



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

December 19, 2019

**RECEIVED**

The Honorable Jenny Kitchings  
Clerk of Court, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

DEC 19 2019

SC Court of Appeals

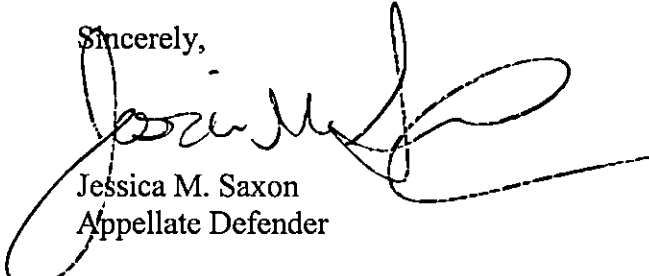
Re: State of South Carolina v. Hilton Rhoderequs Hayes  
Appellate Case # 2018-000264

Dear Ms. Kitchings:

Please find attached the requested defendant's request to charge submitted by trial counsel during the trial of Mr. Hayes.

If you have any questions, or need any additional information, please feel free contact me.

Sincerely,



Jessica M. Saxon  
Appellate Defender

JMS/mba

cc: William M. Blich, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	)	
	)	Case No.: 2015A1210100122
State of South Carolina,	)	
	)	
vs.	)	<b>DEFENDANT'S REQUESTED</b>
	)	<b>JURY INSTRUCTIONS</b>
Hilton R. Hayes,	)	
	)	
DEFENDANT.	)	

**Defendant's Request to Charge No. 1 (Police Officer)**

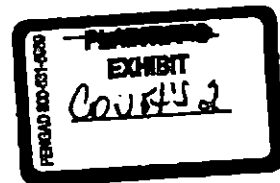
The testimony of a police officer is not entitled to more weight than that of any other witness. You are the sole judges of the credibility of a witness, and you are not to give more credence to a police officer's testimony solely because he is a police officer. Rather, you should judge an officer's testimony by the same standards that you apply to other witnesses.

*Cf. SCRE Rules 608, 609* [Note that in terms of character or witness for credibility under SCRE Rules 608, 609, role as officer is not necessarily an indicator of credibility. This jury instruction is necessary to remind the jury of this point.].

**Defendant's Request to Charge No. 2 (Resolution of Doubt in Favor of Defendant-Acquittal)**

If you have a reasonable doubt as to whether the defendant is guilty of Distribution of Crack Cocaine, then you must resolve that doubt in favor of the defendant and find him not guilty of Distribution of Crack Cocaine. ✓

*See, e.g., Brightman v. State, 336 S.C. 348, 352, 520 S.E.2d 614, 616 (1999)* (“[M]odern general reasonable doubt charge... instructs the jury to resolve doubts in favor of the defendant...”); *State v. Robinson, 307 S.C. 169, 414 S.E.2d 142 (1992)*.



**Defendant's Request to Charge No. 3 (Defendant's Right Not to Testify or Present Evidence)**

The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and the defendant in a criminal case has the right under the United States Constitution and the South Carolina Constitution not to take the witness stand and testify. The exercise by the defendant of the right not to testify or present evidence should not weigh in the slightest against the defendant and should play no role in your discussion and deliberations. No inference of any kind may be drawn from the failure of a defendant to testify or to present any other form of evidence. In particular, no presumption or inference of guilt may be drawn from the failure of the defendant to testify or offer evidence.

*State v. Arther*, 290 S.C. 291, 350 S.E.2d 187 (1986); *State v. White*, 243 S.C. 238, 243-45, 133 S.E.2d 320 (1963).

**Defendant's Request to Charge No. 4 (Distribution)**

In order to show that Defendant is guilty of distribution of crack cocaine, the State must prove two things beyond a reasonable doubt: First, that Defendant distributed crack cocaine to another without lawful authority to do so; and Second, that Defendant knew that the substance he distributed was crack cocaine.

S.C. Code Sec. 44-53-370, 44-53-375.

**Defendant's Request to Charge No. 5 (Inference from fact that witness not called by the state)**

If it is particularly within the power of the State to produce a witness who could give relevant testimony on an issue in the case, failure to call that witness may give rise to an inference that this testimony would have been unfavorable to the State. No such conclusion should be drawn by you, however, with regard to a witness who is equally available to both parties or where the testimony of that witness would be merely repetitive or cumulative.

*See, e.g., Arnold v. Yarborough*, 281 S.C. 570, 316 S.E.2d 416 (Ct. App. 1984) (civil case); O'MALLEY, GRENIG, & Lee, 1A FEDERAL JURY PRACTICE AND INSTRUCTIONS Sec. 14.15 (5<sup>TH</sup> ed. 2000); *cf., e.g., Gathers v. South Carolina Electric and Gas Co.*, 311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993) (civil case); *State v. Mabe*, 306 S.C. 355, 412 S.E.2d 386 (1991) (lost or destroyed evidence); *see also State v. Hammond*, 270 S.C. 347, 242 S.E.2d 411 (1978) (instruction can have a limited role but not required).

**Defendant's Request to Charge No. 6 (Bias – Informer or Other Witness with Possible Gain)**

The credibility of all witnesses is a matter for you, the jury, to determine. In making this determination you may consider whether a particular witness has a motive to testify favorably for one party versus the other. Thus, you may consider whether a particular witness was an informer providing evidence for pay, or a witness who has been granted immunity from punishment, or a witness who has entered a plea after a bargain with the state, or a witness who may gain some other reward, payment, personal advantage, or vindication through his testimony.

*See, e.g., SCRE Rule 608(c); State v. Ferebee*, 115 S.C. 235, 105 S.E. 345 (1920) (effect of possible bias resulting from receipt of payment for conviction relevant and a matter for jury to determine; charge that bias alone created reasonable doubt properly refused); O'MALLEY, GRENIG, & LEE, 1A FEDERAL JURY PRACTICE AND INSTRUCTIONS SEC. 145.02 (5<sup>th</sup> ed. 2000).

**Defendant's Request to Charge No. 7 (Bias – Immunity)**

The credibility of all witnesses is a matter for you, the jury, to determine. In making this determination you may consider whether a particular witness has a motive to testify favorably for one party versus the other. Thus, you may consider whether a particular witness testifies under a grant of immunity – that is, with a promise from the government that he will not be prosecuted. After any such consideration, you may give the testimony of the immunized witness such weight, if any, as you feel it deserves.

*See, e.g., SCRE Rule 608(c); State v. Ferebee*, 115 S.C. 235, 105 S.E. 345 (1920) (effect of possible bias resulting from receipt of payment for conviction relevant and a matter for jury to

determine; charge that bias alone created reasonable doubt properly refused); O'MALLEY, GRENIG, & LEE, 1A FEDERAL JURY PRACTICE AND INSTRUCTIONS SEC. 15.03 (5<sup>th</sup> ed. 2000).

**Defendant's Request to Charge No. 8 (Bias – Addict)**

The credibility of all witnesses is a matter for you, the jury, to determine. In making this determination you may consider whether a particular witness has a motive to testify favorably for one party versus the other. Thus, you may consider whether a particular witness for the state is a narcotics addict, who might have a constant need for a supply of drugs, for money to support his habit, and/or an abnormal fear of imprisonment, where his supply of drugs might be cut off. These are special circumstances which you may consider in weighing the testimony of this kind. It is for you to determine the weight, if any, to give to such testimony in light of the relevant circumstances.

Factual  
Charge

*See, e.g.,* SCRE Rule 608(c); *State v. Ferebee*, 115 S.C. 235, 105 S.E. 345 (1920) (effect of possible bias resulting from receipt of payment for conviction relevant and a matter for jury to determine; charge that bias alone created reasonable doubt properly refused).

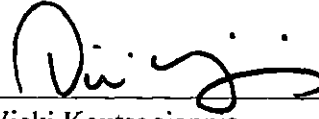
**Defendant's Request to Charge No. 9 (Conviction of a Crime)**

The testimony of a witness may be discredited or impeached by a showing that the witness has been convicted of a crime. Prior conviction does not render a witness incompetent to testify, or necessarily indicate the witness is not reliable. Such conviction is merely a circumstance which you may consider in determining the credibility of the witness. IT is for you to determine the weight, if any, to be given to any prior conviction as impeachment in determining credibility.

X  
N/A

*See, e.g.,* SCRE Rule 609; *State v. Harrison*, 298 S.C. 333, 380 S.E.2d 818 (1989); O'MALLEY, GRENIG, & LEE, 1A FEDERAL JURY PRACTICE AND INSTRUCTIONS SEC. 15.07 (5<sup>th</sup> ed. 2000).

Respectfully submitted,



Vicki Koutsogiannis

James R. Snell, Jr.

Attorneys for the Defendant

LAW OFFICE OF JAMES R. SNELL, JR., LLC

123 Harmon Street

Lexington, South Carolina 29072

(803) 359-3301

(800) 567-6249 (facsimile)

[vicki@snelllaw.com](mailto:vicki@snelllaw.com)

February 13, 2018

Lexington, South Carolina