

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County
Robert E. Hood, Circuit Court Judge

THE STATE,

v.

JAMES ELBERT DANIELS, JR.

RECEIVED
RESPONDENT,
APR 23 2019
SC Court of Appeals

APPELLANT

APPELLATE CASE NO. 2018-001630

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General
S.C. Bar No. 11973
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

JIMMY A. RICHARDSON, III.
Solicitor, Fifteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

INDEX

| | |
|--|-----|
| INDEX | i |
| PRE-TRIAL HEARING TRANSCRIPT DATED AUGUST 22, 2018 | 1 |
| <u>JACKSON V. DENNO</u> HEARING..... | 5 |
| TESTIMONY | |
| GREG LENT | |
| Direct Examination by Mr. Hixson..... | 7 |
| Cross Examination by Ms. Pratt | 22 |
| Redirect Examination by Mr. Hixson | 35 |
| Examination by the Court | 57 |
| Re-Cross Examination by Ms. Pratt | 60 |
| Redirect Examination by Mr. Hixson | 63 |
| Re-Cross Examination by Ms. Pratt | 63 |
| RULING BY THE COURT..... | 64 |
| MOTION TO ELECT CHARGES | 73 |
| TRIAL TRANSCRIPT DATED AUGUST 27-30, 2018 | 124 |
| STATE CALLS THE CASE | 137 |
| RULING ON MOTION TO ELECT CHARGES | 141 |
| STATE'S MOTION TO INTRODUCE EVIDENCE | 149 |
| RULING BY THE COURT..... | 165 |
| REQUEST FOR LIMITING INSTRUCTION..... | 171 |
| OPENING INSTRUCTIONS BY THE COURT | 179 |
| OPENING STATEMENT BY MR. RICHARDSON | 191 |
| OPENING STATEMENT BY MS. PRATT | 202 |
| TESTIMONY | |
| BARBARA MCDOWELL | |
| Direct examination by Mr. Richardson..... | 206 |
| Cross examination by Ms. Pratt | 217 |

| | | |
|---|-----|-----|
| ASHLEY HARDEE | | |
| Direct examination by Mr. Richardson..... | 219 | |
| Cross examination by Ms. Pratt | 224 | |
| JILL DOMOGAUER | | |
| Direct examination by Mr. Hixson | 225 | |
| Voir dire by Ms. Pratt | 265 | |
| Direct examination by Mr. Hixson (continued)..... | 266 | |
| Cross examination by Ms. Pratt..... | 279 | |
| Redirect examination by Mr. Hixson..... | 287 | |
| SUZANN CROMER | | |
| Direct examination by Mr. Hixson | 291 | |
| Cross examination by Ms. Pratt..... | 303 | |
| PETER CESTARE | | |
| Direct examination by Mr. Hixson | 305 | |
| EDWARD PROCTOR (IN CAMERA) | | |
| Examination by the court..... | 374 | |
| PETER CESTARE (Continued) | | |
| Direct examination by Mr. Hixson | 379 | |
| Cross examination by Ms. Pratt..... | 392 | |
| Redirect examination by Mr. Hixson..... | 403 | |
| Re-Cross examination by Ms. Pratt | 406 | |
| TYLER JENNINGS LUTHER | | |
| Direct examination by Mr. Hixson | 409 | |
| Cross examination by Ms. Pratt..... | 423 | |
| Redirect examination by Mr. Hixson..... | 425 | |
| Re-Cross examination Ms. Pratt | 426 | |
| GREG LENT | | |
| Direct examination by Mr. Hixson | 429 | |
| Cross examination by Ms. Pratt..... | 458 | |
| Redirect examination by Mr. Hixson..... | 466 | |
| STIPULATIONS OF FACT..... | | 420 |
| TESTIMONY | | |
| MARQUE SCOTT | | |
| Direct examination by Mr. Richardson..... | 469 | |
| Cross examination by Ms. Pratt..... | 473 | |

TODD KIDDER
 Direct examination by Mr. Richardson.....474
 Cross examination by Ms. Pratt.....475

WILLIAM ANDERSON
 Direct examination by Mr. Richardson.....477

JOHN ALLAN JAMIESON
 Direct examination by Mr. Richardson.....480

STATE RESTS489

DEFENSE RESTS AND RENEWS ALL MOTIONS.....490

CLOSING ARGUMENT BY MR. HIXSON.....492

CLOSING ARGUMENT BY MS. PRATT.....511

CHARGE ON THE LAW524

QUESTION FROM THE JURY544

VERDICT550

POLLING OF THE JURY.....552

SENTENCING557

COURT’S EXHIBIT #3 (JURY QUESTION).....559

INDICTMENTS AND SENTENCING SHEETS560

CERTIFICATE OF COUNSEL569

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

FROM 8/22/2018: STATE’S EXHIBIT #1 (PHOTO BOARD), STATE’S EXHIBIT #2 (CD STATEMENT JAMES DANIELS), STATE’S EXHIBIT #3 (CD SECOND INTERVIEW JAMES DANIELS); FROM 8/27-30/2018: STATE’S EXHIBIT #2 (REDACTED COPY OF DANIEL’S LETTER), STATE’S EXHIBIT #3 (COPY OF DOCUMENT – JAIL LETTER), STATE’S EXHIBIT #5 (PHOTO), STATE’S EXHIBIT #6 (PHOTO), STATE’S EXHIBIT #17 (DVD), STATE’S EXHIBIT #18 (DVD-ARROWHEAD), STATE’S EXHIBIT #19 (DVD-OAK), STATE’S EXHIBIT #20 (DVD-OAK), STATE’S EXHIBIT #146 (DVD – VIDEO FROM JAIL), STATE’S EXHIBIT #167 (DVD – DANIEL’S INTERVIEW), STATE’S EXHIBIT #168 (DVD- DANIEL’S INTERVIEW)

Closing Argument by Mr. Hixson

480

1 coats and jackets. He's wearing a t-shirt and shorts. You
2 know why? Because he gave J.J., James or Jerome Jenkins,
3 excuse me, the shirt off his back and the pants off his legs
4 so he could go in and rob and kill Trisha Stull. That's why
5 he's wearing shorts and a t-shirt in 37 degree weather. He
6 gave it to him before they went into Lake Arrowhead, and he
7 used it again when he killed Trish Stull. That is intent.
8 That is a plan. He knows what's going on. Look at the video
9 and see everybody else bundled up in hoods, and the only man
10 in the world with a toboggan cap on because it's cold out with
11 a t-shirt on. J.J.'s wearing his clothes, and where's that
12 striped hat recovered? In the Malibu like he said where they
13 were switching clothes. Where's the black -- where's the blue
14 bandana recovered? The back seat of the Malibu.

15 Let's talk about the blue bandanna for a second. 905, if
16 you get a chance where you can see it, take a look, a blue
17 bandanna on Jerome Jenkins. Lake Arrowhead Road, a blue
18 bandanna on Jerome Jenkins. Just before Trish was killed, a
19 blue bandanna, gray sweatshirt, red pants. Back seat of the
20 Malibu where they said they were switching clothes, a blue
21 bandanna. In the custody of Horry County Police Department,
22 trying to test it for DNA, inconclusive because it was mixed
23 with too many DNA contributors, too much DNA soup to determine
24 just one person, multiple people wearing that bandanna.

25 How do we know Jerome Jenkins? How do we consistently ID

1 the same clothing? It's a simple point. He's wearing the
2 same shoes, silver shiny, low top Nike Airs, silver tag --
3 that silver low top Nike Airs. Trish Stull, shiny, silver,
4 tongue low top Nike Airs. Search warrant of his house, shoes
5 in evidence, think he was wearing the same shoes, common
6 scheme or plan, same thing.

7 There's a couple of these summaries I wanted to go
8 through. As it relates to an ID'ing the black hooded
9 sweatshirt worn by McKinley Daniels, first robbery. The first
10 robbery, if you recall, everybody was wearing gray. The
11 second robbery, the black hooded sweatshirt entering Lake
12 Arrowhead Road. Entering Trish Stull at the Cultra Road,
13 running away from the camera. You see the white rip
14 underneath the armpit of the hooded sweatshirt. There's a
15 bunch of different black hooded sweatshirts out there but very
16 few used in robberies with rips that you can see a white t-
17 shirt under the armpit. Matter of a fact, I won't say how
18 many. You can see the black hooded sweatshirt recovered in
19 [REDACTED] Goose Bay Road in evidence of Horry County the rip
20 underneath the armpit. It's beyond a reasonable doubt, beyond
21 all doubt.

22 Let's talk about the shoes. It's one of those
23 interesting little tidbits left. The ubiquitous high top Nike
24 Airs with the neon green soles, Trish Stull, leaving Trish
25 Stull on Lake Arrowhead Road. A search warrant in James

Closing Argument by Mr. Hixson

482

1 Daniels and McKinley Daniels' house, in evidence, the same
2 shoes, same clothes, and one more thing, I want you to take a
3 look at this one. Look at the shoes that James Daniels was
4 wearing when he went into. See if you can see it from this.
5 I may have to pull the big still up. Take a look at the shoes
6 that he was wearing in this one when you get a chance and the
7 bigger one. Just take a look and see if you don't think those
8 are the same ones. This is at 905. This picture is hard to
9 hear [sic] and I'm not going to pull them all out, but you can
10 take your time in there and if you want to. You get the idea.

11 I don't want to beat a dead horse because there's a lot
12 of horse to beat. So I'm -- now, you guys, I don't think had
13 a chance to read much of the letter. You got. Maybe you
14 have. Maybe you haven't. Now, if you can, imagine being
15 accused of horrific crimes that you knew nothing about wishing
16 like wish that you could talk and see what in the world is
17 going on because you got arrested right after the statement.
18 You saw the video and you saw the efforts to pass a note,
19 being kind of concerned about, "How do I get that note to my
20 brother? We're separated. I'm in lockup. How do I talk to
21 him. How do I find out what's going on?" And when you get
22 that opportunity, the first thing out of your mouth is,
23 "What's going on, man? They hooked me up. I was at Lashana's
24 house. I went -- what is going on?" No. The first letter
25 out of -- words out of James Daniels' mouth when he gets a

1 shot to try to pass a note to his brother is, "Bro, I did tell
2 them people that I was driving the car that night just to save
3 Lashana. I never tell them." You read it. I'm not going to
4 read it to you. That's all about getting your story straight.
5 It's all about talking, "What I said about Conway, what I said
6 about Lake Arrowhead and what I said about 905," because
7 they're still in the plan. He's still by himself, and he's
8 got to keep these guys off the street. You'll see it. You'll
9 read it. You'll understand it. "And the last thing I need to
10 know is if I go to trial, you going to testify against me?
11 You going to hurt me or not? Because I'm trying to keep you
12 off the street and saying I don't know anything that's going
13 on, man. If I can hold that tight, we have a chance."

14 Let's talk about his statement, too. There's a term that
15 we use that's called progressive truth telling. Okay? Really
16 it's kind of a like version of say you're lying, but it's more
17 respectful than that. Right? So how progressive truth
18 telling happens is that you say, "Were you working at Subway
19 that night?" "Nope, or yeah, I was working all the time.
20 Work every day." "Wow, well, were you -- was there any other
21 time that you didn't work?" "No. I work all the time, seven
22 days a week." "Well, somebody said, Lashana said that you
23 dropped her off and meet" -- "well, I just worked morning that
24 day. You're right." "Well, you drive a car?" "Not really.
25 McKinley has the car." "Well, man, she says that you had the

Closing Argument by Mr. Hixson

484

1 car." "Well, you're right, I did drive the car. Yeah.
2 You're right. So I didn't have anything to do with it, but I
3 -- now, I'm driving the car." " Well, did you drop them off
4 at a meeting?" "Yeah." "Well, man, your timetable is off by
5 two hours because you're in the video in that store." "Oh,
6 yeah. I was in that store, but so I don't, you know, that's
7 it." "Well, well, you know what, that's pretty interesting
8 because these guys say that they look like Jerome Jenkins and
9 McKinley Daniels." "Oh, yeah. You're right. They do, but I
10 didn't know what they were going." Progressive truth telling
11 is just that. At the end of it, at the end of it, the
12 Defendant perhaps or their defense attorney, or whoever could
13 say, "He told the truth of his involvement. He had no idea
14 what was happening," but every step along the way is an
15 attempt to deny. "No. Had nothing to do with it," and the
16 circle keeps closing, and you have to progressively tell the
17 truth in order to deflect, "I didn't know." How many times
18 when you listen to this statement, "I don't know what's going
19 on. I have no idea." He just dropped them off. It
20 absolutely defies common sense to believe that you found out
21 that you dropped your brother and a friend off and someone was
22 killed in an armed robbery and for 23 days it was the subject
23 of such intense scrutiny that the police were going around
24 shutting businesses down and you guys, now, know something the
25 public doesn't. You know why there was such concern over that

1 because the man in the first one fully complied, fully
2 complied, take the money, take the cigarettes, and back it
3 away and he lost his life. That's why the county police was
4 shutting places down because, wow, and throughout that intense
5 scrutiny, right, you heard him say, "Well, after they came
6 running back to the store -- from the store with cigarettes
7 and guns, I started getting a little nervous."

8 So let's be compassionate people, shall we? Let's be
9 absolutely compassionate and let's just say perhaps you were
10 merely present at the first one and you had no idea what was
11 going on, you were unlucky enough to drive them up there, drop
12 them off, they got out of the car with guns, drove away from
13 the location. After you came -- after you drove around back
14 and forth and then 10 minutes later they come running back
15 with cigarettes, and of course, progressive truth telling,
16 right? They came running back they weren't carrying anything.
17 They had nothing in their hands. "Really? You sure?"
18 "Yeah." "Well, how did the cash drawer get all the way up at
19 Red Bluff Road heading back towards Goose Bay? It didn't fly
20 there. It didn't walk there." Progressive truth telling.
21 "Oh, you're right. J.J. was carrying it."

22 What's the problem with that? Watch the video. McKinley
23 Daniels is carrying that cash drawer out of the machine
24 protecting his brother. You'll read about that in the letter,
25 "Always have your back. I can't tell you no." That's in the

Closing Argument by Mr. Hixson

486

1 letter that you'll get a chance to read. "You're my older
2 brother. I'm there for you. I'll do -- I'll help you."
3 That's progressive truth telling. All right? So we
4 understand that.

5 So then once the cash drawer is done with all this stuff,
6 he says, "Well, man, after you see them with guns coming back
7 with a cash drawer and this, don't you know what's going on,"
8 and one of the better lines is, "Yeah. I got a little
9 nervous." So let's just be hospitable and say at that point
10 in time he had no idea. He is guilty beyond a reasonable
11 doubt of the second armed robbery. He is guilty beyond a
12 reasonable doubt of the armed robbery after that and the
13 murder resulting in Trish Stull because he knew full well,
14 full well, what it means to pick up McKinley Daniels and J.J.,
15 case the store, drop them off, have them go in, have them come
16 back out, and you know what, if he had just said no at that
17 point in time, perhaps Trish Stull would still be alive
18 because these guys got to get there somehow. All right. He
19 didn't. He continued to perform his role in this all the way
20 to another fatality.

21 Let's talk about the law that you're going to apply just
22 for a little bit. Okay? This -- James Daniels has been
23 charged with two counts of armed robbery, right, one from the
24 Lake Arrowhead store and armed robbery is pretty easy to
25 figure out. I can even figure this one out. All right. It's

1 the taking and carrying away of the goods with -- of the goods
2 of another with intent to permanently deprive them of those
3 goods while armed with a deadly weapon. The gun's a deadly
4 weapon. Check. All right.

5 Goods of another, remember she testified, the Barbara
6 McDowell testified that \$80 roughly, 50, \$80 in cigarettes.
7 It could be a penny and it's armed robbery, but it's 80 to 50
8 bucks. All that for that amount, that amount of money. Did
9 they intend to return it, say, "I made a mistake?" Intention
10 is to permanently deprive and through force, threats or
11 intimidation. She said she was scared. Clearly, you see her
12 commanded and going around running and locking the door after
13 the fact, pretty straight-forward stuff. Right?

14 Now, acting in concert with another means that you don't
15 have to be the one that's holding the gun on somebody. You
16 don't have to be the one that goes in. A classic example of
17 this is an old western in a bank robbery. Right? So a whole
18 group rides up to the town. Two guys go in. Three guys are
19 back in the back holding the horses. You know, they'll come
20 run out and run out again. This ain't the old west, but it's
21 exactly the same. That's acting in concert with another
22 present during the commission and not just -- performing your
23 role, scouting, holding the horses and getting out of there as
24 fast as you can. They are equally guilty as a hand of one is
25 a hand of all as if they fired -- if they grabbed the cash

Closing Argument by Mr. Hixson

488

1 drawer themselves. Okay? It's slightly complicated, but it's
2 pretty straightforward. It's pretty intuitive. That's
3 standard stuff.

4 Let's go to the next one, and that is Trish Stull's
5 Cultra Road and Oak Street. Okay? That's an armed robbery,
6 and this time resulting in a murder. All right. So you don't
7 have to find that James Daniels knew that they were going to
8 kill Trish Stull. What you have to find is that he knew an
9 armed robbery was going to occur and that a murder during the
10 commission of that robbery is a natural and foreseeable
11 consequence of an armed robbery. All right? So don't get
12 confused to say that he had to know that J.J. was going to
13 kill him. He had to know that if you go into a store with
14 guns and put in people's faces and you drag them around and
15 you do this, someone may get shot. That's as natural as
16 clouds and rain. You know what is so amazing about this one,
17 and it actually hurts to say it, we don't have to speculate
18 the foreseeable. We know it because they killed the man at
19 905 in January 2nd and he knew it. Not only did he have to
20 see if it was foreseeable, he had irrefutable proof that what
21 happened. That's proof beyond a reasonable doubt. That's
22 proof beyond any doubt. Okay?

23 So those are the things that you have to think about, the
24 felony murder rule meaning if someone dies during the
25 commission of a felony, an armed robbery is a felony, and, and

1 someone dies, you are responsible as all. All right? And
2 then you understand that, you want to encourage people to say,
3 "I don't want to get involved in this. I want to do something
4 else. Hey, I ain't in for this man. You go do what you got
5 to do, I'm leaving." That's what we want people to do, to not
6 do -- not keep going forward, that they're going to be liable
7 for. So when you here a statement that he's concerning, "Hey,
8 man, I'm maybe -- perhaps I'm guilty of conspiracy, perhaps
9 something, some lesser offense, but I didn't shoot nobody,"
10 you don't have to pull the trigger. We're not asserting he
11 pulled the trigger. We're asserting that he put everything in
12 operation, the first one in, the first one with the plan, he's
13 the face man and these guys, guys got to stay masked up.
14 Okay?

15 There's a lot to think about. Please take a look at any
16 of this that you feel like that you need to. Ms. Pratt's
17 going to talk to you here in a little bit, but before you go
18 back in there I want you to think about just a couple of
19 things. Okay? I'm going to let you in on a little bit of a
20 secret. The State of South Carolina and Horry County had a
21 plan, too, and the citizens of Horry County have a plan, and
22 that is after you go back there and you talk amongst each
23 other, you will reach one unanimous inescapable conclusion and
24 you'll come back out here with one voice and you will say with
25 unanimity James Daniels is guilty of the armed robbery of the

Closing Argument by Ms. Pratt

490

1 Lake Arrowhead Road store with Barbara McDowell. He is guilty
2 of the armed robbery of the Sunhouse, Cultra Road and Oak
3 Street store with the victim is Trish Stull, and he is guilty
4 of murder of Trish Stull because it's the foreseeable
5 consequence of an armed robbery of that store that he planned
6 and participated in with Jerome Jenkins and McKinley Daniels,
7 and then after that James will have one more first. He'll be
8 the first one to grab a seat on the bus to the Department of
9 Corrections, and perhaps we can save those nametags and
10 reserve two seats on that bus for McKinley and J.J. for the
11 next trip. Thanks.

12 THE COURT: All right. Thank you very much, Mr. Hixson.
13 All right. Ms. Pratt?

14 MS. PRATT: Thank you, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, ma'am.

17 MS. PRATT: You know when I started with my opening what
18 I asked you to watch out for were assumptions and inferences
19 and confusion because there's no question that you've got a
20 lot of information even though we only did this for what,
21 three days. You've got over 170 exhibits here that you've
22 seen. You've looked at pictures. You've looked at videos.
23 You've listened to statements, and that's a lot of information
24 to process. So I do ask you to try to think very carefully
25 about that information.

1 The most important thing that James and I can ask you to
2 do at this point is to be very clear about what information
3 relates to McKinley and Jerome and what information relates to
4 James, and when I did these chairs I didn't think that the
5 State would also refer to them. I have a slightly different
6 purpose for them because the point that I want you to get out
7 of this is that these two aren't here and these two are the,
8 I don't think anybody doubts, the evil movers in these
9 situations. In the killing of Bala Paruchuri, both of them
10 shoot. In the killing of Trisha Stull, Jerome shoots. So
11 these guys are evil, criminal types, and there's no question
12 in my mind and I hope not in yours that these two had some
13 kind of plan. I mean, obviously, they come in together. They
14 know how they're handling this. They leave together.

15 The real issue for you is whether or not this plan
16 included James because if there is no plan that includes James
17 then he is not guilty, and the Judge is going to talk to you
18 about, the Judge will charge you about the fact that there has
19 to be a plan. Now, we don't have any direct evidence of the
20 plan. I mean, we don't have a tape recording that says, "I
21 sat down with McKinley and did this," or "I sat down with
22 Jerome and did this." The Solicitor refers to a meeting on
23 Blue Moon, and he's using that, that wrong. I checked on my
24 transcript. You don't get the transcripts, but you get to
25 hear this again. James says, "I have a home boy named Rocky

Closing Argument by Ms. Pratt

492

1 Phillips and when I took Lashana to her meeting, we all had a
2 meeting." Well, they can call it a meeting. Detective Lent
3 put that word into his mouth, but it's really just they're all
4 sitting around, they're drinking, they're probably doing some
5 other things they shouldn't be doing, but they're not sitting
6 down, and he never says, "I sat down with McKinley and Jerome
7 and we had a plan and we planned out some robberies." So
8 please don't misunderstand that, and any time that you have a
9 question about what the State said or what I say, you get to
10 go back to the transcripts, not the transcripts, the actual
11 tapes, and you get to listen to that because you're going to
12 have a laptop in your jury room, and you're going to have all
13 those DVDs. Now, I'm not saying you should sit there and
14 listen to the whole thing because you'll be here for another
15 three days just like we have been, but I'm sure that there are
16 questions that you have.

17 All right. So we don't have direct evidence, and that
18 means you have to look at circumstantial evidence, and His
19 Honor is going to charge you about circumstantial evidence,
20 but one of the things that he is going to say is to the extent
21 the State relies on circumstantial evidence all of the
22 circumstances must be consistent with each other, and when
23 taken together, point conclusively to the guilt of the accused
24 beyond a reasonable doubt. If these circumstances merely
25 portray the Defendant's behavior as suspicious, the proof has

1 failed. So we have to look at what they're saying James did
2 and try to determine whether it's just suspicious or not,
3 whether it actually all comes together and proves that, that
4 conclusive proof that His Honor will talk to you about.

5 The State wants to use this clothing thing, and you know,
6 it took me a long time to get that as to why this or them
7 meant that there was some kind of plan. Yeah. There's not
8 just one pair of red sweatpants, and I commend Lieutenant
9 Cestare. I've known Pete a long time because he actually -- I
10 think that the purpose of the red sweatpants for him was that
11 he went, "Wait a minute. I've seen those pants somewhere."
12 It may have led him back to question about who the person with
13 the dreads was, but it doesn't mean that there's a plan.
14 Shoot, my sisters and I used to change clothes in high school
15 all the time. There was one year that we were all wearing the
16 same clothes, the same size, and it was truly the one that got
17 out the door first that wore the best outfit to high school.
18 So I don't know that that indicates a plan. We sure weren't
19 planning anything, and I don't know that this does, and you've
20 see -- you're going to have in your jury room that driving
21 record which shows address changes. I don't care if the
22 Solicitor says he was living at [REDACTED]. He changed his address
23 on his driving license to [REDACTED] Ware Road in April of 2014,
24 some eight months before any of this happened. How many
25 people do we know that, first of all, actually do it within

Closing Argument by Ms. Pratt

494

1 the 10 days that the trooper told us, but I thought it was 45,
2 or actually would do it and then be living someplace else?

3 That just doesn't make any sense.

4 McKinley's stuff was in McKinley's house. So McKinley's
5 wearing the shoes. Okay. He's wearing his shoes, and I get
6 that they didn't test things for DNA. It sure would have been
7 nice if they had been tested to see if there was some
8 connection because if the State's going to rely on all these
9 photos, page after page after page of photos, it would be nice
10 if they'd tested them to see if their theory was true, but
11 they didn't. So you don't know that, and neither do I.

12 As Scott was talking I wrote down a whole bunch of
13 assumptions and things that he said that concerned me. One of
14 the things that was an assumption that I want you to think
15 about is that he wants you to assume, the State wants you to
16 assume that because it was an armed robbery they didn't save
17 the video. Well, I say to you that it's an armed robbery on
18 the same night as another armed robbery with a murder with the
19 people wearing the same clothing. So I would tell you that if
20 they, if they had gone back that video would have been there
21 and you would have been able to tell. It's not. They didn't
22 do it. My client tells you in his statement that he dropped
23 them off at an apartment. There may have been a store down
24 there, but they came back and he drove them off. He didn't go
25 in the store, and there's no proof of it. He didn't say --

1 know anything about a robbery. There's no proof of that. So
2 what's frustrating for me is that he has to deal with all
3 these other peripheral issues in trying to fend off this
4 attack by the State that says that he was part of some plan,
5 and they want to say that somebody changed clothes in the back
6 of the Malibu the night of the, the Trisha Stull robbery.
7 Well, aren't they wearing the same clothes in both those
8 things? Nobody changed, and we don't know if somebody
9 changed. The detective is asking my client a question and
10 trying to trip him up, and he says, "Well, maybe somebody did.
11 I don't know."

12 Now, you get to listen to that statement, and I want to
13 talk about that for a minute or two. The -- first of all,
14 that statement was given on February the 5th, which is about
15 10 days after the Trisha Stull incident on January 25th. Am I
16 right on that? Eleven days, not three years later as the
17 Solicitor stated in his, in his closing. He gets -- he comes
18 home. He gets a call from his fiancée or baby momma's aunt or
19 from his fiancée saying, "The police are here." So he leaves
20 work, and that's an interesting thing. The guy has two jobs.
21 You need to remember that, a job at Shorty's and a job at the
22 Subway. Anyway, he leaves work. He comes. There are four
23 police cars, and Detective Lent could tell you, "Well, maybe
24 only four cops," but we know that there's a lot more. There's
25 -- all these people are there because they've been working on

Closing Argument by Ms. Pratt

496

1 this thing for a month. So there's a whole bunch of police
2 cars. They take my client in one car and they take his
3 pregnant fiancée in another, and they take him to a police
4 station or a precinct, and the State wants you to believe that
5 he's not in custody at that time, that he could leave at any
6 time except he doesn't have a car. It's 10:00 o'clock at
7 night, and his pregnant fiancée is in another room. So the
8 Judge is going to tell you that you have the right to
9 completely disregard that statement if you decide that it's
10 not voluntary because if you listen to it you'll realize that
11 it takes a good half hour before they even think about giving
12 him Miranda Rights, and it's after they make a comment about
13 there might be a dead midget in the backyard. What was that
14 about? It's to make it seem easier so that, that the, the
15 person who's there who's scared out of their wits and picture
16 how you would be, scared out of their wits, will talk about
17 things.

18 Now, I like this phrase that Scott uses, this progressive
19 truth telling thing, and I think there's other reasons for
20 progressive truth telling. My client's problem that night is
21 two-fold. He's got a pregnant fiancée in another room right
22 there. He doesn't know if she's going to be arrested. In
23 fact, in that statement that he gives one of the last things
24 he says is, "Is Lashana going to get to go home," and the
25 police, and I, I picture them kind of laughing on the inside,

1 say, "Oh, why would we charge her with anything?" Obviously,
2 he's been worried about that throughout the whole time.

3 There's some other things that he's really worried about
4 throughout the whole time of that statement. He has an insane
5 brother, a crazy brother. Even Detective Lent tells you this
6 guy's nuts. Okay? He's more insane than anybody. You hear
7 in the statement that he has threatened to kill my client.
8 You hear that he's hit him in the head with a gun. You hear
9 throughout the statement, if you listen to it, that my client
10 is afraid for the safety of his fiancée out on the street, and
11 he's afraid for his own safety, too, and there's no question.
12 So he's got to kind of dance this line, and yeah, he's not
13 telling them everything at the beginning. He's trying to
14 figure out what they know because he knows that if he says
15 something about McKinley not only can he be hurt at J. Reuben
16 Long Detention Center because you're going to see how close
17 those video, the rec yards and everything else is and the
18 people are able to communicate, but he's worried about Lashana
19 on the street because she's still out there, and McKinley's
20 got other crazy people out there, and Detective Lent says,
21 "Well, you got some brothers or some people out there that'll
22 protect her." He asks for protection for her if you listen to
23 that statement. "I need somebody to help," and I'm just going
24 to read from the transcript. "I've been wanting to come
25 forward, but I know how my brother is. He already shot at me

1 one time. He already hit me in the head with a gun," and then
2 later on he says, "I been wanting to come forward. I was just
3 scared, but now I'm scared for them. Ain't nobody going to
4 protect them like me. Before I let something happen to them,
5 I'd rather lose my own life. I want to make sure I protect
6 them," and then Detective Lent says, "What are you protecting
7 them from," and he says, "Both of them, McKinley and J.J."

8 Now, the letter that you're going to read, there was a
9 reason that you get to read it, and I do this in Family Court
10 all the time. I'm always telling my clients, "Please be
11 careful what you text because somebody is going to read that
12 with a different ear, a different voice than how you sent it."
13 You can send a text that says, "Do whatever you want to do,"
14 meaning do whatever you want to do, and the other person will
15 read it like, "Do whatever you want to do," like some kind of
16 argumentative thing. So it's important to me that you guys
17 read these and listen to them from different ears. Try to see
18 how the person's saying this.

19 Now, the State wants you to believe that that letter that
20 you get to read is my client trying to get his story straight
21 with McKinley, and there's something in that letter that you
22 all need to understand so that you see the context. You'll
23 read it. He says, "A lot of that shit the detective say
24 yesterday is some bullshit. That why I can't wait to get my
25 motion." This happened on April the 11th of 2015, which just

1 happened to be the day after the preliminary hearing where the
2 detective testified as to his probable cause for arrest. Both
3 of those guys, you guys don't know this, but this is how the
4 jail works, they get to be present by video to listen to the
5 preliminary hearing, so both of them, maybe even in the same
6 room because they do it in a -- in the small courtroom at the
7 jail. Hopefully, you all will never see that courtroom, but
8 it's there, and they do it by video. So the two of them are
9 sitting there and they're hearing Detective Lent talk about
10 what he says my client said. I will bet you James was
11 terrified at that point because up till then, April, two
12 months later, McKinley doesn't know and Jerome doesn't know
13 that he said anything at all to protect his fiancée. So of
14 course he has to write something, and what he says is, "Bro, I
15 did tell them people I drove the car, but I didn't tell them,"
16 thus and so because he knows in J. Reuben Long he could get
17 shanked just as easily as anybody, and he knows that Lashana
18 could get hurt just as easily as anybody. So when you read
19 these, understand the context of what's going on. He's not
20 trying to get his story straight. He's not part of a plan
21 because the fact is there's very little proof of a plan in
22 regards to James. There's proof of a plan in regards to these
23 two, and I'm going to touch on a pinch of the law, and then I
24 know you probably want to relax for a minute.

25 Credibility of witnesses, my client has the right to be

Closing Argument by Ms. Pratt

500

1 believed. He gave a statement. You don't automatically
2 assume that because a person is suspected of a crime that
3 they're lying. People that are suspected of stuff tell the
4 truth, too. So he has the right to be believed. You get to
5 determine his credibility and his bias, and the Judge is going
6 to talk to you about that.

7 The most important thing in this case is whether or not
8 my client had any prior knowledge of a plan. The Court is
9 going to tell you in their charge that there has to be a plan
10 between two or more people, and I'm going to read what the
11 charge is going to be. "Prior knowledge that a crime is going
12 to be committed without more is not sufficient to make a
13 person guilty of that crime. Mere knowledge that another
14 person is going to commit a crime, even if the Defendant was
15 present at the time the crime is committed, is not sufficient
16 to convict the Defendant as a principal. Guilt as a principal
17 is shown by actual or constructive presence at the scene as a
18 result of prior arrangement. Therefore, a finding of a prior
19 arranged plan or common scheme is necessary. Present at the
20 commission of a crime means to be near, sufficiently near to
21 aid and abate. However, mere presence at the scene of a crime
22 is not sufficient to convict one as a principal on the theory
23 of aiding, abetting or hand of one," and then he's going to
24 talk to you about mere presence. "Mere presence at the scene
25 is not sufficient to prove someone guilty of a crime. Mere

1 association with a person," or these two, "mere association
2 with a person who commits a crime does not make a Defendant an
3 accomplice."

4 Now, the last point that the State made was something
5 that I was pondering this morning because I knew he was going
6 to -- Scott was going to try to say that my guy should have
7 known on the 25th what would happen because of what happened
8 at the 905, but I think you could look at it a different way,
9 and I want you to think about it logically for that reason.
10 There's a lot of hullabaloo after Bala Parachuri was killed.
11 There's police everywhere. They're doing, helping the
12 different businesses close down. They're trying to prevent
13 armed robberies. They're doing a lot. Who in their right
14 mind would believe that people that he drives places, hangs
15 out with, they're his brother and his cousin, would do the
16 same darn thing again? The night of the 25th he doesn't know
17 they're going to do it again just because they did it before.
18 In fact, it would be more reasonable to believe that he would
19 think they wouldn't because of all of the police presence.
20 That fact doesn't mean that he knew what was happening and he
21 tells you, "I didn't know what was going on. I drove
22 Lashana's car. I helped my brother. I take care of my
23 brother because my momma died and that's my job," even though
24 he's the younger brother, McKinley is the older brother, and
25 he's the mean brother.

Closing Argument by Ms. Pratt

502

1 Now, there's two things the Judge'll tell you about, but
2 I'm going to tell you briefly and then I'm going to sit down,
3 presumption of innocence and beyond a reasonable doubt. We
4 talk about the presumption of innocence because it is very,
5 very important. Each person that is charged with any kind of
6 crime is presumed innocent until the State removes that robe
7 of righteousness, as the Court will describe it, from the
8 shoulders of the Defendant, and they have to do that with
9 proof beyond a reasonable doubt. Now, beyond a reasonable
10 doubt means firmly convinced that this is -- that he is
11 guilty, not that he might be or we could assume he knew this
12 or we infer he knew that, but firmly convinced that he did and
13 that he was part of this. I, I usually wear a white jacket
14 for my closing because this is like the robe of innocence.
15 It's a, it's a symbol that says this clothes this person. Old
16 Judge Floyd used to say that it was like the choir robe on
17 Sunday morning that cloaked them completely, and they have to
18 remove this robe, not just partly, not just a little bit over
19 here but completely in order for you to be firmly convinced
20 beyond a reasonable doubt. They got a lot of assumptions.
21 They got a lot of inferences. They got a lot of confusion,
22 but the truth is, they don't have anything that's proof beyond
23 a reasonable doubt, and for that reason I ask you to, to be
24 very careful, to think logically and seriously and return a
25 verdict of not guilty for my client, James Daniels. Thank

1 you.

2 THE COURT: Thank you very much, Ms. Pratt. All right.
3 Ladies and gentlemen, let's stand up, kind of stretch, twist,
4 make sure you're awake. All right. Let's go ahead and lock
5 the back door.

6 All right. Ladies and gentlemen, we have reached the
7 point of the trial where it is my responsibility to tell you
8 what the law is in this state. Now, I promise you that this
9 is not going to be the most exciting thing that you've ever
10 heard. Okay? However, it is very important. I need you to
11 follow along with me. I read my charges, and I read from a
12 script. I don't make them up as I go or just kind of ad lib.
13 So that makes it less exciting when someone is looking down
14 sometimes, but I want to make sure that the law that I give
15 you is accurate. The attorneys have seen what I'm about to
16 tell you. They know what I'm about to tell you. Ms. Pratt
17 just read from the document that, that we sent her that I'm
18 about to read to you. So I want you to stay with me and stay
19 focused. It's going to take a few minutes, but I'll try to
20 make it as exciting as possible. Okay?

21 Now, the indictments that you have heard about have
22 charged the Defendant with two counts of armed robbery and one
23 count of murder. I remind you that the fact that the
24 Defendant was arrested and charged and indicted in this case
25 is not evidence, and it cannot be considered by you as

Charge

504

1 evidence of guilt in this case, nor does it create any
2 presumption or inference of guilt. The indictments are simply
3 the formal written instruments which contain the charge made
4 against the Defendant. They are the formal documents by which
5 the case is brought into this court.

6 Now, the indictments allege several different offenses
7 against the Defendant. Indictment, what I'm calling
8 indictment number one is the indictment for the armed robbery
9 of Barbara McDowell. Indictment number two is the indictment
10 for the murder of Trisha Stull. Indictment number three is
11 the indictment for the armed robbery of Trisha Stull. Now,
12 again, indictments are not proof of anything. They are merely
13 the allegations. Each indictment contains a separate and
14 distinct offense. You must decide each indictment separately
15 on the evidence and the law applicable to it, uninfluenced by
16 your decision as to any other indictment. The Defendant may
17 be convicted or acquitted on any or all of the offenses
18 charged. You will be asked to write a separate verdict of
19 guilty or not guilty for each indictment. Okay?

20 Now, as I told you in the beginning, you and I have
21 certain duties to perform. It is my responsibility to preside
22 over the trial, and I also have the duty to rule on the
23 admissibility of the evidence that was offered during the
24 trial. You are to consider only the competent evidence before
25 you. If there was any testimony ordered stricken from the

1 record, you must disregard it completely. You are to consider
2 only the testimony which has been presented from this witness
3 stand and the exhibits which have been made a part of the
4 record in this case and the stipulations which I have read to
5 you throughout the case.

6 I have the additional duty to charge you the law. I am
7 the sole judge of the law of this case, and it is your duty
8 and under your oath to accept the law and apply the law as I
9 now give it to you. If you have an idea as to what you think
10 the law is or what you think the law ought to be and it
11 doesn't agree with what I now tell you the law is, you are
12 required under your oath to abandon your own idea because you
13 are sworn to accept and apply the law exactly as I state it to
14 you.

15 In every single case tried before this court or, excuse
16 me, before a jury, the jury becomes the sole and exclusive
17 judge of the facts. A trial judge cannot state, comment on or
18 make any statement to a trial jury about the facts in the
19 case. You are the sole judge of the facts. You are not to
20 infer from anything that I have said during this trial in
21 ruling upon the admissibility of evidence or otherwise or
22 anything that I say now during the course of this instruction
23 to you that I have any opinion about the facts in this case.
24 The law does not allow me to have an opinion about the facts.
25 This is a matter solely for you to determine. It is your duty

Charge

506

1 to determine the effect, the value and the weight of the
2 evidence that has been presented.

3 Now, the Defendant has pled not guilty to these
4 indictments. That plea puts the burden of proof on the State
5 to prove the Defendant guilty. A person charged with
6 committing a criminal offense in South Carolina is never
7 required to prove himself innocent. I charge you that it is
8 an important rule of law that the Defendant in a criminal
9 trial, no matter what the seriousness of the charge may be,
10 will always be presumed to be innocent for the crime for which
11 the indictment was issued unless guilt has been proven by
12 evidence that satisfies you of that guilt beyond a reasonable
13 doubt. This presumption of innocence doesn't end when you
14 begin your deliberation, but it accompanies the Defendant
15 throughout the trial until you reach a verdict of guilt based
16 upon evidence that satisfies you of that guilt beyond a
17 reasonable doubt. This presumption of innocence is like a
18 robe of righteousness placed about the shoulders of the
19 Defendant which remains with the Defendant until it has been
20 stripped from the Defendant by evidence that satisfies you of
21 the Defendant's guilt beyond a reasonable doubt. The
22 presumption of innocence is not a mere legal theory. It's not
23 just some legal phrase that we toss around. It is a
24 substantial right to which every Defendant is entitled unless
25 you are satisfied from the evidence of the Defendant's guilt

1 beyond a reasonable doubt.

2 So that begs the question what is beyond a reasonable
3 doubt? So the State has the burden of proving the Defendant
4 guilty beyond a reasonable doubt. Now, some of you may served
5 as -- may have served as a juror in a civil case where you
6 were told that it is only necessary to prove that a fact is
7 more likely true than not true, such as by the greater weight
8 or the preponderance of the evidence. In criminal cases the
9 State's proof must be more powerful than that. It must be
10 beyond a reasonable doubt. Proof beyond a reasonable doubt is
11 proof that leaves you firmly convinced of the Defendant's
12 guilt. There are very few things in this world that we know
13 with absolute certainty, and in criminal cases the law does
14 not require proof that overcomes every possible doubt. If,
15 based upon your consideration of the evidence, you are firmly
16 convinced that the Defendant is guilty of the crime charged
17 you must find the Defendant guilty. If on the other hand you
18 think that there is a real possibility that the Defendant is
19 not guilty, you must give the Defendant the benefit of the
20 doubt and find him not guilty.

21 Now, some things that you have heard during this trial
22 are not evidence, and they cannot be considered by you as
23 evidence in the case. The following things are not evidence:
24 number one, the statements and the arguments of the attorneys
25 are not evidence; number two, the questions and the objections

Charge

508

1 of the attorneys are not evidence; number three, anything that
2 I told you to disregard.

3 Now, there are two types of evidence which are generally
4 presented during a trial. They are called direct evidence and
5 circumstantial evidence. So what is direct evidence? Direct
6 evidence directly proves the existence of a fact and does not
7 require any deduction. Circumstantial evidence is proof of a
8 chain of facts and circumstances that indicate the existence
9 of a fact. So crimes may be proven by circumstantial
10 evidence. The law makes no distinction between the weight or
11 the value to be given to either direct or circumstantial
12 evidence; however, to the extent that the State relies on
13 circumstantial evidence, all of the circumstances must be
14 consistent with each other, and when taken together, point
15 conclusively to the guilt of the accused beyond a reasonable
16 doubt. If these circumstances merely portray the Defendant's
17 behavior as suspicious, the proof has failed. The State has
18 the burden of proving the Defendant guilty beyond a reasonable
19 doubt. This burden rests with the State regardless of whether
20 the State relies on direct evidence, circumstantial evidence
21 or some combination of the two.

22 Now, as I told you in the beginning, you will have to
23 determine the credibility of the witnesses who have testified
24 in this case. Credibility simply means believability. It is
25 your duty to analyze and to evaluate the evidence and

1 determine which evidence convinces you of its truth. In
2 determining the believability of the witnesses who have
3 testified in this case, you may believe one witness over
4 several or several over one. You may believe a part of the
5 testimony of a witness and reject the remaining part of the
6 testimony of that same witness. You may believe the testimony
7 of a witness in its entirety or reject the testimony of a
8 witness in its entirety. You may consider whether the witness
9 has exhibited to you any interest or bias or prejudice or
10 other motive in the case. You may also consider the
11 appearance and the manner of the witness while on the witness
12 stand.

13 Now, I've explained this to you throughout the trial, but
14 the rules of evidence ordinarily do not permit witnesses to
15 testify to opinions or conclusions. An exception to this rule
16 exists for witnesses that we call experts or expert witnesses.
17 This is a witness who by education and experience has become
18 an expert in some art or science or profession or calling and
19 that person is permitted to state an opinion as to relevant
20 and material matters in which the witness claims to be an
21 expert. They may also state their reasons for that opinion.
22 So you should consider any expert opinion received in evidence
23 in this case, and like any other piece of evidence, give it
24 the weight that you believe it deserves. If you decide that
25 the opinion of an expert is not based upon sufficient

Charge

510

1 education and experience or if you conclude that the reasons
2 given in support of the opinion are not sound or that the
3 opinion is outweighed by some other evidence that you believe,
4 you may disregard the opinion entirely. An expert witness'
5 testimony is to be given no greater weight than that of other
6 witnesses simply because the witness is an expert. Further,
7 if you are, excuse me, further, you are not required to accept
8 an expert's opinion even though it is not contradicted.

9 All right. Now, there is a statement that is alleged to
10 have been made by the Defendant. This statement has been
11 admitted into evidence in this case. While I have determined
12 that the statement is admissible, I instruct you that you make
13 the ultimate decision of whether or not the Defendant made the
14 statement. If the Defendant did make the statement, you must
15 determine whether the statement was made by the Defendant
16 voluntarily and of his own free will. This means that the
17 statement was not caused by pressure, force, fear, threats,
18 coercion or intimidation or by hope or a promise of leniency
19 or a reward of any kind. In determining whether the
20 statement was voluntary you should consider both the
21 characteristics of the Defendant and the details of the
22 questioning. Some of the factors that you must consider are
23 the age of the Defendant, the Defendant's education or lack of
24 education, the Defendant's mental ability or capacity, the
25 Defendant's IQ or intelligence, the Defendant's background and

1 environment, the place and the length of the detention, the
2 nature of the questioning and the advice or lack thereof to
3 the Defendant of his constitutional rights including, but not
4 limited to, the right to remain silent; that any statement
5 could be used against him in a court of law; the right to have
6 a lawyer present; that if he cannot afford a lawyer, a lawyer
7 would be appointed to represent him without any cost; and that
8 he could stop making a statement at any time. You must
9 carefully consider all of the surrounding circumstances before
10 you give any weight to an alleged statement. The State has
11 the burden of proving beyond a reasonable doubt that the
12 alleged statement was voluntary. If you determine it was, you
13 may give it any further consideration you deem proper. You
14 must decide what weight, if any, should be given to the
15 alleged statement. If you determine the alleged statement was
16 not the free and voluntary statement of the Defendant, you
17 should not consider it at all.

18 All right. Now, I instruct you and emphasize to you that
19 the fact that the Defendant did not testify in this case is
20 not a factor to be considered by you in any way in your
21 deliberation and in your consideration of the, of the question
22 of the guilt or the innocence of the Defendant. It must not
23 be considered by you in any way whatsoever. A Defendant has a
24 constitutional right to remain silent, and the assertion of
25 this right must be considered by you -- must not be considered

Charge

512

1 by you in your deliberations. I repeat, under your oath you
2 are to draw no conclusion whatsoever from the fact that the
3 Defendant in this case did not testify. The fact that he did
4 not testify should not even be discussed in the jury room.
5 The burden of proof as I have told you from day number one is
6 upon the State of South Carolina. The Defendant is not
7 required to prove his innocence. The burden of proof remains
8 on the State to prove guilt beyond a reasonable doubt.

9 Okay. We're going to kind of switch gears now, and we're
10 going to start to talk about the crimes. Okay? So the first
11 thing that we need to talk about is intent. All right. So in
12 order to establish criminal liability, criminal intent is
13 required. For example, now these are examples, okay, the
14 mental state required to be proven by the State for a
15 particular crime could be purpose, intent, knowledge,
16 recklessness or criminal negligence. Criminal intent must be
17 proven by the State beyond a reasonable doubt. Criminal
18 intent is always a matter that must be determined by the jury
19 from the circumstances surrounding the situation. There is no
20 way to prove intent to a mathematical certainty. There is no
21 way that medical science can dissect a person's brain and
22 determine what that person had in mind. So the law says that
23 criminal intent may be inferred from the circumstances shown
24 to have existed. This is how you will make a determination of
25 whether or not the element that requires intent was present.

1 It is not necessary to establish intent by direct and positive
2 evidence, but intent may be established by inference in the
3 same way as any other fact by taking into consideration the
4 acts of the parties and all the facts and circumstances of the
5 case. Criminal intent is a mental state. It is a conscious
6 wrongdoing. It is up to you to determine what the Defendant
7 intended to do based upon the circumstances shown to have
8 existed. Criminal intent can arise from an action or a
9 failure to act. It may arise from negligence, recklessness,
10 or an indifference to duty or to consequences that is
11 considered by the law to be the equivalent of criminal intent.

12 All right. Now, let's talk about murder. So the
13 Defendant is charged with murder. The State must prove, so
14 what does the State have to prove for murder? The State must
15 prove beyond a reasonable doubt that the Defendant killed
16 another person with malice aforethought. So what is malice?
17 Malice is hatred. It is ill will or hostility towards another
18 person. It is the intentional doing of a wrongful act without
19 just cause or excuse and with an intent to inflict an injury
20 or under circumstances that the law will infer an evil intent.

21 So what is malice aforethought? Malice aforethought does
22 not require that malice exists for any particular time before
23 the act is committed, but malice must exist in the mind of the
24 Defendant just before and at the time the act is committed.
25 Therefore, there must be a combination of previous evil intent

Charge

514

1 and the act.

2 Now, malice aforethought may be express or it may be
3 inferred. Now, these terms express and inferred don't mean
4 different kinds of malice, but they merely mean the manner in
5 which the malice is shown to exist, that is either by direct
6 evidence or by an inference from the facts and circumstances
7 which are proved. So express malice is shown when a person
8 speaks words which express hatred or ill will for another or
9 when the person prepared beforehand to do the act which was
10 later accomplished. For example, lying in wait for a person
11 or any other acts of preparation going to show that the deed
12 was within the Defendant's mind would be express malice. So
13 malice may also be inferred from conduct that shows a total
14 disregard for human life. Inferred malice may also arise when
15 the deed is done with a deadly weapon. A deadly weapon is any
16 article, instrument or substance which is likely to cause
17 death or great bodily harm. Whether an instrument has been
18 used as a deadly weapon depends on the facts and circumstances
19 of each case. An example of a deadly weapon would be a
20 pistol, and a gun may be a deadly weapon even if it is not
21 operating.

22 Now, let's talk about felony murder. So the law says if
23 one intentionally kills another during the commission of a
24 felony, and under our laws armed robbery is considered to be a
25 felony, the implication of malice may arise. So if facts are

1 proved beyond a reasonable doubt sufficient to raise an
2 inference of malice to your satisfaction, this inference would
3 simply be an evidentiary fact to be taken into consideration
4 by you, along with the other evidence in the case, and you may
5 give it such weight as you determine it should receive. Okay?

6 Now, let's talk about armed robbery. So the Defendant is
7 also charged with armed robbery. So what does the State have
8 to prove? So in order to prove this offense, the State must
9 first prove beyond a reasonable doubt that the Defendant took
10 the personal property from the presence, person or presence of
11 another person. So property is in the presence of a person if
12 it is within the person's reach, inspection, observation or
13 control so that the person could, if not overcome with
14 violence or prevented by fear, keep possession of the
15 property. The State must also prove beyond a reasonable doubt
16 that the Defendant carried the property away intending to
17 permanently deprive the owner of the property and to keep the
18 property for the Defendant's own use. The slightest removal
19 of the property or the complete possession of the property,
20 even for an instant by the Defendant, is sufficient to show a
21 taking and carrying away of the property. The taking and
22 carrying away of the property must have been done with
23 violence or by putting the owner of the property in fear of
24 violence. Finally, the State must prove beyond a reasonable
25 doubt that the Defendant was armed with a deadly weapon during

Charge

516

1 the robbery. A deadly weapon is any article, instrument or
2 substance which is likely to cause death or great bodily harm.
3 Whether an instrument has been used as a deadly weapon depends
4 on the facts and circumstances of each case. An example of
5 an instrument which may be a deadly weapon would be a pistol.
6 A gun may be a deadly weapon even if it is not operating.

7 Okay. We're going to talk about this theory. It's
8 called act of one is the act of all. So if a crime is
9 committed by two or more people who are acting together in
10 committing a crime, the act of one is the act of all. A
11 person who joins with another to commit an unlawful act is
12 criminally responsible for everything done by the other person
13 which happens as a probable or natural consequence of the acts
14 done in carrying out the common plan and purpose. If two or
15 more people are together, acting together, assisting each
16 other in committing the offense, the act of one is the act of
17 all, or as sometimes is said, the hand of one is the hand of
18 all. Prior knowledge that a crime is going to be committed,
19 without anything more, is not sufficient to make a person
20 guilty of that crime. Mere knowledge that another person is
21 going to commit a crime, even if the Defendant is present when
22 the crime is committed, is not sufficient to convict the
23 Defendant as a principal. Guilt as a principal is shown by
24 actual or constructive presence at the scene as a result of
25 prior arrangement. Therefore, a finding of a prior arranged

1 plan or common scheme is necessary for finding of guilt as a
2 principal. The State must prove beyond a reasonable doubt by
3 competent evidence the theory of the hand of one is the hand
4 of all. A principal in a crime is one who either actually
5 commits the crime or is -- or who is present, aiding, abetting
6 or assisting in committing the crime. When a person does an
7 act in the presence of and with the assistance of another, the
8 act is done by both. Where two or more acting with a common
9 plan or intent are present at the commission of a crime, it
10 does not matter who actually commits the crime. All are
11 guilty. The hand of one is the hand of all. Present at the
12 commission of a crime means to be sufficiently near to aid and
13 abet and assist in the commission of the crime; however, mere
14 presence at the scene of a crime is not sufficient to convict
15 one as a principal on the theory of aiding and abetting.
16 Intent is also a necessary element, for there must have been a
17 common design or intent to commit the crime and the crime must
18 have been committed pursuant thereto with the person aiding
19 and abetting by some overt act. Intent means intending the
20 result which actually occurs, not accidentally or involuntary.
21 Intent may be shown by acts and conduct of the Defendant and
22 other circumstances from which you may naturally and
23 reasonably infer intent. The State must prove these elements
24 beyond a reasonable doubt.

25 Now, let's talk about mere presence. You've heard that

Charge

518

1 term this week. Okay? So mere presence at the scene is not
2 sufficient to prove someone guilty of a crime. A Defendant's
3 presence where a crime is being committed or mere association
4 with a person who commits a crime does not make a Defendant an
5 accomplice or an aider and abettor of the person committing
6 the crime. The burden is on the State to prove every element
7 of the crime charged. If you find after reviewing all the
8 evidence that the State has proved that the Defendant was only
9 present at the scene of the crime and that the State has not
10 proved beyond a reasonable doubt any other participation in
11 the crime, then you must find the Defendant not guilty. The
12 law is that proof -- well, that sentence is not right on there
13 -- the law is that proof of mere presence at the scene of the
14 crime is not sufficient to find someone guilty.

15 All right. I'm almost done. Okay? So in determining
16 the guilt or the innocence of the Defendant, you cannot
17 consider any possible penalty for any particular crime. The
18 punishment for the crimes is a matter for me to determine and
19 should never be considered by you in any way whatsoever in
20 arriving at an impartial verdict as to the guilt or innocence
21 of the Defendant.

22 Now, let's talk about deliberating. So let me talk to
23 you about your deliberations. The word deliberation is
24 defined as a careful consideration, weighing up with a view to
25 a decision. The genius of our system is that it allows 12

1 good men and women from 12 totally different backgrounds, life
2 experiences and perspectives, to consider the evidence, talk
3 about it and reach a verdict. We call them deliberations for
4 a reason. You are to consider the evidence in this case
5 carefully and deliberately, and you should discuss it in a
6 calm, thorough and courteous manner, and remember, you are not
7 a partisan or an advocate for either side. You do not favor
8 one side or the other. You are a judge. You are the judge of
9 the facts. So listen to the views of all of your fellow
10 jurors. Consider other people's points and their points of
11 view and talk through and discuss the evidence, and remember,
12 if you are doing something deliberately, you are not in a big
13 hurry and you should not be in a hurry here. This case is
14 very important to both sides. This is their only day in court
15 to resolve this matter. When you retire to the jury room, you
16 should discuss the case with each other to reach an agreement,
17 if you can. Your verdict must be unanimous. Each of you must
18 decide the case for yourself, but you should do so only after
19 you have impartially considered all of the evidence, discussed
20 it fully with each other and listen to the views of your
21 fellow jurors. Do not be afraid to change your opinion if the
22 discussion persuades you that you should, but do not come to a
23 decision simply because everyone else thinks it's right. It
24 is important that you attempt to reach a unanimous verdict,
25 but of course, only if each of you can do so after having made

Charge

520

1 your own decision. Do not change an honest belief about the
2 weight and the effect of the evidence simply to reach a
3 verdict. In other words, do not change your opinion simply
4 solely -- opinion solely for the sake of reaching a unanimous
5 verdict.

6 All right. You all stay right there. I'm going to walk
7 right around to you. Okay?

8 All right. In most courthouse I don't have to do that.
9 This one is a little, a little backwards. All right. What I
10 want to do is explain your verdict forms to you and then give
11 you a couple of basic rules for deliberating. Okay? So in
12 the next two minutes I'm going to send you back to your jury
13 room. You are still not allowed to deliberate. Okay? You
14 are still not allowed to talk about the case. The sign that
15 you may begin talking about the case is when all of the
16 exhibits enter the room. Okay? So I'm going to send you
17 back, and I'm going to check with the lawyers and make sure I
18 told you what I was supposed to tell you. Then we're going to
19 make sure we have all the right exhibits, and then when those
20 exhibits, when Ms. Dana brings those exhibits in the room,
21 that's your sign you can begin deliberating. Okay? You all
22 12 must be in the room to deliberate. So if somebody needs to
23 go to the restroom or somebody needs to take a smoke break,
24 something like that, you have to stop deliberating. To
25 deliberate all 12 must be in the room.

1 Now, as I told you, these are my little notes. As I told
2 you, you have to consider each charge separately. Okay? As
3 to each charge your verdict must be unanimous. Right? So
4 we've created this verdict form, which the lawyers have all
5 seen, which I'm going to give you, Madam Forelady, and what I
6 did is as to the armed robbery of Ms. McDowell, not guilty or
7 guilty; as to the murder of Ms. Stull, not guilty or guilty;
8 as to the armed robbery, not guilty or guilty. There is no
9 significance to me putting not guilty first and guilty second.
10 I have to put one first. I have to put one second. I
11 alternate it every trial. So that's how that happens, and
12 then there's a place for you to sign and date. Okay?

13 All right. One thing else that I need to make sure you
14 know -- okay -- is this. We are going to give you a computer.
15 Okay? And this is going to be what we call a, what we call a
16 clean computer. Okay? So there's basically nothing on it.
17 You're going to have the discs that are associated with this
18 case. Okay? My law clerk, Catherine, is going to come back
19 and show you all how to run the computer and how to play -- if
20 you want to play the videos. So you can play the video, hit
21 the audio so you can listen to the audio and do all that.
22 Okay? If you have a problem with that or some kind of
23 technical malfunction, just send a note out and we'll send
24 somebody in to fix it, but we're going to give you the ability
25 to play all that and do all that and listen to it or watch it

Charge

522

1 as much as you want to. Okay?

2 The other thing is this, there is no reason at any point
3 in time that you should report to me the counts. Okay? So
4 they don't tell you that in judge's school, and so when I
5 first started doing trials as a judge, these juries would send
6 me the note and say the count is this or the count is that.
7 Okay? Your count is your count. You don't ever need to
8 report it to me. Okay? Does that make sense? Whatever the
9 count is the count is. That's between you all. You don't
10 need to send me a note that says the count is "X" at any, at
11 any point in time. Okay?

12 So I'm going to send you back to your jury room. You're
13 still not allowed to deliberate. Everybody with me? When we
14 bring in the exhibits that'll be your sign and we'll -- and at
15 that time we'll pull out the alternates and that'll be the
16 sign that you all can start. Okay? Everybody with me? Okay?
17 Thank you very much. Everyone else remain seated.

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

20 THE COURT: All right. Any exception to the charge other
21 than the hand of one hand of all?

22 MR. HIXSON: No, sir.

23 THE COURT: Ms. Pratt?

24 MS. PRATT: Only my concern about hand of one, Your
25 Honor.

1 COURT REPORTER: Mr. Hixson, Mr. Richardson, do you agree
2 that the exhibits are the proper exhibits to go to the jury?

3 MR. RICHARDSON: I did. It's good.

4 COURT REPORTER: Okay. We're good to go.

5 THE COURT: All right. And so the issue with the juror,
6 everybody at this point since it's -- the exhibits are going
7 back at 11:40, is everybody okay with leaving number one in
8 place?

9 MR. HIXSON: Yes, sir.

10 MS. PRATT: Yes, Your Honor.

11 THE COURT: Okay. And we're going to -- so I'm going to
12 excuse the alternates, pull them out, send the exhibits back.
13 The law clerk knows how to teach them how to work the
14 computer. I've told them to have lunch here between 12:30 and
15 one and that's it. Everybody else good?

16 MR. HIXSON: Yes, sir.

17 THE COURT: Everybody good on all the exhibits?

18 MR. HIXSON: Yes, sir.

19 THE COURT: Okay. Okay. Thank you.

20 (Alternates released. Exhibits taken into jury room and
21 deliberations begin at 11:45 A.M.)

22 OFF THE RECORD

23 (On the record. Question from jury at 12:03 p.m.)

24 Following takes place outside the presence of the jury.)

25 THE COURT: All right. We got a note. Why don't you all

Question from Jury

525

1 come up and read it. You want to mark it as a Court's
2 Exhibit?

3 COURT REPORTER: Yes, sir.

4 THE COURT: It's right there. You all read it while
5 she's grabbing her stickers.

6 MS. PRATT: Okay. All righty. So you're just going to
7 recharge?

8 THE COURT: Hold on just a second. Let me get a --

9 COURT REPORTER: Court's Three.

10 THE COURT: Okay. So the note basically wants some jury
11 charges re-explained. I'm open to discuss how you all want to
12 do it. One of the ways that I've done it in the past is I
13 just give them the whole charge in writing because what I find
14 is, and again, this is open for discussion, so I'm not saying
15 we're going to do it that way, but what I find is if we --
16 instead of saying, "We're going to give you this and we're
17 going to give you this. We're going to tell you all these
18 three things, but we're not going to tell you about reasonable
19 doubt again."

20 MS. PRATT: Uh-huh (affirmative response).

21 THE COURT: "Or we're not going to tell you about" --
22 they start to find some are more important than others as
23 opposed to taking the charge as a whole. So if I give them
24 the whole charge in writing, and then to do that, there's
25 actually a charge that I bring them back out here and read to

1 them that says, "I'm giving you a copy of this charge. You
2 must consider the instructions as a whole and not follow some
3 and ignore others," and then I give them this copy and they
4 can take back there, read whatever part of it they want to, as
5 much as they want to and all have access to it and a copy of
6 it. So if somebody wants to hear something else, we're not
7 running back and forth, but I'll do -- I'll charge -- I'll do
8 it however you guys want to do it.

9 MS. PRATT: Do you ever highlight the beyond a reasonable
10 doubt as well as that read the whole charge one?

11 THE COURT: No.

12 MS. PRATT: Okay.

13 THE COURT: Not when I give it back, no.

14 MS. PRATT: Okay.

15 THE COURT: Because that -- because it's -- I mean, it's
16 clearly --

17 MS. PRATT: Because it's in there every --

18 THE COURT: It says beyond a reasonable doubt so many
19 times.

20 MS. PRATT: It does.

21 THE COURT: You can't see straight in it so.

22 MR. HIXSON: Yeah. I think it's appropriate if the
23 requested charges go back, if that's the way you want to do
24 it.

25 MS. PRATT: I'm fine with that, too.

Question from Jury

527

1 THE COURT: Okay. Okay. And there was one typo I found.

2 MS. PRATT: Uh-huh (affirmative response).

3 THE COURT: And that was at the end of the merely present
4 where it says, "The law is that being merely present at the
5 scene of the crime is not sufficient to find someone guilty."
6 So I've written that in correctly, but that was the only typo
7 I saw when going through it.

8 MS. PRATT: Okay.

9 THE COURT: Everybody okay with that?

10 MS. PRATT: That's okay.

11 MR. HIXSON: Yes, sir.

12 THE COURT: Okay. All right. All right. Let's bring
13 them in, Mr. Tony, and for the record, we made the note a
14 Court's Exhibit. It is Court's Exhibit Number Three, and we
15 received that just a few minutes ago and immediately came out
16 and asked the Clerk's Office to contact the attorneys so.

17 MS. PRATT: May we get a copy of that at the appropriate
18 time, Your Honor?

19 THE COURT: The Court's Exhibit?

20 MS. PRATT: Of the Court's Exhibit, yes.

21 THE COURT: Oh, yes, ma'am. Of course you can.

22 MS. PRATT: After it's all done.

23 THE COURT: Yeah, sure. Natalie I think has a copier
24 somewhere close. She can make you a copy of it without any
25 problem. Okay?

1 MS. PRATT: Perfect. Thank you, Your Honor.

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

4 THE COURT: All right. Welcome back, ladies and
5 gentlemen. I have received your note, and one of the things
6 that I usually don't explain in the beginning, but I do when a
7 jury sends out a note is once you send one out I've got to get
8 everybody back together, show them the note and then we kind
9 of powwow through how we're going to answer that note if we
10 can. Some questions that juries ask I simply cannot answer.
11 All the questions that you all have asked are legal questions
12 about my charge on the law to you. So what I -- what I'm
13 doing with the consent of the parties is I'm going to give you
14 a copy of my charge in writing. Okay? So you have that with
15 you. Because what I don't want to do is focus on some things
16 and not focus on other. The law requires that you take the
17 charge as a whole. Okay?

18 So to give you a copy of the charge they -- I actually
19 have to read a new charge to you to give you a copy as crazy
20 as that sounds, but what it says is during your deliberations
21 you may refer to the instructions to guide your decision-
22 making. You must consider the instructions as a whole and not
23 follow some and ignore others. Please return the instructions
24 to the Court once your verdict is rendered. So I'm going to
25 give you my copy of the charge. There was one typo when I was

Verdict

529

1 reading it, when you heard me pause on mere presence, and so
2 I've written in in my own handwriting what should go right,
3 right in there about being merely present at the scene. I'm
4 going to give you a copy of the charge, and you may continue
5 your deliberations. Okay? And Natalie will walk it or Ms.
6 Dana, there you go. Ms. Dana will give it to you and then you
7 all may continue. Thank you very much. All right. You may
8 go back to your jury room.

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

11 THE COURT: Okay. Anything from the State?

12 MR. HIXSON: No, sir.

13 THE COURT: From the Defense?

14 MS. PRATT: Nothing, Your Honor.

15 THE COURT: Okay. Thank you very much. All right.
16 We'll be in recess.

17 OFF THE RECORD

18 (On the record. Verdict reached at 2:48 p.m. The
19 following takes place outside the presence of the jury.)

20 THE COURT: All right. It's my understanding we have a
21 verdict. So we're going to bring in the jury in just a
22 second. Let me say this to everybody before we get started.
23 I understand this is an emotional case. I understand that
24 there are family members here on all the different sides of
25 this case. If you do not feel you can contain your emotions

Verdict

530

1 while the verdict is being read, that's perfectly fine. Just
2 grab a seat out in the hallway and somebody will come tell you
3 what happened. If you stay in here and there's some form of
4 inappropriate loud outbursts, then I really don't want to have
5 to deal with that today. So if you're in here, you're welcome
6 to stay in here. If you don't feel like you can contain your
7 emotions, just step outside. No one will think any less of
8 you, and someone can come out and tell you what happened.
9 Okay? Everybody with me? Okay. Let's bring them in, please.

10 MS. PRATT: Your Honor, while they're getting them, may
11 we approach just for a second?

12 THE COURT: Sure.

13 (Whereupon, a bench conference is held.)

14 (Whereupon, the following takes place in the presence of
15 the jury.)

16 THE COURT: All right. Madam Forelady, it's my
17 understanding that there is a verdict; is that correct?

18 MADAM FORELADY: Yes.

19 THE COURT: Would you please hand it to Ms. Dana?
20 All right. Thank you very much.

21 (Court reviews verdict.)

22 THE COURT: All right. I find the verdict is in its
23 proper form, and the Clerk may publish.

24 CLERK: Indictment number 2015-GS-26-01752, 2015-GS-26-
25 01764, 2015-GS-26-01766, the State of South Carolina versus

Verdict

531

1 James Elbert Daniels, Jr., we, the jury, by unanimous consent,
2 find the Defendant as to the charge of armed robbery of
3 Barbara McDowell on indictment 2015-GS-26-01752, guilty; as to
4 the charge of murder of Trisha Stull, on indictment
5 2015-GS-26-01764, guilty; as to the charge of armed robbery
6 of Trisha Stull on indictment 2015-GS-26-01766, guilty,
7 signed by Foreperson Susan Perry dated August the 30th of
8 2018.

9 Ladies and gentlemen of the jury, if this is your
10 verdict, so signify by raising your right hand.

11 (All jurors raise right hand.)

12 CLERK: Thank you.

13 THE COURT: All right. Does the State or the Defense
14 request polling?

15 MR. HIXSON: The State does not, Your Honor.

16 THE COURT: Okay.

17 MS. PRATT: Defense would, Your Honor.

18 THE COURT: Okay. All right. Ladies and gentlemen,
19 we're going to call out your juror numbers, and we're going to
20 ask you two questions. The first question is is this your
21 verdict and the second question is is this still your verdict.
22 Is that what you all normally ask?

23 CLERK: Yes.

24 THE COURT: Okay. All right. So when your number is
25 called out, Natalie will ask you that question, and if you

Polling of Jury

532

1 will just answer out loud for us to hear, please.

2 CLERK: Number 300, is this your verdict? Is this still
3 your verdict?

4 JUROR 300: Yes.

5 CLERK: Number 235, is this your verdict? Is this still
6 your verdict?

7 JUROR 235: Yes.

8 CLERK: Number 325, is this your verdict? Is this still
9 your verdict?

10 JUROR 325: Yes.

11 CLERK: Number 236, is this your verdict? Is this still
12 your verdict?

13 JUROR 236: Yes.

14 CLERK: Number 416, is this your verdict? Is this still
15 your verdict?

16 JUROR 416: Yes.

17 CLERK: Number 225, is this your verdict? Is this still
18 your verdict?

19 JUROR 225: Yes.

20 CLERK: Number 224, is this your verdict? Is this still
21 your verdict?

22 JUROR 224: Yes.

23 CLERK: Number 419, is this your verdict? Is this still
24 your verdict?

25 JUROR 419: Yes.

Polling of Jury

533

1 CLERK: Number One, is this your verdict? Is this still
2 your verdict?

3 JUROR ONE: Yes.

4 CLERK: Number 335, is this your verdict? Is this still
5 your verdict?

6 JUROR 335: Yes.

7 CLERK: Number 348, is this your verdict? Is this still
8 your verdict?

9 JUROR 348: Yes.

10 CLERK: Number 183, is this your verdict? Is this still
11 your verdict?

12 JUROR 183: Yes.

13 THE COURT: All right. The jury's been polled. Anything
14 further with the jury before I release them, Mr. Solicitor?

15 MR. RICHARDSON: Nothing from the State, Your Honor.

16 THE COURT: From the Defense?

17 MS. PRATT: Nothing from the Defense.

18 THE COURT: Okay. All right. Ladies and gentlemen, I
19 want to personally say thank you very much for your service
20 this week. I know that being a juror takes you away from your
21 family and your friends and your loved ones and your work and
22 all the other things that you have going on and you all are
23 probably just a few weeks back into school like we are back in
24 Columbia. So this time of year is very hectic for a lot of
25 families. I want to say thank you very much for your service.

1 MS. STULL: Thank you.

2 THE COURT: Okay. Thank you all. Thank you very much
3 for being here, and would Ms. McDowell like to speak or be
4 heard from?

5 MR. HIXSON: No, sir. No, sir.

6 THE COURT: Okay. All right. Mr. Solicitor, Mr. Hixson,
7 anything else?

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

9 THE COURT: Okay. Go ahead.

10 MR. HIXSON: Just specifically as relating to documents
11 that I handed up, Your Honor, Your Honor is aware that we had
12 filed notice pre-trial of the State's intention to seek a life
13 in prison without the possibility of parole sentence. We have
14 provided the Court and I showed Ms. Pratt the certified copies
15 of a prior conviction that qualified him for that and that is
16 a kidnapping conviction. I believe the offense date or the
17 conviction date, I believe, is 2011 on the document. I don't
18 have it in front of me, from me memory, Your Honor, just
19 whatever ---

20 THE COURT: The conviction date is August 10th of 2005.

21 MR. HIXSON: 2005, I apologize, Your Honor.

22 THE COURT: Right. It's okay.

23 MR. HIXSON: A lot going in my mind right now. I have
24 other, other NCIC certified copies, but that perhaps suffice,
25 suffices, Your Honor.

Sentencing

540

1 THE COURT: Okay. All right. Ms. Pratt, would you like
2 to be heard from or anybody on your client's behalf or, of
3 course, from Mr. Daniels, if he wishes to speak. He doesn't
4 have to. Anybody or any mitigation, I'd be happy to hear it
5 at all.

6 MS. PRATT: Thank you, Your Honor. I do believe my
7 client would like to speak. I would like to ask the Court and
8 tell you a little bit about him. You already know some things
9 about him. He did have two jobs at this time, one at Shorty's
10 and one at Subway. He has two children that are presently
11 eight years old and three years olds. At the time of the
12 incident, his fiancée, who he was planning to marry a week
13 later, was pregnant with that second child.

14 I think this is a young man that was trying to get his
15 life on track and move away from his brother, get away from
16 what was going on. Unfortunately, he was in the eyes of the
17 jury unable to do that.

18 If the Court believes that it has any right to deviate
19 from life without parole in this situation, Your Honor, we
20 would respectfully ask you to do that based on these
21 circumstances. My client was not the person who pulled the
22 trigger in either of the incidents that were dealt with over
23 this last week.

24 THE COURT: Okay. Anybody from his family like to speak?

25 MS. PRATT: No.

1 THE COURT: Okay. I wanted them to know they have the
2 opportunity to if they'd like to. Now, Mr. Daniels, you are
3 welcome to address me if you want to. You certainly do not
4 have to. You're under no obligation to.

5 MR. DANIELS: Yes, sir.

6 THE COURT: But I want to give you the ability to if you
7 would like to.

8 MR. DANIELS: I would like to.

9 THE COURT: Okay.

10 MR. DANIELS: Well, first off, I would like to say sorry
11 to the victim's family actually lost somebody, and I wasn't,
12 as we all know, that I wasn't the shooter in this case. So
13 and I do have two kids also that will be losing a father to
14 something that he didn't do, but was mere present like we said
15 in the beginning, but I'm also really, really sorry to a
16 family that really lost something in this matter. So thank
17 you, Your Honor.

18 THE COURT: Thank you very much, Mr. Daniels, and I
19 appreciate your words.

20 All right. I do find that Mr. Daniels has been convicted
21 of a prior kidnapping on or about August the 10th of 2015
22 [sic], which would have been a violent and a most serious
23 offense and would have been a strike. It appears that that
24 conviction was here in Horry County, and so, based upon that,
25 I believe that my hands are tied as to sentencing. I do not

Sentencing

542

1 have a choice under the law since it -- because of his prior
2 conviction of a most serious offense and today's convictions
3 of three most serious offenses, that I am required by law to
4 sentence him to life without parole and that is the sentence
5 that I will be imposing and best of luck to you, Mr. Daniels.

6 And Ms. Pratt and Mr. Hixson and Mr. Solicitor, I want to
7 say to each of you, you all did an excellent job trying this
8 case. It was a much more difficult case than, than, than the
9 average run-of-the-mill case. There were a lot of moving
10 parts. There was a lot of exhibits. There were a lot of
11 different things to process through, and you all were
12 completely and totally prepared. You were on top of things.
13 You had obviously all spent significant time preparing and
14 getting ready, and it was a pleasure to try a case with you
15 all. You all did a great job, and it's always a pleasure to
16 be down here in Horry and holding court, but it was good this
17 week to be with great lawyers that really know what they're
18 doing and treat each other with respect and dignity and
19 courtesy, and it was a pleasure to try the case with you, and
20 best of luck to you all, and Mr. Daniels, best of luck to you
21 and to your family and to the Stulls, I wish the same, the
22 same thing. I know that no matter what sentence I give here
23 today, I could never bring her back and, and I know that
24 doesn't make anything any easier, but I hope that this is a
25 step for you in the healing process as we process through

Sentencing

1 these cases. Okay?

2 Thank you all very much and best of luck.

3 MR. RICHARDSON: Thank you, Your Honor.

4 MS. PRATT: Thank you, Your Honor.

5 (Adjourned.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Case 3
8/27/18
Court's

EXHIBIT

We'd also like more
clarification over the
part of me being the hand
of money.

There's some confusion
if you can separate armed
robbery and murder, being
guilty for one and not
the other.

Can the judge explain
felony murder again?

DOCKET NO. 2015-GS-26-01752

The State of South Carolina
County of Horry

Scott R. Hixson 15H00653

COURT OF GENERAL SESSIONS

APRIL, 2015 TERM

THE STATE

vs.

James Elbert Daniels Jr
B/M
Ware Dr
Nichols, SC 29581-4970
DOB:
SSN:

ATTORNEY: Barbara Wilson Pratt

Indictment for
ARMED ROBBERY

ORIGINAL

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUNTY

2015 APR 27 AM 10:23

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

RECEIVED
SEP 07 2018
SC Court of Appeals

RENEE H. ELYS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

WITNESSES

Greg Lent Horry County Police Department

ARREST WARRANT NUMBER

2015A2610700094
CDR: 0139 16-11-0330(A)
DOA: 2/8/2015

ACTION OF GRAND JURY

TRUE BILL

Bob Harris
Foreperson of Grand Jury
Date: APR 28 2015

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)


INDICTMENT

At a Court of General Sessions, convened on April 23, 2015, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY
CDR: 0139 16-11-0330(A)

That James Elbert Daniels Jr, while acting in concert with others, did in Horry County on or about January 25, 2015, while armed with a deadly weapon, to wit: Firearm, take and carry away personal property of Barbara McDowell from or in the immediate presence of Barbara McDowell with intent to deprive Barbara McDowell of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

2015 APR 23 10:53 AM

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF: Horry
STATE: VS:
James Elbert Daniels Jr
AKA:
Race: BLACK Sex: M Age: 30
DL#: _____ SID#: _____

INDICTMENT/CASE#: 2015GS2601752
A/W#: 2015A2610700094
Date of Offense: 1/25/2015
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or PLEADS

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery 10 - 30 yrs

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS/CSC §17-25-45
w/minor 1st or 1c wd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury: _____ (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] SCB69635 Defendant: [Signature] SCB11916
Hixson, Scott R. SC Bar#: _____ Pratt, Barbara Wilson SC Bar#: _____
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of life up parole 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 SCDOC.

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 (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%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforc. Funding) \$25 \$ _____

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ N/A

Clerk of Court/Deputy Clerk: Renee N. Elviss

Court Reporter: Dixie Eubank

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning: _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge: [Signature]

Judge Code: 7164

Sentence Date: 8/30/18

FILED
HORRY COUNTY
AUG 30 PM 4:18
RENEE N. ELVISS
CLERK OF COURT
HORRY COUNTY, SC

RECEIVED
SEP 07 2018
SC Court of Appeals

WITNESSES

Greg Lent Horry County Police Department

ARREST WARRANT NUMBER

2015A2610700095
CDR: 0116 16-03-0010, 0020
DOA: 2/6/2015

ACTION OF GRAND JURY

TRUE BILL

Ben Harris
Foreperson of Grand Jury
Date: APR 23 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-26-01764

**The State of South Carolina
County of Horry**

Scott R. Hixson 15H00658

COURT OF GENERAL SESSIONS

APRIL, 2015 TERM

THE STATE

vs.

James Elbert Daniels Jr
B/M
Ware Dr
Nichols, SC 29581-4970
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: Barbara Wilson Pratt

Indictment for

MURDER

ORIGINAL

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUNTY
2015 APR 27 AM 10:23

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

RECEIVED
SEP 07 2018
SC Court of Appeals

RENEE M. ELMIS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on April 23, 2015, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That James Elbert Daniels Jr, while acting in concert with others did in Horry County, on or about January 25, 2015, willfully, feloniously, and intentionally kill the victim, Trisha Stull, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about January 25, 2015 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry VS. STATE

James Elbert Daniels Jr

AKA: Race: BLACK Sex: M Age: 30

DOB: Address:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Murder 30 - LIFE

INDICTMENT/CASE#: 2015GS2601764 A/W#: 2015A2610700095 Date of Offense: 1/25/2015 S.C. Code § 16-03-0010.0020 CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45

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

ATTORNEY: Hixson, Scott R. SCB69635 Defendant Pratt, Barbara Wilson SCB11916 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 - LIFE under the Youthful Offender Act not to exceed years and/or to pay a fine 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 SCDOC. 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 (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: \$ days/hours Public Service Employment

Payment Terms: Set by SCDPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (DUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ca, 3% to County (if paid in installments).

TOTAL \$ N/A

Clerk of Court/ Deputy Clerk: Renee N. Elvis Court Reporter: Dixie Suban

Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Appointed PD or appointed other counsel Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Judge Code: Sentence Date: 8/30/18

FILED Horry County 2018 AUG 30 PM 4:48 RENEER ELVIS CLERK OF COURT Horry County, SC

RECEIVED SEP 07 2018 SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)


INDICTMENT

At a Court of General Sessions, convened on April 23, 2015, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY
CDR: 0139 16-11-0330(A)

That James Elbert Daniels Jr, while acting in concert with others, did in Horry County on or about January 25, 2015, while armed with a deadly weapon, to wit: Firearm, take and carry away personal property of Trisha Stull from or in the immediate presence of Trisha Stull with intent to deprive Trisha Stull of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

63-0144-15-0001

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

James Elbert Daniels Jr

AKA: _____

Race: BLACK Sex: M Age: 30

Address: _____
City, S: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery 10 - 30 yrs

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2601766

A/W#: 2015A2610700097

Date of Offense: 1/25/2015

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: [Signature] SCB69635 Defendant Pratt, Barbara Wilson SCB11916
Hixson, Scott R. SC Bar# _____ Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of life w/o parole 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 SCDOC.

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 16-25-66 (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: _____ days/hours Public Service/ Employment _____

Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp. _____

Set by SCDPPPS _____ May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling

*Fine: _____ Random Drug/Alcohol testing

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

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ _____

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL s. N/A

Clerk of Court/ Deputy Clerk Renee N. Elvis

Court Reporter: Dixie Eubank

Presiding Judge [Signature]

Judge Code: 2169

Sentence Date: 8/30/18

FILED
HORRY COUNTY
RENEE ELVIS
CLERK OF COURT
HORRY COUNTY
18 AUG 30 PM 1:48

RECEIVED
SEP 07 2018
SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of December, 2019.

RECEIVED
DEC 23 2019
SC Court of Appeals