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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Barnwell County

Honorable Maite Murphy, Circuit Court Judge

STEPHON ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001515

APPENDIX

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State of South Carolina)	In the Court
)	Of General Sessions
County of Barnwell)	

Indictment No.: 2011-GS-06-00245

State of South Carolina, Plaintiff.)	
vs.)	Transcript of Record
Stephon Robinson, Defendant.)	

November 1-2, 2011
Barnwell, South Carolina

B E F O R E:

The Honorable Doyet A. Early III, Judge and a jury.

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

A. Keith McAlister, Assistant Solicitor
David W. Miller, Assistant Solicitor
For the State

Glen Walters, Esquire
Attorney for the Defendant

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TUESDAY, NOVEMBER 1, 2011

THE COURT: Call your first case, Mr. Solicitor.

MR. MCALISTER: Your Honor, the State calls State versus Stephon Tenard Robinson, Indictment 2011-GS-06-245 for burglary in the first-degree, and Indictment 2011-GS-06-246 for possession of a weapon during a violent crime.

THE COURT: All right. Where's your client.

MR. WALTERS: Right here.

(WHEREUPON the defendant entered the courtroom.)

THE COURT: Mr. Walters, you ready to strike the jury?

MR. WALTERS: Yes, sir, Your Honor.

JURY VOIR DIRE

THE COURT: All right. Ladies and gentlemen, the State has called the case of the State of South Carolina versus Stephon, S-t-e-p-h-o-n, Tenard, T-e-n-a-r-d, Robinson. Mr. Robinson has been indicted by the Barnwell County Grand Jury on two offenses. One is for the offense of burglary in the first-degree, and the other one is an indictment for possession of a weapon during the commission of a violent crime.

Mr. Robinson has pled not guilty to both of these indictments, and under our constitution, a plea of not guilty means that he is, under the constitution, presumed

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to be innocent unless the State is able to prove his guilt to you beyond a reasonable doubt as to each and every element of both indictments. And obviously, I will explain to you during the trial what burden of proof is, what beyond a reasonable doubt is, what the elements of the offenses are; but he has pled not guilty, so the State has the burden of proving his guilt to you beyond a reasonable doubt. And the fact that he has been charged and arrested and indicted, that is not evidence in the case. These are simply the formal documents by way a person is brought into the courtroom. So don't infer anything from the fact that he's been indicted.

I need to ask you a few questions about the case before we strike the jury, so listen carefully. If any of the questions apply to you, please stand and respond to the question.

I remind you that you're still under oath.

Mr. Robinson, good morning. How are you?

THE DEFENDANT: Good morning.

THE COURT: Could you please stand and face the jury panel.

(WHEREUPON the defendant stood and faced the jury panel.)

THE COURT: Thank you, you may be seated.

Ladies and gentlemen of the jury panel, is

anybody -- any one of you ever been related by blood or marriage or have you ever in the past or now had a close personal or social relationship with the defendant, Stephon Tenard Robinson? If so, please stand.

Your name, please?

THE JUROR: Timothy Slayton.

THE COURT: I can't hear you.

THE JUROR: Timothy Slayton.

THE COURT: What's your situation?

THE JUROR: I was just good friends with him. I used to hang out with him.

THE COURT: You were good friends with him, you used to what?

THE JUROR: I used to hang out with him. I know his brother, too, Reggie.

THE COURT: Okay. Well, how close of friends were you?

THE JUROR: I used to hang out with him a good bit.

THE COURT: Well, Son, I'm a lot older than you. I don't know what hang out means.

THE JUROR: I used to go spend time with him like as friends.

THE COURT: Like as friends. So y'all were close friends.

THE JUROR: We were pretty good friends.

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THE COURT: Okay. Would you feel uncomfortable being on this jury?

THE JUROR: Yes, sir.

THE COURT: All right. I'll excuse you. Stay with me now.

THE JUROR: All right.

THE COURT: Anyone else? And I really do know what hang out means. I was just...

All right. Ladies and gentlemen, I'm going to read out the list of potential witnesses in the trial of the case -- that doesn't mean they'll all be called -- and I'm going to ask you the same question.

Is Eddie Williams in the room? He's back here.

(WHEREUPON Mr. Williams stood.)

THE COURT: Mr. Williams, good morning. Thank you. Be seated, please.

Shawn Washington. Shawn Washington, he's in back. Stand up for me, Mr. Washington, please.

(WHEREUPON Mr. Washington stood.)

THE COURT: Thank you. Shelly Leanna Gunnels. Ms. Gunnels are you in the courtroom?

(WHEREUPON there was no response.)

THE COURT: Deputy Eddie Thomas with the Barnwell County Sheriff's Office; Deputy D. J. Boots, with the Barnwell County Sheriff's Office; Investigator Jeff Croft;

with the Barnwell County Sheriff's Office; help me, Stephanie -- Mr. Walters?

MR. WALTERS: Stephon.

THE COURT: Oh, Stephon. We've already called him. Reggie Felder; is he in the courtroom?

(WHEREUPON there was no response.)

THE COURT: I'm sorry, Mr. Walters, is it Gerard?

MR. WALTERS: Jamal Wallace.

THE COURT: Jamal Wallace.

MR. WALTERS: And I believe you called Mr. Williams and Mr. Felder.

THE COURT: I did.

Any member of the jury panel now or in the past been related by blood or marriage or do you now or have you in the past had a close personal or social relationship with any of the witnesses that I have called? Please stand.

Okay. Let's start on my right, your left.

Ma'am in the sort of blue and black diamond dress.

THE JUROR: I know Shawn. He's my cousin.

THE COURT: He's your cousin?

THE JUROR: Yes. And Eddie, he's my other cousin 's father.

THE COURT: My other cousin's father. All right. I'm going to excuse you because you are related by blood or

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marriage.

THE CLERK: What's her name?

THE COURT: Name, please?

THE JUROR: Teresa Worthy.

THE COURT: No, hold on.

THE JUROR: Dedra Jenkins.

THE COURT: Ms. Jenkins?

THE JUROR: Uh-huh.

THE COURT: Thank you, you may be seated.

THE JUROR: Okay.

THE COURT: Yes, ma'am, in the yellow.

THE JUROR: Teresa Worthy. Shawn Washington, we're first cousins.

THE COURT: First cousins?

THE JUROR: Yes, sir.

THE COURT: I'll excuse you. Just have a seat.

THE CLERK: What was her name again?

THE COURT: Ms. Washington, right?

THE JUROR: Worthy.

THE COURT: Worthy.

THE CLERK: One, twenty-seven.

THE COURT: Ma'am?

THE JUROR: I'm Dionne Smalls. I'm --

THE COURT: I'm sorry, your name?

THE JUROR: Dionne Smalls. I know Shawn Washington

socially. I've done his hair a few times.

THE COURT: You've done his hair a few times?

THE JUROR: Yes.

THE COURT: Which one is he? At least he's got hair to do, some of us don't.

All right. The fact that you have done his hair, and you're friends, would that in any way keep you from being a fair and impartial juror in the trial of this case? In other words, could you listen to all the evidence and determine the facts from what you hear in this courtroom and not be influenced by any friendship with a potential witness?

THE JUROR: I could.

THE COURT: You can do that, can't you?

THE JUROR: Yes.

THE COURT: Thank you, ma'am, you may be seated.

Ladies and gentlemen, in this case, the State of South Carolina will be represented by two members of the solicitor's office, Mr. Kip McAlister, Mr. David Miller.

(WHEREUPON Mr. McAlister and Mr. Miller stood.)

THE COURT: Thank you.

The defendant is being represented by Mr. Glen Walters. Mr. Walters practices law over in Orangeburg. Any member of the jury panel now or in the past have had legal services provided to you by any of the lawyers?

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(WHEREUPON there was no answer.)

THE COURT: Any member of the jury panel now or in the past have had a close personal or social relationship or have you ever been related by blood or marriage to any of the lawyers? If so, please stand.

(WHEREUPON there was no answer.)

THE COURT: Ladies and gentlemen, it is alleged -- these are simply allegations, it is not evidence, but I must tell you what is alleged so I can ask you if you know anything about it. It is alleged in the indictments that here in Barnwell County on or about February 20th of this year, 2011, that the defendant, without consent and with intent to commit a crime therein, unlawfully entered the dwelling of Eddie Williams, located at [redacted] -- that's [redacted] St. John Road in Barnwell, and at that time possessed or visibly displayed either a firearm or other deadly -- or other weapon during the commission of the alleged burglary. In other words, it's a burglary -- alleged burglary that took place on February 20th, 2011, at 6 -- [redacted] St. John Road in Barnwell.

Question: Any member of the jury panel know anything about this situation, read anything about it --

(WHEREUPON a juror was moving around.)

THE COURT: You okay?

THE JUROR: Yes, sir.

THE COURT: The same bug that was trying to get me is getting you.

-- know anything about it, read anything about it, has anybody discussed it with you, formed any opinion, seen anything about it on TV, computer, internet, whatever. Know anything about it, please stand.

(WHEREUPON a juror stood.)

THE COURT: You've been excused, so you can sit down. Know anything about it?

(WHEREUPON there was no answer.)

THE COURT: Ladies and gentlemen, one of my main responsibilities as the trial judge, whether I'm here in Barnwell or Cherokee County or Beaufort or Columbia or where ever they send me, and whether it's a criminal case or a civil case, one of my main responsibilities is to make sure that both is State and the defendant receive a fair trial. And the way that works is, is that in just a few minutes we will select twelve people to serve as jurors in the case. And actually, your title as juror is not quite correct because the twelve of you, collectively acting as one, you become the judges of the facts in the case. We have two judges in the case. I'm the judge of the law. I tell and instruct you what the law is. You're the judges of the facts. And the way that works is, is that the State has to call witnesses and present evidence by way of live

testimony or exhibits. The defendant has the right to present it's defense by way of testimony or exhibits, and most of the time, if not all of the time, you will hear conflicting stories, conflicting facts. And you have to determine what the true facts are. You have to determine who you believe and what the true facts are. You take those true facts as you find them to be, and you apply it to the law as I give it to you, and then you're in a position to render a verdict in the case.

So you have the most important job in this courtroom. You are the judges of the facts in the case. And we have to be able to judge those facts based solely on what we hear in the courtroom. So my question is this: Does anyone have any reason why they cannot perform that task?

(WHEREUPON there was no answer.)

THE COURT: Thank you.

Does anyone have any personal belief, religious beliefs, political beliefs, any kind of belief that would keep or preclude you from performing your civic duty of being a finder of fact or a judge of the facts in this case? I need to know now. Please stand.

(WHEREUPON there was no answer.)

THE COURT: Any member of the jury panel know of any reason why he or she should not serve, with particular

emphasis being placed on your ability to be fair and impartial both to the State and to the defendant? If so, please stand.

(WHEREUPON there was no answer.)

THE COURT: Any additional questions by the defense?

MR. WALTERS: No, sir, Your Honor.

THE COURT: By the State?

MR. MCALISTER: None from the State, Your Honor.

THE COURT: All right. Ladies and gentlemen, give me --

(WHEREUPON the Court was conferring with the clerk.)

THE COURT: The way we select a jury in a criminal trial or general sessions trial is that your names are now being fed into the computer and it will randomly select you one at a time from a random selection. If your name is called, please come down and stand right here -- come through that gate. Mr. Eddie will help you through.

The State has five strikes. The defendant has ten strikes. And they can strike you for most any reason at all within certain legal parameters that the lawyers know about. So as you come down, the State will say either swear the juror or strike him, and then likewise with the defendant until we get 12 jurors and two alternates. Once

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we complete that task, then we will be in a position to start the trial of the case. If we were trying an automobile wreck case or a medical malpractice or breach of contract, a civil case, at this point of the game, we would draw twenty names out of the computer, put them on a piece of paper, and the person suing the plaintiff would have four strikes. The person getting sued, the defendant would have four strikes. So twenty less eight leaves us with twelve. So it's done a little bit different in the general sessions setting.

(WHEREUPON the lists were being printed by the clerk.)

THE CLERK: Judge, are you ready?

JURY SELECTION

THE COURT: We are.

THE CLERK: Juror No. 106, Clinton Stephens. (Black male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

THE CLERK: Juror No. 86, John Rhodes. (White male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

THE CLERK: Juror No. 73, McKinley Nix. (Black male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

THE CLERK: Juror No. 105 Brenda Steadman (White female)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

THE CLERK: Juror No. 83, Leon Priester. (Black male)

What says the State?

MR. MCALISTER: Please excuse this juror.

(WHEREUPON the juror returned to his seat.)

THE CLERK: Juror No. 108 Lindsey Stillinger. (White female)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Excuse this juror.

(WHEREUPON the juror returned to her seat.)

THE CLERK: Juror No. 52, Jerry James. (Black male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE CLERK: Juror No. 120, Clary Williams (Black male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE CLERK: Juror No. 12, Shirley Broughton. (Black female)

THE CLERK: What says the State?

MR. MCALISTER: Please excuse this juror.

(WHEREUPON the juror returned to her seat.)

THE CLERK: Juror No. 25, Bobby Cuthbertson. (Black male)

THE CLERK: What says the State?

MR. MCALISTER: Please excuse this juror.

(WHEREUPON the juror returned to his seat.)

THE CLERK: Juror No. 118, William Webb. (White male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Excuse the juror.

(WHEREUPON the juror returned to his seat.)

THE CLERK: Juror No. 130, Merisa Zorn. (White female)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE CLERK: Juror No. 23, Kathryn Corley (White female)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Excuse the juror.

(WHEREUPON the juror returned to her seat.)

THE CLERK: Juror No. 48, Mark Hiers. (White male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

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MR. WALTERS: Present the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE CLERK: Juror No. 58, Lacole Jones. (Black female)

(WHEREUPON someone other than a juror stood.)

THE COURT: Hold on a second.

Ma'am, you need to leave?

(WHEREUPON the person returned to their seat.)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Present the juror.

THE CLERK: Juror No. 116, Teresa Walker. (Black female)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Present the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE CLERK: Juror No. 9, Owinthia Boan. (Black female)

THE CLERK: What says the state?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Present the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE CLERK: Juror No. 40, Kathrine Gordon. (Black female)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Present the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE COURT: Two alternates, two and one.

THE CLERK: Juror No. 49, Andrea Hogan. (Black female)

THE CLERK: What says the State?

MR. MCALISTER: Please excuse this juror.

(WHEREUPON the juror returned to her seat.)

THE CLERK: Juror No. 91, Debra Salley. (Black female)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE COURT: All right. Give me one more. Two and one.

THE CLERK: Juror No. 38, Otelia Gleaton. (Black female)

What says the State?

MR. MCALISTER: Please excuse this juror.

(WHEREUPON the juror returned to her seat.)

THE CLERK: Juror No. 124, Robert Williams. (White male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Please excuse the juror.

(WHEREUPON the juror returned to his seat.)

THE CLERK: Juror No. 51, Tremaine Jackson. (Black male)

THE CLERK: What says the State?

MR. MCALISTER: Please present this juror.

THE CLERK: What says the defense?

MR. WALTERS: Seat the juror.

(WHEREUPON the juror took a seat in the jury box.)

THE COURT: Any motions by the defense or State in connection with the selection of the juror?

Mr. Walters?

MR. WALTERS: No, sir, Your Honor.

MR. MCALISTER: None from the State, Your Honor.

THE COURT: All right. Mr. Walters --

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

THE COURT: Ladies and gentlemen, I'm going to let y'all -- Mr. Eddie will show you to the jury room back there. I've got to dismiss this jury. I've got about ten or fifteen minutes of pretrial before we get started. It's a quarter until eleven. If you need to step out and get some fresh air, a cigarette or whatever, soon as he shows you where to be, just be back at about -- let's say about five after eleven. That's twenty minutes. So you won't be back there twiddling your thumbs, and we'll start right at eleven and just march on from there.

Everybody else remain seated.

(WHEREUPON the jury left the courtroom at 10:45 a.m.)

THE COURT: All right. Ladies and gentlemen, as represented, I will excuse you now for the balance of the week.

THE CLERK: And an excuse for work will be put in the mail to you. If you need one today, just go downstairs and they'll go ahead and print you out one. Four or five of you that were failure to locate, please go down and give her your information so we can make sure you get your money.

THE COURT: Thank you. You're excused to go.

(WHEREUPON the remaining members of the jury panel left the courtroom.)

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THE COURT: Look here --

(WHEREUPON, there was a bench conference out of the hearing of the Court Reporter.)

(WHEREUPON the attorneys were conferring with the court reporter to mark exhibits.)

THE COURT: Now, as I understand now that the jury is drawn, the State has offered your client a plea -- nol pros the possession of a weapon of a violent crime, let him plea to burglary second violent. Is that correct?

MR. MCALISTER: That's correct, Your Honor.

THE COURT: Mr. Walters, have you expressed that to your client.

MR. WALTERS: I conveyed to my client that the offer is the fifteen years with regard to burglary second, which would be considered violent and that he would be eligible for parole after doing one-third of that particular sentence.

THE COURT: That's correct. That's five years.

MR. WALTERS: I believe --

THE COURT: Under the current state of law, I assume. I don't make any representations about parole, but I think that is correct. Of course, on burglary first, that's a minimum of fifteen to life and you do 85 percent of that. So if you got a fifteen year sentence on that, instead of doing five, you have to do 85. If my math is

correct, that's eight and a half -- somebody help me.

MR. WALTERS: A little over twelve years, Your Honor.

THE COURT: Twelve years. You understand that young man?

THE DEFENDANT: (The defendant shook his head.)

THE COURT: You ready to proceed? Are y'all ready to proceed?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I'll be glad to hear from you on ID.

And I assume that is now off the table?

MR. MCALISTER: Yes, sir.

BIGGER'S HEARING

MR. MCALISTER: Your Honor, the State would call Investigator Jeff Croft.

THEREUPON,

INVESTIGATOR JEFF CROFT,

after being duly sworn, testified as follows:

THE CLERK: Please be seated and state your name for the record.

THE WITNESS: Jeff Croft.

DIRECT EXAMINATION - IN-CAMERA

By Mr. McAlister:

Q Investigator Croft, who do you work with?

A I work with the Barnwell County Sheriff's Office.
Q And how long have you been with the Barnwell County Sheriff's Office?
A Since August of 2004.
Q And what is your title or your position?
A I am an investigator for Barnwell County.
Q Did you have an opportunity to come in contact with the defendant and be involved in the investigation of this case?
A Yes, sir, I did.
Q And how did you become involved with the investigation of this case?
A I was at home and it was my weekend of call. I was notified by central dispatch of the incident and was requested to respond.
Q Did you have an occasion during the investigation top conduct a photo display of a lineup in this case?
A I did.
Q Okay. And on what day did you do that -- or did you initially do that?
A I think it was 2/24, I think was the initial lineup -- 2/25.
Q So several days after the actual incident date?
A Yes, sir.
Q Which was what, February 20th?

A Yes, sir.
Q Okay. And do you recall where you -- where this lineup took place? Where this photo lineup took place?
A It was at the victim's residence at [redacted] St. John Road in Barnwell.
Q What, if anything, did you tell the witness or the victim before permitting him to see these photos?
A I advised the victim that I was going to display what we consider a photo lineup of several individuals. I advised the victim that the person in question may or may not be displayed on the lineups. And I advised the victim that if he was not 100 percent certain that he did not have to make a choice.
Q And was Mr. Williams the only person to view those lineups that day?
A He was.
Q All right. How many photos were displayed in total?
A There was a total of three lineups shown to Mr. Williams. Six pictures on each lineup page.
Q Can you describe the nature of those photos? Race, age, build.
A The lineup was constructed by South Carolina Law Enforcement Division and photos were used in individuals similar in size, characteristics, facial characteristics.

Q I'm going to hand you what's been previously marked as State's Exhibit No. 1. Do you recognize that item?

A I do.

Q Did you -- what is it?

A This is the photo lineup that was shown to Mr. Williams for Mr. Robinson.

Q Okay. Have the contents of that composite been in your care and custody since that day?

A It has been in the case file locked in a filing room at our office.

Q Are they in substantially the same condition as when you originally used them?

A Yes, sir. Other than the sticker that the State has placed on it.

Q Other than the sticker, no material alterations or deletions?

A No, sir.

Q Okay.

MR. MCALISTER: Your Honor, we would move at this time to admit State's Exhibit 1 for purposes of this hearing.

THE COURT: Any objection?

MR. WALTERS: No objection, Your Honor.

(WHEREUPON State's Exhibit one was entered into evidence for the purposes of the Bigger's Hearing.)

By Mr. McAlister:

Q Did you also provide another picture -- picture lineup for Mr. Williams?

A Yes, sir, I did.

Q I'm showing you what's been previously marked as State's Exhibit 2. Do you recognize that?

A Yes, sir, I do. This is the actual lineup that I presented to Mr. Williams.

Q Okay. And have the contents been changed at all?

A No, sir. It has not.

Q And did it remain in your care and custody until today?

A It was also in the case file, locked in a filing room at the Barnwell County Sheriff's Office.

MR. MCALISTER: Your Honor, again, for the purposes of this hearing, the State would move to admit this into evidence.

THE COURT: Any objection?

MR. WALTERS: No objection, Your Honor.

THE COURT: All right. Let me see it.

(WHEREUPON State's Exhibit No. 2 was entered into evidence for the purposes of the Bigger's Hearing.)

By Mr. McAlister:

Q For this initial lineup, when you went out there to question him about it, was the victim, Mr. Williams, able

to identify anyone?

A He was able to identify both Mr. Stephon Robinson and the codefendant.

Q And how did he do that?

A By initialing and pointing at the number in which reflected the photo of the defendant.

Q And was he correct in that identification?

A He was correct in identifying the person. He was incorrect in the names.

Q Okay. And those two individuals that he named -- both were named in the actual alleged incident, correct?

A Yes, sir.

Q Okay. He just flip-flopped the names on them?

A That's all, yes, sir.

Q And those individuals are brothers?

A They are, yeah.

Q Okay. Did you -- did you go back out and present to him an additional photo lineup?

A I did, using a more current photo of both of the individuals.

Q Okay. And why did you do that?

A The facial features of both individuals had changed dramatically over the six year period. The photo that was used was a six-year-old driver's license photo, and I was able to acquire a recent photo of both individuals to share

with Mr. Williams.

Q And you went out sometime later?

A I did.

Q Okay. And do you recall how long after the initial photo lineup that you went with the second one?

A It was approximately three months.

Q Okay. I'm going to show you what's been marked as State's Exhibit 3. Do you recognize that?

A Yes, sir, I do.

Q Has it been changed or altered in any way since you initially had it?

A No, sir, it hasn't.

Q Okay. Did it remain in your care and custody until this hearing today?

A It was also locked in the case file in the filing room at the sheriff's office.

MR. MCALISTER: Your Honor, for purposes of this hearing the State would move to admit State's Exhibit 3.

MR. WALTERS: No objection, Your Honor.

(WHEREUPON State's Exhibit No. 3 was moved into evidence for the purposes of the bigger's hearing.)

By Mr. McAlister:

Q And was the witness or the victim able to identify the defendant in this lineup?

A Yes, he was.

Q And he did that immediately?
A Yes, he did.
Q Was he correct?
A Yes, he was.
Q I'm also going to show you what's been previously marked as State's Exhibit 4. Do you recognize that?
A Yes, sir, this is the second lineup that was conducted on the codefendant.
Q And has it been changed or altered since your initial meeting with the victim?
A No, sir.
Q And has it remained in your care and custody until this hearing today?
A It has also been locked in the case file in the filing room at the Barnwell County Sheriff's Office.

MR. MCALISTER: Again, Your Honor, people would move to admit State's Exhibit 4 for purposes of this hearing.

THE COURT: Any objections?

MR. WALTERS: No objection.

(WHEREUPON State's Exhibit No. 4 was entered into evidence for the purposes of the Bigger's Hearing.)

By Mr. McAlister:

Q And was the witness able to identify anyone on that?

A He was also able to identify the codefendant.

Q Okay. And who would that be?

A Reginald Felder.

Q And he was correct in the identification?

A Yes, he was.

MR. MCALISTER: No further questions at this time.

THE COURT: Any cross?

MR. WALTERS: May it please the Court.

CROSS-EXAMINATION IN-CAMERA

By Mr. Walters:

Q Mr. Croft, in this particular case, I believe that on 2/25/11 is when you originally produced a lineup for Mr. Williams to review; is that correct?

A Yes, sir.

Q All right. And I believe that lineup that you produced on that particular day was pictures that were some years, I believe about six years ago?

A It's approximately a six-year-old driver's license photo that was used.

Q Okay. And I believe that in this process of identifying the defendant in this particular case -- let me back up. Originally when you investigated this matter, you were told that there were three men that had broken into the house; is that correct?

A That is correct.

Q All right. And I believe his testimony was that there were three individuals that broke into the house and he stated that he knew some of the individuals; is that right?

A That is correct.

Q All right. And when given the opportunity on 2/25/11 to identify Mr. Robinson, he failed to do so?

A He identified the person in the photo lineup and mixed the names of the two brothers up. But he identified the actual photo.

Q All right. When you say he identified the photo, you're saying he identified Mr. Robinson?

A He identified both Mr. Robinson and Mr. Felder as being the two individuals that came into the house -- two of the three individuals that came into the house. He got their names mixed up.

Q Okay. As far as the third individual that was alleged came into the house, did Mr. Williams ever identify that individual?

A He was also given a lineup for the third individual. He told me from the beginning he didn't get a good look at the third guy. Out of six photos, he was able to narrow it down to two, which did include the third subject, but was not 100 percent sure and refused to mark it because he said he didn't want to make a mistake.

Q All right. And after 2/25/11, we then move to April 20th, '11; is that correct?
A I'm sorry?
Q April 20th, that's when you obtained new pictures; is that right?
A Yes, sir, that is correct; on Mr. Robinson and Mr. Felder.
Q All right. And you felt that you could go back with another set of pictures?
A I was only able to acquire the lineup for Mr. Robinson. The photo that I had acquired for Mr. Felder at that time could not be used according to SLED.
Q Why is that?
A The eyes were partially closed, and they could not accurately match up any other pictures.
Q Okay. And was there a positive identification on 4/20/11?
A Yes, sir, it was an immediate identification.
Q Then you approached Mr. Williams again on 5/23/11; is that correct?
A That is -- yes, sir, that is correct.
Q All right. And what lineup was prepared in that particular case?
A That was a new photo acquired for Mr. Felder that SLED was able to put into a lineup.

Q Now, each one of the identifications that was done in this particular case, did you perform at his home, I believe it was on St. John Road?

A That's correct.

Q All right. Who else was present when that occurred?

A The first lineup, myself and Investigator Peterson were there. The second incident only myself was there.

Q Okay. And initially when they started this investigation, I believe there was an issue with regard to some of the activities that Mr. Williams was involved in?

A I don't understand what you're asking in reference to the lineup, sir.

Q Isn't it true that he also had an illegal weapon when this occurred?

A There was a weapon that was recovered that Mr. Williams never was charged with because it was identified and proven that he had nothing to do with the illegal weapon other than he had purchased the weapon.

Q Okay.

MR. WALTERS: Your Honor, we have no further questions.

THE COURT: Anything on redirect?

MR. MCALISTER: Nothing on redirect, Your Honor.

THE COURT: All right. You may step down.

Any additional witnesses?

MR. MCALISTER: No, sir.

THE COURT: Any motions by the defendant?

MR. WALTERS: No, sir, Your Honor. I -- just for the record, I simply state that it's under the Neal v. Biggers standard, of course, if a photo ID lineup is unduly suggestive. In this circumstance, we have three different incidents, the first incident where a photo lineup is presented. The victim in this particular case does not identify my client. There is some mix up with regards to someone whose a blood relation to him. There's a second approach in April, and of course, at that particular time, Mr. Williams has still turned over this gun that there you know sure of where it came from and if it was involved in any illegal activity. But nevertheless, he knows that he's in trouble because he's got a gun that doesn't have a serial number on it.

And then, of course, we have a third incidence where in May of 2011, they approach him again and at that time he does the positive ID regarding Felder. We respectfully submit our motion to the Court and we would suggest that it is unduly suggestive.

THE COURT: I've listened to the testimony, heard your arguments and reviewed the photo lineups myself, and I find that they are not unduly suggestive and will deny your

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motion.

Anything else before we start?

MR. WALTERS: Thank you, Your Honor.

MR. MCALISTER: Nothing from the State, Your Honor.

THE COURT: Ready to bring to jury in?

MR. MCALISTER: Yes, sir.

THE COURT: All right. Once I bring the jury in, there's no turning around. Are you still okay with your decision?

How old are you?

THE DEFENDANT: Twenty-five.

THE COURT: All right. Bring the jury.

All right. Fellows, in the back of the courtroom, you're going to have to be quiet or leave. You, yes, sir. Thank you.

(WHEREUPON the jury entered the courtroom at 11:12 a.m.)

OPENING REMARKS BY THE COURT

THE COURT: All right. Ladies and gentlemen, let me sort of give you a little bit of a guesstimate on where we are. It's obviously 11:15. We're going to run about another hour and the County is going to buy your lunch down at the HideAway. I don't know where it is because it's hidden away, but -- (laughter .)

I think that's the old restaurant down on the four

lane. So we'll go up until about an hour and then we'll break for long enough for y'all to go to lunch and come back, and then we'll probably go until about five this afternoon.

Is that an imposition with anybody? Anybody got family problems, work problems? Children problems?

THE JUROR: I need to call work.

THE COURT: You can. You can call at lunch.

Okay. The first thing we have to do is -- please stand and raise your right hand. You have to be sworn once again for this case.

(WHEREUPON the jury was sworn at 11:15 a.m.)

THE COURT: Okay. Ladies and gentlemen, as I told you a little bit when we were selecting the jury, in this case, the -- Mr. Robinson is charged in two indictments. One is burglary in the first-degree and the other one is possession of a weapon during the commission of a violent crime. He's pled not guilty to both of those indictments, and obviously a plea of not guilty -- under the constitution, he is presumed to be innocent unless the State is able to prove each and every allegation contained in the indictments to you beyond a reasonable doubt. And the way we do that, because the State has the burden of proof in the trial of the case, they will go first. They have the burden of proof so they present their witnesses

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first.

Once they have completed their testimony and their witnesses, then the defendant has the opportunity to present a defense if he chooses. Once that testimony is in, the State then has the right to reply to any testimony. So that's how it goes. Before the testimony is taken, the State is entitled, as well as the defendant, to make an opening statement. Please bear in mind that the opening statements are not evidence in the case. It's simply what the lawyers contend the issues are, sort of a road map as to what they're going to follow in proving their case and what their defense happens to be in this particular case.

So we do opening statements, testimony by the State's witnesses, by the defense witnesses; the State once again if they need to put up anything in reply. At the conclusion of all of the testimony, both lawyers will make their final arguments, and once that is done, then I will charge or instruct you on the law in the case; and then it will be turned over to you for a decision.

As I told you when we were selecting the jury, you and I have different functions to perform. I have two main tasks to perform. Number one is that I have to instruct you or charge you on the law in the case --

(WHEREUPON someone stood up.)

THE COURT: Mr. Johnson, you need to go outside?

MR. JOHNSON: No, sir.

THE COURT: Well, you know better than that.

I have to instruct or charge you on the law in the case. My position as the judge makes me the law -- the judge of the law in the case, so if you came into the courtroom with some preconceived idea about what the law is or should be and it doesn't agree with what I tell you, you have to set that aside and accept the law as I charge or instruct you in the case. That's one responsibility I have.

The second responsibility is I have to rule on the admissibility of evidence that comes into the trial. The lawyers have to perform their duties by complying with our rules of evidence and our rules of criminal procedure. And I would probably guess before we start that 99 percent of what they ask and what they present will be admitted into the trial of the case. Once it is admitted, once the testimony is admitted, then it is up to you to determine what the true facts are. It's not unusual in a trial of a case where one witness says something that -- they'll tell you it happened all day Wednesday and another witness will say, No, it happened all day Friday; and another witness will say it happened on Sunday, three different entire stories. You have to determine from how they appear on the stand and using your ordinary common sense what the true

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facts are, who's telling the truth. What are the true facts?

And as the judges of the facts, you determine what those true facts are, and you apply it to the law as I give it to you, and you'll be in a position to render a true and just verdict in the case. So your job is the most important in the courtroom. You are the judges of the facts in the case. You take the facts as you find them to be, apply it to the law as I give it to you, and you'll be in a position the render a true and just verdict.

We'll take a break from time to time. We'll take our lunch break, we'll come back after lunch, we'll take an afternoon break before we break for the evening. We'll take an evening break if we don't finish this afternoon. When we take those breaks, I will tell you each time, please do not start any discussions or deliberations concerning the case. It is not proper for you to start talking about the case until all the evidence has been presented, the lawyers have given you their final arguments, and I have instructed you on the law in the case. So when you go back to the jury room, you can talk about anything you want to except for the case until it's turned over to you for deliberation.

I try to run an efficient courtroom by making things run smoothly and run on time, but I'm not trying to

run an endurance race. So if at any time during the trial of the case you become uncomfortable, you need to use the bathroom, your back's hurting, you need to stand up, or you just get tired or whatever, please raise your hand. Don't get uncomfortable back there, and I will make sure any personal needs are met; or if we need to take a break, we'll take a break. So don't get uncomfortable. Raise your hand.

When we break for lunch and you go to lunch and come back, I'm going to ask the twelve of you, excluding the alternates, to select a foreperson from the twelve of you. The foreperson is simply the person who acts as the spokesperson for the jury, brings any problems to my attention, and leads up the deliberations at the conclusion of the trial. We'll run until about five o'clock this afternoon, as I said, and depending on where we are, we'll see how we want to proceed, and I'll get your input on that decision whether you want to stay late and finish or whether you want to come back tomorrow or it may be that we'll be finished mid-afternoon -- I don't know how long it's going to last, but I'll let y'all have some input into that decision.

In just a few seconds, we're going to hear the opening remarks by both lawyers and then move right into the testimony, and we'll go until about 12:15.

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Any objections to my opening remarks by the State?

MR. MCALISTER: None from the State, Your Honor.

THE COURT: By the defendant?

MR. WALTERS: No, sir, Your Honor.

THE COURT: Thank you. Mr. McAlister?

OPENING STATEMENTS

MR. MCALISTER: May it please the Court, Mr. Walters, ladies and gentlemen, our homes are a place of comfort, a place of peace, a place of refuge. In this day and age, we don't have much privacy, but our homes are one place that we do have privacy. On February 20th, 2011, at [redacted] St. John Road, our victim, Mr. Eddie Williams, was at home. He was enjoying the peace and quiet. He's laying in his back bedroom watching a race, just being lazy. Sometime after one that day, the defendant, Stephon Robinson, and his brother, Reginald Felder, came by the house. They drove up in the yard.

Mr. Williams looked out the window, saw them in a white car exiting the vehicle, coming to the door. The defendant and his brother knocked. Mr. Williams didn't want company. He decided not to answer the door. He watched them get back in the car. They pulled away. He went back to his bedroom and laid back down to watch the race.

Dozing in and out of sleep, a few minutes later,

he's awakened again. This time it's an explosion. His door, his front door, is being kicked in. He's startled. He jumps up. We're talking about the middle of the afternoon. He grabs a pistol that's laying near his bedside, and he starts around the corner of his home to see what in the world is going on. As he turns the corner down a short hallway, he runs into the defendant standing just a few feet away, face to face, no mask, no disguise, with a gun in his hand.

Well, Mr. Williams, he has his pistol too. He sees this gun, these guys in his home, they'd just kicked the door in. He starts shooting. About that time, the defendant ducks to run back out and in the process, fires a shot and it hits the ceiling above Mr. Williams kitchen table.

Now, the defendant and his brother exit the home, and maybe a third individual who had not gotten completely through the door, and they take off in that white car. Now, Mr. Williams goes back to his bedroom and retrieves a shotgun. He doesn't know if they're coming back. He's scared. He goes to his front door, looks out the window and makes sure that they're not going to return. He even fires a shot up in the air, just in case he needs to scare them off. At this point in time, he calls the police. The police come out.

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You're going to hear a lot of things today. Most of it's just going to be direct testimony. There's not going to be a ton of evidence that's entered, it's just going to be these witnesses on the stand.

Primarily Mr. Williams, who's sitting in his home, sees these individuals face to face. There's no mistake there. At the end of the trial, the judge is going to instruct you on the law, and I'm going to tell you a little bit about it in a minute, but if I tell you something that's different, you go with what he says. What he says is correct. I promise you that.

The defendant's charged with burglary in the first-degree. What that means is, he enters a dwelling, a home, a house without consent, with intent to commit a crime; and while doing so, while entering that dwelling, that home or exiting that home, he's armed with a deadly weapon or something that appears to be a deadly weapon.

He's also charged with possession of a weapon during a violent crime, burglary first is considered a violent crime. And the weapon in this case was a handgun, was a pistol.

Now, just walking through the elements -- Mr. Williams is in his home. The defendant and his brother enter without consent. They kick the door in. And with intent to commit a crime, he's carrying a handgun.

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Now, ladies and gentlemen, you won't hear from many witnesses and this isn't a complicated case, but that doesn't mean you won't have difficult decisions to make when you go back in that jury room. Just use your common sense. Listen to the testimony. Pay attention to the witnesses. This was his home, his place of comfort, his place of peace, his place of security. At the end of the testimony, at the end of the day, there will be no doubt that that defendant is guilty of burglary in the first-degree. There will be no doubt that that defendant is guilty of possession of a weapon during a violent crime. Thank you.

MR. WALTERS: May it please the Court?

THE COURT: Yes, sir.

MR. WALTERS: Solicitor. When His Honor qualified you as jurors, he inquired as to whether you've had any relationship with anyone with regards to this case, any friends to reward, any enemies to punish. And most importantly during that process when he qualified you, we wanted a jury that would be fair and would simply listen to the facts of the case. And most importantly, when you took your oath to serve as jurors, you agreed to abide by the rules that His Honor will instruct. The State must be held to their burden to prove their case beyond a reasonable doubt; that the defendant, beyond a reasonable doubt,

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committed the alleged offense that they eluded to.

I ask that you carefully listen to the facts and the evidence, but most importantly, that you hold the State to their burden of proving their case beyond a reasonable doubt.

You'll hear from many witnesses that will testify. You'll hear from the victim in this particular case and what he has to say. I ask that you carefully evaluate all that's put before you and most importantly, that you hold the State to their burden of proving their case beyond a reasonable doubt.

I'm confident after you review the evidence and the testimony that will be given, you can reach your on conclusion as to what happened, but most importantly, hold them to their burden of proving their case beyond a reasonable doubt. Thank you.

THE COURT: You may call your first witness.

MR. MCALISTER: The State calls Investigator Jeff Croft.

THE COURT: Mr. Croft.

THEREUPON,

INVESTIGATOR JEFF CROFT,

after being duly sworn, testified as follows:

THE CLERK: If you would, be seated and state your name for the record.

THE COURT: Hold on one second.

(WHEREUPON someone was moving around the courtroom.)

THE WITNESS: Jeff Croft.

DIRECT EXAMINATION

By Mr. McAlister:

Q Investigator Croft, who are you employed by?

A I'm employed by the Barnwell County Sheriff's Office.

Q And how long have you been employed with the sheriff's office?

A Since August of 2004.

Q Did you work in law enforcement before joining the sheriff's office?

A I worked reserve work with the Barnwell County Sheriff's Office prior to going full time.

Q And today, what are your job responsibilities with Barnwell County?

A I'm an investigator for the County. I process crime scenes and investigate criminal activities.

Q And were you working on February -- in February of 2011?

A Yes, sir, I was.

Q How about on February 20th, 2011?

A Yes, sir.

Q How did you become involved with this case?

A I was on call that weekend and received a call from our central dispatch and was advised of an incident which took place at [redacted] St. John Road and was requested to respond to that location.

Q Were you advised as to what kind of incident had taken place?

A It was a home invasion -- put out as a home invasion.

Q And [redacted] St. John Road, that's here in Barnwell County?

A Yes, sir, it is. That's off of Highway 3, south of Barnwell in the County of Barnwell.

Q Do you recall what time you arrived on the scene?

A I think it was around three -- somewhere around the three o'clock mark, maybe a little after three when I arrived.

Q Any idea how long after the initial call went out?

A I think the initial call came out around 2:17, 2:20 that afternoon. The initial officer arrived, assessed what he had and requested the on call investigator come out.

Q Who was that initial officer?

A That would have been Eddie Thomas.

Q And he's a deputy with the sheriff's office?

A That's correct. He's a sergeant with the sheriff's

office.

Q When you got out to [redacted] St. John Road, what did you do?

A I initially made contact with Sergeant Thomas to obtain any information that he'd already gotten to try to save time in this processing of the scene.

Q And did you meet with the victim?

A I -- after speaking with Mr. Thomas, I did meet with the victim and did receive a statement, a verbal statement from the victim.

Q Okay. At that point in time, what did you do?

A I'm sorry?

Q At that point in time, what did you begin to do? Did you begin to process the scene? How does that work?

A Following acquiring the statements -- acquiring the information from Mr. Thomas and the victim, I then observed the scene as it was upon my arrival. I went back to my car, began to -- I got my camera and started processing the scene, which details as photographs of the scene as it was when I got there and photographing any kind of evidence that may be helpful in the case.

Q Let me show you what's been previously marked as State's Exhibit 5. Do you recognize that?

A Yes, sir, I do.

Q And what is that?

A That is the front side of the residence at [redacted] St. John Road.

Q And how are you able to recognize that?

A I took the picture of this residence, and it was taken from the driveway area.

Q Does this photo fairly and accurately depict the scene at [redacted] St. John Road on February 20th of this year?

A Yes, it does.

Q Has it been altered or changed in any way?

A No, it hasn't.

Q And once again, can you just explain briefly what that picture shows?

A This is the front of the residence at [redacted] St. John Road where the incident took place.

MR. MCALISTER: Your Honor, at this time, I'd ask that the State be allowed to admit this into evidence, State's Exhibit 5.

MR. WALTERS: No objection, Your Honor.

MR. MCALISTER: I'd also request to be able to publish it to the jury.

THE COURT: You can pass it down. Keep going.

(WHEREUPON State's Exhibit 5 was entered into evidence.)

By Mr. McAlister:

Q I'm also going to show you what's been marked as --

previously marked as State's Exhibit 6. Do you recognize this?

A Yes, sir, I do.

Q And how are you able to recognize that item?

A This is the drive going down to the incident location, and I also took this picture. It's date and time stamped also on the bottom right.

Q Does that picture fairly and accurately depict the scene at [redacted] St. John Road on February 20th of 2011?

A Yes, sir, it does.

Q Has it been changed or altered in any way?

A No, sir, it hasn't.

Q And I think you've already stated, is the view from the road?

A This is a view from the -- actually the front of my car where I parked my car when I arrived.

MR. MCALISTER: Your Honor, the State would move to admit State's Exhibit 6 into evidence.

MR. WALTERS: No objection, Your Honor.

MR. MCALISTER: We'd also like to publish it to the jury.

MR. WALTERS: No objection, Your Honor.

THE COURT: You may.

(WHEREUPON State's Exhibit 6 was entered into evidence.)

By Mr. McAlister:

Q As you processed the scene, did you find evidence of forced entry?

A Yes, sir, I did.

Q And what did you find specifically?

A The door jam or door frame on the front door was splintered into a number of pieces and scattered across the floor, breaking the lock assembly and all that.

Q Now, I'm going to show you what's been previously marked as State's Exhibit 7. Do you recognize that item?

A Yes, sir, I do. This is a photograph of the actual door jam at [redacted] St. John Road.

Q And did you also take that picture?

A Yes, sir, I did.

Q And does it fairly and accurately depict the scene as you found it at [redacted] St. John Road that day?

A Yes, sir, it accurately reflects the damage to the door, yes, sir.

Q And has it been changed or altered in any way?

A No, sir.

MR. MCALISTER: Your Honor, at this time, the State would move to admit State's Exhibit 7 into evidence.

MR. WALTERS: No objection, Your Honor.

MR. MCALISTER: We'd also like to publish it to the jury.

(WHEREUPON State's Exhibit 7 was entered into evidence.)

By Mr. McAlister:

Q As you went into the house, what other things did you find?

A I immediately noticed, even prior to going into the residence, a -- what appeared to be a bullet hole exiting the trailer. Also just inside the door, I observed what appeared to be another bullet hole in the wall and further into the residence, I could see what appeared to be a third bullet hole in the direction of the door.

Q Okay. How many total bullet holes did you locate in that residence?

A I only located four actual bullet holes.

Q And where exactly were those located, once again? I'm sorry.

A There was three at the door area, which were in a position of exit and there was one over the dining room table just beside the light in a direction of going into the house.

Q I'm going to show you what's been previously marked as State's Exhibit 8. Do you recognize that photo?

A Yes, sir, this is a photo that's taken inside of the residence located at [redacted] St. John from the position that the victim stated he was standing.

Q Okay. And would it fairly and accurately depict the scene from -- at [redacted] from where the victim would have been standing that day?

A Yes, sir, it does.

Q Okay. It hasn't been changed or altered in any way?

A No, sir, it hasn't.

MR. MCALISTER: Your Honor, at this time, the State would move to admit State's Exhibit 8.

MR. WALTERS: No objection, Your Honor.

MR. MCALISTER: We'd also like to publish it to the jury.

(WHEREUPON State's Exhibit 8 was entered into evidence.)

By Mr. McAlister:

Q Now, you said you were able to locate four total shots; is that correct?

A I was able to locate four places where a bullet had struck, yes, sir.

MR. MCALISTER: Your Honor, at this time, we'd request that the witness be able to step off the stand and provide demonstrative evidence.

(WHEREUPON the witness walked down in front of the jury.)

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By Mr. McAlister:

Q Can you draw for us the layout of the residence?

A You'll have to excuse my drawing, but I'll do the best that I can.

(WHEREUPON the witness was drawing on the board.)

By Mr. McAlister:

Q What is that right here that you've drawn?

A This is the entrance door.

Q That's the door that's been kicked in already?

A Yes, sir, and the door is actually this way. The wall, the living room wall here. The bed -- back bedroom is here; and this is a hallway, and this goes into the living room area, the kitchen area.

Q And the driveway is here in front?

A The driveway is -- it goes out to St. John Road.

Q Okay. And where did you determine that the victim's bedroom was located?

A The victim's bedroom is here.

Q Does he have a window facing the drive?

A There's a window right here.

Q Okay. And during the course of your investigation determining where gunshots hit and projectile holes were found, where did you find those bullet holes?

A Okay. The kitchen -- this wall may not protrude quite as far as I have it, but the kitchen table is right

in here just above the kitchen table there's a light, and there was a bullet hole in the ceiling above the kitchen table, a single bullet hole in this direction. On this wall in the living room, there was a bullet hole approximately six foot from the floor and then another bullet hole approximately four foot from the floor; and then there was another bullet hole exiting through the side of the trailer to the outside.

Q And did you -- were you able to retrieve any of these projectiles?

A We were able to retrieve the two projectiles that was -- that hit the living room wall and came out -- both bullets came out of the hall wall. One entered this closet that's at the end of the hall you're facing and was located on the shelf of that closet. The other bullet, which was just a little lower, entered into the bedroom closet, which is right here -- right behind this closet. It's a bedroom closet and I did locate the hole -- it went through all the wall and I found a pair of pants that had sheetrock dust, and I found the second projectile there. I did recover those two.

Q Were you able to retrieve the projectile above the kitchen table.

A I did not retrieve the projectile above the table due to the amount of damage that it would have caused to

the house, and I did not have a weapon to compare that projectile to.

Q And who would that weapon have belonged to according to --

A According to the direction of travel of that round and the victim's testimony, it would have came from the subjects that came in.

Q Okay. You didn't have a gun to compare that to, so there was no need to get that projectile?

A I did not collect that.

Q Okay. Have a seat back up there.

(WHEREUPON the witness returned to the witness stand.)

By Mr. McAlister:

Q Did you recover any other firearm at the residence that day?

A I did recover a .357 that the victim had.

Q And were you the actual law enforcement officer that recovered that gun initially?

A Deputy Boots actually took initial possession of the firearm.

Q And then he turned it over to you?

A Yes, sir.

Q Okay. And whose gun was that?

A It belonged -- it was in the possession of the

victim.

Q Mr. Williams?

A Yes, sir.

Q And where was that gun located?

A It was located at Mr. Williams' residence.

Q Was that gun entered into your data base there at the sheriff's office?

A Yes, sir, it was.

Q And what did you find?

A I found that that particular weapon had been previously stolen out of Beaufort County.

Q Did you question Mr. Williams about this?

A I did.

Q And what did you ultimately determine?

A I determined that Mr. Williams did purchase the weapon from an individual. He had no knowledge that the gun was stolen, and he purchased it for his home.

Q Was he charged with a criminal offense or for possession of that weapon?

A No, he wasn't.

Q And why is that?

A When he was advised that the gun was in the system as stolen, he immediately said I don't want to have anything to do with it. I'll turn it over to you.

Q Okay. And changing gears a little bit. You

received information about a vehicle, a suspect vehicle?
A Yes, sir.
Q Was the victim able to provide a description of that vehicle?
A Yes, sir, he was.
Q Do you recall what that description involved or what kind of make and model that was?
A He described the vehicle as being a white, four-door vehicle. He thought it to be a Pontiac and described what vehicle it actually was -- what vehicle he thought it was.
Q Was the victim able to identify the subjects who he stated had entered his home that day?
A Yes, he was.
Q Okay. And were you able through your law enforcement resources to determine who that car ultimately belonged to?
A Yes, I was.
Q And how did you establish that connection?
A Through what the information that the victim had shared with me, the location at that -- the individual who owned the car, I was able to run it through our central dispatch and was able to get some information that the individual did indeed own this make and model car.
Q Okay. Was the victim that day able to give you any

identifying information about the subjects that came into the house? Was he able to identify those subjects?

A Yes, he was. He identified by name, initially, down to the family. And he kept referring to Mr. Robinson as having facial hair, a goatee. He kept doing his hands on his face and describing the goatee, which --

Q And that's Stephon Robinson?

A That is correct.

Q Okay. As you continued your investigation, what did you do next? Where did you go?

A Once I left the scene at [redacted] St. John Road, I traveled to [redacted] Cocoa Road, which is the residence of Stephon Robinson.

Q Okay. Anyone else live there with him?

A Under my -- my understanding is no. His brother stays there sometimes.

Q And how far is that location from the victim's residence?

A It's approximately two miles, three miles at the most.

Q When you arrived there that day -- was it the same day that you were called out to the scene?

A Yes, sir. I left the scene and went straight to that location.

Q Okay. How long were you at the scene?

A An hour and a half, two hours, maybe.
Q Okay. So at some point thereafter, that afternoon, late in the afternoon, you went to the suspect's location, or their home?
A Yes, sir.
Q Was the defendant there?
A The defendant was there, yes, sir.
Q Who was with him?
A His brother, Reginald Felder and his cousin was also there.
Q Okay. Do you have his cousin's name?
A Can I look at my paper?
Q Yes, sir.
A I can use yours.
(WHEREUPON the witness was looking at his notes.)
THE WITNESS: Mr. Jamal Wallace.
By Mr. McAlister:
Q And did you have an opportunity to meet with the defendant?
A Yes, sir.
Q Was he willing to speak with you?
A Yes, sir.
Q And what did he say when you questioned him about his whereabouts?
A He stated he was asleep. He had just gotten up.

Q Okay. And this was late in the afternoon?
A Yes, sir.
Q Did you ask him about the white car?
A I did ask him about the white Pontiac and -- yes, sir, I did.
Q And what did he tell you about that white car?
A He stated that it belonged to a girlfriend or a good friend, a female friend of his and that he borrowed the car the night before and had returned it that morning.
Q Okay. And what time did he say he returned that vehicle?
A He said he returned that vehicle around 10 a.m.
Q Was he -- was the defendant willing to provide a statement in writing?
A No, he wasn't.
Q Okay. This interview that you conducted with him initially, was it taped?
A It was taped, but the audio on the tape didn't pick up.
Q But you weren't aware of that when you went out to meet with him?
A No, sir.
Q And from this information and based on the information given to you by the victim, were you able to verify -- I think I asked you this -- the make and model of

Ms. Gunnel's car?

A It was a Pontiac G6, four door, white in color.

Q I'm showing you what's been previously marked as State's Exhibit 9. Do you recognize that item?

A Yes, sir, this is a photo that was taken at [redacted] St. John Road of the hole in the ceiling over the table.

Q Does that photo fairly and accurately depict the scene as it would have appeared that day, on February 20, 2011?

A Yes, sir.

Q Has it been changed or altered in any way?

A No, sir.

MR. MCALISTER: Your Honor, at this time, the State would move to admit State's Exhibit 9 into evidence.

MR. WALTERS: No objection, Your Honor.

MR. MCALISTER: I'd also like the publish it to the jury.

(WHEREUPON State's Exhibit 9 was entered into evidence.)

By Mr. McAlister:

Q After you met with the defendant that day, did you initially put him under arrest?

A No, sir, I did not.

Q What did you do next?

A I met with the other two individuals at that

residence --

Q Okay.

A -- Mr. Felder and Mr. Wallace.

Q And did you also have an opportunity to meet with Ms. Gunnels?

A I did.

Q Did you go back out to the residence where the incident occurred and provide a photo lineup?

A Yes, sir --

Q To the victim?

A I did.

Q I'm going to show you what's been previously marked as State's Exhibit 1 and State's Exhibit 2. On what day did you go out there and provide those photo lineups to the victim?

A On February 25th, 2011.

Q So this was several days after the incident actually occurred?

A Yes, sir.

Q Okay. Where did this photo display take place?

A I'm sorry?

Q Where did it take place? Where did you actually show him the lineup?

A It was at Mr. Williams residence at [redacted] St. John Road.

Q What, if anything, did you tell the victim -- the witness before he was allowed to see those photos?

A I advised Mr. Williams that the -- I was going to present him with a photo lineup which would have a number of pictures on it. I advised Mr. Williams that the individuals may or may not be displayed on the photo lineups. And I advised Mr. Williams that if he wasn't 100 percent sure of the identity of the individuals that he did not have to make a choice.

Q And was Mr. Williams the only person that viewed the display that day?

A Yes, he was.

Q How many photos were actually displayed to Mr. Williams?

A There was three sets -- three lineups presented to Mr. Williams with six photos on each lineup.

Q Can you describe the nature of those photos, how they were comprised, how they're put together?

A They were put together using similarities in facial features, height, weight characteristics of each individual.

Q And after showing Mr. Williams this photo lineup, was he able to identify any of the subjects?

A Yes, he was. He was able to identify two of the individuals. Mr. Stephon Robinson and Mr. Felder.

Q And he selected them from that photo lineup?
A Yes, he did.
Q And I know I've already handed them up there to you. Do you recognize the contents of those lineups?
A The State's Exhibit 1 is a lineup for Mr. Stephon Robinson.
Q And how about State's Exhibit 2?
A State's Exhibit 2 is a lineup from Mr. Reginald Felder.
Q Are those lineups in the same condition when you originally provided them and presented them to Mr. Williams?
A Yes, sir, they are.
Q Okay. Are there any material alterations or deletions to those photo lineups?
A No, sir, there's not.
MR. MCALISTER: Your Honor, at this time the State would move to admit State's Exhibit 1 and State's Exhibit 2 into evidence.
MR. WALTERS: No objection, Your Honor.
(WHEREUPON State's Exhibits 1 and 2 were entered into evidence.)
By Mr. McAlister:
Q Now, did you go back out and meet with Mr. Williams again in regards to lineups?

A I did.
Q Okay. And why did you do that?
A The photographs that were used in the initial lineups were retrieved using the South Carolina driver's licenses. The photos were approximately six years old and there was a number of features that had changed about both individuals. So I was able to acquire a new photo of the two individuals and was able to share it with Mr. Williams.
Q And why did you do that? Was there something wrong initially?
A When we -- on the initial lineups, Mr. Williams picked out two individuals that he positively stated came into his residence, but Mr. Williams reversed their names.
Q Okay. So he picked Reginald Felder as Stephon and Stephon Robinson as Reginald Felder?
A That is correct.
Q Okay. And was he able to -- did he initial what picture he thought was his or how did he mark or signify what was what?
A He stated he was going to place an X on the ones which he could eliminate. And he placed an X on all five of the six pictures.
Q Okay.
A And --
Q And who did he not place the X on?

A He did not place an X on Stephon Robinson.
Q How about in the second photo lineup initially that was presented?
A Again, he stated he was going to place an X on the photos which he could eliminate, and he eliminated five. He did not eliminate No. 5, which is Reginald Felder.
Q Okay. Did you also present a lineup that showed the third suspect?
A I did.
Q Okay. Was he able to identify anyone in that lineup?
A He again stated he wanted to put an X on the ones which he could eliminate. He eliminated immediately four of the six photographs. He did identify the third person, but said he was not 100 percent sure because he didn't get a look at him; and he refused to put a mark on it because he didn't want to make a mistake on identity.
Q And on what date did you return out there to his residence to show the second photo lineup?
A The photo lineup for Mr. Robinson I think was on 4/20 or 4/23, so...
Q So around April 20th?
A Yes, sir.
Q Okay. And what did this lineup entail?
A This was a new picture of Mr. Stephon Robinson, a

current picture which I was able to acquire, sent to SLED and SLED put together a lineup using that photograph.

Q And again, was it based on facial features?

A Again, based on facial features, similarities in all the individuals.

Q Okay. And when you went out there subsequently, did you give the witness any instructions prior to him viewing those photos?

A Same instructions as before. I advised him I was going to show him a lineup which consisted of six pictures, and the individual may or may not be displayed on the lineup. I advised him if he wasn't 100 percent sure, he did not have to make a mark.

Q I'm going to hand you what's been previously marked as State's Exhibit 4 and State's Exhibit 3 -- excuse me 3 and 4 -- and when presented those lineups, was Mr. Williams able to identify the defendant?

A I presented the one on Stephon Robinson first, which was presented on the 20th of April, and when he looked at it, he immediately placed his finger on Stephon's picture and said, I told you that's him right there.

Q And did he give any other details of why he felt that that was --

A He continued to describe the goatee, which he had explained to us from the very beginning that Mr. Robinson

had on his face.

MR. WALTERS: I object, Your Honor. I believe that's hearsay. He's testifying as to what Mr. Williams said.

THE COURT: The victim's right back there, he's going to testify. Move along.

By Mr. McAlister:

Q And how about when you provided him the other photo lineup?

A The other photo lineup was shared on 5/23 of Reginald Felder and he did pick Mr. Felder out of the lineup.

Q Okay. And have either one of those lineups been changed or altered in any way?

A No, sir, it hasn't.

Q Okay. Have they been in your custody and care?

A They have been in the case file, locked in a filing room at the Barnwell County Sheriff's Office.

Q And they are substantially in the same condition as when you originally used them?

A Yes, sir.

Q Your Honor, at this time, the State would move to admit Exhibits 3 and 4 into evidence.

MR. WALTERS: No objection, Your Honor.

(WHEREUPON State's Exhibit 3 and 4 were entered

into evidence.)

MR. MCALISTER: Beg the Court's indulgence real quick.

No further questions at this time.

THE COURT: Cross-examination.

MR. WALTERS: May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

By Mr. Walters:

Q Investigator Croft, in this particular case during your investigation, there's no gun that you found that my client had in his possession?

A A gun never was retrieved, no, sir.

Q And in this particular case, there were no fingerprints of my client's found at the residence?

A There was no prints at the scene, no, sir.

Q And in this particular case there's no empirical data or evidence that substantiates that my client was inside this trailer?

A Can you repeat that?

Q Do you have anything other than the allegation made by Mr. Williams that my client was inside this trailer?

A The investigation revealed that through identification and the vehicle, that it was Mr. Robinson that was in the residence, yes, sir.

Q And I believe your testimony is that it was an allegation made by Mr. Williams that there was a gentleman named Stephon Robinson; is that correct?

A Yes, sir.

Q All right. And I believe that you stated that two hours after this occurred you went to Mr. Robinson's residence; is that right?

A I did.

Q And you've been doing this a long time, if he fired a gun, you could simply bag him --

A There are certain procedures that must be done in order to do that, yes, sir.

Q And what I'm eluding to, to make sure the jury understands. When a person fires a gun, there's residue left on their hands or their arms, correct?

A It can, yes, sir.

Q And how many times have you performed a gun residue -- a gunshot residue kit?

A A number of times, I'm not sure.

Q Right. And explain to the jury how that process goes about when you perform a gunshot residue test?

A The residue kit must be performed within a certain period of time. It is prepackaged, sealed, which we get it prepackaged and sealed. You test the back of the hand, the fingers, the palm, and neutral locations; and it can be

sent to South Carolina Law Enforcement Division to determine whether or not the traces of evidence show that that person could have fired a weapon.

Q And would you describe to the jury what you place on the front of the hand and the back of the hand in order to prepare this test to be sent to SLED. Is it a powder? Is it a chemical?

A It's actually -- the kit comes with a collection tool, which you dab on the -- just dab on the hand, which actually picks up -- it's sticky. It picks up particles on the back of the hand, the palm of the hand, inside the fingers. There's a liquid acid which you use to dilute on a Q-tip which you can swab the hands, which also picks it up.

Q All right. I want to make sure I'm clear about your testimony. You arrived at Mr. Williams' residence. He informs you that this individual has fired a gun within his home. He's less than two miles away. You go to his home. Did you perform the test?

A No, sir.

Q Now, Mr. Williams also eluded to, there was someone else there, and he eluded to this person named Felder; is that right?

A That's correct.

Q All right. And I believe Felder is the brother of

Stephon Robinson; isn't that right?

A That's correct, yes, sir.

Q And I believe that he was present at the home that was two miles away; is that correct?

A That is correct, yes, sir.

Q So I want you to explain to this jury, Mr. Williams has alleged that there is a shooting that's occurred. His home has been broken into, someone's fired a gun, he's fired a gun back at them. You stayed there about an hour and a half, and you go down to road two miles. You go to the actual residence where these individuals are present, and it's alleged that they committed this heinous crime because no one wants someone to fire into their home. It is very serious.

And you walk in and Mr. Robinson is there and also his brother is there. Why didn't you simply just perform a kit on both of them and determine if they had fired a gun?

A The time allotted to collect that kit, it was getting very close to that timeline and I did not perform the kit.

Q It was getting close to the timeline --

A Yes, sir.

Q -- but you were told initially when you walked in that house -- this is your testimony -- that these are the individuals. You knew where their home was. I believe you

said it was on Cocoa Road; is that right?

A That's correct.

Q You travel to Cocoa Road?

A Yes, sir.

Q All right. And you could have simply driven over to the house, Hold your hands out, let me get a sample, we'll see what we've got. Mr. Williams has made a serious allegation against you, that you've done something within his home.

And at that time you could walk in front of this jury and simply tell them, look, I found gunshot residue on the hands of Felder and Robinson within minutes after this alleged event occurred at Mr. Williams' house; isn't that right?

A My duty when I arrived on scene at [redacted] St. John Road was to process the crime scene and collect evidence from the crime scene, initially, before it was contaminated by any activities. Once I acquired the statements and acquired information, my duty then was to attempt to get -- collect any other evidence that may be located with the subjects. So my initial contact was to process the crime scene at [redacted] St. John Road.

Q Okay. In your experience as a police officer, why don't you tell the jury how long you have to conduct a gunshot residue kit?

A SLED will not test beyond six hours.

Q Right. And if you arrived at the house -- he says he called the police after this happened, and you were there an hour and a half. And then you said you drove two miles down the road. You were well within the six hours; is that right?

A I arrived on scene around three. The initial call came into our dispatch around 2:15, 2:16, somewhere in that neighborhood. It was around five or six before I ever made it to [redacted] Cocoa Road. It was a couple of hours that I was actually at the scene.

Q All right. But you would agree that you determined they had fired guns, that may substantiate the allegation by Mr. Williams?

A If I could have performed the test -- I could have tested to see if there was gunshot residue on their hands, and it may or may not have been conclusive.

Q Now, we served a Rule 5 on the solicitor's office, and I carefully went through it; and when you arrived at Robinson's house, was there a white Pontiac there?

A No -- at Mr. Robinson's residence?

Q Yes, sir.

A No, sir, it wasn't.

Q All right. And as far as this car in this particular case, at what time did you locate the car?

A I knew where the car should be immediately that afternoon, but it was not at home. I actually made contact -- I think it was the next day, with the individual who owns the car.

Q You also answered a question of the solicitor in this particular case -- there was a question in regards to Mr. Robinson and the conversation. You remember answering those questions?

A Yes, sir.

Q All right. And you stated he was not willing to provide a statement. I think that's your words; is that right?

A He said he did not want to write a statement at that time.

Q Right. But Mr. Robinson, he answered all of your questions; is that correct?

A He did.

Q He was cooperative?

A He answered my questions, yes, sir.

Q And he told you that he had borrowed his girlfriend or friend's car; is that correct?

A He said she was a good friend. That's the way he worded it, yes, sir.

Q All right. In fact, in most of your investigations -- and we've dealt with each other before --

you have a habit or recording conversations, don't you?

A Yes, sir.

Q All right. In fact, you attempted to record the conversation with Mr. Robinson; is that right?

A We wear what is known as a scorpion. It is a video and audio recorder. The video picks up fine. You can see the picture. The audio did not. It was immediately replaced because of the malfunction.

Q Well, let me ask you this. Let's make sure the jury's aware of when you say scorpion, what are you talking about?

A It's a video and audio recording device. It's a small device that we wear for the purposes of capturing video and audio with anybody.

Q I apologize. I didn't mean the interrupt you.

A That's okay.

Q I sometimes get ahead of myself. The scorpion that you were wearing, can you wear it under a necktie?

A No, sir, it's exposed.

Q All right. And how big is it? Is it a business card?

A No, sir, it's approximately an inch and a half, two inches and maybe a half inch wide. You can wear it on your business tie. It clips on and is readily visible on the front or you can clip it on here.

Q And does it record the audio? or video? or what does it record?

A It records both.

Q Right. And of course that would reflect the conversation you had with Mr. Robinson?

A The audio did not pick up. You can see mouths moving, but the video -- excuse me the audio does not pick up. And it was immediately replaced.

Q And I believe you also were -- I'll use your words, the scorpion, when you talked to Mr. Felder; is that correct?

A I did.

Q And did you wear the scorpion also when you talked to Ms. Gunnels?

A I did.

Q And I believe Ms. Gunnels was on a different date; isn't that right?

A It was.

Q All right. And that audio did not work?

A It wasn't -- when it was downloaded was when we discovered it wasn't working. It didn't work either when I talked to Mr. Williams at the initial scene.

Q All right. But if it worked that might be the best measure of what happened that day; right?

A I would have liked for it to work, yes, sir, but it

didn't.

Q Now, let's talk about something else that you eluded to in your testimony. You also talked about Mr. Williams and the.357 that he had in his home; is that right?

A That's correct.

Q Right. And initially when you talked to Mr. Williams about this particular weapon, you eluded to the fact that it didn't have a serial number?

A No, sir, I did not say it didn't have a serial number.

Q Did it have one?

A Yes, it did.

Q Okay.

A That's the way we identified the weapon as being one from Beaufort.

Q All right. And who initially did Mr. Williams buy this weapon from?

A I don't recall the name of the individual that he gave us. I did share that with the investigator that was handling the case in Beaufort.

Q All right. Because we served you a Rule 5. It eluded to the fact that the gun was stolen. Did you go back and tell Mr. Williams that the gun was stolen?

A I did.

Q All right. What was his reaction?
A He said he didn't want anything to do with it. He told me who he purchased it from.
Q And what is that person's name?
A I don't recall his name. I shared that information with Beaufort.
Q Did you make a report?
A Of that information?
Q Yes, sir.
A I didn't include it in this report, no, sir.
Q Did you ever make a report?
A I made a report to Beaufort and they got a copy of where it was run in the CAD system -- or excuse me NCIC system, which reflected that it was stolen.
Q Okay. I don't want to belabor the point, but we served you a Rule 5. He said he fired this weapon during this alleged event. And you determined that the person that he purchased this gun from that was stolen, did you ever write out a report?
A No, sir.
Q So did you just call the phone to Beaufort and tell them that this was what Mr. Williams has said with regards to this gun?
A When we run it through NCIC, it immediately comes up as a hit. What we call a hit. Beaufort is notified via

computer, which says that we -- that that gun has been recovered. They immediately send a response to our dispatch and advise that it is the gun which is entered. At that point, their investigator contacted me and asked about the gun. I told him we had just recovered the weapon, and I could turn it over to him when we were through with this case.

Q I want to refer your attention to the photo ID lineups that you referred to. Have there been cases where you have to conduct three to four photo ID lineups?

A There's times when certain circumstances to clarify what the victim has pointed out, yes, sir.

Q Well, these pictures -- you can say is it Glen Walters or isn't it?

A Okay. On the photo lineup, we're not asking for names to be identified. We're only asking for you to identify the person which you know, and whether they put a name with it or not, it's not -- it's not a name identification. It's a photo identification.

Q All right. But you would agree that you conducted a photo lineup on February 25th of 2011.

A That's correct.

Q And you did it at the home?

A That's correct.

Q Then you did a photo lineup on 4/20/11?

A That's correct.
Q All right. And you came back and you did another photo ID lineup on May 23rd of 2011?
A That's correct.
Q All right. And the first time there was a mix up with regards to the actual person that he was referring to?
A There was no mix up on identifying the two people who entered the residence. Absolutely none as far as the photo goes. There was a mix up in what their names were.
Q Okay. And the second time around, I believe you said that you had pictures that were six years older and then you had pictures that were more recent with regards to DMV?
A They weren't DMV pictures used the second time.
Q Okay. And then, of course, we have the May 23rd, 2011 lineup. In that particular case -- and I believe you stated that four out of the six he was able to eliminate --
A I'm sorry, say that again.
Q Well, I'll go through your testimony -- I don't want to mix you up. On May 23rd, 2011, that's where you produced a photo ID lineup where Mr. Williams eliminated four of the six people in this lineup; is that correct?
A I don't think that was the May lineup.
Q All right. Well, which lineup was it where the four out of the six were eliminated?

A That was on the initial lineups that were shown on 2/25.

Q And there were three people that he wasn't sure about.

A There was two people --

Q Okay.

A -- he narrowed it down to two people and said he would rather not mark the individual because he did not want to make a mistake.

Q Okay. So in looking at your testimony there, I want to make sure I'm clear. No fingerprints.

A No, sir.

Q Okay. There's no gunshot residue kit?

A No, sir.

Q Was there a search of the vehicle?

A What vehicle, sir?

Q The white Pontiac?

A No, sir.

Q Okay. And did you search Mr. Robinson's house where he and Mr. Felder were staying?

A No, sir.

MR. WALTERS: Your Honor, I have no further questions.

THE COURT: Thank you. Redirect.

///

REDIRECT EXAMINATION

By Mr. McAlister:

Q When you went to the defendant, Stephon Robinson's home, on February 20th, did you search his house for a weapon that day?

A He wouldn't allow us to come into his residence. He actually came outside and talked.

Q And you've already indicated that that white Pontiac, that car was not there?

A It was not at that location at that time, no, sir.

Q Did you have a chance to search that car for a weapon?

A No, sir, I did not.

Q Can you collect a GSR, a gunshot residue kit without a search warrant or consent?

A Under certain circumstances, yes, sir.

Q Did you do that in this case?

A No, sir, like I said, the time was stretching. There were some circumstances that was obvious and I didn't do it.

Q Okay. Would you expect to find GSR on the hands of a suspect after those hands had been washed?

A No.

Q In the amount of time in this incident was several hours?

A That's correct.
Q Did the defendant consent to allow you to search his home at all?
A No, he did not.
Q Did he allow you to search his car at all?
A No, we wasn't in possession of any -- of the vehicles at that time, no, sir.
Q Did he allow you to search his person?
A No, sir.
Q So he didn't allow you to do a GSR kit?
A No, sir.
Q And did you have a warrant to do any of those things, a search warrant?
A No, sir, I did not.
Q There's been a lot made here about these ID's, and just for clarity, initially when you went out on the 25th, you had three different sets of photo lineups, correct?
A Yes, sir, and the three sets consisted of eighteen pictures.
Q Okay. And the first two sets were one was Stephon Robinson and one with Reginald Felder?
A That's correct.
Q And the third was a possible third codefendant?
A That's correct.
Q And that third lineup that's been mentioned, I

think Mr. Walters's referenced it just a minute ago on cross, that third lineup is the one of that third codefendant where Mr. Williams was not able to identify a certain person, correct?

A That is correct.

Q Okay. And because he couldn't identify that third person, y'all didn't charge that third person, correct?

A No, sir, no charges have come at this time.

Q Okay. So that's the first time you went out?

A That is correct, yes, sir.

Q Okay. The second time you went out, was in May?

A Yes, sir.

Q Or April or May?

A April.

Q Okay. And you initially approached him with whose lineup at this point in time?

A Stephon Robinson's.

Q Okay. But you didn't go with one for Reginald Felder?

A I couldn't. The one that we had -- the picture that we had for Reginald Felder, which would have been on that same day, we didn't use because there was some issues with the photo.

Q Okay. And so that's why you went out a third time specifically with Reginald Felder's lineup?

A The third time?
Q Yes.
A That is correct, yes, sir.
Q Okay. And that was several days later after you got a lineup that you could use?
A Yes, sir.
Q Okay. And that's the only reason you went out three times?
A That's it.
Q Okay. The day that the incident occurred, was the victim able to ID the defendant by name?
A Yes, he was.
Q Okay. When you went back on the 25th, was he able to ID him by photo?
A Yes, he was.
Q Okay. And then when you went back in April, was the victim able to identify the defendant Stephon Robinson by photo?
A Yes, he was.
Q Okay. And was he able to identify the codefendant, Reginald Felder, by photo?
A Yes, he was.
Q Okay. And that's all y'all asked him to do?
A That's all we asked him to do, yes, sir.
MR. MCALISTER: No further questions.

THE COURT: Thank you. You may step down.

I don't allow recross.

MR. WALTERS: I apologize.

THE COURT: It's discretionary with the Court.

MR. WALTERS: I'm sorry.

THE COURT: I'm consistent with both sides an in every case I try.

MR. WALTERS: Yes, sir.

THE COURT: How are you going to get them out to the restaurant?

THE CLERK: I'm hoping they'll be able to drive their own vehicles because I don't have transportation.

THE COURT: We're going to take a break for lunch. We'll start back at two, but if you're not finished by two, I'm not going to start without you. Can y'all -- you each got your own vehicle or you want to share rides out there or however? You know how to get there.

(WHEREUPON the jury nodded in affirmation.)

THE COURT: You got a room set up for them?

THE CLERK: Yes, in the private room and a couple of the bailiffs will go as well.

THE COURT: The bailiffs will go, and they'll take care of the bill. So have -- I think they've got a big buffet, so enjoy your lunch and if you want the desert, get that and thank the clerk for agreeing to do it. And we'll

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start back at two o'clock. Please don't discuss the case, don't let anybody discuss it with you, and don't, obviously, start any kind of deliberations.

Everybody else remain seated.

Y'all go with Mr. Eddie, and he'll get y'all lined up.

(WHEREUPON the jury left the courtroom at 12:25 p.m.)

THE COURT: All right. Anything for the record on behalf of the State before we break for lunch?

MR. MCALISTER: Nothing from the State, Your Honor.

THE COURT: Mr. Walters?

MR. WALTERS: Nothing, Your Honor.

THE COURT: All right. We're -- the defendant's in custody. We'll start back at two clock.

(WHEREUPON a recess was observed for lunch.)

THE COURT: All right. Mr. Walters, you ready to proceed?

MR. WALTERS: Yes, sir, Your Honor.

THE COURT: Did you talk to him?

MR. WALTERS: Yes, sir, thoroughly.

THE COURT: State ready to proceed?

MR. MCALISTER: Yes, we are, Your Honor.

THE COURT: Mr. Walters?

MR. WALTERS: Yes, sir, Your Honor.

THE COURT: Bring the jury in.

(WHEREUPON the jury entered the courtroom at 2:11 p.m.)

THE COURT: Did y'all appoint me a foreperson?

(WHEREUPON there was no response from the jury.)

THE COURT: You ate so much and you forgot to do that. Well, since you didn't do it, I'm going to do it.

I'm just going to do this -- y'all want to do it when you take a break at three o'clock.

THE JURY: We can do it then.

THE COURT: Was lunch okay.

THE JURY: It was good.

THE COURT: I peaked in there. I saw one particular lady, her plate was filed particularly high. I'm glad we were able to find -- thank Ms. Rhonda for that. It's difficult enough having to be on jury duty and I know it's an imposition being away from your jobs and your family, so hopefully lunch was a little help to you.

We're going to try to go until about five to see how we are. We'll get to that point and see where we are, and I'll let y'all sort of make the call on what to do about -- if we can finish in just a few minutes, we'll finish it up, but if it's 4:15 or 4:20, we'll decide how we want to handle it. Fair?

THE JURY: Yes, sir.

THE COURT: Call your next witness, please.

MR. MCALISTER: The State calls Shelly Leanna Gunnels.

THE COURT: Ma'am, if you would come around and place your left hand on the Bible and raise your right.

THEREUPON,

SHELLY LEANNA GUNNELS,

after being duly sworn, testified as follows:

THE CLERK: Be seated and state your name for the record.

THE COURT: Ma'am, you're going to have to speak up, please.

THE WITNESS: Leanna Gunnels.

THE COURT: That's not going to work.

THE WITNESS: Leanna Gunnels.

THE COURT: A little bit higher.

THE WITNESS: Leanna Gunnels.

THE COURT: Thank you, ma'am. Take a deep breath, everything will be fine. You want a glass of water?

THE WITNESS: No.

THE COURT: All right. Listen to his questions and answer them, please.

DIRECT EXAMINATION

By Mr. McAlister:

Q Ms. Gunnels, how old are you?

A Nineteen.
Q And where are you from?
A Hampton.
Q Where did you go to high school?
A Hampton and Barnwell.
Q And where were you living in February of this year?
A In Barnwell.
THE COURT: Speak up, please.
By Mr. McAlister:
Q And where do you live now?
A In Georgia.
Q How long have you known the defendant, Stephon Robinson?
A Almost seven years.
Q Where did you meet?
A Through my uncle and at a club, like a teen club.
THE COURT: At a what?
THE WITNESS: A teen club.
By Mr. McAlister:
Q A teen club here in Barnwell?
A (Witness nodded head.)
Q Were y'all in a relationship for that six or seven years or what was the nature of that relationship?
A On and off.
Q Did the defendant ever use your vehicle?

A Yes, sir.
Q I'm going to show you what's been previously marked as State's Exhibit 11. Do you recognize that?
A Yes, sir.
Q And what is that?
A My car.
Q Is that the car that you were driving back in February of 2011?
A Yes, sir.
Q Do you still own that car?
A No, sir.
Q Okay. Was that the car that you allowed the defendant to use on occasion?
A Yes, sir.
Q How often?
A Whenever.
Q Whenever he wanted to use it?
A Uh-huh.
THE COURT: Yes or no?
THE WITNESS: Yes, sir.
By Mr. McAlister:
Q On February 19th of this year, did the defendant borrow your car?
A Yes, sir.
Q When did he return the car?

A The next day.
Q That would be February 20th?
A I guess.
Q Do you recall when he returned it?
A Like --
Q Do you recall?
A I guess around that afternoon.
Q Okay. Do you recall who was with the defendant when he returned the car?
A I don't remember.
MR. MCALISTER: No further questions at this time.
THE COURT: Hold on a second.
MR. MCALISTER: Your Honor, one more thing. I do need to enter the picture into evidence if that's okay.
THE COURT: All right. Any objection?
MR. WALTERS: No objection, Your Honor.
THE COURT: All right. Thank you.
MR. MCALISTER: Thank you, Your Honor.
(WHEREUPON State's Exhibit 11 was entered into evidence.)
THE COURT: Mr. Walters?
MR. WALTERS: I have no questions, Your Honor.
THE COURT: All right. Ma'am, you may step down. Can she be excused to leave?
MR. MCALISTER: She can.

THE COURT: Thank you.

Next witness.

MR. MCALISTER: State calls Eddie Williams.

THEREUPON,

EDDIE WILLIAMS,

after being duly sworn, testified as follows:

THE CLERK: Please be seated and state your name for the record.

THE COURT: Mr. Williams, how you doing.

THE CLERK: State your name for the record.

DIRECT EXAMINATION

By Mr. McAlister:

Q Mr. Williams, how you doing today?

A Pretty good.

Q Can you tell the Court where you live?

A [redacted] St. John Road.

Q Is that here in Barnwell County?

A Yes, sir.

Q Okay. Where at in Barnwell County?

A South on -- south on Highway 3, about five miles from Barnwell.

Q Okay. Are you originally from there?

A Yes.

Q Have you always lived there?

A No, I stayed in New York for a while.

Q All right. But your family is from that area?

A Yes.

Q Here in Barnwell?

A Yes.

Q Where did you live previously to moving into this residence at [redacted] St. John Road?

A [redacted] Red Oak Road, Barnwell.

Q And when did you move back to [redacted] St. John Road?

A I moved back -- I think it was July of 2010, June or July, 2010.

Q And what do you do for a living?

A I used to drive trucks, tractor trailer.

Q Do you work anywhere now?

A No, sir.

Q How do you survive?

A I'm on social security disability.

Q What made you stop driving trucks?

A I had a bad accident in the truck over the road.

Q Okay. When did that occur?

A That was February of 2003.

Q Let's go back to February of this year, 2011. Do you remember February 20th of 2011?

A Yes, sir, it was my birthday.

Q Do you recall what day that actually was? What day of the week?

A That was on a Sunday.
Q And why do you remember that day? Why does that day stick out other than your birthday?
A Well, I was laying down getting ready to watch a NASCAR race and thought I heard a car outside and got up and looked. It was a white car. I recognized the car and I recognized the people, so I didn't answer the door because they didn't really come to see me, you know, so I figured they weren't coming to see me. I got a little nephew that stay with me.
Q So they knocked on your door?
A Yes. They knocked on the door.
Q But you didn't answer?
A No, I didn't answer. And then when I didn't answer, I said, Let me go into the front part of the room, and they was getting back in the car.
Q Okay. And what did you do then?
A Well, I got me a drink, some Kool-aid and fixed me a sandwich and went back to my bedroom.
Q Okay. So you went back to your bedroom to continue watching the race?
A Yes, sir.
Q Okay. And what happened -- what happened right after that?
A It was about ten minutes later, I thought I heard a

car back out there. I didn't know it was that particular car, but I thought I heard a car came back up. So I said, Well, I'm not moving. You know, I had me a sandwich and watching the race. Next thing I know my door came in.

Q Okay. And that startled you?

A Yes -- yes, it did.

Q Okay. What did you do when you heard your door being kicked in?

A Well, I grabbed a gun off the nightstand that I had and --

Q Okay.

A -- jumped up.

Q Just backtracking a little bit, when they -- when the individuals first came up in that white car, did you see who got out of the car?

A Yes, sir.

Q Who was that?

A It was Stephon Robinson.

Q Okay. Anybody else with him?

A I didn't see the people right then and there, I just seen him at the time.

Q Okay. And when he got back in the car to leave, who was driving?

A It was Stephon.

Q Okay. Your driveway, let's explain to the jury, do

you have a long driveway? You are able to see cars coming up, as far as coming up?

A Yes, sir, yes.

Q So your house sits back off the road?

A Yeah, it sits back off about 75 yards.

Q The car that they were in, did you recognize that car?

A Yes, I recognized it. I recognized the car.

Q How did you recognize that car?

A Well, he been -- he been up into the house I think probably one or two times before in that car.

Q Okay. So the defendant had been to the house before?

A Yes, sir.

Q And he was in that vehicle?

A Yes, sir.

Q Okay. What did they do when they were over at your house on these previous occasions?

A They get on that TV and play that little Nintendo game or whatever they call it, them -- whatever they call the little game that they were --

Q Xbox?

A Yeah, Xbox.

Q Okay. And that would be in your den?

A Yes, sir.

Q You have a big TV in there?
A Yes, sir.
Q Okay. Now, you said that they'd been over there before. How well do you know the defendant, Stephon Robinson?
A Well, I really know his parents. I knowed his father and his mother. I knowed his grandmother also. You know the kids, they get bigger and, you know, you don't recognize them. You know their parents and then you'll know them. But I know him. Not personally, but I know him.
Q All right. Going back to when they kicked in the door and you got up and you grabbed your pistol. You said it was laying where?
A It was laying on the nightstand.
Q Okay. And what did you do once you grabbed your pistol?
A I proceeded down the hall and -- I slipped coming down the hall and when I looked up, he couldn't have been no more from here to the gentleman sitting down, looking right in the face.
THE COURT: Which gentleman?
THE WITNESS: The -- yeah.
THE COURT: Mr. Miller?
THE WITNESS: Yes, sir.

THE COURT: That big guy right there.

THE WITNESS: Yes, sir.

By Mr. McAlister:

Q And did you know who it was?

A Yes, sir.

Q And you saw him face to face?

A Face to face.

Q Was he wearing a mask?

A No, sir.

Q Did you notice anything distinguishing about him or just looking at him in the eye?

A No, he just was coming -- he just coming -- he was coming in the house, coming down back toward the room.

Q Okay. What did you do once you saw him?

A I started to shoot.

Q Okay. And why did you do that?

A I was scared.

Q Okay. And how did he react once you started shooting?

A Well, he turned to run. And I didn't see the gun initially until he turned around and started to running, he threw his hands back up and that's when he fired one shot.

Q And that's the one that's lodged above your --

A Lodged in the ceiling.

Q -- kitchen table? And that was just above where

you were standing?
A Yes, sir.
Q Okay. Did you see anybody else in the house with him? Who else came in with him?
A It was three of them. I seen Stephon, I seen the brother, Reginald. I couldn't make the last person out because they liked to ran him over going back out, so I couldn't make him out.
Q So he never actually made it through the door?
A Well, he made it in the house too, but just like I said, when you come down -- when you come into my door, they had to come about 15 feet into the house, 15, 20 feet into the house. But when I started to shooting, they turned around and the guy, the last guy that was coming through the door, I never did made him out.
Q Okay. And what kind of pistol did you have?
A I had a.357 revolver.
Q And you said it was laying by your bed. What did you do with it once they left? Did you go back to your bedroom or what did you do once they ran back out the door?
A When they ran back out the door, after I emptied the gun, I ran back and got the shotgun because I didn't know if they was, you know, still out there and were going to come back in.
Q Did you see them getting in the car and leaving?

A Yes. When I got back to -- when I got the shotgun and came back, they been -- they been done turned back around and was headed out the driveway.

Q Okay. Was it the same car that had been there --

A Yes, sir.

Q -- a few minutes earlier that day?

A Yes, sir.

Q Did you go onto your porch with the shotgun? Did you shoot your shotgun?

A Yes, I went to the porch. I -- to be honest with you, I aimed it at the car and I thought better and I --

Q Why did you think --

A -- but I --

Q -- better of that?

A I didn't want to shoot them because they was running away and I didn't want to, you know...

Q They were no longer in your house?

A Yeah, they -- but I did shot it up in the air anyway. But I had it at the car to start off with and then I took and put it up in the air and shot it.

Q So the defendant was several feet away from you within your house?

A Yes, sir.

Q Along with his brother, Reginald Felder?

A Yes, sir.

Q And the third individual, you couldn't make out?
A I couldn't make him out.
Q Okay. After you grabbed your shotgun and you saw them driving off, did you call police?
A Yes, sir.
Q All right. When investigators got there -- came out to the house, did they show you a photo lineup?
A Yes, they did.
Q Was it that day or was it several days later?
A It wasn't that day. It could have been three, four, five days later. Yeah about three, four or five days later.
Q I'm going to show you what's already been marked as State's Exhibit 1 and 2. Are those the lineups that you were shown?
A Yes, sir.
Q And who did you point out in those lineups?
A I pointed out on this lineup right here, I pointed out No. 4.

THE COURT: Which number is that on the back?

THE WITNESS: That's Exhibit No. 1.

THE COURT: All right, sir.

By Mr. McAlister:

Q Is that why you had the X's on the others?
A Yeah, I have the X on the others that I crossed

out.

Q And how about on the second one there in your hand?

A On Exhibit No. 2, I pointed out No. 5.

Q And are those your initials by that picture?

A Yes, sir.

Q Okay. Why did you initial that photo?

A That's Stephon, that's the one I recognized him as.

Q Okay. And were you instructed to do that by law enforcement or sign it to verify that that was --

A Yes, sir.

Q That's what you did?

A Yeah.

Q Okay. After you initialed beside the photo, did you tell Investigator Croft anything about facial appearances or anything significant?

A Yes, sir, he asked me was I sure I know him. I told him, Yes, I know him because he got the goatee and all, but I looked him right in the face.

Q Did Investigator Croft bring you another photo lineup?

A Yes, he did.

Q And that was sometime later?

A Yeah, it could have been about six weeks later.

Q Okay. All right. I'm going to show you what's been marked as State's Exhibit 3 and 4. Do you recognize

those lineups?
A Yes, sir.
Q Are those the ones that were presented to you on -- on Investigator Croft's subsequent trips out there to meet with you?
A Yes, sir.
Q Okay. And what -- what do you see on Exhibit 3? Can you identify what you marked there?
A Yes, sir.
Q And who is that?
A This would be Stephon.
Q Okay. Did you initial it?
A Yes, sir.
Q Did you sign the back?
A Yes, I did.
Q Okay. How about on Exhibit 4, the second one there in your hand? Who is that that you identified?
A That's Reginald.
Q Okay. Did you initial that one?
A Yes, sir.
Q And did you sign it?
A Yes, sir.
Q And is the defendant who entered your home that day on February 20th of 2011, that shot in your home, is he here in the courtroom today?

A Yes, sir.

Q Can you point him out?

A Yes, sir, right over there.

Q What is he wearing?

A The blue shirt with the tie, Khaki pants.

Q And who is that?

A That's Stephon there.

Q Stephon who?

A Stephon Robinson.

MR. MCALISTER: No further questions at this time.

MR. WALTERS: May it please the Court, Solicitor.

CROSS-EXAMINATION

By Mr. Walters:

Q Mr. Williams, when this initially happened, do you remember talking to the various police officers?

A Yes, sir.

Q All right. And I believe you had an opportunity to discuss your case with Mr. -- Officer, I'm sorry Eddie Thomas, and also you spoke to Investigator Croft that's sitting here?

A Yes.

Q Okay.

MR. WALTERS: It is Croft?

(WHEREUPON Investigator Croft nodded his head.)

MR. WALTERS: I wanted to make sure I didn't say it

incorrect.

By Mr. Walters:

Q Now, in your discussions with them, were you honest and frank about what happened inside of your home?

A Well, not right off at the beginning, but with Thomas -- I told him I didn't shoot -- shot the gun. I was a little scared because I thought the gun was supposed to have been registered. So at the time I didn't tell them I fired the gun.

Q In fact, in your conversations with the police officers, you kept changing your story over and over again.

A I don't know about changing it, but I didn't tell them that I fired the gun to start off with. I thought I was supposed to have a license to have it.

Q All right. In fact, you were sitting inside the courtroom here --

MR. WALTERS: If Your Honor would allow me to look at the exhibits here.

By Mr. Walters:

Q You were here when Investigator Croft talked about these pictures and they identified your home.

I'm showing you what's marked as Plaintiff 's Exhibit No. 5. And that is your home; is that correct?

A Yes, sir.

Q All right. And I'm showing you Plaintiff's

Exhibit -- State's Exhibit No. 6. That is your home?

A Yes, sir.

Q All right. And then you -- there's a picture here, State's Exhibit 7, where the door was ajar and it looks like someone broke in your home?

A Yes, sir.

Q And then there's State's Exhibit No. 8, and there's a bullet hole and things of that nature?

A Yes, sir.

Q Is that right?

A Yes, sir.

Q All right. And I believe that if we go into State's Exhibit No. 10, that also shows another bullet hole?

A Yeah.

Q All right. Isn't it true that you stated that you talked to numerous officers that day and your testimony was that the home was shot up; is that correct?

A Say that again, sir?

Q You told the police officers that your home was shot up and it was just this battle, so you shot back?

A Yes, yes.

Q But isn't it true that on February 20th, on the date of the incident, you told Officer Thomas that the bullet holes in your home were already there when you

purchased it?
A No, sir, I didn't told them that.
Q I want you to look at the report. This is your statement you gave them. It starts right there with the word after.
A Uh-huh.
Q Could you read that sentence and then -- read that sentence?
A Okay.
Q What does it state?
A Now, where do you want me to start from, sir?
Q Well, let me point it out to you?
A Okay.
Q It starts with the word --
A Start with after?
Q Uh-huh.
A After bullet holes were found in his residence, the victim stated he bought the trailer and it was already there and the bullet hole was in it.
Q So in other words -- and I just want to make sure I repeat what you said --
A Uh-huh.
Q -- it said after bullet holes were found in his residence, victim stated -- the victim being you?
A Uh-huh.

Q He bought the trailer and it already had bullet holes in it?
A Uh-huh.
Q Is that right?
A Yes, sir.
Q All right. So these pictures that they presented before the jury with regards to the bullet holes inside of your home, you told the police they were already in your home?
A Well, as I stated earlier, just like I said, I was afraid about the gun and I did tell them at the start of it, but after I found out that it was legal for me to have a gun in the house -- I thought it had to be registered -- that's when I changed my story and told them the truth.
Q All right. But, today, which version do you want the jury to believe?
A I want them to believe the truth.
Q Well, is it the statement you gave on the date of the incident where you stated that the home was purchased and it already had bullet holes in it?
A No, it did not.
Q Okay. Well, tell us which version you want to jury to believe.
A I want them to believe that I put those bullet holes there. I'm the one that shot in the trailer --

Q Isn't it true --
A To protect my house.
Q I apologize, I don't mean to interrupt you. Go ahead and finish.
A No, I'm finished.
Q All right. Isn't it true on that particular day, you had an illegal weapon in your home?
A I don't know -- I don't know whether it was illegal, but I had a weapon in my home.
Q Well, I want to go over your testimony that you just gave.
A Uh-huh.
Q It appears that the police did inform you that the gun --
A Was stolen.
Q -- was illegal. You already knew that, didn't you?
A No, I didn't.
Q Then why did you tell the police a false statement when you simply could have told them the truth?
A I said it already. I thought I was going to get in trouble by not having a gun registered. I thought I had to have it registered.
Q Okay. And you didn't think that that was illegal, having a gun that wasn't registered?
A If you're in a house, I think -- any gun in your

house, it's pretty good to have. I didn't know whether it was legal or not.

Q Okay. Now, you also testified when you talked to the police, not you testifying today, but you gave statements to the police officers. And you also gave statements about how many times you fired this .357; is that correct?

A Correct.

Q All right. On the date of the incident, the testimony was that you never got a shot off and you never fired the gun; isn't that correct?

A I said a lot of things, so hopefully, I'm telling the truth now. Just like I said, I was afraid that I was going to get in trouble for not having a registered gun.

Q All right.

A Yes.

Q And then you gave another statement --

THE COURT: Is that his statement?

MR. WALTERS: Yes, sir, it's dated February 20th and it's signed by --

MR. MCALISTER: Your Honor, I'd request that we could take a look at these statements.

THE COURT: Yes.

MR. WALTERS: You can take a look at it.

(WHEREUPON the attorneys were looking over the

statements.)

THE COURT: What's your objection.

MR. MCALISTER: Objection is he can't testify to someone -- the statement will be hearsay, the officer's statement.

THE COURT: Correct. So object to it when you have to.

MR. WALTERS: May it please the Court?

THE COURT: Yes, ask the question.

By Mr. Walters:

Q In this particular case --

THE COURT: Let me see -- which one are you talking about?

MR. WALTERS: I'm referring to the statement --

THE COURT: Well mark it.

MR. WALTERS: We'll mark this as Defendant's Exhibit --

THE COURT: Just mark it for identification.

MR. WALTERS: Defendant's Exhibit No. 1.

THE COURT: For identification.

MR. WALTERS: For identification.

(WHEREUPON Defense Exhibit 1 was marked for identification.)

THE COURT: All right. It's been marked. What's your question?

MR. WALTERS: And, Your Honor, if I could, I'd like to have marked for identification a statement signed by Mr. Williams and it's dated February 21st.

MR. MCALISTER: No objection from the State, Your Honor.

THE COURT: That's No. 2 for ID, right?

MR. WALTERS: Yes, sir.

(WHEREUPON Defendant's Exhibit 2 was marked for identification.)

By Mr. Walters:

Q All right --

THE COURT: Hold on a second. You ready Brenda?

THE COURT REPORTER: Yes, sir, I'm ready.

MR. WALTERS: May it please the Court.

By Mr. Walters:

Q Defendant's Exhibit No. 1, is that your handwriting, sir?

THE COURT: Can you identify that?

THE WITNESS: To my knowledge, that's my handwriting.

By Mr. Walters:

Q Okay. Where does it state within the statement that you fired your weapon?

A It don't say it here.

Q I'm going to show you what's marked as Defendant's

Exhibit No. 2. Can you identify that document?

A Yes, I can.

Q All right. And how many times does it state that you fired --

THE COURT: What is the document? What is that? Is that a statement that you signed?

THE WITNESS: It's a statement that I wrote.

THE COURT: Okay. And then the question is, Mr. Walters?

By Mr. Walters:

Q How many times does that statement state you fired your gun?

A Three times.

Q Yes, sir.

THE COURT: Now, are you introducing that, Mr. Walters?

MR. WALTERS: No, Your Honor.

THE COURT: Just marked for identification?

MR. WALTERS: Just marked it for identification.

By Mr. Walters:

Q Now, I believe that you talked to Investigator Croft with regards to what occurred; is that right?

A Yes, sir.

Q At any time did the police ask of you to take a gunshot residue sample from your hands to see if you

actually fired a weapon?

A No, sir.

Q So no one ever inquired and said, we want to know if you did fire a weapon?

A No, sir.

Q Who did you buy the illegal weapon from?

A I bought it from a friend called Tank. I don't know his real name, I just know him by Tank.

Q Okay. Were regards to the photo ID lineup, I believe that you had informed and you testified in front of the jury, that you knew the individuals; is that right?

A Yes, sir.

Q Do you have any idea why the police came back to you three and four times with regards to pictures to identify someone?

THE COURT: Why -- does he know why the police came back?

MR. WALTERS: Does he have any knowledge.

THE WITNESS: Well, I told them who it was and so they brought me the lineup back to make sure, I imagine.

MR. WALTERS: Okay. Beg the Court's indulgence, Your Honor.

Your Honor we have no further questions.

THE COURT: Redirect?

///

REDIRECT EXAMINATION

By Mr. McAlister:

Q Mr. Williams, this first statement that you gave, Defense Exhibit 1 --

THE COURT REPORTER: Mr. Walters's has them.

MR. WALTERS: Your Honor, I apologize.

By Mr. McAlister:

Q The first statement you gave, was it a complete statement? Did you sign it that day?

A No, I didn't sign it. This wasn't a complete statement. I wrote that one -- I wrote -- to be honest with you, I wrote this one and then he told me to tell the truth about firing the gun and I come out and told them that I did fire the gun, so I had to write it back over after he'd told me to tell the truth.

Q So in this first statement, nowhere in here did it talk about you not firing a gun, it just didn't say that you did?

A Yeah, yes, sir.

Q But in the second statement, the complete statement, which you signed, you said that you fired the gun three times?

A Yes, sir.

Q Mr. Williams, is there any doubt that the defendant, Stephon Robinson came in your house that day?

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A There's no doubt.

MR. MCALISTER: No further questions.

THE COURT: You may step down.

Next witness.

MR. MCALISTER: Your Honor, the State would rest at this time.

THE COURT: All right. Ladies and gentlemen, let's -- I'm going to have to take up a few matters with the lawyers. That's the end of the State's case. Let me find out what the defense is going to do. Y'all step back to your jury room. Don't discuss the case, don't start deliberating. Please select me a foreperson between the twelve.

(WHEREUPON The jury left the courtroom at 2:44 p.m.)

THE COURT: Anything by the State?

MR. MCALISTER: Nothing from the State, Your Honor.

THE COURT: Mr. Walters?

MID-TRIAL MOTIONS

MR. WALTERS: May it please the Court. I'm sorry, Your Honor, I was talking to him in regards to the motions after the jury stepped out.

THE COURT: Whatever you want.

MR. WALTERS: May it please the Court. Your Honor, at this time, we believe that the State has failed to meet

the requisite elements in regards to these offenses. For the record, we would make a motion that the charges be dismissed. Under the circumstances, each and every element of the offense must be substantiated and the witness -- the key witness, the victim, the person who has the personal knowledge of what occurred, has consistently waffled with regard to the elements of what exactly happened. By his own admission, he stated he was afraid he would get in trouble. And we would ask that the Court carefully look at each element and we believe that the State has failed to substantiate those elements and under the circumstances we would ask for a dismissal.

THE COURT: Thank you. I respectfully deny it. There's ample evidence in the evidence for the jury to consider whether or not your client did, in fact, commit the crime as alleged in the indictments.

Anything else before we move forward?

MR. WALTERS: No, sir, Your Honor.

THE COURT: All right. Mr. Robinson, please stand and raise your right hand.

THEREUPON,

STEPHON ROBINSON,

after being duly sworn, testified as follows:

THE COURT: You may be seated.

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QUESTIONING OF THE DEFENDANT

THE COURT: Mr. Robinson, we're at the stage of the trial now where you have the opportunity to present your case or your defense, tell the jury your side of the story. And obviously, you can do that by calling witnesses and introducing relevant exhibits. You also have the right to testify in your own defense and tell the jury your side of the story. However, you also have protections guaranteed you by the Fifth Amendment to the Constitution of the United States, which basically says that no one can be compelled to testify in a criminal case where they've been charged. In other words, you have the right to remain silent. If you decide to testify, obviously, you will be subjected to the same rules on cross-examination as any other.

Does he have any impeachable offenses? Prior record?

MR. MCALISTER: He has. Yes, sir.

THE COURT: And you also have convictions for --

MR. MCALISTER: Strong-armed robbery. He's got several burglary convictions as well, Your Honor.

THE COURT: You've gotten convictions in the past for burglary and strong-armed robbery. If I determine that these prior crimes can be testified or introduced to attack your credibility or believability, if I decide that the

probative value outweighs the prejudicial effect of it, I will tell the jury if I do allow that in that they can only consider those as dealing with your credibility and it can't be used in determining whether or not you're guilty in this case.

So if you testify, perhaps those prior record can come in and you will be subjected to cross-examination. If you exercise your constitutional right to remain silent, then, obviously, I will tell the jury that it is an important rule of law, a constitutional rule that you have the absolute right remain silent and they cannot hold the fact, that you did not testify against you in any manner whatsoever and I will instruct them that they can't even talk about it. They can't even consider the fact that you didn't testify when they deliberate your innocence, that they're absolutely not to draw any inference from the fact that you did not testify.

Now, Mr. Robinson, do you understand your right to testify.

MR. ROBINSON: Yes, sir.

THE COURT: You understand your right to remain silent and the precautions I'll give concerning them?

MR. ROBINSON: Yes, sir.

THE COURT: You understand that if you do testify, that you will be subjected to cross-examination and perhaps

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the armed robbery coming in as a prior record for impeachment purposes, in order to attack your credibility? You understand that?

MR. ROBINSON: Yes, sir.

THE COURT: You further understand that if you decide not to testify, that I will instruct the jury as I just told you that they can't hold the fact that you did not testify against you in any manner whatsoever? You understand all that?

MR. ROBINSON: Yes, sir.

THE COURT: You have any questions you want to ask me?

MR. ROBINSON: No, sir.

THE COURT: Any questions you want to discuss with your lawyer?

(WHEREUPON the defendant was conferring with his attorney.)

MR. ROBINSON: No, sir.

THE COURT: All right. So have you made a decision as to whether you're going to testify?

MR. ROBINSON: Yes, sir.

THE COURT: And what is that decision?

MR. ROBINSON: Yes, sir.

THE COURT: You will?

MR. ROBINSON: Yes.

THE COURT: All right. Anything else before we start back? How many witnesses have you got?

MR. WALTERS: As it stands you, Your Honor, I believe I have two.

THE COURT: Okay. Well, let's bring the jury back and complete the testimony and then we'll see where we are.

MR. MILLER: Your Honor, before -- when the defendant does take the stand, he does have multiple prior convictions for burglary. The burglary convictions from 2009 for a burglary second degree, for which he received a YOA, an attempted -- the rap sheet says attempted robbery that he got a YOA, a burglary third that he got a YOA and then ultimately he went to the department of corrections on those. Obviously, the State would seek to use the prior burglary convictions to impeach him.

THE COURT: How about the armed robbery you talked about?

MR. MILLER: It was an attempted robbery, Your Honor.

THE COURT: So which ones are you attempting to use, or want to use?

MR. MILLER: Burglary second degree in 2009. That was an offense date of 11/2/2007, conviction date of May 15, 2009. And on that same day, he has an attempted robbery conviction, May 15th of 2009.

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THE COURT: Those are the ones you want to use for impeachment purposes?

MR. MILLER: Yes, sir.

THE COURT: Mr. Walters?

MR. WALTERS: Your Honor, I believe the prejudicial value of allowing that outweighs the probative value.

THE COURT: Your argument is that the prejudicial value outweighs the probative value?

MR. WALTERS: Yes, sir, Your Honor.

THE COURT: Any other argument?

MR. WALTERS: Your Honor, I believe under the circumstances, he's currently charged with a burglary offense and the jurors may conclude that once a burglar, always a burglar.

THE COURT: Mr. Miller?

MR. MILLER: Your Honor, the -- obviously the Court's going to give a limiting instruction as to the impeachment use of the prior convictions; and I would point out, additionally, Your Honor, that there are two convictions from 2007 in the State of Georgia for breaking into an automobile, which would also be with attempt to commit a theft or a felony. Those convictions should also come in.

Your Honor, as far as the burglary conviction goes, we could certainly -- if it was -- if it would please the

Court, we could refer to that as a felony conviction. They carry more than a year as opposed to saying burglary, but as far as the attempted robbery and the two breaking into motor vehicles, those are all within ten years and each carries more than a year.

THE COURT: I find that they come within the statute and I will -- in order to preclude any prejudicial value, I will make you refer to the burglary as you just stated, a felony, which carries a penalty in excess of one year and you will be precluded to use the others for impeachment purposes.

Mr. Walters, please discuss that with your client.

MR. WALTERS: Yes, Your Honor.

THE COURT: Or just tell him what it means.

(WHEREUPON the defendant was conferring with his attorney.)

THE COURT: All right. We've got the jury coming back. Y'all still -- he still going to testify?

MR. WALTERS: Yes, sir.

THE COURT: All right. Tell Mr. Eddie he can bring the jury in.

(WHEREUPON the jury entered the courtroom at 2:55.)

THE COURT: All right. Who got selected?

(WHEREUPON a juror raised her hand.)

THE COURT: Ms. Steadman. Y'all want to switch and

let Ms. Steadman sit down here in the foreperson's chair. Y'all can move around.

Ma'am, just slide down if you would for me, please. Y'all just slide down one.

Thank you, Ms. Steadman.

Mr. Walters?

MR. WALTERS: May it please the Court. Your Honor at this time, we'd call Mr. Stephon Robinson.

THE COURT: All right. Mr. Robinson come around. Place your left hand on the Bible and raise your right.

THEREUPON,

STEPHON ROBINSON,

after being duly sworn, testified as follows:

THE COURT: Just have a seat.

MR. WALTERS: May it please the Court?

THE COURT: Yes, sir.

DIRECT EXAMINATION

By Mr. Walters:

Q Mr. Robinson, could you state your full name for the record.

A Stephon Tenard Robinson.

Q How old are you Mr. Robinson?

A Twenty-five.

Q And where do you live?

A [redacted] Cocoa Road.

Q All right. Mr. Robinson, you're here and this trial is going on. Would you tell us where you were that day when this incident occurred?

A [redacted] Cocoa Road.

Q Explain to the jury what was going on in your home?

A Me, my brother and my cousin was home. I woke up that morning and took a shower and took the owner of the car, her car back home and been home ever since.

Q Did you cooperated with Officer Croft when he came to your house?

A Yes, sir.

Q And did you explain to him where you were?

A Yes, sir.

Q All right. And in this particular case, you've heard the testimony of Mr. Williams?

A Yes, sir.

Q All right. Do you know Mr. Williams?

A I -- not personally, but I know him, yes, sir.

Q Okay. How do you know him?

A I went to -- like he said, I was going to their house to get things from them.

Q Okay. All right. And how many times have you been to Mr. Williams' house?

A A good bit of times. I don't know exactly how many, but a lot -- a lots amount.

Q Okay. All right. And did you have anything to do with kicking the door down and brandishing a weapon?

A No, sir.

Q Or attempting to take something out of his home?

A No, sir.

Q Okay.

MR. WALTERS: Your Honor, I have no further questions.

THE COURT: Cross.

CROSS-EXAMINATION

By Mr. Miller:

Q Mr. Robinson, when you talked to Investigator Croft on the day that this happened -- well, let me ask you this: When did you take your girlfriend's car back to her?

A About twelve clock that day, twelve, one, somewhere up in there.

Q Okay. Twelve or one?

A Yes, sir.

Q Okay. And you were completely cooperative with Investigator Croft?

A Yes, sir.

Q You didn't lie to him?

A No, sir.

Q Okay. Did you or did you not tell him you had taken that car back to her at ten o'clock that morning?

A No, sir.
Q So Investigator Croft is lying if he's the one that said that in the report because you told him that?
MR. WALTERS: Objection, Your Honor.
THE WITNESS: Yes, sir.
THE COURT: Hold on. Hold on.
THE WITNESS: I --
THE COURT: Hold on.
Mr. Walters?
MR. WALTERS: He's pitting the witnesses against each other.
THE COURT: Sustained. Ask another question.
By Mr. Miller:
Q What did you have the car for?
A I went to the club the night before.
Q And who were you with?
THE COURT: Hold on. You did what?
THE WITNESS: I went to the club the night before.
By Mr. Miller:
Q And who were you with?
A My brother and my cousin.
Q And who's your cousin?
A Jamal Wallace.
Q And who's your brother?
A Reginald Felder.

Q Okay. What time did you get back from the club?

A I got out of the club about three O'clock.

THE COURT: Three o'clock a.m.?

THE WITNESS: Yes, sir. And I didn't take the owner her car back then because I called her and let her know that I was going to bring the car back in the morning when I got up because I didn't want to drive across town under the influence of alcohol and catch a charge.

Q Okay. So you just drove it from the club back to your house instead?

A Yes, sir, in the country because the club in the country toward my house.

Q It's not illegal to drive a car in the country under the influence of alcohol?

A Yes, sir, but I'd rather take the chance going through the country than through town where all the law is.

Q So what time did you get home?

A I got home around 3:30.

Q So it took you a half hour to get from the club to your house?

A Not a half hour, but that's about what time I got home.

Q And then what did you do?

A I went to sleep.

Q And where was the car?

A In my yard.
Q And what time did you get up?
A I'd say around eleven.
Q And who was with you at that time?
A My brother and my cousin, Jamal Wallace and Reginald Felder.
Q The same two people you'd been at the club with?
A Yes, sir.
Q Okay. And where did you go?
A I went to give the owner of the car her car back.
Q Okay.
A But before I did that, my brother woke me up around ten. He wanted to go to Shorty's and see he got the car at around ten o'clock and went to Shorty's and came back home and Shorty's has cameras, so you can check the camera that day; and so why would I tell Croft I took the car back at ten o'clock when I know my brother had it then and he went to the store.
Q Because you knew if you had the car after ten o'clock you would be in possession of the car when this happened.
A No, I had the car after ten. But my brother took the car to the store at ten o'clock, Shelton's.
Q And who was with your brother when he went to Shelton's?

A He was -- he went by himself.
Q Okay. Who else drives your girlfriend's car?
A As far as my knowledge, just her.
Q Okay. Now, you've heard the testimony from Mr. Williams that three males, black males came up to his house in a white car that matches the description of your girlfriend's car and knocked on his door and then they left, correct?
A Yes, sir.
Q That wasn't you?
A No, sir.
Q It wasn't your girlfriend's car because you had it?
A No, sir, exactly.
Q And then fifteen minutes later, three people come to his house in the same car and they kick in his door and it wasn't you. That's your testimony?
A Yes, sir. At the time of the -- that he's saying the crime actually happened, the owner of the car had her car back. She got a statement that she gave to Croft telling him that and he signed it.
Q Are you the same Stephon Robinson that was convicted of strong-armed robbery in 2009?
A Yes, sir.
Q And you're the same Stephon Robinson that had another felony conviction in 2009 that carried more than a

year, aren't you?
A Yes, sir.
Q And you're the same Stephon Robinson that in 2007 had two convictions for breaking and entering automobiles with the intent to commit a felony or theft?
A Yes, sir.
Q But you want this jury to believe that you don't know anything about this?
A Yes, sir, because for one, I plead guilty to all my charges and take my responsibility because I know I was guilty of those charges. And two, that was back in my past when I did stupid things to get a little money to do things because I didn't have. But my parents recently passed away and we got insurance money and all kind of money back off that and I have no reason to kick in this man's door. Nothing.
Q Let me ask you this, in 2007, was your brother with you whenever you broke into the cars?
A Yes, sir.
Q Did he plead guilty to his charges?
A Yes, sir.
Q And in 2009, with the strong-armed robbery, was your brother with you then?
A Yes, sir.
Q Who else was with you?

A No one.
Q You and your brother?
A Yes, sir.
Q And that other felony charge from 2009, was your brother with you then?
A No, sir.
Q He wasn't?
A No, sir. You talking about the burglary, right?
Q The charge that you pled guilty to in 2009, the felony charge that carried more than a year.
A Yes, sir, yes, sir.
Q Was your brother with you on that?
A No, sir.
Q Okay. So in three out of the four times when you committed a crime, your brother was with you?
A Yes, sir.
Q How long have you known Mr. Williams?
A I known of him for about a year and a half now.
Q Are you friends with his nephew?
A Who his nephew?
Q Why were you in his house?
A When was I in his house?
Q You testified you went to his house a lot?
A Oh, I went to buy things from them.
Q You went to buy things from him?

A Yes, sir.
Q Okay. What kind of things did you buy from him?
A Marijuana.
Q You bought marijuana from him?
A Yes, sir.
Q So you figured that there was marijuana in the house?
A I guess marijuana in the house. That's where I bought it.
Q You played video games at his house?
A Never.
Q Never played video games over at his house?
A No, sir, I don't play video games, sir.
Q Okay. You don't know anybody else that's in that house with him?
A Yes, sir, I know somebody else in the house with him.
Q How do you know that person?
A Because I buy marijuana from him too.
Q How long have you known him?
A I've known him for a while now, a couple of years.
Q So what kind of problems did you have with them in the past?
A No problems. I ain't never had no problems with neither one.

Q Never had a problem with either one of them?
A No, sir.
Q So why is it that they're going to come out here and accuse you of breaking into the house?
A I don't know, sir, that's another thing I want to find out.
Q You don't have any idea?
A No, sir.
Q How would Eddie Williams know that you had your girlfriend's car on the day when he accused you of breaking into his house?
A For one, the night before I went to the club, I know one of them was at the club and I had the car. But I didn't even have the car at the time of the accident. When this incident occurred, I didn't even have the car.
Q What accident?
A This incident. His door got kicked in. I didn't --
Q Okay.
A -- I didn't have the car. The owner of the car had the car.
Q So it's your testimony that it's just an incredible stroke of bad luck for you that at the time that Eddie Williams says you were kicking in his door and you were driving your girlfriend's car that you had been seen in

your girlfriend's car the night before and your girlfriend testified right there on the stand that she didn't get the car back from you until that afternoon of the incident?

A That afternoon, twelve to one, yes, sir.

Q But he doesn't have any reason to lie about you, does he?

A No, sir. Not that I know of.

Q He just did it for what reason?

A I can't tell you that. You'll have to ask him that, sir.

MR. MILLER: No further questions, Your Honor.

THE COURT: Redirect?

MR. WALTERS: Your Honor, we have no questions.

THE COURT: All right. Step down.

Next witness.

MR. WALTERS: May it please the Court, at this time we'd call Mr. Jamal Wallace.

THE COURT: Come around Mr. Wallace.

THEREUPON,

JAMAL WALLACE,

after being duly sworn, testified as follows:

THE CLERK: Please be seated. State your name for the record.

THE WITNESS: Arthur Wallace.

THE COURT: Speak up.

THE WITNESS: Arthur Wallace.

DIRECT EXAMINATION

By Mr. Walters:

Q Mr. Wallace, you know Mr. Stephon Robinson, don't you?

A Yes, sir.

Q All right. And you are aware of what was going on that day on February 20th; isn't that correct?

A Yes, sir.

Q Please tell the jury what happened that day?

A Like he said, we went to the club that night. All of us came back home. We was feeling pretty good, so we went home. Everybody went to sleep. So when we woke up the next day, Reggie did, in fact go to the store, because when I woke up, he had a soda and he was eating --

THE COURT: Who went to the store?

THE WITNESS: Reginald Felder. He was eating stuff. So I asked him where he got it from and he said he went to the store and that when I went to look to see where T was because he was quiet --

By Mr. Walters:

Q Who's T?

A I meant Stephon Robinson.

Q Okay.

A He was in the bed asleep. That when he got up and

then he stayed there -- he about to take her her car back because she did, in fact, say she had to go somewhere.

Q All right. And about what time was that?

A Around twelve to one.

Q At any time did you speak to Investigator Croft?

A Yes, sir, I did.

Q All right. And were you honest with him?

A Yes, sir.

Q And what did you tell him?

A That we was at the house, that he did take her her car back around that time. He asked me what my name was and if he was show me the dude, would he know me and I said, No, sir, he wouldn't know me because I'm not from here.

Q Okay.

MR. WALTERS: Your Honor, I have no further questions.

THE COURT: Cross, if any?

CROSS-EXAMINATION

By Mr. Miller:

Q Mr. Wallace, you said you were cooperative with Investigator Jeff Croft?

A Yes, sir.

Q Do you recall about what time he came by the house?

A I know it had to be somewhere in between two

something.

Q Okay. And what were you doing at that time?

A In the house. Me and my cousin was just in the house.

Q Just hanging out?

A Yes, sir.

Q Why were you over there?

A Because that's my family and we went to the club together.

Q So, two, three o'clock the next day, you're still over there just hanging out?

A Yes, sir.

Q Why didn't you catch a ride back to your house whenever he took that car back at twelve or one like you just stated?

A Because we always hang out like that, every day.

Q Mr. Wallace, are you the same Arthur Wallace that was convicted of a burglary second in 2008?

A Yes, sir.

Q Had you ever been over to Mr. Williams' house?

A To who house.

Q Mr. Eddie Williams, the victim?

A One time.

Q One time. What did you go over there for?

A Just riding with my cousin.

Q Was it riding over there with your cousin over there that day, February 20th?
A No, sir.
Q So y'all didn't go by and knock on the door just prior to this incident occurring?
A No, sir.
Q Do you know why Mr. Williams would fabricate this story, would make this up?
A No, sir.
Q So it was you, Stephon Robinson, and your cousin, his brother, Reginald Felder all hanging out that day?
A Yes, sir.
Q How would Mr. Williams have known there were three of y'all there together?
A I have no idea.
Q So that was just a coincidence?
A I guess.
Q Three black males came to the door, in the white car that y'all were in previously that night, earlier that day -- three black males came to him, one was Stephon Robinson, one was Reginald Felder and the other third one was one that couldn't be identified. That's just a coincidence?
A It's -- I really don't know. You'll have to ask him. I really don't know.

MR. MCALISTER: Thank you. No further questions.

THE COURT: Redirect?

MR. WALTERS: I have no questions, Your Honor.

THE COURT: You may step down.

Next witness.

MR. WALTERS: Your Honor at this time, we'd call Reginald Felder.

THE COURT: All right. Bring out Reginald Felder.

(WHEREUPON Mr. Felder entered the courtroom.)

THEREUPON,

REGINALD FELDER,

after being duly sworn, testified as follows:

THE CLERK: Be seated. State your full name for the record, okay.

THE WITNESS: Reginald Lamar Felder.

THE COURT: Speak up, please.

THE WITNESS: Reginald Lamar Felder.

THE COURT: Thank you.

DIRECT EXAMINATION

By Mr. Walters:

Q Mr. Felder, you're Stephon Robinson's brother; is that correct?

A Yes, sir.

Q All right. And you were with your brother on February 20th of 2011; is that right?

A Yes, sir, I was.
Q Were you with him the day before, that night?
A Yes, sir.
Q Would you please tell this jury what happened that night and then the following next day?
A Okay. On February 19th, my brother called Leanna Gunnels to get her car so we could go to the club. So we got the car and went to the club. We woke up -- well, he told her that he couldn't bring the car back that night because he didn't want to catch a DUI so he would bring it back the next morning. So she said okay. So then we went home and went to sleep after the club. Then that morning, I woke up, went to get some cigarettes at like ten o'clock because my brother and them was asleep.

My brother and Jamal Wallace was still asleep because they were tired from the club. Okay. Then when I came back, I realized that they were still asleep. So when my brother woke up at one o'clock, he took the car back and Leanna Gunnels brought him back home.

MR. WALTERS: Your Honor, I have no further questions.

THE COURT: Mr. Miller?

CROSS-EXAMINATION

By Mr. Miller:

Q Mr. Felder, your brother is the defendant, correct?

A Yes, sir.
Q Y'all live together?
A Yes, sir.
THE COURT: Speak up, please.
THE WITNESS: Okay.
By Mr. Miller:
Q Were you convicted in 2007 of breaking into motor vehicles to commit a felony or a theft in Georgia?
A I was, but I didn't do it.
THE COURT: Wait a minute. What? Say that again.
THE WITNESS: I was. But I didn't do it.
By Mr. Miller:
Q You were convicted but you didn't do it?
A Yes, sir.
Q Okay. Well, when you weren't breaking into these motor vehicles that you were later convicted of breaking into, were you with your brother?
A Sir?
Q Were you with your brother when you were supposedly breaking into these motor vehicles that you have a conviction for?
A My brother was doing community service at the time, but the guy that really did it said that me and my brother did it, which we didn't do it.
Q Okay. I'm asking you the question though, were you

convicted in 2007 of breaking into motor vehicles?
A Yes, sir.
Q Okay. And in 2009, were you convicted in July of a strong-armed robbery?
A Yes, sir.
Q And were you with your brother when that happened?
A Yes, sir.
Q Now, what time was it that Officer Croft showed up at your house on February 20th?
A Sometime that evening.
Q Sometime that evening. It wasn't two o'clock in the afternoon?
A I think it was a little after that.
Q A little after that. Okay. What time -- were you with Stephon whenever he took the car back to his girlfriend?
A No, sir. He was by himself.
Q He was by himself?
A Yes, sir.
Q And you said your testimony, he woke up at one o'clock and that's when he took the car to his girlfriend?
A Yes, sir.
Q And y'all live out in the country?
A Yes, sir.
Q Because he didn't want to drive into town --

A And catch a DUI when we left the club.
Q And catch that DUI?
A Yes, sir.
Q Okay. So how long does it take for him to get from your house to his girlfriend's house and back?
A Probably like fifteen minutes.
Q Okay. Do you know the defendant -- I mean, the victim, Eddie Williams?
A Yes, sir.
THE COURT: Speak up, please.
THE WITNESS: Yes, sir.
By Mr. Miller:
Q And you've been over to his house before.
A Yes, sir.
Q And you're obviously incarcerated right now, aren't you?
A Yes, sir.
Q For this crime?
A Yes, sir, but I didn't do it.
Q So you're up here saying that your brother was with you and that's why this jury should believe that Mr. Williams didn't see what he testified to?
A Yes, sir.
Q But you're charged with being there too?
A I am.

Q Isn't it true that you and your brother were together on February 20th of 2011, and you and your brother and your other witness back there were the three people that went into that house?
A No, sir, that's not true.
Q So it's just a coincidence that Mr. Williams said or testified that three people came up to his house, two of whom he knew, you and your brother in a car owned by your brother's girlfriend, and he saw you and you knocked on the door and he didn't come to the door and ten or fifteen minutes later, the door gets kicked in, it's three black males and it's the same white car?
A That's not true.
Q That's just a coincidence?
A It is, sir.
Q How long after this break in occurred was it before Investigator Croft came and saw you?
A Like an hour or so.
Q Okay.
A Like an hour or so.
Q Okay. So in that hour or so, did you take a shower?
A No, sir.
Q Did you wash your hands?
A No, sir.

Q What were you doing in that hour or so between the time the break in happened and Investigator Croft came and saw you?

A Watching TV at the house.

Q But nobody was doing anything between the time of the break in and the time the investigator came and saw you. Y'all weren't getting rid of the gun?

A No, sir. We don't have guns.

Q You weren't getting rid of the car?

A No, sir.

Q What were y'all doing for that period of time?

A Like usual, watching TV, smoking cigarettes.

Q Well, if you didn't have anything to do with the break in, how do you know how long it was after the break in before Investigator Croft came and talked to you?

A Sir?

Q If you don't have anything to do with the break in, don't know anything about it --

A I just was going by what Croft told me when he got to the house. I didn't do nothing.

Q So Croft told you when he got to the house --

A What time that it occurred.

Q Did he tell you that before or after y'all said that the girlfriend had gotten her car back prior to that time?

A Sir?
Q Did you tell Investigator Croft, we took the car back to his girlfriend?
A Yes, sir. He took the car back to his girlfriend. We didn't even have the car.
Q Did you already know what time the burglary had occurred?
A No, sir.
Q You didn't?
A (Witness shook head.)
Q Isn't it true you knew exactly when the burglary occurred because you were standing right there?
A No, sir.
Q It's not?
A No, sir.
Q It's just a coincidence?
A Yes, sir.
Q And the charges you picked up in 2007, those charges were you being falsely accused again?
A Yes, sir. The person with me did it but I didn't do it.
Q Who was the person with you?
A My cousin.
Q Who?
A Shannon Miller. You're talking about 2007 right?

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Q In 2007.
A That's what I'm talking about.
Q Okay. And in 2009, that charge -- was it 2009 or 2008, you had a strong-armed robbery?
A 2009, I think.
Q Was that you that did that?
A No, sir.
Q Okay. It's not you that did this either; is it?
A No, sir.
Q No further questions.
THE COURT: Redirect.
MR. WALTERS: I have no questions, Your Honor.
THE COURT: All right. You may step down.
Next witness.
MR. WALTERS: Your Honor, the defense at this time rests.
THE COURT: Thank you. Anything in reply?
MR. MCALISTER: Nothing in reply, Your Honor.
THE COURT: All right. Madame Forelady, and ladies and gentlemen of the jury, that concludes all of the testimony. Here's what we have left. I have to spend about ten minutes with the lawyers and they have to argue. That would be two arguments and I have to instruct you on the law. That probably would mean that y'all would start deliberating 4:30. It's 3:30 now, twenty minutes to five.

Once you start deliberating, I need to keep you together and finish up the case. We can do that and I don't know how long you might go. You might not go long, you might go long. I don't know what's going to happen.

Or, it's 3:30 now, I can let y'all go home, I can finish up everything with the lawyers, come back in the morning at 9:30 or ten and finish it up. I'll buy you some breakfast. Finish it up and -- y'all want to go back and talk about which way you want to do it and let me know?

THE FOREPERSON: Uh-huh.

THE COURT: All right. Just discuss that and I'm going to ask the foreperson to come back out in just a second and tell me which way y'all would want to do it. I'm agreeable to either way. You're in charge. Don't discuss the case though, just discuss...

(WHEREUPON jury left the courtroom at 3:24 p.m.)

THE COURT: Anything for the record on behalf of the State?

MR. MCALISTER: Nothing for the record on behalf of the State, Your Honor.

THE COURT: Mr. Walters?

MR. WALTERS: No, sir, Your Honor.

THE COURT: You going to renew any motions?

MR. WALTERS: Yes, sir, Your Honor.

THE COURT: Respectfully denied.

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MR. WALTERS: Thank you, Your Honor.

THE COURT: Charge? Regular charge on credibility of witnesses, reasonable doubt, duties of judge and jury and presumption of innocence, prior record of the defendant, prior record of witnesses, burglary first, possession of a weapon during the commission of a violent crime.

Anything else? By the State.

MR. MILLER: The State would request hand of one, Your Honor.

THE COURT: Anything else? Mr. Walters?

MR. WALTERS: No, sir.

THE COURT: And this -- I think it's all or nothing. This is burglary first. There's no lesser included.

MR. MILLER: No, sir, Your Honor, either he had a weapon or he didn't.

THE COURT: All right. Let's everybody take a bathroom break. You going to waive opening on the law?

Mr. Walters, you ready the start if they want to go this afternoon?

MR. WALTERS: Yes, sir.

THE COURT: All right. Let's take a bathroom break. Do y'all have any -- I'm going to go back to my chambers. When the forelady lets Mr. Eddie know, can I

find out what she wants to do in my chambers and come back out and report to y'all?

MR. WALTERS: Yes, sir.

THE COURT: Any problem with that? Just on the logistics of how they want to do this afternoon.

MR. MILLER: Nothing from the State, Your Honor.

THE COURT: All right. Well let's stand at ease for a second. Make sure the defendant has access to the restroom.

(WHEREUPON a recess was observed.)

THE COURT: All right. Bring your client in here.

All right. Is the State ready to proceed?

MR. MCALISTER: Yes, Your Honor.

THE COURT: Mr. Walters?

MR. WALTERS: Yes, sir, Your Honor.

THE COURT: All right. Bring the jury in.

(WHEREUPON the jury entered the courtroom at 3:38 p.m.)

THE COURT: All right. Madame Forelady, as I understand, y'all want to go ahead and try to conclude this afternoon?

THE FOREPERSON: Yes, sir.

THE COURT: What we have left is the final arguments by the defendant going first and then the State going second. Please bear in mind that you've heard all of

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the evidence. You won't hear anymore evidence. The arguments, obviously, these lawyers are advocates for their own particular side of their respective sides. So they will be arguing the evidence in the light most favorable to their client. But that is simply what it is, argument. You've already heard the testimony. You'll make a decision from the testimony as to what the true facts are. So please pay close attention to Mr. Walters and to the State. Once we do that, I will charge or instruct you on the law. It's not a very long charge and then I'll give you the case to deliberate.

Ma'am, you want me to cut the air down, some?

A JUROR: If you don't mind.

THE COURT: Cut it down?

THE JUROR: Yes.

THE COURT: You want it colder?

A JUROR: I'm frozen.

THE COURT: Madame Clerk, I don't want a frozen juror.

THE CLERK: I have not touched it, believe it or not today.

THE COURT: I don't believe it.

Mr. Walters?

MR. WALTERS: May it please the Court.

THE COURT: Yes, sir.

CLOSING ARGUMENTS

MR. WALTERS: Solicitors, ladies and gentlemen of the jury, as I stated in the beginning, his Honor qualified you as a jury that will could carefully evaluate the facts, the evidence and the testimony that was presented before you today. And most importantly, that you would hold the State to their burden of proving their case beyond a reasonable doubt.

If we carefully evaluate the evidence, the testimony, the witnesses that have come forward and what has been presented by the State in this particular case, I believe that you can only reach one conclusion: The State has failed miserably. Eddie Williams came before this Court as the victim, arguing that somehow he had suffered some type of crime, that there was some type of issue that occurred within his home. But later in the testimony, you found out that Eddie Williams, he wants you to believe his words, but his words are those of a drug dealer.

Why do we question Eddie Williams and what he has to say? And why do we believe the State has failed miserably to prove their burden or proving their case beyond a reasonable doubt? These are great police officers. They do a great job. The solicitors do a great job and they can only work with the people that come forward, report a crime honestly, and, of course ask their

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participation to solve whatever issues have occurred in their life. I ask that you evaluate the testimony of Eddie Williams. The inconsistencies and the contradictions over and over and over again. Let's start with the first one, the bullets to the trailer. I'd ask that you examine the exhibits that were presented before you. He had a police officer come out to his place where he lived and he's taking all these pictures. Remember they were published to the jury. Pictures of his home and what occurred at his home. There's a bullet hole in the ceiling, things of that nature. And the question with regards to this particular home, he went on to talk about what ensued inside of the house. He made it even seem dramatic. He said he slipped down the hall as if his life was under siege and something was going to happen. But when asked on cross-examination, you purchased this mobile home and when you purchased the mobile home, it already had bullet holes in it. And what was his response? Yeah, that's true, I just didn't want to tell the truth at that time. See what you're going to find out about Eddie Williams when you carefully go through the evidence and the testimony of Eddie Williams, what he's done today is rotten to the core because he sat on that witness stand and what did he tell you under oath? He told you, I wanted to tell the truth, but I couldn't tell the truth because of the gun that I had in my possession.

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In addition to that, he allowed the officers while sitting there to present these pictures of this trailer to you and pass it around to everyone and said, Oh, my God, the trailer's been shot up. A hole above where he eats his dinner. There's a hole with regard to this trailer in somebody's living room. Even had police officers come before you and what do they do? They pulled out a magic marker and said this is the hole. This is the angle of the bullet and this is where it came from. And he knew all along that the home was shot up when he purchased it. In addition to that, a good police officer, Investigator Croft, he went out there to do his job. In doing his job, he stayed there about an hour and a half while listening to Mr. Williams. Mr. Williams and this so called story of what was going on. And in that process of gathering evidence, I simply inquired of Investigator Croft, I said, Well, what evidence do you have? Do you have any fingerprints? No. Have you seen any bullets? No.

Have you seen any evidence that substantiates that my client was inside of this home when this alleged event occurred? No. What did you determine? Well, I determined that there was a gun that was there and the gun, it was an illegal gun. I determined that the gun was purchased from someone we later found out to be named Tank and somehow it led back to the Beaufort Police Department or Sheriff's

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Department. When we inquired where's that paperwork, where's that information with regards to, we served a Rule 5, we'd like a copy of this information, and who he bought it from and where was the information forwarded to. He said I just simply made a phone call.

We then went on and I said, well, he has a tough job, let's find out what's going on. And what do we find out? At that time, we said, well, if is there was an allegation that this individual that shot a gun or brandished a gun inside of that house and fired at someone, you could simply get in a car because he said Cocoa Road was less than two miles away. All he had to do was get in the car and drive over there and say give me your hands. You notice how he didn't want to go into detail about the gunshot residue kit. It's real simple. He said you take a sample, just rub the hand, the front and the back, place inside a bag and you send it to SLED.

Well, if a shooting occurred, Eddie Williams was somehow in danger and he identified the individual, the question was raised, why didn't you simply do it. But there's a greater question there. If Eddie Williams claimed that he fired a gun -- and that's interesting because in one statement, he says what? He never fired a weapon. In his second statement -- and this all goes to his inconsistencies and contradictions over and over again.

In his second statement, he stated what? That he fired a gun three different times. We then inquired and said, Well, why the ambivalence? And then of course, my question simply was, which version do you want the jury to believe? You've lied with regards to the bullets.

Now, they're -- there's some type of contradiction with regards to the gun being fired. All this information was given to Investigator Croft, a good police officer. But he didn't stop and raise one question: Well, if you fired your gun on three different shots and got these people outside of your house, he simply could have asked him what? Hold your hands out and let me get a sample from you and I'll find out if you fired that .357. That was never done.

In this particular case, we went on, and then we found out exactly what was going on. The gunshot residue kit was never performed when they ran up on Stephon Robinson. And he said, well, why wasn't it done then? He said it was getting close to the time. We said, what time are you referring to? He says, about six hours, we're not sure exactly, but it was getting close to the time. I said, well you could have performed the test and you simply could have found out and said, look, Mr. Robinson, it appears that on your hands, it looks like you fired a weapon. I'm going to arrest you. I'm going to take you

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in. And do you remember the key question that was asked by the solicitor? Could you go and take a sample from someone without their permission if you believe they fired a weapon. And the response of Officer -- or Investigator Croft was what? Yes, I could do that. No other question was raised. But you ask the question. Why wasn't a sample taken from Mr. Robinson simply swipe it from him and say, you fired a gun. It appears that someone's alleged you fired a gun, but under those circumstances, it was never, ever done.

And in this particular case, let's go further into the inconsistencies and the contradictions over and over again of Mr. Williams and his behavior and why I believe that his testimony, as I stated, is rotten to the core. It robs justice. What did he say? He said, they come over to the house and they played Nintendo. So they play games. And then the truth finally came out. What did Mr. Robinson say? I don't play video games. I bought marijuana from you. You don't have the full story of what went on in that house with Mr. Williams. The inconsistencies with regards to the bullet holes, the inconsistencies with regards to the illegal weapon, the inconsistencies that he somehow put into the story to somehow get you to buy it -- that's what he's doing. He's like a car salesman. He wants you to buy into his story. And then he went on and stated they come

over and play with my nephew. They played Nintendo, they play those games. But the reality is that Mr. Robinson testified, we didn't play games. You're a drug dealer.

He stated they did numerous times. And he purchased drugs from him. But in addition to that, we went on further with his testimony. And of course, in this particular case, the words of a drug dealer are sometimes laced with deceit and he couldn't make up his mind as to where he was going with this story. He simply sat down and he said, well, I identified them. And that's something interesting. You have to draw upon your own life experiences. I didn't know you would be here today and certainly I didn't know the case would come up this week, but we're all here together. We were notified. And if you simply take a picture of the individual sitting beside you and you come back tomorrow, you simply ask is that the person that was sitting beside you yesterday.

In this particular case, they went back over three times to attempt to identify Mr. Robinson and Mr. Felder. How many times does it take for a drug dealer who's consistently changed his story over and over again to simply identify an individual that he claims has been to his house on two or three different occasions, who he has played video games within his home or with someone within his home because he didn't play video games. And he stated

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that I know their mother and I also know their father.

How many times does it take for someone to come in and simply say, is that the picture of the individual that broke into your house when you slid down the hall and you looked up at him and he stated I saw his face and I saw the goatee. That was his testimony. In this particular case, we have visits from the police that began after 2/20/11 and it went on consistently over and over and over again. And simply trying to do one thing: Identify the individual that committed this crime. So he claims he knows the family. He claims he's associated with the mother, he knows the father. He states they've been in the house playing video games. You have to draw upon your own life experiences. Kid comes into your home. He plays video games. I'm sure you'd recognize that kid. And if he's been there two or three times, it doesn't require three or four visits from the police to identify a child when you know their parents.

And in this particular case, if we go further, we have to sit down and evaluate the testimony that was further given. Mr. Robinson, he got on that stand. He admitted every crime that he had ever committed. He also stated, I assumed responsibility for what I've done. I've pled guilty. I assume responsibility for what I've done. But in this particular case, the inquiry was, well, did you

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do this. And his response was no, I didn't do it. Art Wallace got on the stand. The same testimony with regards to what went on. I ask that you carefully evaluate the State's case in totality. No fingerprints. No weapon. A photo ID lineup that takes two, three times to try to sit down and identify some local boys in Barnwell. The sale of marijuana -- because when he testifies, Mr. Williams, when he told you that I didn't want the police to think bad of me because I had an illegal weapon or a weapon that might not have been right.

You draw upon your own life experiences. He didn't want the police to get into whatever was going on in his life, like the sale of drugs, the sale of marijuana. We'll never know what went on in that home on that particular night, but we do know this, that Mr. Williams, as far as a witness, has he been candid? Has he been frank? Has he been forthcoming? Can you rely upon his testimony to take away a man's liberty and their freedom? The inconsistencies and contradictions of Mr. Williams' testimony over and over again, you ask Your Honor, what is reasonable doubt and his Honor will define it for you.

You know what reasonable doubt is? When I tell you the State has failed to prove their case beyond a reasonable doubt? What gives you reasonable doubt? What makes you hesitate to act? Well, when a child gets ready

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to walk across the road and you know it's a busy street and you jump up and you say, Hold up, Honey, let me walk you across. Let me make sure you're okay. What's reasonable doubt in this particular case? A man that lied with regards to the bullets. A man that lied with regards to the gun. A man in this particular case that took three times to identify someone that he claimed he knew their parents, their family and they've been to his house on numerous occasions. A man that lied and said these children had been in his home and somehow entertained themselves and that's how he knew them when they're was no entertainment, there were no video games. A man in this particular case who was simply scared that the police were going to find out, this fine officer right over here, he was afraid that he was going to smoke him out and find out exactly what he was doing.

And now he set things in motion. He can't back out. He's got to take it all away and show up in this courtroom and testify in front of you. But today, he's been put on the stand and he admits back in February when I said that, it might not have been true. Back in February when I said that, I was a little frightened and afraid. The inconsistencies on the part of Mr. Williams gives you reasonable doubt and under the circumstances can you walk in that jury room, can you get up in the morning and look

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at yourself and know that you've done the right thing by relying with regards to his testimony.

The only position that you can take with regards to the testimony of Mr. Williams in this particular case, before you take away someone's liberty, is simply to come back and say, not guilty. Because he's failed and the State, in putting their resources and time and energy behind this man and his allegations, he's the reason the State has failed to prove their case beyond a reasonable doubt. I ask that you simply hold the State to their burden. It's not the solicitor's fault, it's not Officer Croft's fault. The problem is that the so-called victim here, he's not a victim. He's a player. I ask that you carefully evaluate all of it. But in the bottom line, they can't sit here and say they've proved their case beyond a reasonable doubt. They did the best they could relying on the statements of a man that's frightened by what he has done and set in motion and he's still afraid that someone may find out something about it.

I ask that you return the proper verdict in this case and that's simply a verdict of not guilty. Thank you.

MR. MCALISTER: May it please the Court, ladies and gentlemen, when we started today, I told you that this wasn't going to be a complicated case. There aren't going to be many witnesses, you're not going to hear a ton of

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testimony, there's not going to be a ton of forensic evidence. I just ask that you use your common sense. Let's walk back through everything that's gone on here today and start with the testimony.

You've got Eddie Williams' home, right here in Barnwell, South Carolina. His door kicked in. He's not making that up. He didn't kick his own door in. You heard Officer Croft, Investigator Croft talk about the bullets that he found within the home. He just shot up his own home and then he called the police out there after he kicked his own door in? That doesn't make any sense. Use your common sense.

You know, yeah, there were situations today where Mr. Williams told you that he initially misspoke to police. He initially told them he didn't fire any shots because he was scared. But he sat right on that stand and told you the truth about why he did that. And there's no doubt these bullet holes were in this. Take a look at the car.

Now, Ms. Gunnels sat there on the stand and said, yeah, this is my car. A white Pontiac four-door G6. I let the defendant, Mr. Robinson use it all the time. He just so happened to have it that day. Now, Mr. Walters and the defense would have you believe that there's no evidence in this case. Eyewitness testimony is the best evidence we've got. Mr. Williams was laying in bed. He didn't ask for

somebody to come over and kick his door in. He got up out of bed and he confronted Mr. Robinson. He stood right there and looked him dead in the eye. A guy that's been in his house before. Mr. Robinson and his brother. Somebody that's been welcome into his own home. Why would he make that up?

Now, there's also been a lot been made about these IDs, these photo lineups. Don't get it twisted. The first two lineups that were presented to Mr. Williams, he was able to identify both suspects. He put X's on everyone except No. 4 and he initialled No. 5. Well, it just so happened those were old pictures. They were six years old. They weren't accurate. You heard Investigator Croft and Mr. Williams testify that he didn't -- he said it didn't look like him, it didn't have the facial hair. He didn't have the goatee. So he went back out a couple of weeks later when Investigator Croft got a new, more accurate photo and put it in the lineup. And he immediately picked No. 4. He immediately picked the defendant. He's not making that up. There isn't three, four, five times that he went out there trying to get an ID. He told them from the get go it was Stephon Robinson. He identified the vehicle that they drive. It had come to his house fifteen minutes prior. He saw them twice. He identified photos of Stephon Robinson and his brother Reggie Felder. The same

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individual that's sitting ten feet away from him in his home after they kicked in the door. They're not making that up.

We talked about burglary in the first-degree before the trial. Burglary in the first-degree is entering a dwelling, a home without consent with intent to commit a crime. And in this case, while carrying a firearm.

Now, all the testimony you've heard today, it's every element: His door was kicked in; the defendant entered the home without consent; he obviously came in to commit a crime. I don't know if he's coming in there to steal a TV -- I don't know what he's doing. We don't have to prove that. He's coming in to commit a crime because he's got a gun in his hand.

Broad daylight. He fires that gun. The projectile is still lodged above Mr. Williams' kitchen table.

Credibility. It all comes down to credibility. You've heard everybody take the stand today under oath and testify.

Now, as a jury, it's your ability to believe all of what a witness says, part of what a witness says or none of what a witness says.

Now, let's walk through those witnesses. The first person to take the stand was Investigator Croft. He sat there and he told you how he walked through the

investigation. He found those projectiles. He went out and took pictures of the scene on Sunday afternoon. From there he followed it up and went around the corner to the defendant's home, where he questioned him about it. And the defendant first said he was asleep. Said that he took a car back at 10 a.m. Why would Jeff Croft lie about that? Why would he make that 10 a.m. time up?

Now, the girlfriend, Leanna Gunnels took the stand. She was scared to death. She didn't want to be here. It's a rock and a hard place. She doesn't want to have to testify against a guy she dated on and off for six or seven years. She cares about him. But she also sat there and told you that they didn't return that car until later that afternoon. She wasn't sure when they returned it, but they returned it later that afternoon. She did say that.

Now, let's talk about the defendant. He got on the stand. He admits to having the vehicle. Just a coincidence though that he has a vehicle, the same vehicle that's named by Mr. Williams. Just a coincidence that he's with his brother, Reginald Felder, and his cousin Jamal Wallace. What motive do they have to lie? Every motive. Jamal Wallace takes the stand. Obviously, he wasn't there because if he's going to tell you the truth, he'd be facing charges as well. And then Mr. Felder gets on up here, his brother. He admits, maybe the only thing he told the truth

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on, I don't know, about the crimes he committed in the past. I got some mixed testimony. He went back and forth on what he did do and what he didn't do. He was convicted of crimes that he says he was wrongfully convicted of. He's facing these same charges. Obviously, he has motivation to lie.

And then you got Mr. Williams. Now, he has just been drug through the mud. He's laying in bed watching a race on Sunday afternoon and three young men kick a door in at his house and all of the sudden he's a villain. He's doing what every one of us would have done, picked up a gun. Somebody comes into my house, I have every right to shoot at them and to protect myself. That's called the Castle Doctrine. He's in self-defense. He's in his own home. He didn't do anything wrong. Did he have a pistol that was later determined that he probably shouldn't have had? Yeah. Did he face criminal charges? No. Because it's not illegal -- the word illegal was used a lot. It's not illegal to own that pistol. He didn't have knowledge that it was stolen. He bought it from a buddy of his. It happens all the time. That's not illegal. There's nothing illegal about that. The only thing that he sat here and told you and told the truth about was he was scared to death. They came to his house. He didn't know what to do. He just fired in his house. He was not sure if that's

proper. He has this gun. He's not sure if he's supposed to have a permit for it. He's scared to death. Don't let that be mischaracterized in closing because that's not what went on on the stand.

Now, the State has the burden of proof and we have to prove that the defendant is guilty of all of those elements that I've already talked to you about: Burglary in the first-degree, going into a dwelling, a house, without consent with intent to commit a crime, carrying a handgun. The handgun is also part of the possession of a weapon during a violent crime. All a reasonable doubt is or all we have to prove is it leaves you firmly convinced that the defendant's guilty.

Now, ladies and gentlemen, there's no denying that the defendant was in that house. He looked him face to face from ten feet away. He talked about his goatee. He talked about the car. He made subsequent IDs from the get go. There's no doubt he's guilty of burglary in the first-degree. And there's no doubt he's guilty of possession of a weapon during a violent crime. Just use your common sense. Thank you.

THE COURT: Everybody okay? You warm up?

JURY CHARGE

THE COURT: All right. Madame Forelady, ladies and gentlemen, let me go through what we generally charge in

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all criminal cases, and then I'll charge you specifically the facts in this case or the law in this case. Let me remind you that the fact that the defendant was arrested -- everybody all right -- charged and indicted in the case is not evidence in the case and cannot be considered as evidence in the case. The indictments for the burglary first and possession of a weapon during the commission of a crime are simply the documents or formal written instruments by way a case is brought into the courtroom. So please do not infer anything from the fact that he was indicted. The indictments in this case allege two different offenses against the defendant, as I said, burglary first and the possession of a weapon during the commission of a violent crime.

Now, you have to decide each indictment separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other indictment.

Now, to the indictments, both indictments, the defendant has pled not guilty to each indictment. And a plea of not guilty puts the burden on the State of South Carolina to prove the defendant guilty beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge and instruct you that it is an important constitutional rule of law that a defendant in a

criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictments were issued unless guilt is proven by evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence does not end when you begin your deliberations, but it stays with the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is not a mere legal theory, nor is it just a legal phrase. It is a substantial, constitutional right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

Now, what is a reasonable doubt? Our Supreme Court and appellate courts have defined a reasonable doubt in a very succinct way and a very short way and then they've expanded on it somewhat, so let me tell you. To find a reasonable doubt, it is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt. If based on your

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consideration of the evidence you are firmly convinced that the defendant is guilty of the crimes charges, you must find the defendant guilty. If, on the other hand, you think there's a real possibility that he's not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

Now, let me remind you once again, as I've told you several times during the trial of this case, you and I have had two distinct responsibilities. My responsibility is the judge of the law. I charge you and instruct you on the law. More importantly, your job is the judge of the facts. You are the judges of the facts and so you determine what the true facts are.

So I tell you, if at any time during the trial of the case you think that I may have had an opinion about the facts, please set that aside. The law does not allow me to have any opinion whatsoever about the facts. So if at any time during the trial of the case I have yawned or rolled my eyes or smiled or shook my head or acted like I was disgusted or happy or whatever, don't infer anything from that. I sit up here and listen to them day in and day out. I can't have any opinion about the facts, so don't think from anything that I've done during the trial of the case that I have an opinion about the facts. You are the sole judges of the facts, the finders of the facts in the case.

As I told you when we started this case, this case would probably be like all others that I try and sure enough, we hear testimony that's over here and testimony that's over here. I mean, it's just a wide convergent between what the two sides are saying. So when we have somebody saying one thing and somebody saying another thing, you, as the finders of the facts must determine the credibility of the witnesses who have testified in the case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

Now, in doing this, in determining the believability of witnesses who have testified in the case, please use your ordinary common sense. You deal with husbands, wives, children, employees, employers, people on the street. You know how to judge somebody as to whether or not they're telling the truth. So don't leave that outside the courtroom when you go back and try to make your decision on what the true facts are. Apply that common sense you've gained over your years and determine who's telling the truth.

You have the right to believe one witness over several, several over one. You can disbelieve everything somebody says, you can believe everything somebody says, you can believe a part and disregard the other part. You

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have the right to determine what the true facts are in the case. You may consider whether any witnesses exhibited to you any interest, bias, prejudice or other motive in the case and you may also consider the appearance and manner of a witness while on the witness stand. So, use your common ordinary sense in determining what the true facts are in the case in determining who was telling the truth. We had a witness who -- a witness who testified with a past criminal record. The law in this case is that a person who has a past criminal record is competent to testify as a witness during a trial. A past criminal record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all in determining the witnesses credibility and/or believability. You are the sole judges of the facts. The believability of any and all witnesses in the case is up to you.

You also heard in this case evidence that the defendant had been, in the past, convicted of crimes other than the one for which he is now on trial. This evidence may be considered by you if you conclude it's true only in deciding whether the defendant's testimony is believable or credible and for no other purpose. You must not consider the defendant's prior record as any evidence of the defendant's guilt of the charge we are trying here today.

Now, let's talk about the two indictments. The

first indictment, the defendant is charged with first-degree burglary. The State must prove first, beyond a reasonable doubt, that the defendant entered a dwelling without consent. They must prove beyond a reasonable doubt that the defendant entered a dwelling without consent. Our law defines a dwelling as any building or portion of a building in which a person ordinarily sleeps. So they must first prove beyond a reasonable doubt that the defendant entered a dwelling without consent and the dwelling is any type of building where a person sleeps.

Secondly, the State must prove beyond a reasonable doubt that the defendant intended to commit a crime at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary. On the other hand, if the defendant intended to commit a crime at the time of the entry, it's burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed. That's the first two things they have to prove, that the defendant entered a dwelling.

I've defined to you that the dwelling is a building where someone sleeps, without consent and secondly, the State must prove beyond a reasonable doubt that the defendant intended to commit a crime when he entered the

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building, upon entry of the building or before he entered the building.

And last, the State must prove, and finally, beyond a reasonable doubt, the State must prove that while entering the dwelling, the defendant was armed with a deadly weapon. And our law has defined a deadly weapon as an instrument which is likely to cause death or great bodily harm. An example, obviously, is a pistol or gun.

So when you consider the crime of burglary in the first-degree, it's pretty much boiled down to you entered a dwelling without consent, with intent to commit a crime therein, while armed with a deadly weapon.

The other indictment, is possession of a weapon during commission of a violent crime. That's set out in our Code of Laws in Section 16-23-490 and that's pretty much self-explanatory. In this case, he's charged with possession of a weapon during the commission of a violent crime. The State must prove beyond a reasonable doubt that the defendant was in possession of a firearm during the commission of a violent crime. It says what it says, it is what is it. A firearm, obviously, means any type of gun, pistol or revolver. In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the defendant guilty of committing a violent crime and I charge you that burglary

in the first-degree is a violent crime. There is a principal of law that says if a crime is committed by two or more people who are acting together and committing a crime, the act of one is the act of all. A person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurred as a natural consequence of the acts done in carrying out the common plan or purpose.

Now, Madame Forelady, ladies and gentlemen of the jury, obviously, your verdict must be based on what we have heard here in the courtroom. You absolutely have no friends to reward or enemies to punish. You are the moral conscious of Barnwell County. You take the testimony that you find it to be true and you apply it to the law as you hear it here today and determine whether or not the State has proven their case beyond a reasonable doubt.

There are two types -- there are two verdict forms, one for the burglary charge and one for the possession of a weapon during a violent crime. Your verdict must be unanimous. All twelve of you must agree. So obviously, you need to consider the burglary first -- burglary first, first -- the crime of burglary in the first-degree first because if you find him not guilty of that, obviously, he wasn't committing a violent crime. So the verdict is simply this: We find the defendant not guilty or guilty.

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It's one or the other. Don't put any emphasis on the way I've got it on here. I've got to put one before the other.

Check it, sign your name as foreperson.

If you do find him guilty of the burglary, then obviously, you would consider the possession of a weapon during the commission of a violent crime. You will have in the jury room the exhibits that have been introduced in the trial of the case. You'll have the verdict form. When you reach a verdict, knock on the door, let the bailiff know and I'll receive you back in the courtroom.

A lot of times during deliberations, juries have questions to ask or want questions answered. Sometimes I can answer them, sometimes I can't. It just depends on what the question is. So you'll have a pad in there. So if y'all have a question or concern or anything, write it out on a peace of paper and Mr. Eddie will bring it to me and I will try to answer it by writing an answer out and if I can't, I'll just tell you I can't do it because rules sometimes preclude me from doing it.

So in just a second, I'm going the let you go back to the jury room. Please don't start deliberating. I have to ask the lawyers if I've left anything out and then they have to gather up the exhibits. That shouldn't take us but about two minutes, three minutes. And then you can start deliberating when he delivers the exhibits and the verdict

form.

Thank you very much. I'm going to let y'all step back to the jury room.

Mr. Eddie, separate the alternates for me now.

THE BAILIFF: Yes, sir, they're in the two chairs.

THE COURT: I know that, but don't put them in the jury room.

THE BAILIFF: All right, sir.

(WHEREUPON the jury left the courtroom at 4:23 p.m.)

THE COURT: All right. Any requested additions, deletions, objections to the charge by the State.

MR. MCALISTER: No objection to the charge by the State, Your Honor.

THE COURT: By the defendant?

MR. WALTERS: No, sir, Your Honor.

THE COURT: All right. Y'all please come up and verify the exhibits and verdict form.

(WHEREUPON the attorneys were looking at the exhibits and verdict form.)

THE COURT: Y'all agree all the exhibits are in order?

MR. WALTERS: Yes, sir, Your Honor.

MR. MCALISTER: Yes, sir.

THE COURT: Have you looked at the verdict form and

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approve of the same?

MR. WALTERS: Yes, sir.

MR. MCALISTER: Yes, sir.

THE COURT: All right. I'm sending it to the jury. According to the clock, it's 4:27 p.m.

Mr. Eddie, take that back and tell them they can start deliberating.

THE BAILIFF: All right, sir.

(WHEREUPON the jury began deliberations at 4:27 p.m.)

(WHEREUPON it was reported to the Court that the jury had received a verdict at six o'clock p.m.)

THE COURT: All right. Is the State ready to receive the verdict?

MR. MCALISTER: Yes, Your Honor.

THE COURT: Defendant ready?

MR. WALTERS: Yes, sir, Your Honor.

THE COURT: All right. Bring the jury in, please.

(WHEREUPON the jury entered the courtroom at 6:03 p.m.)

THE COURT: Madame Forelady, have y'all reached a verdict?

THE FOREPERSON: Yes, we have.

THE COURT: Hand it to the bailiff, please.

THE FOREPERSON: Both charges?

THE COURT: Yes, ma'am.

Mr. Eddie?

(WHEREUPON the bailiff gave the verdict forms to the Court.)

VERDICT

THE CLERK: State of South Carolina versus Stephon Tenard Robinson in the Court of General Sessions for Indictment No. 2011-GS-06-00245, as to offense of burglary first-degree, We the jury find the defendant guilty. Signed by the foreperson, Brenda Steadman.

As to the charges of State of South Carolina versus Stephon Tenard Robinson, in the Court of General Sessions for the Second Judicial Circuit, Indictment No. 2011-GS-06-00246, as to the offense of possession of a weapon during a violent crime, We the jury find the defendant guilty; signed by Brenda Steadman, Foreperson.

THE COURT: Anything from the jury before I release them by the State.

MR. MCALISTER: Nothing from the State, Your Honor.

THE COURT: Mr. Walters?

MR. WALTERS: No, sir, Your Honor.

THE COURT: Thank you.

Madame Forelady, ladies and gentlemen, I can't thank you enough. You've paid absolutely you know believable attention. The only thing that went wrong was

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my two alternates fussed, they wanted to go back and deliberate with you. They wanted to sit out here. Y'all all did an excellent job.

We can't run the criminal court system without jurors being ready, willing, and able to serve. It's an important civic function. You know, when you're accused of something, there's no better way to let it be decided than to let twelve citizens from the community make a decision on what the true facts are. It's a wonderful system. You know, we look around the world today and -- like you look over in Libia, how they handle their differences over there with guns and out in the streets. So we live by a rule of law.

Y'all have participated in it. I thank you. Quite frankly, I sat up here and listened to it all and I wholeheartedly agree with your decision. I thank you. I will have to impose sentence, but I'll probably do that tomorrow. It's late and I'll let everybody get a fresh night's sleep.

We don't have anything else for them, do we?

MR. MCALISTER: No, Your Honor.

THE COURT: The rest of them have been excused. As promised, you are excused now for the balance of the week. Ms. McElveen will mail you a check.

Does anyone need a work excuse for today?

(WHEREUPON several jurors raised their hands.)

THE COURT: All right. If you'll just sit tight, we'll get that.

Ms. Steadman, I need you to sign the actual indictment, if you would for me, please.

THE FOREPERSON: Okay.

THE COURT: Ms. McElveen will walk back in the jury room with you.

Once again, I thank you very, very much. I enjoy coming to Barnwell. I married a girl from Barnwell -- none of y'all will believe this, but 42 years ago. And we're still married. But her mother and father lived here. So I enjoy coming over here. I got married right over there in the First Baptist Church, so Barnwell is like my second home.

Thank y'all. Y'all were wonderful and I appreciate it. Some of you won't have to eat supper tonight. I saw those plates. (Laughter) I ate there too. I know how it is. But thanks, really, from the bottom of my heart. I really appreciate it. Y'all did a great job. I hope you have a very pleasant evening and the holiday season is coming up. I hope you have a wonderful holiday season.

Thank you very much. Y'all can just go back there.

(WHEREUPON the jury left the courtroom at 6:08 p.m.)

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THE COURT: All right. I think it's probably best to sentence tomorrow. Everybody's tired and -- I don't want tiredness interfering with my decision making process.

Mr. Walters, what time suits you tomorrow?

MR. WALTERS: Whenever the Court orders, Your Honor.

THE COURT: Well, no. Eleven? Give you time to -- you tell me if you'd rather do it early, mid-morning, or lunchtime?

MR. WALTERS: Ten o'clock, Your Honor.

THE COURT: I'll be here bright and early.

MR. MILLER: Your Honor, we have reviewed the sentencing sheet with Defense Counsel and we're in agreement on the sentencing sheet.

THE COURT: Okay. All right. He's in custody and we'll reconvene in the morning at what time, solicitor?

MR. MCALISTER: Ten is fine unless you want to start earlier.

THE COURT: Let's start at 9:30.

(WHEREUPON court was in recess for the day.)

WEDNESDAY, NOVEMBER 2, 2011

SENTENCE

THE COURT: All right. We have back before me Stephon Robinson, who was found guilty yesterday by the jury of Barnwell County or a Barnwell County jury for

burglary in the first-degree and possession of a weapon during a violent crime.

Is he on probation?

PROBATION OFFICER: He's on YOA, Your Honor.

THE COURT: All right. Well, how do we handle that?

PROBATION OFFICER: Once you sentence, Your Honor, I'll take care of the paperwork.

All right. I know I heard yesterday while we were talking about prior record for impeachment purposes, I heard -- let's put on the record for sentencing purposes, Mr. Miller and Mr. McAlister, his prior record.

MR. MILLER: Your Honor, we did an extensive review of his prior record. His NCIC rap sheet was a little bit confusing. His prior record started with the 2005 shoplifting in Georgia, which he was granted first offender act status for; however in February of 2007, he was convicted of financial transaction theft and breaking into motor vehicles with intent to commit a felony in Georgia, which revoked the first offender status on that shoplifting. So he's got three convictions from Georgia.

THE COURT: That's an '05 shoplifting, an '07 financial transaction card fraud --

MR. MILLER: Theft.

THE COURT: Or theft, and breaking into a motor

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vehicle.

MR. MILLER: Yes, sir.

THE COURT: That's three times and '05, he would have been what -- how old were you in '05, sir?

MR. MILLER: Nineteen, eighteen.

THE COURT: Eighteen. All right. Go ahead.

MR. MILLER: Your Honor, in 2007, November of 2007, Mr. Robinson was arrested for burglary second, violent in Barnwell County and was released on bond. He was thereafter arrested again in April of 2009 while the burglary charge was still pending and charged with attempted armed robbery. In May of 2009, Mr. Robinson pled guilty to the burglary second, nonviolent and a strong-armed robbery and was sentenced to an active sentence under the Youthful Offender Act.

THE COURT: When was that?

MR. MILLER: That was in May -- excuse me May of 2009. Mr. Robinson was actually released from prison on his YOA sentence --

THE COURT: Was that my sentence in May of '09?

MR. MILLER: Yes, sir. Mr. Robinson was released from prison on his YOA sentence in March of 2010 and this incident occurred less than a year later. It was in February of 2011 when this incident occurred.

THE COURT: While on YOA parole?

MR. MILLER: Yes, sir.

THE COURT: So this will be one, two, three, four -- this will be his sixth offense?

MR. MILLER: Yes, Your Honor.

THE COURT: And he's 25 years of age.

MR. MILLER: Yes, Your Honor and the State would note --

THE COURT: Second burglary --

MR. MILLER: -- each offense is escalating in severity. You go from the shoplifting to breaking and entering motor vehicle to a burglary to an attempted armed robbery that was pled as a strong-armed robbery and now we're here on a burglary first.

THE COURT: Anything else by the State?

MR. MILLER: Nothing further from the State, Your Honor. The victim did not want to make a statement to the Court.

THE COURT: Mr. Walters?

MR. WALTERS: Good morning, Your Honor.

THE COURT: Good morning, how are you?

MR. WALTERS: Fine, Your Honor.

Your Honor, as my client stated to you, he's 25 years old. He's a member of Jordan Baptist church. Your Honor, during the last couple of years, it looks like the last two or three years, his father died, his mother died

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and his grandmother died. He's essentially lived on his own and attempted to take care of his family. Your Honor, under the circumstances --

THE COURT: What kind of family does he have? Does he have children?

MR. WALTERS: He has a sister and a nephew that he attempts to take care of. He has essentially tried to take care of the family.

THE COURT: Work anywhere at all?

MR. WALTERS: Cutting grass for a gentleman named Mr. Harris. His highest educational level is in the 12th grade. Under the circumstances, this is a young man that -- he's made some terrible mistakes.

THE COURT: That's sad, because he looks like a nice -- clean cut -- Mr. Walters, how about sign these sentence sheets for me.

MR. WALTERS: Yes, sir.

THE COURT: And if your client wishes to, he may.

(WHEREUPON the defense was signing the sentence sheets.)

THE COURT: Anything else, Mr. Walters?

MR. WALTERS: Your Honor, you met his brother yesterday. There have been numerous issues in his family because of -- there wasn't sufficient funds. And of course the parenting role disappeared after the deaths of his

entire family, his father or mother and dad and the grandparent. We would ask the Court under the circumstances to please consider his youth. There's still some good in this young man. He's made some terrible mistakes since the age of eighteen.

Perhaps after this ordeal, he could learn from it and move forward with his life.

THE COURT: Mr. Robinson anything you want to say?

THE DEFENDANT: No, sir.

THE COURT: Mr. Williams, anything you want to tell me in regards to being the victim?

MR. WILLIAMS: No, sir.

THE COURT: Mr. Robinson, you certainly can't complain. The State offered you a plea to burglary second violent that carries fifteen years and it's not an 85 percent sentence. Your lawyer, as I understand, certainly encouraged you to do that. And even after the trial started, I was considering your young age. I once again told your lawyer that I would get the State to open that back up for you. Even I thought that I could give you less than the fifteen years. You exercised your right to trial, which you absolutely have the right to do so. But you've never accepted responsibility for your actions. I thought the evidence was overwhelming and supported the verdict rendered by the jury.

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Young man, I'm not sure what's going on with you, but you're on a pattern to be a menace to society. You start off by a simple shoplifting in 2005; you escalated to stealing financial transaction cards, breaking into motor vehicles in '07. The same year you burglarized another house. You get out on bond and while out on bond, you get involved in an attempted armed robbery two years later.

The State, once again, gives you a break and allows you to plea to both of those together. Actually the burglary first pled down to a burglary second, violent. I gave you an active YOA trying to help you and then you went to the Youthful Offender Detention Center in Columbia, segregated from the mainstream inmates. You stayed there, as I understand, from May of '09 until March of 2010. What's that? About ten months. You were released on parole, being supervised by our agents and within thirteen months, you're kicking in the door of a home with a weapon, shooting at someone.

As I told my law clerk on the way over here this morning, we're not but about 6 inches, 12 inches, 18 inches away from Mr. Williams being dead or you being dead or your brother or your cousin. I'm not sure what's going on with the segment of our young people today and their use of guns and their just cavalier attitude about what guns are. There was an article in the paper this morning, I think it

was in New Orleans, Halloween, they had sixteen killings over Halloween in New Orleans from young people with guns and acting like thugs.

So I just think that you need to be separated from the rest of us if you want to live this lifestyle. We'll let you live it in Columbia with the other people who decide to live their lives like you.

Sentence of the Court on the burglary charge, that you be sentenced -- committed to the State Department of Corrections for a period of twenty years. On the possession of a weapon, that's a five year sentence to run concurrent. I'll give you credit for your time served. Good luck to you.

MR. WALTERS: Thank you, Your Honor.

* * * * * * * * * * END OF TRANSCRIPT * * * * * * * * * *

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State of South Carolina)
) **Certificate of Reporter**
County of Aiken)

I, THE UNDERSIGNED, Brenda J. Sigwald, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the captioned case in the Court of General Sessions in and for the State of South Carolina on the 1st and 2nd days of November, 2011.

I FURTHER CERTIFY that the foregoing pages, numbered 3 through ^ # constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 15th day of May, 2012.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Stephon Robinson, Appellant.

Appellate Case No. 2011-202987

2014 MAR 10 P 12:06
RHONDA D. [illegible]
CLERK OF COURT
BARNWELL, S.C.

Appeal From Barnwell County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2014-UP-068
Submitted December 1, 2013 – Filed February 19, 2014

REMANDED

Appellate Defenders Dayne C. Phillips and Carmen Vaughn Ganjehsani, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General John Benjamin Aplin, both of Columbia, for Respondent.

PER CURIAM: Stephon Robinson appeals his convictions for first-degree burglary and possession of a weapon during the commission of a violent crime. Robinson argues the trial court erred in admitting his prior convictions and failing

to conduct an on-the-record balancing test weighing the probative value of the prior convictions against their prejudicial effect. Specifically, Robinson contends the trial court erroneously admitted his 2009 conviction for attempted robbery and two 2007 Georgia convictions for breaking into an automobile with intent to commit a theft or felony. We remand.

Examining the record, we conclude the trial court did not conduct a meaningful analysis balancing the impeachment value of Robinson's prior convictions against their prejudicial effect. *See State v. Scriven*, 339 S.C. 333, 344, 529 S.E.2d 71, 76 (Ct. App. 2000) (stating the trial court must conduct "a meaningful analysis to balance the impeachment value of [a defendant's] prior convictions, if any, against the prejudicial impact, as clearly required under Rule 609(a)(1)[, SCRE]"). Although the trial court found Robinson's prior convictions were "within the statute" and ordered the State to refer to his 2009 second-degree burglary conviction as a "felony," the trial court did not analyze the prejudicial impact of admitting his 2009 attempted robbery conviction and two 2007 Georgia convictions for breaking into an automobile with intent to commit a theft or felony. *See id.* (stating if the trial court does not conduct a meaningful on-the-record balancing test, a decision to admit a defendant's prior convictions is an error of law resulting in an abuse of discretion).

On remand, the trial court should hold a hearing and carefully balance the probative value of his prior convictions for impeachment purposes against their prejudicial effect. If the trial court finds the prejudicial impact of the prior convictions outweighs their impeachment value, the trial court shall order a new trial. Otherwise, subject to further appellate review, the convictions and sentences are affirmed. *See State v. Howard*, 384 S.C. 212, 222, 682 S.E.2d 42, 48 (Ct. App. 2009) (remanding for an on-the-record balancing test weighing the probative value of the defendant's prior convictions against their prejudicial effect); *Scriven*, 339 S.C. at 344, 529 S.E.2d at 77 (remanding to the trial court "with instructions to hold a hearing on the admissibility of [the defendant's] prior convictions, applying the proper burden of establishing admissibility, and carefully weighing the probative value for impeachment of the prior convictions against the prejudice to [the defendant]").

REMANDED.[1]

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

SHORT, WILLIAMS, and THOMAS, JJ., concur.

State of South Carolina

Court of General Sessions

County of Aiken

State	)	
	)	
	)	Transcript of Record
v.	)	2011-GS-06-245; 246
	)	
Stephon Robinson	)	
	)	
Defendant.	)	

June 9, 2014
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

David Miller, Assist. Solicitor
Attorney for the State

Carmen Ganjehsani, Esq.
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

I N D E X

WITNESS	PAGE

(No Witnesses.)

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

(No Exhibits.)

(The following proceedings were held on June 9, 2014.)

THE COURT: All right. This is *State vs. Stephon Robinson*.

Mr. Robinson, how are you today?

THE DEFENDANT: All right.

THE COURT: 2011-GS-06-245. Mr. Robinson was convicted in this court of first-degree burglary and possession of a weapon during the commission of a violent crime. He appealed that conviction in the South Carolina Court of Appeals in an unpublished opinion, 2014-UP-068; remanded the case to -- or back to me for me to hold a hearing and carefully balance the probative value of his prior convictions for impeachment purposes against their prejudicial effects.

I find that the prejudicial impact of the prior convictions outweighs their impeachment values, then I shall order a new trial; otherwise, convictions and sentences are affirmed. Subsequent to receiving this, I received -- we received a note -- or I got a copy of a note from Ms. Carmen Ganjehsani and said that she'd be representing Mr. Robinson.

So I've ordered a copy of the transcript from the trial, I have reviewed the same. I suspect,

ma'am, that -- I'll just give you about a five- or ten-minute argument; Mr. Miller, you can respond, and then I'll make a decision.

MS. GANJEHSANI: Well, you went through the background of the case. And the two convictions -- or the three convictions at issue are the 2009 attempted common-law robbery and --

THE COURT: '09 attempted common-law robbery.

MS. GANJEHSANI: Or strong-arm robbery, and then there are also two 2007 Georgia convictions for breaking into an automobile.

THE COURT: B&E auto. So one was in '09 and two in '07.

MS. GANJEHSANI: Right.

THE COURT: And he was tried --

MS. GANJEHSANI: In November 2011 for first-degree burglary, possession of a weapon during the commission of a violent crime.

THE COURT: So he's tried some two years after the strong-arm robbery and some four years after the breaking into an automobile.

MS. GANJEHSANI: Correct.

THE COURT: Both within the ten-year statute.

MS. GANJEHSANI: Right. We don't have any issue with remoteness. But under Rule 609 (a)(1),

those prior convictions can only be admitted if you determine the probative value of that evidence outweighs its prejudicial effects.

THE COURT: That's correct.

MS. GANJEHSANI: And I'll go through. The Supreme Court has listed five factors in *State vs. Colf*; the impeachment value of the crime, the point and time of the conviction and the witness' subsequent history, the similarity of the prior crimes and the charged crime, the importance of the defendant's testimony, and of centrality of the credibility issue.

And I first want to argue that prior crimes, they must be probative of the defendant's credibility. So we're looking at whether the prior convictions have any impeachment value whatsoever. Prior crimes can be admitted to show that he had a bad character or is capable of committing the charged offense. The Court of Appeals said that in *State vs. Howard*. The Court of Appeals also said in *State vs. Black,* you can't admit a prior crime just to show he's a bad person. In that case, the only legitimate purpose of admitting a prior crime is to impeach the witness' credibility.

And again, the Supreme Court, in a 2006 case,

State vs. Bryant, says the prior crime cannot be used to show that the defendant gets in trouble a lot and continues to commit crimes. Our State Supreme Court in that *State vs. Bryant* case in 2006 has also held that convictions for robbery, burglary, and theft, beyond the basic crime itself, are not probative of truthfulness.

So I would submit, the prior crimes of attempted common-law robbery and breaking into an automobile, they don't have any probative value whatsoever because they don't go to his truthfulness, they don't show his veracity, they don't go to his credibility. So I submit there's no probative value of those prior crimes. And then in addition, it's inescapable that he was prejudiced by the admission of those prior crimes; they're not identical to the charged offense, but they're very similar.

He was charged with first-degree burglary, so we have a jury hearing that he was previously convicted of attempted common-law robbery, breaking and entering into an automobile. Obviously for a jury, you know, they're looking at that and the common thread is that there's theft, taking of property, and they're going to think of a burglary,

going into a indwelling, usually that's to go in and take property. So those crimes are so similar that -- you know, I think it really -- the similarity of the prior crimes to what he was charged with really heightens the prejudicial effect.

And the State Supreme Court in Bryant, again has said, when that prior offense is similar to the offense on trial, the danger of unfair prejudice weighs against its admission, especially when we have a prior crime that has nothing to do with the defendant's credibility, like these crimes here; they don't go to his veracity, his credibility, and when these crimes are very prejudicial, the State Supreme Court has said it will find that the trial Court errs in admitting those prior convictions.

So we contend that, you know, under Rule 609 (a)(1), those prior convictions should not have been admitted into trial, he's entitled to a new trial, Mr. Robinson is entitled to a fair trial where a jury is making a decision not based on some prior character or based on something that he may have done during a previous conviction. We don't want a jury to think if he did it once, he did it again; we want the jury to be looking and making a

decision on the facts of the case.

And in this case credibility was very important. The only evidence basically we had -- Mr. Eddie Williams was the victim. He says that Mr. Robinson and his brother and a third unidentified man came into his house and that he recognized them. And, of course, Mr. Robinson took the stand and his brother and a friend took the stand and he said they were at their own house at the time.

There was no physical evidence linking Mr. Robinson to this crime; you know, they never recovered the gun that he allegedly had, there were no fingerprints. So it really becomes kind of a he-said-versus-he-said type of case. So credibility is important. And so when you're admitting crimes that have, you know, nothing to do with credibility. That's very prejudicial when a jury is hearing that when they're trying to make a decision, you know, based on the facts and trying to decide whose story is correct and, therefore, we do not think the admission of those prior convictions was harmless either. So for that reason, I'm asking you today to grant him a new trial and to hold that those prior convictions of attempted common-law robbery and the

two breaking and entering into automobiles should not have been admitted in the trial.

THE COURT: Thank you.

Mr. Miller.

MR. MILLER: Thank you, Your Honor.

We do agree with something that was just said, and that is that credibility was the central issue in this case.

THE COURT: Did he have an alibi?

MR. MILLER: It was an alibi, Your Honor. He stated that he was with his brother and that he and his brother were at the girlfriend's house. They had taken car back to the girlfriend and they didn't even have the car, even though they said they had had the car the night before this alleged -- the incident was alleged to have taken place.

Your Honor, first of all, there's a rule -- and it's been stated that this doesn't have anything to do with the impeachment value of the prior crime. It doesn't have anything to do with honesty. But, Your Honor, there's actually two rules in 609; there's the general rule under 609 (a)(1) that specifically addresses what we have here, and then there's 609 (a)(2). And under 609 (a)(2), evidence of any witnesses who have been convicted of a crime

shall be admitted if it involved dishonesty of false statements, regardless of the punishment. And that's not what we're trying to get these in under.

The Supreme Court case that Ms. Ganjehsani cites that says robberies and breaking and entering into autos without anything other than that base offense, it's not a crime of dishonesty, so it doesn't come under 609 (a)(2).

We're talking about 609 (a)(1). And 609 (a)(1) says when a witness -- excuse me; evidence that an accused has been convicted of such a crime shall be admitted if the Court determines the probative value of admitting the evidence outweighs its prejudicial effects of the accused. And what they're talking about there is evidence of conviction of a crime if the crime was punishable by death or imprisonment in excess of one year under the law that the witness was convicted under.

Now, all of these, they can see, carry more than a year; all of these, they concede, were within the ten-year timeframe. And if you're looking at the Colf factors whenever you're discussing that and looking and weighing them, there's a significant difference between Colf which sets out the test and this case, and that is in Colf, the crimes that they

were trying to get in were actually outside of the ten-year time limitations. And in that case, the Court found that the specific facts and circumstances had to substantially -- the probative value had to substantially outweigh the prejudicial effect. That's not the test or the standard here.

Here, the standard is, it's a balancing test, 51 percent one side or the other. So with that in mind, we look at the impeachment value of the prior crime. I don't know how, Your Honor, we presume what the jury thought about these crimes, certainly there was not any objection from Mr. Walters at the time of trial that they were so closely related to the crime of burglary; in fact, there was the one burglary conviction, and in that conviction we specifically said that we would not refer to it as a burglary, instead we would refer to it in the parliaments of the rule as being a crime that carried more than a year and within ten years, obviously, and that would be the burglary conviction from 2009.

The robbery charge, the jury sat there and listened to all of the allegations in the case. This was not presented as a robbery that went wrong. Everybody, including the -- well, the victim is the

everybody, said that these individuals broke into his house, he believed, not knowing that he was home. So there was nothing similar about the victim's version of what happened to a robbery. It was a burglary. They were trying to break into his house.

As far as the cars go, the breaking and entering into automobiles in 2007, that's less than five years prior to the time. But there's a large difference, and the law recognizes it, between breaking into somebody's car and breaking into somebody's home. So I don't think that the jury -- I don't think we can assume that the jury automatically just heard, oh, he steals stuff and he's a thief, therefore he must have committed this burglary, this -- when it actually turned out to be an armed home invasion whenever he came into this man's house with a gun.

And that was what the jury had heard. The jury had heard that the defendant came into the victim's house, armed with a gun, and shots were fired before the defendant ran away. And so if the jury was listening to the testimony, which I presume that they were doing, whenever they hear subsequent to that and this guy's got a charge for breaking and

entering automobiles, it's just as likely to assume that the jury is going to sit there and go, this guy breaks into cars, he doesn't invade people's homes.

So having said that, I just don't believe that you can presume what the jury was thinking whenever they heard this because these are not similar crimes; burglary first is not a similar crime to breaking and entering into an automobile.

Furthermore, Your Honor, these convictions were not only within ten years of the date of this alleged offense, they were within five years, even the most remote one was in 2007. This case -- as a matter of fact, it was the case -- two cases out of Georgia. They were February the 20th of 2007 was when he was convicted of those two counts of entering an automobile or other motor vehicle with intent to commit a theft or a felony. They were pled in the same day. There was another case, Your Honor, that he pled guilty to that same day that was financial transaction card theft. But at the time, we actually had discussed it -- we hadn't discussed it, our office had discussed it, and we were concerned about the paperwork on that and we weren't sure whether or not that was a conviction at the time. The record -- the rap sheet is pretty clear

now that it was a conviction, but we didn't try to get that in because we weren't sure of it.

Your Honor, these are not similar crimes, they are well within the statutorily allowed or period allowed by the rules to have these things come in. And in this case, when you have a defendant who is saying, it wasn't me, I didn't do it, his testimony is exceedingly important because there was not any kind of physical evidence. There was the testimony and the recollection of the victim. The victim talked extensively about all of the different things that he saw and all of the different things that happened that day. The victim talked about the car that they were in. And that became a very important piece of evidence, but it was still circumstantial evidence because the car, it turned out, was later admitted to, was the car that belonged to Mr. Robinson or one of his compatriots' girlfriends and that they had been -- they admitted that they had been riding around in the car the night before whenever they had gone to the club. And they actually tried to say that that's the reason why the defendant -- or the victim knew what kind of car that they were driving in was because he must have seen them at the club in the car the night before

and then he decided to blame this armed home invasion of his house on them.

Your Honor, this alibi testimony that was offered not only by the defendant but also by his brother who was also charged in the crime with him and a third individual who came in really put the issue of credibility squarely as the deciding factor in the case. The entire case had to be decided on the credibility because if that jury did not believe Mr. Williams and did not think they could trust his statement, then Mr. Williams -- the case isn't a burglary case. I mean, that was it. It all came down to, do we believe Mr. Williams or do we believe the defendant and his brother and this third guy who have been put up on the stand to say this guy didn't do it, he wasn't there, it's just a coincidence that Mr. Williams knew what kind of car they were driving that day and told the police and told the jury exactly how the car came up, somebody knocked on the door, they went back to the car, the car disappears for a few minutes, the car comes back and then somebody kicks in his door and -- causing him to get up and go investigate what's going on.

So certainly credibility was the central issue in the case. None of these prior convictions are

remote in time, but they also are not similar to the crime with which he was charged. The one that we had that was similar to the crime for which he was charged, we did not elicit the details or did not elicit the discussion of that crime by the name burglary because, obviously, that was something that would have been potentially more prejudicial than probative. But in this case, Your Honor, particularly in light of the standard of the balancing test, it is a 50/50 or weighing both sides and seeing which one it is; is it more probative or is it more prejudicial?

Your Honor, the State takes the position that it was absolutely highly probative and, in fact, other than the fact that it was probative of his veracity, other than it was probative of his telling the truth, to the extent that the jury decided against him, then, yes, in that respect it was prejudicial against him. But it wasn't because -- I don't think that the Court -- or we would assume that it was because of the fact that he just thought he was a bad guy who did bad guy things and, therefore, he must have done this thing. And that's certainly the rationale, which I appreciate and understand, from the prior opinions that have been

cited, but that's exactly why we couched the burglary conviction in the terms that we did when we were talking about it. Thank you, Your Honor.

THE COURT: Anything in response?

MS. GANJEHSANI: Yes. I just want to point out again, as the solicitor says, credibility was -- it was essential to this case and we admit that. But we say, what was the probative value of those prior convictions? And there was -- there was none. The solicitor can't articulate what is the probative value because, like I said, our State Supreme Court and Court of Appeals have time and time again said that convictions of robbery, burglary, theft, are not probative of truthfulness, they do not go to impeachment because the *State vs. Bryant* case and the Court of Appeals case *State vs. Broadneck* says that; *State vs. Black* also from Court of Appeals, *State vs. Cheeseboro* from the Supreme Court that says that housebreaking and grand larceny are not generally considered probative of truthfulness. So, therefore, we don't have any probative value.

And so when credibility is the central issue of this case, which the solicitor admits, the Supreme Court in *State vs. Bryant* has said that the State should not be allowed to attack a defendant's

credibility with inadmissible prior convictions where the credibility is essential to the defendant where credibility is the essential part of the case.

There should not be prior convictions that do not go to impeachment admitted. And, like I said, I don't say, you know, our harmless error analysis focus on can we say beyond a reasonable doubt that those prior convictions did not contribute to that jury's verdict? And I don't think we can say that. They heard it, you know, they heard about strong-arm robbery, they heard about breaking and entering, you know, and they -- I don't think we can say beyond a reasonable doubt that the jury hearing that does not get into their head and think, you know, he's done something like this before, he may also do something like a burglary which -- I think these crimes are all similar, they're not identical.

But for a layperson jury, I think when you have that kind of thread of maybe taking property from others, going into a house, you know, strong-arm robbery, you're taking from the person, burglary, you're going into a house to take something, that's very similar to a jury. I don't think we can say that those are dissimilar crimes. And I think when they are similar, the prejudice is there. The

Supreme Court has noted it's inescapable that there's prejudice when you have similar crimes.

So, here, when I think we're weighing the probative value, which I contend is none, versus the prejudice, which is -- is great -- I mean, there's no doubt it's great. Our Courts have always agreed that committing the similar crimes is highly prejudicial to the defendant. I think when you tip the scales, especially when there's no probative value, the prejudice outweighs -- and I agree under 609 (a)(1), it doesn't have to substantially outweigh the probative value, but here it does outweigh it, and I think he's entitled to a new trial.

THE COURT: Thank you.

Okay. I'm going to take it under advisement. Ma'am, can you are send me a cite to those cases that you just argued about in --

MS. GANJEHSANI: Do you want me to just e-mail them or --

THE COURT: Yes, ma'am.

MS. GANJEHSANI: Okay. I'll do that.

THE COURT: And send a copy to Mr. Miller.

All right. I'll take it under advisement and get an order out shortly.

-- END OF TRANSCRIPT OF RECORD --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the captioned cause, relative to appeal in the General Sessions Court for Aiken County, South Carolina, on the 9th of June, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 20, 2015

/s/Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	IN THE GENERAL SESSIONS COURT SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, Plaintiff, v. STEPHON ROBINSON, Defendant.	2011-GS-06-00245 2011-GS-06-00246 **ORDER**

FILED FOR RECORD
2014 NOV 11 AM 10: 19
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter came before this Court on remand from the South Carolina Court of Appeals for a hearing to determine whether, under Rule 609(a)(1), SCRE, the prejudicial impact of admission of Defendant Stephon Robinson's prior convictions for burglary, attempted robbery, and breaking into an automobile with intent to commit a theft or felony outweighed their probative value.

The remand hearing was held in Aiken County on June 9, 2014. The Defendant was present for the hearing and was represented by Carmen V. Ganjehsani of the South Carolina Commission on Indigent Defense. Deputy Solicitor David W. Miller appeared on behalf of the State. This case was initially tried over two days beginning November 1, 2011in Barnwell County. For the purposes of the remand hearing, the parties agreed to waive venue and have the matter heard in Aiken County.

I. PROCEDURAL HISTORY

On October 25, 2011, the Barnwell County Grand Jury indicted Robinson for first-degree burglary and possession of a weapon during the commission of a violent crime.

Robinson proceeded to trial before this Court and a jury in Barnwell County on both indictments. Glen Walters represented Robinson, and Assistant Solicitors A. Keith McAlister

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.
Clerk of Court, Barnwell County, SC
By: SR Date: 11-11-14
XL2-PSI3079 RED

and David W. Miller represented the State. The jury found Robinson guilty as charged on November 2, 2011. Robinson was sentenced to twenty (20) years imprisonment on the first-degree burglary conviction and a concurrent five (5) years imprisonment for possession of a weapon during the commission of a violent crime.

Following his conviction, Robinson filed an appeal to the South Carolina Court of Appeals. In his appeal, Robinson presented the following issue to the Court of Appeals:

> Did the trial court err in admitting [Robinson's] prior convictions for strong-arm robbery and breaking and entering into a motor vehicle under Rule 609(a)(1), SCRE when the trial court failed to conduct the required on-the-record balancing test set forth by State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000), and [Robinson] was prejudiced by the admission of his prior convictions given the similarity of his prior convictions to his charges for first-degree burglary and possession of a weapon during the commission of a violent crime?

The Court of Appeals issued its Opinion No. 2014-UP-068 on February 19, 2014, remanding the case to this Court to "hold a hearing and carefully balance the probative value of [Robinson's] prior convictions for impeachment purposes against their prejudicial effect." The Court of Appeals instructed that if this Court "finds the prejudicial impact of the prior convictions outweighs their impeachment value, [this Court] shall order a new trial. Otherwise, subject to further appellate review, the convictions and sentences are affirmed."

After considering the instructions of the Court of Appeals, reviewing the transcript of the trial in this matter, hearing the arguments of counsel, and conducting the balancing test set forth in State v. Colf, this Court hereby finds Robinson should not be granted a new trial for the reasons set forth below.

II. RELEVANT FACTS OF TRIAL

Eddie Williams, a resident of Barnwell County, claimed that Robinson, Robinson's brother, and an unidentified third man entered his home on the afternoon of Sunday, February

20, 2011. Williams testified that he heard the door to his home broken in by someone while he [Williams] was in another part of the residence. Williams testified he retrieved a gun and went to investigate the disturbance. Williams confronted the intruders in the hallway of the residence and started to shoot at the intruders. As the intruders ran from the home, one of them, identified by Williams as Stephon Robinson, turned and fired a shot into the ceiling above Williams' head. Trial Tr. 99-107. Williams testified that Stephon Robinson was one of the intruders and the second intruder was Stephon Robinson's brother, Reginald Felder[1]. Williams was never able to identify the third individual that entered his home that day because, "they liked to ran over him going back out, so I couldn't make him out". Id. at 105. After the intruders fled the residence, Williams called law enforcement to report the burglary.

Williams initially did not tell the officer investigating the incident that Williams himself had shot his gun at the intruders. Williams testified he was afraid to tell the truth to law enforcement because the gun in his possession had not been registered. Trial Tr. 111. Subsequent investigation of the pistol Williams used determined that it had been reported stolen out of Beaufort County. Trial Tr. 60. Williams also told law enforcement on the date of the incident that the bullet holes in his home were already there when he purchased the home. Trial Tr. 112-113.

At trial, Robinson testified that he was at his home with his brother Reginald Felder and his cousin when the incident occurred at Williams' home. Robinson testified he woke up in the morning, took a shower, took a car he borrowed from Shelly Leanna Gunnels back to her house, and then came back home and was home for the rest of the day. Trial Tr. 130-132.

[1] After testifying for the defense in this trial, Reginald Felder pled guilty to Burglary 2nd Degree (Violent) related to this incident on January 4, 2012. He was sentenced to twelve (12) years.

Gunnels testified that Robinson did borrow her car on February 19th and then returned it on February 20th "around that afternoon." Trial Tr. 96-97.

III. LAW AND ANALYSIS

During the trial, this Court heard from counsel for the State and the Defense outside the presence of the jury regarding what, if any, prior convictions of the Defendant should be allowed to be admitted for impeachment purposes if the Defendant chose to testify.

Under Rule 609(a)(1), SCRE, "evidence that an accused has been convicted of [a crime punishable by death or imprisonment in excess of one year under the law under which the witness was convicted] shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused."

Four prior convictions were discussed. The only prior conviction Defense counsel presented any argument on was a prior 2009 burglary conviction. Additionally, the Defendant had a prior conviction in 2009 for strong-arm robbery and two 2007 Georgia convictions for breaking and entering into an automobile with the intent to commit a felony or theft.

As to the 2009 burglary conviction, I find that the prior conviction was probative as to the believability of the Defendant and that any undue prejudice from introduction of the conviction would be diminished by this Court's limiting instruction as well as the requirement that the State refer to the conviction only as a "conviction for a felony offense that carried more than a year". The State was prohibited from mentioning to the jury that the conviction was for a prior burglary. Accordingly, the probative value of this conviction outweighs its prejudicial effect.

As to the 2009 strong-arm robbery conviction and the two 2007 Georgia convictions for breaking and entering into an automobile with the intent to commit a felony or theft, I likewise find that the probative value of these convictions outweighs their prejudicial effect.

In conducting the Colf balancing test, each of the four convictions is considered together because the analysis remains the same for each conviction. In making this determination, this Court has considered:

1. The impeachment value of the prior convictions

"Impeachment value refers to how strongly the nature of the conviction bears on the veracity, or credibility, of the witness." State v. Black, 400 S.C. 10, 21-22, 732 S.E.2d 880, 886-87 (2012). The only legitimate purpose for introducing evidence of past convictions is to impeach a witness's credibility, not the witness's general character. Id. at 23, 732 S.E.2d at 887. This Court finds the admission of the four prior convictions has value for impeachment purposes and that the prejudicial effect of the admission of the prior convictions, if any, is not outweighed by their admission. While no specific details of the prior convictions were provided to this Court or the jury in this case, the mere fact that the Defendant had twice been convicted of serious crimes within a few years of the alleged offense would tend to impact the Defendant's credibility. Simply put, convictions for breaking into motor vehicles and strong-arm robbery don't imply that the accused was an armed burglar, as was alleged in this case, but they do imply that the accused is not someone to be trusted - that he might not be credible. The Court's instructions to the jury reflect this reality. After carefully weighing the prejudicial effect of these prior convictions with their probative value, I find that the probative value outweighs any prejudicial effect.

2. The point in time of the convictions and the witness's subsequent history

Each of the prior convictions in this case were well within the ten (10) year boundary set forth by Rule 609(b). "Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness

from the confinement imposed for that conviction, whichever is the later date..." Id. The Defendant's 2007 convictions in Georgia resulted in a sentence of probation for a period of five (5) years commencing on February 20, 2007. His subsequent 2009 convictions for burglary and strong-arm robbery resulted in an active YOA sentence not to exceed six (6) years, commencing on May 18, 2009. The Defendant would have been released from confinement on the active YOA sentence less than one year before the February 20, 2011 burglary of the Williams' home. At the time of this offense, and at the time of trial in November 2011, the Defendant was ostensibly still being supervised by Georgia and South Carolina authorities for these prior convictions. All of the Defendant's prior convictions occurred within five (5) years of the trial, and were therefore well within the time frame provided for by the Rule.

3. The similarity between the past crimes and the charged crime

The Defendant claims that his prior convictions are so similar in nature to his current charge that they are unfairly prejudicial to him in this case. In fact, there is very little similarity between his prior convictions and the charge in this matter. As stated above, the State was prohibited from mentioning the Defendant's 2009 burglary conviction during the trial. Instead, the State was required to simply refer to the conviction as "a felony conviction that carries more than a year". There is nothing about that characterization of the prior conviction to make it similar to the offense that the Defendant faced. As to the strong-arm robbery and breaking into motor vehicle charges, there is no indication that any of those charges involved the use of a deadly weapon (a crucial element of the burglary charge), or that they involved entering someone's home (also an element of the burglary charge). Despite Defense counsel's claim, there is no similarity between the prior convictions and the offenses for which the Defendant was on trial in this case.

4. The importance of the Defendant's testimony

The defense presented an alibi defense at trial. Specifically, testimony was offered that the Defendant was at his home with his brother, who had also been charged with first degree burglary in this case but was not being tried, and his cousin, who was not facing any charges from this incident. Reginald Felder and his cousin Arthur Wallace testified that the Defendant was with them at the time of the burglary and that none of them participated in the burglary of Mr. Williams' home. Given the fact the Defendant's testimony was entirely cumulative to the testimony of the two other defense witnesses, it was not necessary for the Defendant to take the stand in his defense. In fact, the only thing the Defendant testified to that his other witnesses did not confirm was that he [Robinson] had bought marijuana from Mr. Williams at the home prior to the date of the burglary. Trial Tr. 139.

5. The centrality of the credibility issue.

The credibility of Williams, Robinson, and Robinson's witnesses was central to the case. There was no physical evidence linking Robinson to the break-in at Williams' home. The only evidence linking Robinson to the crime was Williams' statement that Robinson was one of the three men who entered his home. The Defense called Williams' credibility into question in an effort to discredit his unwavering identification of Robinson and his brother as the perpetrators of the crime. Additionally, Robinson's brother and cousin testified consistently with Robinson that Robinson was with them and not at Williams' home on the day of the burglary.

Having weighed the admission of each prior conviction after applying the analysis set forth in Colf, I hereby find Robinson's prior convictions had impeachment value and that their admission was more probative than prejudicial. I further find the Defendant's prior convictions were sufficiently close in time to the trial in this matter. I find that the prior convictions were not

#7

substantially similar to the crime for which the Defendant was being charged, except for the prior burglary conviction, and as to that conviction, the State was properly limited in the introduction of that matter. I additionally find that the Defendant's testimony was not important to advance his defense of an alibi in this matter, as he had two other witnesses that could, and did, corroborate his testimony. Finally, I find that credibility of *all* witnesses, for the State and the Defense, was an essential element of this trial, as it is with every trial.

The defense strategy was to discredit the victim's identification of the Defendant and his brother as the perpetrators of this crime- in other words, to convince the jury that the victim was not credible. In an effort to that end, the jury was given the task of determining whether the victim really did see the Defendant and his brother breaking into his home or that the victim was lying. This could have been done even without the Defendant's testimony. Having offered his testimony in support of his defense and his own witnesses, I find the Defendant's prior record was properly presented to the jury for them to give it the consideration, within the confines of my instructions, they saw fit.

IV. CONCLUSION

BASED ON THE FOREGOING, I find that the probative value of the introduction of the Defendant's prior record outweighed any prejudice to him under Rule 609(a)(1), SCRE in this matter. Accordingly,

IT IS ORDERED that Defendant Stephon Robinson's motion for a new trial should be, and hereby is, DENIED.

Doyet A. Early, III
Resident Judge,
Second Judicial Circuit

~~Greenville~~, South Carolina
November 10, 2014.

WITNESSES

Barnwell Sheriffs Office

Jeff Croft

Law Enforcement Case #: C11-02-1265

AKM

ARREST WARRANT NUMBER

M545278

ACTION OF GRAND JURY

True Bill

Mark Brillabon

Foreperson of Grand Jury
Date: October 25, 2011

VERDICT

Guilty

Brenda Steadman

Foreperson of Petit Jury
Date: 11/1/11

232

DOCKET NO. 2011GS0600245

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE
vs.

STEPHON TENARD ROBINSON

CDR #: 0079

Indictment for

BURLGARY FIRST DEGREE

§ 16-11-0311

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	BURLGARY FIRST DEGREE
COUNTY OF BARNWELL	)	
	)	§ 16-11-0311

At a Court of General Sessions, convened on October 25, 2011, the Grand Jurors of Barnwell County present upon their oath:

That **STEPHON TENARD ROBINSON** did in Barnwell County on or about February 20, 2011, willfully and unlawfully enter the dwelling of Eddie Williams located at [redacted] St. John Road in Barnwell, South Carolina, without consent and with the intent to commit a crime therein and the defendant was armed with a deadly weapon (firearm), all in violation of §16-11-311, *Code of Laws of South Carolina* (1976), as amended.

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

FOR
J. STROM THURMOND, SOLICITOR

WITNESSES

Barnwell Sheriffs Office

Jeff Croft

Law Enforcement Case #: C11-02-1265

AKM

ARREST WARRANT NUMBER

M545279

ACTION OF GRAND JURY

True Bill

Mark Dunkley

Foreperson of Grand Jury
Date: October 25, 2011

VERDICT

Guilty

Brenda Treadman

Foreperson of Petit Jury
Date: 11/1/11

234

DOCKET NO. 2011GS0600246

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE
vs.

STEPHON TENARD ROBINSON

CDR #: 0549

Indictment for

POSSESSION OF WEAPON DURING A VIOLENT CRIME

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

INDICTMENT FOR
POSSESSION OF WEAPON DURING A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on October 25, 2011, the Grand Jurors of Barnwell County present upon their oath:

That **STEPHON TENARD ROBINSON** did in Barnwell County on or about February 20, 2011, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: BURGLARY FIRST DEGREE, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

FOR
J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Barnwell)
STATE)
VS.)
Stephon Tenard Robinson)
AKA:)
Race: 2 Sex: M Age: 25)
DO[redacted])
Add)
City)
DL#)
*C)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0600245

A/W#: M545278
Date of Offense: 2/20/2011
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET
15yrs - life

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Burglary / Burglary (After June 20, 1985) - First degree
In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ 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. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor 78213 SC Bar # Defendant Attorney for Defendant 13178 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,**
for a determinate term of 20 ~~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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: $ _____ plus 20% fee: _____ $ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ 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: _____

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

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

~~Clerk of Court~~/Deputy Clerk S Aaron H. Ritchie
Court Reporter: Brenda Sigwald
Presiding Judge W B Early Jr.
Judge Code: 0136
Sentence Date Nov 2, 2011

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Barnwell)
STATE)
VS.)
Stephon Tenard Robinson)
AKA:)
Race: 2 Sex: M Age: 25)
DO [redacted]
Ad
Ci
DL
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0600246
A/W#: M545279
Date of Offense: 2/20/2011
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET
5 Yrs.

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ 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. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor 78213 SC Bar # Defendant Attorney for Defendant 13158 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,**
for a determinate term of 5 ~~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: 11-GS-06-245
☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: $ _____ plus 20% fee: _____ $ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ 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: _____

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

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

~~Clerk of Court~~/Deputy Clerk S. Sharon H. Ritchie
Court Reporter: Brenda Sigwald
Presiding Judge W. W. Cooley
Judge Code: 0136
Sentence Date Nov 2, 2011

SCCA/217 (03/2011)

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Barnwell)
)
Stephen Robinson #334700)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2019-CP-06- 00305

APPLICATION FOR

POST-CONVICTION RELIEF

FILED FOR RECORD
2019 AUG -5 PM 3:16
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

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 Ridgeland Correctional Institution

2. Name and location of Court which imposed sentence Barnwell, SC

3. Name(s) of co-defendant(s) (if any) Reginald Felder

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: (Clerk's note adding indictment #:)

(a) Burglary First Degree 2011-GS-06-00245

(b) Poss. weapon during violent crime 2011-GS-06-00246

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 20 years for Burglary First Degree on November 2, 2011

(b) 5 years for PWDVC on November 2, 2011

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Court of Appeals

ii. South Carolina Supreme Court

iii. _____

(b) the result in each such Court to which you appealed:

i. Decision was affirmed by Court of Appeal

ii. Decision was affirmed by Supreme Court

iii. _____

(c) the date of each such result:

i. Court of Appeal affirmed on Feb. 2, 2017

ii. Supreme Court affirmed on May 18, 2019

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Answer on back of page

(b) Answer on back of page

(c) _____

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

(a) Victim's prior statements

(b) Leanna Gunnells statement

(c) Jeff Croft's police notes from day of crime

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

Answer to Question 10.

a) Ineffective assistance of counsel for failing to impeach the testimony of the prosecution's witnesses using evidence of inconsistant statements and police notes showing an erroneous testimony using false and fabricated evidence. In result of these facts, verdict could have been different.

b) Ineffective assistance of counsel for not cross examining Leanna Gunnells showing mitigating evidence in her statement and also in the police notes. Counsel has the duty to familiarize himself with discovery materials provided by State. Counsel failed in this regard and his behavior was not objectively reasonable Under Strickland. In result of these facts, verdict could have been different.

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) On back of this page

(b) On back of this page

(c)

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

(a) your arraignment and plea? No

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

No

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

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

i. Glenn Walters during trial and sentencing
1910 Russell St. / Orangeburg, SC 29116

ii. Victor R. Seeger during appeal
P.O. Box 11589 / Columbia, SC 29211

iii.

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

i. Glenn Walters at trial and sentencing

ii. Victor. R. Seeger on appeal

iii.

(Answers to Question 16)

a) Ineffective assistance of counsel for failing to impeach the testimony of the prosecution's witnesses using evidence of inconsistent statements and police notes showing erroneous testimony using false and fabricated evidence.

These grounds has not been presented because my counsel did not object to any of these grounds in trial and [redacted] because of that they couldn't be brought up on appeal.

b) Ineffective assistance of counsel for not cross examining Leanna Gunnells showing mitigating evidence in her statement and also in police notes. Counsel has duty to familiarize himself with discovery materials provided by State. Counsel failed in this regard and his behavior was not reasonable objectively under Strickland.

These grounds were also not objected to or couldn't be brought up on appeal and that's why this is just being brought up.

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

I'm looking for a reversed and remanded sentence. The right to a fair trial.

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

No

FILED FOR RECORD
2019 AUG -5 PM 3:17
RHONDA D. MCELVEEN
CLERK OF COURT
BARNWELL COUNTY S.C.

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of _____)

I, Stephen Robinson, 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.

Stephen Robinson
Stephen Robinson

SWORN to and subscribed before me this 22 day of July, 2019.

Beverly Ferguson (L.S.)
Notary Public

My Commission Expires: 10-1-25

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

I, Stephon Robinson, 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.

Stephon Robinson
Applicant

SWORN or affirmed to and subscribed before me this 22 day of July, 2019.

Beverly Ferguson
Notary Public

My Commission Expires: 10-1-26

FILED FOR RECORD
2019 AUG -5 PM 3:17
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Stephon Ternard Robinson, #334700 Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2019-CP-06-00305 **RETURN**

The State ("Respondent"), making its Return to the application for Post-Conviction Relief filed on August 5, 2019, would respectfully show this Court:

I. Procedural History

Stephon Robinson ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. During the October 2011 term, the Barnwell County Grand Jury indicted Applicant for first-degree burglary and possession of a weapon during a violent crime. (2011-GS-06-00245; 2011-GS-06-00246). Glen Walters, Esquire, ("Counsel") represented Applicant. Assistant Solicitors A. Keith McCalister and David W. Miller of the Second Circuit Solicitor's Office prosecuted the case.

On November 1-2, 2011, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. The jury found Applicant guilty as indicted. Applicant was sentenced to twenty years' imprisonment for first-degree burglary and a concurrent five years' imprisonment for possession of a weapon. Applicant timely filed a notice of appeal.

By Order dated February 19, 2014, the South Carolina Court of Appeals remanded Applicant's case to "hold a hearing and carefully balance the probative value of [Applicant's] prior

convictions for impeachment purposes against their prejudicial effect." State v. Robinson, Op. No. 2014-UP-068 (S.C.Ct. App. filed February 19, 2014). A hearing took place on June 9, 2014. By Order signed November 10, 2014, and filed November 11, 2014, Judge Early ruled on remand that Applicant was not entitled to a new trial. Applicant appealed again. The South Carolina Court of Appeals issued an unpublished opinion holding that although the trial court erred in applying two of the five factors set forth in State v. Colf,[1] any resulting error was harmless. State v. Robinson, Op. No. 2017-UP-065 (S.C.Ct. App. filed February 1, 2017). The Supreme Court of South Carolina granted the cross-petitions for writs of certiorari to review the court of appeals' decision. The Supreme Court of South Carolina affirmed the court of appeals' decision as modified by Order dated May 8, 2019. State v. Robinson, Op. No. 2017-UP-27883 (S.C. filed May 8, 2019). The remittitur was issued on May 24, 2019.

II. Factual Background

On Sunday, February 20, 2011, Eddie Williams was home lying in bed, getting ready to watch a NASCAR race on television. He thought he heard a car outside so he got up and looked out. Williams saw a familiar white car and recognized Applicant as he got out and knocked on the door. Williams explained that Applicant had been to his house before to play video games with Williams' nephew and at least one or two times had been in the same white car when he visited. Williams said he knows Applicant's parents and his grandmother and had known Applicant when Applicant was a kid. Williams did not answer the door because he knew these were friends of his nephew, and were probably not there to see him. Upon getting no response at the door, Applicant returned to the car and drove away. After the car left, Williams fixed a drink and a sandwich and returned to his bedroom to watch the race. About ten minutes later, Williams again heard a car

[1] 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000).

but did not get up to look outside. Suddenly he heard his front door being kicked in. (R.p.98, line 5-p.103, line 11).

Williams grabbed a .357 revolver from his nightstand and got up to confront the intruder, but he slipped and fell briefly as he was making his way down the hall. When Williams looked up, he was face-to-face with Applicant and started to shoot because he was scared. As Applicant turned to run, Williams saw a gun in Applicant's hand and saw Applicant fire a shot into the ceiling. Williams then saw Applicant's brother, Reginald Felder, and a third man who had also entered the house as the three intruders turned and ran outside. Williams grabbed a shotgun and followed the three men out to his front porch to make sure they were not going to come back. He fired the shotgun into the air as the car drove away, and then called the police. (R.p.103, line 12-p.107, line 5). Williams was able to positively identify Applicant and Felder as two of the three intruders in two separate photo line-ups prepared by the police. (R.p.107, line 6-p.109, line 22). Williams subsequently made an in-court identification of Applicant as the man who entered his home on February 20, 2011, and fired a shot. (R.p.109, line 23-p.110, line 9). He testified there was no doubt that Applicant is the man who came into his house that day. (R.p.121, line 24-p.122, line 1).

III. Allegations Raised and Relief Sought

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

(1) Ineffective Assistance of Counsel
   a. "Ineffective assistance of counsel for failing to impeach the testimony of the prosecution's witnesses using evidence of inconsistent statements and police notes showing an erroneous testimony using false and fabricated evidence."
   b. "Ineffective assistance of counsel for not cross-examining Leanna Gunnels showing mitigating evidence in her statement and also in the police notes. Counsel has the duty to familiarize himself with discovery materials provided by the State.

> Counsel failed in this regard and his behavior was not objectively reasonable under Strickland. In result of these facts, verdict could have been different."

As requested relief, Applicant requests "a reversed and remanded sentence. The right to a fair trial."

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

IV. Response to Allegation of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, an 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, the 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, the 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." Id.

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

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

VI. Response to 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, Respondent requests that an evidentiary hearing be held on the aforementioned claims of ineffective assistance of trial 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

December 12th, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	
	)	
	)	2019-CP-06-00305
	)	
STEPHON T. ROBINSON, #334700,	)	
	)	
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:

Nancy C. Fennell, Esquire
Post Office Box 2176
Irmo, South Carolina 29063

DATED this the 12th day of December, 2019.

Kaitlyn S. Slice, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	2019-CP-06-305
	)	
	)	
	)	
	)	
	)	
THE STATE,	)	
Respondent,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STEPHON ROBINSON,	)	
Applicant.	)	
_____	)	

May 24, 2022
Via WebEx

B E F O R E:

THE HONORABLE MAITE MURPHY, JUDGE.

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

NANCY C. FENNELL, ESQ.
Attorney for the Applicant

JULIANNA E. BATTENFIELD, ESQ.
Attorney for the Respondent

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

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

Page No.

STEPHON ROBINSON:
Direct Examination by Ms. Fennel..... 5
Cross-Examination by Ms. Battenfield..... 20
Redirect Examination by Ms. Fennell..... 31

GLENN WALTERS:
Direct Examination by Ms. Battenfield..... 32
Cross-Examination by Ms. Fennell..... 48

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
	(Applicant's Exhibits)		
1	2/20/11 Statement by Williams		19
2	2/21/11 Statement by Williams		19
3	2/21/11 Statement by Gunnells		19
	(Respondent's Exhibits)		
1	Order for Discovery		48
2	Letter		48

All Exhibits were retained by the Clerk of Court for Barnwell County.

P R O C E E D I N G S

THE COURT: Good afternoon, everyone. Are we ready to proceed with Mr. Robinson's case?

MR. WALTERS: Good afternoon, Your Honor.

THE COURT: Good afternoon, Mr. Walters.

Ms. Battenfield.

MS. BATTENFIELD: Yes, Your Honor. May it please the Court.

This is State of South Carolina vs. Stephon Robinson, 2019-CP-06-00305. He was represented at trial by Mr. Glenn Walters, who's here today. And PCR counsel is Nancy Fennell.

Incident date, for a bit of procedural history, Your Honor, was February 20th, 2011, where Mr. Eddie Williams was at home. It was actually his birthday. He was watching the NASCAR race. He saw applicant along with two other gentlemen pull up and come to his door. It was his birthday, he didn't wish to have company that day, so he did not answer the door.

About ten minutes later, the three gentlemen kicked his door in and Mr. Williams goes and retrieves a firearm because he believes it's burglars. And then, Mr. Stephon Robinson fires off a shot at Mr. Williams, thankfully, not hitting him, but Mr. Williams did identify Mr. Stephon Robinson in a six-pack lineup and in-court identification.

He also identified the vehicle that Mr. Robinson was driving that his girlfriend testified at trial that she let him borrow the car that day and he didn't return it until after the date of the crime.

He was convicted, Judge, of burglary in the first degree, which is 2011-GS-06-00245. He received 20 years, that's record page 190 to 197, as well as five years concurrent for the weapons charge. The verdict is record page 187. He did pursue a direct appeal and the Court of Appeals affirmed February 19th, 2014, an unpublished opinion 2014-UP-068. It actually did go up on cert and cert was granted, Judge. The Supreme Court did affirm on May 18th, 2019, on direct appeal in State vs. Robinson, opinion number 2017-UP-27883. The remittitur was filed in May of 2019.

Applicant filed a few months later for a PCR on August 5th, 2019. We did our return a few months later. Now, we're here today on two claims of ineffective assistance of counsel, Judge.

THE COURT: All right. Before we get started, Mr. Robinson, you have the right to have this matter heard in person. By appearing here today, you're waiving that right and consenting to a video hearing, is that how you wish to proceed, sir?

THE APPLICANT: Yes, ma'am.

THE COURT: All right.

Counsel, you may call your first witness.

MS. FENNELL: Thank you, Your Honor. Applicant calls Stephon Robinson to the stand.

STEPHON ROBINSON,

after being duly sworn, testified as follows:

THE APPLICANT: Yes, ma'am.

THE COURT: You may proceed, counsel.

MS. FENNELL: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. FENNELL:

Q Mr. Robinson, you have filed this PCR application on August 5th, 2019; is that correct?

A Yes, ma'am.

Q And you are serving a sentence of 20 years for burglary with a concurrent five-year sentence for the weapons charge; is that right?

A Yes, ma'am.

Q Okay. And you have a projected release date of May 2018?

A Yes, ma'am.

Q And you understand that if you move forward on your PCR application that one of the potential risks of moving forward if you are successful is that it could result in you getting a sentence greater than the sentence that you're currently serving. Do you understand that?

A Yes, ma'am.
Q And with that understanding, you still want to move forward with your application?
A Yes, ma'am.
Q Okay. Now, on these underlying charges, you were indicted for first degree burglary and possession of a weapon during a violent crime; is that right?
A Yes, ma'am.
Q And who represented you in those charges?
A Glenn Walters.
Q Was he appointed to represent you or did you hire him?
A I hired him.
Q And when did you hire him?
A It was May 24th.
Q May 24th of 2011?
A Yes, ma'am.
Q And explain how you came about to retain Mr. Walters?
A I went to Orangeburg to his office and wrote a statement for him and we went from there.
Q And so, you were actually incarcerated on May 27th, 2011; is that correct?
A Yes, ma'am.
Q Did you remain incarcerated until the time of your trial?
A Yes, ma'am.

Q And when did your trial take place?
A November 1st, 2011.
Q So you were incarcerated during that time. Did you meet with Mr. Walters prior to your trial?
A No, ma'am.
Q So you didn't ever meet with him before you went to trial?
A He came up the Friday before -- I went to trial on a Monday. He came up there Friday and just told me I was going to trial that Monday.
Q Okay. And during that discussion, what else did you discuss other than the fact that you were going to trial on Monday?
A Nothing, really.
Q Okay. Did he ever discuss with you what the State would be required to prove during trial?
A No, ma'am.
Q Did he ever discuss with you the elements of the crimes that you were being charged with?
A Yes, ma'am, he did that.
Q He did discuss that?
A Yes, ma'am.
Q And did you discuss a trial strategy?
A No, ma'am.
Q Did you ever discuss with him any type of plea offer?

A I told him the only thing I would plead to was time served. Of course, that was never on the table.
Q Are you aware of whether there was ever any plea on the table?
A Yes, ma'am, 15 nonviolent.
Q When did you become aware of that plea offer?
A That Friday when he came to visit me.
Q And that was the first time you became aware of that?
A Yes, ma'am.
Q Okay. Now, did you receive your discovery file?
A Yes, ma'am.
Q And when did you receive that?
A I received that a few weeks after I was incarcerated, some time in the middle of June.
Q June of 2011?
A Yes, ma'am.
Q And how did you receive that?
A Mr. Walters sent it to my sister and she brought it up to the jailhouse for me.
Q Did Mr. Walters ever go through your discovery materials with you?
A No, ma'am.
Q So did you ever have an opportunity to ask him any questions about the evidence against you?
A The only time was right before we went into the

courtroom the day of the trial.

Q Okay. Now, in this case, so I understand, you've raised two separate allegations of ineffective of assistance of counsel, and we'll go through both of those allegations. The first allegation is ineffective assistance of counsel for failing to impeach the testimony of the prosecution's witnesses using evidence of inconsistent statements and police notes showing an erroneous testimony using false and fabricated evidence.

So tell the Court what you mean by raising that allegation.

A Okay. The victim and the investigator got on the stand and testified that the victim told them that Stephon Robinson and Reginald Felder committed this crime the day of the crime. I don't have not one statement, period, where the victim is calling Reginald Felder's name. The only name he was ever calling was my name. There's nothing showing that -- that's false evidence. He never called Reginald Felder's name.

Q So the victim is Mr. Williams; is that right?

A Yes, ma'am.

Q And Mr. Williams actually gave -- provided two written statements prior to trial; is that right?

A Yes, ma'am.

Q And he also testified at trial?

A Yes, ma'am.
Q So the first statement that -- and do you have a copy of his statements with you?
A Yes, ma'am.
Q Do you have those in front of you?
A Yes, ma'am.
Q So what was the date of the first statement that Mr. Williams provided?
A The day of the crime, February 20th.
Q 2011?
A Yes, ma'am, 2011.
Q In that particular statement, did he identify you?
A Yes, ma'am.
Q And in that particular statement, did he identify anyone else?
A No, ma'am, but they wouldn't even use it because he didn't sign off on the statement on the day of the crime. So they went back the day after the crime and got the second one and he still -- the day after the crime, he still is not calling Reginald Felder's name. He clearly says he doesn't know who the second person was.
Q Okay. So looking at the other statement that he provided, what is the date of that statement?
A February 21st, 2011.
Q And in that statement, did he again identify you?

A Yes, ma'am.
Q And did he specifically say that he could not make out the other individual?
A Yes, ma'am.
Q And are these statements that were provided to in your discovery file?
A Yes, ma'am.
Q So you were aware of these statements before you went to trial?
A Yes, ma'am.
Q Now, during the trial, what did Mr. Williams testify to regarding the identity of any co-defendants?
A Nothing, really. He --
Q Let me stop you there. Do you have a copy of the transcript in front of you?
A Yes, ma'am.
Q Okay. If you will look at the transcript and, specifically, on Page 105. I'll point you to that page. And if you will look at Page 105, Lines 5 through 8, is this where Mr. Williams is testifying during trial?
A Yes, ma'am.
Q And, specifically, if you could, read Lines 5 through 8.
A It was three of them. I seen Stephon and I seen the brother, Reginald. I couldn't make the last person out

because they like to ran him over going back out, so I couldn't make him out.

Q Okay. So at trial, Mr. Williams identified Reginald Felder. Who is Reginald Felder?

A That's my brother.

Q And at trial, was that the first time you became aware of him identifying Reginald Felder?

A Yes, ma'am.

Q So in his written statements that he provided prior to trial, did he ever identify Reginald Felder?

A No, ma'am.

Q Okay. Did Mr. Walters cross-examine Mr. Williams about that inconsistency?

A No, ma'am.

Q Do you think it was important for him to raise that issue at trial?

A Yes, ma'am, very important.

Q And you think it was important for him to impeach the witness' testimony using his prior inconsistent statements?

A Yes, ma'am. Another thing in his statement he also says --

Q Wait, I want to stay with this one first before we move on. Why do you think that was important for him to raise that issue?

A Because that's -- he's my alibi. They made my alibi my

co-defendant, but he ain't had nothing to do with it.
Q So was there any direct evidence linking you to this crime?
A No, ma'am.
Q So you were, basically, convicted based on the testimony of witnesses at trial?
A Yes, ma'am.
Q So impeaching this witness regarding his prior inconsistent statement would have been something very important for the jury to hear?
A Yes, ma'am, very.
Q And then you were going to raise another issue. Go ahead before you forget what that is.
A Well, I was just also pointing out that in the same statement on the day after the crime, February 21st, he also said he seen intruders fire the shot, which he didn't know at the time of the crime they even fired. He found that out after the crime. At the time of the crime, he didn't even know that the intruders were shooting. He said he found that out later. But he said the intruders, he never said Stephon Robinson, he seen Stephon Robinson firing a shot with a weapon or anything. Again, this is the day after the crime, the statement he wrote the day after the crime.
Q Okay. And did he testify during trial that you fired a weapon?

A Yes, ma'am, he seen me.
Q And that was another inconsistency in his prior written statement and the testimony he gave at trial?
A Yes, ma'am.
Q And did Mr. Walters cross-examine him on that inconsistency?
A No, ma'am.
Q And then if you'll look at the first -- or, actually, the second statement that the witness provided. On that statement, if you will look at the first page of that statement, about midway down, how many intruders did the victim, Mr. Williams, say there were?
A Two, two intruders.
Q Okay. So he writes in his statement the day after the incident that there are two intruders?
A Yes, ma'am, not three.
Q And if you'll look at Page 107 of the transcript, Lines 1 and 2, does Mr. Williams testify that there are three intruders?
A Yes, ma'am.
Q So that's another inconsistency in his prior written statements and the testimony he provided at trial?
A Yes, ma'am.
Q Did Mr. Walters cross-examine him on that issue?
A No, ma'am.

Q And, again, what was the importance of his failure to cross-examine him or impeach him on that prior inconsistent statement?

A Because the victim word is the only thing linking me to this crime. I got found guilty off the victim's word, so that's why it's so important.

Q And then looking at the second allegation that you raise in your application, it's ineffective assistance of counsel for not cross-examining Leanna Gunnells showing mitigating evidence in her statement and also in the police notes. You also allege he had a duty to familiarize himself with the discovery materials. Who is Leanna Gunnells?

A That's the owner of the car that they said I committed this crime in.

Q And give us a little background information regarding this car and the importance of the car?

A The car is the only other thing they trying to use to link me to the crime, which is hers. They said I have her car during this crime, but as you can see, I gave the statement -- I got the police note right here the day where they questioned me and he wrote the notes down where I told him I returned the car at 12 o'clock, which he wrote down I have right there.

Leanna Gunnells also has in her statement that I returned her car around 12:00 or 1:00. And she has an

alibi, which was never contacted at all. The call -- this happened at 2:00 something, way after.

Q Okay. So the incident -- looking back at Mr. Williams, the second statement he gave on February 21st, 2011, on the second page, he indicates that the incident occurred around 1:50 p.m. Do you see that on his statement?

A Yes, ma'am.

Q And so then Ms. Gunnells -- so the allegation is -- the testimony was that you were -- that a white vehicle belonging to Ms. Gunnells was the vehicle you used during the crime?

A Yes, ma'am.

Q And so Ms. Gunnells, did she testify at trial?

A Yes, ma'am.

Q And if you look at the transcript on Page 96. At the bottom of that page, did she testify that you had actually borrowed her car on February 19th, the day before the crime?

A Yes, ma'am.

Q And then looking on Page 97, the day of the crime was February 20th; is that right?

A Yes, ma'am.

Q And she was asked what time you had returned the vehicle to her. Do you see on Line 7, if you could read Line 7, which is her response?

A I guess around that afternoon.

Q Okay. And did Ms. Gunnells give a written statement to law enforcement prior to trial?
A Yes, ma'am.
Q And on what day did she give her statement?
A February the 21st, 2011.
Q Okay. And do you have a copy of that statement in front of you?
A Yes, ma'am.
Q And does she indicate on her statement a time that you had returned the vehicle to her?
A Yes, ma'am. She indicated that I, Stephon Robinson, returned the car on February 20th around 12:00 or one o'clock.
Q And looking back to the trial transcript, on Page 97, after she testified that she guessed that you returned the car around that afternoon, did Mr. Walters question her in any way to further elicit testimony regarding the specific time that the car was returned?
A No, ma'am.
Q Would that have been important to elicit that testimony?
A Yes, ma'am. Very --
Q Okay. I'm sorry, go ahead.
A I just said very important.
Q Okay. And she had given a prior statement indicating

that you had returned the car around 12:00 or 1:00?
A Yes, ma'am.
Q And you had a copy of the statement prior to trial?
A Yes, ma'am.
Q And the victim had written in his statement that the crime occurred around 1:50 p.m.
A Yes, ma'am.
Q So would pinpointing Ms. Gunnells on her -- and demonstrating her prior statement regarding the specific time the car was returned, would that have been important to identify for the jury?
A Yes, ma'am. Because it shows I didn't even have the car at the time of the crime. I think it would have been more important, too, for them to, at least, question her alibi because she had an alibi, too, that she put in the statement, but they never even questioned.
Q So Mr. Walters didn't question her at all during the trial?
A No, ma'am.
MS. FENNELL: Your Honor, at this time, I would like to offer these three documents into evidence. The first one being the one-page statement of the victim, Mr. Williams, dated February 20th, 2011. The second one being the two-page statement of the victim, Mr. Williams, dated February 21st, 2011. I think both of those documents were

marked as Defendant's Exhibits during the trial. And then the third document, being the one-page statement of Shelly Leanna Gunnells, dated February 21st, 2011. These were all documents included in Mr. Robinson's discovery file provided to me by the solicitor's office.

MS. BATTENFIELD: No objection, Judge.

THE COURT: No objection, they're in.

(Applicant's Exhibit Nos. 1, 2 and 3 admitted into evidence.)

BY MS. FENNELL:

Q So, Mr. Robinson, are there any other points that you wanted to raise that we have not already talked about?

A No, ma'am.

Q And, again, these were vitally important to you that the jury hear these issues because the testimony of the victim was what linked you to the crime; is that correct?

A Yes, ma'am.

Q And do you believe that Mr. Walters' failure to raise these issues, failure to impeach these witnesses with their prior inconsistent statements was ineffective assistance of counsel?

A Yes, ma'am.

Q Do you believe the outcome of your trial would have been different had he raised these issues?

A Yes, ma'am.

MS. FENNELL: I have no further questions for you, but please answer any questions the AG has.

THE WITNESS: Okay.

THE COURT: Cross-examination?

MS. BATTENFIELD: Thank you, Judge.

CROSS-EXAMINATION

BY MS. BATTENFIELD:

Q Good afternoon, Mr. Robinson. How are you?

A I'm all right. Good afternoon.

Q I won't take too much of your time. I do want to talk about Mr. Williams' statements briefly. I know you already said this, but I just want to confirm. His statements were introduced to the jury at trial, correct?

A The first one was, yes, ma'am. I don't know about the second one.

Q Would it surprise to learn that both were introduced to the jury?

A No, ma'am.

Q At least, one of his statements was introduced to the jury, correct?

A Yes, ma'am.

Q And he never wavered in identifying you as one of the two or three individuals that came into his home, correct?

A No, ma'am.

Q What motive would Mr. Williams have to lie in your

opinion?
A I don't know.
Q You and Mr. Williams were friends, right? You knew each other before this incident?
A We know each other, but we're not friends.
Q But you didn't have any bad beefs?
A No, ma'am.
Q So he identified you without any prior bad blood between you?
A Yes, ma'am.
Q So I know that you bring up perjury, what's your definition of perjury, Mr. Robinson?
A Something you can prove that's not true. A statement you can prove that's not true.
Q But these statements Mr. Williams gave, the statements he gave to law enforcement, do you know if he was under oath when he gave those statements?
A No, ma'am.
Q He definitely was under oath at trial and swore to tell the truth?
A Yes, ma'am.
Q With law enforcement, sometimes there isn't a judge when individuals give statements, so he probably wasn't sworn and under oath; is that a fair assumption?
A I guess.

Q Now, you talked about the discovery materials, that you did receive those because Mr. Walters sent them via your sister to you. Do you remember what those materials were?
A The discovery materials?
Q Yes.
A What do you mean what they were?
Q What was the discovery that the State had against you? What evidence did they have against you that you got to see on paper?
A Oh, the victim's statements.
Q Okay. Is that it? Anything else?
A And a photo lineup.
Q Okay. Got you. And that was the photo lineup that Mr. Williams identified you with?
A Yes, ma'am.
Q Was there any other discovery materials? I know it's been a while, do you remember receiving anything else?
A No, ma'am.
Q Did you ever talk to Mr. Walters about the six-pack lineup or have any questions about the victim's statement?
A Yes, ma'am.
Q You did talk to him?
A I mentioned it to him the day before I went in the courtroom at the trial.
Q Okay. What questions did you ask him about it?

A I asked him how could the police give somebody a lineup of a person he couldn't even make out, then the victim pick out a person that he knew the whole time. He could have just said from the jump it was Stephon Robinson and his brother, Reginald, because he knowed both of us. So just as well as he could have said it was Stephon Robinson, he could have said it was Stephon Robinson and Reginald, his brother. He know both of us. He know us the whole time, that's how he picked us out the photo lineup. But he never called my brother's name.

So how can you pick him out a photo lineup when you could have just said the person -- you couldn't make them out, but now, all of a sudden, you got a photo lineup three months later that you could pick him out and say you were a hundred percent sure he did it. It don't make any sense to me.

Q Got you. Was your brother also in the six-pack with your photo?

A Yes, ma'am.

Q So you and your brother were in the six pictures or were there two separate --

A It was separate.

Q Oh, it was separate, okay. Did Mr. Williams, to your knowledge, identify your brother or only you?

A The first time, he picked us out wrong, the second

time, he picked both of us out.
Q Okay. The first time, he picked just you?
A No, ma'am, he picked both of us, but he picked us out wrong. The second time, he picked us out with our right names.
Q Okay. Now, I want to talk about your trial. You actually testified at your trial, right?
A Yes, ma'am.
Q And you actually had two witnesses testify for you as well, right?
A Yes, ma'am.
Q I think they were -- let me see their names. Mr. Jamal Wallace as well as your brother, Reginald Felder, right? Those were the three witnesses for you?
A Yes, ma'am.
Q And what did those two gentlemen say? What did they testify to?
A What happened that day.
Q They actually testified to an alibi for you, right?
A Yes, ma'am.
Q And Mr. Jamal Wallace said you went to the club that night and then you all went home to sleep, correct?
A Yes ma'am.
Q And then your brother went to the store?
A The next morning, yes, ma'am.

Q Okay. And then Mr. Wallace said he got up and saw that you were still asleep in the bed. And Mr. Wallace is your brother's cousin, correct?

A Yes, ma'am.

Q And then Mr. Felder, your brother, testified also to going to the club after you called Leanna to get her car, right?

A Yes, ma'am.

Q And then you told -- or Mr. Felder said -- maybe it's you told her you'd bring the car back the next morning so you wouldn't catch a DUI, does that sound right?

A Yes, ma'am.

Q And then you all went home after the club and were asleep?

A Yes, ma'am.

Q And then you testified to, essentially, the same thing, correct?

A Yes, ma'am.

Q So, basically, all three of you were each other's alibis, would that be a fair assessment?

A Well, my alibi because all three of us aren't locked up.

Q Sure. Absolutely. Yeah, that's a good point. Did Mr. Felder ever go to trial?

A No, ma'am.

Q He never went to trial?
A No.
Q But he's listed as a co-defendant, do you know why that is?
A He pled guilty.
Q He pled guilty?
A Yes, ma'am.
Q Do you know what sentence he received? It's okay if you don't.
A Twelve non-violent.
Q Twelve years nonviolent?
A Yes, ma'am.
Q To burglary second?
A Yes ma'am.
Q Speaking of which, let's talk about your plea offer. During your sentencing -- this is record page 195 if you want to look it up. The Judge mentioned your plea offer and your conversations with Mr. Walters. The Judge said that the State -- let me actually pull it up as well.

Beg the Court's indulgence.

(Pause.)

Q Okay. So the Court says on Page 195 during sentencing, The State offered you a plea to burglary second degree nonviolent. It carries zero to 15 years and it's not an 85 percent sentence. Your lawyer, I understand, certainly,

encouraged you to do that. Is that true, that the State offered you a plea deal to burglary second?

A Yes, ma'am.

Q And who offered you that? Who communicated that offer to you?

A Glenn Walters.

Q Mr. Walters. Why did you choose to reject that offer?

A Because I'm innocent. The only thing I was going to plead to was time served and go home.

Q Sure. So you would plea to time -- how much time had you been in jail at that point when you received a plea offer approximately?

A That was a couple days before trial, so, like, five months.

Q So you testified you would plead guilty to time served even though you were innocent?

A Basically, I was saying I was going -- I would sign papers to go home then, but that's it.

Q Sure. But you would still plead guilty to an offense you were innocent of?

A If they was going to let me out, yes, ma'am.

Q So, also, during the plea offer -- oh, let me ask you this question. Was it your decision or Mr. Walters' decision to reject the plea offer?

A Mine.

Q It was your decision, okay. Did you have any other questions about the plea offer?
A No, ma'am.
Q Did you ask Mr. Walters other than time served to work on any other plea offer?
A No, ma'am.
Q Now, your prior record, I won't go too much into this, but this is record page 136 to 138, as well as record page 191 to 199. You had a few violent convictions on your record before this trial, correct?
A Violent, no, ma'am. Nonviolent.
Q Okay. Let me scroll to that page. So I'm looking at Page 136, you were convicted of strong armed robbery in 2009?
A Yes, ma'am.
Q And then you have another felony conviction in 2009?
A Ys, ma'am.
Q And then 2007, you had two separate convictions for breaking and entering automobiles with intent to commit a felony or theft, correct?
A Yes, ma'am.
Q And then I believe there's another one, four total, but I don't want to harp too much on your prior record. We're just here for this particular burglary, but was the jury able to see your prior record?

A Yes, ma'am.
Q Did your defense attorney object to that?
A Yes, ma'am.
Q In fact, he put up quite a fight for you, didn't he?
A No, ma'am.
Q But he did object to --
A He objected to that.
Q -- your priors?
A Yes, ma'am, he did that.
Q And that was actually argued on direct appeal as well, correct --
A Yes, ma'am.
Q -- but the Court still denied relief? Now, do you remember Mr. Walters' closing argument for you during your trial?
A (No response.)
Q I know it's been quite a while, but do you remember that counsel did cross-examine Mr. Williams and also argue to the jury on closing argument about how many times Mr. Williams had lied to law enforcement?
A I don't know.
Q Was that a I don't know or was that a no? I'm sorry.
A I'm saying I don't know. I don't see the way he was talking about it.
Q Sure. That's fine. Were you aware that law

enforcement did know that Mr. Williams gave inconsistent statements to them multiple times?

A Yes, but not -- they was talking about the evidence, like, the gun, the stolen gun he got caught with and stuff. They wasn't talking about none of the evidence I brought up, none of this was introduced.

Q Sure. But your defense attorney argued and told the jury all about that, told the jury how Mr. Williams lied about the bullet holes, lied about the gun. The jury still got to hear all about that, correct?

A Yes, ma'am.

Q And Mr. Walters, your defense attorney, also argued that Mr. Williams was a drug dealer to the jury, correct?

A Yes ma'am.

Q And then during your sentencing, he, actually, gave a two-page mitigation where he introduced some of your background and some of the reasons why the judge should sentence you to a lesser sentence; is that right?

A Yes, ma'am.

Q And then just briefly to talk about Leanna, on record page 97, I know we're talking about the exact time of the crime, but -- and I know that you're arguing that Mr. Walters should have cross-examined her, but in the record, are you aware that she doesn't actually give a time, she just says you returned the vehicle in the afternoon?

A Yes, ma'am, she testified that, but she gave an actual timeframe in her statement, that's why I wanted him to cross-examine her. That's why it was so important.

Q I got you. But the afternoon, technically, could be interpreted to mean a lot of different things, correct?

A Yes, ma'am.

Q But I definitely understand your argument here today. Absolutely.

MS. BATTENFIELD: Judge, I don't believe I have anymore questions. Thank you very much.

Thank you very much, Mr. Robinson.

THE APPLICANT: You're welcome.

THE COURT: Any redirect?

MS. FENNELL: Just one, Your Honor.

REDIRECT EXAMINATION

BY MS. FENNELL:

Q So Mr. Robinson, looking at -- look at Mr. Williams' second statement that he provided. It was pointed out that these statements aren't under oath, but the testimony provided at trial was under oath. But at the bottom at each of these statements above the signature line, does it indicate that the person providing the statement is certifying that the facts contained herein are true and correct?

A Yes, ma'am.

Q So did Mr. Williams sign that statement indicating that what he put in the statement was true and correct?
A Yes, ma'am.
Q And then he testified to something different at trial?
A Yes, ma'am.
MS. FENNELL: I have no further questions.
THE COURT: Do you have any other witnesses?
MS. FENNELL: I don't, Your Honor.
THE COURT: Ms. Battenfield, you may call your witness.
MS. BATTENFIELD: At this time, we would call Mr. Glenn Walters, Sr. to the stand.

GLENN WALTERS, SR.,

after being duly sworn, testified as follows:

THE WITNESS: I do.
THE COURT: Your witness.
MS. BATTENFIELD: Thank you, Judge.

DIRECT EXAMINATION

BY MS. BATTENFIELD:
Q Good afternoon, Mr. Walters. How are you?
A Good afternoon.
Q How long have you been practicing criminal law?
A 33 years.
Q Wow, that's amazing. Do you practice any other areas of law or solely criminal law?
A I have a bankruptcy practice, social security, social

security disability, also, personal injury practice, also, civil rights practice, fair labor standards, police brutality, probate practice, quiet title. I have a large real estate practice. In addition to that, we also have worker's compensation practice. In addition to that --

Well, put it this way, if you name it, in order to feed the kids and take care of everybody, there is no court in the State of South Carolina that I haven't practiced in and there's no area of law that I have not practiced. Large domestic practice, too. But if you name, I've done it.

Q That's very impressive. When did you have your first conversation with Mr. Robinson in this case?

A I can't remember. This case is -- is it over ten years old, I believe?

Q Yes, sir.

A So, certainly, as an officer of the court, I'm not going to come into this hearing and allege that I remember what we discussed yesterday. Certainly, when I saw PCR, I said well, let's go and try to find the file. I remember the case itself, but then I looked at the transcript, but it was over ten years ago, I think.

Q Sure. Well, then, let's talk about your typical way of doing things when you first open a criminal trial. You've been doing this 33 years, what are your typical moves that you do to open a file and make contact with the individual?

A Well, normally, what happens is -- I'm also a juvenile public defender and I was also public defender. But if it was a private sector case, the defendant will pay a retainer. Once the defendant pays a retainer, the staff is required to send out the standard Rule 5, other paperwork that's required in order to make sure you get a copy of the Rule 5. I can't attest to any of that at this time, but that's the standard procedure.

Once that information is received, you provide the defendant a copy of the Rule 5. Give it to him that day, tell him to come back in 30 days after he's read the file. If he has a family member that pays the retainer fee, if he wants them involved, they'll sign a waiver in order for that family member to be aware of what's going on in the file. If they refuse to do so, we cut the family member out.

Once the Rule 5 is evaluated, then you bring the client back in. What you do is have a brutal conversation about what the Rule 5 says, the strengths and weaknesses of the case. Is there a possibility of an alibi defense? Who's going to be the judge when the case is tried? What county you're in. The jury selection, things of that nature.

Once you go through that, you also sit down with the client and you have a very brutal conversation about this is how long you can go to jail. And if there's a possibility that I can prevent a jury from convicting you with a hung

jury, you're going to pay another fee in order for me to be able to do that. If you're not guilty, of course, you'll be free.

And then you'll also get into the personalities of the defendant. Sometimes people have never had someone sit down and simply address what's going on in their life. So then you have to have this conversation, this visceral, cutting conversation about why were you there, what were you doing. Then you have to tell the client where they were being responsible, where they were being irresponsible and why did they engage in this behavior. Sometimes people don't like to hear that, but you need to have that conversation. So if you're on record having a conversation with regards to Rule 5, the strengths and weaknesses of the case itself.

And then you have to assess the client, will he testify well in front of a jury or does he look deceptive? Does he have a prior record and what was he convicted for previously. Once you go through all of that, then you sit down and say look, this is the sum total. This is the entire case and this is where I think you stand. And under those circumstances, he's a grown man, he has to make a decision.

Once he makes the decision as to what course he's going to travel, you know, I feel assured that we've done everything possible. If a client makes a decision that this

is the course they want to travel, you go down that road.

Now, after you've looked at the client's case, you have to assess the co-defendants in the case. And once you assess the co-defendants and whether someone is going to testify against you, whether a loved one is going to comply and produce the results that you want or is this a case where there's no honor among thieves and somebody is going to end up getting stabbed in the middle of this process and your client is going to end up losing.

You also assess your client's age and status in life. He's not an old man. He's a young man. There's a possibility that he's convicted. This is how long he can be in jail. If there's a possibility that we can salvage his life. Sometimes the best years that any young person can have between 20, 35, maybe 40 will be the best years of their life. Today, kids may live to be over 100 with the medical miracles. But the bottom line is, you tell them where they are. And sometimes if they don't like it, so be it.

Q Do you have any reason to believe that you would not have followed the same process with Mr. Robinson?

A No. I mean, we negotiated a deal where it would be nonviolent. The problem is -- and we're talking to each other at a PCR. All this case involved was some foolishness over some drugs and people fighting each other and arguing

with each other. His contention was that he didn't name my brother. He doesn't know who my brother is. My problem was he named you. He said he knows who you are. He didn't state that you're an acquaintance and y'all have a great relationship. What he stated was that I know who you are. And he said well, he couldn't identify my brother. I said, I don't represent your brother.

The problem here is, is that the devil's in the details. And he's operating under the assumption that no one can figure out why he would kick a door in and then weapons are being fired. Usually, from my experience of 33 years, it's either drugs, sex or women, one of the three. Under these circumstances, when you bring a bunch of guys with you, you're not looking for a woman. It may involve drugs and it may involve money.

So under the circumstances -- you know, there's safety in numbers. So if I'm going to commit a crime, I might take my brother. I might take my cousin. That's why we charge people with the hand of one is the hand of all. We enable people by being there and saying I'm here to support you.

And, of course, my big question was, is this Felder guy going to testify against you? Is he going to take the plea? Of course, if he does, you know, you could have a problem here. I don't represent him. If you want to pay me a retainer and sign a waiver, I'll take both of y'all, but

we've got to go in with a united front.

The problem with the girlfriend under the circumstances, what did she state? It was afternoon. So that means it's after 12 o'clock. I'm not exactly sure where you are and what's going on. You were driving her car. But the gentleman stated this is the individual that committed the crime. And, of course, my question was why out of all the people in the world would he identify you?

So when we get to the bottom line, it involves drugs, sex or women. And in this particular case, ain't no women involved. His girlfriend let him borrow her car. And we never could get to that. His position was I will accept time served. I believe that 150 days or something like that.

I don't really remember this. I feel bad because I'm testifying in a case and, you know, it could turn out that I never represented the guy, but I'm looking at the transcript and I said that is me. But the bottom line is, is that he simply stated I want to set the terms and conditions of the negotiation. I want a judge to set me free for the time that I've been in jail. I want to walk out of this jail and I don't want to have any problem. And under the circumstances, I told him, I said, That's not going to happen. Some people are unwilling to accept they're the author of their own dilemma.

Q You mentioned, Mr. Walters, the plea offer. We know that you did discuss the plea offer with Mr. Robinson because Mr. Robinson just testified to that. And the judge also said on the record, Page 195, that, like I said, the State offered a plea deal to burglary second. And burglary second carries zero to 15; is that correct?

A Yes ma'am, that's correct. Normally, if a good offer is rejected, a good defense lawyer will say let me put this on the record because later on, there's a PCR coming down the line. And under the circumstances, that's exactly what happened here.

Q Sure. And the judge did say at sentencing that you encouraged Mr. Robinson to take it. The judge said also on that page that he even informed Mr. Robinson that he'd get the State to open the 15-year offer back up to him, but, quote, even I thought that I could give you less than 15 years. That's the judge speaking to Mr. Robinson. But the judge recognized on the record that Mr. Robinson never accepted responsibility for his actions and there was overwhelming evidence that supported the verdict the jury gave on Page 195. Does that sound like something that would have happened at the sentencing?

A He would have probably ended up with the same sentence Mr. Felder got. He would have gotten less than the 15. He would have probably ended up with 12.

One thing about the case if there's anything good out of it, nobody died. So he wasn't charged with murder. Also, the judge understood this is some foolishness going on among people who are shooting at each other and firing at each other, it probably involves, you know, some dope.

So what we've got here is that we've got bad people with regards to the victim and we've got bad people with regards to the defendant. So what you do is you split the baby and you sit down and say okay, I'm going to give you a break. He would have had to do one-third of that time sitting in the South Carolina Department of Corrections. He would have gotten involved with the ministry there. He would have gotten involved with the kitchen. Next thing you know, he would have credits out of the wazoo and he would be walking out of the jail and be back home. And even got a credit for the 150 days or so that he was already in jail.

Q But he did reject it, it was his idea to reject it and go to trial?

A I have boys and when you're hard headed and you don't understand, sometimes you scream at people, sometimes you're rough with people, sometimes you have these conversations that they don't want to have. Bottom line is that he would be in a position where he would be walking around Barnwell right now, hopefully, not kicking in any more doors. And under the circumstances, he wanted to play hard ball because

he was playing in a game --

Bottom line was is they were giving him a ticket to walk out of there after doing 150 days -- he would have gotten acclimated to the jail -- before he could acclimated to it, he would have been back out on the street. But what he did was he rolled the dice and a judge had to take the position that look, if we try to dole out some type of equity here and fairness and you're not fair with us, then I can only take one position because I've got an obligation to protect society.

Q Absolutely. Now, let's talk about defense strategy. And this is going to take me into the first allegation, ineffective assistance of counsel. It seems from the record, Mr. Walters, that your defense strategy was to present an alibi defense; is that correct?

A Well, the problem is, is that normally when you characterize an alibi defense, it's individuals other than those inside of the case.

Q Sure.

A You get those individuals together, turn the information over to the solicitor's office. They interview them, take them down and tell them you're going to go to jail if you lie. And if they insist and state that's my position, he was present, he was somewhere else and that's his alibi defense, that's fine.

What we had here is co-defendant justifying where he was and where his brother was. Of course, I said, this is a house of cards and this is ridiculous. But the same reasoning that goes into rejecting a plea of 15 years and nonviolent and I want time served is the same reasoning that's applied with regards to what a strategic defense is. Of course, your hands are tied, you say okay, guys, if this is where we're going and what we want to do, let's go ahead and do it. But it looks like Felder wised up and he said I'm going to take the deal. Felder's home by now.

So the bottom line is, is that his position was I get time served or else. And under the circumstances, it worked against him.

Q Mr. Robinson mentioned two statements by Mr. Williams and that he discussed those statements with you prior to trial, right?

A Yes, ma'am.

Q And did you ever think to cross-examine Mr. Williams -- well, what was your strategy?

A I can't remember my strategy. What I remember is that we had an inconsistent statement from a guy who's running smack, you know, he's running dope. And he's a wild card, we don't know what he's going to say. But he's been consistent about one thing, I know Robinson. I know who Robinson is. I know Robinson kicked my door open.

So the bottom line is, you know, how do I counteract the victim saying this -- and he's not really a victim in the first place. I don't even know if he's alive today, I'd be surprised. But the point is, is that -- the bottom line is that strategically, you take the statements, you draw the inconsistences and contradictions, that's one approach. The other approach is if they were both submitted to the jury, the inconsistencies and contradictions could be brought up on cross. They could be brought up at the closing of the case.

The bottom line is we know Felder, we don't know Felder. One thing was consistent in the entire trial, I know Robinson. That's Robinson. Of course, you know, to deflect and come up with any type of diversion is fine. I could state that he doesn't know my Aunt Mary, but he did identify me. And he's consistently said it's always been me. So under the circumstances, what do we do with that conversation.

Q So in your professional opinion, bringing up the fact that the statements about Mr. Felder were a little inconsistent balanced with the multiple times Mr. Williams identified Mr. Robinson, it wouldn't have done much?

A Well, I think it would be absurd. He's walking around saying you can't tell me what's over here, you can't tell me what's over here, but he keeps saying I know you. And all

he had to do was place him there. He said the door was kicked open. He said I was watching TV on Sunday evening and it's my birthday and, all of a sudden, someone kicked in my door like he was surprised. I said, you guys kick in doors all the time.

The problem is that, you know, as I stated this behavior goes on and on and on and then they somehow come to court and say I want to have a rational conversation. And I say I don't think you're able to do that.

Q Introduced during the trial, it was proven that Mr. Robinson was one of the two or three individuals carrying a weapon, correct, that he entered Mr. Williams' home?

A I can't remember. All I know is a group of guys go over to a house and you kick a door in, you better have a gun when you enter that house or you're going to have a problem.

Of course, in this particular case, I think the victim after they left, he claimed he went in the back room and shot a gun in the air. He was in pain or something was wrong or something was going on. The retaliation goes on between these people over and over and over again. They end up in the courtroom and say well, I just wasn't there, but I'll take a deal for 150 days and I'll admit I was there.

Q But in preparing for this case, you did have Jamal Wallace and Reginald Felder testify as well as Mr. Robinson.

Was that an attempt to convince possibly the jury that Mr. Robinson didn't do it or what was your reasoning in having those individual testify?

A I can't remember my reasoning, but I do know this: If he told me he was going to trial, I'd say look, let's put every defense possible out there. There's a possibility that somebody on the jury is just like you and they may believe anything. So let's just go ahead and throw it in the air and, hopefully, something constructive can come out of it.

Q Sure. In your closing argument, you did argue to the jury that Mr. Williams had made inconsistent statements to law enforcement, right?

A Y'all sent me this and I went through all of it. If I remember it correctly, I probably went after everything I could get my hands on. The problem is Williams is saying this is the guy.

Q And you did -- the jury did get to hear three different individuals, including Mr. Robinson give the proposed alibi, right?

A That's what's reflected in the transcript, but I know my conversation probably was this is crazy. It's not going to be -- it's not going to fly in front of this crowd. You're going to have a problem. I didn't know Felder was planning to roll and plead guilty and state he was there,

but, you know, that's all part of the process.
Q Sure. Now, would it surprise you to know that Mr. Robinson actually admitted to driving the vehicle that Mr. Williams identified as the vehicle outside his house that day?
A Nothing in this case surprises me. It is consistent with the behavior of someone that's been compromised. And when they take a position that says I'm not doing anything unless you get me time served, I'm not surprised by anything that's said.
Q Let's quickly move on to the second allegation ineffective assistance of counsel for not cross-examining Leanna Gunnells. Her testimony is located on record page 94 to 98. She testified she was 19 at the time of the trial and she had been in a relationship with the Applicant for on and off six to seven years and that Applicant could use her vehicle at any time, that he was allowed to use the vehicle whenever. Is that what that transcript says? Is that what she testified to?
A Yeah, I'm looking at Page 94, that's correct.
Q So Leanna Gunnells, did you have a conversation with her at any point?
A I don't remember. I know this, that strategically when you go into a trial, it is a trial lawyer's -- you have a right to strategically decide who you want to cross-examine

and who you don't want to cross-examine.

Q Absolutely.

A The defendant may disagree with you, but your trial strategy is solely within your discretion. And whether you want to cross-examine someone or not is within the discretion of that attorney. And at that time, the ebb and flow of a case may be determined by the jury's reaction to prior testimony, it may be determined by the fact that your client's got to testify and he's going to goof it up, or it may be determined by the fact that you've got a girlfriend here, you know, have you talked to her, I don't want to be involved in any witness tampering, but what is she going to say and is it going to compromise your case?

So all those factors moving at the same time, multiplicity of factors. You have to sit down and decide at that time this is what's best under the circumstances considering the reaction of the jury since they're the finders of the facts.

What Mr. Robinson is saying is right here in black and white in the paper and this is what you should do. There were a number of factors moving at that time. And, you know, this clown show we're going to put on with an alibi defense, it was a joke.

Q Mr. Walters, is there anything else you believe the Court needs to know to make a determination in this case?

A I'm sorry I don't remember everything. I wish Mr. Robinson the best. It's just he made a decision to move in a direction where he would have been -- he would have been home a long time ago just like his brother. Under the circumstances, we're here.

MS. BATTENFIELD: Yes, sir. Thank you, Mr. Walters.

Judge, briefly, I neglected earlier to move in two exhibits. Proposed State's Exhibit 1, I believe Ms. Fennell mentioned this earlier. It was an order for discovery dated February 9th, 2022. And then proposed State's Exhibit 2 is a letter denoting all of the discovery turned over from the solicitor's office to Ms. Fennell in this case. So we would at this time move State's Exhibit 1 and 2 into evidence.

THE COURT: Any objection?

MS. FENNELL: No objection.

THE COURT: All right. They're in.

(State's Exhibit Nos. 1 and 2 admitted into evidence.)

THE COURT: Cross-examination.

MS. FENNELL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. FENNELL:

Q Mr. Walters, just a few questions. Now, there at the end -- and you've testified to what you thought about the alibi defense that was presented and you testified that you thought it was a joke. Did you discuss that opinion with

Mr. Robinson prior to going to trial?

A I can't recall my discussions with him because it was over ten years ago. So I don't want to mislead the Court and I don't want to mislead you.

What would I normally do? I would probably go in and rip it apart and tear it apart and degrade it. And then I'd turn around and say if we're going to use it, these are the holes that I see in it. I'm going to rip it apart and dress it down for what it is. And then, of course, sometimes I even take the staff and I say look, if you were on the jury, would you believe this? Now, I've done that a lot.

The point is, is that I can't remember what we've discussed, but I do know this. If it was silly, you're guaranteed I went off and said something inappropriate. I probably even said something profane because this young man is going to lose his freedom behind this foolishness.

Q And when you have a situation like that, I know you've said it's within your discretion on who to cross-examine and to what extent to cross-examine them, but do you retain that discretion over presenting a certain defense or if the defendant request that you assert that defense, do you do it regardless?

A In this particular case, he said I have an alibi. Now, it's not my decision to sit down and say it's stupid and we shouldn't do it. If he insisted that he was somewhere else

and preoccupied and he wasn't involved in the crime, I have a duty and obligation to send a notice, to make sure the solicitor is aware of it, call the people, bring them in, tell them -- read them the riot act, you know, Judge Murphy will put you in jail if you're lying now and the solicitor is going to talk to you. And there's a possibility that if you've crafted this story and it's a house of cards, everybody is going to jail. I can't be involved in anything illegal. So if you're going to do this, number one, I want you to sit down and go through it carefully with me. But when I sit down and talk to him, guess what happened, I tried to tear it apart.

I said, Now, look, if you're telling me the truth, tell me the truth. But if you come in here with this same rational that says I want 150 days for, you know, a crime that carries almost a life sentence -- when you break into somebody's house at night and you say I want 150 days, I'm the one that has to sit down and say you're totally illogical. You're going to end up hurting yourself if you're trying to help Mr. Robinson. It's just going to cause a cluster of problems and some additional charges for Mr. Robinson if we find out you colluded and attempted to do this.

So to answer your question, I wouldn't walk in and say it's stupid and I'm just not going to do it. If you insist

on it after I've read you the riot act and I've ripped it apart, so be it.

Q Okay. And so you had reviewed all of the discovery in Mr. Robinson's case prior to the trial?

A I can't remember going through everything under the sun because, guess what, I didn't remember what happened ten years ago. So I don't want to make a representation to you that says I did this. What I do remember is, is that, you know, the letter came and said you've got a PCR. I said how old is that file.

I do remember -- I think he was charged previously with -- I think he was charged with strong armed. He had a prior record for strong armed or something like that. And, you know, he had some other infractions I think where he was stealing things.

And my point is, I don't know if he was convicted or not, but what the record showed was, is that he was consistent and he was consistently getting in trouble. And he didn't need to do this and take a position like he was taking.

So as far as me sitting down and saying I reviewed everything, I remember everything, no. I'm sitting here today and I'm trying to refresh on what happened ten years ago. I have problems remembering sometimes what happened 20 days ago. I don't have any impairment, it's just I've got a

lot going on. If you ask me about ten years ago, I've first got to walk in and say -- first, I do the math and say what year was that. Then I turn around and go forth from there. If you want to talk about files, pull the ledger and tell me why I was representing you here.

Q Okay. And so although you don't recall specifically, you've seen now via the transcript, would you dispute the fact that you did not cross-examine these witnesses on these particular issues that Mr. Robinson has raised?

A I wouldn't dispute it at all. Let the record reflect exactly what type of trial he received. I can't tell you my motivations at that time, but, certainly, if I get a chance to tear a witness apart, degrade them in front of a jury and score some points, I'm going to take that chance.

But in this particular case, I can't remember my motivation for why I didn't go after the girlfriend and Mr. Williams with his inconsistencies. I do remember this, this entire care is full of sound and fury, but it's all about the dope.

Q Okay. So would you agree that it would be a more effective strategy to actually cross-examine and impeach a witness on a prior inconsistent statement rather than simply making reference to it during the closing remarks?

A No. When I was public defender, I tried two cases a week for probably five years, along with my private

practice. So I'd try almost two to three cases every week. And that went on for probably about ten years, running from magistrate's court to every other court under the sun.

Sometimes with cross-examination, you think you're going to hit the home run, you get knocked out. Because you can open up a can of worms where somebody will turn on you, they'll turn the argument itself, the discussion itself. And when you've got a wild grenade out there and you pull the pin, you could end up hurting your client more than helping your client.

In Mr. Robinson's case, everybody in this case was involved with the illegal activity that was going on. And there was no measure or metric I could use to say this is going to be great for you, Mr. Robinson. His own brother pled guilty and placed him there.

Q So you don't -- you think that making reference to the inconsistent statements in a closing argument is just as effective as impeaching a witness during their testimony?

A It could be because in the closing argument, you can't come back and address these people. If you go in and you sit down and you say I've got this cross-examination prepared, most lawyers fail because they write it out and they've got it on a sheet of paper and they say this is what we're going to do. You don't try a case that way.

You go in and get a read on the jury. You see the

movement in the courtroom itself, it's reaction and then you have to -- you have to do this on your feet. You've got rules of evidence going at one time, you've got the actual law, you've got a judge on your back, you've got a defendant talking to you. And in addition to that, then comes the girlfriend and says I'm not going to jail. I love him, but I don't have anything to do with him now because he's in trouble.

You've got to make a decision at that time based on all of those multiplicity of factors what's best. And the good thing is that the Bar and ethical rules allow us to make that decision. What Mr. Robinson is saying there's only one way to do things and that's just not true.

Q And did you meet with Mr. Robinson prior to going to trial?

A I can't remember. I know he came to the office. If anything, we probably had a long discussion with regards to -- or if he came to the office, I'm not sure. He said he came to the office. I don't even remember him coming to the office.

And as far as my discussions with him, I'm not going to sit down and represent that we had a bunch of discussions. He's telling me that he had discussions with me and I'm sitting down saying okay, evidently, we did. If you ask me how many Robinsons I've represented in 33 years, well, you

know, it might be over six feet of Robinsons. I just can't remember.

The bottom line is strategically I did the work. He could have been home in less than four or five years. He said I want to do 150 days and I'm going to roll the dice. And he rolled the dice and now he's paying the price. And he's saying strategically I don't think you did what you were supposed to. I had him up and ready. The problem is that he was playing a game he just didn't understand. Obviously, no one has ever told him what to do.

MS. FENNELL: I don't believe I have any additional questions. Thank you.

THE COURT: Any redirect?

MS. BATTENFIELD: No, ma'am.

THE COURT: Any other witnesses?

MS. BATTENFIELD: No, ma'am.

THE COURT: Either party care to make any closing remarks?

MS. FENNELL: I don't believe it's necessary, Your Honor.

THE COURT: Thank you.

MS. BATTENFIELD: Judge, just that he can't possibly prove prejudice here because of the overwhelming amount of evidence. The jury got to hear the inconsistencies in Mr. Williams' statements, got to hear inconsistencies or could

infer the inconsistencies in Mr. Williams' statements and got to hear Mr. Williams identify Mr. Robinson multiple times as one of the perpetrators. So we would ask that you deny relief, Judge.

THE COURT: Thank you, everyone. I'll take the time to review the transcript and then issue my decision.

MS. FENNELL: Thank you very much, Judge.

MS. BATTENFIELD: Thank you.

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.

August 26, 2022

Penny M. Johnson

Penny M. Johnson
Court Reporter III

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP0600305

Stephon Robinson		South Carolina State of	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: **SEE ATTACHED ORDER**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ Maite Murphy — **Circuit Court Judge**

2166 — **Judge Code**

10/4/2022 — **Date**

For Clerk of Court Office Use Only

This judgment was entered on **08/30/2022**, and a copy mailed first class or placed in the appropriate attorney's box on **10/05/2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Stephon Robinson
Nancy Carol Fennell PO Box 2176 Irmo, SC 29063

Megan Harrigan Jameson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Ami M. Still

Court Reporter

Ami M Still - Common Pleas Clerk

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

(First Statement)

BARNWELL COUNTY SHERIFF'S OFFICE
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Case # C11-02-1265

I, Eddie Williams, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Barnwell Co. Sheriff's Office. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state. I volunteer the following information of my own free will, for whatever purpose it may serve.

I am 48 years of age, and I live at [redacted] St. John Rd Barnwell, SC.

I Eddie Lee Williams on Feb, 20. 2011 app. 1:20 pm was lying in bed when I heard my Front door being Keep in. I Jump out of bed to see 2 intruders possibly 3 black young male. One I reconize as Stephon Robinson. They been to the house early, about 15 to 20 minutes. The car that they were driving was a white 4 Door Midsize. They were wearing blue Jeans and white Shoes. The Shirt was dark or possibly blue. I'm a 100% sure it was Stephon Robinson who had bed here 15 minute.

DEFENDANT'S EXHIBIT
11-471
Robinson
#3

I have read each page of this statement consisting of 01 page(s), each page of which bears my signature, and corrections. If any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at [redacted] St. John Rd, this 20th day of February 20 11.

WITNESS: Sgt Eddie Thomas

WITNESS: _____

X _____
Signature of person giving voluntary statement

DEFENDANT'S EXHIBIT 2
11-1-11 Robinson

BARNWELL COUNTY SHERIFF'S OFFICE
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Case # C11-02-1265

I, Eddie Lee Williams, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Barnwell Co. Sheriff's Office. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state. I volunteer the following information of my own free will, for whatever purpose it may serve.

I am 48 years of age, and I live at [redacted] ST John Rd. On Feb, 20, I was awark by a knox on my Front door at appox, 1:10 pm. I arose to look out the window and saw a VC Poniac 4 midsize white Car. Before I could answer the door I seen Stephon Robinson getting Back in the car. I went back to bed and about 10 to 15 minute, I heard another car pull in the yard. It could have Been No more than 30 second my Front door was keep in. I Jumpout of Bed with my 357 calibur gun and came down the hall to see two intruders in my house I pull My Fire arm up when they realize the Intruders that is, that I was in the house, I FiRE my FiRE arm 3 times and Realize it was Stephon Robinson, and the other one I could not Make out. Shots were FiRE also by the Intruders also. AT That TiME I was to believe they were Shooting outside thinking that I was Following behind them. Not know at time TiME 1 or more Round was FiRE in my house by the Intruder

I have read each page of this statement consisting of 01 page(s), each page of which bears my signature, and corrections. If any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at [redacted] St. John Rd, this 21st day of February, 20 11.

WITNESS: Sgt Eddie Thomas

WITNESS: _____

X Eddie Lee Williams
Signature of person giving voluntary statement

BARNWELL COUNTY SHERIFF'S OFFICE
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Case # C11-02-1265

I, Eddie Lee Williams, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Barnwell Co. Sheriff's Office. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state. I volunteer the following information of my own free will, for whatever purpose it may serve.

I am 48 years of age, and I live at [redacted] St John Rd

I went back in to retrieve my shot gun when I got back out the room the white car that Stephon Robinson came in appox. 15 minute. early was pulling out of my yard I call BCSO about 1:50pm. This is my Sworn statement to my Recorlection.

End of Statement

I have read each page of this statement consisting of 02 page(s), each page of which bears my signature, a corrections. If any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at [redacted] St. John Rd, this 21ST day of February 20 11

WITNESS: Sgt Eddie Thomas

WITNESS: _____

Eddie Lee Williams
Signature of person giving voluntary statement

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PLAINTIFF'S EXHIBIT NO. 3

PENGAD 800-631-6989

BARNWELL COUNTY SHERIFF'S OFFICE
VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Case # C11-02-125

I, Shirley Lafrina Burrell, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Jeff Scott. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state. I volunteer the following information of my own free will, for whatever purpose it may serve.

I am 9 years of age, and I live at [redacted].

(I Lafrina Burrell let Stephen Robinson, and my Cousin Sade Hayden, Return the car on Feb. 20 around 12 or 1. I went to a friends house. Sade Hayden, Jr. moved out for a little while Then we went to Augusta I returned back home around 1:30 - Lafrina Burrell - [redacted] Stephen Robinson called me from [redacted] to Sade Hayden - [redacted]

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections. If any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at [redacted], this 21 day of 2 20 11.

WITNESS: [signature]

WITNESS: _____

Shirley Burrell
Signature of person giving voluntary statement

m2cs

317

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP0600305

Stephon Robinson		**South Carolina State of**	

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED FOR RECORD
2022 FEB 28 PM 4:30
RHONDA D. REESE
CLERK OF COURT
BARNWELL COUNTY, S.C.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: See attached Order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ Robert J. Bonds	2770	2/28/2022
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **February 3, 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **March 1, 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Stephon Robinson
Nancy Carol Fennell PO Box 2176 Irmo, SC 29063

Megan Harrigan Jameson PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Constance B. Carter J.

Court Reporter

Constance B. Carter - Deputy Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	**CASE NO. 2019-CP-06-00305**
Stephon Robinson, #334700	**ORDER FOR DISCOVERY**
Applicant,	
v.	
State of South Carolina,	
Respondent.	

FILED FOR RECORD
2022 FEB 28 PM 4:30
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter is before the Court on Applicant's Motion for Discovery. Counsel for Applicant seeks an Order granting leave to request Applicant's file from trial counsel. In the alternative, if counsel's file is otherwise unavailable, Applicant seeks his discovery file from the solicitor. In support of Applicant's request, counsel for Applicant provided that the purpose of the request was based on Applicant's need to provide proof of Applicant's allegations regarding counsel's failure to properly use prior inconsistent statements and other discovery materials to impeach witnesses at trial. Counsel for Respondent did not object to Applicant's motion.

Based on the foregoing, I find good cause exists pursuant to S.C. Code Ann. § 17-27-150 to grant Applicant's motion.

IT IS THEREFORE ORDERED that Applicant's Motion for Discovery is granted. Counsel for Applicant shall provide Counsel for Respondent with the documents received in response to the request for discovery.

This 1 day of Feb, 2022.

Hon. Robert Bonds, Presiding Judge
Second Judicial Circuit

Nancy Fennell 4-11-22

please have her sign & date & Return to Aiken Sol. Office 19

The State of South Ca
Office of the Solicitor
Second Judicial Circuit

Bill Weeks
Solicitor
Serving Aiken, Bamberg,
& Barnwell Counties

February 7, 2022

[redacted]

Nancy Fennell
Attorney at Law
P. O. Box 2176
Irmo, SC 29063

RE: THE STATE OF SOUTH CAROLINA V. STEPHON TENARD ROBINSON
Barnwell County/PCR

Dear Attorney Fennell:

Pursuant to Michael Neubauer, AAG's email requesting that the closed criminal file discovery be re-sent to you in lieu of Glenn Walters, and due to the loss of his previously sent discovery, enclosed please find a copy of the complete closed criminal file:

- BCSO Case Report: C11-02-1265
- Time Line
- Color Photo
- Notice of First & Second Appearance
- Rule 5 Cover Sheets
- Plea Offer
- Fax Cover Sheets
- Glenn Walters Correspondence
- Color Copy of Letter handwritten by Stephon Robinson
- Pre Lim Notice
- Glenn Walters letter of request for Extension of Time dated 12/7/2011
- Final Disposition (yellow paper)
- State's Witness List
- Copies of served subpoenas (4)
- Copy of Letter dated 11/12/2014 by David Miller to SC Com. Indigent Defense
- Entire copy of all Appeal paperwork and transcripts we have in our closed file
- CD of Crime Scene

- DVD labeled Scorpion Video 2/20/2011
- CD labeled C-11-02-1265/165 St. John Rd
- DVD labeled Scorpion Video – Shelley Gunnells
- DVD labeled Peterson Scorpion 2/2/5/2011

With kind regards, I am

Sincerely,

Stephanie R. Powers

Stephanie R. Powers
Assistant to the Solicitor
Second Judicial Circuit

/srp
Enclosures

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS

STEPHON T. ROBINSON, #334700 Applicant,

v.

STATE OF SOUTH CAROLINA Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Solicitor's Discover File** has been served upon the applicant by hand delivery addressed to:

Ms. Nancy Carol Fennell, Esquire
Post Office Box 2176
Irmo, South Carolina 29063

This 11th day of April, 2022

Joshua Osborne
Legal Assistant for Respondent

SWORN to before me this 11th day of April, 2022.

Leigh Ann Stone
Notary Public for South Carolina.
My Commission Expires: May 16, 2029

FILED FOR RECORD
2022 OCT -3 PM 4:22
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF ~~AIKEN~~ Barnwell	**SECOND JUDICIAL CIRCUIT**
Stephon Ternard Robinson, #334700	**Case No. 2019-CP-06-00305**
Applicant,	
v.	**ORDER OF DISMISSAL**
State of South Carolina,	
Respondent.	

This is a Post-Conviction Relief matter. By way of counsel, Applicant Stephon T. Robinson filed his Post-Conviction Relief ("PCR") application on August 5, 2019. An evidentiary hearing was held before the Honorable Maite Murphy on Tuesday, May 24, 2022, at 2:30 p.m., over WebEx. The Applicant was present and was represented by Nancy C. Fennell, Esq., and Assistant Attorney General Julianna E. Battenfield, Esq., represented Respondent. The Court Reporter was Penny Johnson. Applicant and trial counsel, Glenn Walters, Sr., testified.

The Court has also taken into consideration the trial transcript, all arguments of counsel, the testimony presented from Applicant and Applicant's trial attorney, and the exhibits entered into evidence at the hearing: State's Exhibit 1 – February 9, 2022 Order for Discovery, and State's Exhibit 2 – February 2022 Letter Denoting all Discovery Turned Over by the State. The Court concludes that the Applicant has not met the required standards articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof of proving the result of his trial would have been different but for the alleged errors of counsel. The application is denied and dismissed with prejudice.

PROCEDURAL HISTORY

Applicant is currently imprisoned in the South Carolina Department of Corrections. He was indicted at the October 2011 Barnwell County Grand Jury term for burglary first degree (2011-GS-06-00245) and possession of a weapon during the commission of a violent crime (2011-GS-06-00246). He proceeded to trial by jury before the Honorable Doyet A. Early, III, from November 1 to 2, 2011, pursuant to which he was found guilty as charged. The State proved that Applicant broke into Eddie Williams' home at 1:20 PM on the afternoon of February 20, 2011 and had presented a weapon during the burglary. The case was prosecuted by Assistant Solicitor A. Keith McCalister, Jr., and Deputy Solicitor David W. Miller of the Second Circuit Solicitor's Office. Applicant was represented by Glenn Walters, Jr., Esquire. Judge Early sentenced Applicant to twenty years' imprisonment for first-degree burglary and a concurrent five years' imprisonment for possession of a weapon. Applicant timely appealed.

The South Carolina Court of Appeals remanded the case back to the circuit court on February 19, 2014, to "hold a hearing and carefully balance the probative value of Applicants' prior convictions for impeachment purposes against their prejudicial effect." *State v. Robinson*, Op. No. 2014-UP-068 (S.C. Ct. App. filed February 19, 2014). A hearing was held on June 9, 2014, and Judge Early held that Applicant was not entitled to a new trial via an Order filed November 11, 2014. Applicant filed a second notice of appeal.

Applicant raised one issue:

> 1. Whether the remand court erred in finding that the probative value of the admission of Appellant's prior convictions for second degree burglary, strong armed robbery, and breaking and entering into a motor vehicle with intent to commit a felony or theft, outweighed the prejudice to him under Rule 609(a)(1), SCRE?

The South Carolina Court of Appeals affirmed in an unpublished opinion: *State v. Robinson*, Op. No. 2017-UP-065 (S.C. Ct. App. filed February 1, 2017). Applicant's February 2017 petition for

rehearing was denied so Applicant then filed a petition for writ of certiorari shortly after in April of 2017. The petition was granted but the Supreme Court of South Carolina soon affirmed the Court of Appeals in a May 18, 2019 published opinion. *State v. Robinson*, 426 S.C. 579, 828 S.E.2d 203 (2019). The remittitur dismissing the case was issued on May 24, 2019.

Applicant filed his post-conviction relief application on August 5, 2019, raising the following issues:

> **1.** Ineffective assistance of counsel for failing to impeach the testimony of the prosecution's witnesses using evidence of inconsistent statements and police notes showing an erroneous testimony using false and fabricated evidence; and
>
> **2.** Ineffective assistance of counsel for not cross-examining Leanna Gunnels showing mitigating evidence in her statement and also in the police notes. Counsel has the duty to familiarize himself with discovery materials provided by the State. Counsel failed in this regard and his behavior was not objectively reasonable under Strickland. In result of these facts, verdict could have been different.

The State filed its return in December of 2019. The post-conviction relief hearing was originally scheduled for September 10, 2021, via WebEx, but Applicant's counsel requested a continuance. The Honorable Courtney Clyburn Pope signed an order of continuance the same day. The Honorable Robert Bonds later signed an order for discovery on February 9, 2022, requiring the solicitor to turn over any information regarding counsel's failure to properly use prior inconsistent statements and other discovery materials to impeach witnesses at trial. (State's Exhibit 1). The State responded in a February 2022 letter (State's Exhibit 2) which included a copy of the complete closed criminal file. The hearing was then rescheduled for Tuesday, May 24, 2022 via WebEx.

CURRENT PROCEEDING

The hearing commenced before me via WebEx on May 24, 2022, at 2:00 P.M. Present were Assistant Attorney General Julianna E. Battenfield, PCR counsel Nancy Fennell, Esq., trial counsel Glenn Walters, Jr., Esq., Applicant, and court reporter Penny Johnson. The State put a

procedural history on the record and summarized the two ineffective assistance of counsel claims for the court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Summary of Testimony

Applicant testified he felt counsel Glenn Walters, Jr., was ineffective because he did not impeach at trial the testimony of Eddie Williams, the victim, with the prior statements he had given to the police. Williams gave his first statement on February 20, 2011, and the second on February 21, 2011. Mr. Williams identified the Applicant as one of the two black males who broke into his house in the first statement and reiterated that he still did not know who the second black male was in his second statement. At trial, however, Williams testified he did in fact know who the second black male was – Applicant's co-defendant Reginald Felder. Applicant felt the outcome of the trial could have been different if the inconsistent statements would have been presented.

Applicant also testified he felt counsel was ineffective for not cross-examining Leanna Gunnels with a prior inconsistent statement. She gave her statement to law enforcement on February 21, 2011. She testified she had allowed Applicant to borrow her vehicle on February 19, 2011, and that he had returned it the next afternoon on February 20, 2011. The robbery for which Applicant was convicted occurred on February 20, 2011, on or about 1:20 PM. Applicant felt that inconsistencies in Gunnels' statement to law enforcement and her testimony at trial about the vehicle would have changed the outcome of his trial because it would have provided him an alibi. Gunnels and Applicant shared an on-again, off-again relationship.

Trial counsel Glenn Walters, Jr., testified next that he had thirty-three years practicing criminal law. He testified he had met with Applicant many times in preparation for trial, had reviewed all discovery materials with him, had reviewed all plea offers and all witness statements,

and had introduced two alibi witnesses at trial on Applicant's behalf. Counsel testified he felt Applicant should have taken the plea deal, but that Applicant ultimately chose to reject it and "roll the dice at trial."

Regarding Eddie Williams' statements, counsel testified that any prior inconsistent statements Williams made about the co-defendant would not ultimately matter because Williams was always confident and sure that Applicant was one of the men who had burglarized his home. Counsel testified that Applicant's own brother had also placed him at the scene of the crime that day, so counsel had strategically chosen not to cross-examine Williams with his prior statements to avoid alienating the jury. "The less you say the better sometimes." Counsel noted that he did cross-examine Williams about his lies to law enforcement regarding bullet holes, his being a drug dealer, and more, that he had given a long closing argument highlighting how Williams had lied to law enforcement, and that he had given extensive mitigating at sentencing about this as well.

Regarding Leanna Gunnels' statements, trial counsel testified he did not cross-examine Ms. Gunnels with any prior inconsistencies for a strategic reason. First, counsel said he did not believe the alibi evidence was credible. Counsel admitted he could not remember all of the information about the alibi but said he would typically discuss any potential alibi with a client thoroughly and "tear it apart," then communicate any holes he found in the alibi with his client. Counsel affirmed he had deliberately chosen not to cross-examine Gunnels about any alibi evidence. "You don't want to open up a can of worms in a way that can hurt your client." Ultimately, the Applicant had admitted at trial to driving Gunnels' vehicle on the date of the incident, so cross-examining Gunnels about the vehicle would have possibly done more harm than good. He said he did send an alibi notice to the solicitor and had presented evidence of the alibi on his client's behalf at trial, noting that he could not, however, "suborn perjury" so he had to be

careful in how he presented this particular alibi. He highlighted the fact that the jury did hear the alibi theory from two other witnesses but that they did not buy it as they found Applicant guilty.

Findings of Fact & Conclusions of Law

The Court has thoroughly reviewed the record in its entirety. The Court concludes that the Applicant does not meet the required standards articulated in *Strickland*, in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof.

All applicants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A Post-Conviction Relief Applicant has the burden of proving the allegations in his PCR action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of her lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the PCR court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690).

In order for an applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's

performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

> [I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable . . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for [the lawyer'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. "Representation is an art, and an act or omission that is unprofessional in one case may be sound of even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense." *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted).

This Court finds trial counsel's testimony particularly credible and that counsel adequately informed Applicant of all pertinent information he needed to make the decision about whether to proceed to trial or enter a plea. This court also finds that Applicant has given this Court no credible evidence to believe otherwise.

1. Ineffective Assistance of Counsel – Eddie Williams' Statements

The Court finds trial counsel strategically chose to not cross-examine Eddie Williams about his prior inconsistent statements, and that his decision was based on Applicant and counsel's agreed-upon defense strategy. The Court finds Applicant has not met his burden of proving trial counsel was ineffective in making this decision and has also not met his burden of proving he suffered prejudice therefrom, as Eddie Williams was always confident and sure that Applicant was one of the perpetrators. The prior inconsistent statements involved Applicant's co-defendant and did not reflect upon Applicant's own guilt or innocence. Applicant has not met his burden of proving the result of the trial would have been different but-for this alleged error. This claim is denied and dismissed with prejudice.

2. Ineffective Assistance of Counsel – Leanna Gunnels' Statements

The Court finds trial counsel strategically chose to not cross-examine Leanna Gunnels about her prior inconsistent statement regarding the vehicle she allowed Applicant to borrow, and that counsel's decision was based on Applicant and counsel's agreed-upon defense strategy. The Court finds Applicant has not met his burden of proving trial counsel was ineffective in making this decision and has also not met his burden of proving he suffered prejudice therefrom, as Applicant himself admitted at trial that he had driven Gunnels' vehicle on the date of the crime, rendering any cross-examination on the matter unproductive and possibly harmful to Applicant.

Applicant has not met his burden of proving the result of the trial would have been different but-for this alleged error. This claim is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for Post-Conviction Relief.

IT IS THEREFORE ORDERED:

1. This application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of Aug., 2022.

Maite' Murphy

THE HONORABLE MAITE MURPHY
Presiding Judge

Aiken County, South Carolina