

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Dorchester County
The Honorable Diane S. Goodstein

Appellate Case No. 2018-000210

The State of South Carolina, ..., Respondent,

v.

Tiffany Ann Sanders, ..., Appellant.

RECORD ON APPEAL
VOLUME I OF II

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IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT
2007-GS-18-1206, 2010-GS-18-0707

V.

TIFFANY ANN SANDERS,
Defendant.

**MOTION FOR A NEW TRIAL
BASED ON AFTER-DISCOVERED EVIDENCE**

Tiffany Sanders, by and through undersigned counsel, Elizabeth Franklin-Best, moves this Court for a new trial based on after-discovered evidence. This motion is being made within one year of the actual date of discovery of the evidence by the defendant. Specifically, counsel for Tiffany Sanders discovered on October 4, 2016 facts that prove that she is not guilty of murder. On that date, counsel met with Sean Kammerer at the Kershaw County Correctional Facility where Kammerer is serving a 34-year sentence for the murder of Jesse Ham. Tiffany Sanders has been convicted of being an accomplice in this murder. Sean Kammerer revealed matters to counsel that have been memorialized in his affidavit which is attached. This information could not have been discovered before because Sean Kammerer was pursuing his own constitutionally and statutorily provided legal remedies for his conviction. Having exhausted his legal remedies, and no longer represented by counsel, Kammerer has offered his affidavit.

In his affidavit, Kammerer reveals that Tiffany Sanders had no indication that he intended to shoot and kill the victim on that night. He swears that DeJuan Jenkins gave him the gun on that night, while they were in the parking lot, and just moments before the murdered occurred. Tiffany

Sanders did not know that Kammerer had a gun, nor had she ever seen him with a gun. In short, she is not guilty of murder under the State's theory of accessory liability because she had no idea, nor did she have reason to know, that Kammerer intended to murder the victim that night.

For the reasons presented below, counsel respectfully asks this Court to allow an evidentiary hearing so that Sanders may present testimony of Sean Kammerer, her step-father and her mother for the Court's consideration. At that hearing, counsel then intends to ask the Court to grant Tiffany Sanders a new trial based on after-discovered evidence.

I. Relevant Facts¹

Tiffany Sanders was tried before the Honorable Diane S. Goodstein and a jury between August 3-5, 2010 in Dorchester County, South Carolina. She was represented by Michael O'Neal, Esquire. The State was represented by Harrison Bell and Mandy Kimmons.

The essential facts of this case are not complex. Tiffany Sanders encountered Jesse Ham, Brandon Frye, David Hughey, and Kevin King on June 8, 2007 in a neighborhood near where she lived as she was out driving with her disabled sister. While she with these young men, she spoke to Sean Kammerer, a friend of hers on the phone. Shortly afterwards, she drove Jesse Ham to a shopping center area near a Tire Kingdom in North Charleston, SC. After they arrived, Sean Kammerer shot and killed the victim.

The State's theory of the case, as Bell outlined in his opening argument, was that Tiffany lured the victim, J.H., to the area so that Sean Kemmerer could kill him. The State prosecuted the

¹ Citations are to the transcript which is in the possession of counsel. Counsel will gladly provide copies of the transcript to the Court and the Solicitor's Office at such time as they would like to receive them.

case under the theory of "the hand of one is the hand of all." Tr. 109. As the State argued to the jury:

The difference between accessory before the fact of murder and murder is that you have to determine whether she was present or not. She was in her car when the murder happened outside the car. At some point she left the scene. It's up to you to decide if she was present or not.

If she was not present at the scene, you can find her guilty of accessory before the fact. If she was present at the scene, you can't find her guilty of accessory before the fact, but you can find her guilty of murder, because she aided and abetted and helped and joined in with this crime.

Tr. 109-110.

At the conclusion of the opening argument, the State asked the jury to find her guilty "of either murder or accessory before the fact of murder." Tr. 110.

But what the jury did not hear because it is only now being revealed, is that Tiffany Sanders had absolutely no knowledge that Sean Kammerer had a gun that night, or that he intended to shoot and kill Jesse Ham. Indeed, Sean Kammerer's affidavit is wholly consistent the version of events that Tiffany gave to law enforcement when this happened as discussed below.

At trial, the State elicited the following testimony from its witnesses:

David Watson, a special investigator with the Ninth Circuit Solicitor's Office, testified. At the time J.H. was killed, he was a detective with the North Charleston Police Department. He was dispatched to an area near a Tire Kingdom in North Charleston at approximately 11:15- 11:20pm on June 8, 2008. This area was on the corner of Ashley Phosphate and Dorchester Road. There is an "infamous" Rock-n-Roll McDonald's restaurant on the corner. When he arrived, he saw the victim on the ground. Tr. 125. This witness identified a number of photographs that were admitted into evidence.

Kevin King also testified for the State. He was a friend of J.H.'s from the neighborhood. Tr. 130. They lived in Forest Hills neighborhood off Dorchester Road. Tr. 131. On the night of the shooting J.H. came by King's house with another friend, and they decided to hang out. Tr. 132. J.H.'s friend was "Brandon." Tr. 133. They went back to a house right behind the Rock-n-Roll McDonald's. They hung out and "had a beer or two." Tr. 133. Present were J.H., King, and another male.

Bored, they decided to walk around the neighborhood. Tr. 133. While they were walking, a female drove into the neighborhood. The young men waved her down and she pulled up to them. They asked her what she was doing, and she said "Nothing with ya'll" and drove away. Tr. 134. They walked back to the house. King testified this happened around 7:30 or 8:00pm. Back at the house, they sat in the backyard. They heard a loud horn. Brandon and the "other guy" went to the front of the house. King and J.H. stayed in the backyard. Tr. 135. Brandon then came to the backyard and said "Hey, this girl wants to talk to you" referring to J.H. Tr. 135. According to King, the girl asked them their names and they lied to her about them. Tr. 135. He said they stood there talking for at least 30 to 45 minutes. Tr. 135. King testified that she said she had a friend from the neighborhood who knew J.H. and wanted to meet him at the Rock-n-Roll McDonald's. While they were talking, she spoke on the cell phone. King testified he put his ear to the phone and heard a guy's voice. Tr. 136.

King testified that J.H. was hesitant to go, but that eventually he went. King got into the backseat. He said he got into the car because J.H. was "his friend." Tr. 137. She drove to the McDonald's, drove around it one time, and then pulled into a Publix parking lot. There was a delivery truck between the buildings, so she drove up to the wood line and backed in. Tr. 137.

There were four of them in the car—Tiffany, J.H. in the passenger seat, King, and then Tiffany's older, disabled sister next to King. Tr. 138.

King testified that something did not seem right to him, and he wanted to get out of the car. As he was doing so, Sean came running up to the car with a gun and put it into King's stomach. King pushed him down and then ran. Tr. 139. He ran between the buildings where the delivery truck was parked.

King testified that he knew Sean; that they grew up together and attended school together. Tr. 140. As King ran, he continued to hear shots. Tr. 140. He then took off through the woods behind the Publix because he knew the area. He called his dad to come and pick him up. Tr. 141.

Later that morning, detectives got in touch with King and they told him that he needed to speak to them. Tr. 142.

King described that Sean and J.H. used to be friends but that they had a fight over shoes. Tr. 143. This argument happened two or three years before the shooting, but apparently they held grudges. The two of them "fought a lot." Tr. 144. J.H. got tired of it and hit Sean with a bat. Tr. 144. King's testimony was conflicting as to the seriousness of their problems. He testified that Sean had screamed, in connection with the bat incident, that he would kill J.H. But then he stated there were other incidents, but they were not "too serious." Tr. 144.

King admitted that he did not run into Publix to seek help for his friend. He testified, implausibly, that he tried to call 911 on his phone while he was in the woods, but that because he had a long distance phone, it would not call 911.

David Hughey also testified for the state. At the time of his testimony, he was employed by the U.S. Army. He lived down the street from Brandon and was friends with J.H. That night they

were hanging out at Brandon's house. They were drinking and talking. Tr. 157. While they were hanging out, Tiffany pulled up in her car. Hughey knew her before that night because they attended middle school together. Tr. 158. They asked her what she was doing, and she said "nothing." Then she pulled off. Tr. 159. After that, they returned to Brandon's house, and drank some more. According to Hughey, Tiffany then returned to the house. Hughey said that she was "trying to find out who Jessie was." Tr. 161. She talked on her cell phone. Hughey testified that he thought she already knew who J.H. and Kevin were. Tr. 162. Hughey testified that she said that a girl wanted to meet J.H. Tr. 163. J.H., King and Tiffany, along with her sister, drove away. Tr. 163. After they left, Hughey stayed at the house with Brandon for another 10 or 15 minutes, and then left. Tr. 164.

Later that night, Brandon called Hughey and told him they needed to go to McDonald's to look for J.H. They rode their bikes there. There were police on the scene, so they went back home. Brandon spoke to the police. Tr. 165.

Hughey admitted on cross-examination that he knew "a little bit" about the history between Sean and J.H. Tr. 167. He never saw them fight. Tr. 168. When he and Brandon went back up to the Publix area, Hughey took his gun. Tr. 169. After encountering the police and not being searched for weapon, he rode his bike and then threw the gun into a ditch to get rid of it. Tr. 170.

Brandon also testified for the State. Tr. 171. He lived in the area behind the Rock-n-Roll McDonald's. Generally, Brandon corroborated King and Hughey's accounts. He stated that Kevin and J.H. were "hollering" at Tiffany and that she drove off. Tr. 173. They asked her if she wanted to hang out with them, and she said no. Tr. 175. After she, her sister, King and J.H. went to Publix,

Tiffany returned about 15 minutes and said that "something happened." They drove back up there together. They did not see anything. They drove to the McDonald's and Publix parking lots. Tr. 177. Brandon testified that she was acting like she was scared but that "you could tell it was an act." Tr. 178. Brandon testified that Tiffany brought him back to his house and then left. He then called Hughey and they biked up there to check on J.H. Tr. 179. They saw the police there. Brandon tried to leave, but he was chased down by a police officer who found marijuana on him. Tr. 179-80. The next day he found out that J.H. had been killed. Tr. 180.

Brandon had prior convictions of assault and battery of a high and aggravated nature. He also suffers from an anoxic brain injury that causes memory loss and makes him "slower." Tr. 181.

Brandon testified he knew both Sean and J.H. and knew that they did not like one another. He never saw them fight in public. He testified that he heard Sean talk about killing J.H. Tr. 183.

Jessica Hans, another State's witness, worked for Publix Supermarkets. She testified that as she and another co-worker were standing outside, they heard several loud pops. She looked over to the Papa John's/ Tire Kingdom area and saw a person firing a gun. After the shot was fired, the person with the gun ran to the other side of Tire Kingdom and then disappeared behind a building. She estimated that about 30 seconds later, she saw a Jeep Cherokee speed off in another direction. Tr. 196. She and her co-worker then drove over to that area and found the victim on the ground. They called 911.

DeJuan Jenkins then testified for the State. He lived in Forest Oak, a neighborhood off Dorchester Road in Dorchester County. He testified that he had been with Sean Kammerer since 3 o'clock or 4 o'clock on the day that J.H. was killed. They had been at the mall; Jenkins had driven Sean's mother's car. Around 9 o'clock that evening, they returned back to Sean's house. He

testified that around 10 o'clock, he and Sean went to the McDonald's. They parked in the Tire Kingdom parking lot. According to Jenkins, they were going to meet Sean's "girlfriend" there. Jenkins testified that once the "girlfriend" arrived, he observed Sean walk over to the car and open up the passenger door. As he did so, someone exited the car. Sean then pulled out a gun. The victim then exited the car and tried running away. Sean started shooting at him. After he shot him, Sean got back into the car and told Jenkins to take him to his brother's house. Instead, he took him home.

Jenkins testified that he did not see Sean with a gun prior to being in the Tire Kingdom parking lot. Kammerer disputes this, and claims that Jenkins gave him the gun that night. At trial, Jenkins denied he gave the gun to Kammerer. Jenkins acknowledged that he did not call the police. Later, he pleaded guilty to accessory after the fact of murder and received a youthful offender sentence. Jenkins testified that Tiffany Sanders had not been present at the scene when the murder occurred— "She been left since—since he first started shooting and she leave." Jenkins testified that he did not know of any problems between Sean and J.H. Tr. 206.

Detective James Sturkie was employed with the City of North Charleston Police Department. He spoke to Tiffany Sanders at the police station, and he recounted their interview during the trial. Her statement was admitted into evidence without objection. Tr. 223. Her statement said:

Riding around with my sister, my parents called and said they was almost home. Rode to my neighborhood. Was riding through; seen Brandon, David, Jessie, and Kevin. I knew David and Brandon before.

Sean calls and asks who I'm with, then asked me to bring Jessie up to Publix. Kevin, Jessie, my sister and I ride to Publix.

Kevin and Jessie wanted to get out of the car, and as soon as they did Sean ran up to Kevin, pushed him and Jessie screamed "drive." And I took off and went to Brandon's house.

Went to Brandon's house, got Brandon, went back up there to see if any—if they ducked in the woods. I had no knowledge of a gun until I heard the shot.

After me and Brandon didn't see anyone, Brandon said, "All right you can take me home. "I dropped Brandon off and went home. Tried to call Sean, no answer.

I had no knowledge of a gun being present to take a life. The only knowledge that I had was Sean wanting to fight Jessie because of Jessie beating Sean in the head with a baseball bat. I had—if I had known guns would have been involved, I would have kept Jessie and Kevin at Brandon's house.

Tr. 223-24.

The newly discovered information presented in these affidavits is so critical to this case because the State conceded how weak its case was during the trial. The State clearly indicated they did not have any proof that Tiffany possessed any malice on the night this happened.

MR. BELL: Well, Your Honor, I think that malice exists from the fact that the principle in this case has admitted and pled guilty to murder. So, malice does exist. She is here as a person that aided, abetted under the "hand of one, the hand of all." I don't know that we have to assume that she had malice, but that malice existed in the commission of the crime... It's up to the jury to decide whether that the murder was the probable or natural consequence of this fight that she—that she gave in her, you know, self-serving statement....

And her part is either she was present or not present, thus accessory before the fact of murder or murder. The malice is certainly there. It's not necessarily her malice, but all it says is "malice." It doesn't say it has to be that person's malice, but that malice existed before somebody was killed.

The information contained in Sean Kammerer's affidavit is newly discovered evidence that proves that Tiffany Sanders is not guilty of murder. Counsel respectfully asks this Court to allow an evidentiary hearing so that Sanders may present testimony of Sean Kammerer, her step-father and mother for the Court's consideration. Then, counsel intends to ask this Court to grant Tiffany Sanders a new trial.

II. Tiffany Sanders is Entitled to a New Trial

In *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993), the S.C. Supreme Court held that to obtain a new trial based on after discovered evidence, the party must show that the evidence:

- (1) would probably change the result if a new trial is had;
- (2) has been discovered since the trial;
- (3) could not have been discovered before trial;
- (4) is material to the issue of guilt or innocence; and
- (5) is not merely cumulative or impeaching.

And see *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623 (2013); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

Additionally, the PCR Act provides that "[a]ny person who has been convicted of, or sentenced for, a crime and who claims . . . that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice" is entitled to seek post-conviction relief. *S.C. Code Ann.* § 17-27-20(A)(4) (2014).

The information contained in Kammerer's affidavit is after-discovered evidence that entitles Ms. Sanders to a new trial. This information—that Tiffany Sanders was unaware of the existence of a gun, or that Kammerer had any intention of killing Jesse Ham—would have changed the outcome of the trial since the State's entire theory of the case was that she did know about Kammerer's plans that night. But as Kammerer admits, not only was Tiffany Sanders unaware of his plans but the gun was not even present at the scene until after Kammerer and Tiffany Sanders spoke that night. DeJuan Jenkins pulled out the gun and handed it to Kammerer once they arrived at the scene of the shooting. This information was discovered after trial, and could not have been discovered before trial by counsel because Sean Kammerer was represented by counsel. This

information is material to the issue of guilt or innocence because Tiffany Sander's knowledge of the existence of the gun constitutes an element of the offense. And also, this information is not merely cumulative or impeaching since it is information that has not been revealed, in any manner, until now. Sean Kammerer is available and willing to testify to these facts.

III. The Bremenour Affidavit

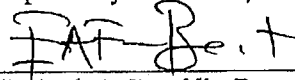
Tom and Linda Bremenour, Tiffany Sander's stepfather and mother, have also provided an affidavit in connection with this motion. Their affidavit provides additional information that this Court should consider in deciding to grant Tiffany Sanders a new trial. This affidavit details aspects of Tiffany's relationship with her disabled sister that provides additional circumstantial evidence that Tiffany has told the truth about her participation in this crime since the very beginning. Tiffany has always been highly protective of her sister, and never intentionally would have involved her in a murder. Tom and Linda Bremenour are also available and willing to testify to the facts contained in their affidavit.

IV. Conclusion

For the reasons presented above, counsel respectfully asks this Court to allow an evidentiary hearing so that Sanders may present testimony of Sean Kammerer, her step-father and her mother for the Court's consideration. At that hearing, counsel then intends to ask the Court to grant Tiffany Sanders a new trial based on after-discovered evidence.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

Respectfully submitted,



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3/21/17

cc: Don Sorenson, Dorchester County Solicitor

State of South Carolina }
County of Kershaw }

Jan. 7, 2017

Affidavit of Sean Hammer

I hereby swear & affirm under Penalty of Perjury that:

- 1) I am currently 28 years old, & pleaded guilty to the murder of Jesse Ham on 3/10/08 in dorchester county, S.C.
- 2) I am giving this affidavit to "Blume Norris & Franklin-Best, L.L.C." freely & without expectation of a reward from anyone in connection with this -or- any law office.
- 3) Tiffany Sanders was a special friend of mine at the time of this incident, dated 6/8/07
- 4) I spoke to Tiffany on the night that she drove Jesse Ham to meet with me. I did not tell her that I had any intension to shoot or kill Jesse Ham. At the time I spoke to Tiffany, I did NOT have a gun in my possession, or plans to obtain one.
- 5) I never told Tiffany Sanders that I intended to shoot or kill Jesse Ham, not on the night of 6/8/07, or any time before this date. Tiffany was not aware of the relationship between Jesse Ham and myself, until after this incident.
- 6) on the night of the shooting, Dejuan Jenkins gave me the gun that I used to shoot Jesse Ham. Dejuan pulled the gun out at the parking lot and handed it to me, when Kevin King and Jesse Ham exited Tiffany's car. I gave Dejuan his gun back when he dropped me off at my house afterwards
- 7) Tiffany never knew I had a gun. I obtained it right before I got out my vehicle.
- 8) Tiffany Sanders has never seen me with a gun. I approached her car from the back passenger side (blind side) while she was in the driver seat.
- 9) I did not own a gun. Tiffany never seen me with a gun of my own -or- Dejuan's gun. I never told Tiffany I had a gun of my own before this incident. I was not known nor had a reputation for carrying a fire arm.
- 10) Tiffany Sanders would have no way of knowing that I would have a gun at the parking lot that night. because I was not in contact with her when she parked her car, nor at the time Dejuan Jenkins handed me his gun upon my exit of car.

Pg 1 of 2

LEGAL

000013

State of South Carolina }
County of Kershaw } Affidavit of Sean Kammerer
- continued -

- 11) Tiffany Sanders never had any reason to believe that I intended to kill Jesse Ham on the night of 6/8/07, for she was unaware of mine & Jesse's relationship before this incident occurred.
- 12) I never encouraged or provoked Tiffany Sanders to find Jesse Ham and bring him to the parking lot that night or any time before this date.
- 13) Tiffany Sanders never informed me, she would be bringing Jesse Ham and Kevin King up to the parking lot, to meet me nor for a fight or shooting.
- 14) Tiffany Sanders never witnessed me shoot the gun - nor kill Jesse Ham. Tiffany drove off before everything transpired that night.
- 15) I did not speak to Tiffany after I shot Jesse Ham.
- 16) I did not tell anyone this earlier, (i.e. Dale Cobbs who was Tiffany's P.R. lawyer) because I was pursuing my own legal remedies at that time. My P.C.R. was denied on 6/14/13, due to faulty legal advice. I have most recently been informed "I may appeal..."
- 17) Tiffany did not aid, abet, or conspire with me on 6/8/07 to kill Jesse Ham, because I had no intentions to kill or shoot Jesse Ham that night, until it was too late.

On this 7th day of
January, 2018 (S4)

x Sean Kammerer
Sean Kammerer
Ker. C.I. (CYP.34)
4848 Goldmine Hwy,
Kershaw, S.C. 29067

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

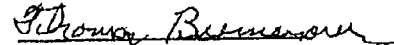
**AFFIDAVIT OF TOM AND
LINDA BREMENOUR**

We hereby declare under penalties of perjury:

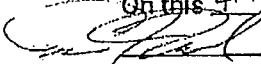
- 1) We are the biological mother and step father of Tiffany Sanders. We were married on June 5, 1999 in Summerville, South Carolina. We currently live at 244 Carolinian Drive, Summerville, South Carolina. At the time of Tiffany's arrest, our address was currently 4606 Battery Range, North Charleston, South Carolina.
- 2) At the time of her arrest and up through the time of her conviction, we were present and have personal knowledge of the events that took place.
- 3) At the time of these events, Tiffany had just been hired by CGI Federal, Inc., and had been granted an interim security clearance. She was in the process of receiving a permanent federal security clearance.
- 4) Tiffany's biological sister is Amanda. She is intellectually disabled due to lack of oxygen to the brain during childbirth. Amanda's intellectual level is at that of a 6th grader's. She was born in 1979, but still lives at home where we expect her to continue to live. During school, she attended special education classes. She works as a custodian, a job she secured through Goodwill.
- 5) Amanda was with Tiffany on the night that Tiffany drove Jesse Ham to the area in Dorchester County where he was ultimately shot by Sean Kammerer.
- 6) Tiffany and Amanda have always been very close. When they were growing up, Tiffany would involve Amanda in almost all of her activities. Amanda socialized with Tiffany and her friends. Once Tiffany started driving, she would drive Amanda to wherever she needed or wanted to go. They both have children who are two weeks apart in age, and they shared baby-sitting duties between the two of them. When Tiffany was arrested, Amanda used her own money to put up the bond. To this day, when Amanda can, she helps out with sending money to Tiffany whenever she can afford it. As children, Amanda was the oldest of the three girls, and she mothered Tiffany.
- 7) Tiffany and her sister are very close, and Tiffany would absolutely never do anything to endanger her.
- 8) Tiffany told me that law enforcement threatened to implicate her sister in this crime if Tiffany did not give them a statement.
- 9) Tiffany was initially indicted for Accessory Before the Fact of Murder. Tiffany was

offered an opportunity to plead guilty for a prison sentence of 5-20 years. She declined that offer and then the State then indicted her for murder.

FURTHER AFFIANTS SAYETH NAUGHT.


THOMAS BREMENOUR


LINDA BREMENOUR

Sworn and Subscribed before me
On this 4th day of February, 2017
 Notary Public for South Carolina
Commission Expires: 2/12/2026



2017-GS-18-1206
2010-GS-18-0707

State of South Carolina,)
)
 Plaintiff,)
)
 v.) Transcript of Record
)
 Tiffany Sanders,)
)
 Defendant.)

I N D E X

Motion Hearing

WITNESS/DESCRIPTION

PAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 44

1 to -- I'm going to give you an overview about what I'm going
2 to talk to you about, okay?

3 INMATE KAMMERER: Yes, ma'am.

4 THE COURT: And the overview -- before I begin, I
5 want to tell you that the reason that I'm having this
6 conversation with you at all is that I want to advise you
7 some of your rights.

8 INMATE KAMMERER: Okay.

9 THE COURT: And in no way, shape or form am I
10 intending to chill your involvement in these proceedings at
11 all. And I don't want you to hear that. I just want you to
12 hear that I believe that I have an obligation just to advise
13 you of certain of your rights.

14 INMATE KAMMERER: Yes, ma'am.

15 THE COURT: You are certainly capable of making a
16 good judgment about how you want to proceed and I want you
17 to know that I in no way want to interfere with your
18 intention of how you wish to proceed. But I do want to just
19 talk to you about a particular matter that concerns me and
20 then we'll go from there, okay?

21 INMATE KAMMERER: Okay.

22 THE COURT: All right. Now, it is my
23 understanding -- and I just want this to -- I want you to
24 know that I have -- I haven't read, but I understand that
25 there is a document that you have written that says that

1 you're giving this --

2 INMATE KAMMERER: Freely and without --

3 THE COURT: Exactly.

4 INMATE KAMMERER: Yes, ma'am.

5 THE COURT: But, Mr. Kammerer, that document is
6 not -- it's not sworn to. So I want to stop -- I don't want
7 you to say anything until I finish, okay?

8 INMATE KAMMERER: Yes, ma'am.

9 THE COURT: So I'm not taking that as being a
10 sworn statement; you understand?

11 INMATE KAMMERER: I understand, right.

12 THE COURT: Now, here's what I know. I know that
13 -- and, of course, I want you to correct me if I'm in error.

14 INMATE KAMMERER: Okay.

15 THE COURT: I know that you gave a statement to
16 law enforcement?

17 INMATE KAMMERER: Yes, ma'am.

18 THE COURT: I know that you pled because you pled
19 in front of me.

20 INMATE KAMMERER: Yes, ma'am.

21 THE COURT: And I know that when you obviously
22 pled guilty in front of me you were under oath?

23 INMATE KAMMERER: Yes, ma'am.

24 THE COURT: And I have not seen the statement in a
25 long time that you gave to law enforcement. I don't know if

1 that was under oath or not, I don't, okay?

2 INMATE KAMMERER: It was kind of forced.

3 THE COURT: But I do know that you were under oath
4 when you pled.

5 INMATE KAMMERER: Yeah, when I pled under my
6 counselor's advice.

7 THE COURT: Exactly. Exactly. And so here's what
8 I want you to consider, and you don't have to make a
9 decision at this moment, because -- that's another reason I
10 don't want to do it before I would hear from you, okay?

11 INMATE KAMMERER: Okay.

12 THE COURT: If, if you would intend to testify in
13 these proceedings and if that testimony should differ from
14 other testimony that you have given under oath, you need to
15 understand that you can be charged with perjury?

16 INMATE KAMMERER: Yeah. Credibility.

17 THE COURT: Which carries five years.

18 INMATE KAMMERER: Yes, ma'am. I know that.

19 THE COURT: And it could run consecutive to the
20 time that you're serving now, okay?

21 Now, I want to go back with where I started. And where
22 I started was I don't want to chill anything that you're
23 doing or intend to do. I don't want to do that. But I have
24 an obligation, I think, to share that with you for this
25 reason. If you want to have a lawyer appointed to you, I'm

1 going to do that.

2 INMATE KAMMERER: For this situation right here?

3 THE COURT: Yes, sir. Yes, sir. If you want to
4 retain a lawyer, I want you to do that. But I want you to
5 know that I am prepared to appoint you a lawyer -- I just
6 am.

7 INMATE KAMMERER: May I ask how long that
8 proceeding might take to be accounted a lawyer, how long
9 would that take? Like I just don't --

10 THE COURT: How long would it take for me to get
11 you one?

12 INMATE KAMMERER: Yes, ma'am. I know it wouldn't
13 happen today.

14 THE COURT: About five seconds.

15 INMATE KAMMERER: Oh, yeah.

16 THE COURT: Oh, yeah. The public defender's right
17 here. We're going to do it immediately.

18 INMATE KAMMERER: Would I have time to discuss
19 with him my situation all that?

20 THE COURT: Yeah. I think so. I think so.

21 INMATE KAMMERER: I think that might be for the
22 better. I think I would.

23 THE COURT: Thank you for that, Mr. Kammerer. I
24 think that's -- you know, I think that that -- and I do this
25 really for your protection and knowledge --

1 INMATE KAMMERER: Uh-huh. I understand.

2 THE COURT: -- that's not to change your mind, not
3 to chill anything you wish to do, just to be sure that you,
4 you know what all your constitutional rights are protected.

5 INMATE KAMMERER: Yeah, so I would like to have a
6 lawyer who's more familiar --

7 THE COURT: And there's Ms. Mims. Hi, Ms. Mims,
8 you're there. You're going to help me. There's Mr.
9 Templeton. He's not one either. I need me a public
10 defender. Y'all go get me one.

11 MS. MIMS: Yes, ma'am.

12 INMATE KAMMERER: Just like that, huh?

13 THE COURT: And I really don't know who's up here
14 but they will be in just in a moment.

15 Now, what I'm going to ask y'all to do is take Mr. --

16 Oh, wonderful. All right. Thank you. This is
17 terrific.

18 Do you know Mr. Kammerer?

19 MR. WEYMAN: I do not.

20 Pierce Weyman?

21 INMATE KAMMERER: Excuse me?

22 MR. WEYMAN: Pierce Weyman.

23 INMATE KAMMERER: Pierce Weyman?

24 MR. WEYMAN: Yeah.

25 THE COURT: Pierce Weyman. He's part of our

1 million dollar public defender law office.

2 INMATE KAMMERER: Okay.

3 THE COURT: And I'm going to share with Pierce and
4 then y'all can talk as long as you need, okay?

5 INMATE KAMMERER: Yes, ma'am.

6 THE COURT: You're here because I'm here, right?

7 MR. WEYMAN: Yes, ma'am.

8 THE COURT: You have all the time you need?

9 MR. WEYMAN: Absolutely.

10 THE COURT: You're not to feel rushed at all. Mr.
11 Kammerer pled, and he'll tell you about that, pled in front
12 of me --

13 INMATE KAMMERER: About ten years ago.

14 THE COURT: Mr. Sorenson has the transcript of
15 that. This proceeding is for a new trial, they have some
16 after-discovered evidence. And I'm trying to think because
17 you kind of need to be here too as we go forward, I think.
18 But Mr. Kammerer has a document that he has given to a co-
19 defendant. And I'm not taking it as an affidavit, even
20 though the beginning of it says it's a sworn document, it's
21 not notarized. I'm not taking it as a sworn document, okay.
22 I have shared with him, because Mr. Kammerer has had a PCR.
23 His co-defendant has had a PCR. His co-defendant has had an
24 appeal of that PCR. And Mr. Kammerer can tell you his --
25 he's better to tell you what his process has been. And this

1 is a motion today for a new trial based on newly discovered
2 evidence. And we're going to argue that, all right? And
3 it's based upon information that counsel will raise. Mr.
4 Kammerer has that may be important to that.

5 My concern is that you kind of need to be here and you
6 kind of need to be -- I want you to talk to Mr. Kammerer as
7 well.

8 MR. WEYMAN: Yes, Your Honor.

9 THE COURT: So -- but I think -- I'm trying to
10 think what is the best way to proceed.

11 Yes?

12 MR. SORENSON: My suggestion is probably just to
13 have him let us proceed because obviously that would allow
14 Mr. Weyman to kind of -- have an overall layout of what's
15 going on before he talks to him.

16 THE COURT: Yes.

17 MR. SORENSON: As opposed to go talk to him and
18 come back, and then he's got to go back and talk to him
19 anyways.

20 THE COURT: Yeah. I think that probably makes
21 sense. So let me just tell you, I'm going to do some
22 procedural things first, okay?

23 MR. WEYMAN: Okay.

24 THE COURT: And I think Mr. Weyman needs to have
25 benefit of these procedural things. And then he's going to

1 come and talk to you, okay? Yes?

2 INMATE KAMMERER: Yes, ma'am.

3 THE COURT: And in the event that I would take
4 testimony from you today, I'm not going to do that until you
5 have had a full and fair opportunity to talk to Mr. Weyman
6 and that means it may not be today, okay?

7 INMATE KAMMERER: Yes, ma'am.

8 THE COURT: Do you understand?

9 INMATE KAMMERER: Yes, ma'am. I understand.

10 THE COURT: So I think what then is appropriate is
11 for Mr. Weyman to stay here with us. They'll take you --
12 they're going to take you downstairs so you can talk to Mr.
13 Weyman, take you a place where you can talk to him in
14 private.

15 INMATE KAMMERER: Yes, ma'am.

16 THE COURT: And he'll report back to you with that
17 and then you'll have an opportunity to discuss with him --
18 okay?

19 INMATE KAMMERER: Okay.

20 THE COURT: Nothing's going to happen with regards
21 to you until you've had the benefit of advice of counsel,
22 okay?

23 INMATE KAMMERER: Thank you.

24 THE COURT: Yes?

25 INMATE KAMMERER: Yes, ma'am. Thank you.

1 MR. WEYMAN: Thank you, Your Honor.

2 I'll be downstairs shortly.

3 THE COURT: No, you're going to be in here with
4 us.

5 (Mr. Kammerer exits courtroom)

6 THE COURT: And first of all, any objection from
7 either side about my comments with Mr. Kammerer?

8 MS. FRANKLIN-BEST: No objection.

9 MR. SORENSON: No, Your Honor.

10 THE COURT: Okay. Very well. All right. I'm
11 going to hush now and I'm going to listen to you.

12 MS. FRANKLIN-BEST: Okay. Thank you, Your Honor.
13 May it please the Court. I know that we have had some
14 discussions back in chambers now, so I should probably
15 modify some of my opening remarks. But I'm sure we will get
16 to all of these procedural issues.

17 THE COURT: And you've had a chance to talk to
18 your client about what we chatted about in chambers?

19 MS. FRANKLIN-BEST: I have, Your Honor.

20 THE COURT: Okay. Great.

21 MS. FRANKLIN-BEST: But I wanted to thank you for
22 granting this motion, granting us the opportunity to be here
23 in court today. We're here today for what I expect to be a
24 brief hearing on a motion for a new trial based on after-
25 discovered evidence, which was filed back the end of March

1 and which includes affidavit by Shawn Kammerer, an inmate
2 who pleaded guilty to the murder of Jessie Hamm.

3 Now, since the time of Ms. Sanders' conviction, Mr.
4 Kammerer has had the opportunity to exhaust his legal
5 remedies in this case. And just to kind of briefly go over
6 that, I mean, from the time of his guilty plea he would have
7 had fifteen days to file a direct appeal of that, even
8 though we'd sort of gotten rid of a lot of -- valid pleas,
9 he still would have had the opportunity to at least explore
10 that particular remedy. He then had one year in which to
11 file his PCR. He would have had the opportunity to consult
12 with legal counsel or as he did in this case to proceed pro
13 se and have the Court appoint counsel for him. Once that
14 was completed the evidentiary hearing, he had the
15 opportunity to appeal to the South Carolina Supreme Court.
16 And even after that, he would have had an additional ninety
17 days with an additional sixty after that if he'd gotten an
18 extension, to appeal to the United States Supreme Court. He
19 also would have had an additional year in which to file in
20 the -- for a federal habeas depending on the amount of time
21 that elapsed from the time of his direct appeal to the time
22 that he filed the PCR. So our position is that he was
23 sufficiently pursuing his legal remedies during much of this
24 time.

25 Now, once Ms. Sanders finished her appeals, she did not

1 file a federal habeas. That period elapsed. But then the
2 family contacted me. I was retained and very quickly after
3 I became aware of the claims in this case, I reached out to
4 Mr. Kammerer and we discussed this. We discussed the
5 situation. We discussed Ms. Sanders, you know,
6 participation in these events. And he agreed at that time
7 to write an affidavit for me. And that is what has been
8 attached to the motion in this case. So at the conclusion --

9 THE COURT: Let me just say what we talked about
10 in chambers, did not have a notary clause --

11 MS. FRANKLIN-BEST: I'm sorry.

12 THE COURT: Didn't have a notary clause where he
13 had sworn to the truth of it. It says in the preamble that
14 he -- that under the penalty of perjury, but it's not sworn
15 to.

16 MS. FRANKLIN-BEST: And that's correct. And I
17 expect when he takes the stand that he will adopt the
18 contents of this affidavit, or of this statement, under
19 sworn testimony. And he's never indicated to me that he has
20 wished to change the content of these statements.

21 THE COURT: And the reason that I say that I just
22 want to be sure I didn't mislead him just now?

23 MS. FRANKLIN-BEST: No, no, no. Absolutely not,
24 Your Honor. And the fact that it was a statement and not an
25 affidavit frankly is my fault. I should have had it

1 notarized where he could have done that at the institution.
2 But in any event, I believe that he is sincere in his belief
3 that these are accurate statements that he is prepared to
4 represent before this Court.

5 At the conclusion of this hearing, I will be asking the
6 court to grant the motion for a new trial. As I mentioned
7 earlier during a phone conference, Your Honor, you know, if
8 this Court does see fit to grant this motion, we are
9 prepared to enter a guilty plea to the initial plea offer
10 that was made in this case, which was to a different charge.
11 And I've got a couple of conflicting statements on exactly
12 what the offer was. But I believe that the offer, the plea
13 offer was for a five-year term of years. And for reasons
14 that are not directly pertinent here -- I mean, I realize
15 that this is not a second PCR. I will represent to the
16 Court that my client and her family did not understand that
17 to be the plea offer in this case. But I do understand from
18 Mr. Sorenson that that is what the State understood the
19 offer to be. But we would be willing to enter that guilty
20 plea for whatever term of years that Your Honor would see
21 fit. And we would also waive any and all appeals and
22 collateral challenges to that conviction. So one other
23 final thing to mention before, I guess we start talking
24 about the procedure here, last week I forwarded a copy of
25 the appendix in this matter, along with two supplemental

1 appendices, to Your Honor and Mr. Sorenson. And so I just
2 wanted to make sure that everyone has a copy of the motion
3 for the new trial, along with the affidavits and a copy of
4 the appendices. And I believe that Mr. Sorenson also has a
5 copy of Mr. Kammerer's guilty plea that we would like to
6 incorporate into this record as well. And I will wait, I
7 guess, for Mr. Sorenson's objection at this point.

8 THE COURT: All right. Well, thank you.

9 MR. SORENSON: May it please the Court, Your
10 Honor?

11 THE COURT: Yes, sir.

12 MR. SORENSON: I guess I can start off by I can't
13 imagine that every murderer in the department of corrections
14 would probably gladly come and, you know, have their
15 conviction overturned and enter a guilty plea to a five-year
16 sentence. And we are not in the position where we will be
17 entertaining that at this point in time.

18 Your Honor, I guess my initial objection to this motion
19 falls under -- is filed under criminal rule -- rule of
20 procedure 29(b) on post-trial motions. New trials based on
21 after-discovered evidence. And basically, it indicates that
22 a motion for a new trial based on after-discovered evidence
23 must be made either: One, within one year after the date of
24 the actual discovery of the evidence by the Defendant; or,
25 within one year after the date when the evidence could have

1 been ascertained by the exercise of reasonable diligence.

2 A little bit of background, Your Honor, in this case.
3 And I think it's probably contained in most of the items
4 that have been submitted to you. This incident occurred,
5 Your Honor, back in June of 2007. Shortly after that, Mr.
6 Kammerer was arrested for the murder of Jessie Hamm and Ms.
7 Sanders was originally arrested and charged with accessory
8 after the fact stemming out of that homicide. So obviously
9 Mr. Kammerer at that point in time -- I mean, he is not a --
10 it's not a surprise witness who's come up and provided, you
11 know, some information that's contradicted evidence that was
12 presented at trial or something of that nature. I mean, he
13 is an individual that was intricately involved in this case
14 from the get go, from shortly after June of 2007. Mr.
15 Kammerer, Your Honor, his case ended up coming up to court
16 first. He pled guilty before Your Honor on March the 10th
17 of 2008. And at that point in time received a thirty-four
18 year sentence. He did not, at least from what I see in his
19 file, and my memory of it because I was the prosecutor on
20 his case, file a direct appeal. He did file a PCR on
21 January 3rd of 2009. So almost ten months later. So he
22 would have sitting in the department of corrections for that
23 ten-month period of time basically free for anybody to come
24 talk to him.

25 This Defendant, Your Honor, proceeded to trial. She

1 was ultimately indicted. Mr. Bell in our office actually
2 handled her prosecution. She was convicted, also in front
3 of Your Honor, August the 5th of 2010. She, in the interim,
4 had been indicted for murder and that's what the jury
5 convicted her of. She ended up filing the PCR within, you
6 know, basically about a year later. It was some time, some
7 time in August of 2011. Her hearing was held before Judge
8 Benjamin on May the 24th of 2012 and an order was issued by
9 Judge Benjamin in July of 2012, denying her PCR claims but
10 basically granting her belated direct appeal. I'm not aware
11 of what ever -- I don't think anything ever came of that
12 appeal or appealing that denial of her PCR claim.

13 Ultimately, Mr. Kammerer, Your Honor, he appeared
14 before Judge Dickson in May of 2013, at that point in time
15 on the record indicated that he wished to withdraw his PCR
16 with prejudice and Judge Dickson signed an order to that
17 effect on June the 5th of 2013. There's no indication that
18 I can see in his file where he appealed that denial or
19 sought any other remedy after his PCR was withdrawn by him,
20 with advice of counsel. And that order signed on June the
21 5th of 2013.

22 So obviously, it's the State's position that, first of
23 all, he is somebody that was known from the get go. There
24 is -- Ms. Sanders in her PCR that she filed, the very first
25 allegation that she makes in her PCR was that her trial

1 counsel was ineffective, failing to call Shawn Kammerer as
2 witness. So obviously -- and ultimately, she testified,
3 along with her trial counsel, Michael O'Neal, both testified
4 that they had had discussions about Mr. Kammerer,
5 discussions about calling him as a witness, discussions
6 about the possible pitfalls of doing that. And that's all
7 in -- as Your Honor has the transcript from her PCR hearing
8 -- the fact that Mr. Kammerer had -- Mr. O'Neal acknowledged
9 during the PCR that he was aware of the fact that Mr.
10 Kammerer had pled guilty and that -- and I'll make a -- I
11 think we need to make another copy of this so I can give Mr.
12 Weyman a copy -- but was aware of the fact that during Mr.
13 Kammerer's plea on March the 10th of 2008, it was addressed
14 the fact that Mr. Kammerer had actually been untruthful with
15 Your Honor the week prior when we were attempting to --
16 attempting to plea him the week prior. And basically, when
17 the factual presentation was laid out at that point in time,
18 he'd indicated that's not what happened and had a different
19 take on it that would have raised some defenses. So Your
20 Honor did not take his plea.

21 So Mr. O'Neal was -- indicated that he was aware of the
22 fact that Mr. Kammerer had already admitted, at that point
23 in time, basically had lied under oath in front of the
24 Court. And then ultimately at that point in time they had
25 sort of made a strategy decision to preserve last argument

1 and did not call Mr. Kammerer as a witness.

2 It's the State's position that whole colloquy between
3 them that came out through both of the testimony during the
4 PCR hearing shows the fact that they were aware, aware of
5 Mr. Kammerer, aware of the fact that he potentially say
6 things that could help her in her defense as basically being
7 sort of merely present or not having any knowledge about
8 what was going to happen between Mr. Kammerer and the victim
9 in the victim in this case, Jessie Hamm, and that they chose
10 not to call him because of the potential pitfalls in calling
11 him as a witness.

12 So it's our position that clearly he was available back
13 -- I mean, that's going all the way back to prior to 2010.
14 Ultimately then, Your Honor, as I indicated Mr. Kammerer
15 exhausted his remedies basically in 2013. And ultimately it
16 is some three -- almost three and a half months later before
17 this -- this -- this statement that Mr. Kammerer then
18 provided to defense counsel.

19 THE COURT: Three and a half years?

20 MR. SORENSON: Yes, Ma'am.

21 THE COURT: Right.

22 MR. SORENSON: Years. I'm sorry. I believe I
23 said months, but three and a half years. Which yet again is
24 clearly outside of what Rule 29 provides for. I mean this
25 is yet again not a situation where obviously -- I mean, they

1 knew about this. They knew that that only -- came out
2 during her PCR from Mr. Cobb that the concern was that Mr.
3 Kammerer was represented. And, again, I don't see where
4 anybody ever made an attempt to even talk to Mr. Kammerer or
5 his legal counsel any time during that four-year period
6 there, actually longer than that if you're going all the way
7 back to when they were initially arrested back in 2007.
8 Despite the fact that he'd given s statement to law
9 enforcement that basically suggested she had nothing to do
10 with anything. And that was, yet again, played into their
11 whole trial strategy in talking about it.

12 So it's our position that ultimately, Your Honor, that
13 Rule 29 has not been complied with. That this was a motion
14 that should have been made -- an yet again, I mean, I don't
15 think it was ever after-discovered evidence. I'm not really
16 too sure there was ever a proper time to make this motion
17 because I think it's not after-discovered evidence. It's
18 evidence, I see that they knew about, were aware of, were
19 aware of the potential to help and or hurt her back prior to
20 her trial. But even if you argue, even if you go with the
21 fact that, you know, what he says specifically in his
22 statement is different from what he has said prior and,
23 therefore, is after-discovered, I still think looking under
24 29(b) (2) that this is evidence that could have been
25 ascertained by the exercise of reasonable diligence long

1 before the three and a half years that went by after Mr.
2 Kammerer's PCR was withdrawn. So that would be my argument
3 as to why at this point in time, Your Honor, she is not
4 entitled to this hearing. Because quite frankly whatever
5 Mr. Kammerer has to say, I submit is not relevant because
6 it's not after-discovered evidence so there's really no
7 reason to even put him in that position to have to testify.

8 Additionally, Your Honor, I would ask -- I concur with
9 Defense counsel that we -- I have no issue with Your Honor -
10 - I know she has submitted the transcript from the PCR. I
11 think the transcript from the trial is in there too. I'm
12 not really too sure that's necessary, whether it plays in or
13 if it's too much. But also if I could submit Mr. Kammerer's
14 transcript of his guilty plea. I would, Your Honor, object
15 to Your Honor considering, for purposes of this initial
16 determination, Mr. Kammerer's statement, anything
17 considering that at all. And she also has attached an
18 affidavit from the Defendant's mother and father and I would
19 object to that because I don't see what's laid out in that
20 and I don't see how that even addresses after-discovered
21 evidence one way or another. I think at this point in time,
22 that's all I have, Your Honor, as to the initial argument as
23 to why I don't think she's entitled to an evidentiary
24 hearing.

25 THE COURT: Thank you. Thank you, Mr. Sorenson.

1 Yes, ma'am.

2 MS. FRANKLIN-BEST: Thank you, Your Honor. May
3 it please the Court?

4 THE COURT: Yes.

5 MS. FRANKLIN-BEST: I need to start briefly about
6 the time frame. I mean, I understand that Mr. Sorenson's
7 not aware that he -- that Mr. Kammerer filed an appeal, but
8 these are still time frames in which he can explore his
9 legal options. These are time frames in which he may or may
10 not be consulting with attorneys. I mean, certainly if he'd
11 pleaded guilty, he would have had the opportunity to file
12 the appeal. I mean, he would have had fifteen days in order
13 to do that. And you then would have had this time frame in
14 which to file the PCR. So that's time in which he is still
15 pursuing his own legal remedies. He's not, you know, just
16 kind of sitting there while his time is ticking away. I
17 mean, and in fact, he did pursue the PCR. He did file that.
18 So he was currently still looking at challenging his own
19 conviction, which he has the right to do. I mean, there's
20 no way that we could have compelled him, even if we wanted
21 to, to be a witness on behalf of Ms. Sanders during those
22 time frames. He did voluntarily withdraw his PCR --

23 THE COURT: And tell me why that is so? You say
24 you could not have compelled him to be a witness.

25 MS. FRANKLIN-BEST: Because he was in his own

1 legal jeopardy. I mean, if we could have called him at
2 trial to testify, I mean, if he -- he had his own legal
3 remedies that he was pursuing.

4 THE COURT: And had he pled guilty at that point?

5 MS. FRANKLIN-BEST: He had pleaded guilty at that
6 point. Yes, Your Honor.

7 THE COURT: All right. And so --

8 MS. FRANKLIN-BEST: And may have filed a notice
9 of intent to appeal. He certainly would have had the
10 opportunity to explore those remedies.

11 THE COURT: So you're telling me he had filed a
12 notice of appeal?

13 MS. FRANKLIN-BEST: I'm not sure. I'm not aware.

14 THE COURT: Oh, okay. And Mr. Sorenson is telling
15 me he did not appeal his plea. Do you have any evidence
16 otherwise?

17 MS. FRANKLIN-BEST: I can get that information
18 for you because I know it's on the -- but I will do that.

19 THE COURT: Well, let's presume just for the
20 moment that he did not appeal his plea. And so if he did
21 not appeal his plea then what you're saying he is in
22 jeopardy at that point, he's pled.

23 MS. FRANKLIN-BEST: Well, but he's also pursuing
24 other legal remedies. I mean he is working on his PCR, I
25 mean, which we know that he ultimately files. So, I mean,

1 at that point he's still challenging his own -- he's
2 availing himself of his statutory and constitutional rights
3 to challenge his own conviction. I mean, so I don't -- you
4 know, I don't think that's sort of fair to characterize that
5 as somebody who's now just kind of sitting down there, who
6 somebody who's kind of come in and talk to at that point. I
7 mean, I don't think there's any reason to believe that he
8 would have been, you know, helping anyone out, other than
9 himself at that point.

10 THE COURT: And is there -- I mean, you will
11 concede that obviously -- is known?

12 MS. FRANKLIN-BEST: Yes, Your Honor.

13 THE COURT: All right. And I gather that you can
14 see that whatever statements were given to law enforcement
15 are known?

16 MS. FRANKLIN-BEST: Yes, Your Honor.

17 THE COURT: And the fact that Mr. Kammerer is
18 represented by counsel is known?

19 MS. FRANKLIN-BEST: Yes, Your Honor.

20 THE COURT: And obviously counsel could have
21 contacted Kammerer's lawyer to request the opportunity to,
22 have a conversation, yes?

23 MS. FRANKLIN-BEST: Correct.

24 THE COURT: No evidence that occurred?

25 MS. FRANKLIN-BEST: No evidence that it, you know,

1 occurred or did not occur. That's not in the record.

2 THE COURT: And subsequent to the plea, clearly --
3 of course, I don't know what his status was following the
4 plea in terms of his representation, but I gather there was
5 no attempt subsequent to the plea to have a conversation
6 with him; is that your understanding?

7 MS. FRANKLIN-BEST: That is my understanding.

8 THE COURT: And he wasn't subpoenaed to trial?

9 MS. FRANKLIN-BEST: He was not subpoenaed to
10 trial. But we do know from the PCR transcript that trial
11 counsel wished that he had done so. I mean, that is
12 something that -- you know, and he -- that trial counsel
13 believed that he would be subpoenaed by the State. And that
14 when he realized the State had not subpoenaed him, that he
15 wished that he had gone forward and subpoenaed him for
16 trial.

17 THE COURT: And that is in the testimony along
18 with what Mr. Sorenson has discussed that Mr. O'Neal
19 testified that his client and Mr. O'Neal had the
20 conversation about whether or not to call Kammerer, correct?

21 MS. FRANKLIN-BEST: There was some -- I mean, yes.
22 There was some discussion about whether or not to call him.
23 But I would point out that Mr. O'Neal never sought to
24 investigate him. And we have really, sort of clear South
25 Carolina State Law that is part of his duties. And I would

1 just sort of point to the Court to the case of Terrance
2 Edwards versus State of South Carolina. I had to pull this
3 off of the judicial department website so it's Opinion No.
4 26977 filed in May 23rd of 2011. And I point to that
5 because it's -- 26977, May 23, 2011. And I point this out
6 -- there's some good language that -- and this is an opinion
7 by Justice Hearn, that this Court has stated previously that
8 criminal defense attorneys have a duty to --

9 THE COURT: You going to have to slow down.

10 MS. FRANKLIN-BEST: I'm sorry.

11 THE COURT: That's okay.

12 MS. FRANKLIN-BEST: The court has stated
13 previously that criminal defense attorneys have a duty to
14 undertake a reasonable investigation, which at a minimum
15 includes interviewing potential witnesses and making an
16 independent investigation of the facts and circumstances of
17 the case. And it cites to Ard v. Catoe, McKnight v State.

18 THE COURT: Now, let me ask you this question.
19 Wasn't that case law that was most appropriate at the PCR?

20 MS. FRANKLIN-BEST: Yeah. I mean, yes, Your
21 Honor.

22 THE COURT: Okay.

23 MS. FRANKLIN-BEST: It would have been.

24 THE COURT: And as I understand it the court found
25 that with regard to Mr. Kammerer, that that was strategy,

1 that Mr. O'Neal's determination not to call Mr. Kammerer at
2 trial was part of his strategy; is that correct?

3 MS. FRANKLIN-BEST: That is the finding in the
4 order, but I would argue is not supported by the actual
5 testimony from the PCR.

6 THE COURT: But that was appeal.

7 MS. FRANKLIN-BEST: I mean, that was in -- I
8 concede that that is in the order of dismissal.

9 THE COURT: Okay.

10 MS. FRANKLIN-BEST: I do not concede that that is
11 an accurate reflection of what happened at the PCR hearing.

12 THE COURT: Okay. I understand that, but what I
13 am bound by -- I cannot go behind the determination of the
14 court, particularly -- and I understand that Cert was
15 denied?

16 MS. FRANKLIN-BEST: That is correct.

17 THE COURT: Okay. All right. So --

18 MS. FRANKLIN-BEST: Okay. So ultimately this is
19 going to be an issue of law that Your Honor will decide.

20 THE COURT: Right.

21 MS. FRANKLIN-BEST: You know, whether or not this
22 was through the reasonable amount of time that we've
23 exercised diligence. I will say that as soon as I got
24 retained in this case, clearly Ms. Sanders was still
25 pursuing her legal remedies, that we promptly went and met

1 with Mr. Kammerer. And that is why, you know, we quickly
2 filed all the rest of this. But I guess the real question
3 for Your Honor is whether or not he was available during
4 this period of time in which he could have been pursuing the
5 various legal remedies. And as for Mr. Sorenson's --

6 THE COURT: Well, let me stop you there. Do you
7 have any case law that you can direct me to, to review that
8 says that the fact that a potential witness, co-defendant,
9 is pursuing their own legal remedies makes them unavailable,
10 either for interview or for subpoena or for information that
11 might be helpful potentially to a co-defendant?

12 MS. FRANKLIN-BEST: You know, I will look for that
13 particular case law but I did not, off the top of my head,
14 review anything. But I will say just in terms of looking at
15 -- for purposes of federal habeas, that I'm used to kind of
16 calculating time from the period in which somebody could
17 have done it to where we're at, which is much less certain
18 fact specific and easier for the courts to determine that
19 actually looking at any particular case that actually
20 happened in a particular case before the Court. The second
21 point as to trial strategy, and I think I just covered this.
22 Again, even though the order of dismissal finds that the
23 failure to call Mr. Kammerer was a matter of trial strategy,
24 our position is that it's not reflected by the transcript of
25 the PCR hearing. So, again, we believe that Mr. Kammerer

1 has important information to share, that appears to have
2 been consistent with what law enforcement, what he told law
3 enforcement, which is that Tiffany Sanders did not know that
4 this was going to happen. And at the end of the day, I
5 mean, this is about rendering justice in a particular case
6 for a young woman who is now spending a long term in prison
7 when, in fact, there were plea offers made earlier. She
8 offered to cooperate with law enforcement at the very
9 beginning. She actually met with the Solicitors for
10 purposes of cooperating with them had Mr. Kammerer gone to
11 trial. And so what we're asking is that Your Honor listen
12 to the testimony of Mr. Kammerer and then grant our motion
13 for a new trial.

14 THE COURT: Thank you so much. One other
15 question. Tell me is there -- I know that in your argument
16 you have argued that the determination by the PCR Court that
17 the decision not to call Mr. Kammerer was strategy. And
18 that that was to a great or lesser extent integral to the
19 court denying the PCR. It feels as though you are asking me
20 to go behind that determination and make a different
21 finding. And I just want to make sure that I give you an
22 opportunity to address that because I do not believe that I
23 can do that.

24 MS. FRANKLIN-BEST: I mean, I think -- I believe
25 this is a complicated procedural question. So I'm going to

1 try to think through this. I mean, I think this Court in
2 assessing a motion for a new trial, that you would have to
3 be looking de novo at the record that's before you because
4 ultimately you are responsible for determining whether or
5 not this would have changed the outcome. So I believe that
6 you are not bound by a particular order in this case if you
7 assess the facts and all of the facts. I mean, I think that
8 you would have the right to look at the testimony at the PCR
9 hearing and draw some of your own conclusions as it relates
10 to these particular claims. So I don't know that you would
11 have to go so far as to say I find that particular order to
12 be inaccurate and I hereby overrule it. But I think that
13 you're not -- I mean, this is a different procedure. I
14 don't think that you're bound by, you know, a case that
15 arose in a different procedural posture.

16 THE COURT: Okay. Yes, sir.

17 MR. SORENSON: I need briefly to address a couple
18 of things dealing with that kind of, the PCR order that you
19 just -- I think you've asked about.

20 THE COURT: Yes.

21 MR. SORENSON: Your Honor, if I've recalled --
22 just for the record, now that you get a chance to look at it
23 kind of down the road, basically during the -- the
24 transcript of the PCR hearing Ms. Sanders testified first,
25 Your Honor. On page fifty-nine of the overall document that

1 was submitted to Your Honor is page 30 of the actual
2 transcript. She is being questioned by -- by her cross-
3 examination by Ms. Elliott at the Attorney General's Office.

4 THE COURT: Yes?

5 MR. SORENSON: It's on page, I think fifty-nine of
6 the -- at the bottom fifty-nine.

7 THE COURT: Okay. Great.

8 MR. SORENSON: You see where I am, Your Honor; 30
9 at the top, fifty-nine at the bottom?

10 THE COURT: I do.

11 MR. SORENSON: All right. This is the Defendant
12 on cross-examination basically talking about the whole issue
13 about whether Mr. Kammerer would be called or not, starting
14 with line 8 question, okay, you also discussed with your
15 attorney whether or not Mr. Kammerer should be produced as a
16 witness for the Defense; is that correct? Yes, ma'am.

17 THE COURT: You got to slow down just a little
18 bit.

19 MR. SORENSON: Okay. I'm sorry. Yes, ma'am. And
20 the question. And wasn't that also discussed that it might
21 not be a good idea to do that because you don't have any
22 control over what he may say once he gets on this witness
23 stand; is that true? Yes, ma'am. The question is, it was
24 decided -- again, as a matter of trial strategy -- that it
25 would be best not to call Mr. Kammerer because there is no

1 control and you don't know what's going to happen? Yes,
2 ma'am. And now that you've gone to trial and the result is
3 not what you hoped, you now wish you would have called him
4 just to see it would make a difference? Yes, ma'am. So she
5 talks about it, about them talking about it in trial
6 strategy. And then if you fast forward to page -- at the
7 bottom, it's page ninety-six.

8 THE COURT: You say ninety-six?

9 MR. SORENSON: Ninety-six at the bottom, yes.
10 It'll be 67 at the top. This now is cross-examination of --
11 well, actually it's probably the direct examination of Mr.
12 O'Neal, her trial attorney.

13 THE COURT: Okay.

14 MR. SORENSON: And if you go down to -- they're
15 talking about Mr. Kammerer. And if you go down to the line
16 17, the question is asked -- so it was a matter of trial
17 strategy. And right before that talks about him wanting the
18 last argument and not putting up any evidence or testimony.
19 So it was a matter of trial strategy? And his answer is at
20 the time, I guess that's what I was thinking. Based on your
21 experience, the facts of the case, your discussions with
22 your client and -- for trial. Yes, but it turns out it was
23 a mistake. That's because it was not successful; is that
24 correct? And then the next page he talks about, you know,
25 having discussed this with his client. That goes on all the

1 way through page 99 where he talks about -- he was asked a
2 question, did you discuss this with your client? Yes. She
3 concurred with the strategy you formulated for trial? The
4 answer, I don't think she understood it. Question, but
5 didn't you discuss it with, you explained it to her. And
6 his answer was, as best I could. So I do think there is a -
7 - ultimately a basis for Judge Benjamin's finding that it
8 was trial strategy.

9 THE COURT: And it doesn't matter who answers
10 this, which of you, but was Mr. Kammerer -- because
11 obviously there's got to be ineffective assistance and
12 prejudice. On the issue of prejudice in the PCR, why isn't
13 Mr. Kammerer called and did he testify at the PCR, which
14 would have been required in order to show -- there are other
15 ways I'm sure that you could have done it, but that would be
16 the most direct way to show prejudice. Did he testify at
17 the PCR?

18 MS. FRANKLIN-BEST: No, Your Honor, he did not.

19 MR. SORENSON: He did not, nor was there any kind
20 of affidavit or anything submitted about what he might have
21 said had he testified.

22 THE COURT: That's fine. Okay.

23 MR. SORENSON: And she kind of, in that cross-
24 examination of Ms. Sanders, kind of, kind of raises
25 ultimately why this is basically unfair to the State, for

1 you to find this to be after-discovered evidence because it
2 basically gives her the opportunity to basically go forward
3 without calling him and hope for the best, but then turn
4 around and after it doesn't go as -- she asked the question.
5 I mean, obviously now you wish you had called him because it
6 didn't work out the way you wanted it to. To allow her then
7 to turn around six years down the road, seven years down the
8 road and to say this is after-discovered evidence and then
9 have an opportunity basically to go back and do a do-over
10 because it didn't work out the way that they wanted it to.

11 THE COURT: I got it.

12 MS. FRANKLIN-BEST: If I can just make a brief
13 response to the strategic argument. You know, particular
14 decisions are entitled to deference only after counsel has
15 engaged in a reasonable investigation. Here, and again, I
16 would point back to the Edwards case and the Ard case and
17 the McKnight case, and the year counsel did not engage in
18 any investigation into the co-defendant. So I don't believe
19 that the finding that this was strategic is entitled to
20 deference. But again -- well, I guess I'll just sort of
21 stop at that. But, you know, trial counsel admitted that he
22 never spoke to him. Never went back to the jail and never
23 spoke to him. But here we are now looking at this as sort
24 of newly discovered evidence, and --

25 THE COURT: Let's say I take a look at that.

1 Let's say that I take a look at what you think I should look
2 at and that I'm not bound by the strategic finding. What
3 that does is that gets you prong number one. It doesn't get
4 you prong number two. It gets you ineffective assistance of
5 counsel. It doesn't get you to prejudice unless you all Mr.
6 Kammerer in the PCR or -- or in some other way show to the
7 Court that his testimony would have made a difference. Tell
8 me, do you have that?

9 MS. FRANKLIN-BEST: Well, and I understand. At
10 the time of her PCR --

11 THE COURT: Uh-huh. (Affirmative response.)

12 MS. FRANKLIN-BEST: -- which was in August of 2011
13 -- and correct me if my dates are wrong, Mr. Sorenson.

14 MR. SORENSON: That's when it was --

15 MS. FRANKLIN-BEST: But Mr. Kammerer did not
16 withdraw his PCR until May of 2013. So at that point he
17 maybe -- I mean, he is pursuing his own legal remedies, may
18 be represented by counsel and is not in a position to help
19 someone else. I mean, he's still trying to -- he's still
20 availing himself of the statutorily --

21 THE COURT: That's not -- being able to help
22 somebody else. You've just got to tell the truth or take
23 the Fifth. Yes?

24 MS. FRANKLIN-BEST: You mean if they called him
25 for purposes of taking the Fifth?

1 THE COURT: He's either going to do one or the
2 other. He has to tell the truth, yes. Or take the Fifth.
3 I guess he could lie but you don't presume people are going
4 to do that.

5 MS. FRANKLIN-BEST: No, but we also don't call
6 people for purposes of taking the Fifth. I mean, so I'm not
7 sure if he is pursuing his own legal remedies if he could be
8 made to testify on behalf of Tiffany Sanders.

9 THE COURT: Sure he can. He can be subpoenaed.
10 Of course, he can.

11 MS. FRANKLIN-BEST: To take the Fifth.

12 THE COURT: Here's my point. My point is --
13 here's my point -- my only point is this. Is that no --
14 having a PCR you must prove prejudice. And even assuming
15 that the investigation wasn't done, and assuming that, it
16 would have been critical to show that the call Mr. Kammerer
17 would have made a difference at the PCR. And what you're
18 telling me is no, that that prong doesn't count in the PCR
19 because he couldn't be called as a witness. I guess I'm
20 taking issue with you. You could have subpoenaed him. At
21 which point you said yeah, but --

22 MS. : Well, I guess my -- sort of my position and
23 maybe I'm a little confused. I'm here on the after-
24 discovered and not really the PCR. So in wondering why
25 trial counsel or PCR counsel did not call him, I believe

1 it's because he was probably not available, but I can't
2 answer that. I'm not sure exactly why he was not secured at
3 that particular -- it would have been lovely if he had been.
4 But at this point, you know, I still think that we have a
5 legitimate basis to go forward on an after-discovered case.

6 THE COURT: Well, all of that factors in there
7 too. The reason that it's important to me is it all factors
8 into the time. You know, was this some -- obviously,
9 somebody that was known. And there has to be an explanation
10 if it's after-discovered evidence or newly discovered
11 evidence, after-discovered evidence, why it was reasonable
12 not to avail or Ms. Sanders not to have availed of what that
13 testimony might have been prior to --

14 MS. FRANKLIN-BEST: Yes, Your Honor.

15 THE COURT: Yeah.

16 MR. SORENSON: Just the mere fact that there was
17 such a discussion about calling him as a witness just shows
18 that obviously they thought that he was -- had something
19 helpful to say. So how that can then be after-discovered or
20 newly discovered now that we've given that -- I mean, it
21 just -- I mean, it just -- and I do think that if they
22 called him as witness. I mean, obviously he could get up
23 there and plead the Fifth at that point in time, and they
24 would have addressed that. But, I mean, it's -- I mean, I
25 think it would be an issue with calling him front of a jury

1 knowing that he's going to plead the Fifth. But calling him
2 in front of the court and have him make that determination
3 whether he's going to testify or assert some Fifth Amendment
4 right, I don't think there's a problem with doing that. I
5 mean, but they don't even ever get to that point.

6 THE COURT: Right.

7 MR. SORENSON: Right.

8 THE COURT: Prejudice. What could he have said and
9 what he wouldn't have said. What he had to offer would have
10 been prejudicial --

11 MR. SORENSON: Just the fact that they had that
12 whole conversation, you know, five years ago shows that it
13 was known to them at that point in time.

14 MS. FRANKLIN-BEST: And, again, I mean, I agree
15 that in order to show prejudice under Dempsey and all the
16 other cases, you have to secure the witness for purposes of
17 the PCR. I mean, my question is that even the fact that it
18 didn't happen in PCR does not foreclose our ability to come
19 and ask Your Honor to grant our motion now. I mean, the
20 fact that it may have been a claim that was raised in PCR,
21 it was not, you know, perfected well. I do not believe it
22 forecloses our ability to seek relief from this Court.

23 THE COURT: Okay. So this is going to be really
24 -- let me be very clear where I am at this moment. And I
25 guess I'm going to ask for -- and I'm not going to ask from

1 the State at this moment did you wish to make a response,
2 but I think that it is imperative that you be able to direct
3 to me case -- South Carolina case law if it's available that
4 substantiates the argument that is propounded that while
5 this witness was known, he was not available because of his
6 own legal circumstance. Because I'm unaware of such case
7 law, but -- but, I certainly don't want to make a decision
8 if it's there and I don't know about it. So I'm going to
9 look for that. Do you think you can provide that in ten
10 days?

11 MS. FRANKLIN-BEST: Yes, Your Honor.

12 THE COURT: And then, of course, you'll give that
13 to Mr. Sorenson and then it would be at that point, Mr.
14 Sorenson, if you wish, just let me know if you want to
15 respond to that.

16 MR. SORENSON: Yes, ma'am.

17 THE COURT: And let me just share with you, it
18 really does hinge on that.

19 MS. FRANKLIN-BEST: Okay.

20 THE COURT: It's important. Okay.

21 MS. FRANKLIN-BEST: Will do, Your Honor. Thank
22 you.

23 THE COURT: Thank you for your presentation. And
24 I think -- Mr. Weyman, back to you and if you could just
25 report to Mr. Kammerer sort of what has occurred. And I

1 know you'll be able to do that. And I know that -- I think
2 it's -- y'all help me now but I think it's really important
3 that you would have, I think, the transcript from the
4 attempt plea, the plea and then the statements --

5 MS. FRANKLIN-BEST: A copy of the statement.

6 THE COURT: And, again, please understand, I'm not
7 considering that as an affidavit. So insofar as I believe
8 he is today -- what, if any, and I don't -- and I don't
9 prejudice. I don't know. I just know that potentially
10 there's an issue and I just say potentially, that -- because
11 he gave a statement to law enforcement because he had an
12 attempted plea and then a plea, and you know, he had a PCR.
13 Maybe that's -- that may be important. I don't know. But I
14 just think that -- places him in this process when he was
15 under oath, those are important for me to have and I don't
16 know the solicitor is happy to have that. My only concern
17 is that he have the benefit of counsel if we go forward.

18 MR. WEYMAN: Yes, Your Honor

19 THE COURT: And I know the solicitor will let you
20 know and I'll try to remember to do that too, to let you
21 know what the decision is. I'm going to make the decision,
22 the first -- procedurally. And then as I understand the
23 testimony that they wish for me to take would be testimony
24 from Mr. Kammerer at that point, and then maybe -- Okay.

25 MR. WEYMAN: Yes, Your Honor.

1 THE COURT: Um --

2 MR. SORENSON: I've got somebody making copies, an
3 extra copy of his plea transcript. So once I get that back
4 I can give Your Honor a copy of it and then I can give Mr.
5 Weyman the statement he gave to law enforcement, that
6 transcript and then I've got --

7 THE COURT: And the PCR, his -- Mr. Kammerer's
8 PCR.

9 MR. SORENSON: I've got the order, the order where
10 it was withdrawn. I can --

11 THE COURT: Okay.

12 MR. SORENSON: May I approach, Your Honor?

13 THE COURT: Sure. Okay. Yes. I think that
14 completes what we needed to do today, yes?

15 MR. SORENSON: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. SORENSON: And obviously if we need to convene
18 back in front of you, we've got you -- not in the month of
19 July but we've got you I think for three or four straight
20 weeks of court starting like the first of August. So --

21 THE COURT: All right. Okay. Thank you.

22 MS. FRANKLIN-BEST: Thank you, Your Honor.

23 MR. SORENSON: Thank you.

24 THE COURT: Hopefully, we can get -- I know that
25 there needs to be a resolution so I will -- as soon as you

1 get me that --

2 MS. FRANKLIN-BEST: Yes, absolutely, Your Honor.

3 THE COURT: And I want to be clear. Hopefully,
4 I'm looking for South Carolina law but I haven't -- you from
5 looking beyond South Carolina, have I?

6 MS. FRANKLIN-BEST: No. I will find what I can.

7 THE COURT: Okay. Good deal. Thank you very
8 much.

9 (This proceeding was concluded.)
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE GENERAL SESSIONS COURT OF DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 30 DAY OF MAY, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

June 21, 2018

000060

STATE OF SOUTH CAROLINA) RECON THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT
2018 FEB -5 PM 4:30 CASE NOs.: 2007-GS-18-1206 and
2010-GS-18-0707

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

v.
TIFFANY ANN SANDERS,
Defendant.

**ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL**

2018 FEB -5 PM 4:30
CERTIFIED COPY
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This matter came before the Court on the Defendant's Motion for a New Trial on May 30, 2017. The Defendant was present and represented by Elizabeth A. Franklin-Best, Esquire. The State was represented by 1st Assistant Solicitor Donald N. Sorenson. The Defendant's Motion for a New Trial is based upon after-discovered evidence pursuant to South Carolina Rules of Criminal Procedure, Rule 29(b). The Defense sought to introduce the testimony of the Defendant's co-defendant, Sean Kammerer and the State objected on the basis that the testimony is not after-discovered because Mr. Kammerer was known to the Defendant since their arrest in 2007 and his testimony could have been ascertained through the exercise of reasonable diligence prior to the Defendant's 2010 trial. Additionally, the Defendant and the State presented supplemental memorandums for the Court's review.

The Court has carefully considered both party's memoranda in addition to the arguments presented at the hearing on the Defendant's Motion for a New Trial on May 30, 2017. For the following reasons, I agree with the State's position and deny Defendant's Motion for a New Trial:

Mr. Kammerer's testimony is not necessary to decide this issue because it does not fit within the definition of newly-discovered evidence. Kammerer was known to the Defendant at

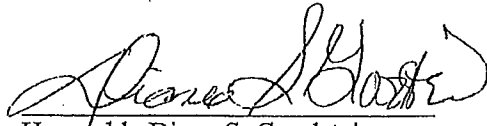
000061

least since their arrest in 2007. While the Defendant may be correct in her assertion that Kammerer would not have wanted to testify at her PCR hearing while he was pursuing his own legal remedies through the PCR process, that fact does not mean that Kammerer was unavailable at the time. The Defendant had the means to subpoena Mr. Kammerer's testimony pursuant to Rule 45 of the SC Rules of Civil Procedure.

The fact that control is to be judged at the time of trial strengthens the State's position. Mr. Kammerer pled guilty to his charges in 2008, and had been incarcerated in the South Carolina Department of Corrections for over two years prior to Defendant's trial. As is the case for all guilty pleas, Mr. Kammerer was advised that he was surrendering his right to remain silent and his right against self-incrimination. Thus, he no longer enjoyed the privilege of refusing to testify upon the Court's acceptance of his plea. Therefore, at the time of her trial, Kammerer was available for Defendant to subpoena or attempt to interview. The reasoning behind Defendant's decision to not call Kammerer to the stand during her trial is immaterial to the Court's decision today. Due to Defendant's knowledge of Mr. Kammerer and the available legal means for obtaining his testimony at the time of trial, the testimony cannot be newly discovered evidence under the relevant definition.

THEREFORE IT IS ORDERED that the Defendant's Motion for a New Trial be DENIED.

IT IS SO ORDERED!


Honorable Diane S. Goodstein
Presiding Judge
First Judicial Circuit

St. George, South Carolina

January 5, 2018

000062

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Court of Common Pleas

RECEIVED

DEC 31 2013

S.C. Supreme Court

Dianne S. Goodstein, Circuit Court Judge
(Trial)
Deandrea G. Benjamin, Circuit Court Judge
(PCR)

Case No. 2011-CP-18-1497

Tiffany Sanders, ... Petitioner,

vs.

State of South Carolina Respondent,

AMENDED PETITION FOR WRIT OF CERTIORARI

December 27, 2013

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STATEMENT OF ISSUES ON APPEAL

APPEAL FROM JUDGE DIANNE GOODSTEIN

(Trial judge)

(filed separately as Appellant's Brief as direct appeal)

- I. Did the trial judge award fail to direct a verdict of acquittal when there was no evidence to establish the necessary elements for the crime of murder? (filed separately as direct appeal)
- II. Did the trial judge err in failing to instruct the jury that the killer's malice cannot be transferred to the appellant without some evidence that the appellant demonstrated malice? (filed separately as direct appeal)

APPEAL FROM JUDGE DEANDRE G. BENJAMIN

(Denial of Relief from PCR judge)

ARGUMENTS

- I. Did the Court of Common Pleas correctly grant the Petitioner a direct appeal? 9
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STATEMENT OF THE CASE¹

(TRIAL)

On June 8, 2007, Sean Kammerer shot and killed Jessie Ham in the Publix/Tire Kingdom parking lot on Dorchester Road in Dorchester County, South Carolina. On June 26, 2007, the Dorchester County Sheriff's Department arrested the appellant and charged her with the crime of accessory before the fact of murder on the theory that she drove the victim to the scene at the request of the shooter, Sean Kammerer. Thereafter, on September 8, 2008, the Dorchester Grand Jury indicted the appellant for this charge. See Appendix at page 1 for Indictment Number 2007-GS-18-1206. For reasons that are not clear in the record, almost two years later, the Dorchester County Grand Jury indicted the appellant for murder on May 6, 2010, at Indictment number 2010-GS-18-707. (Appendix at page 3) Presumably, the State increased the charge because the appellant would not plea to the 2007 charge to accessory. 88 days after being indicted for murder, the appellant appeared before Judge Goodstein and a jury on August 3, 2010, for trial on both charges. She entered a plea of not guilty to each charge, waived arraignment on the new charge of murder, and the Court of General Sessions tried her on both charges. The State called seven witnesses as follows:

1. Detective David Watson (North Charleston Police Officer)
2. Kevin King (Jessie Ham's friend who rode to scene of the shooting in back seat of Tiffany Sander's Honda and who sat behind Jessie Ham)
3. David Hughey (Jessie Ham's friend who rode to scene after the shooting on bicycle while carrying a gun)

¹ This statement of case is the statement of case from the petitioner's direct appeal. The petitioner includes it here because it is hard to make sense of the statement of case from the P.C.R. appeal without this factual background.

4. Brandon Frye (Jessie Ham's friend who rode to scene on bicycle with David Hughey)

5. Jessica Hans (North Charleston Police Officer, formerly Publix employee, who witnessed the shooting)

6. DeJuan Jenkins (driver of Sean Kammerer's Jeep Cherokee who drove Sean Kammerer to the scene of the shooting—the Jeep belong to Sean's mother, and the witness testified he was driving it because Sean lost his driver's license.)

7. James Sturkie (North Charleston Police Detective)

The appellant did not testify, but the parties stipulated to the introduction of her uncounseled, written statement given on June 9, 2007. (See page __ Record on Appeal for her written statement—trial transcript is included in the record on appeal in direct appeal being filed simultaneously.)

In addition to these seven witnesses, the parties stipulated that on June 8, 2007, the defendant, Sean Kammerer, shot and killed Jessie Hamm by shooting him three times in the back and one time in the neck. (See page __ [tr. 67] of R.O.A. for stipulations and page ____ of the R.O.A. for the written stipulation.) The Defendant, after colloquy with the Court, declined to testify, and the defendant called no witnesses. R.O.A. page __[tr. Page 230] On August 5, 2010, after requesting that the Court replay the testimony of the eyewitness, Jessica Hans (the Publix employee, later N. Charleston police officer), and Kevin King (Jessie Ham's friend who rode with him to the scene) and for clarification of the court's instruction on "intent and malice" and thereafter the definition of "principal," the jury returned a verdict of not guilty on the charge of accessory before the fact of murder and a verdict of guilty on the charge of murder. The Court sentenced the appellant to 30 years in

prison, giving credit for time served in pre-trial detention. See Record on Appeal page ____ [tr. Pages ____ [tr. Page 314] and sentencing sheet. (Appendix page 17)

STATEMENT OF THE CASE
(POST-CONVICTION RELIEF)

Following the Court's sentencing on August 5, 2010, the appellant did not appeal her conviction. On August 3, 2011, petitioner filed a *pro se* application for post-conviction relief. On August 18, 2011, she filed an amended application for post-conviction relief, alleging that her trial counsel failed to notify her of her right to appeal, failed to call witnesses at trial, the shooter, Sean Kammerer or her sister, Amanda Fender, and failed to follow up on a cross examination of Jessica Hans, confirming the fact that the appellant was not present at the scene. (Appendix, page 5) One of the grounds for relief was that the petitioner's trial counsel failed to advise her of her right to appeal. On May 24, 2012, the Honorable Deandrea G. Benjamin heard the appellant's post-conviction relief. On July 27th, Judge Benjamin issued a written order, denying the appellant's claim for post-conviction relief, but granting her leave of court to file a direct appeal of her conviction on the ground that her counsel failed to advise her of her right to an appeal. Judge Benjamin's order is in the Appendix at page 18. Therefore, since the trial court granted the petitioner the right to a direct appeal, she does not address that separate ground in detail. The issues raised in the direct appeal are addressed in petitioner's separate brief filed simultaneously with this petition for *certiorari*.

On August 28, 2012, the appellant filed her notice of intent to appeal.

Introduction/Standard of Review

The VI Amendment to the U. S. Constitution and Article I § 14 of the State Constitution guarantee to every criminal defendant the right to be represented by a competent lawyer and receive a vigorous defense. There is a well-developed body of law in the federal circuits and South Carolina that require lawyers to present a competent defense, and when a lawyer fails to act in a competent manner and his or her representation falls below an objective standard, then the defendant is denied a constitutional right to counsel. See, for example, *Sosebee v. Leeke*, 293 S.C. 531, 362 S.E.2d 22 (1987), where the Supreme Court found that a lawyer's performance was so deficient as to prevent the defendant from receiving a fair trial when the trial lawyer failed to object to the trial judge's comments on the credibility of witnesses. "The comments unfairly prejudiced petitioner. The compounding of that prejudiced by counsel's failure to object was an error so serious as to deprive Petitioner of a fair trial." *Sosebee* at page 24.

The standard for judging the performance of counsel is what is reasonable under prevailing norms:

"The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674, 636 (1984). The second prong of the *Strickland* test requires a showing that trial counsel's deficient performance so prejudiced the defense "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 693.

Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987)

Here, the deficiencies were far greater and more material than a failure to object to a trial judge's comments.

Argument I.

The Court of Common Pleas correctly granted the Petitioner the right to a direct appeal when she found that the Petitioner's trial counsel gave her no meaningful information about her right to appeal.

The lower court correctly concluded that the Petitioner knew practically nothing about her right to appeal. At the P.C.R. hearing below, trial counsel admitted that he did not give her any meaningful information about her right to appeal. He did not tell her how long she had, what was involved. In fact, the only thing he told her was that she had no grounds for an appeal:

I suppose I should have told you [Sanders], you have a right to appeal, you have to do it in 10 days, you should probably—I should probably file an appeal and order the transcript. I should have told her all about that, but I was in shock, too, and I basically told her, you've got no right to appeal. You have no grounds for appeal.

Appendix, Volume I, pages 104-105

The Petitioner testified that after the trial, she never heard from her lawyer again, and even though she testified the trial judge mentioned something about the right to appeal, such a colloquy, if it happened, does not appear in the record below. See Petitioner's testimony at pages 42-43 of the Appendix (Volume I):

Q. Now, after you were convicted and sentenced that day, did he [counsel] talk to you about filing an appeal?

A. No, sir, not to me. After that, I didn't hear anything from him.

Q. Okay. That day?

A. That day or afterwards.

Q. Or afterwards?

A. No, sir.

Q. Did you contact him?

A. No, sir.

Q. All right. So you had not talked to him from that point on about your conviction, your sentence or whether or not—

A. No, sir. He told my family that he was supposed to come visit or he was supposed to write, but he never came.

Q. So you haven't spoken to him about an appeal?

A. No, sir.

Q. Did anyone from the bench or anyone from the court system explain to you that you had a right to appeal your conviction and sentence?

A. The judge did.

Q. The judge—when?

A. After I was convicted.

Q. And what did the judge tell you?

A. She said we that the right to appeal her decision.

Q. All right. But you didn't know how to do that?

A. No, sir.

Q. You didn't know how much time you had?

A. Correct.

Q. You didn't know what forms to file?

A. Correct.

Thus, the record conclusively demonstrates that the Petitioner received no meaningful information about a right to appeal, and she could not have "knowingly" or "voluntarily" waived her right to appeal. Knowingly means "with knowledge" or "consciously. Likewise, voluntarily means "done by design or intention." *Black's Law Dictionary*, 5th Edition. Since the evidence is overwhelming that the Petitioner had no information or incorrect information, the lower court did not err in granting the Petitioner the right to a direct appeal.

Argument II

The Court of Common Pleas erred in failing to grant the appellant a new trial when the overwhelming evidence demonstrates that her trial counsel deviated from the minimum standard of care by failing to interview or call material witnesses, which prevented the petitioner from receiving effective assistance of counsel.

A.

Trial Counsel Did Not Interview Witnesses.

To prevail in a PCR action, an applicant must satisfy a two prong test: he must first show her counsel's performance fell below an objective standard of reasonableness, and he is then required to prove he suffered prejudice as a result of counsel's deficient performance. *Franklin v. Catoe*, 346 S.C. 563, 570-71, 552 S.E.2d 718, 722-23 (2001) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "However, there is a strong presumption that counsel rendered adequate assistance and exercised reasonable

professional judgment in making all significant decisions in the case." *Edwards v. State*, 392 449, 456, 710 S.E.2d 60, 64 (2011) (internal quotation omitted) *Sigmon v. State*, ___ S.C. ___, ___ S.E.2d ___ (Opinion No. 27233, filed March 20, 2013).

As the transcript of the trial demonstrates, the State indicted the appellant for the charge of accessory before the fact of murder on September 8, 2008.² On May 6, 2010, the State indicted the appellant for the charge of murder and called the case for trial 88 days later on August 3, 2010. (See pages 13 and 15 Appendix for the indictments.) As discussed above, the State called seven witnesses, three police officers and four eyewitnesses. The appellant elected not to testify and entered her June 27, 2010, written statement in to evidence. (See R.O.A. filed simultaneously in the direct appeal at page ___ for the written statement.) The State did not call Sean Kammerer who previously plead guilty to murder and who was in state custody at the time of appellant's trial. Appellant's trial counsel counted on the State calling Kammerer and was surprised when the State did not do so. If this were the only strategic error committed by counsel, this matter would not rise to the level of ineffective assistance of counsel. However, the appellant's counsel **never interviewed or attempted to interview Kammerer**, and this is one critical failure that deprived the appellant of effective representation:

Q. And what did you do to investigate the charges and any defenses?

A. The trial came up. I figured the government, the state was going to bring him [Kammerer] to trial. I kind of was counting on that. I told my client that. We showed up for trial, he wasn't there, and I can just tell you right now that after the trial was over I

² The petitioner's direct appeal is filed simultaneously with this petition for certiorari. Therefore, the petitioner makes reference to the Appendix and the separate record on appeal.

realized that I should have gone to see him in jail. I should have found out what he was going to say and I should have brought him down there. I did, in my closing argument, try to put it on the state, that if he was going to help their case they would have brought him, but I guess, I could tell looking in the jury's eyes that they weren't buying it. They figured I could have got him there just as easily as they could.

Appendix page 95 [tr. Page 66])

This statement is an admission of a deviation from the objective standard governing the representation of a criminal defendant. While the State can argue that it may be a plausible strategy not to call Kammerer as a witness, it is an undeniable deviation from the minimum standard of competent representation to avoid discovering what he had to say. No lawyer can adopt a "strategy" if he does not know what is included or excluded in the strategy. Another way of saying the same thing is to say that no one can make a strategy decision without knowing what potential elements are available. The lower court erred in justifying the departure from the minimum effective standard holding: "The applicant did not present Kammerer at the post-conviction relief hearing or properly establish his testimony in accordance with the rules of evidence." (Order under review at page 5, page 22 of the Appendix.) This analysis misses the point. The undisputed point is that the applicant's trial counsel never interviewed the witness. This is far different from failing to call the witness, which might have been a strategy decision if counsel had interviewed him. By the time of the P.C.R. hearing, the opportunity was lost. As counsel explained to the court, the petitioner was denied the opportunity to call Mr. Kammerer because of his application for post-conviction relief:

MS. ELLIOTT: Your Honor, I object. This is going to be based on hearsay. He's not here. He could have been brought into court to testify. We do not have the opportunity to cross-examine him and tremendously object to anything related to Mr. Kammerer from this witness.

MR. COBB: Well, unfortunately, Your Honor, he is pending a post-conviction relief, and is waiting to have counsel appointed and obviously could not be summoned as a witness.

Appendix at page 88 [transcript page 59])

Thus, the appellant suffered prejudice at the time of trial because when appellant's counsel conceded that he never interviewed the most critical witness to his defense, he conceded falling below an objective standard of competency. The failure to attempt to interview Kammerer is a critical deviation from the minimum standard of care that directly prejudiced the petitioner and denied her a fair trial. As the lower court noted in the Order under review: "Where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. *Watson v. State*, 370 S.C. 68, 634 S.E.2d 642 (2006). 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. Where counsel articulates a valid reason for employing a particular trial strategy, counsel's conduct will not be determined ineffective assistance of counsel. *Simpson v.*

Moore, 367 S.C. 587, 627 S.E.2d 701 (2006). This Court finds that all allegations with the exception of the appeal to be without merit and are denied and dismissed as set forth below." (Order at page 4, Appendix at page 21) It is one thing to make a strategic trial decision not to call a witness, but it is quite a different thing to neglect to interview him, thus preventing any meaningful analysis of such a decision. This failure is alone sufficiently prejudicial to deprive the appellant of any hope of a fair trial, and especially so when the failure is combined with the failure to call an available witness in the courtroom, Amanda Fender.

As the trial transcript in the record on appeal establishes, Jessica Hans, the Publix employee who later became a North Charleston police officer, witnessed the shooting. At the time of the shooting, she worked at Publix and saw the murder as she left work. Her testimony is contained in the trial transcript filed in the direct appeal Record on Appeal at page ____ [transcript page 195] as follows:

A. Yes, sir. After I walked to my car, another employee and I stood in the parking lot for a few minutes. We were talking about work and other things. Some point between 11 and 12, I'm not sure the exact time, we heard several loud pops. I thought they might have been fireworks. I'm not 100 percent positive. But at some point my attention was drawn across the parking lot to the Papa John's/Tire Kingdom area, which is on the other side, which is where I actually continued to see a person standing—standing pointing at the ground.

Eventually he actually fired a gun. There was another shot, I'm not sure if it was one or two, fired another shot. There was another person that was

standing with that person that ran between the two buildings, because Publix is separate from Papa John's and Tire Kingdom.

After that shot was fired, the person who actually held the gun in their hand ran to the other side of Tire Kingdom, which was even further away. They disappeared behind the side of the building between Tire Kingdom and the woods.

About 30 seconds later, a Jeep Cherokee pulled out from the side of the building, pulled out through the parking lot and turns left onto the little side street that is between the parking lot and the other restaurants that are right there; and sped off in the direction opposite from where we were in the parking lot.

(emphasis added)

It is undisputed that DeJuan Jenkins drove the Jeep Cherokee while the shooter, Sean Kammerer was the passenger. In fact, this car belonged to the Kammerer family, and DeJuan Jenkins testified he was driving only because Sean Kammerer lost his driver's license. Officer Hans testified no one else was present, which was consistent with all the other testimony. Thus, the jury's murder conviction is based on nothing more than the jury's speculation that the petitioner was involved in a scheme to murder only because she drove the victim to the scene of the crime, and thus the failure to interview or call the shooter to the stand and examine him was critical. Even if the shooter's testimony would be unfavorable, the petitioner's counsel neglected to interview him to learn what his testimony would be and thus had no basis to form any

strategy. This is a failure that is indisputably prejudicial to the petitioner's case. Not one witness had any direct evidence of a conspiracy to commit murder. The closest evidence was a police officer's statement that he "heard" from an undisclosed declarant that Tiffany Sanders was Sean Kammerer's girlfriend. See the direct appeal Record on Appeal at page ____ [tr. page 217]). Astonishingly, the petitioner's attorney did not object to this hearsay statement, which Officer Sturkie recited in the passive voice as "it was said" that Tiffany was romantically linked to the shooter. A more damaging unchallenged statement cannot be imagined, which further supports the deficient performance of trial counsel who fell below any professional objective standard.

Since Sean Kammerer is one of the two witnesses who can exonerate the petitioner, there was no excuse for the petitioner's lawyer to fail to contact him and discover exactly what his testimony would be. This critical failure deprived the petitioner of a substantial chance to mount an effective defense, and she has been prejudiced by being sentenced to 30 years in prison in spite of the fact that not one witness puts her at the scene at the time of the murder.

B. Trial Counsel Did Not Call Available Witnesses In The Courtroom

As the record demonstrates, there were six people at the scene of the crime before the shooting: Sean Kammerer and his driver, Dejuan Jenkins arrived in the Kammerer's Jeep Cherokee. The appellant drove her Honda automobile to the scene accompanied by the victim, Jesse Ham, his friend, Kevin King, and her sister, Amanda

Fender. In the hours leading up to the shooting and in the hours following the shooting, Amanda accompanied the petitioner at every moment. She was there when the two of them initially came upon the four boys at around 7:00 p.m. She was there when the appellant drove back to Brandon's house and spoke to Brandon and David Hughey in Brandon's front yard. She was there when Kevin King and Jessie Hamm later joined them. She was there when the four—Tiffany, Amanda, Kevin and Jessie—drove to Publix/Tire Kingdom, and she was there when appellant left the scene without the two boys. She saw and heard everything, and she was in the courtroom available to testify. She has no criminal record, and she witnessed all of the events involving her sister on the night of the event. At the hearing before the P.C.R. judge on May 24, 2012, she testified that the four boys stopped them, not the other way around:

A. Well, we went to grab something to eat because our parents went out for their anniversary, and then we were riding around the neighborhood, and we got stopped by these guys walking and they said, come on to our house.

Q. Okay.

A. So when we got there they asked me, they all asked me if I could go get them some beer, and I told them no, because they were underage. They also asked me if I knew where I could get them any marijuana. I was, like, I don't do that kind of stuff. So I don't—I couldn't help. I told them I wouldn't—no.

Q. Okay. And--

A. Because they were drinking that night and—

Q. And did you ultimately end up at somebody named Brandon's house?

A. Yes, sir.

Q. Were there some people there shooting baskets, playing basketball?

A. Yes, sir, and they were drinking, but me and my sister didn't drink anything.

Q. You weren't drinking?

A. No.

Q. Were y'all shooting baskets with them?

A. No.

Q. Were you listening to music?

A. No.

Q. O.K.

Appendix pages 68-69 [tr. Pages 39-40]

This is critical testimony. It is critical testimony from a witness who was present at the petitioner's trial and available to be called. Amanda's testimony demonstrates that Tiffany had no plan, and more importantly, the four boys approached them! The State's entire theory of the case was based on speculation that because Tiffany knew Sean Kammerer was lying in wait for Jesse Hamm, that she delivered the victim to the scene of his death. However, there is not a scintilla of direct evidence of such a plan in the record, and Amanda Fender, who the State concedes is blameless and who is unimpeachable—except as being related to the defendant—was present every second of the tragic night that led to the death of Jessie Hamm. It is particularly disturbing that the defense did not call this witness, and the failure to do so is a demonstrable deviation from the minimum standard of practice. The failure to call Amanda critically

prejudiced the defendant, especially since Amanda confirms—just as Officer Hans saw—that Tiffany was not present at the time of the shooting:

Q. Okay. When you got to the Publix, did anybody get out of the car?

A. Kevin. He was real –he was real – like he knew something. He was like, let me out, let me out, you know. And then Jesse got out, and he said drive. So we left.

Q. You left?

A. Yes, sir.

Q. Where were you sitting then?

A. I was still in the back seat.

Q. Okay. And where did you drive or where did Tiffany drive?

A. We went past the churches and that's when we heard, you know, I guess shots, and I didn't know quite what it was, you know?

Q. All right. How far away from the boys were you when you heard those noises?

A. I know it was pretty – you know, it's pretty far because from the Publix to the Catholic church is like – I would say maybe a mile or two. It's that far away.

Q. All right. When the boys were in the car, did you see any guns?

A. No, sir.

Q. Did you hear them talk about any guns?

A. No, sir.

Q. Where did you go after you left; after you heard the noises where did you go?

A. We went to Brandon's house.

(Appendix at pages 71-72 [tr. 42-43])

This is critical testimony because it demonstrates the lack of a plan and the fact that Tiffany went back to Brandon's house. The State elicited the most crucial information on page 80 of the Appendix [tr. Page 51] when the State asked Amanda if she was aware of everything going on that night:

Q. Could you hear everything that was going on?

A. I know that Jesse got the phone from Tiffany and then after he got off the phone he said to take me up to Publix. So him and Kevin got in the car with us. Because we said were going to go home.

Even the State will concede this is crucial testimony. While it is exclusively the jury's province to choose how much to believe of any witness' testimony, it is indisputable that this is critical testimony, for it demonstrates that Tiffany took Jesse to Publix at his direction, rather than Tiffany having a plan to drive him there. If the jury had heard this testimony, it could acquit the appellant of the accessory charge **and** the murder charge, but the jury never had an opportunity to evaluate Amanda's credibility because petitioner's counsel failed to call her even though she was present in the courtroom. Moreover, all trial lawyers know that the failure to call an available witness leads to an adverse inference. See *Davis v. Sparks*, 235 S.C. 326, 111 S.E.2d 545 (1959): "Inference from the unexplained failure of a party to call an available witness that the testimony of such witness would have been unfavorable may be drawn only where, under all of the circumstances of the case, the failure to produce such witness

creates suspicion of a willful attempt to withhold competent testimony. Such suspicion is generally held not warranted where the material facts assumed to be within the knowledge of the absent witness have been testified to by other qualified witnesses." Amanda could have testified to facts that no other witness knew, especially in the critical moments leading up to the coincidental meeting with the four boys. The jury knew Amanda was on the scene, and thus it became critical to call her. While the trial court correctly charged the jury that the failure to call the defendant cannot be considered, this charge says nothing about failing to call eyewitnesses. Stated another way, it is impossible to build an alibi defense without taking some step to prove the alibi. Thus, the decision falls below the standard of practice, and the resulting prejudice to the appellant cannot be overstated. The State's entire case against Tiffany Sanders is built on inferences that are supported only by speculation. The State's eyewitness to the shooting, Officer Hans, testified that she saw only one vehicle—Sean's Jeep Cherokee. Thus, Amanda Fender's testimony would have been corroborated by the State's eyewitness. Thus the failure to call Amanda or make any effort to amplify Officer Hans' testimony doomed any chance of a defense and fell below the objective standard.

Argument III.

Trial Counsel deviated from the minimum standard of care in failing to cross-examine the one unbiased eyewitness to the crime. As the record on appeal

demonstrates, Officer Hans testified from pages 193 to 198, and, as quoted above, testified that she was an eyewitness to the shooting and saw the perpetrators flee in a Jeep Cherokee. It is a rare murder scene that includes an eyewitness, who at the time of her testimony, wore the uniform of a police officer. There is no doubt that the police officer's testimony was favorable to Tiffany Sanders because, as quoted above, she established beyond any question, that at the time of the shooting, Tiffany Sanders was not present. Thus there was no need to cross-examine the witness for purposes of impeachment, but the failure to examine her to reinforce the testimony she gave in direct was not only a critical blow to the defense, but also a clear deviation from the minimum standard of effective representation. Even a cursory cross-examination would amplify the officer's ability to see and hear the events at the exact moment Sean Kammerer was committing the offense and reinforce the point that the only vehicle in the vicinity at the time of the shoot was Sean Kammerer's Jeep Cherokee. The availability of Officer Hans to the defense was the most critical piece of the defense's theory of the case and would have paved the way to present Amanda Fender as the only other eyewitness to the events leading up to the crime. This is not a case in which the evidence of guilt is so overwhelming that counsel's failure to follow up on Officer Han's testimony is harmless. "An error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Thus, an insubstantial error not affecting the result of the trial is harmless where guilty has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *State v. Martin*, ___ S.C. ___, ___ S.E.2d. ___ (Ct. App. 2013, Opinion No. 5125) The evidence leading to the conviction of Tiffany Sanders is non-existent, being premised

only up inferences and speculation. Therefore, her lawyer's failure to follow up and amplify the evidence of her innocence offered by the State resulted in extreme prejudice to her defense and prevented her from receiving a fair trial.

The lower court brushed off this failure by rationalizing that "nature and scope of cross-examination is inherently a matter of trial tactics." (Order at page 8, Appendix at page 24). This is a correct statement of law, with which the petitioner has no quarrel. However, where the undisputed evidence in the record is that the eyewitness **saw** the murder and saw the participants, the failure to cross-exam her to emphasize this crucial point is well below the standard of care for effective representation. The P.C.R. court missed the legal issue. The Order under review recites: "Applicant failed to present Hans as a witness at the post-conviction relief hearing to establish whether beneficial information could have been elicited other than that obvious from a review of Hans' testimony on direct examination." (Order at page 8-9, pages 24-25 of Appendix) This is a correct statement of law and a correct statement of fact, but it misses the essential point of the petitioner's application. Officer Hans's testimony was crucial to the elements of the petitioner's defense of murder. She was not present. Officer Hans's testimony demonstrates that at the time of the murder, the petitioner was not present. At the post-conviction relief hearing, the petitioner did not need more evidence from Officer Hans—all she needed to demonstrate was that her trial counsel failed to follow up with a single cross-examination question that amplified and emphasized the Officer's critical defense testimony. As the trial transcript makes clear, Officer Hans offered the petitioner an alibi, and her trial counsel did not ask a single question to follow up or amplify. This failure is the deficient performance that

prejudiced the petitioner and prevented her from receiving anything close to a fair trial. The jury convicted the petitioner of murder despite Officer Hans establishing she was not present. Therefore, she was critically prejudiced by her counsel's failure to amplify and augment Officer Han's testimony.

CONCLUSION

In summary, it is impossible to look at the petitioner's trial counsel's failings and see them as anything other than a failure to conform to the minimum standard for competent and effective representation. In short, the petitioner was denied any meaningful opportunity to mount a defense and thereby deprived of her constitutional right to counsel. As may be seen by reference to the trial transcript being filed in the direct appeal filed simultaneously with this Petition for Certiorari, the State had insufficient evidence to get to a jury. With anything approaching a competent defense, the trial judge would have been more likely to grant a directed verdict, at least on the charge of murder. Instead, despite a record devoid of any evidence that the petitioner was present at the scene of the shooting at the time of the shooting, the trial court not only refused to grant a directed verdict, but also a jury convicted her of murder on the thinnest of evidence. It is impossible to look at the thin evidence in this case combined with the deficient performance of counsel and conclude anything other than this case represents a miscarriage of justice. For these reasons, this Court should vacate the sentence and remand the case for trial so that the petitioner can receive the benefit of a competent defense.

Respectfully submitted,

December 27, 2013

A handwritten signature in black ink, appearing to read "D. R. Cobb", written over a horizontal line.

Dale T. Cobb, # 1291
Thomas R. Goldstein, #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
Charleston, S. C. 29415-1121
(843) 554-4291
dtcobbblaw@hotmail.com

The Supreme Court of South Carolina

Tiffany Sanders, Petitioner,

v.

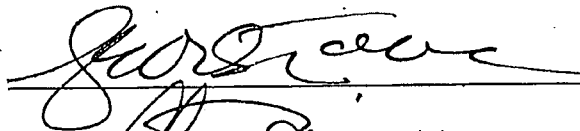
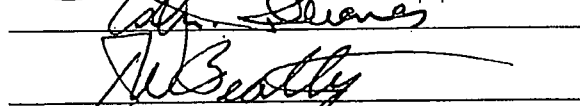
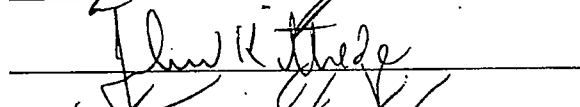
State of South Carolina, Respondent.

Appellate Case No. 2012-212858

Lower Court Case No. 2011-CP-18-01497

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

January 22, 2015

cc:

Dale T. Cobb, Jr., Esquire

Salley W. Elliott, Esquire

Thomas R. Goldstein, Esquire

000089

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Tiffany Sanders, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-212858
Lower Court Case No. 2011-CP-18-01497

Appeal From Dorchester County
The Honorable DeAndrea G. Benjamin, Circuit Court
Judge

Memorandum Opinion No. 2014-MO-049
Submitted December 9, 2014 – Filed December 17, 2014

AFFIRMED

Dale T. Cobb, Jr. and Thomas R. Goldstein, both of Belk
Cobb Infinger & Goldstein, P.A., of Charleston, for
Petitioner.

Senior Assistant Deputy Attorney General Salley W.
Elliott, of Columbia, for Respondent.

000090

PER CURIAM: Petitioner seeks a writ of certiorari from the denial of her application for post-conviction relief (PCR).

Because there is sufficient evidence to support the PCR judge's finding that petitioner did not knowingly and intelligently waive her right to a direct appeal, we grant certiorari on this issue, deny certiorari on petitioner's Questions I and II, and proceed with a review of petitioner's direct appeal issues pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).

Petitioner's conviction and sentence are affirmed pursuant to Rule 220(b)(1), SCACR, and the following authorities:

Issue I (directed verdict): Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001) ("On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State."); *State v. Langley*, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999) ("Under this theory [the hand of one is the hand of all], one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose."); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."); *State v. Cannon*, 49 S.C. 550, 555, 27 S.E. 526, 530 (1897) ("The common purpose may not have been to kill and murder, but if it was unlawful, as, for instance, to break in, and steal, and in the execution of this common purpose a homicide is committed by one, as a probable or natural consequence of the acts done in pursuance of the common design, then all present participating in the unlawful common design are as guilty as the slayer.").

Issue II (jury instruction): Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *State v. Mattison*, 388 S.C. 469, 697 S.E.2d 578 (2010) (holding a jury instruction is correct if it contains the proper definitions and adequately covers the law); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled

upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Collins*, 228 S.C. 537, 91 S.E.2d 259 (1956) (holding where the jury acquitted the appellants on one particular offense in the indictment, no prejudice resulted from the jury instructions for that offense).

AFFIRMED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Court of Common Pleas

Dianne S. Goodstein, Circuit Court Judge
(Trial)
Deandrea G. Benjamin, Circuit Court Judge
(PCR)

Case No. 2011-CP-18-1497

RECEIVED

JUN 17 2013

S.C. Supreme Court

Tiffany Sanders, ... Petitioner,

vs.

State of South Carolina Respondent,

APPENDIX

Salley W. Elliott
S. C. Attorney General
P. O. Box 11549
Columbia, S. C. 29211
(803) 734-0477
sellott@scag.gov
ATTORNEYS FOR RESPONDENT

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P. O. Box 71121
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N. Charleston, South Carolina 29415-1121
(843) 554-4291(843) 554-5566 (fax)
tgoldstein@cobbllaw.net
ATTORNEYS FOR PETITIONER

000093

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FORM 5

STATE OF SOUTH CAROLINA

County of DORCHESTER

IN THE COURT OF COMMON PLEAS

2007-GS-18-1206 / 2010-GS-18-0707

2011-CP-18- 1497

TIFFANY ANN SANDERS #342130

Full name and prison number (if any) of Applicant

v.

State of South Carolina

AMENDED
APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Camille Griffin, Columbia, SC
2. Name and location of Court which imposed sentence Court of General Sessions
Dorchester County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-18-0707

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) August 5, 2010 - 30 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 X
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed:
i. _____
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. _____
ii. _____
iii. _____
(c) the date of each such result:
i. _____
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
(a) I was not advised by my attorney that I had a right to appeal.

- (b) _____
(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) my attorney failed to call witnesses at trial
(b) my attorney failed to notify me of my right to appeal
(c) my attorney failed to cross examine Jessica Hans on the issue of my presence at the scene when the shots were fired.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED
(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? NO
(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. _____
ii. _____
iii. _____
iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
ii. _____
iii. _____

- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) All of these grounds deal with ineffective assistance of
- (b) counsel and they are only ripe now for consideration.
- (c) _____

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

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

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. Michael O'Neal

ii. _____

iii. _____

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

i. At trial & sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

Reversal & remand for a new trial.

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

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

Revised 2/2003
FILED - RECORD
AUG 18 PM 4:48
CHERYL DRAHNS
CLERK OF COURT
DORCHESTER COUNTY

I, Tiffany Ann Sanders, 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.

Tiffany Ann Sanders

SWORN to and subscribed before me this 8th
day of August, 2011.

Kelly K. Barnes (L.S.)
Notary Public

My Commission Expires August 12, 2015

My Commission Expires: _____

11. (a) - My attorney failed to investigate, interview or call as witnesses, Sean Kammerer, or Amanda Sue Fender.

Mr. Kammerer would have verified that I was not involved in any pre-arranged plot to bring Jesse Ham to a location for the purpose of having Mr. Kammerer murder Mr. Ham and would verify that Ms. Sanders was not present when any shots were fired.

Ms. Fender was present in the car with me the entire evening and would verify that no plans were made to take Mr. Ham to a pre-arranged location for the purpose of having him murdered. She also would have testified that at no time was a gun ever mentioned, and that we were over a mile from the crime scene when Mr. Ham was shot.

Ms. Hans would have indicated that she did not know who was in the Jeep Cherokee, and could not have testified that Ms. Sanders was at the scene when any shots were fired. She also did not see a Honda Accord after the shots were verified, and Ms. Sanders was driving a Honda Accord.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Tiffany Sanders, #342130,)

C.A. No. 2011-CP-18-1497

Applicant,)

v.)

RETURN

(Appointment of Counsel Requested)

State of South Carolina,)

Respondent.)
_____)

In response to the amended post-conviction relief application filed August 18, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Dorchester County Clerk of Court's orders of commitment. The Dorchester County Grand Jury indicted the Applicant at the May 2010 term of General Sessions for Murder (2010-GS-18-0707). Michael O'Neal, Esquire represented the Applicant. A Dorchester County jury convicted the Applicant of the charge as indicted. On August 5, 2010 the Honorable Diane Goodstein sentenced the Applicant to thirty (30) years imprisonment. The Applicant did not appeal the conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Dorchester County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. "My attorney failed to call witnesses at trial"
 - a. "My attorney failed to investigate, interview or call as witnesses, Sean Kammerer, or Amanda Sue Fender. Mr. Kammerer would have verified that I was not involved in any pre-arranged plot to bring Jesse Ham to a location for the purpose of having Mr. Kammerer murder Mr. Ham and would verify that Ms. Sanders was not present when any shots were fired. Ms. Fender was present in the car with me the entire evening and would verify that no plans were made to take Mr. Ham to a pre-arranged location for the purpose of having him murdered. She also would have testified that at no time was a gun ever mentioned, and that we were over a mile from the crime scene when Mr. Ham was shot. Ms. Hans would have indicated that she did not know who was in the Jeep Cherokee, and could not have testified that Ms. Sanders was at the scene when any shots were fired. She also did not see a Honda Accord after the shots were verified, and Ms. Sanders was driving a Honda Accord."
2. "My attorney failed to notify me of my right to appeal"
3. "My attorney failed to cross examine Jessica Hans on the issue of my presence at the scene when the shots were fired"

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

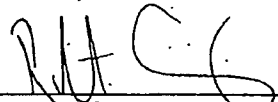
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

November 10, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

2011-CP-18-1497

TIFFANY SANDERS, 342130,)

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:

**Dale T. Cobb Jr., Esquire
Belk Cobb Infinger & Goldstein, PA
Post Office Box 71121
Charleston, SC 29415**

DATED this 10th day of November, 2011.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

WITNESSES

J. Jellico

North Charleston Police Department

07-024114

ARREST WARRANT NUMBER

K269532

Arrested: June 26, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE

9/4/08

Foreperson of Grand Jury

Date: September 08, 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007GS18-1206

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

September 08, 2008 TERM

THE STATE

vs.

Tiffany Ann Sanders

Indictment for

ACCESSORY BEFORE THE FACT TO A
FELONY

SC Code: 16-1-40

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

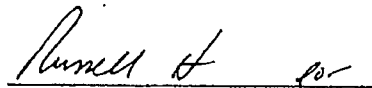
INDICTMENT
2007GS18-1206

At a Court of General Sessions, convened on September 08, 2008 the Grand Jurors of
Dorchester present upon their oath:

ACCESSORY BEFORE THE FACT TO A FELONY

That in Dorchester County, South Carolina, on or about June 8, 2007, the
Defendant, Tiffany Ann Sanders, did knowingly and unlawfully aid in the
commission of, abet, counsel, hire, or otherwise procure the commission of
Murder, by the principal, Sean Kammerer, and the defendant was not present
when the principal felony was committed; this offense being a violation of Section
16-1-40 of the South Carolina Code of Laws, as amended.

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



B. Bell, Solicitor

WITNESSES

J. Jellico

North Charleston Police Department

ARREST WARRANT NUMBER

2010DOR08

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

DATE 5/6/10

Foreperson of Grand Jury

Date: May 6, 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS18-0707

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

May 17, 2010 TERM

THE STATE

vs.

Tiffany Ann Sanders

Indictment for

MURDER

SC Code: 16-3-10

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

Defendant

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

Defendant

Witness:

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

CLERK OF COURT
DORCHESTER COUNTY

MAY -6 PM 10:41

RECORDED

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

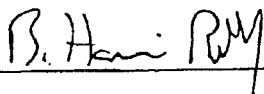
INDICTMENT
2010GS18-0707

At a Court of General Sessions, convened on May 17, 2010 the Grand Jurors of
Dorchester County present upon their oath:

MURDER

That in Dorchester County on or about June 8, 2007, with malice aforethought,
the defendant, Tiffany Ann Sanders did kill or aid, abet, assist, or join with Sean
Kammerer to kill Jesse Ham by means of shooting him. The victim did die as a
proximate result thereof. This offense being in violation of the Common Law and
Section 16-3-10, of the South Carolina Code of Laws, as amended.

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



Harrison Bell, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Dorchester

STATE

VS.

Tiffany Ann Sanders

INDICTMENT/CASE#:

2010GS18-0707

A/W#:

2010DOR08

AKA:

2011 AUG -3 PM 3:02

Date of Offense:

6/8/2007

Race:

Sex:

Age:

2010

S.C. Code §

16-3-10

DOB:

00-00-0000

SS#:

CDR Code #:

0116

Address:

DORCHESTER COUNTY

DL#:

SID#:

SENTENCE SHEET

CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was:

☒ CONVICTED OF or ☐ PLEADS

TO: Murder

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

0116

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(Defendant Initial)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

B. Harrison

TJ63

SC Bar#

Tiffany Ann Sanders

Attorney for Defendant

SC Bar#

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Dept. of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:

14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2895 (DUI Assessment)	\$12	\$
§ 56-1-288 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (If paid in installments)	\$	\$ 3.00
TOTAL	\$	\$ 177.00

Cheryl Graham
Clerk of Court, Deputy Clerk

Court Reporter:

B. Kelly

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Conditional Discharge § 44-53-450 (C) requires \$350 be paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (06/2010)

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

TIFFANY SANDERS, 342130,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-18-1497

**ORDER GRANTING WHITE V. STATE
REVIEW AND DISMISSING ALL
OTHER CLAIMS**

2012 AUG 3 PM 2:54
CERTIFIED COPY
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 3, 2011 and Amended Application filed August 24, 2011. The State made Return dated November 10, 2011. An evidentiary hearing into the matter was convened on May 24, 2012, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Dale T. Cobb, Jr., Esquire. The Respondent was represented by Salley W. Elliott, Senior Assistant Deputy Attorney General.

The Applicant and her trial attorney, Michael S. O'Neal, Esquire, testified at the hearing. Also testifying were Harrison Bell, Esquire, Applicant's mother, and Applicant's sister, Amanda Sue Fender. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Dorchester County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections.

pursuant to orders of commitment. The Dorchester County Grand Jury indicted the Applicant for Murder (2010-GS-18-0707) and Accessory Before the Fact of Murder (2010-GS-18-1206). Michael O'Neal, Esquire represented the Applicant. A Dorchester County jury convicted the Applicant of murder and acquitted her of the accessory charge. On August 5, 2010 the Honorable Diane Goodstein sentenced the Applicant to thirty (30) years imprisonment. The Applicant did not appeal the conviction or sentence.

Applicant alleges she is being held in custody unlawfully for the following reason:

1. "My attorney failed to call witnesses at trial"
 - a. "My attorney failed to investigate, interview or call as witnesses, Sean Kammerer, or Amanda Sue Fender. Mr. Kammerer would have verified that I was not involved in any pre-arranged plot to bring Jesse Ham to a location for the purpose of having Mr. Kammerer murder Mr. Ham and would verify that Ms. Sanders was not present when any shots were fired. Ms. Fender was present in the car with me the entire evening and would verify that no plans were made to take Mr. Ham to a pre-arranged location for the purpose of having him murdered. She also would have testified that at no time was a gun ever mentioned, and that we were over a mile from the crime scene when Mr. Ham was shot. Ms. Hans would have indicated that she did not know who was in the Jeep Cherokee, and could not have testified that Ms. Sanders was at the scene when any shots were fired. She also did not see a Honda Accord after the shots were verified, and Ms. Sanders was driving a Honda Accord."
2. "My attorney failed to notify me of my right to appeal"
3. "My attorney failed to cross examine Jessica Hans on the issue of my presence at the scene when the shots were fired"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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, 466 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, 466 U.S. at 668. "Where counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 634 S.E.2d 642 (2006). 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. Where counsel articulates a valid reason for employing a particular trial strategy, counsel's conduct will not be determined ineffective assistance of counsel Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006). This Court finds that all allegations with the exception of the appeal to be without merit and are denied and dismissed as set forth below.

Applicant first asserts that she received ineffective assistance of trial counsel for counsel's failure to investigate, interview, or call her co-defendant, Sean Kammerer, as a witness at her trial. Applicant testified at the evidentiary hearing that she discussed her co-defendant, Sean Kammerer, and the statement he gave to law enforcement authorities with counsel. She stated that Kammerer had entered a guilty plea by the time her case proceeded to trial and that counsel should have called Kammerer as a witness to verify her version of the facts. However, Applicant admitted that she and counsel discussed whether to use Kammerer as a witness and both decided that it would be best not to call him. Applicant also admitted that she did not know what Kammerer would have said had he been called as a witness and that she was engaging in speculation.

~~Trial counsel testified that Kammerer was represented by counsel for the majority of the~~
time counsel was preparing for Applicant's trial. Counsel did not interview Kammerer but reviewed his statement to law enforcement authorities in preparation for trial. Counsel stated that he and Applicant discussed whether to call Kammerer as a witness at trial but made a strategic decision not to call him as a defense witness because of the uncertainty of what he would say when he took the witness stand. Even had counsel interviewed Kammerer, there would still have been uncertainty as to what Kammerer would actually say when called to testify.

Counsel stated that ultimately he and Applicant made a strategic decision not to call Kammerer as a witness. Instead, counsel used Kammerer's absence to Applicant's advantage during the trial by contending to the jury that the State's failure to present Kammerer as a witness against Applicant indicates Kammerer would not have testified favorably for the State.

First, this Court finds that prejudice from trial counsel's failure to interview or call a witness cannot be shown where the witness does not testify at the post conviction relief hearing. Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witness' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant did not present Kammerer at the post-conviction relief hearing or properly establish his testimony in accordance with the rules of evidence. Therefore, the Applicant did not show prejudice from the failure of trial counsel in this regard.

Second, this Court finds that trial counsel articulated a valid strategic reason for not calling Kammerer as a defense witness based upon the uncertainty of what he might ultimately say when actually placed under oath on the witness stand. Counsel fully discussed this strategy with Applicant before trial and Applicant concurred. This was a legitimate concern and is one which was shared at the time by Applicant. This Court notes that it is still not known what

Kammerer would have said at trial. It is only now after conviction and the lack of success of the original trial strategy respecting Kammerer that Applicant and trial counsel are second-guessing the strategy originally employed. This Court will not second-guess defense counsel's reasonable trial tactic. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). As noted above, trial counsel articulated valid strategic reasons for not calling Kammerer as a defense witness and used Kammerer's absence from trial to Applicant's advantage. Applicant has not shown that counsel was deficient in that choice of tactic or that she suffered the requisite prejudice. The allegation is without merit and is denied and dismissed.

Applicant also contends that counsel should have investigated, interviewed and called her sister, Amanda Sue Fender, as a defense witness at trial to establish that Applicant was not involved in a pre-arranged plot to bring the victim to a location for the purpose of allowing co-defendant Kammerer to murder the victim. She also contends that Fender could establish that ~~Applicant was over one mile from the scene when gunshots were fired. Applicant acknowledged~~ that she spoke with counsel before trial about the possibility of using Fender as a defense witness but ultimately decided not to do so after speaking with her family and based upon Fender's mental limitations or special needs. Applicant stated that later during trial, she changed her mind and asked counsel about using Fender as a witness but was told by counsel that calling Fender ~~would be too risky.~~

Trial counsel testified that he spoke with Applicant's family and accepted the family's

assessment of Amanda's mental limitation and likely inability to benefit Applicant's defense during trial. He fully discussed this strategy with Applicant and she concurred. Counsel stated that Applicant family did not want Fender called as a witness. Fender's mother testified at the post-conviction relief hearing and acknowledged this decision. When asked about using Fender as a witness during the trial, counsel advised Applicant that it would be too risky at that point in the proceedings and that the information Fender could provide was available from other sources. Applicant's statement establishing the matters about which Fender would have testified was admitted as evidence at trial. This Court agrees and also notes that, based upon the initial discussions with Applicant and her family about Fender, counsel informed the jury that Fender would not testify at trial and acknowledged Fender's mental impairment.

This Court finds counsel's failure to call Fender as a witness was based upon reasonable, valid, trial strategy respecting concerns about Fender's abilities as a witness. It was also a strategy that was dictated initially by Applicant. Applicant thereafter changed her mind at a point when using Fender was not a beneficial option. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v.

State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Applicant has not shown that counsel was deficient in the choice of tactic respecting Fender. After hearing Fender's testimony at the post-conviction relief hearing, this Court finds that Fender would have offered little to alter the outcome of the trial in view of her relationship to Applicant, lack of credibility, and the manner and substance of her testimony. Fender conceded at the post-conviction relief hearing that she did not know the substance of the

conversations between Applicant and Kammerer and this Court finds that Fender's testimony about Applicant's location when gunshots were fired is simply not credible. Applicant failed to show that she suffered the requisite prejudice respecting the claim relating to Fender. The allegation is without merit and is denied and dismissed.

Applicant also complains that counsel was ineffective for failing to cross-examine State's witness Jessica Hans to establish that Hans did not see Applicant after she heard gunshots being fired at the scene. This Court finds the allegation to be without merit. At trial, Hans testified that as she was leaving her job at Publix for the night and heard several pops from another area of the parking lot. When she looked toward Tire Kingdom some distance away, Hans saw a person pointing and another person running. Hans also testified that the shooter ultimately ran away and disappeared. She testified that shortly thereafter, she saw a Jeep speed away. She did not remember seeing any other vehicle. Trial counsel testified that Hans did not have anything to offer on cross-examination because the information that was beneficial to Applicant was elicited on direct examination. Hans did not identify Applicant as being present in the Jeep and Hans did not see any other vehicles, including Applicant's Honda.

The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). Applicant failed to present Hans as a witness at the post-conviction relief hearing to establish whether beneficial information could have been elicited other than that obvious from a

review of Hans' testimony on direct examination.

This Court finds counsel engaged a valid and reasonable trial strategy in choosing not to cross-examine Hans when the information favorable to Applicant was elicited from Hans on direct examination. Applicant failed to establish that Hans could have offered any information favorable to the defense other than what was established in her direct examination. Cross-examination of Hans to have her repeat what has already been stated on direct examination would not have served a useful purpose in this case based upon the evidence presented at trial and the danger cross-examination can sometimes pose. This Court finds that counsel's strategy respecting further examination of Hans was reasonable and did not constitute ineffective assistance. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). The Applicant failed to establish there is a reasonable probability the result of the trial would have been different had counsel engaged in cross-examination of Hans. Instead, Applicant engages in pure speculation. See Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006) (stating applicant failed to meet his burden of proof when he failed to show that further investigation would have led to a different result).

Lastly, Applicant contends in her application that trial counsel failed to advise her of the right to appeal. At the post-conviction relief hearing, Applicant testified that counsel did not advise her of the right to appeal but conceded that the trial court advised her of the right to appeal after her conviction. She testified that members of her husband's family contacted another attorney about handling the direct appeal and that attorney wanted to review the trial transcript before proceeding with the appeal.

Trial counsel testified that he advised Applicant of the right to pursue an appeal but also advised her that she did not have meritorious grounds for a direct appeal. He stated that he did not advise Applicant about assistance that might be available to Applicant without cost from the South Carolina Office of Appellate Defense or the manner in which to pursue that assistance. Neither counsel nor Applicant indicated that Applicant might have qualified for this service at the time. Neither Applicant nor trial counsel stated that Applicant expressed to counsel a desire to appeal. The prosecutor in this case testified that he was contacted by another attorney the day after Applicant's conviction about the possibility of representing Applicant on appeal.

After conviction, trial counsel has a duty to make certain his client is aware of the right to appeal and give his or her judgment as to whether an appeal should be taken. In re Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991). If the post-conviction relief judge determines the Applicant did not freely and voluntarily waive the right to appeal, the applicant may petition the appellate court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

Based upon the testimony before it, this Court finds that, while Applicant was advised of ~~the right to appeal, there is no showing that she knowingly and voluntarily waived the right to~~ appeal. Therefore, Applicant is entitled to appellate review of direct appeal issues pursuant to White v State, 263 S.C. 110, 208 S.E.2d 35 (1974). Accordingly, Applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. at 110, 208 S.E.2d at 35; See Rule 243, SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d

60 (1986).¹ This Court cautions Applicant that she must appeal from this order to secure review.

CONCLUSION

Based on the foregoing, this Court finds and concludes that, other than the right to appellate review following conviction, Applicant has not established any constitutional violations or deprivations that would require this court to grant her application. Therefore, with the exception of a review pursuant to White v. State, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that a notice of appeal must be served within thirty (30) days from the receipt of notice of entry of this Order to secure the appropriate appellate review. The Applicant's attention is also directed to South Carolina Appellate Rule 243 for appropriate procedures after notice has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice;
2. Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 243 for the appropriate procedure for securing belated appellate review;

¹Even where the PCR judge makes this finding, the applicant must petition this Court for a White v. State review to secure the appropriate review of trial.

3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of July, 2012.


DEANDREA G. BENJAMIN
Presiding Judge
First Judicial Circuit

Columbia, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2011-CP-18-1497

Tiffany Sanders,	)	
	)	
Applicant,	)	
	)	
v.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	
	)	

May 24, 2012
Orangeburg, South Carolina

B E F O R E:

The Honorable Deandrea G. Benjamin, Judge

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

Dale T. Cobb, Jr.,
Attorney for the Applicant

Salley Elliott, Esquire
Attorney for the State

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E XWITNESS/DESCRIPTION PAGE NO.

EXCERPT OF PCR OF TIFFANY SANDERS

TESTIMONY:

Tiffany Sanders direct..... 4

Tiffany Sanders cross..... 17

Tiffany Sanders redirect..... 36

Amanda Fender direct..... 38

Amanda Fender cross..... 45

Linda Bremenour direct..... 54

Michael O'Neal direct..... 62

Michael O'Neal cross..... 77

Michael O'Neal redirect..... 85

Harrison Bell direct..... 90

Harrison Bell cross..... 91

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 92

1 THE COURT: Yes ma'am.

2 MS. ELLIOTT: Your Honor, the next case somewhat out of
3 order. Tiffany Sanders verses State, will be one of the
4 larger packets in the stack.

5 May it please the Court. Before you is the matter of
6 Tiffany Sanders verses State. Ms. Sanders was indicted in
7 May 2010 for murder and accessory before the fact of murder.
8 She proceeded to trial before Judge Goodstein and a jury.
9 Was found guilty of murder and was sentenced to 30 years on
10 August 5, 2010. She did not appeal. She filed timely
11 application for Post Conviction Relief. In the application
12 Ms. Sanders is alleging that she received ineffective
13 assistance of counsel on three grounds. First that counsel
14 failed to advise her of the right to appeal from the
15 conviction and sentence. Secondly, that counsel failed to
16 investigate or call Sean Kaminer (sp), who was the
17 co-defendant -- I'm probably mispronouncing it -- or Amanda
18 Sue Fender as witnesses to show that she was not involved in
19 a prearranged plot to bring the victim to the location of
20 the murder. She also asserts that Fender would have said
21 they planned -- no pre-arranged plan and that no gun was
22 discussed and actually the defendant was a mile away from
23 the scene of the shooting, and I'll ask Mr. Cobb to correct
24 me if I'm wrong in any of these assertions. And thirdly
25 that the attorney failed to cross-examine a state's witness,

1 Jessica Hahn (sp) on the defendant's presence at the scene
2 when the shots were fired. She's asserting that Kahn's
3 would have said she did not know who was in a Jeep Cherokee
4 that left the scene and could not identify the defendant at
5 the scene, and did not see the Honda Accord after the shots
6 were fired and the defendant was driving a Honda Accord.

7 It's my understanding those are the claims before the
8 Court today.

9 MR. COBB: That is correct, Your Honor.

10 THE COURT: All right. Are you ready to call your first
11 witness?

12 MR. COBB: We are, Your Honor. I would like to call
13 Ms. Tiffany Sanders.

14 THE CLERK: Place your left hand on the Bible and raise
15 your right. Could you state your name for the record?

16 MS. SANDERS: Tiffany Ann Sanders.

17 (WHEREUPON, Tiffany Sanders was
18 sworn to tell the truth.)

19 TIFFANY SANDERS - DIRECT EXAMINATION

20 BY MR. COBB:

21 Q Thank you. Now, you need to speak up now nice and loud
22 and clear so the Court can hear you and the court reporter
23 can hear you, and the Attorney General can hear you. Don't
24 just nod your head. You have to speak up. She can't pick
25 up a nod of the head, all right?

1 A Okay.

2 Q All right. Ms. Sanders, you were charged initially in
3 this offense with being an accessory to the murder of this
4 young man, Jesse; is that correct?

5 A Yes.

6 Q Initially, you were represented by a gentleman named
7 Milton Stratus?

8 A Yes.

9 Q And at some point you switched attorneys and hired Mr.
10 Michael O'Neal?

11 A Yes.

12 Q And you met with Mr. O'Neal and talked with him about
13 what happened that night; is that correct?

14 A Yes.

15 Q You told him where you were that night?

16 A Yes.

17 Q And who was with you that night?

18 A My sister Amanda.

19 Q Is she here in Court today?

20 A Yes, she is.

21 Q Could you please point to her in Court?

22 A She's sitting right there.

23 MR. COBB: Amanda, can you please stand up.

24 (Amanda stands.)

25 MR. COBB: Thank you.

1 BY MR. COBB:

2 Q Is she your sister?

3 A She is.

4 Q Is she older or younger?

5 A She's older.

6 Q What were y'all doing that night?

7 A We were riding around. We had went out to grab a bit
8 to eat. My parents had went out to celebrate their
9 anniversary.

10 Q Anniversary?

11 A Yes, sir.

12 Q And did you run across some people that you knew?

13 A Yes, sir.

14 Q And ultimately did any of those people get in the car
15 with you?

16 A Yes. Towards the end of the night they did.

17 Q Whose car was this?

18 A It was my car.

19 Q What kind of car was it?

20 A It was a Honda Accord.

21 Q It was not a Jeep Cherokee?

22 A No, sir.

23 Q What color was it?

24 A It was blue.

25 Q And where were you when these people got in the car

1 with you?

2 A We were in front of Brandon's house in our
3 neighborhood.

4 Q Now, who is Brandon?

5 A He's an affiliate, I guess you could say.

6 Q All right. And for the Court's purposes, where were
7 you, is this in South Carolina, where were you?

8 A In North Charleston.

9 Q In North Charleston. Okay. And who was it got in the
10 car with you?

11 A Jesse and his friend, Kevin.

12 Q Jesse and Kevin?

13 A Uh-huh. (Affirmative response.)

14 Q Did you know these two boys?

15 A No, sir.

16 Q So in the car now are Jesse, Kevin, you and Amanda?

17 A Yes, sir.

18 Q And why did they get in the car with you?

19 A Because they wanted me to take them up there to the
20 Publix parking lot to meet Sean.

21 Q Publix where?

22 A In North Charleston on Dorchester Road.

23 Q Okay. And they wanted to go to the Publix to meet who?

24 A Sean Kaminer (sp).

25 Q Sean Kaminer. And did you give them a ride?

- 1 A Yes, sir.
- 2 Q When you got to the Publix what time of day or night
- 3 was this?
- 4 A I would say it was around 10:00 at night.
- 5 Q 10:00 at night, and you were driving?
- 6 A Yes, sir.
- 7 Q Where was Amanda?
- 8 A Amanda was sitting in the back seat.
- 9 Q And where was Jesse?
- 10 A He was sitting in the passenger seat.
- 11 Q And where was Kevin?
- 12 A He was in the back seat.
- 13 Q All right. Did anybody get out of the car?
- 14 A Yes, sir. Brandon did -- Kevin did.
- 15 Q Kevin did. Did anybody else get out of the car?
- 16 A Jesse did.
- 17 Q All right. Did you see anybody at the Publix?
- 18 A No, sir.
- 19 Q Did you see Sean Kaminer?
- 20 A I seen a body, but I could not make out that it was
- 21 him.
- 22 Q Okay. And what did you do after Jesse and Kevin got
- 23 out of the car?
- 24 A He told me to drive?
- 25 Q He told you to drive, and did you do that?

1 A Yes, sir.

2 Q If you're looking at the publix from the front of the
3 building, where were you parked?

4 A If you're looking at the front of the building I was
5 parked on the right side in front of the Tire Kingdom.

6 Q Okay. Were parked facing in or backed in?

7 A I was backed in.

8 Q Did you happen to see whether or not there was a Jeep
9 Cherokee anywhere near your Honda Accord?

10 A No, sir.

11 Q Thank you. And when Jesse said drive, you pulled out?

12 A Yes, sir.

13 Q And who else was still in the car with you?

14 A My sister.

15 Q And which way did you go?

16 A I went to the left and when I pulled out the parking
17 lot I took another left and there's a back street that goes
18 down in our neighborhood.

19 Q And where were you heading?

20 A Home.

21 Q Home. And how far did you get before you heard
22 anything?

23 A On the back street, there's two churches. I got next
24 to the Jehovah Witness Church and I heard something that
25 sounded like a fireworks.

1 Q And did you go back?

2 A No, sir. I went to Brandon's and told Brandon
3 something had happened and picked him up to go up there with
4 me to see what happened?

5 Q And did you go back?

6 A Yes, sir.

7 Q And did you see anything?

8 A No, sir.

9 Q Where did you go after that?

10 A I took Brandon back home and took me and my sister back
11 home.

12 Q And you went back home?

13 A Yes, sir.

14 Q That night did you see either Jesse or Kevin with a
15 gun?

16 A No, sir.

17 Q Did Kevin or Jesse talk about having a gun?

18 A Yes, sir. On my way up to take them to --

19 MS. ELLIOTT: Your Honor, I'm going to object to
20 hearsay.

21 MR. COBB: Well, it goes to her state of mind, Your
22 Honor, whether or not she had any prior knowledge. She's
23 being charged with being an accessory. She would have to
24 know whether or not she was becoming involved in an
25 altercation.

1 THE COURT: I'm going to sustain the objection.

2 BY MR. COBB:

3 Q Did you see any guns?

4 A No, sir.

5 Q When you got up there did you see any guns?

6 A No, sir.

7 Q Did you see anybody involved in any kind of a fight?

8 A No, sir.

9 Q Did you see anybody involved in any kind of altercation
10 whatsoever?

11 A When Kevin got out of the car, I seen somebody push
12 him.

13 Q You saw somebody push --

14 A Kevin.

15 Q -- Kevin?

16 A Yes, sir.

17 Q But other than that you did not see anybody hit anybody
18 --

19 A No, sir.

20 Q -- certainly did not see anybody shoot anybody?

21 A No, sir.

22 Q Okay. Did you have any plans with Sean Kaminer?

23 A No, sir.

24 Q Let me finish. Did you have any plans to bring anyone
25 up to Sean Kaminer for him to be involved in a fight?

- 1 A No, sir.
- 2 Q Did you have any plans with Sean Kaminer for him to do
- 3 bodily harm to anyone?
- 4 A No, sir.
- 5 Q Did you have any plans with Sean Kaminer for him to
- 6 shoot anyone?
- 7 A No, sir.
- 8 Q Amanda has some special needs doesn't she?
- 9 A Yes, sir.
- 10 Q Okay. She was in your charge that night?
- 11 A Yes, sir.
- 12 Q Would you have taken her with you that night if that's
- 13 what you were involved in?
- 14 A No, sir.
- 15 Q Now, before you went to trial, were you aware that Sean
- 16 had entered a guilty plea to murder?
- 17 A Yes, sir.
- 18 Q Did Sean testify for or against you at your trial?
- 19 A He was not there.
- 20 Q Okay. Did you discuss with either of your lawyers
- 21 about getting a statement from Sean?
- 22 A Michael did.
- 23 Q Okay. You knew that Sean had given a statement to
- 24 police; did you not?
- 25 A Yes, sir.

1 Q And that statement did not involve you?

2 A Correct.

3 Q Now, when you went to trial did you talk to your
4 attorney about having Amanda testify?

5 A Yes, sir.

6 Q Okay. Do you know what, do you remember what his
7 response was?

8 A That with her, with her abilities that it was kind of a
9 toss-up, just because of her mental issues.

10 Q Okay. Did he come and talk to her before trial?

11 A No, sir.

12 Q To your knowledge, did he go and talk to Sean before
13 trial?

14 A No, sir.

15 Q Now, after you were convicted and sentenced that day,
16 did he talk to you about filing an appeal?

17 A No, sir, not to me. After that, I didn't hear anything
18 from him.

19 Q Okay. That day?

20 A That day or afterwards.

21 Q Or afterwards?

22 A No, sir.

23 Q Did you contact him?

24 A No, sir.

25 Q All right. So you had not talked to him from that point

1 on about your conviction, your sentence or whether or not --

2 A No, sir. He told my family that he was supposed to
3 come visit or he was supposed to write, but he never came.

4 Q So you haven't spoken to him about an appeal?

5 A No, sir.

6 Q Did anyone from the bench or anyone from the court
7 system explain to you that you had a right to appeal your
8 conviction and sentence.

9 A The judge did.

10 Q The judge -- when?

11 A After I was convicted.

12 Q And what did the judge tell you?

13 A She said we had the right to appeal her decision.

14 Q All right. But you didn't know how to do that?

15 A No, sir.

16 Q You didn't know what you had to do to appeal it?

17 A No, sir.

18 Q You didn't know how much time you had?

19 A Correct.

20 Q You didn't know what forms to file?

21 A Correct.

22 Q Now, there was a witness who was a police officer who
23 worked at Publix named Jessica Hahn; is that right?

24 A Yes.

25 Q Who testified that she saw the shooting and then saw a

1 Jeep Cherokee leave the location; right?

2 A Correct.

3 Q Did Mr. O'Neal ask her any questions?

4 A No, sir.

5 Q She did not indicate in her testimony whether or not
6 she saw who was driving that vehicle; right?

7 A Correct.

8 Q Or who was in that vehicle?

9 A Correct.

10 Q She did not testify that she saw a blue Accord --

11 A Right.

12 Q -- did she?

13 A No, she didn't.

14 Q She was not asked whether or not she saw a blue Accord?

15 A No.

16 Q Had she been asked, she could have potentially said she
17 did not see it because you had already left?

18 MS. ELLIOTT: Objection. Speculation.

19 THE COURT: Sustained.

20 MR. COBB: Okay.

21 BY MR. COBB:

22 Q When you came back to the scene with Brandon and Amanda
23 you did not see anything in the parking lot; right?

24 A No, sir.

25 Q So you did not call 911 or the police because you did

1 not see anything?

2 A Correct.

3 Q You took Brandon home?

4 A Yes, sir.

5 Q And then you went home?

6 A Yes, sir.

7 Q So you weren't aware that an actual shooting had taken

8 place until you were questioned by the police later on; is

9 that correct?

10 A Correct.

11 Q So the nature of your post-conviction application is

12 that Amanda could have verified your testimony, right?

13 A Yes, sir.

14 Q And she was never questioned?

15 A Yes, sir.

16 Q And never testified?

17 A Yes, sir.

18 Q Sean Kaminer could have verified your testimony?

19 A Yes, sir.

20 Q And was never questioned?

21 A Yes, sir.

22 Q And never testified?

23 A Yes, sir.

24 Q And Jessica Hahn was never cross-examined on the issue

25 of whether or not she saw, as a police officer, you actually

1 there at the parking lot at the time of the shooting?

2 A Yes, sir.

3 Q And you were unaware of what you had to do to file an
4 appeal?

5 A Yes, sir.

6 Q Is there anything else that you want to add for the
7 Court?

8 A No, sir.

9 Q You're sure?

10 A (Nods head in the affirmative.)

11 Q All right. Please answer any questions that the
12 Attorney General may have for you.

13 TIFFANY SANDERS - CROSS-EXAMINATION

14 BY MS. ELLIOTT:

15 Q Hi, Ms. Sanders. I just have a few questions for you.
16 Your claims are, basically you're saying that your
17 allegations -- your claims against your attorney are that he
18 didn't cross-examine Hahn, but we don't know what she would
19 have said; isn't that true?

20 A Yes, ma'am.

21 Q And he could have presented Mr. Kaminer, am I
22 pronouncing that right?

23 A Kaminer. Yes, ma'am.

24 Q Kaminer, as a witness, but we don't know, actually,
25 what he would have said if he'd gotten up and testified

1 would we?

2 A No, ma'am.

3 Q And we also don't know what your sister would have
4 said, actually, if she had gotten up and testified and what
5 she would have said on cross-examination by the solicitor,
6 do we?

7 A Yes, ma'am, we do?

8 Q She didn't testify, though, did she?

9 A No, ma'am.

10 Q Okay, so you don't know actually what would have come
11 out at trial had she testified?

12 A No, ma'am.

13 Q So that's all basically just speculation at this point,
14 is that correct?

15 A Yes, ma'am.

16 Q Prior to your trial, did you also spoke to the other
17 prosecutor, the prosecutor who was prosecuting Mr. Kaminer;
18 is that correct?

19 A Yes, ma'am.

20 Q In preparation in possibly testifying for the state in
21 his trial?

22 A Yes, ma'am.

23 Q And describe for him what transpired that night?

24 A Yes, ma'am.

25 Q You also gave a statement to the police about happened

1 that night?

2 A Yes, ma'am.

3 Q And in your statement, I believe that statement was
4 actually read out during the trial; is that correct?

5 A Yes, ma'am.

6 Q And in that statement you told law enforcement officers
7 that Mr. Kaminer called and basically asked you to bring the
8 victim up to Publix; isn't that correct?

9 A Yes, ma'am.

10 Q And that is what you did; isn't that correct?

11 A Yes, ma'am.

12 Q In fact, you saw the boys, left the area where they
13 were standing and came back to ask the victim, Mr. Ham, to
14 come with you up to McDonald's; is that correct?

15 A No, ma'am.

16 Q That's not correct?

17 A That's not why I came back.

18 Q Why did you come back?

19 A Because recently my mother had a fall, and there was a
20 friend at the house when she fell, and Brandon had contact
21 with this guy.

22 Q Why did you ask for the victim and his friend to come
23 out from the backyard?

24 A I didn't ask for them to come out.

25 Q And why did you insist that they come with you to

1 McDonald's?

2 A I didn't insist. They got in the car. He made his
3 own decision to come up.

4 Q Why did you tell him there was a girl at McDonald's, a
5 cute girl, a good looking girl that wanted to see him at
6 McDonald's and try to get him to go with you up to that
7 area?

8 A I did not tell him that.

9 Q And why did all the other witnesses testify to this
10 consistently at the trial; isn't that correct?

11 A Not all of them.

12 Q All the witnesses who were there at the time that you
13 were insisting that the victim get in the car with you, did
14 they not?

15 A No.

16 Q No, but if the transcript shows otherwise, you don't
17 dispute that do you?

18 A No, ma'am. You just said all of them.

19 Q All the four boys, the three boys who were still
20 living?

21 A Yes, ma'am.

22 Q Okay, and they all said that, did they not?

23 A Yes, ma'am.

24 Q And you were on your cell phone during this entire
25 period of time, on and off, were you not?

1 A Yes, ma'am.

2 Q And you were on your cell phone with Mr. Kaminer were
3 you not?

4 A Yes, ma'am.

5 Q And you had known Mr. Kaminer for some time?

6 A Yes, ma'am.

7 Q And at one point, you and he were girlfriend and
8 boyfriend?

9 A No, ma'am.

10 Q Did you not tell Mr. Sorenson that?

11 A He was not my boyfriend.

12 Q Y'all were obviously friends enough to be on the cell
13 phone constantly that night; were you not?

14 A Yes, ma'am.

15 MS. ELLIOTT: One moment, Your Honor.

16 BY MS. ELLIOTT:

17 Q All right. And the three boys who lived testified that
18 you persisted for about 15 minutes trying to get the boy who
19 was the victim to get in the car with you; isn't that
20 correct?

21 A Yes, ma'am.

22 Q And that once he got in the car with you, you drove up
23 to the McDonald's, circled it and then went into the back
24 behind Tire Kingdom; is that correct?

25 A Yes, ma'am.

1 Q And you backed into a wooded area at Tire Kingdom;
2 isn't that correct?

3 A Yes, ma'am.

4 Q And didn't Kevin ask you to move the car to some area
5 that was more lighted?

6 A There was light in that area.

7 Q But you didn't move the car did you?

8 A No, ma'am.

9 Q You backed into the woods, towards the woods?

10 A Yes, ma'am.

11 Q And as Kevin got out of the car, Mr. Kaminer was there
12 at the door with a gun; isn't that correct?

13 A He was not at the door, and I do not know that he had a
14 gun in his hand.

15 Q And didn't he shoot between Kevin's legs as Kevin was
16 getting out of the car?

17 A No, ma'am.

18 Q And did Kevin run away?

19 A No, ma'am.

20 Q He didn't run away?

21 A I don't know that.

22 Q Well, then, how did the victim get out of the car,
23 because he got out second. How did the victim get out of
24 the car if there was somebody standing at the door and the
25 testimony from trial is that they were shooting between that

1 individuals legs, Kevin's legs, and the victim got out after
2 Kevin. How did you drive off with Kevin still -- I mean,
3 with the victim, then, still in the car?

4 A He was not in the car. He was out of the car. I don't
5 even know if he closed the car door.

6 Q Well, did you drive off with the door open?

7 A Ma'am, I don't even remember. I just remember being on
8 the back lane.

9 Q You knew from prior conversations in your associations
10 with Mr. Kaminer that there was bad blood between Mr.
11 Kaminer and the victim; did you not?

12 A I do not know of it being him.

13 Q Well, you said in your statement that you knew that the
14 victim had beaten Mr. Kaminer with a bat; isn't that
15 correct?

16 A The next day I was able to put two and two together.

17 Q Well, you knew that the co-defendant was asking you to
18 find out who he was at that house, find out if that's Mr.
19 Ham. Bring him up to the area where he was ultimately shot.
20 You knew that was going on. You made a big effort to find
21 out who he was before he got in the car with you; isn't that
22 true?

23 A I did not make a big effort.

24 Q You found out what his name was?

25 A Yes, ma'am.

1 Q And you persisted to find out what his name was because
2 he wasn't telling you initially, was he?

3 A No, ma'am, he told me.

4 Q And once you knew who he was you took him up to Tire
5 Kingdom to Sean Kaminer; did you not?

6 A Yes, ma'am.

7 Q At Sean Kaminer's request; correct?

8 A Well, it was his decision. He got on the phone, as
9 well, with Sean Kaminer.

10 Q Knowing there was bad blood, knowing there had already
11 been a weapon involved in a prior altercation; isn't that
12 correct?

13 A Yes, ma'am.

14 Q After you drove off, I believe the testimony at trial
15 was, Mr. Kevin got out of the car. As he was exiting with
16 one foot on the pavement, the defendant ran up, pointed the
17 gun at him, shot -- Kevin knocked his hand down, shot
18 between Kevin's legs. Kevin ran off. Then the victim get's
19 out of the car; correct?

20 A No, ma'am.

21 Q And runs off as the co-defendant is shooting him down;
22 isn't that correct?

23 A No, ma'am.

24 Q Why, what do you mean that's not correct?

25 A That's not how it was.

1 Q What was it?

2 A Brandon -- Kevin wanted to get out of the car. Brandon
3 -- Kevin got out of the car, and at that time Jesse was
4 hanging out of the car messing with my radio. Out of the
5 corner of my eye I seen somebody come up and push Kevin.
6 That's when Jesse looked at me and Jesse told me to drive
7 and go out the vehicle, and that's when I took off.

8 Q And there were gunshots before you took off; isn't that
9 correct?

10 A No, ma'am.

11 Q You left, went back to Brandon's house where you
12 initially saw the four young men; isn't that correct?

13 A Yes, ma'am.

14 Q Got Brandon in the car, your car, and drove back to the
15 area?

16 A Yes, ma'am.

17 Q You didn't go to Tire Kingdom where all this happened,
18 did you?

19 A No. He told me not to go up there.

20 Q He -- why would he know where to do? You drove him
21 around McDonald's, didn't you and then you left?

22 A He asked where we was parked at. Brandon did. I told
23 him where we was parked at. He said, don't go up there. He
24 said, we can see from here.

25 Q Well, what did you tell Brandon?

1 A I said, I think something happened. On the back street
2 I heard something that sounded like fireworks. I've never
3 heard a gunshot go off. So I couldn't tell him that was a
4 gunshot or not.

5 Q Well, you don't know where that happened. You said you
6 weren't even there so how would you even know where it was?

7 A When I was on the back street, that's when I heard a
8 pop.

9 Q But you don't know where the pop came from, according
10 to your testimony today; is that correct?

11 A Correct, but earlier in that night when I drove up
12 there, Jesse had asked me to go take him to his house to get
13 a gun, and I told him no.

14 MS. ELLIOTT: Your Honor, I move to strike that as
15 non-responsive.

16 MR. COBB: No objection.

17 THE COURT: All right.

18 BY MS. ELLIOTT:

19 Q And so where were you exactly when you heard what you
20 say were pops?

21 A Right next to the Jehovah Witness church.

22 Q Okay. You were close enough to hear the gun fire,
23 then?

24 A Yes, ma'am.

25 Q According to your testimony. You told -- during trial

1 your statement was admitted as evidence; is that correct?

2 A Yes, ma'am.

3 Q And during -- and in your statement you said that
4 basically, that Sean ran up to Kevin, pushed him and Jesse
5 said to you, go, and you drove, correct. That you didn't
6 have any knowledge of the gun being present to take a life
7 until you heard the shots; is that correct?

8 A Yes, ma'am.

9 Q So that information was presented to the jury through
10 your statement?

11 A Yes, ma'am.

12 Q Already?

13 A Yes, ma'am.

14 Q And you -- the only knowledge you have is that Sean
15 wanted to fight Jesse?

16 A Yes, ma'am.

17 Q And that's what you told the police and that's what's
18 in your statement; correct?

19 A Yes, ma'am.

20 Q Because Sean -- because Jesse had beaten Sean in the
21 head with a baseball bat?

22 A Yes, ma'am.

23 Q You knew all that?

24 A After that night.

25 Q You knew all that that night?

1 A I did not know about Jesse, specifically.

2 Q Well, you knew that Sean was wanting to fight with
3 Jesse?

4 A Yes, ma'am.

5 Q And you knew weapons had been used before; correct?

6 A Yes, ma'am.

7 Q And what mental incapacitation does your sister have?

8 A My sister, she's 33 and she's mentally 16 year old, 15
9 year old.

10 Q Okay, and you talked to your attorney about whether or
11 not to use her as a witness; is that correct?

12 A Yes, ma'am.

13 Q Basically, she would have said she was riding with you
14 during these events?

15 A Yes, ma'am.

16 Q And that you heard -- and that issue was discussed with
17 your family as well?

18 A Yes, ma'am.

19 Q And wasn't it decided that it would be best not to use
20 her testimony?

21 A She was still -- as far as a witness, on the witness
22 list.

23 Q Right, and then ultimately y'all decided not to use her
24 as a witness during trial; isn't that correct?

25 A Yes, ma'am.

1. Q And that was an issue that was discussed with you and
2 your family; is that correct?

3 A I wouldn't say it was discussed. She was never called.

4 Q Well, didn't you lawyer tell you why he didn't think it
5 would be a good idea to call her as a witness?

6 A Not that day. We discussed prior why he wouldn't.

7 Q Okay, and during his opening arguments to the jury
8 didn't he say that she was present in Court, but wouldn't be
9 -- but wouldn't testify because of her mental impairment?

10 A I didn't remember that, ma'am.

11 Q Well, if it's in the transcript, you don't dispute it?

12 A No, ma'am.

13 Q And if that were not true wouldn't you have discussed
14 that with your lawyer when you heard that?

15 A Yes, ma'am.

16 Q So y'all had discussed whether she would testify and it
17 was agreed that it would be best for her not to?

18 A I'm guessing so.

19 Q It's just now you wish you had called her because the
20 result for you was not so good; is that correct?

21 A Yes, ma'am.

22 Q You'd like to have a re-do?

23 A Yes, ma'am.

24 Q And call her now because you think, hope it might would
25 make a difference?

1 A Yes, ma'am.

2 Q But at the time it was a matter of strategy between you
3 and your attorney about how the trial should proceed; isn't
4 that correct?

5 A Yes, ma'am.

6 Q But it just didn't go as you had hoped?

7 A No.

8 Q Okay. And you also discussed with your attorney
9 whether or not Mr. Kaminer should be produced as a witness
10 for the defense; is that correct?

11 A Yes, ma'am.

12 Q And was it that -- that also discussed that it might
13 not be a good idea to do that because you don't have any
14 control over what he may say once he gets on the witness
15 stand; is that true?

16 A Yes, ma'am.

17 Q And it was decided, again, as a matter of trial
18 strategy, that it would be best not to call Mr. Kaminer
19 because there is no control and you don't know what's going
20 to happen?

21 A Yes, ma'am.

22 Q But now that you've gone to trial and the result is not
23 as you had hoped, you now wish you had called him just to
24 see if it would make a difference?

25 A Yes, ma'am.

1 Q Okay, but we don't know what he would have said,
2 correct?

3 A Correct.

4 Q And you made a decision not to testify at trial; is
5 that correct?

6 A Yes, ma'am.

7 Q And that was after discussions with your attorney?

8 A Yes, ma'am.

9 Q And after you were questioned by the trial court?

10 A Yes, ma'am.

11 Q Okay, and you made the knowing and voluntary decision
12 not to testify?

13 A Yes, ma'am.

14 Q And present any of this information?

15 A Yes, ma'am.

16 Q Because your statement was already in evidence, and
17 your statement said you didn't know anything about the gun?

18 A Yes, ma'am.

19 Q So as a matter of trial strategy it was decided that
20 your defense would be presented through your statement; is
21 that correct?

22 A Yes, ma'am.

23 Q Okay. What was the timing between the shots; do you
24 know?

25 A I would say one went pow, and then probably two quick

1 ones and then another one.

2 Q Okay. So in pretty close succession; is that correct?

3 A Yes, ma'am.

4 Q Okay. All right. And in your discussions -- Mr.
5 Kaminer pled guilty before your trial; isn't that correct?

6 A Yes, ma'am.

7 Q And you -- he is the one who told you where to go that
8 night once you got up to the shopping area?

9 A No, ma'am.

10 Q Did you not tell that to the prosecutor that prosecuted
11 Mr. Kaminer?

12 A No, ma'am.

13 Q That Sean directed you where to go?

14 A No, ma'am.

15 Q Well, how did you know where to go?

16 A I didn't.

17 Q You just happened to pull into that parking spot?

18 A Yes, ma'am.

19 Q Just happenstance?

20 A Yes, ma'am.

21 Q But didn't your statement say that Sean asked you to
22 bring Jesse up to Publix?

23 A Yes, ma'am.

24 Q Okay. And that was a true statement, was it not?

25 A Yes, ma'am, but he didn't tell me where to park.

1 Q Oh, well, excuse me. But he told you where to go, to
2 go up to the Publix area; isn't that right, and you were on
3 the cell phone with him, as you got to the shopping center
4 you were on the cell phone with him?

5 A Yes, ma'am.

6 Q And you were going to drive between that little
7 driveway between the Publix and the other buildings, but it
8 was locked was it not?

9 A No, ma'am. I wasn't going to drive back there.

10 Q You weren't going to drive back there, but you said,
11 okay, when you were on the cell phone, okay, I'll go that
12 way, something like that?

13 A No, ma'am.

14 Q You did not? You deny that?

15 A Yes, ma'am.

16 MS. ELLIOTT: Your Honor, if I may have a moment?

17 THE COURT: Yes, ma'am.

18 BY MS. ELLIOTT:

19 Q Now, your sister, Amanda. I know you said she
20 functions as a -- what age?

21 A I would say a 15 years old.

22 Q A 15 year old. What other impediments does that cause
23 as far as memory or ability to comprehend?

24 A I would say that's more of a social skills, her
25 educational skills I wouldn't really put a gap on that.

1. Q So you don't really know. If I may ask you, too, in
2 closing argument your attorney made a lot of hay, I guess
3 maybe is not the right word, your attorney argued over and
4 over again to your advantage that had the state wanted to
5 present evidence against you some of the good evidence would
6 have come from Sean Kaminer; is that correct, about your
7 knowledge and your participation?

8 A I'm sorry, could you repeat that, please?

9 Q Okay. In the jury closing argument, didn't your
10 attorney point out that the state failed to present Sean
11 Kaminer as a witness?

12 A Yes, ma'am.

13 Q And that that might have been something beneficial for
14 the state?

15 A I don't believe that was his argument.

16 Q Wasn't he arguing to your benefit the fact that Sean
17 Kaminer was not present at trial and he did not testify.
18 Did he use that to your benefit in his closing argument?

19 A Yes, ma'am.

20 Q So it might have been a good thing that Sean wasn't
21 there if you were able to use it to your advantage during
22 closing argument; correct?

23 A Yes, ma'am.

24 Q And did not Andy Savage's law firm contact the
25 solicitor's office about an appeal for you?

1 A I believe so. That was in the talks of hiring Andy
2 Savage, but from my understanding the solicitor's office
3 told him that there was no other vehicle used. So Andy
4 Savage did not want to take on my case without getting the
5 transcripts.

6 Q Okay. So you made a decision not to appeal because you
7 would have to pay for the transcripts?

8 A No, not because of that, because we placed the order
9 quickly to get them as soon as we could.

10 Q Okay. So you knew about the appeal and you had already
11 ordered the transcripts?

12 A This was a couple of days after we didn't hear from
13 Michael O'Neal.

14 Q Okay, and a decision was made by Mr. Savage that you
15 didn't have any grounds for appeal in the transcript?

16 A That's not his decision. His decision is he felt that
17 he needed to see the transcripts before he took on the case.

18 Q Okay. So you knew you had the right to appeal,
19 obviously?

20 A After my family got involved.

21 Q And did not appeal?

22 A Correct.

23 Q Okay. You consulted other counsel and did not appeal?

24 A Yes, ma'am.

25 Q Okay. And didn't Ms. Hahn's testify that she saw the

1 Jeep Cherokee leave, but to her recollection she doesn't
2 remember seeing any other vehicles?

3 A Yes, ma'am.

4 MS. ELLIOTT: One moment, Your Honor.

5 That's all I have, Your Honor.

6 THE COURT: All right. Yes, sir, anything else?

7 MR. COBB: Yes, Your Honor.

8 TIFFANY SANDERS - REDIRECT EXAMINATION.

9 BY MR. COBB:

10 Q Ms. Sanders, Kevin was a friend of Sean Kaminer, too,
11 wasn't he?

12 A I believe so.

13 Q They had been friends for a while?

14 A That's what they said.

15 Q And Kevin had a cell phone that night, too?

16 A Yes, sir.

17 Q. And he was on the phone with Sean, wasn't he?

18 MS. ELLIOTT: Your Honor, I object. She has no basis
19 to know that. It's totally hearsay.

20 BY MR. COBB:

21 Q Kevin was directing you to go to that particular
22 location, was he not?

23 A Kevin wasn't.

24 Q When you say that Andy Savage was talking about an
25 appeal, did you talk directly to Andy Savage?

1 A No, sir.

2 Q How long after your conviction did you talk to Andy
3 Savage?

4 A I have never talked to Andy Savage. My family --
5 actually my in-laws are the ones who called and tried to
6 contact Andy Savage.

7 Q Within 10 days after your conviction?

8 A I don't believe so.

9 Q Okay. So you don't know if it was even within the
10 statutory time to even file notice of intent to appeal.

11 A No, sir. I didn't know of the 10 days limitation on
12 that.

13 Q So you did not file notice of intent to appeal yourself
14 within 10 days; is that right?

15 A Yes, sir.

16 Q Because no one told you that?

17 A Correct.

18 Q Either an attorney or the Court?

19 A Correct.

20 Q Or the clerk of court?

21 A Correct.

22 MR. COBB: I have no other questions.

23 MS. ELLIOTT: That's all I have, Your Honor.

24 THE COURT: All right. You can step down.

25 MR. COBB: Come down, Ms. Sanders.

1 Your Honor, we would like to call Amanda to the stand.

2 Step up here, please, ma'am.

3 THE CLERK: Would you place your left hand on the Bible
4 and raise your right hand.

5 (WHEREUPON, Amanda Fender as sworn
6 to tell the truth.)

7 THE CLERK: Could you state your name for the record?

8 MS. FENDER: Amanda Sue Fender.

9 THE CLERK: Thank you. You may be seated

10 AMANDA FENDER - DIRECT EXAMINATION

11 BY MR. COBB:

12 Q Okay, Amanda, you need to speak up nice and loud and
13 clear for everybody, okay?

14 A Okay.

15 Q How old are you, ma'am?

16 A 33.

17 Q All right. And where do you work?

18 A I'm work for Goodwill, but I'm a contractor at Spawar
19 (sp).

20 Q At Spawar. Okay. How long have you been working
21 there?

22 A Almost 2 years with Spawar.

23 Q And how long have you worked for Goodwill?

24 A Almost four.

25 Q Okay. And where do you live?

1 A I live at 244 Carolanne Drive, Summerville, South
2 Carolina.

3 Q All right, do you live with your parents?

4 A Yes, sir.

5 Q And who else?

6 A And my daughter.

7 Q And how old's your daughter?

8 A She's two.

9 Q And you're Tiffany's sister?

10 A Yes, sir.

11 Q All right. Older or younger?

12 A Older.

13 Q Okay. Now, Amanda, we've been talking about Tiffany's
14 trial; do you remember her trial?

15 A Yes, sir.

16 Q Okay. And you remember the night we've all been
17 talking about. Do you remember being in the car with her
18 that night?

19 A Yes, sir.

20 Q I want you to think back. Did you go with her anywhere
21 that night?

22 A Yes, sir.

23 Q Where did y'all go?

24 A Well, we went to grab something to eat because our
25 parents went out for their anniversary, and then we were

1 riding around the neighborhood, and we got stopped by these
2 guys walking and they said, come on to our house.

3 Q Okay.

4 A So when we got there they asked me, they all asked me
5 if I could go get them some beer, and I told them no,
6 because they were underage. They also asked me if I knew
7 where I could get them any marijuana. I was like, I don't
8 do that kind of stuff. So I don't -- I couldn't help. I
9 told them I wouldn't -- no.

10 Q Okay. And --

11 A Because they were drinking that night and --

12 Q And did you ultimately end up at somebody named
13 Brandon's house?

14 A Yes, sir.

15 Q Were there some people there shooting baskets, playing
16 basketball?

17 A Yes, sir, and they were drinking, but me and my sister
18 didn't drink anything.

19 Q You weren't drinking?

20 A No.

21 Q Were y'all shooting baskets with them?

22 A No.

23 Q Were you listening to music?

24 A No.

25 Q Okay.

1 A Not that I know of -- remember.

2 Q At some point -- do you remember what car you were in?

3 A Yeah. My sister's Honda.

4 Q Okay.

5 A It was blue, I think. I'm not sure of the color.

6 Q That's okay. But it was her car?

7 A Yes.

8 Q Okay. Then at some point did you and Amanda (sic)
9 leave with some boys?

10 A Yes.

11 Q Okay. And did you end up going, like we've been
12 talking about, to a Publix parking lot up in North
13 Charleston?

14 A Yes, sir.

15 Q Okay. Where were you sitting in the car?

16 A I was in the back seat.

17 Q All right. So the boys, one was in the front and one
18 was in the back?

19 MS. ELLIOTT: Your Honor, object to the leading.

20 MR. COBB: I'm sorry.

21 BY MR. COBB:

22 Q Where were the boys sitting?

23 A Kevin was sitting beside me and Jesse was up front
24 playing with the radio.

25 Q Okay. Playing music?

1 A Yes, sir.

2 Q Okay. When you got to the Publix, did anybody get out
3 of the car?

4 A Kevin. He was real -- he was real -- like he knew
5 something. He was like, let me out, let me out, you know.
6 And then Jesse got out, and he said drive. So we left.

7 Q You left?

8 A Yes, sir.

9 Q Where were you sitting then?

10 A I was still in the backseat.

11 Q Okay. And where did you drive or where did Tiffany
12 drive?

13 A We went past the churches and that's when we heard, you
14 know, I guess shot, and I didn't know quite what it was, you
15 know?

16 Q All right. How far away from the boys were you when
17 you heard those noises?

18 A I know it was pretty -- you know, it's pretty far
19 because from the Publix to the Catholic church is like -- I
20 would say maybe a mile or two. It's that far away.

21 Q All right. When the boys were in the car, did you see
22 any guns?

23 A No, sir.

24 Q Did you hear them talk about any guns?

25 A No, sir.

1 Q Where did you go after you left; after you heard the
2 noises where did you go?

3 A We went to Brandon's house.

4 Q Right.

5 A And my sister said Brandon we think something's
6 happened.

7 Q Okay.

8 A So he got in the car with us, and he says, if we --
9 Brandon said if we see anybody you don't know me and I don't
10 know you.

11 MS. ELLIOTT: Your Honor, I object.

12 THE COURT: Sustained.

13 BY MR. COBB:

14 Q You can't say what someone else said, okay. All right.

15 A Sorry.

16 Q Where did you go; did you pick up anyone when you got
17 to Brandon's house?

18 A No. We got Brandon and --

19 Q Where did you go with Brandon?

20 A We went back up to the Publix to see if we could --

21 Q Did you see anybody?

22 A No, sir.

23 Q Where did you go then?

24 A We took Brandon back home.

25 Q And then where did you go?

1 A Home.

2 Q Okay. Now, at some point after that Tiffany was
3 arrested, right?

4 A Yes, sir.

5 Q Did anyone from the police question you?

6 A No, sir.

7 Q Did Tiffany's first lawyer question you?

8 A No, sir.

9 Q Did her second lawyer question you?

10 A No, sir.

11 Q When she was getting ready to go to trial, did you
12 actually come to the trial?

13 A Yes.

14 Q All right. When she was getting ready to go to trial,
15 did you offer to come testify as to what you saw and what
16 you heard?

17 A Yes, sir.

18 Q When you actually were at the trial down in St. George,
19 did you offer to testify to what you saw and heard?

20 A (No response.)

21 Q In other words, did you talk to her lawyer and said I'm
22 available to testify?

23 A Yeah. I told him I would.

24 Q Okay. Thank you, ma'am. Please answer any questions
25 that the Attorney General may have for you, okay?

1 A Okay.

2 AMANDA FENDER - CROSS EXAMINATION

3 BY MS. ELLIOTT:

4 Q Ms. Fender; is that correct?

5 A Fender.

6 Q Fender. I'm sorry. I, can't read my own handwriting.

7 Ms. Fender you say you live with your parents and your
8 daughter; is that correct?

9 A Yes, ma'am.

10 Q Have you always lived with your parents?

11 A Yes.

12 Q And this job that you have is this the first job that
13 you've had?

14 A No, ma'am.

15 Q You're had other jobs, too?

16 A Yes.

17 Q Do your parents help you take care of your daughter?

18 A Yeah.

19 Q It's okay. Are you all right?

20 A Yeah.

21 Q You say you remember what happened during the trial; is
22 that correct?

23 A Uh-huh. (Affirmative response.)

24 Q Were you involved in any of the discussions with your
25 sister's other family members, your parents and the attorney

1 about how the attorney felt the trial should go?

2 A Can you repeat that, please?

3 Q Okay. Were you present when your sister's attorney
4 discussed calling witnesses and what evidence should be
5 presented at trial?

6 A I don't remember.

7 Q You don't remember that, but you remember what happened
8 that night?

9 A Yes, ma'am.

10 Q And have you discussed that with your family and your
11 sister?

12 A Discussed what, ma'am?

13 Q What happened that night; have you talked to them about
14 it since then?

15 A My parents.

16 Q About your recollection of it?

17 A Yeah.

18 Q And probably talked to your sister about it after it
19 happened?

20 A Yeah, I think so.

21 Q Okay. You have a hard time remembering?

22 A Some --

23 Q Sometimes?

24 A -- times, some stuff, you know.

25 Q All right, but you've talked to your parents about what

1 happened that night before you testified today; is that
2 right?

3 A What I remember of it.

4 Q How often did Sean Kaminer visit your house?

5 A Not much.

6 Q Not much.

7 A Huh-uh. (Negative response.)

8 Q But he was someone who did visit there?

9 A Not very often. Maybe once or twice.

10 Q All right. He was someone who did visit there; is that
11 correct?

12 A Not -- not -- it was only like two times.

13 Q So he was someone who did visit there; is that correct?

14 A Yeah.

15 Q And how long had your sister know Sean, did you know,
16 that period of time he would come those one or two times he
17 visited; how long was that prior to the incident?

18 A It was long, long time.

19 Q Long time --

20 A Yeah.

21 Q -- before that. They obviously were still talking by
22 telephone; isn't that correct?

23 A I have no idea.

24 Q You wouldn't know that would you?

25 A No.

1 Q Wouldn't know what they talk about on cell phones or in
2 telephone conversations would you?

3 A No, ma'am.

4 Q Okay. So you don't know what Sean and your sister
5 talked about?

6 A No, ma'am.

7 Q And I guess your sister is like everyone your age y'all
8 all use cell phones a lot; isn't that correct? So she's on
9 the cell phone all the time?

10 A No.

11 Q Not too much?

12 A Not too much.

13 Q But she was on the cell phone a good bit that night;
14 was she not?

15 A I don't remember.

16 Q , You don't remember.

17 A Right.

18 Q But you remember everything else; is that right?

19 A Yes.

20 Q Okay. You don't like seeing your sister in jail do
21 you?

22 A No, ma'am.

23 Q And you want to help her if you can, don't you?

24 A Yes, ma'am.

25 Q You'd like for her to get out?

- 1 A Yes, ma'am.
- 2 Q And you'd like to do whatever you can for her to get
3 out?
- 4 A (Nods head in the affirmative.)
- 5 Q Okay. And y'all didn't get out of the car at Brandon's
6 house did you?
- 7 A We did.
- 8 Q You got out of the car?
- 9 A Yes.
- 10 Q How long were y'all there that second time?
- 11 A We -- you know, we hanged out with him for a little
12 bit.
- 13 Q Okay. Y'all went by the first time, isn't that right,
14 y'all rode by or they called you down as they were walking?
- 15 A They called us down. They said, come on --
- 16 Q Okay.
- 17 A -- come on to our house.
- 18 Q And then didn't they say to you sister, what are you
19 doing, and she said nothing with y'all; isn't that right?
- 20 A Yes.
- 21 Q But then later, 15 minutes later she came back to
22 Brandon's house, she drove y'all back over there?
- 23 A I don't --
- 24 Q You don't remember?
- 25 A No, ma'am. Like I said, there's some thing, you know --

1 Q Some things you remember pretty well, but most of it
2 not.

3 A (Nods head in the affirmative.)

4 Q Okay, and you talked to --

5 MR. COBB: Object to the characterization, Your Honor.

6 THE COURT: Repeat the question?

7 MS. ELLIOTT: Some things she remembers, but most of it
8 she does not.

9 MR. COBB: I object to characterization. She remembers
10 just fine.

11 MS. ELLIOTT: Well, she said repeatedly --

12 MR. COBB: She said -- most of it --

13 THE COURT: All right. Please rephrase your question.

14 MS. ELLIOTT: All right.

15 BY MS. ELLIOTT:

16 Q You remember some things, you don't remember some
17 things; is that correct?

18 A Yeah.

19 Q Okay. Is that yes? I'm sorry.

20 A Yes.

21 Q Okay. When you went back -- you don't remember how many
22 times y'all went over there?

23 A I think we were there only two.

24 Q Two times?

25 A I think.

1 Q And when you were there was your sister asking who
2 Jesse was, was she trying to find out his name?

3 A No.

4 Q You say she wasn't doing that. Could you hear
5 everything that was going on?

6 A I know that Jesse got the phone from Tiffany and then
7 after he got off the phone he said to take me up to Publix.
8 So him and Kevin got in the car with us. Because we said we
9 were going to go home.

10 MS. ELLIOTT: Your Honor, that is unresponsive
11 testimony. I move to strike that as unresponsive.

12 MR. COBB: She asked the question.

13 THE COURT: Overruled. You can rephrase the question.

14 BY MS. ELLIOTT:

15 Q And you say that when y'all got to the Publix parking
16 lot, Kevin was acting antsy, he knew something was wrong?

17 A Yeah.

18 Q And he got out of the car?

19 A Yeah.

20 Q And that's when he said at trial, he knew something was
21 wrong, and he wanted to get away; isn't that right?

22 A I don't know if he wanted to get away, but I felt that
23 he -- you know, he was -- I think he knew something was
24 going on we didn't know. We didn't know nothing. I didn't
25 know what was going to happen.

1 Q Well, you heard the statement given by your sister at
2 trial that said that Sean asked her to bring Jesse to the
3 Publix parking lot; did you not hear that?

4 A At the trial?

5 Q Yes.

6 A Yes, I heard that.

7 Q And today you heard her say that that was the truth;
8 did you not?

9 A Yes, ma'am.

10 Q And when you heard those shots, when you heard those
11 pops, did you know what it was when you heard it?

12 A No, ma'am.

13 Q You were down by the church?

14 A No, ma'am.

15 Q So you didn't know what it was?

16 A No, ma'am.

17 Q Why would you go back up there, then? Why would you
18 know even where those were coming from?

19 A Because -- I don't --

20 Q You don't know. You were just in the car?

21 A When we heard it, I didn't know what it was, and my
22 sister said, well, we might want to go to Brandon's house
23 and go see if we could see anybody up there. We didn't see
24 anybody up there.

25 Q Well, you hadn't seen a gun up to that point, according

1 to your testimony?

2 A No, ma'am.

3 Q So why would you even connect the pops with that
4 location?

5 A Can you repeat that, again?

6 Q I said you had not seen a gun, correct?

7 A Yes, ma'am.

8 Q So when you heard those firecracker type sounds why
9 would you connect that with gun and why would that make you
10 fearful, and why would that make you go back to the shopping
11 center?

12 A Because I guess we had dropped the boys off and I
13 didn't know what was going on. So I thought that's what it
14 was, I guess.

15 Q Well, you're a mile away. You don't even know where
16 the gunshots are coming from, do you, or those noises are
17 coming from?

18 A (No response.)

19 Q Correct?

20 A Correct.

21 Q And you were basically just in the car riding with your
22 sister; isn't that right?

23 A Yes.

24 Q You basically don't know what was discussed or what was
25 going on?

1 A (No response.)

2 Q Is that correct?

3 A Can you repeat that again, please?

4 Q I said, you were basically riding in the car with your
5 sister. You don't know what was discussed or what was going
6 on. You were just a passenger in the car?

7 A Yes, ma'am, but there was music playing so there was
8 really nothing discussing in the car, because there was
9 really loud music playing.

10 Q Okay. But you don't know what was discussed beforehand
11 do you?

12 A (Shakes head in the negative.)

13 Q That's a no?

14 A No.

15 Q Okay. Thank you. That's all I have.

16 THE COURT: Mr. Cobb.

17 MR. COBB: Thank you, ma'am, you may step down, now.

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

19 Step up and be sworn, please ma'am.

20 THE CLERK: If you would raise your right hand, please,
21 and state your name for the record, please?

22 MS. BREMENOUR: My name is Linda Bremenour (sp).

23 (WHEREUPON, Linda Bremenour was
24 sworn to tell the truth.)

25 LINDA BREMENOUR - DIRECT EXAMINATION

1 BY MR. COBB:

2 Q You are Tiffany's mother, is that correct?

3 A Yes, sir.

4 Q Did you know Sean Kaminer?

5 A I knew him from the old neighborhood we lived in.

6 Q Was he someone who was in your house all the time?

7 A No, sir. He wasn't in my house all the time.

8 Q Was he someone who had been to your house?

9 A He'd been to my house one time.

10 Q Okay. Now, let's sort of do this in inverse order.

11 There was some talk about Andy Savage calling the.

12 solicitor's office about a possible appeal. Did you or your

13 husband contact Andy Savage about --

14 A No, sir.

15 Q -- calling the solicitor's office about an appeal?

16 A No, sir.

17 Q Do you even know who had done that, if anyone had done
18 that?

19 A I imagine maybe the in-laws or Tiffany's ex-husband.

20 Q Okay. You don't know, but it wasn't you or your
21 husband?

22 A No, sir.

23 Q All right. Well, let's back up, then. You -- when
24 Tiffany was first arrested, hired an attorney to represent
25 her; is that correct?

1 A Yes, sir.

2 Q That was Mr. Milton Stratus?

3 A Yes, sir.

4 Q And for several years she had been charged with being
5 an accessory; is that right?

6 A Yes, sir.

7 Q During that time, did Mr. Stratus ever try to contact
8 either Sean Kaminer or Amanda about getting statements from
9 them to take to the solicitor's office.

10 A No, sir.

11 MS. ELLIOTT: Your Honor, I'm going to object. She
12 would have no knowledge of that.

13 MR. COBB: Well, if he was working for Tiffany and they
14 were -- they were footing the bill.

15 THE COURT: All right.

16 BY MR. COBB:

17 Q Do you, of your own knowledge know whether or not that
18 was done?

19 A Repeat the question again?

20 Q Did Mr. Stratus ever contact Amanda to get a statement
21 from her?

22 A No, sir.

23 Q She lives in your house; did he come to your house to
24 get a statement?

25 A No, sir.

1 Q Thank you. At some point, for whatever reason, Tiffany
2 switched lawyers and you hired Mr. O'Neal; is that right?

3 A Yes, sir.

4 Q And as you were getting ready for trial. Do you know,
5 at that time, whether or not Mr. Kaminer had already pled
6 guilty?

7 A Do I know?

8 Q Yeah.

9 A Yeah, I think I did.

10 Q All right. As you were getting ready for trial, had
11 the police, at that time, taken a statement from Amanda?

12 A No, sir.

13 Q Had the solicitor's office?

14 A No, sir.

15 Q Had either Mr. Stratus or Mr. O'Neal?

16 A No, sir.

17 Q And was Amanda willing to testify at trial?

18 A Yes, she was. And she's just kind of nervous.

19 Q Well, everyone is reluctant to testify. You can
20 understand everyone's nervous about testifying in court.
21 Was there some discussion about preventing her from
22 testifying at trial?

23 A We didn't think that we needed her testimony at first.

24 Q Okay.

25 A And so we just -- the attorney just thought it was the

- 1 best.
- 2 Q She has some limitations?
- 3 A Yeah, a little.
- 4 Q But she works?
- 5 A Yes.
- 6 Q Takes care of her own personal business?
- 7 A Yes.
- 8 Q Takes care of her own child?
- 9 A Yes.
- 10 Q Takes care of her own life despite the fact that she
- 11 lives with y'all?
- 12 A Right.
- 13 Q She does have help from you and your husband?
- 14 A A little. Yeah.
- 15 Q She takes care of herself, by and large?
- 16 A Right.
- 17 Q And understanding that she might be nervous about
- 18 testifying is there anything that would have kept her from
- 19 testifying at Tiffany's trial?
- 20 A No, sir. No.
- 21 Q After Tiffany was convicted, did you have any
- 22 communications from Sean?
- 23 A Did I have any communication --
- 24 Q Right.
- 25 A -- with Sean? Yes.

1 Q Okay. Just briefly what did that entail. What was that
2 communication about?

3 MS. ELLIOTT: Your Honor, I object. This is going to be
4 based on hearsay. He's not here. He could have been
5 brought into court to testify. We do not have the
6 opportunity to cross-examine him and tremulously object to
7 anything related to Mr. Kaminer from this witness.

8 MR. COBB: Well, unfortunately, Your Honor, he is
9 pending a post conviction relief, and is waiting to have
10 counsel appointed and obviously could not be summons as a
11 witness.

12 THE COURT: All right. Objection sustained.

13 MR. COBB: Pardon me?

14 THE COURT: Objection sustained.

15 BY MR. COBB:

16 Q When you received communication from Sean did you
17 notify your attorney?

18 A That was after --

19 Q Yes.

20 A -- after Tiffany had done been convicted.

21 Q Right.

22 A Okay.

23 Q And did you notify your attorney?

24 A My husband did. Yes.

25 Q Okay. And did you -- did your husband ask him to go

1 see Mr. Kaminer at that point?

2 MS. ELLIOTT: Your Honor, she didn't have these
3 conversations with the attorney. I object to her testimony
4 on that point, too.

5 MR. COBB: Okay.

6 THE COURT: Sustained.

7 BY MR. COBB:

8 Q When Tiffany was convicted, the day that she was
9 convicted, did you have any conversations yourself with Mr.
10 O'Neal about filing a notice of intent to appeal?

11 A No, sir. We were just so upset.

12 Q Pardon me?

13 A No, sir. We were so upset.

14 Q Did you have any conversation with him in the following
15 weeks about filing a notice of intent to appeal?

16 A No, sir. I've heard something about PCR bond or
17 whatever.

18 Q Was a notice of intent to appeal ever filed to your
19 knowledge?

20 A As far as I know, no.

21 Q And you never contacted Mr. Savage. Did you contact
22 any other attorneys about filing an appeal?

23 A No, sir.

24 Q Okay. Thank you, ma'am. No other questions.

25 THE COURT: All right. Please answer any questions that

1 Ms. Elliott may have.

2 MS. ELLIOTT: Your Honor, no questions.

3 THE COURT: Ma'am, you may step down.

4 Call your next witness.

5 MR. COBB: Thank you. Nothing further, Your Honor, at
6 this time other than I wanted to, for purposes of the
7 record, I want -- Page 195 and 195 of the transcript of the
8 trial reflect what Jessica Hahn testified to in the trial,
9 and basically lines four through nine on Page 196 reflect
10 that as a police officer she had seen the shooting, had run
11 out -- seen individuals who had done the shooting, and about
12 30 seconds later a Jeep Cherokee pulled out from the side of
13 the building, pulled down the parking lot and drove off.

14 The solicitor's position was that Ms. Sanders and her
15 sister in the blue Accord were still there at the time of
16 the shooting. If, in fact, that was the case, this witness
17 would have seen them. And would have been able to, as a
18 trained police officer, been able to testify that they
19 either saw them individually or certainly would have seen
20 this particular vehicle.

21 So I wanted those two pages to reflect that for that
22 part of the applications, Your Honor.

23 THE COURT: Okay.

24 MS. ELLIOTT: And just in response, Your Honor, I'll
25 direct your attention to Page 197 where she's talking about

1 any other vehicles and also ask Your Honor to review her
2 testimony because, you know, she said her attention was
3 directed on the shooter. She doesn't remember any other
4 vehicles in the area, but obviously her attention was
5 directed at the shooting incident, but at the time she was
6 not a police officer, she was an employee of Publix. Later
7 became a police officer.

8 MR. COBB: Right. That's correct.

9 THE COURT: All right. You said you don't have any other
10 witnesses?

11 MR. COBB: No, we don't have any other witnesses.

12 THE COURT: All right. Ms. Elliott, do you have any
13 witnesses?

14 MS. ELLIOTT: Yes, Your Honor, we would call Mr. O'Neal
15 the trial attorney.

16 THE CLERK: Please raise your right hand, put your left
17 hand on the Bible, please. State your full name.

18 MR. O'NEAL: Michael Sean O'Neal.

19 (WHEREUPON, Michael O'Neal was
20 sworn to tell the truth.)

21 THE CLERK: Thank you. You may be seated.

22 MR. O'NEAL: Thank you, ma'am.

23 MICHAEL O'NEAL - DIRECT EXAMINATION

24 BY MS. ELLIOTT:

25 Q State your name, please?

1 A Michael O'Neal.

2 Q And Mr. O'Neal, you're a practicing attorney?

3 A I am.

4 Q And how long have you been practicing?

5 A Since 1984.

6 Q And what portion of your practice is devoted to
7 criminal law?

8 A Probably 85 percent.

9 Q And that has been for the entire time?

10 A Actually, for the first five years in my legal career,
11 I worked for the Attorney General's Office.

12 Q Okay. I was probably there. And then you went from
13 the AGs office into private practice?

14 A That's correct.

15 Q And you have devoted most of your time since then to
16 the practice of criminal law?

17 A That's correct.

18 Q And have had opportunity to represent defendants
19 charged with numerous types of crimes?

20 A Yes.

21 Q Including murder?

22 A Yes.

23 Q Accessory?

24 A Yes.

25 Q And have issues involving confessions and ballistics

1 and the types of issues that were involved in this trial?

2 A Yes.

3 Q So you have experience in those areas?

4 A Yes.

5 Q Great experience in those areas?

6 A Yes.

7 Q And how do you maintain your knowledge of the criminal
8 issues, to cutting edge issues and changes in the law as
9 they evolve?

10 A I'm required to do continuing education and, of course,
11 war stories with other lawyers. Probably the best way to
12 learn.

13 Q And handling cases, conducting research for the issues
14 that arise in the cases you handle?

15 A Correct.

16 Q And have you also had the opportunity to handle cases
17 involving aiding and abetting and principle accessory
18 issues?

19 A Yes.

20 Q Okay. Were you retained or appointed in this case?

21 A Retained.

22 Q And were you at -- at what point were you retained in
23 connection with when Ms. Sanders was charged?

24 A Tom Bremenour who I knew from a previous relationship
25 came to me and indicated that his step-daughter had been

1 arrested and charged with accessory before the fact of
2 murder and was being represented by Milton Straus. They
3 came to me about turning the case over to me. I spoke with
4 him. I spoke with the family, and I spoke with Milton and
5 they decided to release Milton Stratus as her lawyer and
6 hire me.

7 Q Okay. And how long did you represent her prior to
8 trial?

9 A A year, maybe.

10 Q Did you have an opportunity to sufficiently confer with
11 your client to prepare for trial?

12 A Yes.

13 Q And what did you do to investigate the charges and any
14 defenses?

15 A Well, I went and looked at all the discovery materials.
16 I looked at all the statements. I spoke with my client.
17 What I did not do, which I should have done, was I should
18 have gone up and talked to Sean Kaminer in prison.

19 Q And why did you not do that?

20 A The trial came up. I figured the government, the state
21 was going to bring him to trial. I kind of was counting on
22 that. I told my client that. We showed up for trial, he
23 wasn't there, and I can just tell you right now that after
24 the trial was over I realized that I should have gone to see
25 him in jail. I should have found out what he was going to

1 say and I should have brought him down there. I did, in my
2 closing argument, try to put it on the state, that if he was
3 going to help their case they would have brought him, but I
4 guess, I could tell looking in the juries eyes that they
5 weren't buying it. They figured I could have got him there
6 just as easily as they could.

7 Q That was, of course, was speculation on your part,
8 unless you spoke to them afterwards; isn't that correct?

9 A I did not speak to them.

10 Q Mr. Kaminer was represented by counsel?

11 A I believe he was.

12 Q Okay, and did you have his statement?

13 A Yes.

14 Q Okay. So you knew what he had told the police as far
15 as his statement?

16 A Yes.

17 Q Did you know what he had said during his guilty plea?

18 A No.

19 Q What reason -- why did you not speak to him in advance
20 of trial?

21 A Like I said, I assumed, which is always a mistake, that
22 the state was going to bring him to trial, and I would get a
23 chance some way to talk to him prior to trial, and if he'd
24 be helpful to my case, I'd put him up as a witness. In
25 retrospect, I should have gone to speak to him. I should

1 have gone to the jail to talk to him. I should have put him
2 up in my case.

3 Q Okay. He wasn't on the state's witness list; is that
4 correct?

5 A I don't remember.

6 Q And could you have had him brought in when you realized
7 he wasn't going to be used by the state?

8 A Absolutely.

9 Q Okay. And you did not do that?

10 A I did not.

11 Q And why did you not do that?

12 A His statement was in the package. I knew Tiffany
13 wasn't going to be taking the stand. I didn't think that
14 Amanda was going to be taking the stand. I guess I had an
15 idea that I wanted the last argument and not put up any
16 evidence or testimony whatsoever.

17 Q So as a matter of trial strategy?

18 A At the time, I guess that's what I was thinking.

19 Q Based upon your experience, the facts in the case, your
20 discussions with your client, and the defense you formulated
21 for trial?

22 A Yeah, but turns out it was a mistake.

23 Q Okay. And that's because it was not successful; is
24 that correct?

25 A Well, it's one thing to argue what -- that could have

1 helped the government, but I knew the jury would figure I
2 could have gotten him there just as easy myself, and they
3 wondered why I didn't bring him. I should have brought him.
4 I should have gotten him down there.

5 Q And you're saying that because your client, in
6 retrospect, was convicted?

7 A In part, I suppose, yes.

8 Q Okay. But at the time, having closing argument was you
9 felt a good trial strategy?

10 A With what I had to work with, yes.

11 Q Okay. And, of course, have you called defendants or
12 co-defendants as witnesses before?

13 A Yes.

14 Q And have you ever had that go south?

15 A No.

16 Q Has that been detrimental to your client?

17 A No, have not.

18 Q Have you know of that to happen?

19 A I suppose it's possible.

20 Q And did you have any control over Mr. Kaminer once he
21 was placed on the witness stand as to what he would say?

22 A No. But for what he'd said before.

23 Q In his statement. You could have cross-examined him on
24 his statement?

25 A Yes.

1 Q All right. What about calling -- and let me ask you
2 this -- well -- sorry. What about calling Amanda Fender as
3 a witness. Tell me your thought processes you might have
4 had about that?

5 A Initially, it became clear to me that she was a
6 witness. In speaking with her family I basically took their
7 word for it that her mental ability might not stand up to
8 testifying at court. I never talked to her myself. I never
9 got any doctors reports. I basically took their word for
10 it. After the state's case was over they came to me again
11 and said don't you think she should testify, and, again, I
12 took their word for it and said I don't think it can help.
13 I think it might hurt.

14 Q And during your opening argument to the jury and during
15 the trial it was pointed out that she had some mental
16 incapacity and that she would not be testifying at trial; is
17 that correct?

18 A That's what I said to begin with, but I think I said
19 she probably wouldn't testify, leaving my options open.

20 Q All right. Okay. And when the state rested, it was
21 still your opinion based on your trial strategy, discussions
22 with your client, her family, the facts and your defense it
23 would be best for her not to testify?

24 A Well, the family said that they wanted her to testify.
25 They thought she should testify and I basically overrode

1 them and said, no, I don't think so.

2 Q And you discussed Kaminer's possible testimony,, perhaps
3 having him come in with Amanda Fender and your client, and
4 your reasons for not calling them as witnesses?

5 A As I said, I figured the state was going to bring him
6 down, that I'd get him put up as a witness that way. When
7 they didn't bring him down,, you know, I should have
8 subpoenaed him. I should have done that.

9 Q All right. Did you discuss that with your clients?

10 A Yes.

11 Q And she concurred in the strategy you formulated for
12 trial?

13 A I don't think she understood it.

14 Q But then you discussed it with her and explained it to
15 her?

16 A As best I could.

17 Q Okay, and did she have any additional questions after
18 you discussed it with her and explained it to her?

19 A I should have called Sean Kaminer as a witness.

20 Q I'm sorry?

21 A She -- her position was that we should have called Sean
22 Kaminer as a witness.

23 Q And so she was convicted?

24 A Right.

25 Q And you were hoping that now it might have made a

1 difference?

2 A I'm convinced it would have.

3 Q Well, but you don't know that. That's purely
4 speculation on your part; is it not?

5 A I don't know. I tried the case, I was there.

6 Q Well, you don't know what the jury would have done.
7 You didn't think the jury would convict her anyway, did you?

8 A Nobody did, except Mr. Bell, but he's a good trial
9 lawyer.

10 Q And as far as your investigation did you have access to
11 all the discovery materials, the autopsy report, the
12 photographs, the ballistics report, all the evidence the
13 state presented against your client at trial?

14 A Yes.

15 Q Okay. You discussed all that with your client?

16 A Yes.

17 Q Was her position to you, I guess in her discussions
18 with you, was her -- was -- did she relate facts that were
19 consistent with the statement she gave to law enforcement
20 officers, that basically that was the defense?

21 A Yes.

22 Q Okay. And what defense theory did you formulate for
23 trial?

24 A That she didn't know what was going to happen. That
25 she had no idea there was going to violence, certainly not

1 gun play. That she wouldn't have brought her sister up
2 there if she thought anything like that was going to happen
3 and that she was -- she had departed from the scene at the
4 time of the actual shooting.

5 Q And you elicited that information on cross-examination
6 and argued that information during your closing argument;
7 did you not?

8 A I don't know if I elicited the information, but I
9 certainly argued it.

10 Q Okay. As far as the fact that Ms. Sanders didn't have
11 knowledge of the gun or that Sean planned to use a gun to
12 take the victim's life, that information was conveyed to the
13 jury when her statement was read; is that right?

14 A Yes.

15 Q So that information was provided to the jury basically
16 through Tiffany's own mouth without having to have her
17 testify?

18 A Well, yes. That's how I got her position into the
19 record, in front of the jury, plus I think I made some hay
20 with the cross-examining the gentleman on the stand.

21 Q Right. Mr. Jenkins. The cross-examination of Mr.
22 Jenkins, did you not elicit from him the fact that he didn't
23 know Sean had a gun and planned to use it at the scene?

24 A Correct.

25 Q Okay. And in order to establish this lack of knowledge

1 on Tiffany's part?

2 A Right.

3 Q Okay. And also as far as no plans, no pre-scene plans,
4 no knowledge of the gun, Tiffany saying she was a mile away,
5 didn't Mr. Jenkins say that Tiffany left when Sean started
6 shooting?

7 A I don't recall specifically.

8 Q But basically if he did, wouldn't that establish what
9 we've been here talking about today; correct?

10 A I suppose.

11 Q And then Tiffany from her own mouth to the jury through
12 this statement said that when Sean ran up the victim said to
13 her, drive, and she drove off.

14 A Yes.

15 Q Okay. So that would have also established for the jury
16 through Tiffany's statement through her own mouth without
17 having to have her subject to cross-examination?

18 A Yes.

19 Q Okay. So those factors were established at trial?

20 A As best they could.

21 Q Okay.

22 MS. ELLIOTT: If I could have moment, Your Honor.

23 BY MS. ELLIOTT:

24 Q Tiffany, after the state rested, you discussed with her
25 whether or not Amanda should testify; is that what you said?

1 A. Yes.

2 Q And it was decided that that would not be in Tiffany's
3 best interest?

4 A I made that decision.

5 Q Okay, and you discussed it with your client before you
6 rested?

7 A I don't know if I'd use the word, discussed. I
8 basically told them.

9 Q She knew Amanda would not testify?

10 A Not if I had anything to do with it.

11 Q Okay. And your decision, I think, after Ms. Hahn
12 testified, the worker from the Publix Shopping Center --

13 A Uh-huh. (Affirmative response.)

14 Q -- who later was a police officer, testified at trial.
15 You did not cross-examine her; is that correct?

16 A No, I did not because -- I read back over her testimony
17 and at trial I didn't think her testimony hurt us that bad.
18 I suppose I should have said, did you see a blue Honda
19 anywhere around. I didn't.

20 Q And what benefit would there have been to that?

21 A To bolster my client's position that she as not in the
22 area when the fatal shots were fired.

23 Q But didn't Ms. Hahn say that she didn't believe, and
24 wasn't her testimony equivocal?

25 A I mean, I could have asked her on cross; did you see my

1 client in the Jeep Cherokee, could you see who was in the
2 Jeep Cherokee? I could have asked her questions.. I didn't
3 ask her one.

4 Q Okay. Well, she had already said she didn't know who
5 was in the Jeep Cherokee on direct examination, didn't she?

6 A Right.

7 Q Okay. And she couldn't see who the shooter was. She
8 just saw this incidence from a great distance; is that
9 correct?

10 A That's my understanding.

11 Q All right. Directing your attention to after the
12 trial, after the conviction, did you discuss with Ms.
13 Sanders she had a right to appeal?

14 A I told her she had a right to appeal. I told her she
15 didn't have any grounds. I thought the trial went great.
16 Mr. Bell and I didn't have a whole lot of problems, hardly
17 any, and the judge ruled in my favor on just about every
18 issue.

19 Q Okay. So there was probably nothing reserved for
20 appeal that would result in reversal?

21 A I suppose I should have told you, you have a right to
22 appeal, you have to do it in 10 days, you should probably --
23 I should probably file an appeal and order the transcript. I
24 should have told her all about that, but I was in shock,
25 too, and I basically told her, you've got no right to

1 appeal. You have no grounds for appeal.

2 Q Okay. You told her she had a right to appeal, but she
3 had no valid grounds for appeal?

4 A Correct.

5 Q And you were retained and she would be paying for that
6 appeal; is that right?

7 A Correct.

8 Q Okay. I notice in reading the transcript, too, you did
9 not challenge Ms. Sanders statement as read. Was there a
10 trial strategy related to that?

11 A Yeah, I think the judge expected me to have a Jackson
12 verses Denno hearing to try to keep it out, but it didn't
13 hurt us. I liked her statement. That would be way to get
14 her statement in front of the jury without her having to
15 testify.

16 Q And that was something you talked to your client about
17 in advance --

18 A Yes.

19 Q -- and was part of your defense strategy?

20 A Yes.

21 Q With all these other factors?

22 A Yes.

23 Q And that was something in which she concurred; is that
24 correct?

25 A Yes.

1 Q And the judge questioned her about that specifically;
2 is that correct?

3 A Yes.

4 Q Okay.

5 MS. ELLIOTT: That's all I have right now, Your Honor.
6 Thank you.

7 MR. COBB: Thank you.

8 MICHAEL O'NEAL - CROSS-EXAMINATION

9 BY MR. COBB:

10 Q Mr. O'Neal, as to Mr. Kaminer, when you got the
11 discovery materials, part of that was Sean Kaminer's
12 statement?

13 A Yes.

14 Q And basically, in that statement Mr. Kaminer says that
15 he directed Mr. -- Kevin and Jesse come up to the Publix,
16 but does not indicate that it was for the purpose of
17 anything being done other than them talking. There was no
18 pre-ordained plan that anything was going to go --

19 A That was all.

20 Q Okay. And certainly does not indicate in the statement
21 that Tiffany knew anything about that?

22 A Correct.

23 Q Okay. When you got the case, had Sean already pled
24 guilty?

25 A I think so. Or he pled at some point during my

1 representation.

2 Q And had been sentenced?

3 A Correct.

4 Q So the issue of whether or not he was represented by
5 counsel at that time was a moot issue. He had already, at
6 some point, prior to trial, at least, had pled and been
7 sentenced?

8 A And we knew where we could find him.

9 Q Okay. All right. In any event you did not go to talk
10 to him or have him subpoenaed as a witness and when you
11 found out that the state had not subpoenaed him did not
12 subpoenaed him?

13 A I did not subpoena him, I did not try to go take a
14 statement from him. I -- like I've already said, I assume
15 the state would subpoena him at trial, would bring him down.
16 When I discovered that they had not, I should have. You
17 know, we had time. We had time before our case came up.
18 You got to give somebody you subpoena, what, 24 hours before
19 they've got to be there. I should have subpoenaed him.

20 Q In the two important defendants in this case were Sean
21 and Tiffany?

22 A Yeah.

23 Q And so if the statements of the two important witnesses
24 sort of dovetail that there was no plot to bring Jesse up
25 there to have him murdered, that certainly would have been

1 helpful for the jurors; do you not agree?

2 A Well, it's one thing -- you know, my client did not
3 want to take the stand, I did not want her to take the
4 stand. It would have been effective if I had gotten Sean
5 Kaminer there to be able to answer questions about what he
6 told her, what they said back and forth. That was the whole
7 -- that's the only way they could tie her to the murder.

8 Q Right.

9 A The only way that they could argue that she was guilty.
10 So I should have had him there.

11 Q So for purposes of the jury, Tiffany's motivation for
12 saying that was, she wanted to get off.

13 A Absolutely.

14 Q Sean had no motivation, at that point, he was serving a
15 34 year sentence. He would have no reward for having come
16 in if you had subpoenaed him or if the state had Subpoenaed
17 him to say this?

18 A Right.

19 Q. The other possibility, assuming that Sean was not there
20 as a witness, did you consider trying to have this admitted
21 through the investigating officer as part of his or her
22 investigation?

23 MS. ELLIOTT: Your Honor, I'm going to object to that
24 question. It's not relevant to any of the issues that's
25 been raised. That was not an allegation raised.

1 THE COURT: Yes, sir.

2 MR. COBB: She was asking if that was part of his trial
3 strategy and I'm asking if that was part of his trial
4 strategy as to why he didn't call Sean Kaminer. If this was
5 part of the solicitor's file and he did not have that
6 available through one of the other witnesses either by a
7 police officer or by Sean Kaminer in order to get this in
8 front of the jury, I'm asking as to why that was not done
9 one way or the other.

10 THE COURT: I think her objection is as far as your
11 applicant, one of the claims she had that she specifically
12 stated in her application. Y'all made that pretty clear.

13 MR. COBB: Okay.

14 THE COURT: I'm going to sustain the objection.

15 MR. COBB: All right.

16 BY MR. COBB:

17 Q The best witness is the witness himself, not just a
18 piece of paper.

19 A Yes. I agree.

20 Q All right. So you agree you did not call the witness.
21 And you agree that whether or not to call the witness is
22 premised on having a direct knowledge of what the witness is
23 going to say and how the witness is going to say it.

24 A I mean, I even considered that suppose he got up there
25 and said something like we planned this, we planned this for

1 months. We both hated this guy. I could have worked with
2 that, also.

3 Q Okay.

4 A And that might have even helped us, if he'd said
5 something like that, but the bottom line is I didn't
6 subpoena him. I didn't put him up and I should have.

7 Q And which goes back to my original question, which is
8 knowing whether or not to subpoena him is premised on first
9 going to see him?

10 A Absolutely.

11 Q And interviewing him to ascertain whether or not he's
12 going to be a valuable witness or whether or not you want to
13 call him or not?

14 A Correct.

15 Q And you did not do that?

16 A I did not do that.

17 Q Okay. And the same sort of can be said about Amanda,
18 because we all understand that Amanda has some limitations,
19 but knowing what those limitations are and whether or not
20 they would effect a decision to call her as a witness depend
21 upon your view of how she would hold up as a witness?

22 A Yes.

23 Q Okay. And whether or not, first of all, she would be
24 competent to testify?

25 A Yes.

1 Q Given her limitations?

2 A Yes.

3 Q And two, whether she would be able to withstand, given
4 her limitations, both direct and cross-examination?

5 A Yes.

6 Q And whether or not she would be sympathetic?

7 A Yes.

8 Q And to be able to know that you would first have to,
9 obviously, have to interview her?

10 A Yes.

11 Q And you did not do that?

12 A I did not.

13 Q Okay.

14 A I took the word of her family.

15 Q And they certainly would want to protect her, but as a
16 trial attorney certainly we have to, sometimes, do things
17 that are in contradiction with what our clients want or our
18 clients families want for the better good?

19 A Yes, that's true.

20 Q Okay. In terms of filing an intent to appeal, you
21 argued for a directed verdict?

22 A Yes, I did.

23 Q And a directed verdict is one of those amorphous terms
24 that sometimes the Court of Appeals and the Supreme Court
25 latches on and grants and sometimes it's doesn't. When you

1 talk to clients about filing a notice of intent to appeal
2 there are very specific bits of information that a client
3 needs to know, is there not?

4 A Yes.

5 Q They need to know, one, they have the right?

6 A Yes.

7 Q Two, they need to know if they have to file a
8 particular document, a Notice of Intent to Appeal, and that
9 has to be done in a certain amount of time?

10 A Yes.

11 Q Usually, the judge does that from the bench; isn't that
12 right?

13 A To make sure. Yeah.

14 Q Looking at the transcript and I do not see in the
15 transcript that that was done by the judge.

16 A I don't recall. I don't believe it was. I think the
17 judge was just as shocked as anybody else.

18 Q I don't see it, but that's not to say that it was not
19 done and not in the transcript, but be that as it may, and
20 your testimony from a little bit earlier. You told her she
21 had a right to appeal, but she didn't have any grounds.

22 A That's what I told her.

23 Q And you were retained in this case, because she was now
24 in custody -- there's another right that she has and that
25 would be a right to file an Application for Indigency and to

1 apply for services of an appellate defender?

2 A Yes.

3 Q Okay. So she certainly did not know those things?

4 A I did not tell her.

5 Q Okay. So she would not have know on her own, she was
6 not told by the Court, and you did not tell her that she had
7 those rights. Now, whether she has a justifiable claim, even
8 if it's only the right to appeal the directed verdict and
9 whether or not there are any justifiable claims in the
10 transcript, she certainly has a right or had the right, at
11 the time, to file a Notice of Intent to Appeal, even if it
12 ended up in some form or fashion an Anders Brief?

13 A Yeah. I mean, technically, I suppose I should have
14 told her you've got a right to file a Notice of Intent to
15 Appeal.

16 Q Right.

17 A You've got to do that within 10 days. I should have
18 done it for her, even if I thought there were no grounds for
19 an appeal. Maybe another lawyer could read the transcript
20 and find something. That's probably what I should have
21 done. I've been trying cases, I've tried hundreds of cases
22 in my career and I can probably count my losses on both
23 hands and one foot.

24 Q All right.

25 A And I was shocked too. I was blown away.

1 Q Okay. All right. So you would agree that you should
2 have gone to see Sean?

3 A Yep.

4 Q You should have called Sean as a witness?

5 A Yep.

6 Q You should have interviewed Amanda?

7 A Yeah.

8 Q You probably should have called Amanda as a witness to
9 verify Tiffany's statement --

10 A Yes.

11 Q -- because with a live witness the jurors would have
12 seen --

13 A Yes.

14 Q -- and in retrospect should have done more about at
15 least notifying her about her rights to appeal to protect
16 her right to appeal?

17 A Yes.

18 Q Okay. Thank you very much. I appreciate it.

19 THE COURT: Anything else.

20 MS. ELLIOTT: Very briefly.

21 MICHAEL O'NEAL - REDIRECT EXAMINATION

22 BY MS. ELLIOTT:

23 Q But you told Tiffany that she had the right to appeal?

24 A Yes, I did.

25 Q So she was aware of that. Did she ask you to file a

1 Notice of Appeal?

2 A No, she did not. She was upset.

3 Q And you're indicating that you should have called
4 Amanda as a witness -- and understanding that my skills at
5 cross-examination are nothing like Mr. Bell's?

6 A Oh, I knew he'd eat her up. And I -- that was my major
7 fear. I knew if I could put her on the stand, I knew I
8 could get her position, her testimony on the stand, but I
9 didn't think she could stand up to cross-examination and,
10 like I said, the family, at the close of the state's case, I
11 told them we didn't have to put up a defense, but we could
12 if we wanted to. I told them that if we didn't put up any
13 defense, didn't put up any witnesses or testimony that I'd
14 get last argument and I figured last argument is more
15 valuable than whatever help or testimony would be.

16 Q Okay. Did you know that Mr. Kaminer, that when he
17 pled, he ended up appearing before the Court twice for a
18 guilty plea?

19 A I did not. No.

20 Q And did you know that when he ultimately pled guilty he
21 admitted to Judge Goodstein that he lied to her during the
22 first guilty plea proceedings?

23 A I heard something about that. Initially he said
24 something about self-defense, didn't say anything about
25 self-defense, and then tried to say something about it.

1 Yeah.

2 Q Okay. So you knew that he had admitted in court that
3 he made statements in court that were untruthful.

4 A Yes.

5 Q To a judge?

6 A But it didn't effect my client's case.

7 Q Right, but had he testified is that not something that
8 the solicitor could have brought out on cross-examination?

9 A Sure. I mean, like I said, looking at the trial, if
10 I'd have put him on the stand, I could have worked with it
11 either way, whether he helped my case or whether he claimed
12 he planned this whole thing with Tiffany.

13 Q You would have put him up to say that?

14 A Well, I should have talked to him first to see what he
15 was going to say.

16 Q Okay.

17 A But I understand completely that he might change his
18 mind. This guy's in jail. Who knows what he was going to
19 say once he got on the stand. Like you said.

20 Q Right.

21 A But I should have put him up there. I could have gone
22 either way. I could have worked with either way.

23 Q All right. So you're now saying you should have taken a
24 chance and put him up regardless of what he said to hurt
25 your client?

1 A Right. I think I could have worked with it either way.

2 I the jury would --

3 Q And you should have put him up --

4 A -- hate him worse than they might hate Tiffany.

5 Q Or disliked both of them; is that an option?

6 A Yes.

7 Q And you knew at the time that he had lied under oath in
8 court?

9 A No, not at the time, but I found out.

10 Q Oh, not at the time, but you found out since then, but
11 if you had talked to him you would have found out about it
12 before you would have called him as a witness you would have
13 talked to him?

14 A If he had told me.

15 Q And that or anything else he might not have told you
16 until it came out on the stand?

17 A Right.

18 Q That's also a danger?

19 A Right. For example, I would have had his statement
20 when I talked to him.

21 Q Okay.

22 A The one he gave police.

23 Q And I mean, it's pretty clear that you're distressed
24 that your client was convicted --

25 A Yes.

1 Q -- and you didn't think that she was going to be
2 convicted --

3 A Yes.

4 Q -- and that you formulated a particular trial strategy
5 for this case that was not successful?

6 A That's how it ultimately turned out.

7 Q And you wish you had handled it a little differently
8 because it might have had a different outcome; is that
9 correct?

10 A Well, I was thinking that, at the time, that I probably
11 should have put Sean Kaminer on the stand, but didn't.

12 Q But you obviously made a conscious decision not to do
13 that?

14 A Yes.

15 Q Based on how you were handling things at the time?

16 A Yes.

17 Q Okay.

18 MS. ELLIOTT: That's all I have, Your Honor.

19 THE COURT: You may step down.

20 MR. O'NEAL: Thank you, Judge.

21 MS. ELLIOTT: I just have one very short witness, Your
22 Honor.

23 THE COURT: All right.

24 MS. ELLIOTT: We call Harrison Bell.

25 THE CLERK: State your name for the record, please?

1 MR. BELL: Benjamin Harrison Bell, Jr.

2 (WHEREUPON, Harrison Bell was sworn
3 to tell the truth.)

4 THE CLERK: Thank you. You may be seated.

5 MR. BELL: Thank you.

6 HARRISON BELL - DIRECT EXAMINATION

7 BY MS. ELLIOTT:

8 Q Mr. Bell, how are you employed?

9 A I'm employed with the First Circuit Solicitor's Office.

10 Q And were you the prosecutor for Tiffany Sanders case?

11 A Yes, I was.

12 Q And, if I can direct your attention to events that
13 might have occurred after the trial?

14 A Yes.

15 Q Do you have any knowledge about discussions of or
16 contacts respecting an appeal in this case?

17 A Yes.

18 Q And what would that be?

19 A I believe it was the day after the conviction, Friday.
20 We were in the office, phone rang and sometimes I pick up
21 the phone, and it turned out to be somebody who said they
22 were from Andy Savage's office talking about this particular
23 case. I kind of told them the background. They said, thank
24 you and went on.

25 Q Okay. The purpose of the call was about a possible

1 appeal?

2 A Yes.

3 Q Okay. That's all I have. Your Honor.

4 HARRISON BELL - CROSS EXAMINATION

5 BY MR. COBB:

6 Q Mr. Bell, do you know what the genesis of that call
7 that contacted Mr. Savage?

8 A No. I just know that they were inquiring about maybe
9 representing her on appeal.

10 Q You don't know whether it came from Tiffany or her
11 parents or from somebody else?

12 A No, I do not know. They just said -- mentioned Tiffany
13 Ann Sanders and an appeal, and wanted a little background.

14 Q Thank you.

15 MR. COBB: No more questions.

16 MS. ELLIOTT: Thank you, Your Honor. State rest.

17 THE COURT: All right.

18 MR. COBB: No other witnesses, Your Honor.

19 THE COURT: I am going to take this under advisement.
20 I'll get back to y'all shortly.

21 MS. ELLIOTT: Thank you, Your Honor.

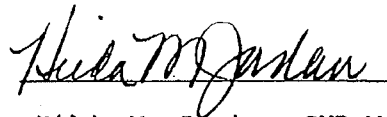
22 MR. COBB: Thank you, Your Honor.

23 (This proceeding was concluded.)
24
25

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT
REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PCR
IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR
ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 24ND DAY OF MAY,
2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
NOR INTEREST IN ANY PARTY HERETO.


Hilda M. Jordan, CVR-M

June 15, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Court of Common Pleas

RECEIVED

JUN 17 2013

Dianne S. Goodstein, Circuit Court Judge
(Trial)
Deandrea G. Benjamin, Circuit Court Judge
(PCR)

S.C. SUPREME COURT

Case No. 2011-CP-18-1497

Tiffany Sanders, ...

Petitioner/Appellant,

vs.

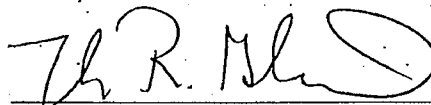
State of South Carolina

Respondent,

PROOF OF SERVICE

I certify that I have served the Petition for Certiorari, Appendix, and Initial Brief and Designation of Contents of Record on Appeal on the State of South Carolina by depositing a copy of all four documents in the United States Mail, postage prepaid on June 12, 2013, addressed to the State's attorney of record, Salley W. Elliott, Deputy Attorney General, P. O. Box 11549, Columbia, S. C. 29211.

June 12, 2013



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000216

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June 12, 2013

Hon. Daniel E. Shearhouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

RECEIVED

JUN 17 2013

Re: Tiffany Sanders adv. State of South Carolina
2011-CP-18-1497

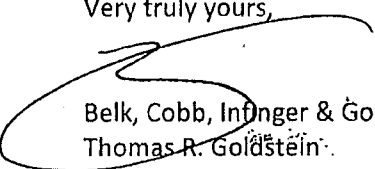
S.C. SUPREME COURT

Dear Mr. Shearhouse,

I enclose the original and seven copies of our petition for certiorari. I also enclose the original, unbound appendix with two bound copies. I also enclose two copies of our initial brief and designation of contents of record on appeal. Lastly, I enclose our certificate of service for these documents.

Would you be so kind as to file the originals and return a clocked copy of the petition for certiorari and initial brief to us in the self-addressed stamped envelope provided? I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

enclosure: August 28, 2012, correspondence; January 23, 2013, correspondence

cc:

Sally W. Elliott, Esq. (with enclosure)

Harrison Bell, Esq. (with enclosure of petition for cert. and initial brief)

000217

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Court of Common Pleas

Dianne S. Goodstein, Circuit Court Judge
(Trial)
Deandrea G. Benjamin, Circuit Court Judge
(PCR)

Case No. 2011-CP-18-1497

Tiffany Sanders, ... Petitioner,

vs.

State of South Carolina Respondent,

Supplemental Appendix

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AUG - 2 2013

S.C. Supreme Court

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIRST JUDICIAL CIRCUIT
 COUNTY OF DORCHESTER) 2007-GS-18-1206/2010-GS-18-0707

STATE OF SOUTH CAROLINA,)
)

PLAINTIFF,)
)

VS.)

TRANSCRIPT OF RECORD)
)

TIFFANY ANN SANDERS,)
)

DEFENDANT.)
)
)
)

AUGUST 3 - 5, 2010

ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

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

HARRISON BELL, ESQUIRE
 MANDY KIMMONS, ESQUIRE
 ATTORNEYS FOR THE PLAINTIFF

MICHAEL O'NEAL, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY
 CIRCUIT COURT REPORTER

1
2
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000224

1 THE COURT: Mr. Bell, would you please call your first
2 case for trial?

3 MR. BELL: Thank you, Your Honor. If it pleases the
4 Court, the State at this time calls Indictment No. 2007-GS-
5 18-1206, the *State vs. Tiffany Ann Sanders*. She's charged
6 in this indictment with accessory before the fact to a
7 felony, specifically murder. And also Indictment 2010-GS-
8 18-707, the *State vs. Tiffany Ann Sanders*. She's charged
9 in that indictment with murder.

10 She is represented by Mr. Michael O'Neal. Mr. O'Neal,
11 how does your client plead to each indictment?

12 MR. O'NEAL: Not guilty.

13 MR. BELL: Does your client waive arraignment?

14 MR. O'NEAL: She waives.

15 MR. BELL: The State's ready to proceed, Your Honor.

16 THE COURT: Thank you.

17 MR. BELL: Do you have the indictments up there?

18 THE COURT: Please? Oh, do I have them up here?

19 (Bench conference between the Court, Mr. Bell

20 and the Clerk of Court.)

21 THE COURT: All right. Ladies and gentlemen, I want
22 to talk to you in a moment about what has just occurred,
23 and then I want to explain for you what an indictment is
24 and what it is not. First of all, I want to tell you that
25 what has just happened is that Mr. Harrison Bell -- who is

1 the senior assistant solicitor for the First Judicial
2 Circuit -- he has just called the first case for trial.
3 And there are two indictments involved in this particular
4 action. And I'm going to go -- to read to you some of
5 those allegations in just a moment.

6 Now, ladies and gentlemen, I want to share with you
7 that in South Carolina the prosecutor is called the
8 "solicitor." and in every other state in the country they
9 are called the "district attorney." But in South Carolina
10 we call our prosecutors "solicitors," "solicitor."

11 And what has just happened is that Mr. Bell has just
12 called the first case for trial, and he has announced the
13 two indictments and given the numbers; and then asked Mr.
14 O'Neal, who represents the defendant in our first case for
15 trial, how she pleads. She has pled not guilty to both and
16 to each of these indictments. And that, of course, places
17 upon the State the burden of proving each and every
18 allegation of each of these indictments beyond a reasonable
19 doubt.

20 Now, ladies and gentlemen, let's talk about what an
21 indictment is and what it is not. An indictment is a --
22 first of all, it's a piece of paper. So, we have two
23 pieces of paper. And it is simply the notice document. It
24 is simply the notice document that notifies a citizen that
25 the State alleges -- State alleges that that citizen has

1 violated one or more of the criminal laws of the State of
2 South Carolina. It is no more than that. It is certainly
3 not evidence of any of the allegations that it contains.
4 It simply lets a citizen know that the State alleges that
5 that citizen has violated one or more of the criminal laws
6 of the State of South Carolina.

7 In this case there are two indictments. There are two
8 indictments. And I will tell you in the -- those of you
9 that serve on this jury, I will tell you in the concluding
10 instruction that these indictments are independent, they're
11 separate. The State has the burden of proving each and
12 every allegation of each of these indictments beyond a
13 reasonable doubt. And they certainly stand on their own,
14 and they are independent one of the other.

15 Now, again what -- let me tell you what an indictment
16 is not. It is not evidence of any of the allegations that
17 it contains.

18 Now, ladies and gentlemen, in a moment I'm going to be
19 reading to you some of the allegations of the indictment.
20 The reason that I'm going to be doing that is to find out
21 whether or not any of you know or think you may know, or if
22 you have heard or think you may have heard anything about
23 these allegations. Now, ladies and gentlemen -- and have
24 heard to include today, if you've heard anything about it
25 today.

1 Now, let me tell you, once I've gone through that,
2 then I'm going to introduce you to some folks, I'm going to
3 ask you a few more questions, and then we're going to get
4 right into our jury qualification.

5 Now, ladies and gentlemen, on the other side of
6 reading to you these indictments -- some of the allegations
7 of these indictments, on the other side of that, this is
8 going to be my question: Do any of you know or think you
9 may know, or have you heard or think you may have heard
10 anything about these allegations? That's going to be my
11 question on the other side of reading to you some of the
12 allegations of these indictments.

13 Again, let me hasten to tell you that as to each and
14 every allegation as it involves Ms. Sanders, she has pled
15 not guilty. And that of course places upon the State the
16 burden of proving each and every allegation beyond a
17 reasonable doubt..

18 Now, ladies and gentlemen, with regards to Indictment
19 2007-GS-18-1206, this is an indictment for accessory before
20 the fact to a felony. And it alleges in part (as read):
21 "That in Dorchester County South Carolina, on or about June
22 the 8th, 2007, the Defendant, Tiffany Ann Sanders, did
23 knowingly and will -- and unlawfully aid in the commission
24 of, abet, counsel, hire, or otherwise procure the
25 commission of murder by the principal, Sean Kammerer. And

1 the Defendant, Ms. Sanders, was not present when the
2 principle felony was committed. This offense being
3 violation..." and it goes on to quote a code section of our
4 law, 16-1-40 of the code of laws as amended.

5 Now, ladies and gentlemen, Indictment 2010-GS-18-0707
6 alleges in part -- and this is an indictment for murder and
7 alleges (as read): "That in Dorchester County, on or about
8 June the 8th, 2007, with malice aforethought, the
9 defendant, Tiffany Ann Sanders, did kill, or aid, abet,
10 assist, or join with Sean Kammerer to kill Jessie Ham by
11 means of shooting him. The victim did die as a proximate
12 result thereof. This offense being in violation of the
13 common law of South Carolina and Section 16-3-10 of the
14 South Carolina Code of Laws as amended."

15 Ladies and gentlemen, do any of you know or think you
16 may know, or have you heard or think you may have heard
17 anything about these allegations to include today? If so,
18 please stand.

19 (Juror member stands.)

20 THE COURT: Very well. I'm going to come on down
21 there. Counsel you may join me down there, please.

22 MR. O'NEAL: Yes, ma'am.

23 THE COURT: (To juror) If you would come forward. Hi.
24 Good morning. Now, let me tell you, I need just enough
25 volume for our court reporter to hear.

1 JUROR: Okay.

2 THE COURT: They will gather around as best they can.
3 And you are Juror Number ...?

4 JUROR: 146.

5 THE COURT: 146. Tell me what you know or think you
6 know or have heard, or think you ---

7 JUROR: Her and my daughter were friends at the time
8 this happened. So, I know the whole scenario ---

9 THE COURT: I understand. And so, let me ask you this
10 question: Does your daughter live with you now?

11 JUROR: Up until about five or six months ago she did.

12 THE COURT: She did?

13 JUROR: Uh-huh.

14 THE COURT: And so, you've -- you've heard from your
15 daughter what --

16 JUROR: Oh, yeah.

17 THE COURT: Yes.

18 JUROR: All different kinds of stuff.

19 THE COURT: I understand. Let me ask you this
20 question: Do you believe that you can set all of that
21 information aside?

22 JUROR: I don't think so.

23 THE COURT: Very well. Thank you so much for your
24 candor.

25 JUROR: You're welcome.

1 THE COURT: But two things I'm going --

2 JUROR: Uh-huh.

3 THE COURT: -- to ask: Number one, please don't
4 discuss this with your fellow jurors?

5 JUROR: I know.

6 THE COURT: And secondly, do stay with me so I can
7 give you instruction about how we'll stay in contact?

8 JUROR: Okay.

9 THE COURT: Sure.

10 JUROR: Thank you so much.

11 THE COURT: You're welcome.

12 (To Court Clerk) 146, she is excluded.

13 CLERK OF COURT: Yes, ma'am.

14 THE COURT: For this case.

15 (To jurors) All right. Can you all hear me if I -- if
16 I stay here?

17 JURORS: (No audible response.)

18 THE COURT: Anybody got -- all right. Now, if my
19 voice drops, y'all raise your hand.

20 Thank you, Counsel, y'all can be seated. But you
21 probably -- you might be back in a little bit.

22 MR. O'NEAL: Yes, ma'am.

23 THE COURT: Now, ladies and gentlemen, I'm going to
24 use a term in just a moment, and I'm going to use it all
25 week long. And so, I want to define it for you, because I

1 intend a very, very general definition of this term. The
2 term is "acquainted with." I'm going to ask you, "Are you
3 related by blood or marriage or acquainted with so and so."

4 When I use the term "acquainted with," I intend a
5 general definition, because I'm trying to find out if you
6 have any connection with these folks that I'm going to be
7 asking you about whatsoever.

8 Now, let me give you a couple of examples. It may be
9 that you went to school with someone who I'll ask you about
10 20 years ago. You hadn't thought about this person, you
11 hadn't seen this person in 20 years. But you know that you
12 went to school with this person 20 years ago. Believe it
13 or not, that relationship, as old and moldy as it is, would
14 be encompassed within my definition of "acquainted with,"
15 and you would approach and say, "Yeah, I knew this person
16 20 years ago. I hadn't seen them, hadn't thought about
17 them. But we went to school together 20 years ago."

18 It may be that you simply work at the same location
19 with somebody that I will ask you about. And you maybe
20 occasionally wave at each other across the parking lot.
21 Believe it or not, that relationship, as limited as it is,
22 would be encompassed within my definition of "acquainted
23 with." And you'd -- you would approach and you would tell
24 me that.

25 Ladies and gentlemen, let me give you sort of a

1 general rule. If you're pondering if you need to disclose,
2 you need to disclose. Don't ponder, just come tell me.
3 And then -- and then we'll -- we'll deal with whatever that
4 information is.

5 Now, ladies and gentlemen, please allow me to
6 introduce you to Mr. Harrison Bell. He is the senior
7 assistant solicitor. He is going to be, as I understand
8 it, trying this particular case. I'm going to call on him
9 and ask him to please introduce the folks in his office.

10 Mr. Bell?

11 MR. BELL: Thank you, Your Honor. If it pleases the
12 Court.

13 (To the jurors) Again, my name is Harrison Bell. I'm
14 the senior assistant solicitor for the First Judicial
15 Circuit, Dorchester County. I work for your elected
16 solicitor, Mr. David Pascoe.

17 Assisting me in this case is Ms. Mandy Kimmons. Also
18 in our office is Mr. Russell Hilton, Ms. Jean Popowski, Ms.
19 Megan Hall, and coming on board is Mr. Matt Austin over
20 here. And we also have our juvenile prosecutor, Mr. Virgil
21 Deas.

22 THE COURT: Thank you so much. Ladies and gentlemen,
23 are you related by blood or marriage, or acquainted with
24 Mr. Bell, Ms. Kimmons, or any of the attorneys or anyone
25 employed by the First Circuit Solicitor's Office? If so,

1 please stand at this time.

2 (Juror member stands)

3 THE COURT: Yes, Mr. --

4 JUROR: Stillinger.

5 THE COURT: -- Stillinger. I almost said "Dillinger."

6 Stillinger. Yes, sir. Yes, sir. Tell me who you know.

7 JUROR: I know Russell.

8 THE COURT: You know Mr. Hilton? Tell me how you know

9 --

10 JUROR: Yes. We grew up together,

11 THE COURT: Grew up together? Do --

12 JUROR: I ain't seen him in a while, but we -- we ---

13 THE COURT: Absolutely. Do you visit in each other's
14 homes?

15 JUROR: No.

16 THE COURT: All right.. Now, as a result of your
17 relationship with Mr. Hilton, just as you have described
18 it, do you believe that that might or could in any regard
19 interfere with your ability to be completely fair and
20 impartial, both to the State as well as to Ms. Sanders?

21 JUROR: No.

22 THE COURT: Can you set that relationship aside and
23 make up your mind based upon what you hear in court while
24 court is in session?

25 JUROR: Yes, ma'am.

1 THE COURT: Thank you, Mr. Stillinger. Please stay
2 with us. Anyone else?

3 (No audible response.)

4 THE COURT: Very well. Now, ladies and gentlemen,
5 please allow me to introduce you to Ms. Tiffany Ann
6 Sanders.

7 MR. O'NEAL: Stand up, please.

8 DEFENDANT: (Complies.)

9 THE COURT: Thank you, Ms. Sanders. And this is Ms.
10 Sanders. Thank you, and you may be seated.

11 Ladies and gentlemen, are you related by blood or
12 marriage, or acquainted with Ms. Tiffany Ann Sanders? If
13 so, please stand at this time.

14 (No audible response.)

15 THE COURT: And I find no one standing.

16 Now, ladies and gentlemen, Ms. Sanders is represented
17 by Mr. Michael O'Neal.

18 (Mr. O'Neal stands.)

19 THE COURT: And this is Mr. O'Neal. Mr. O'Neal is a
20 sole practitioner. And I would ask: Are you related by
21 blood or marriage or acquainted with; or have you or any
22 member of your immediate family, to your knowledge, ever
23 been represented by Mr. O'Neal? If so, please stand at
24 this time.

25 (No audible response.)

1 THE COURT: Thank you so much, Mr. O'Neal. And I find
2 no one standing.

3 Now, ladies and gentlemen, the victim in this matter
4 is a gentleman who's name is "Jessie Ham," "Jessie Ham." I
5 would ask: Are you related by blood or marriage or
6 acquainted with Mr. Jessie Ham? If so, please stand at
7 this time.

8 (No audible response.)

9 THE COURT: And I find no one standing.

10 Now, ladies and gentlemen, I'm about to read to you a
11 list of potential witnesses, potential witnesses. The
12 lawyers cooperate by giving me at this time the names of
13 potential witnesses. Some may not testify. You certainly
14 shouldn't hand -- hold it against either of these attorneys
15 in the event that all of these witnesses aren't -- are not
16 called, because they give to me the list of potential
17 witnesses so that I may ask if you all know any of these
18 folks at this time. They do that in cooperation with me.

19 And so, my question as to each of these individuals
20 is: Are you related by blood or marriage or acquainted
21 with any of these individuals?

22 Now, if you happen to be in the courtroom, please
23 stand when your name is called, because it's so much easier
24 to put a face with a name rather than a name itself.

25 Now -- now, let me be clear, there is no requirement

1 that these folks be here at this point. But in the event
2 that they simply happen to be here, I would like to be able
3 to -- to put a face with a name.

4 All right. (As read) Paul Retherford; Kelly Arnette;
5 Albert Hallman; David Watson.

6 (Detective Watson Stands.)

7 THE COURT: There's -- all right. There's Detective
8 Watson. Thank you for being here.

9 DETECTIVE WATSON: My pleasure.

10 THE COURT: And you may be seated.

11 (Detective Watson complies.)

12 THE COURT: (As read) Andrew Coker; Eric Jourdan;
13 James Sturkie; Cynthia Schandl; Ira Parnell; Jessica Hans;
14 Ashley Bradford; Kevin King; Brandon Frye; David Hughey;
15 DeJuan --

16 (Juror stands.)

17 THE COURT: Yes?

18 JUROR: I -- I know a David Hughey. I don't know if
19 it's him or not.

20 THE COURT: Assume for purposes of my question that it
21 is, tell me how you know Mr. Hughey.

22 JUROR: We worked together. He works for a different
23 company, but we run the same tasks together for about a
24 year.

25 THE COURT: How long ago?

1 JUROR: About three years ago.

2 THE COURT: And do you visit in each other's homes?

3 JUROR: No.

4 THE COURT: So, your association was work related?

5 JUROR: Yes.

6 THE COURT: In the past?

7 JUROR: Yes.

8 THE COURT: As a result of that association, if Mr.
9 Hughey is a witness in this matter, do you believe that
10 that could interfere in any regard with your ability to be
11 completely fair and impartial both to the State as well to
12 Ms. Sanders?

13 JUROR: No.

14 THE COURT: Can you set that association aside,
15 acquaintanceship aside, professional relationship aside,
16 make up your mind based upon what you hear in court while
17 court is in session?

18 JUROR: Yes.

19 THE COURT: And you are Juror Number ...

20 JUROR: 162.

21 THE COURT: Thank you so much. Please stay with us.

22 And finally, DeJuan Jenkins, DeJuan Jenkins.

23 And you've met Ms. Sanders. Linda Faye Bremenour --

24 MR. O'NEAL: Bremenour (pronunciation).

25 THE COURT: Bremenour. Bremenour.

1 (Linda Faye Bremenour stands.)

2 THE COURT: I know I did a terrible job. Say your
3 name?

4 MS. BREMENOUR: Linda Bremenour.

5 THE COURT: Bremenour. Thank you.

6 This is Ms. Bremenour. Thank you so much, and you may
7 be seated.

8 (Ms. Bremenour complies.)

9 THE COURT: Amanda Sue Fender.

10 (Amanda Sue Fender stands.)

11 THE COURT: And this is Ms. Fender. Thank you. Thank
12 you, Ms. Fender.

13 Are you related by blood or marriage or acquainted
14 with any of those individuals? If so, please stand at this
15 time.

16 (Juror stands.)

17 THE COURT: Tell me who you know.

18 JUROR: Mrs. Bremenour and her husband.

19 THE COURT: And tell me your juror number?

20 JUROR: 41.

21 THE COURT: 41. Tell me very briefly how you know
22 them.

23 JUROR: They're a former neighbor of mine.

24 THE COURT: Former -- how long ago?

25 JUROR: Probably about four years that we were

1 neighbors and they moved and ---

2 THE COURT: They moved and you stayed?

3 JUROR: Yeah.

4 THE COURT: Very well. As a result -- did you -- at
5 that point, did you visit in each other's homes?

6 JUROR: Not really.

7 THE COURT: Not -- may have popped in once or twice,
8 but not a regular thing?

9 JUROR: Yes.

10 THE COURT: Have you visited in each other's homes in
11 the last four years since they left?

12 JUROR: No.

13 THE COURT: And as a result of that acquaintanceship,
14 might that, could that in any regard interfere with your
15 ability to be completely fair and impartial both to the
16 State as well as to Ms. Sanders?

17 JUROR: No.

18 THE COURT: Can you set that relationship aside and
19 make up your mind based upon what you hear in court while
20 court is in session?

21 JUROR: Yes.

22 THE COURT: Thank you. And I got your juror number,
23 right?

24 JUROR: 41.

25 THE COURT: 41. Thank you, sir.

1 Anyone else?

2 JURORS: (No audible response.)

3 THE COURT: Very well. I find no one else standing.

4 Now, ladies and gentlemen, I have some questions to
5 ask of you. Now, I'm going to ask you three questions
6 together. I do not want you to -- I don't want you to
7 answer any of these questions until I have asked all three.
8 And I'm going to ask you to approach one at the time, so
9 that we may discuss -- those of you that need to respond.

10 Now, the first question is: Is any member of our jury
11 panel or member of your immediate family or close personal
12 friend --

13 And let me describe this close personal friend. This
14 close personal friend is so close that you cannot
15 distinguish your relationship with this person and a member
16 of your family. You might even like them better than you
17 like siblings or something. This close personal friend is
18 like you -- I mean, they are so close to you that if
19 something -- that -- that they really are a part of your
20 family. That's this close personal friend.

21 Now, is -- has any member of our jury panel or member
22 of your immediate family or close personal friend, as I've
23 described close personal friend, been involved -- been
24 involved in a murder case, either as a victim, as a
25 witness, as a defendant -- I can't think of any -- or their

1 family member? Now, that would be the first question.
2 Don't respond, if you need to respond, until I've asked all
3 three.

4 The second question is: Has any member of our jury
5 panel or member of your immediate family been the victim of
6 any crime -- been the victim of any crime or -- or have you
7 or any member of your immediate family ever been charged
8 with a crime other than like traffic stuff? Ever been
9 charged with a crime other than like a speeding ticket or
10 traffic violation?

11 Finally, does any member of our jury panel have an
12 objection -- have an objection, whether it is moral,
13 religious, ethical, personal, or other reason; and as a
14 result, you feel that you cannot judge another person?
15 That's the third question.

16 If you need to respond to any of those three
17 questions, I'm going to ask you to please stand and
18 approach one at a time.

19 (Several jurors come forward.)

20 THE COURT: Yes. (To Court Security) Come on Marvin,
21 help me out.

22 (Bench conference.)

23 THE COURT: Come on.

24 COURT SECURITY: 66.

25 THE COURT: Hello.

1 JUROR: Hello.

2 THE COURT: Tell me which question you're responding
3 to. Let's see, that's one -- that's two and three and
4 there's one.

5 JUROR: I think I -- I might be impartial. My
6 brother's in prison for murder. Sorry.

7 THE COURT: Okay. Okay.

8 JUROR: I'm just totally honest.

9 THE COURT: Well, thank you for your candor. I know
10 that's not pleasant. Let me ask you: How long ago did
11 that occur?

12 JUROR: About 15 years -- 10 years.

13 THE COURT: I understand. Ten -- ten years ago.

14 JUROR: He's in.

15 THE COURT: He's --

16 JUROR: He's in.

17 THE COURT: I understand.

18 JUROR: Okay.

19 THE COURT: I understand that. And 10 years ago, were
20 you all in the same household?

21 JUROR: No.

22 THE COURT: Okay. So at that point, you all were not
23 in the same household?

24 JUROR: Two separate states.

25 THE COURT: Two separate states.

1 JUROR: Yeah.

2 THE COURT: I understand. As a result of that
3 occurrence in your life, do you believe you can set that
4 aside and make up your mind based upon what you hear in
5 court while court is in session?

6 JUROR: And that's my problem. It's like I just don't
7 know.

8 THE COURT: Well, you --

9 JUROR: I don't know if I want to take that chance.

10 THE COURT: You know what? I am -- I'm so grateful
11 for your candor. I really am. We've got plenty other
12 cases. I'm going to ask you to sit this one out.

13 JUROR: I would appreciate that.

14 THE COURT: Thank you. Thank you so much.

15 JUROR: Thank you.

16 THE COURT: Just sit this one out. Okay.

17 JUROR: So, I just go back and sit down?

18 THE COURT: Yeah. And -- because I've got to give you
19 some instructions about ---

20 JUROR: Okay.

21 THE COURT: -- we're going to stay in contact. Thank
22 you.

23 JUROR: Got you.

24 THE COURT: Thank you so much.

25 (Juror returns to the audience.)

1 THE COURT: (To Court Clerk) Out.

2 CLERK OF COURT: Yes, ma'am.

3 THE COURT: Yes? Next.

4 COURT SECURITY: Number 20.

5 THE COURT: Hi.

6 JUROR: Hi. My father and my sister are attorneys, so
7 I didn't know if that -- they practice in Georgia.

8 THE COURT: Your father ---

9 JUROR: And my sister.

10 THE COURT: --- and your sister are lawyers. And they
11 practice out of state.

12 JUROR: Out of state..

13 THE COURT: Very well. Because they practice, do you
14 believe that -- that they might or could -- that your
15 relationship could keep you from being or interfere with
16 your ability to be completely fair and impartial?

17 JUROR: No, ma'am.

18 THE COURT: And I will give you this instruction not
19 to discuss this matter or allow anyone to discuss it with
20 you. Do you believe that would present any kind of an
21 issue or problem for you?

22 JUROR: No, ma'am. I also -- I was going to say I
23 don't know if this is a crime, but my car was -- I had my
24 car broken into --

25 THE COURT: Well, it is.

1 JUROR: -- in February.

2 THE COURT: It is. And as a result of that
3 occurrence, do you believe that that could affect your
4 ability to be completely fair and impartial?

5 JUROR: No, ma'am.

6 THE COURT: Thank you.

7 JUROR: Thank you.

8 THE COURT: Please stay with us.

9 (Juror returns to the audience.)

10 THE COURT: Yes?

11 COURT SECURITY: Juror number 91.

12 THE COURT: Hi.

13 JUROR: Hello. I had a DUI, like, 30-some years ago -

14 -

15 THE COURT: You did?

16 JUROR: -- when I was young and dumb. Yeah.

17 THE COURT: Very well. As a result of that
18 occurrence, might that, could that interfere with your
19 ability to be completely fair and impartial?

20 JUROR: No.

21 THE COURT: Thank you.

22 JUROR: All right.

23 (Juror returns to the audience.)

24 THE COURT: Got that?

25 MR. O'NEAL: Got it.

1 THE COURT: Good.

2 COURT SECURITY: Number 142.

3 THE COURT: Tell me which question you are responding
4 to.

5 JUROR: Well, it's sort of a combination.

6 THE COURT: Sure.

7 JUROR: It's -- and I don't know if this has anything
8 to do with it and stuff. But back --

9 THE COURT: Thank you for your candor. Thank you for
10 your candor.

11 JUROR: -- back when I was probably in my early 20s
12 and stuff, I had a couple of guns pointed at me at one
13 point. Nothing happened at the time and so, but --

14 THE COURT: It was --

15 JUROR: -- it makes me --

16 THE COURT: -- horrifying?

17 JUROR: Yeah.

18 THE COURT: It was horrifying.

19 JUROR: And it still makes me nervous.

20 THE COURT: And you know, it's remarkable I can see
21 that you wanted to be here, because I've watched you out
22 here and you've been smiling and so engaged.

23 Do you believe -- and you know because of what I've
24 already told you that there -- there are -- there's a gun
25 involved.

1 JUROR: Yes.

2 THE COURT: Do you believe that that might or could --

3 JUROR: It might.

4 THE COURT: I'm watching you.

5 JUROR: And that's where it's ---

6 THE COURT: Yeah.

7 JUROR: -- like ---

8 THE COURT: Your demeanor is saying, "Yes."

9 JUROR: I'm ---

10 THE COURT: Let me tell you, we've got many cases.

11 I'm going to ask you to sit this one out. But please stay
12 with me so I can give you instruction about how we'll stay
13 in contact.

14 JUROR: I will do that.

15 THE COURT: Thank you.

16 JUROR: Thank you.

17 THE COURT: Thank you for your candor.

18 JUROR: Thank you.

19 (Juror returns to the audience.)

20 THE COURT: Got that?

21 MR. O'NEAL: Number 142?

22 THE COURT: Uh-huh. Uh-huh.

23 CLERK OF COURT: Yes, ma'am.

24 THE COURT: Yes.

25 COURT SECURITY: Number 113.

1 THE COURT: Hi. These are the questions. Tell me
2 which one you're responding to.

3 JUROR: As far as any crimes besides --

4 THE COURT: Yes.

5 JUROR: -- minor traffic tickets.

6 THE COURT: Yes.

7 JUROR: I've had a MIP for alcohol when I was 17.

8 THE COURT: Okay.

9 JUROR: Disorderly conduct, aggravated assault, and
10 criminal domestic violence.

11 THE COURT: And you -- tell me what your participation
12 in -- you were charged with those offenses?

13 JUROR: Uh-huh. And convicted.

14 THE COURT: And convicted of those? All magistrate
15 court level, right?

16 JUROR: Yes.

17 THE COURT: Okay. And as a result of those
18 experiences, do you believe that they might or could
19 interfere with your ability to be completely fair and
20 impartial both to the State as well as to Ms. Sanders?

21 JUROR: No, ma'am.

22 THE COURT: Can you set those experiences aside and
23 make up your mind based upon what you hear in court while
24 court is in session?

25 JUROR: Yes, ma'am.

1 THE COURT: I'm having trouble figuring out -- you're
2 20 ...

3 JUROR: 27.

4 THE COURT: 27. These events happened how long ago?
5 Years?

6 JUROR: The CDV was this year.

7 THE COURT: Okay. Okay.

8 JUROR: The aggravated assault was '07 --

9 THE COURT: Okay.

10 JUROR: -- and so was the disorderly conduct.

11 THE COURT: Okay. Now, the aggravated assault, that -
12 - that can be a general sessions offense. Was it simple
13 assault? Was it aggravated assault?

14 JUROR: It was actually --

15 THE COURT: Where did you come? Where did you --

16 JUROR: -- it was actually court marshal, while I was
17 in the military.

18 THE COURT: In the military. When you were in the
19 military?

20 JUROR: Yes, ma'am.

21 THE COURT: Okay. And what is that punished by? Do
22 you know?

23 JUROR: I -- what I received was I was retained.

24 THE COURT: Oh, okay.

25 JUROR: I -- I lost two stripes.

1 THE COURT: Okay.

2 JUROR: Confined to base for two months --

3 THE COURT: Okay.

4 JUROR: -- and then hard labor for three months.

5 THE COURT: Okay. All right. And -- all right. Do
6 you know? You may not know what you could have received.

7 JUROR: It wouldn't have been over a year in the brig,
8 but ---

9 THE COURT: Okay.

10 JUROR: -- and a -- and a discharge.

11 THE COURT: Okay. Fantastic. Thank you.

12 JUROR: Yes, ma'am.

13 THE COURT: Thank you for your candor.

14 CLERK OF COURT: Staying?

15 THE COURT: Uh-huh. He's staying.

16 (Juror returns to the audience.)

17 COURT SECURITY: 128.

18 THE COURT: Hi.

19 JUROR: Hi.

20 THE COURT: Yes, sir, 128. Yes, sir.

21 JUROR: About 30 years ago, my wife's brother, as a
22 single man, owned his own house, rented part of his house
23 to another man. The other man was found guilty of drug
24 trafficking.

25 THE COURT: Okay. Okay.

1 JUROR: Brother-in-law was tried as an accomplice.

2 THE COURT: Okay.

3 JUROR: And also found guilty.

4 THE COURT: Okay. Okay. Thirty years ago.

5 JUROR: Thirty years ago.

6 THE COURT: Might that have an affect on your ability

7 --

8 JUROR: No, ma'am.

9 THE COURT: -- to be completely fair and impartial to
10 the State as well as Ms. Sanders?

11 JUROR: Yes, ma'am.

12 THE COURT: Thank you. Thank you.

13 (Juror returns to the audience.)

14 COURT SECURITY: 70.

15 THE COURT: Hi.

16 JUROR: Hi. How are you?

17 THE COURT: Good.

18 JUROR: My husband iss a police officer and was
19 involved with an incident where somebody was killed. There
20 was a trial process, so ...

21 THE COURT: There -- let me ask you this question:
22 He's with North Charleston, right?

23 JUROR: Uh-huh.

24 THE COURT: As a result of his work, and you're
25 mentioning a particular case, but he's got cases every day

1 --

2 JUROR: Uh-huh.

3 THE COURT: -- do you believe that that could or might
4 in any regard interfere with your ability to be completely
5 fair and impartial both to the State as well as to Ms.
6 Sanders?

7 JUROR: No, ma'am.

8 THE COURT: Can you -- can you set what your husband
9 does aside and make up your mind based upon what you hear
10 in court while court is in session?

11 JUROR: Yes, ma'am.

12 THE COURT: Let me ask you one final question, I want
13 to do this gently, because -- but it probably won't be as
14 gently as I want it to be: If you were to believe that the
15 State had not met it's burden of proof beyond a reasonable
16 doubt, would the fact that your husband is involved in law
17 enforcement and his reaction have any -- any bearing on
18 your decision making process at all?

19 JUROR: No, ma'am.

20 THE COURT: Thank you so much.

21 MR. O'NEAL: Judge, I hate to interrupt, but a couple
22 of the witnesses are with North Charleston City Police.

23 THE COURT: Oh, yeah. That's right, that's right.

24 (To juror) Let me ask you this question or let me give
25 you just a little, tiny bit more information. Oh, that's

1 right. Thank you so much, Mr. O'Neal, because I -- these
2 folks, let me share with you, North Charleston Police
3 Department: Kelly Arnette?

4 JUROR: Unh-unh.

5 THE COURT: Albert Hallman?

6 JUROR: (No audible response.)

7 THE COURT: That's no, you don't recognize his name?

8 JUROR: No, ma'am, I didn't recognize his name.

9 THE COURT: Sure. David Watson?

10 JUROR: Unh-unh.

11 THE COURT: Nope? That's a no?

12 JUROR: Unh-unh.

13 THE COURT: All right. You know what? She's taking
14 this down. And you're saying no?

15 JUROR: No, ma'am.

16 THE COURT: Because I'm interpreting it --

17 JUROR: Sorry.

18 THE COURT: -- and I'm uncomfortable interpreting for
19 you.

20 All right. Andrew Coker?

21 JUROR: No, ma'am.

22 THE COURT: Okay. Eric Jourdan?

23 JUROR: No.

24 THE COURT: Don't know him? James Sturkie?

25 JUROR: No.

1 THE COURT: Don't know any of those folks? And the
2 fact that these are North Charleston folks, would that have
3 any affect on your ability to be completely fair and
4 impartial both to the State as well as to the Defendant?

5 JUROR: No, ma'am.

6 THE COURT: Thank you so much.

7 JUROR: All right.

8 (Juror returns to the audience.)

9 COURT SECURITY: 22.

10 THE COURT: Hello.

11 JUROR: How are you doing?

12 THE COURT: Good.

13 JUROR: One of those questions --

14 THE COURT: Yes.

15 JUROR: -- the next to the last question. I have a --
16 I have a daughter. She's -- two years ago, when she was 13
17 years old, She was raped. And I think the system poorly
18 judged that --

19 THE COURT: Yeah.

20 JUROR: -- and they just gave him probation.

21 THE COURT: Yeah.

22 JUROR: I don't understand that.

23 THE COURT: Yep.

24 JUROR: And I have doubts with the system.

25 THE COURT: I understand. I hear -- I see it and I

1 hear it. I am so grateful to you for your candor.

2 Let me ask you this question, because I treasure that
3 fact that you are here and I treasure your services as a
4 juror. I don't want -- I don't want to lose you. but
5 here's what I think --

6 JUROR: Uh-huh.

7 THE COURT: -- I think you're going to have this
8 reaction to any criminal case.

9 JUROR: Uh-huh.

10 THE COURT: So, my question is, I don't want to lose
11 you: Are you willing to transfer and pick a week in the
12 future and come serve on a civil jury?

13 JUROR: Yeah.

14 THE COURT: You are wonderful. Thank you so much.
15 You pick the week.

16 JUROR: Yeah.

17 THE COURT: Ms. Hill, at the end will --

18 JUROR: Uh-huh.

19 THE COURT: -- give you your choice. You pick it
20 whenever it suits you, and I so look forward to seeing --

21 JUROR: All right.

22 THE COURT: -- you then. Thank you.

23 JUROR: All right. Thank you.

24 (Juror returns to the audience.)

25 (Bench conference.)

1 THE COURT: All right. All right. Any -- I'm going
2 to ask my final question. Will there be any additional
3 voir dire?

4 MR. BELL: None from the State.

5 MR. O'NEAL: No.

6 THE COURT: No. All right.

7 This is my concluding question and it -- yes, it's
8 general, and yes, I mean it to be general: Do you know any
9 reason why you ought not, should not, could not be a juror
10 in this case; being ready, willing, and able to listen to
11 the evidence and make up your mind based solely on what you
12 hear in court while court is in session; being completely
13 fair and impartial, both to the State as well as to Ms.
14 Sanders, and not being affected by anything extraneous;
15 meaning anything outside the court while court is in
16 session? If you have any concerns about your ability to do
17 that, or if you were shy this morning and you really wanted
18 to tell me something but you were shy and now you -- we've
19 been together a while and we're getting to be close, and
20 you feel more comfortable telling me now what you didn't
21 want to tell me earlier; or during the break you went out
22 to your car, and the tickets to Tahiti were above the visor
23 and how in this world are you supposed to come tell me that
24 you forgot about your trip to Tahiti and you're supposed to
25 leave tomorrow afternoon at 2:00? Or if you went to your

1 car -- because I know none of you got your cell phone with
2 you. But you went to your car to check your messages, you
3 had 10 messages. You called, and low and behold, the
4 people with that big ole check and those flowers and the
5 balloons, they are standing outside, sweltering at your
6 house; and you're just distracted because you're really
7 wanting to leave and go get that big ole check and the
8 balloons and the flowers and you're a little distracted
9 right now. It could be anything, anything. If so, please
10 come forward and let us talk about it.

11 (No audible response.)

12 THE COURT: Very well. Nobody's coming forward.

13 Let me tell you what happens next. I am delighted to
14 tell you that decades ago now, I myself, at the old
15 courthouse sat in a jury panel for criminal court and my
16 name was called. And when your -- if your name is called,
17 I want you to exit your row, come through the gates, and I
18 want to stand right here.

19 I remember doing that. And all I could remember is,
20 dang, I didn't know what to do with my hands. You know
21 what -- and I wish I could have left my hands at my seat.
22 Just bring them up with you, it's okay. And if you've got
23 a pocketbook, or an umbrella, book, whatever, bring it with
24 you, too. And you'll stand here.

25 And you're first going to hear from the State, you'll

1 hear one of two things: You're going to hear them either
2 say, "Present the juror," or you're going to hear them say,
3 "Excuse the juror." If you hear either of these lawyers
4 say, "Excuse the juror," I want you to know that these
5 lawyers absolutely mean you no embarrassment whatsoever.

6 It's just there are about nine jillion elements that
7 go into the selection of a juror. Please, please don't
8 take any offense, because I promise you that these lawyers
9 mean you no offense whatsoever. They are officers of the
10 court, and they too are so truly grateful for you being
11 here and grateful for your time. So, please don't take any
12 offense, because I promise you none is intended. But if
13 you hear "Excuse the juror," please take your seat back in
14 -- in the audience.

15 Now, if you hear, "Present the juror," then you are
16 going to hear from Mr. O'Neal. And you're going to hear
17 from him either, "Seat the juror," and you'll turn and
18 you'll come take your seat over here; or you will hear,
19 "Excuse the juror," at which point you will take your seat
20 in -- into the audience.

21 So again, if your name is called -- it's always fun to
22 be the first person. But if your number and name are
23 called, please come through and stand here (indicating).
24 And thank you so much.

25 (To Clerk of Court) I'm going to turn it over to you.

1 Ten, five, two, and one -- with regards to alternates, and
2 we're going to select two alternates --

3 MR. O'NEAL: Yes, ma'am.

4 THE COURT: -- and -- give me just a second to take
5 my seat, please ma'am.

6 CLERK OF COURT: Yes, ma'am.

7 THE COURT: (To Bailiff) Ms. Salisbury, you're going
8 to have to put another chair. You know what? We're going
9 to have to put one more chair here -- right here.

10 MS. SALISBURY: Yes, ma'am.

11 (The Court confers with the bailiff.)

12 THE COURT: Okay.

13 CLERK OF COURT: Thank you. As I call your name
14 please come forward. Juror No. 148, David Villinger.

15 (A white male comes forward.)

16 CLERK OF COURT: Just come -- back up to the podium,
17 please and turn around. That's it. What saith the State?

18 MR. BELL: Present the juror.

19 CLERK OF COURT: The Defense?

20 MR. O'NEAL: Swear the juror.

21 CLERK OF COURT: Have a seat in our jury box to the
22 left.

23 (The juror complies.)

24 CLERK OF COURT: Juror No. 56, Donna Gore.

25 (A white female comes forward.)

1 CLERK OF COURT: What saith the State?

2 MR. BELL: Present the juror.

3 CLERK OF COURT: The Defense?

4 MR. O'NEAL: Swear the juror.

5 CLERK OF COURT: Have a seat in our jury box.

6 (The juror complies.)

7 CLERK OF COURT: Juror No. 60, Shannon Guilford.

8 (A white female comes forward.)

9 CLERK OF COURT: What saith the State?

10 MR. BELL: Present the juror.

11 CLERK OF COURT: The Defense?

12 MR. O'NEAL: Swear the juror.

13 CLERK OF COURT: Have a seat in our jury box.

14 (The juror complies.)

15 CLERK OF COURT: Juror No. 155, Christina Willis.

16 (A white female comes forward.)

17 CLERK OF COURT: What saith the State?

18 MR. BELL: Present the juror.

19 CLERK OF COURT: The Defense?

20 MR. O'NEAL: Swear the juror.

21 CLERK OF COURT: Have a seat in our jury box.

22 (The juror complies.)

23 CLERK OF COURT: Juror No. 139, John Stillinger.

24 (A white male comes forward.)

25 CLERK OF COURT: What saith the State?

1 MR. BELL: Present the juror.
2 CLERK OF COURT: The Defense?
3 MR. O'NEAL: Defense will excuse this juror from.---
4 CLERK OF COURT: Have a seat --
5 MR. O'NEAL: --- the trial of this case.
6 CLERK OF COURT: -- back in the audience, please.
7 (Juror returns to the audience.)
8 CLERK OF COURT: Juror No. 69, Tameka Huger.
9 MR. O'NEAL: What was that number again, Madam Clerk?
10 CLERK OF COURT: Juror No. 69.
11 MR. O'NEAL: Thank you.
12 (A black female comes forward.)
13 CLERK OF COURT: What saith the State?
14 MR. BELL: Present the juror.
15 CLERK OF COURT: The Defense?
16 MR. O'NEAL: Swear the juror.
17 CLERK OF COURT: Have a seat in the jury box.
18 (The juror complies.)
19 CLERK OF COURT: Juror No. 145, Brenda Thornhill.
20 (A black female comes forward.)
21 CLERK OF COURT: What saith the State?
22 MR. BELL: Please excuse the juror from this trial.
23 CLERK OF COURT: Have a seat back in the audience.
24 (Juror returns to the audience.)
25 CLERK OF COURT: Juror No. 116, Scott Phillips.

1 (A white male comes forward.)

2 CLERK OF COURT: What saith the State?

3 MR. BELL: Present the juror.

4 CLERK OF COURT: The Defense?

5 MR. O'NEAL: The Defense would excuse this juror from
6 the trial of this case, Your Honor.

7 CLERK OF COURT: Have a seat back in the audience.

8 (Juror returns to the audience.)

9 CLERK OF COURT: Juror No. 91, Brenda McCoil.

10 (A white female comes forward.)

11 CLERK OF COURT: What saith the State?

12 MR. BELL: Present the juror.

13 CLERK OF COURT: The Defense?

14 MR. O'NEAL: Swear the juror.

15 CLERK OF COURT: Have a seat in the jury box.

16 (The juror complies.)

17 CLERK OF COURT: Juror No. 100, Denise Murray.

18 (A white female comes forward.)

19 CLERK OF COURT: What saith the State?

20 MR. BELL: Present the juror.

21 CLERK OF COURT: The Defense?

22 MR. O'NEAL: The Defense would excuse Ms. -- this
23 juror from the trial of this case.

24 CLERK OF COURT: Have a seat in the audience.

25 (The juror complies.)

1 CLERK OF COURT: Juror No. 161, Gretchen Montagna.

2 (A white female comes forward.)

3 CLERK OF COURT: What saith the State?

4 MR. BELL: Present the juror.

5 CLERK OF COURT: The Defense?

6 MR. O'NEAL: The Defense would excuse this juror from
7 the trial of this case.

8 (Juror returns to the audience.)

9 CLERK OF COURT: Juror No. 118, Michael Powell.

10 (A white male comes forward.)

11 CLERK OF COURT: What saith the State?

12 MR. BELL: Please excuse the juror from this trial.

13 (Juror returns to the audience.)

14 CLERK OF COURT: Juror No. 4, Thomas Armstrong.

15 (A white male comes forward.)

16 CLERK OF COURT: What saith the State?

17 MR. BELL: Present the juror.

18 CLERK OF COURT: The Defense?

19 MR. O'NEAL: Beg your indulgence a moment, Judge?

20 THE COURT: Sure.

21 MR. O'NEAL: Swear the juror.

22 CLERK OF COURT: Have a seat in our jury box.

23 (The juror complies.)

24 CLERK OF COURT: Juror No. 113, Dale Perchert.

25 (A white male comes forward.)

1 CLERK OF COURT: What saith the State?

2 MR. BELL: Please excuse the juror from this trial.

3 (Juror returns to the audience.)

4 CLERK OF COURT: Juror No. 16, John Blanchard.

5 (A white male comes forward.)

6 CLERK OF COURT: What saith the State?

7 MR. BELL: Present the juror.

8 CLERK OF COURT: The Defense?

9 MR. O'NEAL: Swear Mr. Blanchard.

10 CLERK OF COURT: Have a seat in our jury box.

11 (The juror complies.)

12 CLERK OF COURT: Juror No. 20, Diana Braunbeck.

13 (A white female comes forward.)

14 CLERK OF COURT: What saith the State?

15 MR. BELL: Present the juror.

16 CLERK OF COURT: The Defense?

17 MR. O'NEAL: The Defense would excuse this juror from
18 the trial of this case, Your Honor.

19 (Juror returns to the audience.)

20 CLERK OF COURT: Juror No. 26, Paula Callahan.

21 (A white female comes forward.)

22 CLERK OF COURT: What saith the State?

23 MR. BELL: Present the juror.

24 CLERK OF COURT: The Defense?

25 MR. O'NEAL: The Defense would excuse this juror from

1 the trial of this case.

2 (Juror returns to the audience.)

3 CLERK OF COURT: Juror No. 141, Ronnie Stone.

4 (A white male comes forward.)

5 CLERK OF COURT: What saith the State?

6 MR. BELL: Present the juror.

7 CLERK OF COURT: The Defense?

8 MR. O'NEAL: Swear the juror.

9 CLERK OF COURT: Have a seat in the jury box.

10 (The juror complies.)

11 CLERK OF COURT: Juror No. 157, Michelle Witherspoon.

12 (A white female comes forward.)

13 CLERK OF COURT: What saith the State?

14 MR. BELL: Present the juror.

15 CLERK OF COURT: The Defense?

16 MR. O'NEAL: The Defense would excuse this juror from
17 the trial of this case.

18 (Juror returns to the audience.)

19 CLERK OF COURT: Juror No. 103, Illuminada Nettles.

20 (An Asian female comes forward.)

21 CLERK OF COURT: What saith the State?

22 MR. BELL: Present the juror.

23 CLERK OF COURT: The Defense?

24 MR. O'NEAL: Swear the juror.

25 CLERK OF COURT: Have a seat in our jury box.

1 (The juror complies.)

2 CLERK OF COURT: Juror 156, Robin Wilson.

3 (A white female comes forward.)

4 CLERK OF COURT: What saith the State?

5 MR. BELL: Please excuse the juror from this trial.

6 (Juror returns to the audience.)

7 CLERK OF COURT: Juror No. 70, Tess Hughes.

8 (A white female comes forward.)

9 CLERK OF COURT: What saith the State?

10 MR. BELL: Present the juror.

11 CLERK OF COURT: The Defense?

12 MR. O'NEAL: The Defense would excuse this juror from
13 the trial of this case.

14 (Juror returns to the audience.)

15 CLERK OF COURT: Juror No. 33, Ellen Cone.

16 (A white female comes forward.)

17 CLERK OF COURT: What saith the State?

18 MR. BELL: Present the juror.

19 CLERK OF COURT: The Defense?

20 MR. O'NEAL: Beg your indulgence, Judge?

21 THE COURT: Certainly.

22 MR. O'NEAL: Swear the juror.

23 CLERK OF COURT: Have a seat in the jury box.

24 (The juror complies.)

25 CLERK OF COURT: Juror No. 125, Homer Roberts.

1 (A white male comes forward.)

2 CLERK OF COURT: What saith the State?

3 MR. BELL: Present the juror.

4 CLERK OF COURT: The Defense?

5 MR. O'NEAL: Swear the juror.

6 CLERK OF COURT: Have a seat in our jury box.

7 (The juror complies.)

8 CLERK OF COURT: These are for the --

9 THE COURT: Uh-huh.

10 CLERK OF COURT: -- alternates.

11 THE COURT: Alternates. Yes.

12 CLERK OF COURT: Juror No. 94, Bridget Middleton
13 Brown.

14 (A black female comes forward.)

15 CLERK OF COURT: What saith the State?

16 MR. BELL: Please excuse the juror from this trial.

17 CLERK OF COURT: Have a seat back in the audience.

18 (Juror returns to the audience.)

19 CLERK OF COURT: Juror No. 136, Rhonda Snipe.

20 (A black female comes forward.)

21 CLERK OF COURT: What saith the State?

22 MR. BELL: Present the juror.

23 CLERK OF COURT: The Defense?

24 MR. O'NEAL: Swear this juror as the first alternate.

25 CLERK OF COURT: Have a seat in our jury box.

1 (The juror complies.)

2 CLERK OF COURT: Juror No. 53, John Garofalo.

3 (A white male comes forward.)

4 CLERK OF COURT: What saith the State?

5 MR. BELL: Present the juror.

6 CLERK OF COURT: The Defense?

7 MR. O'NEAL: Swear this juror as the second alternate.

8 CLERK OF COURT: Have a seat in our jury box.

9 (The juror complies.)

10 CLERK OF COURT: Thank you, Judge.

11 THE COURT: Are there any matters regarding the
12 qualification or the selection of the jury from the State?

13 MR. BELL: None from the State, Your Honor.

14 THE COURT: From the Defense?

15 MR. O'NEAL: Nor from the Defense, Your Honor.

16 THE COURT: Very well.

17 (To the jurors in the jury box) Now, ladies and
18 gentlemen, there is a matter that I must take up outside
19 your presence, and therefore I am going to -- Ms.
20 Salisbury, in just a moment I'm going to have you take our
21 jurors to their jury room.

22 And those of you who are in our audience I'm going to
23 ask you to please step outside the courtroom for just a
24 moment. There's a matter which I must cure outside your
25 presence.

1 Now, those of you -- well, both -- all of you, you
2 have a little bit of information about this matter, because
3 I've read you some of the allegations from the indictments
4 and I have introduced you to some folks. And with all of
5 that, ladies and gentlemen, I must instruct you not to
6 discuss this matter or allow anyone to discuss it with you.

7 And so what that admonition, those of you who are in
8 our audience, please step outside the courtroom. Don't go
9 far, because we won't be long.

10 And ladies and gentlemen, who are on our jury, if
11 you'll go with Mr. Taylor. But do not discuss this matter
12 or allow anyone to discuss it with you. We'll be with you
13 shortly.

14 (The jurors and remaining jury panel

15 members exit the courtroom at 12:43 p.m.)

16 THE COURT: Yes, sir. Mr. O'Neal, you have a motion?

17 MR. O'NEAL: Judge, as far as the motion on the
18 *Jackson vs. Denno* you're talking about?

19 THE COURT: No, no, no, no. Motion with regards to
20 the qualification of the selection of the jurors.

21 MR. O'NEAL: Oh, no. I don't have one, Judge.

22 MR. BELL: No. He didn't have one.

23 THE COURT: Bless your heart.

24 MR. O'NEAL: I don't mean to say that I did.

25 MR. BELL: I didn't think you did either. I was kind

1 of wondering.

2 THE COURT: Well, I was wondering, too, because I was
3 wondering myself, did I not ask that, "Are there any
4 matters regarding the qualifications of the selection of
5 the jury?"

6 MR. O'NEAL: And I said none from the Defense.

7 MR. BELL: Yeah. That's what I heard him say.

8 THE COURT: I thought you said, "Yes, there is."

9 MR. O'NEAL: Sorry, Your Honor. I'll try to be more
10 clear next time. I apologize.

11 MR. BELL: I thought that's what I heard, too, Your
12 Honor, that he didn't.

13 THE COURT: I thought I heard that you did. And I'm
14 thinking ...

15 MR. O'NEAL: No, ma'am. I'm saying -- I was about
16 going, what did I forget. I don't forget anything.

17 MR. BELL: That's what I was going. I was going,
18 What?

19 THE COURT: Hello. Well, you know, that's why they
20 call it the practice of law.

21 MR. O'NEAL: That's right.

22 THE COURT: It's the practice of judging, too.
23 Wonderful.

24 All right. Yes, sir, Marvin, George --

25 COURT SECURITY: Yes, ma'am.

1 THE COURT: -- bring them back in. .

2 (Jurors and remaining jurors return

3 to the courtroom at 12:45 p.m.)

4 COURT SECURITY: (To seated jurors) I see y'all found
5 the goodies. Wonderful.

6 (To the remaining jurors) Now, ladies and gentlemen,
7 you all who are now in our audience are known as our
8 "remaining jurors." And I do need to give you some
9 instruction about how we're going to stay in contact with
10 each other.

11 Ladies and gentlemen, I'm going to ask you to --
12 that's your queue. Thank you. To call back the juror
13 information line after six o'clock this evening. That
14 number is on the little card that was in the packet that
15 you received from the Clerk of Court's office.

16 If you're like me, you don't have a clue where those
17 cards are. So, Marvin is standing in the back of the
18 courtroom with a stack of the cards. Please feel free to
19 take one or two. If you're like me, you might want to take
20 a couple so you can hide them from yourself, so you'll have
21 it, because I do need you to have the juror information
22 number so that you can call that number after six o'clock
23 tomorrow night. Not tonight. Wednesday night. Call it
24 after six o'clock Wednesday evening. Wednesday night. . .

25 Now, a couple of things about that: Please wait until

1 six o'clock to call, because otherwise the -- the message
2 will make absolutely no sense to you whatsoever. That
3 gives us until six o'clock tomorrow evening to know what
4 our schedule is, and to put the recording on the machine
5 for you.

6 Whatever the instruction is, to call back or to
7 return, whatever it is, please follow that instruction.
8 And I don't know what it'll be. I have no way of knowing
9 at this point what the -- the message will be for you.
10 But whatever it is, please follow that instruction.

11 Ladies and gentlemen, I know many of you are dashing
12 off to work as soon as you leave in just a moment or two.
13 And if you need anything for your employer so that they
14 will know where you have been and what you have been up to
15 this morning, we will be delighted to get something for you
16 down in our clerk's office, which is on the first floor.

17 The clerk's office is directly below where we are.
18 So, if you exit off the elevator, if you're an elevator
19 rider, take a left and go to the end and you will see the
20 clerk's office. They will be delighted to get that for
21 you, just tell them that you need that.

22 If you are a stair walker, take a right at the foot of
23 the steps and go to the clerk's office. Again, it's right
24 below where we are. They will be delighted to get that for
25 you, so you may take that to your employer this afternoon.

1 Ladies and gentleman, y'all have been wonderful. You
2 have given so much of your dear and precious time. I am
3 thankful to you for every tick of the clock. I can't wait
4 to see you all later in the week. If you will do so
5 quietly, you are free to go. Thank you.

6 (Remaining jury panel members exit the
7 courtroom at 12:49 p.m.)

8 THE COURT: (To the jury) Now, ladies and gentlemen,
9 I bet y'all's din-din bells are going off. So, I need to
10 give you just a little bit of instruction, and then I need
11 to just kind of you -- give you an update on our schedule.

12 And -- and it's this: Ladies and gentlemen, we are
13 going to begin this trial in the morning at 9:30, in the
14 morning at 9:30. I have some things that I must do this
15 afternoon, and I don't want you waiting on me. And so,
16 it's just better that we begin in the morning.

17 And so, we need to talk a little bit about what you
18 can talk about. Again, you've got very little bit of
19 information about this matter, but you do have some
20 information. And therefore I must instruct you: Do not
21 discuss this matter or allow anyone to discuss it with you.

22 But I want you to understand why I give you that
23 instruction, and it's this: You are going to be learning -
24 - particularly in the morning as I give you the preliminary
25 instruction, you're going to learn that you are the finders

1 of the fact in this case. No one else under our system is
2 allowed to make the findings of fact in this case, but a
3 trial jury. You are the sole, you are the only, you are
4 the exclusive finders of the fact.

5 Under our system of justice, there is ordinarily no
6 way, no way under our system to correct an erroneous
7 determination of the facts by a trial jury. Now, because
8 of that, your findings of fact are absolutely critical to
9 our system, critical.

10 Now, here's what we know: We know, anecdotally, from
11 200 years of trying cases, that apparently the way that we
12 are put together is that when we began to talk about
13 something as people, we begin to form opinions about them.

14 We also know that it is critical to your role as a
15 fact finder that you're able to listen open mindedly to all
16 of the evidence that is presented.

17 Evidence comes in one little piece at the time, and it
18 is critical that you are able to listen attentively to all
19 of it; to listen open mindedly to all of it; to not make up
20 your mind about anything until you've heard all the
21 evidence, the arguments of counsel and of course my charge
22 on the law; and you begin your deliberation with your
23 fellow jurors.

24 So, ladies and gentlemen, the reason that I will
25 instruct you every time we leave each other not to discuss

1 this matter or allow anyone to discuss it with you is to
2 support your ability to listen open mindedly to all of the
3 evidence. That's the reason for the instruction.

4 Now, ladies and gentlemen, you're going to be going
5 home, and there's going to be somebody curious about what
6 you have been up today. Please remember that you cannot
7 discuss this matter with whomever is curious. Here's what
8 you can talk about though: You can certainly say, "Yeah, I
9 went to Saint George for my jury qualification. Didn't
10 need one of them chauffeur-driven rides down to the
11 courthouse. I got there this morning, and I have been
12 selected to serve on the jury. And it is a criminal matter
13 as opposed to a civil matter."

14 You can talk about all that. That's fine. But beyond
15 that, beyond that you must not discuss this matter or allow
16 anyone to discuss it with you.

17 Now, also ladies and gentlemen, you must not read
18 anything about this case, listen to anything about this
19 case. And that means on the radio, the television, the
20 newspaper, and the internet. You must not receive any
21 information about this matter outside court while court is
22 in session.

23 Do not chat, do not blog, do not tweet, do not
24 Facebook, do -- and I can't remember. Are there other
25 ones? Don't do any -- don't "PDQ-ing" or "A-ing" or

1 whatever. You must not communicate about this matter in
2 any regard. You must receive all of the information from
3 which you will make up mind here in court while court is in
4 session.

5 Let me speak a little bit further and tell you that,
6 you know, lawyers are gregarious folks by their nature.
7 They like to talk. They like to talk to people. So,
8 lawyers always want me to tell jurors if they happen to see
9 you around the courthouse and they don't even say hello,
10 they want you to know that they are not being rude. They
11 are following my instruction, because it would be highly
12 inappropriate for them to speak to you. They're not going
13 to speak to you. And so, if you happen to see one of these
14 lawyers and they don't even say hello, please understand
15 they aren't being rude. They're following my instruction.

16 It would also be inappropriate for anyone that has
17 anything to do with this case to interact with you at all.
18 And I would tell you that if anyone should try to talk to
19 you about this case, mention anything to you about this
20 case, please get their name. If you can't, a description
21 and report it to me upon your return to the court. That
22 would be highly inappropriate. But I promise you, I will
23 deal with that individual. So please, if anyone tries to
24 talk to you about this case, please report it to me upon
25 your return.

1 Now, do not work tonight. If -- if anyone is
2 concerned about that, I am delighted to make a call to your
3 supervisor and explain to them that most folks, while they
4 do work between the daylight hours, they are missing work.
5 And likewise, if you typically and normally work during the
6 evening hours or early in the morning you -- you cannot go
7 to work. You must be rested. These parties are entitled
8 to you being rested.

9 And sometimes employers resist that a little bit. I
10 am happy to intercede on your behalf. You just let me know
11 who I need to talk to, and I will be delighted to do that,
12 because you're not going to work tonight. Or you know --
13 and by that what I mean that -- you know, that shift that
14 oft times is three or four o'clock to eleven o'clock, or to
15 midnight, or folks that work all night. Unh, unh, unh,
16 unh, unh. Not while you're serving on a jury. That would
17 be highly inappropriate.

18 Now, I'm trying to think what else I need to tell you.
19 We're going to start at 9:30 in the morning. I'm going to
20 ask you, please gather in the morning in the jury assembly
21 room and then you will be brought up. Ms. Salisbury will
22 have something for you. So, you best just have a half a
23 bowl of Wheaties in the morning, because otherwise you're
24 going to have too much breakfast, because I know she's
25 going to have something here for you, too, in the morning.

1 Cell phones. Cell phones. You know, please remember
2 to leave your cell phones either at home or in your
3 vehicle. Please do not bring them into the courthouse.
4 Don't bring any kind of communication device: any cell
5 phone, IT phone, or Iphone, or any PD-whatevers. In other
6 words, you must not have the means of communicating with
7 anyone while you're serving on the jury, meaning an
8 electronic device.

9 Now, we are all tethered to these things and
10 somebody's going to forget. It is not a problem so long as
11 you just let us know, give us your communication device,
12 and we will give it to Ms. Graham. She will keep it very
13 safe until lunch or a morning break, and you can take it
14 then to your car. So, please just be mindful to let us
15 know if you come into the courthouse with one of those
16 devices. And I promise you we'll take good care of it.
17 She doesn't know more than a couple of people in Europe.
18 You're fine. So, she won't make more than a couple of
19 European phone calls.

20 Just teasing. She'll take good care of it. But you
21 must not have one with you while you're serving on your
22 jury duty.

23 Now, I believe that that -- oh, no investigation.
24 Don't get on the internet. Don't be looking for elements
25 of anything. Don't be trying to -- to look up any

1 information. No "Columbo." You must receive all of the
2 information from which you will make up your mind here in
3 court while court is in session.

4 Also, let me talk about seating assignment when you
5 return. Now, we -- ladies and gentlemen, we have very
6 little seating assignment. These back two seats, you are
7 our alternates. Let me be sure. Ms. Snipe -- no, Ms.
8 Snipe. That's okay. And Mr. Garofalo -- Garofalo?

9 JUROR: Garafalo.

10 THE COURT: Garofalo. Mr. Garofalo. These two seats
11 are reserved for our alternates. When you all return
12 tomorrow, please take these two seats and keep them
13 throughout the balance of our trial. You don't have to
14 move right now. Oh, that was wonderful. These two in the
15 back. That's so I can keep up with you as our alternates.
16 It's not so I know where to put the whoopie cushion, I
17 promise. So, keep those seats for me.

18 And our law provides that there should be one of your
19 number who serves as the presiding juror. The presiding
20 juror will take this seat and keep this seat on the front
21 row closest to the door; and keep that seat throughout the
22 balance of the trial, so that I may keep up with you as our
23 alternate. Now, the presiding -- I mean, not an alternate.
24 It's our presiding juror.

25 Presiding juror has three additional tasks. Number

1 one, the presiding juror will actually take physical
2 possession of the verdict form, and once the deliberations
3 of the jury are concluded will write those -- will write
4 the verdict on the verdict form.

5 Secondly, the presiding juror will preside in the jury
6 room, just to be sure that each and every juror has an
7 opportunity to participate in those deliberations.

8 And third, in the event that the jury needs to
9 communicate with me for whatever reason, the presiding
10 juror will take that down in writing, sign it, give it to
11 Ms. Salisbury or Mr. Taylor, who will in turn give that to
12 me.

13 And it could be anything. It could be like: Could
14 you get the courtroom any hotter? Could you get it any
15 colder? Could you have people speak up? Tell Ms.
16 Salisbury that was a great biscuit, whatever, whatever. If
17 you need to communicate with me, take that down in writing,
18 and give that to me.

19 And is it -- is it Huger? Huger? Where's Ms. Huger?

20 JUROR: Huger.

21 THE COURT: Ms. Huger --

22 JUROR: Uh-huh.

23 THE COURT: -- would you be our presiding juror?

24 JUROR: Yes.

25 THE COURT: So, when you return tomorrow, if you'll

1 take this seat and keep it for me, I will be very grateful.
2 And keep that seat.

3 The rest of everybody, there is no assigned seating.
4 If you find a seat and you like it, keep it. If not, get
5 here early, and get somebody else's seat. There is no
6 other assigned seating. Wonderful.

7 Ladies and gentlemen, I do believe that that concludes
8 the instruction that I'm going to give to you. I want you
9 to know that I thank you for every single, solitary tick of
10 the clock. Y'all have been wonderful. I appreciate it so
11 very much. I'm so grateful to you for your service. I
12 look forward to seeing you in the morning at 9:30.

13 Let me tell you how we're going to be proceeding.
14 When you return in the morning at 9:30, I have a few
15 preliminary remarks for you just to put some structure,
16 some framework around what the trial will be and what you
17 can anticipate occurring. You will be sworn in as the jury
18 in this case, and then we're going to get right into
19 opening statements.

20 Have a wonderful afternoon and evening. I look
21 forward to seeing you in the morning. If you'll go with
22 Mr. Taylor.

23 (Jury exits at 1:01 p.m.)

24 THE COURT: All right. Counsel, are you fine with
25 going ahead with our other matters at this point and then -

1 -

2 MR. O'NEAL: Yes.

3 THE COURT: -- we'll adjourn?

4 MR. O'NEAL: Yes, ma'am.

5 THE COURT: Okay. I don't want anybody's blood sugar
6 plummeting, and I -- you need to take a break. You might --
7 - do you need to take a break, tend to the baby?

8 DEFENDANT: The baby's not here. We left him at home.

9 MR. O'NEAL: Chose to leave him at home, Judge.

10 THE COURT: Oh, okay. Very well. We can take a short
11 comfort break. Our court report, and me, and everybody --
12 we need to take a little break. Let's just take a little
13 short break and --

14 MR. O'NEAL: Okay.

15 THE COURT: -- we'll reconvene. I'm going to stay
16 here. We'll be at ease for 5/10 minutes.

17 MR. O'NEAL: Okay. Thank you, Judge.

18 THE COURT: Uh-huh.

19 MR. O'NEAL: I'm going to step outside to our little
20 room, if that's all right.

21 THE COURT: Sure.

22 (Off the record at 1:02 p.m.)

23 (On the record at 1:14 p.m.)

24 THE COURT: All right. Now, we have a number of
25 things just to -- to put on the record and talk about. And

1 first of all, are there any motions? I know we've got some
2 other things, but do we have any motions from the State?

3 MR. BELL: None from the State.

4 THE COURT: From the Defense?

5 MR. O'NEAL: None from the Defense, Your Honor.

6 THE COURT: Okay. Now, here's what I think is
7 appropriate: I think it's appropriate at this point for me
8 to have an *in camera*, *ex parte* communication with Defense
9 counsel and the Defendant, and then have you all come back
10 in.

11 MR. BELL: Very well.

12 THE COURT: I think that -- I think that's the
13 appropriate way to proceed. But don't go far and don't be
14 gone long.

15 MR. BELL: Yes, ma'am.

16 THE COURT: Okay. Very well. That means y'all have
17 to leave.

18 (All non-parties to the *ex parte* hearing
19 exit the courtroom.)

20 EX PARTE HEARING

21 THE COURT: All right. At this point the following
22 individuals are in the courtroom: Major Moultrie and
23 George Taylor, our security; Ms. Kelly, my court reporter;
24 obviously Mr. O'Neal is here with Ms. Sanders. And those
25 are the individuals who are -- remained in the courtroom.

1 And Security Detail and Ms. Kelly, you are all under
2 the Court's order to preserve the attorney/client -- any
3 attorney/client communications that you might hear, and not
4 to discuss these matters with anyone without prior Court
5 authorization.

6 MR. O'NEAL: Thank you, Judge.

7 THE COURT: Now, of course, the reason that -- that
8 I'm -- ask for this *in camera*, *ex parte* communication, Mr.
9 O'Neal, is that I want to put on the record certain
10 stipulations that I understand -- that you are prepared to
11 -- to enter into with the State.

12 MR. O'NEAL: Yes, ma'am.

13 THE COURT: And I want to go over those with your
14 client to be sure that she understands that you are doing
15 that, and that she approves.

16 MR. O'NEAL: Yes, ma'am.

17 THE COURT: And, Ms. Sanders, the reason that I am
18 doing that, just so you are completely aware, is because at
19 the point in time that a lawyer stipulates or makes an
20 agreement with another lawyer, what they are doing is that
21 they are agreeing that the jury would take, as a finding of
22 fact, certain information.

23 And that is actually a waiver of your Fifth Amendment
24 right. And -- not in general, but as to those matters.
25 And because when your lawyer agrees to anything, or agrees

1 to any facts or even agrees that anything occurred, that is
2 actually a waiver of your Fifth Amendment right as to that
3 matter. And that's the reason that -- that I wanted us to
4 have an opportunity to talk a bit about it, and to be sure
5 you understood that. And then to address what those
6 stipulations might be. Okay?

7 DEFENDANT: Okay.

8 THE COURT: Very well.

9 MR. O'NEAL: Do you want her to take the stand, Judge,
10 or --

11 THE COURT: No.

12 MR. O'NEAL: -- you want to swear her right here or
13 ...?

14 THE COURT: Yeah. She's fine right there.

15 (To the defendant) Raise your right hand.

16 TIFFANY ANN SANDERS, having been
17 first duly sworn, testifies as follows:

18 THE COURT: And big, state your name for the record.
19 Just a big voice.

20 MR. O'NEAL: Judge, she has gotten married since she
21 was arrested. Her last name is now -- is "Hecksher." I
22 didn't want to put another name into the mix. You know,
23 all along it's been "Sanders." So, I -- you know, we were
24 good with that, but that is her name.

25 (To defendant) Go ahead and tell her ---

1 THE COURT: Tell me your full name.

2 DEFENDANT: Tiffany Ann Hecksher.

3 THE COURT: Spell "Hecksher."

4 DEFENDANT: H-e-c-k-s-h-e-r.

5 THE COURT: And did you used to be "Sanders"?

6 DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Thank you. You can put your hand
8 down.

9 DEFENDANT: Uh-huh.

10 THE COURT: Now, do you solemnly swear or affirm that
11 the testimony that you will give will be the truth and the
12 whole truth?

13 DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. Now, here's what I want to do, I
15 want Mr. O'Neal -- and I want you to listen and you can sit
16 down. I want you to listen very, very carefully what he's
17 going to tell me are the agreements and the stipulations,
18 okay?

19 DEFENDANT: (No audible response.)

20 THE COURT: Very well. Yes, sir, Mr. O'Neal.

21 MR. O'NEAL: Thank you, Judge. The first stipulation
22 that I've agreed to -- it's all one little package is:
23 We've agreed to stipulate that a murder occurred. Further,
24 that the murder came about as a result of Sean Kammerer
25 shooting Jessie Ham with a gun, I think some four times,

1 which he ultimately died of those wounds.

2 We agreed to stipulate that this murder occurred in
3 the evening hours of -- I think it was June the 8th, 2007.

4 We further agree to stipulate that Sean Kammerer pled
5 guilty to murder and got 34 years, coincidentally from Your
6 Honor. And that DeJuan Jenkins was charged with accessory
7 after the fact of murder. He pled and got sent to jail
8 because he pled guilty to driving Sean Kammerer to the
9 scene of the murder, and helping him escape by driving him
10 away.

11 Those are the stipulations that we've agreed to. And
12 -- and the reason that I've agreed to stipulate to that is
13 because we -- I think it would be counterproductive for the
14 Defense in this case to make the State prove that there was
15 a murder; to bring in the autopsy photos of this kid lying
16 on a slab with bullet holes all in him, and trajectory rods
17 sticking out of him, the pools of blood in the parking lot.

18 My fear was requiring or even allowing the State to
19 prove that there was a murder would be counterproductive
20 with regard to my defense of my client. That's the main
21 reason. Plus, we not -- we're not here to argue about
22 every little thing, just about certain things that comprise
23 her defense.

24 Other than that, Judge, she made a statement to the
25 police. I've talked to her about the circumstances of that

1 statement. I'll go ahead and tell the Court that she told
2 me that the police came to her house, her sister woke her
3 up said, "There's cops at the door. They want you"; that
4 she -- they asked her to go with them and she went with
5 them.

6 I asked her if she felt like she was free to leave,
7 tell the cops, "Stop, let me out of the car." She said no.
8 And I told her that in my opinion then she was in custody,
9 maybe not arrested, but in custody. That they took her
10 down to the police station, started talking to her about
11 what happened, wanted to ask her questions about what
12 happened. That they never read her her rights, but that
13 they gave her a piece of paper that had the Miranda rights
14 on it; asked her to read them, and to initial each one
15 after she had read it if she understood it. I believe they
16 said something about, "Do you understand what you've just
17 signed?" And she said yes.

18 Now, she tells me that she was apprehensive, perhaps
19 even a little scared. Never been in police custody before.
20 That's endemic.

21 Further, Judge, you'll find out, as the case goes on,
22 that pretty much the entire time on July -- or June the
23 8th, 2007, my client's sister was with her, one of the
24 witnesses posed in the case; older than her
25 developmentally, and intellectually challenged.

1 And that they started saying, "Well, you know, if you
2 don't tell us what happened we're going to have to bring
3 her in here and talk to her, you know. She might end up
4 getting arrested," things like that. And that she agreed
5 to make a statement without the presence of a lawyer after
6 being warned of her Miranda rights; if not a majority, in
7 part -- but at least some in part in a effort to protect
8 her sister. But for that reason she gave a statement to
9 the police.

10 I told her about her right to -- to *Jackson vs. Denno*,
11 to challenge the voluntariness of that confession, to
12 challenge her statement to try to keep it from coming in.
13 But she and I have gone over her statement, and she and I
14 have gone over her rights under *Jackson vs. Denno*. And
15 we've collectively decided that the statement doesn't hurt
16 us. In fact, it helps us. And so, she wants the statement
17 to go in. She wants the jury to consider it. So, for that
18 reason, I'm not taking up the Court's time arguing some
19 stupid motion that I don't even want. And that's it.

20 THE COURT: Thank you so much, Mr. O'Neal.

21 Ms. Sanders -- ups. Say your last -- new last name
22 again.

23 DEFENDANT: Hecksher.

24 THE COURT: Hecksher. Hecksher.

25 DEFENDANT: Yes, ma'am.

1 THE COURT: I'm going to mess it up. Please help me.
2 Just correct me so that I -- because I really want to get
3 it right. Hecksher.

4 DIRECT EXAMINATION BY THE COURT:

5 Q All right. Ms. Hecksher, first of all, did you
6 understand what Mr. O'Neal just told me?

7 A Yes, ma'am.

8 Q Did you understand everything that he just told me?

9 A Yes, ma'am.

10 Q Did you understand his reasoning behind what he just
11 told me?

12 A Yes, ma'am.

13 Q All right. And do you understand the -- the
14 stipulations?

15 A Yes, ma'am.

16 Q Do you understand the waiver of *Jackson v. Denno*?

17 A Yes, ma'am.

18 Q Which is that hearing where you could challenge the
19 statement?

20 A Yes, ma'am.

21 Q And do you agree with what he's just told me?

22 A Yes, ma'am. Absolutely.

23 Q All right. Do you have any concerns about either the
24 stipulation or -- as -- as he's been through it; talking
25 about that a murder occurred; that Mr. Kammerer was the

1 shooter and he shot Mr. Ham four times; that the date was
2 June the 8th, 2007, in the evening; and that Mr. Kammerer
3 pled guilty, received 34 years in prison.

4 And that Mr. DeJuan Jenkins pled to accessory after
5 the fact to murder, and he drove Mr. -- drove Mr. Kammerer
6 -- drove with Mr. Ham to the scene, right?

7 MR. O'NEAL: No, ma'am.

8 THE COURT: Kammerer.

9 MR. O'NEAL: Jenkins drove Kammerer to and from the
10 scene. And I -- Judge, I believe he pled to accessory
11 after the fact.

12 THE COURT: Accessory after the fact.'

13 MR. O'NEAL: And I don't know what kind of jail
14 sentence he got.

15 DIRECT EXAMINATION BY THE COURT CONTINUES:

16 Q All right. And -- and the stipulation that Mr.
17 Jenkins drove Mr. Kammerer to and from the scene?

18 A Yes, ma'am.

19 THE COURT: And I think it's printed.

20 MR. O'NEAL: Yes, ma'am.

21 THE COURT: Can we make that the Court's Exhibit? And
22 then we'll -- later we'll -- but I think right now I'd like
23 to make that the Court's Exhibit.

24 MR. O'NEAL: It's right here, Judge. Give me one
25 second.

1 THE COURT: Sure. And just be sure you show that,
2 please, to -- to --

3 MR. O'NEAL: I showed this -- I've shown this to you,
4 right?

5 DEFENDANT: Yes.

6 MR. O'NEAL: A couple of times?

7 DEFENDANT: Yes.

8 MR. O'NEAL: And I explained it to you?

9 DEFENDANT: Yes.

10 MR. O'NEAL: Okay.

11 THE COURT: Thank you. We'll make that --

12 MR. O'NEAL: Can I approach, Your Honor?

13 THE COURT: -- a Court's exhibit.

14 (Marked Court's Exhibit No. 1,
15 stipulation document, 1 page.)

16 DIRECT EXAMINATION BY THE COURT CONTINUES:

17 Q The items that are in Court's Exhibit No. 1, in the
18 stipulation, you understand --

19 A Yes, ma'am.

20 Q -- that those matters will be told to the jury, and
21 that they are to accept those items as fact?

22 A Yes, ma'am.

23 Q Okay. And you concur with that?

24 A Yes, ma'am.

25 Q All right. And you understand that that would be a --

1 a waiver of your Fifth Amendment right to those topics?

2 A Yes, ma'am.

3 THE COURT: Okay.

4 MR. O'NEAL: Judge, excuse me. I should probably --

5 THE COURT: Sure.

6 MR. O'NEAL: -- instruct my client, Fifth Amendment is
7 the Amendment that says you got a right not to incriminate
8 yourself.

9 DEFENDANT: (Nods head up and down.)

10 DIRECT EXAMINATION BY THE COURT CONTINUES:

11 Q You -- you understand that?

12 A Yes, ma'am.

13 Q All right. Very well. And what the Fifth Amendment --
14 - and it's in the South Carolina Constitution and the
15 United States Constitution. What it says is that no
16 person, no person can be compelled to be a witness against
17 himself or herself. It says, "himself," but I add
18 "herself." Okay? All right. Very well.

19 No one can waive your Fifth Amendment right but you.

20 All right?

21 A Okay.

22 Q Very well. Now, also there's the waiver of the
23 *Jackson v. Denno* hearing. And those are hearings that are
24 held to determine two things: Voluntariness of the
25 statement, and whether or not Miranda Rights were given if

1 -- if you were in custody or you were detained. And it
2 determines the voluntariness of the statement.

3 What happens is there's a hearing, and the Court makes
4 the determination of whether or not the State has met it's
5 burden by a preponderance of the evidence to prove that
6 Miranda was given and that the statement was voluntary. In
7 that instance, then that statement can be admitted at the
8 trial. But it's up to the jury to determine whether or not
9 voluntariness for the statement existed beyond a reasonable
10 doubt. Okay?

11 A Okay.

12 Q All right.

13 MR. O'NEAL: Yes.

14 Q Then the Court, if you will, sits as a gatekeeper and
15 -- and in that capacity. But the ultimate factual
16 determination, of course, is by the jury.

17 Do you understand that Mr. O'Neal and the Solicitor
18 have asked me to read the stipulation to the jury --
19 Court's Exhibit 1 to the jury, explaining to them what a
20 stipulation is, even before the opening statements are
21 made? You understand that?

22 A Yes, ma'am.

23 Q All right. And you -- do you have any questions about
24 any of these matters that we're discussing?

25 A No, ma'am.

1 Q And feel as though you understand them fully?

2 A Yes, ma'am.

3 Q Now, let me just get a little bit more information
4 from you. Tell me how old you are.

5 A I'm 21 years old.

6 Q Okay. And how far did you go in school?

7 A I graduated high school.

8 Q And I know that from the conversations with counsel
9 that you had a little one about six months ago?

10 A Yes, ma'am.

11 Q And you are -- went -- and you're married?

12 A Yes, ma'am.

13 Q All right. And I know you're working inside your
14 home. Are you working outside your home?

15 A At this current moment -- when this incident happened
16 I had a security clearance. And because of the incident,
17 it ruined my security clearance. So, at this moment, no,
18 I'm -- I'm staying at home.

19 Q You're not working outside your home?

20 A Correct.

21 Q Again, I know with a six month old, you are working
22 24/7 inside your home for sure. All right. Now, where
23 were you working?

24 A At Stanley Associates.

25 Q What is that?

1 A It's a government contracting job. I was in the
2 department of doing cable fabrication for submarines.

3 Q Okay.

4 THE COURT REPORTER: Cable fabrications?

5 DEFENDANT: Yes, ma'am.

6 Q Have you had any drugs or alcohol or medicine in the
7 last 72 hours?

8 A No, ma'am.

9 Q Okay. I ask all of those questions just to be sure
10 that I am convinced that -- that when you tell me that you
11 understand these matters and that you are -- are freely and
12 voluntarily waiving your right to allow Mr. O'Neal to
13 stipulate to these things, got to know a little bit about
14 you.

15 Feel like I know a little bit about you. I feel like
16 you're making these stipulations freely, voluntarily, and
17 knowingly and intelligently.

18 Now, do you have any other questions that you can
19 think of about these matters for me?

20 A No, ma'am.

21 Q Very well. All right.

22 THE COURT: (To Mr. O'Neal) Can you think of anything
23 I need to ask?

24 MR. O'NEAL: You've read your statement that -- that
25 you gave to the police?

1 DEFENDANT: Yes.

2 MR. O'NEAL: You and I've gone over it time and time
3 again?

4 DEFENDANT: Yes.

5 MR. O'NEAL: And you understand that my plan is to
6 allow that in, not to object to it?

7 DEFENDANT: Yes.

8 MR. O'NEAL: And we talked about that over and over?

9 DEFENDANT: Yes.

10 MR. O'NEAL: Okay.

11 THE COURT: And let's make that a Court's Exhibit if
12 you have an extra copy.

13 MR. O'NEAL: No, ma'am, I don't. But I'm happy --

14 THE COURT: We'll make one.

15 MR. O'NEAL: -- if the Court wants to make a copy.

16 THE COURT: Yeah. We've got a copy machine somewhere
17 around here. Thank you. I don't want to mark yours.

18 MR. O'NEAL: I was going to say, can you get somebody
19 to make a copy real quick?

20 THE COURT: Yeah. We'll get Maj.

21 (To Major Moultrie) Maj, can we make a copy? Thank
22 you so much.

23 (Marked Court's Exhibit No. 2, defendant's statement
24 to police document, 3 pages.)

25 THE COURT: Very well. All right.

1 (To the Defendant) What -- just so you know what's
2 going to happen next, is I'm going to invite the solicitor
3 back in and talk about the stipulation a little bit and any
4 other issues that -- that we have. All right?

5 DEFENDANT: Okay.

6 THE COURT: We're going to begin in the morning at
7 9:30, okay?

8 DEFENDANT: Okay.

9 THE COURT: Very well. (To Court Security) George,
10 let everybody else in.

11 MR. O'NEAL: Can she be seated, Your Honor?

12 THE COURT: Yeah. Absolutely.

13 (Ex parte hearing ends.)

14 (All parties return to the courtroom.)

15 THE COURT: Y'all come on up here. Y'all don't have
16 to stay so far back. You can come closer to your loved
17 one.

18 Let me -- I wanted to explain to family members, I
19 wanted to explain why I asked you to leave, too. And just
20 so you understand the reason that I did that was to
21 preserve -- was to preserve the attorney/client privilege.

22 If you all had been here, that would have waived the
23 attorney/client privilege. The whole purpose of that
24 exercise was to be sure that I did nothing in obtaining
25 some information that I needed to obtain in waiving her

1 attorney/client privilege. So, please understand that was
2 the reason for asking you to leave. It wasn't to exclude
3 you from what was going on at all. But it was to preserve
4 her attorney/client privilege. All right. Thank you.

5 All right. Now, let me tell you what I have -- or
6 what -- it is my understanding that there is a stipulation.

7 MR. BELL: Yes, Your Honor.

8 THE COURT: And that there is a request on behalf of
9 the State and the Defense for me to publish that
10 stipulation to the jury even before the opening statements
11 are given. I know that from having had a conversation in
12 chambers with you gentlemen.

13 I'm prepared to do that if that is a continuing
14 request --

15 MR. O'NEAL: Yes, ma'am.

16 THE COURT: -- in the morning. I'm not going to get
17 to it today.

18 MR. BELL: We have ---

19 THE COURT: Just in the morning. And y'all remind me,
20 I'll --

21 MR. BELL: I'll remind you.

22 THE COURT: -- get to it in the morning.

23 MR. BELL: I've still got the copies here, so.

24 THE COURT: Very -- very well. Now --

25 MR. O'NEAL: One -- one was made a Court's --

1 THE COURT: Yes, a Court's Exhibit.

2 MR. O'NEAL: A copy was made a Court's Exhibit.

3 MR. BELL: Okay.

4 THE COURT: Now, anything further from the State at
5 this time? (To Mr. O'Neal) You're going to waive -- now,
6 in front of the State, you're going to waive the *Jackson v.*
7 *Denno* hearing?

8 MR. O'NEAL: I am.

9 THE COURT: Understanding that the statement would --
10 if offered appropriately under the rules of evidence, would
11 come into evidence.

12 MR. O'NEAL: Yes, ma'am.

13 THE COURT: Very well. And there would be no
14 objection to it not being admitted on the basis of what
15 would -- could and would have been handled in the *Jackson*
16 *v. Denno*.

17 MR. O'NEAL: Yes, ma'am.

18 THE COURT: Very well. Yes? Anything further from
19 the State?

20 MR. BELL: Nothing from the -- further from the State,
21 Your Honor.

22 THE COURT: All right.

23 MR. O'NEAL: Judge, I haven't yet had a chance to call
24 my client's bondsman. I'm going to ask formally on the
25 record she be allowed to remain free on bond pending this

1 trial.

2 THE COURT: The only thing that I would ask you to do
3 is to communicate with me if there's any concern on behalf
4 of the bondsman. I have no concern.

5 MR. O'NEAL: I will.

6 THE COURT: I have no concern with -- with her
7 remaining out.

8 (To the Defendant) I need you to understand a couple
9 of things though. And I'm -- I do this so that you are
10 notified, not because I have any preconceived ideas about
11 what you may or may not do, okay?

12 DEFENDANT: (No audible response.)

13 THE COURT: I would tell you that -- first of all,
14 that if you do not appear, the case would go on in your
15 absence.

16 And secondly, I would immediately issue a bench
17 warrant. And upon your being located, you would then be
18 placed into the detention center where you would remain.
19 Any -- and there may be other issues that would erupt as a
20 result of that.

21 I simply tell you that, again, so that you are fully
22 informed, not because I have, -- obviously if I thought you
23 were not going to return, I wouldn't let you stay out. But
24 I do believe -- unless there's some objection on behalf of
25 your bondsman, I am satisfied that you will return.

1 MR. O'NEAL: Thank you, Judge.

2 THE COURT: Very well. Is this your new husband?

3 DEFENDANT: Yes, this is my husband.

4 THE COURT: Now, let me ask you one final question.

5 Mr. O'Neal, you may want to -- to speak with your client,
6 and I don't need to know until tomorrow: Does she wish to
7 be referred to as "Sanders," or does she wish to be
8 referred to with her new name?

9 MR. O'NEAL: You can ask her right now.

10 (Mr. O'Neal confers with the defendant.)

11 MR. O'NEAL: She wants to be referred to by her
12 married name, Judge, now that she's married: Hecksher.

13 THE COURT: Y'all are going to have to help me. You
14 got that, Mr. Bell? Hecksher.

15 MR. BELL: (No audible response.)

16 THE COURT: I can handle it, but you're just going to
17 have to be patient with me and remind me. Hecksher.
18 Wonderful.

19 MR. O'NEAL: I think there's a boulevard by that name
20 in L. A.

21 THE COURT REPORTER: I'm sorry?

22 MR. O'NEAL: There's a boulevard in Los Angeles by
23 that name, Hecksher Boulevard. Am I wrong or am I right?

24 THE DEFENDANT: And in Florida.

25 THE COURT: Mr. O'Neal, I'm from Dillon, South

1 Carolina. That's more of a stretch than I can even manage.

2 MR. O'NEAL: Sorry, Your Honor.

3 THE COURT: I've been to L. A. once, and I didn't -- I
4 don't remember seeing it.

5 THE COURT: Well, you were worried about being on
6 "Jeopardy."

7 Very well. All right. That -- I believe that will
8 conclude -- I'm going to be a little bit early, hopefully
9 like five minutes, in the morning. I just like to check
10 and be sure everybody's copacetic and --

11 MR. O'NEAL: Yes, ma'am.

12 THE COURT: -- everything is fine. And again, that
13 room is yours. It will be open and awaiting your arrival
14 in the morning. You know, it may not be right before
15 8:30/9:00, but it will be there for you.

16 Use it anyway that -- that you all need to. If you
17 want to turn it into -- Mr. O'Neal, if y'all want to turn
18 it into a nursery, turn it into a nursery. If you want to
19 turn it into a nursery and office, turn it into a nursery
20 and office. That is your space. And again --

21 MR. O'NEAL: What time do you want us there, Judge?

22 THE COURT: -- if you wish to put "private" on that
23 door, feel free to do that.

24 MR. O'NEAL: Thank you, Judge.

25 THE COURT: Okay.

1 MR. O'NEAL: What time do you want us there?

2 THE COURT: 9:30.

3 MR. O'NEAL: Thank you, Judge.

4 THE COURT: Maybe 9:25-ish.

5 MR. O'NEAL: Very well.

6 THE COURT: Just so I can check to make sure there are
7 no issues in the morning. Have a good afternoon.

8 MR. O'NEAL: Thank you.

9 THE COURT: See you all in the morning.

10 (Off the record at 1:37 p.m.)

11 DAY TWO

12 (On the record at 10:11 a.m.)

13 THE COURT: All right. Good morning. Good morning.

14 MR. O'NEAL: Morning, Judge. I've got my people in
15 the room. Should I bring them in here now?

16 THE COURT: That will be wonderful, "Moses." Bring
17 your people in.

18 MR. O'NEAL: I will bring my people in.

19 (Briefly off the record.)

20 THE COURT: Great. Now, when do y'all want me to do
21 this?

22 MR. BELL: Mike, hen do you want her to read the
23 stipulation?

24 MR. O'NEAL: I think at the end of the charge.

1 MR. BELL: Yeah, before the -- I guess before the
2 opening statement.

3 THE COURT: Yeah.

4 MR. O'NEAL: Right after your pre-charge and right
5 before opening statements will be opinion, Judge.

6 THE COURT: Got it. I'll -- happy to do that then.
7 And if I happen to give the preliminary -- I'm just --
8 preliminary charge and then look to y'all and y'all do like
9 this (indicates.)

10 MR. BELL: Okay.

11 THE COURT: Do like -- and that'll be a sign to me
12 that I've got to --

13 MR. O'NEAL: Yes, ma'am.

14 THE COURT: -- do that.

15 All right. Anything from the State before we bring
16 the jury out?

17 MR. BELL: Nothing from the State.

18 THE COURT: Very well.

19 MR. O'NEAL: Nothing, Your Honor.

20 THE COURT: Very well. And is -- is -- just in the
21 event that our victim's family is here, is the victim
22 advocate, you know -- there she is. There she is.
23 Wonderful. I'm glad she's here.

24 MR. BELL: Yeah. Mr. Ham, Jesse Mac Ham is -- the
25 grandfather of the victim, is the only victim's family

1 here.

2 THE COURT: Well, I'm delighted that she's here with
3 us. That's great.

4 Let me just mention, of course, every case in -- in
5 criminal court is so emotional, not only for the defendant,
6 but for both families; the victim's family, the victim if
7 the victim is present -- able to be present, and -- and of
8 course the family of the victim, as well as the -- the
9 family of the defendant. And I'm -- I'm -- I'm aware of
10 that.

11 And so, what I wanted to speak to and just tell the
12 family is that there may be -- I -- what I don't do is I
13 don't let people come and go while people are testifying
14 and during the opening statements.

15 But that does not apply to the victim's family or the
16 defendant's family. It just doesn't apply.

17 MR. O'NEAL: Thank you, Judge.

18 THE COURT: And the reason for that is that because
19 these cases, by their very nature, are so heart wrenching
20 and so emotional, I want my family members to know that if
21 you feel overwhelmed or you feel as though you're going to
22 have an outburst or whatever, please feel free to leave the
23 court.

24 Because what we must do throughout this trial is that
25 we must maintain appropriate decorum, which means we don't

1 -- we cannot inject emotion into the jury, because they're
2 entitled to that. They're entitled to be able to do their
3 work without that kind of extra matters injected into their
4 proceedings.

5 So, while other people may not be allowed to come and
6 go, that does not apply to the victim's family and it does
7 not apply to the defendant's family. So, if you feel as
8 though you just -- you got to leave, if you'll do so
9 quietly, feel free to do that.

10 Now, you know, of course Mr. O'Neal, I know you don't
11 want your client, of course, to -- she's got to remain with
12 us.

13 MR. O'NEAL: Yes, ma'am. She understands.

14 THE COURT: But if she should need to take a break,
15 you just --

16 MR. O'NEAL: I'll let you know.

17 THE COURT: -- you approach and let me know. Okay?
18 Very well.

19 Now -- now, I have written down in my notes, and I
20 tried to practice it this morning and then realized I
21 couldn't find my notes. So, Hecksher?

22 MR. O'NEAL: Hecksher. That's correct.

23 THE COURT: I did that right?

24 MR. O'NEAL: Yes, ma'am.

25 THE COURT: For a girl from Dillon, that's pretty

1 good. Wonderful. All right.

2 I -- with your permission, I will explain in my
3 preliminary charge the change -- the reason for the
4 difference in "Sanders" to "Hecksher." Any concern about
5 that, Mr. Bell?

6 MR. BELL: I don't -- I don't suppose there's anything
7 any from the State.

8 THE COURT: Okay.

9 MR. O'NEAL: And Judge, I apologize for waiting to
10 tell you about that. I wasn't sure when it was a good
11 time. When she was indicted she was arrested under the
12 name "Sanders," got married subsequently --

13 THE COURT: It's a good thing, Mr. O'Neal. Because if
14 you'd have told me anytime earlier, I'd have forgotten how
15 to pronounce it.

16 MR. O'NEAL: Well, thank you, Your Honor.

17 THE COURT: So, that -- that worked out fine for me.

18 All right. Wonderful. Okay. Anything further before
19 we -- before we bring the jury out from either side?

20 MR. BELL: None from the State.

21 MR. O'NEAL: None.

22 THE COURT: Thank you, Ms. Salisbury. All right. Ms.
23 Jeffers, are you ready to swear in this jury?

24 COURT CLERK: Yes, Your Honor.

25 THE COURT: Wonderful.

1 (Jury enters at 10:17 a.m.)

2 THE COURT: (To the jury) Good morning, ladies and
3 gentlemen.

4 JURY: Good morning.

5 THE COURT: (To the presiding juror) You are already
6 doing a superb job as the presiding juror. Look, you
7 gathered them all up and got them back. Thank you so much.
8 Thank you so much.

9 (To jury) Ladies and gentlemen, at this time -- at
10 this time I'm going to ask Ms. Jeffers to please swear you
11 in as the jury in this case. If you'll please stand and
12 raise your right hand.

13 CLERK OF COURT: Thank you, Your Honor.

14 Ladies and gentlemen of the jury, do you solemnly
15 swear and affirm that you shall well and truly and true
16 deliverance make between the State of South Carolina and
17 the defendant at bar, with whom shall have the charge, and
18 a true verdict give according to the law and the evidence?
19 If you accept this oath, please say "I do," and be seated.

20 JURORS: (In unison) I do.

21 COURT CLERK: Thank you. Thank you, Your Honor.

22 THE COURT: Thank you so much.

23 Ladies and gentlemen, first and foremost, you are now
24 the jury in this case. And I do want to make some
25 preliminary remarks to you. And -- and then we've got a

1 couple of things that I -- that I want to do before we get
2 right into the trial of the case.

3 Now, ladies and gentlemen, I would begin my
4 preliminary remarks by telling you that so often -- so
5 often, particularly in -- in our current time when we have
6 things like "Court TV" and "CNN" and "FOX" and so -- and
7 "Reality TV"; when we have so much television and cable
8 interaction with the court system; one of the things that
9 can happen is that a jury can come to court with -- with an
10 idea about the way that a trial can be.

11 Because obviously when shows are done, particularly
12 the fictional shows -- "CSI" is probably the most popular
13 and known one of those kinds of shows today. What happens
14 is is that there are -- these shows are full of high drama,
15 big action, lots of things going on all the time. And then
16 there's a break for a commercial. And then they come back
17 and do it again. And then there's a break for a
18 commercial. And then they come back one final time with
19 this huge crescendo; and then it's over, the show, and it
20 all happens in what, 27 minutes?

21 So, a lot of what we know as -- as citizens happens in
22 the context of those television shows or "Court TV." And
23 even "Court TV," they have little snippets.

24 Ladies and gentlemen, I want you to know that while
25 all of those things, in terms of the high drama and the

1 intrigue and all of that, while, you know, that is true in
2 cases from time to time, the search for the truth in the
3 doing of justice is obviously a slow and deliberative
4 process. It is not "CSI" I must tell you. And it is not
5 intended for entertainment.

6 The duty that you are -- now have embarked upon is --
7 is an awesome duty. And it is the duty to do justice in --
8 in our system.

9 Ladies and gentlemen, I would tell you also that our
10 lawyers in this case, they are advocates for their clients.
11 But first and foremost, they are -- and take an oath when
12 they become lawyers in our state. They take an oath, and
13 the oath while it is -- has various component parts to it,
14 they take an oath as an officer of the Court to -- to of
15 course seek justice in the context of an advocate.

16 But I also want you to know that they are officers of
17 the Court and -- and ethically bound to the Court. Ladies
18 and gentlemen, I -- you should expect these lawyers to be
19 competent and ethical as they make their presentations on
20 behalf of their clients.

21 Now, ladies and gentlemen, of course, the case that we
22 are about to try is the *State of South Carolina vs. Tiffany*
23 *Ann Sanders*. When Ms. Sanders was -- was arrested,
24 indicted her name was "Sanders." I will tell you, ladies
25 and gentlemen, that she has had a name change. She has

1 married since these events, since her arrest and
2 indictment. Her name is now "Tiffany Ann Sanders
3 Hecksheer" -- or "Hecksher." And so, I wanted you to know
4 that you very well may hear her referred to as "Hecksher."
5 And that is her new name, if you will. So, first and
6 foremost, the case that we're about to try is the case of
7 the *State vs. Tiffany Ann Sanders Hecksher*.

8 Now, ladies and gentlemen, what I will now say to you
9 is intended to serve as an introduction to the trial of the
10 case. These remarks are not a charge on the law applicable
11 to this case. I will instruct you on the law applicable to
12 this case at the end of the trial, before you retire to
13 consider your verdict.

14 This is intended to be an explanation of the procedure
15 that we will be following in the trial of this case, so
16 that you may better understand what may be happening. In
17 other words, it's to give you the framework to put the
18 different events that will occur into context.

19 Now, ladies and gentlemen, jurors always appropriately
20 ponder, wonder about the taking of notes. I want to talk
21 about that for a moment. Ladies and gentlemen, there is a
22 debate that goes on in -- in the trial of cases and
23 throughout the judiciary, throughout the country, certainly
24 throughout our state. And the debate goes like this:
25 There is a real concern with the taking of notes, because

1 there's a concern that if you're taking a note while
2 testimony is being given, that you can miss something as
3 you're taking a note.

4 The other concern is that if one juror has a note and
5 another juror does not have a note, and there is an ongoing
6 discussion during your deliberations, there can be an undue
7 amount of influence placed upon that note.

8 Now, the -- the efficacy, the positive part of note
9 taking is that for those people who are note takers -- and
10 I'm one of those people, there are people who are note
11 takers -- to allow someone to take notes will allow them to
12 refresh their recollection prior to their deliberation.

13 Very good arguments on both sides. Let me tell you
14 what I have decided as a policy matter after years of
15 having the opportunity to try cases with juries. When a
16 case is expected to be of relatively short duration, I ask
17 jurors to -- I ask them irrespective to listen very
18 carefully and not take notes. When the trial is
19 anticipated and expected to be of more lengthy duration, we
20 have notebooks, we have writing implements, paper, and we
21 even have a sheet that talks about note taking for jurors.

22 Ladies and gentlemen, I am informed that this trial is
23 anticipated to be of relatively short duration. And for
24 that reason, I'm going to ask you to listen carefully and
25 not take notes and trust your collective memory.

1 Now, I have commented on the expected duration of this
2 trial, and I want you to know that I in no way demean the
3 importance of this trial. It is of the utmost importance
4 to the State, certainly to Ms. Hecksher, and very much to
5 our system. I simply commented on the anticipated
6 duration, because I didn't want you to be concerned about
7 my instruction not to take notes; and I wanted you to
8 understand the reason I will -- why I've given you that
9 instruction.

10 Now, ladies and gentlemen, the -- the defendant, Ms.
11 Hecksher, is indicted in this case with two criminal
12 offenses. One, accessory before the fact to murder; and
13 murder. I will explain the elements of these two offenses
14 to you later when I give you the instruction on the law.

15 I would like to tell you now that, as we talked
16 yesterday, an indictment is simply the charge by which a
17 case is brought into court. And it is not, in any sense,
18 evidence of any of the allegations that it contains.

19 Ms. Hecksher has pled "not guilty" to these
20 indictments. The State, therefore, has the burden of
21 proving each element of each of these indictments beyond a
22 reasonable doubt. And it will be your duty, ladies and
23 gentlemen, to decide whether the State has met that burden.

24 Let me tell you also, these indictment exist
25 independently. Completely independently. And your

1 determination of one and the other must be made
2 independently.

3 Your purpose as jurors is to find and to determine the
4 facts, what are the facts in this case. You are the sole
5 judges of the facts. You are the only judges of the facts.

6 Ladies and gentlemen, if I at any point in time,
7 during the course of these proceedings, make any comment or
8 gesture or do anything that you believe is a comment or an
9 intimation regarding the facts, I ask you in advance,
10 please disregard that. I -- it is only coincidental
11 because, ladies and gentlemen, our law doesn't allow me to
12 have an opinion.

13 I don't have an opinion regarding these facts. I
14 respect and I honor the -- the determination of the facts
15 in this case is a matter solely for you to determine. So,
16 if over the course of these proceedings you think I have
17 done something with regards to the facts, maybe it's too
18 much lunch or something. But I can promise you, there is
19 no intimation or comment regarding these facts. Please
20 disregard that.

21 Now, ladies and gentlemen, you are to determine the
22 facts from the sworn testimony that you will hear and from
23 other evidence introduced into court. And there will be a
24 stipulation that I'm going to read to you in just a moment.
25 And I'll tell you what a stipulation is in just a moment

1 before I read it to you.

2 Ladies and gentlemen, it is up to you to determine the
3 inferences which you feel may properly be drawn from the
4 evidence. Ladies and gentlemen, it is especially important
5 that you perform your duty of determining the facts
6 diligently and conscientiously. Because you see, under our
7 system of justice, there is ordinarily no way, no way,
8 under our system, to correct an erroneous determination of
9 the facts by a trial jury.

10 On the other hand, and with equal emphasis, the same
11 law that makes you the judges of the facts, as I've just
12 explained, make me the judge of the law. The law as given
13 to you by the Court is the only law that you may consider.
14 And if you should come into court with some preconceived
15 idea about what you think the law is or ought to be, and if
16 you disagree with what I tell you the law is, in order for
17 our system to work correctly, you must abandon your
18 preconceived idea and you must accept and apply the law
19 exactly as I give it to you. I cannot tell you what the
20 facts are, and you cannot disagree with me about what the
21 law is or should be.

22 Your job -- your job is to make the findings of fact.
23 And then once you have made your findings of fact, you will
24 take the law as I give it to you, you will apply it to
25 those facts. And that is how you will reach your verdict,

1 which will then be a true and just verdict under the oath
2 that you just took.

3 Now, until I advise you to begin your deliberations,
4 you must not discuss this case with anyone, including your
5 fellow jurors, your friends, your family or anyone involved
6 with the case. After the case is submitted to you, and I
7 promise you there will be no question in your mind when
8 that time has come, then you must discuss it only in your
9 jury room with your fellow jurors.

10 The attorneys and the parties in this case, as we
11 talked yesterday, know that they are not to communicate
12 with you at all. And so, if they do not even say hello
13 when they -- should they pass you, please understand
14 they're not being unfriendly. They are simply following my
15 instructions.

16 During this trial, you must not read, listen to, or
17 watch any news reports, read any newspaper accounts or
18 listen to anything, of course, on the television or the
19 radio. And you know, we say -- we have to say, "And you
20 cannot read or listen to anything on the internet." And as
21 we talked yesterday, don't chat, don't tweet, don't blog,
22 don't Facebook, don't -- did I get it all? Seems like
23 there -- chat -- seems like there ought to be something
24 else. But don't communicate about his case in any regard.
25 No "Columbo," no investigation, no going to the internet.

1 You must -- you must receive all of the information from
2 which you will make up your mind here in court while court
3 is in session.

4 It is essential that you keep an open mind and that
5 you not decide any issue in this case until all the
6 evidence has been presented, the parties have made their
7 closing arguments, and I have instructed you on the law
8 applicable to this case.

9 It is your solemn responsibility to determine whether
10 Ms. Hecksher is guilty or not guilty. And your verdict
11 must be based solely on the evidence as it is presented to
12 you during this trial, and on the law as I instruct you
13 during and at the close of the trial.

14 Now, in just a moment, the Solicitor will make what is
15 called an "opening statement" to you. And in his opening
16 statement, I think you can anticipate that Counsel will
17 explain to you the issues in this case; or better said,
18 what the Solicitor believes the issues are in this case.

19 Mr. O'Neal, of course, is the attorney for Ms.
20 Hecksher, the defendant, will also make an opening
21 statement; at which time he, likewise, will share with you
22 what he believes the issues are in this case.

23 Now, ladies and gentlemen, once the opening statements
24 -- and they are not arguments. Those arguments will come
25 at the conclusion of the case. The opening statement is an

1 opportunity, if you will, for each side to outline the
2 issues and what they believe the evidence will show to give
3 you a road map to their case.

4 Now, once the opening statements are finished, each
5 side will then have an opportunity to present evidence to
6 you. Remember, sworn witnesses from the witness stand, and
7 any exhibits which are admitted into evidence. And again,
8 in a moment, I will read to you a stipulation.

9 And you will first hear from the State, and then the
10 Defense will have an opportunity to present evidence.

11 Now, ladies and gentlemen, once the evidence has been
12 presented, then you will hear the closing arguments of both
13 parties by their attorneys. These arguments are true
14 arguments, meaning that each side will emphasize certain
15 portions of the evidence, and try to convince you to agree
16 with their version of the facts.

17 Now, ladies and gentlemen, let me say this about
18 Counsels's remarks to you. I urge you, please, please give
19 these lawyers your undivided attention, because what they
20 will say to you is important. Please listen to them, but
21 please also know that what the attorneys say is not
22 evidence. The evidence comes from the sworn witnesses and
23 any exhibits admitted into evidence and the stipulation.

24 Now, ladies and gentlemen, I want to talk about a
25 couple of other things, because I want you to understand

1 what is occurring as these matters, no doubt, will occur
2 during the course of this trial. You are learning that a
3 trial is a very structured activity. And as in sports or
4 business or any other structured activity, there are
5 certain rules that both sides must obey when presenting
6 evidence. The reason for these rules -- and interestingly
7 enough they are called "Rules of Evidence" -- the purpose
8 of these rules is to ensure that the information you
9 receive is the must -- most trustworthy and reliable
10 information that is available.

11 Now, under our procedure, if one of these lawyers
12 believes that there has been a violation of the rules of
13 evidence, it is their responsibility to raise that to my
14 attention. The way that our procedure affords for them to
15 do that is to say, "Objection, or "Your Honor, may we
16 approach," or "Your Honor, we have a matter of law," or
17 something like that. That is the procedure that they can
18 use to raise a possible violation to my attention.

19 Because that is the only means that they have to do
20 that -- they can't, like, email me or whatever -- please,
21 you must not hold an objection against an attorney nor his
22 client, nor -- or her client; nor should you conclude from
23 my ruling on the objection that I favor one side or the
24 other, because I can assure you, I do not.

25 Now, let me tell you the way the objections are going

1 to be handled. They will object, and I may ask them for
2 just a word or two to guide me regarding the basis of their
3 objection. I may very well rule on it. If I say that the
4 objection is sustained, that means that the information
5 cannot be received in that form, that the -- that the rule
6 that has been raised was correctly raised. The exhibit
7 can't be received or the testimony can't be heard, because
8 there is a violation of the Rules of Evidence.

9 If I say "overruled," that means that the testimony
10 can be received or the exhibit can be received.

11 Now, I may also -- and no doubt -- oft times I'll --
12 I'll do this -- I may ask the lawyers to approach. I may
13 even need to ask you to step to your jury room. And I want
14 you to know exactly what is happening.

15 You now know that you're the sole finders of the
16 facts. And you know that I cannot comment on the facts.
17 Sometimes, when I'm ruling on matters of evidence which are
18 matters of law, I need to have a conversation with the
19 lawyers. Sometimes it's just a word or two; sometimes it
20 can be a little -- a little more extensive. And the reason
21 that I'll ask them to approach or ask you to step to your
22 jury room is so that nothing that I would say in my ruling
23 on a matter of evidence would be a comment on the facts.
24 That's the reason for the approaching or the asking you to
25 step to your jury room. It's certainly not so these

1 lawyers can keep anything from you. It's just to allow me
2 the space to do the work that I must do.

3 Now, when the lawyers approach, we have this great
4 little gadget. Oh, here we go. (Turn on white noise
5 sound.) You will go to the beach. You can close your eyes
6 and you could just see the ocean rolling and rolling. So,
7 I just didn't want that to startle you in the event that --
8 that I need to use that. I'm getting used to it, so I'm
9 liable to forget. So, if we have a sidebar, y'all can say,
10 "beach, beach," and it'll remind me.

11 Now, ladies and gentlemen, in determining what the
12 true facts are in this case, you must decide the
13 credibility of the witnesses in this case. Credibility
14 simply means "believability." It will be my responsibility
15 to rule as a matter of law whether certain testimony or
16 exhibits are admissible at all or not. But once the
17 testimony is admitted, or the exhibit admitted, whether or
18 not you believe it, the weight you give to it, those are
19 matters solely, solely for you to determine.

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

1 anything that is in the record that will help you evaluate
2 the testimony of the witnesses.

3 These are certainly not -- these are just matters that
4 you can consider -- you know, are examples of things that
5 you can consider as you evaluate the credibility, the
6 believability of these witnesses. This list by no means is
7 exhaustive.

8 Ladies and gentlemen, because the evaluation of these
9 witnesses is so essential to your duty, you must pay close
10 attention to them, observe them, listen to them. And
11 please pay close attention to the attorneys and of course
12 the Court. Please don't let your thoughts wander, but give
13 the strictest attention to the testimony in this case; so
14 that at the end of all the testimony, after the arguments
15 of counsel, and my charge on the law you will then be in a
16 position to determine what the true facts are and to apply
17 the law to those facts, and thus render a true and just
18 verdict.

19 We talked about your duties yesterday, Madam Presiding
20 Juror. Of course, you will preside in the jury room during
21 the deliberations to be sure that each and every juror just
22 has an opportunity to participate. Once the jury's
23 deliberations are concluded, it will be your duty to write
24 the verdict on the verdict form. And finally, you are the
25 jury's spokesperson here in court, meaning if the jury

1 needs to communicate with me for whatever reason, you would
2 take that down in writing and give it to Ms. Salisbury or
3 Mr. Taylor, no doubt who will in turn give that to me.

4 Now, ladies and gentlemen, I want to shift on you a
5 little bit, because I want to talk about stipulation.
6 Counsel has given to me a stipulation. And I want to tell
7 you what that is, and then we're going to go over the
8 stipulation.

9 Ladies and gentlemen, a stipulation occurs when
10 lawyers for -- for both sides agree -- agree that the jury
11 should accept as fact certain items, certain information.
12 And for those facts that they have stipulated, what they're
13 saying is, "We agree that this is what occurred. We agree
14 that these are facts. Don't struggle with these. These
15 you may accept as fact."

16 That is what a stipulation is. And it comes about
17 through an agreement of counsel, through an agreement of
18 the lawyers for both sides.

19 So, ladies and gentlemen, I'm now going to read to you
20 this stipulation, meaning that the lawyers agree that you
21 should accept the following as fact. I will read this to
22 you again when I give you the -- the -- the concluding
23 instruction.

24 (As read) "Jessie Ham, the victim, was killed by four
25 shots: three in the back and one to the neck.

1 "Jessie Ham was killed near the Tire Kingdom in the
2 Publix shopping center at the corner of Park Forrest
3 Parkway, across from Ashley Phosphate Road and Dorchester
4 Road, in the city of North Charleston, in Dorchester
5 County.

6 "Sean Kammerer, Sean Kammerer fired those four shots.
7 Sean Kammerer was convicted by his plea of guilty to
8 murder.

9 "DeJuan Jenkins, DeJuan Jenkins drove Sean Kammerer to
10 the scene and away from the scene, and was convicted by his
11 plea to accessory after the fact."

12 Ladies and gentlemen, these attorneys have agreed that
13 you should accept the foregoing facts as fact, or the
14 foregoing statement as fact. That is the conclusion of the
15 stipulation.

16 Now, ladies and gentlemen, in order to preserve
17 everyone's rights, it is necessary that I inquire of
18 counsel whether or not there are any additions or
19 exceptions to my preliminary remarks to you.

20 By the State?

21 MR. BELL: None from the State.

22 THE COURT: From the Defense?

23 MR. O'NEAL: None from the Defense, Your Honor.

24 THE COURT: Ladies and gentlemen, at this time -- at
25 this time, I ask that you please draw close, as we listen

1 to the opening statements of our attorneys.

2 Mr. Bell?

3 MR. BELL: Thank you, Your Honor. If it please the
4 Court.

5 THE COURT: Yes, sir.

6 MR. BELL: Mr. O'Neal.

7 MR. O'NEAL: Yes, sir.

8 MR. BELL: Ladies and gentlemen, of the jury --

9 THE COURT: Wait. I'm so sorry to do this. We've got
10 people coming in. I don't want our jury distracted from
11 being able to listen to you.

12 (To Court Security) Mr. Taylor, that will be
13 everybody. Don't want my lawyers to -- I don't want the
14 jury distracted from the lawyers. All right. Thank you.

15 MR. BELL: Thank you, Your Honor.

16 Jessie Ham never had a chance. He was lured to that
17 shopping center near the Tire Kingdom and he was ambushed
18 and he was shot and killed by Sean Kammerer. The person
19 that lured him and took him to that place, the defendant --
20 then Tiffany Ann Sanders now Tiffany Ann Sanders Hecksher -
21 - she found Jessie Ham where he was -- he was with some
22 friends, and begged him or urged him that she had a girl he
23 wanted -- she wanted him to meet at the McDonald's, which
24 is near -- the Rock-n-Roll McDonald's, which is near there.

25 She finally got him in the car and took him to the far

1 corner of the parking lot away from McDonald's, where Sean
2 Kammerer was waiting, waiting to kill Jessie Ham, which he
3 did.

4 That's why we're here today, ladies and gentlemen, why
5 you were here yesterday and today.

6 She's charged with two counts. She's charged with
7 accessory before the fact to murder, and murder.

8 As a solicitor, prosecutor, it is my duty to present
9 the case on behalf of the State and it is also my job and
10 my duty and --and what I'm required to do is to prove the
11 case beyond all reasonable doubt against the defendant.

12 She has nothing to prove; she sits there innocent.
13 Throughout the trial, she sits there innocent. That's what
14 our law says. It's a fundamental concept of -- in our law,
15 which you'll be charged with at the end of this trial. The
16 burden's on the State to prove a defendant guilty of the
17 criminal charges, and I accept that burden in this
18 particular case.

19 You will hear from several witnesses. Now, you've
20 heard some facts that will cut this trial a bit short.
21 You've heard facts, what has been proven so far. And
22 that's unusual for juries. You've already had some facts
23 proven to you. One, that Jessie Ham was murdered, that
24 Sean Kammerer murdered him. We know that.

25 The question is: What was the defendant's

1 involvement?

2 Well, we have witnesses that say that -- as I said,
3 urged Jessie Ham to go with her, her sister. There was a
4 friend of Jessie's who got in the car with them, and he
5 took her -- took Jessie Ham to where he was ultimately
6 murdered. And that's the case, ladies and gentlemen.

7 The two charges, accessory before the fact and murder
8 in this case are -- the State is proving from this aspect
9 that she aided, abetted, joined with, conspired, urged, all
10 those things that -- kind of conspiracy. In South Carolina
11 we have a concept called -- that's known colloquially as
12 "the hand of one, the hand of all." That is when two or
13 more people join in a criminal enterprise, whatever aspect
14 they do, then if something happens -- in this case, a
15 murder -- that the hand of one is the hand of all. That is
16 if one person murdered, the other person didn't murder,
17 that other person who had -- didn't fire a shot is just as
18 culpable as the person that fired the shot. And that's
19 what this case is about.

20 The difference between the accessory before the fact
21 of murder and murder is you have to determine whether she
22 was present at the scene or not. She was in her car when
23 the murder happened outside the car. At some point she
24 left the scene. And it's up to you to decide if she was
25 present or if she was not present.

1 If she was not present at the scene, you can find her
2 guilty of accessory before the fact. If she was present at
3 the scene, you can't find her guilty of accessory before
4 the fact, but you can find her guilty of murder, because
5 she aided and abetted and helped and joined in with this
6 crime.

7 And that's the State's case. We will have several
8 witnesses who were out with the victim. We have Mr. King
9 who rode with the victim. We have a couple of police
10 officers, and officer -- and officers that will present a
11 statement that she gave to the police after this crime.
12 And that's what you will hear from the State.

13 And we feel that all that evidence will prove that the
14 defendant is guilty of either -- and we're going to ask you
15 to find her guilty of either murder or accessory before the
16 fact to murder.

17 Now, ladies and gentlemen, you've heard a little bit
18 about the law, and I want to tell you a little more about
19 the law on this. As I said, the State has the burden of
20 proof. She has nothing to prove; she doesn't have to put
21 up evidence. She's not required to do that. The State has
22 the entire burden of proof in this case.

23 Now, you've heard that -- as before, you've heard from
24 Judge Goodstein. She's the judge of the law in this case.
25 You just took an oath several minutes ago that you will

1 follow the law as she charges you. And what that means,
2 ladies and gentlemen, is if you don't like the law, if you
3 think the law stinks, if you have problems with the law,
4 whatever, that does not enter into it. You must follow the
5 law that she charges you at the end of this case and during
6 the case. And that is your -- that is your sworn duty now.

7 But interestingly -- interestingly enough, ladies and
8 gentlemen, she's not the only judge in the courtroom,
9 because you are the -- a judge of the courtroom. As the
10 jury, and individually as jurors, you are judges. And
11 you're the judges of the fact as she told you earlier.

12 And nobody in this courtroom can tell you how to find
13 those facts. I certainly can't. I only present them for
14 you to find. Mr. O'Neal can't tell you how to find the
15 facts. Judge Goodstein cannot tell you how to find those
16 facts. It is solely up to you at the end of this case.

17 You do that by looking at any testimony that comes
18 from that witness stand, any exhibits that the State or, if
19 they so choose, the Defense puts in. And you take all
20 those at the end of this trial and you take the law that's
21 charged to you, and you deliberate and reach a verdict.
22 And that's your job, ladies and gentlemen.

23 It is also your job to determine, when the witnesses
24 come up there, their credibility, as Judge Goodstein
25 touched on earlier. Credibility means "believability." Do

1 you believe them or not. You can believe all of what of
2 they say, part of what they say, none of what they say.
3 You can believe one witness against many, many against one.
4 However you feel, however you take the facts up there, it's
5 solely up to you to find.

6 And you're probably going, "How do I tell when
7 somebody's lying or not, or how -- if somebody's telling
8 the truth? How do I do that?"

9 Wish I could tell you. I wish I could give you a
10 formula. I wish I could give you the magic formula to do
11 that. I can't. All I can urge you to do, ladies and
12 gentlemen, is you come in here with what -- what you've
13 developed through your life: your common sense or -- or
14 your wisdom or what have you. Because when you talk to
15 people, when you're out with your friends or you're out
16 with family or even if you're out with strangers, and you
17 listen to them, you get a sense of whether they're telling
18 you truth or not.

19 That's the same standard that you use here in the
20 courtroom. You haven't left anything at the door when you
21 came into this courtroom today.

22 All I can do, ladies and gentlemen, is -- is to urge
23 you to listen carefully to all the testimony, observe any
24 evidence that may be presented.

25 At the end of this trial, ladies and gentlemen, the

1 State will present you with more than enough evidence to
2 find the defendant guilty of murder or accessory before the
3 fact of murder. Thank you.

4 THE COURT: Thank you, Mr. Bell. Mr. O'Neal.

5 MR. O'NEAL: Thank you, Judge. If it please the
6 Court, Mr. Bell.

7 THE COURT: Sure.

8 MR. O'NEAL: Ladies and gentlemen, I'm Michael O'Neal.
9 I'm the defense lawyer in this case. I practice here in
10 the area: Charleston, Berkley and Dorchester Counties.

11 And I've got the pleasure of representing Tiffany Ann
12 Sanders Hecksher. Here she sits right here. She was
13 arrested back in June of '07, and this thing has been
14 hanging over her head for three years.

15 Now, she's here with her family: her stepfather, her
16 mother, her aunt, her sister -- her sister who was here
17 with her that night.

18 Now, her sister suffers from mental and emotional
19 impairment due to something that happened when she was in
20 the womb of her mother, some -- care, some -- a medical
21 emergency. And so, she probably won't be able to testify.

22 She's also here with her husband.

23 Now, the first thing you guys might be thinking is,
24 "Wait a minute. She's got a murder charge hanging over her
25 head and she gets married?"

1 Well, as I said, ladies and gentlemen, this thing's
2 been hanging over her head for three years. She got
3 married in October of '09, and even better than that, she
4 had a baby earlier this year, got a six-month-old baby at
5 home.

6 Now, you might be thinking, "What kind of crazy woman
7 would get married while she's got murder hanging over her
8 head?" The reason that happened is because she's not
9 guilty. And her husband, Richard, could see that and
10 understand that. And they chose to go forward with their
11 lives.

12 Now, that's the reason y'all are here. That's the
13 reason we're having to take up your valuable time is
14 because she is not guilty.

15 Now, you've heard the Judge tell you about what your
16 job is. You heard Mr. Bell tell you about what your job
17 is. Please take a second and -- and -- I've been trying
18 cases since 1984. And I'm going to tell you, this is the
19 best way I can figure out how to tell you what you got to
20 do: The government has the burden of putting up evidence.
21 All right? When you look at that evidence about what
22 happened, you have to figure out what happened. That's the
23 facts. What happened that night? You weren't there. But
24 the government's got the burden of putting up the evidence.
25 And once you hear all that evidence and see all that

1 evidence, you're supposed to be able to figure out what
2 happened, the facts of the case.

3 Once you figure out what happened, then you gotta
4 take the law as the Judge gives it to you -- and like she
5 says, you gotta take it as she gives it to you, whether you
6 like it or not -- and you fit the law to what happened.
7 That's where you determine whether or not first, a crime
8 was committed, then second, whether or not Tiffany did it.

9 If they don't fit -- well, let me put it this way, if
10 you look at the State's case, if you look at all the
11 evidence that they put up, and you can't figure out what
12 happened no matter how hard you try, no matter how you look
13 at it, and how many times you look at it, you can't figure
14 out what happened, that means you gotta vote not guilty on
15 both counts because the State has failed their burden of
16 proof.

17 Let's say you look at the evidence and you get a
18 pretty good idea of what happened, you figure out what
19 happened. Then you take the law as the Judge gives it to
20 you, but it doesn't fit; there's a hole, there's a gap.
21 That's reasonable doubt.

22 Now, I can't remember if the Judge told you, but I'm
23 going to tell you, because I know I'm right. If I say
24 anything different than the Judge, you listen to her, don't
25 listen to me.

1 Reasonable doubt is the kind of doubt that would cause
2 a reasonable person to hesitate to act. That's what our
3 Supreme Court has defined it as.

4 Now, as far as the State's case is concerned, in the
5 evening of -- of June the 8th, 2007, there were some boys
6 hanging around in the neighborhood. Tiffany went for a
7 ride in her car with her sister.

8 Her sister's a little older than she is. Because of
9 her limitations, she doesn't get to go out much. Tiffany
10 takes her sister -- used to take her sister around whenever
11 she went out to help her, you know -- so she don't have to
12 stay home by herself.

13 Riding through the evening, she meets up with some
14 boys that she knows. One guy, Brandon, Brandon Frye. At
15 the same time, she's talking on the phone off and on with
16 an old -- used to be kind of a boyfriend -- I think they
17 went to the prom together years -- you know, a couple of
18 years ago -- an old boyfriend named "Sean Kammerer."
19 They're not tight. They're not boyfriend/girlfriend. They
20 don't come over to each other's house every day, but they
21 talk on the phone.

22 And she goes over to Brandon's house, Tiffany does --
23 Tiffany with her sister, Amanda. And they're talking with
24 Brandon and all those guys. There's a guy there that she
25 don't know, a guy she'd never met before, Jessie Ham. He's

1 over there at Brandon's house with some other boys. And
2 she's talking to Sean and he's like, "Who -- where you at?"
3 "Over at Brandon's house." "What are y'all doing?"
4 "Shooting basketball, drinking beer." "Who's over there?"
5 "Well, Brandon's over here, so and so, and this guy
6 Jessie." He's like, "Jessie? Jessie, who?" She goes, "I
7 don't know." He goes, "What's his last name?" "Ham." She
8 tells him Jessie Ham.

9 Sean doesn't like Jessie Ham, unbeknownst to Tiffany.
10 Jessie Ham doesn't like Sean, unbeknownst to Tiffany. She
11 heard something about it, but she didn't really know what
12 the relationship was.

13 But Sean tells Tiffany on the phone, "Hey, see if you
14 can get him to come up here behind the Publix shopping
15 center. I want to fight with him." She goes, "How am I
16 going to do that? I don't even know him." She said he
17 goes, "Make something up. Figure out some way."

18 So, she tells Jessie, "Hey, there's this girl I know
19 that thinks you're cute, wants to meet you, wants to meet
20 you behind the Publix." They go back and forth.

21 Now, you're gonna hear testimony from all them boys
22 that were there that night, or a couple of them at least,
23 about talking to Jessie about, "What's up with this?
24 Something ain't right. I don't know, you know, I don't
25 know. You gotta be careful."

1 And their statements, which I'm sure are going to be
2 put into evidence, a couple of those boys tell that, no --
3 a lot of people don't like Jessie. A lot of people don't
4 like Jessie. He's got to be careful where he goes.

5 They go back and forth and back and forth. And at
6 some point Jessie decides to get in the car with Tiffany
7 and her sister, and ride up to go to the Publix.

8 Kevin King, I think his last name is, rode along with
9 them to ride up there. Maybe you'll hear from Kevin King.
10 Maybe you'll find out why he got in the car also.

11 They get over to behind the Publix. At some point,
12 Kevin wants to get out of the car. Kevin gets out of the
13 car. Somebody comes running up. Kevin says the guy has a
14 gun in his hand. He runs away. Jessie gets out, yells,
15 "drive" to Tiffany. Tiffany drives away. Then she hears
16 gunshots. And that's when the murderer, Sean Kammerer,
17 shot Jessie Ham to death.

18 Jessie got a -- I mean, Sean got a ride up there from
19 DeJuan or DeJuan or TeJuan Jenkins. He knew what was going
20 on. He waited for Jessie -- I mean waited for Sean to go
21 murder Jessie, and then come back; and this guy Jenkins
22 drove the murderer away from the scene.

23 Now, Sean Kammerer is gone. He's in jail long, long
24 time. All right. He ain't going to be here today. The
25 State could have brought him over here. They could have

1 subpoenaed him. They are the ones that have him. Mr. Bell
2 knows where he is. But for one reason or another, we'll
3 see why not hopefully, he hadn't been brought here to
4 testify in front of y'all today.

5 But as the Judge told you, the burden of proof is on
6 the government to prove that Tiffany knew that Sean was
7 going to murder Jessie, knew -- knew ahead of time that
8 Sean was going to use a gun to shoot Jessie Ham to death.

9 They've also got to prove as part of their element of
10 the offense that Tiffany felt malice. The Judge is going
11 to define to you what malice is. Malice is a depraved
12 desire to kill somebody. The criminal intent. They've got
13 to prove that she meant for Sean to shoot Jessie to death.
14 And as I just told you she hadn't met Sean -- Jessie before
15 that night. She had no idea who he was.

16 I'm confident once that you've listened to all the
17 testimony from the government and figure out as best you
18 can what happened, and then you listen very carefully to
19 the law as the Judge gives it to you and you apply that to
20 the facts, you're going to see that it doesn't fit, that it
21 fails on the issue of intent. And you're going to see the
22 truth that Tiffany's not guilty. Thank you.

23 THE COURT: Thank you very much.

24 (To Mr. Bell) Call your first witness.

25 MR. BELL: The State would call David Watson to the
26 stand.

DIRECT EXAMINATION BY MR. BELL - DAVID WATSON, SR. 120

1 COURT CLERK: Please raise your right hand and state
2 your full name for the record; and spell your last name.

3 WITNESS: David Don Watson, Sr.; W-a-t-s-o-n.

4 COURT CLERK: Thank you.

5 DAVID WATSON, having been first
6 duly sworn, testifies as follows:

7 THE COURT: Your witness.

8 MR. BELL: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. BELL:

10 Q Could you state your name again, please?

11 A David Don Watson, Senior.

12 Q Where are you employed now?

13 A I'm presently a special investigator for the Ninth
14 Circuit Solicitor's office.

15 Q How long have you been there?

16 A Approximately a month.

17 Q And where were you employed before then?

18 A I was employed with the North Charleston Police
19 Department.

20 Q How long were you there?

21 A I was there 10 years.

22 Q Is that all of your law enforcement experience?

23 A No, sir. My first three years, I was a patrolman.

24 The following four years, I was assigned to the detective

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1 division.

2 Q When were you in the detective division?

3 A I went to the detective division in 2004.

4 Q And you were there until 2008?

5 A 2008, that's correct, sir.

6 Q Investigator Watson, did you have an occasion back on
7 June 8th of 2007, to end up at the Tire Kingdom in North
8 Charleston?

9 A Yes, I did.

10 Q Why?

11 A At that time, I was part of the investigation team in
12 case there was a call-out. In case it was an incident, we
13 were paged and called out to the scene.

14 Q Why were you called to that particular location?

15 A Because there was -- at the time, it -- it was a
16 murder.

17 Q And do you recall about what time you were called out
18 and ...

19 A Yes. It was approximately around 11:15/11:20.

20 Q That was on the evening of June 8th?

21 A That's correct, sir.

22 Q And where did you go? What did you do?

23 A The page told me to respond to an address on
24 Dorchester Road. I was told to meet with Lieutenant Jelico

1 who was on the scene at -- in front of the Tire Kingdom.

2 Q Can you tell the jury a little bit about where this
3 location is?

4 A Yes, sir. It's located on Park Forrest Drive. It's a
5 brand new subdivision out there. It's on the corner of
6 Ashley Phosphate and Dorchester Road.

7 Q And what -- what's all around the Tire Kingdom there?

8 A At the time, there was the shopping center itself.
9 And the Tire Kingdom is located at the very end, very dark;
10 and there was -- it was a wooded area at the time.

11 Q Were there other businesses in that -- around the Tire
12 Kingdom?

13 A Yes, sir, there was. I believe there was a pizza
14 delivery. I believe it was Papa John's.

15 Q Are there some eating establishments near there?

16 A Yes, sir. There's -- there's the infamous Rock-n-Roll
17 McDonald's on the corner, there's a Popeye's Chicken, and
18 stuff like that there.

19 Q Are they near the Tire Kingdom, where the Tire Kingdom
20 is?

21 A Yes, sir.

22 Q When you went there, what did you find?

23 A Upon my arrival, there was several officers already on
24 scene, crime scene tape had already been, you know,

1 developed. And upon my arrival, I made contact with
2 Lieutenant Jelico; and I saw Jessie Ham lying on the
3 ground.

4 Q Was he -- had he been identified right then and there?

5 A No, sir.

6 Q That was -- then he was identified during the course
7 of your investigation?

8 A Yes, sir, he was.

9 Q And how long did you stay at the scene?

10 A Approximately -- probably two/three hours.

11 Q So, you were familiar with what the scene looked like
12 that night?

13 A Yes, sir.

14 Q And where everything was?

15 A Yes, sir.

16 MR. BELL: One moment, Your Honor.

17 THE COURT: All right.

18 (Mr. Bell confers with Mr. O'Neal.)

19 MR. O'NEAL: No objection, Your Honor. I mean, if
20 it'll help this case along, I'll stipulate that whatever
21 occurred, occurred in Dorchester County, and is well within
22 the jurisdiction of this Court.

23 THE COURT: I think that's already been actually
24 stipulated to --

1 MR. O'NEAL: Okay.

2 THE COURT: -- that these events occurred in
3 Dorchester County in the stipulation.

4 MR. O'NEAL: Okay.

5 MR. BELL: I would offer them -- and I offer them --
6 these four into evidence, 1 through 4.

7 MR. O'NEAL: Without objection, Your Honor.

8 THE COURT: Very well.

9 MR. BELL: Okay.

10 THE COURT: Exhibits -- State's Exhibit 1 --

11 MR. O'NEAL: 1, 2, 3 and 4.

12 THE COURT: -- 1, 2, 3 and 4 in evidence without
13 objection.

14 (Marked State's Exhibits Nos. 1, 2, 3 and 4,
15 photographs, in evidence.)

16 THE COURT: They are -- I don't know what they are.

17 MR. BELL: They're four photographs.

18 THE COURT: Okay. Very well. You need the ELMO?

19 MR. BELL: Yes, I do.

20 THE COURT: All right. Hold on.

21 (Brief pause as the ELMO is prepared for use.)

22 MR. BELL: Investigator Watson, I'm going to put up
23 what's been marked as State's 1. Hopefully it'll come on
24 the screen in front of you as well.

1 THE COURT: There we go. Is that the first one that
2 you wanted?

3 MR. BELL: Yes.

4 THE COURT: Okay. Very well. Now.

5 DIRECT EXAMINATION BY MR. BELL: (Resuming)

6 Q Investigator Watson, can you describe what -- what's
7 seen there?

8 A What we have there is the actual crime scene tape
9 around the sign, and I believe that is the body of Jessie
10 Ham on the ground.

11 Q What's on the left of that photograph, State's 1? You
12 can look at the monitor in front of you as well.

13 THE COURT: You have your own monitor.

14 THE WITNESS: Do I? Okay. I apologize.

15 THE COURT: There you go. No, no, no, we just -- were
16 all getting adjusted.

17 A What we have is -- I get the -- you see the patrol
18 unit, two officers going to the scene. And then you see
19 the body of Jessie Ham lying on the ground.

20 Q Okay. And what's the building on the -- on the left
21 of the --

22 A The building on the left is the Tire Kingdom.

23 Q Okay. I'm going to put up what's been marked as
24 State's 2, and ask you if you can identify that.

1 A Yes, sir. That's also the area of the Tire Kingdom.

2 Q Okay. And that's looking -- okay. And --

3 THE COURT: You may need the annotation. It might be
4 of assistance to you if you want to point some things out.

5 MR. BELL: Okay.

6 Q You can touch on the screen and it'll --

7 A All right, sir.

8 Q All right. What's to the far right on that
9 photograph, State's 2?

10 THE COURT: You can point, too, and then he'll know
11 what you mean.

12 Q Okay.

13 A You'll see the Tire Kingdom. You'll also see the
14 business of Papa John's. And also between Papa John's and
15 the next building there's a cut that goes into the back.

16 Q Okay. Is that like a little road or something?

17 A Yes, sir, it is. Yeah. Yes, sir.

18 Q And then what's -- what's past that cut?

19 A That is the -- the bank of the -- of the shopping
20 center, and also another wooded area.

21 Q Okay. Let me put up State's -- what's been marked as
22 State's 3, and if you can describe what that is.

23 A Yes, sir. That's another entrance to the shopping

1 center.

2 Q Okay. And --

3 A And basically, what you see here is parking spaces and
4 the wooded area and the stop sign there.

5 Q And from where are you looking?

6 A You -- from the -- the actual crime scene area looking
7 in that direction.

8 Q Okay. Back towards the -- that park -- that side of
9 the parking lot?

10 A Yes, sir, back towards that side. There's a Heritage
11 Bank and other businesses in that area.

12 Q Okay. And finally, State's 4. It's a little dark,
13 but what is that a photograph of?

14 A Again, this is looking back towards the Publix, back
15 towards Park Forrest Parkway. And there -- in between here
16 (indicating) is the -- is a roadway. It's actually -- you
17 know, usually delivery trucks park there and stuff like
18 that.

19 Q Okay. You can point it out on the screen.

20 A Yes, sir. It's right here (indicating). In this area
21 here (indicating).

22 Q Okay. Now, in perspective, on this photograph, if you
23 can point on the screen, where is the McDonald's?

24 A It's off picture, way over in the corner. Over in the

1 corner.

2 Q Right where that -- you just moved the cursor?

3 A Yes, sir. Exactly.

4 Q Back in that direction?

5 A Back in that direction.

6 Q How would -- how far would you say from that area, as
7 best you --

8 A I would say maybe -- maybe a hundred yards, maybe a
9 football-field length.

10 Q Okay.

11 MR. BELL: Your Honor, at this time I would -- I would
12 allow cross examination. I would just ask -- I don't know
13 I will, but with the right to recall the -- Investigator
14 Watson.

15 THE COURT: Very well.

16 MR. O'NEAL: I have no questions for this witness.

17 THE COURT: Very well. You may come down.

18 THE WITNESS: Thank you, Your Honor.

19 (The witness retires from the stand.)

20 THE COURT: Call your next -- well, you know what?

21 We're going to take our morning break.

22 (Addresses jurors) Ladies and gentlemen, I'm going to
23 ask you to please step to your jury room. Do not discuss
24 this matter or allow anyone to discuss it with you.

25 Gonna take about 20 minutes. By the time everybody

1 gets a comfort break, given that you've got a couple of
2 extra, it takes about that long, 20 minutes.

3 Do not discuss this matter or allow anyone to discuss
4 it with you.

5 (Jury exits at 11:17 a.m.)

6 THE COURT: Anything before we take our break from the
7 State?

8 MR. BELL: Nothing from the State, Your Honor.

9 THE COURT: From the Defense?

10 MR. O'NEAL: Nothing, Your Honor.

11 THE COURT: We're going to take our break.

12 MR. O'NEAL: When you want us back, Judge?

13 THE COURT: Huh?

14 MR. O'NEAL: What time you want us back?

15 THE COURT: Oh, y'all come back about 17 minutes.

16 MR. O'NEAL: Okay. Thank you, Judge.

17 (Off the record at 11:18 a.m.)

18 (On the record at 11:41 a.m.)

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

21 MR. BELL: Nothing from the State, Your Honor.

22 MR. O'NEAL: Nothing from the Defense.

23 THE COURT: Thank you. All right. Let's have the
24 jury.

25 (Jury returns to the courtroom at 11:42 a.m.)

1 THE COURT: Ladies and gentlemen, at this time we will
2 continue with the State's case.

3 Mr. Bell, please call your next witness.

4 MR. BELL: Thank you, Your Honor. The State would
5 call Kevin King.

6 COURT CLERK: Please raise your right hand and state
7 your full name for the record.

8 WITNESS: Kevin King.

9 KEVIN KING, having been first duly
10 sworn, testifies as follows:

11 THE COURT: Your witness. All right. Yes, sir.

12 DIRECT EXAMINATION BY MR. BELL:

13 Q Would you state your name again, please?

14 A Kevin King. 1

15 Q That's a good volume on -- on your voice. And you can
16 just keep it like that so all the jurors can hear you.

17 Okay?

18 A (No response.)

19 Q Mr. King, did you know Jessie Ham?

20 A Yes, sir.

21 Q How did you know Jessie Ham?

22 (Car horn beeps outside the courthouse.)

23 A He was a friend of mine in the neighborhood.

24 Q Where -- what neighborhood was that?

25 A Forest Hills.

1 Q And where's that located?

2 A Off of Dorchester Road.

3 Q How long did you know Jessie Ham?

4 A For about three or four years.

5 Q Did you live near him?

6 A Yes, sir.

7 Q Do you remember the night that he got killed?

8 A Yes, sir.

9 Q Can you tell me what -- what you'd been doing that --
10 that evening?

11 A Just hanging out.

12 THE COURT: Excuse me. Just hold up a minute.
13 Because I don't know about you, but that's distracting.

14 (Beeping stops.)

15 THE COURT: But not anymore. Thank you. Mr. Bell --
16 Mr. Bell, you might want to --

17 (Car horn beeps again.)

18 COURT SECURITY: I'll take care of that, Your Honor.

19 THE COURT: I can't wait to see what he's going to do.

20 (Brief pause.)

21 THE COURT: I just find that distracting. I don't
22 know about y'all, but I find it very distracting. I mean,
23 I think it's hard to -- to listen waiting for that to start
24 back.

25 (Off the record at 11:46 a.m.)

(On the record at 11:48 a.m.)

THE COURT: All right. Thank you, thank you, thank you. Mr. Bell, you can continue.

MR. BELL: Thank you, Your Honor.

THE COURT: And I think it's appropriate for you to begin anew.

MR. BELL: Okay.

THE COURT: I really do.

DIRECT EXAMINATION BY MR. BELL:

Q Mr. King, I think I was asking you if you knew Jessie Ham?

A Yes, sir.

Q And how long had you known him?

A For about three/four years.

Q And how did you know him?

A Just from the neighborhood.

Q And that was what neighborhood?

A Forest Hills.

Q And then I asked you if you remember the -- the day that he was killed, the evening?

A Yes, sir.

Q And what were y'all doing that evening?

A He just came by, picked me up with another friend, and said, "Do you want to come and hang out? So I said yes.

Q Where'd he pick you up from?

- 1 A My house.
- 2 Q Do you know who the other friend was?
- 3 A I think his name was "Brandon."
- 4 Q And where did y'all go?
- 5 A Over -- back over to his house.
- 6 Q Whose house?
- 7 A The guy that was driving Brandon, I think.
- 8 Q And where was his house?
- 9 A Right behind Rock-n-Roll McDonald's, in that
- 10 neighborhood. I'm not sure what the name is.
- 11 Q And what did you do when you got over to his house?
- 12 A Just talked, hung out. I had a beer or two.
- 13 Q Who all was there?
- 14 A I think me, Jessie, Brandon, and one other guy.
- 15 Q And what -- about what time was this?
- 16 A What time did he pick me up from my house, or what
- 17 time --
- 18 Q What time y'all got over to the --
- 19 A Probably around like 7/7:30.
- 20 Q What else did y'all do besides that?
- 21 A We decided to walk around the neighborhood. We got
- 22 bored sitting at the house.
- 23 Q And who went walking?
- 24 A Me, Jessie, Brandon, and the other guy.
- 25 Q And did anything happen while you were walking?

1 A Yes, sir.

2 Q What happened?

3 A We seen a female pulling up in the neighborhood, and
4 we waved her down and she pulled up to us. And we asked
5 her, "What are you doing?" And she kind of looked at all
6 of us, looked at Jessie and was like, "Nothing with y'all."
7 And drove off. So, we walked back to the house.

8 Q Where were y'all exactly when -- when this happened?

9 A The main road. Like if you turn by Rock-n-Roll
10 McDonald's, right there. We were walking like -- we walked
11 out the neighborhood, and was walking on that main strip.

12 Q Was this -- you said, "girl." Was she alone?

13 A No, she had another girl with her.

14 Q And then after that happened, where'd you go?

15 A Back to the house.

16 Q Okay. Do you recall about what time this was?

17 A I mean, honestly, no. It was about -- I know it was
18 dark. I know it was probably about 7:30/8:00; something
19 like that.

20 Q And did anything happen when y'all get back to the
21 house?

22 A No. We just sat in the backyard, and then we heard a
23 horn real loud and everything like that. And Brandon and
24 the other guy went out there to see who it was.

25 Q And did you stay in the backyard?

1 A Yes, sir. At first.

2 Q And who was in the backyard with you?

3 A Jessie. Me and Jessie were in the backyard.

4 Q Did y'all stay -- leave the backyard anytime?

5 A Brandon came and got us and said, "Hey, this girl
6 wants to talk to you."

7 Q And talk to who?

8 A Jessie.

9 Q And what happened then?

10 A We walked out there. And at the time, she didn't know
11 our names or nothing like that. We didn't tell her our
12 names. And she -- she asked us what are our names. And my
13 friend Jessie said his name was Benjamin, just giving her a
14 fake name, because -- and I told her my name was Kyle, just
15 to give her -- you know, so she wouldn't know who exactly
16 we were.

17 And she was just like, "No. You're Jessie, ain't you?
18 You're Jessie." And Jessie was like, "No, no. "My name is
19 Benjamin." And she was like, "No. My friend -- my friend
20 knows you. My home-girl knows you. You're Jessie."

21 And he -- and he still was just like, "No, no."

22 She knew who he was.

23 Q And how long did this go on?

24 A For a good minute. For at least 30 to 45 minutes she
25 was just talking to us and everything like that. And she

1 kept saying that she had a friend that knew Jessie from the
2 neighborhood and everything like that, that she wanted us
3 to meet her at Rock-n-Roll McDonald's.

4 Q Did -- did y'all ever tell her your real names?

5 A I think at the very end, like, yeah, finally she just
6 -- she -- she already knew. She just -- I mean, she wasn't
7 giving up on it, like, until Jessie was like, "Yeah, my
8 name's Jessie."

9 Q And during this time, was she doing anything else?

10 A Yeah, she was talking on the cell phone. And she
11 would walk off, come back, talk on it some more. And I
12 just thought that was kind of odd and everything like that.

13 So, I put my ear to the phone and I heard a guy's
14 voice on there. And I told Jessie, I was like, "No, that's
15 a guy on the phone. It's not a girl."

16 And by the time Jessie like grabbed the phone from
17 her, I guess there was a girl on the -- you know? I guess
18 Sean gave the phone to a girl.

19 Q And what was this girl telling y'all during this
20 period of time?

21 A Which --

22 Q The one that y'all were talking to?

23 A Oh. She just said a friend wanted to meet Jessie,
24 want -- she knows her from the neighborhood and she wants
25 to hookup with you. Come on. Come meet -- you know, let's

1 go to Rock-n-Roll McDonald's. She's there.

2 Q Did Jessie want to go?

3 A I mean, he was hesitant at first, because we just met
4 the girl, like -- and everything like that. But at the
5 same time, he thought the girl -- the girl was telling the
6 truth. She -- he thought that there was another girl at
7 Rock-n-Roll McDonald's that was going to meet up with him.

8 Q What happened eventually?

9 A Eventually he sat in the car. And she was like,
10 "Well, let's go." And they tried to pull off. And I kind
11 of stopped the car, and I got in, in the backseat.

12 Q Why did you get in?

13 A Because he was my friend.

14 Q And where did y'all go?

15 A She drove up to Rock-n-Roll McDonald's, drove around
16 it one time, and then pulled back out and into a Publix
17 parking lot, and drove down there. Tried to go in between
18 the buildings, but -- behind it, but there was a delivery
19 truck or something like that there. So, she wasn't able to
20 get by.

21 And she was on the phone, too. And she was like, "Oh,
22 there's a delivery truck. I can't get behind there." And
23 she was like, "Oh, okay." She just drove up to the wood
24 line and backed in.

25 Well, when she did that, there was no lights and

1 nothing like that, and I'm like, "Well, you can at least go
2 park, you know, underneath the light or something like
3 that." And she turned off the car and said, "No. We're
4 not moving."

5 Q In driving over there, where -- where was everybody
6 sitting in the car?

7 A She was driving, Jessie was in the passenger seat next
8 to her, I was directly behind Jessie, and I guess, her
9 sister was right beside me.

10 Q And you didn't know if it was her sister or not, did
11 you?

12 A No, not at the time.

13 Q Okay. Now, you said she went over -- how -- the
14 parking lot in front of the Publix where -- was it a lot of
15 cars? no cars? What was it like?

16 A Not really where she parked at. Not on the wood line.
17 There was probably -- like in front of Publix, so it was
18 and everything -- cars. But I mean, it was a pretty big
19 parking lot. And she just, like I said, pulled it back
20 into the wood line.

21 Q Okay. And when she pulled in, how did she pull in
22 again?

23 A She pulled up and then she backed in.

24 Q And then what happened?

25 A She -- we were like, "You can't park over there by the

1 light so she can at least see your car?" And she said,
2 "No." Turned off the car and said, "No. We're not
3 moving."

4 Q What happened then?

5 A Just -- she just -- she got off the phone and
6 everything like that, and she just sat there. And like, we
7 were talking and just -- I was looking around. And I was
8 like, just something don't seem right. I had my gut
9 feeling that, you know, I needed to get out the car. And
10 as soon as I did, as I was getting out, Sean came running
11 up with a gun and like put it to my stomach. And I knocked
12 his hand down like that (indicating), and I pushed him, and
13 I ran.

14 And then -- and then I heard three/four shots when I
15 was running.

16 Q Where did you run to?

17 A In between the buildings where the delivery truck was.

18 Q Now, before you got out the car, how was this -- the
19 girl that was driving acting?

20 A Fine. Like nothing was -- you know, she was -- like
21 we were going to meet a friend.

22 Q And you said that you -- what made you get out of the
23 car?

24 A Just something didn't seem right. Like she was just
25 acting real -- like she was acting shady like. She was

1 acting like everything was fine, but at the same time like
2 I could just tell, like, she knew something was about to
3 happen. Like she knew something that she wasn't telling
4 us.

5 Q And so, you got out of the car and --

6 A Sean --

7 Q -- there was Sean?

8 A Sean was right there. Like as soon as I got out of
9 the car, he was running up with the gun like that.
10 (indicating.)

11 Q Did you know Sean?

12 A Yes.

13 Q How did you know Sean?

14 A I went to school with him, grew up with him.

15 Q And so, he fired -- you got the gun down, he fired a
16 couple of shots, and which way did you go?

17 A Yeah. Because when I knocked his hand down, I just
18 grabbed his hand and like pushed down on his wrist. And he
19 shot two shots in between my legs. And I didn't feel his
20 wrist no more, so I just shoved him. And I turned around
21 and I ran.

22 At first I just turned straightly around and ran
23 straight. And then when I heard the shots, and I veered
24 over to the right and cut in between the buildings.

25 Q Now, how did you get out of the car if you were in the

1 back?

2 A Jessie was -- Jessie was -- he was real skinny. So,
3 he just kind of leaned up the seat like that (indicates)
4 and I pushed the seat up, because it was a two-door. And
5 like, I just stepped out. And by the time I got one foot
6 out, Sean was already running up with the gun.

7 Q Where did he come from?

8 A Out -- out of air, thin air. I don't know. He was
9 just there with a gun.

10 Q Did he say anything?

11 A Yeah. "I'm tired of this shit."

12 Q Did you hear Jessie say anything while you were
13 getting out of the car?

14 A No.

15 Q You said you ran behind McDonald's and --

16 A No, no. Publix.

17 Q Publix. Sorry. And where did you go?

18 A I hid behind there for a second, and I heard some more
19 shots. And then I -- then I took off into the woods right
20 behind Publix. And I went through that -- the woods into
21 the neighborhood, because I knew that area. And I called
22 my dad to come pick me up.

23 Q And where did you go then?

24 A To my house.

25 Q Did you ever go to the police?

1 A Later on that morning, the detectives got in touch
2 with me, and told me I needed to come up there and talk to
3 them. Because right after that, Jessie told me that if
4 anything ever happened to him, to tell his girlfriend.
5 That he wanted me to, you know, be the one to tell her. He
6 didn't want her to hear it from nobody else.

7 So, I went up and told her that he was -- you know,
8 most likely he was dead.

9 Q This girl that you rode with, do you see her in the
10 courtroom today?

11 A Yes.

12 Q Can you point her out, please?

13 A (Complies.).

14 MR. BELL: Your Honor, let the record reflect that the
15 witness has identified the defendant.

16 THE COURT: He's pointing to defense table and to --

17 THE WITNESS: That one.

18 THE COURT: -- the young lady at the table.

19 Q Now, you said that you knew -- you knew Jessie and you
20 knew Sean?

21 A Yeah, we were all friends.

22 Q Where did Sean live?

23 A On Desmond, right next -- right across the street from
24 Jessie.

25 Q And you lived in the same neighborhood?

1 A Yes, sir.

2 Q And you said y'all were friends?

3 A One point in time, we were all -- I mean, we were all
4 good friends.

5 Q And had that changed?

6 A Yeah. In about a three year period, it just went to
7 war. They just -- they just fought all the time.

8 Q And who is they?

9 A Sean and Jessie. Pretty much anytime they seen each,
10 other they would fight.

11 Q Do you recall how that started?

12 A Yes, I do.

13 Q How?

14 A It was over a pair of shoes.

15 Q And who got mad about a pair of shoes?

16 A We all spent the night over at my house, and Sean went
17 to sleep and somebody took his shoes. And the next
18 morning, he woke up and he didn't have his shoes. And he
19 was really mad about that, wanted to know who took them,
20 wanted to know who took them. Oh, about two or three weeks
21 -- because there still was a couple of people at my house,
22 and Sean didn't have back his shoes. And then Jessie
23 finally found out who took them and got them back. And was
24 wearing them though, and Sean seen him and they started --
25 I mean, it was over.

1 Q What were some of the things that happened between
2 them -- well, how long -- let me ask you this: Before
3 Jessie was murdered, how long had this happened before
4 then?

5 A Oh, about two or three years ago before this.

6 Q And what -- what's happened -- what happened between
7 them since the incident with the shoes that you -- that you
8 saw, that you witnessed?

9 A They just fought a lot. Anytime they would see each
10 other, it didn't matter where it was at; grocery store,
11 anywhere they would -- one time we were driving through the
12 neighborhood with Jessica, Jessie's girl, and Sean would
13 always spit on Jessica's car. Just a sign of disrespect
14 and everything like that to Jessie.

15 Well, Jessie got tired of it and jumped out and hit
16 him with a little souvenir bat. Not a big bat, but one of
17 them little ones like that (indicating). And after that,
18 it just -- Sean was going to kill him. Everybody knew.
19 Sean kept telling everybody, "I'm going to kill him."

20 Q Did you hear him say that?

21 A Yeah. A bunch of times. He was screaming.

22 Q And there were other incidents since then that you
23 know of?

24 A I mean just them fighting. Nothing real -- you know,
25 too serious.

1 Q Okay. This is State's -- hold on. I'll show you
2 what's been marked as State's 3, Mr. King. Do you
3 recognize that?

4 A Yes, sir.

5 Q What is that?

6 A That's where he got shot. We were over there in that
7 wood line. That's the wood line I was talking about that
8 she --

9 THE COURT: Hold on a second. Let me -- all right.
10 Now you can annotate.

11 Q If you -- if you press your finger to the screen,
12 it'll draw a little thing. If you could show where you --
13 about where y'all were.

14 A Probably back up in there, in the wood lines.

15 THE COURT: (To Court Clerk) Push annotate. My -- my
16 screen is not working, Ms. Jeffers.

17 MR. BELL: Yeah, he touched it. Right --

18 COURT CLERK: He is -- it's on there.

19 THE COURT: Okay.

20 Q Okay. So, where that cursor is, is about where y'all
21 were parked?

22 A Yeah. Maybe a little farther back.

23 Q Okay. And you were -- your car was backed in?

24 A Yes.

25 Q Okay. And you never saw what happened with Jessie

1 when you left?

2 A No. I mean, I heard shots and I -- I knew he -- I
3 knew he got shot. But I didn't -- I didn't see him after
4 that.

5 Q Do you recall what you were wearing that particular
6 night?

7 A I think a beige/brown shirt and blue -- blue shorts.

8 MR. BELL: Thank you, Mr. King. Please answer any
9 questions that the defense counsel has for you.

10 THE COURT: Cross-examination?

11 MR. O'NEAL: Thank you, Judge.

12 THE COURT: Uh-huh.

13 MR. O'NEAL: If it please the Court, Mr. Bell.

14 CROSS-EXAMINATION BY MR. O'NEAL:

15 Q Kevin, let me make sure I've got this straight. You
16 were friends with Jessie?

17 A Yes, sir.

18 Q You were friends with Sean?

19 A Yes, sir.

20 Q All y'all --

21 A Was.

22 Q -- used to be friends together?

23 A Yes.

24 Q All right. And on this particular day in question,
25 you're hanging out with Jessie and your -- and this guy

1 Brandon comes by; is that right?

2 A No. Brandon and Jessie came by and see if I ---

3 Q That's right. Let me -- okay. So, Jessie knew

4 Brandon?

5 A Yes.

6 Q Did you know Brandon?

7 A Not really.

8 Q All right. Is that the first time you'd met him or
9 pretty much the first time you'd met him?

10 A I mean, I've seen him probably a couple of times, but
11 I never actually met him, like hung out with him.

12 Q All right. Jessie probably knew him better than you,
13 I reckon, huh?

14 A Yes.

15 Q All right. And y'all went over to Brandon's house.

16 A Yes.

17 Q And there was another guy over there.

18 A Yes.

19 Q Do you remember his name?

20 A (No audible response.)

21 Q Can't remember? I think you testified that y'all were
22 over there kind of hanging out, drinking some beer?

23 A Yes, sir.

24 Q You got over there, what seven o'clock? I think you
25 said around in there?

- 1 A Yeah, around in there.
- 2 Q Went for a walk at some point, came back to the house?
- 3 A Yeah.
- 4 Q Drinking beer, chilling out?
- 5 A Yeah.
- 6 Q Okay. You smoking any marijuana?
- 7 A No.
- 8 Q Okay. During some -- at some point, the car comes by,
- 9 you see two girls in it. Brandon kind of knows them?
- 10 A No. That's not -- we waved them down when they were
- 11 pulling out to the neighborhood, and she drove up. And she
- 12 didn't even act like she knew Brandon or anybody like that.
- 13 She just kind of looked around and Jessie asked her, "What
- 14 are y'all -- what are y'all doing tonight." "Nothing with
- 15 you." And drove off.
- 16 Q Okay. But she came back over to the house later?
- 17 A Yes.
- 18 Q Wonder how she knew where to go if she didn't know
- 19 Brandon?
- 20 A I mean, I don't know if she knew him or not. I'm
- 21 saying ---
- 22 Q Okay.
- 23 A --- when she first pulled up ---
- 24 Q You don't know? You don't --
- 25 A --- she didn't act like it. She didn't act like she

1 knew him.

2 Q But she comes back over to the house, honks the horn.
3 Brandon goes around front with the other guy to see who it
4 is.

5 A Uh-huh.

6 Q He tells you who it is. Did you know her name? When
7 did you first learn her name?

8 A I really didn't.

9 Q Oh, you never did, huh?

10 A No.

11 Q How about the other girl?

12 A Unh-unh.

13 Q You see the other girl here in the courtroom?

14 A Yes.

15 Q Where is she at?

16 A Sitting right behind her.

17 Q Okay. Now, you're -- you're there. And your
18 testimony is, is that Tiffany kept talking to Jessie about
19 this girl that she thought he should meet?

20 A Yeah, or that knew him.

21 Q That knew him?

22 A Yes.

23 Q Knew of him?

24 A Yes.

25 Q And y'all are talking back and forth. And she's

1 talking about, hey, she wants to meet up here behind this
2 Rock-n-Roll McDonald's up there by the Publix; is that
3 right?

4 A No. At the Rock-n-Roll McDonald's.

5 Q Okay. And I think you said something that you guys
6 didn't think -- thought something wasn't right, but that at
7 the end, Jessie decided to go?

8 A Yeah. When we were at the house and she knew who
9 Jessie was before Jessie even told her his name. Like he
10 kept saying, "My name's Benjamin." And she -- like, "No,
11 your name is Jessie," like she knew who he was.

12 Q Did Brandon tell her who Jessie was?

13 A I don't know. I don't think so because --

14 Q But you don't know, do you?

15 A No.

16 Q Okay. So, comes time to go, she is in the driver's
17 seat, her sister's sitting right behind her --

18 A Uh-huh.

19 Q -- Jessie gets in the car. He's in the passenger
20 front seat, and you decide to go along also.

21 A That's my friend. Knew that something wasn't ---

22 Q So what? Why'd you want to go?

23 A Huh?

24 Q So what he's your friend. Why did you want to get in
25 the car and go with him?

1 A Because I felt something wasn't right. I felt in my
2 gut that she was -- she wasn't right. She was not --
3 because I heard a guy's voice on the phone, and she kept
4 saying it was a girl. So, that right there, when I heard
5 that I was like, "Jessie, man, what are you doing?"

6 Q What did you think?

7 A I thought she was going to set him up?

8 Q For what?

9 A I -- I didn't know who. I didn't know who at the time
10 was -- I didn't know.

11 Q So -- well, why did you go then?

12 A Because he was my friend; I'm loyal.

13 Q Where was your gun?

14 A What?

15 Q Did you carry a gun?

16 A No, sir.

17 Q Did you have a knife?

18 A No. I wish.

19 Q A bat? Any kind of weapon?

20 A No.

21 Q Okay. Did you have a cell phone?

22 A Yes.

23 Q Everybody's got a cell phone now a days, don't they?

24 A Yep.

25 Q All right. So, you got in the car. You were willing

1 to go up on this thing you didn't think was right. You
2 didn't bring any weapons. You didn't call anybody. You
3 didn't call the cops. You didn't call anymore friends to
4 help you. You decided just to ride up there --

5 A Yes, for Jessie.

6 Q -- just to protect Jessie; is that right?

7 A Look after him.

8 Q All right.

9 A Wish I could have done more.

10 Q I guess it's pretty clear you didn't expect to hear
11 any gun play or see any gun play, right?

12 A I didn't know what to expect. I knew ---

13 Q Well, would you have gone if you had known that
14 somebody was going to pull out a gun and start shooting at
15 you?

16 A Yeah.

17 Q Would you have gone?

18 A Probably. Just because that was my friend. Or I
19 would have made sure he ---

20 Q All right. Let me ---

21 A --- didn't go.

22 Q --- ask you this then: You're -- you're at -- in the
23 car, you decide you want to get out because something's
24 funky.

25 A Yes.

1 Q You get out, and sure enough, here comes Sean with a
2 gun.

3 A When she wouldn't move. When we asked her to move the
4 car and she said no.

5 Q Okay. And you decided to get out. And your testimony
6 is, is that here comes Sean with a gun, close enough to you
7 that you have to push it down and push it out of the way.

8 A Yes.

9 Q And that he fired the gun, and two -- two shots went
10 off between your legs.

11 A Yes.

12 Q And you took off.

13 A Yes.

14 Q You didn't -- why didn't you stop and get Jessie?

15 A Because I -- I seen Jessie running.

16 Q Okay. Jessie took off running too, didn't he?

17 A Yeah.

18 Q All right. And you took off. I think you said that
19 you heard some shots, so you ran over in between the
20 buildings?

21 A Yes.

22 Q Is that so that the shooter wouldn't have an angle to
23 shoot at you?

24 A Yeah. And so I could get some cover.

25 Q When did you pull out your phone and dial 911?

1 A When I was laying in the woods.

2 Q What happened?

3 A My phone's on long distance. It was a long distance
4 phone at the time. It's a -- it's a -- like a 204 area
5 code. Because how I got the phone and everything like
6 that, it wasn't South Carolina. So, when I called 911, it
7 just wouldn't -- it wouldn't call. Like I called (843)
8 911; I tried everything to call 911, and it just would not
9 -- it would not ring. Like ---

10 Q All right. Let me get this straight. You ran away
11 from the scene. You ran away -- ran through the buildings.
12 Where'd you come out when you ran through the buildings?

13 A Right behind the buildings.

14 Q Which buildings? What -- what businesses?

15 A Behind Publix.

16 Q Okay. Was Publix open?

17 A I think so. I think they stay open ---

18 Q Why didn't you run in Publix and say, "Help, help. My
19 buddy's just been shot. I've been shot at. Call the
20 police"; why didn't you do that?

21 A I wasn't thinking. I was thinking get out of there;
22 saving my -- get -- save my life.

23 MR. O'NEAL: That's all the questions I have for this
24 witness, Your Honor.

25 THE COURT: All right. Re-direct?

1 RE-DIRECT EXAMINATION BY MR. BELL:

2 Q Mr. King, was there a girl at McDonald's?

3 A No.

4 Q Was there anybody at McDonald's?

5 A She just drove around it one time and pulled right
6 out.

7 MR. BELL: Nothing further.

8 MR. O'NEAL: Nothing further, Your Honor.

9 THE COURT: Very well. Is this witness free to leave?

10 MR. BELL: Yes. We ask that he be excused, Your
11 Honor.

12 THE COURT: Very well. Any objection?

13 MR. O'NEAL: No objection.

14 THE COURT: Very well. You are free to go.

15 (The witness retires from the stand.)

16 THE COURT: Please call your next witness.

17 MR. BELL: State would -- David Hughey.

18 (The witness approaches the stand.)

19 COURT CLERK: Please raise your right hand and state
20 your full name for the record.

21 THE WITNESS: David Hughey.

22 CLERK OF COURT: And spell your last name.

23 THE WITNESS: H-u-g-h-e-y.

24 DAVID HUGHEY, having been first
25 duly sworn, testifies as follows:

1 THE COURT: Spell your last name, please?

2 THE WITNESS: H-u-g-h-e-y.

3 THE COURT: Your witness.

4 MR. BELL: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. BELL:

6 Q Would you state your name again, so I can hear your
7 volume?

8 A David Hughey..

9 Q Mr. Hughey, where do you live now?

10 A Savannah, Georgia.

11 Q How are you employed?

12 A U.S. Army.

13 Q How long have you been in the army?

14 A Two years.

15 Q Where did you live before you were in the army?

16 A North Charleston.

17 Q Where in North Charleston?

18 A Can't remember the neighborhood, but the neighborhood
19 behind the Rock-n-Roll McDonald's.

20 Q And did you know Brandon Frye?

21 A Yes, sir.

22 Q How did you know Brandon Frye?

23 A A long-time friend.

24 Q Where did he live?

25 A Down the street from me.

1 Q Did you know Jessie Ham or Kevin King?

2 A I knew Jessie.

3 Q How did you know him?

4 A Through Brandon.

5 Q Do you recall, back on the night of June 8th, 2007,
6 when Jessie and Kevin and Brandon and you were together?

7 A Yes.

8 Q Where were y'all at that evening?

9 A Brandon's house.

10 Q How did you come to be at Brandon's house that
11 evening?

12 A He just called me, walked over and hang out.

13 Q Okay. When you got over there, who was there?

14 A Brandon, Jessie and -- can't remember his name. King.

15 Q The fellow that just testified?

16 A Yes.

17 Q Okay. What time -- do you recall about what time this
18 was that evening?

19 A About 7:30/8.

20 Q Was it light? dark? dusk?

21 A It was almost dark, but it was still sun out.

22 Q And what were y'all doing over there?

23 A We was hanging out.

24 Q What does "hanging out" mean?

25 A Like drinking, just talking.

1 Q Did anything happen while y'all were hanging out?

2 A Yeah.

3 Q What?

4 A Tiffany just pulled up in a car, and we was just
5 asking -- you know, we asked her like, "What are y'all
6 doing?" She said, "Nothing with y'all." And --

7 Q Where -- where were y'all at when this happened?

8 A We was walking down the street.

9 Q All four of you?

10 A Uh-huh.

11 Q Did you know Tiffany?

12 THE COURT REPORTER: Was that a "yes"?

13 THE WITNESS: Yes.

14 Q Did you know Tiffany before that night?

15 A A little.

16 Q How did you know her?

17 A I went to middle school with her.

18 Q And Tiffany, could you point her out for the jury?

19 A (Complies.)

20 Q Seated at the defense table?

21 A Yes, sir.

22 MR. BELL: We'd ask the record reflect that the
23 witness has --

24 THE COURT: Very well.

25 MR. BELL: -- identified the defendant.

1 THE COURT: It so reflects.

2 Q What -- how did she come up -- where were y'all at
3 walking about?

4 A On the main road of the subdivision.

5 Q Okay. And the main road goes where?

6 A From Rock-n-Roll McDonald's, it used to be -- like to
7 the end of like -- at the riverside. Like the end of the
8 neighborhood.

9 Q And they're -- and they're subdivisions off that road?

10 A Yes. Yes.

11 Q And where you lived was off that road?

12 A Uh-huh.

13 Q Okay. And how did she -- where -- I mean how -- where
14 was she when she met y'all?

15 A She was in a car.

16 Q Was she alone?

17 A No. She was with her sister.

18 Q You knew her sister?

19 A (No audible response.)

20 Q Seated in the courtroom?

21 A (Indicates) That's her.

22 Q And what happened when she -- what did you hear when
23 she pulled up to y'all?

24 A We was -- just asked her what she was doing and she
25 said nothing. And then just like pulled off.

- 1 Q And what happened? What did y'all do after that?
- 2 A We walked back to Brandon's house.
- 3 Q And what did you do when you got to Brandon's house?
- 4 A Hang out and drink some more.
- 5 Q Did anything happen when y'all went back to Brandon's
- 6 house?
- 7 A Yeah. She -- she came back and honked her horn.
- 8 Q And where were y'all at that time?
- 9 A We was in the backyard, and then me and Brandon came
- 10 out to the front.
- 11 Q What happened when you and Brandon came out to the
- 12 front?
- 13 A They got out the car and just started talking.
- 14 Q And what did she want to know? What was she talking
- 15 about?
- 16 A She wanted to know, I guess, who Jessie was.
- 17 Q And did y'all tell him?
- 18 A No.
- 19 Q How long did she stay there?
- 20 A I want to say about 15 to 20 minutes.
- 21 Q Did -- were you and Brandon the only ones that were
- 22 out there?
- 23 A Yeah, at the time.
- 24 Q Did anybody else come up?
- 25 A Yeah. Jessie and King.

1 Q When did they come?

2 A Probably about -- maybe five minutes -- about 2 to 5
3 minutes after we came -- me and Brandon came out there
4 first.

5 Q Did they just happen to come around there?

6 A Yeah.

7 Q Okay. What happened when they came up?

8 A Like I said, they was -- she was trying to find out
9 who Jessie was. And then at the end, he and them confessed
10 that, "Okay. My name is Jessie." Because they -- they
11 already knew that she knew.

12 Q What do you -- who --

13 A Like, you could tell that she knew, because she kept
14 on asking like she wasn't going to give up, you know.

15 Q Was she doing anything while talking with y'all?

16 A She got on her cell phone.

17 Q And you don't know who she was talking to?

18 A No.

19 Q Who was she talking to mainly out there?

20 A I believe it was like Jessie.

21 Q And you just said something that -- they don't know
22 who -- explain that.

23 A Like, first, she didn't -- like -- she was acting like
24 -- well, we was playing with her like -- like -- we like --
25 she didn't know like -- she knew who they were, but we was

1 playing dumb with her, like, you know, "My name is
2 Benjamin," you know, stuff like that.

3 And at the end, it came out that -- they just
4 confessed and said that -- like, "My name is Jessie. My
5 name is King." Duh, duh, duh, duh. She already knew, but
6 in her head --

7 Q So, you felt that she already knew who Jessie and --

8 A Yeah.

9 Q -- and Kevin were. But they weren't letting on who
10 they were.

11 A They weren't, but after a while they did.

12 Q Were you talking with her? Were you playing dumb,
13 too, or --

14 A No.

15 Q But she knew you.

16 A Yeah.

17 Q Now, once they decided -- once they identified
18 themselves, what happened?

19 A They talking some more, and then I guess -- she was on
20 her cell phone saying a girl wanted to meet her at
21 McDonald's. I mean -- yeah, a girl wanted to meet him at
22 McDonald's and --

23 Q "Him" being who?

24 A Jessie.

25 Q And what was she doing? Was she telling Jessie that?

1 A She was telling Jessie that, and at the same time
2 walking away and coming back.

3 Q While she was on her cell phone?

4 A Yes.

5 Q And what went on after that?

6 A After a while, Jessie and King just got in the car and
7 supposedly went to go meet this female.

8 Q Do you remember how many times she told him about this
9 female?

10 A No.

11 Q Was it a lot?

12 MR. O'NEAL: Judge, I object. He said no.

13 THE COURT: Let me hear the question again. Don't
14 respond until I've heard it.

15 Q I just said was it a lot.

16 MR. O'NEAL: He asked whether or not -- his question
17 before that I think she's asking about, Harrison. How many
18 times did she ask Jessie about the girl, do you know. He
19 said, "no." And then Mr. Bell's question was, "A lot?"

20 THE COURT: And your objection is leading?

21 MR. O'NEAL: Yes, ma'am.

22 THE COURT: Very well.

23 MR. O'NEAL: Because he already said no.

24 THE COURT: Sustained.

25 DIRECT EXAMINATION BY MR. BELL CONTINUES:

1 Q Was she insistent with Jessie?

2 A What do you mean?

3 Q Kept trying to get him ---

4 A Yes. Yes.

5 Q What -- what happened after she told him about this
6 girl that was on the phone?

7 A Like I said, after a while, Jessie gave in -- gave in.
8 And him and King got in the car. And like I said, they was
9 supposed to go meet a female at McDonald's and they left.

10 Q Did you see how they got in the car, what seats they
11 got in? Do you remember that?

12 A I believe Jessie was in the front seat and King was in
13 the back.

14 Q And when they left, what did you do?

15 A Me and Brandon hung out for about another maybe 10/15
16 minutes, and I called it a night and went home.

17 Q Was that all you did that night?

18 A No.

19 Q Did something happen after that?

20 A Yeah. I guess, Brandon called me and said me and him
21 needed to go up and -- I guess, McDonald's to look for
22 Jessie.

23 Q Did you do that?

24 A Yes.

25 Q How did you do that? What did you do?

1 A We got on our bikes and rode up there.

2 Q And what happened when you got up there?

3 A Police were already on the scene and we left.

4 Q Where did you go?

5 A Back home.

6 Q Where did Brandon go?

7 A I believe he went back home.

8 Q Did y'all go home together?

9 A No.

10 Q How did y'all go back home?

11 A I went first, and then like -- like I said, the cops
12 wanted to talk to him. So, he ended up staying after a
13 while.

14 Q Went back -- and you went back home.

15 A Yes.

16 Q Did you ever find Jessie when y'all went up there?

17 A No.

18 Q Why not?

19 A Because the police were already on the scene.

20 MR. BELL: One moment, Your Honor.

21 THE COURT: All right.

22 Q Mr. Hughey, back when Tiffany was talking with Jessie,
23 talking about that girl --

24 A Uh-huh.

25 Q -- what all was she saying to him?

1 A "I have a friend who wants to meet you."

2 Q And did she -- is that all she said, or did she say
3 more?

4 A It was -- I can't recall. But it -- it was, you know,
5 "I have a friend who wants to come -- you know, who wants
6 to meet you urgently. Do you want to come" type --

7 Q Did she describe the friend?

8 A No.

9 MR. BELL: Thank you. Please answer any questions the
10 Defense have.

11 MR. O'NEAL: Thank you. If it please the Court --

12 THE COURT: Cross-examination.

13 MR. O'NEAL: -- Your Honor; Mr. Bell.

14 CROSS-EXAMINATION BY MR. O'NEAL:

15 Q All right. David, you knew -- you know who Tiffany
16 was?

17 A Yes.

18 Q You know who her sister was? Right?

19 A Yes.

20 Q You knew Jessie?

21 A Yes.

22 Q But you didn't know Kevin King?

23 A I knew him a little bit. Like --

24 Q Okay. It sounds like you guys were just kind of
25 hanging out. He said y'all were drinking beer. Were you

1 drinking beer?

2 A Yeah.

3 Q All right. Y'all hanging out, drinking beer. You
4 decided to go for a walk, some girls come by. You tried to
5 kind of hit on them; they ain't got nothing to do with you.
6 It turns out, though, you know them. Is that pretty much
7 how it was?

8 A I mean, I wasn't hitting on her. I was -- I was with
9 the people who originally ---

10 Q I see.

11 A --- stopped her, but I was -- you know, I got my own
12 thing going on.

13 Q I got you. All right. And they came back over to the
14 house. And I think everybody agrees that Tiffany was
15 talking to Jessie about this girl?

16 A Uh-huh. Yes.

17 Q Okay. Now, you -- you -- you were in the courtroom
18 when Kevin testified, weren't you?

19 A Yes.

20 Q And you heard him testify that he thought something
21 was not cool, thought something was funky. Did you feel
22 that?

23 A A little bit.

24 Q Now, you heard testimony from him about Jessie and
25 Sean's history.

1 A Uh-huh.

2 Q Did you know anything about that?

3 A A little bit.

4 Q All right. Did you know that they used to once be
5 friends?

6 A Yes.

7 Q Did you know that they had a falling out over a pair
8 of shoes?

9 A A little -- yeah, I think so. I recall. Yes.

10 Q Did you ever see them fight? According to ---

11 A No.

12 Q --- Kevin, they were fighting in the public all the
13 time.

14 A I didn't see them.

15 Q Okay. Let's talk about what happened after. You
16 stayed there at the house with Brandon, right?

17 A Yes.

18 Q Jessie and Kevin got in the car and rode off with the
19 girl.

20 A Yes.

21 Q You hung out for a little while and went on home.

22 A Yes.

23 Q A little while later you get a call from Brandon?

24 A Yes.

25 Q Brandon says, "Hey, man. Something's going on. We

1 got to go back up there."

2 A Yes.

3 Q And meaning back up there at the Publix and the
4 McDonald's.

5 A Yes.

6 Q Did he tell you to bring a gun?

7 A Yes.

8 Q All right. And did you bring your gun?

9 A Yes.

10 Q Okay. So, you go back over to Brandon's house. Y'all
11 got on bicycles and rode up there, didn't you?

12 A Yes.

13 Q You had your gun in your pocket?

14 A Yes.

15 Q All right. You got up there. There's cops there,
16 right?

17 A Yes.

18 Q Did the cops speak to you?

19 A Yes.

20 Q But he didn't really talk to you very long or frisk
21 you, and you walked away, didn't you?

22 A Yes.

23 Q Okay. That's when you left, right?

24 A Yes.

25 Q And what did you do with the gun you brought?

1 A Hesitated. Rode off for a little while and then
2 tossed it in the ditch.

3 Q You got rid of it, didn't you?

4 A Yes.

5 Q All right. Did you see Brandon later on that evening?

6 A No.

7 Q He didn't come back to the house and tell you that the
8 cops talked to him, and gave him a ticket for the marijuana
9 he had ---

10 A Not ---

11 Q --- in his pocket?

12 A --- not til the next morning.

13 Q Oh, you found out the next morning that the cops
14 talked to him, and patted him down and found marijuana and
15 hung a ticket on him for the possession of marijuana.

16 A Yes..

17 MR. O'NEAL: That's all the questions I have. Thank
18 you, Judge.

19 THE COURT: Re-direct?

20 MR. BELL: Nothing further.

21 THE COURT: Is this witness free to leave?

22 MR. BELL: State would ask that he be excused.

23 THE COURT: Any ---

24 MR. O'NEAL: No objection.

25 THE COURT: --- objection. You are free to go.

1 (The witness retires from the stand.)

2 THE COURT: Call you next witness, please.

3 MR. BELL: The State would call Brandon Frye.

4 (The witness approaches the stand)

5 COURT CLERK: Please raise your right hand and state
6 your full name for the record, and spell your last name.

7 THE WITNESS: Brandon Patrick Frye, F-r-y-e.

8 BRANDON FRYE, having been first
9 duly sworn, testifies as follows:

10 THE COURT: Your witness.

11 MR. BELL: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MR. BELL:

13 Q Mr. Frye, did you know Jessie Ham?

14 A Yes.

15 Q How did you know him?

16 A He was just -- he was a friend.

17 Q How long did you know him?

18 A About three years.

19 Q And that's three years before he was killed?

20 A Yes, sir.

21 Q And where did -- where did you live at the time back
22 around when he was killed?

23 A Woodington.

24 Q And where is that located?

25 A Behind the Rock-n-Roll McDonald's.

1 Q Back in all those -- one of those neighborhoods back
2 there?

3 A Yes, sir.

4 Q And where did Jessie live?

5 A Forest Hills.

6 Q And on the night that he was killed, what were you
7 doing that evening?

8 A Just hanging out.

9 Q Where were you hanging out?

10 A At my house.

11 Q How did you get up -- let me ask you this: Who was
12 there?

13 A It was me, Jessie, Kevin, and David.

14 Q And how did -- how did David get over there?

15 A I think he walked from his house.

16 Q Okay. He lives near you?

17 A Yes, sir.

18 Q Okay. And how did Kevin and Jessie get there?

19 A I picked them up.

20 Q From Forest Hills?

21 A Yes, sir.

22 Q Drove over there?

23 A Yes, sir.

24 Q What time of evening are we talking about that night?

25 A About seven o'clock.

1 Q And came back to your house, and where did y'all go?

2 A We just hung out at my house for a little while, and
3 then walked down the street.

4 Q Were you hanging out outside? inside?

5 A Outside.

6 Q What were y'all doing?

7 A Just talking.

8 Q And then how long did -- before y'all decided to walk
9 down the street?

10 A About 20/30 minutes.

11 Q And where did y'all walk?

12 A To the parkway.

13 Q And who all was with you? Who all walked down there?

14 A It was all four of us.

15 Q So, it was you and Jessie and -- and David and Kevin,
16 correct?

17 A Yes, sir.

18 Q Did anything happen when y'all were out walking?

19 A Tiffany approached us.

20 Q How did she approach you?

21 A Kevin and Jessie were talking to her, or hollering at
22 her. And ---

23 Q Where was she?

24 A --- she drove off.

25 Q Let me ask you: Where was she?

1 A I think she had pulled up to the stop sign.

2 Q Was she in a car, walking?

3 A Car -- a car.

4 Q Okay. Was she alone?

5 A No.

6 Q Who was she with?

7 A Her sister.

8 Q Did you know her?

9 A Slightly.

10 Q And how did you know her?

11 A Just through a mutual friend.

12 Q Do you see her in the courtroom today?

13 A Yes, sir.

14 Q Would you point her out, please?

15 A (Complies.)

16 MR. BELL: Your Honor, we'd ask that the record
17 reflect that the witness has identified the defendant.

18 THE COURT: Very well.

19 Q Do you see her sister in the courtroom?

20 A Yes, sir.

21 Q Where is she?

22 A (Indicates.)

23 Q On the row behind her?

24 A Yes, sir.

25 Q When she pulled up to the stop sign, what did you say

1 happened?

2 A Just -- they asked her what -- what she was doing and
3 if she wanted to hang out and she said not with us.

4 Q And who was "they?"

5 A It was her and her sister, and then me, Kevin King,
6 Jessie, and David.

7 Q You said "they asked her," who were "they"? Let me
8 ask you that.

9 A Oh, Jessie and Kevin.

10 Q Okay. And she said, y'all have -- she said not with
11 y'all, right?

12 A Yes, sir.

13 Q And what -- what happened?

14 A She drove off and then came back.

15 Q Where did -- did y'all stay there?

16 A No. We continued to walk back to my house.

17 Q And when you -- what happened when you got back to
18 your house?

19 A It was about 15/20 minutes, and somebody was blowing
20 the horn. So, me and David walked to my front yard to see
21 who it was.

22 Q Where were y'all before when you heard the horn?

23 A In the backyard.

24 Q And all four of you were there?

25 A Yes, sir.

1 Q And when you came to your front yard, what did you
2 see?

3 A Tiffany and her sister.

4 Q And did she say anything to you?

5 A Yes, but I don't recall.

6 Q What happened after that?

7 A I went and got, I think, Kevin and Jessie.

8 Q Why did you go get them?

9 A Because she had wanted to talk to them.

10 Q And she asked specifically for them?

11 A She said -- I think she said, "the other two guys."

12 Q She didn't mention names?

13 A I don't recall.

14 Q So, you went and got Jessie and Kevin, and brought
15 them to where she was?

16 A Yes, sir.

17 Q What happened then?

18 A I think me and David walked to the backyard.

19 Q Did you -- you didn't stay around?

20 A I don't believe so, but I don't -- I don't recall. We
21 might have.

22 Q Okay. What's the next thing that you remember?

23 A I think Kevin and Jessie getting in the car with her.

24 Q Did you see that?

25 A Yes, sir.

1 Q Where were you?

2 A In my front yard.

3 Q So, you stayed in your front yard?

4 A I guess so.

5 Q Do you recall any conversations that were going on?

6 A No, sir.

7 Q And when -- you saw Jessie and Kevin get in the car?

8 A Yes, sir.

9 Q She drove off?

10 A Yes, sir.

11 Q What do you remember next?

12 A She came back like 15 minutes later and said something
13 happened. So, I got in the car with her and we road up
14 there.

15 Q Did she say what?

16 A No.

17 Q Where did y'all go?

18 A We went, I think, to the McDonald's and the Publix
19 parking lot. And then she drove me back to my house and
20 dropped me off.

21 Q Did you see anything?

22 A Unh-unh.

23 THE COURT: That's a "yes" or "no"?

24 THE WITNESS: No, no. Sorry.

25 Q Did she say what had happened?

1 A Just that somebody came out of the woods and then she
2 drove off.

3 Q How was she acting?

4 A Kind of like -- like she was scared, but you could
5 tell it was an act.

6 Q How could you tell it was an act?

7 A Just by her facial expressions and how overly dramatic
8 she was.

9 Q For -- can you give us an example?

10 A Like alligator tears. Like the facial expressions of
11 crying with no tears.

12 Q And when she brought -- she brought you back to your
13 house?

14 A Yes, sir.

15 Q What -- what happened then?

16 A She left.

17 Q And what did you do?

18 A I called David.

19 Q Why did you call David?

20 A To go up there and check things out, and look for
21 Jessie.

22 Q Did you ask him to do anything?

23 A I asked him to grab a gun.

24 Q Why'd you do that?

25 A To protect my friend's life, and the lives of me and

1 David.

2 Q And by "your friend's life," what -- who do you mean?

3 A Jessie.

4 Q So, what did y'all do then? Did y'all go up there?

5 A Yes, sir. We rode up there and were stopped by the
6 police.

7 Q How did you -- what did you ride? How were you
8 riding?

9 A Bicycles.

10 Q Okay. And how did you -- how did you drive -- or how
11 did you ride into the area?

12 A Through the back of the shopping center.

13 Q And you said that there were police there. Where were
14 the police that stopped you?

15 A Between Papa John's and some other store.

16 Q And what happened with that when the police stopped
17 you?

18 A He stopped us and told us to sit right there. And I
19 knew David had the gun on him. So, I looked over at David..
20 David left, and then I waited about three or four minutes
21 and I left.

22 Q And something happened to you?

23 A Yes, sir.

24 Q What happened?

25 A I was chased down by the police officer that told us

1 to wait, and he went through my pockets. And I had a
2 little bit of marijuana, and I was charged with simple
3 possession.

4 Q And what happened to you after that?

5 A I went home.

6 Q Okay. Did you do anything after that in regards to
7 this?

8 A Other than talking to Kevin. Because he called me on
9 the phone and said something happened. But he didn't know
10 what. That was just -- that was it until the next morning,
11 whenever I tried to call Jessie's house. And I think it
12 was his aunt told me that he was murdered last night.

13 Q Now, when -- when Tiffany was around there, do you
14 recall any of the conversations she had with y'all?

15 A She was just very persistent to get Jessie in the car.

16 Q How was she persistent?

17 A Telling him that -- that the girl was really pretty
18 and she really wanted to meet him and he would really like
19 her.

20 Q What girl is this?

21 A Some girl that she knew. I think it was -- it might
22 have been her cousin or something. I don't recall.

23 Q Besides talking to y'all, was she doing anything else
24 while she was out there?

25 A No.

1 Q And how do you mean she was "being persistent"?

2 A She was not -- not stopping. So, she was like
3 determined to get Jessie in the car.

4 Q That was what you -- your perspective?

5 A Yes. Yes, sir.

6 Q Brandon, you were convicted of assault and battery of
7 a high and aggravated nature a couple of years ago on
8 another matter?

9 A Yes, sir.

10 Q And you got a probationary sentence?

11 A Yes, sir.

12 Q Have you had any injuries in your lifetime?

13 A Yes, sir.

14 Q What kind?

15 A An anoxic brain injury.

16 Q Excuse me?

17 A An anoxic brain injury.

18 Q Does that have any effect on you?

19 A Yes, sir.

20 Q What kind of effect?

21 A Memory loss, and like I'm -- I'm slower, I guess.

22 MR. BELL: Thank you, Mr. Frye. Please answer any
23 questions the defense counsel has for you.

24 THE COURT: Cross-examination?

25 MR. O'NEAL: Thank you, Judge. If it please the

1 Court; Mr. Bell?

2 CROSS-EXAMINATION BY MR. O'NEAL:

3 Q Brandon, you kind of knew who Tiffany was?

4 A Yes, sir.

5 Q Kind of knew who her sister was, Amanda, right?

6 A No.

7 Q Not too much?

8 A No.

9 Q All right. Now, let me ask you: You knew Jessie?

10 A Yes, sir.

11 Q You knew Sean?

12 A Yes, sir.

13 Q What did you know about their history?

14 A Not much other than they didn't like each other.

15 Q Okay. You didn't know about the part where they were
16 friends before they got mad over the shoes?

17 A No, sir.

18 Q But you knew about the part where they were angry at
19 each other?

20 A Yes, sir.

21 Q Now, we heard from another witness -- you were here in
22 the courtroom when that witness testified, right?

23 A Yes, sir.

24 Q Did you ever see Sean and Jessie fight in public?

25 A No, sir.

1 Q But you knew of their dislike for each other?

2 A Yes, sir.

3 Q All right. Did you ever see Sean with a gun?

4 A No, sir.

5 Q You ever see Jessie with a gun?

6 A No, sir.

7 Q Did you ever hear Sean talk about killing Jessie?

8 A Yes, sir.

9 Q Did you ever hear Jessie talk about killing Sean?

10 A No, sir.

11 Q Oh, really? Okay. Let's go back to the evening in
12 question. You knew who -- as we've already established,
13 you knew who Tiffany was?

14 A Yes, sir.

15 Q But when Tiffany saw y'all walking and when Tiffany
16 first came over to your house that night, she had no idea
17 who Jessie was or who David was -- or Kevin was, right?

18 A That -- not from my point of view.

19 Q What makes you think that she knew them?

20 A Because she was persistent to get Jessie in the car or
21 "Benjamin," as she -- or as he told her his name was.

22 Q Did he know her?

23 A No.

24 Q And not at all, did he?

25 A I don't think so. No.

1 Q Okay. All right. And the story was that she had this
2 girl that wanted to meet Jessie. Come on up to the
3 McDonald's and meet her. And Jessie agreed to go.

4 A After about 45 minutes of -- of talking him into it.

5 Q Well, you heard testimony from Kevin. He thought
6 something was weird, something was wrong, something was
7 sketchy about doing this. Did you feel that way?

8 A Yes, sir.

9 Q Did you tell Jessie that?

10 A No, sir.

11 Q Why not?

12 A Because it wasn't -- it wasn't that strong of a
13 feeling. It was just like a gut feeling, like something
14 could be wrong.

15 Q Sounds like you guys are kind of -- the usual thing
16 that young people do, going back and forth, joking and
17 laughing and stuff like that most of the evening, right?

18 A Yes, sir.

19 Q Okay. Now, we -- I think we've established, but let's
20 see if you remember. Tiffany's driving the car, her
21 sister's behind her. Jessie got in the front seat beside
22 Tiffany; Kevin got in the backseat beside Amanda?

23 A I don't recall.

24 Q You don't recall. Okay. I mean, do you recall them
25 driving away, going away to go up to the Publix and the ---

1 A Yes, sir.

2 Q --- McDonald's? And you just stayed at home.

3 A Yes, sir.

4 Q And I think your testimony is it wasn't a whole lot
5 longer after that, that Tiffany came back to your house.

6 A Yes, sir.

7 Q All right. How'd you know she came back to your
8 house?

9 A Because she ---

10 Q Were you outside and saw her drive up or what?

11 A Yes. Yes. Yes, sir.

12 Q Okay. And then you talked to her. And I think your
13 testimony is, is that she was upset; appeared to be
14 frightened.

15 A Yes, sir.

16 Q And what did -- she say to you something like, "Hey,
17 something happened. Let's go back up there and see if we
18 can't find Jessie"?

19 A Yes, sir.

20 Q Is that what she told you?

21 A Yes, sir. I -- well, I -- I mean I don't really
22 recall, but it was something along the lines of that.

23 Q Okay. And you agreed to get in the car and go up
24 there.

25 A Yes, sir.

1 Q Weren't you afraid?

2 A No.

3 Q You weren't scared or anything, were you?

4 A No.

5 Q All right. You went up there fully expecting to find
6 Jessie, didn't you?

7 A Yes.

8 Q All right. You didn't though, did you?

9 A No.

10 Q You came back home.

11 A Yes, sir.

12 Q All right. At some point you called David and told
13 David to bring his gun over.

14 A Yes, sir.

15 Q And -- and I think you testified that was to protect
16 the life of your friend, Jessie, and protect your own life;
17 to protect the life of Kevin who you hardly knew.

18 A Yes, sir.

19 Q Why didn't you call the cops? Why didn't you call 911
20 or call North Charleston Police Department and say, "Hey, I
21 think something's happening. I think my friend's been shot
22 to death"?

23 A Because at that time, I didn't know that there was a
24 gun involved.

25 Q You did not know, right?

1 A Right.

2 Q Where is Sean right now?

3 A In prison.

4 Q In prison?

5 A Yes.

6 Q Do you know how long?

7 A No, sir.

8 MR. O'NEAL: No further questions for this witness,
9 Your Honor.

10 THE COURT: Re-direct?

11 MR. BELL: Yes, Your Honor.

12 RE-DIRECT EXAMINATION BY MR. BELL:

13 Q Brandon, as best you can remember, when you -- she
14 drove you back to Publix ---

15 A Yes, sir.

16 Q --- where exactly did she take you to?

17 A It was through the Publix parking lot and around
18 McDonald's.

19 Q And how far down did she go?

20 A Not where Jessie was.

21 Q Do you know where Jessie was?

22 A Yes, sir.

23 Q How do you know where Jessie was?

24 A Because there was a cross marked where he was ---

25 Q Did she go anywhere near that area?

1 A No, sir.

2 Q How did -- when she -- when -- when she left your
3 house, how did y'all go, as best you remember?

4 A Up Park -- Forrest Parkway and to the Rock-n-Roll
5 McDonald's. And then when we came out the Rock-n-Roll
6 McDonald's, we went to the Publix parking lot and then we -
7 - she took me home.

8 Q So, you went -- did you go around the Rock-n-Roll
9 McDonald's?

10 A Yes, sir.

11 Q All the way around?

12 A Yes, sir.

13 Q Came back out?

14 A Yes, sir.

15 Q And then she went down to the Publix?

16 A Yes, sir.

17 Q Did she -- you -- where y'all tried to go through,
18 where the police met you, did she go down that far --

19 A No, sir.

20 Q -- where the cut through is?

21 A No, sir.

22 Q Did she go anywhere past the Publix?

23 A No. It -- it was like she was staying away from that
24 area.

25 Q Is there -- next to the Publix on the other side,

1 there like a cell phone place and a Subway?

2 A Yes, sir.

3 Q Is that kind of where y'all went?

4 A Yes, sir.

5 Q Away from where Tire Kingdom is?

6 A Yes. Yes, sir.

7 MR. BELL: Thank you.

8 MR. O'NEAL: Just a couple questions --

9 THE COURT: Re-cross?

10 MR. O'NEAL: -- on re-cross.

11 RE-CROSS EXAMINATION BY MR. O'NEAL:

12 Q Brandon, when did you find out that Jessie had been
13 murdered by Sean?

14 A The next morning.

15 Q All right. You had no idea when you went back up
16 there to look for him that he was murdered, did you?

17 A No, sir.

18 Q Of course, you didn't have any idea where he -- he or
19 his body might be, did you?

20 A No, sir.

21 Q Okay. Do you know where the police officers finally
22 found his body?

23 A Yes, sir.

24 Q Where?

25 A At the corner of Tire Kingdom, there's a cross marked

1 where -- where his body was found.

2 Q That was put there after the fact, though, right?

3 A Yes. Yes, sir.

4 MR. O'NEAL: Okay. That's all I have.

5 THE COURT: All right. You may come down. Is this
6 witness free to leave?

7 MR. BELL: Yes, Your Honor.

8 MR. O'NEAL: No objection.

9 (The witness complies and retires from the stand.)

10 THE COURT: Very well. Call your next witness,
11 please.

12 (Bench conference.)

13 THE COURT: Ladies and gentlemen, I think now is a
14 good time for us to break for lunch. And we are going to
15 be -- start back at two o'clock, at two o'clock. That'll
16 give you a little over an hour.

17 Ladies and gentlemen, of course, over the lunch break
18 please do not discuss this matter or allow anyone to
19 discuss it with you.

20 Who's from below the swamp, Summerville, below the
21 swamp?

22 (Some jurors raise their hands.)

23 THE COURT: I think we have the majority. Who's above
24 the swamp?

25 (Some jurors raise their hands.)

1 THE COURT: All right. Let me tell you, the culinary
2 experiences available to you in Saint George. If you will
3 -- when you exit the front of the courthouse property, 78
4 will be in front of you. If you go left, unless you really
5 do like twigs and bark, you will have no dining
6 opportunities until you reach Summerville. Well, Carter's,
7 if you go to the convenience store.

8 But the dining opportunities here in Saint George,
9 they are all to your right, they are all to your right.
10 And you will go past them on 78. It's really quite
11 convenient.

12 If you reach I-95, as you go under I-95 on Highway 78,
13 be mindful that there is only one culinary opportunity that
14 remains for you, and that is the Taco Bell right beyond
15 I-95 on the left. If you go past the Taco Bell, there are
16 no more culinary opportunities until Orangeburg, I think.
17 But it is for a long time that you will go. Is that, yeah,
18 a pretty good indication?

19 If you want more specifics, Ms. Salisbury, she is our
20 "Zagat's" here in Saint George.

21 Enjoy your lunch. Please be mindful: Do not discuss
22 this matter or allow anyone to discuss it with you. Do not
23 read anything, do not listen to anything about this matter.
24 You must receive all of the information from which you will
25 make up your mind here in court while court is in session.

1 Have a pleasant lunch. And if you will gather in the
2 jury assembly room at 2:00, Ms. Salisbury or Mr. Taylor
3 will bring you up. Thank you. Have a good lunch.

4 (Jury exits the courtroom at 12:47 p.m.)

5 THE COURT: All right. Anything before we take our
6 lunch from the State?

7 MR. BELL: Nothing from the State.

8 THE COURT: From the Defense?

9 MR. O'NEAL: Nothing, Your Honor.

10 THE COURT: Very well. You all have a good lunch.
11 See you just before 2:00.

12 (Off the record at 12:47 p.m.)

13 (On the record at 2:21 p.m.)

14 THE COURT: Anything before we bring the jury out from
15 the State?

16 MR. BELL: Nothing from the State, Your Honor

17 THE COURT: From the Defense?

18 MR. O'NEAL: Nothing, Your Honor.

19 THE COURT: Very well. Thank you, Ms. Salisbury.

20 (Jury enters at 2:22 p.m.)

21 THE COURT: Ladies and gentlemen, I certainly hope
22 that you all had a very good lunch. At this time we will
23 continue with the State's case. Mr. Bell?

24 MR. BELL: The State will call Jessica Hans to the
25 stand, please.

1 THE COURT: All right.

2 (The witness approaches the stand.)

3 COURT CLERK: Please raise your right hand and state
4 your full name for the record.

5 THE WITNESS: Jessica Hans.

6 COURT CLERK: And spell your last name, please?

7 THE WITNESS: H-a-n-s.

8 JESSICA HANS, having been first
9 duly sworn, testifies as follows:

10 THE COURT: Your witness.

11 MR. BELL: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MR. BELL:

13 Q Will you state your name again, please?

14 A Jessica Hans.

15 Q And you're employed by the Charleston Police
16 Department now; is that correct?

17 A Yes, sir.

18 Q How long have you been there?

19 A Since October of last year.

20 Q Where did you work before you worked at the Charleston
21 Police Department?

22 A I worked for Publix Supermarkets.

23 Q And did you work at a specific store?

24 A Yes, sir. For most of the six years I worked there, I
25 worked at the one on Ashley Phosphate and Dorchester.

1 Q Okay. You were working there back in June of 2007?

2 A Yes, sir.

3 Q And I want to direct your attention to a date, June
4 8th of 2007. Were you working that day?

5 A Yes, sir.

6 Q What -- did you work a specific shift?

7 A It was the closing shift, which I think was 3 to 10, 3
8 to 11?

9 Q And what -- what did you do there? What did you do at
10 Publix when you worked there at that time?

11 A I worked in the customer service department, up at the
12 customer service desk.

13 Q And on that -- you said you were closing. Did you
14 help close the store or was that somebody else's
15 responsibility?

16 A I helped close that -- the store that night.

17 Q Okay. And what time do you think you left the store
18 on that particular evening?

19 A It's probably close to 11 that night. Between 10:30
20 and 11:00.

21 Q And when you closed the store, did you -- did you
22 drive there to get there?

23 A Yes, I did.

24 Q Where was your car parked?

25 A It was in the parking lot. As you're coming out of

1 the store, if you're looking at the parking lot, it's off
2 on the right-hand side.

3 Q Okay. And on that particular night when you were
4 leaving, did you notice anything?

5 A Not when I was actually walking out of the store, I
6 didn't notice anything unusual.

7 Q And subsequent to that, did you notice anything or
8 after that?

9 A Yes, sir. After I walked to my car, another employee
10 and I stood in the parking lot for a few minutes. We were
11 talking about work and other things. Some point between 11
12 and 12, I'm not sure the exact time, we heard several loud
13 pops. I thought they might have been fireworks. I'm not
14 100 percent positive. But at some point my attention was
15 drawn across the parking lot to the Papa John's/Tire
16 Kingdom area, which is on the other side, which is where I
17 actually continued to see a person standing -- standing
18 pointing at the ground.

19 Eventually he actually fired a gun. There was another
20 shot, I'm not sure if it was one or two, but fired another
21 shot. There was another person that was standing with that
22 person that ran between the two buildings, because Publix
23 is separate from Papa John's and Tire Kingdom.

24 After the shot was fired, the person who actually held
25 the gun in their hand ran to the other side of Tire

1 Kingdom, which was even further away. They disappeared
2 behind the side of the building between Tire Kingdom and
3 the woods.

4 About 30 seconds later, a Jeep Cherokee pulled out
5 from the side of the building, pulled out through the
6 parking lot and turned left onto the little side street
7 that is between the parking lot and the other restaurants
8 that are right there; and sped off in the direction
9 opposite from where we were in the parking lot.

10 Q Okay. The person you said you saw first running,
11 where were they running to?

12 A They ran from -- what looked to me to be in front of
13 Papa John's, they ran between the two buildings. Between --
14 -- Publix is in one building with a couple of other stores,
15 and then Papa John's and Tire Kingdom are in another
16 building. And they ran -- that other person ran between
17 those two buildings.

18 That was not the person who fired the shot, though.
19 That was a different person. The person who fired the shot
20 ran to the other side of Tire Kingdom.

21 Q The person that ran between them, what -- what was he
22 wearing that you remember?

23 A From what I remember, he was wearing a white shirt.
24 I'm not sure of the rest of the description of what he was
25 wearing. I just remember him being in -- in a white shirt.

1 Q Were there any other vehicles down at that end of the
2 parking lot or in that area that you noticed?

3 A I don't remember at that time seeing any other
4 vehicles. Prior to noticing the incident, the girl I was
5 talking to, we noticed a Papa John's truck drive through
6 the parking lot. Other than that I didn't notice any at
7 the time.

8 Once we drove over there to see if anybody was hurt,
9 there were some other cars just randomly parked in the
10 parking lot. But nothing that I noticed during the whole
11 incident until after we got over there.

12 Q Did you see where the Papa John's truck went to?

13 A It went between the two buildings. After that I'm not
14 sure. I assume it might have -- was loading -- delivering
15 for Papa John's. But once it disappeared between the
16 buildings, I'm unsure.

17 Q Okay. And when you rode over to that area, did you
18 see anything?

19 A Once we drove over there, we noticed a man lying on
20 the ground. If you're looking at the building, he was
21 actually to the right of Tire Kingdom.

22 He was lying on his back on the ground. I believe he
23 was wearing a white shirt, and you could see the red blood
24 on his shirt.

25 So, we pulled into a spot and that's when we called --

1 I dialed 911 actually.

2 Q And you talked to the police at that time?

3 A Yes, sir.

4 Q Okay.

5 MR. BELL: Thank you, Officer Hans. Please answer any
6 question Mr. --

7 MR. O'NEAL: No questions for this witness, Your
8 Honor.

9 THE COURT: Very well. Is this witness free to leave?

10 MR. BELL: Yes, Your Honor. She's free to leave.

11 MR. O'NEAL: No objection.

12 THE COURT: Very well. You are free to go.

13 THE WITNESS: Thank you.

14 (The witness retires from the stand.)

15 THE COURT: Call your next witness, please.

16 MR. BELL: State will call DeJuan Jenkins to the
17 stand.

18 (The witness approaches the stand.)

19 COURT CLERK: Please raise your right hand and state
20 your full name for the record.

21 THE WITNESS: DeJuan Jenkins.

22 COURT CLERK: And spell your first name, please.

23 THE WITNESS: D-e-j-u-a-n.

24 DEJUAN JENKINS, having been first
25 duly sworn testifies as follows:

1 THE COURT: Pull that microphone down just a little
2 bit, please, Mr. Jenkins.

3 THE WITNESS: Ma'am?

4 THE COURT: Can you help him, Ms. Salisbury? Just
5 pull that microphone down --

6 THE WITNESS: Pull it a little closer.

7 THE COURT: -- just a little bit. All right. There
8 you go. The chair won't -- all right.

9 And just state your full name again -- again for us.

10 THE WITNESS: DeJuan Jenkins.

11 THE COURT: Your witness.

12 DIRECT EXAMINATION BY MR. BELL:

13 Q Mr. Jenkins, where do you live, sir?

14 A In Forest Oak.

15 Q Okay. And where is that located?

16 A Off of Dorchester Road.

17 Q And you recall this incident where Sean Kammerer shot
18 someone back in 2007?

19 A Right.

20 Q You know Sean Kammerer; is that correct?

21 A Right.

22 Q Had you been with him that day?

23 A Yes, sir.

24 Q Where had y'all been that day? How long had he been
25 with you?

1 A I was probably with him since --

2 THE COURT: Say again. I'm having trouble hearing
3 you. Let me see if I can get your volume a little bit
4 better. Go ahead. Say again.

5 THE WITNESS: I'd been with him since like three
6 o'clock/four o'clock that day. We went out to the mall.
7 We going downtown in my little cousin house, stuff like
8 that.

9 Q And how did y'all get to the mall and to your
10 cousin's?

11 A In his mother's car.

12 Q And who was driving?

13 A I was.

14 Q And why were you driving his mother's car?

15 A Because I was the only one with a license at the time.

16 Q And how long were y'all out?

17 A We was probably going back to his house like around
18 nine -- nine o'clock.

19 Q And that's in the evening?

20 A No -- yeah. In the evening, evening.

21 Q Was it light or dark?

22 A Probably dark outside.

23 Q And did y'all stay at his house?

24 A Yeah, for a little while. We leave like around 10 --
25 10, I think when we leave.

1 Q Okay. And why did you leave?

2 A Because he said -- he had want me to take him around
3 Rock-n-Roll McDonald's to his girlfriend.

4 Q Okay. And how did y'all get over there? How were
5 y'all going that way?

6 A How?

7 Q Yeah.

8 A In -- in his momma car.

9 Q And who was driving then?

10 A I was.

11 Q Okay. And where was his house at?

12 A Sean's house?

13 Q Yes.

14 A He live in the same neighborhood I live in.

15 Q So y'all went towards the Rock-n-Roll McDonald's.

16 A Right.

17 Q And when you got to the Rock-n-Roll McDonald's is
18 that -- what road is that off of?

19 A Ashley Phosphate.

20 Q What did y'all do when you got there?

21 A We had gone by Zaxby's, because I see two of my home-
22 girls. I start talking to them. Then after Zaxby's, we
23 park in Tire Kingdom parking lot, because he had told me to
24 park over there.

25 Q Why did you park in Tire --

1 THE COURT REPORTER: I'm sorry. Say that one more
2 time?

3 THE WITNESS: Because he had told me to park over
4 there.

5 THE COURT: Can you speak up just a little bit?

6 THE WITNESS: Because he told me to park over there.

7 Q All right. Let's go back. I don't think she got
8 where y'all parked at.

9 A By Tire Kingdom.

10 Q And who told you to park there?

11 A Sean.

12 Q Okay. Why did he tell you to park over there?

13 A Because he was going to meet his girlfriend over
14 there.

15 Q And where did y'all park?

16 A Like one side of -- the side of the building on Tire
17 Kingdom.

18 Q And what did y'all do -- what happened when y'all
19 pulled over and parked there?

20 A I mean, we was sitting and waiting for a little while
21 for his girlfriend to come, whatever. I had got out the
22 car and used the bathroom behind the car. I get back
23 inside the car. His girlfriend roll up and he walk over
24 there.

25 Q And where did she come to?

1 A Where did she park at?

2 Q Yes.

3 A Like five -- five spaces down from where we were
4 parked at.

5 Q And when she came, what did you say happened?

6 A When she came? Sean walked over to the car.

7 Q And where were you?

8 A I still been inside the car.

9 Q Did you see anything happen after that?

10 A Yeah. I saw Sean walk over to the car, he opened up
11 the passenger door. And when he opened the door, somebody
12 get out the car.

13 And Sean pulled out a gun and aimed the gun at him;
14 and he shoot at him, but he missed. And the guy started
15 running away. And Jessie been trying to get out the
16 backseat of the car. And when he got out the car, he
17 started running like towards me where I been park at. And
18 Sean started shooting at him.

19 Q What did you do?

20 A I been in the car ducking down like, you know, trying
21 not to get hit by the bullets, because he been like -- I
22 been park right there. He was shooting like towards me.

23 Q You said "Jessie:" Did you know Jessie?

24 A No, I didn't know him.

25 Q You never met him before?

1 A No.

2 Q You said you ducked down and he was running at you.

3 What happened next? What --

4 A After that, Sean walk up to Jessie and started
5 shooting.

6 Q Where was Jessie when he walked up to him?

7 A On the ground.

8 Q And what happened after that?

9 A Sean get inside the car and tell me to take him to his
10 brother's house. I tell him I ain't taking him there, I'm
11 taking him home.

12 Q And what did -- what did you do?

13 A I take him home.

14 Q Did you see him with the gun before y'all got to the
15 Tire Kingdom parking lot?

16 A No, sir.

17 Q When's the first time you saw him with a gun?

18 A When he went out there shooting with it.

19 Q Did you give him a gun?

20 A No, sir.

21 Q Do you know where he got the gun from?

22 A No, sir.

23 Q Did he have it when he got back in the Jeep?

24 A Yes, sir.

25 Q And you took him back where?

000424

- 1 A To his mom's house.
- 2 Q What did you do then?
- 3 A I got on my bike and I rode home.
- 4 Q And when you got home, what did you do?
- 5 A I just stayed in my room.
- 6 Q Did you call the police?
- 7 A No, sir.
- 8 Q You saw a man shot, didn't you?
- 9 A Yes, sir.
- 10 Q Why didn't you call the police?
- 11 A Well, at the time, I was kind of scared, kind of
- 12 shocked. And I -- if I had knew that was a crime not to
- 13 report it, then I would have called. But I thought that I
- 14 was just going to stay out of harm's way if I not say
- 15 nothing to nobody.
- 16 Q But you got in trouble; is that right?
- 17 A Yes, sir.
- 18 Q You pled guilty to accessory after the fact; is that
- 19 correct?
- 20 A Yes, sir.
- 21 Q You served a youthful offenders sentence, didn't you?
- 22 A Yes, sir.
- 23 Q Now, back in the parking lot, did you see what
- 24 happened with the -- with the car, what his -- you said his
- 25 girlfriend pulled in?

1 A Yeah, she -- she already had left. She been left
2 since -- since he first started shooting and she leave.

3 Q And the two guys had gotten out -- had gotten out by
4 then?

5 A Yeah, they already --

6 Q Did Sean say anything to you when he got back in the
7 Jeep?

8 A Just keep -- he keep saying, "Take me to my brother
9 house."

10 Q How long had you known Sean before this happened?

11 A Probably for about a year.

12 Q Did you know -- and you said you didn't know Jessie
13 Ham?

14 A No.

15 Q Did you know of anything going on between Sean and
16 Jessie?

17 A No.

18 Q You know Kevin King?

19 A Unh-unh.

20 THE COURT: That's a "no"?

21 THE WITNESS: No. No, ma'am.

22 Q Did you know who his girlfriend was?

23 A No. I did meet her one time, but I ain't really been
24 --

25 MR. BELL: Thank you, Mr. Jenkins. Please answer any

1 questions that the defense counsel has.

2 THE COURT: Cross-examination?

3 MR. O'NEAL: Thank you, Judge.

4 THE COURT: Yes.

5 MR. O'NEAL: If it please the Court; Mr. Bell.

6 CROSS-EXAMINATION BY MR. O'NEAL:

7 Q Mr. Jenkins, you said you were friends with Sean
8 Kammerer?

9 A Yes, sir.

10 Q And how long had you been friends with him at the time
11 this thing happened?

12 A Like a year.

13 Q Now, you -- on the day that this happened, you'd been
14 with him pretty much most of the day on into the evening?

15 A Right.

16 Q So, y'all pretty good friends then?

17 A I mean, you could -- you could say it if you want to.
18 But I just been cooling with him.

19 Q Well, how long -- I'm -- how often a week would y'all
20 get together? Every day? once a week? twice a week?

21 A See, really, I didn't really even -- like the only
22 reason why I probably been with him is cause my car been
23 broke at the time, and his momma had a car. I knew she was
24 going to let me drive it, because I had my license. So
25 that's why I really been over there.

1 Q Okay.

2 A That's why we really get kind of closer, because I
3 been -- we been together like that driving his momma car.

4 Q How long had that been going on? Your car in the
5 shop, you driving his momma's car?

6 A Probably about three weeks.

7 Q During all that time, did you ever see him together
8 with Tiffany Sanders Hecksher?

9 A Yeah. We meet up one time.

10 Q One time?

11 A Yeah.

12 Q All right. Now, let's talk about this evening in
13 question. Did Sean tell you, "Hey, I need you to help me
14 kill Jessie Ham"?

15 A Did Sean tell me that?

16 Q Did he ever tell you that?

17 A No, sir.

18 Q Did he ever say, "Me and you and Tiffany are going to
19 get together and kill Jessie Ham"?

20 A No, sir.

21 Q Did he ever tell you, "I want you to drive me
22 someplace, because I'm going to get out and shoot a gun and
23 shoot somebody"?

24 A No, sir.

25 Q I mean, isn't it the truth -- isn't it the truth, what

1 you're telling this jury, that when you drove him up there
2 and y'all parked and he got out, the first you knew of any
3 kind of gun was when he pulled it out of his pocket and
4 started shooting it?

5 A Right.

6 Q Were you scared?

7 A Yes, sir.

8 Q You said you were shocked.

9 A Right.

10 Q You didn't see a gun in his pocket?

11 A No, sir.

12 Q He didn't pull it out while y'all were riding around
13 that day, "Look at this right here, look at this gun"?

14 A No, sir.

15 Q None of that, right?

16 A No.

17 Q All right. Did he ever say anything to you about how
18 he and Tiffany were trying to set up some kind of an ambush
19 to kill Jessie Ham?

20 A No, sir.

21 Q You didn't know Jessie Ham at all, did you?

22 A No, sir.

23 Q Now, you -- you did plead guilty to accessory after
24 the fact, because you did in fact see Sean Kammerer shoot
25 Jessie Ham to death, let him get in the car, and drove him

1 back to his house.

2 A Yes, sir.

3 Q Didn't call the cops.

4 A No, sir.

5 Q And you pled guilty and got a youthful offender, did
6 what, a year/13 months?

7 A Yes, sir.

8 MR. O'NEAL: That's all I have. Thank you, Judge.

9 THE COURT: All right. Re-direct?

10 RE-DIRECT EXAMINATION BY MR. BELL:

11 Q Mr. Jenkins, why did you go over to the Tire Kingdom
12 parking lot?

13 A To meet Sean girlfriend.

14 Q And what spurred Sean to go over there? Why'd he go
15 over there?

16 A I guess to go inside her car or something.

17 Q I mean, had there been any -- any conversation between
18 them during the evening?

19 A What him and her?

20 Q Yeah.

21 A I mean, he been talking to her when we went at his
22 house.

23 Q How was he talking to her?

24 A I been on my phone myself, so I really didn't pay no
25 attention. I didn't even know he -- he been talking to her

1 until after he get off the phone, and he tell me to take me
2 over there.

3 Q Okay. So, you were doing your own business, and he
4 was talking with you think his girlfriend, Tiffany, right?

5 A Right.

6 Q And you don't know what they were talking about.

7 A Right.

8 Q He just said, "Let's go meet her. I got off the phone
9 with her, we're going to meet her."

10 A Right.

11 MR. BELL: Thank you.

12 MR. O'NEAL: No further questions.

13 THE COURT: All right. Is this witness free to leave?

14 MR. BELL: He's free to leave, Your Honor.

15 MR. O'NEAL: No objection, Your Honor.

16 THE COURT: You are free to go.

17 THE WITNESS: All right.

18 (The witness retires from the stand.)

19 THE COURT: Call your next witness.

20 MR. BELL: The State would call Detective James
21 Sturkie to the stand.

22 (The witness approaches the stand.)

23 COURT CLERK: Please raise your right hand and state
24 your full name for the record.

25 THE WITNESS: James Sturkie.

1 COURT CLERK: And spell your last name, please

2 THE WITNESS: S-t-u-r-k-i-e.

3 COURT CLERK: And keep your hand raised, please.

4 DETECTIVE JAMES STURKIE, having
5 been first duly sworn, testifies as follows:

6 DIRECT EXAMINATION BY MR. BELL:

7 Q Will you state your name for the record, please?

8 A James Sturkie.

9 Q And where are you employed?

10 A The City of North Charleston Police Department.

11 Q And in what capacity are you employed with the City of
12 North Charleston Police Department?

13 A Police officer.

14 Q How long have you been with the City of North
15 Charleston?

16 A A little over seven years.

17 Q And how long have you been in law enforcement?

18 A Seven years.

19 Q And how are you employed with the police department
20 right now? What's your -- what are your duties?

21 A I'm a patrol officer.

22 Q And how long have you been a patrol officer?

23 A Three years prior to being a detective, and then three
24 years and now a couple of months.

25 Q And were you a detective back in June of 2007?

1 A Yes.

2 Q And do you recall a date, June the 8th, 2007?

3 A Yes, sir.

4 Q Were you working a particular shift or have any
5 particular duties on that day?

6 A I was on the call-out schedule for detectives.

7 Q And what -- what's a "call-out schedule"?

8 A That there's a team of, you know, three to four/five
9 detectives that are responsible for responding to incidents
10 such as this.

11 Q And were you called out that night?

12 A I was actually off duty, and I heard the call go out.
13 So, I responded.

14 Q Where were you -- I mean, where were you in -- in
15 location of the ---

16 A Remount and Rivers Avenue. Remount Road.

17 Q All right. And where did you go to?

18 A Ashley Phosphate and Dorchester.

19 Q Okay. And when you got there what did you find?

20 A The patrol officers already put crime scene tape up
21 around Jessie Ham, who was laying in front of the Tire
22 Kingdom.

23 Q Were there any other detectives or crime scene people
24 around?

25 A They were responding. I'm not exactly sure. I know

1 there was two patrol officers and I think lieutenant.

2 Q And where -- where was the victim at?

3 A In front of the Tire Kingdom.

4 Q Okay. And what did you do once you got there?

5 A I -- I started looking for shell casings and evidence
6 of value.

7 Q Okay.

8 (Marked State's Exhibit No. 5, photograph,
9 for identification.)

10 Q Officer Sturkie, let me show you what's been marked as
11 State's 5, and ask if you can identify that?

12 A Yes, sir.

13 Q What is that?

14 A That's the shopping center where Publix is located and
15 Tire Kingdom.

16 Q Okay.

17 A And it shows the Rock-n-Roll McDonald's as well.

18 Q And you're familiar with that area?

19 A Yes, sir.

20 Q It's in the City of North Charleston?

21 A Yes, sir.

22 MR. BELL: Your Honor, we'd offer this as State's 5.

23 MR. O'NEAL: No objection.

24 THE COURT: Very well. State's 5 in evidence without
25 objection.

1 (State's Exhibit No. 5 is moved into evidence.)

2 MR. BELL: I want to put it up here on the overhead.

3 THE COURT: Okay.

4 DIRECT EXAMINATION BY MR. BELL CONTINUES:

5 Q Can you see that Officer Sturkie?

6 A Yes, sir.

7 Q All right. If you push the -- push on the screen real
8 hard, you -- you can make marks. It's an annotator. Can
9 you point out where the Rock-n-Roll McDonald's is?

10 A (Indicates.)

11 Q Okay. And what's that -- the road right there above
12 Rock-n-Roll McDonald's?

13 A This is Dorchester.

14 Q Okay. And what's -- go ahead.

15 A This is Ashley Phosphate and this would be Park
16 Forrest Parkway (indicating).

17 Q Okay. And where's the Publix?

18 A Publix is right here (indicating)..

19 Q Okay. And where's the Tire Kingdom?

20 A Right here (indicating).

21 Q Okay. And there's a -- is there a cut through between
22 the building where the Tire Kingdom is and the Publix is?

23 A Yes, sir. It's right here (indicating).

24 Q And can you approximately put where you found and saw
25 the body of Jessie Ham?

1 A It was right in here (indicating).

2 Q Okay. All right. Now, Officer Sturkie, were you
3 involved -- you were involved in -- in the investigation of
4 this case?

5 A Somewhat, yes.

6 Q Okay. At some point fairly quickly after this
7 happened, I think it was the next day, did you have an
8 occasion to talk to a Tiffany Ann Sanders? That's her name
9 at the time.

10 A Yes.

11 Q And who was with you, do you recall, when you talked
12 with her?

13 A Detective David Watson.

14 Q Do you recall where you talked to her at?

15 A Yes. We were in the detective bureau interview rooms.

16 Q And why were you talking to her?

17 A Because she had been brought in because she was said
18 to have been the driver of the car where the victim was --
19 and also Sean Kammerer's girlfriend.

20 Q Okay. And when you brought her in, what did you do
21 with her?

22 A We placed her in the interview room by herself.

23 Q And when you went into talk to her, what did you do
24 with her?

25 A We went in and Mirandized her first: Read her her

1 Miranda rights and made sure she understood them.

2 Q Okay. And when you talk to a person like that when --
3 when you're investigating a crime, how do you read the
4 Miranda rights?

5 A Well, I like to let them read the first line to make
6 sure that they understand how to read and write and that
7 they understand them.

8 Q And do you have a particular form that you use?

9 A Yes.

10 (Mr. Bell confers with Mr. O'Neal.)

11 MR. O'NEAL: No objection, Your Honor.

12 THE COURT: Very well.

13 MR. BELL: Thank you.

14 THE COURT: State's Exhibit 6 --

15 MR. BELL: Yes.

16 THE COURT: -- into evidence without objection.

17 (Marked State's Exhibit No. 6,
18 Miranda Rights form, into evidence.)

19 MR. BELL: Yes. Thank you, Your Honor.

20 DIRECT EXAMINATION BY MR. BELL CONTINUES:

21 Q All right. Detective Sturkie, I'm going to hand this
22 to you. And that's what you read to a -- when you're
23 talking to somebody?

24 A Yes, sir.

25 Q Okay. And you've got her name up there?

1 A Yes, sir.

2 Q Her age?

3 A Yes.

4 Q And you ask her about her -- how far she went to
5 school?

6 A Yes.

7 Q And what did she say?

8 A Twelfth grade.

9 Q And then you read her some rights?

10 A Yes.

11 Q Do you let them -- how do you do it?

12 A I -- I normally read the first line out and -- or let
13 them read the first line out aloud to me to make sure that
14 they understand the -- reading and writing.

15 Q Okay. And can you read what she read or what you read
16 to her on that occasion?

17 A The first one is (as read): "I have the absolute
18 right to remain silent and do not have to answer any
19 questions or give a statement and this fact cannot be used
20 against me."

21 Q Okay. And did she acknowledge that she understood
22 that?

23 A Yes. She initialed beside it.

24 Q Okay. So, by her initials, that acknowledged that she
25 understand what she read and you read?

1 A Yes, sir.

2 Q Okay. And did you -- what's the next line that you
3 read to her?

4 A (As read) "If I do not answer" -- I'm sorry. "If I do
5 answer questions or give a statement anything I can --
6 anything I -- anything I say can and will be used against
7 me in a court of law."

8 Q Okay. Did she acknowledge that she understood that?

9 A Yes, sir.

10 Q By how?

11 A She initialed that -- she stated yes, and initialed
12 it.

13 Q Okay. And what else did you read her?

14 A (As read) "I have the right to consult with a lawyer
15 of my choice before I answer questions or give a statement,
16 and also have him present while I am being questioned."

17 Q Okay. She understood that?

18 A Yes, sir.

19 Q Okay. Next line?

20 A (As read) "If I wish to talk to a lawyer or have him
21 present, but am unable to afford to hire a lawyer, one will
22 be appointed to represent me free of charge."

23 Q Okay. She understood that?

24 A Yes, sir.

25 Q And then finally?

1 A (As read) "If I decide to answer questions or give a
2 statement without having a lawyer present representing me,
3 I have the absolute right during this interview to stop
4 answering questions and to remain silent."

5 Q And she understood that?

6 A Yes, sir.

7 Q Okay. And did she sign that she understood all those?

8 A Yes, sir, she did.

9 Q And you signed it?

10 A Yes, sir.

11 Q And who else signed it?

12 A Detective Watson.

13 Q Okay. And then she waived her rights?

14 A Yes.

15 Q Okay. There's a little something about waiving her
16 Miranda rights?

17 A Yes, sir. It says (as read): "Having these rights in
18 mind, I wish to waive these rights and answer questions
19 concerning the charge of murder. No threats, force, or
20 promises of any kind have been made to me by anyone to
21 cause me to waive these rights or answer questions."

22 Q And she signed that?

23 A Yes, sir.

24 Q And you signed it?

25 A Yes, sir.

- 1 Q And Detective Watson?
- 2 A Yes, sir.
- 3 Q And it was dated? What was the date?
- 4 A June 9th, 2007.
- 5 Q Okay. And after that, you went through this with her.
- 6 Did she talk with you and Detective Watson?
- 7 A Yes, sir, she did.
- 8 Q Did you offer her anything to talk with you?
- 9 A As in ...?
- 10 Q Did you make any offers to her?
- 11 A Oh, no, sir. No, sir.
- 12 Q Did you force her to talk with you?
- 13 A No, sir.
- 14 Q Did you coerce her into talking?
- 15 A No, sir.
- 16 Q Did you withhold any drinks or anything she wanted?
- 17 A No, sir.
- 18 Q Did you keep her from, like, going to the bathroom or
- 19 anything?
- 20 A No, sir.
- 21 Q Did she talk with you freely and voluntarily?
- 22 A Yes, sir.
- 23 Q And she gave you a statement; is that correct?
- 24 A Yes.
- 25 Q And did she write it or did you write it or did

1 Detective Watson write it?

2 A Initially I started to write it. You can see it on
3 there where my writing was the first two words. And then
4 she said that she would want -- she wanted to write it.

5 Q Okay. So, the statement is a two-page statement?

6 A Yes.

7 Q And other than the first two words and I guess the --
8 at the -- at the top, the caption, the rest is her
9 handwriting?

10 A Yes, sir.

11 Q Okay.

12 MR. O'NEAL: Judge, I don't have an objection to his
13 introduction of this document. But I would like to reserve
14 the right to cross-examine him a little bit about their
15 reading.

16 THE COURT: Very well.

17 MR. O'NEAL: Thank you, Judge.

18 THE COURT: Sure. Any objection to that, Mr. Bell?

19 MR. BELL: That's fine. I mean he's -- he can have
20 full cross-examination.

21 Okay. State's 7, Your Honor.

22 THE COURT: Yes.

23 MR. BELL: Into evidence --

24 THE COURT: State's Exhibit 7 ---

25 MR. BELL: -- with no objection.

1 MR. O'NEAL: No objection.

2 THE COURT: --- into evidence without objection.

3 (Marked State's Exhibit No. 7, 2-page
4 statement document, in evidence.)

5 DIRECT EXAMINATION BY MR. BELL CONTINUES:

6 Q Mr. Sturkie, I'm going to hand you what's been marked
7 as State's 7. Is that the statement that she wrote for you
8 on June 9th, 2007?

9 A Yes.

10 Q And can you read what it says?

11 A Read the entire thing?

12 Q Yes.

13 A (As read) "Riding around with my sister, my parents
14 called and said they was almost home. Rode to my
15 neighborhood. Was riding through; seen Brandon, David,
16 Jessie, and Kevin. I knew David and Brandon before.

17 "Sean calls and asks who I'm with, then asked me to
18 bring Jessie up to Publix. Kevin, Jessie, my sister and I
19 ride to Publix.

20 "Kevin and Jessie wanted to get out of the car, and as
21 soon as they did Sean ran up to Kevin, pushed him and
22 Jessie screamed "drive." And I took off and went to
23 Brandon's house.

24 "Got to Brandon" -- I'm sorry. "Went to Brandon's
25 house, got Brandon, went back up there to see if any -- if

1 they ducked in the woods. I had no knowledge of a gun
2 until I heard the shot.

3 "After me and Brandon didn't see anyone, Brandon said,
4 'All right you can take me home.' I dropped Brandon off
5 and went home. Tried to call Sean, no answer.

6 "I had no knowledge of a gun being present to take a
7 life. The only knowledge that I had was Sean wanting to
8 fight Jessie because of Jessie beating Sean in the head
9 with a baseball bat. I had -- if I had known guns would
10 have been involved, I would have kept Jessie and Kevin at
11 Brandon's house."

12 That's the end of the statement.

13 Q And her signature's on that?

14 A Yes, sir.

15 Q And your signature's on that?

16 A Yes, sir.

17 MR. BELL: Thank you, Officer Sturkie. Please answer
18 any questions that Mr. O'Neal has for you.

19 MR. O'NEAL: Beg your indulgence just a moment, Judge?

20 THE COURT: Certainly.

21 MR. O'NEAL: No questions for this witness, Judge.

22 THE COURT: Very well. You may come down. Is this
23 witness free to leave?

24 MR. BELL: He's free to leave, Your Honor.

25 MR. O'NEAL: No objection.

1 THE COURT: Very well. Free to go.

2 (Witness retires from the stand.)

3 THE COURT: Call your next witness, please.

4 MR. BELL: Your Honor, may I have one moment?

5 THE COURT: All right.

6 MR. BELL: Your Honor, I believe all the -- all the
7 exhibits are in. We move them all in, if they're not. But
8 I believe they're all in. The State would rest at this
9 time.

10 THE COURT: Very well. Ladies and gentlemen, you have
11 now heard the witnesses and received the evidence which you
12 will from the State and the State's case in chief.

13 That signifies to me that there are matters which I
14 must take up outside your presence. Therefore, at this
15 time, I'm going to ask you to -- to please step to your
16 jury room. Do not discuss this matter, do not allow anyone
17 to discuss it with -- with you. And we'll be with you
18 shortly.

19 (Jury exits at 2:54 p.m.)

20 THE COURT: All right. Are there any motions?

21 MR. O'NEAL: Yes, Your Honor. I got a motion for
22 directed verdict.

23 THE COURT: All right.

24 MR. O'NEAL: Judge, as I understand it, the way it
25 works is at this point in the trial, the Court has to take

1 all the evidence that the State has produced and assume
2 it's gospel truth, assume that it's true.

3 And if you look at that evidence and assume that it's
4 true, all of it, the State fails on a required element of
5 each offense: malice, criminal intent.

6 There is absolutely no evidence whatsoever produced by
7 the State to -- to prove malice or criminal intent on the
8 part of Tiffany Sanders Herksher [sic]. As it says in the
9 indictments (as read): "That in Dorchester County, on or
10 about June 8 -- June 8, 2007, with malice aforethought ---

11 THE COURT: You gotta slow down. Slow down. Slow.

12 MR. O'NEAL: (As read) "That in Dorchester County, on
13 or about June the 8th, 2007, with malice aforethought, the
14 defendant, Tiffany Ann Sanders, did kill or aid, abet, or
15 assist or join with Sean Kammerer to kill Jessie Ham."

16 About the same thing in accessory before the fact to a
17 felony, specifically written down in the indictment by the
18 solicitor's office, the felony of murder, that also
19 requires a proof of a key element of the offense of malice.
20 And the State doesn't have it. For that reason, I move for
21 a directed verdict of not guilty.

22 THE COURT: Thank you. Mr. Bell.

23 MR. BELL: Well, Your Honor, I think that malice
24 exists from the fact that the principle in this case has
25 admitted and pled guilty to murder. So, malice does exist.

1 She is here as a person that aided, abetted under the
2 "hand of one, the hand of all."

3 I don't know that we have to assume that she had
4 malice, but that malice existed in the commission of the
5 crime.

6 But there is criminal intent from her own statement.
7 She knew she was taking him over there for a fight, to do
8 ill will, to do harm. That is malice. That is ill will.
9 So, it is in existence. It's up to the jury to decide
10 whether that the murder was the probable or natural
11 consequence of this fight that she -- that she gave in her,
12 you know, self-serving statement.

13 But I think malice exists by the fact that Sean
14 Kammerer has admitted and pled guilty to murder, because
15 the murder occurred. It happened. By stipulation, it
16 happened.

17 And her part is either she was present or not present,
18 thus accessory before the fact of murder or murder. The
19 malice is certainly there. It's not necessarily her
20 malice, but all it says is "malice." It doesn't say it has
21 to be that person's malice, but that malice existed before
22 somebody was killed. An unlawful killing occurred. And
23 that's proven, again, as I said by Sean Kammerer's
24 admission and by his -- his guilty plea.

25 THE COURT: All right. Anything further?

1 MR. O'NEAL: Judge, I think it's absolutely clear they
2 have to prove malice with regard to Ms. Sanders. They are
3 the ones that chose -- chose to charge her with accessory
4 before the fact. They're the ones that chose to charge her
5 with the crime of murder.

6 Malice is a -- and since in the accessory before the
7 fact to a felony, they described the felony in the
8 indictment as the crime of murder. They have to prove
9 malice with regard to Tiffany toward Jessie Ham. And it's
10 not there.

11 The testimony of all these witnesses that she had no
12 idea, never met him before, didn't know who he was, had no
13 desire to have him killed.

14 THE COURT: Let me see the statement for just a
15 second, her statement.

16 (Mr. Bell hands the defendant's statement to the Court.)

17 (Brief pause as the Court reviews the statement.)

18 THE COURT: All right. I have reviewed the statement,
19 and thank you for it.

20 I'm going to respectfully deny your motion. At this
21 stage, I am required to determine whether or not there is
22 element on each and every -- or evidence on each and every
23 element of the offense from which a jury could determine
24 guilt. And I do find that there is evidence on each and
25 every element.

1 I'm going to respectfully deny your motion, noting
2 your exception thereto.

3 MR. O'NEAL: Thank you, Judge.

4 THE COURT: Now, are you ready to proceed?

5 MR. O'NEAL: Judge, can I get a 10 minute/15 minute
6 recess to talk with my client --

7 THE COURT: Of course.

8 MR. O'NEAL: -- in our little room in the back?

9 THE COURT: Of course.

10 MR. O'NEAL: Thank you, Judge.

11 THE COURT: Of course. Let's take 15.

12 MR. O'NEAL: Thank you, Your Honor.

13 THE COURT: (To Court Security) And George, just tell
14 the jury we're going to turn this into our afternoon break.

15 COURT SECURITY: Yes, ma'am.

16 THE COURT: And we're going to be 15 minutes.

17 COURT SECURITY: Yes, ma'am.

18 THE COURT: Thank you. You all be at ease.

19 (off the record at 3:00 p.m.)

20 (On the record at 3:18 p.m.)

21 THE COURT: Yes, sir. Are you ready?

22 MR. O'NEAL: Judge, we are not going to put -- I'm not
23 going to put her on the stand.

24 THE COURT: Okay.

25 MR. O'NEAL: We rest.

1 THE COURT: Let me -- let me -- let us speak about
2 that. And thank you so much --

3 MR. O'NEAL: Yes, ma'am.

4 THE COURT: -- for that Mr. O'Neal.

5 All right. Just one -- y'all let me get myself
6 organized here for just a moment.

7 THE COURT: I'm going to hit rewind just a little bit
8 --

9 MR. O'NEAL: Uh-huh.

10 THE COURT: -- because Ms. Kelly just put went back on
11 the record.

12 MR. O'NEAL: Okay. Judge, the Defense rests. My
13 client will not take the stand.

14 THE COURT: Thank you so much. And -- and I'll just
15 examine her about that.

16 And Ms. Hecksher, would you please stand and raise
17 your right hand for me?

18 TIFFANY ANN SANDERS HECKSHER,
19 having been first duly sworn, testifies as follows:

20 DIRECT EXAMINATION BY THE COURT:

21 Q And you're probably -- you can put your hand down --
22 you probably wonder if you just said you weren't going to
23 testify, why did I just place you under oath.

24 I have some questions to ask of you and Mr. O'Neal may
25 have just chatted with you about that. But I do have just

1 some explanation that I want to give to you.

2 And first and foremost -- let me turn on my
3 microphone. And next, if at any point in time you do not
4 understand what I'm telling you or saying, I want you to
5 let me know because there are many ways to explain any one
6 thing. Okay?

7 A Yes, ma'am.

8 Q And if you need me to repeat anything, you let me know
9 that as well, because Ms. Hecksher, it is critical that you
10 understand what we're about to talk about. Okay?

11 A Yes, ma'am.

12 Q And we have now reached the stage of the trial where
13 you may present your defense. You have the right to claim
14 the protections given to you by the Fifth Amendment of the
15 Constitution of the United States and of South Carolina.

16 This amendment states in part (as read): "No person
17 shall be compelled in any criminal case to be a witness
18 against himself." That's the quote. I like to add "or
19 herself."

20 This means that you cannot be required to testify in
21 this case. You have the right to testify on your own
22 behalf. However, no one can make you testify. This is a
23 personal right, and no one can waive this right except you.

24 If you decide to testify, you will be subject to the
25 same rules that govern other witnesses, and you may be

1 examined and cross-examined on any relevant issue in this
2 case.

3 In addition, if you have any convictions involving
4 dishonesty or false statement, or for crimes punishable by
5 imprisonment for more than one year, and this Court
6 determines that the probative value of admitting this
7 evidence outweighs it's prejudicial affect to you, the
8 Solicitor will be able to introduce your record to attack
9 your credibility. But only for that purpose; to attack
10 your credibility.

11 If you decided to testify, this decision on your part
12 must be freely, voluntarily, and intelligently made, with
13 knowledge of the protections given to you by the Fifth
14 Amendment and the consequences of your decision to testify.

15 If you decide not to testify, I will instruct the
16 jurors that they cannot give the fact that you did not
17 testify any consideration whatsoever, and that there is to
18 be absolutely no prejudice to you because you did not
19 testify.

20 In -- I will tell you that in my instruction, I tell
21 the jury that they cannot even discuss your decision not to
22 testify in the jury room. I tell them that, that the --
23 that the fact that you chose not to testify is part of your
24 Fifth Amendment rights, just as I've already said. And
25 then I tell them that the burden is and remains on the

1 State of South Carolina to prove guilt.

2 Now, I want to reiterate and tell you that the
3 decision whether to testify or not to testify is left
4 entirely up to you. You may talk -- I urge you, of course,
5 and I know you've been talking with your attorney. I urge
6 you to talk to your attorney, to family, friends, or anyone
7 else. And obviously when I talk about family, I mean your
8 family, your biological family, and of course -- and your
9 married family as well.

10 But the final decision, the final decision is yours.
11 And it must be yours. The decision is left entirely up to
12 you. It is your decision.

13 Do you understand what I have explained to you?

14 A Yes, ma'am.

15 Q Do you -- and I want you to feel free to take a moment
16 and think. Do you have any questions about what I have
17 explained to you?

18 A No, ma'am.

19 Q Now, have you discussed fully with Mr. O'Neal whether
20 you should or should not testify?

21 A Yes, ma'am.

22 Q Do you need anymore time to talk to him?

23 A No, ma'am.

24 Q And are you absolutely confident that you've spoken
25 with him as long as you need to?

1 A Yes, ma'am.

2 Q Have you had an opportunity to speak to your family?

3 A Yes, ma'am.

4 Q All right. And do you need to speak with your family
5 or Mr. O'Neal any further at this time?

6 A No, ma'am.

7 Q Have you made your decision whether you wish to
8 testify or not to testify?

9 A Yes, ma'am.

10 Q Tell me which it is?

11 A I'm not going to testify.

12 THE COURT: Very well. Very well. Thank you. You
13 may be seated.

14 MR. O'NEAL: Thank you, Judge.

15 THE COURT: Now, will there be other witnesses?

16 MR. O'NEAL: No, ma'am.

17 THE COURT: Very well. Now, Counsel, let me see you.
18 We're just talking about scheduling.

19 (Bench conference.)

20 THE COURT: (To Court Security) Jury. Thank you.

21 (Jury enters at 3:27 p.m.)

22 THE COURT: (Addresses jurors) Ladies and gentlemen,
23 as I mentioned to you before our break, you've now heard
24 the witnesses and received the evidence from the State and
25 the State's case in chief.

1 And now we'll turn to you, Mr. O'Neal.

2 MR. O'NEAL: Defense rests, Your Honor.

3 THE COURT: Very well. Ladies and gentlemen, you've
4 now heard the witnesses and received the exhibits which you
5 will in this case. What remains for us now are the
6 arguments of counsel and my charge or instruction on the
7 law.

8 Now, ladies and gentlemen, when -- 13 years ago when I
9 became a judge, I learned from the folks that had been
10 judges for a long time there's an old adage that says,
11 "Don't argue and charge after four o'clock."

12 Well, we close. And let me tell you the reason why.
13 The reason why is, is that by the time I've done just a
14 little bit of work that I must do to prepare to -- to
15 conclude my preparation for the charge, that will not take
16 particularly long. But by the time we do that and by the
17 time we have arguments and then the charge, and you would
18 receive this case, you would probably receive this case
19 close to six o'clock. Not -- I don't -- it's not a good
20 idea.

21 And therefore, I'm going to ask you all to return in
22 the morning at 9:30. When you return in the morning, you
23 will have the arguments of counsel and then my charge on
24 the law. And then you will receive this case for your
25 deliberations.

1 Now, you have not heard the arguments of counsel, you
2 have not heard my charge on the law, and you are not
3 prepared to deliberate. Therefore, going home with you
4 this evening is my instruction: Do not discuss this matter
5 or allow anyone to discuss it with you.

6 Now, the curiosity is going to be heightened. I hope
7 you understand that. But remember not to discuss the
8 matter or allow anyone to discuss it with you. And if they
9 are irritated, remember put it on the judge. Don't you
10 take any upset. Remind whomever is curious that the judge
11 has told you, you can't talk about it. Let them get upset
12 with me and not you, because you must not discuss this
13 matter. As I have repeated to you, you must receive all of
14 the information from what you will make up your mind here
15 in court while court is in session.

16 Ladies and gentlemen, do not read anything. Do not
17 listen to anything about this case. And that's newspaper,
18 radio, television, internet. Don't blog, don't tweet, don't
19 chat, don't Facebook. I think that's everything. They do
20 this every -- it's always just one more thing that I think
21 people can do. Don't email regarding this matter. No
22 "Columbo." No investigation. Don't look up anything on
23 the internet. Do not investigate. You must receive all of
24 the information from which you will make up your mind here
25 in court while court is in session.

1 Ladies and gentlemen, I want to reconvene this matter
2 in the morning at 9:30. You now know about eating that
3 half a bowl of Wheaties. Did y'all have biscuits or donuts
4 this morning?

5 JURY: Biscuits.

6 THE COURT: So, it's probably a donut morning in the
7 morning.

8 In the event, I hope your employer is still
9 understanding that you cannot go to work at night. If they
10 should become concerned, if you let me know in the morning,
11 again, I'm happy to communicate with them on your behalf..
12 I need you rested.

13 JUROR: I called them.

14 THE COURT: All of them?

15 JUROR: I already called and he said all right.

16 THE COURT: Wonderful. Wonderful. Very well. If
17 that changes let me know. I'm happy to -- happy to make a
18 phone call.

19 JUROR: Thank you.

20 THE COURT: Ladies and gentlemen, if you will go with
21 Mr. Taylor. And I will see you in the morning at 9:30.

22 (Jury exits at 3:32 p.m.)

23 THE COURT: All right. Motions?

24 MR. O'NEAL: Judge, I'd like to -- (clears throat)
25 excuse me -- renew my earlier motion for a directed verdict

1 on the same grounds as stated before.

2 THE COURT: Thank you. And similarly, on the same
3 basis as before, I would respectfully deny your motion
4 notice -- noticing your exception thereto.

5 Now, I do want to have an informal charge conference
6 this afternoon.

7 MR. O'NEAL: Yes, ma'am.

8 THE COURT: And -- but I -- but I do need you all to
9 give me about, I don't know, 10/15 minutes to conclude my
10 work about that. Y'all just be at ease and meet me in
11 chambers probably in about 15 minutes.

12 MR. O'NEAL: Yes, ma'am.

13 THE COURT: And we'll go over it. Thank you. And we
14 will be at ease.

15 (Off the record at 3:33 p.m.)

16 DAY THREE

17 (On the record at 10:03 a.m.)

18 THE COURT: Thank you all so much and please be
19 seated.

20 All right. Let me just tell both of you that we are
21 preparing the verdict forms now. And I want both of you to
22 have an opportunity to see them. They're very simple. I'm
23 just doing one verdict form for one indictment and the
24 other for the other indictment. And I'll show them to you.

1 They're very, very simple, but I do want you to see
2 them and review them and approve of them before they go to
3 the jury, but we'll have those in just a few moments.

4 Probably what -- what I'll do is in between your
5 arguments and then my charge, I'll get you guys to just
6 approach -- guys and of course Ms. Kimmons, the brain trust
7 -- to come forward and take a look at them and make sure
8 that they're as they should be. But we're working on that
9 now.

10 Now, anything from the State before I bring the jury
11 out?

12 MR. BELL: Nothing before the jury, Your Honor.

13 THE COURT: Before the jury comes out? Okay. Yes,
14 sir.

15 MR. O'NEAL: Nothing from the Defense, Your Honor.

16 THE COURT: Now, as you all know, yesterday we had a
17 informal charge conference.

18 MR. O'NEAL: Yes, ma'am.

19 THE COURT: And there was a particular charge that
20 I've -- that I've addressed and I've made, not really a
21 change, as much as an inclusion of some of the case law
22 that was requested.

23 MR. O'NEAL: Yes, ma'am.

24 THE COURT: It is my understanding that there is an
25 objection to that, but you need to make that at the

1 conclusion of the charge.

2 MR. O'NEAL: Yes, ma'am.

3 THE COURT: Okay?

4 MR. O'NEAL: Yes, ma'am.

5 THE COURT: And, you know, as I sit here, it seems
6 like there was something I --

7 MR. O'NEAL: Oh, Judge, there was one thing you wanted

8 ---

9 THE COURT: Thank you.

10 MR. O'NEAL: --- me to put on the record.

11 THE COURT: Yes.

12 MR. O'NEAL: I guess now is a good time to do it?

13 THE COURT: Yes, it is.

14 MR. O'NEAL: Judge, I moved earlier -- we had an
15 informal conference about whether or not my client's 6-
16 year-old child -- baby would be allowed in court ---

17 THE COURT: Six-month-old.

18 MR. O'NEAL: Six month -- excuse me -- six-month-old.
19 And you denied me, and I want to renew that motion --

20 THE COURT: Sure.

21 MR. O'NEAL: -- to allow the child into the courtroom.

22 THE COURT: Thank you so much for doing that. And let
23 me put on the record, as I recall it was really addressed
24 to the Court.

25 And Mr. Bell, as I recall, I -- I don't even remember

1 if I even gave you an opportunity to speak to it, because
2 it's one of those things that -- that -- that I sort of
3 addressed before and have a policy about. So, I'm going to
4 put on the record now what my -- what I said.

5 MR. BELL: Thank you. I think I did that.

6 THE COURT: But if I miss anything, please let me
7 know. Okay?

8 My concern was this: My concern was -- was that while
9 certainly every six-month-old is -- is also a member of the
10 public, this is a public place. But I think it lies within
11 the discretion of the Court to be able to control the
12 decorum, if you will, of the courtroom; and to -- to do all
13 that the Court can do reasonably to keep the jury from
14 being affected by matters extraneous or matters outside the
15 court.

16 My concern was, and as I understand there was -- on
17 your behalf, Mr. O'Neal, there was an additional concern in
18 that this child is a child that is being breast fed. There
19 was an additional concern on your behalf.

20 My concern is this: I cannot expect a six-month-old
21 infant to be able to control what -- with any -- in any
22 other person would be an outburst. Clearly, in a six-
23 month-old, it isn't. It is -- it is a normal and
24 appropriate need for an infant to cry when that little one
25 is hot, cold, hungry, wet, bored, wants to move. And --

1 and -- and certainly those little ones ought to be allowed
2 the ability to do that.

3 My concern is that if an infant would begin to cry,
4 and you've already told the jury that -- that your client
5 has a six-month-old -- in the event that that would occur,
6 I have now injected something extraneous into the
7 considerations of the jury. It's one of those bells that
8 you cannot un-ring.

9 For that reason, as I told you then, I would -- I did
10 not think it was appropriate. I did not want the little
11 one here in the courtroom. However, we are so lucky in our
12 new courthouse to have facilities outside -- right outside
13 the -- the door to the courtroom. And as I told you, the
14 room on the -- the conference room on the left was yours.
15 You could turn it into a nursery. You could turn it into a
16 nursery/office. You could turn into an office. But it was
17 yours, and please feel free to bring the -- the little one
18 and -- and he or she could stay in that conference room.
19 And if -- if we needed to take more frequent breaks to
20 allow your client to attend to the -- to -- to her baby,
21 that was going to be perfectly fine. And that was the
22 accommodation. And -- but that's my determination.

23 I believe it lies within the discretion of the Court,
24 but those are the bases that I made -- I made the
25 determination that I did. I will continue -- now, that

1 you've raised the issue anew, I will continue with that
2 ruling. I note your exception. And -- and now I'll give
3 you guys and opportunity to put anything else on the record
4 that you need to. Yes, sir.

5 MR. O'NEAL: Judge, just as -- to put that issue to
6 rest and for the purpose of the record --

7 THE COURT: Uh-huh.

8 MR. O'NEAL: -- when we talked about it yesterday, I
9 did inform the Court that I had family members, personnel
10 available, to remove the baby from the courtroom if a
11 problem arose ---

12 THE COURT: Yes, you did. Thank you for that. You
13 absolutely did. And -- and just to make -- take that one
14 step further, I think that your position also was -- was
15 that the infant ought to be allowed to remain into the
16 courtroom because I -- I can't make a determination that
17 the child's going to cry --

18 MR. O'NEAL: Right.

19 THE COURT: -- preliminarily. And you and I just had
20 a difference of opinion --

21 MR. O'NEAL: Thank you, Judge.

22 THE COURT: -- with regards to that. Yes, sir.

23 Mr. Bell, anything you need to add?

24 MR. BELL: No, Your Honor.

25 THE COURT: Very well. Anything further before we

1 bring our jury out for our closings?

2 MR. BELL: None.

3 MR. O'NEAL: Nothing.

4 THE COURT: All right. Now, let me address this: You
5 take the position that you're entitled to the final
6 argument?

7 MR. O'NEAL: Yes, ma'am.

8 THE COURT: Any concern about that?

9 MR. BELL: No, Your Honor.

10 THE COURT: Very well. All right. Now, let me just -
11 - let me be -- let me just address our security people in
12 the back. I don't want people coming and going during the
13 closing of my lawyers. In between the two closings, then
14 clearly people can come and go.

15 That does not -- where are my families? That does --
16 there we -- there you are. That does not apply to family.
17 If you all need to leave because you're being overcome with
18 emotion, you feel free to come and go. You can come and
19 go.

20 But no -- I don't want other people coming and going
21 except in between the two arguments. And then at the
22 conclusion of the argument by Mr. Bell, before I deliver
23 the charge, people can come and go. Cannot come and go
24 during the charge. I don't want our jury distracted.
25 That's the reason for it.

1 Now, let me ask this question: We have the screens up
2 and are y'all going to use ELMO? Do we need them up?

3 MR. BELL: I'm going to use, not ELMO, but --

4 MR. O'NEAL: I'm not -- I'm not going to.

5 THE COURT: Okay. That's fine. All right. Podium.
6 Got podium where you all need it?

7 (No audible response.)

8 THE COURT: Very well.

9 (Briefly off the record.)

10 THE COURT: Okay. There we go. Great. All right.

11 (To Court Security) George, Mr. T., let us have our
12 jury, please.

13 COURT SECURITY: Yes, ma'am.

14 (Jury enters at 10:13 a.m.)

15 THE COURT: Good morning.

16 JURY: Good morning.

17 THE COURT: (To the presiding juror) You did a
18 wonderful job. You got everybody back. All 14. What a
19 great job yet once again.

20 Ladies and gentlemen, I want to tell you how we will
21 be proceeding this morning. The first thing that will
22 occur is that you're going to hear from Mr. Bell in his
23 closing argument on behalf of the State.

24 You are then going to hear from Mr. O'Neal in his
25 closing argument on behalf of Ms. Hecksher.

1 Once the closing arguments are finished, there will be
2 a very short break that will be self explanatory. When we
3 reach that point, I will then deliver the charge or the
4 instruction on the law to you. And then there will be
5 another very short break that I will explain to you when we
6 reach that point. And then you will receive this case for
7 your deliberations.

8 Ladies and gentlemen, at this time I ask that you
9 please draw close as we listen to the closing arguments of
10 our attorneys.

11 Mr. Bell.

12 MR. BELL: Thank you, Your Honor. If it please the
13 Court?

14 THE COURT: Yes.

15 MR. BELL: Mr. O'Neal.

16 MR. O'NEAL: Yes, sir.

17 MR. BELL: Madam Forelady, ladies and gentlemen of the
18 jury, Jessie Ham never had a chance on the night of October
19 8th -- June 8, 2007. He was lured to an ambush that
20 resulted in his murder on that night. Lured by the
21 defendant.

22 But for her actions on that night, Jessie Ham would
23 not have been murdered. If it wasn't for her, he would not
24 have been murdered.

25 Remember what the testimony was from the State's

1 witnesses. Number one, she happened upon somebody she
2 knew, Brandon Frye, and a group of boys. And she knew that
3 Jessie Ham was one of them. How did she know?

4 Don't you remember the testimony that Jessie Ham never
5 revealed his identity until right before he got in the car
6 to go with her. She knew who she was looking for, who she
7 had found that night, Jessie Ham. And she knew what to do
8 with that information. She got in communication with Sean
9 Kammerer, the person who Jessie Ham had -- had had an
10 ongoing problem with, and let him know that I was with
11 Jessie.

12 And what happened? They agreed, they planned to bring
13 Jessie Ham over to Tire Kingdom to have an altercation.

14 After that, she knew right where to find Jessie. She
15 went to Brandon's house. Straight to Brandon's house, blew
16 the horn, got Brandon and David Hughey to come around. And
17 what did she want? She wanted to see Jessie. She wanted
18 to see the other guy.

19 And then Jessie and Kevin King came around; they
20 played to be Benjamin and Kyle. She kept saying, "You're
21 Jessie, you're Jessie." He was like, "No, I'm not Jessie."

22 She was on the phone with somebody. You remember
23 Kevin King said he heard a male voice on the phone. And
24 then she lured him to get him to go to McDonald's. "I've
25 got a girl you want to meet. I know this girl, and she

1 wants to meet you. She's in McDonald's. Come on, come
2 with me. I'll take you to McDonald's to meet her."

3 She lied to him. Lied to him to get him in the car to
4 take him to Sean Kammerer. Sean had told her bring him to
5 Tire Kingdom. That's in her statement: Bring him to Tire
6 Kingdom.

7 So, they get in the car. They finally get in the car
8 after all this urging by her, all this offer by her to meet
9 this girl. They get in her car. She tries to pull off.
10 You remember what Kevin King said. And he jumped in the
11 car with them, because he wanted to go with his friend. He
12 thought the whole thing was kind of hinky. He thought it
13 was a setup in his mind. That's what he testified to you
14 yesterday, ladies and gentlemen. He got in the car with
15 his friend.

16 And guess what? They did go to McDonald's. They did
17 one lap around McDonald's. There was no girl there. And
18 then they started off across the parking lot, over to Tire
19 Kingdom.

20 And you remember what Kevin King said. He said, yeah
21 he heard that she was saying about she couldn't get behind
22 Tire Kingdom because there was a truck blocking the way.

23 And what did Jessica Hans tell you? She was there.
24 She was a Publix employee. Yeah, there was a Papa John's
25 truck blocking that cut-through between the businesses.

1 So, they go over to a specific place at Tire Kingdom
2 and they parked in the dark, turns the engine off. Kevin
3 King says, "Why don't we go over there where the light is?"
4 "No, we're staying right here."

5 And then what's the next thing? Kevin King gets
6 really, really hinky, and he goes to get out of the car and
7 there's Sean Kammerer, ambushing him. Both of them.

8 Don't you remember there was a struggle with Kevin
9 King, two shots fired in the ground? He took off. And
10 then, as we learned, Jessie Ham was murdered: Three shots
11 to the back and one to the neck.

12 She knew that Sean wanted to harm Jessie from her
13 statement. Her statement was, "I was going to a fight."
14 She knew that there was bad blood between them. Again, see
15 her statement. After she says, "I took him to a fight. I
16 knew because Sean or Jessie had beat Sean with a baseball
17 bat." She knew that a weapon had been involved in the
18 prior altercation. That's from her statement that she gave
19 to the police the day after this happened.

20 Then she drove off at some point. You heard Kevin
21 King he -- he was gone. You heard DeJuan Jenkins say that
22 she drove off when the -- when she saw -- saw them drove
23 when the shooting started. Where'd she go? She went to
24 Brandon Frye's house. Why did she do that? Why did she go
25 to Brandon Frye's house? She says in her statement she

1 went to Brandon Frye's house. Brandon says she came up
2 said, "Something bad's happened." In her statement she
3 says, "Somebody" -- or she told Brandon also that somebody
4 came out of the woods. Well, we know who came out of the
5 woods, Sean Kammerer.

6 She also said, when she was driving over, in her
7 statement that she wanted to show the wood line. But what
8 did Brandon Frye tell you? He said that they came in, rode
9 around McDonald's, went down the Publix parking lot, and
10 then went back to his house. They didn't go over to the
11 wood line, because I guarantee you, if they went to the
12 wood line, Brandon Frye would have seen Jessie Ham over in
13 the far corner in front of the Tire Kingdom.

14 But they didn't even get close. You heard what
15 Brandon Frye said. They just kind of went down in front of
16 the Publix and then left. She was trying -- she was trying
17 to cover her tracks. She was trying to make it look like
18 she was upset. And what did Brandon Frye say? "Alligator
19 tears." He said he didn't think she was serious because
20 she had "alligator tears" I think is what his quote was.
21 Trying to cover her tracks because of what had happened.

22 And as we know from both Kevin and Brandon, there was
23 bad blood between Sean Kammerer and Jessie Ham. Both of
24 them said they knew that Sean had said he was going to kill
25 Jessie. That was common knowledge. Both of them asked --

1 asked on direct and cross.

2 And Kevin said they'd had some prior altercations.
3 And this was common knowledge. This was common knowledge.
4 And as I said earlier, and I'll keep saying it, she
5 acknowledges she knew about this bad blood in her
6 statement. Just this little blurb. And I guarantee you
7 she knew more about that than just that baseball bat.

8 Let's look at her statement, which is probably the
9 most damning piece of evidence in this case. First off,
10 remember that she lied to Jessie about taking the girl --
11 going to see the girl at McDonald's.

12 She lied to Brandon about what had happened: Some guy
13 came out of the woods. Didn't even take him near where
14 this happened, where she had been previously, 20 minutes
15 before time.

16 But her statement, she says that she -- Sean calls
17 asking where she is, she's with Jessie. Wanted to get
18 Jessie over to the Publix. They went over there and Sean
19 then shoots -- as soon as they did, Sean ran up to Kevin,
20 pushed him, Jessie screamed "drive off," and took off and
21 went to Brandon's house.

22 Again, why do you go to Brandon's house? What
23 purpose? Why didn't you call the police? If that wasn't
24 supposed to go down like that, call the police.

25 Brandon doesn't say she called -- she called the

1 police when he was with her when she came back. Police
2 weren't there. They didn't find anything. Why? Why go to
3 Brandon's house. For what purpose?

4 She says (as read): "I have no knowledge of a gun
5 until I heard the shot. After me and Brandon didn't see
6 anyone, Brandon said, all right, you can take me home. I
7 dropped Brandon off and went home and tried to call Sean.

8 "I had no knowledge of a gun being present to take a
9 life. The only knowledge that I had was Sean wanting to
10 fight Jessie because of Jessie's beating Sean in the head
11 with a baseball bat."

12 That's what she knew and that's what convicts her of
13 this crime, ladies and gentlemen.

14 Remember the plan wasn't between Sean, DeJuan, and
15 Tiffany, but between Sean and Tiffany. DeJuan came up here
16 and testified for you. He was convicted of accessory after
17 the fact, because he saw what happened and he -- all he did
18 -- didn't call the police. He took Sean home. Helped him
19 get away. And he didn't want -- he didn't want to be in
20 harm's way. You remember that's what he said, he didn't
21 think he'd be in trouble, but he was. All he said was,
22 "Sean said my girlfriend called; gonna meet her over at
23 Publix or over at the McDonald's."

24 And then when we got over there he said, we're gonna
25 meet her over at the Tire Kingdom, my girlfriend. He kept

1 saying, "my girlfriend" as relating to Sean.

2 And then what did he say when he got over there, all
3 of a sudden Sean got out, went around, and they starting
4 firing -- started firing shots. He was running back
5 towards me. Jessie was running back towards me. I ducked
6 in my truck and saw him kill him. That's what DeJuan said.

7 The law in this case, ladies and gentlemen, is this:
8 The defendant's been charged with accessory before the
9 fact, which says (as read): "To -- it's a crime to aid,
10 abet, join or procure, counsel, or otherwise join with a
11 purpose or plan to commit a crime, then a crime is
12 committed" -- and we know that, for a fact, that the crime
13 was committed, and we know that she joined. Even her
14 statement, if you believe her statement, that, you know,
15 she's talking to the police trying to minimize her role,
16 she's going to take Jessie Ham to a fight, to an assault,
17 which is a crime in the State of South Carolina. Take him
18 to a crime.

19 A crime is committed. How do we know this? We know
20 this because Sean Kammerer has pled guilty and admitted
21 that he murdered Jessie Ham. By the principal: Sean
22 Kammerer is the principal.

23 The defendant is not present: It's up to you to
24 decide whether she was present, ladies and gentlemen. Was
25 she still around when the murder occurred or had she taken

1 off at that time? That's a jury question. That's a
2 factual question that you must decide out of the evidence
3 that you heard in this case.

4 (As read) "And that the crime committed, while not
5 originally planned, is a probable or natural consequence of
6 the planned crime." What that simply means is, two people
7 can plan on doing something else, plan on doing a crime,
8 say for instance an armed robbery, and when they go there,
9 the person that stayed out in the car is not doing
10 anything, but the guy that goes in with -- with the weapon
11 goes in and robs them and shoots somebody, murder or armed
12 robbery is a natural consequence.

13 You have a fight. At the bare minimum, if you believe
14 her statement that it's just a fight -- even though she
15 knew about this bad blood -- it was just a fight, a natural
16 probable consequence of a fight is somebody dying. Quite
17 honestly. Even in a fist fight.

18 Next, we have murder. Now, we know that a murder
19 occurred in this. Sean Kammerer admitted to it, pled
20 guilty to it. (As read) "It's the unlawful killing of
21 another with malice aforethought, either expressed or
22 implied."

23 We know that malice was involved in the killing of
24 Jessie Ham because Sean Kammerer admitted that there was
25 malice by admitting to murder. And what is malice? It's

1 either doing of a wrongful act intentionally and without
2 just cause or excuse; the wrongful intent to injure
3 another; a wicked or depraved spirit intent on doing wrong.
4 Those are some definitions of malice.

5 She took Jessie Ham, again at the bare minimum if you
6 believe her statement trying to look good for the police,
7 she was going -- he was going there to be injured, to a
8 fight. He was going there to do a wrongful act, an
9 assault. That's what the plan -- she planned on doing
10 that. That's malice. You can take the malice from Sean.
11 You can take the malice -- you can find malice in her heart
12 as well.

13 And what she's charged with as far as murder is the
14 "hand of one." Where a crime is committed by two or more
15 people who are acting together in committing a crime, the
16 act of one, is the act of all. It's a person who aids,
17 abets, counsels, or joins with another to accomplish an
18 illegal purpose, is criminally responsible for everything
19 done by the other person which occurs as a natural or
20 probable consequence of the acts done in carrying out the
21 common plan or purpose.

22 Again, natural consequence. And when they do that,
23 it's said they act as the hand of one.

24 And I will tell you, ladies and gentlemen, that you
25 can sit there and decide between murder, accessory before

1 the fact. If you find that she wasn't present, I urge you
2 to convict her, because the State has given you more than
3 enough evidence beyond all reasonable doubt that she was
4 involved; that she was involved in this plan to kill Jessie
5 Ham.

6 And if you find that she's not present, I urge you to
7 convict her of accessory before the fact. If you find that
8 she was present, I urge you to convict her of murder under
9 the "hand of one, hand of all" theory. She was involved.
10 She was in the middle of it. As I said earlier, but for
11 her actions that murder would not have happened that night.

12 Now, the other law that you will be charged, ladies
13 and gentlemen, reasonable doubt. I think Counsel talked a
14 little bit about reasonable doubt in his opening statement
15 that one definition is reasonable doubt is a doubt that
16 leaves a -- let's a juror or a reasonable juror to hesitate
17 to act in his or her most important affairs.

18 Well, there are other definitions. Most notably one
19 definition that -- that I would urge you to consider about
20 reasonable doubt is that proof beyond a reasonable doubt is
21 proof that leaves a juror firmly convinced of the
22 defendant's guilt. I think you will be charged with that
23 under the law from Judge Goodstein.

24 I will say this with reasonable doubt, that you can
25 have reasonable doubt as to certain facts throughout the

1 case. You can have a reasonable doubt as to one or two
2 facts. But just because you have reasonable doubt as to a
3 particular fact does not necessarily mean you -- you --
4 that negates reasonable doubt as to whether the crime was
5 committed.

6 You can think about that. I mean you can have
7 reasonable doubt about the truth about what somebody said.
8 And you can reject part of it, but that doesn't necessarily
9 affect whether you find that there's reasonable doubt of a
10 person committing a crime.

11 You will also be charged, ladies and gentlemen, about
12 direct and circumstantial evidence. Direct and
13 circumstantial evidence is, I guess, two types of evidence
14 and they carry the same weight. There's no difference
15 between them.

16 And direct evidence is evidence that a person senses
17 with their five senses, that is they see something, they
18 hear something, they smell something, they taste something,
19 they touch something, and they report it. You know, I saw
20 so-and-so do this; I heard so-and-so do that. That's
21 basically what direct evidence is. They experience it.

22 Circumstantial evidence, on the other hand, is a chain
23 of facts that you take and you can put together. And by
24 putting them together you can infer another fact or
25 conclusion.

1 For example, you're up here in court, you're back in a
2 room in the jury room that doesn't have any windows. When
3 you came in, say yesterday morning, it was sunny.
4 Everything was dry. Your sidewalk was dry, your car was
5 dry. You were sitting in the jury room late yesterday
6 afternoon, ready to go. You hear a rumble outside. You go
7 outside everything's wet. You go to your car, your car's
8 wet. You didn't see it rain. You don't have direct
9 evidence that it rained. But putting all those facts
10 together, you can say it probably rained. That's
11 circumstantial evidence.

12 Now, ladies and gentlemen, since I don't have the
13 opportunity to come back up and rebut anything the Defense
14 says in this case after their argument, I have to kind of
15 anticipate. And I have to anticipate kind of some of what
16 the defenses are.

17 First one that I -- I -- I think, I don't know, she
18 didn't know he -- the Defense says that she didn't know he
19 was going to kill Jessie, that Sean was going to kill
20 Jessie. Well, we talked about that. We've talked about
21 her statement. We've talked about her knowledge. We've
22 talked about the common knowledge of the bad blood.

23 She was involved up to her shoulders in this thing,
24 ladies and gentlemen. This just wasn't, "Oh it was a fight
25 and oh, my god, there was a gun. And if there wasn't a

1 gun, I wouldn't have been involved."

2 Hindsight's 20/20, ladies and gentlemen. If you want
3 to minimize your -- you can't believe that. But I still
4 say if she wasn't up -- if she wasn't -- didn't know what
5 was going on, why did she run to Brandon's house? That's --
6 -- that's what has puzzled me. Why? If it was such a
7 terrible thing, why didn't she call the police? Why didn't
8 -- why did she go to Brandon's house and get Brandon or
9 tell Brandon to call the police? That didn't happen.

10 Also, that what happened is a natural and probable
11 consequence of what they planned. Very easily you can find
12 that. A fight can certainly turn into murder in a -- in a
13 second unfortunately, as we've found out in our society.

14 I think it was mentioned that, well, she -- the State
15 alleges she had malice. She didn't have any malice towards
16 Jessie. Well, I think I covered that a little bit earlier.

17 But first of all, Sean had malice and she -- she
18 planned together with Sean, so she took Sean's malice.
19 Sean wanted to kill Jessie. Sean admitted his malice by
20 pleading guilty.

21 She had malice, too, because she wanted to see or she
22 planned on seeing that Jessie Ham had harm do him -- or
23 come to harm or be injured. That's a -- the definition for
24 malice. She was doing a wrongful act, a wrongful act,
25 because she was taking him with a plan to have him -- harm

1 come to him.

2 There was no agreement. She can't be part of this
3 because DeJuan came up and testified, "Well, there was no
4 agreement between Sean and Tiffany and me." Well, again, I
5 covered that too. There wasn't. It was an agreement
6 between Tiffany and Sean. DeJuan was the means of Sean to
7 get to the location and to help him get away.

8 Nothing serious was going to happen because Kevin King
9 got in the car and didn't have a weapon, and he went along
10 with his friend Jessie Ham. Well, first of all, they
11 weren't at either one of their's house. They weren't at
12 Jessie or Kevin's house. They were at somebody else's
13 house. I -- I mean, if they had a weapon, you would think
14 they would have it at their house and not on them. And
15 there's been no testimony that either Jessie or Kevin had a
16 weapon.

17 What did he say? He very simply said, I went with him
18 because he was my friend. He was my friend. But then the
19 Defense says, "Oh, but when the shooting started, you ran
20 away." Well, I think that when shooting starts, it's kind
21 of every person for themselves at that point. And that's
22 human nature.

23 The State didn't call Sean Kammerer. That's
24 reasonable doubt because we left out a witness. Well,
25 what's Sean going to say? I mean he's the one that

1 murdered Jessie, he's the one that had bad blood. What's
2 he -- what -- what's he going to say for the State?

3 But -- but he did testify, I keep saying, because he
4 admitted his guilt, that he murdered Sean -- excuse me --
5 that he murdered Jessie with malice aforethought. So, he
6 did in fact testify through that stipulation at the
7 beginning of the trial. That's all he needs to say in this
8 case, because we have evidence of what Tiffany's role was
9 in at that time.

10 As I said, ladies and gentlemen, Jessie Ham would not
11 have died on June 8, 2007 if not for her act. She was
12 integral to this thing. She was in the middle of it.
13 She's the one that got Jessie over there. She's the one
14 that found him. She's the one that told Sean she was with
15 him. She's the one that drove him over there. She's the
16 one that knew what was going on. She knew there was a
17 plan. There was a plan. And wouldn't even leave, wouldn't
18 even move the car when Kevin got antsy and he was like, can
19 you move to the light. Oh, no, no, not moving. And
20 there's Sean.

21 Also, ladies and gentlemen, don't be fooled that she
22 was just an old acquaintance or prom date or whatever.
23 First of all, would somebody, just a passing acquaintance,
24 an old acquaintance, go to this much trouble to help
25 somebody? Would she go to that much trouble to help Sean

1 if they were just an old fling? Don't buy that, ladies and
2 gentlemen.

3 Because remember, remember what DeJuan said. He
4 talked about Sean talking to his girlfriend, not once, but
5 a couple of times during his testimony. Remember that
6 testimony.

7 Now, as I said, I won't get a chance to get up after
8 this, after Mr. O'Neal gets up. He gets to rebut what I
9 say; I don't get a chance to rebut what he says. You
10 remember my arguments. You remember the evidence the State
11 has presented to you of her involvement in the death of
12 Jessie Ham.

13 Ladies and gentlemen, as I've said, Jessie Ham didn't
14 have a chance that night. He's been dead for three years.
15 He hasn't had the chance to have a marriage or have a child
16 in these three years, nor will he ever. The State has
17 given you more than enough evidence to convict the
18 defendant of either accessory before the fact of murder, or
19 murder.

20 All the State asks of you, ladies and gentlemen, is to
21 take those facts, apply the law that the Judge gives you.
22 And in the end, to do justice; do justice for the State of
23 South Carolina, for Dorchester County, for Jessie Hams's
24 grandfather, Mr. Mac Ham, and for the Ham family. Find her
25 guilty of accessory before the fact of murder, or of

1 murder. Thank you.

2 THE COURT: Thank you, Mr. Bell. Mr. O'Neal.

3 MR. O'NEAL: Please the Court, Your Honor. Mr. Bell.

4 THE COURT: Yes, sir.

5 MR. O'NEAL: That's what Mr. Bell says his evidence
6 should convince you of. That's the story, that's the facts
7 that he says his evidence supports. It doesn't. There are
8 holes in the State's case. The State has not proven their
9 case.

10 I told you when we first started that your job
11 consisted of evidence put up by the State, burden of proof
12 is on the State -- Judge is going to tell you that --
13 burden of proof's on the State, no burden on the defendant
14 to prove that she's not guilty. The State has to prove
15 that she is, if they can.

16 And I told you that you'd get testimony, you'd get
17 evidence from the State. Once all that evidence is in
18 front of you, then you have to figure out what happened, if
19 you can figure out what happened. Once you figure out what
20 happened, take the law as the Judge gives it to you, apply
21 it to the facts, and see whether or not, first, a crime was
22 committed, second of all, whether or not Tiffany did it.
23 That's exactly what you got to do here. And there are
24 holes in the State's case.

25 First thing is, Mr. Bell would have you believe that

1 it was some kind of nefarious or -- or mean spirited
2 agreement between Sean Kammerer and Tiffany about trying to
3 get Jessie over there to the Publix, over there behind the
4 Tire Kingdom. Well, you could have had evidence. You
5 could have had proof. You could have had something that
6 you could rely on to figure out what, if any kind of
7 agreement, was between Sean Kammerer and Tiffany if Sean
8 Kammerer had come and taken the stand. You all know it, it
9 was already established he's in jail. He's in jail for the
10 rest of his life. He's in the Department of Corrections,
11 in the control of the State. Mr. Bell knows where he is.
12 Mr. Bell could send an order up there, bring that guy down
13 here and put him on the stand.

14 Now, let me just tell you, if Sean Kammerer would say
15 -- if he would say, "Oh yeah, I told Tiffany that I wanted
16 to kill Jessie Ham. I told Tiffany to do whatever she had
17 to do to get Jessie up there. I told Tiffany that I had a
18 gun, that I was going to keep it secret from everybody,
19 nobody would know about it. I told her to park in a
20 certain spot, make sure it was dark; and that I was going
21 to come running up to the car and shoot Jessie Ham to
22 death."

23 If he was going to say that, don't you think he would
24 have been in that witness stand? Remember the burden of
25 proof is on the government. Sean Kammerer, the murder, is

1 in the control of the solicitor's office. They got to make
2 a phone call to get him down here and put him up, and they
3 didn't do it. You know why? Because that's not what Sean
4 Kammerer says.

5 What does he got to lose? What are they going to do
6 if he doesn't tell the truth, put him in jail? He's got no
7 reason to lie. And the reason he's not here is because if
8 he was here, he would tell you, "I asked Tiffany to get him
9 up there; she didn't know what the purpose was for."

10 Now, that goes to malice --

11 MR. BELL: I'm going to object, Your Honor. That
12 wasn't testified -- there's no testimony to that.

13 THE COURT: Ladies and gentlemen, you will make the
14 findings of fact. It is for you to determine what
15 testimony was in this matter, and for you to make findings
16 of fact.

17 You may proceed.

18 MR. O'NEAL: Thank you, Judge.

19 The point is the Judge is going to tell you, you can
20 make your decision based on the testimony that you heard,
21 and you can make your decision based on the failure of the
22 State to produce testimony to prove their case.

23 Now, let's talk about malice. You heard from the
24 State's witnesses that Jessie and Sean used to be friends.
25 You heard from the State's witnesses that Jessie and Sean

1 quit being friends and started being enemies over something
2 stupid like a pair of shoes. You heard from the State's
3 witnesses that they fought in public, off and on, for two
4 years. You heard from the State's witnesses that at one
5 point Jessie -- Sean spit on Jessie's girlfriend's car and
6 Jessie got out of the car with a little souvenir baseball
7 bat, hit Sean with it. Not a baseball -- not a Louisville
8 Slugger, major-league size, but a little one.

9 Point is, there's no evidence from the government that
10 anybody ever got hurt as a result of those fights or that
11 anybody much less got killed as a result of those fights.
12 That's the State's evidence. They put that in and it's
13 before you produced by the government.

14 Now, whether or not there was malice on the part of
15 her part, the State didn't bring Sean down here to tell you
16 about whether or not he planned anything at all further
17 than just bringing Jessie up there to where he was located,
18 where he got killed by Sean Kammerer. As far as malice in
19 Tiffany's heart toward Jessie, she had no idea who Jessie
20 was. This particular evening was the first time she ever
21 met him.

22 Now, she determined who he was, somebody on the phone
23 told her who he was. We don't know who that was. It might
24 have been Sean, it might have been somebody else. If Sean
25 was here, he could have told us, but he never made it. He

1 never got brought down here by the solicitor's office.

2 She had no reason to hurt Jessie. She had no reason
3 to want Jessie to befall harm. She had no reason for
4 Jessie to get injured. Now, Mr. Bell tells you, you can
5 infer malice. Sure, Sean Kammerer had malice toward
6 Jessie. He shot him to death with a handgun. No question
7 there. But does that malice reach to Tiffany? No.
8 There's no proof. There's no proof before you that she
9 felt any malice at all toward Jessie.

10 Did Sean ask her to bring him up there to talk -- I
11 mean to bring Jessie up there to talk? Did Sean ask her to
12 bring Jessie up there so they could fight? You don't know,
13 because there's no proof before you. Remember, they've
14 been fighting for two years off and on. Nobody ever got
15 killed. Nobody ever even got hurt. The State has not
16 provided you with any proof that anybody ever got hurt.

17 Now, let's look at Tiffany. Let's look at what
18 happened. She's in the car with her sister. She rides
19 around with her sister a lot. Rode by to talk to these
20 guys. She knew Brandon; she knew David.

21 All right. She's talking with them. They're out
22 there drinking beer, doing whatever, you know. Who knows?
23 They're talking back and forth. At some point, Jessie gets
24 in the car with her.

25 Now, let's look at it this way: If you look at her

1 statement and figure, yeah, I think she figured they were
2 going to fight. And that's what I'm thinking that -- you
3 know, I think the State's proven that, that she brought him
4 up there so that Jessie and Sean could fight. Jessie
5 brought reinforcements. That guy, King -- Kevin King got
6 into the car with them. Was there any testimony from
7 anybody that Tiffany said, "Oh, wait. No, no, Jessie. You
8 can't bring that guy. Unh-unh. This girl won't like it if
9 you bring a friend. Oh, no, no. Don't bring that guy,
10 he's too big, he's too strong"? No. Nothing like that.
11 He got in the car, too.

12 Tiffany then drove to the location of the murder with
13 her sister in the car. Now, has the government proved that
14 she was so depraved and so mean spirited that she wouldn't
15 care what happened to her sister or even to herself if she
16 knew she was taking Jessie to be shot to death by Sean?
17 It's unbelievable.

18 Now, let's talk about what happened after. She drives
19 him up there, she parks, they get out of the car, somebody
20 comes out of the wood line, she hears shots, she drives
21 away. I guess Mr. Bell's right, I guess if you hear
22 gunshots every -- every human's normal reaction is to leave
23 the area. All right.

24 Now, where'd she go? Seems to me, if she had
25 conspired to murder Jessie or even just to watch him get

1 beat up, that she could have driven on home. Just driven
2 away. Forgot all about it. You know, find out about it
3 later. She was just as shocked and scared as everybody
4 else, because nobody but Sean Kammerer knew there was going
5 to be gunplay. Not even his bud, Mr. Jenkins, who was with
6 him for three weeks driving him around in his mom's car
7 because he didn't have a driver's license. He said, "I had
8 no idea that Sean had a gun, until he pulled it out of his
9 pants pocket and he was walking over there."

10 Nobody, nobody except for Sean Kammerer knew there was
11 going to be gunplay. Did Sean tell Tiffany, "I'm going to
12 have a gun and I'm going to shoot Jessie"? We don't know,
13 because Sean never took the stand to testify, even though
14 he was in -- within the State's ability to bring him over
15 here.

16 She's not guilty of murder. I'm telling you that
17 right now. The evidence is not there. I told you there
18 was going to be holes in the State's case. I told you when
19 I first spoke to you, that you've got to figure out what
20 happened, then apply the law to it.

21 Now, you guys don't know what happened, you can't
22 figure out what happened, because the State has failed in
23 their burden of proof.

24 Let's talk again about Tiffany. She didn't run away.
25 She went back to Brandon's house. She knows Brandon from

1 the neighborhood. And said, "Let's go back up there and
2 see what's up. Let's go back up there and see what's going
3 on." She knew something had gone wrong. She knew
4 something bad had happened. All right. She didn't know
5 that Sean Kammerer had shot Jessie to death. If she did,
6 would she -- would she bring Brandon up there? Would she
7 bring her sister back up there? No. There's no way.

8 She had no idea what Sean was getting ready to do.
9 She had no malice in her heart towards Jessie. You know,
10 maybe she thought it was a game. Maybe the agreement was
11 that he was just going to talk with Jessie. We don't know,
12 because the State failed to prove it.

13 Now, the Judge is going to tell you what the law is.
14 And if I say anything different from what the Judge tell
15 you, if I put anything up on the screen, which I ain't
16 going to do, different than what the Judge tells you, you
17 listen to the Judge. Don't listen to me, don't listen to
18 Mr. Bell on what the law is. Take it as she gives it to
19 you.

20 But I know she's going to tell you that the burden of
21 proof is on the government to prove her guilt beyond a
22 reasonable doubt if they can. She's going to tell you the
23 definition of reasonable doubt is the kind of doubt that
24 would cause a reasonable person to hesitate to act.

25 She's going to tell you that Tiffany is presumed

1 innocent and stays innocent until -- and you always hear
2 it, until proven guilty by a court of law. I always want
3 to put in there until and unless proven guilty by a court
4 of law. It's not inevitable. Every trial doesn't end up
5 with a guilty verdict. Some trials, where the government
6 fails to satisfy their burden of proof, end up with a not
7 guilty verdict.

8 What is boils down to is this: If you are sure, if
9 you are confident that she's guilty of murder, then you
10 should find her guilty of murder. If you are sure, if you
11 are confident that she's guilty of accessory before the
12 fact of murder -- remember they've got to prove malice in
13 both cases, there is none -- then you should vote guilty.

14 But if you're not, if you're wondering where Sean is,
15 why isn't he here; if you're wondering, well, the State
16 never did really prove why she drove -- why Tiffany drove
17 Jessie up there. If you're wondering where's the malice, I
18 mean, these guys had been fighting for two years, nobody's
19 gotten hurt yet or much less killed; even if you figure
20 that she knew she was taking him up there to fight with
21 Jessie, she didn't try to stop Jessie from bringing
22 somebody to help him.

23 If you're not convinced that she's guilty, the Judge
24 is going to tell you you got to vote not guilty. You bring
25 back a verdict that speaks the truth. That is what it

1 means in Latin, the truth. And the truth is, she's not
2 guilty. Thank you.

3 THE COURT: Thank you, Mr. O'Neal.

4 (Addresses jury) Just stand up where you are. This is
5 that first break I was talking about. Seriously. Stand
6 up, we can just stretch a minute. Why do I want you to do
7 this? Because I want you fresh and paying attention. So I
8 want -- I want to get a little bit of oxygen going. So,
9 ladies and gentlemen, that -- that's why we take this
10 little break right now.

11 Counsel, let me see you.

12 MR. O'NEAL: Yes, ma'am.

13 THE COURT: And y'all just stretch. No, we're not
14 going to do calisthenics. No, no, no, no.

15 (Bench conference.)

16 THE COURT: (Addresses jury) And when you're ready to
17 be -- now, y'all think, can we sit down? Yeah, you can sit
18 down. Absolutely.

19 All right. Madam Presiding Juror, ladies and
20 gentlemen of our jury, in this case there are two
21 indictments. One of the indictments charges the defendant
22 Ms. Hecksher with accessory before the fact of murder, and
23 murder.

24 I remind you that the fact that the defendant was
25 arrested, charged, and indicted in this case is not

1 evidence in this case, and cannot be considered by you as
2 evidence of guilt in this case; nor does it create any
3 presumption or inference of guilt.

4 These documents are simply the formal written
5 instruments which contain the charges made by the State
6 against the defendant. They are the formal documents by
7 which cases are brought into this court. They are the
8 notice documents. The indictments in this case allege the
9 two offenses: accessory before the fact, in the first
10 indictment; and the second, one murder.

11 Each indictment charges a separate and distinct
12 offense. You must decide each indictment separately on the
13 evidence and the law applicable to it, uninfluenced by your
14 decision as to the other indictment.

15 The defendant may be convicted on one of these
16 indictments or neither of these indictments. You will be
17 asked to write a separate verdict of guilty or not guilty
18 with regards to each indictment.

19 Ladies and gentlemen, Ms. Hecksher has pled not guilty
20 to these indictments, and that plea places the burden on
21 the State of South Carolina to prove her guilty. A person
22 charged with committing a criminal offense in the State of
23 South Carolina is never required to prove himself or
24 herself innocent. The burden of proof is and remains on
25 the State of South Carolina.

1 I charge you that it is an important rule of the law
2 that a defendant in a criminal trial, in a criminal matter,
3 no matter the seriousness of the charge, will always be
4 presumed innocent of the crimes or crime for which the
5 indictment was issued, or for which the indictments were
6 issued, unless guilt has been proven by evidence satisfying
7 you of that guilt beyond a reasonable doubt.

8 The presumption of innocence doesn't end when you
9 begin your deliberations, but it accompanies the defendant
10 throughout the trial until you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt. The presumption of innocence is like a
13 robe of righteousness placed about the shoulders of the
14 defendant, which remains with her until it has been
15 stripped from her by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt.

17 The presumption of innocence, ladies and gentlemen, is
18 not a mere legal theory and it is not just a legal phrase.
19 But it is a substantial right to which every defendant is
20 entitled unless you, our jury, are satisfied from the
21 evidence of the defendant's guilt beyond a reasonable
22 doubt.

23 What then is reasonable doubt in the law? A
24 reasonable doubt is the kind of doubt that would cause a
25 reasonable person to hesitate to act. The State and the

1 State alone has the burden of proving the defendant guilty
2 beyond a reasonable doubt.

3 Some of you -- and I did not ask this earlier when we
4 did our qualifications. But some of you may have served as
5 jurors in civil cases where you were told the burden of
6 proof was by the greater weight or the preponderance of the
7 evidence; that it was only required that the plaintiff, the
8 person who brings the civil action, prove that a fact is
9 more likely true than not true.

10 Ladies and gentlemen, in criminal cases, the State's
11 proof must be powerful than that. It must be beyond a
12 reasonable doubt. Proof beyond a reasonable doubt is proof
13 that leaves you firmly convinced of the defendant's guilt.
14 There are very few things in this world that we know with
15 absolute certainty. And in criminal cases the law does not
16 require proof that overcomes every possible doubt.

17 If, based on your consideration of the evidence, you
18 are firmly convinced that the defendant is guilty of the
19 crime that you are considering, you must find the defendant
20 guilty. If, on the other hand, you think there was a real
21 possibility that the defendant is not guilty, you must give
22 the defendant the benefit of the doubt and find her not
23 guilty.

24 You will do this determination, ladies and gentlemen,
25 independently and with regards to each of these two

1 indictments.

2 I remind you that during this trial you and I have had
3 certain duties to perform. As the trial judge, it is my
4 responsibility to preside over the trial of this case and I
5 also have the duty to rule on the admissibility of the
6 evidence offered during this trial. You are to consider
7 only the competent evidence before you. You are to
8 consider only the testimony which has been presented from
9 this witness stand, any exhibits which have been admitted
10 into evidence, and any stipulations of counsel.

11 I have the additional duty to charge you the law
12 applicable to this case. As the presiding judge, I am the
13 sole judge of the law of this case. And it is your duty as
14 jurors to accept and apply the law as I now state it to
15 you.

16 If you already have any idea as to what the law is or
17 what it ought to be, and it should disagree -- if it should
18 not agree with what I tell you the law is, you are, by your
19 oath, sworn to set your preconceived ideas aside, because
20 you are bound now by your duty as jurors to accept and
21 apply the law exactly as I give it to you.

22 I oft times tell jurors if I should tell you the law
23 is a certain way and you disagree with that, maybe that's a
24 topic for your legislator some other time. But for our law
25 to work appropriately, you must accept and apply the law

1 exactly as I state it to you.

2 Now, as we talked yesterday morning, in every case
3 tried in this case -- in this court before a jury -- in
4 every case tried in this court before a jury, the jury
5 becomes the sole, the only, and the exclusive judge of the
6 facts. A trial judge, under our law cannot intimate,
7 state, comment, or make any statement to a trial jury about
8 the facts in a case.

9 Since you the jury are the sole judges of the facts in
10 this case, you are not to infer from what I have said
11 during the progress of this trial in ruling on the
12 admissibility of evidence or otherwise, or anything that I
13 say to you now in the course of this instruction being
14 given, that I have any opinion about the facts. I have no
15 opinion regarding these facts. The law does not allow me
16 to have an opinion. This is a matter solely for you to
17 determine.

18 As jurors, it is your duty to determine the effect,
19 the value, the weight, and the truth of the evidence
20 presented during this trial.

21 Now, ladies and gentlemen, normally there are two
22 types of evidence which are generally presented during a
23 trial. One is called "direct evidence," and the other
24 "circumstantial evidence."

25 Direct evidence is the testimony of a person who

1 claims to have actual knowledge of a fact, such as an
2 eyewitness. It is evidence which immediately establishes
3 the main fact to be proved.

4 Circumstantial evidence is proof of a chain of facts
5 and circumstances indicating the existence of a fact. It
6 is evidence which immediately establishes collateral facts
7 from which the main fact may be inferred. Circumstantial
8 evidence is based on inference, and not on personal
9 knowledge or observation.

10 The law makes absolutely no distinction between the
11 weight or value to be given to either direct or
12 circumstantial evidence. Nor is a greater degree of
13 certainty required of circumstantial evidence than of
14 direct evidence. You should weigh all the evidence in the
15 case. After weighing all the evidence, if you are not
16 convinced the guilt of the defendant beyond a reasonable
17 doubt, you must find the defendant not guilty.

18 Necessarily then, you must determine the credibility
19 of the witnesses who have testified in this case.
20 Credibility simply means believability. It becomes your
21 duty as jurors to analyze and to evaluate the evidence and
22 determine which evidence convinces you of its truth.

23 In determining the believability of witnesses who have
24 testified in this case, you may believe one witness over
25 several witnesses, several witnesses over one witness.

1 You may believe a part of the testimony of a witness
2 and reject the remaining part of the testimony of that same
3 witness. You may believe the testimony of a witness in its
4 entirety, or you may reject the testimony of a witness in
5 its entirety.

6 You may consider whether any witness has exhibited to
7 you any interest, bias, prejudice, or other motive in this
8 case. You may also consider the appearance and the manner
9 of the witness while on the witness stand.

10 Ladies and gentlemen, these are simply examples of the
11 types of things that you may consider. They are not, of
12 course, an exclusive list.

13 Ladies and gentlemen, I instruct you and I emphasize
14 that the fact that the defendant did not testify is not, is
15 not a factor to be considered by you in any way in your
16 deliberations and in your consideration on whether the
17 defendant is guilty or not guilty. The fact that the --
18 that the defendant did not testify must not be considered
19 by you in any manner whatsoever. A defendant has the
20 constitutional right to remain silent, and the assertion of
21 this right must not be considered by you in your
22 deliberations.

23 I repeat, under your oath, you are to draw no
24 conclusion whatsoever from the fact that the defendant in
25 this case did not testify. The fact that this defendant

1 did not testify, ladies and gentlemen, should not -- should
2 not even be discussed in your jury room.

3 The burden of proof is and remains on the State of
4 South Carolina. As I have stated to you and I state again,
5 a defendant in a criminal case is not required to prove his
6 or her innocence. They are not required to prove that they
7 are not guilty. The burden of proof is and remains solely
8 on the State of South Carolina to prove guilt beyond a
9 reasonable doubt.

10 Now, ladies and gentlemen, I want to -- I want to step
11 back just for a moment, because I want to give you -- you
12 know, we talked about -- we've talked about a number of
13 things. But I want to step back for just a moment and I
14 want to talk about direct and circumstantial evidence for
15 just a moment. Because I forgot to give you my favorite --
16 my favorite example of direct and circumstantial evidence.

17 Because the explanation of what is direct and
18 circumstantial evidence can certainly appear -- well, I
19 think it -- I think that your understanding is assisted by
20 an example.

21 I used to give an example involving Clemson and
22 Carolina. But my jurors got -- you know, got too active
23 about all that. You could see people moving around and you
24 could tell who was a Clemson fan and who was a USC fan and
25 who didn't care about either one. It was really marvelous.