I didn't really -- I mean, he didn't
11 really go into depth of that it could really acquit me of
12 anything if I did testify or really harm me in any kind of
13 way.

14 Q: And how old were you at the time of this trial?

15 A: Of this -- of the trial?

16 Q: Of the trial.

17 A: I was 20.

18 Q: You were 20, and how far did you go in school?

19 A: I just recently ---

20 Q: At the time of trial?

21 A: Ninth grade at the time of trial.

22 Q: At the time of trial you had completed the ninth grade?

23 A: Uh-huh, (affirmative response).

24 Q: I'm sorry; you have to yes or no.

25 A: Yes, ma'am.

1 Q: She's taking it down. Okay. Is there anything else that
2 you want to tell the Court as to why you think you're entitled
3 to this PCR?

4 A: I just think I'm entitled to this PCR because what I've
5 been found guilty of, I didn't do. Like I said, there was
6 evidence that I even told my attorney about, I presented to my
7 attorney that wasn't presented, and there was the evidence
8 that wasn't in my motion of discovery, and there was evidence
9 that was like I say never presented. I don't know if they
10 didn't present it, was it hidden or what -- there was evidence
11 that could have excluded me from this whole crime, but it was
12 never presented.

13 Q: I don't understand what evidence are you talking about?

14 A: Like for one, Ervin Moore said that he never got in the
15 car to fight with the defendant and it would have shown that
16 he did get in the car to fight with the defendant to take the
17 drugs away. And it would have been evidence -- because he had
18 scratches from the victim, so if they have tested under the
19 victim's fingernails it would have shown that he did get in
20 the vehicle to fight with the deceased, but they never did
21 that and he never presented the evidence.

22 Q: Okay. But and that would've gone to Moore's credibility,
23 correct?

24 A: Yes, ma'am.

25 Q: Okay. That's all the questions that I have. Please

1 answer any the state or the Court may have.

2 THE COURT: All right. Mr. James?

3 CROSS EXAMINATION OF MOKEIA HAMMOND BY MR. JAMES:

4 Q: You indicated that you tried to help law enforcement
5 locate the gun ---

6 A: Yes, sir.

7 Q: --- that was used to shoot the victim?

8 A: Yes, sir.

9 Q: And that gun was never found?

10 A: No, sir.

11 Q: And who used that gun?

12 A: Richard Niles.

13 MR. JAMES: I have no further questions for this witness,
14 Your Honor.

15 THE COURT: All right. Anything further, Ms. Williams?

16 MS. WILLIAMS: No, sir, not from Ms. Hammond.

17 THE COURT: All right. You may step down. Thank you.
18 If you'll call your next witness.

19 MS. WILLIAMS: Your Honor, that is our presentation.

20 THE COURT: And Mr. James, any witnesses on behalf of the
21 state?

22 MR. JAMES: No, Your Honor.

23 THE COURT: All right. Thank you. I'll take it under
24 advisement and let you know something soon.

25 MS. WILLIAMS: Thank you, Your Honor.

1 MR. JAMES: Thank you, Your Honor.

2 (ADJOURNED - 12:20 P.M.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

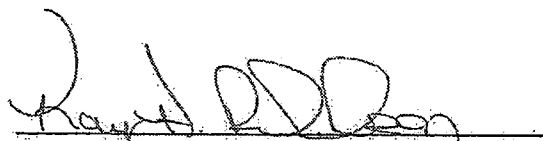
24

25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Mokeia Hammond v. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on September 19, 2017.

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



Kay H. Richardson

Official Court Reporter

April 13, 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Mokeia Hammond,) Case No.: 2012-CP-26-01065
S.C.D.C. No. 333772,)
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

RECEIVED

JAN 18 2018

FILED
Horry County
CLERK OF COURT
HORRY COUNTY, SC
2018 JAN -5 PM 2:18

SC Court of Appeals

This matter comes before the Court by way of an application for post-conviction relief filed by Mokeia Hammond ("Applicant") on February 9, 2012. Respondent made its return on or about May 24, 2012. The Court convened an evidentiary hearing into the matter on Tuesday, September 19, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Brana J. Williams, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Ronald W. Hazzard, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the August 2007 term of the Horry County Grand Jury for murder (2007-GS-26-3362). Applicant was further indicted at the October 2008 term for possession of a weapon during the commission of a violent

crime (2008-GS-26-04118), and armed robbery (2008-GS-26-04119). Ronald W. Hazzard, Esq., represented Applicant. Donna Elder and Bradley C. Richardson, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury on March 9, 2009. The jury found Applicant not guilty of murder and possession of a weapon during the commission of a violent crime, and guilty of armed robbery on March 13, 2009. Judge Culbertson sentenced Applicant to imprisonment for a term of 15 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Joseph L. Savitz, III, Esq., who raised the following issues:

The trial judge committed reversible error by refusing to direct a verdict acquitting Hammond of armed robbery, since the State failed to introduce any substantial circumstantial evidence that she was anything other than merely present when the incident happened, regardless of which version of events – Moore's or Niles' – the jury chose to believe.

By unpublished opinion decided October 26, 2011, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Hammond, Op. No. 2011-UP-476 (S.C. Ct. App. filed Oct. 26, 2011). The Remittitur was issued on November 14, 2011.

Present Application

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. "Refer to Final Brief"
 - a. "Refer to Final Brief"

By order filed August 28, 2013, the Honorable J. Cordell Maddox, Jr. granted Applicant's request for a stay of proceedings pending the resolution of co-defendant Richard Bill Niles, Jr.'s appeal, then pending upon the State's petition for writ of certiorari in the Supreme Court of South Carolina. That appeal was resolved June 10, 2015, with the Supreme Court

reversing the holding of the South Carolina Court of Appeals and affirming co-defendant Niles' conviction. See State v. Niles, 412 S.C. 515, 772 S.E.2d 877 (2015). At the evidentiary hearing, Respondent motioned that the stay be lifted. This Court lifted the stay without objection.

Additionally, at the evidentiary hearing, Respondent motioned to dismiss the application for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act. Applicant responded with a motion to amend her application to allege ineffective assistance of counsel. This Court denied Respondent's motion to dismiss and granted Applicant's motion to amend the application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness

claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

IAC Allegation #1 – Failure to Adequately Argue for Directed Verdict

Applicant primarily alleges that Counsel failed to adequately show her lack of involvement or adequately argue that there was no evidence to support her conviction during his motion for a directed verdict. At trial, the parties agreed to follow a consistent procedure in which witnesses would first be cross-examined by counsel for co-defendant Niles, Verdell Barr, Esq., and then by Counsel. Tr. 100, ll. 4-13. Throughout trial, much of Counsel's cross-examination fixed on totally disassociating Applicant from the affair, including recurring questions as to whether a witness personally, or by way of their investigation, had anything to show that Applicant ever shot or robbed the victim, or ever possessed a weapon. See, e.g. Tr. 179-80, 331-32. The State's key witness, Ervin Moore, however, testified that Applicant was driving the car when Niles declared his intent to rob the victim:

Q: Now, during the course of riding to the Best Buy parking lot after he made arrangements for somebody to meet you all there ---

A: Yes, ma'am

Q: --- what did he say if anything?

A: He said that we was going -- he was going to do a lick.

Q: What does do a lick mean?

A: Rob somebody.

...

Q: All right, and who was driving the vehicle at this time?

A: Mokeia.

Q: Okay, and where were you sitting?

A: Behind Richard, behind the passenger side.

Q: In the backseat?

A: Yes, ma'am.

Q: And he was in the ---

A: Front seat.

Q: Okay, and when he was telling you he's hitting this lick, going to rob this victim was he in the front seat?

A: Yes ma'am.

Q: And was Mokeia Hammond beside him driving?

A: Yes, ma'am.

Q: And you were in the backseat?

A: Yes, ma'am.

Q: And even with the radio were you able to hear that?

A: I heard a little bit of it.

Q: Okay, you heard enough that you knew what you were going there for?

A: Yeah.

Tr. 380-82. Applicant continued driving. Id. Counsel thoroughly and aggressively impeached Moore, drilling him on his prior drug record, plea deal with the State, differences between his testimony and his prior statement, and other weaknesses in his story. Tr. 421-49.

At the close of the State's case-in-chief, both Counsel and Barr motioned for a directed verdict. Counsel argued that no evidence was introduced to show Applicant directly committed the crimes alleged, nor was there any evidence to justify the application of "hand of one, hand of all":

As the Court has heard, Your Honor, there is no witness that the State has presented that has indicated in any way, shape or form that Mokeia Hammond directly committed any of the crimes for which she is charged, no witness indicated that she directly robbed anyone while armed, no witness testified that she directly possessed a handgun, no witness indicates or testifies that she directly fired a shot that led to the death of James Salter and that being an unlawful killing.

That would bring us to the issue, therefore, of accomplice liability, okay, where the felony murder rule or the hand of one is the hand of all. I would submit that then is the only way that the State could have these charges, you know, go forward. Well, in looking at the testimony the only witness that I recall from the State who gives any testimony whatsoever regarding what occurred that day among the three Codefendants is Ervin Moore and what I recall Ervin Moore saying is that at some point in time he heard Rich Niles say "I'm going to hit a lick," or something to that effect. I do not recall hearing any testimony indicating that Mokeia Hammond heard that statement. I do not remember hearing any testimony that would indicate that Mokeia Hammond even knew whatever that terminology or that slang is supposed to mean. I do not recall hearing any testimony indicating that as a result of hearing this slang phraseology that Mokeia Hammond in any way, shape, or form indicated that she was and knew of a plan to commit a robbery or indicated that she was part of a plan to commit a robbery.

In fact, from what I recall hearing, the light most favorable, taken in the light most favorable to the State the only evidence is Ervin Moore says at some point Rich Niles said, "I'm going to hit a lick," no indication whatsoever, A, as to whether Mokeia Hammond heard those words, B, whether she would have any idea what those words meant because I do not believe that we will be involved with conceit that every member of a certain ethnic group happens to know and recognize any gutter street slang that is thrown out there, but I don't personally recall hearing anything from Ervin Moore or any other witness indicating that Mokeia Hammond specifically knew of any plan to rob anyone.

Tr. 525-26 (paragraph breaks added). The motion was denied. Tr. 529, ll. 4-6. On appeal, the South Carolina Court of appeals held that "substantial circumstantial evidence existed showing [Applicant's] guilt." State v. Hammond, Op. No. 2011-UP-476 (S.C. Ct. App. filed Oct. 26, 2011).

At the evidentiary hearing, Counsel reported meeting or speaking with Applicant on seven different occasions prior to trial. Counsel summarized the facts of the case. Counsel condemned Moore's "doing a lick" testimony as a ludicrous statement. Nonetheless, Counsel identified it as the crux of Applicant's conviction and as the key to establish her guilt under hand-of-one, hand-of-all. When asked why he did not question Moore as to whether Applicant heard the "doing a lick" statement, Counsel replied that doing so would have been asking Moore to speculate. Counsel testified that he did not feel Applicant needed to testify at trial, as he felt his client was in a good place prior to co-defendant Niles' testimony. Nonetheless, Counsel explained that he never tells any client not to testify, but rather discusses the options available to them and the possibility of testifying. Counsel could not recall why Applicant did not testify, but noted that she could have hurt herself by testifying and potentially provided facts necessary to earn convictions on her other charges. Counsel's theory of what occurred was that co-defendant Niles had no reason to rob the victim, but that the only person who wished to rob was Moore.

Applicant testified that she did not recall defense counsel ever trying to contact her prior to trial. Applicant claimed there was evidence not presented at trial and that Counsel never challenged Moore on his inconsistent statements. Applicant suggested that the State should have tested under Moore's fingernails for DNA evidence. Applicant recalled that Counsel told her it would be best if she did not testify.

This Court finds no deficiency on the part of counsel nor prejudice therefrom. The sufficiency of the evidence to support the trial court's denial of Applicant's motion for a direct verdict has already been settled by the Court of Appeals. The trial transcript reflects Counsel's consistent strategy of disassociating Applicant from the shootout that occurred, in favor of "mere presence," despite her role as the driver. Counsel effectively cross-examined witnesses and argued his motion for a directed verdict. Applicant introduced no evidence or testimony that

Counsel could have otherwise utilized to her benefit. Applicant's assertion that Counsel did not impeach Moore is not at all credible, as evidenced by the exhaustive impeachment reflected in the trial transcript. Nor does this Court find credible Applicant's claim that Counsel did not meet with her prior to trial, given Counsel's credible recitation of meetings and conversations with Applicant. Accordingly, Applicant has failed to meet her burden of proof, and her request for relief is **DENIED**.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19 day of December, 2017.


WILLIAM H. SEALS, JR.

Presiding Judge
Fifteenth Judicial Circuit

Mari, South Carolina

821

WITNESSES

S Mann Myrtle Beach Police Department

e DOCKET NO. 2008-GS-26- 04119

The State of South Carolina

County of Horry

Donna Elder

85221-1

COURT OF GENERAL SESSIONS

OCTOBER, 2008 TERM

ARREST WARRANT NUMBER

CAW2008GS2604119

CDR: 0139 16-11-0330(A)

DOA: 4/14/2007

THE STATE

VS.

ACTION OF GRAND JURY

Mokeia Hammond

/ F

SALTERS, SC 295903797

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: West, Orrie E.

TRUE BILL

James Wehrens

Foreperson of Grand Jury

Date:

OCT 30 2008

VERDICT

Guilty

Indictment for

Armed Robbery

J. Gregory Hembree, Solicitor

ORIGINAL

Foreperson of Petit Jury

Date: *3/13/09*

David Kahraman

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

INDICTMENT

At a Court of General Sessions, convened on October 30, 2008, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Mokeia Hammond did in Horry County on or about April 9, 2007, while armed with a deadly weapon, to wit: , take and carry away personal property of James Salter from or in the immediate presence of James Salter with intent to deprive James Salter of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

823

WITNESSES

S Mann Myrtle Beach Police Department

DOCKET NO. 2008-GS-26- 04118

The State of South Carolina

County of Horry

Donna Elder

85221-1

COURT OF GENERAL SESSIONS

OCTOBER, 2008 TERM

ARREST WARRANT NUMBER

CAW2008GS2604118

CDR: 0549 16-23-0490

DOA: 4/14/2007

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 30 2008

VERDICT

Not Guilty

Foreperson of Petit Jury

Date:

David Kahanamoku
3/13/09

THE STATE

vs.

Mokeia Hammond

/ F

SALTERS, SC 295903797

DOB:

SSN:

ATTORNEY: West, Orrie E.

Indictment for

**Possession of Weapon During Commission of
Violent Crime**

J. Gregory Hembree, Solicitor

ORIGINAL

*Vrial-
Judge Benjamin
Culbertson
Grace Hurley, CL*

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 30, 2008, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Mokeia Hammond did in Horry County, on or about April 9, 2007, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY
85221-2 DEE

COURT OF GENERAL SESSIONS

AUGUST TERM 2007

THE STATE

vs.

RICHARD BILL NILES, JR. B/M

SALTERS SC 29590-3516
DOB:
SSN:

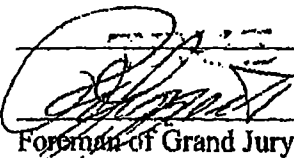
ARREST WARRANT NO. _____

K-003228
CDR: 0116 16-03-0010,0020

CDR: _____

DOA: 04/14/2007

ACTION OF GRAND JURY

 AUG 23 2007
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date: _____

ATTORNEY: BOBBY FREDERICK

INDICTMENT FOR:
MURDER

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

825

04-08-2009

02:51:10 p.m.

horry county solicitor

461

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT FOR:
MURDER

At a Court of General Sessions, convened on August 23, 2007, the Grand Jurors of Horry County present upon their oath:

MURDER**CDR: 0116 16-03-0010,0020**

That RICHARD BILL NILES, JR. did in Horry County, on or about April 9, 2007, along with codefendants, willfully, feloniously, and intentionally kill the victim, James Michael Salter, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about April 9, 2007 in Horry County, in violation of Section 16-3-10, S. C. Code of Laws, 1976, as amended.

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


SOLICITOR