

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Williamsburg County

Honorable Diane Schafer Goodstein, Circuit Court Judge

ROY MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000629

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
18-GS-45-0041

ROY DONELL MOORE,)

DEFENDANT.)

February 26-27, 2018
Kingstree, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE;
AND JURY

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

WARREN S. ANDERSON, ESQ.
Assistant Solicitor

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Attorney for Defendant

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Circuit Court Reporter

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1 THE COURT: You can call your first case.

2 MR. ANDERSON: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. ANDERSON: Your Honor, the State calls
5 indictment number 2018-GS-45-41, the State versus
6 Roy Donell Moore. It's a two count indictment, one
7 count of burglary in the second degree and another
8 count of attempted burglary in the second degree.

9 THE COURT: Okay.

10 (Attorneys confer.)

11 THE COURT: Ladies and gentlemen, if
12 you'll give me your attention we're about to begin
13 the case of the State of South Carolina versus Roy
14 Donell Moore. Is there any member of the jury panel
15 connected by blood or marriage, close personal
16 friends, social relations with Mr. Moore, if so,
17 please stand.

18 (There was no response.)

19 THE COURT: I'm going to read out a list
20 of potential witnesses in this case and I need to
21 know whether you're connected by blood or marriage,
22 close personal friends, or social relations with any
23 of these witnesses: Investigator Cheyenne Monteith
24 of the Williamsburg County Sheriff Department,
25 Deputy Jalisa Brown, Cierra McFadden, Billy Joe

1 Brown, Glenn Lee, Sharon Richardson, Sharon
2 Staggers. They're obviously clerk of court and
3 deputy clerk of court. Anybody connected by blood
4 or marriage, close personal friends with any of
5 those potential witnesses, if so, please stand.

6 (There was no response.)

7 THE COURT: The State is being represented
8 by Warren Anderson.

9 Yes, sir, I'm sorry. What's your ---

10 THE POTENTIAL JUROR: Sharon Staggers.

11 THE COURT: Huh?

12 THE POTENTIAL JUROR: Related to Sharon
13 Staggers.

14 THE COURT: And what's your number?

15 THE POTENTIAL JUROR: 54.

16 THE COURT: And how are you related?

17 THE POTENTIAL JUROR: First cousins.

18 THE COURT: Okay. And the fact that she
19 may be a witness in this case, would that affect
20 your ability to be fair and impartial?

21 THE POTENTIAL JUROR: No, sir.

22 THE COURT: Okay, thank you, sir.

23 Anybody else?

24 (There was no response.)

25 THE COURT: The Solicitor's Office, or the

1 State is being represented by Warren Anderson of the
2 Solicitor's Office. The Defense is being
3 represented by Charles Barr. Any member of the jury
4 panel connected by blood or marriage or close
5 personal friends, social relations, or have been
6 represented by either two of these attorneys, if so,
7 please stand.

8 (There was no response.)

9 THE COURT: Okay. This allegedly occurred
10 on or about July the 9th, 2017, here in Williamsburg
11 County at 20 Harrelson Street in Kingstree. Any
12 member of the jury panel formed or expressed an
13 opinion about any of the issues or matters involved
14 in this case, if so, please stand.

15 (There was no response.)

16 THE COURT: Any member of the jury panel
17 know anything about this case, if so, please stand.

18 (There was no response.)

19 THE COURT: Any member of the jury panel
20 aware of any bias or prejudice either toward the
21 State of South Carolina or this defendant, if so,
22 please stand.

23 (There was no response.)

24 THE COURT: Any member of the jury panel
25 served on the grand jury that indicted this case, if

1 so, please stand.

2 (There was no response.)

3 THE COURT: Any member of the jury panel a
4 member or a contributor to any group which is
5 primarily concerned in the promotion of law
6 enforcement or victim's rights, such as MADD, SADD,
7 CAVE? If that applies to you, please stand.

8 Yes, ma'am.

9 THE POTENTIAL JUROR: I'm in regional long
10 term care ombudsman and I represent patients in long
11 term care facility and advocate victims of assault
12 robbery and ---

13 THE COURT: And what's your number?

14 THE POTENTIAL JUROR: I'm 171.

15 THE COURT: And would that affect your
16 ability to be fair and impartial in this case?

17 THE POTENTIAL JUROR: No, sir, it won't.

18 THE COURT: Thank you, ma'am.

19 Anyone else? Any member of the jury panel
20 due to ---

21 THE POTENTIAL JUROR: Your Honor ---

22 THE COURT: Oh, I'm sorry.

23 THE POTENTIAL JUROR: I'm sorry, I just
24 thought of this. I am distantly related to Mr.
25 Monteith by marriage, but it is a distant family

1 connection.

2 THE COURT: Would that affect, if he was a
3 potential witness would it affect your ability to be
4 fair and impartial?

5 THE POTENTIAL JUROR: No, sir.

6 THE COURT: What is your number?

7 THE POTENTIAL JUROR: 22.

8 THE COURT: Thank you, ma'am.

9 Any member of the jury panel due to
10 religious or moral reasons unable to sit in judgment
11 of your fellow man, if so, please stand.

12 Yes, sir.

13 THE POTENTIAL JUROR: My name is Mike
14 Dunmore and I believe only God should judge. I
15 can't really...

16 THE COURT: What's your number?

17 THE POTENTIAL JUROR: I don't know.

18 THE COURT: What's your name?

19 THE POTENTIAL JUROR: Elmore, Ahrmanee.

20 THE COURT: I couldn't hear you.

21 THE POTENTIAL JUROR: Ahrmanee Elmore.

22 THE CLERK: Juror number 49.

23 THE COURT: All right. You just sit with
24 me a minute. I'll have them pull you out of this
25 particular panel, okay?

1 THE POTENTIAL JUROR: All right.

2 THE COURT: Any member of the jury panel
3 ever participated in any program with the
4 Williamsburg County Solicitor's Office or victim
5 advocate's office? If that applies to you, please
6 stand.

7 (There was no response.)

8 THE COURT: Any member of the jury panel
9 have a member of your immediate family or close
10 personal friend who is involved in law enforcement
11 either in a state or federal level, or a probation
12 officer, if so, please stand.

13 Yes, ma'am.

14 THE POTENTIAL JUROR: My brother works in
15 law enforcement in Florence and he is my nephew.

16 THE COURT: What's your name and number?

17 THE POTENTIAL JUROR: 77, Patricia
18 Johnson.

19 THE COURT: 77?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Would that affect your ability
22 to be fair and impartial in this case?

23 THE POTENTIAL JUROR: No, sir.

24 THE COURT: Thank you so much.

25 Any member of the jury panel or a member

1 of your immediate family ever had anything stolen
2 from your house or your immediate person, if so,
3 please stand.

4 THE POTENTIAL JUROR: Say that again
5 please.

6 THE COURT: And if that applies to any of
7 you stand up, we'll go through it one by one.
8 Anybody had -- yes, sir.

9 THE POTENTIAL JUROR: Yes, sir, my house
10 was robbed before.

11 THE COURT: What's your number? What's
12 your name?

13 THE POTENTIAL JUROR: Tony McGill.

14 THE COURT: Okay. And if this case
15 involved a burglary or robbery, would that affect
16 your ability to be fair and impartial?

17 THE POTENTIAL JUROR: No, sir.

18 THE COURT: Thank you, sir.

19 THE COURT REPORTER: Judge, one of the
20 jurors wanted you to repeat the question.

21 THE COURT: Oh, I'm sorry, you want me to
22 repeat that question?

23 THE POTENTIAL JUROR: Yes.

24 THE COURT: I didn't hear you. The
25 question was has any member of the jury panel ever

1 have anything stolen from your house or your person?

2 You have?

3 THE POTENTIAL JUROR: Yes, sir.

4 THE COURT: All right. Would that affect
5 your ability to be fair and impartial?

6 THE POTENTIAL JUROR: No, sir.

7 THE COURT: Thank you.

8 Yes, sir.

9 THE POTENTIAL JUROR: Yes, I was robbed at
10 gunpoint.

11 THE COURT: How long ago?

12 THE POTENTIAL JUROR: About two years ago.

13 THE COURT: Okay. And would that affect
14 your ability to be fair and impartial in this case?

15 THE POTENTIAL JUROR: No.

16 THE COURT: Thank you, what was your
17 number?

18 THE POTENTIAL JUROR: 120.

19 THE COURT: 120?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: And it won't affect your
22 ability or it will?

23 THE POTENTIAL JUROR: No.

24 THE COURT: Okay, thank you, sir.

25 Yes, ma'am.

1 THE POTENTIAL JUROR: My business.

2 THE COURT: What's your number?

3 THE POTENTIAL JUROR: I don't have...

4 THE COURT: What's your name?

5 THE POTENTIAL JUROR: Debra Martin. My
6 business.

7 THE COURT: All right. Ms. Martin, would
8 that affect your ability to be fair and impartial in
9 this case?

10 THE POTENTIAL JUROR: No.

11 THE COURT: Thank you.

12 THE POTENTIAL JUROR: Juror number 17, my
13 home has been robbed also.

14 THE COURT: And would that affect your
15 ability to be fair and impartial?

16 THE POTENTIAL JUROR: No, sir.

17 THE COURT: Thank you, ma'am.
18 Anyone else?

19 THE POTENTIAL JUROR: Number 50, I've had
20 it happen several times. The last one was during
21 the hurricane year before last.

22 THE COURT: Okay.

23 THE POTENTIAL JUROR: And I'd like to
24 squeeze the blood out of the person that did it.

25 THE COURT: I understand but, Mr. Evans,

1 would that affect your ability to be fair and
2 impartial in this case?

3 THE POTENTIAL JUROR: I'm not a hundred
4 percent sure about that.

5 THE COURT: I understand, but what I need
6 is a fair and impartial jury panel that can listen
7 to the evidence and reach a fair verdict. That's
8 what both sides are entitled to so. And you're the
9 only one that knows that.

10 THE POTENTIAL JUROR: I'm sorry?

11 THE COURT: You're the only one -- I'm
12 looking for a fair and impartial jury that can
13 listen to the evidence in this case and reach a
14 verdict that is truthful and fair to both sides, and
15 you're the only -- I don't know, if you think you
16 can do that, I'd love to have you. If you can't, I
17 can't use you.

18 THE POTENTIAL JUROR: Mr. Monteith knows
19 me pretty well. I've been in contact with him on
20 occasion, and I don't think that I can honestly say
21 that I can.

22 THE COURT: Well, I appreciate your
23 honesty. I'll have you excused from this case,
24 okay. And you got to stay with me 'cause you, I'll
25 let you do with the rest of them at least for this

1 particular case, okay. All right, thank you.

2 Any member of the jury panel inclined to
3 believe a police officer's testimony against that of
4 a private citizen merely because the person is a
5 police officer? If that applies to you, please
6 stand.

7 (There was no response.)

8 THE COURT: Any member of the jury panel
9 have any problem following the law as I cite it to
10 you in a particular case and would be able to put
11 aside your own prejudice as far as the law is
12 concerned and apply the law as I give it to you? If
13 that'd be a problem for any of you, please stand.

14 (There was no response.)

15 THE COURT: Any member of the jury panel
16 know anything about this case at all, either through
17 personal contact or read anything in the newspaper
18 or news media or social media or anything, if you
19 think it would prevent you from being fair and
20 impartial, if so, please stand.

21 (There was no response.)

22 THE COURT: Any further -- well, any
23 member of the jury panel know any reason whatsoever
24 you can't give both the State of South Carolina and
25 this defendant a fair and impartial trial, if so,

1 please stand.

2 (There was no response.)

3 THE COURT: Any further questions from the
4 State?

5 MR. ANDERSON: Nothing from the State,
6 Your Honor.

7 THE COURT: From Defense?

8 MR. BARR: Judge, I believe you asked
9 them whether or not anybody had anything stolen from
10 them. There's also a question whether or not anyone
11 on the jury panel or immediate family has had a
12 residence burglarized or their property burglarized.

13 THE COURT: All right, I'll ask it.
14 Anybody have their house broken into or their
15 property burglarized? Anybody different that
16 already stood, that has not already stood up.

17 (There was no response.)

18 THE COURT: A number of you stood up that
19 had things stolen from you. Has anybody had their
20 house burglarized that something wasn't stolen, they
21 just broke into your house?

22 (There was no response.)

23 THE COURT: Okay. Anything else,
24 Mr. Barr?

25 MR. BARR: No, sir.

1 THE COURT: All right. Madam Clerk, if
2 you'll give me a jury.

3 MR. BARR: Strikes are five and ten?

4 THE COURT: Ten.

5 MR. BARR: Five and ten?

6 THE COURT: Ten, he gets five.

7 MR. BARR: Okay.

8 THE COURT: How many alternates y'all
9 think we're going to need, one or two?

10 MR. ANDERSON: Just one, Your Honor.

11 THE COURT: You agree with that, Mr. Barr?

12 MR. BARR: Yes, sir, that's fine.

13 THE COURT: Okay.

14 THE CLERK: When I call your name, please
15 just stand where you are.

16 Juror number 31, Douglas Casselman (white
17 male). What says the State?

18 MR. ANDERSON: Please present
19 Mr. Casselman.

20 THE CLERK: What says Defense?

21 MR. BARR: Excuse the juror from the trial
22 of this case.

23 THE CLERK: Okay. Please take your seat.

24 Juror number 53, Telishia Fulton (black
25 female). What says the State?

1 MR. ANDERSON: Please present Ms. Fulton.

2 THE CLERK: What says Defense?

3 MR. BARR: What's the number, Madam Clerk?

4 THE CLERK: Juror 53.

5 MR. BARR: 53? Seat the juror please.

6 THE CLERK: Ms. Fulton, please bring your
7 belongings and take a seat over here in the jury
8 box.

9 Juror number 92, Monique Matthews (black
10 female). What says the State?

11 MR. ANDERSON: Please present
12 Ms. Matthews.

13 THE CLERK: What says the Defense?

14 MR. BARR: Seat the juror please.

15 THE CLERK: Okay. Please bring your
16 belongings, ma'am, and take your seat in the jury
17 box.

18 Juror number 11. Valerie Blakeley (white
19 female). What says the State?

20 MR. ANDERSON: Please present
21 Ms. Blakeley.

22 THE CLERK: What says the Defense?

23 MR. BARR: Seat the juror please.

24 THE CLERK: Okay. Please bring your
25 belongings and take your seat in the jury box.

1 Juror number 180, Ronnie Tisdale (black
2 male). What says the State?

3 MR. ANDERSON: Please present Mr. Tisdale.

4 THE CLERK: What says the Defense?

5 MR. BARR: Seat the juror please.

6 THE CLERK: Okay. Please bring your
7 belongings and take your seat in the jury box.

8 Juror number 196, Moses Woods (black
9 male). What says the State?

10 MR. ANDERSON: Please present Mr. Woods.

11 THE CLERK: What says the Defense?

12 MR. BARR: Seat the juror please.

13 THE CLERK: Okay. Please bring your
14 belongings and take your seat in the jury box.

15 Juror number 130, Kevin Murray (black
16 male).

17 THE STATE: Please present Mr. Murray.

18 THE CLERK: What says the Defense?

19 MR. BARR: Excuse the juror for the trial
20 of this case.

21 THE CLERK: Have a seat. Thank you.

22 Juror number 153, Cynthia Robinson (black
23 female). What says the State?

24 MR. ANDERSON: Please excuse Ms. Robinson
25 for just this case.

1 THE CLERK: Okay, please be seated.

2 Juror number 38, Sheena Cooper (black
3 female). What says the State?

4 MR. ANDERSON: Please present Ms. Cooper.

5 THE CLERK: What says the Defense?

6 MR. BARR: Swear her please.

7 THE CLERK: Please bring your belongings
8 and take a seat in the jury box.

9 Juror number 120, Leonard Montgomery
10 (black male).

11 MR. ANDERSON: Please present Mr.
12 Montgomery.

13 THE COURT: What says the Defense?

14 MR. BARR: Excuse the juror from this
15 case.

16 THE CLERK: Please have a seat.

17 Juror number 77, Patricia Johnson (black
18 female). What says the State?

19 THE STATE: Please present Ms. Johnson.

20 THE CLERK: What says —

21 MR. BARR: Please excuse Ms. Johnson from
22 the trial of this case.

23 THE CLERK: Juror number 164, Sharon
24 Singletary. What says the State?

25 MR. ANDERSON: Please present

1 Ms. Singletary.

2 THE CLERK: What says the Defense?

3 MR. BARR: Seat her please.

4 THE CLERK: Please bring your belongings
5 and have a seat in the jury box.

6 Juror number 41, Daniel Correa (black
7 male). What says the State?

8 MR. ANDERSON: Please present Mr. Correa.

9 MR. BARR: Excuse the juror from the trial
10 of this case.

11 THE COURT: Okay, please be seated.

12 Juror number 67, Debra Holliday (white
13 female). What says the State?

14 MR. ANDERSON: Please present
15 Ms. Holliday.

16 THE CLERK: What says the Defense?

17 MR. BARR: Seat the juror please.

18 THE CLERK: Okay, please take your seat in
19 the jury box, Ms. Holliday.

20 Juror number 171, Tasia Stackhouse (black
21 female). What says the State?

22 MR. ANDERSON: Please present
23 Ms. Stackhouse.

24 THE CLERK: What says the Defense?

25 MR. BARR: Seat the juror.

1 THE CLERK: Please take your seat in the
2 jury box.

3 Juror number 197, Michael Wrenn (white
4 male). What says the State?

5 MR. ANDERSON: Please present Mr. Wrenn.

6 THE CLERK: What says the Defense?

7 MR. BARR: Excuse the juror from the trial
8 of this case.

9 THE CLERK: Please be seated.

10 Juror number 110, Tony McGill (black
11 male). What says the State?

12 MR. ANDERSON: Please present Mr. McGill.

13 THE CLERK: What says the Defense?

14 MR. BARR: Excuse the juror from the trial
15 of this case.

16 THE CLERK: Okay, please be seated.

17 Juror number 10, Paul Blakeley (white
18 male). What says the State?

19 MR. ANDERSON: Please present
20 Mr. Blakeley.

21 THE CLERK: What says the Defense?

22 MR. BARR: Excuse the juror from the trial
23 of this case.

24 THE CLERK: Okay, please be seated.

25 Juror number 54, Nolan Gamble (black

1 male). What says the State?

2 MR. ANDERSON: Please present Mr. Gamble.

3 THE CLERK: What says the Defense?

4 MR. BARR: Seat the juror please.

5 THE CLERK: Please take your seat in the
6 jury box.

7 Juror number 36, Brandon Cooper (black
8 male). What says the State?

9 MR. ANDERSON: Please present Mr. Cooper.

10 THE CLERK: What says the Defense?

11 MR. BARR: Swear him please.

12 THE CLERK: Please take your seat in the
13 jury box.

14 Juror number 104, Emily McDonald (black
15 female). What says the State?

16 MR. ANDERSON: Please present
17 Ms. McDonald.

18 THE CLERK: What says the Defense?

19 MR. BARR: Seat the juror please.

20 THE CLERK: Please take your seat in the
21 jury box, Mr. McDonald.

22 For your alternate, juror number 148,
23 Leonard Pressley (black male). What say the State?

24 MR. ANDERSON: Please present
25 Mr. Pressley.

1 THE CLERK: What say the Defense?

2 MR. BARR: Seat the juror please.

3 THE CLERK: Okay, please be seated in the
4 jury box.

5 THE COURT: Are there any matters of law
6 pertaining to the selection of the jury on behalf of
7 the State?

8 MR. ANDERSON: Nothing from the State,
9 Your Honor.

10 THE COURT: On behalf of Defense?

11 MR. BARR: No, sir.

12 THE COURT: All right. Ladies and
13 gentlemen, we're not gonna actually start this case
14 till tomorrow so I'm gonna ask you to be back here
15 at 9:30. When you come back I need y'all back at
16 9:30 in the morning. When you come back you will go
17 straight to the jury room, you won't come in here,
18 and I'll get you out as quick as I can. If you have
19 an emergency tonight you need to call the Clerk's
20 Office, the Sheriff's Office, or 911, or somebody,
21 and let them know that you got an emergency and
22 you're not gonna be here at 9:30. So if I don't
23 hear from you, you need to be here at 9:30. If you
24 haven't called or you don't show up, I can't start
25 'til all of you are here so I'm gonna send the

1 sheriff looking for you if you're not here with
2 instructions to bring you here. So I need you to
3 either be here at 9:30, or if you have an emergency
4 call and let us know that you have a problem, what
5 that problem is, okay.

6 Don't do any research tonight, don't
7 Google anybody, don't try to find out anything about
8 this case. I'll instruct you in the morning as to
9 what your duties are, and what I'm looking for is a
10 fair and impartial jury that doesn't know anything
11 about this case and everything you learn about this
12 case you're gonna learn in this courtroom. So has
13 anything changed, Mr. Solicitor? You want me to
14 dismiss them? Can I dismiss them now?

15 MR. ANDERSON: I'm sorry, Your Honor?

16 THE COURT: I'm sure -- y'all don't have
17 anything else for them to do, right, till in the
18 morning?

19 MR. ANDERSON: These are the jurors we
20 need tomorrow.

21 THE COURT: I'll see y'all in the morning
22 at 9:30. Thank you.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 3:53 p.m.)

25 THE COURT: All right. Anything else?

1 MR. ANDERSON: Nothing from the State,
2 Your Honor.

3 THE COURT: Anything from Defense?

4 MR. BARR: No, sir, Judge.

5 MR. ANDERSON: We don't oppose Mr. Moore
6 staying out on bond.

7 THE COURT: All right, Mr. Moore, you
8 understand you got to be back at 9:30 or whenever
9 your lawyer needs you. If you don't, we're gonna
10 continue this trial without you.

11 THE DEFENDANT: Oh, I'll be here, sir.

12 THE COURT: And if they convict you I'll
13 seal your sentence and issue a bench warrant, okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I'll see you in the morning
16 then.

17 THE DEFENDANT: Yes, sir.

18 (WHEREUPON, court was adjourned and resumed on
19 February 27th, 2018.)

20 (WHEREUPON, State Exhibits Nos. 1 through
21 7 were marked for identification only.)

22 THE COURT: Okay, we ready for the jury?

23 MR. ANDERSON: We are, Your Honor, but I
24 know Mr. Barr has a pretrial motion about the prior
25 convictions. We can deal with that now or before I

1 call that witness.

2 MR. BARR: Well, let's do it now.

3 THE COURT: Okay.

4 MR. BARR: And in addition to the issue
5 regarding the pretrial, the prior convictions,
6 Judge, I want to make sure that I'm on the record.
7 Prior to the time that the State make their opening
8 statement to the jury, on the issue of burglary
9 second degree burglary and attempted second degree
10 burglary, it's our position that the State should be
11 required in this indictment to elect between the
12 attempted and between the second degree.

13 The second thing is the issue of a motion
14 under 403 of the South Carolina Rules of Evidence;
15 and of course, under 403, Judge, all relevant
16 evidence or evidence that may be excluded if it's
17 probative value is substantially outweighed by the
18 danger of unfair prejudice, etc. Your Honor, in
19 this case, of course, I noted a strong argument can
20 be made that the legislature by virtue of including
21 as an element of the offense by one with a prior
22 record of two or more burglaries for house breaking
23 or burglary or both, I noted that there's a strong
24 suggestion there that you might have a person and
25 there might be a situation such as what we have here

1 where somebody is accused of committing another
2 burglary and that as an element of the offense that
3 this evidence can be used to complete the offense.
4 But I, you know, it says that "or" entering in the
5 nighttime or the entering in the nighttime occurs,
6 which to me, Judge, suggests that the State would
7 still be able to make their case because this is
8 alleged to have occurred in the nighttime without
9 presenting evidence of two or more prior convictions
10 for burglary or housebreaking. And Judge, we just
11 believe that it's just, it's almost impossible to
12 try to get a jury to be able to understand that when
13 you introduce a conviction or two convictions, and
14 in this case two convictions -- the statute says two
15 or more -- but when you introduce two convictions
16 for two prior housebreakings, the jury, the natural
17 inclination is to say, you know, this man is a
18 burglar and he probably did this. And Judge, I
19 think that in this case the defendant would be
20 unfairly prejudiced by allowing that potential
21 implication to come to the jury when there is an
22 alternative and that alternative is clearly to be
23 able to prove that the alleged burglary occurred at
24 night, then it's our position that that element of
25 the crime offense is met without the necessity of

1 the two prior burglaries and I wanted to get that on
2 the record, Judge.

3 THE COURT: Okay. Would you like to
4 respond, Solicitor?

5 MR. ANDERSON: Yes, Your Honor. I would
6 like to make the Court have reference to State v.
7 Hamilton. That's 327 S.C. 440. And, Your Honor, in
8 that case the defense is wanting to stipulate
9 defendant had prior burglary convictions to try to
10 avoid the jury from hearing. The Court of Appeals
11 reviewed that and said, no, the State can prove the
12 case by the elements that they choose to prove it
13 by. There's another case where the State and
14 defendant had nine convictions and the State
15 introduced all nine. That case didn't get bounced
16 back because that was unduly prejudicial. In this
17 case I plan on only introducing two priors. I don't
18 actually plan on introducing the sentencing sheets
19 that has the sentencing information. I'm just going
20 to ask the Clerk are they convictions for burglary
21 if it's the same rule of law. I don't know any
22 other way I can reduce the prejudice beyond that,
23 but I believe the law says I can prove the case on
24 the elements I choose and that's the State's
25 election.

1 THE COURT: Okay.

2 Mr. Barr, I think the State is correct in
3 my review of the law. They have to prove to get
4 this to a burglary second violent one of the
5 aggravating circumstances, and they got a right to
6 choose to pick those that fit the evidence in this
7 case and so. And I don't think because it is an
8 element they have to prove under the 403 now, that
9 the prejudicial value outweighs the probative
10 effect, it's an element they have to prove. Now I'm
11 not gonna to let them go into details at all about
12 those prior burglaries other than they existed so I
13 overrule your motion. And as far as — what about
14 the indictment?

15 MR. ANDERSON: Your Honor, he is currently
16 indicted for burglary second violent and burglary
17 second, or an attempted burglary second violent.
18 And the video shows an individual breaking into one
19 shed in the victim's backyard, walking a distance to
20 the other shed and attempting to break in that shed.

21 THE COURT: Okay.

22 MR. ANDERSON: I believe the correct way
23 for Mr. Barr to challenge this would be a motion for
24 directed verdict after all the evidence is heard in
25 direct, move for direct, saying I have not met the

1 elements.

2 THE COURT: And these crimes in the
3 indictment occurred at the same time in the same
4 location?

5 MR. ANDERSON: They're in the same yard,
6 yes.

7 THE COURT: Okay. And on the same night?

8 MR. ANDERSON: Same night.

9 THE COURT: Okay. And Mr. Barr, I mean,
10 the fact that you says it's all one offense ---

11 MR. BARR: Yes, sir.

12 THE COURT: ---on one burglary, the
13 problem is it is two different buildings. And
14 it's -- if he had broken into two different
15 buildings he could be charged with two different
16 counts. You know, it's on the same days, the basic
17 same fact situation. It's just like somebody going
18 into a convenience store and going to the rack and
19 shoplifting or stealing some item, putting it in
20 their pocket, and then walking up to the cash
21 register and pulling out a gun and stealing the
22 money out the cash register. They committed two
23 crimes. They committed larceny and they committed
24 armed robbery. Unlike if they had pulled a gun out
25 and just stolen the money out the cash register and

1 then that's armed robbery and they can't charge him
2 with armed robbery and grand larceny. But in the
3 factual basis, if it'd all been one building I'd
4 agree with you. The fact there's two buildings I
5 think there's two separate crimes; and the State
6 has, I think, they don't have to elect, that they
7 can proceed on count one and count two.

8 MR. BARR: All right.

9 THE COURT: If I hear facts — I'm making
10 some assumptions based on what y'all have told me.
11 If after this case has been presented by the State
12 and those facts don't warrant that, then a motion
13 for directed verdict for one or both counts may be
14 appropriate and I'll deal with it at that time,
15 okay. Anything else?

16 MR. BARR: No, sir.

17 MR. ANDERSON: Nothing from the State,
18 Your Honor.

19 THE COURT: All right, if you'll bring me
20 the jury.

21 (WHEREUPON, the jury was returned to the
22 courtroom at approximately 9:54 a.m., and
23 the following proceedings commenced in
24 open court.)

25 THE COURT: Madam Clerk, you may swear the

1 jury.

2 THE CLERK: Good morning. Please stand
3 and raise your right hand.

4 (WHEREUPON, the jury was sworn.)

5 THE COURT: Ladies and gentlemen, we're
6 about to begin the trial of this case, and I'm just
7 gonna give you some basic opening remarks to kind of
8 explain to you your duties and responsibilities
9 throughout this case. This is not a charge on the
10 law. I will explain to you at the end of the case
11 the law that you're to apply to this case. Mr. Roy
12 Moore has been indicted for the crimes of burglary
13 in the second degree and attempted burglary in the
14 second degree, and the elements of those crimes I
15 will explain to you at the end of the case. This
16 indictment is not evidence in this case. It's
17 simply a formal document that charges him with these
18 crimes. And to this indictment, he's entering a
19 plea of not guilty; therefore, it placed the burden
20 upon the State of South Carolina to prove each and
21 every element of these indictments to you beyond a
22 reasonable doubt.

23 Your job is to determine what the facts
24 are in this case. My job is to rule upon the
25 admissibility of the evidence and explain the law to

1 you; and in determining what the facts are, you're
2 to make that determination and reach a verdict based
3 on the evidence in this case. And the evidence is
4 going to come to you in basically three forms.
5 First of all, through sworn testimony. Witnesses
6 will come before you under oath and testify about
7 the things that they know or the facts or the
8 observations that they've made. The other way may
9 be by photographs or documents that under our rules
10 are admissible and are introduced into evidence in
11 this case, and you'll be able to take those back to
12 your jury room and consider those. The third way
13 that you may receive evidence is through
14 stipulations of the attorneys. They may stipulate
15 to certain facts. In some cases they do. But
16 that's how you will, that's the evidence that you
17 will consider in this case to determine what the
18 facts are in this case.

19 Now in a few minutes the lawyers are going
20 to get up and make opening statements to you. That
21 is not evidence. They're simply going to explain to
22 you what they think the evidence is going to show or
23 not show in this case and try to give you a road map
24 of what this case is about. Then we will have
25 testimony. The State has the burden of proof and

1 they will go and present whatever evidence that they
2 think is important in this case.

3 The defendant does not have to prove
4 anything in this case. He has a right to put up
5 evidence, but he also has a right not to and I will
6 explain that to you in the end. After you hear all
7 the testimony the attorneys will get up and make
8 closing arguments to you, and they will argue to you
9 as to what they think the evidence showed or did not
10 show in this case. Then I will charge you on the
11 law that you're to apply in this case and you will
12 go to the jury room and reach a verdict.

13 Now it is important throughout this case
14 that you pay close attention so I will try to stop
15 every hour, hour-and-a-half and I usually try to
16 take a break after a witness has testified simply
17 where I won't interrupt their testimony. But
18 sometimes the witnesses testify for two or three
19 days at a time and so I'll obviously have to
20 interrupt that. Having said that, any time during
21 this trial you personally need a break, I need you
22 to simply raise your hand because I need all of you
23 to pay close attention and if you're uncomfortable
24 in any way you can't pay attention. So if you have
25 an issue that you need a break, just simply raise

1 your hand, we'll stop testimony, we'll take that
2 break and come back.

3 Sometimes throughout the trial I may have
4 to send you out to rule upon certain evidence that,
5 you know, that under our rules whether that evidence
6 comes in or not and I'll send you to the jury room.
7 When I send you out and when we take breaks and even
8 we break for lunch or whatever, I'm gonna tell you
9 you can't talk about this case. You can't talk
10 about it to anybody on the street. You can't even
11 talk about it among each other. And you say, well,
12 after we've heard from one witness and we take a
13 break, why can't we at least talk about what that
14 witness said or what we think that witness said.
15 And the reason you can't do that is because if you
16 do that after the first witness, at the end of the
17 case you're gonna want to defend that opinion you
18 had at the beginning of the case to your fellow
19 jurors. And I don't want you to start forming
20 opinions and sharing them with each other until
21 you've heard all the case, as well as the law that
22 I'm gonna charge you, and then and only then will it
23 be proper for you to talk about the case because
24 both sides have picked you to be a fair and
25 impartial jury. And it's important to both sides

1 that you get the facts right 'cause if you make a
2 mistake, it is very hard to correct that mistake.
3 If I make a mistake in the law, then at some other
4 time and some other place that will be reviewed and
5 corrected. But it's important that you get it
6 right, so that's why I need you to pay close
7 attention and to follow the rules that I've given
8 you and that way both sides will have a fair and
9 impartial jury who will determine what the facts are
10 in this case and they will get a fair trial.

11 In a few minutes the lawyers are gonna get
12 up and make opening statements to you. If you will
13 pay close attention and well proceed with the
14 testimony in this case. I don't think this is going
15 to be a very long case. The lawyers have told me
16 that it ought to be in the whole scheme of things,
17 you know, a day or two at the most so pay close
18 attention like I say. If you need a break raise
19 your hand and we'll take that break.

20 Mr. Solicitor.

21 MR. ANDERSON: May it please the Court.

22 THE COURT: Yes, sir.

23 MR. ANDERSON: Mr. Barr.

24 MR. BARR: Yes, sir.

25 MR. ANDERSON: Madam Clerk, ladies and

1 gentlemen of the jury. This is a case about
2 choices, the choices that people make. Imagine this
3 for me, if you will, a person is in their bed, the
4 early morning hours, it's cold outside, there's
5 frost on the window and they're getting that good
6 sleep where you're kind of half dreaming and kind of
7 not half dreaming. And then they hear it, that
8 horrible noise that everybody hates so much, that
9 alarm clock is braying in their ear, it's time to
10 get up. And out comes their arm and it's hovering
11 right there above that alarm and they got a choice
12 to make. They can turn it off and go back to sleep
13 or they can get up. They can roll up their sleeve
14 and go to work. Brush their teeth, kiss their loved
15 ones, and go put food on the table, go earn money to
16 buy the things that they need. Imagine that same
17 person a little bit all on later in the day and time
18 is short, and the boss is riding them, and the work
19 is piled up and that phone has got a blinking orange
20 light that says they've got a voice mail. They look
21 at the clock, it's not even close to lunch yet. And
22 they got another choice, it's right there at the
23 door. They can walk out the front door at work and
24 go literally anywhere else on the planet, but they
25 don't. They make a choice. They choose to stick it

1 out, to roll up their sleeves, to earn money, the
2 things they want, provide for their families,
3 participate in society.

4 Ladies and gentlemen, we're not here about
5 those kind of choices. We're here today about the
6 kind of choices that lead a person to be charged
7 with burglary. We're here today about the kind of
8 choices that lead a person be charged with attempted
9 burglary. And burglary is simply entering a
10 building with the intent to commit a crime therein.

11 Before I go into the evidence I'd like to
12 take a moment to tell you what my role in the
13 process is. My name is Warren Anderson. I'm from
14 Turbeville, South Carolina, and I've been sent here
15 by Chip Finney, your elected solicitor. And I'm the
16 prosecutor in this case. And what I want you to do
17 right now is take two seconds and forget everything
18 you know from TV about what you think a prosecutor
19 is. Invariably on TV it's some guy who's balding,
20 and I'm balding, and he's got a cigar in the corner
21 of his mouth and his tie is untied and doesn't have
22 the top button done and he's grumbling about
23 convictions; and that's simply not how it works.
24 Ladies and gentlemen, what I am here to do today is
25 to give y'all the evidence. Law enforcement

1 investigates crimes and they hear about it. They
2 gather all the evidence, and they give it to me.
3 And my job, 'cause we have the burden like Judge
4 Cothran said, is to give y'all the evidence through
5 testimony, through exhibits, and that's what I
6 intend to do. And you may be wondering how much
7 evidence is enough, what's the standard that I have
8 to prove the case to you. And I'm about to talk to
9 you briefly about the law so if I say something
10 different than what Judge Cothran says about what
11 reasonable doubt is, disregard what I say and listen
12 to Judge Cothran. He's the final ruler on the law
13 for a lack of a better way of putting it. But I
14 submit he's gonna tell you something along these
15 lines, that beyond a reasonable doubt is the
16 standard I have to prove the case to you. Beyond a
17 reasonable doubt means you've heard such proof where
18 you will not hesitate to act to find the defendant
19 guilty. If you've heard such proof, you are firmly
20 convinced of his guilt.

21 I like to point out to jurors the word
22 reasonable is right there in the title, reasonable
23 doubt. I have to spell doubts that make sense.
24 It's not beyond any and all doubt, it's not beyond
25 every doubt. And that's what I'm here for. What

1 are y'all here for? And it's great, the way our
2 system is set up is you're not here to reward
3 friends. You're not here to punish enemies. You
4 may have noticed that we spent a long time picking
5 y'all out. We may have spent longer picking y'all
6 all than we're actually going to try this case,
7 going over our notes and striking some and putting
8 others in. It's because we wanted the best group of
9 people possible to hear this case. And you don't
10 need any special knowledge, that's the other great
11 thing about our system. What you have, what you
12 need to hear this case is you had with you when you
13 were outside the courtroom. It's your common sense
14 and life experience. And it rests, your common
15 sense, life experience, right here with you in the
16 jury box. And what I want you to do is when you go
17 back there to deliberate on this case, remember, oh,
18 common sense, life experience. That's what you
19 apply. You don't need some trick, special
20 knowledge, just bring what you brought with you; and
21 that's your job, is to review the evidence and give
22 us a verdict.

23 Now I'm gonna talk to you briefly about
24 what evidence I think this case is gonna show.
25 About two-and-a-half miles from where y'all sit

1 right now there's a house. Behind that house is two
2 sheds. The house is owned by the victim. And one
3 afternoon in July of last year she went outside,
4 noticed that the door of one of her sheds is open.
5 And she walked up and she observes on the inside
6 that everything is disheveled, some stuff is on the
7 ground. And then she goes to the other shed and it
8 appears that that lock has been attempted to pry it
9 off. And there was no one out there the night that
10 it happened. There's not gonna be any crazy CSI
11 evidence that shows us who did this. But
12 fortunately, the victim in this case made a choice.
13 Like I said, this is a case about choices. They
14 chose to buy a video system for their backyard;
15 cameras are in place. And those cameras are pointed
16 at the sheds in questions. And ladies and
17 gentlemen, I submit to you that when you watch the
18 video you're going to see another choice, most
19 important choice in this case. The person who
20 breaks into these sheds turns as they're leaving and
21 looks directly in the camera. They actually see it.
22 They see the moment of recognition when they realize
23 everything they had just done is on camera. And
24 when you see that, when you see the video in this
25 case, I submit to you that the choice that you all

1 have to make will be an easy one. The only choice
2 that will make sense is a verdict of guilty.

3 THE COURT: Mr. Barr.

4 MR. BARR: Thank you, Judge. If it
5 pleases the Court, Solicitor Anderson, ladies and
6 gentlemen. I'm Charles David Barr and I practice
7 law here in Kingstree. I'm not gonna tell you how
8 long I've been practicing because I might disclose
9 my age to you and I wouldn't want to do that this
10 morning. You know, I'm sitting here and as I sat
11 here listening to my colleague talk about choices
12 and I'm wondering what in the world is he talking
13 about. And then he says Turbeville and I've
14 concluded it may be something that they teach them
15 in law school where you go to a jury and you try and
16 get the jury's attention by telling them something
17 familiar.

18 This case is not a very difficult case.
19 Roy Moore, that gentleman that's seated over here by
20 me is the defendant. He's charged with burglary.
21 And what it is is, he's got two burglaries or got
22 two housebreakings, whichever the case might be, or
23 both. His Honor is going to instruct you at the
24 appropriate time that the State of South Carolina is
25 allowed to use those prior convictions because they

1 are an element of the offense for which he is now
2 charged.

3 Now, he's charged with entering a building
4 without consent with the intent to commit a crime in
5 the building and then the entering occurred by a
6 person with a prior record of two or more
7 housebreakings and/or burglaries. Now, I believe
8 that that's the reason that Roy Moore is here today
9 and that's the reason that he has been indicted.
10 And His Honor has already told you that an
11 indictment in this case is not evidence, but an
12 indictment is a charging paper. That's how the case
13 gets to the jury. It has absolutely no evidentiary
14 value at all, not at all, no value. It's just a
15 method by which a case comes to a jury.

16 Now that having been said, Roy Moore now
17 being accused of burglary, that is second degree
18 burglary and attempted burglary, one of the unique
19 things about this case — and I've never seen a case
20 like this in my life, never. The prosecutor alluded
21 to you that in this case that there is a video.
22 Well, guess what there is. Now His Honor has
23 already in his preliminary, in his excellent
24 preliminary instructions, he's already told you that
25 there are certain kinds of evidence. You've got

1 testimonial evidence. You've got documentary
2 evidence and testimony. Of course, that's what you
3 hear from the people that get on this witness stand.
4 Now, understand that their testimony will be
5 screened because everybody that puts their hand on
6 the good book and say, I'm gonna tell the truth,
7 they don't always do that. But ladies and
8 gentlemen, one of the things that you're being
9 called upon as triers of the facts are to determine
10 whether or not somebody's testimony is worthy of
11 belief; and if it's worthy of belief, how much
12 weight do you need to give it. Do you need to give
13 it a little bit of weight, a lot of weight? You
14 might decide to just totally ignore it all together.
15 You might rely on your good experience that you've
16 accumulated over your lifetime and say, you know,
17 this person is lieing. That's up to you. That's
18 part of your duty and part of your responsibility.
19 So you got testimonial evidence, you've got
20 documentary evidence, that is, pieces of paper or
21 whatever that the prosecution might use in their
22 case and present it to you after it's been properly
23 authenticated.

24 And you've got what we call demonstrative
25 evidence, and in this case I think the demonstrative

1 evidence is gonna tell the story. The demonstrative
2 evidence is gonna make it easy for you to do that
3 for which you've been summoned to jury service and
4 that by which you've been elected on this. You were
5 screened very carefully. You probably watched the
6 lawyers looking at you. Well, in fact, when you got
7 up the very first day you started telling people
8 about where you work, what your husbands or
9 significant others, what they do. All that is the
10 lawyers believe there are certain things about
11 certain witnesses that they can screen them and tell
12 when a person is qualified and a person will look at
13 a situation and not allow their own judgment or
14 preconceived notions to interfere with making a
15 decision based on the facts as you find them to be
16 in a case in connection with the law as his honor
17 gives it to you because, see, at the appropriate
18 time in this case this judge is gonna tell you what
19 the law is and, see, you may not like it. You might
20 say, well no, he said that but I don't think it
21 ought to be. Well, we want to know whether or not
22 you're the kind of person that you'll put aside what
23 you think the law ought to be and apply the law as
24 his honor gives it to you to the facts as you
25 collectively find them to be. Now notice I said

1 collectively because you're gonna be called upon to
2 come back at the end of this case hopefully with a
3 verdict that speaks the truth, but one that's
4 unanimous. In other words, you all would have to
5 agree as to whether or not the prosecution in this
6 case with that speech my good colleague and good
7 friend gave you, whether or not they've proven their
8 case against Roy Moore and proven it by a standard
9 we call beyond a reasonable doubt.

10 Now, two more things and I'm gonna sit
11 down. In a criminal case, and His Honor is going to
12 instruct you, the defendant, that is this person
13 right here, is presumed innocent. I'm gonna let
14 that soak in because it is a substantive right. Any
15 defendant that's tried in a criminal case is
16 presumed to be innocent. That means right now that
17 presumption applies in this case. Before the
18 prosecution presents any evidence he is presumed
19 innocent. He doesn't have to come to court to prove
20 anything. The burden is on the prosecution to prove
21 his innocence and to prove his innocence by a
22 standard that we call beyond a reasonable doubt.
23 Beyond a reasonable doubt. His Honor is going to
24 talk to you about the standard of beyond a
25 reasonable doubt, the kind of doubt that would cause

1 a person to hesitate to act. The kind of evidence
2 that leaves you firmly convinced that the
3 prosecution has not put up smoke, but proved the
4 defendant's guilt of what he's charged with beyond a
5 reasonable doubt.

6 Now, ladies and gentlemen, as I said
7 earlier, in this case I suspect that there will be a
8 video. I wish everybody had a camera up by their
9 house, by their outdoor buildings. Maybe it would
10 make things a whole lot easier when it comes to
11 proving when somebody is responsible for breaking in
12 and stealing your stuff. In this case the person
13 that's accused, I believe, and I believe you're
14 gonna conclude based on what you see, because the
15 video will show that person attempting to break in
16 to the building and breaking into another building.
17 In fact, the man comes around and shows his face.
18 But I would submit to you that man is not Roy Moore.

19 Now guess what, you'll be able to look at
20 that video yourself and even as you look at Roy
21 Moore and look at the light colored man that you
22 will see in that video, His Honor is going to
23 instruct you at the appropriate time that in
24 addition to proving this case, one of the things
25 that the prosecution has to prove, one of the

1 elements in this case is identity, identity.
2 Identity is always an element in a criminal case,
3 and they have to prove that the man that you'll see
4 in that video, that he is, in fact, beyond a doubt,
5 a reasonable doubt that he's this man. And I don't
6 think that's gonna happen, I don't think it's gonna
7 happen.

8 I thank you at this stage for your
9 attentiveness and for your willingness to serve on
10 jury duty. I'm gonna tell you something else about
11 that later on in this case because you deserve to be
12 complimented for it, but I'm gonna thank you now and
13 I appreciate your obedience to that summons that was
14 served on you. I ask, ladies and gentlemen, that
15 you pay very close attention because in this case
16 there is one -- I've never seen a case where one
17 piece of evidence in and of itself is more crucial
18 to aiding a jury and being able to determine whether
19 or not the person charged did, in fact, do what the
20 person accused of. It's a unique case. I ask that
21 you listen to the evidence. As His Honor said,
22 don't start making up your mind about it until after
23 you've seen and heard it. Thank you.

24 THE COURT: Mr. Solicitor, you may call
25 your first witness.

SW - B. BROWN - DIRECT

1 MR. ANDERSON: Your Honor, the State calls
2 Billy Joe Brown.

3 THE COURT: If you'd come around please,
4 ma'am. Place your left hand on that Bible and raise
5 your right hand.

6 WHEREUPON,

7 **BILLY JOE BROWN,**
8 having been duly sworn by the Clerk, testified
9 as follows:

10 THE CLERK: Step around to the witness box
11 and watch your step.

12 **DIRECT EXAMINATION**

13 BY MR. ANDERSON:

14 Q Good morning. Ms. Brown, where do you live?

15 A 20 Harrelson Street, Kingstree, South Carolina.

16 Q Is that in Williamsburg County?

17 A Yes, it is.

18 Q All right. Is that your primary residence?

19 A Yes, it is.

20 Q Who do you live there with?

21 A My husband.

22 Q All right. And what's his name?

23 A Glenn Lee.

24 Q All right. Can you describe generally the
25 outside of your home?

SW - B. BROWN - DIRECT

1 A The backyard has a privacy fence and then outside
2 of the privacy fence is two buildings, two utility
3 buildings, and we have a camera that focuses on
4 them.

5 Q All right. And were those buildings broken into
6 in July of last year?

7 A Yes, they were.

8 Q All right. And how did that first come to your
9 attention?

10 A I was leaving for church and as I was pulling out
11 of the drive I looked back and saw one of the
12 building doors was open on it so I backed up and I
13 walked up to it and the locks were thrown on the
14 ground, and one lock was completely torn off and the
15 other one was hanging and stuff was scattered all
16 about it. And as I looked at my second building you
17 could see that the bottom of the door was warped.

18 Q And tell -- can you describe these buildings to
19 the jury?

20 A They're wood buildings with shingle roofs.

21 Q You have to open a door to get inside of them?

22 A Oh, definitely.

23 Q Okay. And earlier you said that stuff was
24 scattered around, can you just tell us what that is
25 and what it was.

SW - B. BROWN - DIRECT

1 A The building that the door was actually open, I
2 do a feral cat program with the County and I had my
3 food in there and pet carriers and I have, I
4 decorate my yard for different seasons of the year.
5 The Christmas stuff, Easter stuff, whatever, all
6 that stuff was thrown around in there.

7 Q So it wasn't how you left it?

8 A No.

9 Q All right. Does anybody have permission to be in
10 those sheds besides you and your husband?

11 A No.

12 Q Did anybody have permission to knock the locks
13 off?

14 A No.

15 Q All right. I heard you mention that there was a
16 video camera on the back of your yard. Was it
17 operational ---

18 A Yes.

19 Q ---in July of last year? Can you tell the jury
20 little bit about the video system.

21 A It's a camera system and you can go inside the
22 house and view the film any time you want to. So
23 once we realized that the buildings were broken into
24 we, we reviewed the film and we could actually see
25 the guy. And he came around the corner and he went

SW - B. BROWN - DIRECT

1 in the first building and he had a cigarette
2 lighter, and he was using that cigarette lighter to
3 look inside the building and he'd go out and come
4 back in and he kept watching the flick his lighter.
5 And obviously there was nothing in there that he
6 cared about so he went to the next building which
7 has a much better lock on it and he was trying to
8 pry it open and he looked like he was a little like,
9 he maybe got mad or something he couldn't open it.
10 He walked around a little bit. Then you could see
11 the lights of a car coming down the road and he went
12 behind the building and hid. When the car went on
13 by he came back from behind the building again and
14 attempted to break in it again. And at this time
15 when he turned around he looked directly into the
16 camera and it startled him, and he pulled his
17 T-shirt over his face and walked away.
18 Q Okay. And does the camera have night vision?
19 A Yes.
20 Q And can you describe what the picture looks like?
21 Does it look like daytime or how does it look in the
22 nighttime?
23 A It's a good view. It's, it looks bright daytime.
24 Q Does it affect color?
25 A (No verbal response.)

SW - B. BROWN - DIRECT

1 Q Okay. Does the video, this camera records, have
2 a time stamp?

3 A It does.

4 Q Did it have a time stamp, did it appear to be
5 operational ---

6 A Yes.

7 Q ---for the time that this happened?

8 A Yes.

9 Q Do you remember the date?

10 A July 9th.

11 Q Okay.

12 MR. ANDERSON: Your Honor, may I approach
13 the witness?

14 THE COURT: Yes, sir.

15 BY MR. ANDERSON:

16 Q Ms. Brown, I'm gonna show you what's been
17 premarked as State's Exhibit 1. Do you know what
18 that is?

19 A Yes, sir.

20 Q What's that?

21 A It's the video that Sheriff Monteith came to the
22 house and took it off the chip and put it on there.

23 Q And is that the video that you just described to
24 the jury?

25 A Yes, it is.

SW - B. BROWN - DIRECT

1 Q Is it a fair and accurate representation of what
2 you saw?

3 A Yes, it is.

4 MR. ANDERSON: Your Honor, at this time I
5 seek to move State's Exhibit 1 into evidence.

6 THE COURT: What says the Defense?

7 MR. BARR: No objection, Judge.

8 THE COURT: All right, it's in without
9 objection.

10 MR. ANDERSON: Permission to publish, Your
11 Honor.

12 THE COURT: Yes, sir.

13 (WHEREUPON, State Exhibit No. 1
14 was admitted into evidence.)

15 BY MR. ANDERSON:

16 Q Ms. Brown, I have just a few more questions for
17 you. Did you call law enforcement in this case?

18 A I did.

19 Q Did someone come out?

20 A Deputy Brown.

21 Q That's Jalisa Brown?

22 A Uh-huh.

23 Q Did you observe what she did?

24 A Yes, sir.

25 Q What'd she do?

SW - B. BROWN - DIRECT

1 A We went outside and she looked at the buildings
2 and the damage and she came in and she reviewed the
3 film.

4 Q Okay.

5 MR. ANDERSON: Your Honor, permission to
6 approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. ANDERSON:

9 Q I'll ask you to take a look at these for me.
10 This is premarked for identification purposes
11 State's 2 through 6.

12 (Pause while witness reviews exhibits.)

13 BY MR. ANDERSON:

14 Q Do you recognize those?

15 A Uh-huh.

16 Q And what are they?

17 A My building. This is my first building where he
18 actually went in. And this is where I put, took the
19 lock and fixed it back to keep the door from being
20 open, but I couldn't fix the bottom back because it
21 wasn't broken off entirely so I just left the bottom
22 door open.

23 Q So you touched the locks in this case?

24 A I locked my building back. I didn't want it left
25 open.

SW - B. BROWN - CROSS

1 Q Okay. But those are a fair and accurate
2 representation of the buildings as you found them?

3 A Yes, sir.

4 Q Other than the shut lock?

5 A Yes, sir.

6 MR. ANDERSON: Your Honor, at this time we
7 seek to move these exhibits into evidence.

8 MR. BARR: Judge, I've seen them. I don't
9 have any objections.

10 THE COURT: Okay. And the numbers?

11 MR. ANDERSON: I think it's 2 through 6,
12 Your Honor.

13 THE COURT: 2 through 6.

14 MR. ANDERSON: 1 was the video.

15 THE COURT: Okay, they're in without
16 objection.

17 (WHEREUPON, State Exhibit Nos. 2 through 6
18 were admitted into evidence.)

19 MR. ANDERSON: I have no further questions
20 of this witness.

21 THE COURT: Mr. Barr.

22 **CROSS-EXAMINATION**

23 BY MR. BARR:

24 Q Ms. Brown, I don't have any questions. I'm sorry
25 your property was broken into.

DW - C. MONTEITH - DIRECT

1 MR. BARR: I don't have any questions,
2 Your Honor.

3 THE COURT: Thank you, ma'am.

4 MR. ANDERSON: The State calls
5 Investigator Monteith.

6 WHEREUPON,

7 **CHEYENNE MONTEITH,**
8 having been duly sworn by the Clerk, testified
9 as follows:

10 **DIRECT EXAMINATION**

11 BY MR. ANDERSON:

12 Q Investigator Monteith, where do you work?

13 A Williamsburg County Sheriff's Office.

14 Q All right. How long have you worked in law
15 enforcement?

16 A It will be 22 years this month.

17 Q All right. Have you had any specialized training
18 and experience as an investigator?

19 A Yes, sir.

20 Q Have you worked burglary cases before?

21 A Yes, sir.

22 Q Did you work this burglary case?

23 A I did.

24 Q And what was the address where it occurred?

25 A 29 Harrelson Street.

DW - C. MONTEITH - DIRECT

1 Q All right. Is that address, did you respond to
2 the address?

3 A Yes.

4 Q And is that address in Williamsburg County?

5 A It is.

6 Q All right. Can you tell the jury a little bit
7 about your investigation in this case, what you did.

8 A I was notified by Deputy Jalisa Brown and
9 Lieutenant Wrenn of the Sheriff's Office of the
10 burglary that occurred at the victim's residence. I
11 was told that there was a video from the
12 surveillance system at the home by the victim and
13 the video needed to be downloaded. I responded out
14 to the residence and downloaded the video on a thumb
15 drive.

16 Q All right, did you review that video in the
17 course of downloading it?

18 A I did.

19 Q Were you, did you identify the person you saw on
20 the video?

21 A I did.

22 Q Who did you know that to be?

23 A Roy Moore.

24 Q And is Mr. Moore in the courtroom today?

25 A He is.

DW - C. MONTEITH - DIRECT

1 Q Can you point him out for me?

2 A Certainly. He's sitting right over there
3 (indicating).

4 Q All right. Did you have occasion to make a
5 screen shot of the video in this case?

6 A I did.

7 MR. ANDERSON: Your Honor, may I approach
8 the witness?

9 THE COURT: Yes.

10 MR. ANDERSON: Mr. Barr, it's number 7.

11 MR. BARR: I don't have any.

12 BY MR. ANDERSON:

13 Q Mr. Monteith, can you tell me what that is?

14 A That's a picture of Roy Moore in the video.

15 Q Is it a fair and accurate representation of the
16 screen shot you took?

17 A It is.

18 Q Is it a screen shot you took?

19 A Yes, sir.

20 MR. ANDERSON: Your Honor, at this time we
21 seek to move 7 into evidence.

22 MR. BARR: Let me see it.

23 (Mr. Barr reviews exhibit.)

24 MR. BARR: I have no objection.

25 THE COURT: Okay, it's in without

DW - C. MONTEITH - DIRECT

1 objection.

2 (WHEREUPON, State Exhibit No. 7 was
3 admitted into evidence.)

4 BY MR. ANDERSON:

5 Q Investigator Monteith, did you collect any
6 fingerprint evidence in this case?

7 A I did not.

8 Q Did you attempt to?

9 A No, sir.

10 Q And why is that?

11 A I was told that the victim had already went
12 through the buildings and touched everything around
13 the buildings so there was really no point in
14 trying.

15 Q Okay. And again, that address that you responded
16 to is in Williamsburg County?

17 A That is correct.

18 Q All right. Did you get the warrants in this
19 case?

20 A I did.

21 Q Can you tell the jury a little bit of process
22 about the biographical information that goes in
23 warrants? What ---

24 A Basically we look for victims, I mean,
25 correction, the defendant's old records, anything

SW - C. MONTEITH - CROSS

1 that has their information on it.

2 Q Does a person's birthday go on their warrant?

3 A Yes.

4 Q Do you know Roy Moore's birthday?

5 A I do.

6 Q What is it?

7 A [REDACTED]

8 Q I don't have any further questions.

9 **CROSS-EXAMINATION**

10 BY MR. BARR:

11 Q Now, as I understand it, you said that you knew
12 Roy Moore prior to July 9th of 2016.

13 A Yes, sir.

14 Q All right. And you have testified to this jury
15 that this State's Exhibit Number 7 is a still
16 photograph taken from the video that was on the
17 property.

18 A Yes, sir.

19 Q And I noted that when you testified on direct
20 examination you said that this was Roy Moore.

21 A Yes, sir.

22 Q Now did you do a -- now you, the solicitor asked
23 you about fingerprints and you said that you didn't
24 look for any; is that correct?

25 A That's correct.

SW - C. MONTEITH - CROSS

1 Q And the reason that you didn't look for any was
2 because the homeowner told you that the scene
3 perhaps had been contaminated because she had been
4 on to the property?

5 A Yes, sir.

6 Q Now would you not agree that with respect to the
7 homeowner's fingerprints in all likelihood, taking
8 into consideration how recent the homeowner would
9 have been in the property, her fingerprint probably
10 would have been all over the place; wouldn't it?

11 A Yes, sir.

12 Q Now how long did you say you've been an
13 investigator?

14 A Almost 22 -- well, I've been an investigator
15 about 10 years.

16 Q Ten years. You used to work for the City; didn't
17 you?

18 A Yes, sir.

19 Q Now you work for the County?

20 A Yes, sir.

21 Q You've been an investigator for ten years. Have
22 you collected fingerprints ever before?

23 A Many times.

24 Q Many times. Now you indicated in this instance
25 you didn't collect any fingerprints because you

SW - C. MONTEITH - CROSS

1 didn't look for any.

2 A (There was no response.)

3 Q Did you look for any?

4 A No, sir.

5 Q I see. So whether or not the fingerprints were
6 there or whether or not they were collectible, you
7 don't know today because you didn't even look.

8 That's fair, isn't it?

9 A Yes, sir.

10 Q Now you were the only investigator that was
11 assigned to do this investigation; weren't you?

12 A Yes, sir.

13 Q And you went to the investi-- went to the scene
14 to look for fingerprints and for whatever reason did
15 not look for any. You think you did a good job with
16 that?

17 A Yes, sir.

18 Q And you didn't even look for the fingerprints,
19 even though they may have been there and even though
20 they may -- but another piece of evidence that you
21 could add in this case that would definitely,
22 certainly if Roy Moore's fingerprints were over
23 there his fingerprints ain't had no business over
24 there on that lady's property, would it?

25 A No, sir.

SW - C. MONTEITH - CROSS

1 Q And if you'd done your job like how you're
2 supposed to, you may have had the fingerprints,
3 could you? That's the truth; isn't it? You just
4 didn't do your job. You don't have it. All right.
5 Let me ask you to look at -- now Roy Moore, stand up
6 a second. Walk over here and look at me.

7 (Defendant complies.)

8 BY MR. BARR:

9 Q Now any question in your mind that this man is
10 the man that you claim now depicted in that
11 photograph?

12 A Without a shadow of a doubt that's the man in the
13 photograph.

14 Q All right.

15 MR. BARR: Have a seat, sir. You can go
16 back and sit down.

17 (Defendant complies.)

18 BY MR. BARR:

19 Q Now I would assume that with respect to your
20 testimony that without a shadow of a doubt that's
21 the man, that's the same mentality when you had when
22 you went over to the house and didn't even look for
23 fingerprints; is that right?

24 A No, sir, not until after I'd seen the video.

25 Q All right. Thank you, sir. I have no further

SW - C. MONTEITH - REDIRECT

1 questions.

2 THE COURT: Anything further?

3 MR. ANDERSON: Just one, Your Honor.

4 **REDIRECT EXAMINATION**

5 BY MR. ANDERSON:

6 Q Investigator Monteith, Mr. Barr asked you to take
7 a look at his client and have him stand up and walk
8 and get a look at him. Did you see Mr. Moore back
9 in July last year?

10 A I don't believe so.

11 Q Have you seen, did you see him last year in
12 general?

13 A Yes.

14 Q Did he have a cane then?

15 A No, he did not.

16 Q Did he have his arm in a cast?

17 A Did not.

18 MR. ANDERSON: I don't have any further
19 questions.

20 MR. BARR: Just one or two, Judge.

21 **RECROSS-EXAMINATION**

22 BY MR. BARR:

23 Q Now you're not suggesting that -- you hadn't
24 talked to Roy Moore and you don't know anything
25 about his physical condition now, do you?

SW - C. MONTEITH - RECROSS

1 A Currently, no, sir.

2 Q And you're not suggesting that the cane is a prop
3 or something? Have you, you're still invest— you
4 were still investigating this case up until
5 yesterday; weren't you?

6 A No, sir.

7 Q Well, you just, you just stopped with it?

8 A Once I charged him with a particular crime.

9 Q So you've never seen him, you've never seen him,
10 you've never seen him with a cane or with the
11 shoulder---

12 A Never in my life. Yesterday was the first day of
13 my life I ever seen him with a cane or a sling.

14 Q But you have not -- you saw him yesterday you
15 said?

16 A Yes, sir.

17 Q So from the time you locked him up until now
18 you've never seen him?

19 A I can't remember. I'm sure I have, but I can't
20 recall right now.

21 Q Well, now, if he had the cane and the bandage on
22 his shoulder you didn't go up to him and say Roy
23 Moore, what is it you're try to, --

24 A No, sir, I did not.

25 Q --what happened to you?

SW - S. STAGGERS - DIRECT

1 A No.

2 Q You didn't do that, did you?

3 A No, sir.

4 Q I see. I have nothing further.

5 THE COURT: You may step down.

6 MR. ANDERSON: Your Honor, we call Sharon
7 Staggars. And we may need to break for a recess.
8 I'll go get her, Your Honor.

9 THE COURT: Okay.

10 WHEREUPON,

11 **SHARON STAGGERS,**

12 having been duly sworn by the Clerk, testified
13 as follows:

14 (WHEREUPON, State Exhibits Nos. 8, 9, and
15 10 were marked for identification only.)

16 **DIRECT EXAMINATION**

17 BY MR. BARR:

18 Q Madam Clerk, good morning.

19 A Good morning.

20 Q Can you tell the jury where you work.

21 A I'm the Clerk of Court here in Williamsburg
22 County.

23 Q How long have you been the clerk of court in
24 Williamsburg County?

25 A This is my fifth year.

SW - S. STAGGERS - DIRECT

1 Q And can you tell the jury a little bit about what
2 a Clerk does day to day.

3 A I am over general sessions court which is where
4 we are in now, which is criminal court, common pleas
5 court which is civil court, family court as well as
6 I serve as the register of deeds. We are basically
7 the record keepers for each of those offices.

8 Q I heard you say you're a record keeper. Do you
9 keep records of convictions?

10 A Yes.

11 MR. ANDERSON: Your Honor, may I approach
12 the witness?

13 THE COURT: Yes, sir.

14 BY MR. ANDERSON:

15 Q And Madam Clerk, I'm going to show you what has
16 been premarked for identification purposes as
17 State's Exhibit 8 and 9.

18 A Okay.

19 Q Will you review these documents for me?

20 A Okay.

21 Q And what is 8?

22 A 8 is the indictment sheet, t he sentencing sheet.

23 Q And what's the name on that indictment?

24 A Williamsburg County versus Roy Donell Moore.

25 Q And is it for the offense of burglary?

SW - S. STAGGERS - DIRECT

1 A Yes, it is.

2 Q And what is 9?

3 A 9 is the docket sheet for the State versus Roy
4 Donell Moore.

5 Q When you say docket sheet, is that also sometimes
6 called the sentencing sheet?

7 A Correct.

8 Q Does it list birth date for Mr. Moore on that
9 document?

10 A Birthday of [REDACTED].

11 Q All right. Is that a certified copy?

12 A It is a certified true copy.

13 Q And what does that mean for the jury?

14 A It just means that this copy is just like the
15 original. It's a certified true copy stating that
16 this is a true, actual copy of the document.

17 Q Of the original you keep in your file?

18 A Of the original we keep, yes.

19 Q And again, that's a conviction of burglary?

20 A Yes, burglary, uh-huh.

21 Q And Madam Clerk, I'm gonna approach you with
22 what's been premarked as 10.

23 (WHEREUPON, State Exhibit No. 11 was
24 marked for identification only.)

25 BY MR. ANDERSON:

SW - S. STAGGERS - CROSS

1 Q 10 and 11 for identification purposes, can you
2 take a look at these. And Madam Clerk, what's
3 number 10?

4 A Number 10 is a sentencing sheet.

5 Q And who's it for?

6 A It is for Roy Donell Moore.

7 Q Does it have the same birthday?

8 A Yes, [REDACTED].

9 Q And is it for the offense of burglary?

10 A For the offense of burglary, correct.

11 Q All right, is that a certified copy?

12 A This is a certified true copy.

13 Q So there's a copy of that in your records?

14 A Yes.

15 Q And what's 11?

16 A 11 is an indictment for Roy Moore, Donell Moore.

17 Q And that indictment goes with that sentencing
18 sheet just like the other one did?

19 A With the sentencing sheet, correct.

20 Q And that's for the offense of burglary?

21 A Yes, it is.

22 Q All right. I don't have any further questions.

23 **CROSS-EXAMINATION**

24 BY MR. BARR:

25 Q Madam Clerk, with all that you've said with

1 respect to all papers that you've identified, you
2 got two prior convictions for Roy Moore for either
3 third, second, or first degree burglary, you got two
4 prior convictions, right?

5 A Yes.

6 Q That's what these papers are.

7 A Yes.

8 Q All right. Now you don't have an indictment for
9 this charge?

10 A No, not yet.

11 Q All right. All right, good enough. Thank you.

12 MR. BARR: I have no further questions,
13 Judge.

14 MR. ANDERSON: No further questions for
15 this witness.

16 THE COURT: You may step down. Thank you.

17 THE WITNESS: Thank you.

18 MR. ANDERSON: Your Honor, at this time
19 the State of South Carolina rests.

20 THE COURT: Okay.

21 Ladies and gentlemen of the jury, I need
22 to rule on some matters of law outside your
23 presence. I'm gonna send you to the jury room.
24 I'll get you back out in a few minutes. Please
25 don't start discussing this case yet. Thank you.

1 (WHEREUPON, the jury was removed from the
2 courtroom at 10:51 a.m.)

3 THE COURT: Okay. Anything from Defense?

4 MR. BARR: Your Honor, we would
5 respectfully move for a directed verdict on the
6 issue of whether or not it was the defense's
7 position regarding requiring the State to elect,
8 whether or not the State has presented evidence
9 sufficient to sustain a conviction on two separate
10 counts. When I say two separate counts I'm talking
11 about the attempted burglary and the burglary. We
12 think that the prosecution has failed to present
13 evidence in which this jury can reasonably believe
14 that these offenses have been proved. In addition
15 to that, with as far as the second degree burglary
16 and the attempted burglary, both of which by law or
17 both of which has as an element of those offenses,
18 the issue of identity it would be our position that
19 the prosecution has failed to present sufficient
20 evidence from which this jury could reasonably
21 conclude that that element is met and the State has
22 fulfilled its burden in that respect as well.

23 THE COURT: Okay. As far as the burglary
24 and attempted burglary there's evidence pursuant to
25 the testimony of the victim in this case that two

1 buildings were broken into, that one building was
2 open, and the other building was attempted to be
3 opened and she had a video of, in fact, someone in
4 the building on the right. It was dark. At that
5 point you could see a cigarette lighter flicking and
6 then a subject came out of that building and went to
7 the other building and attempted to open the lock on
8 that building. So I think there's sufficient
9 evidence in this record to go to the jury on those
10 charges. And that the identity, there's evidence in
11 the record of a picture and a video, as well as the
12 testimony of the investigative officer, in his
13 opinion that was your client in the video. There's
14 evidence in the record the jury will have to make a
15 determination as to whether they conquer on that
16 opinion based on what they saw on that tape as to
17 whether they think it's your client, but I think
18 there's sufficient evidence it goes to the jury so I
19 will deny your motion on both counts.

20 MR. BARR: Thank you, Judge.

21 THE COURT: Mr. Moore, how about stand up
22 please, sir, and raise your right hand.

23 WHEREUPON,

24 **ROY D. MOORE,**

25 having been duly sworn by the Court, testified as

1 follows:

2 THE COURT: Thank you, you can put your
3 hand down. Now Mr. Moore, the State has rested in
4 this case.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you have a right to put up
7 evidence in this case. You have a right to testify
8 in this case. That is your right. You also have a
9 right not to testify, and if you choose not to
10 testify I will instruct the jury that they can't
11 consider that against you in any way. You can talk
12 to your lawyer, you get his advice, but ultimately,
13 it is your decision whether you want to testify or
14 not to testify because you have a constitutional
15 right to remain silent and you certainly can
16 exercise that right and I will instruct them that
17 they cannot use that against you. However, if you
18 do decide to testify, then you'll be treated like
19 any other witness and the State will have an
20 opportunity to cross-examine you and possibly
21 impeach you based on prior record or other issues.
22 You understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you can talk to your
25 lawyer, you make a decision whether you want to

1 testify or not testify. You certainly have a right
2 to put up other witnesses or any evidence you want
3 to; but ultimately, it'll be your decision. You
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You got any questions
7 concerning your rights you need to ask me about?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay. All right, we'll take
10 about a ten minute break. Mr. Barr, you can decide
11 whether, in fact, you're going to put up any
12 evidence or whether your client will testify and let
13 me know and then we'll -- if not, I'll assume y'all
14 ready to go into closing arguments?

15 MR. ANDERSON: Yes, Your Honor.

16 MR. BARR: Yes.

17 THE COURT: Okay. Then we'll take a short
18 break and I'll be back so y'all can make up your
19 mind.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: Mr. Barr, have y'all decided
23 whether you are going to put up any evidence?

24 MR. BARR: We're going to rest for the
25 record.

1 THE COURT: All right, then we'll argue
2 and charge then. As soon as I get -- my law clerk
3 is working on a verdict form if they can get it to
4 print.

5 (Pause.)

6 THE COURT: Is the State ready?

7 MR. ANDERSON: Yes, Your Honor.

8 THE COURT: Defense ready?

9 MR. BARR: Yes, Your Honor.

10 THE COURT: Bring me the jury please.

11 MR. BARR: Judge, for the record, can we
12 note that our motions are made after?

13 THE COURT: Yes, sir.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 11:11 a.m., and
16 the following proceedings commenced in
17 open court.)

18 THE COURT: Mr. Barr.

19 MR. BARR: May it please the Court, Judge,
20 the Defense rests.

21 THE COURT: Okay. Ladies and gentlemen,
22 you have heard all of the evidence that you're going
23 to hear in this case. Now it's time for you to
24 listen to the closing arguments of the attorneys,
25 and I will charge you on the law after that and give

1 you this case to decide.

2 MR. ANDERSON: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. ANDERSON: Mr. Barr, Madam Clerk,
5 ladies and gentlemen of the jury. Like I said, it's
6 a case about choices; and before I get into those
7 choices I want to talk to you a little bit about the
8 offense I have to prove. For a lack of better way
9 of putting it, the recipe for burglary in the second
10 degree and attempted burglary second degree, what
11 the State's got to put on the table. I have to show
12 that there's a building. We talked about a
13 building. You heard her describe two sheds in her
14 backyard. We call them building A and building B.
15 I have to prove it's trespassory, if the person who
16 entered that building didn't have permission to be
17 there. You heard her describe that they didn't. I
18 have to prove that it was entered with the intent to
19 commit a crime therein. And this is a tricky part
20 of the law. And all of this stuff about the law, I
21 urge you to listen to what Judge Cothran says if I
22 say something different.

23 The offense of burglary doesn't require
24 that anything be stolen. You can commit burglary
25 when you walk through a door with the intent to beat

1 somebody up or burn their house down or dishevel
2 anything so don't think the State has to prove that
3 something was stolen to prove the offenses of
4 burglary. We just have to prove that a person
5 entered or attempted to enter with the intent to
6 commit a crime inside. Let's talk a little bit
7 about intent to commit a crime inside 'cause we have
8 some interesting intent, or evidence intent. We
9 can't prove what's going on in a person's mind. If
10 we could, decide it's kind of weird; but in this
11 case we see an individual in the video. And I'm
12 not -- Mr. Barr says it's not him. I'm not gonna
13 tell you. What I want you to do is all you decide
14 for yourself. But this person breaks into one shed.
15 You can see him flicking a light on and off in there
16 and we know that everything was disheveled in there.
17 Goes to the other shed and tries to pry the door
18 open. How do we know he is intending to commit a
19 crime in both of these sheds? Because the moment he
20 sees that camera, what does he do? He covers his
21 face. That's cognizance of guilt. That's a
22 recondensation that what he is doing is wrong, that
23 there's an intent to commit a crime. So I submit to
24 you that we've proven the elements of burglary.
25 We're also required to prove that he had two prior

1 convictions. We did that through the Clerk.

2 And what I'm gonna ask you to do is watch
3 the video. You can watch it as many times as you
4 want. Slow it down, look at it any way you want
5 'cause I'm not gonna tell you that it's Roy Moore.
6 I'm not say like Mr. Barr said, that's not him. I
7 want each of you to decide for yourself because
8 you're the people that are gonna decide; it's not
9 me. What I think is not important, and what
10 Mr. Barr thinks is not important. It's what each
11 and every one of you thinks this is important in
12 this case so just watch the video 'cause it's the
13 case. I mean, we can concede, I believe defense
14 concedes that the buildings are burglarized. The
15 only fact in issue is whether it's Mr. Moore. So
16 what I ask you to do, as you saw Mr. Moore walk up
17 today, you saw how he walks. You saw how he holds
18 his head. You saw his hair cut. Compare that to
19 the person you saw in that video.

20 Now I'm gonna take a detour in history.
21 And my girlfriend rolls her eyes every time I start
22 talking about history. I'm a history nut, studied
23 history in college. It'll be brief, but I believe
24 it's demonstrative or helpful in this case. When
25 the founding fathers were designing America, for

1 lack of a better term, they were writing up the
2 constitution. They looked at these philosophers
3 called the enlightenment philosophers. I can
4 already see some of your eyes going back in your
5 head. I promise you it has a payoff. There's this
6 fellow called Rousseau. Rousseau said there are
7 three pillars that hold up the government. If any
8 one of those pillars fall, the whole thing is
9 worthless, it comes crumbling down. They are life,
10 liberty, and property. So if the government can't
11 protect your life, it can't protect your liberty,
12 and it can't protect your property, it's not a
13 government worth having. And that's what we're here
14 today 'cause I know some of you thought when the
15 evidence went up there, why are we dealing with
16 this, why does the solicitor's office care about
17 someone's shed getting rifled through. It's because
18 it represents one of the very pillars that our
19 community and our government is based off of. If
20 the State can't protect a person and his property,
21 the government ain't worth having and that's what
22 we're here to do today, ladies and gentlemen.

23 We've met our burdens. We've shown you
24 the evidence. I'm gonna leave you with a saying.
25 There's an old saying that says a picture says a

1 thousand words. Well, I submit to you, y'all should
2 go back there and look at this picture 'cause it
3 only says one word, guilty.

4 THE COURT: Mr. Barr.

5 MR. BARR: May it please the Court,
6 Solicitor Anderson, ladies and gentlemen. You know,
7 we all in this day have respect for the rules of
8 law; but quite frankly, this founding fathers, the
9 founding fathers thought I was property. The issue
10 in this case is whether or not the prosecution has
11 proven Roy Moore guilty of second degree burglary
12 and attempted burglary beyond a reasonable doubt.

13 Now, there are a lot of things that I can
14 talk about in this case and I don't want to
15 oversimplify the case; but the simple fact of the
16 matter is, you've seen the video and you saw the
17 individual committing the offenses. You saw him in
18 the video. Now if you ask the judge, I'm sure he'll
19 let you see that video as many times as you want to;
20 but the issue in this case is whether or not this
21 man, Roy Moore, notwithstanding what he did at some
22 time in the past, whether or not he's guilty of the
23 offenses that he's charged with today. Now the
24 prosecution presented the homeowner, and what did
25 she testify to. She never saw, she said she saw the

1 person that broke in her house. And in this case,
2 even if she said it, you saw it as well. You saw
3 everything she saw.

4 His Honor is gonna charge you that in
5 order to find Roy Moore guilty you have to find the
6 person that you saw in the video was Roy Moore. Now
7 let's look at that. Now in addition to Mr. Brown
8 who didn't testify regarding the identity, he had
9 the investigating officer and he opined that that's
10 Roy Moore. Now, of course he knew Roy Moore from
11 before and even though His Honor is going to charge
12 you that the mere fact that Roy Moore had two prior
13 convictions, that does not prove and cannot be
14 considered as evidence against him as it relates to
15 whether or not he did this burglary. That only
16 matters as an element of the offense for which he's
17 now charged. The issue is still whether or not he
18 is proven guilty beyond a reasonable doubt.

19 Now the only other witness to testify —
20 and let me just, as aside, I talked briefly about it
21 in my opening statement, but His Honor will instruct
22 you that you are the sole judges of the credibility
23 of the witnesses that take this stand. That is, the
24 sole judge of the believability of a witness that
25 takes this stand. Now in a lot of instances, and

1 I've had a lot of trials, there are all kind of ways
2 that we use to show that a witness is not credible.
3 Sometimes you want to show that a witness is biased.
4 Don't expect a witness', -- especially a witness
5 like this man who testified that he's got 20, 23
6 years of experience as a law enforcement officer,
7 but with 24 or with 10 as an investigator, he would
8 have you believe that it was a thorough
9 investigation when he went to the investigation site
10 and did not even attempt to take a fingerprint,
11 didn't even attempt to take a fingerprint. Now what
12 kind of investigator came here, is gonna come to the
13 scene, and don't even try to take a fingerprint.
14 Now that had to be before he saw the video when he
15 claims that -- and he sat right here in this
16 courtroom and sat right here in this witness chair
17 and said, I believe that he's the man in the video.
18 Well, he may believe it, but does his belief 'cause
19 you to believe based on what you see and based on
20 what you know about the kind of person and how
21 thorough he is when it comes to an investigation.
22 It may very well leave you to conclude that, well,
23 he might just say anything. Well, you're looking at
24 the person in the video.

25 Now let's talk about the person in the

1 video. Roy Moore is a person probably not, if you
2 look at him closely, he's not quite as tall as that
3 person in the video. The man in the video is
4 somewhat kind of humped over a little bit. He's
5 probably a little bit thinner than Roy Moore. But
6 the most significant fact as it relates to the
7 identity of the person in the video compared to Roy
8 Moore, I believe, is the texture and the color of
9 his skin. The very first time I saw the video I
10 noticed that the person in the video appears to be a
11 much lighter individual. Now all black folks ain't
12 black. Very few of them are black. Brown tone.
13 But now this is, the man in the video compared to
14 Roy Moore, almost a Michael Jackson kind of bleached
15 look. Now, what's Roy Moore doing? He's gonna go
16 do like bleach his skin and I think I'll go down to
17 Harrelson Street and commit a video. No, no. You
18 look at the video yourself. You've seen it. His
19 Honor will instruct you that in order to find this
20 man guilty you must find beyond a reasonable doubt
21 that he's the man in the video.

22 Now, talk about this reasonable doubt, the
23 kind of doubt for which a person would hesitate to
24 act. Now when you go to your jury room and you
25 start your deliberation you might, some people

1 might, I don't know, you may, you may move to a
2 point where this officer is and say, yeah, that's
3 him. But then there's others of you that are much
4 more conscious and conspicuous when it comes to the
5 details of an identification, well you might very
6 say, listen, I'm just not sure, I'm just not sure.
7 Well, His Honor is gonna tell you that in the
8 beginning you may have differing views of the
9 evidence; but at the end of the day, whether or not
10 the prosecution has proven this identity, the answer
11 to the question of whether it's been proven beyond a
12 reasonable doubt you're gonna have to agree on. And
13 of course, you can agree, that's a different story.
14 But now whatever you come up with as it relates to
15 identification, understand that His Honor will
16 instruct you that identification is an element of
17 the offense, that with respect to what the
18 prosecution has proven or not proven and understand
19 that that burden remains on the prosecution
20 throughout the course of this trial. If at the end
21 of the day what you heard and what you've seen in
22 connection in conjunction with the law as His Honor
23 charge it to you, if you're not convinced beyond a
24 reasonable doubt -- in other words, if you're not
25 firmly convinced, firmly convinced, and if you think

1 that there's a real possibility that it's not him,
2 then His Honor is gonna tell you that you have to
3 find the defendant not guilty. If there is a doubt
4 for which you cannot give a good reason, that doubt
5 must be resolved on behalf of the defendant and you
6 must find him not guilty. That's our law. Now
7 that's some good law, the kind of law that Solicitor
8 Anderson was talking about that the founding fathers
9 actually envisioned at the time, at the time.

10 Again, I'm not gonna take up anymore of
11 your time. I want to thank you for being obedient
12 to the summons that you received to come and serve
13 on this jury. And I realize that for many of you,
14 with all that you see on TV these days as it relates
15 to trials or, this is not something for television.
16 It's not injected by social media and it's not
17 driven by a purpose and a design to entertain you.
18 This is real. This is very real. It's very real.
19 I hope that at least something that's come out of
20 this experience for you, whereby, as a citizen you
21 will have learned something whereby you will
22 appreciate to some degree more the intricacies of
23 our judicial system. It's the best system in the
24 world, and this day you represent an important part
25 of it.

1 On behalf of Roy Moore, on behalf of this
2 Williamsburg County criminal justice system, and on
3 behalf of even the State of South Carolina, I thank
4 you for your service. Thank you.

5 THE COURT: Ms. Holliday, I'm gonna
6 appoint you to be foreperson. You won't have any
7 greater vote than anybody else. You just simply
8 preside over deliberation and sign the verdict form,
9 okay.

10 Okay, ladies and gentlemen, you have heard
11 all the evidence in this case and you've heard the
12 closing arguments of the attorneys and now I'm going
13 to tell you the law that you're to apply in this
14 case. And under our Constitution and Code of laws,
15 you, the jury and only the jury, can make a
16 determination of what the facts are in this case. I
17 am not allowed to have an opinion about the facts so
18 if I've said anything or done anything throughout
19 this trial, if you think I have an opinion about the
20 facts, you're to disregard that 'cause you and only
21 you can have an opinion about the facts. With the
22 same Constitution and the same Code of Laws that
23 makes you the exclusive judge of the facts, makes me
24 the exclusive judge of the law so if you have an
25 opinion as to what you think the law is or what the

1 law should be and it differs from what I now tell
2 you the law is, you're to disregard your opinion and
3 apply the law exactly as I've given it to you.

4 Now the fact that this defendant was
5 arrested, charged, and indicted in this case is not
6 evidence in this case and cannot be considered by
7 you as evidence of guilt in this case; nor does it
8 create any presumption or inference of guilt. The
9 indictment is simply a formal written instrument
10 which contains the charges against this defendant
11 and serves as a formal document to get this case
12 through the process through the court system.

13 Now the defendant has entered a plea of
14 not guilty to this indictment and that casts the
15 burden upon the State of South Carolina to prove
16 each and every element of this indictment to you
17 beyond a reasonable doubt. A person charged with
18 committing a criminal offense in South Carolina is
19 never required to prove himself or herself innocent.
20 And the fact that this defendant did not testify in
21 this case cannot be considered in any way by you.
22 He has a constitutional right to remain silent, and
23 the fact that he exercises that right cannot be
24 considered by you as any kind of evidence of guilt
25 or anything in this case. As a matter of fact, you

1 can't even discuss that in the jury room. The fact
2 that he's exercised that right, you should not
3 consider in any way.

4 It is an important rule of law in this
5 country that a defendant in a criminal trial will
6 always be presumed innocent to the charges and the
7 crime for which he has been charged until proof has
8 been offered by the State that satisfies you of that
9 guilt beyond a reasonable doubt. The presumption of
10 innocence is not a mere legal theory. It is not
11 just a legal phrase. It is a substantial
12 constitutional right which every defendant is
13 entitled to. Presumption of innocence accompanies
14 the defendant from the time he's charged, throughout
15 the trial, until you reach a verdict of guilt based
16 upon evidence that satisfies you of that guilt
17 beyond a reasonable doubt.

18 A reasonable doubt is a doubt which makes
19 an honest, sincere, conscientious juror in search of
20 the truth to hesitate to act. Proof beyond a
21 reasonable doubt must therefore be proof of such a
22 convincing character that a reasonable person would
23 not hesitate to rely upon it and act upon it in the
24 most important of his or her own affairs. Proof
25 beyond a reasonable doubt can also be described of

1 proof that leaves you firmly convinced of the
2 defendant's guilt.

3 Now, ladies and gentlemen, there are very
4 few things in this world that we know with absolute
5 certainty, and in a criminal case the law does not
6 require proof that overcomes every possible doubt.
7 If based on your consideration of the evidence
8 you're firmly convinced the defendant is guilty of
9 the crime charged, you must find him guilty. If on
10 the other hand, you think there's a real possibility
11 he is not guilty, you must give him the benefit of
12 that doubt and find him not guilty.

13 Now in determining what the facts are in a
14 case you must necessarily pass upon the credibility,
15 which simply means the believability of the
16 witnesses and the value or weight to be given to
17 their testimony. You, alone, must decide the force
18 and effect and truth of that testimony. In making
19 these decisions there are many things you should and
20 could take into consideration. The manner of the
21 witness on the stand sometimes referred to as the
22 demeanor of the witness. Was the witness forthright
23 or hesitant. Was the witness' testimony consistent,
24 or did it contain discrepancies. What was the
25 ability of the witness to know the facts about which

1 he or she testified. Did the witness have a cause
2 or reason to be biased or prejudiced in favor of the
3 testimony he or she gave. Was the testimony of a
4 witness corroborated, made stronger by other
5 testimony or evidence, or was it made weaker or
6 impeached by such other testimony or evidence.

7 As a juror you have a right to believe a
8 small portion of a witness' testimony and disregard
9 the larger, or vice versa. You may believe all of a
10 witness' testimony or none. You may believe the
11 testimony of a single witness against that of many
12 or the other way around.

13 Now, ladies and gentlemen, in a criminal
14 case there are two types of evidence that are
15 generally presented during the trial: Direct
16 evidence and circumstantial. Direct evidence
17 directly proves existence of fact and does not
18 require deduction. Circumstantial evidence is a
19 proof of chain of facts and circumstances indicating
20 the existence of a fact. Crimes may be proven by
21 circumstantial evidence, and the law makes no
22 distinction between the weight or value to be given
23 to either direct or circumstantial evidence.
24 However, to the extent the State relies on
25 circumstantial evidence, all the circumstances must

1 be consistent with each other and when taken
2 together point conclusively to the guilt of the
3 accused beyond a reasonable doubt. If these
4 circumstances merely portray the defendant's
5 behavior as suspicious, the proof fails. The State
6 has the burden of proving the defendant guilty
7 beyond a reasonable doubt and that rests, that
8 burden rests upon the State regardless of whether
9 the State relies on direct evidence, circumstantial
10 evidence, or a combination of the two.

11 Now criminal intent is a necessary element
12 of each crime that must be proven to you beyond a
13 reasonable doubt. Criminal intent is always a
14 matter that must be determined by the jury from the
15 circumstances surrounding the situation. There's no
16 way to prove intent to a mathematical certainty.
17 There's no way medical science can dissect a
18 person's brain and determine what he or she had in
19 mind so the law states criminal intent may be
20 inferred from the circumstances shown to have
21 existed both before and after the fact. Whether or
22 not an element required intent was present is based
23 on the circumstances surrounding the acts.

24 Criminal intent is a state of mind that
25 operates jointly with an act or omission in the

1 commission of a crime. Criminal intent is always,
2 or is a mental state of conscious wrongdoing so it's
3 up to you, the jury, to determine what the defendant
4 intended to do based on the circumstances shown to
5 exist at that time. And I tell you, the State must
6 prove criminal intent beyond a reasonable doubt just
7 as the State must prove each element beyond a
8 reasonable doubt.

9 Now the defendant is charged with the
10 crime of burglary in the second degree. The State
11 must prove beyond a reasonable doubt that the
12 defendant entered a building without consent with
13 the intent to commit a crime in the building. A
14 building is any structure, vehicle, water craft, or
15 aircraft, or where people assemble for the purpose
16 of business, government, education, religion,
17 entertainment, public transportation, public use, or
18 where goods are kept or stored.

19 And finally, the State must prove beyond a
20 reasonable doubt one of two elements. One was had
21 the defendant had two prior or more convictions for
22 burglary or housebreaking. Evidence of prior
23 offense is committed by the defendant was not
24 offered to prove the defendant has a bad character
25 or to prove that defendant committed the burglary in

1 this occasion. The prior convictions may be
2 considered by you only for the purpose of
3 determining whether or not it satisfies the elements
4 of the offense that makes it burglary in the second
5 degree if you entered a building or without consent
6 to commit a crime therein or if you have two or
7 more, two or more prior convictions for burglary or
8 housebreaking.

9 Before you can even consider the evidence
10 of defendant's prior burglaries or housebreaking you
11 must first find that the State has proven beyond a
12 reasonable doubt that burglary, a burglary had been
13 committed by the defendant. If you find beyond a
14 reasonable doubt that the burglary was committed,
15 then you may consider the evidence of the prior
16 convictions and the evidence two or more occasions
17 to make it burglary in the second degree. If you do
18 not find beyond a reasonable doubt defendant
19 committed the alleged prior offenses, then you
20 cannot return a verdict in the second degree.

21 The other element that the State has to
22 prove, one or the other or both, that the defendant
23 entered or remained in a building in the nighttime;
24 and night time is the period between sunset and sun
25 rise which there is not sufficient daylight to

1 recognize a person's face except by artificial light
2 or moon light.

3 Now the defendant is also charged with the
4 crime of attempted burglary in the second degree.
5 An attempt is an effort to accomplish a crime which
6 does not succeed. An attempt includes a specific
7 intent to do a particular criminal act along with a
8 act falling short of the act intended. The State
9 must prove more than mere preparation and intent.
10 The State must prove some overt act committed in an
11 effort to commit the crime. Intent means intending
12 result which actually occurred, not accidentally or
13 involuntary. Intent may be shown by acts and
14 conduct of the defendant which may naturally be
15 inferred from the circumstances shown to existed.

16 Now, ladies and gentlemen, you're not
17 partisans or advocates for the State of South
18 Carolina or this defendant. You do not serve as
19 jurors to reward your friends or punish your
20 enemies. Obviously that system of justice wouldn't
21 be not, would not be tolerated. You have been
22 selected by both the State and this Defendant to be
23 fair and impartial jurors, and it is your duty by
24 your joint deliberation to determine the facts in
25 this case giving to the defendant the benefit of

1 every reasonable doubt on each and every issue. And
2 then to the facts that you determine to be true,
3 you're to apply the law that I've given you and
4 reach a verdict in this case.

5 Now I've had my law clerk draw up possible
6 verdict form, and it's simply the caption of the
7 case: State of South Carolina, County of
8 Williamsburg, State of South Carolina versus Roy
9 Donell Moore. And the possible verdicts in this
10 case is: As to the charge of burglary second degree
11 we unanimous: We, the jury, unanimously find the
12 defendant guilty or not guilty. It is -- concerning
13 the charge of attempted burglary in the second
14 degree, we, the jury, find the defendant guilty or
15 not guilty. The order I put these in you're to draw
16 no conclusions from whatsoever. If you find that
17 the State has proved these elements beyond a
18 reasonable doubt, you find the defendant guilty. If
19 you find, think the State has failed to prove these
20 elements beyond a reasonable doubt to you, you can
21 find the defendant not guilty. Now this verdict
22 must be unanimous. All twelve of you must decide
23 guilt or innocence in this case.

24 Now Madam Foreman, when you have reached a
25 unanimous verdict on this form, you check the

1 appropriate blocks, sign your name and date it, and
2 knock on the door and tell the plaintiff y'all
3 reached a verdict and we will bring you back out and
4 receive that verdict. Now if at any time during
5 your deliberations one of you need to be excused, if
6 you need go to the restroom or take a break, you're
7 to stop talking about the case 'cause you can only
8 talk about it when all twelve of you are in the room
9 together. And when you've reached a verdict you let
10 us know.

11 I have to -- I'm gonna send you to the
12 jury room 'cause I've got to confer with these
13 attorneys to be sure I've covered everything. If I
14 have missed something or if I need to explain
15 something further to you, I will bring you back out
16 and charge you further. If I've covered everything
17 to their satisfaction, I will send the evidence and
18 this verdict form to the jury room with you. When
19 you receive this form that will be your indication
20 to begin your deliberations. And like I say, when
21 you reach a verdict knock on the door.

22 Now my foreperson, or my alternate,
23 Mr. Pressley, which one are you? You need to stay
24 with me 'cause I only needed you if somebody got
25 sick. Looks like everybody is going to make it so

1 you had listen to this, but you won't get to decide
2 so. If the rest of you will get to go to the jury
3 room, I'll talk to the lawyers and either I'll send
4 this back and we start or I'll bring you back out,
5 okay?

6 (WHEREUPON, the jury was removed from the
7 courtroom at 11:43 a.m.)

8 THE COURT: Any exceptions, deletions by
9 the State?

10 MR. ANDERSON: Nothing from the State,
11 Your Honor.

12 THE COURT: From Defense?

13 MR. BARR: I didn't hear identity.

14 THE COURT: I didn't charge identity.
15 Based on the testimony, you know, there wasn't a
16 show up. It wasn't a, it wasn't a situation they
17 know -- I think the whole charge was what's on the
18 video.

19 MR. BARR: Well, I would think that, of
20 course, there's no question that identity is an
21 element in the offense and I would respectfully
22 request a charge on identity.

23 THE COURT: Okay, bring them back out.

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 11:45 a.m., and

1 the following proceedings commenced in
2 open court.)

3 THE COURT: Okay. Ladies and gentlemen,
4 I'm sorry, I left off one charge that I needed to
5 give y'all. And this is a charge under our law of
6 identity. Identity is an issue in this case, and
7 identity of, whether this defendant, in fact,
8 committed this crime. The State has the burden of
9 proving identity beyond a reasonable doubt. You
10 must be satisfied beyond a reasonable doubt of the
11 actual, of the identification of the defendant
12 before you can convict the defendant in this case.
13 Identification testimony is an expression or belief
14 or impression by a witness. You must determine the
15 accuracy of the identification of the defendant.
16 You must consider the believability of each
17 identification, identifying witness in this case, in
18 the same way you do any other witness. You may
19 consider whether the witness had an adequate
20 opportunity to observe the defendant at the time of
21 the offense or sometime thereafter. This will be
22 affected by how long, how short a time was
23 available, how far away, how close the defendant
24 was, the lighting conditions, or whether the witness
25 had a chance to see or know the person in the past.

1 Once again, I instruct you, the burden of
2 proof is on the State to prove identity beyond a
3 reasonable doubt. And after examining the testimony
4 you must determine the truthfulness of the identity
5 in this case, and the State must prove that beyond a
6 reasonable doubt.

7 I think I've covered everything. Now I'll
8 send you back to the jury room. I'll send the
9 evidence back with you. Do they have a way to play
10 that disk in the jury room?

11 MR. ANDERSON: Your Honor, typically what
12 we do is bring them back in and watch it on this or
13 ---

14 THE COURT: Okay. If for some reason when
15 y'all get back there and start talking about this
16 case, if you want to see that video again I'll have
17 to bring you back out and play it, okay. So if
18 you'd just write a note to, if y'all decide you want
19 to see it again, if you will just write a note to
20 the bailiff and I'll bring you back out and I'll
21 have them play it back for you again, okay. I'm
22 sorry we don't have the capability of playing it to
23 you in the jury room. Okay, if you'll go to the
24 jury room I'll send the paperwork back.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 11:49 a.m.)

2 THE COURT: Okay, gentlemen, if y'all will
3 get with the court reporter and get whatever
4 evidence goes back. Now, as far as the, since they
5 have no way to play the video I don't see any reason
6 to play it back. As a matter of fact, it'd probably
7 be a good idea for you to leave it in here and get
8 it brought up in case they want to see it we won't
9 wait for you to set it all up, okay.

10 (Alternate was excused and jury began deliberations
11 at 11:52 a.m.)

12 THE COURT: They want to see the video.
13 All right, bring them in.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 12:00 p.m., and
16 the following proceedings commenced in
17 open court.)

18 THE COURT: All right, start it going,
19 Solicitor.

20 JUROR: They're dark.

21 THE COURT: You can move on around there.
22 You can come over there, go stand in front of the
23 big screen. Do whatever is easiest for y'all to
24 see. Everybody where you can see?

25 All right, start it, Solicitor.

1 (Video was played for the jury.)

2 THE FORELADY: Would you start at the
3 beginning?

4 JUROR: Can you freeze it? That's when he
5 turned around.

6 THE COURT: Can you stop it? When he
7 turns around?

8 JUROR: Right when he turns around, when
9 he looks up.

10 THE COURT: Okay.

11 (Video played.)

12 JUROR: 248, 248. He's going to go around
13 and come back. Right before he covers his face.

14 (Video played.)

15 JUROR: Right there. Then he'll move
16 again.

17 THE FORELADY: Y'all want to get up here?

18 THE COURT: Have y'all seen enough?

19 MR. ANDERSON: That one better?

20 THE FORELADY: Can you back it up?

21 THE COURT: Can you back it up?

22 THE FOREMAN: Does anybody want to see it
23 again, the back part, or?

24 (Jury confers.)

25 THE COURT: You have a still photo, don't

1 you, in evidence? Okay.

2 Anyone want to watch anymore?

3 THE FORELADY: Y'all through?

4 (Jury confers.)

5 THE COURT: Okay, if y'all don't want to
6 watch it, go back to the jury room and let us know
7 when you've reached a verdict.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 12:11 p.m.)

10 THE COURT: I got a question from the
11 jury. How long has he been walking with a cane, I
12 guess. Transcript of the officer's testimony. I
13 guess they want me to play back what he said about
14 the cane? He wants to know how long -- of course, I
15 can't tell them how long he's been walking with a
16 cane.

17 MR. BARR: Well, that's not in evidence.

18 THE COURT: That's not in evidence. I can
19 bring them back out and tell them I can't answer
20 that question, but I can play the officer's
21 testimony back. I guess, I don't know whether they
22 want the whole thing or just your cross-examination
23 with the cane.

24 MR. BARR: See, Judge, I cross-examined
25 him, but I didn't ---

1 THE COURT: I know you didn't.

2 MR. BARR: I stayed away from ---

3 THE COURT: I understand that, but that
4 was brought up, but they want -- the answer to that
5 question is not in the testimony.

6 MR. BARR: It's not in evidence is what
7 ---

8 THE COURT: You're right. And I can tell
9 them that the answer to that is not in evidence. If
10 they want to hear it I can play that back for them.
11 How long would it take you to do that, Frances?

12 THE COURT REPORTER: Not long.

13 THE COURT: All right, bring them in.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 12:28 p.m., and
16 the following proceedings commenced in
17 open court.)

18 THE COURT: Madam Foreman, I received a
19 note from y'all and with the question, how long has
20 he been walking with a cane?

21 THE FORELADY: Somebody wanted to know.

22 THE COURT: Okay. And I can't answer that
23 'cause it's not in evidence. I can't re-open the
24 case and add more evidence so that fact was not
25 presented to y'all in evidence. There was a

1 discussion about the cane on cross-examination with
2 the officer, and if you want us to play that
3 testimony back I can. But the answer to that
4 question is not, did not come into evidence.

5 THE FOREMAN: I think they wanted to hear
6 Mr. Monteith's testimony.

7 THE COURT: You want all of the testimony?

8 THE FORELADY: No, I don't think so.

9 THE COURT: Or just the portion on
10 cross-examination?

11 THE FORELADY: Well, there was also
12 somebody had brought up that he had seen him
13 afterwards. I didn't get that from ---

14 THE COURT: So you want me just to play
15 the whole testimony?

16 THE FORELADY: That's probably best and
17 then a couple of them wanted to know how far he
18 lives from where this thing was.

19 THE COURT: That's not in evidence either
20 so I can't, I mean, I can only answer questions of
21 law. I can't answer questions of fact. The
22 evidence has been presented; and if it's not in
23 evidence, I can't re-open the case and put up
24 additional in so you got to decide it based on the
25 facts that are in. Now if you had a legal question

1 I could re-charge you on the law and answer the
2 legal question, but I can't answer factual questions
3 but you got to decide with what's in the record,
4 okay.

5 If you -- can you play me back the
6 officer's testimony?

7 We'll take a break while she's getting
8 that up.

9 (WHEREUPON, the jury was removed from the
10 courtroom and a recess was taken from the
11 proceedings.)

12 THE COURT: All right, bring the jury.

13 (WHEREUPON, the jury was returned to the
14 courtroom and the following
15 proceedings commenced in open court.)

16 THE COURT: All right, whenever you're
17 ready.

18 (Testimony of Cheyenne Monteith was played back.)

19 THE COURT: Okay, return to the jury room
20 and let me know.

21 (WHEREUPON, the jury was removed from the
22 courtroom.

23 THE COURT: Okay. Do y'all have any
24 exceptions? Anything as far as what was played?

25 MR. ANDERSON: Nothing from the State,

1 Your Honor.

2 MR. BARR: No, sir, Judge.

3 THE COURT: So I assume y'all heard it
4 all, assume everything that was said on direct and
5 cross got played? Okay.

6 MR. ANDERSON: Yes, Your Honor.

7 THE COURT: All right. We'll sit at ease
8 'til we hear something from them.

9 (WHEREUPON, a recess was taken from the
10 proceedings.)

11 THE COURT: One of the jurors wants to go
12 check her cell phone. She's a single mother, check
13 on her children and her phone. I don't have any
14 problem with her checking it. I don't want her to
15 call anybody and deliberate.

16 THE BAILIFF: Can she use my phone?

17 THE COURT: She needs to call.

18 THE BAILIFF: I'll let her use mine.

19 THE COURT: I assume she's not calling to
20 get legal advice about the jury. Y'all got any
21 problem with her calling and checking on her
22 children?

23 MR. ANDERSON: No.

24 (Court's Exhibits Nos. 1 and 2 were
25 marked and made a part of the record.)

1 THE COURT: Okay, if you will bring them
2 in.

3 (WHEREUPON, the jury was returned to the
4 courtroom and the following
5 proceedings commenced in open court.)

6 THE COURT: Madam Forelady, I understand
7 y'all reached a verdict?

8 THE FORELADY: Yes, sir.

9 THE COURT: I've been passed up the
10 verdict. Is it unanimous?

11 THE FOREMAN: Yes, sir.

12 THE COURT: All twelve of you agree, okay.
13 Madam Clerk, you may publish the verdict.

14 THE CLERK: In the case of State of South
15 Carolina versus Roy Donell Moore, case number
16 2018-GS-45-41. As to the charge of burglary in the
17 second degree, we, the jury, unanimously find the
18 defendant guilty. As to the charge of attempted
19 burglary in the second degree, we, the jury,
20 unanimously find the defendant guilty. Signed by
21 the foreperson Debra Holliday, dated 2/27/18.

22 THE COURT: Anything from State before I
23 dismiss the jury?

24 MR. ANDERSON: Nothing from the State.

25 THE COURT: Anything from Defense?

1 MR. BARR: Poll, Judge.

2 THE COURT: All right, Madam Clerk, if you
3 will poll the jury.

4 THE CLERK: When I call your name would
5 you please stand.

6 Juror number 53, Telisha Fulton. Is this
7 your verdict, is it still your verdict?

8 JUROR FULTON: Yes.

9 THE CLERK: Juror number 92, Monique
10 Matthews. Is this your verdict, is it still your
11 verdict?

12 JUROR MATTHEWS: Yes.

13 THE COURT: Okay. Jury number 11, Valerie
14 Blakeley. Is this your verdict, is it still your
15 verdict?

16 JUROR BLAKELEY: Yes.

17 THE CLERK: Juror number 180, Ronnie
18 Tisdale. Is this your verdict, is it still your
19 verdict?

20 JUROR TISDALE: Yes.

21 THE CLERK: Okay. Juror number 196, Moses
22 Woods. Is this your verdict, is it still your
23 verdict?

24 JUROR WOODS: Yeah.

25 THE CLERK: Juror number 38, Sheena

1 Cooper. Is this your verdict, is it still your
2 verdict?

3 JUROR COOPER: Yes.

4 THE CLERK: Juror number 164, Sharon
5 Singletary. Is this your verdict, is it still your
6 verdict?

7 JUROR SINGLETARY: Yes.

8 THE CLERK: Juror number 67, Debra
9 Holliday. Is this your verdict, is it still your
10 verdict?

11 JUROR HOLLIDAY: Yes.

12 THE CLERK: Okay. Juror number 171, Tasia
13 Stackhouse. Is this your verdict, is it still your
14 verdict?

15 JUROR STACKHOUSE: Yes.

16 THE CLERK: Juror number 54, Nolan Gamble.
17 Is this your verdict, is it still your verdict?

18 JUROR GAMBLE: Yes.

19 THE CLERK: Juror number 36, Brandon
20 Cooper. Is this your verdict, is it still your
21 verdict?

22 JUROR COOPER: Yes.

23 THE CLERK: Juror number 104, Emily
24 McDonald. Is this your verdict, is it still your
25 verdict?

1 JUROR MCDONALD: Yes.

2 THE CLERK: Okay. Judge, the jury has
3 been polled and their verdict still stands.

4 THE COURT: Thank you. Ladies and
5 gentlemen, I appreciate your serving in this case.
6 I've been telling you you couldn't talk about this
7 case. Now you can talk anybody it with anybody you
8 want to. You don't have to if you don't want to.

9 All right, ladies and gentlemen, if you'll
10 call the number back after six it'll tell you
11 whether to come back tomorrow or call back tomorrow.
12 You have a nice day. Thank you.

13 (Jury was dismissed.)

14 THE COURT: Solicitor, you got the
15 sentencing sheet?

16 MR. ANDERSON: Yes, Your Honor.

17 MR. BARR: Post-trial motions?

18 MR. ANDERSON: Mr. Barr has some
19 post-trial motions.

20 THE COURT: Okay.

21 MR. BARR: Judge, we would at this time
22 respectfully move for judgment in arrest of the
23 verdict based on the previous, all previous grounds
24 that the Defense has made during the course of the
25 trial and would specifically as it relates to the

1 jury verdict being against the overwhelming weight
2 of the evidence we would move for judgment and
3 arrested verdict.

4 THE COURT: Okay, thank you, sir. And
5 I'll respectfully deny your motion. I think there's
6 sufficient evidence in the record that the jury can
7 make a determination. This case, as you know,
8 boiled down to identification and based on the
9 evidence presented to them, they found beyond a
10 reasonable doubt that that was, in fact, your client
11 in the video so I'll respectfully deny your motion.

12 Tell me a little bit about his record,
13 Solicitor.

14 MR. ANDERSON: Your Honor, Mr. Moore's
15 record goes all the way back to 1991. He pled
16 guilty to possession of a controlled substance in
17 1990 and '91 to a loitering charge there as well.
18 And here, 1996, also pled guilty to a burglary
19 offense in Florida in 1996. He also has a grand
20 larceny in '96, a trespassing, a Florida burglary in
21 '03. Then he has a breaking into auto in 2003 as
22 well as an FTC fraud in 2007, receiving stolen
23 goods; 2010, a grand larceny; 2013, unlawful
24 carrying of a pistol, and then two burglaries that
25 were put into evidence in this case, a burglary

1 thirds in 2013.

2 THE COURT: Okay. Anything else the State
3 want to tell me?

4 MR. ANDERSON: We just ask the Court to
5 rely on Mr. Moore's record.

6 THE COURT: All right. Mr. Barr, you want
7 to tell me anything?

8 MR. BARR: Well, Judge, Mr. Moore's record
9 is certainly a patch of some previous misconduct;
10 but clearly he has, he has managed to accumulate
11 these statutory burglaries on his record. He has
12 since this last burglary, I think he has now gotten
13 himself involved in the church. In fact, he's
14 actually a deacon now and he, from what I understand
15 he, even though he was at some point prone to get
16 involved in property offenses, he's turned that
17 around and apparently has now decided to live a life
18 where he finds himself a changed man. And Judge, I
19 would certainly invite the Court to question him and
20 talk to him in terms of what his lifestyle is now.
21 He goes to church every Sunday. This business of
22 taking things that are not his, he's not involved in
23 that anymore.

24 And Your Honor, we would certainly ask the
25 Court to show mercy with respect to he's got a wife

1 and a family. He works now, and he's got his own
2 property now that he takes care of. And even though
3 he, as I said, he's had a rather checkered past with
4 some -- but he's never, he's never been involved in
5 anything where he has committed any serious criminal
6 offenses.

7 And Judge, I'm looking, I looked at the
8 statute and I think that the statute in and of
9 itself is equipped with some rather severe
10 consequences as relates to parole eligibility. It
11 specifically spells out how much time he's gonna
12 have to do in order to become eligible for parole,
13 and Your Honor, we would certainly ask the Court to
14 take this into consideration when it comes to
15 punishment for Mr. Moore.

16 THE COURT: Mr. Solicitor, on the attempt
17 you've got the same code section.

18 MR. ANDERSON: That is incorrect.

19 THE COURT: I know. You need to do these
20 sheets.

21 MR. ANDERSON: I can amend it. I'll take
22 it.

23 THE COURT: Okay.

24 MR. ANDERSON: It will take just five
25 minutes to print it off.

1 THE COURT: Okay.

2 (Pause.)

3 MR. ANDERSON: Your Honor, I apologize for
4 the delay. It's not printing off. I'll have to
5 manually do the sentencing sheet.

6 (Pause.)

7 MR. ANDERSON: Your Honor, may we
8 approach.

9 (WHEREUPON, counsel approached the
10 Bench for an off-the-record discussion.)

11 THE COURT: Anything else you want to tell
12 me, Mr. Barr, Solicitor?

13 MR. ANDERSON: Nothing from the State,
14 Your Honor.

15 THE COURT: The two burglaries that were
16 introduced into evidence, when did they occur?

17 MR. ANDERSON: I think it was two
18 thousand -- I have the sheet right over here.

19 MR. BARR: 5/16/13, and December 16th of
20 2013.

21 THE COURT: Okay, and what was the
22 sentence on those?

23 MR. ANDERSON: Judge Newman gave him four
24 years.

25 THE COURT: Okay. Were those pleas?

1 MR. ANDERSON: One was guilty at trial.

2 THE COURT: All right, anything else you
3 want to tell me?

4 THE DEFENDANT: Yes, sir, Your Honor. I
5 would just like to address the Court since they, for
6 myself, for my behalf. Yes, I have a record. And
7 at that time I had a drug problem, a very bad drug
8 problem, and although I know that ignorance is no
9 excuse for the law and it took me a while to get
10 myself together because, I mean, I transitioned from
11 Florida here to try and get myself together and come
12 here and get back involved in a drug life. But
13 after that two thousand -- when I went in 2013 I
14 went to ADT or ATU program, something that they had,
15 and it helped me to change my life around. I got
16 out and came out and I was doing good, and I was in
17 a head-on collision coming from Wellmans when I was
18 working at Wellmans, in a head-on collision. My
19 sister-in-law got killed. Me and my wife was broke
20 up bad and they was giving me drugs and painkillers
21 and stuff like that, and I ended up starting back to
22 using drugs again and working myself off. But since
23 I got out in 2013, as Mr. Barr said, when I started
24 going back out I've got myself involved in church.
25 I'm in the leadership of a pastor. I'm a deacon in

1 the church. I also started going to school which
2 Mr. Barr has a copy. I went to Grand Canyon
3 University. I have received a degree in business
4 management, business administration. I've changed
5 my life around. I also become a man today that
6 realize that through it all which I've never been a
7 violent person, it's just the drugs had control of
8 my life. If you look at my record, everything on my
9 record is mostly sheds, dumb stuff, gas cans, simple
10 stuff like that, never anything to harm anybody in
11 my mind not realizing just a simple gas can could
12 have cause somebody come out and then could've end
13 up hurting me or I could've end up hurting them
14 trying to get away; but that drug life had me
15 blinded and I couldn't understand, I couldn't
16 realize those things. Today I'm a man that's
17 changed, has turned my life around, and accept
18 responsibilities for my actions, accept
19 responsibilities, and I'm asking the Court to look
20 at me, and as I say, Mr. Barr now has a copy of my
21 degree in the file right now. I have changed my
22 life around. I took my rightful place in society.
23 I have a wife, a daughter, beautiful home, land that
24 I own, vehicles and everything. And I'm asking the
25 Courts just to be lenient with me, if possible, as

1 possible, and as I go and pay my debt to society.
2 Amen.

3 THE COURT: Okay, thank you. All right,
4 on the burglary second, I've taken into
5 consideration what you're telling me; but based on
6 your record the sentence is seven years and on the
7 attempted burglary seven years to run concurrent.
8 They run concurrent with each other. When you get
9 back out this time I hope you won't give law
10 enforcement trouble around here 'cause if I, they
11 catch you again now, I'm gonna max you.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And this is, you got a strike
14 against you. You understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay.

17

18 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

19

20

21

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 15th day of July, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Williamsburg

VS.

Roy Donell Moore

AKA:

Race: 2 Sex: M Age: 46

DOB: SS#:

Address: Ginger Lane

City, State, Zip: Kingstree, SC 29556

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Burglary in the third degreein violation of § 16-11-313 of the S.C. Code of Laws, bearing CDR Code # 0427☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kimberly V. Barr

8443

Barr, Kimberly V

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 4 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

INDICTMENT/CASE#: 2012-GS-45-0183

A/W#: M170849

Date of Offense: 6/4/2012

S.C. Code § : 16-11-0313

CDR Code #: 0427

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

_____ days/hours Public Service Employment

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: _____

A CERTIFIED TRUE COPY

LARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY, SC☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2143

5/16/13

WITNESSES

Officer Ron Dozier
Kingstree Police Department

DOCKET NO. 2012-GS-45-0183

The State of South Carolina
County of WILLIAMSBURG



COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE

vs.

ROY DONELL MOORE

A CERTIFIED TRUE COPY
Sharon W. Staggers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY, SC

ARREST WARRANT NUMBER

M-170849

Indictment for

BURGLARY IN THE THIRD DEGREE

ACTION OF GRAND JURY

TRUE BILL

Date 7/26/12

M. J. Moore
Foreperson of Grand Jury
Date:

Ernest A. Finney III

VERDICT

ERNEST A. FINNEY, III, SOLICITOR

12 JUL 26 PM 12:26
CLERK OF COURT
WILLIAMSBURG COUNTY, SC

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA

COUNTY OF 122 Williamsburg
STATE VS.
Roy Donell Moore

AKA:
Race: 2 Sex: M Age: 46
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED] Dew Drop Lane
City, State, Zip: Kingstree, SC 29556
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Burglary in the 3rd Degree

in violation of § 16-11-313 of the S.C. Code of Laws, bearing CDR Code # 0427
☒ 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) 4 175
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. concurrent w/ current

ATTEST: [Signature] 76316 [Signature] 76277
Barr, Kimberly V SC Bar# Defendant Attorney for Defendant SC Bar# credit for time in SCD

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 4 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: May 16, 2013
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (291 days credit)
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

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

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Margaret Sullivan

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-45-0282

A/W#: M170653

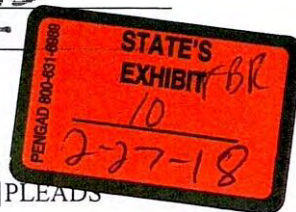
Date of Offense: 7/9/2011

S.C. Code § : 16-11-0312(B) 0913

CDR Code #: 0086 0427

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS



PTUP

_____ days/hours Public Service Employment

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: _____

A CERTIFIED TRUE COPY

[Signature]
SHARON W. STAGGERS

CLERK OF COURT

☐ Appointed Public Defender other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: _____

Sentence Date: December 16, 2013

[Signature]
2127

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
Burglary in the Second Degree(Violent)

At a Court of General Sessions, convened on December 8, 2011 the Grand
 Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE

The defendant, Roy D. Moore, did in Williamsburg County, South Carolina on or about July 9, 2011 enter the building of the victim, Richard Williamson, during the nighttime, without consent, and with the intent to commit a crime therein, all in violation of §16-11-312 of the South Carolina Code of Laws, as amended.



FILED
 11 DEC -8 PM 1:00
 CARYLYN F. WILLIAMS
 CLERK OF COURT
 KINGSTREE, S.C.

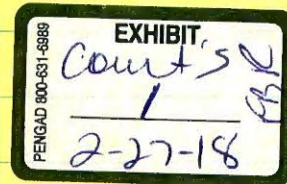
Against the peace and dignity of the State, and contrary to the statute in such
 case made and provided.

Solicitor

Ernest A. Fin...

How long has been
walking on a cane?

transcript of Officer
Monteith's testimony



~~Did~~

Can a juror go check
her cellphone?

Single mother needs
to check her phone.



FORM 5

STATE OF SOUTH CAROLINA)

2019-CP-45-205

IN THE COURT OF COMMON PLEAS

COUNTY OF Williamsburg)

Full name and prison number (if any) of Applicant.)

Roy Donnell Moore)
v. 294950)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland R.E., Columbia SC.
2. Name and location of Court which imposed sentence Williamsburg County
3. Name(s) of co-defendant(s) (if any) N/A 125 W. Main St Kingstree SC. 29556
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-65-45-0041 - Attempted Burglary 2nd
 - (b) 2018-65-45-0041 - Burglary (Violent) - 2nd
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2/27-18 7 years Both counts
 - (b) N/A

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
N/A
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Didn't HAVE knowledge OF How The court's
- (b) worked And Had NO Paper work AS to
- (c) my Case, letter's Attach to Show I Asked
- haver for Paper work.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: 1. The Judge STOP doing sentencing
And state'd that they Had
wrong 2 code's
No court on 2-22-18 for indictment
to be true Bill IN Williamsburg County

- lawyer should have notice that
 (a) 2. I was indicted on 16-11-0313(B) And
 (b) sentenced on 16-11-0312(B)
 (c) wrong code

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) The Court Minus As well As Indictment
 (b) And OR sentencing sheet's
 (c)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(c) the disposition thereof:

- i. N/A
 ii. N/A
 iii. N/A

iv.

N/A

(d) the date of each such disposition:

i.

N/A

ii.

N/A

iii.

N/A

iv.

N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

N/A

ii.

N/A

iii.

N/A

iv.

N/A

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

N/A

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

(a) which grounds have been presented:

i.

N/A

ii.

N/A

iii.

N/A

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

i.

N/A

ii.

N/A

iii.

N/A

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

(a)

/ Because of my lack of knowledge +

(b)

/ I Had my Attorney Contacted By my

(c)

/ wife And Asked for An Appeal on Jan 9th Day, He said it was to late!

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

YesTrial

- (a) your arraignment and plea? N/A
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. Charles David Bar

ii. N/A

iii. N/A

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

i. Trial, I Never Ask OR Hired

ii. MR. Bar, True Bill 2-22-18 trial 2-27-1

iii. NO Pre trial Nothing / stat must have ASK Him.

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

Sentencing over turned Resentence to the Code
Sentencing OR Reconciliation.

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

N/A

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Williamsburg)

I, Ray Moore, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Ray Moore

SWORN to and subscribed before me this 14
day of February, 2019.

Melissa Spizer (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2025

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Ray Moore
I, Ray Moore, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ray Moore
Applicant

SWORN or affirmed to and subscribed before me this
14 day of February, 2019.

Melissa Sping
Notary Public

My Commission Expires: Dec. 1, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Roy Donell Moore, #294950	)	Case No.: 2019-CP-45-205
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for post-conviction relief filed on February 19, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. During its February 2018 term, the Williamsburg County Grand Jury indicted Applicant for second-degree burglary and attempted second degree burglary (2018-GS-45-00041). Charles D. Barr, Esq. represented Applicant at trial. Assistant Solicitor Warren S. Anderson of the Third Circuit Solicitor's Office prosecuted the case. On February 26-27, 2018, Applicant proceeded to trial before the Honorable R. Farrell Cothran, Jr. The jury found Applicant guilty as indicted. Judge Cothran sentenced Applicant to seven years' imprisonment for each charge, to run concurrent. Applicant did not appeal his conviction or sentence.

II. Factual History

Victim was leaving her home in Kingstree when she noticed a door to one of the utility buildings in her yard was open. (Trial Tr. 50). Upon further investigation, Victim realized one lock was completely torn off the door and another lock was hanging off the door. (Trial Tr. 50).

Victim also noticed the door to her second utility building was damaged, indicating the perpetrator attempted to break into the second building as well. (Trial Tr. 50). The contents of Victim's utility building were thrown around. (Trial Tr. 51). Victim testified no one had permission to be inside the utility buildings except for her and her husband. (Trial Tr. 51). Victim had a surveillance system, which captured the crime on video. (Trial Tr. 51).

The surveillance video shows Applicant used a cigarette light to look inside the utility buildings. (Trial Tr. 52). Applicant hid behind the building after seeing a car pass by Victim's house. (Trial Tr. 52). Thereafter, Applicant looked directly at Victim 1's camera, which startled him, and Applicant covered his face with his t-shirt. (Trial Tr. 52).

III. Current Application

In his application for post-conviction relief, Applicant lists two allegations, which Respondent interprets as the following:

1. Ineffective Assistance of Counsel
 - a. Failure to quash an invalid indictment
 - b. Failure to file a direct appeal

Attached to this Return and incorporated by reference are the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

In his Application, Applicant alleges trial counsel was ineffective for failing to quash an invalid indictment and for failing to file a direct appeal. Respondent submits these allegations are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test as to either of these allegations. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on the allegations of ineffective assistance of counsel.

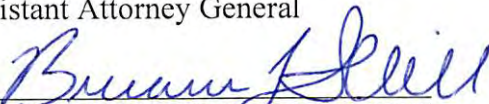
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

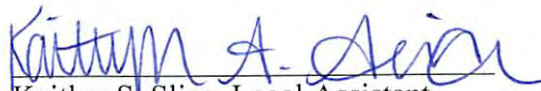
Sept. 16, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	
	)	2019-CP-45-205
	)	
ROY DONELL MOORE, #294950,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC.
Post Office Box 1058
Charleston, South Carolina 29402

DATED this the 16th day of September, 2019.


 Kaitlyn S. Slice, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	2019-CP-45-00205
	)	
	)	
	)	
ROY MOORE,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE,	)	
DEFENDANT.	)	
_____	)	

November 17, 2021
Kingstree, South Carolina

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE.

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

JAMES K. FALK, ESQ.
Attorney for the Applicant

MICHAEL J. NEUBAUER, ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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ROY MOORE:

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E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

THE COURT: We will call the case of Roy D. Moore,
2019-CP-45-205.

DIRECT EXAMINATION

BY MR. FALK:

Q So, Mr. Barr, you represented Mr. Moore in this, what
was it, an attempted burglary case?

A Yes.

Q And what kind of discussion did you have with him about
his appellate rights?

A I don't recollect having any discussions with him about
any appellate rights.

Q Okay. So does that mean -- did you advise him that he
had a right to appeal the jury's verdict?

A I always do.

Q And do you recall him saying that he wanted an appeal?

A No, sir, I sure don't. If he had said that, I would
have filed notice of intent to appeal for him.

Q Is there a possibility that communication could have
just broken down between the two of you?

A I don't think so --

MR. NEUBAUER: Pardon me, Your Honor. Pardon me. I
hate to interrupt. I do not think Mr. Barr was placed under
oath for the purpose of this hearing.

THE COURT: Thank you.

1 CHARLES BARR,

2 after being duly sworn, testified as follows:

3 MR. FALK: I affirm and reaffirm.

4 THE COURT: Thank you so much.

5 Go right ahead.

6 BY MR. FALK:

7 Q Mr. Barr, were you appointed to represent Mr. Moore or
8 did he retain you?

9 A I was retained.

10 Q Okay. And your agreement ended with the -- like most,
11 you had a written retainer agreement, is that correct,
12 engagement agreement?

13 A As far as I can remember.

14 Q And like most of those agreements, they always say that
15 the representation ends at the end of the jury verdict?

16 A Ends at the end of the trial, yes, sir.

17 Q At the end of the trial, okay. But you could have
18 filed a notice of appeal to protect his appellate rights; is
19 that correct?

20 A Well, if he had asked me, I would have, but,
21 ordinarily, I don't -- I don't encourage defendants when we
22 lose, which, hopefully, is not too often, but I don't
23 encourage them to appeal. In Mr. Moore's case, Judge
24 Cothran kind of -- you know, really didn't do him a whole
25 lot of damage.

1 MR. FALK: I have no further questions.

2 THE COURT: All right. Mr. Neubauer.

3 MR. NEUBAUER: Thank you, Your Honor, very briefly.

4 CROSS-EXAMINATION

5 BY MR. NEUBAUER:

6 Q Good afternoon, Mr. Barr.

7 A How are you doing?

8 Q Doing just fine. How about yourself?

9 A I'm blessed.

10 Q How long have you been practicing law, sir?

11 A About 45 years, 44 or 45, something like that.

12 Q And what percent of that is criminal law?

13 A 30 to 40 percent.

14 Q 30 to 40 percent?

15 A Yes.

16 Q So you have experience in criminal courts?

17 A Yes.

18 Q And you were retained by Mr. Moore in this case,
19 correct?

20 A I was retained, yes, sir.

21 Q And as Mr. Falk pointed out, your, I guess,
22 representation agreement, fee agreement, whatever, ran
23 through the end of the trial, correct?

24 A End of the trial of the case, yes, sir.

25 Q But despite the agreement ending at the end of the

1 trial of the case, have you filed notice of appeal for
2 clients in the past?

3 A Countless times.

4 Q Is it very time consuming to file a notice of appeal?

5 A No, sir. It's on the computer. I just push a button.

6 Q And you don't remember Mr. Moore ever asking to file an
7 appeal?

8 A No, sir, I know he didn't. If he had, I would have
9 done it.

10 Q Yes, sir, that was my next question. If he would have
11 asked, would you have been happy to have filed a notice of
12 appeal for him?

13 A Yes, sir.

14 Q And, again, it wouldn't have taken much effort on your
15 part to file that notice of appeal if he had requested it?

16 A Not too much.

17 Q And, again, you -- at some point in your
18 representation, you remember discussing his right to appeal?

19 A I don't.

20 Q You don't specifically remember discussing his right to
21 appeal?

22 A No, sir, I sure don't.

23 MR. NEUBAUER: Beg the Court's indulgence.

24 THE COURT: All right.

25 MS. PARKER: Your Honor?

1 THE COURT: Yes.

2 MS. PARKER: I still have attendee as DS, but,
3 unfortunately, however they are going into the system, I
4 cannot make them a panelist and I cannot unmute --

5 THE COURT: Hold on. Let's finish with this witness.
6 Any other questions, Mr. Neubauer?

7 MR. NEUBAUER: No further questions.

8 THE COURT: Any further questions, Mr. Falk?

9 MR. FALK: No redirect.

10 THE COURT: All right. This gentleman is released from
11 his subpoena, correct?

12 MR. FALK: Yes, ma'am.

13 THE COURT: Now, you're worried about somebody who's an
14 attendee who's DS.

15 Do you know who that might be?

16 MR. FALK: I don't think that's my guy.

17 MS. PARKER: A new telephone has just appeared. It's
18 (843) 372, that one, I can unmute and we can find out who
19 that is.

20 MR. FALK: That should be him.

21 MS. PARKER: Mr. Moore?

22 THE APPLICANT: Yes. Hello.

23 THE COURT: Thank you, Mr. Moore.

24 Now, Mr. Moore, we just took some quick testimony from
25 Mr. Barr. Do you consent to proceed in this virtual format?

1 THE APPLICANT: Say that again. I can't understand
2 what you're saying.

3 THE COURT: Yes, sir. You have a right to have your
4 hearing where everyone is live in the same spot, your lawyer
5 is there, you are there. Obviously, we are not in that
6 format. Do you consent to proceed in this format?

7 THE APPLICANT: Yes.

8 THE COURT: Thank you, sir.

9 Anything, Mr. Neubauer, that you need to add to the
10 introduction of Mr. Moore's case? We've got the case
11 number. My understanding is he was on trial for attempted
12 robbery. And there was a trial, he was found guilty, was
13 sentenced by Judge Cothran. He is now no longer at the
14 Department of Corrections.

15 The question is, based on State V. White, is he
16 entitled to a belated appeal?

17 MR. NEUBAUER: I believe that covers most of the
18 procedural history. In February of 2018, he was indicted by
19 the Williamsburg County Grand Jury for second degree
20 burglary and attempted second degree burglary,
21 2018-GS-45-00041, represented by Charles Barr. Assistant
22 Solicitor Warren Anderson prosecuted the case. Went to
23 trial February 26th and 27th of 2018 before Judge Cothran,
24 Jr. He was found guilty as indicted and was sentenced to
25 seven years for each charge to run concurrent. He did not

1 file an appeal in this case.

2 THE COURT: Very well. All right. Thank you.

3 Now, Mr. Falk, call your next witness.

4 THE COURT: Do you recognize his voice, Mr. Falk?

5 MR. FALK: Yes, I do.

6 THE COURT: Very well.

7 ROY D. MOORE,

8 after being duly sworn, testified as follows:

9 THE WITNESS: Yes, I do.

10 THE COURT: Thank you so much.

11 Mr. Falk.

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q Mr. Moore, so you hired Mr. Barr to represent you on
15 this trial; is that correct?

16 A No, that's not correct.

17 Q How did Mr. Barr get here?

18 A I don't know that to this day. I did not hire Mr. Barr
19 to represent me on this case. I hired Mr. Barr to represent
20 me on another case and, all of a sudden, he called me and
21 told me I had to be in court.

22 He called me one day and told me I had to be in court,
23 that they were pursuing on a trial for me on this case on
24 the next day. I had never been to the grand jury. I never
25 been to an appearance hearing or anything. They just, all

1 of a sudden, called me and told me I was having a trial the
2 next day. So they called me one day and the next day, they
3 had my trial. And I never retained Mr. Barr. And he cannot
4 produce a letter saying that I retained him for this case.

5 Q So, I guess, once this trial was over, what kind of
6 conversations did you have with him about an appeal?

7 A He came to me and I kept telling him, Mr. Barr, I never
8 hired you to represent me on this case. I never been to the
9 grand jury on the case for a hearing -- I mean, you know how
10 they do roll call and all that. I never done any of that as
11 far as with this case. I kept telling him, I did not hire
12 you to represent me on this case. Mr. Barr himself, once
13 the case was over with -- go ahead.

14 Q I'm sorry. So you went through -- I mean, I can
15 understand that, but then you went through the trial. When
16 the trial was over, what did you say about -- what kind of
17 conversation was there about an appeal?

18 A Mr. Barr did come to me and he talked to me and asked
19 me, said, Well, Mr. Moore, let me ask you a question, do you
20 wish for me to file an appeal? And I told Mr. Barr, I never
21 hired you to represent me period on the case. And he kept
22 asking me about an appeal and I kept telling him I never
23 hired him to represent me on the case.

24 Q So did you not want to appeal your conviction?

25 A Yes, I did, but not with Mr. Barr because Mr. Barr

1 never argued the case or anything when it came to the case
2 itself.

3 Q But you did -- you told him -- is it fair to say that
4 you told him you wanted an appeal, but you didn't
5 necessarily want him to do it?

6 A Yes, exactly.

7 MR. FARR: Your Honor, I have no further questions.

8 THE COURT: All right. Mr. Neubauer.

9 MR. NEUBAUER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. NEUBAUER:

12 Q Good afternoon, Mr. Moore. Just a few brief questions
13 for you. So you were indicted for second degree burglary
14 and attempted second degree burglary, correct?

15 A As far as what they say.

16 Q And you did, in fact, have a trial on February 26th and
17 27th of 2018, correct?

18 A That's correct.

19 Q And at that trial, you're contesting that you didn't
20 hire Charles Barr to represent you, but he ended up speaking
21 on your behalf in court on those two days, correct?

22 A Yes.

23 Q And you just told Mr. Falk that following the trial,
24 Mr. Barr came up to you and asked you if you wanted to
25 appeal, correct?

1 A He asked me if I wanted him to appear -- or put in an
2 appeal, he did, yes.

3 Q So he asked you if you wanted him to file an appeal for
4 you?

5 A Exactly, yes. That's true.

6 Q And do you remember how you answered that question from
7 him?

8 A Yes, I do.

9 Q What did you say, sir?

10 A I did not -- I never hired you to represent me on this
11 case. How is it that all of a sudden you called me because
12 I could have hired my own attorney as far as with this case.
13 I never had that right. Whether I wanted to hire an
14 attorney or get a public defender or anything, I never had
15 that right.

16 Somehow, Mr. Barr just called me on the phone and told
17 me I had one. I mean, I had a trial going. He called me on
18 a Thursday night and told me to be to court that Friday
19 morning, my trial was starting that Friday morning. I never
20 hired Mr. Barr to represent me on this case.

21 Q You did not tell Mr. Barr that you wanted him to file
22 an appeal; is that correct?

23 A That's correct.

24 MR. NEUBAUER: I have no further questions.

25 THE COURT: Mr. Falk, redirect?

REDIRECT EXAMINATION

BY MR. FALK:

Q But you did tell Mr. Barr that you wanted an appeal, is that correct, you just didn't want him to do it?

A I wanted an appeal, but I didn't want Mr. Barr to represent me on the case on the appeal, no, that's right. That's correct.

MR. FALK: No further questions.

THE COURT: Recross?

RE CROSS-EXAMINATION

BY MR. NEUBAUER:

Q So you were specifically asked whether or not you wanted Mr. Barr to file a notice of appeal and you told him no, I do not want you to file a notice of appeal for me?

A Yes, sir.

MR. NEUBAUER: No further questions.

THE COURT: Very well.

Mr. Falk, call your next witness.

MR. FALK: No further witnesses.

THE COURT: Mr. Neubauer, does the State have any witnesses?

MR. NEUBAUER: No, Your Honor.

THE COURT: All right, gentlemen. I will give consideration to these matters and render a decision. I'll ask one of you to draft a proposed order for me.

1 Thank you, Mr. Moore.

2 THE APPLICANT: Thank you. Have a blessed day.

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CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

November 25, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Roy Moore, #294950

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

) Case No.: 2019-CO-45-205

) **ORDER OF DISMISSAL**

FILED
2022 FEB 10 AM 10:23
SHARON L. STIGGERS
CLERK OF COURT
KINGSTREE, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Roy Moore ("Applicant") on February 19, 2019. Respondent made its return on or about September 16, 2019. The Court convened an evidentiary hearing into the matter on November 17, 2021, 2021, via the WebEx Virtual Courtroom of the Honorable Diane S. Goodstein. Applicant was present at the hearing via telephone and represented by James K. Falk, Esq. Michael J. Neubauer, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Charles D. Barr, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Williamsburg County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

In February 2018, the Williamsburg County Grand Jury indicted Applicant for second-degree burglary and attempted second-degree burglary (2018-GS-45-00041). Charles D. Barr, Esquire represented Applicant. Assistant Solicitor Warren S. Anderson of the Third Circuit

Solicitor's Office prosecuted the case. On February 26-27, 2018, Applicant proceeded to trial before the Honorable R. Farrell Cothran, Jr and a jury. At the conclusion of Applicant's trial, the jury found Applicant guilty as indicted. Judge Cothran sentenced Applicant to seven years' imprisonment for each charge, to run concurrent. Applicant did not appeal his conviction or sentence.

II. FACTS

Victim was leaving her home in Kingstree when she noticed a door to one of the utility buildings in her yard was open. Tr. p. 50. Upon further investigation, Victim realized one lock was completely torn off the door and another lock was hanging off the door. Tr. p. 50. Victim also noticed the door to her second utility building was damaged, indicating the perpetrator attempted to break into the second building as well. Tr. p. 50. The contents of the Victim's utility building were thrown around. Tr. p. 51. Victim testified no one had permission to be inside the utility buildings except for her and her husband. Tr. p. 51. Victim had surveillance systems, which captured the crime on video. Tr. p. 51.

The surveillance video shows Applicant used a cigarette light to look inside the utility buildings. Tr. p. 52. Applicant hid behind the building after seeing a car pass by Victim's house. Tr. p. 52. Thereafter, Applicant looked directly at the victim's camera, which startled him, and Applicant attempted to cover his face with his t-shirt. Tr. p. 52. - - -

III. PRESENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failure to quash invalid indictment"
 - b. "Failure to file direct appeal"

At the start of Applicant's evidentiary hearing, Applicant, through Counsel indicated they will only be proceeding with Applicant's allegation that Counsel failed to file a direct appeal. This Court finds Applicant has abandoned his allegation Counsel was ineffective for failing to quash an invalid indictment, and this allegation is denied and dismissed with prejudice.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Under this prong, the court measures an attorney's performance

by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

"The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to file direct appeal

Applicant alleges Counsel was ineffective for failing to file a direct appeal on Applicant's behalf.

This Court finds this allegation is without merit.

At his evidentiary hearing, Applicant testified he did not hire Counsel to represent him on these charges. Applicant testified he is unaware how Counsel began representing him for these charges. Applicant testified he received a call from Counsel one day wherein Counsel said Applicant had to be present in court for another matter. Applicant testified he went through a trial with Counsel, and Counsel told Applicant of his right to appeal after his jury trial. However, Applicant testified he told Counsel that Applicant never hired Counsel to represent him on these charges. Applicant testified he did want to appeal his conviction, but he did not want Counsel to represent him during his appeal. Applicant testified Counsel never argued Applicant's case or argued on Applicant's behalf. Applicant stated he wanted to appeal his conviction, but he wanted another attorney to handle his appeal. On cross-examination, Applicant testified he was indicted for second-degree burglary and attempted second-degree burglary, and Applicant had a jury trial on these charges. Applicant testified he did not hire Counsel to represent him on these charges. Applicant testified he told Counsel that Applicant did not want Counsel to file an appeal on Applicant's behalf because he did not want Counsel to represent him. Applicant insisted he never hired Counsel to represent him. Applicant clarified he wanted an appeal, but he told Counsel that he did not want Counsel to file a notice of appeal for him.

Counsel testified he has been practicing law for forty five years, and has a lot of experience in criminal courts. Counsel testified he was retained by Applicant to represent him on these charges. Counsel testified his retainer agreement indicated his representation would end at the conclusion of Applicant's trial, however Counsel would have filed a notice of appeal if Applicant requested he file one. Counsel testified he does not recall any discussion with Applicant where Applicant requested he file a notice of appeal. Counsel testified he ordinarily does not encourage

an inmate to appeal if they lose at trial. Counsel testified he has filed many notices of appeal for clients in the past and this would not have been difficult for him to do. Counsel testified if Applicant asked him to file a notice of appeal he would have been happy to do so. Counsel testified he does not recall discussing Applicant's right to appeal with Applicant after his trial.

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. *Turner v. State*, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738 (1967). *Id.* South Carolina's Appellate Courts have no jurisdiction to entertain appeals when the notice of appeal is not timely given and served. *White v. State*, 263 S.C. 110, 119, 208 S.E.2d 35, 40 (1974). Nevertheless, if a PCR court finds that an applicant has been denied his right to direct appeal from trial due to counsel's errors, his request for post-conviction relief may be denied, but he may be permitted to seek belated review of trial errors in conjunction with his appeal of the order dismissing his PCR application. *Id.*

This Court finds Applicant voluntarily waived his right to a direct appeal. Applicant testified he did not want Counsel to file a direct appeal on his behalf. Applicant testified he spoke with Counsel following his trial and he did not want Counsel representing him on appeal. When expressly asked, Applicant testified he told Counsel to not file an appeal on his behalf. Counsel testified he was willing to file an appeal for Applicant, but he was not asked to do so. We find that Applicant has failed to establish how Counsel was ineffective for following Applicant's wishes and not filing a notice of appeal. For these reasons, Applicant's allegation is denied and dismissed with prejudice.

III. CONCLUSION

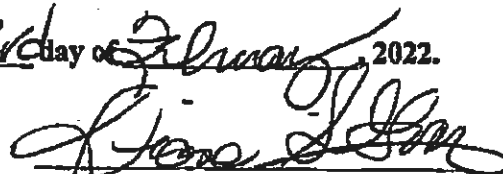
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 3rd day of February, 2022.



DIANE S. GOODSTEIN
Presiding Judge
Third Judicial Circuit



South Carolina

RECEIVED

MAY 12 2022

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas

Honorable Diane S Goodstein Circuit Judge

Case No.: 2019-CP-45-0205

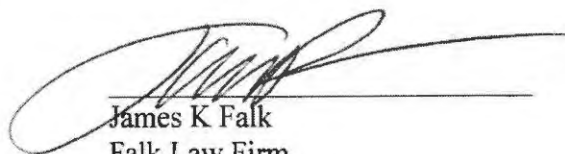
Roy Moore 294950.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Scott Welch appeals the Honorable Diane S Goodstein's February 3, 2022 Order of Dismissal. Undersigned counsel received notice of entry of the order on May 9, 2022. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

May 9, 2022

Michael Neubauer, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

Williamsburg County Clerk
125 W. Main St
Kingstree, SC 29556

RECEIVED

MAY 12 2022

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas

Honorable Diane S Goodstein, Circuit Judge

Case No.: 2019-CP-45-0205

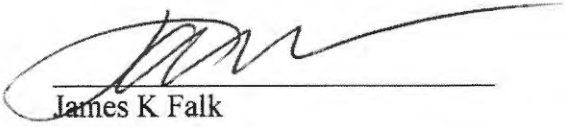
Roy Moore 294950.....PETITIONER

V.

State of South Carolina.....RESPONDENT

CERTIFICATE OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Michael J. Neubauer Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549 and the Horry County Clerk of Court. I further certify that all parties required by Rule to be served have been served this May 9, 2022.

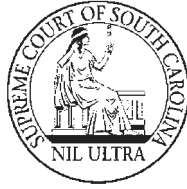


James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

RECEIVED

MAY 12 2022

S.C. SUPREME COURT



The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

August 09, 2022

The Honorable Sharon W. Staggers
125 W Main St
Kingstree SC 29556-3343

REMITTITUR

Re: Roy Moore v. State
Lower Court Case No. 2019CP4500205
Appellate Case No. 2022-000629

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, reading "Brenda F. Shealy".

CHIEF DEPUTY CLERK

cc: James Kristian Falk, Esquire
Zachary William Jones, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Aug 10 2022

APPEAL FROM WILLIAMSBURG COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Honorable Diane S Goodstein Circuit Judge

APPELLATE CASE No. 2022-000629

Roy Moore 294950.....PETITIONER

V.

State of South Carolina.....RESPONDENT

MOTION TO RECALL REMITTITUR

Petitioner moves this court to recall the Remittitur issued August 9, 2010. Counsel's practice is to file Notices of Appeal on all PCR cases that were dismissed on the merits. In almost all cases the Office of Appellate Defense emails counsel to determine if he was appointed to the case and if so the Office of Appellate Defense takes over the appeal. I was appointed to Petitioner's PCR. There was poor communication between my office and Appellate Defense on this case. I have since contacted Appellate Defense and been advised that they will take over this appeal.

The lower court granted Petitioner relief pursuant to Austin v State, 303 S.C. 453, 409 S.E.2d 395 (1991). Counsel was preparing for two General Sessions jury trials for the weeks of August 1, 2022 and August 8, 2022 and failed to respond sooner to this matter.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

August 10, 2022

The Supreme Court of South Carolina

Roy Moore, Petitioner,

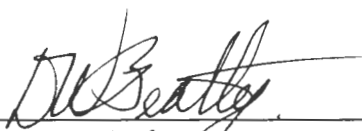
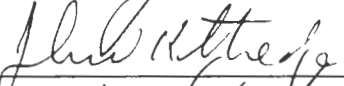
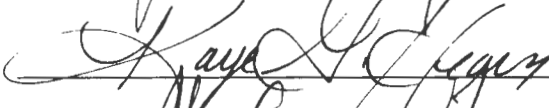
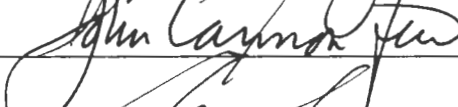
v.

State of South Carolina, Respondent.

Appellate Case No. 2022-000629

ORDER

This matter was dismissed by order dated July 22, 2022, and the remittitur was sent on August 9, 2022. Petitioner now asks the Court to recall the remittitur. We grant the motion to recall the remittitur and reinstate this matter. Petitioner shall, within ten days of the date of this order, request the transcript from the hearing on his application for post-conviction relief as required by Rule 243(b), SCACR.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
September 14, 2022

cc:

James Kristian Falk, Esquire
Zachary William Jones, Esquire

WITNESSES

Steven C. Monteith
Williamsburg County Sheriff

DOCKET NO. 2018-GS-45-0041

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

February TERM 2018

THE STATE

vs.

ROY DONELL MOORE

ARREST WARRANT NUMBER

2017A4510100356

ACTION OF GRAND JURY

TRUE BILL

Date 2/22/18

Foreperson of Grand Jury

Date: 2/22/18

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

BURGLARY, SECOND DEGREE (VIOLENT)

&

ATTEMPTED

BURGLARY, SECOND DEGREE (VIOLENT)

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

FILED

2018 FEB 22 AM 11:56

SHARON L. COLETT
CLERK OF COURT
KINGSTREE, S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
BURGLARY, SECOND DEGREE (VIOLENT)

&
ATTEMPTED

BURGLARY, SECOND DEGREE (VIOLENT)

At a Court of General Sessions, convened on February 22, 2018 the Grand Jurors of
 WILLIAMSBURG County present upon their oath:

COUNT ONE
BURGLARY, SECOND DEGREE (VIOLENT)

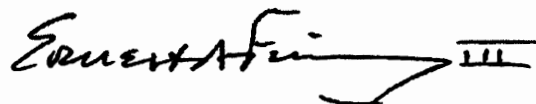
That Roy Donell Moore did in Williamsburg on or about July 9, 2017, willfully and unlawfully enter the building of another, to wit: he did enter the storage shed of Billie Brown located at ■ Harrelson St, Kingstree SC, without consent and with the intent to commit a crime therein after having been convicted of two prior burglary offenses, in violation of Section 16-11-0313, S. C. Code of Laws, 1976, as amended.

COUNT TWO
ATTEMPTED BURGLARY, SECOND DEGREE (VIOLENT)

That Roy Donell Moore did in Williamsburg on or about July 9, 2017, attempt to willfully and unlawfully enter the building of another, to wit: he did attempt to pry the lock off of a storage shed belonging to Billie Brown located at ■ Harrelson St, Kingstree SC, without consent and with the intent to commit a crime therein after having been convicted of two prior burglary offenses, in violation of Section 16-11-0313, S. C. Code of Laws, 1976, as amended.

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

Solicitor



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

169 ✓

COUNTY OF Williamsburg
 STATE VS.
Roy Donell Moore

AKA:

Race: Black Sex: M Age: 52DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Attempted Burglary 2nd Violentin violation of § 16-1-80 of the S.C. Code of Laws, bearing CDR Code # 0086
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendations ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]

Anderson, Warren

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine: \$
 § 14-1-206 (Assessments 107.5 %) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 61.6 (Public Def/Probation) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 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) \$ 3.90

TOTAL \$ 133.90Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2018-GS-45-0041A/W#: 2017A4510100356 Direct IndictmentDate of Offense: 7/9/2017S.C. Code §: 16-1-80 WACDR Code #: 0086 WA

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-1-80 of the S.C. Code of Laws, bearing CDR Code # 0086☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendations ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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*Fine: \$
 § 14-1-206 (Assessments 107.5 %) \$
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 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90Presiding Judge [Signature]Judge Code: 2144Sentence Date: 2-27-18

SCANNED

☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg
STATE VS.Roy Donell Moore

AKA:

Race: Black Sex: M Age: 52DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State: [REDACTED]DL#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary (Violent) - Second degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-45-0041A/W#: 2017A4510100356Date of Offense: 7/9/2017S.C. Code § : 16-11-0312(B)CDR Code #: 0086

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086☐ 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:

Anderson, Warren100902
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 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)		\$ <u>3.90</u>

TOTAL

\$ 128.90

Clerk of Court/ Deputy Clerk

Court Reporter: Frances B. Ray

SCCA/217 (07/2016)

PTUP days/hours Public Service EmploymentObtain 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 FundOther:

SCANNED

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2144Sentence Date: Feb. 27, 2018