

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable Kristi F. Curtis, Circuit Court Judge

MARTIN D. FLOYD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000968

APPENDIX

GARY H JOHNSON
Appellate Defender

ALAN WILSON
Attorney General

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

ATTORNEY FOR PETITIONER

DANIELLE E DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803) 734-3970

ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF DORCHESTER

2013GS18-0364

3 STATE OF SOUTH CAROLINA)

4 vs.)

TRANSCRIPT OF RECORD

5 MARTIN FLOYD)

7 DECEMBER 17, 2013

ST. GEORGE, SOUTH CAROLINA

9 B E F O R E :

10 HONORABLE MAITÉ MURPHY, JUDGE, AND A JURY.

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

13 GLENN JUSTIS, ESQUIRE
14 MANDY KIMMONS, ESQUIRE
Attorneys for the State

15 MARY LEMATTY, ESQUIRE
16 MICHELLE SUGGS, ESQUIRE
Attorneys for the Defendant

17 Ruth L. Mott, RPR, CRR
18 Official Court Reporter
19
20
21
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23
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1 THE COURT: Good morning, ladies and gentlemen of the
2 jury, my name is Maité Murphy. I'm a Circuit Court Judge
3 from here in Dorchester County, and it's a pleasure to be
4 here holding court here at home. The term of court for this
5 week is for one week, so your jury service will be concluded
6 at the end of this week on Friday. We certainly understand
7 the inconvenience that jury service causes to your personal
8 lives, and we thank you for being here. We will do our best
9 to minimize any inconvenience for you, and hopefully we'll
10 make this an enjoyable and educational week for you. Our
11 purpose this morning is to determine your qualifications and
12 eligibility to serve as jurors. Jury qualification is done
13 in several stages, and you've already been through the first
14 stage, the roll call stage, and now we'll be going to the
15 second stage.

16 CLERK OF COURT: Judge, excuse me. We have not done
17 roll call.

18 THE COURT: Let me backtrack on that then. We need to
19 start on the first process, the roll call stage. It's funny,
20 sometimes different counties do it in different ways, so you
21 go to a different county, and we have to adjust as we go.
22 But the roll call stage is where the clerk will call the roll
23 of all those who have been called for jury duty. When your
24 name is called, please stand and in a clear, audible voice
25 provide the following information, your occupation if

1 employed. If you are self-employed, we need to know the
2 nature of your business. If you're retired or disabled,
3 state your former occupation. If you are married and your
4 spouse is employed, state the nature of his or her
5 employment. If you have no objection, please state your age.

6 CLERK OF COURT: We don't do the age, unless you want
7 it.

8 THE COURT: As part of the roll call qualification
9 process it's necessary that you be administered the oath.
10 Madam Clerk, would you swear the jury?

11 CLERK OF COURT: Yes, ma'am. Would you all please stand
12 and raise your right hand to be sworn?

13 Do you swear or affirm that you will provide truthful
14 and complete responses and answers during this jury
15 qualification process. If you have said the oath, please
16 indicate by saying I do at this time and being seated.

17 And everyone's seated.

18 THE COURT: For the record, everyone is seated. Ladies
19 and gentlemen, the Clerk of Court will now call the roll.
20 Clerk, if you will please proceed.

21 CLERK OF COURT: Thank you very much. As I call your
22 name, please stand and give me the information from the
23 board, the monitor.

24 Juror No. 1, Glenn Aban.

25 POTENTIAL JUROR: I'm employed by Boeing, and I build

1 airplanes for 787 program. My spouse is not employed just
2 yet. She's a full-time student.

3 CLERK OF COURT: Juror No. 2, Terell Adams.

4 POTENTIAL JUROR: I am unemployed, my former job was
5 Charleston County Public Library and I was a librarian page.
6 I am single and I'm a full-time student.

7 CLERK OF COURT: Thank you. Juror No. 3, Leonard Anny.

8 POTENTIAL JUROR: I work for Geocycle as a maintenance
9 mechanic, and I'm divorced.

10 CLERK OF COURT: Juror No. 8, Mary Barkley.

11 POTENTIAL JUROR: I'm employed by Kid in Development
12 Services, I'm an early interventionist, and my husband is
13 employed by the United States Air Force, crew chief.

14 CLERK OF COURT: Would you please just elevate your
15 voice just a little bit so our court reporter can hear.
16 Juror No. 12, James Berg.

17 POTENTIAL JUROR: I'm employed by Reads Moving Systems
18 and I move furniture and I'm single.

19 CLERK OF COURT: Juror No. 17, Bruce Blanchard.

20 POTENTIAL JUROR: I work for South Carolina Bank and
21 Trust as a branch manager and I'm single.

22 CLERK OF COURT: Juror No. 18, Randall Boggs.

23 POTENTIAL JUROR: I own Boggs and Sons Construction and
24 I'm self-employed and do construction and I'm divorced.

25 CLERK OF COURT: Juror No. 19, Stephanie Bradley.

1 POTENTIAL JUROR: I'm a full-time graduate student at
2 the College of Charleston. My husband is employed by the US
3 Navy. He's a sailor.

4 CLERK OF COURT: Juror No. 20, Patty Breazeale.

5 POTENTIAL JUROR: I'm employed at Spawar. My job is an
6 admin specialist. My husband is employed at Boeing,
7 logistics specialist.

8 CLERK OF COURT: Juror No. 24, Milestene Broughton.

9 POTENTIAL JUROR: I'm retired from MeadWestvaco and my
10 husband's retired from Stokes Automotive.

11 CLERK OF COURT: Juror No. 27, Lee Bryant.

12 POTENTIAL JUROR: I'm a retired Air Force nurse, and my
13 husband is a retired Air Force P.A., and I'm 58.

14 CLERK OF COURT: Juror No. 29, Valerie Bullock.

15 POTENTIAL JUROR: I'm employed by Charleston Southern
16 University, I'm professor of music, chair of the school of
17 music and also director of choral activities. My husband is
18 employed by Charleston -- Berkeley-Charleston-Dorchester
19 Council of Governments as a grants administrator.

20 CLERK OF COURT: Juror No. 30, Geoffrey Call.

21 POTENTIAL JUROR: I'm employed by Paintball Charleston,
22 I'm the operations manager there, and I'm 28.

23 CLERK OF COURT: Juror No. 31, Monica Canady.

24 POTENTIAL JUROR: I'm employed by the US Postal Service,
25 I'm a postmaster. My husband works at Dayco, and he is a

1 supervisor.

2 CLERK OF COURT: Juror No. 33, Victoria Carr.

3 POTENTIAL JUROR: I'm a receptionist at Coastal Carolina
4 Podiatry, and I'm a full-time student at College of
5 Charleston. I'm single.

6 CLERK OF COURT: Juror No. 34, Bobby Casey.

7 POTENTIAL JUROR: I'm employed by UPS as a Christmas
8 helper, and I'm also a full-time student and I'm single.

9 CLERK OF COURT: Juror No. 36, Kimberly Charles.

10 POTENTIAL JUROR: I am employed by Little Caesar's, I'm
11 a GM. My husband is employed by Harris Teeter, and he is a
12 store manager.

13 CLERK OF COURT: Juror No. 41, Lilia Correa.

14 POTENTIAL JUROR: I work for the Medical University of
15 South Carolina as an administrative coordinator, and my
16 husband works for Pepsi Beverage Company as a delivery
17 supervisor.

18 CLERK OF COURT: Juror No. 43, Joseph Craft, Jr.

19 POTENTIAL JUROR: I'm employed by Ensystex. My job is
20 technical sales representative. My wife is not employed, but
21 if you asked her what her job is, she'd say she works for me.

22 CLERK OF COURT: Hope she gets paid well.

23 Juror No. 44, David Crocker.

24 POTENTIAL JUROR: I'm employed by Metal Trades
25 Incorporated, and I'm electrical supervisor and a project

1 manager and I'm divorced.

2 CLERK OF COURT: Juror No. 50, Julie Dreyer.

3 POTENTIAL JUROR: I'm employed by Walgreens, and my job
4 is cosmetics and photo and I'm single.

5 CLERK OF COURT: Juror No. 51, William Driggins, III.

6 POTENTIAL JUROR: I'm employed by Scout Boats, and my
7 job is warranty technician, and I'm single.

8 CLERK OF COURT: Juror No. 53, Bradley Dudney.

9 POTENTIAL JUROR: I'm employed by Finish Line
10 Restoration. My job is auto collision repair, classic car
11 restoration, and I'm single.

12 CLERK OF COURT: Juror No. 56, Richard Dwyer.

13 POTENTIAL JUROR: I'm employed by the State. I'm a
14 physician. My wife's employed by Claflin University. She's
15 a professor.

16 CLERK OF COURT: Juror No. 62, Rahean Footman.

17 POTENTIAL JUROR: I'm employed by Alternative Staffing,
18 my job is laborer, and I'm separated.

19 CLERK OF COURT: Juror No. 67, Ethel Gelzer.

20 POTENTIAL JUROR: I'm employed by Novatex doing work for
21 Capstone Corporation, I'm a receptionist, and I am divorced.

22 CLERK OF COURT: Juror No. 69, George Gilstrap.

23 POTENTIAL JUROR: I'm employed by Publix, front service
24 clerk, and I'm single.

25 CLERK OF COURT: Juror No. 71, Jeffrey Glazier.

1 POTENTIAL JUROR: As of yesterday I'm employed by
2 Boeing. I'm going to night school at Trident Tech. My wife
3 is a self-employed accountant. And I'm 60.

4 CLERK OF COURT: Juror No. 72, Edward Glowacki.

5 POTENTIAL JUROR: Retired from the US Air Force, worked
6 as an aircraft mechanic. My wife works at Trident Hospital.
7 She's an ER nurse.

8 CLERK OF COURT: Juror No. 77, Curtis Gutter.

9 POTENTIAL JUROR: I'm employed by Bosch. I'm a
10 logistics specialist. My wife works for Dorchester Alcohol
11 and Drug Commission and she's quality assurance.

12 CLERK OF COURT: Juror No. 78, Luretha Hall.

13 POTENTIAL JUROR: I am employed by Bosch Charleston and
14 my job is shipment coordinating. My husband is employed by
15 Boeing, and he's a mechanic. And I'm 55.

16 CLERK OF COURT: Juror No. 80, Sabrina Hansen.

17 POTENTIAL JUROR: I'm employed by Dr. Frank Sparacino.
18 My job is surgical dental assistant. My spouse is
19 self-employed. He's in construction.

20 CLERK OF COURT: Juror No. 84, Alesia Harwood.

21 POTENTIAL JUROR: I'm employed by SAP America, software
22 company, and my job there is a consultant. My husband is
23 employed by the College of Charleston where he's an adjunct
24 professor.

25 CLERK OF COURT: Juror No. 89, David Hirt.

1 POTENTIAL JUROR: I'm employed with Cummins Engine
2 Company, technical project leader. My wife is employed with
3 Riverpointe. She is a preschool teacher.

4 CLERK OF COURT: Juror No. 91, Alex Holmes.

5 POTENTIAL JUROR: I'm an over-the-road truck driver. My
6 wife is employed by White Manor, and she's an occupational
7 therapist.

8 CLERK OF COURT: Juror No. 94, Zachary Hudson.

9 POTENTIAL JUROR: I'm self-employed, my job is
10 landscaping, I'm 20 years old, and I'm single.

11 CLERK OF COURT: Juror No. 99, Laura James.

12 POTENTIAL JUROR: I'm employed by Entertainment
13 Partners. I'm a driver during television and movie
14 production. My husband is also employed by Entertainment
15 Partners. He's a transportation captain on CSI.

16 CLERK OF COURT: Juror 101, Jeanette Johnson.

17 POTENTIAL JUROR: I'm employed by Dorchester County
18 School District Four. My job is resource teacher. My
19 husband is employed at Argos Cement Company in Harleyville,
20 and he's a heavy equipment operator.

21 CLERK OF COURT: Juror 102, Marion Kackley.

22 POTENTIAL JUROR: I'm employed by Dorchester District
23 Two Schools. I'm a long-term substitute teacher. My spouse
24 is employed by Dorchester Presbyterian Church, where he is a
25 minister. And I'm 43.

1 CLERK OF COURT: Juror 109, Jacob Lacroix.

2 POTENTIAL JUROR: I'm employed by DAK Americas,
3 electrician. My spouse is employed by Vibra, and she's a
4 dietician.

5 CLERK OF COURT: Juror 111 Michael Ladi.

6 POTENTIAL JUROR: I'm employed by Leidos, my job is
7 systems engineer, and my wife is a stay-at-home mom.

8 CLERK OF COURT: Juror 114, Floyd Lemon.

9 POTENTIAL JUROR: I'm retired from Dorchester School
10 District Two where I was a special ed. teacher assistant. My
11 wife is a librarian with Dorchester School District Four.

12 CLERK OF COURT: Juror 115, L'teycia Lessane.

13 POTENTIAL JUROR: Hello my name is L'teycia Lessane. I
14 work at the Charleston County Auditor's Office where I am an
15 auditor supervisor, and I'm single.

16 CLERK OF COURT: Juror 122, Curtis Meyn.

17 POTENTIAL JUROR: I work for GM Investments and I work
18 in real estate.

19 CLERK OF COURT: And are you married?

20 POTENTIAL JUROR: Single.

21 CLERK OF COURT: Thank you. Juror 124, Stephen Mims.

22 POTENTIAL JUROR: I'm an ordained minister who serves in
23 a bi-vocational pastorate and so my second job is
24 self-employed carpenter, and my wife is a retired computer
25 specialist with Charleston Naval Supply Center.

1 CLERK OF COURT: Juror 125, Heather Mongillo.

2 POTENTIAL JUROR: I'm employed by American Home Patient
3 as billing and collections supervisor. My spouse is employed
4 by Bland Richter Law Firm as an attorney.

5 CLERK OF COURT: Juror 128, Anthony Morley.

6 POTENTIAL JUROR: I'm employed by the City of Charleston
7 Fire Department and the Ashley River Fire Department, and my
8 position there is a captain, and my wife is a teacher with
9 the Charleston County School District.

10 CLERK OF COURT: Juror 130, Linda Myers.

11 POTENTIAL JUROR: I am a sole caregiver of my father,
12 who's 82, and my husband passed away eight years ago in
13 January.

14 CLERK OF COURT: Juror 134, John Phelan.

15 POTENTIAL JUROR: I'm employed by SKF, my job is a CNC
16 operator, and I am single.

17 CLERK OF COURT: Juror 140, Aletha Reddish.

18 POTENTIAL JUROR: I work for the department of State, HR
19 specialist, my spouse works for Dorchester District Two as a
20 janitor.

21 CLERK OF COURT: Juror 141, Sirine Reich.

22 POTENTIAL JUROR: I am self-employed, I am -- I work as
23 a nanny/baby-sitter and I'm single.

24 CLERK OF COURT: Juror No. 142, Eugene Rickett.

25 POTENTIAL JUROR: I work for Innovative Resource

1 Management, I'm a commodities broker, and my wife works at
2 home.

3 CLERK OF COURT: Juror 144, Eric Sanders.

4 POTENTIAL JUROR: I'm retired US Navy, electrician, and
5 my wife, she works for Goodwill, and she's a manager.

6 CLERK OF COURT: Juror 152, Thai Somsnith.

7 POTENTIAL JUROR: I'm employed by Boeing, my job is
8 aviation mechanic, and my wife is a stay-at-home mom.

9 CLERK OF COURT: Juror 154, Ryan Stevens.

10 POTENTIAL JUROR: Yes, I'm employed by landscaping and
11 I'm a full-time student and I'm 27.

12 CLERK OF COURT: Juror 157, Ronald Taylor.

13 POTENTIAL JUROR: Yes, I'm retired from the United
14 States Air Force, I currently own a lawn care company, and my
15 wife, she works for National Directions, she's a customer
16 service representative.

17 CLERK OF COURT: Juror 158, Wanda Teeslink.

18 POTENTIAL JUROR: Yes, I'm employed by the YMCA as a bus
19 driver and a child counselor. My husband is employed by
20 First Baptist Church of Jedburg as associate pastor.

21 CLERK OF COURT: Juror 161, Cindy Ulanoff.

22 POTENTIAL JUROR: I'm self-employed. I have a
23 housecleaning business. I'm divorced, single mom of a
24 14-year-old daughter.

25 CLERK OF COURT: Juror 170, Gary Zanders.

1 POTENTIAL JUROR: I'm employed by CCS, Carolina
2 Contractor Solutions. I'm a mechanic. My wife is employed
3 by Logan's, and she's a server.

4 CLERK OF COURT: And Juror 171, Jessica Zimmermann.

5 POTENTIAL JUROR: I'm a homemaker, and my husband works
6 at SPARC as a lead systems engineer.

7 CLERK OF COURT: Were there any names I did not call?

8 (No response.)

9 CLERK OF COURT: Thank you all and thank you, Judge.

10 THE COURT: Ladies and gentlemen, I now have certain
11 questions to ask you to determine your qualifications as
12 jurors in this court. These questions determine your general
13 eligibility to serve, and state law requires that I ask these
14 questions. Quite frankly, some of these questions are very
15 personal, and you may not want to stand and disclose this
16 information openly in the presence of your fellow jurors.
17 After each question if any juror needs to respond, I'll ask
18 you to stand. If you do not want to stand, that is fine. At
19 the end of this process I will give you a chance to come
20 forward and speak privately with me and the clerk. We do not
21 want any of you to suffer any embarrassment, but please make
22 a mental note to come up at the very end when I ask you to do
23 so. It is absolutely essential that we have accurate
24 information on each of you.

25 Here are the questions regarding the qualifications to

1 serve as jurors: Is there any member of the jury panel not a
2 citizen of the United States, if so please stand.

3 I find that there is no one standing.

4 Is there any member of the jury panel not a resident and
5 citizen of Dorchester County, South Carolina, if so please
6 stand.

7 I find that there is no one standing.

8 Is there any member of the jury panel unable to read,
9 write, speak or understand the English language, if so please
10 stand.

11 I find that there is no one standing.

12 Does any member of the jury panel have less than a sixth
13 grade education or its equivalent, if so please stand.

14 I find that there is no one standing.

15 Is there any member of the jury panel unable because of
16 mental or physical infirmities to render efficient jury
17 service; for example, does any member of the jury panel have
18 a medical condition that would prevent you from serving on a
19 jury this week, if so please stand.

20 Yes, ma'am, your juror number?

21 POTENTIAL JUROR: 24.

22 THE COURT: 24, would you like to approach?

23 POTENTIAL JUROR: Yes. I've got a case of chronic
24 diarrhea. I have to go out like five or six times.

25 THE COURT: Is that something that just obviously hits

1 you at once?

2 POTENTIAL JUROR: Yes, then I got to go, so I might have
3 to interrupt court at an inopportune time.

4 THE COURT: Is that a constant condition?

5 POTENTIAL JUROR: Right now it's been two years. Help
6 me.

7 THE COURT: We'll excuse you from this case. Is
8 there -- you're sick now? Can we transfer you to another
9 term?

10 POTENTIAL JUROR: You can try.

11 THE COURT: Okay. We'll do that. We'll transfer you to
12 another term of court. You'll receive notice, okay?

13 CLERK OF COURT: You'll get a new summons for next year.

14 COURT OFFICER: Juror No. 20.

15 POTENTIAL JUROR: I'm able to serve every day but
16 Thursday. My husband has surgery at 7:00 in the morning at
17 Trident Hospital.

18 THE COURT: The first trial, this case should be done by
19 then, but I can't promise that, so why don't we just transfer
20 you to another term of court. That way you can make your
21 husband's surgery.

22 POTENTIAL JUROR: Okay.

23 THE COURT: The next question is has any member of the
24 jury panel been convicted by guilty plea or trial in a state
25 or federal court of record of a crime punishable by

1 imprisonment of more than one year and your civil rights have
2 not been restored by pardon or amnesty? Punishable by more
3 than one year means that you could have received a sentence
4 of more than one year regardless of what sentence you
5 actually may have received. If so please stand.

6 I find that there is no one standing.

7 Is any member of the jury panel a clerk or deputy clerk
8 of court, constable, sheriff or other commissioned law
9 enforcement officer, probate judge, county commissioner,
10 magistrate or other county officer or employed within the
11 walls of any courthouse, if so please stand.

12 I find that there is no one standing.

13 Is there any member of the jury panel who has previously
14 served on jury duty in circuit court, not in city court or
15 magistrates court or federal court, during this calendar
16 year, if so please stand.

17 I find that there is no one standing.

18 Has any member of the jury panel served as a member of
19 the Dorchester County Grand Jury during the past several
20 years, if so please stand.

21 I find that there is no one standing.

22 Now, ladies and gentlemen, we move to jury exemptions.
23 State law provides for several exemptions to jury service.
24 An exemption does not mean that you are not qualified to
25 serve. It simply means that you have the right to say, I

1 choose not to serve. The first exemption deals with those of
2 you who are 65 years of age or older may be exempted from
3 jury service. Those of you 65 years of age or older
4 represent a pool of tremendous talent for jury service, and
5 we certainly encourage you to serve this week if you're
6 inclined to do so, but if you wish to be exempted, you may
7 certainly do so. Is there any member of the jury panel who
8 is 65 years of age or older and who wishes to be exempted
9 from jury service this week? Please stand.

10 I find that there is no one standing.

11 Another exemption concerns prior jury service. No
12 person is required to serve as a juror more often than once
13 every three calendar years; therefore, if any member of the
14 jury panel has served on jury duty during the last two
15 calendar years, you may be exempt from service this week if
16 you choose to be exempted. Please note that this exemption
17 does not apply if your jury service was in a magistrate, city
18 court or in federal court. If this exemption applies to you
19 and you wish to be exempted, please stand.

20 I find that there is no one standing.

21 Persons who have served as grand jurors in the last five
22 calendar years may also be exempt from jury service. If any
23 member of the jury panel has served on a grand jury during
24 the last five calendar years, you may be exempt from service
25 this week if you choose to be exempted. If this exemption

1 applies to you and you wish to be exempted, please stand.

2 I find that there is no one standing.

3 The next exemption deals with those of you who have
4 legal custody of young children. Please listen very
5 carefully to this exemption. It has several parts, all of
6 which must apply for you to be exempted on this basis. You
7 may be exempted from jury service if you have a child under
8 the age of seven years, you have legal custody of your child
9 or children, and you have the principal care, custody and
10 control of your child or children, and you are unable to make
11 arrangements for the adequate care of your child or children
12 while performing jury duty. If all of these exemptions or
13 these requirements apply to you, you may be exempted on this
14 basis. If this exemption applies to you and you wish to be
15 exempted, please stand.

16 I find that there is no one standing.

17 If you are the primary caretaker of a person 65 years of
18 age or older and you are unable to provide adequate care for
19 the person while performing jury service, you may be exempt
20 from jury duty. If this exemption applies to you and you
21 wish to be exempted, please stand.

22 Yes, sir, your juror number?

23 POTENTIAL JUROR: 122.

24 THE COURT: And, sir, what's your situation?

25 POTENTIAL JUROR: My mother is 83 years old. She has a

1 broken hip and can only see in one eye, and I pretty much
2 cook all her meals and drive for her and everything.

3 THE COURT: All right, sir, and during this term of
4 court you wouldn't be able to make adequate arrangements for
5 somebody else?

6 POTENTIAL JUROR: I can ask my neighbors to help but --
7 I mean, I can, yes, I can ask my neighbors to help. I'm sure
8 I can get somebody, but I'd rather be at home.

9 THE COURT: Well, if you feel that you can serve, I'll
10 leave it up to you. If you wish to exercise your exemption,
11 you can certainly do so, but we'd certainly like to encourage
12 you to stay if you choose to do so.

13 POTENTIAL JUROR: Yes, I can stay. I mean, I don't
14 know right now -- right now I can stay for the day, it was no
15 problem at all, I made arrangements. I'm not sure if I can
16 for the whole week.

17 THE COURT: I'll share with you that I think the trial
18 of the case that we have is going to be a pretty short trial,
19 maybe one, two days.

20 POTENTIAL JUROR: Okay. That's fine.

21 THE COURT: Great. Thank you, sir.

22 Yes, ma'am.

23 POTENTIAL JUROR: My dad is 82. He had a stroke back in
24 May in New York. I was actually called to jury duty in June,
25 but I was in New York at the time, and I was excused until

1 now. I brought him back here. He now lives with me. He
2 goes to rehabilitation three times a week, and the only
3 person -- my sister's there now taking care of him, but she
4 lives in Bluffton.

5 THE COURT: And your juror number, ma'am?

6 POTENTIAL JUROR: 130.

7 THE COURT: And so basically what you're saying is
8 you're the sole caregiver?

9 POTENTIAL JUROR: Yes, I am.

10 THE COURT: Do you wish to exercise your exemption?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: All right, ma'am, you're excused. Thank
13 you.

14 CLERK OF COURT: 130?

15 THE COURT: Yes, ma'am.

16 The next exemption is if you are the primary caretaker
17 of a severely disabled person who is unable to care for
18 himself or herself and cannot be left unattended and you are
19 unable to provide adequate care for the person while
20 performing jury service, you may be exempt from jury duty.
21 If this exemption applies to you and you wish to be exempted,
22 please stand.

23 I find that there is no one standing.

24 The next exemption involves those of you who may be
25 attending school at this time or working in some capacity

1 with a school. If this exemption applies to you and you wish
2 to be exempted, we will transfer your service to another term
3 of court at which time will not conflict with your school
4 responsibilities. Is there any member of the jury panel who
5 is a full-time student, school teacher, school crossing
6 guard, school bus driver or who serves in any other school
7 related function who is unable to serve on jury duty this
8 week as a result of that school involvement, if so please
9 stand.

10 Yes, sir, your juror number?

11 POTENTIAL JUROR: I'm No. 71, ma'am. I'm not full-time.
12 I'm going to three weeks for Boeing to get my qualifications
13 and certifications, and if I don't get them right now, I lose
14 the job.

15 THE COURT: All right, sir. You wish to be transferred
16 to a different term of court?

17 POTENTIAL JUROR: Yes, ma'am, I do.

18 THE COURT: All right. Sir, what month would be more
19 convenient for you?

20 POTENTIAL JUROR: Any time after the next three weeks.

21 THE COURT: All right, sir. You'll receive a new
22 summons. Thank you.

23 CLERK OF COURT: That's Juror 71?

24 POTENTIAL JUROR: Yes, ma'am. Thank you, Your Honor.

25 THE COURT: The next exemption is is there any member of

1 the jury panel who is employed with the Department of
2 Corrections at a penitentiary? If so and if you would like
3 to be exempted, please stand.

4 I find that there is no one standing.

5 Is there any juror who performs services for a business,
6 commercial or agricultural enterprise which are so essential
7 to the operation of the enterprise that if you were required
8 to perform jury duty the enterprise would have to close or
9 stop functioning. If so and if you wish to be exempted,
10 please stand.

11 I find that there is no one standing.

12 Ladies and gentlemen, that concludes the statutory list
13 of qualifications and exemptions for jury service. It may be
14 that you are qualified and no exemption applies to you but
15 jury service this week would constitute an extreme hardship
16 on you for a particular reason. I cannot permanently excuse
17 a qualified juror from service, but under extremely
18 compelling circumstances I may excuse a juror from this term
19 of court and transfer the juror to another term of court,
20 particularly jurors who have not been previously transferred.
21 Please understand that general inconvenience is not a
22 sufficient reason to transfer you to another term of court.
23 To justify a transfer to another term of court service this
24 week must constitute an extreme hardship to you. Ladies and
25 gentlemen, this is now the chance for those of you who did

1 not respond earlier to any questions that I asked and those
2 of you who have a compelling reason to request a transfer of
3 your jury service to another week to come forward. If you
4 believe you're disqualified or exempt from jury service or if
5 you have questions about whether you are disqualified or
6 exempt from jury service or if you want to be transferred to
7 another term of court, please come forward at this time.

8 COURT OFFICER: Juror No. 34.

9 THE COURT: Mr. Casey.

10 POTENTIAL JUROR: Yes, ma'am.

11 THE COURT: How are you today?

12 POTENTIAL JUROR: Good. I have a job at UPS over my
13 Christmas break, and it's very important because I have a kid
14 due in April, and I need as much money as possible because
15 we're not in a good financial situation, and since we're
16 helpers, we get replaced if we don't show up for a day, and I
17 just really need to be transferred.

18 THE COURT: All right. I suppose this is your busiest
19 time.

20 POTENTIAL JUROR: Yes.

21 THE COURT: You've been transferred once before.

22 POTENTIAL JUROR: Yes. I had exams, my exam week.

23 THE COURT: The trial of this case really is just going
24 to be a day, day and a half, maybe two days. You may not
25 even get selected. I've got to ensure I've got enough jurors

1 to try this case, so why don't we just let you sit down for a
2 second since you've been previously transferred, kind of hold
3 off on that, okay, but stick with us right now. If we have
4 enough jurors at the end of the process, then I'll allow you
5 to transfer, okay?

6 POTENTIAL JUROR: Yes, ma'am, thank you.

7 COURT OFFICER: Juror No. 56.

8 THE COURT: Good morning. Mr. Dwyer?

9 POTENTIAL JUROR: Yes, ma'am. I'm actually a SLED
10 medical officer. They'll shut down some of what I do being
11 here. They used to say we'll put you on the same group as
12 the commission folks. Talked to Ms. Bates about it. She
13 said discuss it with you. I don't work in corrections, but
14 I'm over both clinics at Lieber and MacDougall. They usually
15 have a problem with me being involved.

16 THE COURT: I understand that. Obviously, being a
17 criminal case, you may get struck anyway. However, I'm going
18 to ask you to stay just because I want to ensure that we have
19 enough jurors. Obviously, if an emergency arises where
20 you're called out, we'll have an alternate, we can deal with
21 it at that point.

22 POTENTIAL JUROR: I'll have to notify the office, so I
23 can get the clerk's name here?

24 THE COURT: Sure. Like I said, if an emergency comes up
25 where you've got to go, we'll deal with that when it comes

1 time.

2 All right. Thank you. He stays.

3 COURT OFFICER: Juror No. 53.

4 POTENTIAL JUROR: Yes, ma'am. I'm sorry, I should have
5 stood up the last time, but I'm the only employee at my
6 business. There's the letter from my boss.

7 THE COURT: All right. Would this be likely to change
8 at any point? Do you all anticipate getting more employees?

9 POTENTIAL JUROR: No, ma'am. We just fired the last guy
10 last week, so it's just me and him, and he's got a day job,
11 so if I'm not there, the shop's closed, and we're kind of
12 stacked up right now.

13 THE COURT: Would there be a time more convenient for
14 you, sir?

15 POTENTIAL JUROR: Yes, we just got like a lot of cars in
16 this week, you know, so probably a week or two maybe.

17 THE COURT: Well, the thing I'm asking is you may want
18 to roll the dice and see. This is going to be a short trial.
19 You could get your jury service out of the way. If you come
20 back in a couple weeks, you may actually have to serve all
21 week.

22 POTENTIAL JUROR: Yes, I guess I'll stay then.

23 THE COURT: You want to stay? Okay. I mean, because it
24 could be a short trial. You know, you may not lose as much
25 time from work as you could potentially down the road. So

1 you want to stay?

2 POTENTIAL JUROR: Yes, you're right, you're right. Yes,
3 I'll stay, I guess.

4 THE COURT: Thank you.

5 COURT OFFICER: 27.

6 THE COURT: Good morning.

7 POTENTIAL JUROR: I don't really want to get out of jury
8 duty, but I've had this appointment at the VA for two months,
9 and it's going to be hard to get another one. It's for all
10 of my medications, my eyes, my ears, my shoulder injections
11 and all that kind of stuff, so it's tomorrow at 10:15.

12 THE COURT: Okay. So why don't we transfer you to
13 another term of court.

14 POTENTIAL JUROR: Okay.

15 THE COURT: We'll transfer her. All right, thank you.

16 CLERK OF COURT: That was 27?

17 THE COURT: 27.

18 COURT OFFICER: 144.

19 THE COURT: Mr. Sanders?

20 POTENTIAL JUROR: Yes. I was released from the military
21 because of medical condition. I'm receiving psychiatric
22 evaluation right now, but I'm waiting on the doctor to fax
23 information, but it didn't get here in time because I didn't
24 get the fax number, so if I can fax something, then I can go
25 ahead and give it to you, but that's the only thing I have

1 right now (indicating).

2 THE COURT: Okay. Mr. Sanders, right?

3 POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: Do you feel that the nature of your
5 disability would prevent you from effectively serving on a
6 jury?

7 POTENTIAL JUROR: Yes, because the medication I'm on,
8 it's hard sometimes, I fall asleep and don't even realize I'm
9 sleeping.

10 THE COURT: Okay. I think that's certainly a valid
11 reason, so we'll excuse you from this term, okay.

12 POTENTIAL JUROR: Okay.

13 THE COURT: Thank you, Mr. Sanders. Thank you for your
14 service.

15 COURT OFFICER: Juror 51.

16 POTENTIAL JUROR: Good morning.

17 THE COURT: Good morning. How are you?

18 POTENTIAL JUROR: Okay.

19 THE COURT: Mr. Driggins?

20 POTENTIAL JUROR: Yes, ma'am.

21 THE COURT: What's your situation?

22 POTENTIAL JUROR: This plant close down is Thursday for
23 two weeks, and this is kind of a bad time as far as the job
24 position I'm in, that's the basic thing. I don't have no
25 paperwork on it, but that's where my problem is right there,

1 financially besides that fact, but it's for two weeks so...

2 THE COURT: Well, let me share with you that, you know,
3 obviously everybody's kind of in the same boat, if you don't
4 show up to work, you don't get paid. This could be a very
5 short trial, and you could get your jury service behind you.
6 If we were to transfer you to another term of court, it could
7 be like a week-long trial, so you have to kind of weigh your
8 options there a little bit.

9 POTENTIAL JUROR: That would be more easier because I
10 could deal with it after -- but, I mean, if it has to be what
11 you just said, that's fine, I guess.

12 THE COURT: You know, you're kind of rolling the dice.
13 It's either now or it's later. It's going to be an
14 inconvenience at any point, and you're actually somewhat
15 lucky in that we anticipate this trial's going to be pretty
16 quick.

17 POTENTIAL JUROR: Okay.

18 THE COURT: Do you want to stay with us?

19 POTENTIAL JUROR: Yes, that would work then.

20 THE COURT: Thank you.

21 COURT OFFICER: No. 12.

22 THE COURT: Mr. Berg?

23 POTENTIAL JUROR: Yes, ma'am. I have two things. I
24 don't know if it pertains, but I'm currently out on bond.

25 THE COURT: What are you out on bond for?

1 POTENTIAL JUROR: Possession of cocaine. And also,
2 basically, I work paycheck to paycheck, and if I had to be
3 here for three, four days, or whatever it might be, I
4 wouldn't be able to get my bills paid.

5 THE COURT: Well, do you have any convictions, or are
6 you just out on bond?

7 POTENTIAL JUROR: I got -- I served probation for
8 possession of cocaine five, six years ago.

9 THE COURT: So you did have a probationary sentence?

10 POTENTIAL JUROR: Yes.

11 THE COURT: All right, sir. You're free to go.

12 COURT OFFICER: Juror 141.

13 THE COURT: Good morning.

14 POTENTIAL JUROR: Good morning.

15 THE COURT: And you're Ms. Reich?

16 POTENTIAL JUROR: Reich.

17 THE COURT: Yes, ma'am, what's your situation?

18 POTENTIAL JUROR: One of the questions that says
19 mental -- sorry.

20 THE COURT: Any problems?

21 POTENTIAL JUROR: Yes.

22 THE COURT: And what's the nature of your problem?

23 POTENTIAL JUROR: I was diagnosed as mentally retarded,
24 and I'm not sure if I can function quite well.

25 THE COURT: You don't think you can understand the

1 proceedings and what's going on?

2 POTENTIAL JUROR: No.

3 THE COURT: Okay. All right. We'll excuse you from the
4 trial of this case. Thank you for sharing with us.

5 COURT OFFICER: Juror No. 31.

6 POTENTIAL JUROR: Good morning.

7 THE COURT: Good morning. How are you?

8 POTENTIAL JUROR: I do work at the post office. This
9 has been a huge day for me to be off. I would like to just
10 see if I could transfer it to like January or February, you
11 know, just change my term.

12 THE COURT: I think certainly in the Christmas spirit
13 we'll do that for you.

14 POTENTIAL JUROR: We've been slammed.

15 THE COURT: It's the busiest week. Would January be
16 better for you?

17 POTENTIAL JUROR: January should be fine.

18 CLERK OF COURT: Want to do February?

19 POTENTIAL JUROR: Let's do February.

20 THE COURT: We'll transfer you to then.

21 COURT OFFICER: Juror No. 134.

22 THE COURT: Mr. Phelan?

23 POTENTIAL JUROR: I was actually talking to somebody out
24 there back and forth. I actually don't live in Dorchester
25 County.

1 THE COURT: Oh, you don't? Where do you live?

2 POTENTIAL JUROR: Just on the other side of the
3 interstate. It's still considered Summerville.

4 THE COURT: You live in Berkeley County?

5 POTENTIAL JUROR: Berkeley County.

6 THE COURT: Have you switched your driver's license?

7 POTENTIAL JUROR: I have not.

8 THE COURT: Make sure you do that, okay? You're
9 supposed to do that within 10 days from your move date.

10 POTENTIAL JUROR: It's 100 something days past that.

11 THE COURT: Make sure you do that, but you wouldn't be
12 qualified serving in Dorchester. Thank you for letting me
13 know.

14 COURT OFFICER: Juror No. 18.

15 THE COURT: Good morning.

16 POTENTIAL JUROR: Good morning.

17 THE COURT: How are you today?

18 POTENTIAL JUROR: Good. I'm in a real busy time in my
19 company right now. I'm the only supervisor, and I've got a
20 company that's digging up 7,000 feet of water lines for a
21 trailer court, and then I also have a backup sewer problem
22 right now at an apartment complex. I have Roto-Rooter out
23 there digging up a bunch of my lines. With me not being
24 there, me being the only supervisor, I don't know what's
25 going on. I don't know what they're doing. I don't know

1 what they're charging me. Like Roto-Rooter's charging me \$95
2 an hour right now to find the problem, and I'm not there.

3 THE COURT: Let me ask you this, obviously this is the
4 type of work you do, it's something that could happen pretty
5 much at any time, right?

6 POTENTIAL JUROR: Yes, ma'am.

7 THE COURT: So.

8 MR. JUSTIS: Your Honor, actually he has a conviction
9 (indicating).

10 THE COURT: Okay. Do you have a conviction in West
11 Virginia?

12 POTENTIAL JUROR: Yes, but it's been back in the '80s.

13 THE COURT: You're disqualified, so you can go.

14 POTENTIAL JUROR: Thank you.

15 THE COURT: Would Juror No. 34 please come forward? Mr.
16 Casey, we do have enough people, so I'm going to go ahead and
17 allow you to transfer to another term of court.

18 CLERK OF COURT: Like February or March?

19 POTENTIAL JUROR: Anytime during the summer.

20 CLERK OF COURT: June, July.

21 POTENTIAL JUROR: Yes, ma'am. Thank you.

22 THE COURT: Juror No. 56.

23 Looks like we have enough jurors. I can go ahead and
24 transfer you. If you want to get it behind you --

25 POTENTIAL JUROR: It's going to be that way every time.

1 I do stuff for the court. It's hit or miss. This week we've
2 got something, so I'm probably better off pushing it to next
3 time. Right now I'll have to switch a court date if I end up
4 having to stay for a couple days.

5 THE COURT: If you're selected.

6 POTENTIAL JUROR: Right. Of course. It's criminal.

7 Like I said, given my background --

8 THE COURT: I can't comment on that, however --

9 POTENTIAL JUROR: I understand.

10 THE COURT: -- however, you may want to roll the dice
11 and stay with us, but I'll give you the option if you want to
12 transfer.

13 POTENTIAL JUROR: I'll stay.

14 THE COURT: Thank you, ladies and gentlemen. The jury
15 panel is now qualified. There are going to be some general
16 guidelines for jury service this week. First of all, the
17 courthouse policy is that you're not allowed to have cell
18 phones inside the courthouse, and it's also very important
19 that you have no contact with any of the parties or lawyers
20 or possible witnesses in any case which may come before the
21 Court this week. Even innocent conversations can be
22 misconstrued, so you must avoid contact with any of these
23 people. So if you see them around and they don't say hello,
24 they're not trying to be rude, they're just following the
25 Court's orders. Also, if you're selected to serve on the

1 jury, please be prompt when we ask you to be here at a
2 certain time. It's essential that we have everyone before we
3 can get started, so please be courteous to your fellow jurors
4 and the court system to be on time so that we can run the
5 court efficiently. The Clerk of Court will give you a card
6 with contact information as to when you are to call.
7 Typically it's after 6:00 each day if you are not selected to
8 check to see if you would be having to come back to be drawn
9 for another jury, so make sure you please get that card
10 before you leave here today so that you know when it's proper
11 to call. Typical operation hours of the court, it depends
12 sometimes on witnesses and whatnot, but we typically get
13 started at 9:30 or 10:00 in the morning, depending if we have
14 other matters before the Court, and we will finish up by
15 5:00, and that will allow everyone an opportunity to get home
16 in a timely manner. And, of course, if there's any
17 emergencies that arise during your jury service, we'll give
18 you the phone number of the Clerk's Office where you can have
19 contact information, so we'll make sure that you are
20 certainly well taken care of.

21 Solicitor, if you'd call your first case.

22 MR. JUSTIS: May it please the Court, Your Honor, at
23 this time the State calls the case of State of South Carolina
24 versus Martin Floyd. He is charged on true-billed indictment
25 2013GS18-0364 with one count of burglary in the first degree.

1 THE COURT: Solicitor, may I see the indictment?

2 Ladies and gentlemen of the jury panel, we are about to
3 begin the trial of the case of the State of South Carolina
4 versus Martin Dameon Floyd. Before we select a jury there
5 are several questions which I will ask you.

6 And they've already been sworn, correct, Madam Clerk?

7 CLERK OF COURT: Yes, I swore them.

8 THE COURT: Ladies and gentlemen, the trial of this
9 case, as the solicitor stated, is for burglary in the first
10 degree. It states that in Dorchester County, South Carolina,
11 on or about January 18th, 2013 the Defendant, Martin Dameon
12 Floyd, did willfully and unlawfully enter the dwelling of the
13 Estate of Charles Alvin Rearick without consent and with the
14 intent to commit a crime therein in that the defendant did
15 enter the house under the veil of darkness with the intent to
16 steal items of value or has been convicted of two or more
17 burglaries, this offense being a violation of the South
18 Carolina code of laws. To this indictment the defendant has
19 pled not guilty.

20 Is there any member of the jury panel related by blood
21 or marriage or a friend or acquaintance of any member of a
22 law enforcement agency, if so please stand.

23 Yes, sir.

24 POTENTIAL JUROR: By my position, law enforcement.

25 THE COURT: All right. Thank you, sir.

1 CLERK OF COURT: His number?

2 THE COURT: Your juror number, sir?

3 POTENTIAL JUROR: 56.

4 THE COURT: Thank you.

5 Is any member of the jury panel employed by, related by
6 blood or marriage to or a friend or acquaintance of anyone
7 employed by the attorney general, the solicitor or any
8 prosecuting attorney's office or does any work or has worked
9 with in the past any of these above named agencies, if so
10 please stand.

11 Mr. --

12 POTENTIAL JUROR: Dwyer, 56.

13 THE COURT: 56. Thank you, sir.

14 Yes, sir?

15 POTENTIAL JUROR: Mandy Kimmons.

16 CLERK OF COURT: Your juror number?

17 THE COURT: Why don't we do this, why don't you all come
18 forward so we can put this on the record.

19 COURT OFFICER: Juror 56.

20 THE COURT: Sir, I understand the nature of your
21 employment with SLED, the South Carolina Law Enforcement
22 Division. Do you feel that you could set that experience
23 aside and be fair and impartial and listen to the evidence as
24 presented in this courtroom and be fair both to the State of
25 South Carolina and to the Defense in this matter?

1 POTENTIAL JUROR: Well, I always think I can be fair.

2 THE COURT: You think you can be fair, or can you be
3 fair?

4 POTENTIAL JUROR: Yes, sure.

5 THE COURT: Okay. All right.

6 POTENTIAL JUROR: And I also have a position with the
7 attorney general's office too.

8 THE COURT: The second question applies to you as well.

9 POTENTIAL JUROR: Right, right. I just wanted to make
10 sure I was on the record, I have appointments with both those
11 agencies.

12 THE COURT: And that arises out of the nature of your
13 employment, so again the question would be, arising out of
14 the nature of your employment with all law enforcement
15 agencies --

16 POTENTIAL JUROR: Yes, ma'am.

17 THE COURT: -- can you set that aside and be fair and
18 impartial both to the State and to the Defense?

19 POTENTIAL JUROR: Yes, Judge.

20 THE COURT: Thank you.

21 COURT OFFICER: Juror 170.

22 POTENTIAL JUROR: I know Mandy.

23 THE COURT: How do you know Ms. Kimmons?

24 POTENTIAL JUROR: Friend.

25 THE COURT: Do you think that based upon your

1 relationship with her you could set that aside and listen to
2 the evidence --

3 POTENTIAL JUROR: Oh, yes, that's fine.

4 THE COURT: -- and be fair and impartial to both the
5 State and to the Defense?

6 POTENTIAL JUROR: Yes, ma'am.

7 THE COURT: Thank you, sir.

8 COURT OFFICER: Juror 128.

9 POTENTIAL JUROR: I don't know if my job -- I work with
10 the fire department. I work with some police officers, so I
11 don't know if that would disqualify me or not.

12 THE COURT: Based upon your employment at the fire
13 department and your interaction with law enforcement do you
14 think you could set that aside and listen to the evidence as
15 presented in the courtroom and be fair both to the State and
16 to the Defendant?

17 POTENTIAL JUROR: Probably, yes.

18 THE COURT: Well, you need to --

19 POTENTIAL JUROR: Yes.

20 THE COURT: I need to know for sure you can listen to
21 the evidence and follow the law and rule based solely upon
22 the evidence as presented in Court --

23 POTENTIAL JUROR: Yes.

24 THE COURT: -- and set those relationships aside.

25 POTENTIAL JUROR: Yes.

1 THE COURT: All right, sir. Thank you.

2 COURT OFFICER: Juror 125.

3 POTENTIAL JUROR: My husband is an attorney. I don't
4 know exactly -- I don't know if that qualifies for what you
5 just asked.

6 THE COURT: The fact that your husband is an attorney
7 and may deal with these types of cases or not, do you think
8 you can set that aside and listen to the evidence as
9 presented in this courtroom only and render a fair and just
10 verdict to both the State and to the Defense?

11 POTENTIAL JUROR: Yes.

12 THE COURT: Thank you.

13 Has any member of the jury panel ever been employed by
14 any civilian or military law enforcement agency, if so please
15 stand.

16 (Potential juror stands.)

17 THE COURT: And you're Mr. Dwyer, No. 45?

18 POTENTIAL JUROR: 56.

19 THE COURT: 56. And the same question applies to you,
20 Mr. Dwyer, do you feel you could set that aside and be fair
21 and impartial to both the State and the Defense?

22 POTENTIAL JUROR: Yes, Your Honor.

23 THE COURT: And render a fair and just verdict?

24 POTENTIAL JUROR: Yes, Your Honor.

25 THE COURT: Thank you, sir.

1 Is any member of the jury panel employed by, related by
2 blood or marriage to or a friend or acquaintance of any of
3 the prospective witnesses in this case, and I will now read a
4 list of the prospective witnesses: Jennifer Felkel, Kevin
5 Felkel, Rick Carson with the Dorchester County Sheriff's
6 Office, Stephanie Stover with the Dorchester County Sheriff's
7 Office, Corey Anderson with the Dorchester County Sheriff's
8 Office, Shawn Angelo with the Dorchester County Sheriff's
9 Office, Derek Sauro with the Dorchester County Sheriff's
10 Office, Silas Carter with the Dorchester County Sheriff's
11 Office, Callie Pirkel with the Dorchester County Sheriff's
12 Office, Don Rusty Norris, Angela Fleeman, Tonda Westbury with
13 the Dorchester County Clerk of Court, Becky Stevens with the
14 Dorchester County Clerk, Jason Tony, Michelle Mitchum, Eli
15 Hansen, Chris Bogard, Jennifer Chinnners, Mary Foster, Rita
16 Smith, James Smith, Aaron Lowery, Eli Hansen, Brian Cole,
17 Curtis Saulisbury, Angela Fleeman and Rusty Norris.

18 Yes, ma'am, if you'd approach.

19 COURT OFFICER: Juror 102.

20 POTENTIAL JUROR: I go to church with Rick Carson.
21 We're friends with Detective Carson.

22 THE COURT: The fact that you go to church with him, do
23 you think you can set that aside, listen to the evidence as
24 stated by the State and render a fair and impartial verdict
25 to both the State and to the Defense?

1 POTENTIAL JUROR: Yes.

2 THE COURT: You can set that relationship aside?

3 POTENTIAL JUROR: Yes.

4 THE COURT: All right. Thank you, ma'am.

5 Has any member of the jury panel read or heard anything
6 about this case either today or before today, if so please
7 stand.

8 I find that there is no one standing.

9 Has any member of the jury panel discussed this case or
10 heard anyone else discuss this or a similar case either today
11 or before today, if so please stand.

12 Find that there is no one standing.

13 Has any member of the panel formed any opinion about
14 this case, if so please stand.

15 No one is standing.

16 Have you or any member of your family or any close
17 friend ever been the victim of a burglary, if so please
18 stand.

19 COURT OFFICER: Juror 78.

20 THE COURT: Good morning, ma'am. How are you today?

21 POTENTIAL JUROR: Just fine.

22 THE COURT: You're Ms. Hall?

23 POTENTIAL JUROR: Yes, I am. My first cousin's son,
24 Jerrell Whitley, he murdered someone in our community.

25 THE COURT: That experience, as far as having that type

1 of relationship, do you think you can set that aside and
2 listen to the evidence as presented in this case and be fair
3 both to the State and to the Defendant and render a verdict
4 on the evidence that you hear in this case?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Thank you, ma'am.

7 COURT OFFICER: Juror 114.

8 THE COURT: Good morning, Mr. Lemon. How are you?

9 POTENTIAL JUROR: Very well.

10 THE COURT: Come up here so the court reporter can get
11 what you're saying.

12 POTENTIAL JUROR: Okay.

13 THE COURT: Sir, what was your situation?

14 POTENTIAL JUROR: In April somebody broke in my house.

15 THE COURT: Okay. Having had that experience, do you
16 think you can set that aside and listen to the testimony from
17 the witness stand and be fair and impartial to both the State
18 of South Carolina and to the Defendant?

19 POTENTIAL JUROR: Since they caught the person who did
20 it, I could.

21 THE COURT: So you could set that aside and be fair and
22 impartial to both sides?

23 POTENTIAL JUROR: Yes.

24 THE COURT: All right, sir. Thank you.

25 COURT OFFICER: Juror 43.

1 THE COURT: Good morning.

2 POTENTIAL JUROR: Good morning.

3 THE COURT: You're Mr. Craft?

4 POTENTIAL JUROR: Mm-hmm.

5 THE COURT: All right, sir. What was your situation?

6 POTENTIAL JUROR: All the boat and fishing equipment
7 were stole off my boat last December, and my wife's car's
8 been broken into, pocketbook stolen, few, several years ago,
9 and then a car -- car in the driveway was broken into couple
10 years before that and everything stolen out of that.

11 THE COURT: Frustrating process, isn't it? Mr. Craft,
12 do you think you can set those personal experiences aside and
13 listen to the testimony from the witness stand and render a
14 fair and impartial verdict for both the State and for the
15 Defense in this case?

16 POTENTIAL JUROR: I think so.

17 THE COURT: You can set that experience aside and be
18 fair and impartial to both sides?

19 POTENTIAL JUROR: I think so, yes.

20 THE COURT: Thank you, sir.

21 COURT OFFICER: Juror 29.

22 POTENTIAL JUROR: Last November I had two very valuable
23 rings stolen from my house from the pest person, and they
24 were never recovered, he was never, you know, they never
25 found -- he was never convicted or anything like that.

1 THE COURT: That's certainly disappointing.

2 POTENTIAL JUROR: Yes. Also a silver necklace too.

3 THE COURT: Do you think that based upon that experience
4 that you had that you can set that aside and listen to the
5 evidence in this case from the witness stand and be fair and
6 impartial to both the State of South Carolina and the
7 Defense?

8 POTENTIAL JUROR: I'm not really sure. I'm not really
9 sure I could, to be honest with you. Would that mean that I
10 would be remanded to another -- I would serve again somewhere
11 else, they would transfer it to another time, is that what
12 that would mean?

13 THE COURT: What we could do is just not sit you on the
14 panel, but you may have to remain with us, or we could
15 transfer you to a civil term of court.

16 POTENTIAL JUROR: You mean during this same week?

17 THE COURT: No, if we transfer you to a civil term, it
18 would be a different week.

19 POTENTIAL JUROR: And of course, since I teach at the
20 university, I would have to be sure it complied with that
21 particular schedule also. Yes, I think I'm going to say no.
22 I think I just -- I felt so violated, you know.

23 THE COURT: That's why we ask these questions. Why
24 don't we transfer her to a civil term of court.

25 POTENTIAL JUROR: All right. Thanks.

1 CLERK OF COURT: That was 29?

2 THE COURT: Yes.

3 COURT OFFICER: Juror 72.

4 POTENTIAL JUROR: Good morning, ma'am.

5 THE COURT: Good morning, how are you?

6 POTENTIAL JUROR: Okay.

7 THE COURT: What's your situation, sir?

8 POTENTIAL JUROR: I've had three burglaries over the
9 past 15 years.

10 THE COURT: And based upon having that experience, do
11 you think you can set that aside and be fair and impartial to
12 both the State and to the Defense?

13 POTENTIAL JUROR: Don't like thieves.

14 THE COURT: Nobody likes a thief; however, I'm asking
15 you if you can be fair and impartial and listen to the
16 evidence that comes from the witness stand from the State and
17 from the Defense and set aside any personal problems you may
18 have.

19 POTENTIAL JUROR: Sure.

20 THE COURT: And you can be fair and impartial to both
21 sides?

22 POTENTIAL JUROR: Yes.

23 THE COURT: Sir, basically you'd be instructed to follow
24 the law. Do you think you can do that?

25 POTENTIAL JUROR: Yes.

1 THE COURT: All right, sir, thank you.

2 COURT OFFICER: Juror 36.

3 THE COURT: Good morning.

4 POTENTIAL JUROR: Hi.

5 THE COURT: You're Ms. Charles?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Ms. Charles, what is your situation?

8 POTENTIAL JUROR: Just had a break-in years ago.

9 THE COURT: Based upon that experience, do you think you
10 can set that aside and listen to the testimony as presented
11 from the witness stand and be fair and impartial to both the
12 State and to the Defendant.

13 POTENTIAL JUROR: Yes, ma'am.

14 THE COURT: All right. Thank you ma'am.

15 COURT OFFICER: Juror 53.

16 THE COURT: Good morning. What is your situation, sir?

17 POTENTIAL JUROR: My house been robbed like four times,
18 I don't know, I guess.

19 THE COURT: Based upon having had that experience, do
20 you think you can be fair and impartial and listen to the
21 evidence in this case as it comes from the witness stand and
22 be fair and impartial to both the State and to the Defendant?

23 POTENTIAL JUROR: Yes.

24 THE COURT: All right. Thank you, sir.

25 COURT OFFICER: Juror 124.

1 POTENTIAL JUROR: Good morning.

2 THE COURT: Good morning. You're Mr. Mims?

3 POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: Sir, what was your experience?

5 POTENTIAL JUROR: You said a victim, right? Someone
6 broke in our home and stole things, items from our home.

7 THE COURT: Okay. And having had that experience, do
8 you think you can set that aside and listen to the evidence
9 as presented in this courtroom and render a fair and
10 impartial verdict for both the State and to the Defense?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: All right, sir, thank you.

13 CLERK OF COURT: Judge, his daddy used to be a bailiff
14 here a long time ago.

15 THE COURT: All right.

16 COURT OFFICER: Juror 56.

17 POTENTIAL JUROR: My brother was a house burglary
18 victim, brother-in-law.

19 THE COURT: Based on that experience do you think you
20 can set that aside and be fair and impartial?

21 POTENTIAL JUROR: I can.

22 THE COURT: Thank you.

23 COURT OFFICER: Juror 128.

24 POTENTIAL JUROR: My wife was robbed at gunpoint
25 approximately six years ago on Folly Road.

1 THE COURT: Do you think, having had that experience
2 happen to your wife, do you think you can set that aside and
3 be fair and impartial to both the State and to the Defense in
4 this trial and render a verdict that's fair and impartial?

5 POTENTIAL JUROR: Yes, ma'am.

6 THE COURT: Okay.

7 COURT OFFICER: Juror 142.

8 THE COURT: Mr. Rickett?

9 POTENTIAL JUROR: Yes.

10 THE COURT: What's your situation?

11 POTENTIAL JUROR: I've had a home break-in, and we had
12 two cars stolen out of the driveway.

13 THE COURT: Having had that experience, do you think you
14 can set that aside and listen to the evidence as presented in
15 this courtroom and render a fair verdict for both the State
16 and for the Defendant?

17 POTENTIAL JUROR: Yes.

18 THE COURT: All right, sir. Thank you.

19 COURT OFFICER: Juror 44.

20 THE COURT: Mr. Crocker, all right, sir, what was your
21 experience?

22 POTENTIAL JUROR: My brother had his trailer stolen out
23 of his yard, his car broken into, my ex-wife's car broken
24 into, stuff stolen out of that.

25 THE COURT: Okay. Based upon that experience with you

1 and your relatives, do you think you could set that aside and
2 listen to the evidence as presented in this courtroom and
3 render a fair and just verdict for both the State and for the
4 Defense?

5 POTENTIAL JUROR: Yes.

6 THE COURT: All right, sir. Thank you.

7 COURT OFFICER: Juror 101.

8 THE COURT: Ms. Johnson?

9 POTENTIAL JUROR: My husband -- we was burglarized
10 twice, on two different occasions. His property was stolen,
11 his truck, next thing was a motorcycle. We received the
12 truck back. We never got the motorcycle back.

13 THE COURT: Ms. Johnson, based upon that experience, do
14 you think you can set that aside and listen to the evidence
15 as presented in the courtroom and be fair and impartial to
16 both the State and to the Defense?

17 POTENTIAL JUROR: Absolutely.

18 THE COURT: Thank you.

19 COURT OFFICER: Juror 67.

20 THE COURT: Good morning, ma'am.

21 POTENTIAL JUROR: Good morning.

22 THE COURT: What was your situation?

23 POTENTIAL JUROR: When I came home one day my house was
24 burglarized. I don't know who did it.

25 THE COURT: Based on having been a victim of such a

1 crime, do you think you can set that aside and listen to the
2 evidence in this case and the laws given to you and render a
3 fair and just verdict for both the State and the Defense?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Thank you, ma'am.

6 COURT OFFICER: Juror 91.

7 THE COURT: Mr. Holmes?

8 POTENTIAL JUROR: Yes.

9 THE COURT: Yes, sir, what was your situation?

10 POTENTIAL JUROR: Well, somebody broke into my home, I
11 left my wife there, went to work. Somebody snuck in through
12 the window while she was still in there, stole some credit
13 cards, stuff like that, her pocketbook.

14 THE COURT: Having had that experience happen in your
15 home to your wife, do you think you can set that aside and
16 listen to the evidence --

17 POTENTIAL JUROR: I don't have any problem with it.

18 THE COURT: You can be fair to both the State and to the
19 Defense?

20 POTENTIAL JUROR: Yes, I can.

21 THE COURT: All right, sir. Thank you.

22 And Juror No. 8?

23 POTENTIAL JUROR: My dad's house was broken into one
24 time many years ago, something was stolen, that's all.

25 THE COURT: Do you think you can set that experience

1 aside and be fair and impartial to both the State and to the
2 Defense?

3 POTENTIAL JUROR: Yes.

4 THE COURT: All right. Thank you, ma'am.

5 Is any member of the jury panel, a member of your family
6 or a close personal friend a member of MADD, SADD, CAVE or
7 any other similar type of organizations which has a goal to
8 promote law enforcement, if so please stand.

9 I find that there is no one standing.

10 Is there anything in the nature of the allegations in
11 this case which would cause any member of the panel any
12 problem in sitting as an impartial juror, if so please stand.

13 I find that there is no one standing.

14 Is there any member of the jury panel related by blood
15 or marriage or a friend or acquaintance of Charles Rearick,
16 if so please stand.

17 I find that there is no one standing.

18 Has any member of the jury panel ever sat on a jury
19 before, and if so please stand and let us know what type of
20 case.

21 Yes, sir.

22 POTENTIAL JUROR: It was criminal case.

23 THE COURT: And your juror number, sir?

24 POTENTIAL JUROR: 124.

25 THE COURT: All right.

1 POTENTIAL JUROR: 43.

2 THE COURT: What type of case?

3 POTENTIAL JUROR: Civil case.

4 THE COURT: All right, sir. Thank you.

5 POTENTIAL JUROR: 114, I sat on two criminal cases and
6 one civil case.

7 THE COURT: All right, sir. Thank you.

8 POTENTIAL JUROR: 89, it was criminal.

9 THE COURT: Thank you, sir.

10 POTENTIAL JUROR: 142, criminal case.

11 THE COURT: All right. Ma'am?

12 POTENTIAL JUROR: 140, civil.

13 THE COURT: Thank you.

14 Has any member of the jury panel ever received
15 assistance from the victims advocacy program, if so please
16 stand.

17 I find that there is no one standing.

18 Has any member of your family ever been prosecuted here
19 or anywhere else, if so please stand.

20 Sir, would you like to approach?

21 COURT OFFICER: Juror 114.

22 POTENTIAL JUROR: I have a first cousin who was very
23 close to me. He was convicted of murder in Georgia.

24 THE COURT: In Georgia?

25 POTENTIAL JUROR: Yes.

1 THE COURT: Based upon that experience, do you think you
2 can set that aside and be fair and impartial to both the
3 State and to the Defendant in this case?

4 POTENTIAL JUROR: Yes.

5 THE COURT: All right, sir. Thank you.

6 COURT OFFICER: Juror 152.

7 POTENTIAL JUROR: My brother was in a DUI case.

8 THE COURT: And having had that experience with your
9 brother do you think you can set that aside and be fair and
10 impartial to both the State and to the Defense in this case?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: All right, sir, thank you.

13 COURT OFFICER: Juror 157.

14 POTENTIAL JUROR: My older brother, he went to jail for
15 drunk driving, and then they took him for not paying child
16 support.

17 THE COURT: Okay. And having that experience with your
18 brother, do you think you can set that aside --

19 POTENTIAL JUROR: Oh, yes, yes.

20 THE COURT: -- and be fair and impartial to both the
21 State and to the Defense?

22 POTENTIAL JUROR: Yes, ma'am.

23 THE COURT: All right, sir. Thank you.

24 Is any member of the jury panel aware of any bias or
25 prejudice toward either the State or the Defendant in this

1 case, if so please stand.

2 I find that there is no one standing.

3 Is there any member of the jury panel that was a member
4 of the grand jury which issued the indictment in this case,
5 if so please stand.

6 (No response.)

7 THE COURT: Does any member of the jury panel know of
8 any reason whatsoever why he or she should not serve as a
9 juror in this case with a particular emphasis being placed on
10 your ability to be fair and impartial to both the State and
11 to the Defendant, if so please stand.

12 I find that there is no one standing.

13 Does the State or the Defense have any additional voir
14 dire?

15 MR. JUSTIS: None from the State, Your Honor.

16 MS. LEMATTY: May we approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 (A bench conference was held off the record in the
19 presence of the jury but out of the hearing of the jury.)

20 THE COURT: Ladies and gentlemen, you will now be
21 introduced to the attorneys. Trying these cases for the
22 State is Mr. Glenn Justis and Ms. Mandy Kimmons for the
23 State. And, Mr. Justis, if you would please introduce
24 yourself and the members of your office.

25 MR. JUSTIS: Yes, Your Honor, also at the table with me

1 today is Rick Carson. He's a detective with the sheriff's
2 department. And also Kerri Huff is an administrative
3 assistant in our office. The other attorneys in our office,
4 in the Summerville office, we have Vergil Deas, he handles
5 juvenile prosecutions, Kyle Ward, Phil Giese, Don Sorenson,
6 and we all work for our elected solicitor, Mr. David Pascoe,
7 and Michael Murphy does Magistrate's Court prosecutions for
8 us.

9 THE COURT: Has anyone ever been related by blood or
10 marriage to or have you had a close personal or social
11 relationship with any of the attorneys from the solicitor's
12 office that have just been introduced, if so please stand.

13 COURT OFFICER: Juror 114.

14 POTENTIAL JUROR: I have had social relationship with
15 Vergil Deas.

16 THE COURT: Okay. And your relationship with Vergil, do
17 you think you can set that aside --

18 POTENTIAL JUROR: Yes.

19 THE COURT: -- and be fair and impartial to both the
20 State and to the Defendant?

21 POTENTIAL JUROR: Yes.

22 THE COURT: All right, sir. Thank you.

23 COURT OFFICER: Juror 78.

24 POTENTIAL JUROR: Did you call Vergil Deas?

25 THE COURT: Yes, ma'am.

1 POTENTIAL JUROR: Yes, I know him. He did some legal
2 work for my mother.

3 THE COURT: The fact that you know Mr. Deas, do you
4 think you can set that aside and be fair and impartial to
5 both the State and to the Defendant?

6 POTENTIAL JUROR: Yes. Another thing, while I'm here,
7 when you speak into the mic, sometime you go away and your
8 voice go down, I can't hardly hear.

9 THE COURT: Okay. Thank you.

10 COURT OFFICER: Juror 125.

11 POTENTIAL JUROR: Michael Murphy's son is on my
12 husband's baseball team, so we see him on a regular basis.

13 THE COURT: Having that relationship with Michael's son,
14 do you think you can set that aside and be fair and
15 impartial?

16 POTENTIAL JUROR: Yes.

17 THE COURT: Thank you.

18 COURT OFFICER: Juror No. 8.

19 POTENTIAL JUROR: My son goes to Cub Scouts where
20 Glenn's son used to go to Cub Scouts.

21 THE COURT: Having that relationship, do you think you
22 can set that aside and be fair and impartial to both the
23 State and to the Defense?

24 POTENTIAL JUROR: Yes.

25 THE COURT: Thank you.

1 MS. KIMMONS: Michelle wanted me to disclose that Juror
2 No. 170, I'm friends with him and his wife, we're friends
3 with him.

4 THE COURT: I'll call him up.

5 MS. KIMMONS: He already came up, but she wanted me to
6 disclose that. He already disclosed.

7 THE COURT: Did he disclose when he came up here?

8 MS. KIMMONS: Yes.

9 THE COURT: So everybody's on the same page.

10 Ms. Mary Lematty from the public defender's office is
11 going to be representing the defendant in this case. Ms.
12 Lematty, if you would please introduce yourself and the
13 members of your office.

14 MS. LEMATTY: Good morning. I'm Mary Lematty. I work
15 for our Circuit Public Defender, Mark Leiendecker. Our
16 circuit is the First Judicial Circuit which is Dorchester,
17 Orangeburg and Calhoun. In the Summerville, the Dorchester
18 County office we have Michelle Suggs, who is seated at the
19 table with me. Also we have our Deputy Public Defender, Mr.
20 John Loy, who is present in the courtroom, Mr. Ashley
21 Chisholm, Mr. Mitch Farley, Ms. Katherine Dahlheim, Gina
22 McAlhany and Al Biggs handle our juvenile cases, and we have
23 three attorneys on contract for when and if we need them.
24 They are Laree Hensley, Leslie Sarji and Guy Vitetta.

25 THE COURT: Is there any member of the jury panel who's

1 related by blood or marriage to or have you ever had any
2 close personal or social relationship with any of the
3 attorneys involved in the case for the defense, if so please
4 stand.

5 COURT OFFICER: Juror 72.

6 POTENTIAL JUROR: Good morning, Judge.

7 THE COURT: Good morning.

8 POTENTIAL JUROR: Ms. Lematty was my counsel for a
9 divorce.

10 THE COURT: Okay. And based upon that --

11 POTENTIAL JUROR: No problem.

12 THE COURT: -- you can be fair and impartial to both
13 sides?

14 POTENTIAL JUROR: Yes, ma'am.

15 THE COURT: All right. Thank you, sir.

16 COURT OFFICER: Juror 33.

17 POTENTIAL JUROR: Hi.

18 THE COURT: Good morning.

19 POTENTIAL JUROR: Good morning. I think I'm friends
20 with her, Ms. Lematty.

21 THE COURT: Having that relationship with her, do you
22 feel you could be fair and impartial to both the State and
23 the Defendant and set your relationship aside?

24 POTENTIAL JUROR: Yes.

25 THE COURT: Okay. Thank you.

1 Ladies and gentlemen, we'll actually now begin the
2 selection of our first trial in this case. Before we do that
3 we'll take a quick restroom break. 15 minutes suffice for
4 everybody?

5 MR. JUSTIS: Yes, Your Honor.

6 THE COURT: Report back here at 12:00. We'll begin the
7 selection of our first case.

8 (Brief recess.)

9 THE COURT: Ladies and gentlemen, we'll now begin the
10 selection of the trial of this case. If your name is called
11 as a potential juror, if you would please come forward and
12 turn around and face the back, that way the attorneys for the
13 State and for the Defense will have an opportunity to either
14 put you on the jury or excuse you from the jury, and please
15 take no ill will or anything if you're not selected for the
16 jury. There's so many reasons why that's done on both sides.
17 But, again, as you come up, please make sure that you bring
18 all of your personal belongings with you because if you are
19 selected for the jury, we'll go ahead and seat you in the
20 jury box.

21 Madam Clerk?

22 CLERK OF COURT: Thank you. As I call your name please
23 come forward and turn around and face the back of the
24 courtroom.

25 Juror No. 44, David Crocker.

1 (White male approaches the front of the courtroom.)

2 CLERK OF COURT: What saith the Defense -- the State,
3 I'm sorry.

4 MR. JUSTIS: Please present the juror.

5 CLERK OF COURT: The Defense?

6 MS. LEMATTY: Please seat the juror.

7 CLERK OF COURT: Have a seat in the jury box to your
8 left.

9 Juror No. 122, Curtis Meyn.

10 (White male approaches the front of the courtroom.)

11 CLERK OF COURT: What saith the State?

12 MR. JUSTIS: Please excuse the juror.

13 CLERK OF COURT: Have a seat back in the audience.

14 Juror No. 8, Mary Barkley.

15 (White female approaches the front of the courtroom.)

16 CLERK OF COURT: What saith the State?

17 MR. JUSTIS: Please present the juror.

18 THE COURT: The Defense?

19 MS. LEMATTY: Please excuse the juror.

20 CLERK OF COURT: Have a seat back in the audience.

21 Juror No. 77, Curtis Gutter.

22 (White male approaches the front of the courtroom.)

23 CLERK OF COURT: What saith the State?

24 MR. JUSTIS: Please present the juror.

25 CLERK OF COURT: The Defense?

1 MS. LEMATTY: Please seat the juror.

2 CLERK OF COURT: Have a seat in the jury box.

3 Juror No. 109, Jacob Lacroix.

4 (White male approaches the front of the courtroom.)

5 CLERK OF COURT: What saith the State?

6 MR. JUSTIS: Please present the juror.

7 CLERK OF COURT: The Defense?

8 MS. LEMATTY: Please seat the juror.

9 CLERK OF COURT: Have a seat in the jury box.

10 Juror No. 152, Thai Somsnith.

11 (Asian male approaches the front of the courtroom.)

12 CLERK OF COURT: What saith the State?

13 MR. JUSTIS: Please present the juror.

14 CLERK OF COURT: The Defense?

15 MS. LEMATTY: Please seat the juror.

16 CLERK OF COURT: Have a seat in the jury box.

17 Juror No. 1, Glenn Aban.

18 (Asian male approaches the front of the courtroom.)

19 CLERK OF COURT: What saith the State?

20 MR. JUSTIS: Please present the juror.

21 CLERK OF COURT: The Defense?

22 MS. LEMATTY: Please seat the juror.

23 CLERK OF COURT: Have a seat in the jury box.

24 Juror No. 43, Joseph Craft, Jr.

25 (White male approaches the front of the courtroom.)

1 CLERK OF COURT: What saith the State?

2 MR. JUSTIS: Please present the juror.

3 CLERK OF COURT: The Defense?

4 MS. LEMATTY: Please excuse the juror.

5 CLERK OF COURT: Have a seat back in the audience.

6 Juror No. 170, Gary Zanders.

7 (White male approaches the front of the courtroom.)

8 CLERK OF COURT: What saith the State?

9 MR. JUSTIS: Please present the juror.

10 CLERK OF COURT: The Defense?

11 MS. LEMATTY: Please excuse the juror.

12 CLERK OF COURT: Have a seat back in the audience.

13 Juror No. 125, Heather Mongillo.

14 (White female approaches the front of the courtroom.)

15 CLERK OF COURT: What saith the State?

16 MR. JUSTIS: Please present the juror.

17 CLERK OF COURT: The Defense?

18 MS. LEMATTY: Please seat the juror.

19 CLERK OF COURT: Have a seat in the jury box.

20 Juror No. 3, Leonard Anny.

21 (White male approaches the front of the courtroom.)

22 CLERK OF COURT: What saith the State?

23 MR. JUSTIS: Please excuse the juror.

24 CLERK OF COURT: Have a seat back in the audience.

25 Juror No. 99, Laura James.

1 (White female approaches the front of the courtroom.)

2 CLERK OF COURT: What saith the State?

3 MR. JUSTIS: Please present the juror.

4 CLERK OF COURT: The Defense?

5 MS. LEMATTY: Please excuse the juror.

6 CLERK OF COURT: Have a seat back in the audience.

7 Juror No. 157, Ronald Taylor.

8 (White male approaches the front of the courtroom.)

9 CLERK OF COURT: What saith the State?

10 MR. JUSTIS: Please present the juror.

11 CLERK OF COURT: The Defense?

12 MS. LEMATTY: Please excuse the juror.

13 Juror No. 67, Ethel Gelzer.

14 (Black female approaches the front of the courtroom.)

15 CLERK OF COURT: What saith the State?

16 MR. JUSTIS: Please present the juror.

17 CLERK OF COURT: The Defense?

18 MS. LEMATTY: Please excuse the juror.

19 CLERK OF COURT: Have a seat back in the audience.

20 Juror No. 72, Edward Glowacki.

21 (White male approaches the front of the courtroom.)

22 CLERK OF COURT: What saith the State?

23 MR. JUSTIS: Please present the juror.

24 CLERK OF COURT: The Defense?

25 MS. LEMATTY: Please excuse the juror.

1 CLERK OF COURT: Have a seat back in the audience.

2 Juror 140, Aletha Reddish.

3 (Black female approaches the front of the courtroom.)

4 CLERK OF COURT: What saith the State?

5 MR. JUSTIS: Please present the juror.

6 CLERK OF COURT: The Defense?

7 MS. LEMATTY: Please seat the juror.

8 CLERK OF COURT: Have a seat in the jury box.

9 Juror No. 33, Victoria Carr.

10 (White female approaches the front of the courtroom.)

11 CLERK OF COURT: What saith the State?

12 MR. JUSTIS: Please present the juror.

13 CLERK OF COURT: The Defense?

14 MS. LEMATTY: Please seat the juror.

15 CLERK OF COURT: Juror No. 114, Floyd Lemon.

16 (Black male approaches the front of the courtroom.)

17 CLERK OF COURT: What saith the State?

18 MR. JUSTIS: Please present the juror.

19 CLERK OF COURT: The Defense?

20 MS. LEMATTY: Please excuse the juror.

21 CLERK OF COURT: Juror No. 30, Geoffrey Call.

22 (White male approaches the front of the courtroom.)

23 CLERK OF COURT: What saith the State?

24 MR. JUSTIS: Please excuse the juror.

25 CLERK OF COURT: Have a seat back in the audience.

1 Juror No. 80, Sabrina Hansen.

2 (White female approaches the front of the courtroom.)

3 CLERK OF COURT: What saith the State?

4 MR. JUSTIS: Please present the juror.

5 CLERK OF COURT: The Defense?

6 MS. LEMATTY: Please seat the juror.

7 CLERK OF COURT: Juror No. 62, Rahean Footman.

8 (Black male approaches the front of the courtroom.)

9 CLERK OF COURT: What saith the State?

10 MR. JUSTIS: Please excuse the juror.

11 CLERK OF COURT: Have a seat back in the audience.

12 Juror No. 36, Kimberly Charles.

13 (White female approaches the front of the courtroom.)

14 CLERK OF COURT: What saith the State?

15 MR. JUSTIS: Please present the juror.

16 CLERK OF COURT: The Defense?

17 MS. LEMATTY: Please seat the juror.

18 CLERK OF COURT: Have a seat in the jury box.

19 Juror No. 19, Stephanie Bradley.

20 (White female approaches the front of the courtroom.)

21 CLERK OF COURT: What saith the State?

22 MR. JUSTIS: Please present the juror.

23 CLERK OF COURT: The Defense?

24 MS. LEMATTY: Please seat the juror.

25 CLERK OF COURT: Juror No. 53, Bradley Dudney.

1 (White male approaches the front of the courtroom.)

2 CLERK OF COURT: What saith the State?

3 MR. JUSTIS: Please excuse the juror.

4 CLERK OF COURT: Have a seat back in the audience.

5 Juror 102, Marion Kackley.

6 (White female approaches the front of the courtroom.)

7 CLERK OF COURT: What saith the State?

8 MR. JUSTIS: Please present the juror.

9 CLERK OF COURT: The Defense?

10 MS. LEMATTY: Please excuse the juror.

11 CLERK OF COURT: Have a seat back in the audience.

12 Juror No. 2, Terell Adams.

13 (Black male approaches the front of the courtroom.)

14 CLERK OF COURT: What saith the State?

15 MR. JUSTIS: Please present the juror.

16 CLERK OF COURT: The Defense?

17 MS. LEMATTY: Please seat the juror.

18 CLERK OF COURT: That's 12.

19 Juror No. 154, Ryan Stevens. Alternate.

20 (Black male approaches the front of the courtroom.)

21 MS. SUGGS: I'm sorry, the number again?

22 CLERK OF COURT: 154. What saith the State?

23 MR. JUSTIS: Please excuse the juror.

24 CLERK OF COURT: Have a seat back in the audience.

25 Juror No. 84, Alesia Harwood.

1 (White female approaches the front of the courtroom.)

2 CLERK OF COURT: What saith the State?

3 MR. JUSTIS: Please present the juror.

4 CLERK OF COURT: The Defense?

5 MS. LEMATTY: Please seat the juror.

6 CLERK OF COURT: Have a seat in the jury box.

7 THE COURT: Any exceptions or objections from the way of
8 the drawing of this jury from either the State or the
9 Defense?

10 MR. JUSTIS: None from the State, Your Honor.

11 MS. LEMATTY: None from the Defense, Your Honor.

12 THE COURT: All right. Thank you. Would you all please
13 approach for a second?

14 (A bench conference was held off the record in the
15 presence of the jury but out of the hearing of the jury.)

16 THE COURT: Members of the jury panel that were not
17 selected for jury service on this particular case, if you
18 would please call the number on your card after 6:00 to check
19 in with us to see if there's a chance that you may have to
20 come back for the selection of another jury, but at this
21 time, since you were not selected on this particular matter,
22 you are free to leave. And if you need any excuses for work
23 or anything from the Clerk's Office, please go downstairs and
24 get it from the Clerk of Court's Office. Thank you.

25 (Remaining potential jurors exit the courtroom.)

1 THE COURT: Ladies and gentlemen that have been selected
2 on this particular jury, we actually are taking some other
3 matters outside of your presence this afternoon, so what we
4 will do is we will let you go until the morning when we'll
5 actually start the testimony of the trial and the opening
6 statements, but I want to caution you not to do any
7 independent research about the case, don't look anything up
8 about the case, don't talk to anybody about the case and
9 don't allow anyone to talk to you about the case, and that's
10 solely because it's so important that you get the evidence
11 directly from the witness stand as to how you will be making
12 your verdict.

13 So these fine ladies, Ms. Irene and Ms. Dot, will escort
14 you to your jury room, and I must tell you, you're very
15 privileged this week because this is Ms. Dot's last week
16 here. She's retiring, and she's been taking care of our
17 jurors for 19 years, so you get to have her special treatment
18 for the last time, so we will certainly miss her, but she's a
19 wealth of information, as is Ms. Irene, where to go to lunch
20 and those types of things that you may need during the
21 service of your jury duty. But they will escort you to your
22 jury room and give you the information you need to come back
23 tomorrow.

24 We'll start the testimony of the case at 10:00, so if
25 you could actually be in your jury room at 9:45 or so, that

1 way we make sure we've got everyone present and we're ready
2 to start on time. You all have a good night.

3 (Jury retires to the jury room at 12:24 p.m.)

4 THE COURT: Anything further from the State or Defense
5 at this time?

6 MR. JUSTIS: No, Your Honor.

7 MS. LEMATTY: Your Honor, I'm not sure if I've noted
8 about the time here, but the other brief pretrial matters
9 that we were going to deal with we'd be happy to address now
10 if you'd like or --

11 THE COURT: I think I could hear your stomach growling
12 from here, so we'll take a quick lunch break, how about that?

13 MS. LEMATTY: Thank you, Your Honor.

14 THE COURT: We'll reconvene at 1:30, and we'll take care
15 of all the pretrial motions. Is that okay with everyone?

16 MR. JUSTIS: Yes, Your Honor.

17 MS. LEMATTY: Thank you very much, Your Honor.

18 (Lunch recess held.)

19 (State's Exhibits 1-7, 9-17 and 19-39 premarked for
20 identification.)

21 MS. KIMMONS: State calls Detective Carson to the stand.

22 THE COURT: Detective Carson, if you'll please come
23 around here to witness stand.

24 RICHARD CARSON,
25 being first duly sworn, testified in camera as follows:

1 THE COURT: Your witness.

2 IN CAMERA DIRECT EXAMINATION BY MS. KIMMONS:

3 Q. Detective Carson, where do you work?

4 A. Dorchester County Sheriff's Office.

5 Q. How long have you worked there?

6 A. I've been there full-time since January 2nd, 2007.

7 Q. What are your duties there at the sheriff's office?

8 A. Investigator, work in the criminal investigations
9 division, and on top of investigations, I'm also now one of
10 the unit supervisors.

11 Q. Where were you working back in January of this year?

12 A. I was working for the -- in the criminal investigation
13 division.

14 Q. And around that time did you participate in an
15 investigation that led to the arrest of Martin Floyd?

16 A. Yes, ma'am, I did.

17 Q. Okay. And what was the date on that?

18 A. It was January 18th, 2013.

19 Q. Okay. And as part of that investigation did you speak
20 with Mr. Floyd?

21 A. Yes, ma'am, I did.

22 Q. Did you Mirandize him prior to speaking with him?

23 A. Yes, ma'am, I did.

24 Q. Was that Miranda and the exchange between you and Mr.
25 Floyd captured on video?

1 A. Yes, ma'am, it was.

2 Q. Let me show you what's been previously marked as State's
3 Exhibit 23. I want you to tell me if this is an accurate
4 depiction of the exchange that occurred between you and Mr.
5 Floyd.

6 (Video played.)

7 Q. Is that an accurate representation of what happened, the
8 exchange between -- the conversation you had with Martin
9 Floyd that night?

10 A. Yes, ma'am.

11 Q. Okay. During that exchange between you and Martin Floyd
12 did you or prior to -- or prior to that statement did you
13 promise him anything to get him to say that?

14 A. No, ma'am.

15 Q. Did you beat him?

16 A. No, ma'am.

17 Q. Threaten him?

18 A. No, ma'am.

19 Q. Did you force, threaten or coerce him to make that
20 statement?

21 A. No, ma'am.

22 Q. During that statement did he -- was he in custody during
23 that statement?

24 A. Yes, ma'am, he was.

25 Q. You really couldn't see into the back of the car, but

1 was he handcuffed and things of that nature?

2 A. Yes. The patrol deputies had him handcuffed and placed
3 in the rear of that vehicle.

4 Q. Okay. Was there anything about that statement that was
5 not voluntary?

6 A. No, ma'am, absolutely not.

7 Q. Did you hold your gun to his head?

8 A. No, ma'am.

9 MS. KIMMONS: Your Honor, we would ask to have State's
10 Exhibit 23 entered for the purposes of this hearing, Your
11 Honor.

12 THE COURT: Any objections?

13 MS. LEMATTY: No, Your Honor.

14 THE COURT: Thank you.

15 (State's Exhibit 23 received into evidence.)

16 MS. KIMMONS: Please answer any questions Ms. Lematty or
17 Ms. Suggs might have.

18 IN CAMERA CROSS-EXAMINATION BY MS. LEMATTY:

19 Q. Good afternoon, Detective Carson.

20 A. Good afternoon.

21 Q. At the time that you started interviewing Mr. Floyd he'd
22 been in that car for a substantial period of time, correct?

23 A. I'm not exactly sure how long he'd been in the car. I
24 can tell you that I came on scene at 2:04.

25 Q. Okay. And do you know what -- you don't know what time

1 he was actually placed in the car?

2 A. No, ma'am, I do not. I was notified at 1:51.

3 Q. And when they're placed in the car, it's y'all's
4 standard operating practice to have their hands cuffed behind
5 their back?

6 A. Yes, ma'am.

7 Q. So they're sitting on the seat with their hands behind
8 their back for that period of time?

9 A. Yes, ma'am.

10 Q. When you spoke to Mr. Floyd, did you make any assessment
11 of his physical or mental condition?

12 A. As to --

13 Q. Ask him if he's been drinking, ask him if he has any
14 medical issues or problems?

15 A. No, ma'am, I did not.

16 Q. Ask him about his education, ask him about his ability
17 to understand questions or anything like that?

18 A. No, I did not.

19 Q. And isn't that something you all would normally do if
20 you were sitting down with somebody at the annex with the
21 form, you would ask those questions and make those notes on
22 the top as far as what they told you?

23 A. If we're sitting down, getting ready to do a full-blown
24 interview, yes, ma'am.

25 Q. And so for the purposes of your conversation with him

1 did you feel like he was in an appropriate state to talk to
2 you?

3 A. Yes, ma'am.

4 Q. And you said -- I know the Solicitor asked you if that
5 was an accurate representation of the conversation that you
6 had with him that night. That exchange was four, five
7 minutes long, correct?

8 A. That's correct.

9 Q. It appears that that tape cut off or something. When
10 the tape stopped, that wasn't the end of your conversation
11 with him, was it?

12 A. I believe that was right when we were ending. I do know
13 that recording came from Corporal Angelo's vehicle, and he
14 has indicated in the report that he -- his hard drive ran out
15 of memory right before we got done.

16 Q. So there's no other piece of video or audio recording
17 that relates to that conversation that you had --

18 A. No, ma'am.

19 Q. -- with Mr. Floyd.

20 MS. LEMATTY: Thank you. Nothing further.

21 THE COURT: Anything further?

22 MS. KIMMONS: Yes, Your Honor, briefly.

23 IN CAMERA REDIRECT EXAMINATION BY MS. KIMMONS:

24 Q. When you were interviewing Mr. Floyd, did he appear to
25 know what was going on?

1 A. Yes, ma'am, he did.

2 Q. And he could answer the questions?

3 A. Yes, he could.

4 Q. He knew why you were there?

5 A. Yes, he did.

6 Q. Did he appear to be intoxicated?

7 A. He did not appear intoxicated to me at the time.

8 MS. KIMMONS: Thank you. No further questions.

9 THE COURT: Anything further?

10 MS. LEMATTY: No, Your Honor.

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

12 (Witness excused.)

13 THE COURT: Anything further, Ms. Kimmons?

14 MS. KIMMONS: No, Your Honor.

15 THE COURT: Based upon the testimony of Detective Carson

16 I feel that the State has proven by a preponderance of the

17 evidence that the statement given is voluntary and was taken

18 in compliance with Miranda, and that is considering the

19 totality of the circumstances. The defendant's will was not

20 overborne, he was not mistreated in any way and actually

21 spoke freely and voluntarily.

22 MS. LEMATTY: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MS. KIMMONS: Thank you, Your Honor.

25 MS. LEMATTY: Should we address the other pretrial

1 issues we have at this point in time?

2 THE COURT: Sure.

3 MS. LEMATTY: Thank you, Your Honor. Your Honor, I know
4 that with regard to the witnesses in this case we would ask
5 that the witnesses be sequestered.

6 THE COURT: I think that's appropriate.

7 MR. JUSTIS: And the State would have no objection. The
8 only people we would ask to remain would be our lead
9 investigator, Rick Carson, and our victim, Jennifer Felkel.
10 She's the representative of the victim.

11 THE COURT: I think that's appropriate under the Victim
12 Rights Act. Other than that we'll exclude the rest of the
13 witnesses.

14 MS. LEMATTY: Thank you, Your Honor. Your Honor, also
15 we would respectfully request updated criminal histories on
16 the -- Ms. Fleeman and Mr. Norris. The ones we have are
17 about a year old. I don't know if there's anything else
18 there. We would also ask for criminal histories on any other
19 non-law enforcement, non-court employed personnel who are on
20 the State's witness list.

21 THE COURT: Yes, ma'am. Mr. Justis, can you get that to
22 Ms. Lematty before day's end?

23 MR. JUSTIS: I do -- I have them right here. We'll make
24 copies of them as soon as we finish here.

25 THE COURT: Thank you.

1 MS. LEMATTY: Your Honor, we would also ask that the
2 Court inquire as to any motions regarding any sort of
3 agreements, express or implied, made with the testifying
4 codefendants in this case. We haven't certainly seen any
5 sort of writings or anything addressed to that, but since we
6 have been informed that they are both testifying, they are
7 all equally charged, we would request an inquiry as to
8 anything, whether it's verbal, nonverbal, any sort of
9 concessions to be made to these witnesses in exchange for
10 their testimony in this case.

11 THE COURT: Mr. Justis?

12 MR. JUSTIS: And the only -- there's been no promises
13 made to either codefendant that would be testifying, Rusty
14 Norris or Angela Fleeman. We told both of them that we would
15 not resolve their case this month or probably next month,
16 I'll be in trial, but probably February, at that point would
17 be the earliest we would attempt to resolve their case.
18 They're both charged with burglary in the first degree, and
19 both of them have received no promise, no offer, no nothing.
20 They're still facing the same charge that Mr. Floyd's facing.

21 THE COURT: All right. Thank you, sir.

22 MS. LEMATTY: With regard to Mr. Floyd and his
23 decision-making processes as far as whether or not to
24 ultimately testify in this case, Your Honor, we would move
25 that the Court make a determination regarding his prior

1 convictions which would be admissible or not admissible
2 should he desire to take the stand and testify, and that
3 dovetails into some of the proof on this case, obviously, due
4 to the allegations in the indictment.

5 THE COURT: Sure. I think it falls under the elements
6 of the actual offense for which he's being tried. Does he
7 have any other convictions that you intend on using, Mr.
8 Justis?

9 MR. JUSTIS: I don't believe so, Your Honor. I'm
10 looking at his rap sheet right now. That would be it. It
11 would just be the -- he has four prior burglaries. The State
12 intended to just offer two prior burglaries rather than all
13 four to reduce the prejudicial effect against Mr. Floyd.

14 THE COURT: Okay. So certainly, Ms. Lematty, I think
15 obviously it's an element of the offense for which he's
16 charged. If they're just putting two, even if there's four,
17 I think that's certainly appropriate.

18 MS. LEMATTY: Yes, Your Honor, and we would also request
19 that the Court provide the appropriate limiting instruction
20 with regard to those convictions in consideration of them
21 being limited to the purposes of the proof put up by the
22 State.

23 THE COURT: And I have it printed out for you two both
24 to review to ensure that you don't have any objections to it,
25 but let me find it.

1 There's a limiting instruction that I propose to use,
2 and tell me if either party has any objections, but basically
3 it states that the defendant has a prior record of two
4 convictions for burglary and/or housebreaking. Evidence of
5 prior offenses committed by the defendant was not offered to
6 prove the defendant has a bad character or to prove the
7 defendant committed the burglary on this occasion. The prior
8 convictions may be considered by you only for the purpose of
9 determining whether or not it satisfies that element of the
10 offense that makes it first degree burglary if you enter a
11 dwelling without consent to commit a crime when you have two
12 prior convictions for burglary and/or housebreaking.

13 MR. JUSTIS: No objection by the State, Your Honor.

14 THE COURT: Any objection from the Defense? There's
15 another section I can read a little more too if that
16 satisfies what you're looking for.

17 MS. LEMATTY: What's the other section?

18 THE COURT: The other section basically states that
19 before you can even consider the evidence of the defendant's
20 prior burglary and/or housebreaking convictions, you must
21 first find that the State has proved beyond a reasonable
22 doubt that a burglary was committed by the defendant. If you
23 find beyond a reasonable doubt that the burglary was
24 committed, then you may consider the evidence of the prior
25 convictions as evidence of one of the circumstances which

1 would make the burglary a first degree burglary. If you do
2 not find beyond a reasonable doubt that the defendant
3 committed these alleged prior offenses, then you cannot
4 return a verdict of first degree burglary.

5 MS. LEMATTY: We would ask that that language be
6 included as well, Your Honor.

7 THE COURT: So you want the whole thing?

8 MR. JUSTIS: The State has no objection, Your Honor.

9 THE COURT: All right. So we'll do that whole thing.

10 MS. LEMATTY: Beg the Court's indulgence, Your Honor.

11 Your Honor, pursuant to State versus Lyle, and I don't
12 know that they intend to do so, but if they do intend to
13 introduce any alleged prior bad acts by the defendant, we
14 would ask that that inquiry be made at this time.

15 THE COURT: Solicitor?

16 MR. JUSTIS: I'm not aware of any other than his prior
17 convictions.

18 THE COURT: Okay. We'll just cross that bridge when we
19 get to it then.

20 MS. LEMATTY: Thank you very much, Your Honor. That
21 would be all we have at this time.

22 THE COURT: Anything further, Solicitor?

23 MR. JUSTIS: No, Your Honor.

24 (The trial in this case was recessed for the day.)

25 THE COURT: Good morning everyone. Before we bring the

1 jury in I did just want to put on the record, I know we did
2 the sequestration order of the witnesses, but obviously we
3 have the two clerks from the clerk's office here in the
4 courtroom, and I just want to make sure there is no objection
5 to them remaining in the courtroom.

6 MS. LEMATTY: No objection, Your Honor.

7 THE COURT: No objection from the State?

8 MR. JUSTIS: And, Your Honor, that would be our first
9 witness, so the only thing she'd really be in here for is the
10 opening prior to that.

11 THE COURT: All right. I just wanted to make sure that
12 there were no objections, and of course Ms. Becky Stevens is
13 in here as well, and she was on witness list, so that should
14 take care of it. Anything else before we bring our jury in?

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

16 MS. LEMATTY: Nothing from the defense, Your Honor.

17 THE COURT: All right. Can we have our jury?

18 (Jury enters the courtroom at 10:16 a.m.)

19 THE COURT: Good morning, ladies and gentlemen of the
20 jury. I hope that you had a nice evening last night. We're
21 about to begin the trial of this case, but before we do so
22 I'm going to have our clerk swear you in. Madam clerk.

23 (Jury sworn.)

24 CLERK OF COURT: Thank you.

25 THE COURT: Where is Mr. Crocker? Mr. Crocker, how

1 about if I appoint you to serve as our foreman. If you would
2 switch seats with the gentleman in front of you, and you will
3 maintain that seat throughout the trial. Basically, serving
4 as the foreman doesn't give you any greater of a voice, but
5 you're more a liaison with the Court, so if you ever need
6 anything or have any questions, you just let the bailiff
7 know, and of course at the end of the trial you'll be
8 assigned to sign the actual verdict form, all right, sir?

9 All right. Ladies and gentlemen, what I will now say to
10 you is intended to serve as an introduction to the trial of
11 this case. These remarks are not a charge on the law in this
12 case as I will instruct you on the law applicable to this
13 case at the end of the trial before you retire to consider
14 your verdict. This is merely an explanation of the procedure
15 that we will follow in the trial of the case so that you may
16 better understand what may be happening. The defendant is
17 charged by an indictment filed in this court with the crime
18 of burglary, the elements of which will be explained to you
19 later. The indictment is simply the charge by which the case
20 is brought into Court, and it is not in any sense evidence of
21 any of the allegations it contains. The defendant has pled
22 not guilty to this indictment. The State therefore has a
23 burden of proving each and every element of the offense
24 beyond a reasonable doubt. It will be your duty, ladies and
25 gentlemen, to decide whether the State has met that burden.

1 Your purpose as jurors is to find and determine the facts.
2 You are the sole judges of the facts. If at any time I make
3 any comment regarding the facts, you must disregard it. You
4 are to determine the facts from the testimony you hear and
5 the other evidence introduced in Court. It is up to you to
6 determine the inferences which you feel may be properly drawn
7 from the evidence. It is especially important that you
8 perform your duty of determining the facts diligently and
9 conscientiously because ordinarily there is no way to correct
10 an erroneous determination of the facts by a jury.

11 On the other hand, with equal emphasis, the same law
12 that makes you the judges of the facts makes me the judge of
13 the law. The law as given by the Court is the only law that
14 you may consider. You must accept and follow it even though
15 you may disagree with it. I cannot tell you what the facts
16 are, and you cannot disagree with me about what the law is or
17 should be. Your job is to take the law as I give it to you
18 and apply it to the facts as you find them from the testimony
19 of witnesses and any other evidence that is introduced.
20 After doing that, you will render your verdict, a verdict
21 under the solemn oath that you just took as jurors.

22 Until I tell you that you may begin to deliberate, you
23 must not discuss this case with anyone including your fellow
24 jurors, friends, family members and anyone involved in the
25 case. The attorneys and parties in this case have been

1 advised that they are not to talk to you at all, so if you
2 see anyone involved in the case and they don't even say
3 hello, they're not being unfriendly, they're just following
4 the Court's rules. During your deliberations you may only
5 discuss the case in the jury room with your fellow jurors
6 because they have seen and heard the same evidence you have.
7 However, you must not discuss this case with anyone else
8 until you have returned a verdict and the case is at the end.

9 I remind you that you must decide the case based solely
10 on the evidence presented here in the courtroom. This means
11 that during the trial you must not conduct any independent
12 research about the case, the facts of the case, the evidence
13 presented in the case or the people or the organizations
14 involved in any way in this case. Please do not try to find
15 out information from any source outside of the courtroom. In
16 other words, you must not look at dictionaries or other
17 reference materials, you cannot research the Internet or
18 websites or blogs or use any other electronic tools to get
19 information about this case to help you decide the case. You
20 may not use computers, cell phones, smart phones, tablets,
21 the Internet or other tools of technology with communication
22 capabilities at any time while you are in the courtroom or
23 during your deliberations. During your breaks or meals,
24 overnight if necessary, you may use these devices, however,
25 you must not use these devices to communicate with anyone

1 about the case until the case is over. This means you must
2 not use phone calls, e-mails, text messages, instant
3 messages, Twitter or any blog, chat room or website including
4 Facebook, Google Plus, Myspace, LinkedIn, YouTube or any
5 social media websites to send or receive information about
6 this case. This case includes any information about a party,
7 a witness, an attorney, a court officer, news accounts about
8 the case, research on any topics that are raised, any topics
9 you may think might be helpful in deciding the case or any
10 testimony presented by any witness.

11 During the trial do not listen to or watch any news
12 reports about the case. This includes anything that may be
13 in the newspapers or on the Internet, radio, television. You
14 must not consider anything that you may have read or heard
15 about the case outside of the courtroom, whether before or
16 during the trial. Information on television, radio, the
17 Internet or from other sources might be wrong or incomplete.
18 In our judicial system it is important that you are not
19 influenced by anything or anyone outside of the courtroom.
20 If you become aware of any other jurors' violation of these
21 instructions, please inform me immediately.

22 It is important that you keep an open mind and not
23 decide any issue in the case until all of the evidence has
24 been presented, the parties have made their closing arguments
25 and I have instructed you on the law in this case. It is

1 your solemn responsibility to determine the guilt or
2 innocence of the defendant, and your verdict must be based
3 solely on the evidence that is presented to you in this trial
4 and on the law as I instruct it to you at the close of the
5 trial. In just a moment the Solicitor will make what is
6 called an opening statement in which the Solicitor will
7 explain to you the issues in the case that he, the Solicitor,
8 thinks the issues are in this case. The attorney for the
9 Defendant may also make an opening statement, although she is
10 not required to do so. What the attorneys tell you during
11 their opening statements is not evidence in this case, it is
12 only their contention as to what the issues are. The
13 evidence in this case will be presented to you by the
14 testimony of sworn witnesses from the witness stand and/or by
15 exhibits that may be introduced into evidence.

16 From time to time during the trial you may hear one of
17 the lawyers say something like, Your Honor, I believe I have
18 a question of law or a matter of law to discuss with you, or
19 Your Honor, may we approach the bench, or sometimes I myself
20 might find it necessary to excuse you from the courtroom for
21 a short while so the attorneys and I can discuss a matter of
22 law. The reason for this is because you are the judges of
23 the facts in this case, and sometimes when I am discussing
24 matters of law with the attorneys, it may be necessary for me
25 to make some comment as to the facts in connection with the

1 ruling, whether or not a particular law applies. I am not
2 supposed to tell you what I think the facts are, so I will
3 excuse you from the courtroom while these discussions take
4 place so that in no way will you be influenced by anything I
5 might say or do in connection with the facts.

6 In determining what the true facts are in this case you
7 must decide whether or not the testimony of the witnesses is
8 believable. It will be my responsibility to rule as a matter
9 of law as to whether certain testimony is admissible at all
10 or not. Once the testimony is admitted, whether or not you
11 believe it's solely for you to determine. In deciding
12 whether to believe a witness you have the right to consider
13 the interest of any witness, the bias of any witness, the
14 prejudice of any witness, the opportunity for the witness to
15 have seen the matters and things about which the witness may
16 testify and the way the witness acts on the witness stand.
17 You have the right to consider anything that is in the record
18 that will help you evaluate the testimony of the witnesses.
19 That means it is your duty to pay close attention to these
20 witnesses, to observe the witnesses, to listen to the
21 witnesses and to pay close attention to the attorneys and the
22 Court. Don't let your thoughts wander, but give strict
23 attention to the testimony in this case so that at the end of
24 all the testimony after the arguments of counsel and the
25 charge on the law by the Court, you will then be in a

1 position to determine what the true facts are and apply the
2 law to those facts and thus render a verdict.

3 It is your added duty, Mr. Foreman, to preside in the
4 jury room and to be the jury spokesman here in the Court. It
5 will also be your duty to write the verdict, but I will give
6 you further instructions about that at the conclusion of the
7 case. In order to preserve everyone's rights, I'll give the
8 parties an opportunity to object to the opening charge of the
9 law.

10 Anything from the State, any objections?

11 MR. JUSTIS: No objections, Your Honor.

12 THE COURT: From the Defendant?

13 MS. LEMATTY: No objections, Your Honor.

14 THE COURT: We will now begin the trial of this case.
15 Solicitor?

16 MR. JUSTIS: Thank you, Your Honor, may it please the
17 Court.

18 THE COURT: Yes, sir.

19 MR. JUSTIS: January 17th, 2013, that is the day
20 Jennifer Felkel, seated in the front row, will never forget.
21 On that morning she received the news that her dad, Charles
22 Rearick, was driving on Highway 78 between Summerville and
23 St. George, had a heart attack at the wheel and collided with
24 a truck and passed away. Her and her husband came from the
25 Columbia area down to Summerville as soon as they found out.

1 Later on that day they went to her dad's home which is
2 located on 108 Louise Street in Summerville in Dorchester
3 County. While at the house they looked around. They thought
4 about all the memories of Charles, Mr. Charlie as he was
5 known. And Kevin Felkel collected some of his valuables,
6 took them with him, and approximately 9:00 that evening
7 locked up the house and went back to Columbia.

8 Martin Floyd knew Mr. Charlie, actually lived in that
9 house at some point in time the previous year. Upon hearing
10 the news that his good friend had passed away he didn't give
11 condolences to the family. He called up his friends, and at
12 approximately 11:00 that evening, the evening that Charles
13 Rearick died, went to his house and burglarized it.

14 Ladies and gentlemen, my name's Glenn Justis and, along
15 with Mandy Kimmons, we represent the State of South Carolina
16 in the case of the State of South Carolina versus Martin
17 Floyd. He's charged with one count of burglary in the first
18 degree. Real briefly, the Judge told you you'll be
19 instructed on the law, and she will do that later at the end
20 of the trial. But, briefly, burglary is defined as the
21 breaking and entering of a dwelling of another without
22 permission with the intent to commit a crime therein, and
23 burglary in the first degree requires at least one
24 circumstance of aggravation. In this case I allege there
25 will be the aggravating circumstance of entering under the

1 veil of darkness, during the nighttime, and also that the
2 defendant, Martin Floyd, was previously convicted of two or
3 more prior burglaries.

4 Now, it's the State's burden, a burden we gladly accept,
5 to prove that this burglary occurred beyond a reasonable
6 doubt. Now, when I say beyond a reasonable doubt, I do not
7 mean beyond any and all doubt. A reasonable doubt. If after
8 hearing all the testimony from that witness stand and
9 reviewing all the evidence that will be presented in the case
10 you are firmly convinced of the defendant's guilt, then you
11 must find him guilty.

12 Now, let's go back to January 17th of 2013. As I
13 mentioned to you, Ms. Felkel and her husband and some other
14 family members were at the house. They were at the house
15 until about 9:00 p.m. that evening. And you'll hear
16 testimony from two codefendants. One, Rusty Norris, friend
17 of Martin Floyd, that he received a phone call about 10:00
18 p.m. that evening from Martin asking him to take him to the
19 house to pick up some of his stuff. So Rusty, who doesn't
20 have a driver's license, gets his girlfriend Candace Mauldin
21 to drive him in her truck over to see Marty. And Marty's at
22 Angela Fleeman's house, his girlfriend's house, and together
23 all four of them go over to 108 Louise Street. It's
24 approximately 11:00 in the evening when they go. The door is
25 locked. He doesn't have a key, so they go to the back of the

1 property. Rusty lifts up a window, and they pass Candace
2 Mauldin in through the window. She goes to the front door,
3 unlocks it and let's the other three in. They go through the
4 house, searching. You'll hear testimony that Marty was
5 looking for Mr. Charlie's guns, and when he didn't find them,
6 he thought someone must have got there before them. They
7 start collecting some items and putting them in the truck
8 that they arrived in.

9 Eventually, Marty and Rusty go out to the back shed,
10 which is really more like a barn. It's a two-story
11 structure. It's locked up. There's a padlock on it. No
12 problem. They pull out the bolt cutters that they brought
13 with them, snap the lock, go in the shed, start looking
14 around. About that time Marty goes back to the front because
15 his girlfriend Angela Fleeman's in the truck. She wants to
16 leave, and so does Candace. So as he's convincing her not to
17 leave, the police roll up, to which Marty tells the others,
18 cops. Candace takes off running, never to be seen again that
19 night. Rusty runs too, but he stops in the woods behind the
20 house and crouches down behind a brush pile. Police
21 immediately take Martin Floyd and Angela Fleeman into
22 custody. They clear the house, clear the shed, start looking
23 through the woods, and it's in the woods they find Rusty
24 Norris crouched down. They take him into custody. In his
25 possession, screwdriver, the cut lock, pair of gloves, a

1 grinder, all in his jacket pocket.

2 That's just some of the evidence you're going to hear in
3 this trial, ladies and gentlemen. And the State submits to
4 you that after you've heard all this evidence, after you've
5 heard all this testimony, seen the evidence, that you'll be
6 firmly convinced that that man, Martin Floyd, is a burglar,
7 and on that night he burglarized Charles Rearick's house, a
8 man that had just died that morning, a man that he knew had
9 just died that morning, and the State's going to ask you to
10 return a verdict of guilty. Thank you.

11 THE COURT: Ms. Lematty?

12 MS. LEMATTY: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, ma'am.

15 MS. LEMATTY: Counsel.

16 Good morning, ladies and gentlemen. My name's Mary
17 Lematty, and Michelle Suggs and I represent Martin Floyd in
18 this case before you today. The Solicitor's just described
19 for you his perspective on the night of January 18th, 2013,
20 what he believes happened. He believes that Mr. Floyd simply
21 set out to take advantage of the death of his good friend.
22 That's simply not the case. We submit that the evidence will
23 show you that Mr. Floyd and Mr. Rearick, their families had
24 been friends for a long time. Mr. Floyd had done work for
25 Mr. Rearick. Mr. Floyd had lived with Mr. Rearick. Mr.

1 Floyd and his girlfriend and their child had lived with Mr.
2 Rearick for a period of time in this trailer that Mr. Charlie
3 was renovating. Mr. Floyd is a craftsman by trade, builds
4 cabinets, does things of that nature, and part of what he was
5 doing was helping with those renovations while he was there.
6 And after he didn't live there full-time anymore, he
7 continued to go there to help Mr. Charlie with these
8 renovations. He had clothing in this property. He had tools
9 that he worked with in this property. He had furniture
10 there. Mr. Rearick was somebody who meant a great deal to
11 him and to his family. Mr. Floyd learned that Mr. Rearick
12 had passed away that night, about 12 hours after it happened.

13 You're going to hear testimony that once he learned
14 about the car accident that took his friend's life, he called
15 his friend Rusty Norris who had access to a vehicle. They
16 took the small truck. He wanted to go over there, get some
17 things that were his and secure the property, make sure
18 everything was okay. Ms. Felkel resided in another part of
19 the state. He didn't know if she had been there or not or
20 would be there or not. He was simply concerned about his
21 friend, about his property, and wanted to look and make sure
22 that everything was okay. When he got there, he was
23 concerned that somebody had already been there. He was
24 worried that somebody had already taken some belongings out
25 of this gentleman's house, so he was going to stay, stay the

1 night, make sure everything was okay.

2 As the Solicitor told you and as the Judge will tell
3 you -- and obviously the Judge is the Judge of the law in
4 this case; if anything that he or I says is different than
5 what she says on the law, the Judge is the controlling
6 authority here -- burglary is entering a dwelling without
7 consent with the intent to commit a crime. Burglary first
8 degree, you have to have circumstances of aggravation, as the
9 Solicitor told you and as the Judge will tell you. The State
10 has to prove each and every one of these elements beyond a
11 reasonable doubt to each of you in order for you to find Mr.
12 Floyd guilty of this crime.

13 Mr. Floyd had historically been welcomed into this home
14 at any time while Mr. Rearick was there, while Mr. Rearick
15 was not there, doing work, building cabinets, doing trim,
16 doing all the things that one does when one is renovating
17 one's home. He had property there. He continued to have
18 property there even after he didn't live there on a full-time
19 basis anymore. And as the solicitor told you, they were
20 there for well over an hour before law enforcement rolls up.
21 The police come up with their cameras rolling. They come up
22 with the cameras rolling, Mr. Floyd doesn't run, Ms. Fleeman
23 doesn't run. They don't have items in their hands. They're
24 not putting them in the back of the truck. If somebody's
25 there to rob and steal, aren't they going to do it a little

1 bit more quickly than in an hour and a half? Aren't they
2 going to have items to be stolen in their vehicle in their
3 manner of leaving the premises? He didn't run. He spoke to
4 the officers. He tried to explain what was going on, why he
5 was there.

6 He was arrested that night. He was charged with
7 burglary, first degree. He's been in the county detention
8 center every day since waiting for his moment, for the 12 of
9 you who have been selected because the State and the Defense
10 agree that you're reasonable people. You're going to listen
11 to everything, you're going to pay attention to all of the
12 testimony from the witness stand, all of the evidence that's
13 introduced, evaluate that within the burden of the State.
14 The State has the burden of proof in this case, not the
15 Defendant.

16 We submit to you that if there's a question in your mind
17 at the end of the State's proof as to what was going on that
18 night, why Mr. Floyd was there, that's a doubt. If there's
19 any reasonable doubt, the Judge will tell you you've got to
20 resolve that in favor of the defendant. Mr. Floyd wasn't out
21 to harm his friend or anybody else that night. He wasn't
22 there to commit any sort of crime. Mr. Floyd is not guilty.
23 Thank you.

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

25 MS. KIMMONS: State calls Tonda Westbury to the stand.

1 TONDA WESTBURY,
2 being first duly sworn, testified as follows:

3 THE COURT: Your witness.

4 DIRECT EXAMINATION BY MS. KIMMONS:

5 Q. Good morning. Could you state your name again for the
6 record?

7 A. Tonda Westbury.

8 Q. Where do you work, Ms. Westbury?

9 A. I work for the Clerk's Office for Dorchester County.

10 Q. How long have you worked there?

11 A. January will be three years.

12 Q. Three years. Okay. Can you describe for the jury what
13 the Clerk of Court's Office does?

14 A. The main purpose of the Clerk's Office, we receive all
15 original filings in a case for civil or criminal matters, so
16 we would receive the original paperwork and keep those within
17 our file.

18 Q. Does your job include record-keeping responsibilities?

19 A. It does. The entire office is responsible for that.

20 Q. Okay. And, specifically, when a person is convicted of
21 a crime, how is that conviction recorded? Is that recorded
22 with your office?

23 A. It is. We would keep the original sentencing sheet. If
24 it were after a guilty plea or if it was a trial where
25 someone was found guilty, we would be given that sentencing

1 sheet from the Judge, and we maintain that record.

2 Q. Where is the sentencing sheet kept after you get it?

3 A. After the case is disposed on our computer system, it is
4 scanned to the case on our computer system as well, and then
5 it is kept in that file. It is filed by the indictment
6 number in a criminal case. In civil cases it's assigned a
7 civil case number, but in General Sessions files it is the
8 indictment number, that is how they are kept and filed, by
9 the indictment number.

10 Q. And General Sessions would be criminal court?

11 A. Criminal, yes.

12 Q. And how long do you keep that?

13 A. They're kept forever unless we receive an expungement
14 order which instructs us to destroy the records.

15 Q. Okay. Are these records kept in the ordinary course of
16 your business?

17 A. Yes.

18 Q. Okay. And were you recently served with a subpoena
19 requiring the production in Court today of specific
20 convictions relating to Martin Floyd?

21 A. Yes.

22 Q. Let me show you what has been previously marked as
23 State's Exhibit 21 and 22, and tell me if you can identify
24 those.

25 A. I have my original file to compare the original

1 sentencing sheet to. These would be certified copies of
2 those original sentencing sheets.

3 Q. Okay. How can you tell that the exhibits that I just
4 handed you, State's Exhibits 21 and 22, how can you tell that
5 those are fair and accurate copies?

6 A. When we -- we keep the original, but when a copy is
7 requested, we make the copy, and then we clock it in or hand
8 stamp it that says certified copy, which has the clerk of
9 Court's signature on it, and then we also seal that certified
10 copy.

11 Q. And does State's Exhibits 21 and 22 have those stamps
12 and seals that you just described for the jury?

13 A. They do.

14 MS. KIMMONS: At this time, Your Honor, the State would
15 move State's Exhibit 21 and 22 into evidence.

16 THE COURT: Any objection?

17 MS. LEMATTY: Just like to see them real quick first.

18 THE COURT: Yes, ma'am.

19 MS. LEMATTY: No objection, Your Honor.

20 THE COURT: Thank you.

21 (State's Exhibits 21-22 received into evidence.)

22 Q. I'm going to hand these back to you for just a second,
23 Ms. Westbury. Can you tell me on indictment 2018GS18-509,
24 what does that sentencing sheet reflect?

25 A. This sentencing sheet would reflect a guilty plea on

1 Martin Floyd. The offense was burglary first degree, it's a
2 guilty plea, and it is dated January the 22nd, 2003.

3 Q. Okay. And what was the date of the offense?

4 A. The date of the offense was October the 5th, 2001.

5 Q. Okay. On indictment -- the one 5/10, what does that
6 reflect?

7 A. That's State's Exhibit No. 22. This is also a
8 sentencing sheet for Martin Floyd for a guilty plea pleading
9 to burglary first on January the 22nd, 2003 and the offense
10 date was October 4th, 2001.

11 MS. KIMMONS: Okay. Let me take those back from you.
12 Please answer any questions Ms. Lematty or Ms. Suggs might
13 have for you. Thank you.

14 THE COURT: Counsel, your witness.

15 MS. LEMATTY: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MS. LEMATTY:

17 Q. Both of these sheets reflected guilty pleas rather than
18 trials, correct?

19 A. Yes, ma'am, they were both guilty pleas.

20 Q. A sentencing sheet has actually a place where you check
21 a box to show that a case is a plea as opposed to a trial?

22 A. It does. It has a box for plea or a box for a trial.

23 Q. And that box is checked and filled out for pleas?

24 A. It is, for both of the indictment numbers ending in 509
25 and 510, they're both checked for a plea.

1 Q. And that would mean that Mr. Floyd went through the
2 guilty plea process and took responsibility for his actions
3 on those days?

4 A. Yes, ma'am.

5 MS. LEMATTY: Thank you very much.

6 THE COURT: Ladies and gentlemen of the jury, the
7 defendant has a prior record of two convictions for burglary
8 and/or housebreaking. Evidence of prior offenses committed
9 by the defendant was not offered to prove the defendant has a
10 bad character or to prove that the defendant committed the
11 burglary on this occasion. The prior convictions may be
12 considered by you only for the purpose of determining whether
13 or not it satisfies that element of the offense that makes it
14 first degree burglary if you enter a dwelling without consent
15 to commit a crime and you have two prior burglary convictions
16 for burglary and/or housebreaking. Before you can even
17 consider the evidence of the defendant's prior burglary
18 and/or housebreaking convictions you must first find that the
19 State has proved beyond a reasonable doubt that a burglary
20 was committed by the defendant. If you find beyond a
21 reasonable doubt that the burglary was committed, then you
22 may consider the evidence of the prior convictions as
23 evidence of one of the circumstances which make burglary in
24 the first degree. If you do not find beyond a reasonable
25 doubt that the defendant committed these alleged prior

1 offenses, then you cannot return a verdict of burglary in the
2 first degree.

3 Solicitor, you may proceed. Call your next witness.

4 MR. JUSTIS: Thank you, Your Honor.

5 MS. LEMATTY: May I approach, Your Honor?

6 THE COURT: Yes.

7 (A bench conference was held off the record in the
8 presence of the jury but out of the hearing of the jury.)

9 MR. JUSTIS: At this time, Your Honor, the State calls
10 Angela Fleeman.

11 ANGELA FLEEMAN,
12 being first duly sworn, testified as follows:

13 THE COURT: Your witness, Solicitor.

14 MR. JUSTIS: Thank you, Your Honor. May it please the
15 Court.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION BY MR. JUSTIS:

18 Q. Ms. Fleeman, could you tell us where you live?

19 A. Where I live?

20 Q. Yes, ma'am.

21 A. I live in Santee.

22 Q. Okay. And do you have any children?

23 A. Three.

24 Q. And what are their ages?

25 A. My oldest is eight, my three-year-old will be four in

1 January and a two-year-old.

2 Q. And do you currently work?

3 A. I don't. I've got multiple sclerosis. I'm disabled.

4 Q. How do you know Martin Floyd?

5 A. I met him through a mutual friend of ours.

6 Q. And let me take you back to January of this past -- of
7 this year, January 2013. What kind of relationship did you
8 have with Martin at that time?

9 A. We dated.

10 Q. And let me turn your attention specifically to January
11 17th, I believe it was a Thursday, of 2013. Do you remember
12 that day?

13 A. I do.

14 Q. Do you remember what you were doing that evening?

15 A. I do.

16 Q. And what were you doing that evening?

17 A. At my house with my kids and Marty and my mom, just
18 normal, just nothing.

19 Q. Okay. And did you know Mr. Charlie Rearick?

20 A. I met him through Marty.

21 Q. Okay. And how many times had you met him?

22 A. Twice, maybe three times.

23 Q. Had you ever been over to his house?

24 A. Once.

25 Q. And what can you tell us about that evening as far as

1 Mr. Charlie goes and maybe a phone call that Mr. Floyd
2 received?

3 MS. LEMATTY: Objection, leading.

4 THE COURT: Sustained.

5 Q. What do you remember about that night, anything special?

6 A. That Marty's mom called my phone to talk to Marty and
7 let him know that --

8 MS. LEMATTY: Objection, hearsay.

9 Q. Okay. And as a result of that phone call did Marty say
10 anything to you?

11 A. Yes, he was very upset.

12 Q. Okay.

13 A. Crying.

14 Q. Okay. And why was he upset or crying, did he tell you?

15 A. Mr. Charlie had passed away.

16 Q. What else did Marty tell you that evening?

17 A. Didn't really tell me anything. He was very sad, and I
18 left out of my room, and I heard him go out the back door --
19 he stayed in my room for a period of time, and then I heard
20 him go out the back door. And when I seen him again, he told
21 me how he had called our friend Rusty, and Rusty and Candace
22 ended up coming over to my house, and the four of us were
23 talking in the living room.

24 Q. And when you were talking in the living room with Rusty
25 and Candace and Marty, what was Martin saying?

1 A. He was just sad. I mean, didn't say a whole lot of
2 anything until -- I mean, Rusty and Candace ate, and like I
3 said, the four of us just sat there talking, and he ended up
4 saying he needed probably to go get some of his stuff from
5 over at Mr. Charlie's because he had been helping him remodel
6 his trailer. And prior to that him and his ex-girlfriend and
7 their daughter lived there for a period of time, and he said
8 he needed to probably go get some of his stuff over there
9 before, you know, it ended up in probate and he couldn't get
10 over there for a year and all his stuff would be missing, and
11 Rusty said that --

12 MS. LEMATTY: Objection, hearsay.

13 Q. You can't tell us anything Rusty said. You can only
14 tell us what Marty said. So you stated that -- so he wanted
15 to go over and get some of his stuff. Did he specify what
16 stuff he was looking to get?

17 A. No, sir.

18 Q. And approximately what time was it when this
19 conversation was taking place?

20 A. Maybe 9:30, 10:00.

21 Q. And what happened after this conversation?

22 A. We all four rode over there. I mean, time lapsed. I
23 don't know how much time, you know, went on before we rode
24 over there, the four of us rode over there.

25 Q. When you say rode over there, where was there?

1 A. Mr. Charlie's.

2 Q. Okay. And how did you get over there?

3 A. Candace drove.

4 Q. What did she drive?

5 A. Her truck.

6 Q. And when you arrived at Mr. Charlie's, do you know
7 approximately what time it was?

8 A. Not sure.

9 Q. Okay. And when you arrived, what happened when you
10 pulled up to the property?

11 A. The four of us got out. Marty went to the front door,
12 and it was locked. We walked around the trailer, and I don't
13 remember who or which one, I knew it was either Candace or
14 Rusty had touched the window, because a chair was up against
15 the trailer, and had pushed up on the window, and Candace
16 jumped in the chair and went through the window.

17 Q. Okay. And then after she went through the window, what
18 happened at that point?

19 A. We went through the front door. Marty turned on all the
20 lights, and he asked me to go look at the back at the master
21 bathroom, what he had finished before Mr. Charlie passed
22 away, and we walked back there and looked back there and then
23 went and looked in the room that he had stayed in when he
24 lived there, and there was some of his clothes on the foot of
25 the bed and his daughter's bottle, and then all four of us

1 went back in the living room, sitting down and talking, and
2 then we just got ready to go.

3 Q. Okay. So you went back to, to the bathroom, whose
4 bathroom was that?

5 A. Mr. Charlie's, it was the master bathroom.

6 Q. Okay. And what was he trying to show you back there in
7 the bathroom?

8 A. He had been working in the bathroom, remodeling the
9 bathroom.

10 Q. Did you go in any other rooms?

11 A. Then we went to the opposite end of the trailer where
12 the room was that he had stayed in.

13 Q. Where Marty had stayed in?

14 A. Mm-hmm.

15 Q. What was in that room, what do you remember from that
16 room?

17 A. A bed, and then at one end of the room was like an
18 office and then at the other end the bed was there and then I
19 think that's it.

20 MR. JUSTIS: May I approach the witness, Your Honor?

21 THE COURT: Yes, sir.

22 Q. At this time I'm showing you what's been marked for
23 identification as State's 29 and 30. Please take a look at
24 these. Tell me if you recognize those pictures and what they
25 depict.

1 A. Yes, that's the room where Marty had stayed, and there
2 was a bed on this wall over here. It doesn't show the bed
3 though.

4 Q. But that would be the room that the bed was in?

5 A. Right, where Marty had stayed, not Mr. Charlie's bed.

6 Q. Okay. I'm also showing you what's been marked as
7 State's 31. Do you recognize this?

8 A. That's the bathroom.

9 Q. Okay. Would that be the master bath --

10 A. Yes, sir.

11 Q. -- the one you referred to as the master bathroom?

12 And, finally, I'm showing you State's 24 and 25. Do you
13 recognize those pictures and what they depict?

14 A. I do.

15 Q. And what do they depict?

16 A. Mr. Charlie's trailer and Candace's truck.

17 Q. And do these pictures fairly and accurately represent
18 the trailer and the truck and the location of the truck on
19 that particular night when you were there?

20 A. Yes, sir.

21 Q. And what about the pictures of the bathroom and the
22 computer/bedroom, are they fair and accurate representations
23 of what they looked like that evening? And if you need to
24 I'll show you those pictures again.

25 A. The bathroom was. The other room, that appears a lot

1 more messier. I don't remember all that clutter and all that
2 stuff on the floor.

3 Q. Okay. But you would say State's 31, the bathroom
4 picture, does that appear --

5 A. Yes, sir.

6 MR. JUSTIS: At this time the State would offer State's
7 24, 25 and 31 into evidence.

8 THE COURT: Any objection? Is that 24, 25 or 35?

9 MR. JUSTIS: 25, Your Honor.

10 MS. LEMATTY: No objection.

11 THE COURT: Thank you. They're admitted.

12 (State's Exhibits 24, 25 and 31 received into evidence.)

13 MR. JUSTIS: May I publish to the jury, Your Honor?

14 THE COURT: Yes, sir.

15 Q. Ms. Fleeman, I'm showing you what's been marked as
16 State's 25. You should be able to see on your screen there,
17 Ms. Fleeman, and you can actually draw on that screen. Could
18 you circle the vehicle that you arrived in?

19 A. (Witness complies.)

20 Q. Okay. And is that Mr. Charlie's house right next to the
21 vehicle?

22 A. Yes, sir.

23 Q. I'm showing you now State's 24. Could you tell us what
24 that picture depicts, minus the circle? There you go.

25 A. Mr. Charlie's house.

1 Q. Is that the front of the house?

2 A. The front.

3 Q. And, finally, that is State's 31. What does that
4 depict?

5 A. The master bathroom.

6 Q. Did you have an opportunity to go in the master bedroom?

7 A. We walked through it to get to the bathroom.

8 Q. Okay. So the bathroom's actually kind of -- you have to
9 go through the bedroom?

10 A. Yes, sir.

11 Q. I'm showing you two more pictures, 27, State's 27,
12 State's 28. Can you recognize these pictures?

13 A. Yes, sir.

14 Q. Okay. And what do they appear to be -- and just kind of
15 tell us -- look on the back, there's a number on the back,
16 and just say number whatever is a picture of --

17 A. No. 28 is a picture of entering Mr. Charlie's bedroom,
18 and No. 27 is Mr. Charlie's bed.

19 Q. Okay. Are those fair and accurate representations of
20 what they looked like that evening?

21 A. I really don't remember the bed being made or messed up
22 but, I mean, yes, it's his bedroom.

23 Q. At this point you can't say whether that's a fair and
24 accurate representation of what they looked like?

25 A. I have no idea.

1 Q. That's fine. Now, when you're in the house, did Marty
2 mention anything to you, did he look for anything specific in
3 the house?

4 A. I don't know that he was looking for anything in
5 particular other than his things is all he said he wanted to
6 get.

7 Q. Okay. Did he notice -- did he tell you he noticed
8 anything missing from the house?

9 A. Mr. Charlie's guns.

10 Q. Okay. And how did he tell you that, where was he when
11 he told you that?

12 A. We walked through the bedroom to get to the bathroom and
13 he looked under the mattress, said Mr. Charlie always kept
14 his gun under there. His gun wasn't there. And then in the
15 master bathroom there's like a closet to the left, and when
16 he turned on the light in there and he just like was looking
17 around, and he said those guns are gone.

18 Q. Okay. And did he seem upset when he said that?

19 A. He didn't like it. I mean, that's the first thing that
20 he looked at when we went to the bathroom.

21 Q. Did he have any theory as to what might have happened to
22 those guns?

23 MS. LEMATTY: Objection, calls for speculation.

24 THE COURT: Solicitor --

25 Q. Did he vocalize any opinion or any words?

1 A. Yes, someone probably came in there before him and stole
2 them.

3 Q. What was his demeanor when he realized those guns
4 weren't there?

5 A. I don't really think it changed a whole lot. He was
6 still upset and disgusted. I mean, I really don't know. He
7 wasn't happy at all.

8 Q. Now, you mentioned that when you went in the room where
9 he used to stay where the computer, the bed was, that there
10 were some clothes folded up on the bed --

11 A. Right, at the foot of the bed.

12 Q. -- that were Marty's clothes.

13 A. Right.

14 Q. Did he take those clothes?

15 A. I can't remember, I don't --

16 Q. Okay.

17 A. I have no idea.

18 Q. Do you remember if he took his daughter's baby bottle?

19 A. I don't believe he did, but then again, I'm not real
20 sure after -- we all went outside, and the cops got there. I
21 really don't have a clue.

22 Q. I understand. Now, at one point you said then you were
23 in the living room?

24 A. After we walked to the bedroom where he stayed, the four
25 of us sat in the living room -- I know I sat, I don't know if

1 they stood or sat -- and just were talking just about --
2 really about Mr. Charlie.

3 Q. Reminiscing about Mr. Charlie?

4 A. Yes, and about all the things that, you know, he was
5 wanting to do to the trailer because it was old and all --
6 you know, he had all brand new appliances and everything in
7 there and what Marty was going to do and what the plans were
8 for the place, and I guess just reminiscing and talking about
9 him. And then we left -- well, as we were getting ready to
10 leave, Marty walked around one more time, made sure all the
11 windows and stuff were locked, and we went out the front
12 door.

13 Q. Okay. And when you went out the front door, where did
14 you go?

15 A. To the truck.

16 Q. Okay. And what about Marty and Rusty, where did they
17 go?

18 A. They didn't -- I don't know where they went. I don't
19 know if they stayed in the front of the trailer or the back.
20 I know Candace ended up coming to the truck, and her and I
21 were sitting in the truck just talking and stuff. We were
22 just ready to go, and she said she was going to tell Rusty --

23 MS. LEMATTY: Objection, hearsay.

24 THE COURT: Sustained.

25 THE WITNESS: Sorry.

1 Q. That's all right.

2 A. So she got out of the truck, and then Marty come to the
3 truck, and I still sat in the truck, and Marty stood at the
4 truck talking to me, and Candace and Rusty went behind the
5 trailer because she had to pee.

6 Q. Okay. And what were you and Marty talking about at that
7 time when he was at the truck and you're sitting in the
8 truck?

9 A. Mainly just making sure I was okay, I was making sure he
10 was okay, and he didn't know if he wanted to stay there and
11 make sure no one came there to try to rob Mr. Charlie or if
12 he just wanted to go home with me. I told him I was going
13 home. And he said are you sure you don't want to stay. I
14 said, I'm positive. I'm not staying. I'm going home. He
15 debated, you know, what should I do, what should I do, and I
16 said, it's up to you but I'm going home.

17 Q. Okay. And then what happened?

18 A. I seen bright lights.

19 Q. And when you say bright lights, describe that a little
20 bit.

21 A. The cops. And I looked at Marty, and I said, who is
22 that, Marty? He said, Angela, don't freak out. He said,
23 it's the law. We're not doing anything wrong. We're fine.
24 I said, okay.

25 Q. And where did the police -- where did they pull their

1 vehicle?

2 A. Right behind the truck.

3 Q. And when the police got out, what happened next?

4 A. Marty backed up from the truck a little bit, and they
5 came over, and I don't know if they said anything to him
6 first or not, but I just know he ended up in the back of the
7 police car, and then they came to the truck for me and called
8 another police officer, another car to get me because they
9 wouldn't let me and Marty sit together. And then they
10 handcuffed me, and I waited for the other officer to get
11 there, and they put me in the back of the car, and then they
12 were looking for Rusty and Candace behind the trailer.

13 Q. And why were they looking for Rusty and Candace? How
14 did they know that they were there?

15 A. I don't really know what Marty told them. I have no
16 idea. I just know they came to me and asked me who all was
17 there, and I said the four of us. They said, well, where are
18 they? I said, I have no idea.

19 Q. And were you arrested that night?

20 A. Yes, sir.

21 Q. And what were you charged with?

22 A. First degree burglary.

23 Q. Are those charges still pending on you?

24 A. Yes, sir.

25 Q. And you're here testifying today. Has myself or anyone

1 else representing the State of South Carolina made any
2 promises to you in exchange for your testimony today?

3 A. No, sir.

4 Q. Now, after police arrested you that evening, did you
5 ever give a written statement to police?

6 A. I did.

7 Q. And when was the first time you gave a written statement
8 to police, do you remember?

9 A. The night I got arrested, the first place I went was to
10 the detective's office, a trailer outside of the annex or of
11 the jail. I gave a statement that night, but it wasn't a
12 very accurate statement. And I don't know how much time
13 lapsed, maybe a week, maybe up to two weeks went by before I
14 wrote to Detective Carson and told him I probably needed to
15 write an accurate statement.

16 Q. Okay. And why did you do that?

17 A. Why did I do what?

18 Q. Why did you write him the second time and say, I need to
19 give an accurate statement?

20 A. Candace ended up running that night, and she didn't turn
21 herself in.

22 MS. LEMATTY: Objection -- I'm sorry.

23 THE COURT: You may proceed.

24 THE WITNESS: She didn't turn herself in for a couple of
25 days, and when she turned herself in, she came to the jail,

1 same jail I was at, and she just told me --

2 MS. LEMATTY: Objection, Your Honor.

3 Q. Yes, don't tell us what she told you.

4 A. Okay.

5 Q. Would it be fair to say that at some point you decided
6 you needed to set the record straight?

7 A. Yes.

8 Q. I'm showing you what's been marked as State's 26. Could
9 you kind of identify this if possible, what that looks like
10 it's a photograph of?

11 A. I think the back of Mr. Charlie's trailer.

12 Q. Is that a fair and accurate representation of what it
13 looked like that night?

14 A. It was dark. I don't remember all that junk but --

15 Q. Okay. That's fine.

16 A. I mean, yes.

17 MR. JUSTIS: That's fine. Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (Brief pause.)

20 Q. Ms. Fleeman, I know you have crutches. What happened to
21 your foot?

22 A. I broke my foot.

23 Q. How did you break it?

24 A. I was at the computer --

25 MS. LEMATTY: Objection, relevance.

1 THE COURT: Sustained.

2 MR. JUSTIS: Withdrawn. No further questions. Please
3 answer any questions Ms. Lematty might have.

4 THE COURT: Your witness, Ms. Lematty.

5 MS. LEMATTY: Thank you, Your Honor, may it please the
6 Court.

7 THE COURT: Yes, ma'am.

8 MS. LEMATTY: Counsel.

9 CROSS-EXAMINATION BY MS. LEMATTY:

10 Q. Good morning, Ms. Fleeman. How are you?

11 A. Good. How are you?

12 Q. Fine, thank you.

13 Where were you living in January 2013 when this
14 happened? You weren't in Santee then, right?

15 A. No, ma'am, Knightsville.

16 Q. Knightsville? Do you remember the address?

17 A. It was [REDACTED] Lane. I don't remember the number. I
18 think it was [REDACTED] Lane, but I'm not sure.

19 Q. And at that point in time you and Mr. Floyd were in a
20 relationship?

21 A. Yes, ma'am.

22 Q. And you had children; he had children.

23 A. He had a child and I had children.

24 Q. And you testified that you knew Mr. Charlie.

25 A. I had met him through Marty.

1 Q. And you'd been to his house.

2 A. Once.

3 Q. And talked with him then, just met him in sort of a meet
4 and greet, spent some time together.

5 A. Yes.

6 Q. Okay. And in the course of your relationship with Marty
7 you knew that he worked on Mr. Charlie's house.

8 A. Right.

9 Q. And had tools and items at Mr. Charlie's house.

10 A. Right.

11 Q. Had clothing at Mr. Charlie's house.

12 A. Right.

13 Q. And the night that he got the call to tell him that Mr.
14 Charlie had passed away I believe you testified he was -- he
15 was real upset.

16 A. Very.

17 Q. He was concerned about Mr. Charlie and his property.

18 A. Yes.

19 Q. And he wanted to go over there to secure the place and
20 get some items that were his.

21 A. That's right.

22 Q. And so y'all made arrangements to get over there with
23 Rusty and Candace.

24 A. Right.

25 Q. And you don't remember about what time you got there, do

1 you?

2 A. It was after 10:00, but I'm not sure if it was before
3 11:00 or -- I know it was before midnight.

4 Q. Okay. And you testified that Marty showed you some
5 things that he'd done in the house.

6 A. Right.

7 Q. And showed you where he had stayed in the house.

8 A. Right.

9 Q. And was -- you testified that he was looking to see what
10 had happened as far as Mr. Charlie's guns. Would it be fair
11 to say that he seemed real worried about that?

12 A. It concerned him I would say because if it didn't I
13 don't think he would have really looked in the closet and
14 stuff, but him and Charlie had a very good relationship and,
15 I mean, he loved him, no doubt.

16 Q. And you said you talked in the living room, you all went
17 back outside.

18 A. Right.

19 Q. And you went to the truck, and then you said there were
20 lights and the police pulled up.

21 A. Yes, ma'am.

22 Q. And Marty didn't run.

23 A. No, ma'am.

24 Q. You didn't run.

25 A. No, but when I seen the lights, I knew what it was, and

1 I just looked at him and said, Marty, who is that, and he
2 said, Angela, don't freak out.

3 Q. And so they handcuffed you, put you in a police car and
4 arrested you for burglary in the first degree.

5 A. Yes, ma'am.

6 Q. And you're facing the penalty for burglary in the first
7 degree which is 15 years to life.

8 A. Right.

9 Q. That's pretty scary, isn't it?

10 Since the time that you got arrested are you still in a
11 relationship with Marty Floyd?

12 A. No, ma'am.

13 Q. Have you talked to him since then?

14 A. No, ma'am.

15 Q. But you talked to law enforcement and you gave a couple
16 of statements to law enforcement.

17 A. Yes.

18 Q. And you -- I believe you testified that you set the
19 record straight, so to speak. After your first statement,
20 you gave a second statement then.

21 A. A more accurate statement.

22 Q. A more accurate statement, yes. And in the course of
23 giving your more accurate statement wasn't one of the
24 questions that the detective asked you if you were willing to
25 take a polygraph to confirm that statement?

1 A. Yes, ma'am.

2 Q. But they never gave you one, did they?

3 A. No, ma'am.

4 MS. LEMATTY: Beg the Court's indulgence.

5 (Brief pause.)

6 Q. Ms. Fleeman, just a few more questions if I could. When
7 you all went into the trailer, you said Marty turned on all
8 the lights in the trailer.

9 A. Yes, ma'am.

10 Q. And you all were there for some period of time. I think
11 you said you got there between 10:00 and 11:00. Law
12 enforcement arrived after midnight, correct?

13 A. I don't know what time they came.

14 Q. Okay. And while you were there, didn't you see a
15 neighbor in a golf cart?

16 A. Oh, yes.

17 Q. And wasn't any problem that arose from that?

18 A. No.

19 Q. And you're here today, you're charged with the exact
20 same offense as Mr. Floyd is charged with.

21 A. Yes, ma'am.

22 Q. Burglary first degree.

23 A. Yes, ma'am.

24 Q. Facing the exact same penalty.

25 A. Yes, ma'am.

1 Q. Up to life in prison.

2 A. Yes, ma'am.

3 Q. Minimum of 15 years. But yet you came forward to law
4 enforcement, made a more accurate statement, correct?

5 A. Correct.

6 Q. And that's consistent with what you're telling this jury
7 today.

8 A. Right.

9 MS. LEMATTY: Thank you. Nothing further.

10 THE COURT: Any redirect?

11 MR. JUSTIS: Briefly, Your Honor.

12 REDIRECT EXAMINATION BY MR. JUSTIS:

13 Q. Ms. Fleeman, you mentioned a neighbor in a golf cart.
14 Do you remember who it was?

15 A. Marty told me, but I do not remember, and I want to say
16 it was possibly maybe family of his, maybe a cousin or -- I'm
17 not sure.

18 Q. Do you happen to know any of the neighbors that lived
19 around Mr. Charlie?

20 A. I didn't. I think his brother lived close by, but I'm
21 not -- I don't know.

22 Q. Did -- when Ms. Lematty asked you about Mr. Floyd's
23 reaction when he couldn't find those guns and you mentioned
24 he was -- you know, it bothered him, and I think you
25 testified that he thought somebody else might have gotten

1 them. Did he give any names of who he thought might have
2 gotten those?

3 A. He did.

4 Q. And what names did he give?

5 A. He just said his brother, Jimmy.

6 MR. JUSTIS: Thank you. No further questions.

7 THE COURT: Anything further?

8 MS. LEMATTY: No, Your Honor.

9 THE COURT: You may step down, ma'am. Thank you.

10 (Witness excused.)

11 THE COURT: You may call your next witness.

12 MR. JUSTIS: At this time the State calls Don Rusty
13 Norris.

14 THE COURT: Counsel, would you all please approach for
15 one second.

16 (A bench conference was held off the record in the
17 presence of the jury but out of the hearing of the jury.)

18 THE COURT: Ladies and gentlemen, I understand we may
19 need a little bit of a restroom break, so we'll take a quick
20 ten-minute break, and just let us know when you're ready.
21 Thank you. You may be excused to your jury room.

22 (Jury retires to the jury room at 11:23 a.m.)

23 THE COURT: We'll be at ease for about ten minutes. The
24 jurors needed a quick break.

25 (Brief recess held.)

1 THE COURT: Solicitor, are you ready to proceed?

2 MR. JUSTIS: State's ready, Your Honor.

3 THE COURT: Defense?

4 MS. LEMATTY: Yes, Your Honor.

5 THE COURT: All right. Let's have our jury.

6 (Jury enters the courtroom at 11:46 a.m.)

7 THE COURT: Ladies and gentlemen of the jury, we'll now
8 proceed with the next witness. You may call your next
9 witness, Solicitor.

10 MR. JUSTIS: Thank you, Your Honor. May it please the
11 Court, at this time the State calls Rusty Don Norris.

12 RUSTY DON NORRIS,
13 being first duly sworn, testified as follows:

14 THE COURT: Your witness, Solicitor.

15 MR. JUSTIS: Thank you, Your Honor. May it please the
16 Court.

17 DIRECT EXAMINATION BY MR. JUSTIS:

18 Q. Mr. Norris, prior to being incarcerated, where did you
19 live?

20 A. Knightsville.

21 Q. And what are you currently incarcerated for?

22 A. Manufacturing amphetamine (sic).

23 Q. And are you also charged with a crime in this case?

24 A. Yes, sir.

25 Q. And what are you charged with in this case?

1 A. First degree burglary.

2 Q. Prior to being arrested were you employed anywhere?

3 A. I was self-employed.

4 Q. And what kind of work did you do?

5 A. I do, you know, just home repair and, you know, I mean,
6 maintenance, some yard work.

7 Q. Okay. Let me turn your attention to January 17th and
8 the 18th of 2013, this year. Do you remember that date?

9 A. Yes, sir.

10 Q. Do you remember what you were doing on the evening of
11 January 17th?

12 A. I was getting ready to go do laundry.

13 Q. And who were you with?

14 A. Candace Mauldin.

15 Q. And who's Candace?

16 A. She was my girlfriend at the time.

17 Q. And where were you?

18 A. We were at her apartment on 17. I can't remember the
19 name of the apartment complex. It was her place. I was
20 just, you know, visiting with her.

21 Q. Okay. And you were going to go do laundry. And what
22 happened when you got ready to leave to do the laundry?

23 A. I received a call from Marty, and he said that a good
24 friend of his had passed away and wanted to know could I give
25 him a ride, you know, to the man's residence.

1 Q. Okay. And what did you tell him?

2 A. I told him that I would have to ask my girlfriend, and
3 she said she would --

4 MS. LEMATTY: Objection, Your Honor, hearsay.

5 THE COURT: Sustained.

6 Q. Why did you have to ask your girlfriend?

7 A. Because she has a license and I don't.

8 Q. And did you in fact ask your girlfriend?

9 A. Yes, I did.

10 Q. As a result of that conversation with your girlfriend
11 what did you do next?

12 A. We went and picked up Mr. Floyd.

13 Q. Where did you pick him up?

14 A. At his girlfriend's residence.

15 Q. And do you remember, when you got to the residence, what
16 you did -- when you got to the girlfriend's residence what
17 you did?

18 A. We ate some chicken, and then we proceeded to Mr.
19 Charlie's property.

20 Q. Okay. While you were at -- was it Ms. Fleeman's
21 residence?

22 A. Yes.

23 Q. While you were at Ms. Fleeman's residence, did Marty
24 tell you anything about what he wanted to do?

25 A. Just that he wanted to -- you know, he said he had

1 possessions that -- you know, at the property because he had
2 lived with Mr. Charlie, and he wanted to make sure that, you
3 know, he could secure his, you know, possessions so --

4 Q. Okay. Had you ever met Mr. Charlie?

5 A. No.

6 Q. Have you ever heard of Mr. Charlie?

7 A. I know that Marty had lived with him. I mean, beyond
8 that I didn't really have any knowledge of him, but I know
9 that he had lived there and he had done some work for him
10 because Marty had also done work for me on a trailer that I
11 was working on so he had talked about it.

12 Q. Had you ever been to Mr. Charlie's property prior to
13 that evening?

14 A. No, sir.

15 Q. And you're at Ms. Fleeman's apartment or house and you
16 leave there. Who all leaves with you?

17 A. It was me, Ms. Fleeman, Candace and Marty.

18 Q. And did you leave in Candace's truck?

19 A. Yes.

20 Q. Do you recall what time that was when you left to go to
21 Mr. Charlie's?

22 A. I know it was in the neighborhood of 11:00. I mean, you
23 know, not positive of the time but --

24 Q. And when you arrived at Mr. Charlie's house, kind of
25 tell the jury what happened at that point as you arrive at

1 the house.

2 A. We just, you know, pulled up into the driveway, you
3 know, we got out, walked around the property, you know, a
4 little bit because I think that, you know, Marty had expected
5 someone else to be there when we got there, that was my
6 understanding, and we got there, nobody's there and we just,
7 you know, we had walked around, checked the front door and
8 the door was locked. And when we went around the back of the
9 trailer, I had noticed that there was a window, or a chair up
10 underneath the back window, and I said it looks like
11 somebody's already been here and has been in through that
12 window. And I checked the window and it was open so, you
13 know, Candace went through the window and unlocked the front
14 door.

15 Q. Okay. And when she went in the front window, how did
16 she see inside the house?

17 MS. LEMATTY: Objection, Your Honor, calls for
18 speculation.

19 THE COURT: Sustained.

20 Q. Did she turn on any lights in the house?

21 A. I really, I can't recall. I know that, you know, after
22 she unlocked the front door, we turned on the living room
23 lights when we went in, and then we pretty much turned on
24 every light in the house.

25 Q. Did Marty tell you what he was looking for, did he give

1 you any specific, what kind of items --

2 MS. LEMATTY: Objection, Your Honor, leading.

3 THE COURT: Sustained.

4 Q. What did Marty tell you he was looking for?

5 A. He told me that, you know, specifically, that he just,
6 you know, he said that he had possessions of his that, you
7 know, he had left there because him and his wife or his
8 girlfriend and child had lived there. And, you know, I know
9 in testimony there's mention of guns as far as -- I know
10 that's what we're trying to get at here. As far as that, he
11 said Mr. Charlie was a gun collector. That's not to say that
12 we were in there looking for a gun collection. He just said
13 that there may be guns there because Mr. Charlie had had a
14 gun collection.

15 Q. To your knowledge did Marty find any guns?

16 A. No.

17 Q. Did you hear Marty or did Marty say anything to you
18 regarding the guns when he did not find any?

19 A. There -- you know, I don't know about the guns in
20 particular, but there was some reference to somebody having
21 been there, you know, before we got there and, you know, that
22 possibly the place had been robbed because there was an empty
23 gun cabinet. And, you know, also when we went to the shed,
24 you know, there was a place in the shed where there had --
25 you know, from what I was told, had been a large welder that

1 was no longer there, so he was, I think, assuming that
2 somebody had been there and robbed the place, you know,
3 before we had got there.

4 Q. So let's talk about that shed a little bit. Did you
5 have an opportunity to go to that shed that evening?

6 A. Yes.

7 Q. Kind of tell me about how that came about.

8 A. I actually had walked around there by myself, you know,
9 because Marty had mentioned that there were some tools in the
10 shed, and so I had walked around and was looking through the
11 cracks, you know, in the shed. The light was on inside, but
12 it had a padlock on it. And Marty had walked back there with
13 me, and we were looking through the cracks, and there were a
14 few tools in there that he was telling me -- because I asked
15 him, what's in there belongs to you. And he's like, well,
16 the table saw's mine. There was a floor nailer on the shelf
17 that we could see, and he said and that floor nailer is mine.
18 Then he went back to the front yard because I think Angela
19 had decided she wanted to leave at that time, and he had went
20 to the front yard to talk to her. I went ahead and cut the
21 lock because I had bolt cutters in my truck. I cut the lock
22 off the shed, you know, under the assumption that these are
23 his tools and we're allowed to be here, so I didn't see any
24 harm in doing it. He was expressing that he wasn't going to
25 leave the property, you know, that he couldn't leave the

1 property because he had to look out for his stuff, you know,
2 so I cut the lock. When he come back around the corner, you
3 know, I already had the door of the shed open, and I was
4 like, well, man, I've cut the lock, we might as well go in
5 and see how much of his stuff was there, and that's what we
6 were basically in the process of doing when the police pulled
7 up. I think he had actually walked back out of the shed
8 before and had went back up to talk to Angela, and I was in
9 the shed. Me and my girlfriend Candace were still back there
10 when the police pulled up.

11 Q. Okay. And how did you know the police pulled up?

12 A. Marty had stepped to the corner of the building or
13 trailer and Candace was in the doorway and he just -- I heard
14 him say cops to her. She immediately took off running and --
15 because she was on probation and I, you know, her flight
16 instinct kicked in, and she was gone before I could even get
17 a hand on her so --

18 Q. Okay. And what did you do when you heard that?

19 A. I followed her about three steps and thought, well, you
20 know, we're not doing anything wrong, I don't have any reason
21 to run, so I just squatted down at the edge of the building
22 and thought I'll just, you know, see how it plays out. And
23 more cops showed up, and they started walking around with
24 flashlights, and I was still squatting there when they came
25 around and found me.

1 Q. Okay. At this time I'm going to show you what's been
2 marked as State's Exhibit 19. Do you recognize these?

3 A. Yes.

4 Q. And what are they?

5 A. Those are bolt cutters.

6 Q. Are these the bolt cutters you had with you that
7 evening?

8 A. Yes, sir.

9 Q. And how could you tell that they're your bolt cutters?

10 A. They have been mine for probably eight years. I'm used
11 to seeing them so --

12 Q. And these are the ones that you used that night?

13 A. Yes, sir.

14 Q. And where do you normally keep these?

15 A. In the tool box of the truck.

16 MR. JUSTIS: At this time the State would offer State's
17 19 into evidence.

18 THE COURT: Any objection?

19 MS. LEMATTY: No, Your Honor.

20 THE COURT: Okay.

21 (State's Exhibit 19 received into evidence.)

22 Q. I'm also showing you at this time State's 32. Could you
23 take a look at this and kind of explain -- do you recognize
24 it, first of all?

25 A. Yes. That's the door of the shed and that's where I set

1 the bolt cutters.

2 Q. Is that a fair and accurate representation of where the
3 bolt cutters were left that evening?

4 A. Absolutely, yes.

5 MR. JUSTIS: At this time the State would offer State's
6 32 into evidence.

7 THE COURT: Any objection?

8 MS. LEMATTY: No objection, Your Honor.

9 THE COURT: Thank you.

10 (State's Exhibit 32 received into evidence.)

11 Q. Rusty, I'm showing you State's 32, the Exhibit I just
12 showed you. Could you kind of -- if you look at that screen,
13 you can actually touch it and draw on it. Could you kind of
14 circle where the bolt cutters are?

15 A. (Witness complies.)

16 Q. Okay. And where's the door to the shed?

17 A. This is the door here (indicating).

18 Q. And where was the lock on the door?

19 A. I believe it was this side right here, right here
20 (indicating).

21 MR. JUSTIS: Okay. Can we clear that off?

22 Q. Okay. Could you for the jury describe the shed, kind of
23 what it looked like?

24 A. It was large, two story, and it had -- you can see where
25 it's plywood, and where the sheets are laid one on top of the

1 other, there was gaps in between the plywood where you could
2 see into the shed through the gaps, you know, like right
3 here, and that's how we were looking in at the tools. And
4 there was also this piece of plywood here was hung over the
5 door, but it was just hung on one nail. It kind of -- you
6 could, you know, spin it back and forth.

7 Q. Okay. Did you have to remove that before you --

8 A. Actually, when I was looking at the door, it kind of
9 removed itself. I shoved it to the side and it, you know,
10 fell where it's sitting now.

11 Q. It fell down. And you mentioned there were lights?

12 A. Yes, there was a light there inside the shed. That was
13 the only -- really the only light on the property when we got
14 there. It was about pitch black. You couldn't hardly see
15 walking around except for the light inside of the building.

16 Q. So this was more like -- I guess more like almost like a
17 barn compared to --

18 A. Yes, yes.

19 Q. -- a small shed?

20 A. Right, yes.

21 Q. And what kind of items were in the shed?

22 A. There was, I mean, all kind of, you know, mostly hand
23 tools, but there was, you know, I mean, some airguns and, you
24 know, nail guns, several large tool boxes, you know, socket
25 sets, you know, that type of thing, floor jacks, just, you

1 know, it was a good many tools.

2 Q. Okay. I'm showing you what's been marked as State's 33
3 and 34. Can you take a look at those and kind of tell us
4 what we're looking at there or tell us if you recognize those
5 pictures?

6 A. Yes, that's one of the toolboxes inside the shed, and
7 that's the shed wall. When you walk in, it's to the
8 right-hand side.

9 Q. Are they a fair and accurate representation of what you
10 saw that evening?

11 A. Yes, absolutely.

12 MR. JUSTIS: At this time the State would offer State's
13 33 and 34 into evidence.

14 MS. LEMATTY: No objection.

15 THE COURT: Thank you.

16 (State's Exhibits 33-34 received into evidence.)

17 Q. Showing you what's been marked as State's 33, could you
18 just briefly describe kind of what we're looking at to give
19 the jury a perspective?

20 A. It's just the wall, when you step inside, it's just, you
21 know, it was a workbench, you know, with various tools on it
22 and under it.

23 Q. So this is the inside of the shed?

24 A. Yes.

25 Q. All right. I'm showing you what's been marked as

1 State's 34. Could you tell us what that is?

2 A. That's the toolbox right inside the front door.

3 Q. I'm showing you what's been marked as State's 26. Do
4 you recognize that?

5 A. Yes, sir.

6 Q. And what is that a photograph of?

7 A. That's the back of the trailer.

8 Q. Is that a fair and accurate representation of what it
9 looked like that evening?

10 A. That's actually a better view of it than I had, but I
11 would say so, yes. I mean, there was no light on it when I
12 seen it but --

13 MR. JUSTIS: Okay. At this time the State would offer
14 State's 26 into evidence.

15 THE COURT: Any objection?

16 MS. LEMATTY: No, Your Honor.

17 THE COURT: Thank you.

18 (State's Exhibit 26 received into evidence.)

19 Q. All right. That's State's 26. State's 26, could you
20 explain what we're looking at in that photo?

21 A. Like I say, I mean, that's a lot better view of it than
22 I got that night but, you know, from my memory the window
23 with the chair under it is actually just past that -- it
24 would be like right here (indicating).

25 Q. You can touch the screen and make a mark.

1 A. It would be the next window over from this. The only
2 way I know that that's it is because the trailer's there, and
3 I had hit my leg on the trailer, you know, walking in the
4 dark. Like I say, without a light, I didn't get very much of
5 a view of it, but I know that there was an orange chair
6 underneath the window, so it had to have been the next window
7 down.

8 Q. And you said the trailer. Could you just point out the
9 trailer you're talking about?

10 A. Right here (indicating).

11 Q. Okay. But you remember all that stuff being behind the
12 trailer?

13 A. I know there was a lot of stuff there, yes, but like I
14 say, we couldn't -- you know, like this is an axle. I
15 couldn't have told you there was an axle there because it was
16 too dark to even see it.

17 Q. Right, and there was a lot of stuff.

18 A. Yes.

19 Q. Okay. How did you know that you had permission to be
20 there that night?

21 A. Marty had expressed that, you know, if anybody was to
22 show up, you know, that we didn't have to worry about it
23 because the -- I guess it would have been Charlie's wife or
24 ex-wife, you know, knew him really well and that, you know,
25 he's like, don't worry about it, she loves me to death. You

1 know, if they pull up, just let me talk to them, and
2 everything will be fine. And the fact that he was expressing
3 that he was, you know, going to spend the night there and was
4 trying to get his girlfriend to stay with him, you know, give
5 me no reason to not believe that that was the truth, you
6 know.

7 Q. And at what point did you -- did you ever start to think
8 otherwise?

9 A. Mostly when the -- when the police pulled up and, I
10 mean, because, you know, he said that if they, you know, they
11 notified the next of kin, that everything would be fine and
12 when they explained who he was. And when I told that to the
13 officer, he said, well, that was the same thing that Mr.
14 Floyd had told him and that they were trying to do that. But
15 then he came back to me and told me that --

16 MS. LEMATTY: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q. Okay. Don't tell us what the officer said. Now,
19 explain to the jury how -- you mentioned you were crouched
20 down. Explain to the jury how you made contact or the police
21 made contact with you that evening.

22 A. They just came around with, you know, flashlights and
23 you know, basically, you know, like they do, they shine them
24 around everywhere until they found what they were looking
25 for, you know. When they shined the light on me, they told

1 me to lay down, which I was already lay down, you know, so
2 they came over and, you know, I stood up and they handcuffed
3 me.

4 Q. Did they search you?

5 A. Yes.

6 Q. I'm showing you what's been marked as State's Exhibit 4.
7 Do you recognize this?

8 A. Yes, that's the lock off the shed.

9 Q. Is that the lock that you cut off the shed?

10 A. Yes.

11 Q. And where was this lock located, do you remember?

12 A. It was in my coat pocket.

13 MR. JUSTIS: At this time the State would offer State's
14 4 into evidence.

15 THE COURT: Any objection?

16 MS. LEMATTY: No, Your Honor.

17 THE COURT: Thank you.

18 (State's Exhibit 4 received into evidence.)

19 MR. JUSTIS: Beg the Court's indulgence.

20 (Brief pause.)

21 Q. All right. Mr. Norris, I'm going to show you several
22 State's Exhibits, State's Exhibit 3, 5, 7, 9, 10, 11 and 12.
23 If you could, take a look at these for me and kind of tell us
24 if you recognize them.

25 A. Yes, that's my flashlight.

1 Q. And what number is that? That would be State's 3?

2 A. 3.

3 Q. And tell us about that flashlight. Did you have it on
4 you that evening?

5 A. Yes.

6 Q. And where was it located?

7 A. It would have also been in my coat pocket.

8 Q. Okay. And you're sure that it's your flashlight?

9 A. Yes, absolutely. I colored the little corners in gold.

10 It was actually just a black flashlight. I did that so I
11 could tell it from everybody else's.

12 Q. What about State's Exhibit No. 5, what are those?

13 A. Those are my gloves.

14 Q. And how do you know they're your gloves?

15 A. I'd had them since probably Thanksgiving, little bit
16 after.

17 Q. And where were they located?

18 A. They were in my coat pocket as well. It was pretty cold
19 that night. It was frost on the ground. I had Carhartts on,
20 so it was a good day for gloves.

21 Q. What about State's 7?

22 A. That I picked up out of the shed.

23 Q. Okay. And what is it?

24 A. It's just wood stain, maple wood stain. I redo
25 furniture and stuff like that, and I figured it was something

1 that I could use.

2 Q. Okay. And that's State's 7, and that was recovered off
3 of you that night also?

4 A. Yes. That was in my coat pocket.

5 Q. Okay. And the next one is State's 9. What is that?

6 A. That's a screwdriver.

7 Q. Okay.

8 A. To be honest with you, I don't recognize it.

9 Q. Okay. That's fine. That's fine. We'll skip that one.
10 What about the next thing, that's State's 10.

11 A. Yes, that's an air grinder.

12 Q. Okay. And what is that -- what can you use that for?

13 A. It's for, you know, sanding, grinding, cutting, you
14 know, I mean...

15 Q. Okay. And how do you use it?

16 A. You plug it into an air compressor and, you know, you
17 can use it to cut heavier chain or pipe, anything like that.

18 Q. Right. And where was that located that night?

19 A. I'm assuming it was in my coat pocket as well.

20 Q. Is that -- was that yours or was that something --

21 A. That was, you know, from inside the shed.

22 Q. Okay. So that's something you had picked up from inside
23 the shed?

24 A. Yes.

25 Q. That's was State's 10. What about State's 11, what is

1 that?

2 A. That is a whistle.

3 Q. Okay. And was that something you had on your person
4 that night, do you recall?

5 A. I had -- you know, honestly, I had to have picked it up,
6 you know, from the building because I don't remember ever
7 seeing it before, but it's obviously a whistle of some kind.

8 Q. Okay. Well, we'll skip that one too. And then
9 finally --

10 A. That's a blood pressure monitor that I picked up out of
11 the bathroom.

12 Q. And that's State's 12. And that was the bathroom inside
13 the house?

14 A. Yes.

15 Q. Do you remember having that on your person that night?

16 A. Yes.

17 Q. Did you -- when you collected it, did you open it up?

18 A. Yes.

19 Q. Let me just -- I'm going to open it up just so you can
20 see it, make sure it's what you remember, and if it isn't let
21 me know.

22 A. Yes.

23 Q. Okay. So you do remember this?

24 A. Yes, it was, you know, to check blood pressure if I
25 remember correctly.

1 Q. Okay. That's State's 12. So looking at this stuff, the
2 meter here, the grinder, the flashlight, the gloves and the
3 wood filler, those are things you remember having on your
4 person that night?

5 A. Yes.

6 MR. JUSTIS: Okay. At this time the State would offer
7 State's 3 which is the flashlight, 5, the gloves, 7, the wood
8 filler, 10, the grinder, and 12, the meter into evidence.

9 THE COURT: Any objections?

10 MS. LEMATTY: Your Honor, with regard to the grinder, I
11 believe his testimony was that he was just assuming regarding
12 that item. I believe with regard to the rest of them we
13 would have no objection.

14 MR. JUSTIS: Okay. And we can -- we'll have other
15 witnesses. We can lay the foundation for the grinder later
16 on.

17 THE COURT: So in evidence is 3, 5, 7 and 12.

18 MS. LEMATTY: Yes.

19 MR. JUSTIS: Yes, Your Honor. And then 9, 10 and 11
20 we'll just reserve until later.

21 (State's Exhibits 3, 5, 7 and 12 received into
22 evidence.)

23 Q. I think you testified you had these in your jacket?

24 A. Yes, sir.

25 Q. Do you remember what kind of jacket you had on that

1 night?

2 A. I had a black Carhartt.

3 Q. Does it have big pockets?

4 A. Yes. Four on the outside and two on the inside. I
5 mean, it's a fairly large jacket.

6 Q. Okay. Mr. Norris, I'm showing you what's been marked as
7 State's Exhibit No. 1. Do you recognize this jacket?

8 A. I believe it's Marty's jacket, yes.

9 Q. Okay.

10 A. I can't be positive, of course, but I think -- I think
11 he was wearing a jacket like that that night. He rode in the
12 back of the truck. It was pretty cold out.

13 Q. But you're positive it's not your Carhartt jacket?

14 A. It's definitely not mine. Mine was black.

15 Q. Mr. Norris, I'm showing you what's been marked as
16 State's Exhibit 6. Do you recognize those?

17 A. Oh, yes.

18 Q. And what are those?

19 A. Those are the scissors that I stuck in my pocket from
20 the bathroom.

21 Q. The bathroom inside the house?

22 A. Yes, same place I got the blood pressure monitor.

23 Q. Okay. So you had these three pair of scissors.

24 MR. JUSTIS: At this time the State would offer State's
25 6 into evidence.

1 THE COURT: Any objection?

2 MS. LEMATTY: No, Your Honor.

3 THE COURT: Thank you.

4 (State's Exhibit 6 received into evidence.)

5 Q. Mr. Norris, do you remember having with you any other
6 items from the house that evening?

7 A. You mean on my person or --

8 Q. On your person or when police detained you and arrested
9 you that night, do you remember?

10 A. I don't remember having anything on me personally, no.

11 Q. Okay. Do you remember -- I'm going to show you what's
12 been marked as State's Exhibit 13.

13 A. Oh, yes.

14 Q. Do you recognize this? This is State's 13.

15 A. Yes.

16 Q. What is that?

17 A. That is a belt.

18 Q. And where did you get that from?

19 A. I had picked that up out of the bathroom as well.

20 Q. Okay. This was inside the house.

21 MR. JUSTIS: At this time the State would offer State's
22 13 into evidence.

23 THE COURT: Any objection?

24 MS. LEMATTY: No objection, Your Honor.

25 THE COURT: Thank you.

1 (State's Exhibit 13 received into evidence.)

2 Q. At this time I'm showing you what's been marked as
3 State's 14. Do you recognize those?

4 A. Yes.

5 Q. And what are those?

6 A. Three pills. I picked those up out of the bathroom as
7 well.

8 Q. Okay.

9 A. Two and a half pills, I guess.

10 Q. You don't know what they are, though?

11 A. No.

12 MR. JUSTIS: At this time the State would offer State's
13 14 into evidence.

14 THE COURT: Any objection?

15 MS. LEMATTY: No, Your Honor.

16 THE COURT: Thank you.

17 (State's Exhibit 14 received into evidence.)

18 Q. Now, Mr. Norris, when you were arrested -- I think you
19 stated before you were arrested and charged with burglary
20 first in this incident. When you were arrested did you give
21 a statement to law enforcement?

22 A. Yes.

23 Q. How many statements did you give to law enforcement?

24 A. One.

25 Q. One. And do you remember when you gave that statement,

1 like what day it was?

2 A. It was the same night.

3 Q. Now, currently I think you mentioned you're charged with
4 burglary in the first degree in this case, correct?

5 A. Yes.

6 Q. And you have those charges still pending?

7 A. Yes.

8 Q. Subsequent to that did you pick up another charge?

9 A. Yes.

10 Q. And is that charge still pending?

11 A. Yes.

12 Q. Has the State or anyone represented by the State made
13 any promises to you in exchange for your testimony here
14 today?

15 A. No, sir.

16 Q. With either of those cases?

17 A. No, sir.

18 MR. JUSTIS: Beg the Court's indulgence.

19 (Brief pause.)

20 MR. JUSTIS: No further questions. Please answer any
21 questions Ms. Lematty might have for you.

22 THE COURT: Your witness.

23 MS. LEMATTY: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MS. LEMATTY:

25 Q. Good morning, Mr. Norris.

1 A. Good morning.

2 Q. You went to Mr. Charlie's residence that night for two
3 reasons, to protect Mr. Charlie's stuff and to allow Marty to
4 get some of his stuff, correct?

5 A. That was my understanding.

6 Q. When you all got there, you went and you turned on all
7 the lights.

8 A. Yes, ma'am.

9 Q. Made no effort to hide you were there.

10 A. No, ma'am.

11 Q. You were there for a pretty long time, right?

12 A. Well over an hour, I believe, yes.

13 Q. Okay. And when you were there and you were going
14 through this, Marty was concerned about what he saw at the
15 residence, wasn't he?

16 A. He seemed to be, yes.

17 Q. He was afraid that somebody had already burglarized the
18 place.

19 A. Yes, ma'am.

20 Q. And he was going to stay there that night and he was
21 going to protect the property, wasn't he?

22 A. That was my understanding, yes.

23 MS. LEMATTY: Thank you. Beg the Court's indulgence.

24 (Brief pause.)

25 MS. LEMATTY: Nothing further.

1 MR. JUSTIS: Nothing further from this witness.

2 THE COURT: You may step down, sir. Thank you.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 THE COURT: You may call your next witness.

6 MR. JUSTIS: At this time the State calls Deputy Shawn
7 Angelo.

8 SHAWN ANGELO,
9 being first duly sworn, testified as follows:

10 THE COURT: Your witness.

11 MR. JUSTIS: Thank you, Your Honor. May it please the
12 Court.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION BY MR. JUSTIS:

15 Q. Good afternoon, Deputy Angelo.

16 A. Good afternoon, sir.

17 Q. Could you tell the jury where you work?

18 A. Yes, sir. I work with Dorchester County Sheriff's
19 Office.

20 Q. And how long have you worked there?

21 A. Five and a half years.

22 Q. And what's your job title at the sheriff's department?

23 A. I am a corporal on patrol division.

24 Q. And what are some of the duties as a corporal on the
25 patrol division that you have?

1 A. Pretty much patrolling the areas, patrolling
2 neighborhoods, responding to calls for service.

3 Q. Did you have an opportunity to respond to a call on late
4 evening of January 17th, early morning hours of January 18th,
5 of this year, 2013?

6 A. Yes, I did.

7 Q. And where did you respond to?

8 A. That was 108 Louise Street in Summerville, which is
9 within the County of Dorchester, State of South Carolina.

10 Q. Thank you. And when you arrived, did you have a partner
11 with you at that time?

12 A. Yes. Actually, I had a trainee with me at that time.

13 Q. And who was that?

14 A. That was Deputy Corey Anderson.

15 Q. And when you arrived at 108 Louise Street, what did you
16 observe?

17 A. When I arrived on scene, I actually observed a red
18 pickup truck in the drive next to the house, it actually
19 would be to the left of the house, and I actually observed a
20 white male actually walking in front of the truck on the
21 driver's side.

22 Q. Okay. And when you pulled up, did you have your lights
23 on?

24 A. I did turn my lights on to activate my camera.

25 Q. Okay. And when you pulled up, what did you do at that

1 point after you pulled up behind the truck?

2 A. After we pulled up, we actually called the male over and
3 detained the male at that time, and we also had a female
4 inside the vehicle, we didn't detain her, waited for other
5 units to arrive on scene, and then we ended up doing a
6 protective sweep of the area.

7 Q. Okay. And you mentioned other units arriving. Did
8 backup arrive?

9 A. Yes, it did.

10 Q. Do you remember who arrived?

11 A. That would have been Deputy Carter and Deputy Pirkel.

12 Q. Okay. And you mentioned you did a sweep?

13 A. A protective sweep, yes, sir.

14 Q. And could you explain to the jury what that is?

15 A. What it is, it's for officer safety. Once we arrive on
16 scene, we have no idea what's around us, especially in the
17 hours of darkness, and so we just went through, made sure
18 that -- we was advised there were approximately four people
19 there, and so we actually went through and just made sure the
20 scene was safe for anybody else that was arriving on scene
21 and also for our safety.

22 Q. Now, when you did this protective sweep, did you go in
23 the house?

24 A. Yes.

25 Q. Do you remember whether or not the lights were on in the

1 house?

2 A. No, sir, no lights were on. When we did our protective
3 sweep into the residence, we actually had to use our
4 flashlights.

5 Q. What about the shed, did you do a protective sweep of
6 it?

7 A. We did a protective sweep of the shed. The lights were
8 on in the shed.

9 Q. Could you describe the scene of the shed when you went
10 to do your sweep?

11 A. When we went to do the sweep, as we come around behind
12 the residence, we actually noticed plywood laying on the
13 ground, and we was even -- we could even see the nails
14 sticking up in the plywood, make sure we didn't step on it.
15 Right before we entered in, we had an open door with a light,
16 and when I looked down, I actually saw a pair of bolt cutters
17 next to there, so then we went inside to make sure nobody was
18 inside the shed.

19 Q. Okay. I'm showing you what's been entered into evidence
20 as State's 32. Could you explain what we're seeing in that
21 picture?

22 A. Yes, sir. That's actually the -- that's the shed.

23 Q. And you can draw on that screen if you need to. It's a
24 touch screen.

25 A. Okay this is the door of the shed here, that's the bolt

1 cutters that we observed here, but we were actually coming up
2 through this way to do the protective sweep inside to that
3 shed (indicating).

4 Q. Okay. And did you find anyone in the shed?

5 A. No, we did not.

6 Q. After clearing that shed, what did you do next?

7 A. Right after we cleared the shed, I actually heard
8 something in the woods which appeared to kind of be behind
9 the shed or beside the shed, so we went through the woods to
10 do another protective sweep around the property, and that's
11 when I observed another male, white male, crouched down in
12 behind the, for lack of a better term, like a bulldozed brush
13 pile.

14 Q. Okay. And did you observe anything about this male that
15 was crouching down behind this brush pile?

16 A. As he was crouched down, I actually, when my flashlight
17 shined over toward him, I actually saw something shiny
18 sticking out of his jacket. It was like his jacket was
19 partially open by the way he was crouched and everything
20 which, you know, after we ended up detaining him, it turned
21 out to be some scissors and some other items and everything.
22 We did just a pat-down to ensure he had no other weapons and
23 everything on him, but that's when we also observed a cut
24 lock on his person.

25 Q. Okay. Do you remember some of the items that you

1 recovered from this individual? And first of all, were you
2 able to identify who that individual was?

3 A. Yes, sir, actually identified that individual as Rusty
4 Norris.

5 Q. Okay.

6 A. Some of the things that we have, I'll read it from my
7 list, we actually found a die grinder, brass pipe, an
8 Accu-Chek Aviva pouch, found a Kobalt flashlight, three BIC
9 Lighters, pack of Marlborough cigarettes, small flat-tipped
10 screwdriver, Verizon Samsung cell phone, key chain containing
11 seven keys on it, a Guard Security lock which had the hasp
12 cut off of it, three pair of scissors, a pair of leather
13 gloves and about a six-ounce can of Famowood Wood Filler.
14 Q. At this time I'm going to show you several items of
15 evidence.

16 MR. JUSTIS: May I approach, Your Honor?

17 THE COURT: Yes, sir.

18 Q. Could you take a look at these, and there's evidence
19 stickers on those with numbers. As you look at those if you
20 could just tell us which number you're referring to and tell
21 us if you recognize those items.

22 A. Exhibit No. 5 I do recognize as being the leather gloves
23 that was found on Mr. Rusty. Exhibit No. 3 is the Kobalt
24 flashlight that was on his person. And Exhibit No. 7 is the
25 can of wood filler.

1 Q. And if you need to open it up, you can open it up.

2 A. No. 12, I believe that's going to be that Accu --

3 Q. You can open the bag.

4 A. Okay. That is that Accu machine. Like I said, that was
5 on Exhibit No. 12, and that was also found on Mr. Rusty's
6 person. And Exhibit No. 4 is the cut lock that was found on
7 Mr. Rusty's person.

8 Q. Thank you.

9 A. Yes, sir.

10 Q. I'm also going to show you State's 10, 11 and 9 or 9, 10
11 and 11. Can you identify these items?

12 A. Exhibit No. 9 would be the small flat-tipped screwdriver
13 found on Mr. Rusty's person. Exhibit No. 11 would have been
14 that brass piece that we found on his person which appeared
15 to be like a pipe. Exhibit No. 10 was the die grinder found
16 on Mr. Rusty's person.

17 Q. And are these items you collected from Mr. Norris that
18 evening?

19 A. Yes, they are.

20 Q. What did you do with these items after you collected
21 them?

22 A. These items were actually placed on a chain of custody
23 form. They were photographed and placed into evidence into
24 our evidence locker at the sheriff's office.

25 Q. And you did that?

1 A. Yes, sir.

2 MR. JUSTIS: At this time the State would offer State's
3 9, 10 and 11 into evidence.

4 THE COURT: Any objection?

5 MS. LEMATTY: No, ma'am.

6 THE COURT: Thank you.

7 (State's Exhibits 9-11 received into evidence.)

8 Q. Now, Deputy Angelo, you took Mr. Norris into custody
9 that evening. Were you able to find the fourth individual?

10 A. No, I was not.

11 Q. Based on your investigation that night, were you able to
12 determine who the fourth individual was or believed to be?

13 A. Yes, I was, due to the registration of the vehicle and
14 also from a driver's license that we just observed on the
15 floorboard of the vehicle.

16 Q. And who was that person?

17 A. We actually had her listed as Candace -- bear with me
18 for a second for the last name -- Candace Mauldin.

19 Q. Let me show you what's been marked as State's Exhibit
20 No. 6. Do you recognize these?

21 A. Yes, I do.

22 Q. And what are those?

23 A. Those are the scissors that was found on Mr. Rusty's
24 person.

25 Q. What could you tell us about the pickup truck that was

1 there when you pulled up? Did you do any kind of search or
2 anything on the pickup truck?

3 A. I didn't do a search on the pickup truck except for the
4 persons that was in it, just bringing the persons out and
5 doing a protective sweep of the vehicle.

6 Q. Okay. What else did you do on scene that night after
7 securing Mr. Norris and the other two individuals?

8 A. After we secured them, we actually went through and did
9 a protective sweep of the residence, which was unsecured, and
10 we entered that through the front door.

11 Q. Okay. So was the front door unlocked?

12 A. Yes, sir.

13 Q. Okay. Did anyone else arrive at the scene, any other
14 law enforcement arrive at the scene?

15 A. Yes, sir. Detective Carson arrived on scene, and
16 Detective Stover from our crime scene arrived on scene.

17 Q. And you didn't assist them with anything?

18 A. No, sir.

19 MR. JUSTIS: Beg the Court's indulgence.

20 (Brief pause.)

21 Q. Were you able too determine who the owner of the
22 property was?

23 A. Yes, we were. I was advised that the --

24 MS. LEMATTY: Objection, Your Honor, hearsay.

25 THE COURT: If you'd just rephrase.

1 Q. Did you make any attempt to contact the persons
2 responsible for the property that evening?

3 A. Yes, I did.

4 MR. JUSTIS: Beg the Court's indulgence.

5 (Brief pause.)

6 Q. At this time I'm showing you what's been marked as
7 State's 15, 16 and 17. Could you look at each of these items
8 and tell me if you recognize them? If you have to open them
9 up to look at it, you can.

10 A. Okay. Exhibit No. 17 is a Tosha receipt that I actually
11 found on Mr. Martin Floyd's person.

12 Q. And what's Tosha?

13 A. Tosha is a scrap yard located on Orangeburg Road. They
14 deal with scrap metal, things of that nature. Exhibit No. 16
15 was a pen shell that I actually found on Mr. Floyd's person.
16 And Exhibit No. 15 is a silver pocketknife that I found on
17 Mr. Floyd's person.

18 Q. Are these all the actual items you collected from Mr.
19 Floyd that night?

20 A. Yes, they are.

21 Q. And what did you do with them after you collected them?

22 A. I actually listed those items on a chain of custody form
23 and turned those into evidence at the sheriff's office.

24 MR. JUSTIS: At this time the State would offer State's
25 15, 16 and 17 into evidence.

1 THE COURT: Any objection?

2 MS. LEMATTY: No, Your Honor.

3 THE COURT: Thank you.

4 (State's Exhibit 15-17 received into evidence.)

5 MR. JUSTIS: Beg the Court's indulgence.

6 (Brief pause.)

7 MR. JUSTIS: No further questions. Please answer any
8 questions Ms. Lematty might have.

9 THE COURT: Ms. Lematty, your witness.

10 MS. LEMATTY: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MS. LEMATTY:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. When you drove up that night, you had your lights on,
15 right?

16 A. As I pulled into the driveway, I turned them on, yes.

17 Q. And when you have your lights on, the camera in your
18 vehicle is activated, right?

19 A. Yes, ma'am.

20 Q. And so you, in essence, had a video from the time that
21 you turned your lights on to the time that you turned your
22 lights off.

23 A. Actually, the camera will stay on until it fills up even
24 after I turn the lights off.

25 Q. And you drove straight up to the truck where Mr. Floyd

1 was.

2 A. Yes.

3 Q. He didn't run.

4 A. No.

5 Q. Made no effort to hide from you.

6 A. No.

7 Q. Didn't have any items he was putting in the truck or the
8 back of the truck or anything like that.

9 A. I did not observe any, no, ma'am.

10 Q. And the three exhibits you just testified to, the
11 pocketknife, the pen shell and the receipt, they were the
12 only items you found on him?

13 A. Yes, ma'am.

14 MS. LEMATTY: Thank you. No further questions.

15 MR. JUSTIS: Briefly, Your Honor.

16 REDIRECT EXAMINATION BY MR. JUSTIS:

17 Q. When you pulled up behind this red truck, how far was
18 your vehicle from this red truck would you estimate?

19 A. I'd estimate probably about 20, 25 feet maybe.

20 Q. Okay. So if you're in your car right now, I'm Mr.
21 Floyd, was I further or closer away?

22 MS. LEMATTY: Objection, Your Honor, leading.

23 THE WITNESS: That would be further.

24 Q. Tell me when to stop.

25 A. I would have to assume probably about from here to the

1 first bench on the other side of the doors there, roughly.

2 Q. And you had your service weapon on you?

3 A. That's correct.

4 Q. At any time did you draw your service weapon?

5 A. We did draw the service, or I did draw my service weapon
6 due to not knowing what the other person -- I couldn't see
7 anybody's hands. I couldn't see Mr. Floyd's hands as he was
8 walking in front of the vehicle. I could only see roughly
9 about the chest up from what I could see.

10 Q. When you got out of the vehicle, did you give any
11 instructions to Mr. Floyd or --

12 A. Yes, I did, to actually show us your hands, and we
13 actually backed him up from the vehicle so that we still kind
14 of remained behind cover and placed him into handcuffs for
15 detention.

16 Q. Now, you mentioned this was a pickup truck they were --

17 A. That's correct.

18 Q. -- they were in.

19 Did you notice any items in the back of the pickup
20 truck, or was it completely empty?

21 A. No, there were some items in there. We didn't specify
22 or didn't really look to see what items. We were just
23 looking for people.

24 MR. JUSTIS: Okay. Thank you. No further questions.

25 THE WITNESS: Yes, sir.

1 THE COURT: Anything further?

2 MS. LEMATTY: No, ma'am.

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

4 (Witness excused.)

5 THE COURT: Would counsel, please approach?

6 (A bench conference was held off the record in the
7 presence of the jury but out of the hearing of the jury.)

8 THE COURT: Ladies and gentlemen of the jury, at this
9 time we will take our lunch break. If you would come back to
10 your jury room in one hour, we'll start back up. It's about
11 12:45 now. If you could report back to your jury room at
12 1:45. Please again remember the instructions not to discuss
13 this case with anyone or allow anyone to discuss the case
14 with you as you've not heard all the evidence, but have a
15 nice lunch and we will see you shortly.

16 (Jury retires to the jury room at 12:46 p.m.)

17 THE COURT: Anything further from the State at this
18 time?

19 MR. JUSTIS: Nothing, Your Honor.

20 THE COURT: Anything from the Defense?

21 MS. LEMATTY: No, ma'am.

22 THE COURT: All right. We'll be at recess until 1:45.

23 (Lunch recess held.)

24 (Defense Exhibits 1, 6 and 12 premarked for
25 identification.)

1 THE COURT: Parties ready to proceed?

2 MR. JUSTIS: State's ready, Your Honor.

3 THE COURT: Defense?

4 MS. LEMATTY: Ready, Your Honor.

5 THE COURT: All right. Let's have our jury.

6 (Jury enters the courtroom at 1:54 p.m.)

7 THE COURT: Welcome back, ladies and gentlemen of the
8 jury. We will now resume the trial of the case. Solicitor,
9 if you'll call your next witness, please.

10 MS. KIMMONS: State calls Silas Carter to the stand.

11 SILAS CARTER,
12 being first duly sworn, testified as follows:

13 THE COURT: Your witness.

14 MS. KIMMONS: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MS. KIMMONS:

16 Q. Deputy Carter, where do you work?

17 A. Dorchester County Sheriff's Office.

18 Q. How long have you worked there?

19 A. Approximately four years.

20 Q. Let me direct your attention back to January 18th of
21 2013. Were you working on that day?

22 A. Yes, ma'am.

23 Q. Do you recall being involved in an incident involving
24 Martin Floyd that night?

25 A. Yes, ma'am.

1 Q. Can you tell me about that?

2 A. Yes, ma'am. On January 18th at approximately 12:40 a.m.

3 I responded to a break into a residence in progress.

4 Approximately 10 to 15 minutes later I arrived on scene.

5 That's when -- when I arrived, Corporal Angelo, he already

6 had two individuals detained. When I got there, I secured

7 Angela Fleeman inside of my patrol car. And then Corporal

8 Angelo and myself, we did a protective sweep of the property.

9 Directly behind the residence on Lois Street -- Louise

10 Street -- there's a shed. The doors were open and there was

11 a light on inside the shed, so Corporal Angelo and myself, we

12 did a protective sweep of the shed.

13 Q. What does a protective sweep mean?

14 A. Just looking for individuals, anybody inside that's not

15 supposed to be there.

16 Q. Okay. And you did the protective sweep of the shed, and

17 what did you do after that?

18 A. We cleared the shed, came back out of the shed and did a

19 protective sweep of the property.

20 Q. Did you find anything?

21 A. Inside the shed, nobody was inside the shed.

22 Q. Or on the property.

23 A. On the property, yes, there was an individual later

24 known as Mr. Norris, he was crouched down, hiding in the

25 brush, in the bushes back behind the property. Corporal

1 Angelo and myself went over, made contact with him, and he
2 was detained.

3 Q. Okay. And when you made contact with him and he was
4 detained, what did you all do after that?

5 A. Well, we brought him back to the front of the property
6 where Deputy Anderson was. Then we went back to complete our
7 protective sweep. We went inside the residence, which was
8 unsecured, did a protective sweep of the residence as well,
9 and nobody else was located inside.

10 Q. Was anybody else located anywhere else on the property?
11 You said no one else was located inside. Was anyone else
12 located other than Mr. Norris?

13 A. No, ma'am, that's correct.

14 MS. KIMMONS: Okay. Please answer any questions Ms.
15 Lematty or Ms. Suggs might have.

16 MS. LEMATTY: No questions, Your Honor.

17 THE COURT: Thank you. You may step down, sir. Thank
18 you.

19 (Witness excused.)

20 THE COURT: Call your next witness.

21 MS. KIMMONS: State calls Detective Stover to the stand.

22 STEPHANIE STOVER,
23 being first duly sworn, testified as follows:

24 THE COURT: Your witness.

25 MS. KIMMONS: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MS. KIMMONS:

2 Q. Detective Stover, where do you work?

3 A. Dorchester County Sheriff's Office.

4 Q. How long have you worked there?

5 A. Seven and a half years.

6 Q. And what do your duties include?

7 A. I'm sergeant of the crime scene unit.

8 Q. What does that entail?

9 A. Working the crime scenes, handling evidence, keeping
10 track, finger printing.

11 Q. Let me direct your attention back to January 18th of
12 2013. On that date were you assigned to crime scene?

13 A. Yes, ma'am, I was.

14 Q. And were you called out to a situation or involved in an
15 investigation that led to the arrest of Martin Floyd?

16 A. Yes, ma'am. I was called out to 108 Louise Street.

17 Q. Okay. When were you called out to 108 Louise Street?

18 A. I believe I was notified by dispatch at approximately
19 1:40 in the morning.

20 Q. Okay. And that would have been shortly after the
21 incident occurred?

22 A. Yes, ma'am.

23 Q. Okay. And when you got out there, what did you do?

24 A. I documented the scene by taking photographs inside and
25 outside of the residence and of the workshop behind the

1 residence.

2 Q. Were there any vehicles on the property when you got
3 there other than law enforcement?

4 A. Yes, ma'am. There was a red pickup truck to the left of
5 the residence.

6 Q. Did you have any involvement with the red truck?

7 A. I photographed it on scene, and then it was towed back
8 to our impound lot.

9 Q. And was anything done with it after it went to the
10 impound lot?

11 A. On January 25th I received a search warrant.

12 Q. Okay. And what was that search warrant for?

13 A. To see what items were in the truck.

14 Q. And did you or did someone else conduct the search of
15 that truck?

16 A. I did.

17 Q. And did you find items inside the truck?

18 A. Yes, ma'am. We took some items from inside the truck.

19 Q. Okay. And what items were those?

20 A. I believe at the time we took some pillows, there was a
21 shop vac, there was a painting and there was a computer
22 program box.

23 Q. Let me show you what has been previously marked as
24 State's Exhibit No. 20. Tell me if you recognize this.

25 A. I do. It was behind the seat in the truck.

1 Q. Okay. And what is that?

2 A. A Microsoft Windows XP Professional computer software.

3 MS. KIMMONS: Your Honor, at this time the State moves
4 to have State's Exhibit No. 20 entered into evidence.

5 THE COURT: Any objection?

6 MS. LEMATTY: No objection, Your Honor.

7 THE COURT: Thank you.

8 (State's Exhibit 20 received into evidence.)

9 Q. Now, you mentioned that you frequently take
10 fingerprints. Did you do that or attempt to do that in this
11 case?

12 A. I did.

13 Q. Tell me about that.

14 A. You could tell within the house that he was doing a lot
15 of renovation or somebody was doing a lot of construction
16 work to remodel the inside, and I attempted to lift
17 fingerprints using black powder but was not successful in
18 getting any ridge detail.

19 Q. Okay. And where did you try to do the fingerprints?

20 A. There was a dresser.

21 Q. Okay. And that would have been inside the home?

22 A. I did.

23 Q. Okay.

24 A. And then I also -- there was a pair of bolt cutters that
25 was collected from scene that I brought back and tried to

1 process and did not get any ridge detail on those either.

2 Q. You mentioned that you took some pictures. Let me show
3 you what has been previously marked as State's 27, 28, 29,
4 30, 35, 36, 37 and 38. I show you these exhibits. Do you
5 recognize those? I'll give you a second to look through all
6 of them.

7 A. Yes, I do.

8 Q. What are those?

9 A. These are pictures from the scene and also of the truck
10 at the impound lot.

11 Q. Okay. Are the ones that were taken of the scene, at the
12 scene, are they fair and accurate representations of how the
13 scene looked that night when you responded out?

14 A. They are.

15 Q. The pictures of the truck, are they fair and accurate
16 representations of how the truck looked when you conducted
17 the search warrant?

18 A. Yes, ma'am.

19 MS. KIMMONS: Okay. Let me take those back from you.

20 Your Honor, at this time the State would move to have
21 State's Exhibits 27, 28, 29, 30, 35, 36, 37 and 38 entered
22 into evidence.

23 THE COURT: If you could just give a brief description
24 of what each picture entails.

25 MS. KIMMONS: 27 is a photo of the bed and the bedroom,

1 28 is a picture of the gun case in the bedroom, 29 is a
2 picture of the computer, 30 is a picture of the computer
3 room, 35 is a picture of the red pickup truck during the
4 search warrant at the impound lot or prior to the search
5 warrant at the impound lot, 36 is the front seat of the
6 truck, 37 is the back seat or behind the seat in the pickup
7 truck, and 38 is a picture of -- a partial picture of the bed
8 of the truck.

9 THE COURT: Any objections, Ms. Lematty?

10 MS. LEMATTY: No, ma'am.

11 THE COURT: Thank you.

12 (State's Exhibits 27-30 and 35-38 received into
13 evidence.)

14 Q. Let me show you what's been previously marked as State's
15 Exhibit 27. Do you recognize that?

16 A. I do.

17 Q. What is it?

18 A. That is what I would call the master bedroom of the
19 residence.

20 Q. Let me show you what's been previously marked State's
21 Exhibit 28. Do you recognize that?

22 A. I do.

23 Q. What is that a picture of?

24 A. That is a gun case that was laying roughly behind the
25 door in the master bedroom.

1 Q. Okay. And was it laying like that when you entered the
2 room?

3 A. It was.

4 Q. Let me show you what's been previously marked as State's
5 Exhibit No. 29. What is that a picture of?

6 A. That is one of the back bedrooms, office areas, with the
7 computer up.

8 Q. Is that how that room looked when you entered it that
9 evening?

10 A. It is.

11 Q. What is this a picture of?

12 A. The back bedroom.

13 Q. Is this the same room or a different room than the
14 computer was in?

15 A. I believe it's the same room.

16 Q. What is this a picture of?

17 A. That is the truck back at our impound lot.

18 Q. Is this shortly prior to or during the search warrant or
19 some other time?

20 A. That was during the search warrant.

21 Q. What is this a picture of?

22 A. That is the front seat of the pickup truck.

23 Q. What is this a picture of? I'm sorry. This is State's
24 Exhibit 37. And the last one was State's Exhibit 36.

25 A. That is behind the seats in the truck where the computer

1 box came from.

2 Q. Okay. Could you point out or circle on there the
3 computer box?

4 A. (Witness complies.)

5 Q. Thank you. And let me show you what has been previously
6 marked as State's Exhibit 38. What is that a picture of?

7 A. That is the bed of the truck and it has a painting and
8 shop vac.

9 Q. Let me show you what has been previously marked as
10 State's Exhibit 39. Do you recognize that?

11 A. Yes, ma'am.

12 Q. What is that?

13 A. This is the painting that was in the bed of the truck.

14 MS. KIMMONS: The State moves at this time to have
15 State's Exhibit 39 entered into evidence.

16 THE COURT: Any objection?

17 MS. LEMATTY: No, ma'am.

18 THE COURT: Thank you.

19 (State's Exhibit 39 received into evidence.)

20 MS. KIMMONS: Please answer any questions Ms. Lematty
21 might have for you.

22 THE COURT: Your witness, Ms. Lematty.

23 CROSS-EXAMINATION BY MS. LEMATTY:

24 Q. Good afternoon, Ms. Stover. How are you?

25 A. Good, thank you. How are you?

1 Q. Fine, thank you.

2 You got out there, oh, roughly 30, 40 minutes after they
3 called and got you up at 1:40 in the morning?

4 A. Roughly, yes, ma'am.

5 Q. And when you went out there, part of what you do is that
6 you document the scene.

7 A. Yes, ma'am.

8 Q. You don't disturb anything --

9 A. No, ma'am.

10 Q. -- move anything, you simply take photographs with your
11 camera.

12 A. That is always the first thing we do at the scene, yes,
13 ma'am.

14 Q. And so the pictures that you have just described, they
15 described the scene as you found it that night.

16 A. As I arrived, yes, ma'am.

17 Q. You mentioned dusting for fingerprints.

18 A. Yes, ma'am.

19 Q. And you did that in some areas of the interior of the
20 trailer?

21 A. The interior, yes, ma'am.

22 Q. Do you remember specifically where?

23 A. I believe there was a dresser, trying to go back, I
24 tried with several surfaces, but with the dust, I just -- I
25 was not having luck.

1 Q. Okay. And so there were no fingerprints that you were
2 able to --

3 A. No, ma'am.

4 Q. -- ascertain from the inside of the residence at all?

5 A. No, ma'am.

6 Q. And you testified that you were involved in a search
7 warrant for the vehicle that was at the location that night,
8 the red truck?

9 A. I was, yes, ma'am.

10 Q. And I believe the solicitor had you testify about a
11 computer box --

12 A. Yes, ma'am.

13 Q. -- a painting, a shop vac.

14 A. Yes, ma'am.

15 Q. Those were by far not the only items in that vehicle,
16 correct?

17 A. No, ma'am.

18 Q. There was laundry.

19 A. (Nodding.)

20 Q. There were personal hygiene products, there was laundry
21 detergent, a number of other things.

22 A. Yes, ma'am.

23 Q. With regard to the items that you chose to take from the
24 truck, you didn't conduct any testing on those items.

25 A. No, ma'am.

1 MS. LEMATTY: Beg the Court's indulgence.

2 (Brief pause.)

3 MS. LEMATTY: Thank you. No further questions.

4 THE COURT: Any redirect?

5 MS. KIMMONS: No, Your Honor.

6 THE COURT: You may be excused, Detective, thank you.

7 (Witness excused.)

8 THE COURT: You may call your next witness.

9 MS. KIMMONS: State calls Derek Sauro to the stand.

10 DEREK SAURO,

11 being first duly sworn, testified as follows:

12 THE COURT: Your witness.

13 DIRECT EXAMINATION BY MS. KIMMONS:

14 Q. Detective Sauro, where do you work?

15 A. Ma'am, I work at the Dorchester County Sheriff's Office.

16 Q. How long have you worked there?

17 A. I've worked for the department for approximately five
18 years.

19 Q. And what are your duties there?

20 A. I currently am assigned to the Dorchester County Crime
21 Scene Unit. I'm in the identification division.

22 Q. And were you assigned to crime scene back on January
23 18th of 2013?

24 A. Yes, ma'am, I was.

25 Q. And were you involved in the investigation that led to

1 the arrest of Marty Floyd?

2 A. I was.

3 Q. And what was your involvement there?

4 A. Pertaining to the actual date, on January 18th I
5 responded to a residence at 108 Louise Street, I believe I'm
6 saying that right, in reference to a follow-up to the
7 investigation. I was contacted to come out there to retrieve
8 items that were believed by the victim's family to have been
9 left by suspects at the residence.

10 Q. Okay. And when you got there to retrieve those items,
11 what were they?

12 A. One of the items was a camouflage jacket and the other
13 item was a -- it's a white in color cell phone. I can't
14 recall the brand.

15 Q. Let me show you what has been previously marked as
16 State's Exhibit No. 1. Tell me if you recognize that.

17 A. Yes, ma'am, I do.

18 Q. What is that?

19 A. This is the camouflage jacket that I placed inside this
20 box as evidence that I seized.

21 Q. Okay. And you seized that from where?

22 A. That was on the -- I can't recall if it was on the
23 washer or dryer, they were right next to each other, in the
24 kitchen area of the residence.

25 MS. KIMMONS: The State moves to have State's Exhibit

1 No. 1 entered into evidence.

2 THE COURT: Any objection?

3 MS. LEMATTY: No, Your Honor.

4 THE COURT: Thank you.

5 (State's Exhibit 1 received into evidence.)

6 Q. Let me show you what has been previously marked as

7 State's Exhibit No. 2, if you can tell us what that is.

8 A. Yes, ma'am. This is the cell phone -- do you want me to
9 take it out of the bag?

10 Q. You can.

11 A. This is the cell phone that I collected from the
12 residence. It was in the same area. I believe it was on top
13 of the jacket that was on top of the washer and dryer in the
14 kitchen area.

15 MS. KIMMONS: The State moves to have State's Exhibit
16 No. 2 entered into evidence.

17 THE COURT: Any objections?

18 MS. LEMATTY: No, Your Honor.

19 THE COURT: Thank you.

20 (State's Exhibit 2 received into evidence.)

21 MS. KIMMONS: Please answer any questions Ms. Lematty
22 might have for you.

23 THE COURT: Counsel, your witness.

24 MS. LEMATTY: Thank you, Your Honor.

25 CROSS-EXAMINATION BY MS. LEMATTY:

1 Q. Good afternoon, Detective Sauro. How are you?

2 A. Good, ma'am. How about you?

3 Q. Fine, thank you.

4 You collected these items.

5 A. I did.

6 Q. You didn't do any testing on the jacket, right?

7 A. No, ma'am. I sealed it in the bag -- in the box.

8 Q. And on the cell phone you did do some testing,
9 fingerprint, right?

10 A. Yes, ma'am, I processed the cell phone.

11 Q. Did you achieve any results from that?

12 A. I made one latent lift card or one latent lift off of
13 the phone, but there was no ridge detail.

14 Q. So, in other words, didn't find anything on it?

15 A. No, ma'am.

16 Q. And you collected these items because you believed that
17 these were Mr. Floyd's items?

18 A. I had no knowledge of whose they might be. I responded
19 out to the residence because it was believed that that
20 property was left by a suspect who had broken into the house.

21 MS. LEMATTY: Thank you. No further questions.

22 THE COURT: Any redirect?

23 MS. KIMMONS: No, Your Honor. Thank you.

24 THE COURT: You may be excused. Thank you.

25 THE WITNESS: Thank you, ma'am.

1 (Witness excused.)

2 THE COURT: You may call your next witness.

3 MR. JUSTIS: At this time the State calls Kevin Felkel.

4 KEVIN FELKEL,

5 being first duly sworn, testified as follows:

6 THE COURT: Your witness.

7 MR. JUSTIS: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION BY MR. JUSTIS:

11 Q. Good afternoon, Mr. Felkel. Could you tell us how you
12 know the victim in this case, Mr. Charles Rearick?

13 A. Sure. He's my father-in-law, known him for over 20
14 years.

15 Q. And what's your wife's name?

16 A. Jennifer Rearick Felkel.

17 Q. What's her relationship to Charles Rearick?

18 A. That's his only daughter, only child.

19 Q. And where do you currently live?

20 A. We live in Lexington, South Carolina.

21 Q. And where did you live back in January of this year,
22 2013?

23 A. Lexington, South Carolina.

24 Q. And what do you do for a living?

25 A. I'm a CPA.

1 Q. Let me turn your attention back to January 17th of this
2 year, of 2013. Do you recall what you were doing that
3 morning?

4 A. I was at work.

5 Q. And at some point did you receive a phone call that
6 morning?

7 A. I did, via the Dorchester County Sheriff's Department.

8 Q. As a result of that phone call what did you do?

9 A. I got word of a tragic accident and immediately tried to
10 contact and get in touch with my wife to let her know that
11 her dad had passed.

12 Q. And did you get in touch with her?

13 A. I did.

14 Q. After getting in touch with your wife, what did you do
15 at that point?

16 A. Went and met her, broke the news to her and tried to
17 console her as best I could.

18 Q. And where was she located?

19 A. She was going to meet me for lunch.

20 Q. Does she work?

21 A. She does.

22 Q. And was she working that day?

23 A. She sure was.

24 Q. Where does she work?

25 A. She works in Lexington-Richland School District 5 as an

1 administrator.

2 Q. After meeting with your wife, what did you do next?

3 A. I told her we needed to go and warn her mother of what
4 had happened, so we drove to Lexington informed her mom what
5 had happened and just tried to then console both of them.

6 Q. Were her mother and father married at the time?

7 A. No, they had divorced.

8 Q. And what did you do after informing the victim's
9 ex-wife, your mother-in-law?

10 A. We decided to drive to Summerville, get down there as
11 soon as possible to see if we could figure out what was going
12 on.

13 Q. And where did you go when you came to Summerville?

14 A. We were heading to his house, but we went to where the
15 accident was and we got to see the accident scene.

16 Q. After that, what did you do?

17 A. We were able to get the keys to Mr. Charles's house, and
18 we headed over to his house. Didn't know what else to do, so
19 we just went to his house.

20 Q. And when you arrived, approximately what time do you
21 think you arrived at the house?

22 A. We got there approximately 4:00 on the 17th.

23 Q. And this would be 108 Louise Street?

24 A. That's correct.

25 Q. And when you arrived at the house, what did you -- who

1 was there with you, first of all?

2 A. I had myself, my wife, my mother-in-law and a family
3 friend, four of us.

4 Q. And what did you do when you got to the house?

5 A. We decided just -- we unlocked the door and walked
6 inside and just sat down and just -- sat down and my
7 mother-in-law and my wife were just inconsolable, so we
8 just -- just sort of grieved with them as best we could at
9 the moment. It was very tragic.

10 Q. Could you tell us -- tell us about the house, what it
11 looked like, describe it for us?

12 A. Sure. The house is a single wide trailer. You know, he
13 was -- Mr. Charles was currently doing some renovations in
14 the kitchen area, and so it was sort of a work in process in
15 that area, but the other part of the house was just -- he had
16 two bedrooms and just like a normal house.

17 Q. Did you collect any items before you left the house that
18 day?

19 A. We did -- I did. You know, like I said, my wife and my
20 mother-in-law were inconsolable. The family friend and I
21 thought it might be a good idea to gather some things -- we
22 lived out of town, we were going to be leaving for the
23 night -- grab some things of sentimental value of Mr.
24 Charles' so we did that.

25 Q. What kind of items did you grab?

1 A. He was a decorated war veteran, proud of his service, so
2 we of course grabbed his war metals, his Purple Heart, we
3 grabbed some pictures, we also grabbed his weapons, he had
4 some guns in the house, we took the guns, any bank records
5 that were just readily available, checkbooks, anything like
6 that that was just important, we felt, just to secure it,
7 since we were going to be out of town.

8 Q. And did you have an opportunity to go in the shed in the
9 backyard?

10 A. We did not go in the shed. It was locked up, so we just
11 let it be.

12 Q. What about the house, when you left the house, did you
13 lock up the house?

14 A. Absolutely. We left it -- I remember precisely, we left
15 at 9:00, locked up the house, made sure it was secure, and
16 that was that.

17 Q. So you left at 9:00 in the evening?

18 A. That's correct.

19 Q. I'm going to show you some photographs that have been
20 entered into evidence to get you to kind of describe what
21 we're looking at here if you can or if you recognize them.
22 This is State's 27. Do you recognize that picture?

23 A. Looks like the bedroom, yes, sir.

24 Q. Okay. I'm showing you now what's been marked as State's
25 28. Do you recognize that photograph?

1 A. Yes, sir.

2 Q. And where is that?

3 A. That's in his -- the master bedroom.

4 Q. Okay. And what is -- what are those things on the floor
5 there?

6 A. One of them is like a heater, and the other one is a --
7 like a gun case.

8 Q. Do you recall, the day you were there, do you recall
9 that gun case being on the floor there?

10 A. It was not on the floor. It was actually standing up.

11 Q. Do you know if there was a gun in there?

12 A. Yes, there was no gun in there because I had removed the
13 guns.

14 Q. I'm showing you what's been marked as State's Exhibit
15 31. Do you recognize that picture?

16 A. I do.

17 Q. And what does that picture depict?

18 A. That's just his bathroom and his hygiene items and
19 everything.

20 Q. Do you recall all those drawers being open when you were
21 in the house earlier that day?

22 A. I do recall, they were not open.

23 Q. They were closed?

24 A. They were closed.

25 Q. Have you ever met Martin Floyd?

1 A. No, sir.

2 Q. While you were at the house -- I think you testified you
3 got there around 4:00?

4 A. That's correct.

5 Q. And you left at 9:00?

6 A. That's right.

7 Q. So for about five hours you were at that house. While
8 you were at the house, did anyone come to the house?

9 A. Yes, sir, we had neighbors come by to send their
10 condolences, dropped in. That's about it.

11 Q. Do you know some of those neighbors?

12 A. I knew a couple of them, yes, sir, but there's some I
13 didn't know.

14 Q. What time did you arrive home that evening?

15 A. Approximately 11:00 p.m.

16 Q. And when you got home that evening, what did you do?

17 A. Tried to find some pictures of Mr. Charles but went to
18 bed soon -- soon thereafter.

19 Q. Did you receive a call that night?

20 A. I did.

21 Q. Who answered the phone?

22 A. I did.

23 Q. And do you know who that call was from?

24 A. It was from -- I forget the gentleman's name, but it was
25 from the sheriff's department.

1 Q. Had you given anyone permission to go in that house, Mr.
2 Felkel?

3 A. No, sir.

4 Q. Did anyone else talk to the sheriff's department on the
5 phone that evening?

6 A. No, sir, it was just myself.

7 Q. And what did you tell the sheriff's department that
8 evening on the phone?

9 A. I think they had asked me --

10 MS. LEMATTY: Objection, Your Honor, hearsay.

11 Q. Just tell us what you told them.

12 A. I told them -- I think they had asked me if they had
13 permission --

14 MS. LEMATTY: Objection, Your Honor.

15 MR. JUSTIS: You can't tell us what they asked.

16 THE COURT: Sir, you can't say what somebody else told
17 you, but you can say what you said.

18 Q. Just tell us what you said.

19 A. I said I do not know these individuals. They do not
20 have permission to be there.

21 Q. Was your wife present when you were on the phone?

22 A. No, she was in bed. My mother-in-law -- they spent the
23 night with us that night. They were in another room. So I
24 walked into the room with them and just told them I had the
25 sheriff's department on the phone, the conversation.

1 Q. So you expressed that to them while you were still on
2 the phone with the sheriff's department?

3 A. That's correct.

4 Q. Now, did you have an opportunity to go back to Mr.
5 Charlie's house at some point --

6 A. We did.

7 Q. -- after that evening?

8 A. Yes, sir.

9 Q. And when was that?

10 A. The next morning we got down there as soon as we could,
11 just to secure things and see where things stood.

12 Q. Okay. And explain to the jury what you observed when
13 you went in the house the next day. What differences were
14 there in the house compared to the previous day?

15 A. Things were strewn around. There were piles of items
16 different places, in the bedroom, on the kitchen table.
17 Doors were open. The lock was not on the shed anymore.

18 Q. You say there were things on the kitchen table. What
19 kind of things were on the kitchen table?

20 A. There were some clothes, some computer type items, just
21 a variety of different things.

22 Q. Did you recognize any of the clothes that were on the
23 table?

24 A. Not -- no, sir. I mean --

25 Q. Did you have an opportunity to meet with police again

1 that day?

2 A. I think I did, think they came back that day, we
3 discovered some items that were there and they came back to
4 gather them.

5 MR. JUSTIS: Beg the Court's indulgence.

6 (Brief pause.)

7 Q. Mr. Felkel, I'm showing you what's been marked as
8 State's Exhibit No. 1. Do you recognize this, this jacket?

9 A. I think that's Mr. Charles' hunting jacket.

10 Q. I'm showing you what's been marked as State's Exhibit
11 No. 2. Do you recognize that?

12 A. No, sir.

13 Q. This isn't your cell phone, is it?

14 A. No, sir.

15 MR. JUSTIS: Thank you. No further questions. Please
16 answer any questions Ms. Lematty might have for you.

17 THE COURT: Ms. Lematty?

18 MS. LEMATTY: May we approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 (A bench conference was held off the record in the
21 presence of the jury but out of the hearing of the jury.)

22 THE COURT: Ladies and gentlemen of the jury, we're
23 going to take a quick five minute break just in case anyone
24 needs to use the restroom or needs to get something to drink
25 real quick, and just let us know when you're ready to come

1 back in. Thank you.

2 (Jury exits the courtroom at 2:37 p.m.)

3 THE COURT: Mr. Justis, you have the items for Ms.
4 Lematty?

5 MR. JUSTIS: I do, Your Honor.

6 (Recess held.)

7 THE COURT: Parties ready to proceed?

8 MR. JUSTIS: The State's ready, Your Honor.

9 THE COURT: Defense?

10 MS. LEMATTY: Ready, Your Honor.

11 THE COURT: All right. Let's have our jury, please.

12 (Jury enters the courtroom at 2:47 p.m.)

13 THE COURT: Ms. Lematty, your witness.

14 MS. LEMATTY: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MS. LEMATTY:

16 Q. Good afternoon, Mr. Felkel.

17 A. Hello.

18 Q. Mr. Charlie was your father-in-law?

19 A. Yes, ma'am.

20 Q. And you testified you lived in Lexington with your wife.
21 He lived down here in Knightstown, basically Summerville?

22 A. That's correct, yes, ma'am.

23 Q. And isn't it true that you knew he had roommates from
24 time to time, correct?

25 A. I had no idea.

1 Q. Okay. You testified that you came down to secure the
2 property, that you were dealing with your wife and your
3 mother-in-law, they were very upset.

4 A. That's correct.

5 Q. And you took some items from the house that you thought
6 were important to take, correct?

7 A. Absolutely.

8 Q. And isn't it true that there were still a number of
9 items of value left in the house when you left that night?

10 A. A number, I'm not sure. I know for a fact I left a TV.
11 My wife and mother-in-law were emotional, and I just thought
12 that might be too much to take and just -- I got some of the
13 most sentimental stuff.

14 Q. And so the TV was still there.

15 A. I left the TV, yes, ma'am.

16 Q. There was some sort of a video, blue ray -- something to
17 play movies attached to the TV.

18 A. Perhaps, yes, ma'am.

19 Q. The computer was still in the computer room.

20 A. Yes, I left the computer.

21 Q. There were tools all over from the renovation that Mr.
22 Charlie was having done in his house, various tools?

23 A. Probably, yes, ma'am.

24 Q. And you left, I believe you said, around 9:00 that
25 evening?

1 A. That's correct.

2 Q. And when you came back the next day, you said you
3 noticed differences in the way things were placed or arranged
4 in the house?

5 A. That's correct.

6 Q. But since you left at 9:00, you don't know what happened
7 as far as how those differences were created.

8 A. That would be accurate.

9 Q. You don't know if somebody had gotten into the house, if
10 the police had made those changes, you just simply -- you
11 weren't there, you don't know.

12 A. I was not there.

13 MS. LEMATTY: Beg the Court's indulgence.

14 (Brief pause.)

15 MS. LEMATTY: Nothing further.

16 THE COURT: Any redirect?

17 MR. JUSTIS: No redirect, Your Honor.

18 THE COURT: Thank you, sir. You may be excused.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 THE COURT: You may call your next witness.

22 MR. JUSTIS: At this time the State calls Jennifer
23 Felkel.

24 JENNIFER REARICK FELKEL,

25 being first duly sworn, testified as follows:

1 THE COURT: Your witness.

2 MR. JUSTIS: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION BY MR. JUSTIS:

6 Q. Ms. Felkel?

7 A. Yes, sir.

8 Q. What is your occupation?

9 A. I'm a school administrator for Lexington-Richland School
10 District 5.

11 Q. And where do you live?

12 A. Lexington, South Carolina.

13 Q. And how are you related to Charlie Rearick?

14 A. He was my daddy.

15 Q. Do you have any brothers or sisters?

16 A. No, sir.

17 Q. What about your mom, is your mom still alive?

18 A. She is, and she's in the courtroom.

19 Q. Were your mom and dad married at the time of your dad's
20 passing?

21 A. No, they were not. They were really close, but they
22 were not married at the time.

23 Q. How long have they been -- were they divorced?

24 A. They were married for 25 years, and they got divorced
25 when I was in college, but they were really good friends.

1 Mom would come down here and visit my dad, and my dad would
2 come up to Lexington. My mom has a patio home, and my dad
3 would reside with her when he would come see us and his
4 grandchildren.

5 Q. How many children do you have?

6 A. We have two.

7 Q. What are their ages?

8 A. Ashlyn's a little girl, and she's ten, and we have a
9 little boy named Ryan, and he's eight.

10 Q. Who's the personal representative of your dad's estate?

11 A. I am.

12 Q. And who are the beneficiaries of the estate?

13 A. I am.

14 Q. Do you know Martin Floyd?

15 A. I've met him, yes, sir.

16 Q. Do you see Martin Floyd in the courtroom today?

17 A. Yes, sir.

18 Q. Could you point him out?

19 A. He's on the right (indicating).

20 MR. JUSTIS: Please let the record reflect that the
21 witness has identified Martin Floyd, the defendant.

22 Q. How did you get to know Martin Floyd?

23 A. I talked to my dad every day, and he was in the middle
24 of doing renovations in his home and he said that --

25 MS. LEMATTY: Objection, Your Honor.

1 THE COURT: Sustained.

2 Q. You can't --

3 A. I met him -- I came to visit my dad and I met -- he was
4 there on my dad's property doing some renovations for him.

5 Q. And when do you remember meeting Martin?

6 A. It was springtime -- either early summer or late spring.

7 Q. Of last year?

8 A. Of last year, yes, sir.

9 Q. 2012?

10 A. Yes.

11 Q. Did Martin ever live with your dad?

12 A. He did for a time. It was my understanding --

13 MS. LEMATTY: Objection, Your Honor. What she's going
14 into is going to call for hearsay.

15 THE COURT: Just rephrase your question. Ask her what
16 her knowledge was.

17 Q. What, if anything, do you know about when Mr. Floyd
18 lived with your dad?

19 A. I know he lived with my dad for some time when he was
20 doing renovations. I know that he was released from prison
21 and he had nowhere to go, and my dad was the type of person
22 that would give anybody a chance, and he saw the good in
23 anybody and everybody, and he wanted him to have a chance and
24 he wanted -- he knew he had a child.

25 MS. LEMATTY: Objection, Your Honor. I think we're

1 really getting into hearsay here.

2 THE COURT: Sustained.

3 THE WITNESS: I saw the child. Can I say what I saw?

4 THE COURT: You need to answer the questions that are
5 asked.

6 THE WITNESS: Okay.

7 Q. When was the last time that you were aware Martin had
8 lived there with your dad?

9 A. That summer. He was kicked out.

10 MS. LEMATTY: Objection, Your Honor. May we approach?

11 THE COURT: Yes.

12 (A bench conference was held off the record in the
13 presence of the jury but out of the hearing of the jury.)

14 THE COURT: Ladies and gentlemen, if we could take a
15 quick recess, we'll have you back in here in just one minute.

16 (Jury exits the courtroom at 2:56 p.m.)

17 THE COURT: All right, Ms. Lematty. Happy to hear from
18 you.

19 MS. SUGGS: Judge, do you mind if I handle this
20 argument?

21 THE COURT: That's fine.

22 MS. SUGGS: The testimony from our understanding, from
23 our understanding, first of all, required hearsay, and our
24 first objection obviously is hearsay. All of this testimony
25 is based on what the decedent in this case told this witness.

1 MR. JUSTIS: Your Honor, I've got to object. She did
2 not make the objection.

3 THE COURT: Hold on a second. That's correct. You're
4 going to handle the --

5 MR. JUSTIS: Cross-examination?

6 THE COURT: -- portion of where there was an objection
7 regarding the hearsay.

8 MS. SUGGS: Yes, ma'am, but not -- I was not going to
9 continue with the cross-examination in front of the jury.

10 THE COURT: Then it would be proper for Ms. Lematty to
11 handle it.

12 MS. LEMATTY: Thank you, Your Honor. As Ms. Suggs was
13 saying, where we were going was obviously the foundation of
14 that knowledge would have to be from hearsay. We also made a
15 motion at the beginning of this case to have the State
16 identify any bad acts that were going to come up in the
17 State's case. It's impossible to ascertain a situation in
18 which somebody being kicked out of a residence wouldn't flow
19 from something -- some sort of a bad act. This was not
20 something that we were prepared to address. Her knowledge,
21 unless she was sitting there when it happened, would have to
22 come from her father, would have to come from what he said to
23 her. Unfortunately, her father is unavailable. There is no
24 hearsay exception which fits being able to provide that kind
25 of testimony, and we would ask that the -- and now we've put

1 it out there. We've put it out in front of the jury. That's
2 what the jury's heard, and, Your Honor, I think that it's
3 just manifestly unfair. It's got to be stricken or cured
4 somehow or we'd have to request a mistrial.

5 THE COURT: Mr. Justis?

6 MR. JUSTIS: I would say, Your Honor, I don't see how
7 it's a prior bad act. People get kicked out all the time.
8 That doesn't mean they did anything bad. That just means
9 there was a disagreement between the parties. Obviously, Ms.
10 Lematty has no problem with other people testifying that he
11 lived there. They don't have personal knowledge of that.
12 It's all coming from their client telling them he lived
13 there. So she's okay with all of that coming in, but we
14 can't have a person who does have personal knowledge, who
15 talked to her father every day, that can -- I mean, she's
16 corroborating that, yes, he did live there, but at some point
17 he left. And that's all we're trying to establish is that he
18 left back in the summer. He wasn't a resident there when
19 this burglary took place. And we'd be happy to -- you know,
20 that's essentially what I wanted to get out of this witness
21 was that at the time of this burglary he was no longer living
22 there.

23 THE COURT: I understand that and certainly --

24 MR. JUSTIS: I mean, we're not trying to get into, you
25 know, why he was kicked out. I don't know why he was kicked

1 out or whether he left on his own. We don't know that.

2 THE COURT: That's certainly something I can handle with
3 a curative instruction that can be reviewed by both of you.
4 I mean, it could be as simple as, you're not to consider any
5 reasons why he was no longer living there. That's not
6 relevant to the testimony. Or you can ask the witness. I'd
7 prefer just to give a curative instruction, unless you think
8 it brings more attention to it, Ms. Lematty.

9 MS. LEMATTY: Your Honor, I don't know how it can help
10 to at this point. I mean, if he had asked the question, was
11 he living there any longer, and she had said, no, he wasn't
12 living there any longer as of the summertime, as of August,
13 as of whenever, that would have been one thing. What she
14 said, he was kicked out. There is no way to turn that around
15 and spin it into something good.

16 THE COURT: Yes, there is, there's absolutely ways to
17 turn that around, and it's not that prejudicial. If she
18 knows that her father kicked him out and she knows that,
19 although it's based on hearsay, it's based on her knowledge
20 that she knows that. She knows that he was no longer living
21 there, and certainly there's so many reasons somebody can get
22 kicked out. So your choice is I can give a limiting
23 instruction that you're not to consider any potential reason
24 why he was no longer living there, whether he was kicked out
25 or not kicked out. I think the more generic the better, but

1 I don't think it's prejudicial enough to certainly warrant a
2 mistrial. I think that's certainly something that can be
3 cleaned up very easily.

4 MS. LEMATTY: Court's indulgence, Your Honor.

5 (Brief pause.)

6 MS. LEMATTY: Your Honor, we would just ask to move on
7 obviously with the caution of not bringing one's potential
8 personal interpretation into any further questions of that
9 nature.

10 THE COURT: And certainly, ma'am, I think you have to be
11 very careful in your testimony when you answer questions that
12 you just answer the question that's asked. You can't add
13 anything further such as, he just got out of prison. We want
14 this trial to adhere to the rules of evidence, so you must
15 answer just the question that's asked and don't answer
16 anything further above that.

17 THE WITNESS: Okay.

18 THE COURT: All right. Anything further from anyone?

19 MR. JUSTIS: No, Your Honor.

20 THE COURT: All right. Let's have our jury back.

21 (Jury enters the courtroom at 3:02 p.m.)

22 THE COURT: Thank you for your patience, ladies and
23 gentlemen. We'll now resume the trial of this case. You may
24 proceed.

25 MR. JUSTIS: Thank you, Your Honor, may it please the

1 Court.

2 THE COURT: Yes, sir.

3 Q. Ms. Felkel, I'm showing you what's been marked as
4 State's Exhibit No. 11. Do you recognize that?

5 A. Yes, sir.

6 Q. What is that?

7 A. My dad was a chief in the military, and that was his
8 whistle as a boatswain.

9 Q. What branch did he serve in?

10 A. The Navy.

11 Q. Do you know where he kept this whistle?

12 A. In his back bedroom.

13 Q. Do you know where in his back bedroom?

14 A. No, sir.

15 Q. Showing you what's been marked as State's Exhibit 12, do
16 you recognize this?

17 A. Yes.

18 Q. And you can open it up.

19 A. I know what it is. He had diabetes, and that's how he
20 would check his blood pressure and his sugar.

21 Q. Ms. Felkel, the day after your dad passed, when you went
22 back to the house after learning of the individuals being at
23 his house that evening, did you notice anything different
24 about the house than the previous day?

25 A. Yes. In the kitchen he had a round oak table, and it

1 was piled up, like his military uniform was on that, his
2 chief's hat, his Shriner hat, all that was just piled up, and
3 then there was all these bags and it had -- full of like
4 paper towels and like paper products and stuff like that that
5 was actually put above the washer and dryer. He had like
6 some cabinets, and that's where he kept all his paper
7 products and his laundry detergent and those things, and all
8 that stuff was like in bags all in the kitchen area, big
9 white bags full with stuff like that.

10 Q. And were those items like that the previous day when you
11 were there?

12 A. No, sir.

13 Q. I'm showing you what's been marked as State's Exhibit
14 No. 1. Do you recognize this jacket?

15 A. We did -- that jacket was found on the washer and dryer,
16 and on top of it it had a cell phone, and we didn't know
17 whose it was. It didn't -- I didn't know whose jacket it
18 was. It didn't look like anything that -- I didn't know if
19 it was my dad's or not, but we didn't know whose it was, and
20 then there was a cell phone on it, and my dad didn't have a
21 smart phone. He just had a old-timey little flip phone. And
22 then that's when we called the sheriff's department, or I had
23 my uncle or somebody call the sheriff's department to say, we
24 don't know who this belongs to, and they came back out and
25 investigated that.

1 Q. Now, when you left the house on January 17th, the day
2 your dad passed, did you have an intent to return to the
3 house at some point?

4 A. Absolutely, the next -- yes.

5 Q. Ms. Felkel, did you give permission to Marty Floyd to go
6 in your dad's house at any time?

7 MS. LEMATTY: Objection, Your Honor, leading.

8 THE COURT: Just rephrase please.

9 Q. Did Marty Floyd have permission to go in your dad's
10 house?

11 A. No.

12 Q. Do you know Rusty Norris?

13 A. No.

14 Q. Do you know Candace Mauldin?

15 A. No, I do not.

16 Q. Do you know Angela Fleeman?

17 A. No, I do not.

18 Q. Have you ever met any of them?

19 A. No.

20 Q. Did any of them have permission to be in your dad's
21 house?

22 A. No.

23 MR. JUSTIS: No further questions.

24 THE COURT: Your witness, Ms. Lematty.

25 MS. LEMATTY: Thank you, Your Honor. May it please the

1 Court.

2 THE COURT: Yes, ma'am.

3 CROSS-EXAMINATION BY MS. LEMATTY:

4 Q. Good afternoon, Ms. Felkel. Mr. Rearick was your dad.

5 A. Yes, ma'am.

6 Q. You're an only child.

7 A. (Nodding.)

8 Q. And I believe that you testified that you were the
9 personal representative of his estate.

10 A. Yes, ma'am.

11 Q. And that estate was opened up, what, about ten days
12 after he died?

13 A. I think so. It's such a blur, but yes, ma'am, that
14 sounds right.

15 Q. And you live in Lexington, South Carolina?

16 A. That's correct.

17 Q. How long have you lived there?

18 A. I went to college in '92, four years of school, I guess
19 since '99, well, went to grad school too so '99.

20 Q. So that's your home.

21 A. That's my home, that's right.

22 Q. Lexington is your home. And you're raising your
23 children there, they go to school there.

24 A. Right, yes, sorry, yes, ma'am.

25 Q. You haven't ever lived down here in Summerville since

1 you've been residing in Lexington in 1999.

2 A. No.

3 Q. Okay. I believe that you also testified that there were
4 items that looked different the next day when you came back
5 as opposed to when you left the day before.

6 A. Yes, ma'am.

7 Q. And is it correct you left about 9:00 at night the day
8 before?

9 A. That sounds right, but, again, I don't know specific
10 times. That was such a tragic day. There's a lot of blur to
11 that day with exactly what time I left and everything.

12 Q. But you have no way of knowing how any of those items
13 got moved to where they were -- you say they were moved to.

14 A. No, ma'am.

15 MS. LEMATTY: Beg the Court's indulgence.

16 (Brief pause.)

17 MS. LEMATTY: No further questions, Your Honor.

18 THE COURT: Any redirect?

19 MR. JUSTIS: No redirect, Your Honor.

20 THE COURT: Ma'am, you may step down. Thank you.

21 (Witness excused.)

22 THE COURT: Call your next witness.

23 MR. JUSTIS: At this time the State rests, Your Honor.

24 THE COURT: Ladies and gentlemen, at this point we're
25 going to take one other quick break, and I hate to make you

1 go up and down, but we have to follow certain rules of Court
2 and take certain matters outside of your presence, so we'll
3 take one quick recess, and I promise you we'll have you back
4 in here quickly. Thank you.

5 (Jury exits the courtroom at 3:11 p.m.)

6 THE COURT: Ms. Lematty?

7 MS. LEMATTY: Thank you, Your Honor, may it please the
8 Court.

9 THE COURT: Yes, ma'am.

10 MS. LEMATTY: Your Honor, at this point in time the
11 defense would move for a directed verdict in this case. As
12 the Court knows, the Court has to review the evidence in the
13 light most favorable to the State, simply looking for the
14 existence of evidence. The State has to present evidence on
15 each and every element in this case. The defendant is
16 charged with burglary in the first degree. First of all, in
17 order to commit burglary in the first degree one has to enter
18 a dwelling. In this case the State has failed to prove the
19 location at issue was a dwelling. Section 16-11-10 defines a
20 dwelling house defined in the case of burglary, arson and
21 other criminal offenses, and it reads, with respect to crimes
22 of burglary and arson and to all criminal offenses which are
23 constituted or aggravated by being committed in a dwelling
24 house, any house, outhouse, apartment, building, erection,
25 shed or box in which there sleeps a proprietor, tenant,

1 watchman, clerk, laborer or person who lodges there with a
2 view to the protection of the property shall be deemed a
3 dwelling house, and of such a dwelling house or of any other
4 dwelling house all houses, outhouses, buildings, sheds and
5 erections which are within 200 yards of it are appurtenant to
6 it or at the same establishment of which it is an
7 appurtenance shall be deemed parcels. A dwelling is also
8 defined in part of the burglary statute as a place, a portion
9 of a building in which a person usually sleeps. We would
10 submit that that would cover situations more like the
11 apartment on premises of a self-storage type of place where,
12 you know, somebody who is working there could stay as well.

13 At the time of the incident there's no identifiable
14 occupant of this premises. The State, in its indictment,
15 calls the dwelling the Estate of Charles Rearick. This is
16 not Jennifer Felkel's home. Jennifer Felkel testified this
17 was not her home. An estate is just that. It's not a
18 person. It's perhaps a legal entity, and it's also I believe
19 a legal entity that wasn't in being, in creation at the time.
20 The personal representative was created about ten days, she
21 testified, after her father passed away. State versus
22 Ferebee in South Carolina, which is 273 South Carolina 403,
23 is the closest case on point here, and in that case the
24 defendant was arrested for breaking and entering an
25 unoccupied apartment. The Court in Ferebee analyzed the

1 statutory definition of a dwelling and found that the pivotal
2 question was whether the apartment was being used as a
3 dwelling house at the time of the alleged offense. The Court
4 held that, in our view -- quote, in our view 14-11 -- sorry,
5 I must have mistyped here 16-11-10 requires that an apartment
6 have an identifiable occupant sleeping or residing therein
7 for it to qualify as a dwelling house. While the authorities
8 agree that a temporary absence of the occupants will not
9 prevent a residence from becoming the subject of a burglary,
10 it is required that such occupants leave with the purpose of
11 returning in order for a breaking and entering in absence to
12 constitute a burglary. And I think the reason and rationale
13 for this is because burglary is really an offense against
14 habitation not so much an offense against property.

15 While I haven't found anything directly on point in
16 South Carolina addressing this, other states have addressed
17 the issue of whether or not an offense is a burglary first or
18 what we would call a burglary first in the event of the
19 occupant being deceased. In 1966 State of Florida in Johnson
20 versus State held that a structure was not a dwelling house
21 as the husband who had lived on the premises had died and the
22 wife was confined to a mental hospital, and that's 188 South
23 2nd Reporter. And in 1997, People versus Ramos from
24 California, 52 California Appellate 4th 300, held that a
25 house was not inhabited or occupied when its occupant is

1 deceased. The Court found that a dwelling is inhabited if
2 the occupant is absent and intends to return and use the home
3 as a dwelling, but the Court reasoned, quote, to put it
4 plainly, a dead body is not using a house for a dwelling, and
5 there is no way to say that a dead man is going to return or
6 has intent of any kind. This analysis follows South
7 Carolina's rationale of having an intent to return to the
8 property if you're -- even if you're not there but takes that
9 extra step in the event that the occupant of the premises has
10 passed away. Michigan, state of Michigan has also confronted
11 this issue in People versus Hider, 135 Michigan App. 147, 351
12 Northwest 2nd 905, and in that case the State was required to
13 prove that the absence of an occupant was temporary because
14 otherwise that would shift the burden to the defendant in
15 order to show that there was not an intent to return.

16 If the property is not a dwelling, then even if there
17 was some offense committed inside, it's not a burglary in the
18 first degree, maybe a degree, another degree of burglary,
19 depending on the view of the facts, but if the house is not a
20 dwelling, it is not a burglary first because burglary first
21 requires entry into a dwelling with the circumstances of
22 aggravation that the State's alleged. Even if the
23 circumstances of aggravation are found to be the case, if
24 it's not a dwelling, it's simply not a burglary first degree.

25 Further, the State has also got to prove that the entry

1 into the premises was without consent and with the intent to
2 commit a crime. The State's own witnesses in this case have
3 testified consistently with each other, the only people who
4 were there, that they had no intention to do anything wrong.
5 They were going there to protect the property. They were
6 going there to help Mr. Floyd retrieve his property. Those
7 things are not crimes, and they did not have any intent to
8 commit a crime when they went into the house. The State has
9 failed to present any evidence of an intent to commit a crime
10 at the time of entry which is required to sustain a burglary
11 first conviction. All the testimony so far reflects that
12 there was not an intention to commit a crime, and therefore
13 the State's charge of burglary first cannot be sustained.
14 Thank you.

15 THE COURT: Mr. Justis?

16 MR. JUSTIS: Thank you Your Honor, may it please the
17 Court.

18 THE COURT: Yes, sir.

19 MR. JUSTIS: I'll kind of start in reverse. As far as
20 the intent to commit a crime, Mr. Norris testified that he
21 took, among other things, this whistle from the house. Did
22 not belong to him. We had testimony from the victim's
23 daughter that that's his whistle. She recognizes it as his
24 whistle. So obviously they committed a crime therein, or he
25 committed a crime therein, so we would say there has been

1 enough evidence in the light most favorable to the State to
2 see that there was possibly at least an intent to commit a
3 crime therein. There was the homeowners or Mr. Rearick's
4 items that had been retrieved out of certain rooms and piled
5 up. You know, the belief is that Mr. Floyd was just there to
6 get his stuff. Well, all the victim's stuff was messed with
7 also.

8 As far as the dwelling situation, the case that Ms.
9 Lematty cites requiring an intention to return, she's quite
10 right, it does require an intention to return; at the time
11 you depart the premise, you have an intention to return to
12 the premise. There's no doubt that Mr. Rearick, when he left
13 that morning, he had an intent to come back to that house.
14 The fact that he had a heart attack and lost control of the
15 vehicle, had an accident and died does not not make that a
16 house. And the fact that we put the Estate of Charles
17 Rearick on the indictment, that's because that's what it
18 becomes when he's no longer around. She's trying to claim
19 that it doesn't become the estate until ten days later, so by
20 her logic during those ten days I can go steal anything. I
21 can take this because it doesn't belong to anybody. How can
22 we keep anyone from going in that house, stealing any item
23 because it doesn't belong to anybody, according to that
24 logic.

25 She cites cases not from this state but from other

1 states that are 40, 50 years old. Probably a reason why
2 South Carolina hasn't adopted those cases in the last 40 or
3 50 years, because no one agrees with the logic. The case law
4 in South Carolina says when you leave your residence if you
5 have an intent to return it's a residence. When we all came
6 to work today, we had the intent to return to our residence.
7 The fact that Mr. Rearick wasn't allowed to return to his
8 residence because he passed away does not all of a sudden
9 make this a non-dwelling. This isn't something where he
10 passed away a year ago and the house has been sitting there
11 vacant for a year. It was vacant maybe 14 hours before they
12 went in that house. They were in that house the same
13 calendar day. You know, and if you look at the case law,
14 it's clear. She's absolutely right, there is no case on
15 point. That's because the case that she relies on says, when
16 you leave, if there's an intention to return, it's a
17 dwelling. He didn't abandon the property.

18 One of the cases she refers to talks about a duplex in
19 North Charleston. A doctor owned the duplex and rented out
20 both sides of the duplex. Let's just for sake of argument
21 call it A and B. A is vacant. A week ago the residents from
22 A left with no intent to return. It was for rent. B was
23 occupied. In that case -- it was Judge Lombard who was the
24 assistant solicitor -- A was burglarized. The defendant was
25 convicted, and that conviction was overturned because no one

1 was living there at the time. It had been abandoned with no
2 intent to return a week before and it was for rent. They
3 tried to say, well, the doctor that owned it, you know, it
4 was his, but at the time the people that lived there vacated
5 the apartment, no intent to return. Here Mr. Rearick did not
6 vacate the apartment. He did not abandon it. He had the
7 intent to return.

8 THE COURT: Thank you. In view of the evidence in the
9 light most favorable to the State in this matter, as I'm
10 required to do, and certainly I find that there is direct and
11 circumstantial evidence which would reasonably tend to prove
12 the defendant's guilt from which the jury can infer that, I
13 find that there is sufficient evidence to deny your directed
14 verdict motion, Ms. Lematty, respectfully. As far as the
15 intent to commit a crime therein, certainly there's direct
16 evidence. There are items that belonged to the victim on the
17 codefendants. Certainly your client's assertion that he was
18 there to get only his belongings does not coincide with
19 finding items that belonged to the victim on the
20 codefendants, so certainly I think that element has clearly
21 been established and in an amount to go to the jury.

22 Regarding the fact of the dwelling, certainly I think
23 Mr. Justis is right. Although there's not a case directly on
24 point, when the victim left his home that morning, there's
25 certainly no intention of him thinking that he was not going

1 to come back but for his tragic heart attack. It's that same
2 day. The house was not abandoned. Clearly he was living
3 there. It was his dwelling, and upon his death and his
4 passing his daughter is the heir of that property. She
5 intended to return there, so certainly we're not going to
6 make case law that makes it okay for people to burglarize
7 people's homes the day that they die, so I will respectfully
8 deny your motion. Is your client intending on testifying?

9 MS. LEMATTY: Your Honor, if we can have five minutes to
10 address that with him.

11 THE COURT: Sure. And then I'll question him under
12 oath. If you'll go over that with him, I would appreciate
13 that.

14 MS. LEMATTY: Thank you very much, Your Honor.

15 (Brief recess held.)

16 THE COURT: Parties ready to proceed?

17 MR. JUSTIS: State's ready, Your Honor.

18 MS. LEMATTY: Defense is ready, Your Honor.

19 THE COURT: Ms. Lematty, have you had an opportunity to
20 discuss with your client whether or not he wishes to testify?

21 MS. LEMATTY: I have, Your Honor.

22 THE COURT: What is his position regarding his wish to
23 testify?

24 MS. LEMATTY: He does not wish to testify, Your Honor.

25 THE COURT: Mr. Floyd, if you would please stand. Madam

1 clerk, if you would please swear Mr. Floyd.

2 MARTIN DAMEON FLOYD,

3 being first duly sworn, testified as follows:

4 THE COURT: Mr. Floyd, at this time I'm going to explain
5 to you certain of your rights. If you do not understand
6 anything I say, please let me know. If you want me to
7 explain anything in more detail, please let me know. Do you
8 understand?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Sir, we have now reached the stage of the
11 trial where you may present your defense. You have a right
12 to claim protections given to you by the Fifth Amendment of
13 the Constitution of the United States. This amendment states
14 in part that no person shall be compelled in any criminal
15 case to be a witness against himself. This means that you
16 cannot be required to testify in this case. You have the
17 right to testify on your own behalf; however, no one can make
18 you testify. This is a personal right, and no one can waive
19 this right except for you. If you decide to testify, you'll
20 be subject to the same rules that govern other witnesses, and
21 you may be examined and cross-examined on any relevant issue
22 in the case. In addition, if you have any convictions
23 involving dishonesty or false statement for crimes punishable
24 by imprisonment for more than one year and this Court
25 determines that the probative value of admitting this

1 evidence outweighs the prejudicial effect to you, the
2 Solicitor will be able to introduce your record and attack
3 your credibility. If you decide to testify, this decision on
4 your part must be freely, voluntarily and intelligently made
5 with knowledge of the protections given to you by the Fifth
6 Amendment and the consequences of your decision to testify.
7 If you decide not to testify, I will instruct the jury that
8 they cannot give the fact that you did not testify any
9 consideration whatsoever and that there is to be absolutely
10 no prejudice to you because you did not testify.

11 It is left entirely up to you whether or not you wish to
12 testify. You may talk to your attorneys some more, your
13 family, your friends or anyone else, but the final decision
14 will be left entirely up to you. Do you understand what I
15 have explained to you.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you have any questions about what I've
18 explained to you?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Have you discussed with your lawyer whether
21 or not you should testify?

22 THE DEFENDANT: I have.

23 THE COURT: And do you wish to talk to your lawyer any
24 more at this time?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Do you wish to testify?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: All right, sir, thank you. Anything further
4 at this time before we bring the jury out?

5 MR. JUSTIS: No, Your Honor.

6 THE COURT: Ms. Lematty, game plan-wise, are you
7 planning to call any witnesses?

8 MS. LEMATTY: Yes, Your Honor.

9 THE COURT: How many do you think for the day?

10 MS. LEMATTY: Three at the most, Your Honor.

11 THE COURT: All right. Thank you. Let's have our jury.

12 (Jury enters the courtroom at 3:31 p.m.)

13 THE COURT: Thank you. For your patience, ladies and
14 gentlemen of the jury. At this time of the trial the State
15 has rested its case, and what happens now is the defense does
16 not have to present anything whatsoever. They don't have the
17 burden of proof here, the State has the ultimate burden of
18 proof, but they will be given an opportunity if they choose
19 to present any evidence.

20 Ms. Lematty?

21 MS. LEMATTY: Thank you, Your Honor. The defense calls
22 Rita Smith.

23 THE COURT: Ms. Smith?

24 RITA SMITH,
25 being first duly sworn, testified as follows:

1 THE COURT: Your witness.

2 MS. LEMATTY: Thank you, Your Honor.

3 DIRECT EXAMINATION BY MS. LEMATTY:

4 Q. Good afternoon, Ms. Smith.

5 A. Hello.

6 Q. Where do you reside?

7 A. [REDACTED] Road, Summerville.

8 Q. And how long have you lived there?

9 A. 39 years.

10 Q. And how old are you?

11 A. 64.

12 Q. And do you know the defendant, Martin Floyd?

13 A. Yes.

14 Q. And how do you know him?

15 A. He's my son.

16 Q. Okay. And how old is he?

17 A. 37.

18 Q. And he went to prison for a period of time some years
19 ago, did he not?

20 A. That's correct.

21 Q. And when did he get out of prison?

22 A. Four years, three years ago -- four, three, I can't
23 exactly remember.

24 Q. And did he have a period of time where he was supervised
25 by parole agents and had to meet with them?

1 A. Yes.

2 Q. And did he successfully complete that program?

3 A. Yes, he did.

4 Q. And what kind of work does your son do?

5 A. Construction.

6 Q. And does he have any children?

7 A. Yes.

8 Q. Okay. And did you know Charlie Rearick?

9 A. Yes, I did.

10 Q. Tell the jury how you knew Charlie Rearick.

11 A. He was -- my husband, my current husband, used to live
12 next door to him, and Charlie come up to our house all the
13 time and visited, we would go down there and visit, and
14 that's how I got to know Charlie.

15 Q. And about how long would you say that you've known
16 Charlie?

17 A. Probably eight years.

18 Q. Did you know Charlie when Mr. Floyd was in high school?

19 A. I didn't, no.

20 Q. Did your husband?

21 A. Yes.

22 Q. And you had been to Charlie's home?

23 A. Yes.

24 Q. Charlie had been to your home?

25 A. Yes.

1 Q. And did there come a time when Marty went to live with
2 Charlie?

3 A. Yes.

4 Q. Prior to the time that he went to live with him, was he
5 doing work for him?

6 A. Yes.

7 Q. What kind of work was he doing?

8 A. He was doing some remodeling work in his house.

9 Q. And then he went to reside at his house?

10 A. Yes.

11 Q. And do you remember about when that was?

12 A. It was sometime during the end of 2011 or beginning of
13 2012.

14 Q. Okay. And did anybody else live there at the house with
15 Charlie and Marty Floyd?

16 A. Not that I'm aware of.

17 Q. Was there a period of time when Marty's child lived
18 there?

19 A. Yes.

20 Q. And the child's mother?

21 A. Yes.

22 Q. And all three of them lived with Mr. Rearick?

23 A. Yes.

24 Q. And did Marty have items in that house?

25 A. Yes, he did.

1 Q. What kinds of things did he have in that house?

2 A. I know he had clothes, he had tools, some furniture,
3 artwork, let's see, rugs and miscellaneous items, personal
4 items.

5 Q. Okay. And let me show you what's been introduced into
6 evidence as State's Exhibit No. 39.

7 May I approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 Q. Could I ask if you recognize this?

10 A. Yes.

11 Q. Tell the Court what it is.

12 A. It's a painting that Marty drew.

13 Q. Okay.

14 A. Yes.

15 Q. Were there -- I believe you said there were other items
16 of various personalty of Marty's that were in that residence
17 still?

18 A. Yes, ma'am.

19 MS. LEMATTY: May I approach, Your Honor?

20 THE COURT: Yes, ma'am.

21 Q. Like to show you what's been identified as Defendant's
22 Exhibit 6, ask if you can tell us what that is.

23 A. That was a desk chair that he and I bought together at
24 Goodwill store and gave it to him, yes, ma'am, and the rug is
25 one I also gave him and Mary when they were living in the

1 trailer. When they left the trailer, they took it there to
2 Charlie's.

3 Q. And does this picture fairly and accurately depict those
4 items?

5 A. Yes, ma'am.

6 MS. LEMATTY: Move to introduce Defendant's Exhibit 6
7 into evidence.

8 THE COURT: Any objection?

9 MR. JUSTIS: No objection, Your Honor.

10 (Defendant's Exhibit 6 received into evidence.)

11 Q. I'd like to show you another item, a photograph that's
12 been marked as Defendant's Exhibit 1 and ask if you can
13 identify that.

14 A. Yes, ma'am, that's the Skil saw that Marty owned.

15 Q. And show you Defendant's Exhibit 4 and ask if there's
16 anything in that photograph that you recognize.

17 A. Looks like that drawing could be his, and it looks
18 like -- I'm not sure if that's -- oh, yes that's a box that
19 had some tools in it, I believe.

20 Q. And I'd like to show you what's been marked as
21 Defendant's Exhibit 12 and ask if you recognize that, or I'm
22 sorry, anything in that.

23 A. Oh, yes, the folding doors, bi-fold doors.

24 Q. How do you recognize the bi-fold doors?

25 A. They came from my dad's house, my dad's house is vacant,

1 after he died.

2 MS. LEMATTY: At this time we would request to move
3 Defendant's Exhibit 1 and Defendant's Exhibit 12 into
4 evidence.

5 THE COURT: Ms. Lematty, you said 1 and 12?

6 MS. LEMATTY: 1 and 12. I'm sorry.

7 THE COURT: And what was 1?

8 MS. LEMATTY: No. 1 is the picture of the saw. No. 12
9 is the picture of the doors.

10 MR. JUSTIS: No objection, Your Honor.

11 THE COURT: All right, thank you.

12 (Defendant's Exhibits 1 and 12 received into evidence.)

13 Q. At this time I'd like to show you Defendant's Exhibit 1.

14 Ms. Smith, this Defendant's Exhibit 1, is that the saw
15 that you just identified?

16 A. Yes, ma'am.

17 Q. And was this picture taken inside of the trailer where
18 Marty had lived with Mr. Rearick?

19 A. Yes.

20 Q. And Defendant's Exhibit 12 that you just identified, is
21 that the picture of the bi-fold doors?

22 A. Yes.

23 Q. And is that a picture also from the room where Mr. Floyd
24 lived at Mr. Rearick's?

25 A. Yes.

1 Q. And the photograph that's Defendant's Exhibit 6, is that
2 the chair that you testified that you and Marty bought?

3 A. Yes.

4 Q. And the area rug that you testified about?

5 A. Yes.

6 Q. And those items also in this picture are located inside
7 the room where he'd lived with Mr. Rearick?

8 A. Yes.

9 Q. And there came a time that Marty was not residing at Mr.
10 Rearick's trailer anymore, correct?

11 A. Yes.

12 Q. Do you remember about when that was?

13 A. Probably around July of 2012.

14 Q. Subsequent to that time -- do you know where he moved at
15 that point in time?

16 A. He moved to Brian Cole's house.

17 Q. And after that time did he continue to do work for Mr.
18 Rearick?

19 A. Yes.

20 Q. And how do you know he continued to do work for Mr.
21 Rearick?

22 A. Well, he started doing the bathroom remodel that Charlie
23 wanted done. He ripped the whole thing out and then
24 remodeled it, built it from his hands, the cabinets anyway,
25 his own hands, and I know that because I took him down there

1 most of the time.

2 Q. And so you would transport him to Mr. Rearick's house to
3 do some work?

4 A. Yes.

5 Q. Did you see Mr. Rearick during those times?

6 A. Yes.

7 Q. Did you observe how he and Marty got along?

8 A. Yes, ma'am. They got along fine.

9 Q. And do you remember about the last time that you took
10 Marty to do some work on the house?

11 A. Approximately middle to late December, early January,
12 somewhere around then.

13 Q. And you were providing him with transportation because
14 he didn't have any other way at the time?

15 A. Right. Not all the time. Sometimes he got other rides
16 also.

17 Q. But you took him there personally yourself at times?

18 A. Yes, ma'am.

19 Q. And you continued to see Mr. Rearick as well?

20 A. Yes.

21 Q. You continued to be friends with Mr. Rearick?

22 A. Yes.

23 MS. LEMATTY: Beg the Court's indulgence.

24 (Brief pause.)

25 Q. These photographs that are in evidence, the picture of

1 the doors, the saw, the chair and the rug, all of these items
2 were in Mr. Rearick's house at the time that he passed away?

3 A. As far as I know, yes, ma'am.

4 MS. LEMATTY: Thank you very much. Please answer any
5 questions Mr. Justis or Ms. Kimmons may have.

6 THE COURT: Your witness.

7 MR. JUSTIS: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION BY MR. JUSTIS:

11 Q. And it's Ms. Smith?

12 A. Yes.

13 Q. Good afternoon, Ms. Smith.

14 A. Good afternoon.

15 Q. Now, you live on, you said [REDACTED] Road?

16 A. Right.

17 Q. Where is that in relation to Louise Street, like how far
18 is it?

19 A. Half a mile.

20 Q. And you also stated that when Mr. Floyd got out of
21 prison, he went through his parole time, had no problems,
22 isn't that correct?

23 A. Yes, sir.

24 Q. When did he finish up his parole?

25 A. He was there approximately a year. Exactly, I don't

1 remember exactly. A year, year and a half, somewhere around
2 there.

3 Q. So was he on parole when he was doing work for Mr.
4 Rearick?

5 A. Yes, I believe he was.

6 Q. I think you testified, this is State's (sic) Exhibit 6,
7 I think you testified that you purchased that chair with
8 Marty?

9 A. Yes, sir.

10 Q. Where did you purchase that chair from?

11 A. Goodwill.

12 Q. Do you remember when you purchased that chair?

13 A. Not exactly, no, I don't. It was sometime during 2012,
14 I believe.

15 Q. Was it the first half or the second half of 2012?

16 A. Probably the first half.

17 Q. What about the saw, what kind of saw was it?

18 A. The brand? All I know is it's just a Skil saw. I don't
19 really pay attention to brands. I'm sorry.

20 Q. Isn't it true all Skil saws kind of look the same?

21 A. Yes.

22 Q. Isn't it true that you can't say for sure that that's
23 Marty's Skil saw?

24 A. Let me look at it.

25 Q. What about it tells you that you're 100 percent sure

1 that's Marty's Skill saw?

2 A. Because I remember it was silver around the -- where the
3 blade goes in, and he had tools down there, and I know he had
4 a saw down there.

5 Q. And how do you know he had a saw down there?

6 A. Because I saw it.

7 Q. Let me ask you a question, you said that Marty, I guess
8 around July of 2012, that's when he left Mr. Rearick's home
9 and moved in with a gentleman by the name of Brian Cole?

10 A. Yes, sir.

11 Q. Who's Brian Cole?

12 A. He's a friend.

13 Q. Okay.

14 A. A friend of Marty's. He grew up with Marty.

15 Q. What does Mr. Cole do for a living?

16 A. He works at Boeing.

17 Q. And was he doing work for Mr. Cole?

18 A. No.

19 Q. Do you have any idea why he would leave Mr. Rearick's
20 house, where he was doing work, and move in with someone he
21 wasn't doing work for?

22 A. Because he was with Mary, and they had the baby, and
23 Charlie didn't really want Mary down there, and so it got to
24 where it was becoming intolerable, so Marty and Mary moved in
25 with Brian with the baby.

1 Q. But it's your testimony that even after he moved out, he
2 continued to do the renovations for Mr. Rearick?

3 A. Yes, sir.

4 Q. So I think you testified he moved in with Mr. Rearick
5 around late 2011, early 2012.

6 A. Approximately, sir, yes.

7 Q. Okay. So from let's say January of 2012, let's just
8 assume that for a second, so from then until December, let's
9 say all of 2012, he was working on these renovations for Mr.
10 Rearick; is that correct?

11 A. Not 100 percent all the time, no, sir. Charlie put some
12 things off. He didn't do renovations 100 percent of the
13 time. He did the bathroom first, which took a while because
14 Charlie had to buy the materials and everything. Sometimes
15 Charlie didn't go and get materials exactly when Marty needed
16 them to finish them. And then he started on his kitchen
17 after the bathroom was finished.

18 Q. So in a year all he did was a bathroom and part of a
19 kitchen?

20 A. Yes, sir.

21 Q. How often would you take him over to Mr. Charlie's
22 house?

23 A. I'd say at least two, three, four times a week. It
24 would vary.

25 Q. And when you took him over there, did you ever sit down,

1 talk to Mr. Charlie, have a cup of coffee, something like
2 that?

3 A. No. No. I mean, he would -- Charlie would be home
4 sometimes, and sometimes he wouldn't be home.

5 Q. Would you just drop him off, or would you go and chat
6 for a while?

7 A. I'd go in and chat, just chat, and then turn around and
8 leave, see what kind of work they were doing. I would stand
9 outside and talk.

10 Q. I'm showing you what's been marked as State's Exhibit
11 No. 39. I think you testified that this was a painting that
12 Marty did.

13 A. Yes, sir.

14 Q. When did he do it?

15 A. I believe that was one that he did when he was in
16 prison, or it could have been right after he got out, I'm not
17 sure. In fact, it was, I believe, when he got out because he
18 lived in the trailer with Mary at the time.

19 Q. And where did he keep this painting?

20 A. He kept it with him most of the time, wherever he was.

21 Q. When he was living with Mr. Charlie, where did he keep
22 it, do you know?

23 A. At Charlie's house.

24 Q. Where in his house?

25 A. In the room they were staying in, I think.

1 Q. You think. Well, hadn't you ever been over there when
2 your son was living there?

3 A. Yes, sir. I didn't go in every bedroom or every room
4 all the time.

5 Q. He just lived in one room, right?

6 A. Yes, sir.

7 Q. You don't remember seeing this picture in that room
8 hanging up somewhere?

9 A. Offhand, no.

10 Q. Did Marty put his initials on this?

11 A. I don't recall.

12 Q. Did this painting mean a lot to Marty?

13 A. All his work meant a lot to him, sir.

14 Q. So he wouldn't want to leave home without it, would he?
15 He wouldn't want to lose this, would he?

16 A. He couldn't take everything with him when he left, so
17 it's like most of his stuff, it was at different places.
18 Some things he had framed and some he didn't, and that was
19 one he had framed.

20 Q. On what date did you write a statement for police about
21 all this?

22 A. Last Friday.

23 Q. Okay. You mean your son's been locked up since this
24 incident in the jail, and you just wrote a statement last
25 Friday about this?

1 MS. LEMATTY: Your Honor --

2 THE WITNESS: Actually never wrote a statement. We had
3 a conversation at her office.

4 THE COURT: Ma'am.

5 MS. LEMATTY: May we approach for a minute?

6 THE COURT: Sure.

7 (A bench conference was held off the record in the
8 presence of the jury but out of the hearing of the jury.)

9 THE COURT: Do you wish to withdraw that?

10 MS. LEMATTY: I do. I was confused.

11 THE COURT: Okay.

12 Q. So the truth is you never told police any of this
13 information, did you?

14 A. No, sir. Police didn't come and ask me anything.

15 Q. Okay. Well, I mean, would the police have to come and
16 ask you? Your son's locked up in the county jail for a year
17 and you have information you claim is going to help him and
18 you don't tell police?

19 A. I had no idea what they took from the home, the police
20 took from the home or took pictures of or anything. Had no
21 idea.

22 Q. Have you talked to your son in the last year?

23 A. Of course, yes.

24 Q. Didn't he tell you what happened?

25 A. He told me that he went down there to protect his own --

1 to get his own property is what he told me.

2 Q. And according to your testimony today you know he had
3 property there.

4 A. Yes, sir.

5 Q. That's what you said.

6 A. Yes.

7 Q. So that seems to corroborate what he was saying,
8 wouldn't that be correct?

9 A. Yes.

10 Q. Don't you think that would help him, that police would
11 like to hear that?

12 A. Well, it's the truth.

13 Q. The truth is you'd do anything for your son, wouldn't
14 you?

15 A. Not anything, no, sir. He's made me angry lot of times
16 and sometimes I wouldn't do anything for him, no, sir, but I
17 don't want to see him go to jail, to prison for the rest of
18 his life for something that he did not do -- you know, he did
19 not do, that's all.

20 Q. But you're okay with him sitting in jail for a year when
21 you have information that might help him?

22 A. I really didn't know that that option was available to
23 me. I did not know that.

24 MR. JUSTIS: No further questions.

25 THE COURT: Any redirect?

1 MS. LEMATTY: No, Your Honor.

2 THE COURT: Ma'am, you may step down. Thank you.

3 (Witness excused.)

4 THE COURT: You may call your next witness.

5 MS. LEMATTY: Your Honor, the Defense rests.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, the defense has now rested its case. We will take a
8 brief recess just to assess timing-wise where we'll proceed
9 from here, and we'll bring you right back in. I promise it
10 won't be long.

11 (Jury retires to the jury room at 3:56 p.m.)

12 THE COURT: Looks like it's not quite 4:00, but a wise
13 old Judge always told me never to give the jury a case past
14 3:00, and of course we haven't gone over jury instructions,
15 so what we'll do is we'll print out proposed jury
16 instructions. We'll give each of you a copy of the jury
17 instructions. You can review those overnight. We'll meet in
18 the morning. Want the jury back in here at 9:30 or 10:00
19 work best for you all?

20 MR. JUSTIS: I'm fine with either, Your Honor.

21 MS. LEMATTY: As are we.

22 THE COURT: Why don't we meet at 9:30, and we'll tell
23 the jury to come in at 9:45 so we can get started at 10:00.
24 That will give us an opportunity to go over the jury
25 instructions in case there's any questions. So we will be at

1 ease until -- well, I'll bring the jury back in and let them
2 know what's going on before we do that. Can we have our jury
3 back?

4 (Jury enters the courtroom at 3:57 p.m.)

5 THE COURT: You thought you weren't going to get your
6 exercise serving on a jury. I know you've been up and down a
7 lot today, and we certainly appreciate your patience with us
8 today. Both sides have rested their case. At this moment
9 it's really somewhat late in the day for me to charge you on
10 the law, so we're going to reconvene in the morning for you
11 to hear closing arguments and the charge on the law before we
12 conclude the trial of this case. Please remember my previous
13 instructions to you. It's extremely important not to discuss
14 this case with anybody. Don't do any independent research.
15 Don't allow anybody to discuss the case with you, even
16 amongst yourselves, because you haven't heard the closing
17 arguments as well as the charge on the law. We'll be in
18 recess until 9:45. If you'll report to your jury room at
19 9:45, that should give everybody plenty of time to get here,
20 and we'll get started in the morning. Thank you, and you all
21 have a good night.

22 (Jury exits the courtroom at 3:58 p.m.)

23 THE COURT: Anything further from the State at this
24 time?

25 MR. JUSTIS: Nothing from the State, Your Honor.

1 THE COURT: Anything from the Defense?

2 MS. LEMATTY: No, Your Honor.

3 THE COURT: We'll get those jury instructions to you,
4 and we'll reconvene at 9:30. We're at ease.

5 (The trial in this case was recessed for the day.)

6 THE COURT: Has both the State and the defense had an
7 opportunity to review the verdict form as well? Do you need
8 to look at it just to make sure there's no objections? It's
9 standard, but I just want to make sure you have it ahead of
10 time.

11 (Judge and attorneys confer.)

12 THE COURT: We'll get that squared away and then we'll
13 have our jury.

14 MS. LEMATTY: Your Honor, I do have a brief matter
15 before the jury comes back.

16 THE COURT: Okay. Do you want to go ahead and be heard
17 on that?

18 MS. LEMATTY: Yes, Your Honor. At this time, Your
19 Honor, we would renew our motion for a directed verdict. As
20 we stated before, we don't believe that the State has
21 provided evidence on each and every element of burglary in
22 the first degree to satisfy this case going forward. We
23 would renew all of our prior arguments with regard to that
24 that were made yesterday. We would also add that the State
25 argued that Mr. Rearick had some intent to return to this

1 residence, and there's absolutely no evidence in the record
2 whatsoever about Mr. Rearick's intent in any manner at all
3 simply because there cannot be, so we would ask that, again,
4 that the Court grant a directed verdict on that issue. We
5 would also argue that pursuant to State versus Pinkney the
6 intent to commit a crime must be present at the time of the
7 entry into any dwelling. We would argue that that element
8 was not satisfied and renew all of our prior objections in
9 this matter.

10 THE COURT: Thank you, Ms. Lematty. Mr. Justis?

11 MR. JUSTIS: I would just say as far as the last one,
12 the intent, when they entered the dwelling, I would say there
13 was intent because the first place they go to is the victim's
14 room. That's when he starts looking for the guns. According
15 to Angela Fleeman, that's what she testified to, they went to
16 that room first. The room that he resided in seven months
17 previous they went to after they went through the victim's
18 room. So we would say -- we would say you can infer there
19 that they were looking for not his stuff but the victim's
20 stuff at that time.

21 And as far as the first argument which was dealing with
22 his intent to return, in the case law it talks about the
23 person abandoning the property. Obviously he hadn't moved a
24 single thing out of the property. The only property of his
25 that had been moved out of the property was actually moved by

1 her client and his buddies when they went there that night.
2 Mr. Rearick hadn't moved anything out, so it was clear you
3 can infer that he had no intent to abandon his property that
4 day when he left it, so that's -- based on that evidence, I
5 think we have met that burden.

6 THE COURT: Ms. Lematty, as per the previous ruling, I
7 would respectfully deny your motion for the same reasons as
8 indicated before. I think the State has met its burden as
9 establishing direct and circumstantial evidence for which,
10 viewing it in the light most favorable to the State, it
11 should go to the jury.

12 MS. LEMATTY: Thank you, Your Honor. We would ask that
13 our objections be preserved for the record.

14 THE COURT: Yes, ma'am. Thank you. Anything further
15 before we bring our jury out?

16 MR. JUSTIS: No, Your Honor.

17 MS. LEMATTY: No, Your Honor.

18 THE COURT: All right. Let's have our jury.

19 (Jury enters the courtroom at 10:37 a.m.)

20 THE COURT: Good morning, ladies and gentlemen of the
21 jury. I hope you had a nice evening. As you know, both
22 parties have rested their cases in this matter, and it's now
23 time for us to proceed with closing arguments, so please pay
24 close attention to the parties as they present their closing
25 arguments. Do you plan on opening on the law, Solicitor?

1 MR. JUSTIS: I do, Your Honor.

2 THE COURT: You may proceed.

3 MR. JUSTIS: May it please the Court, Your Honor.

4 THE COURT: Yes, sir.

5 MR. JUSTIS: May we get those screens pulled up?

6 Good morning, ladies and gentlemen. First of all, I'd
7 like to thank you for your service here this week. Jury duty
8 is one of the most important things you can do as a citizen.
9 Without jurors like you willing to serve, we would not be
10 able to resolve these differences that we have in our legal
11 system, so I'd like to thank you for that. I'm going to talk
12 to you real briefly, probably five minutes, on the law as it
13 applies to this case. And as the Judge told you before this
14 trial started and she will instruct you at the end, she's the
15 Judge of the law, so she's going to instruct you more
16 thoroughly on the law. And if anything I say conflicts with
17 what the Judge tells you, follow what the Judge tells you
18 because that's her -- her focus. But let's start. First of
19 all, Martin Floyd's charged with burglary in the first
20 degree. The elements of that, which is really the
21 definition, and they break it into elements almost like one,
22 two, three, so you have to prove this, prove this, prove
23 this, and if we prove all those things beyond a reasonable
24 doubt, then you must find him guilty of that crime.

25 So the first thing is entering a dwelling of another, so

1 you must find by testimony, by physical evidence, that Martin
2 Floyd entered a dwelling that belonged to someone else. The
3 second one is without consent, and of course that's an issue
4 here at trial that you've heard. You have to find that
5 beyond a reasonable doubt you're firmly convinced that he did
6 not have consent to enter the dwelling that evening. Next is
7 with the intent to commit a crime therein. Burglary is
8 entering another's dwelling without consent, and when you
9 enter, as you're going in there, as you enter in there, you
10 have an intent to commit some kind of crime in there, whether
11 it's a larceny, stealing things, or it's damaging things or
12 it's to injure somebody in there, any type of crime. And,
13 finally, for burglary first degree you heard there has to be
14 what they call an aggravating circumstance, and the statute
15 lists several aggravating circumstances. The two aggravating
16 circumstances that are most applicable in this case are,
17 number one, the breaking or entering occurs during the
18 nighttime hours, so if you find beyond a reasonable doubt
19 that all those other elements of burglary were met, then you
20 come to the aggravating circumstances, and if you find that
21 the breaking and entering occurred during the nighttime
22 beyond a reasonable doubt, then that signifies it. You can
23 stop there. If you find it wasn't, then you can go on to the
24 next because it's in order. You don't have to have both.
25 The defendant has a prior record of two or more burglaries or

1 housebreakings. So as the Judge told you in the beginning,
2 she gave you that limiting instruction about why those were
3 introduced, they were introduced for that. So if you find he
4 went in at the nighttime, met all those others, you don't
5 even get to that.

6 Now, when you're doing this, when you're doing a trial,
7 you're the judge of the facts, and what that means is you
8 hear the evidence or hear the testimony, see the evidence.
9 And most times in trials a lot of evidence comes in the form
10 of testimony by witnesses, live witnesses. That's why we
11 can't just have people write depositions and just hand them
12 in. You have to come and testify. Why? One of the reasons
13 is so that you can judge their credibility. Now, as a normal
14 person growing up we do this all the time. You do it with
15 your family members, your children. When they tell you
16 something, do you believe them, you look at them, you know,
17 how they're looking at you, are they holding their head down,
18 not looking at you in the eye. Your friends, your relatives,
19 your enemies, you're constantly judging credibility. And
20 some of the factors that you can use to judge credibility is
21 demeanor of the witness. When they were on that stand, were
22 they forthright with their answers, or were they hesitant?
23 Were they consistent or did their story change? Did they
24 have the opportunity to know the facts they are testifying
25 to? Were they there or are they just saying what someone

1 else told them? Bias, do they have any bias, do they have a
2 reason to say what they're saying or a reason to lie? And
3 then was their testimony corroborated --

4 MS. LEMATTY: Objection, Your Honor. May we approach?

5 THE COURT: Yes.

6 (A bench conference was held off the record in the
7 presence of the jury but out of the hearing of the jury.)

8 MR. JUSTIS: And next we talk about reasonable doubt,
9 and you'll hear about reasonable doubt. Reasonable doubt --
10 the Defendant has rights, but the State has rights too in the
11 trial, and the State has a right to a guilty verdict when you
12 find that there's proof beyond a reasonable doubt of their
13 guilt. Okay. Now, as I told you in opening, it is not proof
14 beyond any and all doubt. We all have doubts. You know, I
15 may doubt that the earth revolves around the sun, but is that
16 a reasonable doubt? I've never physically been in space.
17 I've never seen the earth revolve around the sun. I don't
18 know that for a fact. I might doubt that, but is that
19 reasonable? If you're firmly convinced of the defendant's
20 guilt, then you must find him guilty. If you're not firmly
21 convinced, then you must find him not guilty.

22 As I told you, that's my opening on the law. What's
23 going to happen at this point is Ms. Lematty's going to make
24 her closing argument. I want you to listen carefully, give
25 her your utmost attention. You've been very attentive all

1 week or for the last several days. Continue to do so. I
2 don't want you to make any decision at this point or after I
3 speak. When you go back in your jury room, then you make
4 your decision. But I ask that you give her your undivided
5 attention, and then after she's done, I will come back and I
6 will make my closing argument. Thank you.

7 THE COURT: Ms. Lematty?

8 MS. LEMATTY: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, ma'am.

11 MS. LEMATTY: Counsel.

12 Good morning, ladies and gentlemen. The State came
13 before you yesterday and said that they were going to present
14 evidence that would convince you beyond a reasonable doubt
15 that Martin Floyd is guilty of burglary in the first degree.
16 The trial's moved pretty quickly. You've received a lot of
17 information. As the Solicitor said, we thank you as well for
18 your attention, for your careful attention to everything
19 that's been presented to you today. This is obviously a
20 very, very important case, both to the State and to Mr.
21 Floyd. I ask you to keep some things in the forefront of
22 your mind. What Mr. Justis and I say to you is not evidence
23 in this case. The evidence in this case is what you heard
24 from that witness stand and these exhibits that you have here
25 that have been entered into evidence that will be back with

1 you in your jury room when you do your deliberations. We
2 would also submit that the Judge, of course, is the Judge of
3 the law in this case. So if there's anything different from
4 what the Judge says of the law and what Mr. Justis or I say,
5 obviously what the Judge says controls.

6 It's pretty obvious what's going on here. The State
7 started out of the gate first thing in their opening argument
8 calling Mr. Floyd a burglar. The first witness in this case
9 was the Clerk of Court to present the sentencing sheets from
10 Mr. Floyd's guilty plea to two burglary offenses that
11 occurred a day or so apart over ten years ago. He stood up,
12 he took responsibility for what happened then. He did his
13 sentence. He came out. He tried to make a better life. As
14 part of that he -- he had a friend. Mr. Rearick was his
15 friend. Mr. Rearick was his family's friend. Mr. Rearick
16 helped him out by giving him work. Mr. Rearick helped him
17 out by letting him, and for a period of time his girlfriend,
18 his daughter, live with him in this trailer that they were
19 doing these renovations on. You guys will have the pictures
20 back there that you have seen on the screen and all that, and
21 you can see everything that was going on in various parts of
22 this trailer, the work that was being done, the items that
23 were there. They did move out, as you heard his mom testify,
24 but he continued -- he continued to work for Mr. Rearick, he
25 continued to be his friend. He continued to be his -- be a

1 family friend. They had known each other for a good long
2 time.

3 As you heard, when Mr. Rearick unfortunately passed
4 away, Mr. Floyd didn't hear about that until about 12 hours
5 later. It was in the morning when the car accident occurred.
6 Mr. Floyd heard about it that night. He was distraught. You
7 heard that from Angela Fleeman. You heard that from Rusty
8 Norris. This was his friend. This was somebody who had
9 helped him. He was trying to come back from a past that is
10 not good, and he was making a real big effort to do that. So
11 he asked for a ride over there. Didn't have a vehicle of his
12 own. The four of them go over in this small pickup truck,
13 and they walk around and they see, looks like somebody's been
14 there already. He's worried. He's upset. He wants to check
15 out what's happened, what's going on. He's got items of his
16 own to look out for. He's got items of Mr. Rearick's to look
17 out for. They go inside. They turn on the lights. They
18 look around. They see what's there and what's not there.
19 He's worried about what's not there. You heard Angela
20 Fleeman say that. Then they go outside -- they talk in the
21 living room for a while. They go outside. Mr. Norris --
22 when Mr. Floyd walked back to the shed, Mr. Floyd walks back
23 away to go talk to Ms. Fleeman again. Mr. Norris cuts the
24 lock on the shed on his own. Not with Mr. Floyd there. Just
25 simply on his own he does that. He looks around. Doesn't

1 take any -- you know, anything from there, he says, but he
2 did that on his own. He didn't do that with Mr. Floyd.
3 They're there for over an hour. The testimony showed that
4 that was at least the timeframe that they were there.

5 Cops ride up, lights on, video rolling. Mr. Floyd's by
6 the truck. Ms. Fleeman is in the truck. Mr. Floyd doesn't
7 run. This is a trailer in the Knightsville community.
8 They've got big lots. There was testimony from the officers
9 about woods around. Officer testified he was 20, 25 feet
10 away from Mr. Floyd. Mr. Floyd doesn't run. Mr. Floyd does
11 what the law enforcement officers say. Mr. Floyd gets
12 detained. Mr. Floyd gets placed in the car. They search
13 him. What does he have? I'm sure I could probably find it
14 in here, but you'll have all that back there with you. He's
15 got a receipt from a metals place. He's got a pocketknife.
16 Not an uncommon thing for a man to carry around. And he's
17 got a piece of a pen. That's it. Doesn't have anything
18 else. When law enforcement rides up, there's not -- you see
19 the tools. You see the computer. You see the other items in
20 this house. Those aren't being loaded in that truck.
21 Nobody's got things in their hand. I would submit to you
22 that if folks are out to burglarize a house, you don't stay
23 there for an hour with the lights on and neighbors riding by
24 on golf carts and things of that nature. You want to be in,
25 out and done. There's no intent to commit a crime here.

1 None whatsoever.

2 What happens next? Law enforcement does call out their
3 crime scene person, Ms. Stover. She testifies she took
4 pictures. She took pictures inside that trailer. She
5 documented the scene as she found it, and you've got a number
6 of those pictures in evidence here. And they show the
7 outside of the trailer, there's certainly items out there,
8 the inside of the trailer, there's items in there, the inside
9 of the shed, all sorts of tools in there. If I were a tool
10 person, I might could explain to you what some of them are,
11 but I can't. I can just tell you it looks like a lot of
12 tools, and I know that tools are expensive, and I know that
13 tools are valuable. They weren't in the back of that truck.
14 They weren't on Mr. Floyd. So the pictures show you what was
15 there, and they also show you what was in the back of that
16 truck. Did a search warrant, like they're supposed to; take
17 a look at what's in that truck. You've got the pictures of
18 inside of the truck. You've got the pictures of the back of
19 the truck. What's in there that's attached to Mr. Floyd,
20 back of the truck? A painting he painted. He's an artist,
21 likes to paint. His work means a lot to him. And inside the
22 bed of the truck -- or I'm sorry, inside the cab of the truck
23 one of the things they presented to you was a Microsoft
24 Office box that's back there, and you can see in the picture
25 it's beside some tools and a bag of feminine products. It's

1 just -- there's all sorts of stuff in this truck, but in
2 terms of anything that came from that house, Mr. Floyd's
3 painting. It's not a crime to take something that is yours.

4 Detective Sauro testified that he was called out the
5 next day by the family. There was a jacket and a cell phone
6 they wanted him to take a look at. Jacket's right here.
7 Cell phone's in here. He went out, photographed, he
8 collected those items. Didn't do any testing of any sort on
9 the jacket. I mean, all of our clothes are more than likely
10 going to carry our DNA, that type thing. There was
11 testimony -- I believe Mr. Rearick testified -- I'm sorry,
12 Mr. Felkel testified that this was Mr. Charlie's hunting
13 jacket. I believe Ms. Felkel testified she wasn't sure whose
14 jacket it was. There's also that cell phone that was there.
15 They dusted the phone for fingerprints, but they didn't find
16 any ridge detail. Basically, they didn't find any
17 fingerprints on it, nothing they could use. Think about it.
18 It's a cell phone. We all read in the paper and see on the
19 news how the NSA or whoever can track any of us and all of us
20 from our cell phones wherever we go, monitor our
21 conversations, whatever may or may not be going on in that
22 world. How difficult would it be to open up that -- get a
23 search warrant for the cell phone, load it up, see whose it
24 is, see what it is, see what it says. We simply don't know.

25 And the State didn't do much else to conclude what

1 happened that night. They walked in, this is a burglary,
2 charged everyone with burglary, went on from there. There's
3 no evidence that they made any effort to investigate what was
4 told to them that night. And you heard from the State's
5 witnesses. The State's case is based on the other people who
6 were there, Angela Fleeman and Rusty Norris. That's their
7 case. Both of them testified they went there to help out a
8 friend who had a friend that died. There was no intent to
9 commit a crime when that residence was entered. It simply
10 wasn't there. And these are the State's witnesses. The
11 State has the burden of proof here. Mr. Floyd doesn't have
12 the burden of proving anything. The State has the burden of
13 proving to each and every one of you beyond all reasonable
14 doubt that there was, among other things, intent to commit a
15 crime when this place was entered. I submit to you it's not
16 there. It's simply not there.

17 The State also makes some issue of the fact that Mr.
18 Floyd didn't have keys to the house. Not everybody has keys
19 to a house that they have access to. I've got four children.
20 Three of them are adults. Two of them are college graduates.
21 They don't all live at home with me. None of them have a key
22 to my house. They all know how to get in. My husband's had
23 a best friend for 20 years. He knows how to get into the
24 house. My daughter's boyfriend, they've been dating for six
25 years. He watches our dogs when we're out of town. He knows

1 how to get into our house. None of them have a key. It's
2 not necessarily dispositive of the relationship. There are
3 all sorts of different kinds of circumstances in which
4 someone that you know and love can have access to your house
5 without having a key to it. We would submit to you that
6 that's simply not dispositive of the situation.

7 As I told you earlier, under our rules this is the time
8 when we get to address you during the closing. Mr. Justis
9 will have the opportunity after this to get up to respond to
10 everything that we have said to make his own arguments on
11 what he believes the evidence has shown in this case. And we
12 both thank you for the attention that you have provided
13 because it's so important -- so important in this situation.
14 There's so much that -- Mr. Floyd's future obviously is at
15 stake here. When we started this trial we told you, you
16 know, this was not a situation that's a burglary. This is a
17 situation of somebody distraught over the death of his
18 friend, trying to help a situation. We would submit to you
19 that the evidence that's come from that witness stand has
20 shown exactly that. They were friends. He had items there.
21 He had tools there. He was there simply to try to help. He
22 was going to stay the night. He was going to watch the
23 property. But for law enforcement coming up, he would have
24 done just that, and the State is asking you to convict this
25 man in part based on his past.

1 All of us have done things in our lives that we are not
2 proud of. Most of us, I think, have taken responsibility for
3 the things we've done that we're not proud of, atone for them
4 however we must and moved on with our life. People can
5 change. There are shining examples of that in global
6 society. Look at Nelson Mandela. There are simple examples
7 of that in our everyday lives. Speaking of what I know, I
8 have a child who graduated from college this past Monday.
9 That's why we started this trial on Tuesday. State was kind
10 enough to move things for a day. She graduated with over a
11 3.5 average from the University of South Carolina. I'm very
12 proud of her. In high school she was tenth from the bottom
13 of her class. She barely graduated high school. She knew
14 that she had to make a change. She did it, and she went on.
15 That's exactly what Mr. Floyd has tried to do with his life.
16 He has made terrible mistakes in the past. He stood up, and
17 he took responsibility for those mistakes. He did his time
18 for those crimes. Here he has not committed a crime. He
19 absolutely has not committed a crime.

20 At the beginning of this case the clerk had you all
21 stand up, raise your right hands and take an oath. As part
22 of that oath you promised to afford Mr. Floyd the presumption
23 of innocence, and that is sometimes something that's a little
24 bit difficult for a lot of us to do. We flip on the TV, see
25 the news, open up the paper in the morning, oh, they got the

1 guy that robbed the First Federal. The person is simply
2 charged with a crime. There's been no proof beyond a
3 reasonable doubt of each and every element of the crime that
4 person has committed, but we all have a tendency to do it, to
5 just make that jump. What you have the duty and privilege of
6 doing here is listening to everything that came from that
7 witness stand, looking at every single one of these exhibits,
8 remembering the context in which they came to be admitted as
9 evidence in the course of this trial. You put all of that
10 together, and you put the law as the Judge charges it to you
11 with it, and we submit to you that the evidence simply shows
12 that Mr. Floyd is not guilty. Thank you so much for your
13 attention and time.

14 THE COURT: Solicitor?

15 MR. JUSTIS: Thank you, Your Honor. May it please the
16 Court.

17 THE COURT: Yes, sir.

18 MR. JUSTIS: Ladies and gentlemen, much like the old
19 fable, Mr. Floyd is a wolf in sheep's clothing. He wants to
20 wear the cloth of, we were great friends, I had permission, I
21 was trying to protect Mr. Charlie's property, I did not act
22 like a burglar that night. But when you peel all that off,
23 he's exposed for what he is, and the old saying says beware
24 of a wolf in sheep's clothing.

25 Now, Ms. Lematty, let me get to -- before I start into

1 the testimony and the evidence you heard, let me respond to a
2 few things that she stated. First of all, we were great
3 friends. Such great friends that when he hears of the news,
4 the first thing he wants to do is go get his property. Not
5 let me call the family, offer my condolences. We've been
6 friends for years. Our family's been friends for years. No,
7 let me go get my stuff before it gets tied up in probate.
8 Who does that? I only went to get my stuff. That's why,
9 according to Angela Fleeman, the first room they go into is
10 what? The bedroom. Not his bedroom that he was sleeping in
11 seven months earlier. Mr. Charlie's bedroom. He's lifting
12 up the mattress, looking for what? Guns. They're going
13 through Mr. Charlie's bathroom, that's the first room they
14 went to. Then they went to the other side of the house to
15 where his stuff allegedly was.

16 Trying to protect Mr. Charlie's property. All right, so
17 you start cutting locks off things. Is that how you protect
18 his property? When you -- he thought burglars had already
19 been there because allegedly there was a chair by the window,
20 and someone must have beat us here. Someone must have got
21 here. The guns are gone. There's a chair. So he has this
22 knowledge. He's upset because someone has burglarized my
23 BFF, Mr. Charlie. So what does he do? Does he call police
24 and say, hey, I want to report a burglary? No, they hang out
25 for an hour at least. When the police arrive, he's by the

1 car. He doesn't say, thank God you guys are here. Let me
2 tell you what happened. We got here, we came to check this
3 property, and his stuff's gone. Someone's been here. He
4 doesn't say that. It's not reasonable.

5 I had permission to be there. From who? From who? The
6 only person that said Marty Floyd had permission to be there
7 was Marty Floyd. That's what he told Angela Fleeman and
8 that's what he told Rusty Norris. Jennifer Felkel didn't
9 give him permission.

10 I did not act like a burglar because I didn't run when
11 the cops came. Well, you heard Deputy Angelo testify he had
12 his gun drawn when he got out of the car. I can run fast,
13 but I can't outrun a 40-caliber bullet.

14 I turned all the lights on. I'm not a burglar. Why
15 would I turn all the lights on? Well, of course, Deputy
16 Angelo testified when they got there the lights were off.
17 They had to go through the house with their flashlights. But
18 if you did turn the lights on, Mr. Charlie's not coming back
19 that night. He's not worried about Mr. Charlie coming back.
20 He's not worried about Jennifer Felkel coming all the way
21 down from Lexington at 11:00 at night. You heard testimony
22 his relatives, his brother, lived next door. He didn't worry
23 about it.

24 Oh, I didn't take the TV and the other valuables. They
25 did take some things. They were gathering things up, weren't

1 they? On the kitchen table they had Mr. Charlie's Navy
2 clothes. Not his. Not his belongings. Mr. Charlie's. Why?
3 They had toilet paper, paper towels in bags all lined up,
4 gathering it all. When you pack to go on vacation, do you
5 pack one bag, take it out to the car, put it in, come back
6 in, pack another bag, take it out? You pack everything, line
7 it all up, and you take everything out at one time. He goes
8 there late at night under the cover of darkness. He wanted
9 to get his stuff? Just go the next morning. But it was so
10 important to go that night.

11 They go in through a window because they don't have a
12 key to the front door. Now, as Ms. Lematty said, it's not
13 unusual not to have a key to a house that you have permission
14 to be in. But isn't it normal to have a key to a house that
15 you've lived in as an adult? And he lived there until at
16 least July, around July of 2012. This happened in the
17 following January. So either he turned his key back in, or
18 Mr. Charlie changed the locks or whatever. But if he was in
19 and out of that house all the time, he used to live there, is
20 it fair to say that he should have had a key if he really had
21 permission.

22 He's looking for items that don't belong to him. Guns.
23 You heard both of Angela and Rusty testify he was looking for
24 the guns and he was upset when he didn't find them. If he's
25 so upset because someone stole them, call the cops. That's

1 what normal people do when they find out their stuff's been
2 stolen. That's what the police are for. He doesn't though.
3 He just brings in his girlfriend Angela and then two other
4 strangers, and they come armed with bolt cutters. You mean
5 to tell me he didn't see Rusty Norris -- I know it was
6 dark -- he didn't see Rusty Norris walking around with these?
7 He saw him cut that lock. I mean, maybe Rusty always carries
8 these around in his girlfriend's truck, or maybe they were in
9 his jacket pocket with all the other stuff he had in his
10 pockets.

11 And then when the cops pull up, what does Rusty say
12 Marty says? Cops (indicating). He had permission to be
13 there. Why are you yelling? You should be like, thank God
14 you're here, police officer. No, he's telling these other
15 people, cops (indicating). And what do they do? They're not
16 25 feet away from an officer pointing a gun at them. They're
17 in the back of the house. What do they do? They take off.
18 Candace keeps running. They don't find her that night.
19 Rusty, he runs a little bit, and he stops and crouches down
20 behind a brush pile. If you thought you had permission to be
21 there, why are you hiding? Let Marty do the talking like he
22 told him to do. That's what Rusty said. And Angela
23 testifies that when the cops pull up he says to her, Angela,
24 don't freak out. Why would she freak out if she believed she
25 had permission to be there -- if you believed you had

1 permission to be there?

2 You don't stay there for an hour if you're burglarizing
3 the place. You do if you know the homeowner isn't coming
4 back.

5 Now, let's talk a little bit more about some of the
6 witnesses, and specifically let's start off with Angela
7 Fleeman and Rusty Norris. As Ms. Lematty said, they're my
8 witnesses. She's absolutely right. But they're his friends.
9 Not my friends. That's who he calls up, Angela Fleeman, his
10 girlfriend. As I said, so worried about Mr. Charlie dying,
11 so upset, but the first thought is, I've got to get my
12 clothes before probate kicks in. She testified that she
13 didn't want to go, and we know later on she didn't want to be
14 there. Why is that? Because when Rusty and Candace came to
15 that house -- they were there for about an hour before they
16 actually left and went to Mr. Charlie's. They were eating
17 chicken or something. I submit to you they were getting a
18 plan together. Angela knew. She knew what they were going
19 to do. She really didn't want to be involved. She had her
20 three kids. She really didn't want to be involved. They had
21 time to plan, get their story straight. You know, if anybody
22 comes, let me do the talking. I've got permission.

23 They go in a back window in the back of the house where
24 it's pitch black, you heard him testify, pitch black, so
25 nobody can see. They pull up to the side of the house. It's

1 dark. They don't want anybody to see them there. They go
2 around the back, lift up a window and go in the house. They
3 send Candace in through the house, and she goes through and
4 opens the front door so they can all go in. She testified
5 he's looking for the guns. He's upset. And she admits in
6 her statement that she gave that night she lied. She knew
7 she had permission to be there or Marty told her they had
8 permission to be there, just -- that's what Rusty said, he
9 said Marty told me I had permission. She admits she lied
10 that first night, and then a couple weeks later she's
11 thinking about it, I'd better go change that story.

12 Rusty, he testified he gets a phone call around 10:00
13 p.m. Here's the thing about that: He calls Rusty because he
14 needs a ride. Of course Rusty doesn't have a driver's
15 license, but he does have a girlfriend, and what does she
16 have, a driver's license and a pickup truck. Why not call
17 his mama? Heck, he didn't even have to call his mama. His
18 mama called him that night and said, Mr. Charlie died. Well,
19 she testified she's always running him to the house two,
20 three, four times a week. You've got her on the phone, say,
21 hey mama, you know I've got all that stuff at his house, you
22 know, all my tools that she testified to, my painting that
23 she testified to, my rug, that chair we bought at Goodwill.
24 Can you give me a ride over there before it gets tied up in
25 probate and collect this stuff? No, he doesn't want to

1 involve mama. He calls Rusty, someone who'd never met Mr.
2 Charlie, never been over there, basically clueless. That's
3 that wolf in sheep's clothing. Okay. I know, let's get
4 Rusty and his girlfriend Candace, they don't know anything.
5 I can tell them I've got permission. They'll probably
6 believe me. But he's got mama on the phone that night.
7 Doesn't ask for a ride. She gives him rides all the time.
8 That's what she testified to. No, we'll call Rusty.

9 And Rusty, you know, what does he have when they catch
10 him? He's got on him a flashlight, always comes in handy
11 when you're going in dark houses, and this is in his pocket.
12 This is all the stuff they find in Rusty's pocket, and he's
13 carrying these (indicating). He's got some big pockets.
14 Either that or he's like an Eagle Scout, wants to be prepared
15 for whatever he might encounter at any time in his life.
16 I've got my gloves, good for not leaving fingerprints. I've
17 got the lock I cut off with this, okay, because I don't want
18 to leave that on the ground, take it with me. I've got a
19 screwdriver, good for prying into things, you never know when
20 that might come in handy. Grinder, I think he said he took
21 this out of the shop, okay. Hopefully he took it and didn't
22 bring it because it wouldn't work real well without the air
23 compressor to go with it, so he wouldn't be able to use that
24 that night, you know, but this, you know, I could use that
25 somewhere down the road, stick that in my pocket. You know,

1 there was no testimony that Marty said, oh, that's mine, you
2 can take it. So he's taking stuff, stealing stuff. Wood
3 filler, you never know when you might need to fill a hole,
4 you know, so it's always good to have that on you -- or I
5 think he stole that too, took that. The flashlight, great to
6 go in dark houses with. And then -- and let me put this down
7 because this is getting kind of heavy. You know, he takes --
8 this is one of those blood sugar monitors. This will be back
9 there in evidence. You can look at it. You heard Ms. Felkel
10 testify this was her daddy's. He was a diabetic, okay, takes
11 it out of the bathroom. What's he doing in his bathroom?
12 What's he doing in Mr. Charlie's bathroom if he's helping
13 that man get his stuff? And he takes -- and it's over there,
14 I'm not going to get it -- the pills, takes those out of the
15 bathroom too.

16 And then he takes this. That is a boatswain's whistle.
17 In the Navy the boatswains, they blow this whistle to signify
18 various events and things going on, and it has the little --
19 they wear it on a chain around their neck. And anyone that's
20 been in the Navy would be very familiar with a boatswain's
21 whistle. And you heard Ms. Felkel testify her dad was in the
22 Navy. One of his prize possessions as a boatswain's mate.
23 He didn't keep it in the shed. He kept this in his bedroom
24 in his personal space. Not Marty's personal space when he
25 lived there. His personal space. You know, they didn't take

1 anything of value. I would submit that this has great
2 value -- had great value to Mr. Charlie and has great value
3 to his daughter. All this in his pockets, but they weren't
4 there to get anything that didn't belong to them. That's
5 what the defense wants you to believe. And of course he,
6 like Angela said, Marty's looking for guns. He was upset
7 when he couldn't find them. They go in the shed because the
8 light's on in the shed, and it's a big two-story structure as
9 they've described.

10 MS. LEMATTY: Objection, Your Honor. May we approach?

11 THE COURT: Yes, ma'am.

12 (A bench conference was held off the record in the
13 presence of the jury but out of the hearing of the jury.)

14 MR. JUSTIS: So Rusty testifies he's at the shed, he's
15 looking through the boards on the shed, and he sees the light
16 on inside. He assumes someone had been in there. I guess
17 the same burglars that took the guns. So what does he do?
18 He has to pull the plywood off and cut the lock. Okay. I
19 assume when they burglarized the place, they left the lights
20 on but went ahead and put a new lock on it and put plywood
21 back up because they didn't want people to think they were
22 there. When you look at the pictures -- and you'll have
23 these back there with you -- of the shed, you know, you also
24 notice the toolbox in the shed, a bunch of the drawers open,
25 and you look in the bathroom, drawers open, like somebody was

1 looking through all that stuff. And you heard testimony
2 earlier that day, when the Felkels were there, those drawers
3 weren't open. So somebody's going through stuff looking for
4 stuff. This is Mr. Charlie's bathroom, not Marty Floyd's
5 bathroom.

6 Now, Detective Angelo, he testified, as I mentioned,
7 that when he arrived he drew his gun, told him to stay where
8 he was, let me see your hands. He testified that the shed
9 had been open, the lock was cut, they catch Rusty hiding,
10 Candace gone, lights off in the house, and he's the one that
11 contacted the Felkels to find out whether these individuals
12 had permission to be there, and it was after all that that he
13 placed him under arrest for burglary. Stephanie Stover and
14 Derek Sauro, the crime scene individuals, they took photos of
15 the scene, attempted to get fingerprints, but you heard her
16 explain why with all the construction going on, very
17 difficult. Well, if Marty Floyd's prints would have come
18 back, he lived there seven months earlier. It wouldn't be
19 unusual to find his fingerprints in the house. He lived
20 there at one time.

21 You know, the Windows software box, this is found in the
22 truck. There's no testimony that it was Marty's. We know
23 there was a computer in Mr. Charlie's house but no testimony
24 that this was Marty's. Same thing with the shop vac. You
25 saw in one of the pictures the shop vac. There's no

1 testimony that that was Marty's. The only testimony related
2 to an item that was Marty's, according to his mom, was this
3 picture that he cared a lot about. He cared a lot about his
4 art, according to Ms. Lematty. He cared so much he left it
5 there for seven months because he couldn't fit -- too much
6 stuff to take. Although his mother testifies that he was
7 there two, three, four times a week during those seven
8 months. He cared about it so much that he left it there for
9 seven months, but the night he finds out that Mr. Charlie has
10 passed away, I've got to go get it. I know it's late. I've
11 got to call up friends because I don't even have a car to get
12 there. I've got to get there and get my picture and this is,
13 you know, the most important. All the clothes that he went
14 to get, all the other items, all these tools, the saw, the
15 chair, the rug -- you know, we know somebody was in the
16 computer room because this was taken (indicating) -- did he
17 take any of those things? That's why he went there, was to
18 get his stuff, get the chair, get the rug, get your clothes
19 that are folded up on the bed with the baby bottle. None of
20 that appears in the truck. I submit to you that's because
21 he's not there to get his stuff. He's there to get Mr.
22 Charlie's stuff. You know, you heard Rusty testify that he
23 thought that jacket was Marty's jacket. That's probably why
24 they didn't find much on Marty. He didn't have one of those
25 Carhartt jackets with all the pockets like Rusty did. If I

1 took my jacket off, it would be kind of hard to fit all this
2 stuff in my pockets I've got here.

3 Then the Felkels, you know, they testified that there
4 were items, when they came back the next day after Marty was
5 there, that things had been disturbed, drawers opened, her
6 dad's -- part of her dad's Navy uniform piled up on the
7 kitchen table. That's his. Why are they looking through his
8 stuff if they're there to get Marty's stuff? Marty didn't
9 have permission, neither did the other strangers he brought
10 in the house with him that night.

11 And finally, as far as witnesses, Marty's mom. It's his
12 mom. She testifies that the first time she told her story
13 was last Friday. Her son's locked up for a year, over a
14 year. You don't come forward if you've got information that
15 you think will help him? Is that reasonable? As I said,
16 they're there two, three, four times a week. Couldn't he get
17 his stuff then? You know, when you look at the witnesses on
18 cross-examination of the State's witnesses, you really didn't
19 learn anything new. They just reiterated what they said in
20 direct. He told me he had permission, this happened, that
21 happened. Nothing new. You know, Ms. Smith, Marty's mom, on
22 cross-examination we found out a few things that she didn't
23 tell us on direct like, oh, this is the first time I'm
24 telling this story.

25 When you look at the law in the case, did the Defendant

1 break and enter a dwelling of another with the intent to
2 commit a crime therein, that's kind of the crux. Did he have
3 that intent to commit a crime when he entered that dwelling.
4 And it's impossible to dissect a person's mind scientifically
5 and say, oh, there's the intent, so we have to infer it by
6 words, by actions, by non-actions. And when we look at what
7 the evidence shows and what you heard this week, you know, we
8 know, as far as words, you know, he said, the guns are gone.
9 He's looking for the guns. First thing he went for. Someone
10 beat us here. If anyone comes, let me talk to them. I'll do
11 the talking. Cops. Angela, don't freak out. What did he
12 do? He entered under the cover -- he goes at night, not
13 during the daytime. He expected people to be there. Most
14 people go to bed at a certain time. You go during the
15 daytime. He goes in through a window. I mean, when I go to
16 see my good friend, I don't crawl in his back window. I
17 knock on the front door. I might go to the back door and
18 knock, but I don't crawl in through a window, I don't search
19 through their stuff, and I don't cut locks off of stuff they
20 already had secured so I can secure it, and I call the police
21 if I see something wrong or something that I think was done
22 wrong. You know, they parked next to the trailer. They
23 can't park behind the trailer because you saw all the stuff
24 behind the trailer. That would be the ultimate, you know,
25 because then you're really hidden. And then there's items

1 taken that belonged to Mr. Charlie. We showed some of them.
2 Rusty's taking stuff. It's a free for all. Again, ladies
3 and gentlemen, and I think as far as the aggravating
4 circumstances, nighttime, I think everyone testified this
5 happened 11:00, 12:00 at night.

6 A trial is like a jigsaw puzzle, and the pieces of the
7 puzzle are kind of like the pieces of evidence, and you get
8 those pieces one at a time. That's why we have to call
9 witnesses, and it's your job as a juror, when you go back
10 there, you're going to try to put these pieces together and
11 try to create that picture that it's supposed to create like
12 a jigsaw puzzle. A lot of people have referred to a trial
13 that way, it's like a jigsaw puzzle. When you think about
14 reasonable doubt, what does that mean, proof beyond -- it's
15 not proof beyond any and all doubt. It's a reasonable doubt,
16 and that's the definition. That's hard for people to
17 understand, even lawyers. They know the legal definition,
18 but putting it in clear words sometimes is hard. And Ms.
19 Lematty talked about her daughter and, you know, what she was
20 able to accomplish and, you know, it's a great story, and it
21 reminded me of something with my son several years ago. Came
22 home from work one day, and he was six, seven, in the living
23 room at the coffee table, and he's got a jigsaw puzzle and
24 he's putting it together. So I walked in, I said, what are
25 you doing. Putting this puzzle together. And I was watching

1 because he's getting near the end. I'm just watching. He
2 kind of finishes. He puts the last pieces in place, kind of
3 looks at it, and I looked down, and when I looked down at the
4 puzzle, I noticed there were several pieces missing. And I
5 said to him, where are the other pieces? And he said, well,
6 I don't know. I must have lost them. I don't have them
7 anymore. And I said, well, that's okay, we'll get rid of
8 that. We'll buy you a new puzzle. And he looked at me as
9 only a child could and said, why, daddy, I can still tell
10 what the picture's supposed to be. And as Ms. Lematty said
11 in her opening, if you have a question, that's doubt. The
12 question is, is it a reasonable doubt, and are you firmly
13 convinced of what that picture's supposed to show. So when
14 you go back to deliberate, the State is going to ask you to
15 return a verdict of guilty against Martin Floyd for burglary
16 in the first degree. Thank you.

17 THE COURT: Ladies and gentlemen, it's now time for me
18 to charge you on the law. The indictment charges the
19 Defendant with first degree burglary. I remind you that the
20 fact the Defendant was arrested, charged and indicted in this
21 case is not evidence in this case and cannot be considered by
22 you as evidence of guilt in this case, nor does it create any
23 presumption or inference of guilt. This document simply is
24 the formal written instrument which contains the charges made
25 against the Defendant. It is the formal document by which

1 this case is brought into this court. The Defendant has pled
2 not guilty to the indictment, and the plea of not guilty puts
3 the burden on the State to prove the Defendant guilty of the
4 indictment before he can be convicted of that indictment. A
5 person charged with committing a criminal offense in South
6 Carolina is never required to prove himself innocent. I
7 charge you that as an important rule of law the Defendant in
8 a criminal trial, no matter what the seriousness of the
9 charge may be, will always be presumed to be innocent of the
10 crime for which the indictment was issued unless guilt has
11 been proven by evidence satisfying you of that guilt beyond a
12 reasonable doubt. This presumption of innocence does not end
13 when you begin your deliberations, but it accompanies the
14 Defendant throughout the trial until you reach a verdict of
15 guilt based on evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the Defendant
19 which remains with the Defendant until it has been stripped
20 from the Defendant by the evidence satisfying you of the
21 Defendant's guilt beyond a reasonable doubt. The presumption
22 of innocence is not a mere legal theory. It's not just a
23 legal phrase. It is a substantial right to which every
24 Defendant is entitled unless you, the jury, are satisfied
25 from the evidence of the Defendant's guilt beyond a

1 reasonable doubt. What is a reasonable doubt in the law? A
2 reasonable doubt is a kind of doubt that would cause a
3 reasonable person to hesitate to act. The State has the
4 burden of proving the Defendant guilty beyond a reasonable
5 doubt.

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

22 I remind you that during this trial you and I have
23 certain duties to perform. As the trial judge it's my
24 responsibility to preside over the trial of this case, and I
25 also have the duty to rule on the admissibility of the

1 evidence offered during this trial. You are to consider only
2 the competent evidence before you. If there was any
3 testimony ordered stricken from the record in this case
4 during this trial, you must disregard that testimony. You
5 are to consider only the testimony which is presented from
6 the witness stand, any exhibits which have been made part of
7 the record in this case and any stipulations of counsel.

8 In this case you have heard testimony concerning the
9 penalty of a person concerned for the crime alleged in the
10 indictment. In determining the guilt or innocence of the
11 Defendant you cannot consider any possible penalty for a
12 particular crime. The punishment for the crime is a matter
13 for me to determine and should never be considered by you in
14 any way whatsoever in arriving at a fair and impartial
15 verdict as to the guilt or innocence of the Defendant.

16 In addition, I have the duty to charge you the law
17 applicable to this case. As a presiding judge, I'm the sole
18 judge of the law of this case, and it is your duty as jurors
19 to accept and apply the law as I now state it to you. If you
20 already have any idea as to what the law is or what the law
21 ought to be and it does not agree with what I now tell you
22 the law is, you must abandon this idea because you are sworn
23 to accept the law and apply the law exactly as I state it to
24 you. In every case tried in this court before a jury the
25 jury becomes the sole and exclusive judge of the facts in the

1 case. A trial judge cannot intimate, state, comment or make
2 any statement to the trial jury about the facts in the case
3 since you, the jury, are the sole judge of the facts in this
4 case. You are not to infer from what I have said during the
5 process of this trial, in ruling upon the admissibility of
6 evidence or otherwise or anything that I say now during the
7 course of this instruction to you, that I have any opinion
8 about the facts in this case. The law does not allow me to
9 have an opinion about the facts in this case. This is a
10 matter solely for you, the jury, to determine.

11 As jurors it is your duty to determine the effect,
12 value, weight and truth of the evidence presented during this
13 trial. There are two types of evidence which are generally
14 presented during a trial, direct evidence and circumstantial
15 evidence. Direct evidence is the testimony of a person who
16 claims to have actual knowledge of a fact such as an eye
17 witness. It is evidence which immediately establishes the
18 main fact to be proved. Circumstantial evidence is proof of
19 a chain of facts and circumstances indicating the existence
20 of a fact. It is evidence which immediately establishes
21 collateral facts from which the main fact may be inferred.
22 Circumstantial evidence is based upon inference and not on
23 personal knowledge or observation. The law makes absolutely
24 no distinction between the weight or value to be given to
25 either direct or circumstantial evidence, nor is a greater

1 degree of certainty required of circumstantial evidence than
2 of direct evidence. You should weigh all of the evidence in
3 this case. After weighing all of the evidence, if you are
4 not convinced of the guilt of the Defendant beyond a
5 reasonable doubt, you must find the Defendant not guilty.

6 In order to establish criminal liability criminal intent
7 is required. For example, the mental state required to be
8 proven by the State for a particular crime might be purpose,
9 intent, knowledge, recklessness or criminal negligence.
10 Criminal intent must be proven by the State beyond a
11 reasonable doubt. Criminal intent is always a matter that
12 must be determined by the jury from the circumstances
13 surrounding the situation. There is no way to prove intent
14 to a mathematical certainty. There is no way medical science
15 can dissect a person's brain and determine what the person
16 had in mind, so the law states that criminal intent may be
17 inferred from the circumstances shown to have existed. This
18 is how you make a determination of whether or not the element
19 requiring intent was present. It is not necessary to
20 establish intent by direct and positive evidence, but intent
21 may be established by inference in the same way as any other
22 fact by taking into consideration the acts of the parties and
23 all of the facts and circumstances of the case. Criminal
24 intent is a mental state, a conscious wrongdoing. It is up
25 to you to determine what the Defendant intended to do based

1 upon the circumstances shown to have existed. Criminal
2 intent can arise from action or failure to act. It may arise
3 from negligence, recklessness or an indifference to duty or
4 consequences. That is considered by the law to be equivalent
5 of criminal intent.

6 Necessarily, you must determine the credibility of
7 witnesses who have testified in this case. Credibility
8 simply means believability. It becomes your duty as jurors
9 to analyze and to evaluate the evidence and to determine
10 which evidence convinces you of its truth. In determining
11 the believability of a witness who has testified in this case
12 you may believe one witness over several witnesses or several
13 witnesses over one witness. You may believe a part of a
14 testimony of a witness and reject the remaining part of the
15 testimony of that same witness. You may believe the
16 testimony of a witness in its entirety or reject the
17 testimony of the witness in its entirety. You may consider
18 whether any witness has exhibited to you any interest, bias,
19 prejudice or other motive in this case. You may also
20 consider the appearance and manner of a witness while on the
21 witness stand.

22 I instruct you and emphasize that the fact the Defendant
23 did not testify is not a factor to be considered by you in
24 any way in your deliberation and in your consideration on the
25 question of the guilt or innocence of the Defendant. It must

1 not be considered by you in any manner whatsoever. A
2 Defendant has the constitutional right to remain silent, and
3 the assertion of this right must not be considered by you in
4 your deliberations. I repeat, under your oath you are to
5 draw no conclusion whatsoever from the fact the Defendant in
6 this case did not testify. The fact that this Defendant did
7 not testify should not even be discussed in the jury room.
8 The burden of proof, as I have stated to you, is on the
9 State. The Defendant is not required to prove his innocence.
10 The burden of proof remains on the State to prove guilt
11 beyond a reasonable doubt.

12 I will give you a copy of these instructions in written
13 form during your deliberations. You may refer to the
14 instructions to guide your decision making. You must
15 consider the instructions as a whole and not follow some and
16 ignore others. Please return the instructions to the Court
17 at the time your verdict is rendered.

18 The Defendant is charged with first degree burglary.
19 The State must prove beyond a reasonable doubt that the
20 Defendant entered a dwelling without consent, and at the time
21 of the entry the Defendant intended to commit a crime, either
22 a felony or a misdemeanor. A dwelling is any building or
23 portion of a building in which a person ordinarily sleeps. A
24 building constructed as a dwelling that has never been
25 occupied cannot be considered a dwelling for purposes of

1 burglary, but a building is a dwelling even if the residents
2 are temporarily absent from the building. In order to prove
3 the Defendant entered the dwelling the State does not have to
4 show that the Defendant's entire body entered the dwelling.
5 The smallest entry is sufficient and may be any part of the
6 body such as a hand or foot or even an instrument such as a
7 hook or other instrument. In addition, the State does not
8 have to prove that force was used to gain entry. If a person
9 enters a building by using deception, artifice, trick or
10 misrepresentation to get consent to enter, this is an entry
11 without consent.

12 Next, the State must prove beyond a reasonable doubt
13 that the Defendant intended to commit a crime, either a
14 felony or misdemeanor, at the time of the entry. The mere
15 entry into a dwelling without consent is not burglary. If
16 the intent to commit a crime is formed after the entry, it's
17 not burglary. On the other hand, if the Defendant intended
18 to commit a crime at the time of the entry, it is a burglary
19 even if the intent was abandoned after the entry. It does
20 not matter that the intended crime was not completed. Intent
21 may be shown by acts and conduct of the Defendant and other
22 circumstances from which you may naturally and reasonably
23 infer intent.

24 Finally, the State must prove beyond a reasonable doubt
25 that the Defendant has a prior record of two or more

1 convictions for burglary and or housebreaking. The Defendant
2 entered or remained in the dwelling in the nighttime.

3 Nighttime is the period between sunset and sunrise during
4 which there is not enough daylight to recognize a person's
5 face except by artificial light or moonlight. The Defendant
6 has a prior record of two convictions for burglary and/or
7 housebreaking. Evidence of prior offenses committed by the
8 Defendant was not offered to prove the Defendant has a bad
9 character or to prove that the Defendant committed a burglary
10 on this occasion. The prior convictions may be considered by

11 you only for the purpose of determining whether or not it
12 satisfies that element of the offense that makes it first
13 degree burglary if you enter a dwelling without consent to
14 commit a crime and you have two prior convictions for
15 burglary and/or housebreaking. Before you can even consider
16 the evidence of the Defendant's prior burglary and/or
17 housebreaking convictions, you must first find the State has
18 proved to you beyond a reasonable doubt that a burglary was
19 committed by the Defendant. If you find beyond a reasonable
20 doubt that the burglary was committed, then you may consider
21 the evidence of the prior convictions as evidence of one of
22 the circumstances which would make this burglary a first
23 degree burglary. In the alternative, if you find that the
24 Defendant entered or remained in the dwelling in the
25 nighttime, then you may consider the evidence as a

1 circumstance which would make the burglary first degree
2 burglary. If you do not find beyond a reasonable doubt the
3 Defendant either committed these alleged offenses, alleged
4 prior offenses, or that he entered or remained in the
5 dwelling in the nighttime, then you cannot return a verdict
6 of first degree burglary.

7 Ladies and gentlemen, those are the instructions on the
8 law. As I stated, you will have a copy of this in the jury
9 room for you to refer to. Mr. Foreman, this is the actual
10 verdict form which you will be responsible for signing. It
11 states -- it has the indictment number, and it basically
12 tells you to circle the appropriate verdict below and follow
13 the accompanying instructions carefully. It states, No. 1,
14 as to the charge of burglary in the first degree, we, the
15 jury, unanimously find the Defendant guilty or not guilty.
16 Make no inference whatsoever that guilty comes before not
17 guilty. It could have easily just been flipped-flopped.
18 It's just that one had to come before the other. After you
19 find unanimously, then you sign the actual verdict form, and
20 knock on the door, and Ms. Dorothy will let us know that
21 you've actually reached a verdict. I'm going to excuse you
22 at this time to see if there's any exceptions or additions to
23 the jury instructions, but do not begin your deliberations
24 whatsoever until you've received all the evidence into the
25 jury room and the bailiff instructs you to begin your

1 deliberations. So you may now be excused to your jury room.

2 (Jury retires to the jury room at 11:48 a.m.)

3 THE COURT: Any exceptions or additions from the State
4 on the jury instructions?

5 MR. JUSTIS: None from the State, Your Honor.

6 THE COURT: Any from the Defendant?

7 MS. LEMATTY: No, ma'am.

8 THE COURT: Thank you. All right. If we would gather
9 all the evidence to take back, and make sure you all go
10 through it, make sure everything was properly submitted, so
11 we can let the jury deliberate.

12 (Jury begins deliberations at 11:53 a.m.)

13 (Recess held.)

14 (Jury enters the courtroom at 2:08 p.m.)

15 (Court's Exhibit 1 marked for identification.)

16 THE COURT: Mr. Foreman, it's come to my attention,
17 based upon your question, that you would like to rehear the
18 testimony of two witnesses, that being Rusty and Angela; is
19 that correct?

20 PRESIDING JUROR: Yes, ma'am.

21 THE COURT: If at any point in time during the testimony
22 you as a group feel you've heard what you need to here, we
23 can stop, just let me know. You can hear the entire
24 testimony in its entirety, just let us know when you're
25 ready, but we'll go ahead and proceed and let you listen to

1 the testimony.

2 (Testimony of Angela Fleeman and Rusty Norris replayed
3 for the jury.)

4 THE COURT: You've heard what you need to here? All
5 right, sir. Thank you. You may return to your jury room.
6 Thank you.

7 (Jury retires to the jury room at 2:29 p.m.)

8 THE COURT: Anything further from the State at this
9 time?

10 MR. JUSTIS: Nothing, further.

11 THE COURT: From the Defense?

12 MS. LEMATTY: No, Your Honor.

13 THE COURT: Thank you. We'll be at ease on this matter.

14 (Recess held.)

15 THE COURT: It is my understanding that we have a
16 verdict in this case. I want to make sure that everyone in
17 the audience understands that we'll have no outbursts of
18 emotion, regardless of what the verdict is. If you think you
19 cannot control your emotions, you need to step out now. That
20 goes for any side. Certainly I understand that this is an
21 emotional case for both sides, so I want to give you that
22 opportunity. If you feel that you cannot control your
23 emotions, you can go ahead and step out.

24 Anything further, before we bring out our jury, from the
25 State?

1 MR. JUSTIS: Nothing from the State, Your Honor.

2 THE COURT: Anything from the Defense?

3 MS. LEMATTY: No, Your Honor.

4 THE COURT: All right. Let's have our jury, please.

5 (Jury enters the courtroom at 3:58 p.m.)

6 THE COURT: Mr. Foreman, has the jury reached a verdict?

7 PRESIDING JUROR: Yes, ma'am.

8 THE COURT: If you would please hand it to the clerk.

9 (Juror complies.)

10 THE COURT: Madam Clerk, if you'll publish the verdict.

11 CLERK OF COURT: Yes, ma'am. In the matter of the State

12 of South Carolina versus Martin Floyd, Indictment

13 2013GS18-0364, as to the charge of burglary, first degree,

14 we, the jury, unanimously find the Defendant guilty. Signed

15 by the presiding juror, David Crocker, on December the 19th,

16 2013.

17 THE COURT: Madam Clerk, would you also please poll the
18 jury.

19 CLERK OF COURT: Yes, ma'am.

20 As I call your juror name and number, please stand and
21 answer the two questions for me. No. 44, David Crocker, was
22 this your verdict in the jury room?

23 THE JUROR: Yes.

24 CLERK OF COURT: Is this still your verdict?

25 THE JUROR: Yes.

1 CLERK OF COURT: Thank you. No. 77, Curtis Gutter, was
2 this your verdict in the jury room?

3 THE JUROR: Yes, ma'am.

4 CLERK OF COURT: Is this still your verdict?

5 THE JUROR: Yes, ma'am.

6 CLERK OF COURT: Thank you. No. 109, Jacob Lacroix, was
7 this your verdict in the jury room?

8 THE JUROR: Yes, ma'am.

9 CLERK OF COURT: Is this still your verdict?

10 THE JUROR: Yes, ma'am.

11 CLERK OF COURT: Thank you. No. 152, Thai Somsnith, was
12 this your verdict in the jury room?

13 THE JUROR: Yes, ma'am.

14 CLERK OF COURT: Is this still your verdict?

15 THE JUROR: Yes, ma'am.

16 CLERK OF COURT: Thank you. No. 1, Glenn Aban, was this
17 your verdict in the jury room?

18 THE JUROR: Yes, ma'am.

19 CLERK OF COURT: Is this still your verdict?

20 THE JUROR: Yes, ma'am.

21 CLERK OF COURT: Thank you. No. 125, Heather Mongillo,
22 was this your verdict in the jury room?

23 THE JUROR: Yes, ma'am.

24 CLERK OF COURT: Is this still your verdict?

25 THE JUROR: Yes, ma'am.

1 CLERK OF COURT: Thank you. No. 140, Aletha Reddish,
2 was this your verdict in the jury room?

3 THE JUROR: Yes.

4 CLERK OF COURT: Is this still your verdict?

5 THE JUROR: Yes.

6 CLERK OF COURT: Thank you. No. 33, Victoria Carr, was
7 this your verdict in the jury room?

8 THE JUROR: Yes, ma'am.

9 CLERK OF COURT: Is this still your verdict?

10 THE JUROR: Yes, ma'am.

11 CLERK OF COURT: Thank you. No. 80, Sabrina Hansen, was
12 this your verdict in the jury room?

13 THE JUROR: Yes, ma'am.

14 CLERK OF COURT: Is this still your verdict?

15 THE JUROR: Yes, ma'am.

16 CLERK OF COURT: Thank you. No. 36, Kimberly Charles,
17 was your verdict in the jury room?

18 THE JUROR: Yes, ma'am.

19 CLERK OF COURT: Is it still your verdict?

20 THE JUROR: Yes, ma'am.

21 CLERK OF COURT: Thank you. No. 19, Stephanie Bradley,
22 was this your verdict in the jury room?

23 THE JUROR: Yes, ma'am.

24 CLERK OF COURT: Is this still your verdict?

25 THE JUROR: Yes.

1 CLERK OF COURT: Thank you. And No. 2, Terell Adams,
2 was this your verdict in the jury room?

3 THE JUROR: Yes, ma'am.

4 CLERK OF COURT: Is this still your verdict?

5 THE JUROR: Yes, ma'am.

6 CLERK OF COURT: Thank you.

7 THE COURT: Ladies and gentlemen of the jury, thank you
8 so much for your jury service. We certainly understand what
9 an inconvenience and hardship it can cause on a family, being
10 away from your family and work and whatnot, but it's
11 certainly a very important service that you provide to your
12 country as obviously our system of justice depends on jury
13 service to help us adjudicate matters. You are now released
14 from your jury service for the week. You do not have to
15 report again. We are finished with all of the trials of the
16 cases. I'll advise you that you do not have to discuss this
17 with anyone, but if you choose to discuss this case with
18 anyone, you can certainly do so, but you're free to stop and
19 do so at any time. If for some reason someone bothers you
20 and you don't want to talk to them, please report that to the
21 Court, and I'll take care of that. You're now excused to
22 your jury room, and if you will please retire there, I'll be
23 in there shortly.

24 (Jury retires to the jury room at 4:02 p.m.)

25 THE COURT: Anything further from the State before we

1 proceed to sentencing?

2 MR. JUSTIS: No, Your Honor.

3 THE COURT: Anything from the Defense?

4 MS. LEMATTY: Just to renew all of our prior motions and
5 objections, Your Honor.

6 THE COURT: Yes, ma'am. As a matter for the record, I
7 do have the original jury charge that was given to the jury.
8 We'll go ahead and mark that as a Court's Exhibit. If we
9 could be at ease for about five minutes while I release the
10 jury from the jury room, then we'll proceed to sentencing.

11 (Court's Exhibit 2 marked for identification.)

12 (Recess held.)

13 THE COURT: Are we ready to proceed?

14 MR. JUSTIS: State's ready, Your Honor.

15 THE COURT: Defense ready?

16 MS. LEMATTY: Yes, Your Honor.

17 THE COURT: If you'll all please come forward.

18 MR. JUSTIS: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 MR. JUSTIS: I'm handing up a sentencing sheet and also
21 a certified copy of the State's intent to seek a life without
22 parole sentence if convicted.

23 THE COURT: Thank you. Ms. Lematty, be happy to hear
24 from you.

25 MS. LEMATTY: Thank you, Your Honor, may it please the

1 Court. Mr. Floyd is 37 years old. He has been incarcerated
2 at the Dorchester County Detention Center continuously since
3 he was arrested for this crime on January 18th of 2013. I
4 believe that is 335 days. He is supported in Court today by
5 his mother and two of his friends who are seated on the front
6 row to the Court's right. Your Honor, he came out of prison,
7 completed his community supervision without any violations,
8 was doing his best to make his way in the world, and while
9 obviously the jury's verdict is what it is, I'm sure the
10 Court can tell from the testimony presented and the Defense
11 argument what his position is in the matter. We respect the
12 jury's verdict. We understand that the Court doesn't really
13 have a lot of discretion in sentencing, given the particular
14 circumstance that Mr. Floyd finds himself in.

15 THE COURT: Anything further from anyone on the Defense?

16 (No response.)

17 THE COURT: Solicitor, is there anything that the
18 victims would like to state or anything that you would like
19 to state.

20 MR. JUSTIS: No, Your Honor.

21 THE COURT: And his full prior record, Solicitor, is
22 what?

23 MR. JUSTIS: Back in 2002 he actually pled to four
24 burglaries, two burglary first degree, one burglary second
25 violent and one burglary second nonviolent. At that time he

1 received a ten-year sentence by Judge Williams, and that's
2 pretty much the extent of his record.

3 THE COURT: All right. Mr. Floyd, certainly it's always
4 a difficult thing to sentence someone to life in prison
5 without parole; however, it's certainly by your own doing.
6 It's not as if you did not understand what a burglary was. I
7 certainly -- I agree with the jury's verdict, considering the
8 evidence, and what I find most troubling really is that you
9 victimized this family when they lost a father and a husband
10 and a friend, and the fact that you chose to do that to
11 someone that took you in and gave you a chance after you had
12 committed a similar crime in nature, where probably somebody
13 else would not have done so, is really what's very
14 disturbing.

15 On Indictment 2013GS18-0364 for burglary in the first
16 degree you're hereby committed to the State Department of
17 Corrections for life without parole.

18 MS. LEMATTY: Thank you, Your Honor.

19 MR. JUSTIS: Thank you, Your Honor.

20 --- END OF TRANSCRIPT OF RECORD ---

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter

6 for the State of South Carolina, do hereby certify that the

7 foregoing is a true, accurate and complete transcript of

8 record of all the proceedings had and evidence introduced in

9 the trial of the captioned case, relative to appeal, in the

10 First Judicial Circuit Court for Dorchester County, South

11 Carolina, on the 17th through the 19th of December, 2013.

12 I further certify that I am neither related to nor

13 counsel for any party to the cause pending or interested in

14 the events thereof.

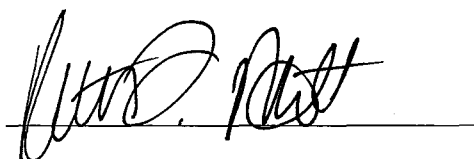
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February 28, 2014

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A handwritten signature in black ink, appearing to read 'Ruth L. Mott', is written over a horizontal line.

19

Ruth L. Mott

20

Official Court Reporter

21

22

23

24

25

WITNESSES

R Carson

Dorchester County Sheriff

**ARREST WARRANT NUMBER
2013A1810300051**

Arrested: January 18, 2013

ACTION OF GRAND JURY

Donna Pratt
**Foreperson of Grand Jury
Date: October 31, 2013**

VERDICT

TRUE BILL

**Foreperson of Petit Jury
Date:**

DOCKET NO. 2013GS18-0364

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

November 4, 2013 TERM

**THE STATE
vs.**

Martin Dameon Floyd

**Indictment for
BURGLARY - FIRST DEGREE**

SC Code: 16-11-311

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

290

Defendant

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

Defendant

Witness:

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

2013 OCT 31 PM 1:56
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2013GS18-0364

At a Court of General Sessions, convened on November 4, 2013 the Grand Jurors of
Dorchester County present upon their oath:

BURGLARY - FIRST DEGREE

That in Dorchester County, South Carolina, on or about January 18, 2013, the
Defendant, Martin Dameon Floyd, did willfully and unlawfully enter the dwelling of
the Estate of Charles Alvin Rearick, without consent and with the intent to commit
a crime therein and the defendant did enter the house under the veil of darkness
with intent to steal items of value and/or has been convicted of two or more
burglaries. This offense being a violation of Section 16-11-311 of the South
Carolina Code of Laws, as amended.

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



Glenn P. Justis, Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
STATE VS.
Martin Dameon Floyd
AKA:
Race: WHITE Sex: M Age: 37
DOB: [REDACTED] SS# [REDACTED]
Address: [REDACTED] Rd
City, State, Zip: Summerville, SC 29483-9575
DL#: [REDACTED] SID#: [REDACTED]
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Burglary - First Degree

Wife W/O Parole
IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 2013GS18-0364
A/W#: 2013A1810300051
Date of Offense: 1/18/2013
S.C. Code § : 16-11-311
CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-311 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. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] 76606
Justis, Glenn P. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

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

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 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
§ 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 (SCCA Surcharge)	\$5	\$ 5
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 Cheryl Graham
Court Reporter: Ruth Mott
SCCA/217 (03/2011)

Presiding Judge Maite' Murphy
Judge Code: 2164
Sentence Date: 12/19/13

FORM 5

STATE OF SOUTH CAROLINA)

County of DORCHESTER)MARTIN D. FLOYD 290265)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-18- 1249

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS, DORCHESTER COUNTY, SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) ANGELA M. FLEEMAN, RUSTY D. NORRIS, CANDACE MAULDIN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 G518-0364
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) DECEMBER 19, 2013, 17-25-45 LIFE WITHOUT PAROLE
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. STATE OF SOUTH CAROLINA, IN THE COURT OF APPEALS
- ii. STATE OF SOUTH CAROLINA, IN THE SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED CONVICTION
- ii. WRIT OF CERTIORARI DENIED
- iii. _____
- (c) the date of each such result:
- i. JULY 15, 2015
- ii. JULY 18, 2016
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO OPINION PUBLISHED
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHMENT PAGE # 1, 10. (A)
- (b) SEE ATTACHMENT PAGE # 1, 10 (B)
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENTS PAGE # 2-8 11. (A)
- (b) SEE ATTACHMENT PAGE # 9 AND # 10. 11. (B)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (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. PETITION FOR WRIT OF HABEAS CORPUS
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. IN THE SOUTH CAROLINA SUPREME COURT
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. DENIED
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. JULY 19, 2017
- ii. _____
- iii. _____
- iv. _____

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

- i. NONE
- 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. NA
- ii. _____
- iii. _____

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

- i. NA
- 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) NOT PREVIOUSLY PRESENTED FOR DIRECT APPEAL
 (b) _____
 (c) _____

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

(a) your arraignment and plea? YES
 (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. A) ASHLEY CHISEM, MARY LEMATTY, B.C., FIRST CIRCUIT PUBLIC DEFENDERS OFFICE, 107 W. 6th NORTH ST. SUMMERVILLE, SC 29483
 ii. CARMEN GANJESHANI, DIVISION OF APPELLATE DEFENSE, 1330 LAOY STREET, SUITE 401, COLUMBIA, SC 29201
 iii. LAURA BAER, DIVISION OF APPELLATE DEFENSE, 1330 LAOY STREET, SUITE 401 COLUMBIA, SC 29201
 (b) the proceedings at which each such attorney represented you:
 i. ASHLEY CHISEM, PRELIMINARY HEARING
~~NOT~~
 ii. MARY LEMATTY, AT TRIAL
 iii. CARMEN GANJESHANI AND LAURA BAER DIRECT APPEAL

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

VACATION OF SENTENCE AND ORAL OF ACQUITTAL, OR REVERSE
AND REMAND FOR NEW TRIAL

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

NO

APPLICANT WILL BE AMENDING THIS APPLICATION ONCE COUNSEL IS APPOINTED
 PURSUANT TO SCLCP RULE 15(b).

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

VERIFICATION

I, MATEO DAMON FLOSA, 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.

Mateo Flosa

SWORN to and subscribed before me this 17th
 day of July, 2017.

Ludovic Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

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

2017-CP-18-1249

I, MARTIN DAMAZON FLOYD, 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.

Martin D. Floyd
Applicant

SWORN or affirmed to and subscribed before me this
17th day of July, 2017.

Luchean Bryant
Notary Public

My Commission Expires: May 26, 2020

CERTIFIED COPY
 2017 JUL 25 PM 4:33
 Clerk of Court
 BORDERS COUNTY

10. STATE CONCISELY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOU ARE BEING HELD IN CUSTODY UNLAWFULLY; 2017-CP-18-1249

10.(A)

APPLICANT WOULD HEREIN ALLEGE THAT HE IS BEING HELD UNLAWFULLY BY THE RESPONDENT DUE TO HIS BEING DENIED HIS CONSTITUTIONALLY GUARANTEED RIGHT TO HAVE "EFFECTIVE ASSISTANCE OF COUNSEL" DURING CRITICAL CRIMINAL PROCEEDINGS, THAT APPLICANT'S ATTORNEY FAILED TO PROVIDE SUCH IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, APPLICABLE TO THE STATES BY AND THROUGH THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; AND IN VIOLATION OF THE SOUTH CAROLINA STATE CONSTITUTION ARTICLE 1 SECTIONS 3 & 14 ACCORDINGLY.

10.(B)

APPLICANT WOULD HEREIN ALLEGE THAT HE IS BEING HELD UNLAWFULLY BY THE RESPONDENT DUE TO HIS BEING DENIED HIS CONSTITUTIONALLY GUARANTEED RIGHT TO A FAIR TRIAL. THAT THE STATE OF SOUTH CAROLINA VIOLATED DUE PROCESS OF LAW WHEN PROSECUTION IN DIRECT REPRESENTATION FOR SUCH SELECTIVELY, VENUECTIVELY, AND INTENTIONALLY PERFORMED CONDUCT THAT WAS NOT FAIR OR IMPARTIAL, WHICH CONSTITUTES PROSECUTORIAL MISCONDUCT AND SELECTIVE PROSECUTION. IN VIOLATION OF DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, APPLICABLE TO THE STATES AND IN VIOLATION OF THE SOUTH CAROLINA STATE CONSTITUTION ARTICLE 1 SECTIONS 3 & 14 ACCORDINGLY

FOR REASONS SET FORTH APPLICANT'S TRIAL WAS UNFAIR AND UNCONSTITUTIONAL AND SENTENCE AND CONVICTION SHOULD BE SET ASIDE AND REHEARD.

11. STATE CONCISELY IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10)

11.(A) APPLICANT WOULD SHOW GIVEN AN OPPORTUNITY FOR AN EVIDENTIARY HEARING THAT COUNSEL WAS INEFFECTIVE AND DEFICIENT WHEN SHE:

- 1) FAILED TO INVESTIGATE THE FACTS AND INFORMATION THAT WAS AVAILABLE AND REQUESTED BY APPLICANT
- A) THE LOCATION OF ALLEGED BURGLARY, ONE OF THE STATES' THEORIES AND A KEY CIRCUMSTANCE USED BY THE STATE WAS THAT APPLICANT ENTERED THE BUILDING THROUGH A WINDOW RATHER THAN CONVENTIONAL MEANS. HAD THE TRAILOR BEEN INVESTIGATED IT WOULD OF BEEN APPARENT AND SUPPORTED BY DIRECT EVIDENCE THE WINDOW ENTRIED WAS THE ACTING BACK DOOR, REBUTTAL TO THE STATES CIRCUMSTANTIAL EVIDENCES RELIED UPON.

(B) APPLICANTS PRIOR RECORD THAT WAS USED AS AN AGGRAVATING FACTOR REQUIRED TO PROVE FIRST DEGREE BURGLARY, WHEN A PERSON HAS A RECORD OF TWO OR MORE CONNECTIONS FOR HOUSEBREAKING "PRIOR RECORD". THEN IT CAN BE CONSIDERED BURGLARY FIRST. HAD SHE INVESTIGATED THESE PRIORS THAT WERE RELIED UPON BY THE STATE SHE WOULD HAVE BEEN ABLE TO CHALLENGE THEM, IN THAT THE COURT LACKED JURISDICTION TO ACCEPT GUILTY PLEA AND SENTENCE APPLICANT, AND THAT WHEN APPLICANT WAS SENTENCED IT WAS IN USING ONE CONVICTION FOR DIFFERENT COUNTS THAT WERE SO CLOSE IN NATURE, TIME AND PROXIMITY THEY WERE TO BE CONSIDERED A SINGLE CONVICTION.

(C) TO INVESTIGATE, INVESTIGATIONS PROBABLE CAUSE, TACTICS AND METHODS, PARTICULARLY THE EVIDENCE USED TO INDICT APPLICANT. IF DILIGENTLY INVESTIGATED COUNSEL COULD HAVE HAD GROUNDS TO FILE MOTION TO DISMISS CHARGES BASED ON DET. CARSON TESTIMONY AT ALLEGEDLY HEARING, THAT WE CONFESSED ORALLY AND IN WRITING TO FIRST DEGREE BURGLARY. THERE IS NO WRITTEN CONFESSION

11. (A) 1) CONTINUED, (C) WRITTEN CONFESSION ON RECORD AND WHEN ASKED ON THE WITNESS STAND AT PRELIMINARY HEARING DID HE RECORD THE ORAL CONFESSIONS HE UNDER OATH TOLD THE COURT, THE DEFENSE, THE PROSECUTION THAT WORCHSTER COUNTY DID NOT HAVE THE CAPABILITIES TO RECORD A CRIMINAL INVESTIGATIONS INTERVIEW OF A SUSPECT. THIS PRAGURA TESTIMONY WAS NEVER CHALLENGED OR KNOWN TO COUNSEL, COUNSEL WAS NOT PRESENT AT THE PRELIMINARY HEARING, PUBLIC DEFENDERS OFFICE SENT A SUBSTITUTE, ASHLEY CHESM TO REPRESENT APPLICANT HAD SHE INVESTIGATED SHE WOULD HAVE HAD INCULCATION TO MOVE FOR AN ADJUDICAL.

(D) A SET OF FINGERPRINT MENTIONED AT PRELIMINARY HEARING TO HAVE EXISTED IN POSSESSION OF THE STATE, THAT WERE NOT REVEALED AGAIN BY PROSECUTION OR DEFENSE, HAD COUNSEL DILIGENTLY INVESTIGATED THESE FINGERPRINT LISTS IN THE POSSESSION OF THE STATE COULD OF POTENTIALLY IDENTIFIED A THIRD PARTY PRESENCE THAT WOULD HAVE RAISED DOUBT AS TO THE VERY CIRCUMSTANTIAL EVIDENCE USED AGAINST APPLICANT AND IS HIGHLY PROBABLY IF CHALLENGED WITH THE EXISTENCE OF ANOTHER THEORY AS TO SOME THINGS PLACED ON KITCHEN TABLE AND HOW THEY GOT THERE THAN THE OUTCOME OF TRIAL MOST LIKELY WOULD HAVE BEEN DIFFERENT.

(E) CRIME SCENE PHOTOS THAT SHOW A NYLON GUN CARRYING CASE LYING ON THE FLOOR IN A BED ROOM SAID TO HAVE CARELESSLY BEEN KNOCKED OVER WHILE APPLICANT ALLEGEDLY RUMAGED THE BUILDING AND PLACED ITEMS ON THE KITCHEN TABLE SO THAT APPLICANT COULD TAKE THESE VALUABLES ALL OUT OF THE TRAILOR AT ONE TIME; HAD THE PHOTOGRAPHS BEEN DILIGENTLY INVESTIGATED COUNSEL WOULD HAVE SEEN THAT THE SAME GUN CASE ALLEGEDLY KNOCKED OVER BY APPLICANT WAS ALSO PHOTOGRAPHED PLACED ON THE KITCHEN TABLE THAT WAS THE HEART OF THE STATES CIRCUMSTANTIAL EVIDENCE CASE. HAD THESE PHOTOGRAPHS BEEN KNOWN TO EXIST BY COUNSEL SHE COULD HAVE FILED A MOTION TO DISMISS.

11. (2) FAILED TO INTERVIEW REQUESTED WITNESSES BY APPLICANT THAT HAVE KNOWLEDGE OF MATERIAL FACTS THAT APPLICANTS TOOLS COULD HAVE BEEN IDENTIFIED BY ARRON LOWERY WHO WAS REQUESTED TO TESTIFY, ALSO THAT HE KNEW ABOUT APPLICANTS RENTAL ARRANGEMENTS THERE.
- (3) FAILED TO CALL WITNESSES THAT WOULD BE PRESENT AT TRIAL TO TESTIFY ON THE APPLICANTS BEHALF AS TO THE RELATIONSHIP AND ARRANGEMENTS MADE BY APPLICANT BY ALLEGED WITNESS CHARLES ROBERT.
- (A) BRIAN COLE WHO WOULD OF TESTIFIED THAT APPLICANT NEVER MOVED HIS BELONGINGS FROM THE TRAILER LOCATION, THAT APPLICANT STILL LIVED THERE UP TO THE DAY OF ALLEGED CRIME. ALSO THE GOOD FRIEND, TRUSTED RELATIONSHIP HE HAD WITNESSED MANY TIMES
- (B) DANIELLE FLOWERS LINDER, THE ALLEGED VICTIMS STEP DAUGHTER WHOM HE WAS VISITING THE MORNING OF VICTIMS TRAGIC CAR ACCIDENT, SHE HAD HEARD MANY TIMES THAT I WAS WELCOMED INTO CHARLES HOME ANYTIME AND THAT SHE GAVE APPLICANT AND HIS INFANT DAUGHTER HER BEDROOM SO ~~THE~~ APPLICANT WOULD HAVE HIS OWN BEDROOM. THE MORNING OF THE ACCIDENT AND ARREST DANIELLE WAS TOLD THAT HER MOTHER JANET LINDER HAD MOVED BACK OUT AND THAT THE APPLICANT STILL OCCUPIED HER ROOM.
- (C) AN EXPERT CODE ENFORCEMENT OFFICER WOULD AFTER ONE LOOK AT THE EXPOSED ELECTRICAL THE CONDITION OF THE BUILDING OUTWALL WAS NOT IN LIVABLE CONDITION, THEREFORE REFUTAL TO THE STATES ASSERTION THAT IF A BUILDING WITH OTHER REQUIREMENTS ARE MET TO EQUATE, LIVABLE CONDITIONS MEANS DEFINED AS A DWELLING SAYING IF IT IS IN LIVABLE CONDITION IT IS A DWELLING.

11. 3) TO MOVE TO QUASH INDICTMENT NAMING THE LAWFUL POSSESSOR AS THE DWELLING OF THE ESTATE CHARLES REARICK. THE INDICTMENT DEFICIENT BECAUSE AN ESTATE CAN NOT BE A PERSON IN LAWFUL POSSESSION AS REQUIRED BY STATUTORY DEFINITION. NEITHER CAN A DECADENT. THUSONE AND SHE MOVED TO QUASH THE OUTCOME WOULD HAVE BEEN DEFENDANT.

4) FAILING TO OBJECT TO THE STATES OPENING ARGUMENT CALLING THE APPLICANT A BUNGALY A REMARK ON HIS CHARACTER

5) FAILING TO CHALLENGE THE ADMISSIBILITY INTO EVIDENCE AS AN AGGRAVATING CIRCUMSTANCE TO FIRST ORDER BUNGALY THE TESTIMONY AND SENTENCING SHARES OF ~~CHARGE~~ AND THE TWO FIRST ORDER BUNGALY SENTENCING STARTS WHEN THE STATE ALREADY HAD AN IRREFUTABLE AGGRAVATION OF UNDER THE VIEL OF DOMUMESS, THE PROSECUTION FOR OUTREACHES THE PROBATION WHEN THEY WERE NOT NECESSARY AT ALL

6) FAILING TO MOVE FOR A DIRECTED VERDICT ON THE ELEMENT OF ALLEGATION THAT APPLICANT ENTERED THE BUILDING WITHOUT CONSENT. WHEN THERE WAS ABSOLUTELY NO EVIDENCE THAT APPLICANT DIDNT HAVE CONSENT TO BE AT THE ALLEGED CRIME SCENE WHEN THERE IS A PREPONDERANCE OF EVIDENCE DIRECT AND CIRCUMSTANTIAL THAT APPLICANT BY STATUTORY LAW AND PERMISSIONS THAT APPLICANT HAD CONSENT AND A BONA FIDE INTEREST TO BE THERE

11.6) COUNSEL FAILED TO REQUEST PROPER, CLEAR AND CONCISE INSTRUCTION, AND STATUTORY INSTRUCTION RELEVANT TO THIS PARTICULAR FIRST DEGREE BURGLARY.

(A) AN INSTRUCTION ON THE LESSER INCLUDED OFFENSES OF FIRST DEGREE BURGLARY, SECOND AND THIRD WHEN THE MAIN DEFENSE STRATEGY THE TRAILER BEING UNOCCUPIED AND UNDER CONSTRUCTION, THE JURY COULD INFER THAT IT WAS ONLY A THIRD DEGREE OR EVEN SECOND DEGREE.

(B) FAILURE TO ASK FOR THE STATUTORY DEFINITION FOUND IN 16-11-10 OF DWELLING HOUSE, WHEN DEFENSE STRATEGY WAS AS SUCH, THAT UPON THE DEATH OF THE ONLY OTHER OCCUPANT OTHER THAN APPLICANT WAS DECEASED AND THEREFORE COULD NOT BE IN ANY DANGER OR OCCUPY ANY PLACE, THEREFORE JURY COULD INFER THAT ONLY THE LESSER OFFENSE COULD OF HAPPENED AND STRUCTURE WAS NOT A DWELLING

(C) FAILURE TO REQUEST INSTRUCTION ON STATUTORY DEFINITION OF THE ELEMENT "WITHOUT CONSENT" DEFINED AS OF THE PERSON IN LAWFUL POSSESSION. UPON THE DEATH OF A HOME OR ESTATE IT BECOMES THE HEIR. HAD THIS INSTRUCTION BEEN CONSIDERED IT COULD OF MOST LIKELY LED TO AN ACQUITTAL AS THE PERSONS IN LAWFUL POSSESSION WERE NOT IDENTIFIED IN THE INDICTMENT AS TO NOTICE APPLICANT TO DEFEND HIMSELF AGAINST

(D) FAILED TO REQUEST INSTRUCTION TO THE JURY ON STATUTORY DEFINITION OF PRIOR CONVICTION IN 17-25-50¹⁷⁻²⁵⁻⁵⁰ DEFINED AS ON A SEPERAT, SUBSEQUENT DATE PRIOR TO THE CURRENT PROCEEDING. STATE RELIED ON ABBREVIATION OF TWO OR MORE "PRIOR CONVICTIONS" OF BURGLARY OR HOUSE BREAKING WHEN RECORDS WOULD INDICATE APPLICANT HAS ONLY BEEN CONVICTED ON ONE OCCASION THEREFORE JURY COULD INFER THAT ABBREVIATION WAS NOT SATISFIED.

11(8) WHEN COUNSEL FAILS TO OBJECT TO THE STATES DELIBERATE MISSTATEMENT OF OF FACTS AND EVIDENCE DURING ARGUMENT TO THE COURT ON A MOTION FOR DEJECTED VERDICT THE STATE FAILED TO OFFER ANY EVIDENCE THE THE STRUCTURE WAS A DWELLING HOUSE DEFENDED IN 16-11-10. THE STATE ARGUED THAT NO PROPERTY HAD BEEN REMOVED BY OCCUPANT THEREFORE AT THE TIME OF THE ALLEGED OFFENSE THE DECEASED OWNER INTENDED TO RETURN BECAUSE NONE OF HIS PROPERTY HAD BEEN REMOVED. THE STATE FURTHER IN ARGUMENT SAYS MATTER OF FACT THE ONLY PROPERTY THAT WAS REMOVED WAS BY HIM AND HIS BROTHERS, (APPLICANT, AND CO-DEFENDANTS, WHEN THE STATES OWN WITNESSES KEVIN AND JENNIFER FELKEL THE ALLEGED VICTIMS HAD TESTIFIED THAT THEY SPENT FIVE HOURS THERE REMOVING DECEDENT'S PROPERTY. THESE DELIBERATE MISSTATEMENT OF FACTS ALSO EQUATES TO STRUCTURE NOT BEING A DWELLING IF HIS ARGUMENT THE RETENTION OF PROPERTY MEANS STILL DWELLING AND THE FAMILY SPENT 5 HOURS REMOVING PROPERTY.

(9) FAILED TO OBJECT TO STATE PROSECUTOR CALLING APPLICANT A BUNGLER IN OPENING ARGUMENT

(10) FAILED TO OBJECT USE OF TWO PRIOR BURGLARIES TO BE INCLUDED IN THE INDICTMENT WHEN STATE ALREADY HAD AN INDEBUTABLE AGGREGATION OF UNDER THE VEIL OF DARKNESS, APPLICANT WOULD BE PREJUDGED AGAINST BECAUSE IT FAR OUTWEIGHS THE PROBATIVE VALUE WHEN IT WAS NEVER EVEN NECESSARY

(11) FAILED TO OBJECT TO THE STATES COMMENTS AND IMPROPER REMARKS THAT APPLICANT IS A WOLF IN SHEEP'S CLOTHING, THEN A SECOND TIME, THATS THAT WOLF IN SHEEP'S CLOTHING, AND AS THE OLD FABLE GOES BEWARE OF THE WOLF IN SHEEP'S CLOTHING,

11.6) COUNSEL FAILED TO REQUEST PROPER, CLEAR AND CONCISE INSTRUCTION, AND STATUTORY INSTRUCTION RELEVANT TO THIS PARTICULAR FIRST DEGREE BURGLARY.

(A) AN INSTRUCTION ON THE LESSER INCLUDED OFFENSES OF FIRST DEGREE BURGLARY, SECOND AND THIRD WHEN THE MAIN DEFENSE STRATEGY THE TRAILER BEING UNOCCUPIED AND UNDER CONSTRUCTION, THE JURY COULD INFER THAT IT WAS ONLY A THIRD DEGREE OR EVEN SECOND DEGREE.

(B) FAILURE TO ASK FOR THE STATUTORY DEFINITION FOUND IN 16-11-10 OF DWELLING HOUSE, WHEN DEFENSE STRATEGY WAS AS SUCH, THAT UPON THE DEATH OF THE ONLY OTHER OCCUPANT OTHER THAN APPLICANT WAS DECEASED AND THEREFORE COULD NOT BE IN ANY DANGER OR OCCUPY ANY PLACE, THEREFORE JURY COULD INFER THAT ONLY THE LESSER OFFENSE COULD OF HAPPENED AND STRUCTURE WAS NOT A DWELLING

(C) FAILURE TO REQUEST INSTRUCTION ON STATUTORY DEFINITION OF THE ELEMENT "WITHOUT CONSENT" DEFINED AS OF THE PERSON IN LAWFUL POSSESSION. UPON THE DEATH OF A HOME OR ESTATE IT BECOMES THE HEIRS. HAD THIS INSTRUCTION BEEN CONSIDERED IT COULD OF MOST LIKELY LED TO AN ACQUITTAL AS THE PERSONS IN LAWFUL POSSESSION WERE NOT IDENTIFIED IN THE INDICTMENT AS TO NOTICE APPLICANT TO DEFEND HIMSELF AGAINST

(D) FAILED TO REQUEST INSTRUCTION TO THE JURY ON STATUTORY DEFINITION OF PRIOR CONVICTION IN 17-25-50¹⁷⁻²⁵⁻⁵⁰ DEFINED AS ON A SEPERAT, SUBSEQUENT DATE PRIOR TO THE CURRENT PROCEEDING. STATE RELIED ON ABBREVIATION OF TWO OR MORE "PRIOR CONVICTIONS" OF BURGLARY OR HOUSE BREAKING WHEN RECORDS WOULD INDICATE APPLICANT HAS ONLY BEEN CONVICTED ON ONE OCCASION THEREFORE JURY COULD INFER THAT ABBREVIATION WAS NOT SATISFIED.

11(8) WHEN COUNSEL FAILS TO OBJECT TO THE STATES DELIBERATE MISSTATEMENT OF FACTS AND EVIDENCE DURING ARGUMENT TO THE COURT ON A MOTION FOR DEJECTED VERDICT THE STATE FAILED TO OFFER ANY EVIDENCE THE THE STRUCTURE WAS A DWELLING HOUSE DEFENDED IN 16-11-10. THE STATE ARGUED THAT NO PROPERTY HAD BEEN REMOVED BY OCCUPANT THEREFORE AT THE TIME OF THE ALLEGED OFFENSE THE DECEASED OWNER INTENDED TO RETURN BECAUSE NONE OF HIS PROPERTY HAD BEEN REMOVED. THE STATE FURTHER IN ARGUMENT SAYS MATTER OF FACT THE ONLY PROPERTY THAT WAS REMOVED WAS BY HIM AND HIS BROTHERS, (APPLICANT, AND CO-DEFENDANTS, WHEN THE STATES OWN WITNESSES KEVIN AND JENNIFER FELKE THE ALLEGED VICTIMS HAD TESTIFIED THAT THEY SPENT FIVE HOURS THERE REMOVING DECEDENT'S PROPERTY. THESE DELIBERATE MISSTATEMENT OF FACTS ALSO EQUATES TO STRUCTURE NOT BEING A DWELLING IF HIS ARGUMENT THE RETENTION OF PROPERTY MEANS STILL DWELLING AND THE FAMILY SPENT 5 HOURS REMOVING PROPERTY.

(9) FAILED TO OBJECT TO STATE PROSECUTOR CALLING APPLICANT A BUNGLEE IN OPENING ARGUMENT

(10) FAILED TO OBJECT USE OF TWO PRIOR BURGLARIES TO BE INCLUDED IN THE INDICTMENT WHEN STATE ALREADY HAD AN INDEBUTABLE AGGREGATION OF UNDER THE VEIL OF DARKNESS, APPLICANT WOULD BE PREJUDGED AGAINST BECAUSE IT FAR OUTWEIGHS THE PROBATIVE VALUE WHEN IT WAS NEVER EVEN NECESSARY

(11) FAILED TO OBJECT TO THE STATES COMMENTS AND IMPROPER REMARKS THAT APPLICANT IS A WOLF IN SHEEP'S CLOTHING, THEN A SECOND TIME, THATS THAT WOLF IN SHEEP'S CLOTHING, AND AS THE OLD FABLE GOES BEWARE OF THE WOLF IN SHEEP'S CLOTHING,

11.(12) APPLICANT WILL PROVE GIVEN THE OPPORTUNITY OF AN EVIDENTIARY HEARING THAT APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT A CRITICAL STAGE WHEN APPLICANT WAS REPRESENTED AT PRELIMINARY HEARING BY AN ACTUAL CONFLICT OF INTEREST ATTORNEY ASHLEY CHISEM FROM THE PUBLIC DEFENDERS WHO AT THE TIME REPRESENTED APPLICANT'S ALLEGED VICTIM'S STEP-DAUGHTER DANIELLE FLOWERS.

(A) HAD COUNSEL OBJECTED TO OR ANALYSED THE EVIDENCE PRESENTED AT THE HEARING COUNSEL WOULD HAVE BEEN ABLE TO PROVE THE STATES PROBABLE CAUSE EVIDENCE WAS WITHOUT MERIT, AND FALSE, PRESENTED BY FLOOD AND PERGURY BY DETECTIVE RICH CARSON IN A VENGEFUL EFFORT TO HAVE APPLICANT'S CASE GO TO GENERAL SESSIONS AT THE COST OF PERGURY. HAD COUNSEL REBUTAL BEEN EFFECTIVE AND OBJECTED TO DETECTIVES PERGURY THAT DORCHESTER COUNTY SHERIFFS OFFICE DID NOT HAVE THE CAPABILITIES TO RECORD A CRIMINAL SUSPECT INTERVIEW, WHEN ASKED BY COUNSEL HAD THE CONFESSIONS DETECTIVE CARSON RELIED ON TO PRESENT HIS CASE BEEN RECORDED OR WITNESSED, HE REPLIED NO, WE DO NOT HAVE THOSE CAPABILITIES. APPLICANT CAN. PROVE THE TO BE FALSE AND COUNSEL SHOULD HAVE OBJECTED AND MOVED FOR A DISMISSAL.

(B) ASHLEY CHISEM INTRODUCED HIMSELF TO APPLICANT AS A CONFLICT OF INTEREST BUT DID NOT NOTIFY THE COURT.

HAD APPLICANT BEEN REPRESENTED BY EFFECTIVE COUNSEL GUARANTEED BY THE 6TH AMENDMENT OF THE U.S. CONSTITUTION AVAILABLE TO THE STATES UNDER THE 14TH AMENDMENT, THERE IS A HIGH PROBABILITY THAT THE OUTCOME OF TRIAL WOULD HAVE BEEN DIFFERENT.

11. (B) GIVEN AN OPPORTUNITY TO AN EVIDENTIARY HEARING APPLICANT WILL PROVE THAT HE IS HELD WITHOUT LIBERTY AGAINST HIS WILL AND IN VIOLATION OF THE 5TH AND 14TH AMENDMENTS TO THE U.S. - CONSTITUTION THE RIGHT TO DUE PROCESS OF LAW WHEN:

(1) INVESTIGATORS AND PROSECUTION VENDETTIVELY, SELECTEDLY AND STRATEGICALLY AGAINST STATE LAW AND THE INTEREST OF JUSTICE COMMITTED FRAUD, PERJURY, TAMPERED WITH EVIDENCE, SUPPRESSED POTENTIALLY EXCULPATORY EVIDENCE, AND AS FOLLOWS SELECTED APPLICANT OUT TO PROSECUTE HIM UNDER FALSE PRETENSES, USED VENDETTIVE TACTICS CONTRARY TO LAW, STANDARDS AND A COMPLETE MESCHINAGE OF JUSTICE IN RETALIATION FOR PRIOR BEHAVIOR IN THE SAME COUNTY FOR OFFENSES AGAINST A COUNTY OFFICIAL YEARS EARLIER WHEN APPLICANT PLEAD GUILTY TO A BURGOLARY AGAINST A FIRE CHIEF OF 20 PLUS YEARS OF SERVICE.

(2) PROSECUTOR DELIBERATELY MISSTATED FACTS AND EVIDENCE DURING A DIRECTED VERDICT ~~AND~~ THE 'DUBIOUS' ASPECT OF BURGOLARY FIRST 16-11-310. IN PROSECUTION'S ARGUMENT HE STATED THAT RETENTION OF PROPERTY IS AN INDICATION THAT AN OCCUPANT HAD AN INTENT TO RETURN SINCE HE HAD NOT REMOVED HIS PROPERTY. PROSECUTION STATED IN ARGUMENT THAT THE ALLEGED VICTIM HAD NOT REMOVED ANY OF HIS THINGS, THEN STATED THAT AS "A MATTER OF FACT THE ONLY PEOPLE TO REMOVE CHARLES THINGS WAS MI FLOYD AND HIS BUDDIES." APPLICANT WILL SHOW THAT THIS IS AN ATTEMPT TO DELIBERATELY DECEIVE THE COURT BY MISTAKING FACTS THAT HIS (THE STATES) OWN WITNESSES JENNIFER FELMEL AND KEVIN FELMEL HAD PREVIOUSLY TESTIFIED THAT THEY SPENT FIVE HOURS REMOVING THE ALLEGED REQUIRED OCCUPANTS PROPERTY. IN LIGHT OF THE STATES

11. (B) CONTINUED...

(2) ... COMMENTS THAT RETENTION AND REMOVAL ARE DETERMINING INDICATORS OF ORIGIN RETURNING OR NOT RETURNING THE ACTUAL EVIDENCE THAT HE TESTIFIED IN HIS ARGUMENT THAT THE ALLEGED VICTIMS HEIR HAD ALREADY REMOVED THE PROPERTY THIS STATEMENT AND EVIDENCE EQUATE TO THE CHARGE OF FIRST DEGREE SHOULD HAVE BEEN ADMITTED BECAUSE THE STATES COMMENT EQUATED TO THAT OF A LESSER OFFENSE AT THE LEAST.

(A) THE DELIBERATE MISTATEMENT OF FACTS TO OBTAIN A CONVICTION IS PROSECUTORIAL MISCONDUCT.

(3) DURING CLOSING ARGUMENTS PROSECUTION IN AN ATTACK AGAINST APPLICANTS CHARACTER CALLED THEM A WOLF IN SHEEPERS CLOTHING TWICE, AND TOLD JURY TO BELIEVE OF THE WOLF IN SHEEPERS CLOTHING. THIS BEING BASED ON HIS OPINIONS OF CHARACTER NOT RELATED TO FACTS OR EVIDENCE OF THE CASE.

(4) POTENTIALLY EXCULATORY EVIDENCE OF A SET OF FINGERPRINTS KNOWN TO EXIST BY PROSECUTION NOT DISCLOSED IN DISCOVERY ACCORDING TO RULE 5. THE SET OF PRINTS COULD HAVE REVEALED ANOTHER PERSON WHO APPLICANT EXPRESSED TO CO-DEFENDENTS THAT COULD HAVE BEEN RESPONSIBLE FOR THE THEFTS THE STATE RELIED ON AS EVIDENCE OF GUILT SUCH AS PLACED THINGS ON THE KITCHEN TABLE, HAD A THIRD PERSON BEEN REVEALED THAT COULD HAVE BEEN THERE TO DO THE THINGS THROATZED BY THE STATE IT IS HIGHLY LIKELY THAT THE OUTCOME WOULD HAVE BEEN DIFFERENT. AND THUS RESULTED IN PREJUDICE AGAINST APPLICANT

FOR THE DENIAL OF APPLICANTS CONSTITUTIONAL GUARANTEE OF A FAIR TRIAL. APPLICANTS SENTENCE AND CONVICTION SHOULD BE VACATED.

APPLICANT WILL BE AMENDING APPLICATION PURSUANT TO SCRP RULE 15 (B) UPON APPOINTMENT OF COUNSEL

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

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

Martin D. Floyd, SCDC # 290265,)

Case No.: 2017-CP-18-1249)

Applicant,)

RETURN

v.)

✓ State of South Carolina,)

Respondent.)
_____)

Respondent, making its Return to the application for Post-Conviction Relief filed on July 25, 2017, would respectfully show this Court:

I. Procedural History

Martin D. Floyd (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. During its November 2013 term, the Dorchester County Grand Jury indicted Applicant for first-degree burglary (2103-GS-18-0364). Applicant was represented by Mary P. LeMatty, Esquire, and Michelle R. Suggs, Esquire. The State was represented by Assistant Solicitors Glenn P. Justis and Mandy W. Kimmons. On December 17, 2013, Applicant proceeded to a jury trial in the Dorchester County Court of General Sessions before the Honorable Maité Murphy, circuit court judge, where he was convicted as indicted. Judge Murphy sentenced Appellant to life without parole pursuant to S.C. Code Ann. § 17-25-45.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf. Appellate Defenders Carmen V. Ganjehsani and Laura R. Baer with South Carolina Commission on Indigent Defense-Office of Appellate Defense represented Applicant on appeal. The State was represented by Megan Harrigan Jameson of the South Carolina Attorney General's Office.

FILED - RECORD
2018 MAR -8 AM 11:49
CHERYL G. HARRIS
CLERK OF COURT
DORCHESTER COUNTY

On appeal, Applicant argued the following issues: first, that he was entitled to a direct verdict on the charge of first-degree burglary because the State failed to present any evidence that he had an intent to commit a crime when he entered the trailer, and second, that that he was entitled to a direct verdict on the charge of first-degree burglary because the State failed to present any evidence that the trailer he entered qualified as a dwelling due to the untimely death of the sole occupant shortly before Applicant entered the trailer. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion without oral argument. State v. Martin Dameon Floyd, Op. No. 2015-UP-362 (Ct. App. filed July 15, 2015). Thereafter, Applicant petitioned for rehearing on July 29, 2015. The Court of Appeals issued an order denying the petition for rehearing on August 20, 2015.

On September 25, 2015, Applicant filed a "Petition to Extend the Petition for Writ of Certiorari and Accompanying Appendix to the Court of Appeals out of Time." On September 28, 2015, Applicant filed an "Amended Petition to Extend the Petition for Writ of Certiorari and Accompanying Appendix to the Court of Appeals out of Time." On September 29, 2015, the South Carolina Supreme Court granted Applicant's request to file his Petition for a Writ of Certiorari and accompanying Appendix out of time. On October 12, 2015, Applicant filed his Petition for a Writ of Certiorari with the Supreme Court. The State filed its Return to the Petition for a Writ of Certiorari on November 6, 2015 and an Amended Return to the Petition for a Writ of Certiorari on November 17, 2015. On July 18, 2016, the Supreme Court denied certiorari. The Remittitur was issued on August 1, 2016.

II. Facts Giving Rise to the Conviction

On the morning of January 17, 2013, Charles Rearick (hereinafter "Rearick") was in a fatal car accident and passed away. (Tr. p. 183 lns. 1-17). His only child, Jennifer Rearick Felkel,

and her husband Richard Felkel left their home in Lexington, South Carolina and travelled to Rearick's home in Knightsville, South Carolina along with her mother and a family friend. (Tr. pp. 184-85). Once they arrived at Rearick's residence at 4 p.m., the group entered the home using a key and gathered sentimental items, including Rearick's war metals, pictures, and gun collection, and important documents, such as bank records. (Tr. pp. 185-86; p. 193). At 9 p.m., the group secured the house, locked the front door, and left with the intent to return in the immediate future. (Tr. p. 186; p. 205; p. 207). No one had permission to enter the home, including Applicant and his friends. (Tr. p. 205).

That evening, Applicant was at the home of his then girlfriend, Angela Fleeman (hereinafter "Fleeman") when he received a call from his mother informing him that Rearick had passed away several hours earlier. (Tr. pp. 105-06). Applicant had previously lived with Rearick but had moved out of the home more than six months prior. (Tr. p. 107; pp. 197-98; p. 222; p. 226). Although he no longer resided with Rearick, Applicant continued to renovate Rearick's home as he had while residing there. (Tr. p. 226-27). According to Fleeman, Applicant was very upset by the information and expressed concern about his property located at Rearick's residence. (Tr. pp. 106-07). Specifically, Applicant was concerned that his property would "end up in probate" and that he would not be able to get it "for a year and all his stuff would be missing." (Tr. p. 107 lns. 8-10). Applicant did not state exactly what property was at Rearick's house that he needed to retrieve. (Tr. p. 107 lns. 15-17).

Having neither a car nor a driver's license, Applicant called his friend Rusty Norris (hereinafter "Norris") to see if he could get a ride to Rearick's home at approximately 10 p.m. (Tr. p. 107; pp. 128-29). Norris also had no car or driver's license, so he asked his then girlfriend Candace to drive him and Applicant to Rearick's house. (Tr. p. 129). Norris and Candace had

never met Rearick or been to his home but agreed to accompany Applicant to his residence shortly after his death to retrieve property. (Tr. p. 128-130). Both went to Fleeman's home, where they met Fleeman and Applicant and talked for approximately an hour before all four went to Rearick's residence in Candace's truck. (Tr. p. 129-130). Norris was armed with gloves, a flashlight, a screwdriver, and bolt cutters. (Tr. p. 143; p. 157).

When the group arrived at Rearick's residence, the lights were off and the front door was locked. (Tr. p. 108). The four then went to the rear of the trailer in hopes of gaining entry into Rearick's secured residence. (Tr. p. 108). Upon finding a chair propped against the rear of the trailer below a window, Norris pushed open the window and Candace gained entry to the residence by crawling inside. (Tr. p. 108; p. 131). Once inside, Candace unlocked and opened the front door and the remaining three entered Rearick's home. (Tr. p. 108; p. 131).

Once inside, Applicant proceeded to Rearick's master bedroom first. (Tr. p. 108). Norris and Fleeman were unsure what Applicant was searching for in particular, but both had been told by Applicant that Rearick was a gun collector and reported that Applicant was upset that he could not find any weapons. (Tr. pp. 113-14; pp. 131-32). Only after searching Rearick's master bedroom and bathroom did Applicant go to the bedroom where he had lived with his child's mother and child months prior. (Tr. pp. 108-09). In this room, Applicant located some of his clothing and his daughter's bottle, but left these items. (Tr. p. 108; p. 114). While in the home, Norris, who had never met Rearick, took various items belonging to the deceased, including a blood pressure monitor, scissors, a belt, pills, and a Navy boatswain whistle. (Tr. pp. 143-48; p. 203). According to Fleeman, the group then sat in the living room and reminisced about Rearick, although Fleeman had only met him once and Norris and Candace had never met him. (Tr. p.

109; p. 114-15). After approximately an hour, Applicant and the group exited the trailer. (Tr. p. 115).

Fleeman and Candace proceeded to Candace's truck while Applicant and Norris went to a two-story shed behind the residence. (Tr. p. 115; p. 133; pp. 136-37). The structure was covered with plywood nailed in place and secured by a lock. (Tr. p. 133; p. 155). According to Norris, Applicant looked through cracks in the fortified shed and identified various tools that were his property. (Tr. p. 133). Norris used bolt cutters to remove the lock, which he placed in his pocket. (Tr. pp. 133-34; p. 142). He then entered the shed, where he took wood stain, an air grinder, and other items belonging to Rearick. (Tr. pp. 143-44). He was still inside the shed when Applicant came from the front of the house and warned him and Candace that law enforcement had arrived. (Tr. p. 134). Norris and Candace both took off running; Norris eventually crouched behind bushes on the periphery of the property while Candace kept going. (Tr. p. 134). Meanwhile, Applicant was at the truck speaking with Fleeman when the Dorchester County Sheriff's Deputies arrived. (Tr. pp. 116-17; pp. 153-54). According to Fleeman, Applicant was considering spending the night at the property when law enforcement arrived. (Tr. p. 116).

Corporal Shawn Angelo (hereinafter "Angelo") from the Dorchester County Sheriff's Office was the first officer to arrive at Rearick's residence. (Tr. pp. 152-53). He pulled up to the home with his lights on and his camera activated. (Tr. p. 153). He reported that Applicant and Fleeman were located in or near Candace's truck and the property was dark. (Tr. pp. 153-55). Applicant and Fleeman were both handcuffed and placed in different police cruisers. (Tr. p. 117). Angelo and fellow Dorchester County Sheriff's Office Deputy Silas Carter (hereinafter "Carter") did a protective sweep of the property, using flashlights when entering the unlocked residence. (Tr. pp. 154-55; p. 160; pp. 167-68). At the shed, officers found the plywood covering to the

shed with nails sticking out lying on the ground alongside bolt cutters. (Tr. pp. 155-56). After clearing the shed, Angelo and Carter heard rustling in the woods and found Norris hiding behind a brush pile. (Tr. p. 156; pp. 167-68). Norris was detained and searched, yielding several items that were taken from the residence and shed. (Tr. pp. 156-57; pp. 167-68). Law enforcement was able to determine that Candace was the fourth suspect based on registration of the truck and her driver's license located on the vehicle's floorboard. (Tr. p. 159). Applicant, Fleeman, and Norris were all arrested that evening and charged with first-degree burglary. (Tr. p. 117; pp. 149-50).

Rearick's family was contacted by law enforcement that evening regarding the activity at Rearick's home. (Tr. p. 161; pp. 188-90). Richard and Jennifer Felkel informed Dorchester County Sheriff's Deputies that no one had permission to be at Rearick's residence, including Applicant. (Tr. p. 189; p. 205). Felkel and his wife returned to Rearick's residence the next morning to re-secure the property. (Tr. p. 190; pp. 203-04). Upon entering the residence, Rearick's family noted a marked difference in the property, which appeared to have been ransacked. (Tr. p. 190; pp. 203-04). They reported that a large quantity of items, including military clothing of Rearick's and other various household items, were piled on the kitchen table in bags. (Tr. p. 190; pp. 203-04). Richard Felkel also noted that the large gun case where Rearick stored his weapons was no longer standing upright as it had been when he left the previous day but rather was lying on the floor of the master bedroom. (Tr. p. 187). The Felkels also reported finding a jacket and cellular phone at the residence that were not present when they left the previous evening. (Tr. p. 191; p. 204). They contacted law enforcement, who collected the items. (Tr. pp. 179-80; pp. 190-91).

As part of their investigation, the Dorchester County Sheriff's Office obtained a search warrant to search Candace's truck, where a shop vac, pillows, a painting, and a computer

program box were located. (Tr. pp. 170-71). Law enforcement also took photographs of the crime scene and dusted for fingerprints, although no usable prints were found. (Tr. pp. 169- 78).

Applicant proceeded to trial on December 17, 2013. Both Fleeman and Norris testified for the State, along with various members of the Dorchester County Sheriff's Office involved in the investigation, an employee from the Dorchester County Clerk's Office, and Rearick's family. At the close of the State's case, Applicant moved for a directed verdict, asserting the State had failed to prove that Rearick's residence was a dwelling in light of his death and that Applicant had the intent to commit a crime when entering the property. (Tr. pp. 208-12). After hearing the State's reply, the trial court denied Applicant's motion as to both grounds. (Tr. pp. 212-16).

Applicant called his mother as his sole witness in his defense. (Tr. p. 220-35). She testified that Rearick was a family friend and that her husband previously lived next door to Rearick. (Tr. p. 221). She testified that Applicant, his former girlfriend, and their child had previously lived with Rearick, but that Applicant had moved out approximately six months prior because Rearick did not want Applicant's girlfriend and child living in the home. (Tr. pp. 222-23; p. 226; p. 230). She testified Applicant was renovating Rearick's house and continued to do so after moving out. (Tr. p. 222; pp. 226-27). She testified she could identify various tools and other personal property as belonging to Applicant. (Tr. pp. 223-28). She testified she provided Applicant transportation to Rearick's house to work on renovations and that she took him there "at least two, three, four times a week." (Tr. p. 231). Following the testimony of his mother, Applicant renewed his motion for a directed verdict, which was again denied by the trial court. (Tr. pp. 238-40).

III. Allegations Raised in Application for Post-Conviction Relief

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

-Ineffective Assistance of Counsel for:

-failure to investigate, including how Applicant entered the trailer, whether Applicant gave a written confession, what Detective Carson testified to at a preliminary hearing, whether the fingerprint lifts taken were valid, discrepancies in photographs taken at the crime scene

-failure to challenge the use of Applicant's prior record for enhancement

-failure to interview requested witnesses and call them as defense witnesses at trial

-failure to retain an expert code enforcement officer to establish the outbuilding was not habitable

-failure to move to quash the indictment because the property owner on the indictment was deceased

-failure to object to the State's opening statement calling Applicant a "burglar" and a wolf in sheep's clothing

-failure to move for a directed verdict based on the argument of consent

-failure to request proper jury instructions on first-degree burglary, the definition of a dwelling, consent, the use of Applicant's prior convictions

-failure to object to the State's deliberate misrepresentation of facts and evidence during its response to his directed verdict motion

-an actual conflict of interest because Public Defender Ash Chisholm also represented the victim's stepdaughter

-Prosecutorial Misconduct for vindictive prosecution, deliberately misrepresenting evidence during trial, failure to turn over exculpatory evidence, including Brady material

Attached to this Return and incorporated by reference are the records of the Dorchester County Clerk of Court regarding the subject conviction, the trial transcript, Applicant's appellate

records (including the record on appeal and all pertinent filings before the Court of Appeals and Supreme Court), Applicant's records from the South Carolina Department of Corrections, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Trial Counsel

Applicant alleges various grounds of ineffective assistance of trial counsel. Respondent submits Applicant's allegations of ineffective assistance of counsel are refuted by the record, and that these allegations are without merit. In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test and cannot meet this requisite burden of proof necessary for relief. However, the allegations 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. Response to Allegations of Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct; specifically, that the prosecutors vindictively prosecuted his case, deliberately misrepresented evidence during trial, and failed to turn over exculpatory evidence, including Brady material. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised these issues on appeal. The failure to do so has waived this allegation as grounds for relief. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Regarding Applicant's discovery violation claims, Applicant specifically alleges that the State suppressed evidence. Brady v. Maryland, 373 U.S. 83 (1963), requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the

evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings. State v. Gullede, 326 S.C. 220, 487 S.E.2d 590 (1997). Rule 5(a)(1)(C) requires:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Id. The definition of “material” for purposes of Rule 5 is the same as the definition used in the Brady context. See Fradella v. Town of Mount Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct.App.1997) (per curiam). In order for Applicant to prevail on a Rule 5 claim, he must show not only an actual violation, but also that he suffered prejudice as a result. State v. Wilkins, 310 S.C. 81, 425 S.E.2d 68 (Ct.App.1992); State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996).

Respondent submits that this ground for relief is without merit. However, the allegations concerning Brady and Rule 5 violations probably raise questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. 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, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII. All Other Claims

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

VIII. Relief Requested

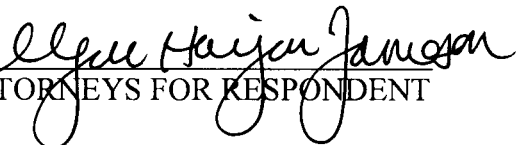
WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel and prosecutorial misconduct.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 6, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

2017-CP-18-1249

MARTIN D. FLOYD, #290265)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

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2018 MAR -8 AM 11:49
CLERK OF COURT
DORCHESTER COUNTY

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:

Rodney D. Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive
Suite 300
Charleston, SC 29405

DATED this 6th day of March, 2018.



Tamieka Russell-Brown, Legal Assistant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2017-CP-18-1249
MARTIN FLOYD, #290265	)	
Applicant,	)	
	)	
vs.	)	AMENDED APPLICATION FOR
	)	POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	
	)	

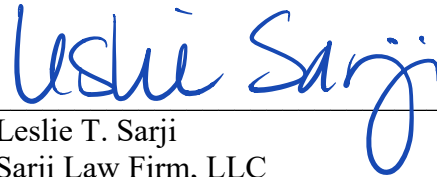
The Applicant, MARTIN FLOYD, now having the benefit of appointed counsel alleges the following, in addition to the grounds previously stated:

1. Martin Floyd is detained at Leiber Correctional Institution under Inmate Number: 290265.
2. Applicant, by and through undersigned counsel, submits this Amended Application for Post Conviction Relief, and alleges the following errors by trial counsel in addition to those already alleged, which rendered trial counsel's assistance ineffective and but for which, there is a reasonable probability that the result of the proceeding would have been different:
 - a. **Trial counsel provided ineffective assistance of counsel by failing to adequately investigate the case prior to trial;**
 - b. **Trial counsel provided ineffective assistance of counsel by failing to request a jury charge for a lesser included offense where the evidence presented would have supported conviction for the lesser offense;**
 - c. **Trial counsel was ineffective for failing to challenge the sufficiency of the indictment in the case;**

- d. Trial counsel was ineffective for failing to challenge the sufficiency of Applicant's prior convictions for enhancement of his charge of conviction to Burglary, First Degree; and
- e. Trial counsel was ineffective for failing to object during the State's closing argument to the Solicitor's argument that Applicant was a "wolf in sheep's clothing."

Wherefore, based on this Amended Application as well as all grounds previously alleged, the Applicant requests that a hearing on the merits be scheduled.

Respectfully submitted,



Leslie T. Sarji
Sarji Law Firm, LLC
230 Congress Street
Charleston, South Carolina 29403
(843)722-5354

Attorney for Applicant

Charleston, South Carolina
May 13, 2021

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
2017-CP-18-01249

Martin Dameon Floyd)

) TRANSCRIPT OF RECORD

-vs-

)

) May 21, 2021

State of South Carolina)

) Orangeburg, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge

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

Samantha J. Weidauer, Esquire
Attorney for the State

Leslie T. Sarji, Esquire
Attorney for the Applicant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

NO EXHIBITS INTRODUCED

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1 THE COURT: Thank you, y'all. Please
2 have a seat. Okay. We're here on Martin Floyd.
3 Is it Weidauer?

4 MS. WEIDAUER: Yes, ma'am.

5 THE COURT: If you will start us off,
6 please, ma'am.

7 MS. WEIDAUER: May it please the Court.

8 THE COURT: Yes.

9 MS. WEIDAUER: Samantha Weidauer on behalf
10 of the state of South Carolina. This is the
11 post-conviction relief matter of Martin D. Floyd v.
12 State, Docket No. 2017-CP-18-01249.

13 For a brief procedural background, during
14 its November 2013 term, the Dorchester County grand
15 jury indicted Martin Floyd for first-degree burglary.
16 Mr. Floyd proceeded to jury trial before the Honorable
17 Judge Murphy on December 17, 2013. Mr. Floyd was
18 convicted as indicted, and Judge Murphy sentenced him
19 to life without parole.

20 Mr. Floyd subsequently timely filed
21 a notice of appeal arguing he was entitled to a directed
22 verdict on the charge of first-degree burglary because
23 the State failed to present any evidence he had an
24 intent to commit a crime when he entered the trailer.
25 And he was entitled to a directed verdict on the charge

1 of first-degree burglary because the State failed
2 to present any evidence the trailer qualified
3 as a dwelling.

4 The state of South Carolina Supreme -- Court
5 of Appeals, excuse me, affirmed Applicant's conviction
6 and sentence in an unpublished opinion without oral
7 argument. The Court of Appeals issued an order denying
8 Applicant's petition for rehearing after. On October
9 12, 2015, Applicant filed a petition for writ with
10 the Supreme Court. The State file an amended return
11 on November 17, 2015.

12 On July 18, 2016, the Supreme Court denied
13 cert, and a remittitur was issued. On July 25, 2017,
14 Mr. Floyd filed this application for post-conviction
15 relief.

16 THE COURT: Thank you, ma'am. Ms. Sarji.

17 MS. SARJI: Thank you, Your Honor.

18 I'm happy to give you a brief overview of the case,
19 or I can just jump right in with calling the witness,
20 whatever you will prefer.

21 THE COURT: No, I'm glad for you to give
22 me the overview.

23 MS. SARJI: Okay. Thank you. Mr. Floyd
24 filed an initial application alleging a number
25 of different grounds. What I expect that we are going

1 to be mainly addressing here today is that trial counsel
2 was ineffective for failing to investigate the case
3 adequately prior to trial. There were several
4 witnesses, some of whom were actually under subpoena,
5 but that were not called.

6 There was a big issue in this trial --
7 I don't know if you've already read the transcript or
8 not, but one of the big issues in the trial was whether
9 or not my client was actually living in the trailer at
10 the time. And so there was a big issue around consent
11 to being at the property, and so we're trying to prove
12 that he was actually a resident of the property.

13 So two of the witnesses that I have here
14 today, I expect to testify -- actually, all three
15 of the witnesses, aside from my client, will testify
16 that they knew him to be a resident of the trailer.
17 Two of them were actually under subpoena by Ms. LeMatty,
18 but were not called during the trial of the case,
19 one of whom, although she was a neighbor, is somebody
20 that was never -- that's where we allege the failure
21 to investigate properly.

22 As well, there were no photographs taken
23 by Ms. LeMatty as the entry point. There was -- went
24 in through a window because the door was boarded up,
25 that he was doing work on the trailer, and so that

1 was just how they did things.

2 Another ground that we are going to be
3 pursuing is that the jury charges that were requested
4 by Ms. LeMatty were inadequate, that she did not request
5 a jury charge for a lesser included offense, nor did she
6 ask for the jury to be charged on the issue of lawful
7 consent to be on the property, and that he would have
8 to have been at the trailer without consent in order
9 to sustain a conviction for burglary.

10 We also expect to offer testimony about
11 Ms. LeMatty being ineffective for failing to challenge
12 the indictment in the case, for failing to challenge
13 the sufficiency of the Applicant's prior convictions
14 for the statutory enhancement to burglary first degree,
15 and for failing to object during the closing argument
16 to the solicitor's inappropriate comments, repeated
17 comments, that my client was a wolf in sheep's clothing.

18 We would also allege that in closing
19 argument Ms. LeMatty failed to adequately address
20 the argument that the trailer was no longer a dwelling,
21 that they move for a directed verdict on that, but
22 she did not follow it up with the jury. So that's
23 what we would present, Judge.

24 I do have some case law on the issue of the
25 wolf's clothing. I have previously given the attorney

1 general the cite for Tappeiner v. State, it's 416 S.C.
2 239, and it's a 2016 case, and that is pertinent to the
3 issue of the failure to object during closing argument
4 to the wolf in sheep's clothing comments. Thank you,
5 Your Honor

6 THE COURT: Thank you and call your first
7 witness.

8 MS. SARJI: Yes, Your Honor. I'll call
9 Martin Floyd to the stand.

10 MR. MARTIN FLOYD was called as a witness,
11 being duly sworn, was examined and testified as follows:

12 THE CLERK: You may be seated. State your
13 full name for the Court.

14 THE COURT: I'm sorry. She asked you
15 to state your full name for the Court, if you could,
16 please.

17 THE WITNESS: Martin Dameon Floyd.

18 MS. SARJI: And, Judge, I did forget
19 to mention that he does wish to pursue another basis
20 for reversal, which is that Attorney Ash Chisolm,
21 who did his preliminary hearing, actually represented
22 the daughter of the victim, or a relative of a victim
23 in the case, and that he was aware of the conflict
24 at the time that he did that prelim. I apologize.

25 DIRECT EXAMINATION

1 BY MS. SARJI:

2 Q. So, Mr. Floyd, where are you currently housed?

3 A. Lieber Correctional Institute.

4 Q. And how long have you been there?

5 A. A little over seven years.

6 Q. And was -- is your incarceration the result
7 of a plea or a trial?

8 A. A trial.

9 Q. And what was your sentence?

10 A. Life without possibility of parole.

11 Q. Okay. And who represented you at trial?

12 A. Ms. LeMatty.

13 Q. And who represented you at your prelim?

14 A. Mr. Ash Chisholm.

15 Q. Okay. And just to sort of jump right into that,
16 at your prelim, did you become aware at some point
17 of a potential conflict of interest?

18 A. The first thing he said to me when he walked
19 up to me and introduced himself was that this was an
20 actual conflict of interest because he was representing
21 Ms. Danielle Flowers at the time.

22 And Mr. Charlie, who was named in the indictment,
23 unfortunately, he passed away visiting her that day,
24 but he represented himself as representing her,
25 that Ms. LeMatty couldn't make it to the hearing.

1 And he asked me if I understood that, and if that was
2 okay, if we should proceed, and I said, yes, sir.

3 I believe when we proceeded, he didn't say
4 anything to the judge, he didn't let the Court know
5 that he represented her at the same time, and I believe
6 that -- is it okay if I take this off?

7 MS. SARJI: Is it okay for him to?

8 THE COURT: That's all right.

9 THE WITNESS: All right. Thank you.

10 Also, when Detective Carson was presenting his case
11 to get it bound over to general sessions, he said that
12 we wrote confessions, and that we had oral confessions.
13 Mr. Chisholm asked him if he had recorded those criminal
14 investigations, and Detective Carson said at the time
15 that he -- that Dorchester County didn't have those
16 capabilities to record a criminal investigations
17 interview. He didn't proceed to object to that,
18 which clearly in 2013, you know, that Dorchester County
19 can record criminal investigations.

20 He comes back to me, and he looked at me,
21 he said, see what happened here today, but he didn't
22 say anything to the Court about this. And I just
23 believe that -- that was the only evidence presented
24 to get it bound over to general sessions. The grand
25 jury report says that there were written and oral

1 confessions by us, but then there was no witness
2 to these confessions, or any recordings of it.

3 And Carson, I believe, is just -- he was
4 out of line, and that should have been objected to,
5 and Mr. Chisholm didn't -- he didn't pursue that in
6 any way. And I think that, you know, maybe the outcome
7 would have been different if it would have been objected
8 to because clearly that ---

9 MS. WEIDAUER: Your Honor, objection.
10 This was not alleged in Applicant's application that ---

11 MS. SARJI: I think that -- sorry.
12 Go ahead.

13 MS. WEIDAUER: With Ash, but there was --
14 Detective Carlson [sic.] -- what's his name, Carson?

15 THE WITNESS: Carson.

16 MS. WEIDAUER: Carson.

17 THE WITNESS: Yes, ma'am.

18 MS. WEIDAUER: We'd object because this
19 wasn't alleged in his application.

20 MS. SARJI: Judge, he clearly alleged that
21 prelim counsel had a conflict or Mr. Chisholm wouldn't
22 be here today. So, I'm asking him why he believes
23 that there was a conflict and that -- my next question
24 was going to be how do you believe that this conflict
25 affected your case and prejudiced you. But she's

1 clearly on notice that he's alleging a problem
2 with Mr. Chisholm representing him at the prelim,
3 given that there was a conflict of interest.

4 THE COURT: I don't know that this directly
5 bares on conflict, but I'm going to give you a little
6 leeway with this.

7 MS. SARJI: Thank you, Judge.

8 BY MS. SARJI:

9 Q. So, Mr. Floyd, how is it that you believe that
10 prejudiced you, that Mr. Chisholm also represented
11 Danielle Linder-Flowers?

12 A. Well, I believe it's, you know, a critical stage
13 in the proceedings, in the whole process, that had there
14 not been any oral confessions and the perjured
15 testimony, if he would have objected or moved to have
16 it thrown out, if you felt that that was his position
17 to do so, I believe that should have been done.

18 And I can't say because he represented Danielle
19 Flowers he didn't do that, but he just came to me and
20 said you see what happened here today, and that was it.
21 I don't -- I believe it's actual conflict of interest,
22 and that really I don't believe you have to show
23 prejudice once it's an actual conflict of interest
24 because that was his relative, that was his
25 stepdaughter, and that was who he was representing

1 at the time, from my understanding. I'm not sure
2 of the case laws, but I do believe that you don't
3 have to actually show prejudice, even though there
4 was prejudice.

5 MS. SARJI: And I'm happy to cite for the Court
6 State v. Gonzalez, which was actually an issue in the
7 trial we had earlier this week.

8 BY MS. SARJI:

9 Q. So, Mr. Floyd, other than that, at the prelim,
10 you -- mainly did you deal with Ms. LeMatty as your
11 lawyer?

12 A. I hadn't even met Ms. LeMatty yet.

13 Q. Okay. So after your prelim, once your case
14 was bound over to general sessions ---

15 A. Yes, just Ms. LeMatty; it was never Mr. Chisholm.

16 Q. Okay. So did you have conversations with
17 Ms. LeMatty about your trial and how to proceed
18 with trial?

19 A. Sure.

20 Q. Okay. And did you understand the charges against
21 you?

22 A. I did, as far as the indictment, what it alleged.
23 It put me on notice to defend myself.

24 Q. Okay. And did you understand that you had gotten
25 LWOP noticed?

1 A. Yes, ma'am.

2 Q. And did your attorney discuss with you all
3 of the law behind that, and did you understand why
4 you had been noticed with -- given life without parole
5 notice?

6 A. I'm not sure if we actually discussed that.
7 But at the hearing, I was aware that first-degree
8 burglary carried life without possibility of parole.
9 I didn't know that it was based on my priors,
10 and I really didn't pay that much attention to it,
11 honestly, because I believe that at trial I would
12 have been acquitted.

13 Q. Okay.

14 A. I wasn't -- I was willing to do that. I was
15 willing to not plead down to second degree, 20 years
16 or 12 years, because I wanted to do what was right.
17 I wanted -- you know, I believed I would be going home.
18 I didn't believe I would be getting a life sentence.

19 Q. Okay. And so one of the first things that
20 we talked about with the judge is that you believe
21 that Ms. LeMatty didn't adequately challenge your
22 indictment, or she didn't raise issues pertaining
23 to your indictment. Can you tell the judge what
24 you believe that she did not do or did do?

25 A. Yes, ma'am. As far as the indictment,

1 it alleges that I entered a dwelling without consent
2 from the estate of Charlie Rearick. The judge,
3 during the directed verdict, she actually stated
4 that upon the death of an occupant -- upon the death
5 of a homeowner that the property immediately goes
6 to the heir of the property. They would have been
7 the ones in lawful possession at the time.

8 Without consent means from the one in lawful
9 possession, according to the burglary statute.
10 The judge said that to us, so that would have put
11 his daughter, Ms. Felkel, and Mr. Felkel as the ones
12 in lawful possession. They should have been the ones
13 named in the indictment.

14 Had they been the ones named in the indictment,
15 it could not have been a dwelling, because they both
16 testified that they never lived there and never
17 intended to live there, and weren't going to live there,
18 and had never previously lived there. So had I known
19 that I had to have the permission of the Felkels,
20 I would have -- it would have been a different plea.
21 I would have pled that I was guilty of that, you know.

22 If I would have known that that's who I had to --
23 who I had to answer to, who I had to have the permission
24 to enter, because I had permission of Mr. Rearick.
25 He passed away. There's no way he could say that I did

1 or didn't. There was no evidence offered at all that
2 I didn't.

3 Q. Okay. So let' be clear. Up until the death
4 of Charlie Reardon [sic], had you lived in the trailer
5 that you were accused of burglarizing?

6 A. I had lived there for almost a year. He had
7 a friend who he needed to stay there, and I had just
8 met my girlfriend, Ms. Fleeman. I was actually kind
9 of staying at her house. I never moved my stuff out
10 or anything, but I was kind of staying with her.
11 Mr. Rearick was doing remodeling in the kitchen
12 at the time.

13 At that time, I was not the one doing
14 the kitchen, but I was doing everything else inside
15 the house. So, I was still going there two or three
16 times a week, all my property was still there, you know.
17 Nobody contested that; nobody says it wasn't. There's
18 evidence that it was. My tenancy was never revoked.

19 Q. So ---

20 A. There was never no notice of eviction.

21 Q. So if you -- was this a situation where
22 you were staying at your girlfriend's house sometimes,
23 but all your stuff was still at your house?

24 A. Correct, yes, ma'am.

25 Q. And your house was Mr. Charlie Reardon's house?

1 A. Yes, ma'am.

2 Q. And so when he died, and you went back there
3 that day, had you been notified by anybody that all
4 of a sudden you were kicked out?

5 A. No, ma'am.

6 Q. Did you and Ms. LeMatty ever discuss South
7 Carolina landlord/tenant law?

8 A. I had shown her -- I had written many letters
9 to her about it. I had shown her some paperwork that
10 my father had sent me about it, landlord/tenant law
11 stating that I'm a tenant-at-will, or a tenant for
12 a term, when you have an oral or written agreement.
13 And she told me that she didn't want to pursue that
14 issue, that defense strategy.

15 And I believe that I had consent to be there.
16 I told my co-defendants that they had permission
17 to be there. I actually stated that I believe maybe
18 somebody would be there at the time that we went there,
19 you know.

20 Q. And so with regard to the indictment,
21 your indictment named the estate of Mr. Reardon;
22 is that right?

23 A. Yes, ma'am, Mr. Rearick.

24 Q. And had you ever talked to Ms. LeMatty about
25 who made up Mr. Reardon's estate?

1 A. She actually contested that somewhat in the
2 directed verdict. Mr. Justis argued that there was no
3 way to stop someone from burglarizing the house because
4 she pointed out -- Ms. LeMatty pointed out that the
5 estate didn't become the estate until ten days after
6 this happened. And that is when the judge actually
7 proceeded to tell us that the heir immediately becomes
8 the one in lawful possession.

9 Q. Okay. And so focusing on the issue of the
10 indictment and why you think that she should have
11 challenged the indictment, I just -- I want to make
12 certain that we're being clear on that. So can you
13 tell me what it is specifically about the indictment
14 that Ms. LeMatty should have challenged?

15 A. I believe the indictment inadequately put
16 me on notice of who I had to defend myself against,
17 or who I had to answer to, because the solicitor
18 introduced into evidence that I needed the Felkels'
19 consent. They weren't the ones named in the indictment;
20 they were the ones in lawful possession. They should
21 have been the ones named in the indictment. I believe
22 she should have objected to it, or moved to squash
23 the indictment.

24 Q. Okay. How about -- let's move on to what
25 happened at the trial and the witnesses that were

1 called, okay? Who did you ask -- who did you tell
2 Ms. LeMatty to talk to?

3 A. Aaron Lowry [ph.]. He was working inside
4 the home with me. I asked her to talk to Ms. Flowers,
5 which was Mr. Rearick's stepdaughter, who we talked
6 about the conflict of interest with. I asked her
7 to talk to her and get her to come testify because
8 she had actually given me her bedroom for me and
9 my child to stay in while we were there working.
10 So, she actually gave -- you know, moved to the couch
11 so we could stay in there. So, she obviously had
12 firsthand knowledge that I stayed there.

13 Mr. Cole, Mr. Brian Cole, and Jason Tony,
14 they had witnessed several times me going in there.
15 Actually, Mr. Tony, he had went inside the home with
16 me to start working on the house without Charlie being
17 there, so he obviously witnessed it. I had permission
18 to be in there. And Charlie Cohen [ph.], he actually
19 knew Charlie personally too.

20 He came home and everything was fine. He had
21 brought over some meats for us one time and witnessed
22 me being there. Mr. Cole had actually come pick me
23 up. That's who I went to stay with for a time also.
24 I moved a couple of things out of the house, some
25 clothing and stuff, just in a red bag to go stay

1 with him. He witnessed that. I never moved any
2 furniture out or anything.

3 Q. Okay. So, to your knowledge, did Ms. LeMatty
4 talk to either Brian Cole or Jason Tony?

5 A. They were present at trial, but never called
6 them to testify.

7 Q. And did you want them called to testify?

8 A. In hindsight, I believe it would have -- yes,
9 ma'am.

10 Q. At the time of trial, did you want them to be
11 called to testify?

12 A. I did. That's why I requested them to be there.

13 Q. Okay.

14 A. Yes, ma'am.

15 Q. And what is it that you believed that they would
16 offer at your trial?

17 A. A good faith relationship between me and
18 Mr. Charlie, that I had belonged there, that I had
19 a right to be there.

20 Q. Okay.

21 A. That I had a bona fide interest in that home.

22 Q. Did Ms. LeMatty ever discuss with you why she
23 did not call those two witnesses to trial?

24 A. The only thing Ms. LeMatty told me is after
25 the State called their witnesses, which were two

1 of my co-defendants, both my co-defendants consistently
2 testified that there was no intention to commit a crime,
3 that they had permission to be there, and she told
4 me that she believed those star witnesses for the
5 prosecution had actually gave testimony that would have
6 acquitted me because there was nothing incriminating
7 in their testimony, that she believed that there's
8 nobody left that needed to be called, and she believed
9 I didn't need to get on the stand because they already
10 proved my innocence.

11 Q. Did you also -- do you know whether she ever
12 talked to Danielle Linder-Flowers?

13 A. She had told me that -- I believe she actually
14 told me that Mr. Chisholm or the office, the public
15 defender's office, did ask her if she would come
16 testify, and Ms. Flowers said that she wouldn't.

17 Q. That she would not?

18 A. She would not.

19 Q. Okay. And as far as -- do you know whether
20 Ms. LeMatty sent an investigator out, or if she actually
21 went herself, to go investigate the scene or take
22 pictures of the house, or anything like that?

23 A. I can't personally attest to what she actually
24 did, but I do not believe that she did because it would
25 have shown, as far as the rebuttal to the back door

1 of me not having a key, she did give an argument about
2 that in her closing arguments.

3 Q. I'm not asking about arguments. What I want
4 to focus on right now is her investigation. Did she
5 ever discuss with you the results of any investigation
6 that she performed?

7 A. No, ma'am. No, ma'am.

8 Q. And had she gone out to the trailer, what do
9 you believe that would have -- how would that have
10 benefitted you?

11 A. It would have shown a construction site.
12 It would have shown, you know -- and that's where I was
13 staying, working on the home, and it would have shown
14 that there was no back door that's why we went through
15 a window because going through a window looked
16 suspicious, but that is traditionally how we entered
17 the trailer, especially when Charlie wasn't there.

18 That's how we got in because it was adjacent to
19 the tool shop, the shop, you know, remodeling the house,
20 things inside the shop, and that's where we're passing
21 lumber through to work on the house. We had boarded up
22 the back door and tore off the siding and boarded that
23 up because he wanted to build an extension right there.

24 Q. And did she ever show you pictures or anything
25 that she herself had taken at the residence?

1 A. No, ma'am.

2 Q. Okay. Now we also talked about that you believe
3 that she was ineffective for not requesting some jury
4 charges?

5 A. Yes, ma'am.

6 Q. Okay. And I think we had a couple of different
7 ones that you wanted her -- that you thought she should
8 have asked for?

9 A. Um-huh.

10 Q. Can you -- is that a yes?

11 A. Yes, ma'am.

12 Q. Can you tell us what it is that you would like --
13 what you thought she should have asked for at the trial?

14 A. I believe that -- our main defense, the one that
15 she pursued mostly, was a brief on the dwelling aspect.
16 It was not a dwelling because the sole occupant had
17 passed away.

18 Q. But you lived there, didn't you?

19 A. I lived there; I was a tenant there, yes.

20 Q. Okay.

21 A. I was working there. But it would need to
22 be a dwelling for someone else, not a dwelling as far
23 as me because I'm not the one named in the indictment.
24 What we were depending on -- what we were strategizing
25 was that it was not a dwelling because the sole occupant

1 had passed away. The dwelling aspect, if it were
2 not a dwelling, then it would have been a building,
3 and that would have been a lesser included offense
4 of second or third-degree burglary, and that was our
5 strategy.

6 She said -- the whole time she said she agreed
7 with me that it wasn't a dwelling. She put together
8 this whole brief; she presented that as a directed
9 verdict, motion for a directed verdict. But she never
10 asked for the lesser included offense that it would have
11 been a building rather than a dwelling.

12 And had she moved for those -- you know,
13 asked for those instructions, then the jury could have
14 easily say, yeah, we believe that it wasn't a dwelling
15 and maybe you're guilty of second or third degree,
16 and I wouldn't be sitting with a life sentence.

17 Q. And then there was also the issue of whether she
18 should have asked for a jury charge on what was lawful
19 consent?

20 A. The without consent element in the statute,
21 the statutory definition is without consent, means from
22 the one in lawful possession, which at the time would
23 have been someone different than the ones named in the
24 indictment. It would have been Ms. Felkel, his heir.

25 Q. But you would have -- wouldn't you have had --

1 at the time you entered into the trailer, you at that
2 point had the consent of Mr. Charlie because you had
3 been living there, correct?

4 A. Correct.

5 Q. Did he ---

6 A. That's my belief.

7 Q. Did he revoke that consent prior to his death?

8 A. No, ma'am.

9 Q. Had anybody else that said they owned the
10 property at any point ever come and said, Mr. Floyd,
11 you've got to get out?

12 A. No, ma'am.

13 Q. Okay. So if Ms. LeMatty -- do you believe
14 that she should have asked for the jury to be charged
15 that you had lawful consent to be in the building
16 or the home?

17 A. Yes, ma'am. She -- in her opening argument,
18 she actually stated that I did have permission to
19 be there. She also stated in her motion for a directed
20 verdict on the -- not having an intent to commit a crime
21 in the dwelling. She actually played around, and then
22 she stated it. She said without -- you know, that
23 she believed that I had consent to be there. There was
24 absolutely no evidence presented by anyone because there
25 couldn't be that I didn't have permission to be there.

1 But she didn't move for a directed verdict on that.

2 And the judge in her instructions, I believe
3 that we had -- she had possession of those instructions
4 the night prior to her reading them off to the jury.
5 And had that without consent from the one in lawful
6 possession been charged to the jury, I believe they
7 would have had the opportunity to observe that,
8 to consider that, and they didn't because it wasn't
9 even charged to them as a law.

10 Q. Okay. So, I want to make sure that I'm
11 understanding. Did Ms. LeMatty go over what the jury
12 charges were going to be with you prior to the judge
13 charging the jury?

14 A. No, ma'am.

15 Q. Okay. So, I thought that I understood you
16 to say that she had some sheets or some jury charges
17 that she got to consider overnight?

18 A. In the trial, she -- in the transcripts,
19 the judge says I will give you all these to look over
20 overnight, a copy of the instructions. I don't know
21 if that's standard procedure or what.

22 Q. Were ---

23 A. Not to myself, but to my attorney.

24 Q. Did your attorney ever go over with you what
25 those charges were, or what she felt like she should

1 be asking for or anything like that?

2 A. No, ma'am.

3 Q. Okay. And is there anything else with regard
4 to the jury charges that you think that she should have
5 asked for, besides the dwelling place and the lawful
6 consent?

7 A. And the lesser included offense.

8 Q. And the lesser included offenses.

9 A. No, ma'am.

10 Q. Okay. We talked about the indictment.
11 Now, you also brought up some issues about your prior
12 convictions and the sufficiency of those prior
13 convictions. Can you tell the judge what you think
14 Ms. LeMatty did wrong in that regard?

15 A. Yes, ma'am. I believe I asked her about these,
16 and she quoted the 17-25-45 statute, the recidivism
17 statute on, you know, the second strike, third strike
18 enhancements.

19 And she -- what I was contesting was the actual
20 -- Mr. Justis, the State, incorporating those as an
21 aggravated circumstance, me having two or more prior
22 housebreaking charges or convictions and challenging
23 those as being separate convictions, as I was asking
24 her about that being only one conviction because I was
25 only convicted on one occasion.

1 But at the same time, I believe that the Court
2 lacked subject matter jurisdiction to actually suspend
3 those sentences. I got a ten-year sentence, I got
4 15 years suspended to ten years, 15 years suspended
5 to ten years. You cannot suspend a non-parolable
6 offense.

7 The sentencing sheets are handwritten,
8 you see where they scratch things out, initial things.
9 What I'm saying is that I believe that those were
10 second-degree burglaries, and they should have been
11 contested because they were used to give me a life
12 sentence.

13 Q. Did you talk to Ms. LeMatty about that fact?

14 A. Yes, ma'am.

15 Q. And did she follow up in any way, to your
16 knowledge?

17 A. She just told me I didn't have anything there.
18 She told me that wasn't an issue, that I had no merits
19 with that.

20 Q. Do you know whether she did any research behind
21 those statements?

22 A. I know -- she didn't show me the law. She showed
23 me -- the day of the trial, she did point that out.
24 She showed me the law about the 17-25-45.

25 Q. But I'm talking about as far as your specific

1 convictions and the fact that ---

2 A. No, ma'am. No, ma'am. Nothing as far as looking
3 into my prior convictions, no.

4 Q. Okay. And you believe that if she would have
5 done some research or looked into it that she would
6 have found that your sentences are such that you
7 couldn't have been convicted of a sufficient predicate
8 offense?

9 A. Correct.

10 Q. Okay. We also talked about with the judge
11 the wolf in sheep's clothing?

12 A. Yes, ma'am.

13 Q. Okay. Can you tell the judge what you think
14 about, what happened with the closing argument that
15 was -- that Ms. LeMatty should have done something?

16 A. Yes, ma'am. The first thing upon his closing
17 argument is he walks up to my bench. I'm sitting there,
18 my mother is behind me. We're sitting there, and we're
19 waiting to hear what he has to say, and he points his
20 finger directly in my face and said, ladies and
21 gentlemen, Mr. Floyd -- I want to let you know Mr. Floyd
22 is a wolf in sheep's clothing. And as the old fable
23 goes, beware of a wolf in sheep's clothing.

24 And I believe that just -- that incorporated
25 prejudice because based on his opinions and his beliefs,

1 not on any of the facts or any evidence presented in
2 the case, that I'm a wolf in sheep's clothing. He used
3 religious language. I mean, that's Jesus in Matthew
4 7 -- Chapter 7, Verse 15. Jesus is preaching to his
5 12 disciples that he just selected on the Sermon on
6 the Mount, telling them to beware of false prophets,
7 that they are ravening wolves in sheep's clothing.

8 And I believe that he was just trying to make
9 them scared of me, to look at me as a deceptive person
10 based upon what? I mean, he had no basis of that
11 at all.

12 And I believe for him to bring religion into
13 it also, I just don't believe that was fair because
14 people are going to automatically, once they hear that,
15 you know, we're in the Bible Belt, and you preach this
16 to someone, they're going to be, like -- they're going
17 to automatically think of something as far as religion.
18 And I believe that's prejudice.

19 Q. Okay.

20 A. I just believe that raised passions that
21 shouldn't have been raised.

22 Q. And did Ms. LeMatty object in any way to those
23 comments?

24 A. There was no contemporaneous objection to that.
25 She only objected to the whole argument at the end

1 of the argument, but not contemporaneously.

2 Q. Okay.

3 MS. SARJI: And, Judge, for -- to assist
4 the Court, that is on Page 254 of the record,
5 which is Page 161 of the record on appeal, and Page 261
6 of the record, which was Page 167 of the record on
7 appeal.

8 BY MS. SARJI:

9 Q. Mr. Floyd, is there anything else that you want
10 to tell the judge about, that you think that Ms. LeMatty
11 or Mr. Chisholm did or didn't do that caused you
12 prejudice?

13 A. I just think that -- there's also during directed
14 verdict. The State when we were arguing that it's
15 a dwelling or not a dwelling, she presented her brief
16 and everything. She presented everything, you know,
17 adequately, I believe. But in the State's argument
18 to that, the State is saying that retention of property
19 is deciding factors in whether that was a dwelling
20 or not a dwelling, okay?

21 He actually -- in his opening argument,
22 he states that the Felkels had spent five hours
23 previously removing Mr. Rearick's property, five hours
24 they were there removing all of his sentimental
25 property. They testified to that -- both of them

1 testified to that. Mr. Justis stated that in his
2 opening argument that the family had already removed
3 the property.

4 But during his rebuttal and during his argument
5 to us saying that it's not a dwelling, he said,
6 as a matter of fact, nobody had removed any property,
7 except Mr. Floyd and his buddies, all the property
8 was still there, but that was a mistake in the facts.
9 That's a mistake in the evidence because his own witness
10 had testified that they had been there previously
11 for five hours and removed property from the house.

12 So, I believe that she should have objected
13 to that because it was a miss -- a complete misstatement
14 of facts and evidence on the account of the State,
15 you know. And it was just -- to me, I believe that
16 was just deception to get a decision in his favor,
17 and it was wrong.

18 I mean, it was wrong, and that's just prejudice
19 because had that argument not come about, then the judge
20 could have decided that maybe it wasn't a dwelling
21 because the property had been removed. He did not
22 have an intent to return because his property had
23 been removed by the family, you know. It just showed
24 that he had intent to return, and the State was saying
25 that the retention of property was what proved that.

1 Q. Okay. Did you -- we talked about this,
2 but I just want to make it clear. You wanted to abandon
3 your issues that you raised with regard to appellate
4 counsel being ineffective; is that right?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. SARJI: Judge, I don't have anything
8 further of this witness.

9 THE COURT: Ms. Weidauer.

10 CROSS-EXAMINATION

11 BY MS. WEIDAUER:

12 Q. Good morning, Mr. Floyd. How are you?

13 A. I'm good.

14 Q. And you're here alleging ineffective assistance
15 of trial counsel, Mary LeMatty, today?

16 A. Yes, ma'am.

17 Q. Okay. She was your counsel at trial, and can you
18 confirm how many times you met with her prior to trial,
19 roughly?

20 A. Possibly two or three times. We had corresponded
21 by mail a few times also.

22 Q. Okay. And what did you discuss in those
23 meetings?

24 A. Basically that I didn't have an intent to commit
25 a crime, and she moved for a directed verdict on that,

1 that I believe that it wasn't a dwelling because there
2 was nobody in any danger, there wouldn't have been
3 had he been alive, but because he was deceased there
4 couldn't have been anyone in any danger. She believed
5 that.

6 She, you know -- I also had asked her about
7 the landlord/tenant laws as far as me having the right
8 to be there, and basically told me that she wasn't going
9 to pursue that strategy. And, you know, I believe
10 that was a viable strategy that we should have used.
11 But she told me that basically she wasn't going to
12 do that because Mr. Rearick couldn't answer to that.

13 Q. Okay. And you reviewed discovery with your
14 attorney?

15 A. Correct.

16 Q. Okay. She discussed the strengths and
17 the weaknesses of your case and some of the strategy
18 that would be using with you?

19 A. Not really. Basically, she just tried to get
20 me to plead to second-degree burglary, and told me
21 that if I didn't I was going to get a life sentence.

22 Q. Okay. And what was your understanding of the
23 State's offer?

24 A. The State offered me 12 years to second-degree
25 burglary.

1 Q. Okay. And you did not want to plead; you wanted
2 to proceed to trial, that was your decision?

3 A. Correct.

4 Q. Okay. You discussed those offers in full with
5 Ms. LeMatty?

6 A. She just offered it to me, and I denied it.
7 She did plead with me. She said, Mr. Floyd, I would ask
8 you to please take this because otherwise you're going
9 to get a life sentence. And I actually told her that
10 I had a 13-month-old daughter, and there was no way
11 that I was going to leave my child.

12 Q. Okay. And you mentioned earlier that you
13 provided Ms. LeMatty with some names.

14 A. Correct.

15 Q. Okay. And I just want to clarify. Those names
16 were Danielle Linder-Flowers, Brian Cole, and what was
17 the last name, Mr. Tony?

18 A. Jason Tony.

19 Q. Jason Tony. Okay. And you testified they could
20 have said that you lived there, or that you were working
21 on the property?

22 A. Both.

23 Q. Both. Okay. Do you remember your mother
24 testifying at trial?

25 A. Yes, ma'am.

1 Q. And do you remember your mother testifying that
2 you had moved out of this house?

3 A. She said something and -- she was saying
4 something along the lines of that he had since moved
5 out, yes.

6 Q. Okay. And she said that you moved out months
7 prior, correct?

8 A. No, ma'am. I am not aware of that. She said
9 that basically because I was asking her to give me
10 a ride there two or three times a week. She testified
11 to that, two or three times a week, to continue to work
12 on Mr. Reardick's property. Dropped me off there to get
13 my things, things of that nature, and that's why she's
14 saying that because I was staying with my new
15 girlfriend. I was 37 years old. I didn't answer to my
16 mother.

17 Q. How many times a week were you staying with your
18 new girlfriend?

19 A. How many times?

20 Q. A week were you staying with your new girlfriend,
21 like, on the weekends?

22 A. Oh, I was staying there since I met her.
23 I mean, since we started dating I was staying
24 with her.

25 Q. Okay. So you have moved into her house?

1 A. No, ma'am. I never moved any kind of furniture
2 or any of my property or anything like that. She had
3 three children; she had her mother living with her
4 in a single-wide trailer. I was just staying there.
5 We were dating and getting to know each other. I did
6 not move in with her. I was not paying rent; I was not
7 helping out with bills or anything like that.

8 Q. Okay. But you were physically staying there,
9 but all of your possessions were at Mr. Rearick's house?

10 A. Correct.

11 Q. Okay. And you discussed this living situation
12 with Ms. LeMatty in full?

13 A. Yes.

14 Q. Okay. Did she ever ask you why you didn't
15 have a key to Mr. Rearick's house?

16 A. I don't believe so because she argued also
17 that that's not something -- that's not a contributing
18 factor as to whether somebody belongs somewhere
19 because she also testified that her own children
20 didn't have a key to her house. She didn't testify
21 to that, but she said that in the closing argument.
22 So, I believe she didn't think that was such a big
23 issue.

24 Q. Okay.

25 A. My brother had lived next door. My father had

1 actually sold to Mr. Rearick's property. We live out
2 in the country. We didn't lock doors, but the back door
3 was -- the window in the back, and that was the acting
4 back door, we didn't lock that.

5 Q. So you didn't lock it, but on this occasion
6 it was locked?

7 A. No, ma'am. The window was not locked.

8 Q. The front door was locked?

9 A. The front door was locked, yes.

10 Q. Okay. And how long have you been gaining entry
11 through the window?

12 A. For at least two or three months.

13 Q. Okay. And Mr. Rearick was aware of that?

14 A. Yes, of course.

15 Q. Okay. Okay.

16 A. He wanted to board up the back door, so we used
17 the window to go in and out. When he wasn't there,
18 that's how we went in.

19 Q. Okay. So instead of supplying you with a key,
20 he had you climb in through the window for a few months?
21 Okay.

22 MS. WEIDAUER: Beg the Court's indulgence
23 for a moment.

24 BY MS. WEIDAUER:

25 Q. As to Mr. Brian Cole, in your application you

1 allege he would have testified that you were working
2 there, but did not allege that he would have testified
3 you lived there, but he would have testified you lived
4 there at the time. Is that your understanding?

5 A. I believe he would. I didn't speak to him.
6 I just called him as a witness because he had witnessed
7 that.

8 Q. He had witnessed you working at the property?

9 A. And living there.

10 Q. Okay.

11 A. He would come get me to go hang out with him
12 at times. Actually, I went and stayed with him for
13 a couple of weeks also, and I never moved anything out.
14 I told him that -- asked him if I could come stay with
15 him for a little bit, and he'd come and pick me up.
16 So, yeah, I mean, he witnessed that.

17 MS. WEIDAUER: Beg the Court's indulgence
18 for a moment. Thank you, Your Honor. That's all.

19 MS. SARJI: Yeah, just very briefly.

20 REDIRECT EXAMINATION

21 BY MS. SARJI:

22 Q. Mr. Floyd, did you think that a reasonable
23 investigation by your lawyer would have included going
24 to the property?

25 A. Yes, ma'am.

1 Q. And maybe talking with some neighbors that were
2 around the property as well?

3 A. Most definitely.

4 Q. And trying to do some things to confirm what
5 you were saying, that you were, in fact, a resident?

6 A. Yes.

7 Q. Okay. I don't have anything further. Thank you.

8 THE COURT: Thank you, sir. You can step
9 down.

10 MS. SARJI: Thank you, Your Honor. I will
11 call Brian Cole to testify.

12 MR. BRIAN COLE was called as a witness,
13 being duly sworn, was examined and testified as follows:

14 THE CLERK: Please be seated, and state your
15 full name for the Court.

16 THE WITNESS: Brian Cole.

17 DIRECT EXAMINATION

18 BY MS. SARJI:

19 Q. Mr. Cole, how old are you?

20 A. Forty-five.

21 Q. And where do you live currently?

22 A. Summerville. In Summerville.

23 Q. In Summerville?

24 A. Yeah.

25 Q. And how do you know Martin Floyd?

1 A. I grew up with him.

2 Q. You grew up with him?

3 A. Yeah.

4 Q. And so did you know him back when he was living
5 with Mr. Charlie?

6 A. Yeah.

7 Q. And tell me how you knew that he -- did you know
8 that he was living with Mr. Charlie?

9 A. Prior to him living with Mr. Charlie, he had
10 lived with me for a couple of months.

11 Q. And so how did you know that he was living
12 at Mr. Charlie's house?

13 A. I helped him move his stuff over there.

14 Q. Okay. So you actually helped him move in;
15 is that right?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes, ma'am.

19 Q. I'm sorry. We have to say -- instead of uh-huh
20 or um-huh.

21 A. Yes, ma'am.

22 Q. Thank you. And so would you have been willing
23 to come in at his trial and testify that you actually
24 helped him move his things into Mr. Charlie's house?

25 A. Yes, ma'am.

1 Q. And did you ever talk to Mary LeMatty,
2 who is sitting here today?

3 A. Yes, ma'am.

4 Q. Okay. And what did you and Ms. LeMatty talk
5 about?

6 A. Not much. The best I can remember when we
7 first went to the courthouse after being subpoenaed,
8 she basically just told us to wait outside until we
9 got called, and then we never got called on the stand.

10 Q. Did she ever talk to you about what you would
11 have said at Mr. Floyd's trial?

12 A. I believe so.

13 Q. Okay.

14 A. I don't recall exactly what though.

15 Q. Okay. Do you recall telling her that you helped
16 him move into Mr. Charlie's trailer?

17 A. Yes, ma'am.

18 Q. And do you recall talking to her about the things
19 that you helped to move into Mr. Charlie's trailer?

20 A. I believe so, yes, ma'am.

21 Q. Do you recall talking to her about some tools
22 that were Mr. Floyd's, that there was some question
23 of ownership about those tools?

24 A. Yes, ma'am.

25 Q. And what do you recall that you would have

1 relayed to her in terms of those tools?

2 A. Skil saw, jigsaw, hand tools.

3 Q. But what about those things was important?

4 A. I knew that some of them were still there.

5 Some of them he had bought from me, and some of them
6 I gave him. I know that those tools were his.

7 Q. Okay. So you would have been able to resolve
8 the question of ownership over tools that he was accused
9 of stealing?

10 A. Absolutely.

11 Q. Okay. And did you ever get -- you never got
12 called in to testify as a witness; is that right?

13 A. Yes, that's correct.

14 Q. And did you -- did she -- did Ms. LeMatty
15 ever talk to you about, well, we really don't need
16 you because of this or anything, or did she just send
17 you on your way?

18 A. I don't remember talking to her at the end of it.

19 Q. Okay.

20 A. I know that I was there for three days and sat
21 in the hallway.

22 Q. And then got sent home?

23 A. Yes, ma'am.

24 MS. SARJI: I don't -- Court's indulgence.

25 I don't have any further questions of this witness,

1 Judge.

2 CROSS-EXAMINATION

3 BY MS. WEIDAUER:

4 Q. Good morning.

5 A. Good morning.

6 Q. So you actually helped Mr. Floyd move those
7 tools?

8 A. Yes, ma'am.

9 Q. Do you know when that was?

10 A. No, not exactly.

11 Q. Was it more than six months before this incident
12 happened?

13 MS. SARJI: Objection, Your Honor.

14 He's already testified that he doesn't know exactly.

15 THE COURT: I'm going to allow it.

16 Thank you.

17 THE WITNESS: I don't know.

18 MS. WEIDAUER: Okay.

19 BY MS. WEIDAUER:

20 Q. And what is your current relationship with
21 Mr. Floyd?

22 A. He's a friend of mine.

23 Q. He's a friend of yours. Okay. And have you
24 ever been to the house while he was living there after
25 you helped move those tools to that location?

1 A. Yes.

2 Q. Okay. And Mr. Rearick was home at that time?

3 A. On two occasions he was.

4 Q. On two occasions. Okay.

5 MS. WEIDAUER: Beg the Court's indulgence
6 for a moment. Thank you, Your Honor.

7 MS. SARJI: Just very briefly.

8 REDIRECT EXAMINATION

9 BY MS. SARJI:

10 Q. Did you help him move more than just tools into
11 Mr. Reardon's home?

12 A. Yes.

13 Q. Was it things that somebody would have to be
14 living, like, a bed and clothes?

15 A. Yeah, baby stuff. I mean, basically,
16 what anybody would need to live, you know.

17 Q. Okay. Thank you.

18 MS. SARJI: I don't have anything further,
19 Judge.

20 THE COURT: Thank you, sir. You can step
21 down.

22 THE WITNESS: Yes, ma'am. Thank you.

23 MS. SARJI: Your Honor, I'm going to call
24 Jessica Koon to the stand.

25 MS. JESSICA KOON was called as a witness,

1 being duly sworn, was examined and testified as follows:

2 THE CLERK: State your full name for the
3 Court.

4 THE WITNESS: Jessica Koon.

5 THE CLERK: Thank you.

6 THE COURT: Can I get you to spell your last
7 name for me, please.

8 THE WITNESS: K-O-O-N.

9 DIRECT EXAMINATION

10 BY MS. SARJI:

11 Q. And, Ms. Koon, what is your relationship,
12 if any, to Mr. Floyd?

13 A. He's just somebody that I know, a friend,
14 I guess, you could say, living next door.

15 Q. Okay. And when you say living next door,
16 where were you living at the time that he lived next
17 door to you?

18 A. At the time, I was staying next door over
19 at Jimmy's house. I was back and forth between
20 Dorchester and there because we were seeing each other
21 here on and off, and I just remember seeing him over
22 there.

23 Q. Okay. Were you ever a neighbor of Mr. Charlie
24 Reardon?

25 A. Well, I would say so. I mean, I was staying

1 with Jimmy at the time, so, yes, we were neighbors.

2 Q. Okay. So Jimmy is the one whose residence
3 it was that was next door to Mr. Reardon?

4 A. Yes, ma'am.

5 Q. And you were a girlfriend of Jimmy's?

6 A. Yes, ma'am.

7 Q. And so how often did you stay at Jimmy's house
8 next door to Mr. Reardon?

9 A. A couple of times -- a couple of nights a week.
10 It was just periodically here on and off. I mean, like
11 I said, I lived in Dorchester County, but I was staying
12 back and forth from Jimmy's house to my house.

13 Q. And did you know Mr. Charlie Reardon?

14 A. Yes, ma'am.

15 Q. Okay. Did you know him well enough to have
16 a conversation with him, if you saw him outside
17 you might stop and talk?

18 A. Yes, ma'am.

19 Q. And did you ever have occasion to talk
20 to Mr. Charlie about Martin Floyd?

21 A. I just remember seeing him over there working.
22 There were several guys working, remodeling the inside
23 of his house at the time, and I remember seeing him over
24 there and in conversation him telling me that Marty was
25 staying there with him, and, I guess, helping the guys

1 with work that was being done.

2 Q. Okay. So, Mr. Reardon actually told you that
3 Mr. Floyd was living there; is that right?

4 A. Yes, ma'am.

5 Q. Would that have been close in time to when
6 Mr. Reardon died?

7 A. Yes, ma'am.

8 Q. How close in time?

9 A. It was within a couple of weeks of that time.
10 It wasn't long after he died. I stayed there a few
11 more months, and then I eventually moved back in.
12 Jimmy didn't...

13 Q. Didn't work out?

14 A. Didn't work out, so I went back to Dorchester.

15 Q. Okay. And during the time that you were staying
16 with Jimmy off and on, did anybody on Mr. Floyd's behalf
17 come and knock on the door and try to talk to anybody
18 that lived there?

19 A. Over at Jimmy's?

20 Q. Over at Jimmy's.

21 A. I don't really remember. Seems like most
22 of the time, he was over at Charlie's.

23 Q. No, no, no. I'm not asking if Mr. Floyd came
24 over and knocked on the door at Jimmy's. I'm asking
25 if after he got arrested, did anybody try to come

1 to talk to you as a neighbor?

2 A. Oh, no, ma'am. No, ma'am. I don't remember
3 speaking to anybody.

4 Q. Okay. Have you ever met Ms. LeMatty there
5 before?

6 A. No, ma'am.

7 Q. Okay. And you were still staying with Jimmy,
8 you said, for a period of months off and on?

9 A. Yeah.

10 Q. After Mr. Floyd got arrested; is that right?

11 A. Yes, ma'am.

12 Q. Okay.

13 MS. SARJI: I don't have anything further
14 of this witness, Judge. You have to stay. You have
15 to stay, answer her questions.

16 THE COURT: Ms. Weidauer.

17 CROSS-EXAMINATION

18 BY MS. WEIDAUER:

19 Q. And how close was Jimmy's house to Mr. Charlie's
20 house?

21 A. Probably walking distance. There was a little
22 section of woods, and then he was right on the other
23 side of him.

24 Q. Okay. And was there, like, a grove of trees,
25 or was there high visibility through those trees?

1 A. You could see. And the trees were -- you could
2 clearly see over there at that point.

3 Q. So you couldn't see everything that was happening
4 at the house?

5 A. No, ma'am.

6 Q. Okay. And how long after Mr. Charlie passed,
7 you said a couple of months?

8 A. Yeah. On and off, 'yeah.

9 Q. Okay. On and off. So you weren't there all
10 the time?

11 A. No, ma'am, not daily I wasn't.

12 Q. So someone could have come and knocked on
13 the door, and you could maybe not have been made aware
14 of that?

15 A. Yes, ma'am.

16 Q. Okay.

17 MS. WEIDAUER: Beg the Court's indulgence.

18 BY MS. WEIDAUER:

19 Q. And Mr. Floyd, your belief was that he was
20 working there?

21 A. Working there, but Mr. Charlie himself had told
22 me that he was staying there.

23 Q. Okay. Okay. And did he say that he was staying
24 there, you know, as in long term?

25 A. That never came up in conversation.

1 Q. Okay. He just said he was staying there?

2 A. Yeah.

3 Q. Okay.

4 MS. WEIDAUER: Thank you, Your Honor.

5 MS. SARJI: Thank you, Judge.

6 REDIRECT EXAMINATION

7 BY MS. SARJI:

8 Q. From your conversation with Mr. Charlie,
9 did you understand that Mr. Floyd was living there?

10 A. Yeah.

11 Q. And doing work at the same time?

12 A. Yes, ma'am.

13 Q. Thank you.

14 MS. SARJI: I don't have anything further,
15 Judge.

16 THE COURT: Thank you, ma'am. Please step
17 down.

18 MS. SARJI: Your Honor, I will call
19 Jason Tony to the stand.

20 MR. JASON TONY, was called as a witness,
21 being duly sworn, was examined and testified as follows:

22 THE CLERK: You may be seated. Please state
23 your name for the Court.

24 THE WITNESS: Jason Marshall Tony.

25 DIRECT EXAMINATION

1 BY MS. SARJI:

2 Q. Mr. Tony, how do you know Mr. Floyd?

3 A. I've known him since the sixth grade, in grade
4 school. I met him at Dubose Middle School a long time
5 ago.

6 Q. Okay. And did you know him at the time that
7 he was living and working at Mr. Charlie Rearick's
8 house?

9 A. Yes, ma'am.

10 Q. Okay. And how did you know -- well, did you
11 know for a fact that Mr. Floyd was living there?

12 A. Yes, ma'am. I would go visit him because he told
13 me that he was living with Charlie Rearick, and I've
14 known Charlie since the fifth grade. I've been working
15 at his fab shop. So, I knew them both very well.

16 Q. Sir, can you take that off? He had a what shop?

17 A. He had a fabrication shop, a metal fabrication
18 shop, years ago.

19 Q. Okay.

20 A. And during the summer I would go out there
21 and help Charlie pick up scraps. So, I knew them
22 both very well.

23 Q. Okay. And did you know that -- had you seen
24 Mr. Floyd coming and going from Charlie Rearick's place?

25 A. When I would go over there, Marty would be there

1 working or not there, and I would visit with Charlie.
2 But there are several occasions I was there and Marty
3 was working or not working, but I've seen him there
4 several times.

5 Q. Okay. Did you go visit with him to just hang
6 out when he was living with Mr. Rearick?

7 A. Oh, yes, ma'am. Yes, ma'am.

8 Q. Okay. Did he have stuff there?

9 A. Oh, yes, ma'am. Yeah, he had baby toys
10 and stuff. And the one time I brought over some meat
11 for him because I buy in bulk.

12 Q. Now, what did he do with meat that you brought
13 over for him?

14 A. He put it in his freezer.

15 Q. Okay. At Mr. Rearick's house?

16 A. Yes, ma'am.

17 Q. Okay. Like you would if you were living there?

18 A. Oh, yes, ma'am.

19 Q. And how long before Mr. Rearick died was it that
20 you brought him that meat that he put in the freezer?

21 A. Like I said, it's, like, about two months,
22 plus or minus a week before that happened.

23 Q. Okay. So ---

24 A. I mean, I didn't really know. I mean,
25 I was there. I mean, I don't remember the exact date,

1 you know. It's right there at that timeframe though
2 that I brought the meat over there.

3 Q. At nine weeks prior to Mr. Reardon's death?

4 A. Nine to seven. I mean, it's like two months.

5 Q. Okay.

6 A. Two months prior, plus or minus a week or so.

7 Q. Okay.

8 A. I mean, when I heard about it, I knew --
9 you know, of course, when I heard about Charlie's
10 passing, I tried to contact his ex-wife, you know,
11 for condolences or whatnot.

12 Q. Okay. Have you seen Mr. Floyd since he's been
13 in prison?

14 A. No, ma'am.

15 Q. Okay. And you actually got subpoenaed
16 by Ms. LeMatty to come testify at this trial;
17 is that right?

18 A. Yes, ma'am.

19 Q. And did you -- did she talk to you about what
20 you would say about Mr. Floyd living with Mr. Charlie?

21 A. We had a brief conversation beforehand,
22 but I think it was just going over the procedural
23 requirements in the courtroom. I've never been in
24 a courtroom like that before, so. But -- so, I think
25 I wrote a statement. I can't remember exactly what

1 it was, but I think we did talk briefly before court,
2 and then after court we spoke again about what the next
3 step would be to try to help Marty.

4 Q. Okay. At the time that you had been subpoenaed
5 to come and testify at trial, you were subpoenaed
6 by Ms. LeMatty; is that correct?

7 A. Yes, ma'am.

8 Q. Okay. And she did not talk to you about what
9 you would have said to the judge or the jury by being
10 there with that subpoena?

11 A. We had to have made that conversation because
12 I think there was a conversation there that the
13 prosecution was going to say, you know, yeah, he did
14 live there, but the timeframe was off, so we're not
15 going to call you up to the stand or something.
16 It's hard for me to remember. It was several years ago.

17 Q. Okay. So, Ms. LeMatty actually did talk
18 to you ---

19 A. Yeah.

20 Q. --- and found that the timeframe was wrong,
21 and that's why she wasn't going to call you as
22 a witness?

23 A. I think that was, like, during the break
24 or something. I can't remember exactly.

25 Q. Okay.

1 A. But it was -- we did have a conversation,
2 now that I'm thinking about it more.

3 Q. Okay. All right. I don't have anything further.
4 Thank you.

5 A. Thank you.

6 THE COURT: Ms. Weidauer.

7 MS. WEIDAUER: No questions, Your Honor.

8 THE COURT: Thank you, sir. You can step
9 down.

10 THE WITNESS: Yes, ma'am. Thank you.

11 MS. SARJI: I don't have anything further,
12 Judge. Thank you.

13 THE COURT: Ms. Weidauer.

14 MS. WEIDAUER: The State calls Mr. Ash
15 Chisholm to the stand.

16 MR. ASH CHISOLM, was called as a witness,
17 being duly sworn, was examined and testified as follows:

18 THE CLERK: Please be seated, and state your
19 full name to the Court.

20 THE WITNESS: My name is Ash Chisholm.

21 THE COURT: Would you spell your last name,
22 please.

23 THE WITNESS: Yes, ma'am.

24 It's C-H-I-S-H-O-L-M.

25 THE COURT: Thank you.

1 DIRECT EXAMINATION

2 BY MS. WEIDAUER:

3 Q. Good morning.

4 A. Good morning.

5 Q. How long have you been practicing law,
6 Mr. Chisholm?

7 A. Give or take, I think, 13 years thereabouts.

8 Q. Thirteen years. And how much of that has been
9 in criminal law?

10 A. All of it.

11 Q. All of it, all 13 years. When did you start
12 working in the First Circuit PD's Office?13 A. Just trying to remember. I think it was 2007
14 or 2008. I started working in the First Circuit Public
15 Defender's Office, actually here in Orangeburg.
16 Three or so years later, I moved to the Dorchester
17 County office, and I've been there ever since.18 Q. Okay. And what was the scope of your
19 representation of Mr. Floyd?20 A. To the best I can recall and from looking through
21 the digital file, it looks like the only interaction
22 I've had in this case was I handled his preliminary
23 hearing.24 Q. Okay. And why did you handle that preliminary
25 hearing?

1 A. It's been a long time, so I can't remember.
2 But it's pretty common within our office that if one
3 of the attorneys can't make it to a preliminary hearing,
4 if they've got something else going on, or if I might
5 have five hearings scheduled and another attorney
6 has one, I might say, hey, I can handle your hearing
7 for you, that way we don't have five attorneys up there
8 for five different cases. One person can handle it.

9 Q. So sometimes it's for efficiency?

10 A. Yes, ma'am.

11 Q. You guys will handle each other's?

12 A. Yes, ma'am.

13 Q. Okay. And that's normal practice in the office?

14 A. Yes, ma'am.

15 Q. And that's still normal practice in the office
16 to this day?

17 A. Yes, ma'am.

18 Q. Okay. During your time at the public defender's
19 office, did you also represent a Ms. Danielle
20 Linder-Flowers?

21 A. I did.

22 Q. Okay. And do you remember when you represented
23 Ms. Flowers?

24 A. I was looking it up, and from what I could tell,
25 it looks like I represented her from October of 2012.

1 I believe her case pled or ended in June of 2013.

2 Q. Okay. And do you recall what charges you
3 represented her on?

4 A. It was several. There were some rearrests
5 in there and probation issues. But I know there was
6 a plead to manufacturing methamphetamines, and I can't
7 recall the others.

8 Q. Okay. Were those charges in any way related
9 to Mr. Floyd's charges?

10 A. No.

11 Q. Okay. And at the time, would you have been
12 made aware of any family members of the victim?

13 A. Generally speaking, when I would handle someone
14 else's preliminary hearing, usually it's not something
15 that's set in advance six months ahead so, I study
16 up on the case. Usually it's kind of on the fly.

17 So, generally speaking, when I go into a case
18 some of the times we don't even have discovery at that
19 point. I don't recall if we did back in 2013 in this
20 case or not. But a lot of times we don't have
21 discovery, we don't know who all the witnesses are,
22 that kind of thing.

23 Q. Okay. And so you weren't aware that
24 Ms. Linder-Flowers was the victim's stepdaughter?

25 A. Let me say this: I cannot recall. It's been

1 a long time. Generally speaking, if I get there,
2 and I somehow find out during -- before the hearing
3 that a co-defendant is represented or is not represented
4 a co-defendant, or something like that, you know,
5 we would, you know, hand it off to a different attorney,
6 or do something along those lines.

7 I heard Mr. Floyd's testimony. I can't recall
8 if we had a conversation. I can't recall along those
9 lines what Ms. Linder-Flowers' relation was to his case
10 either. I'm not sure if she was a victim or a possible
11 -- I'm not sure what it was, but I heard what he
12 testified to. I don't recall that conversation.

13 Generally speaking, like I said, if it's
14 something like a co-defendant or something like
15 that, we would automatically when we discovered
16 it, say I can't handle this case.

17 Q. And is this something you normally would
18 make a record of, is a defendant waiving a conflict
19 of interest?

20 A. Generally speaking, yes.

21 Q. Okay. So though you do not remember Ms. Flowers
22 was the step -- the victim's stepdaughter. Do you
23 believe that might have affected your representation
24 of Mr. Floyd in any way?

25 A. No, it did not.

1 Q. Okay. And you would have considered Mr. Floyd's
2 interest adverse to Ms. Linder-Flowers?

3 A. No, ma'am.

4 Q. Okay. Please answer any questions Ms. Sarji
5 has for you.

6 CROSS-EXAMINATION

7 BY MS. SARJI:

8 Q. Mr. Chisholm, do you have any independent
9 recollection of the prelim in Mr. Floyd's case?

10 A. Just off memory, no. It's been a long time.

11 Q. And were you able to go back and look and
12 see whether your office had a copy of the transcript
13 of the proceeding?

14 A. I have not seen a transcript. I did look to
15 see if I had my notes, which I found online and scrolled
16 notes from the preliminary hearing, but I don't have
17 a transcript.

18 Q. Okay. And so other than what you generally
19 do in cases, you can't say anything specifically based
20 on your memory or your notes with regard to what
21 happened in Mr. Floyd's case?

22 A. Correct.

23 Q. Okay.

24 MS. SARJI: I don't have anything further,
25 Judge. Thank you.

1 MS. WEIDAUER: Nothing further, Your Honor.
2 Thank you.

3 THE COURT: Thank you, sir. You can step
4 down.

5 MS. WEIDAUER: The State would call Ms. Mary
6 LeMatty.

7 MS. MARY LEMATTY was called as a witness,
8 being duly sworn, was examined and testified as follows:

9 THE CLERK: Please be seated, and state your
10 full name for the Court.

11 THE WITNESS: My name is Mary LeMatty.
12 My last name is spelled L-E-M-A-T-T-Y.

13 DIRECT EXAMINATION

14 BY MS. WEIDAUER:

15 Q. Good morning, Ms. LeMatty.

16 A. Good morning.

17 Q. How long have you been practicing law?

18 A. Since 1993.

19 Q. Okay. So roughly 25 to 30 years?

20 A. Somewhere in there.

21 Q. Okay. How much of that has been criminal law?

22 A. I became a part-time assistant public defender
23 in 2005. When the office was created through
24 the creation of circuit defenders listed in 2008,
25 then I became a full-time employee in that office,

1 and I've been there since.

2 Q. Okay. And were you appointed or retained in this
3 case?

4 A. I was appointed.

5 Q. You were appointed. How many times did you meet
6 with Applicant Martin Floyd prior to this trial?

7 A. I would say six or seven at least. He had --
8 we had discovery that we went over. He had a couple
9 of different plea offers. Based on my review of my
10 notes and my recollection, it would be at least that
11 many times, if not more.

12 Q. And can you describe Mr. Floyd's attitude during
13 those meetings? Was he cooperative; was he hostile?

14 A. Mr. Floyd would -- it varied. I mean,
15 it honestly varied. Sometimes he was very involved
16 and invested and talking to me, and other times he did
17 not want to hear anything that I had to say.

18 Q. So when he was invested and would talk to you,
19 you made notes on all of his suggestions for things
20 he believes you should raise at trial?

21 A. He was also a very prolific writer. I received
22 a good bit of correspondence from him. So between those
23 two things, then, yes, what he testified hereto today
24 is, yes, that's accurate.

25 Q. And you testified you did review all discovery

1 materials with Mr. Floyd and told him about all plea
2 offers?

3 A. Yes.

4 Q. Okay. Would you briefly describe the State's
5 evidence, or your understanding of the State's evidence
6 against Mr. Floyd?

7 A. Mr. Floyd and a couple of co-defendants
8 were charged with first-degree burglary for entering
9 the trailer that belonged to Mr. Rearick on the evening
10 that he passed away. Mr. Rearick, I believe, if I'm
11 remembering correctly, got into an automobile accident
12 that morning on Highway 78. I think we may have
13 actually been in court in Saint George that day,
14 and that caused some delay with us getting there.

15 And I believe it was that night that Mr. Floyd
16 had learned of Mr. Rearick's passing, and that Mr. Floyd
17 and the co-defendants went to Mr. Rearick's property
18 to secure the property.

19 Q. Okay. And did you discuss the strengths and
20 weaknesses based on those facts with Mr. Martin Floyd?

21 A. Yes.

22 Q. And you discussed possible defenses to these --
23 this charge?

24 A. Yes.

25 Q. Okay. And what were some of those defenses that

1 you then raised or did raise?

2 A. Well, he had the residency issue. Nobody
3 really contested that he and Mr. Rearick were friends,
4 he had lived with Mr. Rearick for a period of time.
5 It became a bit fuzzy towards in the month prior
6 to Mr. Rearick's passing because Mr. Floyd had
7 a girlfriend, and I believe he had a young child,
8 or a child on the way, or something like that, so he
9 wasn't at Mr. Rearick's as consistently as he would
10 have been if I just say that I'm living at this place.

11 He would go back and forth, but he was still
12 working on the property. He did still have items of his
13 own at that property. So he was continuing with that
14 relationship, although it didn't seem from what we were
15 able to gather that he spent every night there in the
16 weeks and months proceeding Mr. Rearick's passing.

17 Q. And Mr. Floyd testified that he had been staying
18 mostly at his girlfriend's house. Do you remember him
19 telling you that, that he had a girlfriend at the time?

20 A. I believe so. I believe so. This is all, again,
21 very long ago, so doing the best I can based on...

22 Q. Did you discuss with the Applicant the elements
23 of the charge and what the State was going to have
24 to prove?

25 A. Yes.

1 Q. And did Mr. Floyd give you a different version
2 of facts than what the State did allege, or did he say
3 I was there, the cops came, and I was arrested?

4 A. I'm not quite sure I'm following your question.

5 Q. Did he ---

6 MS. WEIDAUER: I'm going to move on,
7 Your Honor.

8 BY MS. WEIDAUER:

9 Q. So, I'm going to move on to first-degree burglary
10 and the requirement of an aggravating circumstance.
11 Do you remember that they were actually two here?

12 A. Oh, in terms of the -- yes.

13 Q. Aggravating circumstances. Okay. And those
14 would be veil of darkness and previously convicted
15 of two or more burglaries?

16 A. Yes.

17 Q. Okay. As for Mr. Floyd giving you other
18 potential witnesses and leads for investigative
19 purposes, do you remember what names he gave you
20 and for what reason?

21 A. I would have to specifically look in my file
22 to see every name that he gave. But the two gentlemen
23 that came up here and testified were both people that
24 I talked to, and they were both present for trial.
25 Ms. Koon, who testified, I don't see anything in my

1 file about having her name as somebody to talk to.
2 But the gentlemen that were here, yes, and his mother.
3 His mother testified for him at trial.

4 Q. Okay. And what about Ms. Flowers?

5 A. Ms. Flowers, I don't recall independently
6 speaking to her on my own. I did look through my notes,
7 and I found a note that says won't say he had permission
8 to be there, which -- my recollection, such as it
9 is at the time, was that I did learn that Mr. Chisholm
10 represented Ms. Flowers -- Linder. She's gone by
11 several different names, and I asked him to ask her.

12 Q. Okay. And you did subpoena the two gentlemen
13 that did testify today?

14 A. Yes.

15 Q. And why did you not call them at trial?

16 A. To the best of my recollection, I think
17 I just thought it would be cumulative after his mother.
18 I thought his mother did a wonderful job in setting
19 things out very clearly, and I just thought it would
20 be duplicative.

21 Q. Okay. And was there any strategy involved in not
22 calling them?

23 A. The second gentleman who testified said
24 something, he testified something about the timeframe
25 not matching up or something. And I believe --

1 and this all sort of happened at the courthouse as
2 things were happening, but I believe I may have backed
3 off on calling him for that. And the other gentleman,
4 I just thought would be duplicative of Mr. Floyd's
5 mother's testimony.

6 Q. And Mr. Floyd testified that he believed the
7 State's witnesses and -- rather you believed the State's
8 witnesses were beneficial to his position?

9 A. I don't recall independently in terms of anything
10 specific. But, no, I don't think they were as harmful
11 as the solicitor wanted them to be in their testimony.

12 Q. Okay. You did have ample time to prepare for
13 this trial?

14 A. I represented Mr. -- I believe he was arrested
15 at the end of October. I looked in my case management
16 system. I got the case at the end of January, filed
17 for discovery. The preliminary hearing was about 20
18 days later in February, and the trial was in December,
19 so, yes.

20 Q. So, yes. And do you recall moving -- we're going
21 to jump to Applicant's burglary convictions. Do you
22 recall moving pre-trial to determine the admissibility
23 of Applicant's prior burglary convictions?

24 A. I don't recall.

25 Q. Okay. Do you recall the judge finding that

1 they would come in under elements of the offense?

2 A. Not specifically.

3 Q. Do you remember that he did have multiple ---

4 A. They did bring certified copies of convictions.

5 Q. Okay.

6 A. But did not -- my train of thought -- I'm sorry.

7 I can't remember what I was going to say.

8 Q. Okay. They did -- the State did bring certified
9 copies of Mr. Floyd's prior burglary convictions?

10 A. I believe so.

11 Q. Okay. And do you remember them only offering
12 two to satisfy the necessary elements?

13 A. If that's what's in the record, that's what
14 happened.

15 Q. Okay. As for the -- Mr. Floyd alleged that you
16 did not request a lesser included. Was there any trial
17 strategy in proceeding with burglary one on the chance
18 that he would be acquitted?

19 A. I have no specific recollection of the charge
20 conference or the jury instructions. But if it's in
21 the record, I did. If it is not, then I don't believe
22 that I did.

23 Q. But it was your belief that the house was
24 not a dwelling. That's what you argued at trial,
25 that the house was not a dwelling?

1 A. That's one of the arguments, yes.

2 Q. Okay. And if the house was determined not
3 to be a dwelling, then proceeding on the burg one,
4 Mr. Floyd would have been acquitted, correct?

5 A. I can't say what a jury is going to do.

6 Q. But for -- to be convicted of burg one,
7 one of the elements is that it is a dwelling?

8 A. Oh, yes.

9 MS. WEIDAUER: Beg the Court's indulgence
10 for one moment, Your Honor.

11 BY MS. WEIDAUER:

12 Q. Did you see any reason to challenge the
13 indictment?

14 A. I don't believe so. I don't see any indication
15 that I did in the transcript. There's nothing in any
16 of my notes that gave me a reason for why I would have
17 done that.

18 Q. Okay. As to the closing argument that Mr. Justis
19 made that Applicant was a wolf in sheep's clothing,
20 do you recall the trial judge instructing the jury that
21 what the attorneys say in arguments is not evidence?

22 A. Not specifically in this trial, but it happens
23 in every trial.

24 Q. Okay. Since you didn't see any reason -- did you
25 see any reason to object to that statement at the time?

1 A. At the time, I obviously didn't because I did
2 not.

3 Q. Okay. And do you believe that prejudiced
4 Applicant?

5 MS. SARJI: Objection, Your Honor.
6 Calls for speculation.

7 THE COURT: I'm going to sustain that.

8 MS. WEIDAUER: Beg the Court's indulgence
9 for one moment.

10 THE COURT: Sure.

11 MS. WEIDAUER: That's all.

12 THE COURT: Ms. Sarji.

13 MS. SARJI: Yes, Your Honor. Thank you.

14 CROSS-EXAMINATION

15 BY MS. SARJI:

16 Q. Ms. LeMatty, you just stated that if it's not
17 in the record, you didn't do it; is that right?

18 A. That would be the best I can give on my memory
19 of that many years ago.

20 Q. Okay. And so ---

21 A. Thousands of cases ago.

22 Q. I'm sorry. Thousands of cases ago?

23 A. Yes.

24 Q. And so if you don't have it in your notes
25 in your file, or perhaps a letter that Mr. Floyd

1 may have written you, or it's not in the transcript,
2 then you have no independent recollection of what
3 happened; is that right?

4 A. That would be accurate.

5 Q. And so you mentioned while you were testifying
6 that you met with Mr. Floyd at least six or seven times
7 before trial. Do you recall that testimony?

8 A. Yes.

9 Q. Is that because your notes only reflect
10 six or seven times that you met with him?

11 A. My notes or my case management log on,
12 but I could only come up with so many dates.
13 And it's entirely possible that we met more than
14 that because procedurally people would be brought
15 over to the courthouse from the detention center just
16 for us to talk to, and the solicitors made that
17 decision, and not us necessarily. So, I would find
18 myself meeting with clients who I wasn't "scheduled"
19 to meet with just because the solicitor had brought
20 them.

21 Q. But you have no independent recollection
22 of having done that in this case?

23 A. Meaning?

24 Q. Well, you just testified that you have
25 no independent recollection of anything that

1 is not reflected in your notes or within the transcript
2 of the case; is that right? You just testified to that;
3 is that correct?

4 A. Yes.

5 Q. Okay.

6 A. I think I'm not following you. I'm sorry.

7 Q. So, I guess what my question for you is that
8 your notes don't reflect that you met with him more than
9 the six or seven visits that you're able to certainly
10 say that you met with him; is that right?

11 A. No, that's all my notes reflect.

12 Q. Okay. And so despite what may have happened
13 because this happened sometimes, you can't say with any
14 certainty that you met with him more than six or seven
15 times prior to trial; is that correct?

16 A. I cannot.

17 Q. And, in fact, you also deferred to Mr. Floyd's
18 recitation of events during your direct testimony.
19 You said that, if he said it, it's true. It's what
20 you just said, and I'm sorry what you guys thought --
21 she was asking you about whether or not he had told you
22 to talk to specific witnesses. You said he wrote lots
23 of letters and that sort of thing. And that -- you said
24 that you heard his testimony and that's what happened?

25 A. To the best of my recollection.

1 Q. Okay. And you also testified that you didn't
2 call these other witnesses in to talk about Mr. Floyd
3 actually living at Charlie Rearick's residence because
4 you felt it would be cumulative; is that right?

5 A. As far as the second. I can't remember
6 the gentleman's name, but one I thought would have
7 been cumulative, the other one I thought the timeframe
8 would not have matched, would have been inconsistent
9 with what's already been presented.

10 Q. Certainly. And so you -- would you agree
11 with me that Mr. Justis worked hard to impeach Marty's
12 mother's testimony because she's his mother?

13 A. He did. He did focus on that in closing.

14 Q. And actually while he was questioning her,
15 he cross-examined her about the fact that she would
16 do anything she could to help Mr. Floyd because she's
17 his mother. Do you recall that?

18 A. Not specifically. But if it's in the record then
19 that would be the exchange.

20 Q. And so despite the fact that the other two
21 gentlemen that you had under subpoena were not relatives
22 of Mr. Floyd's, you testify that you believe that their
23 testimony would be cumulative?

24 A. At the time, yes.

25 Q. Okay. In retrospect, do you disagree with what

1 your judgment was at the time?

2 A. Yes.

3 Q. Ms. LeMatty, we also heard from Ms. Koon who said
4 that she was a neighbor out there, or stayed with her
5 boyfriend who was a neighbor out by Mr. Rearick's
6 residence. Do you recall -- were you sitting here
7 for her testimony?

8 A. Yes.

9 Q. Did you ever go out to Mr. Rearick's trailer
10 to take pictures or maybe canvas, you know, talk to
11 other people in the neighborhood about what Mr. Floyd
12 was telling you, that he actually lived there?

13 A. No.

14 Q. Okay. It was a big deal in this trial
15 about whether Mr. Floyd actually was still living
16 at the residence at the time of Mr. Rearick's death;
17 is that right? If it would have been his residence,
18 he wouldn't have been burglarizing it by going in to
19 get his stuff, right?

20 A. Correct.

21 Q. Okay. And so that was one of the prongs
22 that was necessary and was in dispute during the trial
23 of the case?

24 A. Mr. Floyd had, in essence, without taking all
25 of his items, vacated that property for the most part,

1 except for working there for some months prior to
2 Mr. Rearick's passing.

3 Q. And so it's your testimony that Mr. Floyd had
4 actually not been living at Mr. Rearick's at the time
5 of Mr. Rearick's death?

6 A. Not on a full-time basis.

7 Q. Okay. So a part-time basis he lived there?

8 A. He had items there; he worked on the house.

9 Q. And occasionally spent the night there?

10 A. At that point in time, I don't remember getting
11 that particular impression from him. But I thought
12 that -- the impression I got from him was that he had
13 been out of there some time earlier, several months
14 prior to Mr. Rearick's passing, that he was actually
15 still working on the house, you know, on a very regular
16 basis, but that he was actually residing with
17 a girlfriend at a different location.

18 Q. And do you have in your notes where Mr. Floyd
19 actually told you that he was residing with his
20 girlfriend because his testimony, as you heard earlier,
21 was that they were getting to know each other, and he
22 spent the night over there sometimes, but he had never
23 actually vacated or moved out of Mr. Rearick's home,
24 and that he had not been evicted from Mr. Rearick's
25 home?

1 A. He had not been evicted; he had not taken
2 his items out of there. My recollection, such as
3 it is, the impression was that he was really mostly
4 focusing on staying with the girlfriend. I guess the
5 best way I could say is he would work at Mr. Rearick's
6 house during the day, he would go spend the night with
7 the girlfriend most of the time in the couple of months
8 proceeding Mr. Rearick's passing.

9 Q. Would you agree with me that it is pertinent
10 to a determination of residency where somebody is having
11 their mail delivered, for example?

12 A. Yes.

13 Q. Would you agree with me that certainly in
14 the case of a probationer, or somebody like that,
15 that it is important to a determination of residency
16 what address that the Department of Probation, Pardons
17 and Parole might have on file, that would be an
18 important thing, if you're trying to verify whether
19 your client lived somewhere?

20 A. It would be a factor.

21 Q. Would you agree with me that certainly
22 34-year-old men, or 37-year-old men, who have
23 girlfriends might stay at their girlfriend's house
24 frequently overnight, even though they're not married,
25 but still their residence is in another location?

1 A. It certainly depends on what somebody defines
2 as their own residence. And in working with a lot
3 of people that I work with, they don't have I get the --
4 I get my mail at ---

5 Q. Okay. I'm not asking ---

6 A. I reside at Y, so.

7 Q. Okay. And Mr. ---

8 A. I guess I'm probably over thinking your question.

9 Q. Okay. In Mr. Floyd's case, you say that he had
10 never been evicted from Mr. Rearick's residence?

11 A. Not to my knowledge.

12 Q. And that you knew that he works there during
13 the day and had consent to be at the property then?

14 A. Yes.

15 Q. And that you knew that he was staying at -- maybe
16 even a majority of the time that he was staying with
17 Angela Fleeman; is that right?

18 A. I don't remember it specifically being Angela,
19 but a girlfriend.

20 Q. His girlfriend. And you have no independent
21 recollection of this case, absent the notes in your
22 file, is that right, or the letters that Mr. Floyd may
23 have -- or the transcripts? I'm just asking you ---

24 A. I guess what I'm trying to -- I mean, I recall
25 what I recall because of what I have seen in these

1 things.

2 Q. Okay.

3 A. In the documents that I have.

4 MS. SARJI: Court's indulgence, Your Honor.

5 BY MS. SARJI:

6 Q. Did Mr. Floyd ever tell you that you either have
7 in your notes or somewhere to verify, if that's the only
8 thing that you have that you can base your knowledge
9 on, did he tell you or write you a letter telling
10 you that he didn't -- that wasn't where he considered
11 to be his home, and that he was just staying with ---

12 MS. WEIDAUER: Objection, Your Honor.

13 Asked and answered.

14 MS. SARJI: Actually, it hasn't been.

15 THE COURT: I'm not following your question,
16 so if you can rephrase it, please.

17 MS. SARJI: Thank you.

18 BY MS. SARJI:

19 Q. We've established that you have no independent
20 recollection of the file, other than what you've read in
21 preparation for today; is that right? We've establish
22 that?

23 A. What do you mean by independent recollection?

24 I mean, my recollection is based on what I read
25 and from my documents and Mr. Floyd's documents.

1 Q. Okay. So if you had not read that -- I couldn't
2 have walked up to you two weeks ago and say, hey, I want
3 to talk to you about this case. I know you haven't
4 read your file, but let's talk about what you remember.
5 You wouldn't have been able to recite all the things
6 that you have been here today; is that right?

7 A. Not everything, no.

8 Q. Okay. Do your notes or a letter from Mr. Floyd,
9 or something that you have, indicate that he told
10 you that he was no longer living at Mr. Rearick's --
11 that was not his home, that he may have stayed with
12 his girlfriend, but that was not his home?

13 Do you -- is there something you can point
14 me to in your file that says in your notes client
15 was no longer living there, or client says he no longer
16 lives there? Do you have anything like that?

17 A. Not that I can think of, no. I don't believe so.

18 Q. And if it's not in the record that you requested,
19 any jury instructions on consent to be on the property,
20 or lesser included, then you would defer to what the
21 transcript says; is that right?

22 A. That is correct.

23 Q. Okay. And so if the transcript -- if you read
24 it, and it doesn't say anything about requesting any
25 jury charges ---

1 A. No.

2 Q. --- it didn't happen?

3 A. Not to my recollection.

4 Q. Okay.

5 A. This has been continued, like, six times, so.

6 Q. Understood. So did you ever talk about --
7 and assuming what your client was telling you to
8 be the case and that that was his residence, did you
9 ever look into what the implication of landlord/tenant
10 law is so that if he had actually had a written lease
11 and the landlord dies, that his consent to be occupying
12 or in the property isn't revoked upon the death of
13 the landlord? Did you ever look into any of those kinds
14 of angles in this case?

15 A. The example that you just gave, I don't recall.
16 I don't think so. I don't recall though.

17 Q. Okay.

18 MS. SARJI: Court's indulgence, Your Honor.

19 BY MS. SARJI:

20 Q. Did you talk in any way -- did you do any kind
21 of research about Mr. Floyd's prior convictions?
22 So when he testified, he said that he believed that
23 his prior convictions wouldn't have been sufficient
24 predicate offenses, those are my words, but that
25 they wouldn't have been sufficient predicates because

1 of the sentence that he actually received, which could
2 not have been imposed had they been the requisite
3 offenses to enhance the burglary first.

4 Did you ever go behind what he was telling
5 you in that regard to see if there was something there?

6 A. I'm not sure I'm following you.

7 Q. Okay. Only certain offenses can be used by the
8 State in order to enhance a charge, assuming it wasn't,
9 you know -- so his two prior offenses, two prior
10 convictions, were used to enhance the punishment
11 in this case, right; is that right?

12 A. Yes.

13 Q. Okay. And he told us here that those weren't
14 sufficient in his belief, his mind. He believes
15 that those two predicate offenses were not sufficient
16 to support the LWOP conviction, right? Did you hear
17 him testify to that?

18 A. Yes.

19 Q. And part of the reason that he said that
20 is because he said he got a suspended sentence on,
21 you know -- a suspended sentence, which would have
22 been an illegal sentence had it actually been given
23 for the crime that everyone assumed he had been
24 convicted of. Do you recall that testimony?

25 A. The sentence -- the sentencing for, in terms

1 of what he's talking about the suspension, yes,
2 that did use to happen. I mean, it's been something
3 that's happened historically in South Carolina.
4 Sometimes sentences have not been correct, but I believe
5 that the convictions were still listed as burg first
6 convictions.

7 Q. Did you do any independent research, or go behind
8 those sentencing sheets, given that he was given
9 a suspended sentence to confirm what your client
10 was telling you about that they weren't good enough
11 to LWOP him?

12 A. I don't believe that I recall Mr. Floyd bringing
13 that particular issue of the illegal sentence, and maybe
14 it wasn't a burglary first conviction before.

15 Q. Before PCR?

16 A. Right.

17 Q. Okay.

18 A. Other than that, whatever the clerk's documents
19 were, I did certainly look at that. But beyond that,
20 in terms of going back to his old attorneys or anything
21 like that ---

22 Q. Or get the transcript?

23 A. --- I did not do anything like that.

24 Q. Okay. And with regard to the wolf
25 in sheep's clothing, if the record doesn't reflect

1 a contemporaneous objection to that repeated use,
2 you wouldn't dispute that you didn't object to it?

3 A. I would not.

4 Q. Okay.

5 MS. SARJI: Court's indulgence, Your Honor.
6 I don't have anything further, Judge. Thank you.

7 MS. WEIDAUER: Redirect, Your Honor.

8 THE COURT: Uh-huh.

9 REDIRECT EXAMINATION

10 BY MS. WEIDAUER:

11 Q. So it was your understanding that he used to live
12 at Mr. Rearick's residence?

13 A. It was my understanding that Mr. Floyd for
14 a period of time lived with Mr. Rearick, that sometimes
15 -- and he worked on the house. And at sometime during
16 that, his room became unavailable or something of that
17 nature, and he had the girlfriend anyway, but somebody
18 else was there.

19 It was a very fluid situation, but I never
20 perceived the fact that Mr. Floyd was on the property,
21 or, you know, that he had permission to be on the
22 property as being a real issue in the case, and that
23 was -- everybody knew, you know, and acknowledged.
24 The State acknowledged that, you know, these people were
25 friends, that he had lived there, and that he had worked

1 on the house and continuing to work on the house.

2 Q. And just to clarify, the other witnesses you
3 believed at trial would have been duplicative?

4 A. The one I thought would have been duplicative,
5 that was a bad decision in retrospect. The second
6 one, he did jog my memory when he said the timeframe
7 didn't match up. And I did not want to do anything
8 that would conflict or that caused any more questions
9 than already existed.

10 Q. Right. And as for a parole address, Ms. Sarji
11 suggested that would only be representative of where ---

12 MS. SARJI: Your Honor, she's
13 mischaracterizing my question.

14 THE COURT: I'm going to allow it.

15 BY MS. WEIDAUER:

16 Q. Ms. Sarji questioned you and said that might
17 be representative of where an applicant may live.
18 Did you ever -- did he ever ask you to get his parole
19 records?

20 A. Not that I saw in my notes.

21 Q. Okay. And he never told you that may be proof
22 of residency?

23 A. Not that I recall.

24 Q. Okay. So at the time of trial, you had
25 no knowledge of anyone who could directly testify

1 that he lived there?

2 A. His mother testified that he had lived
3 there for the period of time that he lived there.
4 And, like I said, the other gentlemen knew that
5 he was there and had lived there at times and that
6 kind of thing.

7 The question and focus was more on the timeframe
8 of when he was physically keeping his body there
9 at night every night. And it just seemed to happen
10 that during that period of time, shortly before
11 Mr. Rearick's death, he was spending a lot of time
12 with his girlfriend.

13 Q. Okay. Can you just summarize your primary
14 defense strategy for the record?

15 A. That Mr. Floyd didn't go there to commit any
16 crime. You know, this was a place that he had lived in,
17 that he had worked from, that he had items of his own
18 at, that he was friends with this man. He was crushed
19 when he died.

20 And, yes, he and his co-defendants did go there
21 that night. Yes, they were on the premises, and law
22 enforcement rolled right up on them, but they weren't
23 there to commit any kind of a crime. They were there
24 to try to obtain one of Mr. Floyd's properties that
25 he needed at the time and secure the residence.

1 They weren't there to rob anybody.

2 Q. So it was the trial strategy to focus on intent?

3 A. Yes.

4 Q. As for the jury instructions that Ms. Sarji
5 questioned you about, if a factual element of a crime
6 alleged, could you make an affirmative charge on that
7 from the judge, or is that something for the jury's
8 determination?

9 A. I'm not following your question.

10 Q. A factual element of the crime, could the judge
11 make an affirmative charge on that, the lawful consent
12 issue?

13 A. I'm ---

14 Q. The issue of lawful consent, could the judge
15 determine that he had consent to be there or not,
16 or is that a question for the jury?

17 A. I would think that would have been a jury
18 question.

19 MS. WEIDAUER: Beg the Court's indulgence,
20 Your Honor. Thank you.

21 MS. SARJI: Thank you, Judge.

22 RECROSS EXAMINATION

23 BY MS. SARJI:

24 Q. Ms. LeMatty, your whole trial strategy,
25 now you're saying, focused on intent. But at the time,

1 you were actually making a big argument about whether
2 or not this was a dwelling place at all; is that right?

3 A. Yes. I don't think that was the stronger
4 of the two arguments, but yes. I mean, I argued both.

5 Q. Okay. But you didn't argue that to the jury
6 at all about whether it was a dwelling place in your
7 closing. Do you recall that?

8 A. No, I think I argued the intent in the closing.

9 Q. Okay. And although the assistant attorney
10 general has gotten you to say that the judge can't
11 charge something that relates to a factual matter,
12 that's not actually the case, is it?

13 A. I'm not following any of this line of
14 questioning. I mean, it's been...

15 Q. Okay. So in your experience, if you were to need
16 what the legal definition of a word was, you could go
17 find case law that might define what a dwelling place
18 is; is that right?

19 A. Sure.

20 Q. And so even though that's a factual dispute,
21 the judge can still charge the jury about what that
22 means under the law; is that right? Things like what
23 constitutes a dwelling place. That was one of your main
24 arguments ---

25 A. I did not ask for any different jury charge.

1 Q. Okay. And you could have, in fact, specifically
2 with regard to that? There's a line of cases about
3 what constitutes dwelling places; is that right?

4 A. I think that was all pretty well said in our
5 directed verdict motion.

6 Q. Right. But you didn't carry it through
7 to the jury is our point; is that right?

8 A. Whatever I briefed in ---

9 Q. Whatever it said.

10 A. --- my closing is whatever I briefed in my
11 closing.

12 Q. Okay. You heard here today a neighbor, somebody
13 who was staying near the property, say that Mr. Rearick
14 told her that Martin Floyd was living at that trailer.
15 Had you found her prior to trial, would you think that
16 would have changed the whole outcome in this case?

17 A. I don't know.

18 MS. SARJI: I don't have anything further,
19 Judge. Thank you.

20 THE COURT: Thank you, ma'am. Please step
21 down.

22 MS. WEIDAUER: I am going to try to
23 delineate these allegations in the way they were set
24 up in the beginning. Oh, sorry.

25 THE COURT: Okay. I'm glad to hear, if you

1 all want to make a closing statement. That's fine.

2 MS. SARJI: Yes, Your Honor, just very
3 briefly. I would just say that I think that we have
4 carried our burden of showing that counsel's performance
5 at trial was -- or leading up to trial was deficient,
6 and that, but for those deficiencies, that Mr. Floyd
7 would have had a different result at trial.

8 Central to the issue in this case was
9 whether or not he had a right to be on the property
10 and could go in at will to take the things that belonged
11 to him.

12 And while Ms. LeMatty is absolutely
13 correct that nobody disputed that he was allowed to
14 be on the property for the limited purpose of working,
15 when we're talking about somebody who actually lives
16 there, and, look, we're all adults, we all -- maybe
17 not everybody, but many, many people stay with
18 boyfriends or girlfriends a lot before they're married,
19 and they still have their own residence.

20 We heard from a witness today, Ms. Koon,
21 who told us that she actually did the same thing with
22 Jimmy, who lived next door to Mr. Rearick, and it didn't
23 work out, and she stopped staying over there as much.
24 So, I don't think it's a huge leap that he was staying
25 at his girlfriend's, but his home and where his home

1 would have been, and where he had consent to
2 be as a resident, was at Mr. Rearick's place.

3 And if that is the case, and we have
4 a witness who should have been discovered with adequate
5 investigation and knocking on some neighbors' doors,
6 if he was a resident, which is what by his testimony
7 he says that he was telling his lawyer, okay?

8 She has no record of him ever saying
9 I didn't live there. And if we assume that he's
10 telling the truth about living there, and we believe
11 the witnesses who say that he lived there at the time
12 of Mr. Rearick's death, he would clearly not have been
13 able to be considered burglarizing this residence.

14 And, I mean, that was what I was trying
15 to get at through questioning, is that as a matter
16 of landlord/tenant law and the landlord dies, and he
17 has a tenant in the property, consent for that tenant
18 to be in the property and removing his own items isn't
19 revoked upon the death of the landlord.

20 And so, I mean, in two different ways,
21 I think this failure to pursue that line of reasoning
22 and investigation really failed Mr. Floyd, and it's cost
23 him his life because he's sitting in prison now for
24 the rest of his life based on a failure by trial counsel
25 to follow up and try to corroborate what her own client

1 was telling her.

2 And her failure to sort of cover her
3 bases, which I think that any reasonable trial lawyer,
4 criminal trial law, would have recognized, the inherent
5 bias that the solicitor explicitly alleged with regard
6 to his mother's testimony, and would have called in some
7 unrelated folks who can say the same things, that,
8 okay, the solicitor doesn't want you to believe Mom,
9 but here we have the two friends, or at least one
10 friend, who would come in and say, I helped him move
11 his stuff into there, and I visited him over there,
12 and I knew Mr. Charlie, and he lived there, and that
13 was his home.

14 And I think that the failure to pursue that
15 certainly rises to the level of ineffective assistance
16 of counsel. I think that her failure to object
17 to the solicitor's closing argument, that was clearly
18 an attempt to inflame the jury, is sort of, per se,
19 ineffective assistance of counsel.

20 And I'm probably mispronouncing this,
21 but Tappeiner or Tappiner, versus State, the case
22 at 416 S.C. 239, says there's specific language
23 within that case that indicates that the solicitors
24 must tailor their remarks so as not to appeal to
25 the personal biases of the jury or arouse the jurors'

1 passions or prejudices, and that reviewing courts must
2 determine whether the solicitor's comments so infected
3 the trial with unfairness as to make the resulting
4 conviction a denial of due process.

5 And I would submit to you that in this case,
6 Mr. Floyd's conviction, and all of these sort of little
7 points that culminated and that resulted in a conviction
8 that just shouldn't be, Judge. There is -- she didn't
9 even ask for the judge to talk to the jury about the
10 whole prong, about consent.

11 And I disagree wholeheartedly with the
12 attorney general's rationale that we can't ask judges
13 to charge the jury on what the legal definition
14 of something that they have to decide whether that
15 is the case. But we have to get the judge -- I mean,
16 you do at every trial that you do, right? You can
17 give them a jury charge that says if you find this,
18 it equals that because that's what the law says that
19 it is, right?

20 So we go behind -- everyday words have legal
21 definitions that the judge can charge the jury on those
22 legal definitions. And I think the failure to even
23 request that in this case, or to follow through with
24 what counsel admits was an over -- one of the two major
25 themes of the case was the not a dwelling verses intent.

1 She just totally abandoned that whole dwelling thing
2 after directed verdict. And I think she could have
3 submitted that to the jury as well, and she just didn't
4 do it.

5 So, I think all of it together, certainly
6 cumulatively, would -- should result in a reversal
7 of Mr. Floyd's conviction and a remand for a new trial.
8 Thank you, Judge.

9 THE COURT: Thank you. Yes, ma'am.

10 MS. WEIDAUER: I would like to first note
11 that in South Carolina we do not recognize cumulative
12 error in post-conviction relief proceedings. I would
13 like to start clarifying my argument regarding the
14 charge. Mr. Floyd testified here today that he wanted
15 the judge to charge the jury and determine he had lawful
16 consent to be there.

17 If the judge would have done that,
18 Mr. Floyd would have been acquitted of burg one,
19 as that is a required element of the crime.
20 That is what Mr. Floyd -- maybe I did not properly
21 get -- I pulled a question out of Ms. LeMatty,
22 but that is what Mr. Floyd testified here today to.

23 As for Ms. LeMatty's effectiveness
24 as counsel and her failure to investigate, Ms. LeMatty
25 was not contesting, and she repeatedly stated that

1 it was not contested that he used to live there,
2 or that he worked there. Ms. LeMatty also testified
3 to the fact that calling more witnesses would have
4 been duplicative and cumulative at the time during
5 trial, and his mother had answered those issues.

6 It was her trial strategy to focus in on
7 intent and not the dwelling issue, which is her right
8 as counsel to have that trial strategy and not bring
9 every argument that she believes may have an indicia
10 of merit. She wanted to bring her strongest argument,
11 which she believed was the intent argument in her
12 closing.

13 As to the conflict of interest issue,
14 Ms. Danielle Linder-Flowers had no adverse interest
15 to Mr. Martin Floyd. She was merely the stepdaughter
16 of the victim. Mr. Chisholm had very limited
17 representation of Mr. Floyd and was not made aware
18 of that connection. However, even if he was, that still
19 would not constitute an actual conflict of interest,
20 as there were no adverse interest between the cases.

21 Ms. Sarji cited Tappeiner v. State.
22 The State would argue that applicant's case is different
23 in Tappeiner because that case was entirely dependent
24 on a credibility determination between State's witnesses
25 and defense witnesses, and there was no direct evidence

1 beyond the victim's assertions. That was a case
2 of criminal sexual conduct with a minor.

3 Here, there was direct evidence and
4 a necessity would be propriety of those remarks made
5 in the State's closing. The Court should determine
6 whether the solicitor's comments so infected the trial,
7 which the State would propose that it did not. So even
8 if trial counsel was deficient in failing to object,
9 Applicant was not prejudiced by this because there
10 was other supporting evidence that supported that
11 conviction.

12 I would also like to touch upon the
13 indictment issue. I would like to cite State v. Massey,
14 430 S.C. 349, 2020, a motion to quash the indictment
15 tests only the facial validity of the indictment.
16 It does not test the sufficiency of the State's
17 evidence. And the State here would argue that all
18 elements of the burglary were addressed in that
19 indictment, and it was facially valid. Thank you,
20 Your Honor.

21 THE COURT: Thank you. I have read through
22 the transcript. I'm going to go back and give
23 it another careful review. I'm going to look closely
24 at the case law that both sides have presented and take
25 this under advisement.

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MS. SARJI: Thank you, Your Honor.

THE COURT: Thank you.

(End of Transcript of Record)

CERTIFICATE OF REPORTER

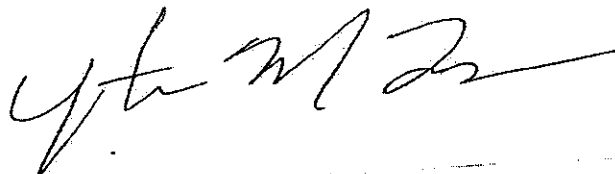
State of South Carolina)

County of Orangeburg)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Orangeburg County, South Carolina, on the 21st of May, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 28, 2021



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Martin D. Floyd, SCDC #290265,	)	Case No.: 2017-CP-18-01249
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter is before this Court by way of Applicant Martin D. Floyd’s application for post-conviction relief challenging his conviction following a jury trial for first-degree burglary based on claims of ineffective assistance of counsel and prosecutorial misconduct. Respondent the State of South Carolina made its return to the application and requested an evidentiary hearing to resolve the claims as set forth in the application. On May 13, 2021, Applicant (through appointed post-conviction relief counsel Leslie T. Sarji) served an amended application asserting additional claims of ineffective assistance of counsel.

An evidentiary hearing was convened before this Court on May 21, 2021. Applicant was present and represented by appointed counsel Sarji. Assistant Attorney General Samantha J. Weidauer of the South Carolina Office of the Attorney General represented Respondent. At the hearing, Applicant proceeded forward on the claims as set forth in his original application and his amended application. In support of these claims, Applicant testified on his own behalf and presented testimony from his friend Brian Cole, his friend Jessica Koon, and his friend Jason Tony. Respondent presented Applicant’s prior counsels Ash Chisholm and Mary LeMatty.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish

any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

PROCEDURAL HISTORY

The records before this Court¹ establish that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. On the evening of January 17, 2013, Applicant and several co-defendants were apprehended at the home of Charles Rearick while they were in the process of taking various personal property from the residence. Applicant had formerly resided with Rearick and was currently assisting with a home remodel. Rearick had died earlier that day. Thereafter, during its November 2013 term, the Dorchester County Grand Jury indicted Applicant for first-degree burglary (2103-GS-18-0364). Applicant was represented by Mary P. LeMatty, Esquire, and Michelle R. Suggs, Esquire. Assistant Solicitors Glenn P. Justis and Mandy W. Kimmons of the First Circuit Solicitor's Office prosecuted the case. Prior to trial, the State served Applicant with notice of its intention to seek a life without parole sentence as a recidivist offender pursuant to S.C. Code Ann. § 17-25-45 based on his prior convictions.²

¹ The records before this Court include the application for post-conviction relief, the amended application for post-conviction relief, the return to the application, the Dorchester County Clerk of Court general sessions records from the underlying conviction, the trial transcript, the complete appellate record (including the record on appeal, all pleadings before the South Carolina Court of Appeals and South Carolina Supreme Court), and Applicant's records from the South Carolina Department of Correction. This Court has reviewed the record in its entirety.

² The trial transcript reveals Applicant previously pled guilty to two counts of first-degree burglary, one count of second-degree burglary (violent), one count of second-degree burglary (non-violent). (Trial Tr. 287-88).

On December 17, 2013, Applicant proceeded to a jury trial before the Honorable Maité Murphy, circuit court judge, where he was convicted as indicted. Judge Murphy sentenced Applicant to life without parole pursuant to Section 17-25-45.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf. Appellate Defender Laura R. Baer of South Carolina Commission on Indigent Defense – Office of Appellate Defense represented Applicant on appeal. On appeal, Applicant argued the following issues:

- I. [Applicant] is entitled to a direct verdict on the charge of first-degree burglary where the State did not present any evidence that [Applicant] had any intent to commit a crime within the trailer when he entered the trailer.
- II. [Applicant] is entitled to a direct verdict on the charge of first-degree burglary because the State did not prove that the property entered qualified as a dwelling where the sole owner of the property was deceased at the time of entry.

Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion without oral argument. State v. Martin Dameon Floyd, Op. No. 2015-UP-362 (Ct. App. filed July 15, 2015). Thereafter, Applicant filed a petition for rehearing on July 29, 2015. The Court of Appeals issued an order denying the petition for rehearing on August 20, 2015.

On September 28, 2015, Applicant filed an Amended Petition to Extend the Petition for Writ of Certiorari and Accompanying Appendix to the Court of Appeals Out of Time. On September 29, 2015, the South Carolina Supreme Court granted Applicant's request to file his Petition for Writ of Certiorari and accompanying Appendix out of time. On October 12, 2015, Applicant filed his Petition for Writ of Certiorari with the Supreme Court. In the Petition for Writ of Certiorari, Applicant raised the following issues:

- I. The Court of Appeals erred in affirming [Applicant's] conviction for first degree burglary where [Applicant] was entitled to a directed verdict because the State failed to present any direct or substantial circumstance evidence that [Applicant] had any intent to commit a crime within the trailer when he entered the trailer.
- II. The Court of Appeals erred in affirming [Applicant's] conviction for first degree burglary where [Applicant] was entitled to a directed verdict because the State did not prove that the property entered by [Applicant] qualified as a dwelling where the sole owner of the property was deceased at the time of entry.

The State filed its Return to the Petition for a Writ of Certiorari on November 6, 2015, and an Amended Return to the Petition for a Writ of Certiorari on November 17, 2015. On July 18, 2016, the Supreme Court denied certiorari. The Remittitur was issued on August 1, 2016. Applicant timely commenced this PCR action on July 25, 2017.

SUMMARY OF EVIDENCE PRESENTED AT TRIAL³

On the morning of January 17, 2013, Charles Rearick (Rearick) was in a fatal car accident and passed away. (Tr. p. 183 lns. 1-17). His only child, Jennifer Rearick Felkel, and her husband Richard Felkel left their home in Lexington, South Carolina and travelled to Rearick's home in Knightsville, South Carolina along with her mother and a family friend. (Tr. pp. 184-85). Once they arrived at Rearick's residence at 4 p.m., the group entered the home using a key and gathered sentimental items, including Rearick's war metals, pictures, and gun collection, and important documents, such as bank records. (Tr. pp. 185-86; p. 193). At 9 p.m., the group secured the house, locked the front door, and left with the intent to return in the immediate future. (Tr. p. 186; p. 205; p. 207). No one had permission to enter the home, including Applicant and his friends. (Tr. p. 205).

³ This factual summary is the same as set forth in the return to the post-conviction relief application.

That evening, Applicant was at the home of his then-girlfriend, Angela Fleeman (Fleeman) when he received a call from his mother informing him that Rearick had passed away several hours earlier. (Tr. pp. 105-06). Applicant had previously lived with Rearick but had moved out of the home more than six months prior. (Tr. p. 107; pp. 197-98; p. 222; p. 226). Although he no longer resided with Rearick, Applicant continued to renovate Rearick's home as he had while residing there. (Tr. p. 226-27). According to Fleeman, Applicant was very upset by the information and expressed concern about his property located at Rearick's residence. (Tr. pp. 106-07). Specifically, Applicant was concerned that his property would "end up in probate" and that he would not be able to get it "for a year and all his stuff would be missing." (Tr. p. 107 lns. 8-10). Applicant did not state exactly what property was at Rearick's house that he needed to retrieve. (Tr. p. 107 lns. 15-17).

Having neither a car nor a driver's license, Applicant called his friend Rusty Norris (Norris) to see if he could get a ride to Rearick's home at approximately 10 p.m. (Tr. p. 107; pp. 128-29). Norris also had no car or driver's license, so he asked his then girlfriend Candace to drive him and Applicant to Rearick's house. (Tr. p. 129). Norris and Candace had never met Rearick or been to his home but agreed to accompany Applicant to his residence to retrieve property. (Tr. p. 128-130). Both went to Fleeman's home, where they met Fleeman, and talked for approximately an hour before all four went to Rearick's residence in Candace's truck. (Tr. p. 129-130). Norris was armed with gloves, a flashlight, a screwdriver, and bolt cutters. (Tr. p. 143; p. 157).

When the group arrived at Rearick's residence, the lights were off and the front door was locked. (Tr. p. 108). The four then went to the rear of the trailer in hopes of gaining entry into Rearick's secured residence. (Tr. p. 108). Upon finding a chair propped against the rear of the

trailer below a window, Norris pushed open the window and Candace gained entry to the residence by crawling inside. (Tr. p. 108; p. 131). Once inside, Candace unlocked and opened the front door and the remaining three entered Rearick's home. (Tr. p. 108; p. 131).

Once inside, Applicant proceeded to Rearick's master bedroom first. (Tr. p. 108). Norris and Fleeman were unsure what Applicant was searching for in particular, but both had been told by Applicant that Rearick was a gun collector and reported that Applicant was upset that he could not find any weapons. (Tr. pp. 113-14; pp. 131-32). Only after searching Rearick's master bedroom and bathroom did Applicant go to the bedroom where he had lived with his child and his mother months prior. (Tr. pp. 108-09). In this room, Applicant located some of his clothing and his daughter's bottle, but left these items. (Tr. p. 108; p. 114). While in the home, Norris, who had never met Rearick, took various items belonging to the deceased, including a blood pressure monitor, scissors, a belt, pills, and a Navy boatswain whistle. (Tr. pp. 143-48; p. 203). According to Fleeman, the group then sat in the living room and reminisced about Rearick, although Fleeman had only met him once and Norris and Candace had never met him. (Tr. p. 109; p. 114-15). After approximately an hour, Applicant and the group exited the trailer. (Tr. p. 115).

Fleeman and Candace proceeded to Candace's truck while Applicant and Norris went to a two-story shed behind the residence. (Tr. p. 115; p. 133; pp. 136-37). The structure was covered with plywood nailed in place and secured by a lock. (Tr. p. 133; p. 155). According to Norris, Applicant looked through cracks in the fortified shed and identified various tools that were his property. (Tr. p. 133). Norris used bolt cutters to remove the lock, which he placed in his pocket. (Tr. pp. 133-34; p. 142). He then entered the shed, where he took wood stain, an air grinder, and other items belonging to Rearick. (Tr. pp. 143-44). He was still inside the shed when

Applicant came from the front of the house and warned him and Candace that law enforcement had arrived. (Tr. p. 134). Norris and Candace both took off running; Norris eventually crouched behind bushes on the periphery of the property while Candace kept going. (Tr. p. 134). Meanwhile, Applicant was at the truck speaking with Fleeman when the Dorchester County Sheriff's Deputies arrived. (Tr. pp. 116-17; pp. 153-54). According to Fleeman, Applicant was considering spending the night at the property when law enforcement arrived. (Tr. p. 116).

Corporal Shawn Angelo (Angelo) of the Dorchester County Sheriff's Office was the first officer to arrive at Rearick's residence. (Tr. pp. 152-53). He pulled up to the home with his lights on and his camera activated. (Tr. p. 153). He reported that Applicant and Fleeman were located in or near Candace's truck and the property was dark. (Tr. pp. 153-55). Applicant and Fleeman were both handcuffed and placed in different police cruisers. (Tr. p. 117). Angelo and fellow Dorchester County Sheriff's Office Deputy Silas Carter (Carter) did a protective sweep of the property, using flashlights when entering the unlocked residence. (Tr. pp. 154-55; p. 160; pp. 167-68). At the shed, officers found the plywood covering to the shed with nails sticking out lying on the ground alongside bolt cutters. (Tr. pp. 155-56). After clearing the shed, Angelo and Carter heard rustling in the woods and found Norris hiding behind a brush pile. (Tr. p. 156; pp. 167-68). Norris was detained and searched, yielding several items that were taken from the residence and shed. (Tr. pp. 156-57; pp. 167-68). Law enforcement was able to determine that Candace was the fourth suspect based on registration of the truck and her driver's license located on the vehicle's floorboard. (Tr. p. 159). Applicant, Fleeman, and Norris were all arrested that evening and charged with first-degree burglary. (Tr. p. 117; pp. 149-50).

Rearick's family was contacted by law enforcement that evening regarding the activity at Rearick's home. (Tr. p. 161; pp. 188-90). Richard and Jennifer Felkel informed Dorchester

County Sheriff's Deputies that no one had permission to be at Rearick's residence, including Applicant. (Tr. p. 189; p. 205). Felkel and his wife returned to Rearick's residence the next morning to re-secure the property. (Tr. p. 190; pp. 203-04). Upon entering the residence, Rearick's family noted a marked difference in the property, which appeared to have been ransacked. (Tr. p. 190; pp. 203-04). They reported that a large quantity of items, including military clothing of Rearick's and other various household items, were piled on the kitchen table in bags. (Tr. p. 190; pp. 203-04). Richard Felkel also noted that the large gun case where Rearick stored his weapons was no longer standing upright as it had been when he left the previous day but rather was lying on the floor of the master bedroom. (Tr. p. 187). The Felkels also reported finding a jacket and cellular phone at the residence that were not present when they left the previous evening. (Tr. p. 191; p. 204). They contacted law enforcement, who collected the items. (Tr. pp. 179-80; pp. 190-91).

As part of their investigation, the Dorchester County Sheriff's Office obtained a search warrant to search Candace's truck, where a shop vac, pillows, a painting, and a computer program box were located. (Tr. pp. 170-71). Law enforcement also took photographs of the crime scene and dusted for fingerprints, although no usable prints were found. (Tr. pp. 169- 78).

Applicant proceeded to trial on December 17, 2013. Both Fleeman and Norris testified for the State, along with various members of the Dorchester County Sheriff's Office involved in the investigation, an employee from the Dorchester County Clerk's Office, and Rearick's family. At the close of the State's case, Applicant moved for a directed verdict, asserting the State had failed to prove that Rearick's residence was a dwelling in light of his death and failed to prove that Applicant had the intent to commit a crime when entering the property. (Tr. pp. 208-12).

After hearing the State's reply, the trial court denied Applicant's motion as to both grounds. (Tr. pp. 212-16).

Applicant called his mother as his sole witness in his defense. (Tr. p. 220-35). She testified that Rearick was a family friend and that her husband previously lived next door to Rearick. (Tr. p. 221). She testified Applicant, his former girlfriend, and their child had previously lived with Rearick, but that Applicant had moved out approximately six months prior because Rearick did not want Applicant's girlfriend and child living in the home. (Tr. pp. 222-23; p. 226; p. 230). She testified Applicant was renovating Rearick's house and continued to do so after moving out. (Tr. p. 222; pp. 226-27). She testified she could identify various tools and other personal property as belonging to Applicant. (Tr. pp. 223-28). She testified she provided Applicant transportation to Rearick's house to work on renovations and that she took him there "at least two, three, four times a week." (Tr. p. 231). Following the testimony of his mother, Applicant renewed his motion for a directed verdict, which was again denied by the trial court. (Tr. pp. 238-40).

ISSUES BEFORE THIS COURT

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

-Ineffective Assistance of Counsel for:

- 1) failure to investigate, including:
 - how Applicant entered the trailer,
 - whether Applicant gave a written confession,
 - what Detective Carson testified to at a preliminary hearing,
 - whether the fingerprint lifts taken were valid,
 - discrepancies in photographs taken at the crime scene
- 2) failure to challenge the use of Applicant's prior record for enhancement

- 3) failure to interview requested witnesses and call them as defense witnesses at trial
- 4) failure to retain an expert code enforcement officer to establish the outbuilding was not habitable
- 5) failure to move to quash the indictment because the property owner on the indictment was deceased
- 6) failure to object to the State's opening statement calling Applicant a "burglar" and a wolf in sheep's clothing
- 7) failure to move for a directed verdict based on the argument of consent
- 8) failure to request proper jury instructions on first-degree burglary, the definition of a dwelling, consent, the use of Applicant's prior convictions
- 9) failure to object to the State's deliberate misrepresentation of facts and evidence during its response to his directed verdict motion
- 10) an actual conflict of interest because Public Defender Ash Chisholm also represented the victim's stepdaughter

-Prosecutorial Misconduct for vindictive prosecution, deliberately misrepresenting evidence during trial, failure to turn over exculpatory evidence, including *Brady* material⁴

In response to the application, Respondent served a return and requested an evidentiary hearing to resolve Applicant's claims of ineffective assistance of counsel and prosecutorial misconduct. Attached to this return and before this Court are the application for post-conviction relief, the Dorchester County Clerk of Court general sessions records from the underlying conviction, the trial transcript, the complete appellate record (including the record on appeal, all pleadings before the South Carolina Court of Appeals and South Carolina Supreme Court), and Applicant's records from the South Carolina Department of Correction.

⁴ Applicant failed to present any evidence or argument as to this allegation, and, accordingly, he has failed to meet his requisite burden of proof as a matter of law as to this claim, which this Court denies and dismisses with prejudice.

After the substitution of the counsel originally appointed to represent Applicant, Leslie T. Sarji, Esquire, was appointed to represent Applicant in this proceeding pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court (S.C. Sup. Ct. Order filed Oct. 6, 2008) and Rule 71.1(d), SCRPC (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Thereafter, counsel served an amended application adding the additional claims for relief:

- Ineffective assistance of counsel for:

11) Trial counsel provided ineffective assistance of counsel by failing to adequately investigate the case prior to trial;

12) Trial counsel provided ineffective assistance of counsel by failing to request a jury charge for a lesser included offense where the evidence presented would have supported conviction for the lesser offense;

13) Trial counsel was ineffective for failing to challenge the sufficiency of the indictment in the case;

14) Trial counsel was ineffective for failing to challenge the sufficiency of Applicant's prior convictions for enhancement of his charge of conviction to Burglary, First Degree; and

15) Trial counsel was ineffective for failing to object during the State's closing argument to the Solicitor's argument that Applicant was a "wolf in sheep's clothing."

Applicant proceeded forward on these claims at his evidentiary hearing.⁵

SUMMARY OF EVIDENCE PRESENTED AT EVIDENTIARY HEARING

At the start of the hearing, Applicant's PCR counsel stated Applicant's primary claims centered around his counsel's failure to properly investigate and present evidence to establish Applicant was a resident of the home. PCR counsel also stated trial counsel failed to take

⁵ Because many of the claims overlap, this Court has addressed many of them together below.

photographs of the entry point into the home to show that the window was the common entry point into the home. PCR counsel next asserted that trial counsel failed to request proper jury instructions, including an instruction on the lesser-included offense of second-degree burglary and consent. PCR counsel also stated that trial counsel failed to challenge the indictment including the charge being enhanced to a first-degree burglary based on his prior convictions. Finally, PCR counsel stated trial counsel failed to object to improper argument by the State characterizing Applicant as “wolf in sheep’s clothing.”

Applicant testified on his own behalf at the hearing. He testified that he was represented by Ash Chisholm, Esquire, at the preliminary hearing because his counsel, Mary LeMatty, could not make it to the hearing, but that Chisholm informed him he had a conflict of interest because he represented Danielle Flowers, who was the victim’s stepdaughter. He stated that he informed Chisholm he wanted to proceed forward with the preliminary hearing with Chisholm representing him despite his representation of Flowers. He testified that at the preliminary hearing, Detective Carson from the Dorchester County Sheriff’s Office said that Applicant and his co-defendants had given confessions, but he had not recorded these due to a lack of recording capabilities. Applicant testified that counsel should have challenged this, but he failed to make any objections. He testified he feels that Chisholm did not vigorously represent him at the preliminary hearing. However, he stated that he is not sure that it is related to Chisholm’s representation of Flowers, which he believes amounted to a conflict of interest.

Applicant testified that he met with LeMatty after the preliminary hearing and he was on notice of the charge as set forth in the indictment and what he was defending himself against. He testified he understood the State was seeking a life without parole sentence if he was convicted based on his prior record, but he was also aware that first-degree burglary carries a possible life

without parole sentence on its own. He testified a possible life sentence was not a concern for him because he believed he would be acquitted at trial. He testified that this belief that he would be acquitted is why he turned down plea offers to lesser-included offenses. He testified that he reviewed Section 17-25-45 with LeMatty. He testified that he questioned LeMatty about how the State could enhance this charge to first-degree burglary because he only had one prior housebreaking conviction rather than the two required for enhancement. He also believes the trial court for those prior convictions lacked subject matter jurisdiction because he received suspended sentences in violation of the statute. He testified he discussed these things with LeMatty and she responded that those issues and arguments were not meritorious. However, he feels that LeMatty should have done an investigation on the underlying offenses to see if they were proper predicate offenses to give rise to Section 17-25-45.

Applicant testified he believed that LeMatty should have challenged the indictment because it improperly listed Rearick as the homeowner of the dwelling, but, upon his death, ownership transferred to his daughter, and, therefore, he believes his daughter should have been listed as the homeowner in the indictment. He later acknowledged the indictment listed the estate of Rearick as the homeowner. He testified that had he known he needed the permission of Rearick's daughter to enter the home, he would have pled guilty. He reiterated that he had Rearick's permission to be in the home and the State did not present any evidence to dispute this consent. Applicant testified that he had lived in Rearick's home for approximately a year before the incident. However, he then testified that he was "kind of staying" with his girlfriend at the time of the incident and was only returning to the home to assist with remodeling two to three times a week, although his property was still at the home and he had not been evicted. He testified that he and his father had researched landlord-tenant laws and he attempted to explain to

LeMatty that he was a tenant-at-will at Rearick's house based on an oral agreement. He believed that this was a valid defense strategy, but LeMatty did not want to pursue this defense. He testified that LeMatty made a motion for a directed verdict based on Rearick's death, but that LeMatty should have challenged the indictment based on Rearick's death because he did not have adequate notice of who he was defending himself against.

Applicant testified he asked LeMatty to speak with several witnesses before trial, including: Aaron Lowry, who was helping him with the remodel; Rearick's stepdaughter Ms. Flowers, who could testify that Rearick had previously lived at the home; Brian Cole, Jason Tony, and Charlie Cohen, who all could have testified that Applicant had permission to be in the home. He testified that Cole and Tony were at the trial but were not called to testify. He testified they should have been called to establish that he had permission to be in the home. Applicant testified he discussed this with LeMatty during trial, but she determined that the witnesses were not necessary because both co-defendants who testified as State's witnesses had clearly testified that they and Applicant did not have any intention to commit a crime upon entry to the home. He testified that she also said he did not need to testify based on this. Applicant testified that LeMatty told him she attempted to talk to Ms. Flowers, but she refused to speak with the defense.

Applicant testified he has no independent knowledge as to whether LeMatty went to the house to investigate. He believes she should have done so to show that it was an active construction site and that he and others used the window to enter and exit the home, especially when Rearick was not present.

Applicant testified that LeMatty should have requested additional jury instructions on the "dwelling" element of the offense, including that the sole occupant had passed away. He testified

that he was entitled to instructions on the lesser-included offenses of second and third degree burglary because it was not a dwelling due to Rearick's death. He testified this was the crux of LeMatty's defense strategy and she had prepared a brief on this issue and argued for a directed verdict based on this, but failed to request instructions on lesser-included offenses. He also believed LeMatty should have requested a jury instruction on lawful consent because Rearick had given him this consent and it was never revoked prior to his death.

Applicant testified that LeMatty should have objected to an argument made by the solicitor that he was a "wolf in sheep's clothing" because it was an improper use of religious language in an attempt to scare the jury and inflame passions. He acknowledged that LeMatty did object at the end of the closing but did not do so contemporaneously.

Applicant also testified that LeMatty should have objected when the State argued both that Rearick's family had removed property from the home and then later argued that they had not removed property from the home, as it was factually inconsistent.

On cross-examination, Applicant testified he met with LeMatty "two or three" times and corresponded with her by mail a few times. He testified they discussed that he did not have any intent to commit a crime, that the home was not a dwelling, and that no one was in danger. He testified that they discussed the landlord-tenant issues and that he believed it was a viable defense strategy, but that LeMatty explained why she did not think it was a viable strategy, including that Rearick was not available to confirm any sort of tenancy. He testified he reviewed discovery with LeMatty. He testified that they did "not really" discuss the defense strategy and LeMatty essentially told him he should accept the plea offer to the lesser-included offense of second-degree burglary or he would likely get a life sentence. He testified he did not want to accept any plea offers and that he discussed the offers with LeMatty.

Applicant testified that he wanted LeMatty to investigate and present witnesses to show that he was working on Rearick's property and had lived there. However, he acknowledged that his mother was called for that purpose, and she testified that she routinely dropped him off at Rearick's home several times a week. Applicant also testified that he had been living with his girlfriend since he started dating her. He clarified that he had not moved furniture into her house and was not paying rent but acknowledged that he was staying there every night prior to Rearick's death. He discussed his living situation with LeMatty, including that his lack of a key was not dispositive of his living situation. He testified that the front door to the house was locked, but that he had been gaining entry to the home through the rear window for two to three months. He testified he wanted Cole to testify he had been living and working at Rearick's property.

Next, Applicant presented Brian Cole as a witness. Cole grew up with Applicant and they had previously lived together. He testified that he knew Applicant had lived with Rearick because he assisted Applicant with moving into Rearick's house. He testified he talked to LeMatty about moving Applicant's things into Rearick's home and specific tools of Applicant's that he could identify from Rearick's home. He testified he was subpoenaed for Applicant's trial and could have testified about specific tools that Applicant was accused of stealing. He testified he was never called as a witness at trial despite being at the courthouse for three days of the trial. On cross-examination, he testified that he does not recall when he helped Applicant move into Rearick's home. He testified he was friends with Applicant and had been to the home two times when Rearick was present. He testified that he moved more than just tools into Rearick's home.

Applicant next presented Jessica Koon, who said she was a friend of Applicant and she stayed at her boyfriend's home next door to Rearick's home. She testified she would talk to

Rearick, and he mentioned that Applicant was staying at his home and assisting with the work being done on the home. He told her this within a couple of weeks of Rearick's death. She testified she eventually moved back to Dorchester when she and her boyfriend broke up. She testified she never spoke with anyone after Applicant's arrest. She testified on cross-examination that she was not staying at her then-boyfriend's house every day so, it is possible someone could have come by to speak to her when she was not present. She testified Rearick told her Applicant was "staying" with him but never indicated a duration.

Applicant also presented Jason Troy, who has known Applicant since middle school. He testified he has also known Rearick since middle school. He testified he was told that Applicant was living at and working on Rearick's house. He testified he saw Applicant's personal belongings, including baby toys, at Rearick's house. He testified he also brought Applicant a bulk quantity of meat when he was living at Rearick's house, approximately two months before Rearick's death. He testified that he spoke with LeMatty prior to trial and was subpoenaed as a witness for trial. He testified he was present for trial but was never called to testify. He testified LeMatty spoke with him during trial and explained that he was not going to be called as a witness at trial because the time frame presented by the prosecution was off.

The State presented Ash Chisholm as a witness at the PCR hearing. He testified he is an attorney at the First Circuit Public Defender's Office and has been employed there for approximately thirteen years. He testified that his only involvement in the case was handling Applicant's preliminary hearing. He cannot recall why he handled Applicant's preliminary hearing but, explained it was not uncommon for one attorney from the public defender's office to handle multiple preliminary hearings on behalf of other attorneys from the office to avoid multiple attorneys having to come for the preliminary hearings. He testified that he represented

Ms. Flowers on numerous charges and probation revocations related to methamphetamine use, but unrelated to Applicant's charges. He cannot recall if he was aware that Ms. Flowers was Rearick's stepdaughter, noting that preliminary hearings are scheduled relatively quickly. He does not recall if he and Applicant discussed Ms. Flowers's connection to Applicant's case and he does not believe that it would have impacted his limited representation of Applicant at the preliminary hearing in any way. On cross-examination, he testified that he has no specific recollection of Applicant's case, he has not reviewed a transcript of the preliminary hearing, and he only has notes of the hearing that he reviewed.

The State then presented trial counsel, Mary LeMatty, as a witness. LeMatty testified that she has been practicing law since 1993. She has been with the public defender's office since 2005. She testified that she was appointed to represent Applicant and she met with Applicant at least six or seven times. She testified she reviewed discovery with Applicant. She testified that Applicant's level of involvement in his case varied, describing his interest level as very high at times and as "not want[ing] to hear anything [she] had to say" at other times. She also described Applicant as a prolific writer and said she received "a good bit" of correspondence from him. She described the State's evidence and testified that Applicant informed her that he and the codefendants had gone to Rearick's home the night of his passing to secure the property. She testified there were available defenses relating to Applicant previously living at the home, but that this defense was complicated because Applicant was living with his girlfriend at the time of Rearick's death. She testified Applicant's burglary charge was first-degree because the State alleged it was committed at nighttime, and he had two or more prior burglaries. She testified that Applicant gave her the name of several possible witnesses to testify at trial and she spoke with both Cole and Troy, who were present at trial. She also testified that Applicant's mother testified

on Applicant's behalf at trial. She testified that she elected not to call Cole or Troy as witnesses at trial because Applicant's mother "did a wonderful job of setting things out very clearly" and she believed the two men would have been cumulative and not added anything to the defense. She testified that she found notes in her file that Ms. Flowers would not testify that Applicant had permission to be at the property. LeMatty testified she had ample time to prepare for trial.

LeMatty testified she had no specific recollection about Applicant's prior burglary convictions either for enhancement to a first-degree burglary or for sentencing enhancement but did recall that the State produced certified copies of his prior convictions. She had no recollection regarding the charge conference or jury instructions. She testified that her trial strategy involved an argument that the building was no longer a dwelling, which she acknowledged was a necessary element of first-degree burglary and without satisfying this element, the State would not be able to meet its burden of proof as to first-degree burglary.

Counsel testified she did not challenge the indictment because she did not see any reason to do so. She similarly testified she did not see any reason to object to the prosecutor's closing argument.

On cross-examination, LeMatty testified that she has little recollection of the case because it was many years ago and she had since handled thousands of other cases. She testified that her notes only reflect six to seven meetings with Applicant, but it is not uncommon for her to also meet with clients at the courthouse when they are transported to court, without making any notations in her file. She testified she did not call any additional witnesses beyond Applicant's mother because she believed their testimony would have been cumulative and/or would not have comported with the timeline as presented by the State during trial. She testified she did not go out to the residence to take pictures or investigate. She agreed that it would not be

first-degree burglary had Applicant been at the trailer to retrieve his own property had he been lawfully residing there. However, she testified that Applicant “had, in essence, without taking all of his items, vacated that property for the most part, except for working there some months prior to Mr. Rearick’s passing.” When challenged, she again asserted that Rearick was living with his girlfriend at the time of Rearick’s death. She testified that he would work on the residence during the day but was living with his girlfriend. She acknowledged there are several ways to establish residency, such as where one gets his mail or the address one has on file in official court documents. She does not recall doing any research regarding his residency or landlord-tenant law. She similarly did not recall doing any research into his prior record but did not recall Applicant bringing any issues regarding prior record to her attention.

LeMatty summarized her defense strategy as arguing that Applicant did not go to the residence to commit a crime but rather only to retrieve his property. She also acknowledged that another defense strategy was to argue that the building was no longer a dwelling at the time of entry.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged multiple instances of ineffective assistance of trial counsel and asserts that as a result of counsel’s purported errors, he is entitled to have his conviction reversed and proceed back to the court of general sessions for a new disposition of his case.

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC.

The three grounds for relief upon which Applicant proceeded at the evidentiary hearing pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). 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.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it 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.” Strickland, 466 U.S. at 689; *see also* Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Id.* (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires 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. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” *Id.* The

reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Findings as to Specific Claims Raised

Applicant has alleged multiple claims of ineffective assistance of trial counsel and asserts that as a result of counsel’s purported errors, he is entitled to a new trial. This Court finds has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Allegation Counsel was Ineffective for Failing to Adequately Investigate Applicant’s Case Prior to Trial

Applicant claims that counsel LeMatty was ineffective for failing to adequately investigate the case prior to trial. Applicant specifically asserted that counsel failed to properly investigate the crime scene, including the common entry point for the trailer and whether he still had personal belongings at the trailer to buttress his claim that he was a lawful resident of the trailer and had consent to be present on the night of his arrest.⁶ In support of this claim,

⁶ In his *pro se* application, Applicant asserted that counsel was ineffective for failing to investigate whether he gave a written confession, what was presented at the preliminary hearing, whether fingerprint lifts were taken, and discrepancies in photographs from the crime scene.

Applicant only provided his own self-serving testimony; he did not present the results of any independent investigation, and did not present any documentary evidence to establish that any additional investigation would have yielded beneficial information that would have resulted in a different outcome at trial. For these reasons, this Court finds Applicant failed to meet his high burden of establishing that counsel was constitutionally ineffective in her investigation.

As an initial matter, this Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, 466 U.S. 668). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” Ard, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted).

However, our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. See, e.g., id. at 331, 642 S.E.2d at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable

However, Applicant presented no evidence to sustain these allegations, and, accordingly, had failed to meet his burden of proof as to these claims.

professional judgments support the limitations on investigation.” Strickland, 466 U.S. at 690–91; see id. (“In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46.

As discussed above, Applicant failed to present any evidence to establish what benefit an additional investigation would have yielded, and, accordingly, his assertions are merely speculative and do not meet the burden of proof he must establish for relief. Accordingly, Applicant’s claims pertaining to Counsel’s failure to adequately investigate are **DENIED**.

***Allegation Counsel was Ineffective for Failing to
Challenge the Use of Applicant’s Prior Record for Enhancement***

Applicant claims that counsel LeMatty was ineffective for failing to challenge the use of his prior record for enhancement purposes. At the hearing, Applicant argued that his prior offenses should not have been qualifying offenses to both enhance the charge to first-degree burglary and for sentencing purposes as a recidivist offender pursuant to S.C. Code Ann. § 17-25-45. After a review of the record before this Court and the testimony presented, this Court

finds Applicant has failed to meet his burden of proof as to both claims.

Initially, the only evidence before this Court regarding Applicant's prior record comes from the trial transcript, which establishes that Applicant previously pled guilty to two counts of first-degree burglary, one count of second-degree burglary (violent), one count of second-degree burglary (non-violent). (Trial Tr. 287-88). Applicant failed to provide any evidence that these convictions were somehow invalid; the only evidence Applicant presented was his own testimony that somehow his *sentences* for these convictions were illegal because they were suspended below the mandatory minimum sentence. He has failed to meet his burden of establishing that these prior convictions were not qualifying offenses pursuant to Section 17-25-45 as a recidivist offender or for enhancement purposes under Section 16-11-311(A)(2). Accordingly, Applicant's claims pertaining to Counsel's failure to adequately challenge his prior record are **DENIED**.

***Allegation Counsel was Ineffective for Failing to
Interview and Call Defense Witnesses at Trial***

Applicant claims that counsel LeMatty was ineffective for failing to investigate and present various defense witnesses at trial to establish that Applicant was a resident of Rearick's property to support his defense that he lived at the property, thereby negating the "without consent" and with the "intent to commit a crime" elements of first-degree burglary as set forth in Section 16-11-311(A). At the hearing, Applicant presented three witnesses to support this claim: two childhood friends, Brian Cole and Jason Troy, and Jessica Koon, who previously dated Rearick's neighbor. All three testified that Applicant had lived at the property at some point before his arrest. Cole testified he moved Applicant's personal belongings into Rearick's home months prior to Rearick's death. Troy testified he brought Applicant a bulk supply of meat at Rearick's house approximately two months prior to Rearick's death. Koon, testified she recalled

seeing Applicant at the property in the weeks leading up to Rearick's death. However, and crucial to this Court's determination of this issue, none of these witnesses testified that Applicant was still a resident at the time of Rearick's untimely death and Applicant's arrest.

Additionally, this Court has reviewed the trial transcript and agrees with counsel LeMatty's assessment at the time of trial that these witnesses provided cumulative testimony to that of Applicant's mother, who also testified that Applicant had *previously* lived at the home but was now living with his girlfriend. Moreover, Applicant's own testimony supports the conclusion that he was not living at the property at the time of Rearick's death and his arrest, as he testified repeatedly that he was staying with his girlfriend. Ultimately, the record before this Court establishes that while Applicant had lived with Rearick prior to his death, he was living with his girlfriend at the time of the trial, and he has failed to provide any concrete evidence to establish otherwise. This Court finds that Applicant has failed to meet his burden of establishing any constitutional ineffectiveness. Accordingly, Applicant's claims pertaining to Counsel's failure to investigate and present witnesses on his behalf are **DENIED**.

***Allegation Counsel was Ineffective for Failing to Retain a Code Enforcement Officer
to Establish the Outbuilding was Not Habitable***

Applicant next claims that counsel LeMatty was ineffective for failing to present a defense witness specializing in expert code enforcement to establish the outbuilding was not habitable. This Court finds that this allegation fails as a matter of law for several reasons. Initially, Applicant failed to present any such witness to support his claim, and, accordingly, he cannot meet his burden of proof. Next, the record establishes that Applicant was accused and convicted of entering both the trailer and the outbuilding and taking personal property belonging to Rearick from both. Any argument that the outbuilding is uninhabitable would still not defeat the evidence establishing he entered Rearick's trailer, which was habitable, based on his own

testimony and that of his witnesses in his attempts to establish residency. Applicant's claims pertaining to Counsel's failure to retain an expert in code enforcement are **DENIED**.

***Allegation Counsel was Ineffective for Failing to
Object to the Prosecution's Argument***

Applicant further alleges counsel LeMatty was ineffective for failing to object to the following statement made by the solicitor: "Ladies and gentlemen, much like the old fable, Mr. Floyd is a wolf in sheep's clothing." (Tr. 254, lns. 18-19). Applicant argues these remarks by the prosecutor invoked religion to intentionally inflame the passions of the jury and prejudiced him in that he was denied a fair trial. This Court finds this claim must be denied and dismissed.

Opening and closing arguments are a basic and important element of the adversarial fact-finding process in a criminal trial, and such arguments serve "to sharpen and clarify the issues for resolution by the trier of fact in a criminal case" while also providing both the solicitor and defense counsel with an opportunity to advocate for their respective positions, argue for certain inferences to be drawn from the evidence presented, and identify the weaknesses in the other side's positions. Herring v. New York, 422 U.S. 853, 862 (1975). When presenting a closing argument, a solicitor generally possesses "wide latitude" as to the substance of his remarks to the jury and is fully permitted to prosecute with earnestness and vigor. Bates v. Lee, 308 F.3d 411, 422 (4th Cir. 2002); Berger v. United States, 295 U.S. 78, 88 (1935) ("[A prosecutor] may prosecute with earnestness and vigor—indeed, he should do so."); see also United States v. Isaacs, 493 F.2d 1124, 1164 (7th Cir. 1974) ("The closing argument of a prosecutor need not be confined to such detached exposition as would be appropriate in a lecture . . . because to shear him of all oratorical emphasis, while leaving wide latitude to the defense, is to load the scales of justice." (citations and quotations omitted)).

A solicitor—amongst other things—is allowed to state and discuss the State’s version of the testimony, to comment on the weight to be given to such testimony, and to point out the matters the jury should and should not consider in arriving at a verdict. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); see State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975) (“[The prosecuting attorney] may argue with reference to any matters which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.” (citation and internal quotations omitted)).

However, prosecutors must confine their arguments to the record and the reasonable inferences that may be drawn therefrom. Tappeiner v. State, 416 S.C. 239, 250, 785 S.E.2d 471, 477 (2016) (quoting Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). When a court is reviewing a post-conviction relief claim that a prosecutor’s argument violated an applicant’s due process rights, the court “must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial.” Id. (quoting Darden v. Wainwright, 477 U.S. 168, 181, (1986) (internal quotations and citations omitted)). This Court has stated:

Improper comments do not automatically require reversal if they are not prejudicial to the defendant. On appeal, the appellate court will view the alleged impropriety of the solicitor’s argument in the context of the entire record . . . The appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.*

Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166-67 (1998) (emphasis added and citations omitted); see also Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) (“The relevant question is whether the solicitor’s comments [in closing argument] so infected the trial with unfairness as to make the resulting conviction a denial of due process.”).

While “[a] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony[,]” prosecutors are “bound to rules of fairness in their closing arguments[.]” Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) (quoting Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004)). “A solicitor’s closing argument must be carefully tailored so as not to appeal to the personal biases of the jury.” Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (quoting Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). “The argument must not be calculated to arouse the jurors’ passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.” Von Dohlen, 360 at 609–10, 602 S.E.2d at 744

Here, the argument from the prosecutor was rather innocuous and was not intended to stoke the passions of the jury. Moreover, from this Court’s review of the record, it is clear that this passing comment did not deny Applicant a fair trial. Accordingly, Applicant’s claims pertaining to Counsel’s failure to object during closing arguments is **DENIED**.

***Allegation that Counsel was Ineffective for Failing to
Challenge Sufficiency of Indictment***

Applicant contends counsel LeMatty was ineffective for failing to challenge the sufficiency of the indictment. Specifically, Applicant argued that because Rearick was deceased at the time of his entry into the home, the house was no longer a dwelling. He also argued the indictment must have specifically listed Rearick’s daughter to be valid. However, as Applicant correctly testified, the indictment did clearly list “the Estate of Charles Alvin Rearick.” This Court finds that the indictment is facially valid, and accordingly, there was no valid argument counsel could have made against the sufficiency of the indictment and any pre-trial motion to quash the indictment based on the sufficiency of the evidence would have been improper as set forth in State v. Massey, 430 SC 349, 844 S.E.2d 667 (2020) (“A motion to quash does not test

the sufficiency of the State's evidence; the sufficiency of the evidence can properly be challenged only by a motion for a directed verdict following the State's presentation of its case at trial.”). Applicant’s arguments and testimony at the evidentiary hearing did not raise an issue with the facial validity of the indictment, but rather appears to raise an issue with the sufficiency or type of proof offered by the State. Moreover, this Court has reviewed the language of the indictment and finds it was indeed facially valid, and Counsel had no viable objection to make. The Court therefore finds Counsel was not deficient, nor was Applicant prejudiced by Counsel’s failure to challenge the indictment. Rather, to challenge the sufficiency of the indictment, counsel properly moved for a directed verdict at the close of the State's case. Accordingly, Applicant’s claims pertaining to Counsel’s failure to challenge the sufficiency of the indictment is **DENIED**.

***Allegation that Counsel was Ineffective for Failing to
Move for a Directed Verdict***

Applicant contends counsel LeMatty was ineffective for failing to move for a directed verdict based on Applicant’s permission to be in the home. However, the record reveals that counsel did move for a directed verdict, arguing that Applicant and his co-defendants went to the residence to collect Applicant’s own property. See Trial Tr. p. 211-12 (“Further, the State has got to prove that the entry into the premises was without consent and with the intent to commit a crime . . .”). The only logical way to interpret counsel’s argument is that it also was an argument against the “consent” element of first-degree burglary pursuant to Section 16-11-311(A). This Court finds that counsel properly made a motion for a directed verdict on several strong grounds, including that the home was not a dwelling, there was not intent to commit a crime, and consent. This Court finds counsel’s performance was reasonable and Applicant cannot establish any constitutional ineffectiveness of counsel. Accordingly, Applicant’s claims pertaining to Counsel’s failure to challenge the sufficiency of the indictment is **DENIED**.

***Allegation Counsel was Ineffective for Failing to Request
Specific Jury Instructions***

Applicant next contends counsel LeMatty was ineffective for failure to request numerous jury instructions, including the definition of dwelling, consent, the use of Applicant's prior convictions, and lesser-included offenses. This Court finds that Applicant cannot meet his burden as to any of these claims.

Initially, the record establishes that the trial court properly and fully charged the jury as to what constitutes a dwelling. See Trial T. 276-77. Any commentary regarding whether the home was a dwelling at the time of entry due to Rearick's death was proper for argument—not jury instructions—and counsel properly made such an argument to the jury. Accordingly, this claim is denied. Similarly, this Court has reviewed the jury instruction as a whole and finds that the “consent” element of first-degree burglary was properly charged to the jury. Again, any specific commentary regarding consent as it applied to this specific case was proper for argument.

Finally, this Court finds that Applicant cannot meet his burden of establishing that he was entitled to a jury instruction on the lesser-included offenses or that counsel was ineffective for failing to request such jury instructions. The trial court is required to charge a jury on a lesser included offense “if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). However, the trial court should refuse to charge on a lesser-included offense where there is no evidence that the defendant committed the lesser rather than the greater offense. Suber v. State, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007). Here, the State alleged that Applicant entered the home of Rearick without his permission with the intent to steal personal property. Applicant argued the home was not a dwelling, he lacked any criminal intent, and he had Rearick's consent. Accordingly, the evidence only established either that Applicant was guilty of

first-degree burglary or not guilty and Applicant was not entitled to jury instructions of on the lesser-included offenses of second-degree or third-degree burglary. Accordingly, Applicant's claims pertaining to Counsel's failure to request specific jury charges are **DENIED**.

Allegation that Counsel Chisholm had an Actual Conflict of Interest

Applicant next contends counsel Chisholm, who represented him briefly at the preliminary hearing, was acting under an actual conflict of interest because he represented Rearick's stepdaughter, Danielle Flowers, on unrelated drug charges.

To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) (citing Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998)). An actual conflict of interest occurs where counsel owes a duty to a party whose interests are adverse to the applicant's. Fuller v. State, 347 S.C. 630, 633-34, 557 S.E.2d 664, 665 (2001). Where an applicant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance, prejudice is presumed. Gonzales v. State, 419 S.C. 2, 10, 795 S.E.2d 835, 839 (2017) (citing Strickland, 466 U.S. at 692). However, "[t]he mere possibility of a conflict of interest is insufficient to impugn a criminal conviction." Fuller, 347 S.C. at 634, 557 S.E.2d at 665.

"The Sixth Amendment right to conflict-free representation, like the right to counsel itself, may be the subject of a waiver." United States v. Swartz, 975 F.2d 1042, 1048 (4th Cir.

1992). “The state can establish a waiver only by proving an intentional relinquishment or abandonment of the right.” Hoffman v. Leeke, 903 F.2d 280, 288 (4th Cir. 1990). “To be valid, a waiver of a conflict of interest must not only be voluntary, it must be done knowingly and intelligently.” Thomas v. State, 346 S.C. 140, 144, 551 S.E.2d 254, 256 (2001) (citing Swartz at 1048-49). “Whether there has been a waiver depends on the particular facts of each case and the court must make as thorough and long an inquiry as necessary to determine whether the accused is voluntarily, knowingly[,] and intelligently waiving his right.” Hoffman, 903 F.2d at 288.

This Court finds that Applicant is not entitled to relief based upon his assertion that Chisholm was ineffective in his representation of Applicant at the preliminary hearing based on a conflict of interest. First, Applicant testified not only that he was aware that counsel Chisholm represented Ms. Flowers but that he waived any purported conflict of interest and wanted Chisholm to represent him for the limited purpose of the preliminary hearing.

Moreover, even if this potential conflict was not waived, Applicant has failed to show any prejudicial effect of the potential conflict. There has been no showing that the potential conflict impacted Counsel’s performance at his preliminary hearing or had any impact on the remainder of his case. Applicant has merely acknowledged a possibility of a conflict existing, which does not warrant relief. Accordingly, Applicant’s claims pertaining to a purported conflict of interest are **DENIED**.

CONCLUSION

Based on the evidence presented at the evidentiary hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof pursuant to *Strickland* and Rule 71.1, SCRPC. This Court finds Counsel adequately conferred with Applicant; logically and realistically evaluated the circumstances of his case; provided effective

and competent representation. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant Martin D. Floyd remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 7th day of June, 2023.

Kristi F. Curtis
 KRISTI F. CURTIS
 Presiding Judge
 First Judicial Circuit

Sumter, South Carolina