

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Kershaw County

Honorable G. Thomas Cooper, Circuit Court Judge

MITCHELL LOGAN HINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001643

APPENDIX

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF KERSHAW)

COURT OF GENERAL SESSIONS
No. 2011 GS 28 00220

3

4 STATE OF SOUTH CAROLINA)

5)

6 versus)

TRANSCRIPT OF RECORD

7)

8 MITCHELL L. HINSON)

9 Defendant)

10

Camden, South Carolina

11

June 27 - 29, 2011

12

13

B E F O R E :

14

HONORABLE CASEY MANNING, Judge, and a Jury

15

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1 (The within matter came before the Court for hear-
2 ing on June 27, 2011)

3 THE COURT: Ladies and gentlemen, we will select a
4 jury today, and I hold in my hand what's called an In-
5 dictment. This Indictment is not evidence, members of
6 the jury. It is just a way to formally notify the De-
7 fendant formally of what he's been charged with.

8 And it says the case number 2011 0220, the State of
9 South Carolina, County of Kershaw, Court of General Ses-
10 sions. The State versus Mitchell Logan Hinson. It is
11 an Indictment for burglary in the first degree, and I'll
12 read what these allegations are.

13 Once again, these allegations are not evidence but
14 simply to put him on notice of what he is charged with,
15 and it lets you all know a little bit about the case.

16 The Indictment alleges that Mitchell Logan Hinson
17 did in Kershaw County on or about January 14th of 2011
18 enter the dwelling of James Eubanks located at [REDACTED], [REDACTED]
19 [REDACTED], Jones Road, Kershaw, South Carolina, without
20 consent and with the intent to commit a crime therein,
21 and in effecting entry or while in the dwelling or in
22 immediate flight the Defendant entered the dwelling in
23 night-time hours, so that makes sense.

24 Mr. Hinson is accused of breaking into Mr. Eubanks'
25 house at night.

1 Now, to these allegations of this Indictment, the
2 Defendant, Mr. Hinson, has pled not guilty. That places
3 the burden of proving to your satisfaction beyond a rea-
4 sonable doubt that Mr. Hinson did in fact break into the
5 house that I've just described to you.

6 Now, first of all, I would ask that the Defendant
7 stand and face the jury. Mr. Hinson, would you stand
8 up and face the jury panel, please, sir?

9 This is Mitchell Logan Hinson. All right, Mr.
10 Hinson, please sit down. Thank you.

11 Now, I need to ask you about Mr. Hinson these
12 questions, and I will repeat the questions about any of
13 the other potential witnesses in this case. We will
14 have some and I will read a list out to you.

15 Before I go that far, let me do this. I think I
16 have already introduced everybody to you. Lead counsel
17 in this case is Mr. Ron Moak. Stand up, Mr. Moak, once
18 again, and this is Ms. Raia Hirsch, also with the Soli-
19 citor's Office. Thank you both.

20 Then Neil Riley from the Public Defender's Office
21 and Mr. Eric Durand from the Public Defender's Office --
22 they will be defending Mr. Hinson, the Defendant.
23 So the question with regard to Mr. Hinson and the other
24 potential jurors I will name for you momentarily is
25 this: Is any juror related by blood -- is any juror

1 related by blood or connected by marriage or employment,
2 or a close personal acquaintance of the Defendant, Mr.
3 Mitchell Logan Hinson? If so, please stand.

4 If any member of the jury panel knows Mr. Hinson or
5 knows his family, grew up with him, went to church with
6 him, or knows him and his family in any way now stand.

7 Any member of the jury panel who knows Mr. Hinson,
8 please stand,

9 (No response from any juror)

10 Mr. Moak, I don't see a list of potential witnesses
11 for the State.

12 (Brief pause)

13 All right. First of all, members of the jury, I
14 will read off a list of potential witnesses for the State
15 and most of these are law enforcement officers; most of
16 them will be from the Kershaw County Sheriff's Department,
17 and the same question would apply.

18 As I read these names out, if you know anybody, in
19 any way, shape or form, you need to stand up or raise
20 your hand and let me know.

21 Now, this doesn't disqualify you from serving, but
22 this is information that is important both to the Soli-
23 citor's Office and also to the Defendant, Mr. Hinson, and
24 his lawyers.

25 So some of the potential witnesses in this case will

1 be Wayne Nesbitt with the Kershaw County Sheriff's De-
2 partment, Justin Wooten from the Kershaw County Sher-
3 iff's Department, Mickey Sellers from the Kershaw County
4 Sheriff's Department, Corbin Bailey, James Eubanks --
5 Mr. Eubanks is the victim in this case -- Mr. Eubanks,
6 please stand up -- Officer Marvin Brown from the Kershaw
7 County Sheriff's Department and Chris Phillips of the
8 Kershaw County Sheriff's Department, and Amy Eubanks.
9 Ms. Eubanks I assume is the wife of Mr. Eubanks. All
10 right.

11 Now, let me ask you this question. Is any member
12 of the jury panel related by blood or connected by mar-
13 riage or employment, or are you a personal friend of any
14 of the names I just called out? If so, please stand.

15 Let me call them out one more time. Stand right
16 there.

17 Wayne Nesbitt, Kershaw County Sheriff's Department,
18 Justin Wooten, Kershaw County Sheriff's Department, and
19 Mickey Sellers, Kershaw County Sheriff's Department,
20 Corbin Bailey, James Eubanks and Amy Eubanks, the vic-
21 tims in this case, and Marvin Brown and Chris Phillips.

22 When I say victims, I mean the alleged victims be-
23 cause nothing has been proven yet. The only way anything
24 is to be proven is at the end of this trial if you render
25 a verdict.

1 So if you are related by blood or marriage or con-
2 nected by employment, or a close personal friend of any
3 of those names, please stand.

4 (Juror standing)

5 THE COURT: Yes, sir. Just stand up if you know
6 anybody, and the lady. All right.

7 Yes, maam, your name, please, and your number.

8 JUROR: Barbara Jones, 105.

9 THE COURT: Barbara Jones, number five.

10 JUROR: One O five.

11 THE COURT: One O five. Ms. Jones, who do you know?

12 JUROR: Wayne Nesbitt, Justin Wooten, . .

13 THE COURT: Members of the Kershaw County Sheriff's
14 Department, maam?

15 JUROR: Yes, sir.

16 THE COURT: How long have you known these gentle-
17 men?

18 JUROR: I worked for the Kershaw County Sheriff's
19 Office for fourteen and a half years.

20 THE COURT: You worked for the Kershaw County Sher-
21 iff's Office for fourteen and a half years, and you met
22 them in a working capacity. Is that fair enough?

23 JUROR: Yes, sir.

24 THE COURT: The fact that you worked for the Kershaw
25 County Sheriff's Department for fourteen years and know

1 those gentlemen whose names were called out, would that
2 affect your ability to be a fair and impartial juror in
3 the trial of this case?

4 JUROR: No, sir.

5 THE COURT: Are you sure about that?

6 JUROR: Yes, sir.

7 THE COURT: I will entertain a motion with regard
8 to this. Thank you, maam.

9 Yes, sir. Your name and number, please.

10 JUROR: (Inaudible)

11 THE COURT: I need you to speak up a little bit. I'm
12 having trouble hearing you.

13 JUROR: Carolyn Griffin, 79.

14 THE COURT: Ms. Griffin, who is it that you know of
15 the names called out?

16 JUROR: Mr. Nesbitt.

17 THE COURT: How long have you known Mr. Nesbitt?
18 Deputy Nesbitt?

19 JUROR: All of my life nearly.

20 THE COURT: So he's a life-long acquaintance. Were
21 you all friends or did you go out to dinner together or
22 anything like that?

23 JUROR: No, sir.

24 THE COURT: You just know him?

25 JUROR: Yes, sir.

1 THE COURT: So as you described to me that you all
2 grew up together, would that affect your ability to be
3 a fair and impartial juror in this case?

4 JUROR: No.

5 THE COURT: You are sure about that?

6 JUROR: Yes.

7 THE COURT: All right, thank you, maam.

8 (Another juror standing)

9 THE COURT: Your name and number, please?

10 JUROR: Debbie Bowers.

11 THE COURT: All right, Debbie Bowers, Juror Number

12 14. Who do you know?

13 JUROR: I knew Mr. Eubanks growing up.

14 THE COURT: The fact that you knew Mr. Eubanks grow-
15 ing up . .

16 JUROR: Went to high school with him.

17 THE COURT: . . and as you described, went to high
18 school with him, would that affect your ability to be a
19 fair and impartial juror in the trial of this case?

20 JUROR: No.

21 THE COURT: Are you sure about that?

22 JUROR: Yes, sir.

23 THE COURT: All right, thank you, maam.

24 (Juror standing)

25 THE COURT: I think the lady in the white blouse

1 was next. I can't see that far back.

2 Yes, maam, your name and number, please?

3 JUROR: Linda McCaskill.

4 THE COURT: Linda who?

5 JUROR: McCaskill.

6 THE COURT: McCaskill. Don't tell me you are re-
7 lated to -- okay.

8 JUROR: I know Mr. Eubanks, and I also know Marvin
9 Brown.

10 THE COURT: All right. Could all of you hear that?
11 The fact that you have a relationship with the individ-
12 uals you named, Ms. McCaskill, would that affect your
13 ability to be a fair juror in this case.

14 JUROR: I don't think so.

15 THE COURT: Are you sure about that?

16 JUROR: Yes, sir.

17 THE COURT: All right, thank you, maam.

18 (Another juror standing)

19 THE COURT: All right, your name and number?

20 JUROR: Dennis Seegars, Number 165.

21 I'm friends with the Nesbitts. I grew up and went
22 to school with some of them.

23 THE COURT: All right, sir. I would ask this last
24 question of you. The fact that you grew up with them
25 and were neighbors and good friends, would that affect

1 your ability to be a fair juror?

2 JUROR: No.

3 THE COURT: What's your number again, sir?

4 JUROR: Number 165.

5 THE COURT: Thank you, sir.

6 (Another juror standing.)

7 THE COURT: Name and number, please.

8 JUROR: I'm Grace Koon, 112.

9 I know Amy Eubanks.

10 THE COURT: How long have you known Amy Eubanks?

11 JUROR: I've been in their place of business.

12 THE COURT: All right. The fact that you know her
13 and have been in their place of business, would that af-
14 fect your ability to be a fair juror in this case?

15 JUROR: No.

16 THE COURT: You're sure about that?

17 JUROR: Yes, sir.

18 THE COURT: Thank you, maam.

19 (Another juror standing)

20 THE COURT: Yes, maam, your name and number?

21 JUROR: Twenty-five, Karen Bullard.

22 I know Wayne Nesbitt. He was at Camden High School
23 when I worked there.

24 THE COURT: All right, you went to Camden High
25 School with him?

1 JUROR: I worked there.

2 THE COURT: Would that relationship affect your
3 ability to be a fair and impartial juror in this case?

4 JUROR: No, sir.

5 THE COURT: Are you sure about that?

6 JUROR: Yes.

7 (Brief pause).

8 THE COURT: I'm going to read out three -- four pos-
9 sible witnesses again. Lindsey Stitzel -- is she pre-
10 sent?

11 MR. RILEY: No, sir.

12 THE COURT: She's a fact witness?

13 MR. RILEY: Yes, sir.

14 THE COURT: Does anyone know Lindsey Stitzel --
15 anyone? She's a potential witness.

16 (No response from jurors)

17 THE COURT: So Lindsey Stitzel, Carmen Young, Raven
18 Williams, Mitchell Hinson, the Defendant himself.

19 So Lindsey Stitzel, Carmen Young, Raven Williams
20 and Mitchell Hinson are all other potential witnesses in
21 this case.

22 The question with regard to these four witnesses
23 would be the same. Are you related by blood or connected
24 by marriage or employment, or are you a close personal
25 friend of Lindsey Stitzel, Carmen Young, Raven Williams

1 or Mitchell Hinson? If so, please stand.

2 (No response from jurors)

3 THE COURT: Have any of you been a member of the
4 Grand Jury for the last three years?

5 (No response)

6 Has any member of the jury formed or expressed any
7 opinion about this case or as to the guilt or innocence
8 of Mitchell Hinson? If so, please stand.

9 (No response)

10 Anybody talked about this case or has anyone dis-
11 cussed this case with you? If so, please stand.

12 (No response)

13 Has any member of this jury panel read or heard any-
14 thing about this case before today? If so, please stand.

15 (No response)

16 Is any member of this jury panel aware of any bias
17 or prejudice in connection with this case or any of the
18 parties to this case, the parties being the victims as
19 well as Mr. Hinson?

20 Is any member of this panel aware of any bias or
21 prejudice in connection with this case or any of the part-
22 ies thereto? If so, please stand.

23 (No response)

24 Does any member of the jury panel know of any rea-
25 son why they could not give the State and the Defendant

1 "a fair and impartial trial in this case? If so, please
2 stand.

3 (No response from jurors)

4 Any reason you think you couldn't be a fair juror
5 in this case? It doesn't matter why. There is no right
6 or wrong answer.

7 Any reason you think you could not be a fair juror
8 in this case because you know the Eubanks or know Offi-
9 cer Nesbitt or anyone else involved, or because it in-
10 volves a friend, please stand?

11 (No response)

12 Now, I have a series of additional questions to ask
13 you, and I ask for your patience as I find them. Here
14 we go.

15 Now, has anyone on this jury panel been a victim of
16 a burglary or theft? Somebody been in your house or from
17 your yard or house or something like that? If so, please
18 stand.

19 (Juror standing)

20 THE COURT: All right. Your name and number, please,
21 ma'am.

22 JUROR: Elizabeth Carter, Number 33. My vehicle was
23 stolen probably twenty-two years ago.

24 THE COURT: All right, car stolen twenty-two years
25 ago.

1 Would that affect your ability to be a fair juror in
2 this case?

3 JUROR: No, it won't.

4 THE COURT: Are you sure about that?

5 JUROR: Yes, sir.

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

7 (Another juror standing)

8 THE COURT: Yes, maam. Your name and number, please.

9 JUROR: (Name and number inaudible)

10 My car was broken into and my purse was stolen maybe
11 five years ago.

12 THE COURT: All right. Would the fact that your car
13 five years ago
14 was broken into/and your purse was stolen, would that af-
15 fect your ability to be a fair juror in this case?

16 JUROR: No.

17 THE COURT: Are you sure about that?

18 JUROR: Yes, sir.

19 THE COURT: Thank you, maam.

20 (Another juror standing)

21 THE COURT: Yes, maam, with the red blouse, your name
22 and number, please.

23 JUROR: My car was broken into last August.

24 THE COURT: Is that case still pending or has it
25 been resolved?

26 JUROR: It has not been resolved.

1 THE COURT: It's still pending then?

2 JUROR: Yes, sir.

3 THE COURT: Would that or could that affect your
4 ability to be a fair juror?

5 JUROR: No, sir.

6 THE COURT: Are you sure about that?

7 JUROR: Yes, sir.

8 THE COURT: Thank you, maam.

9 (Another juror standing)

10 THE COURT: Your name and number, please?

11 JUROR: Janine Eanes, Number 63.

12 My home was broken into a year ago. Our house in
13 Virginia.

14 THE COURT: All right, what part of Virginia was
15 this?

16 JUROR: Danville.

17 THE COURT: Danville -- the Danville Train, a song.
18 Would that or could that affect your ability to be a fair
19 juror in this case, maam?

20 JUROR: No.

21 THE COURT: Are you sure about that?

22 JUROR: Yes, sir.

23 THE COURT: Thank you, maam.

24 (Another juror standing)

25 THE COURT: Yes, sir, your name.

1 JUROR: Dennis Seegars, 165.

2 My house was broken into about a year ago and it's
3 still pending.

4 THE COURT: All right, sir. Would that or could that
5 affect your ability to be a fair juror in this case?

6 JUROR: No.

7 THE COURT: Are you sure about that?

8 JUROR: Yes.

9 (Another juror standing)

10 THE COURT: Yes, ma'am, your name and number, please?

11 JUROR: Number 66. My name is Donna Eudy.

12 My home was broken into and some things were
13 stolen.

14 THE COURT: How long ago was that?

15 JUROR: Eight years ago.

16 THE COURT: Two years ago?

17 JUROR: Eight.

18 THE COURT: Eight years ago, and would or could that
19 affect your ability to be a fair and impartial juror?

20 JUROR: No, sir.

21 THE COURT: Are you sure about that?

22 JUROR: Yes.

23 THE COURT: All right, you may sit down.

24 (Another juror standing)

25 THE COURT: Yes, sir, your name and number.

1 JUROR: Ransom Smith, 169.

2 THE COURT: Yes, sir.

3 JUROR: I had a burglary about seven years ago.

4 THE COURT: Would that affect your ability to be a
5 fair and impartial juror in this case?

6 JUROR: No, sir.

7 THE COURT: Are you sure about that?

8 JUROR: Yes, sir.

9 THE COURT: Thank you.

10 (Another juror standing)

11 THE COURT: Yes, maam, your name and number, please.

12 JUROR: (Inaudible)

13 THE COURT: Could you hear her? Would you speak up
14 a little bit?

15 JUROR: Barbara Stevens, 175.

16 THE COURT: Ms. Stevens, 175. Yes, maam.

17 JUROR: Some poodles were stolen from my property last
18 year.

19 THE COURT: What was stolen?

20 JUROR: Some dogs.

21 THE COURT: Some dogs were stolen from your property,
22 two poodles. Would that or could that affect your ability
23 to be a fair juror in this case?

24 JUROR: No, sir.

25 THE COURT: Are you sure about that?

1 JUROR: Yes, sir.

2 THE COURT: Thank you, maam.

3 (Another juror standing)

4 THE COURT: Yes, maam. Your name and number, please.

5 JUROR: Number 67. Twice my car has been broken
6 into.

7 THE COURT: - Twice your car has been broken into and
8 when was that?

9 JUROR: A couple of years ago.

10 THE COURT: Would that affect your ability to be a
11 fair juror in the trial of this case?

12 JUROR: No.

13 THE COURT: Thank you, Ms. Evers.

14 THE COURT: Does any juror have a family member or
15 friend or acquaintance who has been the victim of some-
16 thing?

17 (Juror standing)

18 THE COURT: Yes, maam, your name and number. .

19 JUROR: Von Schumpert, 163. Elizabeth Schumpert.

20 THE COURT: Ms. Schumpert, yes.

21 JUROR: (Portion inaudible) and my husband's mother's
22 house was broken into.

23 THE COURT: Would those two experiences affect your
24 ability to be a fair juror in this case?

25 JUROR: No.

1 THE COURT: Are you sure about that?

2 JUROR: Yes, sir.

3 THE COURT: Thank you, maam.

4 This is a similar question to what I've just asked
5 you. Does any juror have a family member . . .

6 (Juror standing)

7 THE COURT: Yes, sir. Your name and number.

8 JUROR: Scott Carman.

9 My house was broken into.

10 THE COURT: When was that?

11 JUROR: Two years ago.

12 THE COURT: Two years ago your house was broken into,
13 and would that affect your ability to be a fair juror in
14 this case?

15 JUROR: Yes.

16 THE COURT: I'll take you off.

17 The next question is similar to the first ones. We
18 ask these questions so that both the State as well as the
19 Defendant will get a fair trial.

20 We don't want to pry into your personal situation,
21 but there is no way to do this fairly and squarely with-
22 out asking these questions.

23 Does any juror have a family member or a close per-
24 sonal friend who has been the victim of a burglary or
25 theft? If so, please stand.

1 Those who just stood do not have to stand again. If
2 you didn't stand in response to the first question about
3 a neighbor or friend or a cousin or mother or father whose
4 house was broken into or a theft, please stand.

5 (Juror standing)

6 THE COURT: Tell me about your neighbor or family
7 member or friend. Who was it?

8 JUROR: My son's house was broken into two years ago.

9 THE COURT: Would that affect your ability to be a
10 fair juror in this case?

11 JUROR: No.

12 THE COURT: You may sit down.

13 (Brief pause)

14 THE COURT: Now, this is a sensitive question, but
15 you do not need to announce the answer to it. If you
16 need to come up and talk to me about the situation, you
17 may do so.

18 Has any juror been accused of committing a burglary?
19 Has any juror or member of your family been accused of
20 committing a burglary? If so, please stand. Burglary or theft

21 (Juror standing)

22 THE COURT: You want to come up and talk to me?

23 JUROR: No, sir. I'll stand here. My youngest was
24 involved in a burglary some years ago when he was seven-
25 teen.

1 THE COURT: Okay, would that affect your ability to
2 be a fair juror in this case?

3 JUROR: No, sir.

4 THE COURT: And what's your number?

5 JUROR: Thirty-three.

6 THE COURT: You may sit down.

7 (Another juror standing)

8 THE COURT: Your name and number, please.

9 JUROR: Number 134. My brother was involved in . .

10 THE COURT: Your brother, and when was it?

11 JUROR: About ten years ago.

12 THE COURT: Ten years ago, and would that affect
13 your ability to be a fair juror in this case?

14 JUROR: No, sir.

15 THE COURT: Thank you.

16 (Another juror standing)

17 THE COURT: Yes, ma'am, your name and number, please.

18 JUROR: Barbara Stevens, 175.

19 My aunt committed a burglary last year.

20 THE COURT: You said your aunt committed a burglary
21 last year. All right. Would that affect your ability to
22 be a fair juror in this case?

23 JUROR: No, sir.

24 THE COURT: All right, you may sit down.

25 THE COURT: Well, the next question is similar, but

1 not exactly the same. Has any member of the jury panel
2 been the victim of a violent crime? That is not the ques-
3 tion we've covered already. Has any one of you been as-
4 saulted or robbed at gunpoint or some-
5 thing like that? If so, please stand.

6 Any juror been the victim of a violent crime? If
7 so, please stand.

8 (Juror standing)

9 If you want to talk to me personally about the sit-
10 uation -- yes, maam, come on up.

11 (Juror coming to the bench for colloquy with the
12 Court, not on the record)

13 THE COURT: Anybody else? Okay.

14 (Brief pause in the proceeding)

15 (Colloquy between counsel and the Court not on the
16 record)

17 THE COURT: All right, ladies and gentlemen, one or
18 two other questions, and the next one is this.

19 Is there any member of this jury panel who is a mem-
20 ber of -- a member of or a contributor to MADD, Mothers
21 Against Drunk Driving, SADD, Students Against Drunk Driv-
22 ing, CAVE, CADRE? If so, please stand.

23 Is any member of the jury a member of any of those
24 groups or made contributions to any of those groups? If so,
25 so, please stand.

1 (Juror standing)

2 THE COURT: Yes, maam, your name.

3 JUROR: Tara Ross, 161. I contribute to CUSACARE.

4 THE COURT: All right, would that or could that af-
5 fect your ability to be a fair juror in this case?

6 JUROR: No, sir.

7 THE COURT: Thank you, maam.

8 Now, has any member of this jury panel ever made any
9 contributions to or are you a member of the South Carolina
10 Troopers Association? If so, please stand.

11 (Juror standing)

12 THE COURT: Ms. Carter, give us your number again.

13 JUROR: Thirty-three.

14 THE COURT: Now, would that or could that affect
15 your ability to give a fair trial . .

16 JUROR: No, sir.

17 THE COURT: Thank you, maam.

18 (Juror standing)

19 THE COURT: Yes, sir, your name and number?

20 JUROR: Dennis Seegars, 165. I used to work for them.

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

23 JUROR: No, sir.

24 (Juror standing)

25 THE COURT: Yes, maam, your name and number.

1 JUROR: Grace Koon, 112.

2 THE COURT: Would that or could that affect your
3 ability to be a fair juror in this case?

4 JUROR: No, it wouldn't.

5 THE COURT: Thank you.

6 (Another juror standing)

7 THE COURT: Yes, sir, your name and number.

8 JUROR: Dennis Seegars, Number 165.

9 THE COURT: All right, would that or could that af-
10 fect your ability to be a fair juror in this case?

11 JUROR: No, sir.

12 THE COURT: All right. Any further voir dire in be-
13 half of the State?

14 SOLICITOR: Not for the State, Your Honor.

15 THE COURT: Anything further on behalf of the Defen-
16 dant, Mr. Riley?

17 MR. RILEY: No, sir.

18 THE COURT: All right, Madam Clerk, give us a jury.
19 I think the strikes are ten and five.

20 (Colloquy between counsel and the Court off the re-
21 cord)

22 THE COURT: Mr. Moak, is the State ready??

23 SOLICITOR: Yes, Your Honor.

24 THE COURT: Are you sure?

25 SOLICITOR: Yes, Your Honor.

1 (Brief pause)

2 THE COURT: All right. I have already concluded we
3 are going to pick this jury and probably stop this trial
4 where we are for now. I've pretty much decided that. I
5 may change my mind, but the rest of you will be free to
6 go home and be on stand-by and we'll probably ask you --
7 let me put it this way. We'll probably ask you to call
8 in tomorrow afternoon around noon so for those jurors it
9 won't be a wasted week.

10 I know we have plenty of work to do following this
11 case and there is a good chance you won't be required to
12 come back the rest of this week.

13 Now, if some of you want to come back, you are in-
14 vited to because this is a public place and trials are
15 public. We do the peoples' business in the Courthouse.

16 So we will pick this jury and send the rest of you
17 home. I hope you will understand that. Is that fair
18 enough?

19 Ladies and gentlemen, this is Jason Kirinchek. He
20 wasn't present this morning but Mr. Kirinchek is another
21 of your Public Defenders here in Kershaw County. You
22 may sit down.

23 Madam Clerk, if you're ready give us a jury.

24 (Whereupon, a jury was impaneled as follows:

25 Juror Number 27, Zady Burton, excused by the State;

1 Juror Number 4, Kenneth Bachelor, excused by the
2 State;
3 Number 6, Beverly Ballenger, excused by the Defense;
4 Number 19, Michael Truesdale, seated;
5 Number 122, Terrence Massey, excused by the State;
6 Number 15, Kennedy Boyd, seated;
7 Number 168, Dennis Seegars, excused by the Defense;
8 Number 91, Linda Hornsby, excused by the Defense;
9 Number 41, James Clark, seated;
10 Number 99, Talma Jackson, seated;
11 Number 5, Raforð Baldwin, seated;
12 Number 83, Charles Hampton, seated;
13 Number 163, Elizabeth Schumpert, excused by the De-
14 fense;
15 Number 2, Michael Anderson, seated;
16 Number 69, Angela Floyd, excused by the Defense;
17 Number 143, Charles Orton, seated;
18 Number 169, Ransom Smith, excused by the Defense;
19 Number 19, Sandra Branham, seated;
20 Number 113, Robert Lambert, seated;
21 Number 63, Janine Eanes, excused by the Defense;
22 Number 78, Tremayne Greene, excused by the State;
23 Number 76 Aimee Graham, seated;
24 Number 164, Tonia Seaman, excused by the Defense;
25 Number 112, Grace Koon, excused by the Defense;

1 Juror Number 38, Connie Chestnut, excused by the De-
2 fense;

3 Number 196, Thomas Webb, seated)

4 THE COURT: We'll select one alternate. One alter-
5 nate, two and three.

6 (First Alternate Juror drawn was seated, Number 92,
7 Robert Horton)

8 THE COURT: Are there any matters that need to be
9 taken up at this time in connection with the selection
10 of this jury?

11 Anything from the State?

12 SOLICITOR: Nothing from the State, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. RILEY: No, Your Honor.

15 THE COURT: Please approach.

16 (Colloquy between counsel and the State)

17 THE COURT: To the remaining members of the Panel,
18 I've got good news and I've got bad news. Which would
19 you like first?

20 There is no bad news. You are free to go home. I'm
21 not finished yet but you are free to go home, free to
22 leave the Courthouse as jurors here today. Call back
23 here tomorrow afternoon, Tuesday, after five o'clock, and
24 from the message you will receive further instructions
25 as to whether or not your presence will be needed the

1 rest of the week.

2 It is not likely that it will be, but there is a
3 chance that it could be. In any event, you are free to
4 go home now. I keep saying go home -- I'm sorry -- you
5 are free to leave here and where you go is nobody's bus-
6 iness but yours. You are free to leave, and I see you
7 are anxious to go.

8 (Jury members not selected for the trial of the case
9 excused from Courtroom)

10 THE COURT: Members of this jury, I'm going to ask
11 the Bailiffs in a moment to take you to your jury room
12 where you will stay throughout the course of this trial.

13 I will also say, and I will remind you during the
14 course of this trial, not to talk about the case in any
15 way, shape or form. The reason is that it would be un-
16 fair to the State and to the Defendant for you to do so.

17 The time to discuss this case would be at the end
18 or at the conclusion, once you have heard all the evidence,
19 you've heard the arguments of the lawyers and I tell you
20 what the law is that applies to this particular case.
21 Until then it would be unfair.

22 Do not talk about it among yourselves and certainly
23 do not talk about it with your neighbors, your spouses or
24 anyone else. Wait until the end. After the case is over
25 you can talk about it with whoever you please, but not

1 while the case is going on and until you reach the end
2 a verdict at the end of the case.

3 Please don't discuss it with anyone, and that in-
4 cludes yourselves. When this case is over, you will get
5 it in the jury room and you can then talk about it among
6 yourselves but with nobody else. You all get the idea.

7 What I'm going to do is send you to lunch now. I'll
8 give you an hour and a half so come back at two thirty.

9 There are some preliminary matters I have to take
10 up with the attorneys in this case at two thirty so it
11 might be a little bit late before we get started but I'll
12 tell you all about that when you get back.

13 I hope you all have a pleasant lunch. I understand
14 there are many places to walk to as I'm sure you all know
15 of here in Camden. So go back to your jury room and the
16 Bailiffs will show you where to go when you get back. Do
17 they have to come through here?

18 You will have to come through here and down the hall-
19 way. They will show you how to come and go. Have a
20 pleasant lunch and we'll see you back here at two thirty,
21 ladies and gentlemen.

22 (Jurors excused from Courtroom for the lunch period)

23 THE COURT: Any exceptions or additions to any re-
24 marks made to the jury? Anything from the State?

25 SOLICITOR: Nothing from the State.

1 THE COURT: Anything from the Defense?

2 MR. RILEY: No, Your Honor.

3 (Whereupon, other matters were taken up by the Court,
4 after which the Court stood in recess for the lunch per-
5 iod until the case was resumed)

6 THE COURT: Are you all ready to proceed?

7 SOLICITOR: Yes, sir.

8 MR. RILEY: Just a moment, please.

9 THE COURT: Yes, sir.

10 MR. RILEY: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. RILEY: Your Honor, we would move to sequester all
13 witnesses.

14 THE COURT: All right, who do you want to sequester?

15 The victims are witnesses and you can't sequester them.

16 They have a right to be here. Who else is left?

17 I'm not going to sequester the homeowners. They
18 have a right to be here, so who are you asking to be se-
19 questered?

20 The others are the police officers.

21 SOLICITOR: Your Honor, one is the Codefendant who
22 will testify against him. I'll keep him outside anyway.
23 One will not be called but he is not here anyway.

24 THE COURT: So you have what? The victims . . .

25 SOLICITOR: The two victims, Chief Brown and the

1 CoDefendant.

2 THE COURT: Where is Chief Brown?

3 SOLICITOR: He's back there.

4 THE COURT: If somebody walks in we will deal with
5 it then.

6 The CoDefendant will not be in here anyway. He will
7 be sequestered.

8 What's the next question?

9 MR. RILEY: We have a motion to receive a rap sheet
10 of any witness who has one.

11 THE COURT: Mr. Moak, any rap sheets on any witnes-
12 ses for the State? The CoDefendant, I guess.

13 SOLICITOR: There is no tangible rap sheet.

14 THE COURT: Beg pardon?

15 SOLICITOR: No tangible rap sheet. He's sixteen
16 years old.

17 THE COURT: All right.

18 MR. RILEY: We would ask for it if one exists, as
19 well as any other witness.

20 THE COURT: Well, whoever is going to testify, if one
21 exists. All right, rap sheets.

22 What's the next question?

23 MR. RILEY: We have a motion too to have a summary
24 report on any technical information they intend to offer
25 in the trial.

1 Any technical information that is available on any
2 surveillance camera that was . .

3 THE COURT: What kind of technical information are
4 you referring to, sir?

5 MR. RILEY: Brands, models, specs, range quality
6 or that sort of thing.

7 THE COURT: Mr. Moak?

8 SOLICITOR: That's the first I've heard about all
9 of this is today, a request for this information.

10 THE COURT: Mr. Moak says this is the first he has
11 heard of this particular motion.

12 MR. RILEY: That was served on him.

13 (Brief pause)

14 THE COURT: Let me see a copy of the motion, please,
15 sir.

16 (Brief pause)

17 SOLICITOR: I haven't seen that but the witness is
18 here to testify who bought the camera and installed it;
19 that it was working.

20 THE COURT: How about that? Why do you need all
21 of this? Regarding the model, you can get that and
22 what do you mean by specifications?

23 MR. RILEY: Specifications showing the ability of
24 the camera and what it . .

25 THE COURT: Have you looked at the video?

1 MR. RILEY: Yes, Your Honor.

2 THE COURT: Whoever installed the video can testify
3 to that. The homeowners apparently installed these cam-
4 eras themselves. Name, address of installer.

5 SOLICITOR: Yes, sir.

6 THE COURT: A description of where the house -- a
7 description of where on the house these cameras are
8 mounted. I guess he can testify to that.

9 I want to make sure and try to give you everything
10 you've requested. The homeowners apparently installed
11 these cameras themselves. Okay.

12 He can tell you -- Mr. Moak can tell you right now
13 where he put them, and what else do you want to know
14 about them? Quality, specifications-- what exactly does
15 that mean?

16 He can testify to the brand and model, number of
17 cameras -- okay.

18 Quality, specifications -- tell me again what that
19 means.

20 MR. RILEY: Well, information about the cameras that
21 made the video and quality of the pictures. The . .

22 THE COURT: Well, have you seen pictures of the video?

23 MR. RILEY: Yes, sir.

24 THE COURT: Well, how did they -- were they good or
25 bad?

1 MR. RILEY: You can see what's on there. I mean,

2 ...

3 THE COURT: Well, that's denied then. You can look
4 at the video and you've had the video. How long have you
5 had the video anyway?

6 How long has the Defense had the video?

7 MR. RILEY: About three or four months.

8 THE COURT: Okay.

9 MR. RILEY: May I continue?

10 THE COURT: Yes, sir.

11 MR. RILEY: We would move to not allow that in evi-
12 dence, to exclude the video.

13 THE COURT: Basis?

14 MR. RILEY: As part of the basis the video does not
15 fully show . .

16 THE COURT: I would deny that as to admissibility.
17 The jury can look at it, and if they can't determine the
18 image on the video looks like your client -- that's an
19 issue for them -- the weight, not the admissibility.

20 If that's the motion, I would deny it.

21 Anything else?

22 MR. RILEY: No, Your Honor.

23 THE COURT: All right. Anything further you want
24 to put up, Mr. Riley? Take your time.

25 MR. RILEY: Your Honor, Mr. Eubanks' rap sheet.

1 THE COURT: What now?

2 MR. RILEY: Mr. Eubanks' rap sheet.

3 THE COURT: He's not going to be the first witness,
4 is he?

5 MR. RILEY: I was just given Mr. Eubanks' rap sheet
6 a little while ago, and I would ask for the juvenile re-
7 cord . .

8 THE COURT: Well, he's not going to be your first
9 witness, is he?

10 SOLICITOR: No. What we've given is all that I
11 know of . .

12 THE COURT: Well, he has a right to request it, but
13 I prefer to do it at the right time, and we haven't got-
14 ten there yet.

15 (End of cassette)

16 THE COURT: All right, bring the jury in.

17 (Jury returned to the Courtroom)

18 THE COURT: All right, this is the Foreperson, and
19 you will be seated there. Anyone else may sit where they
20 wish.

21 please swear the members of the jury.

22 (Whereupon, the jurors were sworn by the Clerk for
23 purposes of the trial)

24 THE COURT: Now, Mr. Foreperson and members of the
25 jury, what I will now say is intended to serve as an

1 introduction to the trial of this case. It is not a sub-
2 stitute for the detailed instructions which I will give
3 you at the close of the case before you retire to con-
4 sider your verdict.

5 This is a criminal case commenced by the State, and
6 which is sometimes referred to as the Prosecution, against
7 Mitchell Hinson. This case is based upon the Indictment
8 I read to you when we were selecting you as jurors, and
9 I have already read to you the allegations contained in
10 that Indictment so you know a little bit about the case.

11 (Noise heard in Courtroom)

12 THE COURT: Let's be at ease for a moment.

13 (Brief pause)

14 THE COURT: This Indictment charges the Defendant,
15 Mr. Hinson, with burglary in the first degree.

16 Now, you should distinctly understand that that is
17 simply a charge, and it is not in any sense evidence of
18 the allegations it contains.

19 The Defendant, Mr. Hinson, has pled not guilty to
20 this Indictment. The State then has the burden of prov-
21 ing each of the essential elements of the Indictment be-
22 yond a reasonable doubt.

23 And the purpose of a trial is to determine if the
24 State has met this burden, and your purpose as jurors is
25 to find and determine the facts.

1 Now, under our system of criminal procedure you are
2 the sole judges of the facts. If at any time I should
3 make any comment regarding the facts, you are to disre-
4 gard my comments.

5 It is especially important that you perform your
6 duty of determining the facts diligently and conscien-
7 tiously for normally there is no means of correcting an
8 erroneous determination of the facts by a jury.

9 Now, on the other hand, and with equal emphasis, I
10 instruct you that the law given to you by the Court con-
11 stitutes the only law for your guidance, and it is your
12 duty to accept and follow it. It is your duty to fol-
13 low the law as I give it to you even though you may dis-
14 agree with the law.

15 Sometimes people highly disagree with the law but
16 the law is what the law is.

17 You are to determine the facts from the testimony
18 you hear and from the evidence introduced in Court. It
19 is up to you to determine the emphasis which you feel may
20 properly be drawn from the evidence.

21 You must not consider what you may have read or you
22 may have heard about the case outside of the Courtroom
23 both before or during the trial. Until this case is sub-
24 mitted to you, members of the jury, you may not discuss
25 it with anyone, even with your fellow jurors.

1 After it is submitted to you, you must discuss it
2 only in the jury room with your fellow jurors. It is
3 important that you keep an open mind and not decide any
4 issue in the case until the entire case has been presented
5 and you have received the instructions of the Court.

6 It is your duty, Mr. Foreman, to preside in the jury
7 room and be the jury spokesman here in Court.

8 A couple of other things. From time to time you may
9 hear the lawyers, Mr. Riley or Mr. Durand, object, or
10 Mr. Moak on behalf of the State object to something the
11 other side is seeking to present.

12 An objection is a procedure we use for either side
13 to bring a possible violation of the rules of presenting
14 evidence to my attention.

15 For this reason, you should not hold an objection as
16 against either side, against the State or against the De-
17 fendant, nor should you take from how I may rule on an
18 objection to mean that I favor one side or the other.

19 My interest in this case, members of the jury, is
20 that I have no interest other than trying to ensure that
21 the State and Defendant receive a fair trial, and that's
22 the interest that you have also.

23 So if somebody objects and I say sustained, that
24 means that I agree with the objection and the witness
25 should not answer. If upon an objection I say overruled,

1 that means that I disagree with that objection and the
2 witness should be allowed to answer.

3 Once again, no matter how I rule on an objection,
4 the merits of the case will become clear to you toward
5 the end. That is why I emphasize to you to wait until
6 the end when you have heard everything to discuss the
7 case and try to make your decision.

8 Sometimes it may become necessary to discuss certain
9 points of law with the attorneys involved, and there are
10 two ways I can do that. One is what is referred to as a
11 side bar where the attorneys come up here and we whisper.
12 At other times when I feel it is necessary I will send
13 you out to the jury room to hear that on the record.

14 Now, the reason for that is to ensure that the in-
15 formation you receive is the most trust-worthy available
16 in presenting the evidence. It is not to hide anything
17 from you but we do not want you to hear something that
18 is impermissible and that you shouldn't hear, and this
19 is the way we try to ensure that the information you re-
20 ceive is what you should hear.

21 So I may bring the lawyers up when somebody makes
22 an objection for a brief discussion on a point of law,
23 or sometimes we stop and I have to send you all out to
24 hear more formal arguments on a certain point of law. I
25 emphasize for about the third time now that that is not

1 to hide anything from you, but to ensure under the rules
2 that we have, as with rules that govern every activity,
3 whether it be baseball, basketball or football, are fol-
4 lowed and that what is done is why and how things should
5 be done pursuant to those rules.

6 That is the reason for any objections, and why I
7 have to make a decision on those objections. Sometimes
8 I may have to send you out, once again, so that you only
9 hear what is allowed under the law.

10 So with that in mind, I'm going to invite your keen
11 and close attention now to the opening statements as will
12 be given on behalf of the State as well as on behalf of
13 the Defendant.

14 The State has the burden of proof, once again, and
15 they must prove to you each essential element of the
16 crime of burglary in the first degree beyond a reasonable
17 doubt and to your satisfaction.

18 We will first hear from Ms. Raia Hirsch on behalf
19 of the Fifth Circuit Solicitor's Office, followed by Mr.
20 Neil Riley on behalf of the Defendant, Mr. Hinson.

21 Ms. Hirsch, you may proceed.

22 MS. HIRSCH: Thank you, Your Honor. May it please
23 the Court?

24 THE COURT: Yes, maam.

25 (TRANSCRIPTION NOTE: Portion of opening statement

1 by Solicitor Hirsch on behalf of the State was not
2 audible. No objections were noted during the opening
3 statement:)

4 As Solicitors, we are responsible for proving the
5 elements of the crime charged beyond a reasonable doubt.
6 The Defendant, Mitchell Logan Hinson, has been charged
7 with burglary in the first degree.

8 While the definition of that offense is pretty
9 straight-forward, the crime itself is very, very ser-
10 ious.

11 Burglary in South Carolina is described as the un-
12 lawful entry into the home of another and without the
13 homeowner's consent, with the intent to commit a crime.

14 The reason this is a charge of burglary in the first
15 degree is that it occurred during the night-time, as the
16 term will be defined for you.

17 Now, our burden of proof is beyond a reasonable
18 doubt, and the definition of a reasonable doubt has been
19 attempted by people for a long time, and His Honor will
20 define that for you.

21 Quite honestly, it is what any person might reason-
22 ably find in any situation that they face in their every-
23 day lives. That is what a reasonable doubt is.

24 You must determine after hearing the evidence that
25 will be presented to you during the trial whether there

1 is any reasonable doubt as to the guilt of the Defendant in
2 the crime charged.

3 You will be shown a video of the crime as it is
4 occurring, and you will be able to identify two individ-
5 uals on the video.

6 You will hear the testimony of Corbin Bailey who was
7 along with the Defendant when entry was made into the
8 house, and he will identify the Defendant.

9 Law enforcement officers will testify as to the in-
10 vestigation in this case that led to the arrest of the
11 Defendant.

12 Then after presentation of all of the evidence, Mr.
13 Moak and I will come back to you, and we will ask you to
14 return a verdict of guilty. We will prove to you the
15 elements of the crime of burglary in the first degree be-
16 yond a reasonable doubt.

17 Thank you.

18 THE COURT: All right, Mr. Riley.

19 MR. RILEY: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. RILEY: Good afternoon, ladies and gentlemen of
22 the jury.

23 (TRANSCRIPTION NOTE: Opening statement by Mr. Riley
24 for the Defendant was not audible on the record. No ob-
25 jections were noted.)

1 THE COURT: All right, Mr. Moak, you may call your
2 first witness.

3 SOLICITOR: James Eubanks.

4 JAMES EUBANKS, being duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. Please state your name for the record.

9 A. James Eubanks.

10 Q. James, do you actually go by Raymond?

11 A. I do.

12 Q. Where do you live?

13 A. I live at [REDACTED] Jones Road, Kershaw, South Carolina.

14 Q. Is that in Kershaw County?

15 A. It's in Kershaw County.

16 Q. Is that near the County line?

17 A. It's about two and a half, three miles from the
18 County line.

19 Q. And which County line is that?

20 A. Lancaster County.

21 Q. Now, is that anywhere near Mount Pisgah?

22 A. It is, yes.

23 Q. Would you tell the jurors how, going from the Court-
24 house today, you would get back to your house?

25 A. You can go two ways. You can go all the way back

J. EUBANKS ON DIRECT

1 into Kershaw but we kind of take the short cut through
2 Lockhart and go by North Central High School, go on
3 straight through -- across State 41 and come up to Buf-
4 falo Baptist Church. Okay, that area right there is
5 where we live. It's called the Buffalo Community, right.
6 out -- it is actually the west side of the Mount Pisgah
7 area.

8 Q. And how far is it from here?

9 A. Like twenty -- twenty miles, twenty-two miles,

10 Q Twenty-four is about as far as from here to Lan-
11 caster County?

12 A. Right. Yeah, you can only go two miles, two and a
13 half more miles and you're going into Lancaster County.

14 Q. Now, what kind of territory is it like? Do you
15 have homes around you or are they spread out? How would
16 you describe the area?

17 A. Well, where we live, we live right below the Buf-
18 falo Baptist Church. My mother-in-law stays right be-
19 side me, and my wife's granddaddy lives across the
20 street.

21 Right in the area where we stay there is just fam-
22 ily members. There's about seven houses right there
23 that's kind of close. They're all related.

24 Q. And are there some houses that are away from where
25 you live?

J. EUBANKS ON DIRECT

1 A. It is, on back to town or back into Kershaw. We
2 stay exactly about five miles out from the Town of
3 Kershaw.

4 Q. So would you say this is in the country?

5 A. Yes.

6 Q. Okay. Do you know everybody that lives around you?

7 A. Yes, sir.

8 Q. And are they all related to you?

9 A. Um, like I said, my in-laws to the right. Amy's
10 granddaddy passed away so there is no one in that house.
11 His sister-in-law stayed beside her mother down the
12 street, so there is family right there, yes.

13 Q. Now, how long have you been living out there?

14 A. Since ninety-three.

15 Q. Since ninety-three -- a long time.

16 Who actually lives with you?

17 A. I have a wife, Amy, and Adam and Josh. Josh stays
18 in Charleston but he's home for the summer. He's stay-
19 ing in the house for the summer.

20 Q. So just the four of you all?

21 A. Right.

22 Q. Have you ever met the Defendant before?

23 A. I have.

24 Q. When is the first time you remember ever seeing him?

25 A. Oh, he was --- probably the first time when -- I'd

J. EUBANKS ON DIRECT

1 say seven or eight years old. Probably the first time I
2 ever saw him.

3 Q. Did he go to elementary school with one of your
4 children?

5 A. Yes.

6 Q. Who is that?

7 A. Adam.

8 Q. Which elementary school was that?

9 A. It was Kershaw Elementary.

10 Q. Okay, do you know where he lived then?

11 A. He lived exactly or directly straight across the
12 street from the elementary school. There is a post of-
13 fice in between the school and his house now, so the
14 post office wasn't there at that time.

15 Q. Okay, do you have any memory of what you saw him
16 doing or anything?

17 A. You know, sometimes we'd go to the post office or
18 ride by there going to the grocery store. At one fifty
19 the school let out at that time for elementary kids,
20 and occasionally you would see him coming across the
21 street by himself going home.

22 Q. Okay, and also did you use to coach like Little
23 League Baseball or some baseball thing?

24 A. I did.

25 Q. Did you see him play baseball?

J. EUBANKS ON DIRECT

1 A. I did.

2 Q. In Little League?

3 A. No. He was on another team, and my son played
4 against them but, you know, that little rec team --
5 everybody used that one field to practice on because it
6 was kind of limited on fields. I would see him there
7 occasionally, or around there.

8 Q. Camden is a small place? Kind of a small place?

9 A. It is.

10 Q. All of you know each other?

11 A. I wouldn't say all -- I can't really say all know
12 each other. A lot of people know a lot people. I
13 can't say.

14 Q. Did you ever recall meeting his father?

15 A. Say again?

16 Q. Did you ever meet his father?

17 A. No, I never met his father.

18 Q. Do you have any knowledge about what his situation
19 was?

20 A. Not right off hand. It was just vague. When we
21 were acquaintances with him, all we knew was his mother
22 was taking care of him. His dad was in another state.

23 Q. Was Mr. Hinson ever at your house?

24 A. Yes.

25 Q. About how long ago?

J. EUBANKS ON DIRECT

1 A. There for a while he hung out a good bit at the
2 house. I can't say how many days a week, but it was
3 pretty often. He and Adam hung out a good bit.

4 Q. Did Logan go out of State at some point?

5 A. Yes, he did. I think he was about thirteen or four-
6 teen years old.

7 Q. And did he eventually move back?

8 A. Right.

9 Q. And even last year did you have contact with Logan?

10 A. Last year? Yes.

11 Q. You all had contact last year?

12 A. Actually, longer than the last two years. He
13 started playing Legion ball when he came back, American
14 Legion Baseball. Adam was playing that also, and we'd
15 kind of give him a ride to practice, give him a ride
16 home. It was kind of a back and forth thing, just mak-
17 ing sure he got there.

18 Q. Making sure he got to the game and to practice?

19 A. Right.

20 Q. And you knew him and your wife knew him; your son
21 knew him?

22 A. Right.

23 Q. How about your dog? Your dog knew him?

24 A. I would say yes.

25 Q. Did he spoil your dog?

J. EUBANKS ON DIRECT

1 A. Samson is a twelve year old shepherd, very protec-
2 tive of his turf. He's -- that's Samson.

3 Q. Would you all leave him right in the house when you
4 all would leave home?

5 A. We'd leave him in sometimes. Sometimes we'd leave
6 him out, but at this time we were leaving him in be-
7 cause we had others on the yard.

8 Q. All right. Now, what do you feel like would hap-
9 pen if people came there when you were away?

10 A. I could honestly say they would probably
11 get -- I wouldn't say they would get bit, but he would
12 probably show some aggression.

13 Q. Would there be a problem?

14 A. I think so.

15 Q. Now, in January of this year did something happen
16 to one of your family members?

17 A. My dad passed away.

18 Q. Tell us when that happened.

19 A. He passed away January 14th, and that was on a Tues-
20 day morning. We had snow -- had a big snow, and Thursday
21 we were going to try to bury him but couldn't get to the
22 cemetery because of snow to dig the grave.

23 So they postponed it until Saturday.

24 Q. The 14th was a Friday . .

25 A. I mean the 11th. Excuse me. January 11th, not the

J. EUBANKS ON DIRECT

1 14th.

2 Q. Snow was on the ground?

3 A. Snow was on the ground.

4 Q. Now, you have a camera -- three cameras set up on
5 your house, do you not?

6 A. I do.

7 Q. Why do you have them?

8 A. It was December 7th when I had bought a set of golf
9 clubs for my oldest son for Christmas. I didn't tell
10 anybody about them after I got them over in Cayce.

11 I didn't tell anybody I was leaving to drive over
12 there, so I drive over and pick them up; come back home
13 and get home and tell Amy -- you know, I took two of
14 them in the house, and I went to show Amy the two I got
15 Josh for Christmas.

16 I was going to take them to the office and leave
17 them in the office in the morning for when he comes home
18 from school and bring them here to the house.

19 So the next morning I get up to go to work, get in
20 the truck and the other seven clubs are gone, they are
21 missing.

22 So I'm standing out there with two clubs and I kind
23 of panicked then and that incident right there kind of
24 sparked me to do something about it.

25 So she and I talked. I didn't really want to run

J. EUBANKS ON DIRECT

1 them off with an alarm or a big siren, keeping in mind
2 we stay so far out and call the Sheriff's Department, by
3 the time they get there the damage is done.

4 So we discussed buying some surveillance, and I re-
5 searched it for probably four or five days on the Inter-
6 net and came up with the one I thought the most effective
7 for our house which is the Defender System.

8 It has a -- the one I bought had a two hundred -- a
9 five hundred unit hard drive which would record up to
10 two years without stopping.

11 Q. Okay.

12 A. Once it gets to that point it will start to record
13 again.

14 Q. Okay.

15 A. So that way when we go on vacation we don't have to
16 worry about is it recording, is it not recording, you
17 know, if we're inside the house or outside of the house.
18 So that's the one I bought.

19 It came with an instruction DVD, pretty cut and dry.
20 Just as simple as putting a VCR together.

21 Q. Where did you work?

22 A. I work for a telephone company in telecommunications.
23 I work for Windstream.

24 Q. Windstream, and you hooked all of that up?

25 A. I did.

J. EUBANKS ON DIRECT

1 Q. And you are involved with people who do a lot of
2 that stuff?

3 A. I do.

4 Q. So preparing to do that, how much experience have
5 you had?

6 A. Well, I do a lot of networking for my company which
7 involves computers.

8 Q. Uh huh.

9 A. This didn't -- It was basically a hard drive like
10 a computer, but it wasn't like a computer.

11 So technically it was about the same as far as net-
12 working or doing an ISP for I think here at Tanner net
13 or Bellsouth, as far as internet goes -- as far as hook-
14 ing up a modem.

15 Q. You know how to hook up a modem?

16 A. Oh, yes.

17 Q. And this system, does it allow you to view your home?

18 A. It does have that capability.

19 Q. Tell us about that.

20 A. Well, if you have a smart phone you can type into
21 it the address and with a smart phone you can view my
22 house from anywhere on the planet.

23 Q. And you all vacation on the planet?

24 A. Exactly.

25 Q. Now, on this night when you left your home, where

J. EUBANKS ON DIRECT

1 were you all heading?

2 A. We went over to my mother's house. Some of the fam-
3 ily was meeting over there, and we were preparing for the
4 funeral the next morning.

5 Q. And when you left your house, did you lock the doors?

6 A. I did.

7 Q. (Inaudible)

8 A. Say again..

9 Q. Okay, when you left did you give a key to anyone?

10 A. No, sir.

11 Q. When you came back, what did you notice?

12 A. The back door was -- I have a back door going in my
13 garage and a back door on my deck, and Amy actually had
14 found it. When I got there she was standing in the yard.

15 I walked straight into the back door and through
16 the garage, and my back door -- it was standing open,
17 probably eighteen inches with the door molding hanging
18 from it.

19 Q. So it appeared to have been forced open?

20 A. Yes.

21 Q. When you went in your house, did you find the dog?

22 A. I did.

23 Q. Where was the dog when you got in there?

24 A. Samson was shut up in my bedroom. He pretty much
25 had free rein of the house but when you go down the hall

J. EUBANKS ON DIRECT

1 of my house it's bedrooms on the right -- you start off
2 with a bathroom, bedroom, bedroom, bedroom, and he was
3 down in the master bedroom with the door shut. The door
4 was pulled shut.

5 Q. So the bottom line is you found your dog locked up
6 in your bedroom when you got home?

7 A. I did.

8 Q. What demeanor did the dog have when you got home?

9 A. He was -- he acted like he wanted to get out but,
10 you know, he sensed something was different. I think he
11 was more confused than anything, you know, because we
12 weren't there and somebody he knew was in my house.

13 Q. Did the dog appear agitated?

14 A. Well, when I first opened the door he was standing
15 there, you know, sitting to go. He was happy to see us,
16 of course, but -- you know, he was kind of excited.

17 Q. What did you do then?

18 A. At first initially walked through the house. I bas-
19 ically checked to make sure, you know, no one was still
20 in there. Closets, bathrooms, under the bed.

21 We came back out into the den and I told Amy to call
22 nine one one; tell them we had a home invasion.

23 Then we did an additional walk through, and Adam had
24 found that he had some stuff missing out of his room.

25 Q. Okay.

J. EUBANKS ON DIRECT

1 THE COURT: You mentioned Adam. That's your son?

2 WITNESS: That's my son, yes, sir.

3 BY SOLICITOR:

4 Q. Okay. What were you thinking at this point?

5 A. Um, it's kind of -- I was kind of numb for a second,
6 you know. It just had happened and you're just not real
7 -- you know, it's not every day we have doors kicked in
8 out there in that community.

9 But after the Officer -- after Officer Wooten got
10 there, he asked a few questions and we talked, and I just
11 basically said -- I got my senses back then. I guess my
12 blood pressure went down by that point, and I told him,
13 I said, well, let's see what we got on surveillance.

14 Q. Okay.

15 A. So with Amy and Adam we walked in there and started
16 viewing the tape. He and I and Adam and Amy.

17 Q. Okay.

18 A. And from that point on . .

19 Q. What did you see on the video?

20 A. We saw Logan and another kid coming down my drive-
21 way. They were on my property about twenty-four minutes
22 from the time they walked down the driveway until the time
23 they ran off.

24 Q. And did you see them on that video?

25 A. I did.

J. EUBANKS ON DIRECT

1 Q. I show you what's marked State's Exhibit 1. Is that
2 a copy of the video you burned for the police department
3 or the Sheriff's Department?

4 A. That's it.

5 Q. This is it?

6 A. Yes.

7 Q. Have you watched it?

8 A. I haven't watched that one but I did the one I had
9 on my DVR. We did watch that one, didn't we. I remem-
10 ber that one.

11 Q. Did you see that?

12 A. Yes.

13 Q. That is the video from your camera?

14 A. Right.

15 SOLICITOR: I would move to admit this in evidence.

16 THE COURT: Any objection?

17 MR. RILEY: No objection.

18 THE COURT: All right, it's admitted.

19 (Copy of surveillance video admitted in evidence as
20 State's Exhibit Number 1)

21 SOLICITOR: At this time, can the witness leave the
22 stand?

23 THE COURT: Yes, you may step down. Try not to
24 stand in front of the jury. Just stand on one side or
25 the other.

J. EUBANKS ON DIRECT

1 Members of the jury, if you have any trouble hear-
2 ing or seeing this, let me know.

3 (Whereupon, videotape that is State's Exhibit 1 was
4 played for the jury)

5 BY SOLICITOR:

6 Q. What are we seeing?

7 A. This is my driveway here. This is the house and
8 this is the rear of my house.

9 Q. Someone is walking there?

10 A. Yes, they were walking back there and on my front
11 porch.

12 (Colloquy during showing of the video between the
13 Solicitor and witness)

14 THE COURT: Can you all hear, members of the jury?
15 Speak up, please.

16 Q. Do you think they were checking to see if anybody
17 was at home?

18 A. Yes, and obviously we were not home. You can see the
19 scenario right there.

20 Q. What are they doing?

21 A. They're actually ringing the doorbell.

22 Q. Okay.

23 A. That window right there, that's where one bedroom
24 is at.

25 Q. Okay.

J. EUBANKS ON DIRECT

1 A. They stopped right there by the bedroom window to
2 see if anybody was in there. Adam was not there at that
3 time.

4 He had been in there before, you know, playing video
5 games.

6 They come all the way around the end of my house to
7 go back there.

8 Right here, that was my young dog. You might not
9 have seen that. That was my Shepherd. I'm thinking
10 someone was calling him for him to take off across there
11 like that.

12 Here is my back deck and there's a lot of stuff on
13 the ground. A lot of stuff was there then.

14 Q. And it was dark?

15 A. Yes. You can see it was pitch-black, and that is
16 how well this camera system is. You can see forty feet
17 away in this pitch-blackness.

18 That right there is a dark area. There is a flood
19 light here that shines straight down on the ground, right
20 here.

21 If you were forty-feet away in the pitch-dark you
22 could see that person. That's how good this camera sys-
23 tem is. Forty feet away in the dark you could see a per-
24 son. This is the back door and three feet away is the
25 kitchen window. If you look five feet down, there is :

J. EUBANKS ON DIRECT

1 a big window. If you see that bay window, there is my
2 den area where we sit in there to watch TV.

3 Right here is -- they are kind of checking things
4 out, and I can tell when Logan kind of leans back and he
5 looks over at my mother-in-law's house.

6 My mother-in-law did tell me ~~she~~ had come out and
7 sat on the back deck a few minutes ^{to smoke} but she didn't see
8 anything at that time. Like 21 24, or 21 22.

9 You can kind of see where they are checking it out,
10 checking the house and what's back there and looking in-
11 side the house.

12 It occurred to me this might possibly be the first
13 -- the shorter man could possibly have been the one who
14 got the golf clubs also, and that is what had persuaded
15 me to get the camera system.

16 They decided to check around the house, and you can
17 see them go around the other side. This is the garage
18 area right there. The camera is picking up the garage
19 there. You can see the shadow right there. I'm not sure
20 what they're doing back there.

21 This camera is right there shooting the other way,
22 but that is the garage area there, and they stay out there
23 just a couple of minutes, checking that out.

24 Then they come back to the front porch and get the
25 front door open.

J. EUBANKS ON DIRECT

1 Q. All right.

2 A. You can see them come back in the driveway area,
3 and come around and come back up on the front porch.

4 This is the side window and this is the front door.

5 Q. But they do get the front door open?

6 A. Yeah, they get the front door open and they're going
7 in. They come to the back door one more time, and this
8 is the back door. They come there and take a look over
9 at my mother-in-law's house, over there.

10 They are kind of checking it out out there and one
11 is out in the yard right there by that window trim.

12 Q. Okay.

13 A. There is a steel-glass pane door, and one kind of
14 looked out in the yard right there. Back up right there
15 -- back up up against this door right here (portion not
16 audible)

17 If you notice the time right there, 27, my mother-in-
18 law was still potentially outside, so they were in the
19 house. About 58 or 59 seconds, the first one come out --
20 actually comes out with a Play Station. Now the other
21 one is running out and they run right straight into the
22 camera.

23 You can see the Play Station, the controller, and a
24 couple of games.

25 Some seconds later, Logan comes out and is running

J. EUBANKS ON DIRECT

1 around out there, or a couple of minutes later.

2 Logan is walking around the house right here, and
3 here you can see the other one. He has got something in
4 his left hand. That's about thirty or forty minutes they
5 were on my property.

6 Q. And that's the video?

7 A. It is.

8 THE COURT: All right.

9 BY SOLICITOR:

10 Q. (Inaudible)

11 A. Yes, sir.

12 THE COURT: Would you repeat that question, Mr.

13 Moak?

14 Q. You've known the Defendant since he was in element-
15 ary school?

16 A. Yes, sir.

17 Q. And did you see him several times in the months be-
18 fore this?

19 A. Yes.

20 Q. Do you have any doubt in your mind that that was
21 Logan Hinson?

22 A. No.

23 Q. Did you tell Deputy Wooten who it was?

24 A. We did. Right at the first we were still kind of
25 numb from this. We just really couldn't believe it.

J. EUBANKS ON DIRECT

1 Q. All right.

2 A. But we did, yes.

3 Q. Now, did Marvin Brown come out to your house about
4 a week later?

5 A. He did.

6 Q. On a Sunday?

7 A. Sunday.

8 Q. And did you talk to him?

9 A. I did.

10 Q. Did you give him Logan Hinson's name?

11 A. I did.

12 Q. Did you give Deputy Brown his phone number?

13 A. Um, I don't think we gave it to him right then. I
14 think I got back to him and gave him a contact number.
15 At the initial time when he was at my house that Sunday
16 afternoon I just gave him a name.

17 Q. Did you tell him where Logan stayed at?

18 A. I did.

19 Q. Then a few days later, did you get a call from the
20 Sheriff's Department that they had your stuff?

21 A. I did.

22 Q. And did you go to the Sheriff's Department and get
23 your stuff back?

24 A. Actually I met one of the -- I guess it would have
25 been one of the people that work for the Department that

J. EUBANKS ON DIRECT

1 met me and gave me my stuff back, and I signed for every-
2 thing.

3 Q. Okay. I show you State's Exhibit 2. Is that the
4 paper you signed?

5 A. That's it.

6 SOLICITOR: Your Honor, at this time I would intro-
7 duce State's 2, which is a Kershaw County Sheriff's De-
8 partment property receipt, in evidence.

9 THE COURT: All right, any objection, Mr. Riley?

10 MR. RILEY: No objection.

11 THE COURT: Admitted.

12 (Property receipt introduced in evidence without ob-
13 jection as State's Exhibit 2)

14 BY SOLICITOR:

15 Q. Can you tell us what you all got back?

16 A. A Play Station Three console, a game controller, a
17 Fossil Watch, three games.

18 Q. I show you what's marked State's Exhibit 3 for iden-
19 tification only. What is that?

20 A. That's a Play Station console.

21 Q. Is it yours?

22 A. It is.

23 Q. Is this the one that was stolen?

24 A. Yes.

25 Q. What is this?

J. EUBANKS ON DIRECT

1 A. It's a game controller for the Play Station.

2 Q. Is that State's 4 for identification?

3 A. It is.

4 Q. This belong to you?

5 A. Yes.

6 Q. What is this?

7 A. It's a Fossil Watch.

8 Q. State's 5 for identification?

9 A. Yes, sir.

10 Q. And was that one that was stolen?

11 A. Yes, sir.

12 Q. Who does that belong to?

13 A. It belongs to Adam.

14 Q. How about State's 6?

15 A. It's a game for a Play Station?

16 Q. Assassin's Creed?

17 A. Assassin's Creed.

18 Q. How about this?

19 A. Call of Duty Black Op, a Play station game.

20 Q. Is this State's 7 for identification?

21 A. Yes.

22 Q. How about State's 8?

23 A. Modern Warfare Two, another game for the Play sta-
24 tion.

25 Q. Now, did you all find the disc somewhere?

J. EUBANKS ON DIRECT

1 A. The disc was not in the package. It was actually
2 in the game itself.

3 Q. Was that returned the same way?

4 A. Yeah.

5 Q. And when you got that game it was only the cover?

6 A. Yeah.

7 Q. Was anything else recovered?

8 A. An earpiece, a wireless earpiece, that goes with that
9 that was not recovered.

10 Q. And the Play Station belonged to who?

11 A. Adam.

12 Q. And the watch and games belonged to your son?

13 A. Right.

14 Q. You live in Kershaw County, right?

15 A. I do.

16 SOLICITOR: No further questions, Your Honor.

17 THE COURT: You may Cross-examine.

18 CROSS EXAMINATION

19 BY MR. RILEY:

20 Q. Mr. Eubanks, I just have a couple of questions for
21 you.

22 A. Okay.

23 Q. Did you receive instructions for the camera system
24 that came with the system?

25 A. Uh hm.

J. EUBANKS ON CROSS

1 Q. And can you tell us a little bit about those in-
2 structions?

3 A. Just basically how to install it because it is real
4 generic. This blue wire goes to this blue plug. I
5 mean, it was real simple.

6 Q. Did you say you work with cameras in your employ-
7 ment?

8 A. No.

9 Q. So it's not like something you do everyday?

10 A. No, it's just electronics.

11 Q. And did the instructions contain any instructions
12 for placement of the cameras?

13 A. Yes.

14 Q. Where did it say to place them.

15 A. Within forty feet of what you're trying to watch,
16 and it gave you the width, how far it would cover out,
17 so I had to -- actually I had to move it in a little
18 closer because the length or the end of my house was a
19 little bit further.

20 I had to move it in so I could get that width right.
21 I had to tweak it a little bit.

22 Q. Okay, and did it have any instructions as to how to
23 place lights (portion inaudible)?

24 A. No. It does not need lights. It has infrared.

25 Q. Doesn't need lights?

J. EUBANKS ON CROSS

1 A. No.

2 Q. Had you ever installed a security camera before?

3 A. No.

4 Q. And as soon as the two subjects walked onto the cam-
5 era, you knew that was Logan? Have you said that, that
6 you knew right away it was Logan?

7 A. Yes.

8 Q. And from that one shot you identified him?

9 A. Yes.

10 Q. And from that one shot a third person would be able
11 to identify him? Is that what you're telling this
12 Court, that that one shot he could be identified by?

13 A. Maybe for somebody who did not know him as well as
14 I do, but yes.

15 Q. And you said the person you saw on the video camera
16 is the same person who stole your golf clubs some time
17 ago?

18 A. An assumption.

19 Q. It's an assumption?

20 A. Yes, but we didn't have the camera back then.

21 Q. When you saw the video did you know the person who
22 was with him?

23 A. You're talking about the second kid?

24 Q. Yes.

25 A. We kind of had an idea, yes, but the more we

J. EUBANKS ON CROSS

1 watched it, knowing his mannerisms, yeah.

2 Right when they're leaving -- you probably didn't
3 see it didn't catch it, but with his hat pulled down or
4 pulled over you could see the bottom half of his face.

5 I've watched that video probably six hundred times,
6 slowing it down and pausing it. It just -- it still
7 breaks my heart.

8 Q. But you were able to identify Corbin Bailey?

9 A. From his mannerisms, along with the company he was
10 hanging with. They had been together. I just kind of
11 put two and two together.

12 Q. Just a moment, please, sir?

13 A. Yes, sir.

14 Q. You said a few minutes ago that you did receive --
15 all of your property was returned?

16 A. Right.

17 Q. And one last question. On the identification of
18 Corbin and the other suspect, you said you can identify
19 Logan; that you've known him a long time; that you are
20 familiar with their mannerisms and that they were likely
21 to be together. Is that right?

22 A. Yes.

23 Q. That's all I have. Thank you.

24 THE COURT: Any Redirect, Mr. Moak?

25 REDIRECT EXAMINATION

J. EUBANKS ON REDIRECT

1 BY SOLICITOR:

2 Q. You had your camera on?

3 A. I did, yes, sir.

4 Q. And you told the Sheriff's deputies that Logan used
5 to come to your house?

6 A. I did.

7 Q. You didn't tell them that Logan -- was he familiar
8 with the inside of your house?

9 A. Right.

10 Q. You didn't tell them that Logan was the only one,
11 did you?

12 A. We told them we thought it was Logan.

13 Q. You told the Deputies that you thought it was Logan
14 Hinson?

15 A. Right.

16 Q. No further questions.

17 THE COURT: Any Recross?

18 MR. RILEY: No, Your Honor.

19 (Let me see you up here for just a second.

20 (Colloquy between counsel and the Court of the re-
21 cord)

22 THE COURT: All right, you may call your next wit-
23 ness.

24 SOLICITOR HIRSCH: We'd call Amy Eubanks.

25 AMY EUBANKS, being duly

A. EUBANKS ON DIRECT

1 sworn, testified as follows:

2 CLERK: Please state your name for the record.

3 WITNESS: I'm Amy Eubanks.

4 DIRECT EXAMINATION

5 BY SOL. HIRSCH:

6 Q. Mrs. Eubanks, would you please tell the jury where
7 you live?

8 A. At [REDACTED] . . .

9 THE COURT: I'm sorry, Ms. Eubanks. I didn't mean
10 to scare you. Please speak into the microphone.

11 A. I live at [REDACTED] Jones Road in Kershaw.

12 Q. Who do you live there with?

13 A. I live with my husband and my two sons.

14 Q. And have you lived there the entire time your hus-
15 band testified?

16 A. Yes.

17 Q. Do you know the Defendant, Mitchell Hinson?

18 A. Yes.

19 Q. How long have you known him?

20 A. I've known Logan since him and Adam were in elemen-
21 tary school.

22 Q. Were they in the same class?

23 A. Yes.

24 Q. What sort of relationship have you had with the De-
25 fendant over the years?

A. EUBANKS ON DIRECT

1 A. I got to know Logan a lot better when the boys got
2 in high school. I've known him all through the years,
3 but Logan and Adam played on the same baseball team, in
4 the same grade in school, and I got to know him pretty
5 well when we went to practice and took him and things
6 like that. I got to know him pretty well.

7 Q. So you had had occasion to spend time with him your-
8 self?

9 A. Yes.

10 Q. And why was it that you had occasion to spend time
11 with him?

12 A. Well, Logan needed some guidance. He was from a
13 single parent family, and we knew that, and we just wanted
14 to reach out to him, just to try to help him in any way
15 we could.

16 We felt like he needed, you know, to be in school
17 and needed to be around a positive environment. He is a
18 very good baseball player, and we saw so much potential
19 in him.

20 My husband had coached ball for years and just, you
21 know, saw so much potential in his baseball abilities,
22 and we just wanted to try to help him if we could.

23 Q. Are you and your husband involved in your community?

24 A. Yes.

25 Q. So you are very involved?

A. EUBANKS ON DIRECT

1 A. Yes.

2 Q. Beyond coaching, are you all involved in other com-
3 munity activities?

4 A. Yes. We have -- like, I said, he has always coached
5 ball and we've been very involved with kids. We have just
6 always had children in our home and just tried to be a
7 positive influence.

8 Q. Do you reach out to a wide group of kids in your com-
9 munity?

10 A. Yes.

11 Q. Do you remember January 14 of 2011?

12 A. Yes.

13 Q. Do you remember what you were doing on that evening?

14 A. Yes, we were at his parents' house, and we
15 were there meeting with the family.

16 Q. And when you returned home that evening, do you re-
17 member what happened?

18 A. I came in the door. I was by myself. We were in
19 separate cars. He was about five minutes behind me. I
20 came in the door and saw that our back door was kicked
21 in or knocked in somehow, and . .

22 Q. And how did you feel when you saw that?

23 A. I was scared.

24 Q. You were scared?

25 A. Well, my first thought was that someone was still

A. EUBANKS ON DIRECT

1 in there; you know, so just immediately upon seeing that
2 I came back out and called my husband and called my par-
3 ents who lived next door.

4 Q. Okay, and you have had the opportunity to see the
5 video?

6 A. Yes.

7 Q. Before today you've seen it?

8 A. Oh, yes.

9 Q. Do you recognize who it is on that video?

10 A. Yes.

11 Q. Is it the Defendant, Mitchell Hinson?

12 A. Yes.

13 Q. Is he in the Courtroom today?

14 A. Yes.

15 Q. What is he wearing?

16 A. He has on a blue checkered shirt.

17 SOL. HIRSCH: Your Honor, please let the record show
18 that she has identified the Defendant.

19 THE COURT: Yes.

20 SOL. HIRSCH: Nothing further.

21 THE COURT: Cross examination.

22 MR. RILEY: No cross examination, Your Honor.

23 THE COURT: You may step down.

24 (Witness excused from stand)

25 THE COURT: You may call your next witness.

1 SOLICITOR: May we take a break?

2 THE COURT: Ladies and gentlemen, we will take a
3 short break. Don't talk about this case. Go to your
4 jury room.

5 (Jury excused from Courtroom)

6 (Colloquy between counsel and the Court off the re-
7 cord)

8 (Brief recess was taken, after which the case was
9 resumed)

10 THE COURT: Please take your seats. Bring the jury
11 in, please.

12 (Jury returned to the Courtroom)

13 THE COURT: Any problem with nine thirty in the morn-
14 ing for anyone?

15 (No response)

16 THE COURT: Welcome back, Mr. Foreman and members
17 of the jury.

18 After having a brief discussion with you in the jury
19 room, I have decided to send you all home for right now.
20 This trial won't take very much longer, but we'll start
21 early in the morning, nine thirty in the morning.

22 There's no need to keep you all any longer since
23 someone has to go pick up their baby. That's the reason
24 why, and we'll see you all in the morning at nine thirty,
25 ladies and gentlemen.

1 Thank you very much.

2 (Jury excused for the evening)

3 THE COURT: Anything further we need to take up now,
4 ladies and gentlemen?

5 (No response)

6 I'll see you all in the morning at nine thirty.

7 (Court stood in recess until June 28, 2011)

8 THE COURT: Thank you very much, ladies and gentle-
9 ment. Please take your seats.

10 Are we all ready?

11 SOLICITOR: Yes, Your Honor.

12 THE COURT: Several things we need to put on the
13 record before the jury comes back in.

14 Mr. Riley, Mr. Moak, someone mentioned something in
15 Chambers about a problem regarding a witness. Let's start
16 with that.

17 MR. RILEY: Your Honor, yesterday one of our pre-
18 trial motions was to sequester witnesses, and the Court
19 granted that motion.

20 Yesterday a proposed witness of our, Lindsey Stitzel,

21 . . .

22 THE COURT: She's the young lady whose name I mis-
23 pronounced yesterday. Go ahead.

24 Because of your writing primarily, but go ahead.

25 MR. RILEY: The name is kind of unusual, but she

1 was seated in the Courtroom and I had not noticed
2 that she was there. I forgot about it and did not ask
3 her to exit the Courtroom.

4 THE COURT: Let me ask you this. Whose testimony did
5 she hear? Do you remember that or how long she was in
6 here?

7 MR. RILEY: I think she was here for all of the vic-
8 tim.

9 THE COURT: All right. Ms. Hirsch, now it's your
10 turn.

11 SOL. HIRSCH: Thank you, Your Honor. I believe that
12 defense counsel said she was here for all of that witness.

13 THE COURT: Well, this is a very simple case,

14 SOL. HIRSCH: Based on the fact that defense coun-
15 sel would call this witness and she was here for that tes-
16 timony, we would move for mistrial on the basis of a vio-
17 lation of your Order, or at least for the exclusion of
18 that witness from testifying.

19 THE COURT: This is a very simple case and you have
20 the Defendant on tape. You have the CoDefendant who is
21 going to testify that he went in with him.

22 I appreciate and understand your motion for a mis-
23 trial which is denied, as well as your motion to exclude.

24 Anything further?

25 (No response)

1 THE COURT: Oh, yes, let's put this on the record
2 too.

3 Yesterday morning early, even before we picked the
4 jury, I received this letter, the following letter, from
5 Mr. Hinson, the Defendant. It has been marked as the
6 Court's Exhibit 1, and I have provided a copy to the De-
7 fense as well as to the Prosecution.

8 Dear Judge Manning, dated June 26, 2011. I have pre-
9 viously signed a guilty plea sheet at the Detention Cen-
10 ter only in an effort to come to Court and ask for a bond
11 reduction, due to the fact that my request was being ig-
12 nored by my Public Defender.

13 I have been incarcerated for seven months, during
14 which time I have been under pressure to take plea deals
15 from the Solicitor, Ron Moak. I feel that his previous
16 offers have been extremely unreasonable.

17 I am willing to plead guilty to second degree burg-
18 lary in exchange for time served, probation, or two years
19 straight time at the max.

20 Thank you for your consideration of this matter.

21 I shared this letter with everybody involved, and
22 I make no special note on it in any way. I just wanted
23 to bring this to everybody's attention.

24 That's pretty much it. Anything further.

25 Bring the jury in.

1 (Jury returned to Courtroom)

2 THE COURT: Welcome back, members of the jury. I
3 hope and trust you all had a pleasant and restful evening,
4 although if any of you watched the game last night it
5 might have been pleasant but it wasn't necessarily rest-
6 ful.

7 This case will continue with the prosecution calling
8 the next witness, Mr. Corbin Bailey.

9 SOLICITOR: State calls Corbin Bailey.

10 THE COURT: Bring Mr. Bailey.
11 He was not here yesterday.

12 CORBIN BAILEY, being duly
13 sworn, testified as follows:

14 THE COURT: Mr. Bailey, I'm going to ask you to speak
15 loud enough for everyone to hear. Speak into the micro-
16 phone, sir.

17 State your name.

18 WITNESS: Corbin Reese Bailey.

19 THE COURT: No, you need to speak louder than that.
20 Can you all hear?

21 (Brief pause)

22 WITNESS: Corbin Reese Bailey.

23 DIRECT EXAMINATION

24 BY SOLICITOR:

25 Q. All right, good. Corbin, did you see the security

C. BAILEY ON DIRECT

1 video in this case?

2 A. Yes, sir.

3 Q. And who is this?

4 A. Logan Hinson.

5 Q. And who is that?

6 A. That's me.

7 Q. Do you have any doubt in your mind about that?

8 A. No, sir.

9 Q. Is that Logan with the dog?

10 A. Yes, sir.

11 Q. Any doubt in your mind that's him?

12 A. No, sir.

13 THE COURT: Speak up once again, sir.

14 BY SOLICITOR:

15 Q. Do you see Logan Hinson in the Courtroom today?

16 A. Yes, sir.

17 Q. Would you point him out?

18 A. (Gesturing)

19 Q. White shirt?

20 A. Yes, sir.

21 SOLICITOR: Your Honor, could the record reflect he
22 has pointed out the Defendant?

23 THE COURT: The record will so reflect.

24 All right, Mr. Moak.

25 Q. You know what Logan is charged with in this case?

C. BAILEY ON DIRECT

- 1 A. Yes, sir.
- 2 Q. Are you charged with the same thing?
- 3 A. Yes, sir.
- 4 Q. You are sixteen now?
- 5 A. Yes, sir.
- 6 Q. And in exchange for testifying, what will happen to
- 7 you?
- 8 A. My case will be in Family Court.
- 9 THE COURT: Can you hear, members of the jury? Back
- 10 up a little bit and speak as loud as you can.
- 11 Ask that question again, Mr. Moak.
- 12 BY SOLICITOR:
- 13 Q. What have we said we will do for you if you testify
- 14 here today?
- 15 A. Let my case come in Family Court.
- 16 Q. Is your mother here?
- 17 A. Yes, sir.
- 18 Q. Was she here yesterday?
- 19 Q. Your grandfather here yesterday?
- 20 A. Yes, sir.
- 21 Q. Is he here today?
- 22 A. Yes, sir.
- 23 Q. You said you're sixteen?
- 24 A. Yes, sir.
- 25 Q. Where do you live?

C. BAILEY ON DIRECT

- 1 A. In Kershaw.
- 2 Q. But where?
- 3 A. Eb Williams Road.
- 4 Q. Who do you live with?
- 5 A. My mother and step-father.
- 6 Q. Any brothers or sisters?
- 7 A. No, sir.
- 8 Q. What county is that?
- 9 A. Lancaster County.
- 10 Q. Who do you live with?
- 11 A. My mother and my step-father.
- 12 Q. Any brothers or sisters?
- 13 A. No, sir.
- 14 Q. Do you know Mr. Hinson?
- 15 A. Yes, sir.
- 16 Q. Where do you know him from?
- 17 A. School.
- 18 Q. How long have you known him?
- 19 A. Ever since I've been in school. A while now.
- 20 Q. Elementary school?
- 21 A. Yes, sir.
- 22 Q. Ever played baseball with Logan?
- 23 A. Yes, sir.
- 24 Q. Anything else?
- 25 A. Football.

C. BAILEY ON DIRECT

1 Q. Last year did something happen?

2 A. Yes, sir..

3 Q. Would you tell us about that?

4 A. Last year he started hanging around and (portion not
5 audible).

6 THE COURT: Speak up, please.

7 BY SOLICITOR:

8 Q. When he came back to school he hung around with you?

9 A. Yes, sir.

10 Q. What sort of things would you do?

11 A. Just hang around and drank a little bit.

12 (Juror member stating he could not hear)

13 THE COURT: All right, slow down a little bit. Check
14 the microphone.

15 (Brief pause)

16 THE COURT: I want you to talk as loud as you can.
17 I mean, don't scream but talk louder. The jurors have
18 to hear you, and I can't hear you sitting right beside
19 you.

20 Okay, Solicitor. Speak as loud as you can. Okay.
21 Ask the question again, Mr. Moak.

22 Q. You said you all would hang around and drink a lit-
23 tle bit?

24 A. Yes, sir.

25 Q. Would you hang at his house?

C. BAILEY ON DIRECT

1 A. Yes.

2 Q. Were you hanging with him on January 14th of this
3 year?

4 A. Yes, sir.

5 Q. At Logan's house?

6 A. Yes, sir.

7 Q. What did you do at Logan's house?

8 A. Drank.

9 Q. Drank??

10 A. Yes, sir.

11 Q. Okay, do you know Mr. and Mrs. Eubanks?

12 A. Yes, sir.

13 Q. Yes, right?

14 A. Yes, sir.

15 Q. Did you ever go in their house?

16 A. Yes, sir, one time.

17 Q. Whose idea was it to go in there?

18 A. Logan's.

19 Q. And why do you say that?

20 A. (Inaudible)

21 THE COURT: All right. Sir, relax a minute. I know
22 you can talk louder than that. See how loud I'm talking?
23 Talk as loud as me. Okay, sir?

24 Go ahead.

25 BY SOLICITOR:

C. BAILEY ON DIRECT

1 Q. You went in their house with Logan?

2 A. Yes, sir.

3 THE COURT: That's fine.

4 Q. How long did you stay in their house?

5 A. A little bit.

6 Q. So you remember going in the house?

7 A. Yes, sir.

8 Q. I hand you what's marked State's 3. Are you familiar
9 with this?

10 A. Not really.

11 Q. Do you remember or are you aware whether Logan took this?

12 A. Yes, sir.

13 Q. What do you remember doing in that house?

14 A. Just walking around and looking and stuff like that.

15 Q. Walking around?

16 A. Going up the steps and stuff like that.

17 Q. You remember being in the house?

18 A. Yes, sir.

19 Q. Did you ever go into Mr. Eubank's garage?

20 A. Yes, sir.

21 Q. Where did you all go after you left their house?

22 A. Back to Logan's house.

23 Q. What did you all do then?

24 A. Drank some more. Went to sleep.

25 Q. When you all went into the Eubank house, was it dark

C. BAILEY ON DIRECT

1 out then? Was it daylight or nighttime?

2 A. Nighttime.

3 Q. Nighttime?

4 A. Yeah.

5 Q. Do you remember some items that were taken from the
6 Eubank house?

7 A. No, sir.

8 Q. Okay, do you know what happened to them?

9 A. They got sold.

10 Q. They got sold?

11 A. Yeah.

12 Q. Who sold them?

13 A. Logan.

14 Q. Logan did?

15 A. Yeah.

16 Q. Did Logan call you a couple of days later?

17 A. Yes, sir.

18 Q. Why did he call you?

19 A. He was saying the cops were looking for someone.

20 Q. Were the cops at your house or his house?

21 A. His house.

22 Q. At his house?

23 A. Yeah.

24 Q. What were they asking about?

25 A. About a break-in and stuff like that.

C. BAILEY ON DIRECT

1 Q. And did they get the stuff back?

2 A. Yes.

3 Q. Now, was there any money involved in this?

4 A. Yes, sir.

5 Q. How much money was involved?

6 A. I don't know.

7 Q. Who got some money? You did, or Logan got some
8 money?

9 A. I had to give it back.

10 Q. You gave the money back?

11 A. Yes.

12 Q. Who did you give the money to?

13 A. Logan.

14 Q. You had to go back to Logan's house?

15 A. To give the stuff back.

16 Q. And when he called you to give the stuff back, you
17 went to Logan's house?

18 A. Yes, sir.

19 Q. And then where did you go?

20 A. To the police station.

21 Q. Do you recognize this? State's 5?

22 A. Yes.

23 THE COURT: Son, you're going to have to speak and not
24 shake your head. Okay?

25 WITNESS: Yes, sir.

C. BAILEY ON DIRECT

1 BY SOLICITOR:

2 Q. Is this a watch you gave back?

3 A. Yes, sir.

4 Q. Now, you went back to Logan's house, and then where
5 did you go?

6 A. To the police department.

7 Q. The Sheriff's Department?

8 A. Yes, sir.

9 Q. Did you tell them you were involved in the break-in?

10 A. Yes, sir.

11 Q. You did?

12 A. Yeah.

13 Q. Did you give a written statement?

14 A. Yes, sir.

15 Q. You gave a written statement to the deputies about
16 the break-in?

17 A. Yes, sir.

18 Q. You discussed what happened in the break-in with
19 them?

20 A. Yes, sir.

21 Q. And after giving the statement, did you give a subse-
22 quent statement?

23 A. Yes, sir.

24 Q. Let me show you what is marked as State's 9. Do
25 you recognize that?

C. BAILEY ON DIRECT

1 A. Yes, sir.

2 Q. And is that the first statement you wrote out for
3 the Sheriff's Department?

4 A. Yes, sir.

5 Q. Would you read that?

6 A. (Witness beginning to read State's Exhibit 9 to the
7 jury)

8 THE COURT: Mr. Moak, they need to hear this.

9 (Solicitor reading portion of statement)

10 Q. Is that pretty much it?

11 A. Yes, sir.

12 Q. That's the first statement?

13 A. Yes, sir.

14 Q. Is that what happened?

15 A. Yes, sir.

16 Q. And at that point, did an investigator ask to speak
17 to you?

18 A. Yes.

19 Q. And did he talk to you about a video?

20 A. Yes, sir.

21 Q. But they didn't show you the video, did they?

22 A. No, sir.

23 Q. They just told you they had a video?

24 A. Yes, sir.

25 THE COURT: Has the statement been marked in evidence

C. BAILEY ON DIRECT

1 or for ID. only?

2 SOLICITOR: For ID only.

3 BY SOLICITOR:

4 Q. Is this the second statement?

5 A. Yes, sir.

6 Q. Is that your handwriting?

7 A. Yes, sir.

8 Q. Okay. (Reading from second statement)

9 Is that what you wrote?

10 A. Yes, sir.

11 THE COURT: This is 10 for ID and 9 for ID.

12 All right, sir.

13 Q. You walked to Logan's house?

14 A. Yes, sir.

15 Q. And then you walked with him to the Eubanks' home?

16 A. Yes, sir.

17 Q. And why is that?

18 A. I don't know. I guess because he was my friend at
19 the time.

20 Q. But why would you do that?

21 A. I'd been drinking.

22 Q. At sixteen?

23 A. Yes, sir.

24 Q. No further questions.

25 THE COURT: Mr. Riley, Mr. Durand.

C. BAILEY ON CROSS

1 CROSS EXAMINATION

2 BY MR. RILEY:

3 Q. Corbin, you said you were drinking that night, and
4 what were you drinking?

5 A. Beer.

6 Q. Beer -- what kind of beer?

7 A. (Inaudible)

8 Q. You remember that?

9 A. I'm kind of guessing.

10 Q. Do you drink a lot?

11 A. No, sir.

12 Q. You said you were hanging at Logan's house?

13 A. Yes.

14 Q. Are you saying you don't remember a lot of details
15 of that night because you were drinking?

16 A. Yes, sir.

17 Q. You don't remember taking stuff at the Eubanks' house?

18 A. No, sir.

19 Q. So you remember going in the house and you remember
20 going up the steps, and you remember the door -- the door
21 being kicked in?

22 A. Yes, sir.

23 Q. Do you remember running about the house?

24 A. Some parts.

25 Q. Some parts you remember?

C. BAILEY ON CROSS

1 A. Yes, sir.

2 Q. You have seen the video now?

3 A. Yes, sir.

4 Q. And after seeing the video, you remember it now?

5 A. Yes, sir.

6 Q. Do you think you would have remembered it if you had
7 not seen the video?

8 A. No, sir.

9 Q. And that's how you remember you went in there?

10 A. Yes, sir.

11 Q. And that's how you remember it was Logan who was with
12 you?

13 A. Yes.

14 Q. You said that in exchange for your testimony that
15 instead of being charged in General Sessions Court your
16 case was moved to Family Court?

17 A. Yes, sir.

18 Q. And you have said you didn't want to tell them you
19 were involved? You didn't want to do this?

20 A. At first.

21 Q. You didn't want to tell them anybody else was in-
22 volved?

23 A. At first.

24 Q. Right, but then you did talk to them?

25 A. Sort of.

C. BAILEY ON CROSS

1 Q. Going back to January 14th, that night, specifically
2 after you left the Eubank house, where did you go at that
3 time?

4 A. To Logan's house.

5 Q. To Logan's house?

6 A. Yes.

7 Q. And you said you went to sleep?

8 A. Yes.

9 Q. In your statement you said that you sold the Play
10 Station after getting it from the house?

11 A. In the second statement after I told them what all
12 happened.

13 Q. I'm sorry.

14 A. That was the next day that I got the stuff back and
15 took it to them.

16 Q. I'm sorry. In your statement you said after you left
17 the Eubank home you sold the Play Station?

18 A. Yes.

19 Q. And you told us here that after you left the Eubank
20 home you went back to Logan's house?

21 A. I went to Logan's house.

22 Q. When did you sell the Play Station?

23 A. I don't know.

24 Q. You don't know? You don't remember is your testi-
25 mony here?

C. BAILEY ON CROSS

1 A. Yes, sir.

2 Q. Do you remember how much you sold it for?

3 A. Around -- I believe it was around a Hundred Dollars
4 but I got it back.

5 Q. You got it back?

6 A. Yeah.

7 Q. Do you remember how much you sold it for or you only
8 think that's what you sold it for?

9 A. I mean, I don't remember that much. That was just
10 money I got when I was told I had to get rid of it.

11 Q. Who did you sell it to?

12 A. I don't remember.

13 Q. You can't remember?

14 A. No.

15 Q. Was anybody else at Logan's house when you got back?

16 A. No, sir.

17 Q. Anybody else that you remember?

18 A. No, sir.

19 Q. So there was nobody else at that house when you got
20 back there?

21 A. Not that I remember. I remember going back there
22 to Logan's.

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

24 THE COURT: Yes, sir.

25 (Brief pause)

C. BAILEY ON CROSS

1 BY MR. RILEY:

2 Q. Just a few more questions for you.

3 How did you get to Logan's house, the first time
4 when you got there?

5 A. When I got there to his house -- how I got there?
6 I drove.

7 Q. You drove to his house?

8 A. Yes.

9 Q. How did you get from Logan's house to the Eubanks'
10 house?

11 A. I don't know.

12 Q. You don't remember that?

13 A. I don't remember if I drove or Logan drove.

14 Q. Does Logan have a license?

15 A. I don't know.

16 Q. Does Logan have a car?

17 A. No, sir.

18 Q. But you do?

19 A. Yeah.

20 Q. Do you have a driver's license?

21 A. Yes, sir.

22 Q. No further questions. Thank you, Corbin.

23 THE COURT: Anything on Redirect, Mr. Moak.

24 MR. MOAK: Just a few, Your Honor.

25 THE COURT: Yes, sir.

C. BAILEY ON REDIRECT

1 REDIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Have you been around Logan since this incident hap-
4 pened?

5 A. No, sir. I've seen him.

6 Q. So when you said earlier that you would hang out
7 and drink with him, you don't do that now?

8 A. No, sir.

9 Q. As to the charges, do you remember when Logan was
10 charged?

11 A. No, sir.

12 Q. Do you remember having to come up here for a bond
13 setting?

14 A. Yes, sir.

15 Q. Okay, so you were originally charged with burglary?

16 A. Yes, sir.

17 Q. Do you know for sure what items were taken and what
18 was sold?

19 A. No, sir. I don't know if he had them or sold them,
20 but I had to give the money back. That's what I was told
21 to do.

22 Q. Did he tell you he sold them?

23 A. Yes, sir.

24 Q. So you don't know what Mr. Logan did with
25 them?

C. BAILEY ON REDIRECT

1 A. No, sir.

2 MR. RILEY: Objection, Your Honor.

3 THE COURT: Beg your pardon.

4 MR. RILEY: Objection.

5 THE COURT: Rephrase your question.

6 BY SOLICITOR:

7 Q. Did Logan tell you what items he had sold?

8 A. No.

9 Q. Did he tell you who he sold them to?

10 A. No, sir.

11 Q. Did he tell you how much money he got?

12 A. No, sir.

13 Q. Did he tell you how much money to give back?

14 A. No, sir.

15 Q. But you gave the money back?

16 A. Yes, sir.

17 Q. Is this Logan right here?

18 A. Yes, sir.

19 Q. Is this the guy that went with you into the house?

20 A. Yes, sir.

21 Q. This is the one who kicked the door in?

22 A. Yes, sir.

23 Q. And was this his idea?

24 A. Yes, sir.

25 Q. This the one who called you and said the police are

C. BAILEY ON REDIRECT

1 at my house?

2 A. Yes, sir.

3 Q. Mr. Logan, right here?

4 A. Yes, sir.

5 MR. RILEY: Objection.

6 THE COURT: Overruled.

7 BY SOLICITOR:

8 Q. This the guy that was with you when he kicked in
9 that door?

10 A. Yes, sir.

11 MR. RILEY: Objection.

12 THE COURT: Overruled. Anything further?

13 SOLICITOR: Nothing further.

14 THE COURT: Any Recross?

15 RECROSS EXAMINATION.

16 BY MR. RILEY:

17 Q. Did you speak to a lawyer prior to your arrest?

18 A. Yes, sir.

19 Q. And were you aware, after talking with your lawyer,
20 that . . .

21 THE COURT: Come up a minute, please.

22 (Colloquy between counsel and the Court off the re-
23 cord)

24 THE COURT: You may continue.

25 Q. You did speak to a lawyer about this process?

C. BAILEY ON RECROSS

1 A. Yes.

2 Q. And did the lawyer make you aware of the penalties
3 involved in the offense of . .

4 SOLICITOR: Objection.

5 THE COURT: Sustained. The mention of a lawyer is
6 the basis of the conference. Don't go into that.

7 Respond to what was brought up on Redirect, sir.

8 BY MR. RILEY:

9 Q. I withdraw the question.

10 THE COURT: All right, anything further?

11 MR. RILEY: No, sir.

12 THE COURT: You may step down, sir.

13 (Witness excused from stand)

14 THE COURT: Call your next witness.

15 SOLICITOR: Marvin Brown.

16 MARVIN BROWN, being duly
17 sworn, testified as follows:

18 THE COURT: You can speak up, can't you?

19 WITNESS: Yes, sir.

20 THE COURT: Go ahead, Mr. Moak.

21 DIRECT EXAMINATION

22 BY SOLICITOR:

23 Q. Chief Brown, . .

24 A. Yes, sir.

25 Q. . . how long have you been in law enforcement?

M. BROWN ON DIRECT

1 A. A little over twenty-six years.

2 Q. You were with Kershaw County for a long time,
3 weren't you?

4 A. Yes, sir.

5 Q. How long?

6 A. Eleven -- eleven and a half years first.

7 Q. And where else have you worked in law enforcement?

8 A. I left you all and went to the State Law Enforcement
9 Division. I retired from there back in November of last
10 year.

11 Q. And what is your position now?

12 A. Chief Deputy at the Sheriff's Office.

13 Q. Now, do you live in the immediate area?

14 A. Yes, sir, I do.

15 Q. How long have you lived here?

16 A. About thirty years.

17 Q. Okay. Now, on January 14th of this year, was it
18 the week after (inaudible)?

19 A. Yes, sir.

20 Q. Were you all moved in?

21 A. Yes, sir.. We were in the Sheriff's Department at
22 that time.

23 Q. Do you remember having occasion to go out to the
24 Jones Road neighborhood back then?

25 A. Yes, sir, I do.

M. BROWN ON DIRECT

1 Q. Did you know the Jones Road area?

2 A. Yes, sir, I did.

3 Q. And how did you happen to go out there?

4 A. I received a call from the County Treasurer, Steve
5 Benson, at my residence, I believe on Saturday evening.
6 He explained that they had had a break-in and they weren't
7 sure who to talk to at the Sheriff's Office since the new
8 administration had gone in.

9 Q. And Steve Benson used to be a Deputy, didn't he?

10 A. He did.

11 Q. So he was in law enforcement before?

12 A. Yes, sir. Matter of fact, I used to work for him at
13 one time.

14 Q. All right, so did you go out to the Eubanks' house?

15 A. Yes, sir. On Sunday afternoon I did.

16 Q. And you worked then for the Kershaw County Sheriff's
17 Office?

18 A. Yes, sir, I did.

19 Q. I'll stop right there. Do you see that picture right
20 there?

21 A. Yes, sir.

22 Q. Do you see that kind of haircut?

23 A. Yes, sir, I do.

24 Q. Do you see the Defendant?

25 A. Yes.

M. BROWN ON DIRECT

1 Q. Does that look similar to you?

2 A. Yes, sir. It's very similar.

3 Q. Did you know him?

4 A. Sir?

5 Q. Did you know him?

6 A. No, sir, I did not know him.

7 Q. You hadn't seen him?

8 A. No, sir.

9 Q. Did you go inside the Eubanks' house and see that
10 video?

11 A. Yes.

12 Q. Did they ask you to look at it?

13 A. Yes, sir.

14 Q. And do you remember being told who it was after see-
15 ing that?

16 A. I was told by Mr. Eubanks exactly who it was.

17 Q. Did they give you a phone number for him?

18 A. I'm not sure if I received a phone number or a cell
19 number, but I did later on.

20 Q. And did you discover that Corbin Bailey was the sec-
21 ond individual?

22 A. Yes, sir.

23 Q. Now, when you left the Eubanks' home, where did you
24 go next?

25 A. I went to Mr. Hinson's mother's to locate her house

MR. BROWN ON DIRECT

1 in Kershaw. We had a -- we contacted Lancaster County
2 and had a deputy meet us. Then we went and kind of then
3 watched the house for a little while.

4 Q. You did not arrest Mr. Hinson?

5 A. No, sir, we did not.

6 Q. And this was Lancaster County?

7 A. Yes, sir.

8 Q. But he was arrested and brought to Kershaw
9 County at some point?

10 A. Yes, sir.

11 Q. Did you talk to him?

12 A. I spoke to Mr. Hinson at his house and asked if he
13 would come to the office with me.

14 Q. Did you speak to him about getting some of the stuff
15 back?

16 A. Yes, sir. I told him my main objective that day
17 was to get all the items that were taken from the house.
18 I told him I would give him twenty-four hours to get it
19 back and then we'd talk about an arrest after that.

20 Q. Was that at his house?

21 A. Yes, sir.

22 Q. But he wasn't arrested then?

23 A. No, sir.

24 Q. You gave him twenty-four hours to get the stuff back?

25 A. Yes, sir.

M. BROWN ON DIRECT

1 Q. At some point did you go to Corbin Bailey's house?

2 A. Yes, sir. We left that location and the Lancaster
3 deputy took us to Corbin's mother's and stepfather's
4 house.

5 Q. Was Corbin there?

6 A. No, sir. Not that day, no, sir.

7 Q. And did Corbin Bailey later come to your office?

8 A. Yes, sir. His mother brought him back down there.

9 Q. And did you have an occasion after the items were
10 returned to talk to Mr. Hinson again?

11 A. I talked to him one more time a day or so later. He
12 said -- his remarks were, well, you got the stuff back;
13 that's what you wanted, and then I never could get back
14 in contact with him. He never would return any calls
15 after that.

16 Q. Do you remember how he said that? Did he say you
17 were straight then?

18 MR. RILEY: Objection.

19 THE COURT: Sustained. Leading.

20 BY SOLICITOR:

21 Q. Do you remember how he said that?

22 A. He just said that he thought we were straight; that
23 you got the stuff back.

24 Q. Okay.

25 A. And I said, no, we still need to talk about the break-in.

M. BROWN ON DIRECT

1 Q. Okay.

2 A. But he never would return any more calls after that.

3 Q. Did you all have to track him down?

4 A. Yes, sir.

5 Q. And the items were returned that same day?

6 A. Yeah, that Monday, the day after.

7 Q. The day after you got the stuff back?

8 A. Yeah.

9 Q. No further questions.

10 CROSS EXAMINATION

11 BY MR. RILEY:

12 Q. Good morning, Mr. Brown.

13 A. Good morning.

14 Q. You responded to a call from the Eubanks, is that
15 right?

16 A. I went up there after I spoke with them on Saturday
17 evening. I went to see them Sunday.

18 I went in to see the video and speak to them.

19 Q. And what all was done during the course of your in-
20 house investigation?

21 A. I had a road deputy who went earlier and did a re-
22 port on it. That's the way we usually do, have them go
23 out before and fill out their report. Then I went the
24 next day.

25 Then I went the next day after I spoke to them on

M. BROWN ON DIRECT

1 Saturday evening. I talked to them and they showed me
2 the damage to the house, and at that time Mr. Eubanks
3 showed me the tape.

4 Q. I saw the initial report, but there was no supple-
5 mental report?

6 A. No, sir, I did not write one up.

7 Q. Were there any -- on any of the responses, were fing-
8 erprints taken from the door or from the play station?

9 A. Not to my knowledge.

10 Q. Mr. Eubanks said there were five or six inches of
11 snow on the ground by the porch. Were there any attempts
12 to match footprints to the shoes of the Defendants?

13 A. . .

14 SOLICITOR: He didn't say that . .

15 THE COURT: Is that an objection, Mr. Moak?

16 SOLICITOR: Yes, sir.

17 THE COURT: What is your objection?

18 SOLICITOR: There was no testimony about any foot-
19 prints . .

20 THE COURT: Sustained.

21 BY MR. RILEY:

22 Q. Officer Brown, you are Chief Deputy of the Sheriff's
23 Office. Was there any officer who reported to you that
24 footprints had been compared to the shoes of the Defen-
25 dant?

M. BROWN ON DIRECT

1 A. No, sir, they did not.

2 Q. Did any officer ever report to you that they had
3 done any investigation and there was something further
4 on the case?

5 A. No, sir. Once they did a report, the road deputy, it
6 was turned over to investigators.

7 Q. And you were the investigator?

8 A. Yes, sir.

9 Q. No further questions.

10 THE COURT: Any Redirect?

11 REDIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Is this the guy you saw on the video from that even-
14 ing?

15 A. Yes, sir, it is.

16 Q. Do you recognize him on the video?

17 A. Yes, sir. It looks a lot like him. Yes, sir.

18 Q. The haircut like his?

19 A. Yes, sir.

20 Q. Thank you.

21 THE COURT: Any further questions?

22 MR. RILEY: No, Your Honor.

23 THE COURT: You can step down.

24 (Witness excused from stand)

25 THE COURT: Anything further from the State?

1 SOLICITOR: No, sir.

2 THE COURT: Ladies and gentlemen of the jury, you
3 heard Mr. Moak. The State has rested, and possibly you
4 might have heard all the evidence you are going to hear
5 in this case. Possibly not.

6 This brings us to a point where I need to send you
7 out of the Courtroom and back to the jury room to hear
8 some motions.

9 It might take fifteen or twenty minutes. I'm not
10 sure, but we'll bring you back shortly. I promise you
11 that.

12 You will have an opportunity to refresh yourselves
13 but just don't talk about the case, ladies and gentlemen.

14 Thank you very much.

15 (Jury excused from Courtroom)

16 THE COURT: We'll take a short break.

17 (The Court took a brief recess, after which the case
18 was resumed)

19 THE COURT: All right. Mr. Riley or Mr. Durand?

20 MR. DURAND: Yes, sir. May it please the Court.

21 THE COURT: Yes, sir.

22 MR. DURAND: On behalf of the Defendant, we would
23 make the standard motion for a directed verdict at this
24 time.

25 The State . . .

1 THE COURT: The basis for your motion, sir.

2 MR. RILEY: That would be the failure of the State
3 to establish the elements of the crime charged.

4 THE COURT: All right. Your motion is denied, sir.

5 MR. RILEY: Thank you, sir.

6 THE COURT: That's the motion for directed verdict.
7 Any other motions?

8 MR. RILEY: No, Your Honor.

9 THE COURT: All right. Anything from the State?

10 SOLICITOR: Nothing from the State, Your Honor.

11 THE COURT: All right. Do you want to settle on
12 the Defendant's record now and then I can go over with
13 Mr. Hinson his right to testify?

14 Is that all right with you all?

15 MR. RILEY: Yes, sir.

16 SOLICITOR: Yes, Your Honor. I have a copy of the
17 three sentencing sheets.

18 THE COURT: All right, I recall the conversation in
19 the case about a prior record that he had and whether
20 there was any impeachable prior record.

21 He was on probation for what, Mr. Probation Offi-
22 cer?

23 PROBATION AGENT: He was convicted in 2010 of re-
24 ceiving stolen goods.

25 THE COURT: That is a crime of moral turpitude.

1 MR. RILEY: I'm sorry.

2 THE COURT: I think that is a crime of moral turpi-
3 tude, is it not?

4 MR. RILEY: It would be.

5 THE COURT: All right.

6 SOLICITOR: That was on November 9th of 2010, and
7 in a separate incident on or about the same day he was
8 arrested, Your Honor, an charged with possession of sche-
9 dule one, two and three substances, and possession of
10 marijuana, first offense.

11 Both of these carried a penalty of one year.

12 THE COURT: The drugs I'm going to disallow, but the
13 receiving stolen goods -- talk me out of receiving stolen
14 goods, Mr. Riley. I don't think you can.

15 So that is a crime of moral turpitude.

16 We'll take a real quick break and come back in ten
17 minutes or so.

18 (Whereupon, the Court took a brief recess, after
19 which the case was resumed)

20 THE COURT: All right, ladies and gentlemen. Please
21 take your seats.

22 Anything additional you want to add in connection
23 with whether or not I should allow receiving stolen goods
24 in regard to Mr. Hinson, provided that he testifies?

25 MR. RILEY: No, Your Honor.

1 THE COURT: I think it is a matter that should come
2 in.

3 Mr. Hinson, will you stand up, please?

4 (Defendant sworn by the Court for purposes of the
5 following discussion)

6 THE COURT: You may remain standing. Where is the
7 Indictment?

8 You are Mitchell Logan Hinson, is that correct?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right, at this time I am going to
11 explain to you certain of your rights, Mr. Hinson. If
12 you do not understand anything I say, Please let me
13 know that. If you need me to explain anything in more
14 detail, please let me know.

15 Do you understand so far?

16 DEFENDANT: Yes.

17 THE COURT: Now, we have now reached the stage of
18 the trial where you may present your defense. You have
19 a right to claim the protections given to you by the
20 Fifth Amendment to the Constitution of the United States.

21 This Amendment states in part that no person shall
22 be compelled in any criminal case to be a witness against
23 himself.

24 This means that you cannot be required to testify in
25 this case. You have the right to testify in your own

1 behalf. However, no one can make you testify. This is a
2 personal right, and no one can waive this right except
3 you. Do you understand?

4 DEFENDANT: Yes.

5 THE COURT: If you decide to testify, you will be
6 subject to the same rules that govern other witnesses,
7 and you may be examined and cross-examined on any rele-
8 vant issue in this case.

9 In addition, if you have any convictions involving
10 dishonesty or false statement or for crimes punishable
11 by imprisonment for more than one year, and this Court
12 determines that the probative value of admitting this
13 outweighs its prejudicial effect to you, the Solicitor
14 will be able to introduce your record to attack your
15 credibility. Do you understand this?

16 DEFENDANT: Yes.

17 THE COURT: And this was the conversation we had
18 about -- that you had a prior record of receiving stolen
19 goods. Do you understand this so far?

20 I have ruled that that evidence of a record of re-
21 ceiving stolen goods shall be admitted in this case. Do
22 you understand that?

23 DEFENDANT: Yes.

24 THE COURT: All right. Now, if you decide to tes-
25 tify, this decision on your part must be freely and

1 voluntarily and intelligently made and with knowledge of
2 the protections given to you by the Fifth Amendment and
3 the consequences of your decision to testify.

4 If you decide not to testify, I will instruct the
5 jurors that they cannot give that fact or the fact you
6 do not testify any consideration whatsoever, and that
7 there is to be absolutely no prejudice to you because you
8 did not testify.

9 It is left entirely up to you as to whether or not
10 to testify. You may talk with your attorneys, your fam-
11 ily or friends, or anyone else, but the decision will be
12 left entirely up to you.

13 Do you understand what I have explained to you so
14 far?

15 DEFENDANT: Yes.

16 THE COURT: Do you have any questions about what I
17 have explained to you?

18 DEFENDANT: No, sir.

19 THE COURT: Have you spoken with your lawyers about
20 whether you should or should not testify?

21 DEFENDANT: Yes.

22 THE COURT: Do you need to talk to your lawyers any
23 more at this time?

24 DEFENDANT: No, sir.

25 THE COURT: Do you wish to testify?

1 DEFENDANT: Yes.

2 THE COURT: Anything further?

3 MR. RILEY: No, sir.

4 THE COURT: Anything further from the State?

5 SOLICITOR: No, sir.

6 THE COURT: All right, this is . .

7 MR. RILEY: Just one clarification. The State can
8 go into the receiving? That's the only thing the State
9 can go into?

10 THE COURT: The receiving. Not the drugs. I'm not
11 going to allow that.

12 Mr. Moak, I'll be happy to hear from you on that.
13 The receiving are direct charges, I believe.

14 SOLICITOR: But if that comes out in the narrative
15 of . .

16 THE COURT: If that comes up, we'll be sure to make
17 a good record on it. We'll stop and take that up.
18 Anything further?

19 SOLICITOR: No, sir.

20 MR. RILEY: No, Your Honor.

21 THE COURT: You may bring the jury in.

22 (Jury returned to the Courtroom)

23 THE COURT: Welcome back, Mr. Foreman and members
24 of the jury.

25 The State has rested, and as I indicated earlier to

1 you, that probably means we will hear all of the evidence
2 in this case, although it is possible there may be some
3 reply from the State.

4 The Defense will offer evidence. They are not re-
5 quired to do so. Everyone in this country is presumed
6 innocent until proven guilty beyond a reasonable doubt,
7 so a Defendant does not have to testify or offer any evi-
8 dence. The burden of proving a Defendant guilty is en-
9 tirely upon the State.

10 The Defendant, Mr. Hinson, has decided to testify
11 and will offer evidence, so we will now be hearing the
12 presentation of evidence on behalf of the Defendant.

13 Mr. Riley, you may proceed, sir.

14 MR. RILEY: Yes, Your Honor. We would call for the
15 Defense Lindsey Stitzel.

16 THE COURT: All right. Come around, Ms. Stitzel.

17 LINDSEY STITZEL, being
18 duly sworn, testified as follows:

19 CLERK: Have a seat and state your name for the re-
20 cord.

21 WITNESS: Lindsey Stitzel.

22 DIRECT EXAMINATION

23 BY MR. RILEY:

24 Q. How you doing?

25 A. I'm good.

L. STITZEL ON DIRECT

1 Q. I'm glad to hear that.

2 How old are you?

3 A. I'm sixteen.

4 Q. Do you go to high school?

5 A. Yes, Andrew Jackson.

6 Q. Andrew Jackson. How long have you lived in this
7 area?

8 A. My whole life.. I've lived in Kershaw my whole life.

9 Q. And how long have you known Mr. Hinson?

10 A. Since February of 2010.

11 Q. And how do you know him?

12 A. He's my boyfriend.

13 Q. And that has been since last February of 2010?

14 A. Last March.

15 Q. Last March?

16 A. Yes, sir.

17 THE COURT: Can you all hear, members of the jury?

18 BY MR. RILEY:

19 (Brief pause)

20 Q. How did you meet?

21 A. He came to A.J. last year.

22 Q. To high school?

23 A. Yes, sir.

24 Q. Now, this incident is said to have happened on Jan-
25 uary 14 of 2011. Do you remember what you were doing on

L. STITZEL ON DIRECT

1 that day?

2 A. Yeah, I was with Logan.

3 Q. And tell me about that day?

4 A. We were at his house and I got there probably --

5 I went over there probably about six and we were watching
6 movies. Logan was with me.

7 Q. And what happened?

8 A. I fell asleep. We were watching a movie and Logan
9 was there with me. I'm not sure what time it was, prob-
10 ably around nine or nine fifteen.

11 Q. You say you fell asleep?

12 A. Yes, sir.

13 Q. And when did you wake up?

14 A. Probably about like -- I woke up the next morning
15 and got up and got ready, but I woke up probably around
16 twelve.

17 Q. Then when you woke up in the morning was Logan there?

18 A. Yes, sir.

19 Q. He was at home?

20 A. Yes, sir.

21 Q. I'm sorry. You call Mitchell by his first name or
22 by Logan?

23 A. Logan.

24 Q. You call him Logan?

25 A. Uh hm.

L. STITZEL ON DIRECT

1 Q. You say he was there when you got up?

2 A. Yes, sir.

3 Q. Okay, and during the time you were at Logan's house
4 was anybody else there?

5 A. No, sir.

6 Q. Was Corbin Bailey there?

7 A. No, sir.

8 Q. Now, did Logan ever talk to you about this charge or
9 burglary?

10 A. No, sir.

11 Q. He did not mention it to you?

12 A. He said he didn't do it.

13 Q. When did he tell you that?

14 A. When he first got arrested.

15 Q. Okay. Now, during the time since this happened back
16 in January, did you -- were there times you would send
17 things to him?

18 A. Yes, sir.

19 Q. What did you send to him?

20 A. Cigarettes.

21 Q. And what happened over that?

22 A. I got charged with contraband and I realized that
23 was wrong, and during the time they gave me now I'm doing
24 probation.

25 Q. Did you know that was wrong when you did that?

L. STITZEL ON DIRECT

1 A. Yes, sir. I mean, I didn't -- I knew it was wrong
2 but I didn't think it was as serious a charge as it
3 really turned out to be.

4 Q. So why did you do it?

5 A. I guess it was because I felt sorry for him because
6 he was in jail.

7 Q. Now, Ms. Stitzel, earlier when we talked did you
8 tell me a story about riding in a police car?

9 A. Yes, sir.

10 Q. Tell us about that, please.

11 A. Are you talking about with the golf clubs?

12 SOL. HIRSCH: Objection, Your Honor. (Inaudible)

13 THE COURT: What is it? I didn't understand you.

14 Would you approach, please?

15 (Conference at the bench off the record between coun-
16 sel and the Court)

17 THE COURT: You may continue, sir.

18 MR. RILEY: Thank you, Your Honor.

19 BY MR. RILEY:

20 Q. Tell us about that with the golf clubs?

21 A. That kind of got brought up after Logan was arrested.

22 SOL. HIRSCH: Objection. (Inaudible)

23 THE COURT: I cannot hear you, maam. What was the
24 question again?

25 You need to speak up.

L. STITZEL ON DIRECT

1 SOL. HIRSCH: He was asking her about a conversation
2 concerning golf clubs.

3 THE COURT: How is that relevant? Sustained.

4 Well, I'll take it back. There was some mention by
5 Mr. -- what foundation does this witness have to testify
6 about some golf clubs? Sustained.

7 MR. RILEY: She can . .

8 THE COURT: Go on to something else.

9 BY MR. RILEY:

10 Q. So were you called regarding this case?

11 A. Yes, sir.

12 Q. Who called you?

13 A. Lieutenant Chris Phillips.

14 Q. And can you tell us about that conversation?

15 A. He called me and asked me -- he started asking me
16 questions or whatever, and I told him that I didn't know,
17 and my mom had told me earlier not to answer any questions
18 because I was a minor.

19 I gave her the phone and then she talked to him.

20 Q. Do you remember any specific questions that the of-
21 ficer asked you?

22 A. Um, he asked -- I mean, he asked me my name and he
23 asked me was I with Logan or whatever, and then he just
24 asked me -- the first thing he said was I need to ask you
25 some questions in regard to Logan's case.

L. STITZEL ON DIRECT

1 And I told him I didn't know -- I kept saying that I
2 didn't know because I didn't, and he said, you don't know
3 nothing.. Do you even know your name?

4 He just asked me -- he started getting specific about
5 did Logan do it, I kept saying I didn't know.

6 Q. And did he ask you questions about a specific date?

7 A. No.

8 Q. And how long did you speak to him?

9 A. Probably about ten minutes, with me and my mom.

10 Q. Okay.

11 A. I mean, we just talked but I just told him what I
12 knew but I didn't know any of the questions he was ask-
13 ing me. That's it.

14 Q. And did he talk to anybody else at your house?

15 A. My mom.

16 Q. Do you know what they talked about?

17 A. She just told him that . .

18 SOL. HIRSCH: Objection, Your Honor.

19 THE COURT: Lay a foundation as to whether or not
20 she was present when the conversation took place with her
21 mother.

22 Your Objection is sustained.

23 A. She just told him that . .

24 SOL. HIRSCH: Objection.

25 THE COURT: Sustained. Lay a foundation as to if she

L. STITZEL ON DIRECT

1 was present when the conversation took place with her
2 mother. So your objection is sustained.

3 BY MR. RILEY:

4 Q. Was your mother in the house when the conversation
5 took place with the officer?

6 A. Yes.

7 Q. Who was present?

8 A. My mom.

9 Q. And did she ever talk to the officer?

10 A. Yes.

11 Q. And can you tell us about that conversation?

12 A. Yes.

13 Q. What was that?

14 A. . .

15 THE COURT: Stop. She may have heard half of the
16 conversation with her mother but there is no foundation
17 that she heard what was on the phone. On the other side,
18 so the objection is sustained for that reason.

19 Lay a foundation, sir.

20 Q. Was you present when she was on the phone with the
21 officer?

22 A. Yes.

23 Q. What did your mother say?

24 A. . .

25 SOL. HIRSCH: Objection.

L. STITZEL ON DIRECT

1 THE COURT: Sustained, hearsay.

2 BY MR. RILEY:

3 Q. Tell me what you said.

4 A. I told him what I knew.

5 Q. Thank you. No further questions.

6 THE COURT: Cross examine.

7 CROSS EXAMINATION

8 BY SOL. HIRSCH:

9 SOL. HIRSCH: May it please the Court?

10 THE COURT: Yes, maam.

11 Q. Hi, Lindsey. My name is Raia Hirsch.

12 A. Hi.

13 Q. You and I have not had any meetings before today,
14 is that correct?

15 A. That's correct.

16 Q. You are Lindsey's girlfriend?

17 A. Yes, maam.

18 Q. And have been for about a year now?

19 A. Yes, maam.

20 Q. Over a year now?

21 A. Yes, maam.

22 Q. You are separated now, is that correct?

23 A. Yes, maam.

24 Q. Back in January of this year, you were together?

25 A. Yes.

L. STITZEL ON CROSS

1 Q. And do you see him still?

2 A. Yes.

3 Q. How is it you see him?

4 A. Visitation.

5 Q. At the Kershaw County Detention Center?

6 A. Yes, maam.

7 Q. The last time you spoke with him, did you discuss
8 the case?

9 A. No.

10 Q. No?

11 A. No.

12 Q. How many times have you seen him?

13 A. Eight or nine.

14 Q. Eight or nine times?

15 A. Yes.

16 Q. While he was in jail and under arrest, you all did
17 not discuss the case at all?

18 A. No.

19 Q. Okay, and you all discussed other things but not
20 his arrest?

21 A. Yeah.

22 Q. Are you aware that when you testify after being
23 placed under oath and you lie, you are subject to per-
24 jury charges?

25 A. Okay.

L. STITZEL ON 'CROSS

1 Q. You just testified on Direct that you didn't know
2 any details of the case. Correct?

3 A. Yes.

4 Q. And you also testified that since he was charged
5 with burglary that he's been in jail the entire time?

6 A. Yes.

7 Q. So you did know something about the case?

8 A. I mean I was asleep.

9 THE COURT: I'm sorry, maam, but you have to speak
10 up. Okay? I can't hear you.

11 BY SOL. HIRSCH:

12 Q. You were asleep?

13 A. Yes.

14 Q. You fell asleep around nineteen fifteen, you think?

15 A. Yes.

16 Q. And you have seen the video. Correct? You were in
17 Court earlier this week?

18 A. Yes.

19 Q. You know that on the video the alleged crime began
20 around nine fifteen. Is that correct?

21 A. Yeah.

22 Q. So that about the time you fell asleep?

23 A. Yes.

24 Q. you talked about speaking with an investigator in
25 this case?

L. STITZEL ON CROSS

1 A. Yes, maam.

2 Q. You spoke with him on the phone, and do you remember
3 when you spoke to him what you told him?

4 A. Yes.

5 Q. Do you remember telling him that Logan left the home
6 that evening of January 14th?

7 A. No.

8 Q. You don't remember telling him that Logan left while
9 you were there?

10 A. No.

11 Q. That he left with a friend?

12 A. No.

13 Q. Do you remember telling him if he wanted any other
14 information out of you that you didn't have any?

15 A. No.

16 THE COURT: Both of you need to speak up.

17 BY SOL. HIRSCH:

18 Q. And then you told the investigator you were not going
19 to talk to him any more?

20 A. Yes.

21 Q. So is that about all that you said to him?

22 A. . . .

23 Q. Is that all that you think you said to him?

24 A. I don't understand.

25 Q. You did not tell the Investigator that Logan left

L. STITZEL ON CROSS

1 the house while you were there on January 14th?

2 A. No, I didn't tell him anything.

3 Q. Thank you.

4 THE COURT: Anything on Redirect?

5 MR. RILEY: Just briefly.

6 REDIRECT EXAMINATION

7 BY MR. RILEY:

8 Q. Lindsey, did you say you fell asleep exactly at nine
9 fifteen?

10 A. No, I said I believe I fell asleep earlier, around
11 nine.

12 Q. Is it your testimony that you ^{know} whether he was there
13 or not while you were asleep?

14 A. (Inaudible)

15 THE COURT: Maam, you have to speak so we can hear
16 you. You just cannot shake your head. Speak audibly.

17 A. I mean, I wouldn't know if I was asleep.

18 Q. Thank you.

19 THE COURT: Anything on Recross?

20 SOL. HIRSCH: Yes, Your Honor.

21 RECROSS EXAMINATION

22 BY SOL. HIRSCH:

23 Q. Just a couple of things.

24 A. Okay.

25 Q. Did you think it was important to tell the investigator

L. STITZEL ON RECROSS

1 that Logan said he didn't do it?

2 A. Repeat the question, please.

3 Q. You testified that Logan

4 told you that he didn't do it. Correct?

5 A. Yes.

6 Q. Didn't you think it was important to tell the inves-
7 tigators what he said?

8 A. I just answered the questions that he told me --
9 that he asked me.

10 Q. Did you not ask him about the tape?

11 A. Yeah, but, I mean, I wasn't thinking about that, so
12 I don't know.

13 Q. Was he your boyfriend?

14 A. Yes.

15 Q. And is he still your boyfriend?

16 A. Right.

17 Q. And you want to protect him. Right?

18 A. I guess.

19 Q. Thank you. No further questions.

20 THE COURT: Anything further?

21 MR. RILEY: No, Your Honor.

22 THE COURT: You may step down.

23 (Witness excused from stand)

24 THE COURT: Call your next witness.

25 MR. RILEY: Your Honor, the State calls Mitchell

1 Logan Hinson.

2 THE COURT: Come around, Mr. Hinson.

3 (Whereupon, the Defendant came forward to be
4 sworn by the Clerk)

5 THE COURT: Stop. Go back around, son.

6 Come up for a minute.

7 (Colloquy at the bench between counsel and the
8 Court off the record)

9 THE COURT: Mr. Foreman, members of the jury, I
10 have a matter that I need to take up in your absence.
11 Don't talk about it; go to your jury room.

12 (Jury excused from Courtroom)

13 THE COURT: Is he still shackled?

14 MR. RILEY: Yes, sir.

15 THE COURT: Take them off. When you put him on the
16 witness stand, you have to take them off. Anybody
17 can see that.

18 You all have to help me out. I can't see everything
19 that goes on. I'm shocked. We'll take a short break.

20 (Whereupon, the Court took a brief recess, after
21 which the case continued)

22 THE COURT: Okay, are you all ready now?

23 Bring the jury in.

24 (Jury returned to Courtroom)

25 THE COURT: Welcome back, Mr. Foreman and members

1 of the jury. I told you at the beginning of this
2 case there might be occasions I would have to send
3 you out. If I have to do that, don't take any spe-
4 cial note of it as I has nothing to do with the
5 merits of this case.

6 Am I talking too fast?

7 REPORTER: No, sir.

8 THE COURT: Okay. I would ask that Mr. Hinson
9 come and take the stand. Come around, please,
10 Mr. Hinson.

11 MITCHELL LOGAN HINSON,
12 being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RILEY:

15 THE COURT: All right, Mr. Hinson, as you've heard
16 me tell some up here, please speak up and take your
17 time, sir.

18 Go ahead, sir.

19 Q. Tell me what you go by.

20 A. Logan.

21 Q. All right, Logan. On the day of January 14th, tell
22 us what you did.

23 A. I was at the house and later on that day or that
24 evening, Lindsey, who is my girlfriend, came over, and
25 there was snow outside so we weren't going to go anywhere.

DEFENDANT ON DIRECT

1 I was there all day and then my girlfriend came over.

2 Was anybody else at your house?

3 A. Not that day.

4 Q. Then tell us when you first learned of the burglary?

5 A. When the detective came to the house on Monday,
6 Monday morning.

7 Q. And when he came what did he say?

8 A. Um, he said first I was under arrest for burglary,
9 and I didn't know what he was talking about. So then
10 he came inside of the house, and he kept on asking me
11 did I do it. I kept on saying no, and he said, well,
12 are you ready to go to the Kershaw County Detention
13 Center, and I walked in my room, put on extra socks. I
14 knew they wouldn't give me any down there.

15 So I walked in there and he started looking through
16 my shoes and clothes, and I walked back into the living
17 room and he just kept on talking.

18 Then he said, well, you have twenty-four hours to
19 get the stuff back or whatever and they would drop the
20 charges.

21 Q. What happened then?

22 A. Well, after he left, I called Corbin and told him
23 that the cops from Kershaw just came to my house and ac-
24 cused me of burglary first, and I told him, I mean, if
25 they get the stuff back he said they would drop the

DEFENDANT ON DIRECT

1 charges.

2 I told him I would help him.

3 Q. You would help him?

4 A. Yes.

5 Q. What did you do?

6 A. I gave him all the money I could.

7 Q. Now, stop there a minute. Is it true you have been
8 in jail previous to this charge of burglary?

9 A. Yes.

10 Q. What were the charges?

11 A. That I was previously arrested for? Receiving
12 stolen goods.

13 Q. And what happened then?

14 A. I pled guilty.

15 Q. Did you receive a sentence for that, and you've
16 been in Court today and heard that?

17 A. Yes.

18 Q. You heard the prosecution and the defense talk about
19 that?

20 A. Yes.

21 Q. And you've heard about this burglary offense that you
22 are charged with?

23 A. Yes.

24 Q. Did you do that?

25 A. No.

DEFENDANT ON DIRECT

1 Q. Did you leave your house on January 14th after
2 nine o'clock P.M.?

3 A. I did not.

4 Q. Thank you, Logan. That's all.

5 THE COURT: Mr. Moak.

6 CROSS EXAMINATION

7 BY SOLICITOR:

8 Q. You got arrested on September 9th of 2010 for re-
9 ceiving stolen goods?

10 A. Yes.

11 Q. Receiving stolen goods of between a Two Thousand
12 and Ten Thousand Dollar value?

13 A. Yes.

14 Q. What was it?

15 A. It was a Gator like for yard uses and carrying
16 stuff.

17 Q. You pled guilty in November of 2010?

18 A. Yes, sir.

19 Q. Did you know that the Eubanks had lost golf clubs
20 prior to this?

21 A. I did not.

22 Q. And you were charged with burglarizing the Eubanks'
23 house on January 14 of this year?

24 A. Yes.

25 Q. September to January -- is that the time frame? The

DEFENDANT ON CROSS

1 plea to the offense in September and this burglary on Jan-
2 uary 14th. Right?

3 A. I wasn't the one who broke into on January. I
4 didn't know it was broken into until the police officer
5 came to my house.

6 Q. Weren't you sitting right there when Mr. Eubanks said
7 you were with the other person who broke into as was shown
8 on the videotape?

9 A. Yes.

10 Q. You heard him say it was you, and what do you think
11 of Mr. Eubanks?

12 A. . .

13 Q. Do you like him?

14 A. Yes.

15 Q. Was he good to you?

16 A. Extremely.

17 Q. Then why did you do it?

18 A. Pardon.

19 Q. Why did you do it?

20 A. It wasn't me.

21 Q. They are lying?

22 A. I mean, I guess they are lying.

23 Q. You say they're lying?

24 A. Yes.

25 Q. All right, you say he's a liar?

DEFENDANT ON CROSS

1 A. In this case, yes.

2 Q. This man you say was so good to you?

3 A. . .

4 MR. RILEY: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY SOLICITOR:

7 Q. Was your mother at home at the time?

8 A. She had a (inaudible)

9 Q. How long was she in the hospital?

10 A. . .

11 MR. RILEY: Objection, Your Honor.

12 THE COURT: Overruled. This is Cross Examination.

13 Go ahead, Mr. Moak.

14 Q. How long?

15 A. Two weeks max. It might have been a week and a
16 half.

17 Q. And you know Corbin Bailey?

18 A. Yes.

19 Q. On January 14, 2011, was she still in the hospital?

20 A. Yes.

21 Q. Did you go to see her?

22 A. I could not.

23 Q. You were alone at the house?

24 A. Yes.

Q. Did you have a car at the house?

25 A. Yes.

DEFENDANT ON CROSS

1 Q. Why didn't you drive the car?

2 A. The keys were locked inside of it.

3 Q. Did she lock the keys in the car when she left?

4 A. It was my dad -- I can't remember the reason, but we
5 took her car down there and I drove it back to the house
6 and was told by my mom to lock the keys in the car.

7 Q. She didn't want you to drive her car?

8 A. Yes.

9 Q. Now, you said you liked the Eubanks and they had
10 treated you well?

11 A. Yes.

12 Q. What all did they do for you?

13 A. They had me involved in their lives as friends.

14 Q. I'm just trying to figure out -- they treated you
15 well but they are lying. For what reason would they have
16 lied about this?

17 A. I don't know.

18 Q. You don't know?

19 A. No..

20 Q. Now, you say that Marvin Brown came to see you
21 regarding this?

22 A. Yes.

23 THE COURT: Speak up.

24 A. Yes.

25 Q. And he said you had done the burglary?

DEFENDANT ON CROSS

1 A. Yes, I was accused.

2 Q. You just testified that you called Corbin Bailey
3 about getting the stuff back?

4 A. I told him that, yes.

5 Q. Did you tell your attorneys why you . .

6 MR. RILEY: Your Honor, . .

7 THE COURT: Yes.

8 MR. RILEY: . . he is trying to go into attorney-
9 client conversation.

10 (Colloquy between counsel and the Court off the
11 record at the bench)

12 BY SOLICITOR:

13 Q. Did you testify that Corbin came to see you?

14 A. . .

15 Q. Did you testify to that?

16 A. I don't understand the question.

17 Q. Did you tell the Judge and tell everybody that
18 Corbin Bailey's name was mentioned by Marvin Brown?

19 A. It was not. I said that I would help him get
20 the money back as best I could. I would help him get some
21 things as best I could.

22 Q. Okay. But you called Corbin Bailey?

23 A. Yes.

24 Q. And you told Marvin Brown you would try to get
25 the stuff?

DEFENDANT ON CROSS

1 A. I would try to help him get the stuff.

2 Q. How would you help him get the stuff?

3 A. I would be asking around about it.

4 Q. In the neighborhood?

5 A. Yes.

6 Q. Did you tell Marvin Brown that?

7 A. Yes.

8 Q. You told Marvin Brown that?

9 A. No, I didn't tell him that.

10 Q. So now we've got Marvin Brown saying that he thinks you
11 did the burglary or they think you did the burglary, and
12 you are now telling us that you didn't think it was im-
13 portant to tell him that?

14 A. Why I didn't tell him that?

15 Q. Yes.

16 A. . .

17 Q. Why is that?

18 A. . .

19 Q. I'm trying to figure out why you didn't tell him.

20 A. I don't understand what you're asking.

21 Q. Why didn't you tell Marvin Brown that you knew who
22 broke in the house?

23 A. I didn't know.

24 Q. Why didn't you tell Marvin Brown that Corbin Bailey
25 had the stuff?

DEFENDANT ON CROSS

1 A. I didn't know it. I didn't know all of it. I don't
2 know why. I didn't figure it was all the same thing.

3 Q. When did Corbin Bailey drop stuff at your house?

4 A. If I recall right it was the 15th or the 14th at
5 night.

6 Q. So the 14th would have been a Saturday?

7 A. Yes.

8 Q. The day before you talked with Marvin Brown, and
9 you said on this stand that even though he accused you
10 of burglary that you didn't tell him who did it?

11 A. I didn't tell him anything. If I would have told
12 him something I would have asked for my attorney to be
13 there.

14 Q. Did you come up with this story after you asked
15 for an attorney?

16 A. . .

17 Q. When did you come up with this story?

18 A. It's what happened. Since it happened.

19 Q. So you were sleeping with your girlfriend and you
20 didn't commit this burglary?

21 A. She was asleep. I didn't say I was asleep. I was
22 at the house watching TV and hanging around the house.

23 Q. When did she go to sleep?

24 A. She was asleep -- around . .

25 Q. When did she go to sleep?

DEFENDANT ON CROSS

- 1 A. Around nine thirty or ten-ish.
- 2 Q. How did you know she was asleep?
- 3 A. She wasn't moving.
- 4 Q. What were you doing at that time?
- 5 A. I was watching TV.
- 6 Q. What was on TV?
- 7 A. Movies but I don't exactly recall what I was watch-
- 8 ing.
- 9 Q. What movie?
- 10 A. I don't exactly recall.
- 11 Q. You've seen the video, haven't you?
- 12 A. Yes, sir.
- 13 Q. You looked at the video with your lawyers?
- 14 A. Once, yes.
- 15 Q. You told your lawyer that you and Lindsey were
- 16 both at your house that night?
- 17 A. Yes.
- 18 Q. You say you talked to Corbin on the 14th?
- 19 A. I might have got the days mixed up. I did on that
- 20 weekend but not on the 14th.
- 21 Q. (Question inaudible)
- 22 A. Plenty of people, yes.
- 23 Q. Name some of them.
- 24 A. Um, Jordan Woods, Howard Stover, Dillon Sinclair,
- 25 and -- shall I keep going?

DEFENDANT ON CROSS

1 Q. Who is David Williams?

2 A. A friend.

3 Q. You said before that you talked to Corbin on the 14th
4 but now you're testifying that you -- were you at his
5 house?

6 A. No, I was at my house.

7 Q. So the story about where you were at . . .

8 MR. RILEY: Your Honor, . . .

9 THE COURT: Yes, sir.

10 MR. RILEY: May we approach?

11 THE COURT: Sure, come on up.

12 (Conference at the bench between counsel and the
13 Court off the record)

14 BY SOLICITOR:

15 Q. You're telling us that you were working with Corbin
16 to try to get the stuff back?

17 A. Yes.

18 Q. You're telling us that you automatically talked
19 to him but you didn't relate this to Marvin Brown?

20 A. No, sir.

21 Q. That's what you're telling us?

22 A. Yes, sir.

23 Q. You're telling us that Corbin brought you the stuff
24 back and you thought the charge would go away?

25 A. Yes. He said he was going to Corbin's house.

DEFENDANT ON CROSS

1 Q. But you didn't tell him about Corbin, you said?

2 A. He said he was going to my buddy's house. That's
3 what he said when he came to my house. He said he was
4 going to my buddy's house as he was leaving.

5 Q. You're saying that Marvin Brown told you he was
6 going to Corbin's house? Did he ask where he lived?

7 A. He didn't ask that question. I mean, my attorney
8 -- my attorney didn't ask me that question.

9 Q. Okay. You were home on January 16th when law
10 enforcement came to your home. Right?

11 A. Yes.

12 Q. Did you want to be arrested?

13 A. No.

14 Q. Okay, and you weren't under oath then when you were
15 asked questions, but it's still important to tell the
16 truth, isn't it?

17 A. I didn't want to answer all the questions because
18 I didn't have my attorney there.

19 Q. You didn't have one then, did you?

20 A. No, but I would like to have an attorney present
21 as I'm being asked questions.

22 Q. The reason you didn't want to tell him is because
23 you were hoping that he wouldn't file charges?

24 A. It is not.

25 Q. That's you on the video, isn't it?

DEFENDANT ON CROSS

1 A. No.

2 Q. (Inaudible)

3 A. Can you repeat the question?

4 Q. All right. You're telling us that you didn't tell
5 Brown about Corbin Bailey, is that right, because he
6 didn't ask you the question.

7 A. Yes.

8 Q. And you're telling me or telling us that you weren't
9 asked about who had committed the burglary?

10 A. My attorney didn't ask that question.

11 Q. When Marvin Brown came to your house, he didn't
12 ask you who had been with you? Is that what you're say-
13 ing to us?

14 A. Yes.

15 Q. So you didn't tell him?

16 A. Yes.

17 Q. Okay, and you were telling your lawyer that Lindsey
18 Stitzel, David Williams and (inaudible) Holmes would tes-
19 tify that you were not at the Eubanks' house on January
20 14th?

21 A. . .

22 Q. Is that right?

23 A. Yes.

24 Q. You then told your lawyer that David Williams and
25 (inaudible) Holmes would say you were at their house?

DEFENDANT ON CROSS

1 A. Yes.

2 Q. And then after telling your lawyer that they would say
3 you were at their house, you get on the stand and say
4 you were at your house all night with Lindsey Stitzel and
5 not Williams and Holmes?

6 A. I was with them over the weekend.

7 Q. Okay.

8 A. I got my days mixed.

9 Q. Your stories have changed some?

10 A. Not exactly. I was with them over the weekend but
11 not particularly that night. My days were confused.

12 Q. Okay, you're not on trial for something on the 15th,
13 are you?

14 A. No.

15 Q. You're not on trial for January 16th, are you?

16 A. No.

17 Q. Was your alibi filed on June 17th of this year?

18 A. ...

19 Q. When did you figure out and get your days straight?

20 A. Probably that following week.

21 Q. So you didn't come up with your final story until recently

22 A. I had my final story but I was just confused about
23 the days.

24 Q. Either you were at your home with Lindsey Stitzel or
25 you were with Williams and Holmes. Why did your story

DEFENDANT ON CROSS

1 change

2 A. Because it was so long ago and I didn't have an exact.
3 memory of the dates. I got the two nights mixed up.

4 Q. You are seventeen years old, and you are already a
5 convicted felon?

6 A. . .

7 THE COURT: Be more specific.

8 BY SOLICITOR:

9 Q. You are a convicted felon at age seventeen?

10 A. . .

11 Q. You told your lawyer a different story and then you
12 tell us this story today. Why is that?

13 A. I'm telling the truth.

14 Q. After looking at the video why . .

15 A. Because it isn't me.

16 Q. It wasn't you?

17 A. No.

18 Q. Why did you give your lawyers different alibis?

19 A. I didn't.

20 Q. Are you sure what you told your lawyers?

21 A. I figure so.

22 Q. (Inaudible)

23 A. You'd have to ask my attorney that question.

24 Q. Did your attorney recognize you on the tape?

25 A. No. I didn't see me on the video.

DEFENDANT ON CROSS

1 Q. Why not tell your attorney about January 14th after you
2 got clear on the dates?

3 A. He's my attorney. He asked the questions.

4 Q. Well -- no further questions.

5 THE COURT: Anything on Redirect?

6 MR. RILEY: Just briefly, Your Honor.

7 THE COURT: Go ahead, sir.

8 REDIRECT EXAMINATION

9 BY MR. RILEY:

10 Q. Logan, there seems to be some confusion about the
11 dates, so where were you on January 14th?

12 A. I was at my house.

13 Q. Were David and Mark there?

14 A. No.

15 Q. Did you see them the next day? On the 15th?

16 A. Yes.

17 Q. Where were you on the 14th?

18 A. At my house.

19 Q. And was Lindsey there?

20 A. Yes.

21 Q. Now, let me back up a little bit. When Corbin had
22 talked to you, had he asked if you wanted to buy this stuff
23 from him?

24 A. Yes.

25 Q. Did he say where he got it from?

DEFENDANT ON REDIRECT

1 A. He did not.

2 Q. Then what did you tell him about buying it?

3 A. I wanted it but I didn't have a job or anything and
4 I had to spend all my money that I had that week on gro-
5 ceries. I told him I didn't have the money.

6 Q. Did you burglarize the Eubanks' house?

7 A. I did not.

8 Q. Nothing further.

9 THE COURT: Mr. Moak?

10 RECROSS EXAMINATION

11 BY SOLICITOR:

12 Q. Would you read that letter?

13 A. Out loud?

14 Q. Yes, sir.

15 A. Dear Mr. Moak, this letter is to serve as an alibi de-
16 fense -- serve as notice of an alibi defense. Below are
17 prospective witnesses' names and addresses. Other witness
18 names and addresses will be provided as soon as they are
19 secured.

20 Q. All right, and read on.

21 A. Lindsey Stitzel, [REDACTED] (inaudible) Road in Kershaw,
22 South Carolina, 29067, [REDACTED] 6490.

23 Carlie Young, [REDACTED] 1360.

24 David Williams.

25 Q. Who submitted that letter?

DEFENDANT ON RECROSS

1 A. . . .

2 Q. Who wrote the letter?

3 A. Mr. Durand.

4 Q. That's your lawyer?

5 A. Yes, or one of them.

6 Q. Was he with you on January 14, 2011?

7 A. No. He was my attorney.

8 Q. Was he with you?

9 A. When?

10 Q. January 14 of 2011.

11 A. No. . . .

12 Q. Was David Williams with you on January 15?

13 A. Yes.

14 Q. He was? Any other boy?

15 A. Yes, two. . . .

16 Q. Was he with you on January 14?

17 A. No.

18 Q. No further questions.

19 THE COURT: Anything further?

20 MR. RILEY: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. RILEY:

23 Q. Any doubt about who was with you on the 14th?

24 A. No.

25 Q. Were these other boys expected?

DEFENDANT ON REDIRECT

1 A. No.

2 Q. Was Corbin expected?

3 A. No.

4 Q. No further questions.

5 THE COURT: Anything further of this witness? (No
6 response)

7 You may step down, sir.

8 (Witness excused from stand)

9 THE COURT: Anything further from the Defense?

10 MR. RILEY: Defense rests.

11 THE COURT: Members of the jury, the Defense has now
12 rested. We'll take a short break to see if there are
13 any issues of law I need to resolve in your absence.

14 So go into jury room and relax a bit. Just don't
15 talk about the case.

16 We'll bring you back out in just a few minutes.

17 (Jury excused from Courtroom)

18 THE COURT: All right. Any motions? You would re-
19 new your motion for directed verdict, and that's denied,
20 Mr. Durand.

21 MR. DURAND: Renew the motion for directed verdict.

22 THE COURT: Denied.

23 Anything from the State?

24 SOLICITOR: We'd call Chris Phillips.

25 THE COURT: This is your reply witness?

1 SOLICITOR: Yes, sir.

2 THE COURT: Let's take a few minutes.

3 (Court stood in brief recess, after which the case
4 was resumed)

5 THE COURT: Bring the jury.

6 (Jury returned to Courtroom)

7 THE COURT: You can come up.

8 (Conference at the bench between counsel and the Court
9 off the record)

10 THE COURT: Mr. Foreman and members of the jury, the
11 Defense has rested. Under our rules, the State has a
12 right to reply to the evidence offered by the Defense, and
13 I think the State will call a reply witness at this time
14 to what you heard from the Defense.

15 Now, what that indicates -- what it may indicate -- the
16 Defense would then have a right to rebut what the State re-
17 plies with, if that makes sense.

18 Mr. Moak, you may call your witness in reply.

19 SOLICITOR: Chris Phillips, Kershaw County Sheriff's
20 Department.

21 THE COURT: All right.

22 CHRIS PHILLIPS, being duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR:

C. PHILLIPS ON DIRECT

1 Q. State your name, please.

2 A. Chris Phillips. Christopher Phillips.

3 Q. And you are employed by the County Sheriff's Office?

4 A. Correct.

5 Q. And you work in investigations?

6 A. That is correct.

7 Q. Last week were you asked to make contact with Lindsey
8 Stitzel?

9 A. I was, sir.

10 Q. And why was that?

11 A. The Defense Counsel served notice on alibi witnesses,
12 and I was instructed to contact those witnesses and find
13 out their information since we didn't have their names be-
14 fore that.

15 Q. Did you talk to Lindsey Stitzel on the cell phone?

16 A. I did, with a lady on the phone who advised me it was
17 Lindsey Stitzel.

18 Q. Can you tell us what that conversation addressed?

19 A. I was calling up and I believe her mother answered
20 the phone originally. The number I called I believe was
21 her cell phone. I don't recall the number.

22 Q. Okay.

23 A. I asked for her, Miss Stitzel, Lindsey. I spoke to
24 her a few minutes, and she advised me that she had been
25 contacted numerous times by people about what to say on

C. PHILLIPS ON DIRECT

1 the stand, and I advised her who I was; that I was with
2 the Sheriff's Office in law enforcement, and I was call-
3 ing her on advice of the Solicitor's Office.

4 She advised me that her story -- her only story was
5 going to be that she was with him, whoever him was -- with
6 him, at a location on the night of some situation; that a
7 friend knocked on the door and they left, and that was
8 all she was going to testify to.

9 Q. That she left or that they left?

10 A. She said that they left. They was in someone she
11 was with and someone who knocked on the door. That's who
12 she said left.

13 Q. Did you ask her more questions?

14 A. I did. I asked her for more information; could she
15 tell me anything more, and she told me specifically if I
16 wanted any more information from her that I would have
17 to, quote, beat it out of her.

18 I advised that was not an option; that was not going
19 to happen.

20 Q. And did you hear anyone else in the background?

21 A. I did.

22 Q. Who did you hear?

23 A. Her mother.

24 Q. The woman who answered the phone originally?

25 A. That's correct.

C. PHILLIPS ON DIRECT

1 Q. Okay.

2 A. She had identified herself as her mother.

3 Q. So you were told it was her mother when you called?

4 A. I was.

5 Q. And what was she saying in the background?

6 A. Her mother was telling her, hang up the phone; hang up.
7 the phone. Her mother was very argumentative.

8 Q. Did they hang up?

9 A. Eventually they did.

10 Q. No further questions.

11 THE COURT: Cross examine.

12 CROSS EXAMINATION

13 BY MR. RILEY:

14 Q. Officer Phillips, you called at the request of the
15 Solicitor's Office?

16 A. That's correct.

17 Q. And did you ask her permission to speak to her
18 daughter?

19 A. I told her the reason I was calling.

20 Q. Did you know she was fifteen?

21 A. I did.

22 Q. But you did not request permission to speak to her?

23 A. She handed the phone to her mother -- or the mother
24 handed it to the daughter so I assumed that was consent.

25 Q. Thank you.

1 THE COURT: Anything further for this witness?

2 SOLICITOR: No, sir.

3 THE COURT: Anything further from the State?

4 SOLICITOR: Recall Marvin Brown.

5 THE COURT: You may step down.

6 (Witness excused from stand).

7 THE COURT: Come on up, Mr. Brown. You are still
8 under oath, sir.

9 MARVIN BROWN, having
10 been previously sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Chief Brown, when you spoke to Mitchell Hinson
14 at his house, did you mention or hear him mention the
15 -- when you spoke to Mitchell Hinson before the trial
16 at his house, did you mention or hear Corbin Bailey's
17 name mentioned whatsoever?

18 A. No, sir, I didn't.

19 Q. So no one mentioned Corbin Bailey at all?

20 A. No, sir.

21 Q. Did he mention Corbin Bailey at his house?

22 A. No, sir, he didn't.

23 Q. Did he even want to talk to you?

24 A. No, sir.

25 Q. Did he tell you he wasn't there that night?

M. BROWN RECALLED

1 A. At the break-in?

2 Q. Yes.

3 A. He didn't answer any questions that we had. He
4 would not talk to us about it.

5 Q. No further questions.

6 THE COURT: Anything on Cross Examination?

7 MR. RILEY: Just a moment.

8 THE COURT: Take your time.

9 (Brief pause)

10 MR. RILEY: No questions.

11 THE COURT: You may step down.

12 (Witness excused from stand)

13 THE COURT: Anything further from the State?

14 SOLICITOR: No, Your Honor.

15 THE COURT: Anything further from the Defense?

16 MR. RILEY: We would call another witness, please.

17 THE COURT: All right. As I anticipated, this
18 will be a rebuttal witness.

19 MR. RILEY: Your Honor, at this time as far as
20 Mr. Hinson is concerned, we would call . .

21 THE COURT: Stop. Go to your jury room. Don't
22 talk about the case.

23 We'll bring you back out shortly.

24 (Jury excused from Courtroom)

25 THE COURT: You originally made a motion to

1 sequester witnesses. This lady has been in here the
2 whole time, and now you want to call her as a witness,
3 is that correct?

4 MR. RILEY: Your Honor, we didn't expect . .

5 THE COURT: Stop. Is that correct, yes or no?

6 MR. RILEY: We would call her, yes.

7 THE COURT: All right. Then what is your motion,
8 Mr. Moak?

9 SOLICITOR: She would not be . .

10 THE COURT: She'd be disqualified. Granted.

11 Anything further before we go to lunch? What else
12 do we have before lunch?

13 Anything?

14 MR. RILEY: No, sir.

15 THE COURT: Bring the jury back in.

16 (Jury returned to the Courtroom)

17 THE COURT: Welcome back, Mr. Foreman and members
18 of the jury.

19 You have now received all of the evidence you
20 will hear in the case.

21 I'm going to send you to lunch, and I'll give you
22 an hour and a half. Do not talk about this case, es-
23 pecially now. Remember, you are a member of this jury, so
24 do not let anybody approach you or say anything. If
25 anyone tries to talk to you, you must let me know immediately.

1 Have a pleasant lunch and be back at two thirty.
2 Don't talk about the case.

3 (Jury excused for the lunch period)

4 THE COURT: Anything further? We'll have a brief
5 charge conference that shouldn't take but about five
6 minutes. Thank you very much.

7 We'll be at lunch.

8 (Whereupon, the Court stood in recess for the
9 lunch period, after which the matter was resumed)

10 THE COURT: Is everybody ready? The only thing
11 that occurred to me is if the jury wants to watch this
12 in the jury room we need to make sure somebody on the
13 jury can work with it.

14 We'll get a neutral place we can agree on and it
15 will be set up for them.

16 We'll stop and take the time to set it up or Mr.
17 Moak can set it up. We'll do something.

18 Okay, bring them up.

19 (Jury returned to Courtroom)

20 THE COURT: Mr. Foreman and members of the jury,
21 we are now at the stage of this trial for closing or for
22 final arguments from the State as well as the Defendant,
23 Mr. Hinson.

24 Now, under our system, the State has the burden
25 of proof, as you have heard me say a couple of times.

1 and because of that the State will open on the law,
2 and then we will hear from Mr. Durand on behalf of Mr.
3 Hinson.

4 Then I will charge you on the law, and that is
5 how it will go.

6 They will tell you a little bit about the law
7 in their closing arguments as it applies to this
8 case, and, of course, I will give you a full charge
9 on the law at the conclusion of the arguments.

10 This is how it will work. We'll hear from Ms.
11 Hirsch first, then Mr. Durand, and then followed by
12 Mr. Moak.

13 They will sum up the facts in this case and both
14 sides will try to persuade you to agree to their ver-
15 sion of the facts.

16 The State will try to convince you that Mr. Hinson
17 is guilty, and the Defense will try to convince you of
18 his being not guilty.

19 So you need to anticipate that or expect that.
20 The arguments will be about thirty minutes, as I've
21 suggested, more or less, and my charge will take some
22 twenty minutes.

23 Then the case will be placed in your hands to
24 make a decision. I invite your close attention to
25 the closing arguments. Ms. Hirsch, first.

1 So it will be Ms. Hirsch, and then Mr. Durand,
2 followed by Mr. Moak.

3 I invite your keen and close attention to the
4 closing arguments.

5 Ms. Hirsch, you may proceed.

6 MS. HIRSCH: Thank you, Your Honor. May it
7 please the Court?

8 THE COURT: Yes, ma'am.

9 (TRANSCRIPTION NOTE: Closing arguments by coun-
10 sel were not audible) (No objections were noted)

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1 THE COURT: Mr. Foreman and members of the jury, the
2 State of South Carolina charges that the Defendant,
3 Mitchell Hinson -- they charge him with the offense of
4 burglary in the first degree.

5 The Indictment has been read to you so I will not.
6 repeat the allegations contained therein.

7 Now, to this Indictment the Defendant has entered a
8 plea of not guilty, which places the burden of proving
9 the Defendant guilty upon the State.

10 A person charged with committing a criminal offense
11 in South Carolina is never required to prove himself in-
12 nocent. I charge you that as a matter of the law of ev-
13 idence the Defendant in a criminal trial, no matter how
14 great or serious the offense for which he is charged,
15 must always be presumed innocent until his guilt has been
16 proven beyond a reasonable doubt.

17 This presumption of innocence remains with the De-
18 fendant at all times from the moment of his appearance
19 in this Court throughout the trial and until the jury
20 finds from the testimony and evidence presented a verdict
21 of guilty beyond a reasonable doubt.

22 For it is the solemn duty of the jury if not clearly
23 convinced of his guilt beyond a reasonable doubt to the
24 contrary to acquit the Defendant.

25 So the burden of proof is upon the State to establish

1 by evidence to your satisfaction the guilt beyond a rea-
2 sonable doubt of the Defendant here on trial for the
3 crime of burglary in the first degree.

4 What is a reasonable doubt, members of the jury? It
5 is a doubt -- it is the kind of doubt that would cause a
6 reasonable person to hesitate to act.

7 If you have such a doubt as to the guilt of the De-
8 fendant, then he would be entitled to a verdict of not
9 guilty.

10 A reasonable doubt may arise from evidence which is
11 in the case or from the absence of evidence in the case.
12 You alone must make the determination of whether or not
13 a reasonable doubt exists as to the guilt or innocence
14 of Mitchell Hinson.

15 Members of the jury, the State has the burden of
16 proving the Defendant guilty beyond a reasonable doubt.

17 Some of you may have served as jurors in civil cases
18 where you were told that it was only necessary to prove
19 that a fact is more likely true than not true. In crim-
20 inal cases, the State's proof must be more powerful than
21 that. It must be beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that will
23 leave you firmly convinced of the Defendant's guilt. Now,
24 there are few things in this world that we know with ab-
25 solute certainty, and in criminal cases the law does not

1 require proof that overcomes every possible doubt.

2 If, based on your consideration of the evidence,
3 you are firmly convinced that the Defendant is guilty
4 of the crime charged, you must find him guilty. On the
5 other hand, if you think that there is a real possibil-
6 ity that he is not guilty, then you must find him not
7 guilty.

8 A criminal defendant is presumed to be innocent un-
9 til his guilt is proven beyond a reasonable doubt.

10 A verdict of guilty can be based upon circumstantial
11 evidence as well as upon direct evidence, provided that
12 the circumstantial evidence relied upon to prove guilt
13 measures up to these requirements of the law that I've
14 just stated to you.

15 There are two types of evidence, members of the
16 jury, that may be presented during a trial, direct evi-
17 dence and circumstantial evidence.

18 Direct evidence is the testimony of a person who
19 asserts or claims to have actual knowledge of a fact,
20 such as an eye-witness.

21 Circumstantial evidence is proof of a chain of the
22 facts and circumstances indicating the existence of a
23 fact.

24 The law makes absolutely no distinction between the
25 weight or the value to be given to direct or circumstantial

1 evidence; nor is a greater degree of certainty required
2 with circumstantial evidence than of direct evidence.

3 You should weigh all the evidence in the case, and
4 after weighing all the evidence if you are not convinced
5 of the guilt of the Defendant beyond a reasonable doubt
6 you must find the Defendant not guilty.

7 Now, Mr. Foreman and members of the jury, under the
8 Constitution and laws of South Carolina you are the find-
9 ers of the facts in this case. I do not have the right
10 to pass upon the facts or even to express any opinions
11 I might have as to them, nor may I intimate in any way
12 what I may think about the guilt or innocence of the De-
13 fendant.

14 You are also the judges of the credibility, the be-
15 lievability of the witnesses who have testified in this
16 case. You are the sole judges of the credibility and
17 believability of the witnesses who have testified in this
18 case.

19 In passing upon their credibility, you may take into
20 consideration many things, such as the demeanor or manner
21 of testifying.

22 Did a witness have reason to be biased or prejudiced?
23 Was a witness' testimony contradicted on the one hand or
24 supported or corroborated on the other hand?

25 You certainly do not determine this credibility by

1 or its believability by counting the number of witnesses
2 for either side.

3 You may believe a small portion of a witness' testi-
4 mony and disregard the larger, or vice versa. You may
5 believe one witness against many, or many against one.

6 All of these things you will consider, bearing in
7 mind that you should give a Defendant the benefit of a
8 reasonable doubt.

9 Now, members of the jury panel, under the same Con-
10 sultation and law that makes you the finders of the facts
11 and evidence as I have instructed you, I am as the Judge
12 made the sole and only instructor in the law.

13 You must accept as correct the law which I charge
14 you and apply it to the evidence as you find it and reach
15 your verdict.

16 And finally, I charge you that neither you, nor for
17 that matter I, in this regard should be concerned with
18 what the law ought to be but rather what I charge you
19 the law to be.

20 Members of the jury, Mr. Hinson is charged with first
21 degree burglary. Under Section 16 11 311 of the South
22 Carolina Code burglary in the first degree is defined as
23 the entering of the dwelling house of another without
24 consent and with the intent to commit a crime therein, as
25 I will define for you, which is accompanied by one of the

1 following circumstances, and in this particular case we
2 are only concerned with one circumstance and that is that
3 the Defendant entered or remained in the house at night.

4 At common law, the night-time is that period between
5 sunset and sunrise, during which the face of a person
6 cannot be discerned by the light of the sun.

7 There are four essential elements to the requirement
8 that the Defendant went into the dwelling house of another
9 without consent and with the intent to commit a crime
10 therein.

11 They are, one, the entering. The State must prove
12 that there was an entering; that is, the Defendant actu-
13 ally went inside the house or some part of it.

14 It is not necessary, however, that the entire body
15 of the Defendant entered the house. The smallest entry
16 is sufficient, and it may be of any part of the body,
17 such as a hand or foot, or even an implement such as a
18 hook or other instrument.

19 No force need be used to gain entry, and the entry
20 must be without consent. Aside from the usual understand-
21 ing of use without consent, the term entry also means to
22 enter a building by using deception, artifice, trick or
23 misrepresentation to gain consent and enter upon the pre-
24 mises in unlawful possession.

25 Third, the premises must be a dwelling house. A

1 dwelling house -- the term dwelling house means any build-
2 ing inhabited by a person or persons and in which they
3 customarily sleep.

4 A building constructed as a dwelling that has never
5 been occupied cannot be considered as a dwelling within
6 the definition, but a temporary absence of the inhabitant
7 or inhabitants does not affect the building's character
8 as such.

9 The term dwelling house would be the living quarters
10 of a building used or normally used for sleeping, living
11 or lodging by a person. All houses, out-houses, build-
12 ings, sheds, and erections set out within two hundred
13 yards of a dwelling shall be considered a part of it, and,
14 four, the Defendant must have an intent to commit a crime.

15 The mere entry into a dwelling house without consent
16 is not a violation of this burglary statute. It is when
17 there is an intent to commit a crime, whether a felony or
18 misdemeanor, that the crime is complete.

19 The proof of intent necessarily rests on inference.
20 from conduct. It is essential that the felonious in-
21 tent exists at the time of the entry. It is not suffi-
22 cient that the felonious intent is formed afterward.
23 On the other hand, if intent exists at the time of the
24 entry, it is no defense that the intent was abandoned after
25 the entry.

1 It does not matter that the intended crime was not
2 completed.

3 Members of the jury, there was admitted into the
4 record of this case evidence of an alleged prior record
5 of the Defendant. This evidence was admitted for a lim-
6 ited purpose. The evidence was admitted and may be con-
7 sidered by you, the jury, if found to be true, only for
8 the purpose of evaluating the credibility or the believ-
9 ability of the Defendant.

10 You may give to this evidence such weight and such
11 value, if any, to which you find it is entitled on the
12 sole issue of the credibility and believability of the
13 testimony offered by the Defendant.

14 Now, members of the jury, the Defendant's alibi was
15 offered in this case, and I must now define what alibi
16 is for you.

17 The Defendant in his case has submitted an alibi de-
18 fense, claiming he was not at the scene of the crime at
19 the time it was committed, but that he was elsewhere and
20 had nothing to do with it.

21 The law places no burden on the Defendant to prove
22 that he was not at the scene of the crime. Thus, there
23 is no burden on him to prove his alibi.

24 The burden is upon the State to prove beyond a rea-
25 sonable doubt that he was actually present at the scene

1 of the crime and that he actually participated in it.
2 The State must prove that allegation along with all other
3 allegations of the crime by evidence beyond a reasonable
4 doubt.

5 Members of the jury, in order for there to be a ver-
6 dict in this case it must be unanimous. That means all
7 twelve of you must agree.

8 I further charge you that a verdict in this case
9 cannot be based upon bias, passion or prejudice or some-
10 thing not found in the evidence, and, as I say, your ver-
11 dict must be unanimous. All twelve of you must agree.
12 That is simple and plain.

13 At the conclusion of this case, I have prepared what
14 we call a verdict form, and, Mr. Foreman, I'll read it
15 to you. South Carolina, County of Kershaw, the State
16 versus Mitchell Logan Hinson, the Defendant, in the Court
17 of General Sessions, and the case number.

18 I must list the possible verdict forms one before
19 the other, so take no special notice, members of the jury,
20 as to the order.

21 Then it says, we, the jury, by unanimous consent,
22 find the Defendant on the charge of burglary, guilty or
23 not guilty, and there is a line with Foreman underneath.

24 Mr. Foreman, members of the jury, once you have
25 reached your verdict in this case, you will check either

1 guilty or not guilty, and, Mr. Foreman, you will sign
2 your name on the line above where it says Foreman.

3 That is the verdict form in this particular matter.

4 Now, once again, I'm going to ask you to now go to
5 your jury room and not discuss the case. As a matter of
6 law, at this stage of the trial I must take up a matter
7 of law with the attorneys involved, and the only way I
8 can do that is in your absence.

9 The signal to begin your deliberations will be when
10 a bailiff collects all of the evidence entered in this
11 case, what was entered into evidence and takes this ver-
12 dict form. He will knock on the door and hand you this
13 verdict form along with what has been admitted.

14 Anything that has only been marked for identifica-
15 tion does not go into the jury room, as you will find
16 out momentarily.

17 Once he has handed you the verdict form and the evi-
18 dence, that will be your signal to begin your delibera-
19 tions. Until that time, please don't talk about this
20 case.

21 I have to take up this matter with the attorneys out-
22 side of your presence, so please retire to your jury room.
23 You will get the verdict form along with the evidence ~~me-~~
24 momentarily.

25 (Jury excused from Courtroom)

1 THE COURT: All right, any exceptions or additions
2 to the charge from the State?

3 SOLICITOR: Nothing, Your Honor.

4 THE COURT: All right, from the Defendant?

5 MR. RILEY: No, sir.

6 THE COURT: All right, gentlemen.. Please inspect
7 the evidence to be sure what has been entered goes in
8 and what is marked for ID is kept out.

9 Here is the verdict form. One other thing; the video
10 tape. Let's just see what happens. If they ask to see --
11 just give them that and if they want to see the video I
12 will bring them back out here.

13 (Verdict form and evidence taken to jury. Jury be-
14 gan deliberations) (Alternate Juror was excused)

15 (Court stood at ease for brief period, after which
16 the matter resumed)

17 THE COURT: They want to see the video.

18 Bring them in.

19 (Video tape from surveillance cameras shown to the
20 jury)

21 THE COURT: Thank you, Mr. Foreman. We'll await
22 your verdict.

23 (Jury excused from Courtroom to resume delibera-
24 tions in the jury room)

25 (Court stood at ease until matter was resumed)

1 THE COURT: All right, if you would mark this for
2 the record.

3 I received a question from the Foreperson. The note
4 says what's the penalty for the crime, and, of course, I
5 am not allowed to tell them; that's none of the jury's
6 business.

7 (jury note marked as Court's Exhibit)

8 THE COURT: I could just answer the note saying,
9 you don't need to know or can't know.

10 What do you suggest, Mr. Moak? We'll start with
11 you.

12 SOLICITOR: You can just write the note and send it
13 back.

14 THE COURT: What do you suggest?

15 MR. RILEY: You can just say you aren't permitted
16 to comply with their request.

17 THE COURT: Just bring the Foreman out.

18 (Jury Foreman brought into the Courtroom)

19 THE COURT: Mr. Foreman, your note says what's the
20 penalty for the crime. Well, I can't tell you since it
21 is not in your province. Your concern is only as to
22 guilt or innocence.

23 I will be happy to bring them all out if you wish to
24 tell them.

25 FOREMAN: I'll tell them.

1 THE COURT: Thank you.

2 (Foreman excused to return to jury room to
3 continue deliberating)

4 THE COURT: We'll stand at ease until we hear fur-
5 ther from them.

6 (Court stood at ease until the matter was resumed)

7 THE COURT: Please mark this second note received
8 from the jury.

9 May we have a mug shot or a profile picture of Mr.
10 Hinson? Of course, the answer is no, but that's what it
11 reads.

12 I was inclined to bring them out and tell them they
13 have to make a decision based on evidence they've heard
14 and what was given to them.

15 Tell them something like that and to go back and re-
16 sume deliberations. That would give them a chance to
17 get out of that room for a second which might be helpful
18 to them.

19 That's what I propose to do. If you have any dis-
20 cussion I'll be glad to hear it. The bottom line is no,
21 they can't have anything that is not in evidence.

22 Bring them out now. They can stretch a little bit.

23 CLERK: It would take about an hour to get them some
24 supper, so do you want . . .

25 THE COURT: I didn't ask them about that. I hadn't

1 thought about that.

2 CLERK: I'll have to call and see if they can accom-
3 modate us.

4 (Jury returned to Courtroom)

5 THE COURT: I thought I'd bring you out and give
6 you a chance to stretch a little bit. I have your note and,
7 for the record, it says may we have a mug shot or profile
8 picture of Mr. Hinson.

9 I tell you that in simple terms the answer is no.
10 You have to make your decision on the evidence, the testi-
11 mony you have heard, the exhibits and the law as I have
12 given it to you. That's the beginning and the end of it,
13 so you must base your decision on what you already have
14 heard.

15 I just thought I'd give you a chance to stretch, but
16 the bottom line is you must base your decision on the
17 testimony, the exhibits, and the arguments can help you
18 make up your mind one way or the other or be persuaded in
19 one way or the other, together with the law I've given to
20 you.

21 Let me suggest you go back to the jury room but don't
22 resume deliberations until I have a follow-up talk with
23 the attorneys. Thank you very much.

24 (Jury returning to jury room)

25 THE COURT: The Clerk has told me if they are interested

1 in ordering dinner it would take about an hour.

2 That's what I propose to say to them. The bottom
3 line is I'm going to the door and ask them, and you all
4 can come listen at the door if you want to.

5 I'm going to find out if it will be necessary to
6 order them dinner and see where they are. If they say
7 yes, I'll say it's going to take an hour, and we'll go
8 from there.

9 We'll be at ease.

10 (There was a brief recess, after which the matter
11 was resumed)

12 THE COURT: You may be seated. Is everybody here?

13 After discussions the jury has decided to stop for
14 the day.

15 (Colloquy between counsel and the Court off the re-
16 cord)

17 (Jury returned to Courtroom)

18 THE COURT: I remind you once again as I did at the
19 beginning of this trial, to not discuss the case with
20 anyone. Don't go home and discuss it with family or hus-
21 bands or significant others, or anybody, and do not read
22 the paper in the morning. I don't think anything will
23 be in there, but don't read anything about it or talk to
24 anybody about the case.

25 You must make a decision once again based on what

1 you have received in Court, evidence that has been given
2 to you.

3 With that in mind, go home and get a good nights sleep.
4 I'll see you all at nine thirty in the morning. Thank
5 you very much.

6 (Jury excused for the evening)

7 THE COURT: I'll repeat what I said. Go home and
8 get a good nights sleep. You never know what a jury will
9 do or not do. It's not easy sitting on a jury. I've sat
10 on a couple myself.

11 You never know how difficult it is sitting on judg-
12 ment on a fellow citizen until you actually have to do
13 that. I can tell you, no matter how simple a case seems,
14 it is not easy.

15 So we'll see you all in the morning at nine thirty.

16 (Whereupon, the Court stood in recess until June 29,
17 2011)

18 THE COURT: Do you have all the Exhibits? Good morn-
19 ing.

20 Let's bring the jury in and I'll make a cursory in-
21 quiry of them.

22 (Jury returned to Courtroom)

23 THE COURT: How are you all doing this morning? I
24 hope you had a restful and peaceful evening.

25 I think it was a good decision to stop yesterday,

1 Mr. Foreman. I think you made that call after consult-
2 ing with everybody else.

3 I thank you on behalf of everybody involved in this
4 trial for your patience and attention at this point. I
5 need to ask you some questions. Has anybody tried to
6 contact you or has anybody come up to you? Have you had
7 any outside influence or interference in any way?

8 (No response)

9 Very well, then. I'm going to ask that you go back
10 and resume your deliberations. Take your time. Be fair
11 to everybody as best you can. That's all I'm going to
12 tell you.

13 If there are any questions again, always write them
14 down on a piece of paper, and I will be happy to resolve
15 it for you, if I can.

16 So good luck to you. Go back in and resume your
17 deliberations. I think -- do you have all the evidence?

18 All right, Mr. Foreman, you're in charge. Thank
19 you very much.

20 (Jury excused to jury room to continue deliberations)

21 THE COURT: Any exceptions or additions?

22 SOLICITOR: None from the State.

23 MR. RILEY: No, sir.

24 THE COURT: In the next hour and a half from now if
25 they haven't made a decision, perhaps we should consider

1 the Allen Charge. Let's give them some time. We'll be
2 at ease.

3 (Whereupon, the Court stood at ease until the case
4 was resumed)

5 THE COURT: All right. I've just received a note
6 from the jury that says may we have the statement on bur-
7 glary definition. Obviously the answer is no.

8 I'll bring them out and say I can re-read the defi-
9 nition for you. It was not evidence obviously but part
10 of my charge. I can re-read the charge. Bring them out.

11 (Jury returned to Courtroom)

12 THE COURT: Welcome back, members of the jury. The
13 note that I received is may we have the burglary defini-
14 tion -- the statement of the burglary definition, or the
15 statutory definition.

16 I mis-read that. Would you like me to re-read the
17 definition of burglary? The definition of burglary
18 first you heard me read to you in the beginning.

19 All right. I've got to get it from the office. The
20 idea is I need to read to you exactly what I said. It
21 might not be the same inflection but the words will be
22 the same as I read to you previously.

23 Let me see the lawyers up here real quick.

24 (Conference at the bench between counsel and the
25 Court off the record)

1 THE COURT: I will tell you -- you don't know this but
2 I'll share it with you. I've sat on a jury, a couple of
3 juries years ago. It's only been four or five years that
4 lawyers were allowed to serve on a jury. For years, law-
5 yers couldn't serve.

6 So I've been where you are now and I understand the
7 dynamics of what goes on in a jury room. Patience is a
8 virtue, and I understand these things.

9 Let me make sure I have it. I will read to you ex-
10 actly what I read to you before. After I read it, I'll
11 ask you to go to your jury room and discuss it and see
12 if there is anything else you want me to tell you re-
13 garding first degree burglary.

14 My charge was this on first degree burglary. Un-
15 der Section 16 11 311 of the South Carolina Code, bur-
16 glary in the first degree is defined as the entering of
17 a dwelling house of another without consent and with the
18 intent to commit a crime therein, as I will define for
19 you, which is accompanied by one of the following circum-
20 stances -- in this case we only have one circumstance, and
21 that is that the Defendant entered or remained in the
22 house at night.

23 At common law, the night-time is that period between
24 sunset and sunrise, during which the face of a person
25 cannot be discerned by the light of the sun.

1 There are four essential elements to the requirement
2 that the Defdant entered the dwelling house of another.
3 without consent and with the intent to commit a crime
4 therein.

5 They are, one, there must be an entering. The State
6 must prove that there was an entering; that is, the De-
7 fendant actually went inside the house or some part of
8 it.

9 It is not necessary, however, that the entire body
10 of the Defendant entered the house. The smallest entry
11 is sufficient, and it may be of any part of the body, a
12 hand or foot, or even an implement such as a hook or other
13 instrument.

14 No force need to be used to gain entry. Two, the
15 entry must be without consent. Aside from the usual un-
16 derstanding of the without consent, the term entry aso
17 means to enter a building by using deception, artifice,
18 trick or misrepresentation to gain consent to enter from
19 the person in lawful possession.

20 Third, the place entered must be a dwelling house.
21 A dwelling house -- the term dwelling house means any
22 building inhabited by a person or persons and in which
23 they customarily sleep.

24 A building constructed as a dwelling that has never
25 been occupied cannot be considered as a dwelling within

1 the definition, but a temporary absence of the inhabitant
2 or inhabitants does not affect the building's character
3 as such.

4 The term dwelling house would be the living quarters
5 of a building used or normally used for sleeping, living
6 or lodging by a person. All houses, out-houses, build-
7 ings, sheds and erections set out within two hundred
8 yards of a dwelling house shall be considered a part of it.

9 The Defendant must have an intent to commit a crime.
10 The mere entry into a dwelling house without consent is
11 not a violation of this burglary statute. It is only
12 when there is an intent -- an intent to commit a crime,
13 whether it be a felony or a misdemeanor, that the crime
14 is completed.

15 The proof of intent necessarily rests on inference
16 from conduct. It is essential that the felonious in-
17 tent exists at the time of entry. It is not sufficient
18 that the felonious intent is formed afterwards.

19 On the other hand, where the intent exists at the
20 time of the entry, it is no defense that the intent was
21 abandoned after the entry. It does not matter that the
22 intended crime was not completed.

23 So if someone goes into somebody's house at night
24 with intent to steal something, that is the true definition of
25 burglary.

1 So I ask that you go back into the jury room and re-
2 sume your deliberations when I give you the signal to
3 do so. I must have a discussion with the layers before
4 you do.

5 (Jury excused from Courtroom)

6 THE COURT: Any exception or additions from the
7 State?

8 SOLICITOR: No, sir.

9 THE COURT: From the Defense?

10 MR. RILEY: No, sir.

11 THE COURT: Tell the jury they may resume de-
12 liberating.

13 We'll be at ease.

14 (Whereupon the Court took up other matters until the
15 case was resumed)

16 THE COURT: You may take your seats. All right,
17 ladies and gentlemen, everybody ready to go?

18 I have discussed this with the lawyers in Chambers,
19 and the bottom line is I can give the jury the Allen
20 Charge, so I will read them the Allen Charge unless the
21 lawyers object.

22 (No response)

23 All right, bring the jury out.

24 (Jury returned to Courtroom)

25 THE COURT: Welcome back, members of the jury. As I

1 indicated to you back in the jury room -- I shared my con-
2 versation with the lawyers that I had with you in the room.
3 and this is the additional charge I was telling you about.

4 Members of the jury, in many cases considered by jur-
5 ies, absolute certainty cannot be obtained or expected.

6 The verdict to which a juror agrees must, of course,
7 be his own verdict, the results of his own convictions,
8 as well as the conclusions of his fellow jurors, but in
9 order to bring twelve minds to a unanimous result you must
10 examine the question submitted to you with candor and with
11 a proper regard and deference to the opinions of each
12 other.

13 You should consider that the case must at some time
14 be decided. You were selected in the same manner and
15 from the same source as any future jury must be. There
16 is no reason to suppose that the case will ever be submit-
17 ted to twelve people who are more intelligent, more impar-
18 tial, or more competent to decide this matter, or that
19 more or clearer evidence will be produced by one side or
20 the other.

21 With this in view, it is your duty to decide the case
22 if you can conscientiously do so. It is your duty as the
23 jurors to consult with one another and deliberate with a
24 view toward reaching an agreement, if you can do so with-
25 out violating your individual judgments.

1 Each of you must decide the case for himself or her-
2 self and do so only after impartial consideration of the
3 evidence in the case with your fellow jurors.

4 In the course of your deliberations do not hesitate
5 to re-examine your own views and change your opinion
6 if convinced that your former opinion was erroneous. No
7 juror is expected to give up his or her opinion based on
8 reason satisfactory to himself for the purpose of being
9 in agreement, and I want you to understand that and do not
10 surrender your honest convictions as to the weight or the
11 effect of the evidence solely because the opinion of your
12 fellow jurors is contrary to your opinion, or for the mere
13 purpose of returning a verdict.

14 You are not called upon often to decide cases. As
15 one of the Circuit Judges whose role it is to try cases
16 from day to day, I can tell you that it is very unusual
17 for a jury to go out and return immediately with a ver-
18 dict.

19 However, we usually get a verdict, and what that means
20 is that it is normal for jurors to disagree at first, and
21 the fact we normally get a verdict also means that when
22 reasonable people or persons lay aside all extraneous mat-
23 ters and determine to decide a case on the basis of the
24 law and the evidence, then they do come to a common under-
25 standing and write a verdict.

1 It has never been intended that the verdict of a
2 jury be the verdict of only one person. On the other
3 hand, the verdict of a jury must be with the reasoning of
4 all twelve persons.

5 The reason we have a jury is so that we may have the
6 benefit of the collective thought and reasoning of each
7 individual juror.

8 It may help to tell the other jurors how you feel
9 about the case and why you think as you do, and I am sure
10 you have been doing that.

11 On the other hand, it may help if the other jurors
12 exchange views with you. I ask that you listen to each
13 other and give to the other views the consideration you
14 think they should have.

15 A mistrial in a case is a very unfortunate thing. If
16 you cannot agree on a verdict it does not mean anybody
17 wins or the case is over, but simply it means that at some
18 future time another jury will sit where you are.

19 In the trial of that case the same participants will
20 come, the same lawyers likely will appear, the same ques-
21 tions will be asked and will presumably get the same an-
22 swers. We will go through the entire process again, and
23 I have no reason to believe that any other twelve jurors
24 from this County will represent a better cross section of
25 the community who are more intelligent or more capable of

1 solving this controversy than you are.

2 One day this matter will have to be decided, and
3 while it is important that litigation be ended, it should
4 be ended in the form of a unanimous verdict without any
5 juror doing violence to his or her conscience.

6 No juror is expected to give up an opinion based on
7 reasons satisfactory to him merely for the purpose of being
8 in agreement. If you are unable to reach a verdict, it
9 is possible the case will be tried again, and it is ob-
10 vious that that means to the State and a Defendant anxiety
11 and effort.

12 It is permissible for a jury to disagree, and there
13 are two things a jury can do. They may agree or disagree
14 on what the facts of a case may truly be. Obviously,
15 there is nothing upon which to disagree about on the law
16 as the law is as I have stated it to you.

17 If there are any disagreements about the law, I can
18 clarify that for you now. If you disagree on what the
19 evidence has shown, then only you can resolve that con-
20 flict if it is to be resolved.

21 I have only one request of you by law. I cannot de-
22 mand this of you, but I want you to go back into the jury
23 room and think in terms of the position of the other jur-
24 ors in terms of your own position.

25 You should not interrupt each other or comment on

1 each others' views until each one of you has had a chance
2 to talk.

3 When you have done that, if you simply cannot reach
4 a verdict, then return to the Courtroom and I will de-
5 clare this case mistried and discharge you with appre-
6 ciation for your services.

7 This is an important case, as to time, effort and
8 money by the Defense and the Prosecution, and if you fail
9 to agree on a verdict the case is left open and undecided.
10 Like all cases, it must be disposed of and decided at
11 some time.

12 There is no reason to believe that the case can be
13 tried again by either side than has been exhausted when it
14 was tried before you.

15 Any future jury must be selected in the same manner
16 as you were selected, so there is no reason to believe
17 the case would ever be submitted to twelve men and women
18 more conscientious, more impartial or more competent to
19 decide it, or that more or clearer evidence could be pro-
20 duced by either side.

21 I'm going to ask that you return to your deliberation
22 in an attempt to return a verdict. You have a duty to
23 consult with one another and to deliberate with a view
24 of reaching an agreement, if this can be done without
25 violence to your individual judgments.

1 Each juror must decide the case for himself but only
2 after impartial consideration of the evidence by fellow
3 jurors.

4 You should not hesitate to re-examine your own views
5 and change your opinion if you are convinced it is, erron-
6 eous. Each juror who finds themselves to be in the minor-
7 ity must consider his view in light of the opinions of the
8 majority jurors.

9 Conversely, each juror finding himself in the major-
10 ity should give equal consideration to the views of the
11 minority.

12 No juror, however, should surrender his conviction as
13 to the weight or effect of the evidence solely because of
14 the opinion of his fellow jurors^{or} for the mere purpose of
15 returning a verdict.

16 Remember also that after full deliberation and con-
17 sideration of the evidence it is your duty to agree upon
18 a verdict if you can do so without disobeying your indi-
19 vidual judgment and conscience.

20 Now, with this added instruction, I ask you to go
21 back and retire to your jury room for further delibera-
22 tions.

23 Ladies and gentlemen, one small thing I add that I
24 believe. No decision is better than a bad one, and that
25 in essence sums up what I just told you in the Allen Charge

1 as we call it.

2 You need to go back and re-examine your positions.
3 Try your very best honestly to reach an honest and true
4 and fair verdict, if it can be done. If not, then trust
5 me, no verdict is better than a bad one if it violates
6 your individual consciences and beliefs.

7 So retire to your jury room. Thank you very much.
8 Please continue your deliberations, members of the jury.

9 (Jury excused to jury room to continue their deliberations)
10

11 THE COURT: Are there any exceptions or additions to
12 that from either side?

13 (No response)

14 THE COURT: Any exception to any comments I made,
15 no decision is better than a bad one if it violates your
16 individual conscience.

17 I tell everybody that it is not easy being on a jury
18 because I've been on two or three, and it is difficult to
19 sit in judgment on your fellow citizens.

20 One person thinks this and another person thinks
21 that, and it doesn't matter why. There is another side
22 that constantly tries to satisfy, for whatever reason,
23 and whether I agree or disagree doesn't really matter.

24 You don't know how difficult it is until you sit in
25 that jury room.

1 So we'll be at ease.

2 Let's feed them lunch, and it will probably take
3 them a while to consider all of that.

4 Thank you very much.

5 (Other matters were taken up by the Court until the
6 case was resumed)

7 THE COURT: Is everybody ready? Ladies and gentle-
8 men, I assume we have a verdict. Is everybody ready to
9 receive it?

10 SOLICITOR: Yes, sir.

11 MR. RILEY: Yes, sir.

12 THE COURT: Bring them in.

13 (Jury returned to Courtroom at 2:43 P.M.)

14 THE COURT: All right, Madam Clerk, you may proceed.

15 CLERK: Has the jury reached a verdict?

16 FOREMAN: Yes, maam.

17 (Verdict form exhibited to the Court)

18 THE COURT: All right, you may publish it.

19 CLERK: This is the State of South Carolina, the
20 County of Kershaw, The State versus Michael Logan Hinson.
21 Indictment 2011 GS 28 0220.

22 We, the jury, by unanimous consent, find the Defen-
23 dant on the charge of burglary first guilty, and it is
24 signed by the Foreman.

25 Mr. Foreman and ladies and gentlemen of the jury,

1 if this is your verdict, please signify by raising your
2 right hand.

3 Thank you.

4 THE COURT: All right, anything further for this
5 jury in behalf of the State?

6 SOLICITOR: Nothing from the State.

7 THE COURT: From the Defense?

8 MR. RILEY: Yes, we'd ask that the jury be polled.

9 THE COURT: Will you explain what that means or do
10 you want me to?

11 CLERK: If you would.

12 THE COURT: Ladies and gentlemen, there has been a
13 request made by the Defense to poll the jury, and there
14 are two questions we ask of each and every one of you in-
15 dividually.

16 Was that your verdict, and is it still your verdict?

17 Ms. McDonald will administer those questions.

18 (Whereupon, the jury was polled individually, with
19 each answering in the affirmative, that it was their ver-
20 dict and is still their verdict)

21 CLERK: The jury has been polled, Your Honor.

22 THE COURT: Thank you. The jury has been polled.

23 Is there anything further?

24 MR. RILEY: No, sir.

25 THE COURT: Let me tell you all, as I told you all

1 earlier, that I have sat on a couple of juries and it is
2 extremely difficult to sit in judgment of a fellow citi-
3 zen.

4 It would appear to be easy when you read about it in
5 a newspaper or see it on TV, but it is not that way. You
6 are going back there as twelve honest citizens, seeking
7 the truth and try to do the best you can.

8 You have had the privilege of sitting on this parti-
9 cular jury in judgment of Mr. Hinson, and you have based
10 your decision on the law and the evidence. That is what
11 you should do as conscientious and patriotic American
12 citizens, regardless of which way things may fall.

13 You do the best you can, and I know you have strug-
14 gled with this decision. But I can assure you based on
15 the facts and evidence as presented in this trial, you've
16 done the right thing and reached the right conclusion.

17 It is my opinion, as someone who has been in this
18 business a long time, that the conclusion reached was the
19 only fair one you could reach under the law and the evi-
20 dence.

21 With that in mind, whatever disagreements you had in
22 the jury room, leave them there. Don't take them with you.

23 On behalf of everybody involved in this case, we ap-
24 preciate and thank you for your patriotic service in this
25 case.

1 You are free to remain and witness the imposing un-
2 dertakings; that is, the sentencing of Mr. Hinson, if you
3 want to stay.

4 By the way, burglary in the first degree carries a
5 sentence between fifteen years and life in prison, and
6 it is an old and historic charge, when someone breaks into
7 someone's house in the darkness where as likely as not
8 someone will be injured or killed.

9 So from the common law going back to England, it has
10 always been a penalty for burglary in the first degree.
11 It has lessened somewhat in the last thirty or forty years
12 from a mandatory life sentence to fifteen years to life.

13 What will happen now is the prosecution will get up
14 and make a presentation as to Mr. Hinson's prior record.
15 Parts of his prior record I kept out of the trial as I
16 did not think they were relevant and would be more pre-
17 judicial than probative, as we say.

18 Then, of course, the Defense will have an opportu-
19 nity to make a presentation and make any motions that I'll
20 entertain now or at a later date.

21 (Whereupon, jurors were excused by the Court from
22 service)

23 THE COURT: Mr. Moak, you may proceed, sir.

24 SOLICITOR: Thank you, Your Honor. Back in November
25 of last year in Lancaster County Mr. Hinson was convicted

1 of receiving stolen goods of Two Thousand Dollars, and
2 also convicted of possession of schedule one, two, three
3 -- one, two and three substances, which I believe were
4 pills, and possession of marijuana all at the same time.

5 He was put on probation. He had a Youthful Offender
6 Act sentence that was suspended on that.

7 We made several plea offers to resolve this case
8 short of a trial, which were rejected. One was a Youth-
9 ful Offender Act sentence and one was two years. Both of
10 those were rejected.

11 THE COURT: Thank you, Mr. Moak.

12 Anything further from the Prosecution?

13 SOLICITOR: No, sir.

14 THE COURT: Very well. Mr. Riley.

15 MR. RILEY: Judge, the Court has heard all of Mr.
16 Hinson's personal facts, and I don't think there is any-
17 thing to add at this point.

18 I would ask the Court to be as lenient as possible.

19 THE COURT: All right. Mr. Riley, I will go forward
20 with sentencing. I find for the record that you could
21 make a motion for me to reconsider and I think you have
22 asked in Chambers that you be allowed ten days to make
23 any post-trial motions.

24 MR. RILEY: Yes, sir.

25 THE COURT: May I see Court's Exhibit Number 1,

1 please?

2 (Brief pause)

3 Ordinarily I wouldn't do this but I know how you all
4 have struggled, members of the jury.

5 On Monday Morning I received this letter from Mr.
6 Hinson, the Defendant, and I have to make it public, as I
7 do with motions. I have to share it with everybody.

8 I didn't know what this was and I never met Mr.
9 Hinson before in my life, but it is required of me as a
10 Judge to make it public and a part of the record.

11 June 26, 2011. Dear Judge Manning: I previously
12 signed a guilty plea sheet at the Detention Center only
13 in an effort to come back and ask for a bond reduction,
14 due to the fact that my request was being ignored by my
15 Public Defender.

16 I have been incarcerated for seven months. During
17 this time I have been under pressure to take plea deals
18 from the Solicitor, Ron Moak. I feel that his previous
19 offers have been extremely unreasonable.

20 I was willing to plea guilty to second degree burg-
21 lary in exchange for time served, probation, or two years
22 straight time at the max.

23 Thank you for your consideration of this matter.

24 This is a matter of public record. I am not sharing
25 anything with you that could be filed in the files here,

1 and I say all of this as this is unusual for me. Anybody
2 knows that.

3 But I have been in a jury room as you all have, and
4 I know you have struggled in this case. I hope and sin-
5 cerely believe that nothing I have said in any way, shape
6 or form to get you to do anything other than what you be-
7 lieve was the right thing to do in this case.

8 I feel good as the Judge that at the conclusion of
9 This matter you all will know you did -- and I can assure
10 you under the facts that you did -- the right thing.

11 I know when you all started someone had a note to
12 ask what the punishment was in this case, but punishment
13 is in the hands of the Court, not the jury.

14 Sometimes, if it is a death penalty case, you would
15 know what the punishment is. Punishment was always out
16 in front, and some people hesitate and ignore the facts
17 and all of that, but it is a time-tested real and common
18 sense reason that juries typically don't know what the
19 punishment is. You don't want that to get in the way of
20 the facts and the truth.

21 So my job is to make sure that what you have heard
22 in this case is what you should hear under the facts and
23 the law, as I told you in the very beginning. There is
24 no reason for anyone to leave here disappointed or feeling
25 sorry for anyone.

1 Your job was to do what you felt was the right thing
2 to do under the law and the evidence. That is the way we
3 can depend on a system of justice in this country to work
4 correctly.

5 You try to leave emotions out, and, as I said at the
6 end, you can't base your decision on passion, emotion or
7 something not found in the evidence.

8 You all have followed those instructions to the T,
9 and I know you have struggled. Don't struggle any more
10 with yourself or your conscience.

11 Take it from me as a Judge, and personally as a fa-
12 ther, that you've done the right thing. That is all you
13 can do. My sincere thanks to everyone involved.

14 Thank you very much, Mr. Foreman and ladies and gen-
15 tlemen of this jury.

16 (Brief pause)

17 All right, bring Mr. Hinson around.

18 On 2011 GS 28 220, the State versus Mitchell Logan
19 Hinson, for burglary in the -- indictment for burglary,
20 first degree, the sentence is fifteen years with credit
21 for time served, which is the minimum sentence in a case
22 such as this.

23 Mr. Riley, I will entertain your motion on the re-
24 cord, and you can submit a written request for reconsideration
25 of the sentence.

1 I will be happy to give you ten days. We had a dis-
2 cussion in Chambers and you may have ten days to submit
3 those along the lines of what we discussed in Chambers.

4 Good luck to everyone.

5 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Daphne Helms to the best of my ability, having been heard in the Court of General Sessions for Kershaw County on June 27-29, 2011.

FURTHER, I certify that I am neither of kin nor counsel as to any party to this matter, nor do I have any interest in the outcome of the case.

October 24, 2015

WITNESSES

(S) W Nesbitt - Kershaw County Sheriff

ARREST WARRANT NUMBER

M100351

ACTION OF GRAND JURY

TRUE BILL

Judy D. Bailey
Foreperson of Grand Jury

Date:

MAR 23 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-28-0220

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

MARCH TERM 2011

K98

**THE STATE
vs.**

Mitchell Logan Hinson

**Indictment for
BURGLARY 1ST DEGREE**

SC Code: 16-11-0311

GDR Code: 0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

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.

FILED FOR RECORD
2011 MAR 23 PM 4:47
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

ATTEST True, Correct & Certified
Copy of Original on file in this
Court

Colleen D. Smith
Clerk of Court

Kershaw County

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on MARCH 23, 2011, the
Grand Jurors of Kershaw County present upon their oath:

BURGLARY, 1ST DEGREE

That Mitchell Logan Hinson did in Kershaw County on or about January 14, 2011 enter the dwelling of JAMES EUBANKS located at [REDACTED] JONES ROAD KERSHAW SC without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant entered the dwelling in the nighttime hours, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Kershaw

VS.

Mitchell Logan Hinson

AKA:

Race:

Sex: M

Age:

18

DOB:

SS#:

Address:

North Matson Street

City, State, Zip:

Kershaw, SC 29067

DL#:

SID#:

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

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

TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-28-0220

A/W#: M100351

Date of Offense: 1/14/2011

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311

of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST-SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials):

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

ATTEST:

Moak, Ron

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 15 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

PTUP

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 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

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(I) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

§ 44-53-450(C) (Conditional Discharge)

\$350

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/Deputy Clerk:

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge

Judge Code:

Sentence Date:

_____ 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: ATTEST True, Correct & Certified

Copy of Original on File in this

Court

☐ Condition Discharge § 44-53-450(C) requires \$350 be paid to the Clerk of Court case disposition County
☐ Appointed PD or appointed other counsel, § 47-12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

THE COURT OF GENERAL SESSIONS
 FIFTH JUDICIAL CIRCUIT

State of South Carolina)
)
 V.)
)
 Mitchell Logan Hinson,)
)
 Defendant)

NOTICE OF MOTION
AND MOTION
FOR A NEW TRIAL

FILED FOR RECORD
 2011 JUL -8 AM 11:57
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

TO: Ronald W. Moak, Attorney for the State:

PLEASE TAKE NOTICE that the defendant will move before the court, at a time and place to be determined by the court, for a new trial. Pursuant to Rule 29(a), SCRCrimP, and to leave granted by the trial court, this notice of motion and motion is being filed and served within ten (10) days after the imposition of the sentence on June 29, 2011.

The grounds for this motion will include, but may not be limited to, the following:

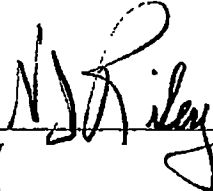
1. The jury foreman is a ROTC teacher at the defendant's most recent school. According to the defendant he and the foreman have communicated and interacted with each other many times at school, and the foreman also knows the victims and their son. The foreman failed to reveal this information during *voir dire*, and that omission constitutes juror misconduct prejudicial to the defendant.
2. The jury (or some members thereof) inadvertently viewed the defendant in leg shackles both in the courtroom and while the defendant was exiting the courthouse. Such glimpses of the custodial status of the defendant prejudiced his right to a fair and impartial jury.
3. The videotape taken at the victims' residence, which was admitted over the defendant's objection, was fuzzy, grainy, and unclear, and its probative value was outweighed by its prejudicial effect in that it depicted an individual generally matching the defendant's physiognomy

without any discernible or distinguishable details that would enable the jury to positively identify the person.

4. During the polling of the jury following their verdict, a female juror answered the clerk's question hesitantly. That same juror began weeping shortly thereafter, and continued weeping copiously during the remainder of the court's proceedings, tending to indicate regret and remorse over that juror's verdict. The court declined further action in this regard during a sidebar conference.

This motion will be supported at the hearing hereon by applicable case law, statute law, and common law principles.

July 8, 2011.



C. J. Neil Riley
Chief K.C.P.D.
P. O. Box 1557
Camden, S.C. 29021
803-425-7237
ATTORNEY FOR DEFENDANT

FILED FOR RECORD

2011 JUL -8 AM 11:57

JOYCE McDONALD
CLERK OF COURTSTATE OF SOUTH CAROLINA)
KERSHAW COUNTY, S.C.)

COUNTY OF KERSHAW)

THE COURT OF GENERAL SESSIONS

FIFTH JUDICIAL CIRCUIT

State of South Carolina)

V.)

Mitchell Logan Hinson,)

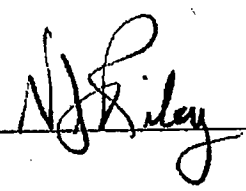
Defendant)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the Notice of Motion and Motion for a New Trial in this matter were served on the following persons on July 8, 2011:

The Honorable L. Casey Manning
Ronald W. Moak, Attorney for the State
Mitchell Logan Hinson, Defendant

July 8, 2011.


C. J. Neil Riley
Chief K.C.P.D.
P. O. Box 1557
Camden, S.C. 29021
803-425-7237
ATTORNEY FOR DEFENDANT

STATE OF SOUTH CAROLINA
 COUNTY OF KERSHAW
 STATE OF SOUTH CAROLINA
 -VS-
 MITCHELL HINSON
 DEFENDANT

FILED FOR RECORD
 2016 APR -4 AM 9:30
 JOYDE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

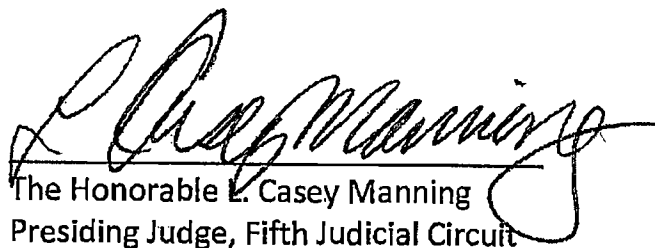
IN THE COURT OF GENERAL SESSIONS
 FOR THE FIFTH JUDICIAL CIRCUIT

ORDER

DENYING MOTION FOR RECONSIDERATION

This matter came before the Court on February 18, 2016, upon Defendant's Motion for Reconsideration of Sentence or in the Alternative for a New Trial. After reviewing the Defendant's Motion for reconsideration of sentence or in the alternative for a new trial, I find that the Defendant is not entitled to reconsideration of his sentence or a new trial.

AND IT IS THEREFORE ORDERED, that the Defendant's Motion be denied.


 The Honorable L. Casey Manning
 Presiding Judge, Fifth Judicial Circuit

March 29, 2016
 Camden, South Carolina.

FORM 5

STATE OF SOUTH CAROLINA

County of KershawMitchell Logan Hinson
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-28-963

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 Walden Correctional Institution
4340 Broad River Road, Columbia SC 29210
2. Name and location of Court which imposed sentence Court of General Sessions - Fifth Judicial Circuit
3. Name(s) of co-defendant(s) (if any) Corbin Bailey
~~Sessions - Fifth Judicial Circuit~~
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-28-0220
 - (b) _____

ATTEST True, Correct & Certified
Copy of Original on file in this
Court

Debra N. Wallace
Clerk of Court Kershaw County

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June x029 2011
- (b) 15 years (violent)
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes The answer for this question is on additional page.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. ~~x Court of General Session Fifth Judicial Circuit~~
- ii. ~~on July 28, 2011~~
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I am unable to. I expressed to my trial attorney I wanted to appeal
- (b) _____

2011 NOV -4 AM 9:25
 CLERK OF COURT
 KENTON COUNTY, S.C.

(Additional Page for Question 7

7) I have been unable to appeal my conviction.
A motion for a new trial was filed in
the Court of General Session Fifth Judicial
Circuit on July 8, 2011. I would very much
like to file an appeal.

(
JULY 10 2011
CLERK OF COURT
KERSHAW COUNTY, S.C.
2016 NOV - 4 AM 9:25
JULY 10 2011
CLERK OF COURT
KERSHAW COUNTY, S.C.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) For 4 years no one has heard my motion for new trial
 (b) there for I have been unable to appeal my conviction
 (c) I claim ineffective counsel and lack of complete understanding as to sentencing.

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

- (a) Answer for this question is on additional page
 (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? Yes

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. Answer to this question is on additional page
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
 i. Answer to this question is on additional page
 ii. _____
 iii. _____
 iv. _____

2016 NOV -4 AM 8:26
 JUDGE NEWMAN
 CLERK OF COURT
 Kershaw County, SC

Additional Page for Question 11 and Question 12 (A & B)

11) A) I have been unable to appeal my conviction.

A motion was filed in the Court of General session for a new trial. The Circuit Court Judge failed to hold a hearing or issue an order relating to the motion of a new trial. This issue made me unable to appeal/PCR.

B) After contacting my Counsel after my conviction.

Mr. Neil Riley would inform me and my family the motion for a new trial will be heard "soon".

After multiple visits from my family. Mr. Riley would always say next Court term the motion will be heard. This went on for over 4 years. Until the motion was finally dismissed.

13) A) Motion for a New Trial

B) The Court of General Sessions, Kershaw County Fifth Judicial Circuit on July 8, 2011

Filed by: C.J. Neil Riley

This motion took over 4 years to be heard.

Also, On May 21, 2013

Violation of Ethical Duties was filed by myself (Mitchell Logan Hanson) TO: The Supreme Court of South Carolina office of Disciplinary Counsel.

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

2016 NOV -4 AM 9:26
 CLERK OF COURT
 MERSHAW COUNTY, S.C.

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

- i. Neil Riley additional request for the pending Motion
for a New trial be heard on July 17, 2013,
- 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?

Recently the motion was finally dismissed. So now
I can enter my P.R.

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

(a) which grounds have been presented:

- i. The motion was dismissed.
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) Answer for this question is on additional page.
 (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? Not yet
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

2016 NOV -1 AM 9:26
 CLERK OF COURT
 Kershaw County, S.C.

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. C.J. Neil Riley Chief Kershaw County
Public Defender P.O. Box 1557 Camden, SC 29021
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial Sentencing
 ii. _____
 iii. _____

Additional Page for Question 16.(a)

16.) a.) I am not sure why the motion for
New trial took so long. I am now finally
able to move forward with my Post conviction
relief

FILED FOR RECORD
2016 NOV -4 AM 9:26
JOYCE HOSKINS
CLERK OF COURT
Kershaw County, S.C.

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

I would like to contest my conviction because of
ineffective counsel and lack of complete understanding.
with a reconsideration.

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

No

STATE OF SOUTH CAROLINA)

County of Kershaw)

VERIFICATION

CLERK OF COURT
KERSHAW COUNTY, S.C.

2016 NOV -4 AM 9:26

RECORD

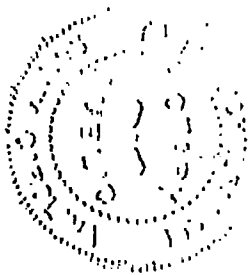
I, Mitchell Logan Hansen, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application;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

[Signature]

SWORN to and subscribed before me this 1st
 day of November, 2016.

[Signature] (L.S.)
 Notary Public

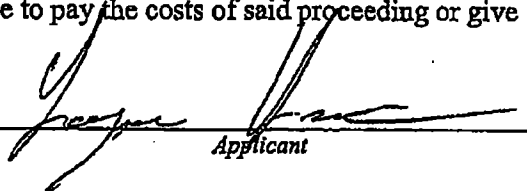
My Commission Expires: 8/30/2020



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

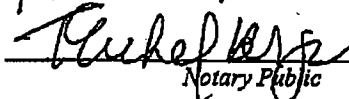
I, Mitchell Logan Hinson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.


Applicant

SWORN or affirmed to and subscribed before me this

1st day of November, 2016.


Notary Public

My Commission Expires: 8/30/2020

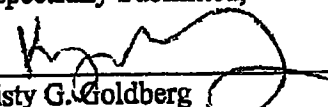
2016 NOV -4 AM 9:26
 JERRY HODGKINS
 CLERK OF COURT
 Kershaw County, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	DOCKET NO.: 2016-CP-28-963
	)	
MITCHELL LOGAN HINSON,	)	
SCDC # 346676	)	
Applicant,	)	
v.	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective assistance of counsel for failure to disclose and explain plea offers to Applicant and failure to accurately and fully explain the consequences of refusing a plea offers and proceeding to trial.
 - (b) Ineffective assistance of counsel for failing to ensure that the jurors did not witness the Applicant in leg shackles.
 - (c) Ineffective assistance of counsel for failing to object to pitting the witnesses.
 - (d) Ineffective assistance of counsel for failing to object to admission the Applicant's prior conviction for Receiving Stolen Goods.
 - (e) Ineffective assistance of counsel for failing to object to the Court's Allen charge.
 - (f) Ineffective assistance of counsel for failing to file Notice of Appeal after the Motion to Reconsider was disposed of March 24, 2016.

Respectfully Submitted,


 Kristy G. Goldberg
 Attorney for Applicant

Columbia, South Carolina

This 24 Day of may, 2017.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2016-CP-28-963

MITCHELL LOGAN HINSON,)
SCDC # 346676)

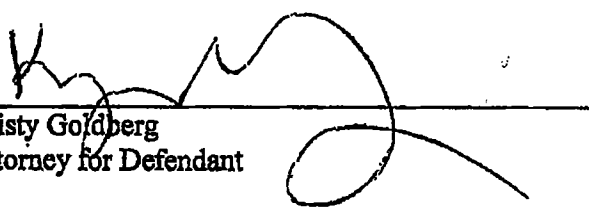
Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

CERTIFICATE OF SERVICE

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


Kristy Goldberg
Attorney for Defendant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 303
Columbia, SC 29201
803-667-6633
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 04 Day of May, 2017.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	
Mitchell Logan Hinson, #346676,	)	Case No.: 2016-CP-28-0963
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 4, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. In March 2011, the Kershaw County Grand Jury indicted Applicant for burglary, first degree (2011-GS-28-0220). Neil Riley, Esquire represented Applicant, and Solicitor Ron Moak, Esquire prosecuted the case. On June 27-29, 2011, Applicant proceeded to trial before the Honorable L. Casey Manning and a jury. The jury found Applicant guilty as indicted. Judge Manning sentenced Applicant to fifteen years with credit for time served. A motion for reconsideration of sentence was filed on July 8, 2011. Applicant did not appeal his conviction or sentence.

On November 3, 2015, Applicant filed a PCR Application; however, because the motion for reconsideration of sentence was still pending, this application was dismissed without prejudice by the Honorable Alison Renee Lee on January 12, 2016. The order included a provision that Applicant had a year from the date that the motion was ruled upon to file a new PCR application, which he did on November 4, 2016 after the motion was ruled upon on March 24, 2016. PCR Counsel, Kristy G.

Goldberg, Esquire, filed an amended PCR Application on May 24, 2017. This return follows.

Attached to this return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, both PCR Applications, and the pleadings. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his original application for post-conviction relief under this case number, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "For 4 years no one has heard my motion for new trial therefor I have been unable to appeal my conviction."
2. "Lack of complete understanding as to sentencing."

The amendment filed by Ms. Goldberg added the following allegations:

1. Ineffective assistance of counsel for
 - a. Failure to disclose and explain plea offers to Applicant and failure to accurately and fully explain the consequences of refusing a plea offers and proceeding to trial.
 - b. Failure to ensure that the jurors did not witness the Applicant in leg shackles.
 - c. Failure to object to pitting the witnesses.
 - d. Failure to object to admission the Applicant's prior conviction for Receiving Stolen Goods.
 - e. Failure to object to the Court's Allen charge.
 - f. Failure to file Notice of Appeal after the Motion to Reconsider was disposed of March 24, 2016.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having

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

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

IV.

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), SCRCR. 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, SCRCR. 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), SCRCR.

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

V.

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

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Signature follows.

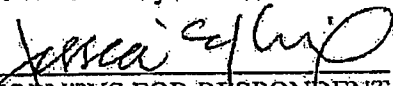
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 23, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MITCHELL LOGAN HINSON, #346676,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

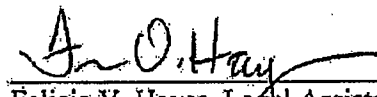
2016-CP-28-0963

AFFIDAVIT OF SERVICE BY MAIL

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:

Kristy Goldberg, Esquire
 Law Office of Kristy Goldberg, LLC
 1720 Main Street, Suite 303
 Columbia, SC 29201

DATED this the 23rd day of June, 2017.


 Felicia V. Hayes, Legal Assistant
 For Respondent

State of South Carolina
County of Kershaw

Court of Common Pleas

Mitchell Logan Hinson	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2016-CP-28-00963
	)	
State of South Carolina	)	
	)	
<u>Respondent.</u>	)	

July 19, 2017
Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Judge.

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

Christy Goldberg, Esquire
Attorney for the Applicant

Jessica Kinard, Esquire
Attorney for the Respondent

Bethanie K. Creppon
Circuit Court Reporter

1		I N D E X	
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5	BY MS. GOLDBERG		
6	CROSS-EXAMINATION		26
7	BY MS. KINARD		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
<u>APPLICANT'S</u>			
EXH. NO. 1	Plea Offer	61	61
<u>RESPONDENT'S</u>			
EXH. NO. 1	Court Order	79	79

1 P R O C E E D I N G S

2 * * *

3 THE COURT: This is the case of Mitchell Logan
4 Hinson. Is the State ready to proceed.

5 MS. KINARD: Yes, Your Honor.

6 THE COURT: Is the Applicant ready to proceed?

7 MS. GOLDBERG: Yes, Your Honor.

8 THE COURT: All right. Ms. Kinard?

9 MS. KINARD: Thank you, Your Honor. This is a
10 Kershaw County case in the matter of Mitchell Logan
11 Hinson vs. The State of South Carolina. It's
12 Case No. 2016-CP-28-0963.

13 We're before the Court on an application for
14 postconviction relief that was filed November 24th,
15 2016, and amended May 24th, 2017. Mr. Hinson is
16 presently confined in the South Carolina Department
17 of Corrections pursuant to orders of commitment by
18 the Richland County Clerk of Court.

19 In March 2011, the Kershaw County Grand Jury
20 indicted him for burglary first degree. He was
21 represented by Cornelius Riley and Solicitor Ron
22 Moak prosecuted the case. On June 27th through
23 29th, 2011, they proceeded to trial before the
24 Honorable L. Casey Manning and a jury. The jury
25 found him guilty as indicted and Judge Manning

1 sentenced him to 15 years with credit for time
2 served. A motion for reconsideration of sentence
3 was filed on July 8th, 2011. Mr. Hinson did not
4 appeal his conviction or sentence.

5 On November 3rd, 2015, the Applicant filed a
6 PCR application; however, the motion for
7 reconsideration was still pending, so the original
8 application was dismissed without prejudice by the
9 Honorable Alison Renee Lee on January 12th, 2016.
10 The order included a provision that he had a year
11 from the date that the motion was ruled upon to file
12 a new PCR application, which he did on November
13 24th, 2016, after the motion was ruled upon on March
14 24th, 2016.

15 The State is present and ready to proceed.
16 Mr. Hinson is present and represented by Christy
17 Goldberg.

18 THE COURT: Ms. Goldberg, you may proceed.

19 MS. GOLDBERG: Thank you, Your Honor. May it
20 please the Court. We're proceeding on an amended
21 application that was -- I don't see my filed copy.
22 I filed it on May 24th, so it should have been filed
23 shortly thereafter.

24 THE COURT: I have it.

25 MS. GOLDBERG: Okay. Good. At this time, Your

1 Honor, I would call Mitchell Hinson.

2 MITCHELL LOGAN HINSON

3 being first duly sworn, testified as follows:

4 THE APPLICANT: Yes, ma'am.

5 DIRECT EXAMINATION

6 BY MS. GOLDBERG:

7 Q. Good morning, Mr. Hinson.

8 A. Good morning.

9 Q. How old are you?

10 A. Twenty-four years old.

11 Q. All right. Twenty-four.

12 Where are you housed?

13 A. Goodman Correctional Facility.

14 Q. And what is your sentence?

15 A. Fifteen years, violent, 85.

16 Q. For what charge?

17 A. Burglary first.

18 Q. When was your trial?

19 A. In June.

20 Q. 2011?

21 A. Yeah, 2011.

22 Q. And who was your attorney at that trial?

23 A. Cornelius Riley.

24 Q. Was he appointed or retained?

25 A. Appointed.

1 Q. When were you arrested?

2 A. 2011, January. I think it was the 26th.

3 Q. Okay. Late January 2011?

4 A. Yes, ma'am.

5 Q. So your trial was only six months after your
6 arrest; correct?

7 A. Yes, ma'am.

8 Q. How old were you at the time of your arrest?

9 A. Seventeen.

10 Q. Between January and June, were you at home or
11 in jail?

12 A. I was in Kershaw County Detention Center.

13 Q. The entire six months you were in jail, was
14 Mr. Riley your attorney?

15 A. Yes, ma'am.

16 Q. Did he come and meet with you at the jail?

17 A. Maybe two to three times at the most.

18 Q. And did he review -- did he bring your
19 discovery down to the jail and review it with you?

20 A. The only time I seen anything like that was two
21 weeks before the trial.

22 Q. Two weeks before trial?

23 A. Yeah, the video and stuff like that.

24 Q. You were charged with burglary in first degree;
25 is that right?

1 A. Yes, ma'am.

2 Q. Were there any other charges or was it just one
3 warrant for burglary from this incident?

4 A. No, just the burglary.

5 Q. Why were you charged with burglary? What did
6 the State say you did?

7 A. Because it was at nighttime I entered a
8 dwelling.

9 Q. You entered a house at nighttime?

10 A. Yes, ma'am.

11 Q. And what was taken?

12 A. I think it was a video game system, and that
13 was it.

14 Q. Not a gun?

15 A. No.

16 Q. Nothing like that?

17 A. No.

18 Q. Were the people even home? Was there ever any
19 allegation people were home at the time?

20 A. No. Nobody was there.

21 Q. Nobody was hurt; correct?

22 A. No.

23 Q. It's just that it happened at night and a video
24 game system was taken?

25 A. Yes, ma'am.

1 Q. You were caught on video?

2 A. Yes, ma'am.

3 Q. What did the video show?

4 A. Two people walking up to a house.

5 Q. Did he -- Mr. Riley show the video to you
6 before trial?

7 A. Yes. Like, two weeks when he -- when he came
8 for the -- getting ready for the trial.

9 Q. Okay. The two weeks before the trial, you saw
10 the video?

11 A. Yes. Because before then, there was allegation
12 that there was no video.

13 Q. Okay. So there was confusion about whether a
14 video existed or not?

15 A. Yes, ma'am.

16 Q. Was there a co-defendant?

17 A. Yes, ma'am.

18 Q. Had the co-defendant given any statements about
19 you?

20 A. Yes.

21 Q. The co-defendant had told police that you were
22 there and that you were involved?

23 A. Correct.

24 Q. So you knew if you went to trial, that would be
25 something you would have to deal with?

1 A. Correct.

2 Q. And then ultimately later, you found out about
3 the video as well?

4 A. Right.

5 Q. So Mr. Riley, you said he came down to the jail
6 to meet with you two or three times?

7 A. Right.

8 Q. So tell -- to the best of your memory, the
9 first time he came down to meet with you, what
10 happened during that meeting?

11 A. Mr. Riley didn't really do or say much. It
12 was -- I guess it was his assistant or something
13 like that he always brought with him.

14 Q. Uh-huh.

15 A. He was the main one that talked with me and
16 interacted with me during the preparing or whenever
17 they had a plea deal or anything like that.

18 Q. They didn't have a plea or anything, is that
19 what you just said?

20 A. No. He was the one, like, describing the plea
21 deals and stuff like that or the offers.

22 Q. Okay. So it was Riley and a co-worker of his?

23 A. Right.

24 Q. And they came down the first time they met with
25 you --

1 A. Yeah.

2 Q. -- and told you there was already a plea offer?

3 A. Right.

4 Q. Okay. And what was that plea offer?

5 A. YOA -- a YOA sentence.

6 Q. Active? Was it -- do you remember specifically
7 if anyone said the words active YOA or any other
8 description other than a YOA sentence?

9 A. I'm not really sure.

10 Q. You just don't remember?

11 A. No, ma'am.

12 Q. Okay. And so tell me what was discussed after
13 they told you that was your plea offer.

14 A. Really just offering me a deal and stuff like
15 that and said it was a pretty good deal and
16 everything. And I was -- told them I was -- I
17 didn't want to plead to anything because I had other
18 charges in Lancaster County with probation, you
19 know. I didn't want to get hit with a probation
20 violation. He really didn't describe anything to
21 me, he just said okay.

22 Q. Okay. Let's talk about that. In Lancaster
23 County, you had previously been to court; right?

24 A. Yes, ma'am.

25 Q. Do you remember when that was?

- 1 A. It was October 2010.
- 2 Q. So a few months before this arrest?
- 3 A. Right.
- 4 Q. You went to court in Lancaster for what
- 5 charge -- what charges?
- 6 A. Marijuana distribution.
- 7 Q. And, like, a receiving stolen goods?
- 8 A. Yes, ma'am.
- 9 Q. And what was your sentence? Did you enter a
- 10 plea in Lancaster?
- 11 A. Yes, ma'am.
- 12 Q. And what was your sentence in November or -- of
- 13 2010?
- 14 A. Five years' probation.
- 15 Q. Five years --
- 16 A. PTUP probation.
- 17 Q. Five years' probation. PTUP upon what?
- 18 A. The -- I think it was \$2,000.
- 19 Q. Restitution?
- 20 A. Yeah, restitution.
- 21 Q. Do you know what was suspended over that
- 22 probation? What kind of sentence was suspended?
- 23 A. I think it was another YOA sentence.
- 24 Q. All right. So YOA suspended on five years'
- 25 probation?

1 A. Right.

2 Q. All right. So then going further, you were
3 arrested in January of 2011. And then how long
4 after your arrest was it before Mr. Riley came to
5 see you for that first meeting?

6 A. Well, I had to see him at the courthouse when I
7 had a bond, so that was a month after I got
8 arrested.

9 Q. So February 2011 --

10 A. Right.

11 Q. -- you had a bond-setting?

12 A. Yeah. General sessions.

13 Q. And what kind of bond did you get?

14 A. 50,000.

15 Q. And Mr. Riley represented you at that?

16 A. Yes, ma'am.

17 Q. Okay. And is that the day he gave you the plea
18 offer or is it his first time coming to the jail
19 that he gave you the plea offer?

20 A. No. I got a plea deal then too, the YOA.

21 Q. You got the plea offer when you were at the
22 courthouse?

23 A. Yes, ma'am.

24 Q. For your bond-setting?

25 A. Yes, ma'am.

1 Q. Mr. Riley said you got a plea offer for a YOA
2 sentence?

3 A. Right.

4 Q. And he told you it's a good deal?

5 A. Yeah.

6 Q. And your response is what?

7 A. I don't want to take a deal, I'm scared I'm
8 going to get a probation violation in my county.

9 Q. All right. And what did Mr. Riley say?

10 A. He went and talked it over with Mr. Ron Moak.

11 Q. Did he tell you that he can get in touch with
12 Lancaster probation and try and work something out?

13 A. He didn't describe anything about the
14 probation.

15 Q. Did Mr. Riley know what was hanging over your
16 head in Lancaster, how much time you were facing?

17 A. Yes. I've told him multiple times I had
18 probation in Lancaster County.

19 Q. Okay. But did he know what you were facing if
20 you got violated?

21 A. I'm not exactly sure.

22 Q. You're not sure.

23 Did he tell you that any plea agreement, a part
24 of that agreement could be a concurrent sentence to
25 a probation violation? Did he tell you that was an

1 option?

2 A. No, ma'am.

3 Q. All right. So that was your first meeting with
4 Mr. Riley. Tell -- and he said, I'll talk to the
5 solicitor, see what we can work out?

6 A. Right.

7 Q. That's how you left things?

8 A. Yes. I left and then the plea deal went off
9 from there.

10 Q. You didn't actually reject that plea offer?

11 A. No.

12 Q. You never said I don't want that plea?

13 A. Right.

14 Q. He said he'd talk with the solicitor and see
15 what he could work out?

16 A. Right.

17 Q. So tell me about your second meeting with
18 Mr. Riley.

19 A. That was probably a month or two after that.

20 Q. Okay.

21 A. It was -- another plea had occurred and it's --
22 I think it's -- if I'm not mistaken, I think it was
23 for two to three years.

24 Q. Okay. He told you your new plea offer was for
25 two to three years. And what was your response?

1 A. I still had my probation pending, and my family
2 and my girlfriend at the time was still trying to
3 pay it off before I pled and everything.

4 Q. Probation pending, family trying to pay off
5 restitution. What was your plan?

6 A. I signed the bond reduction sheet because they
7 had one for bond reduction and one for plea deals
8 any time you're dealing with Kershaw. So I signed
9 one for the bond reduction thinking maybe the bond
10 would get reduced by the time my probation got paid
11 off. So I signed the bond reduction sheet.

12 And then when I went up for a bond reduction,
13 it was denied. I think it was Mr. Goldsmith, he
14 denied the bond. And then Mr. Moak -- or that was
15 when the second plea was brought to me.

16 Q. The two-to-three-year --

17 A. Yes, when I was up for the bond reduction.

18 Q. Did you tell your attorney that you did not
19 want to plead to two to three years?

20 A. No. I just told him I didn't want to plead at
21 that time because of the probation -- I was scared
22 of the probation violation with the charges I
23 already had.

24 Q. You just were trying to resolve the probation
25 cases?

1 A. Right, and then work on this one.

2 Q. Okay. What was Mr. Riley's response?

3 A. He was just like, the deal is pretty good and
4 he wanted me to plead to it.

5 Q. Did he tell you if you don't accept this plea,
6 it will -- the offer will go away?

7 A. No. He didn't say any of that.

8 Q. Did he tell you, let me try and get an
9 agreement for concurrent time on your probation
10 violation and the sentence?

11 A. No. He didn't mention anything about
12 probation.

13 Q. He didn't come up with any ideas that were
14 responsive to your concerns?

15 A. No.

16 Q. Okay. Tell me about the next time you saw him.

17 A. That was the two weeks' notice of the trial.

18 Q. He came to the jail?

19 A. Yeah. That's the only -- one of the only times
20 he's came to the jail.

21 Q. Okay. So that was the only time you actually
22 saw him at the jail?

23 A. Right.

24 Q. And that's when he went over the video with you
25 and some discovery?

1 A. Yeah, the video, the statement and everything,
2 all the evidence.

3 Q. Did he present you with a plea offer that day?

4 A. No.

5 Q. Okay. When was the next time you got a plea
6 offer?

7 A. Jury selection.

8 Q. Jury selection.

9 And what was your plea offer that day?

10 A. Around -- I think it was 12 years.

11 Q. And what was your response to that?

12 A. That's a lot.

13 Q. Okay. So you didn't want to take that?

14 A. No.

15 Q. During all of your conversations with
16 Mr. Riley, each meeting, including the first one,
17 did you discuss whether or not you -- what your goal
18 was, like whether you should have a trial or whether
19 you should have a plea, whether a trial is a good
20 idea? Did you discuss the merits of the case?

21 A. No. The trial really just popped up because
22 Ron Moak, I guess he was irritated that I didn't
23 take the first two plea deals. I mean -- I mean, I
24 wasn't -- that wasn't the plan to go to trial or
25 anything like that, I was just trying to postpone

1 and get the probation paid for.

2 Q. You didn't want a trial?

3 A. No, ma'am.

4 Q. The -- from all of your meetings with
5 Mr. Riley, you weren't asking him -- saying, I
6 insist on a jury trial?

7 A. No, ma'am.

8 Q. That was never how your conversations went?

9 A. No, ma'am.

10 Q. Understanding that you were trying to get this
11 PTUP probation paid off so it would be resolved, did
12 Mr. Riley ever on any occasion tell you if you don't
13 take these plea offers, they're going to go away?

14 A. No, ma'am.

15 Q. Did he ever tell you you have to make this
16 decision now or you're going to end up facing trial?

17 A. No, ma'am.

18 Q. Did he ever offer to communicate with Probation
19 and try and get a concurrent sentence?

20 A. Not that I know of.

21 Q. Or ask the solicitor in Kershaw if they'd agree
22 to a concurrent sentence?

23 A. Nope.

24 Q. Now, you knew you were charged with first
25 degree burglary; correct?

- 1 A. Correct.
- 2 Q. Did Mr. Riley tell you what those charges -- I
- 3 mean, what sentence that carried?
- 4 A. Not really, not until a few months later.
- 5 Q. Was it before trial?
- 6 A. Yes, it was before trial.
- 7 Q. Okay.
- 8 A. Around a week before the trial.
- 9 Q. A couple weeks before trial?
- 10 A. Yeah, when we was going over the statute of
- 11 limitations, going -- while we was going over the
- 12 evidence.
- 13 Q. So two weeks before trial, he told you that
- 14 burglary first carries what?
- 15 A. Fifteen to life, if I'm not mistaken.
- 16 Q. Did you know that before he said it?
- 17 A. No.
- 18 Q. So when you had the discussion about the YOA
- 19 offer, when you had the discussion about the
- 20 two-to-five-years offer or any other offer, did you
- 21 know what sentence burglary carried?
- 22 A. No.
- 23 Q. Did you know how many years you could be facing
- 24 if you were violated for probation, the maximum?
- 25 A. Yeah.

1 Q. What was that?

2 A. Five.

3 Q. So you were only facing five years on the
4 probation violation?

5 A. Right.

6 Q. Did you understand at any point that if you
7 lost the trial, you would get no less than 15 years?

8 A. No, ma'am.

9 Q. Did you know it would be a strike and
10 85-percent time?

11 A. No, ma'am.

12 Q. Why did you go to trial?

13 A. They brought me the two weeks' notice and
14 that's -- I mean, I really didn't have a choice.

15 Q. They brought you two weeks' notice?

16 A. Right.

17 Q. And at that time, were any of your prior plea
18 offers still available to you?

19 A. No, ma'am.

20 Q. Did you think you would win at trial?

21 A. Not really.

22 Q. You knew you were likely to be convicted?

23 A. Yes, ma'am.

24 Q. When the jury -- after your trial, when the
25 jury had the case and they were deliberating, did

1 you ever hear anyone, your lawyer or anyone else,
2 mention that the jury was deadlocked or had said
3 that they could not make a decision?

4 A. Yes, ma'am.

5 Q. When did you hear that or who said that?

6 A. Mr. Riley and his assistant.

7 Q. Did they just tell you that -- I mean, was it
8 said in open court?

9 A. No. They was just talking amongst themselves.

10 Q. Okay.

11 A. I think that was the second day. They went
12 into deliberation and the next day they were still
13 trying to figure out a verdict.

14 Q. The second day they were still trying to figure
15 out a verdict?

16 A. Yes, ma'am.

17 Q. Did Mr. Riley say that he thought they were
18 having a hard time reaching a decision or did he say
19 the jury has said they can't reach a decision?

20 A. No. He was.

21 Q. He what?

22 A. He was saying it amongst us that -- he was
23 saying how good he felt about the trial and
24 everything like that.

25 Q. Oh. Riley felt good about the trial?

1 A. Yeah. He said that most of the time when they
2 take so long like that, it was a good thing.

3 Q. Oh. So he was just explaining to you why the
4 jury was taking so long?

5 A. Right.

6 Q. And he said he thought that was a good thing?

7 A. Right.

8 Q. Okay. He didn't tell you that the jury had
9 said anything about what their status was?

10 A. No.

11 Q. Okay. After the conviction, you received a
12 15-year sentence; correct?

13 A. Correct.

14 Q. Did you ask your lawyer to do anything?

15 A. Yes. I asked him to appeal.

16 Q. To appeal. Did you ask him to do anything
17 else?

18 A. No. That's all I knew -- knew to ask for.

19 Q. He did file a motion for a new trial?

20 A. Right.

21 Q. And that was right after your trial, which was
22 in June of 2011.

23 Did you ever go to court for a hearing on that
24 motion for new trial?

25 A. No, ma'am.

1 Q. What happened after that?

2 A. As soon as I went back to the county, I wrote
3 all the facts that I knew of that maybe we could go
4 back on or issues. And then the Department of
5 Corrections, I got a letter from them with a motion
6 for new trial, and didn't hear from them for months,
7 turned into years; family kept calling, didn't hear
8 anything. He pushed it off, pushed it under the
9 rug.

10 I kept writing him, didn't hear anything back.
11 And then finally, after a few years went by, still
12 haven't heard anything or got anywhere with the new
13 trial motion, I had a family assistance, who is a
14 public defender, he asked me to put in a PCR and ask
15 for assistance because you have to do it in one
16 year, and the PCR was denied because the motion for
17 a new trial was still not heard.

18 So finally I -- that was in the recent year and
19 a half, two years, the motion finally got heard, and
20 that's how I've been able to proceed with this PCR
21 this time.

22 Q. When did you finally find out that the motion
23 for new trial was ruled on?

24 A. Around a year and a half ago. I think it was
25 January or February a year and a half ago.

1 Q. So, like, 2016?

2 A. 2015, I think it was.

3 Q. Did you ever -- did you contact the public
4 defender's office and tell them you wanted to drop
5 or withdraw your motion, or was it just denied
6 without hearing?

7 A. No. I had documents sent to me from maybe the
8 district attorney, if I'm not mistaken, and he -- it
9 explained in his motions that you can't proceed with
10 the PCR while the motion is still open. And then I
11 also had documents sent to me about -- they asked to
12 do away with the motion for a new trial also. And
13 that's all I had.

14 Q. Did you -- you had originally asked Mr. Riley
15 to file notice of appeal; right?

16 A. Right.

17 Q. And instead, he filed motion for new trial?

18 A. Right.

19 Q. Once the motion for a new trial was ended, did
20 you expect a notice of appeal to be filed for your
21 case so you could still meet your appeal?

22 A. Yes. I just figured that was the first step to
23 the appeal.

24 Q. Right. So did you expect his office to do what
25 you had asked?

1 A. Yes, ma'am.

2 Q. Did you ever talk -- you, personally, did you
3 ever talk to anybody else about that?

4 A. Like lawyer-wise?

5 Q. Yes. Like Mr. Riley or anyone else in his
6 office about your desire for an appeal?

7 A. No, ma'am.

8 MS. GOLDBERG: All right. No further
9 questions.

10 MS. KINARD: May it please the Court.

11 THE COURT: Yes, ma'am. You may proceed.

12 CROSS-EXAMINATION

13 BY MS. KINARD:

14 Q. Good afternoon, Mr. Hinson.

15 A. Good afternoon.

16 Q. I want to clear up a few issues that were
17 raised during your testimony. Did you testify that
18 there was some confusion regarding the existence of
19 the surveillance video or the security video?

20 A. During the trial?

21 Q. Pretrial, I believe, when you were describing
22 the incident.

23 A. Yes, ma'am.

24 Q. Okay. Can you go into that a little bit more?

25 A. What was -- I mean, we didn't really

1 communicate that much, but when we did communicate
2 at court, there was no -- it was no evidence,
3 really, from the crime, which would be the video.
4 He didn't have any knowledge of the video at the
5 time. They were still -- I mean, there was word
6 that was spoken of it, but there was never any in
7 his possession.

8 Q. Okay. So it was just that he didn't have a
9 copy of the video?

10 A. Right.

11 Q. Okay. Your first plea offer, the YOA sentence,
12 am I correct that you talked to Mr. Riley about it,
13 he said he'd check with Mr. Moak about it, but you
14 never conclusively rejected the offer?

15 A. No. I never said I didn't want it.

16 Q. And did a similar thing happen with the next
17 one, with the two to three years?

18 A. Yes, ma'am.

19 Q. And then I believe you also testified that you
20 were given your two weeks' notice for the trial and
21 you didn't have a choice as to whether to plead or
22 go to trial.

23 A. Yes, ma'am.

24 Q. However, you also testified that you received a
25 12-year plea offer during jury selection; is that

1 correct?

2 A. Yes, ma'am. Well, when we was picking the
3 jury, that morning, that was 12 years. I was 17
4 years old. I was pretty scared of that 12 years.

5 Q. And Ms. Goldberg also asked you about whether
6 you knew of the mandatory minimum that burglary
7 first carries, which is 15 years.

8 A. Yes, ma'am.

9 Q. And you testified that you weren't aware of
10 that until about two weeks before trial.

11 A. Yeah.

12 Q. So you knew at the time of the 12-year plea
13 offer that that was still a better deal than 15
14 years?

15 A. Yes, ma'am.

16 Q. Okay. Did you testify that Mr. Moak was
17 irritated -- you thought he was irritated that you
18 wouldn't take a plea offer?

19 A. Yes, ma'am.

20 Q. Okay. I just wanted to make sure I understood
21 that.

22 And you testified that one of the reasons you
23 didn't want to take the plea offer is because you
24 were afraid of violating your probation in Lancaster
25 County; is that correct?

1 A. Yes, ma'am.

2 Q. And you conveyed that information to Mr. Riley?

3 A. Yes, ma'am.

4 Q. And you believe he understood that information?

5 A. That was before each -- both plea deals, the
6 first two.

7 Q. And tell me again what his response was when
8 you brought that up.

9 A. He was going to mention it to Mr. Moak.

10 Q. And you made your acceptance of those plea
11 offers contingent upon him working that out, meaning
12 you didn't want to accept it until you heard back
13 from Riley?

14 A. Right, because they never told me I was or
15 wasn't going to get violated in Lancaster County. I
16 just assumed I was. I didn't know.

17 Q. Okay. Did Mr. Riley know about your prior
18 conviction -- well, I'm sorry. He did, but did he
19 know what it was for, that it was receiving stolen
20 goods?

21 A. Yes, ma'am.

22 Q. Okay. And I believe that you testified
23 throughout that you told Mr. Riley you wanted a
24 plea, you wanted, essentially, the best deal?

25 A. Yes, ma'am.

1 Q. And during part of those discussions, did he
2 talk to you about pros and cons of a plea deal?

3 A. Not really. He was just saying that he and
4 Mr. Moak had worked out some pretty good plea deals
5 for me.

6 Q. He told you he felt they were good deals and
7 you should take them?

8 A. Right.

9 Q. Okay. And each of those plea offers, did he
10 show you anything in writing?

11 A. No, ma'am.

12 Q. Okay. Did you realize whether he said it to
13 you or not that by rejecting plea offers or by not
14 accepting plea offers, that meant you were heading
15 toward trial?

16 A. No, ma'am.

17 Q. When you met with Mr. Riley did he discuss with
18 you the elements of the charge of burglary first
19 degree?

20 A. No, ma'am.

21 Q. But you testified earlier you knew that you had
22 been convicted of it because --

23 A. Yeah, only at night. That's the only reason --
24 yeah. That's what he told me was the only reason I
25 was charged with burglary first was because it was

1 at night.

2 Q. And that's what made it first degree?

3 A. Yes.

4 Q. Okay. Did he talk to you about what we call
5 collateral consequences, meaning the 85 percent or
6 the violent classification?

7 A. No, ma'am.

8 Q. No? Okay. All right. I have no further
9 questions. Thank you.

10 MS. GOLDBERG: Briefly, Your Honor?

11 REDIRECT EXAMINATION

12 BY MS. GOLDBERG:

13 Q. Mr. Hinson, in response to me and in response
14 to the State, you had mentioned that you were
15 concerned about his probation violation. What did
16 you think would happen if you pled to something in
17 Kershaw?

18 A. I would get extra time plus whatever I pled to
19 in Kershaw.

20 Q. You thought it would be added together?

21 A. Right, with the probation violation.

22 Q. Did you tell Mr. Riley that was your concern?

23 A. Yes.

24 Q. Did he ever explain to you the possibilities --
25 the different possible outcomes?

1 A. No.

2 Q. Did he ever tell you that that wasn't
3 automatically what was going to happen?

4 A. No, ma'am.

5 Q. He just allowed you to continue to have that
6 belief?

7 A. Yes, ma'am.

8 Q. Thank you. Nothing further.

9 THE COURT: All right, sir. You may come down.
10 Thank you.

11 MS. GOLDBERG: Your Honor, the Applicant has no
12 further witnesses. I did want to put on the
13 record -- I meant to do this in the beginning -- the
14 amended application has allegations A through F.

15 THE COURT: Right.

16 MS. GOLDBERG: We are actually -- some of those
17 I'm going to just -- are just from the record, so
18 I'm just going to argue those again. But allegation
19 C, we're actually -- I'm going to withdraw, in
20 further looking at that.

21 THE COURT: Which one?

22 MS. GOLDBERG: C. In further looking at the
23 transcript, I did decide that there was a sufficient
24 objection in the record on the next page, so I'm
25 withdrawing C.

1 THE COURT: C as in cowboy?

2 MS. GOLDBERG: C as in cowboy.

3 THE COURT: All right.

4 Any witnesses, Ms. Kinard?

5 MS. KINARD: Yes, Your Honor. The State calls
6 Cornelius Riley.

7 THE COURT: Come around, Mr. Riley.

8 CORNELIUS J. RILEY

9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 DIRECT EXAMINATION

12 BY MS. KINARD:

13 Q. Thank you for being here, Mr. Riley.

14 A. Yes, ma'am.

15 Q. All right. Let's start from the beginning. At
16 the time of this trial, how long had you been
17 practicing law?

18 A. Twenty-five years, I think it was.

19 Q. What percentage of that was criminal defense?

20 A. Say again.

21 Q. What percentage of that was criminal defense?

22 A. Well, I had been in private practice for 15
23 years. And during that time, it was probably 50
24 percent civil, 50 percent criminal. Then I was, for
25 four years, an assistant solicitor in the 14th

1 Circuit, and then, you know, obtained this
2 appointment as a public defender in 2006.

3 Q. So for about the last six years of your
4 practice you were a public defender?

5 A. Yeah, the last nine years.

6 Q. Nine years. Excuse me.

7 And Mr. Hinson was appointed to you?

8 A. Yes. I think I appointed his case to myself.

9 Q. Okay. Why was that?

10 A. No particular reason. It was just a new case
11 that needed to be appointed to one of us. At that
12 time I was doing the appointments.

13 Q. Okay. When you met with him, can you discuss
14 your first few meetings with him and how those went?

15 A. Well, during Mr. Hinson's testimony and,
16 obviously, since I knew this hearing was coming up,
17 I tried to recollect specifics about meeting with
18 Mr. Hinson. I just cannot recall the specifics.

19 One thing that I can say for certain is that we
20 did have more than one conversation about what to do
21 with this charge against him. We did discuss the
22 initial plea offer and the ramifications of that; we
23 did discuss -- after that was pulled off the table,
24 we did discuss where the case stood and what the
25 ramifications would be of taking the then-existing

1 plea offer as opposed to going to trial. Potential
2 sentences, pros and cons, we discussed all of that
3 at various times, not any one single time.

4 As to the initial plea offer, the YOA plea
5 offer, my recollection is that Mr. Hinson just could
6 not make a decision. And as the old saying goes, if
7 you choose not to decide, you still have made a
8 choice.

9 I tried to delay the solicitor as long as I
10 could to keep that an active offer. Mr. Hinson did
11 not want to go to trial, but he did not want to
12 plead. And I recall we discussed many times, what
13 other choice was there? At any rate, the solicitor
14 ended up pulling that offer off the table after I
15 delayed him for as long as I possibly could.

16 Q. In terms of that offer and any of the other
17 plea offers, were you aware of the charges he had
18 against him in Lancaster?

19 A. Oh, sure.

20 Q. So you were aware that he was on probation?

21 A. Yes.

22 Q. Did he express concern to you that he was
23 scared he would violate?

24 A. He did.

25 Q. And what was your response to that?

1 A. Well, I explained to him that that wasn't
2 anything I had any control over and that Lancaster
3 County most probably would file a petition to
4 violate his probation. That was just something that
5 he was going to have to face up to. I do recall
6 telling him that, most likely, if Lancaster did move
7 forward to revoke his probation, that would be --
8 whatever he got, if the Court found that he did
9 violate, that would be probably run concurrent with
10 whatever he happened to get in Kershaw County; the
11 probability was that it would be.

12 Q. So that's contradictory to his testimony that
13 you told him it would likely be concurrent, but it
14 would be up to Lancaster County.

15 A. Exactly. Yes.

16 Q. And did that discussion take place with each
17 new plea offer?

18 A. Well, my recollection is there was only really
19 two plea offers. I don't have any recollection of
20 three or more. The first one was a plea to YOA.
21 Obviously, I would have -- and I did try to get the
22 solicitor to agree to a suspended YOA, which he
23 wouldn't agree to. And then when that was
24 withdrawn, we were back to a trial or plea to burg
25 first. If there was anything between, I just don't

1 recall.

2 Q. He mentioned a two-to-three-year plea offer.

3 Do you recall that?

4 A. I don't recall that.

5 Q. Do you recall a 12-year plea offer --

6 A. No.

7 Q. -- at jury selection? No. Okay.

8 Is it fair to say that -- and this is my
9 interpretation of your testimony -- that his failure
10 to make a decision led to the offer being revoked?

11 A. Exactly. I don't remember ever telling the
12 solicitor that he had rejected that. But my excuses
13 as to why he had not made a decision were running
14 kind of thin; from the solicitor's perspective, not
15 from mine.

16 Q. Do you believe that Mr. Hinson knew there was a
17 time limit to accept that?

18 A. I don't think so. I don't remember the
19 solicitor stating any time limit.

20 Q. So you interpreted it as an open-ended offer?

21 A. Well, I knew he wasn't going to wait forever,
22 meaning the solicitor. It was a -- just a matter
23 that, you know, every time I met with that solicitor
24 in regard to Hinson's case or any other case, he
25 would bring it up, you know, what decision has

1 Hinson made?

2 Q. So do you think that Hinson understood that it
3 wouldn't last forever, that he would have -- it
4 would go away eventually?

5 A. I feel certain that I explained to him that it
6 wasn't going to be an open offer forever. But there
7 again, I don't have any specific recollection of
8 telling him that.

9 Q. And one follow-up question about that: Do you
10 recall Mr. Hinson saying that he was trying to pay
11 off his restitution before he pled?

12 A. I remember him mentioning that, yes.

13 Q. Did you provide any advice about that or any
14 commentary to him?

15 A. If I did, I don't remember or I don't recall.

16 Q. Okay. Now, a few of his allegations were not
17 brought forward during testimony from Mr. Hinson,
18 but I'm going to ask you about those regardless.

19 Allegation B is regarding failure to ensure the
20 jurors did not witness him in leg shackles.

21 A. Yes, ma'am.

22 Q. And you and I have spoken briefly about that
23 before. Could you tell me what your opinion is on
24 that allegation?

25 A. I take full blame for that. Let me get the

1 right page of the transcript. What I think
2 happened --

3 Q. I believe it's page 132.

4 A. Right. That's when I -- the judge asked, call
5 your next witness, and I called Mr. Hinson. He came
6 out from around from where he was seated at the
7 table. And that was the first time that I -- that
8 it registered in my mind that he was still shackled.
9 I take full blame for it. I should have noticed it
10 and made sure that didn't happen.

11 Judge Manning was perturbed, as you can
12 imagine. I was also. He did ask -- he excused the
13 jury. So, you know, I take full responsibility for
14 that mistake.

15 Q. Moving on to allegation D, failure to object to
16 admission for the prior conviction --

17 THE COURT: Just hold on a minute.

18 MS. KINARD: I'm sorry.

19 THE COURT: The application says: Failing to
20 ensure the jurors did not witness the Applicant in
21 leg shackles. Looks like at this point the Judge
22 had excused the jury and that's when this colloquy
23 about taking the shackles off took place. Any
24 evidence that the jury ever saw the leg shackles? I
25 mean --

1 MS. KINARD: Respectfully, Your Honor --

2 THE COURT: Maybe Ms. Goldberg can tell me.

3 MS. KINARD: That's not my reading of the
4 transcript, nor is that Mr. Riley's recollection.
5 It looks to me that --

6 THE COURT: Show me then.

7 MS. KINARD: Yes, sir. On page 131, the prior
8 witness is excused. At the bottom of 131,
9 Mr. Hinson is called forward, and the jury is not
10 excused until line 12. And it seems --

11 THE COURT: All right. I see. He says go
12 back, son.

13 MS. KINARD: Right, go back, son.

14 THE COURT: All right. I'm with you. I was
15 reading -- I see now. I'm sorry. Go ahead.

16 MS. KINARD: Thank you, Your Honor.

17 BY MS. KINARD:

18 Q. To the receiving stolen goods conviction, what
19 is your understanding of the requirement of
20 admitting that kind of conviction if a defendant is
21 going to testify?

22 A. Well, essentially, it has to be a conviction
23 within the previous ten years and, secondly, it can
24 only be introduced if it's a crime of moral
25 turpitude. And receiving -- RSG is. The judge was

1 correct.

2 Q. And based on the transcript, you do believe you
3 made an objection?

4 A. An objection on the receiving stolen goods?

5 Q. Yes, sir.

6 A. I don't think I did. I think that -- I
7 couldn't help but agree with the judge that it was
8 entitled to come in. On page 113, the judge said:
9 Talk me out of admitting -- he says -- I'm adding
10 the word admitting. But talk me out of admitting
11 the receiving stolen goods, Mr. Riley, I don't think
12 you can. But, you know, I basically agree with him.

13 Q. I misphrased that. Is there a possible
14 objection you could have made?

15 A. Right. Well, no, not really. I don't think
16 there is. It wasn't in the last ten years and it
17 was a crime of moral turpitude. It was going -- I
18 mean, even if I tried to kick up as much dust as I
19 could on that issue, it was an issue I was doomed to
20 lose.

21 Q. All right. The next allegation is about
22 failure to object to an Allen charge. Do you recall
23 an Allen charge being given in this trial?

24 A. Yes.

25 Q. Do you recall the jury ever stating that they

1 were deadlocked?

2 A. I do not. And the record -- I mean, the
3 transcript doesn't reflect that they ever -- they
4 sent out to the judge three different questions, but
5 I did not see where any of them indicated that they
6 were deadlocked.

7 It could be that the judge decided that well --
8 well, let me back up. The transcript does not show
9 the date or time of day that each of these
10 occurrences happened in court. The date is pretty
11 obvious, as you read through the transcript, but I
12 don't know what time of day it was on the second day
13 of the jury's deliberations when the judge started
14 thinking about an Allen charge.

15 It could be that the judge just felt that with
16 three different questions being handed up by the
17 jury foreman, two of which, I think, or at least one
18 of which, required the judge to recharge the jury on
19 a particular issue, the judge reached the conclusion
20 that maybe an Allen charge was called for or was
21 going to be necessary.

22 He starts -- on page 185 is when the judge
23 starts indicating to us that he was thinking in
24 those terms. And we may have discussed it in
25 chambers. In fact, he says that: I have discussed

1 this with the lawyers in chambers. I didn't object
2 to it, no. Perhaps I should have.

3 Q. But your recollection, and based on the record,
4 is that it probably resulted from a chambers
5 discussion?

6 A. Resulted from what?

7 Q. Resulted from a discussion in chambers.

8 A. Yes. I mean, the --

9 Q. On page --

10 A. As the judge said, I've discussed this with the
11 lawyers in chambers, and the bottom line is I can
12 give the jury the Allen charge, so I'll read them
13 the Allen charge, unless the lawyers object.
14 Neither side objected.

15 Q. Now, you've had, obviously, the opportunity to
16 review this transcript in preparation for today.

17 A. Yes.

18 Q. Did you re-read the Allen charge?

19 A. Not in its entirety, no.

20 Q. Do you recall whether you had any issues with
21 it at the time?

22 A. No. I mean, I did not.

23 Q. You did not. Okay.

24 The last allegation is failure to file a notice
25 of appeal after the motion to reconsider was

1 disposed of. Were you still employed by the Public
2 Defender as of March 24th, 2016?

3 A. No. Let me find -- give me just a second,
4 okay?

5 Q. Certainly.

6 A. The hearing -- according to the order denying
7 my motion, the hearing on it was the 18th of
8 February in 2016, but the judge's order was signed
9 on the 24th of March of 2016. As of the date of the
10 hearing, I would have been retired for four -- or
11 was retired for four and a half months. As of the
12 date the order was signed, I had been retired for
13 five and a half months.

14 Q. Do you --

15 A. After I retired, I heard nothing about this
16 case. Mr. Hinson's case was not the only one that
17 had not yet been disposed of at the time of my
18 retirement.

19 Q. Did you hear about other cases after your
20 retirement? Did you hear of other cases after your
21 retirement? Was this unusual?

22 A. No. I have not heard about any of my cases
23 after my retirement. Periodically, in order -- just
24 for the sake of finding out what happened to clients
25 that I knew and had dealt with whose cases are still

1 pending, I will check the clerk of court's public
2 index to see the status of cases. But that's my
3 only source of information.

4 Q. Do you have any information as to who
5 represented Mr. Hinson at that motion hearing?

6 A. No, I don't know who.

7 Q. Now that we've covered those allegations
8 specifically, I do want to step back and ask a few
9 more background questions. I believe you testified
10 that you spoke to Mr. Hinson about the elements of
11 the charge of burglary first degree.

12 A. Yes, I did.

13 Q. And --

14 A. I think he testified pretty accurately that he
15 understood the elements.

16 Q. And he understood -- do you believe he
17 understood the time that he faced and the collateral
18 consequences?

19 A. I believe he did, yes.

20 Q. Do you remember -- when you talked to him about
21 that, do you think he knew of the 15-year minimum
22 before two weeks before trial?

23 A. He did.

24 Q. Do you think he knew that in order to properly
25 reject those plea offers?

1 A. In order to what now?

2 Q. In order to consider and/or reject those plea
3 offers.

4 A. Well, I wouldn't have stated it in those terms.
5 But, I mean, obviously, it's either, you know,
6 accept -- you know, here's the plea offer, you know,
7 it has advantages and disadvantages, but if you go
8 to trial and are convicted, here's the mandatory
9 minimum.

10 Q. What did he tell you were his understanding of
11 the facts of the case?

12 A. Say again.

13 Q. What were his facts of the case? What was his
14 version?

15 A. That he was innocent, that he didn't do it.

16 Q. He maintained his innocence throughout?

17 A. Yes.

18 Q. Did you feel like you had quality conversations
19 with him and he understood your discussions?

20 A. I think our conversations were good. I think
21 he understood what I was telling him, but from my
22 perspective, they were frustrating because it seemed
23 like what he really wanted was for the whole thing
24 to just go away. That's what he really wanted.

25 Q. In your representation, did you or your office

1 file a discovery or a Rule 5 motion?

2 A. Yes. That was filed on the 8th of February
3 2011.

4 Q. Do you believe you received everything the
5 State had to offer in terms of discovery?

6 A. Yes. Either I -- I don't remember if I sent
7 him copies or we just went over it in the jail.

8 Q. He testified that it was about two weeks before
9 trial before he saw the video. You agree with that
10 assessment?

11 A. No, ma'am, I don't agree with that.

12 Q. When do you believe he saw the video?

13 A. Well, it was -- somewhere in the transcript, I
14 think the judge had asked how long I had had the
15 video because I was -- as it was in the course of my
16 moving to exclude the video. And I think I said
17 three or four months. That was as of the time of us
18 being in court on occasion at trial. So that would
19 have been March or -- February or March of 2011.

20 Q. And you believe you would have shown it to him
21 relatively soon after receiving it?

22 A. I don't specifically remember when I showed it
23 to him. And I can't say that the day I got it, that
24 I trucked it down to the jail to show it to him. I
25 can't pretend to say that. But I know I showed it

1 to him. It wasn't as close as two weeks before
2 trial or sometime before that, but I just don't
3 recollect when it was.

4 Q. And you mentioned briefly in your response a
5 motion to describe the video equipment --

6 A. Yes.

7 Q. -- is that correct?

8 A. Yes.

9 Q. What was the goal of that motion?

10 A. Well, if I had been permitted to get into that,
11 I was hoping to, during the course of the trial,
12 raise some -- I mean, if I had those facts and
13 figures available to me, raise some reasonable doubt
14 in the jurors' minds about the quality of the
15 equipment or the quality of the installation.

16 The resolution of the video, in my opinion, was
17 very poor. Of course it was at night, the camera
18 was infrared, but even so, it was still pretty
19 grainy, very grainy. Mr. Eubanks testified on
20 direct examination that he had not a doubt in the
21 world that it was Mr. Hinson on the video.

22 Well, you know, I was hoping that if I had the
23 specs of the video equipment, I was hoping to maybe
24 poke some holes in his confidence to be able to
25 identify who it was on that video.

1 Q. And you attempted to do that on
2 cross-examination; is that a fair statement?

3 A. I did. But, of course, I wasn't able to. The
4 additional facts and figures of the manufacturer,
5 the specifications, the capabilities and the
6 installation, the judge denied my motion as to
7 getting all of that stuff.

8 Q. Did you learn of any fact witnesses other than
9 Mr. Hinson's girlfriend?

10 A. Did I have any?

11 Q. Did Mr. Hinson provide any to you?

12 A. Well, he mentioned three or four buddies of
13 his, but they weren't around on the date in
14 question. His mother was in the hospital, she
15 wasn't home at the time.

16 Q. Did you discuss possible defenses with
17 Mr. Hinson?

18 A. Sure. I mean -- but there weren't a whole lot.
19 You know, he -- the only alibi witness that we had
20 was his girlfriend, Ms. Stitsal [phonetic], I think,
21 is her name.

22 Q. How would you describe her testimony?

23 A. Pardon?

24 Q. Could you characterize her testimony for us,
25 please?

1 A. Well, you mean, when he was on the witness
2 stand?

3 Q. Ms. Stitsal.

4 A. Oh, Stitsal. Oh, I'm sorry. That she was
5 there overnight on the 14th, which was the date of
6 the incident with the break-in; that she was in
7 Logan's house overnight, but that she was falling
8 asleep about 9:00 or 9:30 and could not state for
9 sure that he was in bed with her all night long,
10 that she was asleep.

11 Q. Was a rebuttal witness called to discount her
12 testimony?

13 A. Was there a rebuttal witness called? I think
14 the solicitor called Chief Brown as a rebuttal
15 witness, if I'm not mistaken.

16 Q. As well as an investigator?

17 A. Yes. You're right. Let me find it.

18 Q. Page 154, Investigator Phillips?

19 A. Chris Phillips, that's right. He called the
20 two, Phillips and Brown.

21 Q. Okay. So, ultimately, would it be fair to
22 characterize her testimony as not credible?

23 A. It wasn't as helpful as I had hoped it would
24 be, that's for sure.

25 Q. How did you feel about Mr. Hinson's testimony?

1 A. Well, he started out, I think, very strong. I
2 think he did well during direct. He got all tangled
3 up during cross, which I feared was going to be the
4 case. He got -- particularly on the issue of dates
5 and times, he got mixed up quite a bit.

6 Q. Whose decision was it for him to testify?

7 A. His.

8 Q. And you discussed the pros and cons with him?

9 A. Yes.

10 Q. And you discussed the constitutional rights he
11 was giving up by testifying?

12 A. Yes. And also the -- I always mention if
13 the -- in the course of discussing whether or not to
14 testify, I always explain that we were giving up the
15 right to the last argument if he took the stand or
16 if we presented anybody. Of course at that point I
17 had already presented Ms. Stitsal.

18 Q. Did you request any specific jury charges?

19 A. Not that I recall.

20 Q. And, finally, what was your opinion on the
21 likelihood of Mr. Hinson being convicted?

22 A. I thought he'd probably -- I was -- I won't say
23 convinced. But I was persuaded that it was likely
24 that he was going to be convicted, considering the
25 videotape and the co-defendant's testimony.

1 Q. And the co-defendant, how far in advance of the
2 trial were you aware that the co-defendant would be
3 testifying against him?

4 A. I don't recall that it was -- you know, it was
5 well in advance that I was aware of it.

6 Q. I have no further questions. Thank you.

7 THE COURT: Ms. Goldberg.

8 MS. GOLDBERG: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. GOLDBERG:

11 Q. Good morning.

12 A. I guess it's afternoon.

13 Q. Good afternoon. All right. Mr. Riley, in this
14 case we had a co-defendant who gave a statement on
15 Mr. Hinson; is that right?

16 A. Yes.

17 Q. He even went and got some of the stolen
18 property and gave it back to the police; right?

19 A. Right.

20 Q. So his admission and his involvement was very
21 credible so that his statement would be credible;
22 right?

23 A. Yes.

24 Q. We have a video that the victim identifies
25 Mr. Hinson on video --

1 A. Uh-huh.

2 Q. -- is that right? This -- Mr. Hinson was 17
3 years old. Would you agree with me that this should
4 have never gone to trial?

5 A. I do agree with you. But, you know, what's the
6 first rule of being a defense lawyer? You have to
7 abide by your client's wishes.

8 Q. Not your decision?

9 A. Not my decision as to whether to go to trial or
10 not. That's strictly the client's decision.

11 Q. Correct.

12 A. I had -- at that point, I mean, as we were
13 nearing the time for the case to go forward at
14 trial, the only plea offer was he could plead guilty
15 to burglary first or go to trial. I mean, there was
16 that plead to burglary first or go to trial.

17 Mr. Hinson kept hoping for a third alternative:
18 Just make all this go away. It never was going to.
19 And I spent a long -- I spent many minutes when we
20 were meeting trying to explain to him that that was
21 not option number 3.

22 Q. Mr. Hinson testified that the only reason he
23 was charged with first-degree burglary is because
24 this happened at night; true?

25 A. Well, it happened at night, it was a residence.

1 Q. Correct. No one was hurt?

2 A. No one was hurt, no.

3 Q. No guns involved?

4 A. Forced entry.

5 Q. Forced entry.

6 A. I don't think there was any allegation that I
7 recall of a weapon being involved.

8 Q. Right.

9 A. So, yeah.

10 Q. The facts aren't the kind that should result in
11 a 15-year violent sentence; right?

12 A. It outraged me when we're talking about a video
13 game and assorted paraphernalia that goes along with
14 it, that a youngster would be sentenced to 15 years.
15 It's just outrageous.

16 Q. Now, when Mr. Hinson was testifying, he said
17 that the first time y'all met was at his bond
18 setting in court? Does that sound right?

19 A. Probably was.

20 Q. Do you remember that day?

21 A. No.

22 Q. You did say, however, that you remember his
23 first plea offer was for a YOA --

24 A. Right.

25 Q. -- is that correct?

1 A. Correct; active YOA.

2 Q. Active YOA.

3 A. I tried to get the solicitor to agree to a
4 suspended YOA which would mean probation.

5 Q. Okay.

6 A. That still would have created problems with
7 Lancaster County, there's no question. But, you
8 know, my concern was Kershaw County, trying to get
9 rid of this charge in Kershaw.

10 Q. You were aware of the Lancaster County
11 situation?

12 A. Pardon?

13 Q. You were aware of the Lancaster situation?

14 A. The lengthen situation?

15 Q. Lancaster.

16 A. Yes.

17 Q. Did you know what his sentence was there?

18 A. Yes.

19 Q. It was a suspended YOA on probation?

20 A. Five years' probation with PTUP.

21 Q. Okay.

22 A. I don't know what the amount of the PTUP was.

23 Q. Right. Are you aware that an individual cannot
24 get two YOA sentences?

25 A. Yes.

1 Q. Okay. So why would you have asked the
2 solicitor to give another suspended YOA?

3 A. He was offering it.

4 Q. The active YOA?

5 A. Yeah. He was aware that he was already on
6 probation. You know, I was -- I knew that no matter
7 what judge we ended up in front of, that that was a
8 land mine ahead of me. But, you know, I wanted to
9 try it.

10 Q. You wanted to try for his best interest?

11 A. Yeah. I mean, it was, I think, an excellent
12 offer --

13 Q. The active YOA?

14 A. -- except for that one -- that one -- even more
15 than a pothole, it was more like a gully --

16 Q. The fact that it might be an illegal sentence?

17 A. Right. And most likely wouldn't have survived
18 the judge's scrutiny. So...

19 Q. Now being aware of that problem, how were you
20 able to advise Mr. Hinson about what would happen
21 with his probation violation when this was kind of
22 uncharted territory?

23 A. Well, I didn't -- you know, as I -- I went as
24 far as to say that most likely there would be a bond
25 revocation motion; most likely whatever he got, if

1 the judge agreed with the revocation, would be run
2 concurrent. But I didn't go any further into the
3 Lancaster case with Mr. Hinson.

4 Q. Have you ever done a plea where -- with a
5 client where there is not a pending probation
6 violation but they are on probation and the plea
7 itself is the violation, so probation goes ahead and
8 disposes of that at the time of the plea? Have you
9 done that with clients before?

10 A. A lot.

11 Q. Okay. Did you look at --

12 A. We could have had that worked out, could have
13 gotten Lancaster involved, even though it's a
14 different --

15 Q. You think you could have done that?

16 A. Well, I would have tried to do that.

17 Q. You could have tried?

18 A. Yes.

19 Q. Did you try?

20 A. No.

21 Q. That would have resolved Mr. Hinson's concerns
22 regarding the probation violation; correct?

23 A. Correct.

24 Q. Is there any reason you didn't try?

25 A. He was -- he couldn't even make up his mind

1 whether to take the offer, aside from the Lancaster
2 issue.

3 Q. Did he express --

4 A. Because, remember now, the solicitor was
5 offering an active YOA, carried up to six years -- I
6 mean, the period of incarceration is up to six
7 years. That left Mr. Hinson uninterested.

8 Q. Other than his concerns with the probation
9 violation, did he express to you why else he was
10 unsure about taking the plea?

11 A. Why what?

12 Q. Why he was unsure about what decision to make.

13 A. He didn't want to have to go to prison. I
14 mean, I can't blame him. But the point comes where
15 your decisions are kind of narrow.

16 Q. Did you -- you said that the State never gave
17 you an end date on the plea offer.

18 A. Not that I remember. I mean, it could be they
19 did, but I just don't remember now. I remember
20 stalling Mr. Moak for as long as I could, telling
21 him that, you know, my client and I are still
22 thinking about it but we haven't made our minds up.

23 Q. Did you believe that Mr. Hinson should take
24 that plea offer?

25 A. I did.

1 Q. And you told this to Mr. Hinson?

2 A. I'm sure I did.

3 Q. Did you ever contact his family or -- in an
4 attempt to convince him to do what was in his best
5 interest?

6 A. Not that I recall.

7 Q. What did you do to try and convince Mr. Hinson
8 that this was in his best interest?

9 A. Met with him, discussed it with him, went over
10 the advantages of it. You know, there wasn't --
11 Mr. Hinson -- I don't mean to exaggerate this, but
12 at that point in time, Mr. Hinson's relationship
13 with his mother was not real good at that point in
14 time, and that was a two-way street.

15 So, you know, I don't recall even thinking of
16 trying to get some advice -- trying to get
17 Mr. Hinson some advice from his mother. But if I
18 did think about it, I would have hesitated because
19 of the fact that I understood they were sort of
20 estranged at that point in time. They're not now,
21 thank God.

22 Q. You testified that you remember that plea
23 offer. You didn't remember any other specific
24 offers?

25 A. I don't.

1 Q. If the public defender's office file reflects a
2 plea offer for eight years at some point, would you
3 deny that that was the case?

4 A. No, I wouldn't deny it. I just don't recall.

5 Q. You just don't recall?

6 A. Yeah.

7 Q. Do you remember discussing that with
8 Mr. Hinson?

9 A. Discussing what?

10 Q. A plea offer for eight years.

11 A. No, I don't.

12 Q. Mr. Riley, if you'll -- this is Applicant's
13 Exhibit No. 1. If you'll review all those
14 documents, and I'm specifically just going to ask
15 you about what's on the one, two, three, four, five,
16 six -- the third from the last page, the plea offer
17 form.

18 A. Third from the last page.

19 Q. All right. First, do those documents all -- do
20 you recognize them?

21 A. I recognize the plea offer. That's a standard
22 form the solicitor's office uses.

23 Q. Well, just as a whole, do you recognize those
24 documents as coming from the public defender's file?

25 A. Well, I don't remember it.

1 Q. No. That's fine. But do you recognize all
2 these documents as items that would have been in
3 your file?

4 A. Well, yes. Yeah. What you've got
5 paper-clipped here, yes.

6 Q. Okay. And you recognize the plea offer sheet
7 as well?

8 A. Yeah. Although I don't remember this -- I
9 don't know what you're asking me.

10 Q. I'm just trying to authenticate it right now as
11 part of the file.

12 A. I don't deny that it came from the PD office's
13 file, but I don't remember this plea offer. And I
14 can't make out the date on it.

15 MS. GOLDBERG: At this time I'd ask the Court
16 to admit this exhibit.

17 MS. KINARD: Without objection.

18 THE COURT: Without objection.

19 (Applicant's Exhibit No. 1 admitted into
20 evidence.)

21 BY MS. GOLDBERG:

22 Q. And looking at that plea offer sheet, it
23 doesn't appear that there is a legible date on that;
24 correct?

25 A. No. I can't make it out.

1 Q. In fact, where it says date, it actually looks
2 like it might be Ron Moak's signature.

3 A. Yeah, it is.

4 Q. So I don't think there is a date on this form,
5 correct, from what you can tell either.

6 A. Well, there's something scribbled -- oh, you
7 mean you think where it says date of --

8 Q. I don't see a date. Do you?

9 A. You think that was Ron's signature?

10 Q. That's what it appears.

11 A. I don't think so.

12 Q. Okay.

13 A. Because at the bottom is the way he signs his
14 name.

15 Q. Okay.

16 A. He scratched out David Ross' name and wrote his
17 own in.

18 Q. The plea offer on this sheet is what?

19 A. Burg second, eight years, all previous
20 rescinded. I guess that's rescinded or withdrawn or
21 something.

22 Q. Okay. Do you have any specific recollection of
23 advising Mr. Hinson that he had this plea offer?

24 A. I don't. But I don't deny that I did, but I
25 just don't recall. It was -- let me just say this:

1 In all of the criminal cases I handle, I always
2 communicated plea offers to my client as they came
3 in, which often ended up with them saying, you know,
4 you're selling me out to the solicitor. But,
5 anyway, that was my standard practice. I never
6 withheld a plea offer from a client. But --

7 Q. All -- go ahead.

8 A. But I do have a faulty memory.

9 Q. Now, you testified earlier on direct that
10 during trial, Mr. Hinson got up from his chair and
11 started to approach the witness chair with leg
12 shackles on. Is that what happened?

13 A. Yes.

14 Q. Did --

15 A. He got around -- I think he was seated to my
16 left, if I'm not mistaken, but I don't remember for
17 sure, got up and walked around the end of the table
18 and headed toward the witness stand. That's as far
19 as he got.

20 Q. He would have been visible to the jury?

21 A. Oh, yeah.

22 Q. Definitely?

23 A. Yes.

24 Q. You stated there wasn't any specific reason you
25 didn't address this prior to his standing up.

1 A. No. I thought we had just come out of a
2 conference in chambers, but that's not the way the
3 transcript reads. So, you know, that, apparently,
4 is not the way things went. It was totally my
5 fault.

6 Q. Just an oversight?

7 A. Yeah, but one that I deeply regret.

8 Q. You believe you should have addressed the issue
9 with the Court and had the leg shackles removed
10 before he approached?

11 A. Before he -- I mean, not only -- visibility is
12 not only a problem, but the leg shackles make a lot
13 of rattles too. I -- you know, I'm sure I told
14 Mr. Hinson not to move his legs around a whole lot
15 under the table.

16 Q. That's your typical practice?

17 A. That's right.

18 Q. All right. Now, when he did testify, there was
19 a discussion in the record about the receiving
20 stolen goods conviction over \$2,000. And you, I
21 think, on direct yourself were citing to the record
22 and stating that Judge Manning said talk me out of
23 that being admissible. Is that right?

24 A. That's right.

25 Q. And you said that you believed it was

1 admissible because it was within ten years and a
2 crime of moral turpitude; is that correct?

3 A. Yes, ma'am.

4 Q. You understand that for a conviction to be used
5 to impeach a defendant, the Court also has to make a
6 finding that it's not more prejudicial than
7 probative.

8 A. No -- what are you saying now? Having said
9 no --

10 Q. I will read it for you and see if you're
11 familiar with this. In rule 609 --

12 A. Uh-huh.

13 Q. -- it states that evidence that an accused has
14 been convicted of a crime shall be admitted if the
15 Court determines that the probative value of
16 admitting it outweighs the prejudicial effect.

17 So there's a required 403 analysis for a
18 conviction to be used against a defendant. Do you
19 understand that?

20 Let me ask you this: Why didn't you attempt to
21 argue that it was prejudicial?

22 A. I mean, I don't have an answer for that. I
23 should have.

24 Q. And you understand both convictions are
25 theft-related convictions?

1 A. Right.

2 Q. Involving stolen items of some sort.

3 A. Right.

4 Q. Do you agree that it was likely prejudicial for
5 the jury to be aware of that conviction?

6 A. I think it would have been, sure.

7 Q. And there's no specific strategic reason that
8 you didn't object to it?

9 A. No. It does tend to -- no -- strike that.

10 Q. Thank you. And I think the attorney general
11 went over this with you on direct: You don't recall
12 ever being made aware that the jury said they were
13 deadlocked?

14 A. No. That puzzles me. You know, had I not been
15 able to read over the transcript of the trial, I
16 would have sworn that they had somehow communicated
17 to the judge that they were unable to reach a
18 unanimous verdict. But the transcript doesn't
19 reflect that, so I think the judge just felt that
20 after sending out three different questions, that
21 that indicated there was some sort of problem that
22 had surfaced in the jury room reaching a decision.

23 And, again, I don't know, other than that we
24 were -- at that point, I think we were in the second
25 day of the jury's deliberations, which isn't a whole

1 lot of time. But the transcript doesn't reflect
2 times of day, so when it was that the judge started
3 thinking in terms of the Allen charge, what time of
4 day it was --

5 THE COURT: The notes are not part of the
6 record, are they?

7 MS. GOLDBERG: The jury notes? They are not.
8 But I have them. And if the attorney general
9 agrees, we can enter them. I will state, they don't
10 say the word -- they don't say deadlocked.

11 MS. KINARD: I have no objection if you'd like
12 to make those part of this record, Your Honor.

13 THE COURT: Well, no. It only goes to the
14 issue of whether they're deadlocked or not.

15 MS. GOLDBERG: Right. I pulled them to make
16 sure.

17 THE COURT: That's typically only on a note and
18 not reflected in the transcript.

19 MS. GOLDBERG: Right.

20 BY MS. GOLDBERG:

21 Q. Is there any particular reason you didn't
22 object to the Allen charge?

23 A. No.

24 Q. Now --

25 A. It's something that I've always considered to

1 be pretty much within the judge's purview.

2 Q. Discretion.

3 A. Yeah.

4 Q. After trial, Mr. Hinson asked you to file an
5 appeal; is that true? Or what did he ask you to do?

6 A. He may have, but I opted instead to file a
7 motion. And I can't say for certain that he
8 requested filing an appeal. But I know I sent him a
9 copy of the motion. He knew it was pending. He
10 knew because I explained it to him either in a
11 letter or by meeting with him.

12 But, anyway, I explained to him that the time
13 for filing an appeal began to run after the motion
14 was ruled upon. Okay? I explained that to him.

15 Q. Did you file that motion because you just
16 thought it was appropriate or because Mr. -- you
17 knew Mr. Hinson wanted you to fight the conviction
18 or for both reasons?

19 A. Oh, I knew he wanted me to fight the
20 conviction.

21 Q. Okay.

22 A. There's no doubt in -- there wasn't then and
23 there isn't now any doubt in my mind.

24 Q. So regardless of the method, you knew he wanted
25 you to file things to challenge the conviction?

1 A. Yes.

2 Q. When you -- and the motion for new trial was
3 still pending when you left the office?

4 A. Yes.

5 Q. Is there any particular reason why it wasn't
6 resolved or heard in open court while you were still
7 there?

8 A. It wasn't for lack of trying. In these
9 documents, I don't see the copy of the letter that I
10 sent to Judge Manning and I don't remember the date
11 of it, but I did send a letter. I spoke with the
12 judge about this case and about my pending motion
13 just about every time I saw him, which in the -- in
14 that four-plus years would have been, like, five
15 times or six times that I addressed the issue
16 verbally with the judge.

17 I discussed it repeatedly with, first of all,
18 the trial solicitor, and then subsequently with the
19 deputy solicitor in Camden, when can we schedule
20 this motion for hearing. What I was being told by
21 the trial solicitor and by the judge was give it
22 more time, give it more time, let the victims calm
23 down, let the dust settle, let the tempers cool
24 down. And --

25 Q. And what did you take that to mean?

1 A. Well, the judge did not want it to be heard and
2 have the victims raise bloody hell, because, you
3 know, first and foremost, because I was seeking a
4 new trial. I didn't see -- even though I captioned
5 my motion to include it, I didn't see any
6 possibility of a reduced sentence because 15 was the
7 statutory minimum for what he'd been convicted of.

8 You know, I didn't disagree with what the
9 solicitors and the judge were telling me. I
10 thought, you know, letting more time elapse might be
11 beneficial. But it began to be a real thorn in my
12 side that this motion is still pending, still
13 pending after all that time.

14 Q. When you left the public defender's office, did
15 you leave the file information on the status of
16 things with anyone to say this motion is still
17 pending, someone needs to handle it?

18 A. Well, it would have been easily ascertainable
19 which of my cases were still pending, and I left all
20 my files there. So determining that it was pending
21 and that finding the file were not going to be any
22 problems.

23 Q. Did you leave any instructions in the file to
24 alert the next attorney, hey, if this motion gets
25 denied, you need to file a notice of appeal because

1 Mr. Hinson wants to fight this?

2 A. No.

3 Q. You never asked anybody to do that?

4 A. No. Just looking at a motion for a new trial,
5 I mean, any lawyer would know any denial to that.
6 means you got a right to appeal.

7 Q. All right.

8 A. I wouldn't need -- that's not something I would
9 need to tell a brother lawyer or sister lawyer.

10 Q. Do you know who ultimately ended up handling
11 the case in your office when the order was
12 finally --

13 A. No. But I see Mr. Kirincich back there.

14 MS. GOLDBERG: All right. No further
15 questions.

16 MS. KINARD: Just a few, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. KINARD:

19 Q. Mr. Riley, you testified you thought the
20 sentence was outrageous, I believe was your word?

21 A. Well, yeah.

22 Q. You were outraged?

23 A. Yes. The sentence was the minimum for what he
24 was convicted of. But for stealing an electronic
25 game, video game, and a few, you know, video games

1 you buy and plug in separately, and ear phones -- I
2 think the co-defendant testified that each of them
3 got a hundred dollars for the equipment. And, you
4 know, a 15-year sentence is just -- it doesn't make
5 any sense. It didn't make any sense to me then, but
6 it sure doesn't make any more sense to me now.

7 Q. To clarify though, do you believe he met the
8 elements of burglary first?

9 A. I do, yeah.

10 Q. So that would be enters a dwelling without
11 consent.

12 A. I don't think the charge was -- based on the
13 facts, I don't believe the charge was inappropriate
14 or excessive.

15 Q. Okay. Thank you.

16 Ms. Goldberg asked you about the potential of
17 contacting Mr. Hinson's family to urge him to take a
18 plea. Would that have been ethical?

19 A. If he agreed, yeah. But, as I say, I had the
20 feeling -- I can't remember why I had -- why I
21 recall feeling that way. But I had a feeling -- I
22 mean, I can't recall him specifically saying it.

23 But I just felt that there was some
24 interruption in the normal relationship between
25 mother and son.

1 Q. Stepping back to the issue of the shackles, did
2 you consider delimiting a curative instruction or
3 requesting one?

4 A. I did, but I didn't want to -- you know, in the
5 instances of that nature, I never want to draw the
6 jury's attention to something bad. And it has the
7 effect of using a highlighter, in my opinion, in the
8 jury's mind, underlining.

9 Q. Can you estimate how long the jury would have
10 seen him in shackles?

11 A. Five seconds or less, maybe ten seconds.

12 Q. Stepping to --

13 A. And because of the way the tables were set up
14 and the route he was following and the way the
15 jurors were seated, I don't know that all 12 would
16 have been able to see him, but probably.

17 Q. So there's a chance some jurors may not have
18 seen him at all?

19 A. The ones to the extreme left of the jury box.

20 Q. And then, lastly, regarding the receiving
21 stolen goods and any potential for objection, rule
22 609(a)(2) automatically allows crimes of dishonesty
23 or false statement. Do you think receiving stolen
24 goods would have fallen into that category at that
25 time?

1 A. Well, of course, it would have been the judge's
2 decision. And I don't remember weighing that issue
3 in my mind. It very well could have been found to
4 fall into that category, yes.

5 Q. That's all I have. Thank you.

6 THE COURT: Anything further?

7 MS. GOLDBERG: No, Your Honor.

8 THE COURT: All right. You may come down, sir.

9 THE WITNESS: Thank you, Judge.

10 THE COURT: Can this witness be excused?

11 MS. KINARD: Without objection.

12 THE COURT: Without objection, you're free to
13 go.

14 Anything further?

15 MS. KINARD: Yes, Your Honor. We have a brief
16 witness, Jason Kirincich.

17 THE COURT: All right.

18 THE WITNESS: Jason Kirincich,

19 K-I-R-I-N-C-I-C-H.

20 JASON KIRINCICH

21 being first duly sworn, testified as follows:

22 THE WITNESS: I do.

23 THE CLERK: Thank you. Have a seat.

24 DIRECT EXAMINATION

25 BY MS. KINARD:

1 Q. Could you spell your name for the record?

2 A. Jason, J-A-S-O-N, Kirincich, K-I-R-I-N-C-I-C-H.

3 Q. Thank you. And where are you currently
4 employed?

5 A. The Kershaw County Public Defender's Office.

6 Q. Were you employed during the time that you've
7 heard testimony about?

8 A. Yes.

9 Q. Were you aware of Mr. Hinson's case?

10 A. Yes.

11 Q. Did you speak with Mr. Riley about it at all or
12 do any work on it?

13 A. No, not at all.

14 Q. Were you there for part of the trial?

15 A. I was there when my client testified.

16 Q. And who was your client?

17 A. Corbin Bailey.

18 Q. And that's the co-defendant?

19 A. Correct.

20 Q. Okay. And did you have any involvement with
21 Mr. Hinson's case posttrial?

22 A. At some point, Mr. Clayton Mitchell from the
23 attorney general's office contacted the solicitor's
24 office about Mr. Hinson's pending motion, and
25 somebody from Richland County asked us about it,

1 asked, you know, what was going on, is this still
2 pending, because it was affecting his ability to
3 file PCR.

4 So I made a call of some sort to his family
5 member. I think it was his aunt. And I may have
6 spoken to his mother at some point. It was a female
7 family member. And I asked the solicitor about the
8 status of the motion.

9 Q. What actions did you take based on those
10 conversations?

11 A. I don't remember doing anything. I didn't file
12 anything, I didn't write any orders, I just remember
13 talking with solicitor Brett Perry about it.

14 Q. What resulted from that conversation?

15 A. The end result was Judge Manning signed an
16 order denying the motion.

17 Q. Do you know if there was a hearing?

18 A. There was never a hearing. And -- no.

19 Q. So, essentially, you did work to effectuate
20 getting it back in front of Judge Manning for a
21 ruling?

22 A. I had another client that also had a pending
23 motion in front of Judge Manning, so I asked about
24 having my client's hearing scheduled and I mentioned
25 Mr. Hinson needed to have it scheduled. My client's

1 hearing got scheduled. We found out some months
2 later that Judge Manning signed an order denying
3 Mr. Hinson's motion and there was never a hearing.

4 Q. So you weren't served with the order? The
5 office was not served with the order?

6 A. Not that I can recall. The last thing I
7 remember before this was you actually contacted me
8 via e-mail asking if it had been signed -- if the
9 order had been signed or if the hearing had been
10 held.

11 I contacted -- well, I'm trying to remember
12 exactly how it happened. I think at that point that
13 was November of 2016. We went back to the clerk's
14 office and something had been filed April, May, June
15 2016, so we didn't have anything in Mr. Hinson's
16 file Mr. Riley had left in our office that the order
17 had ever been signed.

18 Q. Once it came to your attention, did you
19 consider filing an appeal on Mr. Hinson's behalf?

20 A. No, because I think you had already let me know
21 he had already filed for PCR and that was pending
22 again.

23 Q. No further questions. Thank you.

24 THE COURT: Ms. Goldberg?

25 MS. GOLDBERG: Thank you, Your Honor.

1 MS. KINARD: I apologize, Your Honor. I need
2 to get this in front of him.

3 BY MS. KINARD:

4 Q. Mr. Kirincich, will you look at this stuff for
5 me, please.

6 A. Okay.

7 Q. And would you tell the Court what that appears
8 to be.

9 A. This is the order from Judge Manning denying
10 the motion for reconsideration.

11 Q. And it's signed by Judge Manning?

12 A. Yes, it is.

13 Q. On what date?

14 A. March 24th of 2016.

15 Q. And what date is it stamped to file?

16 A. April 4th, 2016.

17 Q. Have you seen this document before?

18 A. I have seen it, yes.

19 Q. Is it the one that we discovered with the
20 clerk's office?

21 A. Yes, and I e-mailed you a copy of it back in
22 November.

23 MS. KINARD: At this time, the State would move
24 to put this into evidence.

25 MS. GOLDBERG: No objection.

1 THE COURT: Without objection.

2 MS. KINARD: That concludes my questioning
3 again.

4 (Respondent's Exhibit No. 1 admitted into
5 evidence.)

6 THE COURT: Ms. Goldberg.

7 CROSS-EXAMINATION

8 BY MS. GOLDBERG:

9 Q. Mr. Kirincich, in the time when you became
10 aware there was a pending motion in your office and
11 you contacted Mr. Hinson's family, did you ever
12 speak with Mr. Hinson?

13 A. No.

14 Q. Did you ever write to him or contact him in
15 SCDC by telephone?

16 A. Never contacted him by telephone. I went back
17 and looked to see if I wrote anything. I couldn't
18 find anything, so I'm going to say no just because I
19 didn't find anything where I wrote down.

20 Q. The order denying the motion, which has been
21 entered in evidence, states it was filed April 4th,
22 2016.

23 A. Right.

24 Q. When do you think you found out about this?

25 A. From what I can recall, looking back at what I

1 did have, it was when Ms. Kinard e-mailed me in the
2 fall of 2016, was when I first remember seeing
3 anything signed and filed.

4 Q. If you didn't know about it in April of 2016,
5 is there anybody else in your office that should
6 have known about it or do you think that you would
7 have known if your office had known? Does that make
8 sense?

9 A. Yeah, it makes sense. I mean, it's possible
10 somebody else could have known, but no one directly
11 told me. And we had to pull it from the clerk's
12 office. It was not part of our file that was in our
13 office in November of 2016.

14 Q. If you had known about this in April of 2016
15 after the order was entered prior to the PCR being
16 filed, what would you have done?

17 A. I don't know exactly what I would have done
18 because when I talked to the family member, I
19 remember explaining that I had represented the
20 co-defendant -- well, I'm sorry. We're not talking
21 about the hearing, we're talking about after this
22 was filed.

23 Q. After -- I guess -- well, my question is, would
24 you -- just based on the fact that this order was
25 issued alone, would you have automatically filed

1 notice of appeal? Would you have contacted
2 Mr. Hinson? Would you have done anything more?
3 Would you have let another attorney handle it? What
4 would you have done?

5 A. I think it would have been appropriate for our
6 office to contact Mr. Hinson and let him know and
7 then and he can make whatever decision he wants
8 make.

9 Q. But that wasn't done in this case?

10 A. No.

11 Q. No further questions.

12 MS. KINARD: Nothing further, Your Honor.

13 THE COURT: All right. You may come down, sir.

14 Thank you very much.

15 Can this witness be excused?

16 MS. KINARD: No objection from the State.

17 THE COURT: Without objection.

18 MS. KINARD: No further witnesses from the
19 State, Your Honor.

20 THE COURT: Anything further from the
21 Applicant?

22 MS. GOLDBERG: Just summation and argument,
23 Your Honor.

24 THE COURT: Go ahead.

25 MS. GOLDBERG: Unfortunately, this case is

1 somewhat tragic because this case should have never
2 gone to trial. He -- Mr. Hinson was 17 years old at
3 the time this all happened. This trial was rushed
4 and occurred within, basically, five months. There
5 was clearly a breakdown in the conversations at some
6 point.

7 Now, I guess part of what Your Honor is going
8 to decide here is who is to blame for that. This
9 should not have gone to trial. There were multiple
10 plea offers given by the State, so it's not the
11 State's fault. Mr. Hinson should have taken one or
12 more of those offers.

13 I would argue that Mr. Riley, he never even
14 bothered to try to resolve the probation violation
15 situation or give Mr. Hinson actual real options in
16 that regard. And Mr. Hinson testified that that was
17 his concern all along. That may have been a
18 somewhat unreasonable concern, but he was 17 and
19 didn't know that. I put that on his lawyer to fully
20 explain to him what his options are and what the
21 possible consequences are for not making an
22 affirmative decision. I think it's clear that
23 Mr. Riley did not make that clear to Mr. Hinson. It
24 shouldn't have gone to trial.

25 By the time it did go to trial, there were

1 errors which I think are substantive and
2 problematic. The jurors saw the leg shackles, which
3 is prejudicial. The receiving stolen goods
4 conviction, I think there could have been a
5 legitimate argument to keep that out. There is case
6 law out there that talks about evidence of
7 conviction -- convictions being used for impeachment
8 solely when it's similar to the crime you're charged
9 with. This is a burglary, that's receiving stolen
10 goods, there's an argument there to be made.

11 And then, more importantly, there's no record
12 and there's no testimony that the jury ever claimed
13 that they're deadlocked. In researching --

14 THE COURT: That's curiosity.

15 MS. GOLDBERG: Yes. In researching Allen
16 charges in preparation for this, I couldn't find any
17 case law on this because all says when a jury says
18 they're deadlocked, then you do this. I don't see
19 any law that says what happens when they're not, and
20 that's because a judge should not issue an Allen
21 charge if the jury does not say they're deadlocked
22 because that would be, per se, coercive.

23 THE COURT: Yeah, that's -- all the case law
24 deals with coercive nature of the Allen charge.

25 MS. GOLDBERG: Right. And so just the fact

1 that it was charged at all without any record of
2 them saying they're deadlocked, I'd say that's
3 coercive.

4 And then finally, Mr. Riley was on notice,
5 fully aware that Mr. Hinson wanted to fight his
6 conviction to the fullest extent. There was a
7 breakdown thereafter, and his notice of appeal was
8 never filed and should have been filed by someone in
9 that office. And I don't -- Mr. Hinson was never
10 even contacted around the time this order was
11 finally filed. He should have had that right to
12 appeal.

13 THE COURT: Has not been made part of the
14 record, but part of the file I have shows that the
15 motion for a new trial was timely made.

16 MS. GOLDBERG: Correct.

17 THE COURT: There's no question about that, is
18 there?

19 MS. GOLDBERG: No question about it.

20 THE COURT: And it sat for some five years
21 before it was acted upon.

22 MS. GOLDBERG: Yes, Your Honor, without a
23 hearing.

24 THE COURT: Anything from the State?

25 MS. KINARD: Yes, Your Honor. The State would

1 argue that the testimony from Mr. Riley is that he
2 conveyed all plea offers, it was in his best
3 practice to do so, that he -- as soon as he'd get
4 one, he would contact the defendant, whether it was
5 Mr. Hinson or any other, and discuss the relative
6 pros and cons of those plea offers.

7 He also testified that he couldn't get a
8 commitment from Mr. Hinson from which to base his
9 argument on. And the State would argue that that
10 would be necessary, that because Mr. Hinson's
11 opinion or feeling that Mr. Riley testified to was
12 always let's just make this go away. If he couldn't
13 get a number, he couldn't get terms, he couldn't get
14 anything from Mr. Hinson to work with in order to
15 effectuate and negotiate a better plea offer for
16 Mr. Hinson.

17 Mr. Riley also testified he explained that
18 repeatedly that the plea offers would eventually
19 lead to a trial. He didn't accept one. And he also
20 testified that he did work with the Solicitor's
21 Office to try to develop plea offers.

22 Regarding the leg shackles, the State argues
23 this is a minor infraction in terms of overall
24 evidence against Mr. Hinson. We would argue that
25 the evidence certainly was overwhelming in terms of

1 all of the factors and witnesses and video against
2 Mr. Hinson. As part of that, there is Supreme
3 Court -- U.S. Supreme Court and state Supreme Court
4 law on point regarding shackles that states if it
5 wouldn't have affected the outcome of trial, then it
6 shouldn't be reversible error, even in terms of PCR.
7 We argue that this case falls under that because of
8 the overwhelming evidence.

9 Looking at the receiving of stolen goods charge
10 and whether that should have been argued more
11 strenuously if at all by Mr. Riley, the State argues
12 that is a crime of dishonesty and, therefore,
13 automatically an exception to the rule 609 analysis.
14 That was before the Broadnax case. And any changes
15 that that might have --

16 THE COURT: Don't bring up Broadnax, please.

17 MS. KINARD: Yes, sir.

18 THE COURT: That's my case.

19 MS. KINARD: Regarding the Allen charge, the
20 record does reflect that there was a chambers
21 conference right before the Allen charge was given.
22 Unfortunately, we do not have the benefit of the
23 content of that charge [sic] for the record, just as
24 we do not have many other things in this record.
25 The Court, if it has not noted already, hopefully

1 will note that this transcript is, unfortunately,
2 not a complete one.

3 Finally, about the notice of appeal, I believe
4 Mr. Kirincich's testimony was that the office's
5 decision to rely on the current PCR that we're here
6 on today and to let that be Mr. Hinson's remedy of
7 posttrial relief.

8 Mr. Riley testified that Mr. Hinson understood
9 all of their conversations, he realized what was
10 going on every step of the way, but he ultimately
11 could not get the relief he wanted, which was for
12 things to just disappear. The State stands by its
13 argument that there's overwhelming evidence in this
14 case. For that reason, errors that might otherwise
15 be deemed efficient are not prejudicial and are not
16 ineffective pursuant to Strickland vs. Washington or
17 several other case laws on point. For that reason,
18 we believe that Mr. Riley cannot be found
19 ineffective and we ask that this be dismissed.

20 THE COURT: All right. Thank you very much.
21 If you'll put those arguments in proposed orders
22 within 30 days, I will accept them.

23 MS. KINARD: Thank you, Your Honor.

24 MS. GOLDBERG: Thank you, Your Honor.

25 -- END OF TRANSCRIPT OF RECORD --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Richland County, South Carolina, on the 19th of July, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 29, 2018

s/Bethanie K Creppon

Bethanie K. Creppon
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA

PUBLIC DEFENDER
FIFTH JUDICIAL CIRCUITDOUGLAS S. STRICKLER
C.J. NEIL RILEY
JASON D. KIRINCICH
ERIC S. DURANDKERSHAW COUNTY COURTHOUSE
1121 BROAD STREET
CAMDEN, SOUTH CAROLINA 29020
TEL 803-425-7237 • FAX 803-425-8807

May 2, 2011

Mr. Mitchell Hinson
KCDC
101 Bramblewood Plantation Rd.
Camden, S.C. 29020

Dear Mr. Hinson,

Enclosed you will find a notice from the Solicitor's office in regards to your case.
Your case is being called the week of May 23, 2011.

Sincerely,

A handwritten signature in cursive script that reads "Robin Mack".
Robin Mack
Administrative Assistant

EXHIBIT

Applicants 1

The State of South Carolina

Dan Johnson
Perry
Solicitor
Solicitor

Paulette Edwards
Goldberg
Deputy Solicitor
Solicitor

SOLICITOR'S OFFICE

Fifth Judicial Circuit
1121 Broad Street
Camden, South Carolina 29020

Phone: (803) 425-7672
Fax: (803) 425-6029

May 2, 2011

Brett

Deputy

Daniel R.

Deputy

*He is in KCDC
since 1/20/11*

*sent copy to
jail*

Neil Riley

RE: State v. Mitchell Hinson

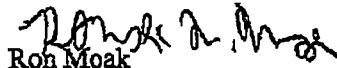
Dear Mr. Riley:

I am writing you in regards to your client Mitchell Hinson. Last week, I extended to him an opportunity to be sentenced under the Youthful Offender Act to an active sentence not to exceed 6 years if he pled guilty to the offense of Burglary in the Second Degree. That plea offer was rejected. As such, that plea offer is now revoked.

The week of May 23, 2011, we have a term of General Sessions Court with Judge Cooper presiding. It is my intention to call this case to trial that week on the original indictment of Burglary in the First Degree. I understand that there may be a video of your client committing the crime for which he is charged. I have asked Investigator Nesbitt of the Sheriff's Office to provide me with two copies of the video- 1 for my office and 1 for

you by the end of this week. I should also have a copy of all of the other documents in this case by that time as well.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ron Moak", written in a cursive style.

Ron Moak
Assistant Solicitor.
Fifth Judicial Circuit

The State of South Carolina

Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
1121 Broad Street
Camden, South Carolina 29020

Phone: (803) 425-7672

Fax: (803) 425-6029

Brett Perry
Deputy Solicitor

Daniel R. Goldberg
Deputy Solicitor

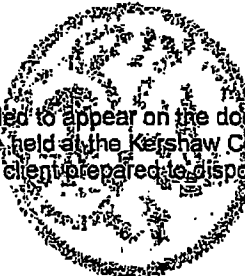
May 2, 2011

Neil Riley
Public Defender

RE: State vs. Mitchell Hinson

Dear Mr. Riley:

The above-named defendant is scheduled to appear on the dockets for the weeks of **MAY 16, 2011 AND MAY 23, 2011 at 9:00AM**, which will be held at the Kershaw County Courthouse, Room 300, 1121 Broad Street, Camden SC. Please have your client prepared to dispose of this matter during the above listed date(s).



Sincerely,

Ronald W. Moak

Ron Moak
Assistant Solicitor
Fifth Judicial Circuit

The State of South Carolina

Dan Johnson
Solicitor

SOLICITOR
Fifth Judicial Circuit
1121 Broad Street
Camden SC 29020

Daniel Goldberg
Deputy Solicitor

Paulette Edwards
Deputy Solicitor

803 425-7672
803 425-6029 fax

May 2, 2011

Mitchell Hinson
[REDACTED] N Matson Street
Kershaw SC 29067

RE: Notice for Trial
Warrant # M100351

Dear Mr. Hinson:



Please be advised that this case is on the docket for the weeks of **MAY 16, AND MAY 23, 2011** at 9:00am, which will be held at the Kershaw County Courthouse, Room 300, 1121 Broad Street, Camden, South Carolina. Please be prepared to dispose of this matter during the above listed date(s).

Sincerely,

Ron Moak
Assistant Solicitor
Fifth Judicial Circuit

RON MOAK

From: RON MOAK
Sent: Monday, May 02, 2011 10:23 AM
To: 'wayne.nesbitt@kershaw.sc.gov'
Subject: Mitchell Hinson

Wayne-

Mitchell Hinson refused to plead guilty last week and wanted a trial. It is my understanding that the homeowner had a video system and video'd the defendants breaking into his home, and that the juvenile helped recover the stolen property and helped id Hinson. I am noticing Hinson for trial at the end of this month, specifically May 23. What I need is a copy of your complete file, including a copy of that video so that I can give it to Riley. I am also going to allow the (Bailey?) kind to go through Family Court in exchange for cooperating against Hinson. Hinson will be tried for Burglary 1st degree, which carries a mandatory minimum sentence of 15 years, no part of which can be suspended.

Give me a call about what the best way to get this will be.

Thanks,

Ron Moak

Assistant Solicitor
Fifth Judicial Circuit

1121 Broad Street
Camden, South Carolina 29020
Phone: 803.425.7672 • Fax: 803.425.6029

5/2/2011

The State of South Carolina



Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
1701 Main Street
Columbia, South Carolina 29201

Phone: (803) 576-1800
Fax: (803) 576-1718

Daniel R. Goldberg
Deputy Solicitor

June 8, 2011

Neil Riley
Kershaw County Public Defender's Office

RE: State v. Mitchell Hinson

Dear Mr. Riley,

The purpose of this letter is to document our previous verbal discussion where I informed you that 1. all previous plea offers in this case are and have been revoked, and 2. that I intend to call this case to trial the week of June 27, 2011. Jury selection begins that Monday morning. Judge Manning will be the Presiding Judge. The charge that I intend to call is from the January 14, 2011 incident where your client is indicted for Burglary in the First Degree. The codefendant, Corbin Bailey, intends to testify against your client. The consideration given to Mr. Bailey for his cooperation is that I will ask for his charge to be remanded to the jurisdiction of Family Court, where he intends to plead guilty as charged. While the State is making no recommendation as to the sentence in Family Court, I would guess that due to his cooperation he might possibly receive a probationary sentence- that would be up to the Family Court Judge and would presumably be based upon an evaluation. If you have any questions, please call me at (803) 425-7672.

Thank You,

Ron Moak
Ron Moak

Assistant Solicitor
Fifth Judicial Circuit

The State of South Carolina



Warren B. Glese

Solicitor

Phone
(803) 576-1800

SOLICITOR

Fifth Judicial Circuit
1121 Broad Street
Camden, South Carolina 29020
(803) 425-1500, Ext. 5358

John P. Meadors

Deputy Solicitor

PLEA OFFERTO: Neil RileyState vs. Mitchell HinsonCharges: Burg 1stPlea Offer: Burg 2nd - 5 years
off previous offer 10 yearsDefendant's 2nd Appearance Date: _____Date of Offer: March 2

Assistant Solicitor David Ross

803-425-7672 office

803-425-6029 fax

Ron Mack

CONTACTS WITH MITCHELL L. HINSON
BY
Neil J. Riley & Eric S. Durand
K.C.P.D.'s Office

1	26	11	CLIENT INTERVIEW & BOND HEARING
2	7	11	ORDER OF APPTMT. RECEIVED FROM CLERK
3	1	11	LETTER TO CLIENT AT KCDC
5	2	11	LETTER TO CLIENT & NOTICE OF TRIAL
5	4	11	CLIENT INTERVIEW AT KCDC
5	19	11	CLIENT INTERVIEW AT KCDC
5	24	11	RECEIVE & VIEW VIDEO
5	27	11	CLIENT INTERVIEW AT KCDC
6	2	11	PRELIMINARY HEARING ON I134600, DISMISSED
6	2	11	CLIENT INTERVIEW AT KCDC
6	8	11	CLIENT INTERVIEW AT KCDC

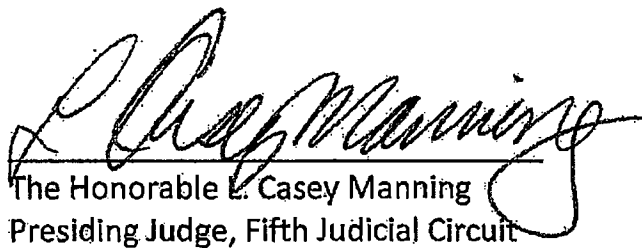
STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
STATE OF SOUTH CAROLINA)
KERSHAW COUNTY, S.C.)

FILED FOR RECORD
2016 APR -4 AM 9:30
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

-VS-)
MITCHELL HINSON)
DEFENDANT)
ORDER
DENYING MOTION FOR RECONSIDERATION

This matter came before the Court on February 18, 2016, upon Defendant's Motion for Reconsideration of Sentence or in the Alternative for a New Trial. After reviewing the Defendant's Motion for reconsideration of sentence or in the alternative for a new trial, I find that the Defendant is not entitled to reconsideration of his sentence or a new trial.

AND IT IS THEREFORE ORDERED, that the Defendant's Motion be denied.


The Honorable L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

March 29, 2016
Camden, South Carolina.

STATE'S
EXHIBIT

#1

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Mitchell Logan Hinson, #346676,)

Case No. 2016-CP-28-0963

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

JAMES C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

FILED FOR RECORD
2018 APR 12 PM 1:09

This matter comes before the Court by way of an application for post-conviction relief filed on November 4, 2016, and amended on May 24, 2017, filed by Mitchell Logan Hinson (Applicant). The State (Respondent) made its return on June 23, 2017. An evidentiary hearing into the matter was convened on July 19, 2017, at the Richland County Courthouse. Applicant was present at the hearing and represented by Kristy Goldberg, Esquire. Jessica E. Kinard, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant and his trial counsel, Cornelius Riley (counsel), testified at the hearing, as did Jason Kirincich, Esquire. The Court had before it a copy of the trial transcript, the records of the Kershaw County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this action. After reviewing the record and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. During its March 2011, the Kershaw County Grand Jury indicted Applicant for first-degree burglary.

APR 12 2018
2016-CP-28-0963
True, Correct & Certified
Copy of Original on File in this
Court
James C. Hasty
Clerk of Court Kershaw County

Public Defender Cornelius J. Riley, Esquire represented Applicant, and Assistant Solicitor Ron Moak, Esquire prosecuted the case. On June 27-29, 2011, Applicant proceeded to trial before the Honorable L. Casey Manning and a jury. The jury found Applicant guilty as indicted. Judge Manning sentenced Applicant to fifteen years imprisonment. Thereafter, counsel filed a motion to reconsider the sentence or in the alternative a new trial, on July 8, 2011. An order denying the motion was signed on March 24, 2016 and filed on April 4, 2016. Applicant did not appeal his conviction or sentence.

On November 3, 2015, while his post-trial general sessions motion was still pending, Applicant filed an initial post-conviction relief application. However, because the motion for reconsideration of sentence was still pending, Respondent moved to summarily dismiss this application as premature. On January 12, 2016, the Honorable Alison Renee Lee, acting in her capacity as Chief Administrative Judge for Common Pleas for the Fifth Judicial Circuit, dismissed the application without prejudice, with leave for Applicant to refile for post-conviction relief within a year from the date that the motion was ruled upon. Thereafter, on November 4, 2016, Applicant timely filed his current application for post-conviction relief.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "For 4 years no one has heard my motion for new trial therefor I have been unable to appeal my conviction."
2. "Lack of complete understanding as to sentencing."

The amendment filed by Applicant's counsel added the following allegations:

1. Ineffective assistance of counsel for



- a. Failure to disclose and explain plea offers to Applicant and failure to accurately and fully explain the consequences of refusing a plea offers and proceeding to trial.
- b. Failure to ensure that the jurors did not witness the Applicant in leg shackles.
- c. Failure to object to pitting the witnesses.
- d. Failure to object to admission the Applicant's prior conviction for Receiving Stolen Goods.
- e. Failure to object to the Court's Allen charge.
- f. Failure to file Notice of Appeal after the Motion to Reconsider was disposed of March 24, 2016.

Allegation (c) was withdrawn during the hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe the witnesses who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

Evidence Adduced at Trial.

On the evening of January 14, 2011, the home of James Eubanks was broken into while he and his family were out. Several items were stolen, including a PlayStation console, several games, and a watch. Upon entering the house, Mr. Eubanks noticed that the door had been forced open, and his dog had been put in its kennel and seemed confused. Mr. Eubanks checked the home and, upon finding it empty, called 911 to inform them of the break-in and his son's missing items. While waiting for law enforcement, Mr. Eubanks reviewed the video of his self-installed home surveillance system. On it, he saw Applicant and another teenager surveying the house and leaving with the stolen items. Applicant was friends with Mr. Eubanks's son, so he had no doubt as to his identity. (Tr. p.77).

 3

Corbin Bailey, the other teenager, testified to the events that transpired that evening. He admitted he was involved, as was Applicant, and stated that the crime was Applicant's idea. He further testified that they sold the items they stole, other than the watch, which was returned. (Tr. p. 82-94). Lindsey Stitzel, Applicant's then-girlfriend, testified that she spent part of the evening with Applicant, but it was shown that she gave law enforcement conflicting stories, and also admitted to wanting to protect Applicant. (Tr. p. 114-131). Applicant testified and maintained his innocence. He admitted that the Eubanks had been very good to him when he needed help growing up, but he believed they were lying about his involvement in the crime. (Tr. p. 132-49).

Summary of PCR Testimony

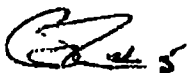
Applicant was the first witness to testify. He testified he was arrested in January 2011 and proceeded to trial six months later. He testified counsel represented him for this entire time, but only visited him two or three times and an associate accompanied counsel who did most of the interactions. He admitted he entered a home at night and stole the items, but pointed out that no one was home or hurt and that he did not have a weapon. He saw the surveillance video approximately two weeks before trial, but maintained that all you could see was two people entering the house.

When asked about plea negotiations, Applicant remembered that he was offered a sentence under the Youthful Offender Act ("YOA"), but did not want to plead as he had charges in Lancaster County and was on probation, so he did not want the violation. Those charges were distribution of marijuana and receiving stolen goods, to which he pled guilty in exchange for a sentence of five years' probation PTUP on \$2,000.00 restitution. He then testified that he received an offer when he and trial counsel were at the courthouse for his bond hearing. Trial counsel informed him the offer was a good deal, and said he would speak to the prosecutor about



it when Applicant mentioned his concerns regarding his other charges. Applicant testified that he never formally rejected the plea offer, nor did trial counsel tell him that the service on the charges could run concurrently. He also recalled another offer of two to three years, which involved disposing of his pending probation violation, and his family trying to pay restitution before the plea. He testified that he did not want to plead guilty at the time, though trial counsel told him they were good offers and he should take them. Trial counsel never told him that the offers would expire.

At the time of trial, Applicant received a plea offer of twelve years during jury selection, and he felt like that was a long time, and was unsure of what he would receive at trial. However, on cross-examination, he testified that he knew he faced fifteen years if convicted. He testified that he felt trial just "popped up" because the solicitor was frustrated that he would not plead. He further testified that he did not want to go to trial, but wanted to try to pay the restitution before he pled guilty, and was also scared of the consequences of the probation revocation in Lancaster. Applicant stated that trial counsel never said he had to take a plea or go to trial, and he did not realize that they were proceeding closer to trial every time he rejected an offer. Applicant testified that he did not believe they would win at trial. He recalled hearing the word "deadlocked" during trial, and thought it was a good thing. Trial counsel told him that, because the jury was taking so long, it could be a good thing. However, Applicant then stated that trial counsel never said the jury was deadlocked. After trial, he asked for an appeal because it was all he knew to do. He remembers that a motion for a new trial was filed, but it was denied without a hearing. After that, he never spoke with anyone in the public defender's office about an appeal, though he expected one to be filed. Instead, he filed for post-conviction relief.



The State called Cornelius Riley to testify, who began by stating that he had been practicing for twenty-five years at the time of the trial. He was with the public defender's office at the time, and as the chief public defender for Kershaw County, appointed himself to the case. He testified that he could not recall the specifics of meeting with Applicant, but knew they discussed the case multiple times. He further recalled discussing plea offers and the ramifications of rejecting them, as well as potential sentences he may receive and how those would be classified. He testified that Applicant's problem was that he could not make a decision between pleading and going to trial, and he seemed to just want the whole thing to go away. Trial counsel testified that he attempted to delay the solicitor's office as much as possible, but they eventually revoked his offers. He further testified that he was aware of the probationary sentence in Lancaster County, and was aware that Applicant was scared of revocation. He explained to Applicant that he had no control over the Lancaster charge, but thought they would likely revoke his probation based on this charge. Contrary to Applicant's prior testimony, trial counsel testified that he told Applicant that the revocation sentence would likely run concurrently with any time on the burglary charge.

Trial counsel remembered the YOA plea offer, and that he tried to negotiate a suspended YOA sentence. He did not recall the 2-3 year offer, or the 12 year offer, but testified that he would have conveyed them to Applicant had he received them. He remembers never formally rejecting the offers on behalf of Applicant, but was in a difficult position because Applicant could not make up his mind. Trial counsel further recalled Applicant stating that he would pay off the restitution in order to get off probation in Lancaster before pleading to this Kershaw County charge.



Regarding trial strategy and preparation, trial counsel testified that he showed the surveillance video to Applicant far earlier than the two weeks prior to trial Applicant alleged. He testified that his strategy was to raise doubt with the jury regarding the video quality, but he was aware that there was not much to defend. The testimony of Applicant's girlfriend was not as helpful as he had hoped it might be, and Applicant himself testified well on direct examination, but seemed to get confused on cross-examination. It was Applicant's decision to testify, and he knew it meant giving up last argument. Applicant also knew well in advance that his co-defendant had taken a deal to testify against him. Trial counsel also testified that Applicant knew he was facing fifteen years to life due to the conversations regarding the plea deal. Specifically regarding the allegation that he was ineffective for allowing Applicant to take the stand while wearing leg shackles, trial counsel admitted that it was his responsibility to ensure that did not happen, and that he believed the jury actually saw the shackles. He testified on cross-examination that the sentence seemed outrageous for the crime, but acknowledged Applicant's conduct comported with the elements of first-degree burglary and the sentence was the mandatory minimum sentence he could receive upon conviction. He further testified that, due to Applicant's refusal to accept that he had to either plead or go to trial, it was difficult to work out deals or do much preparation. Trial counsel testified that he attempted to have the post-trial motion resolved before his retirement, but he was being advised by the judge and solicitors to let the victims calm down before reassessing the sentence, and he agreed with that wisdom.

Assistant Public Defender Jason Kirinich was called to testify regarding the post-trial motion and its resolution. He testified that it came to his attention after Applicant filed his first post-conviction relief application, and he got in touch with the solicitor's office regarding the status. He testified that Judge Manning denied the motion without a hearing, and he was not

immediately served with it. When he discovered the order, he contacted the Attorney General's office to resolve any outstanding post-conviction relief issues.

Ineffective Assistance of Trial Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, an applicant must prove "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, an 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. "A reasonable probability is a

probability sufficient to undermine confidence in the outcome [of the proceeding].” Strickland, 466 U.S. at 694. “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” Strickland, 466 U.S. at 389. “It is all too easy to conclude that a particular act or omission of counsel was unreasonable in the harsh light of hindsight.” Bell v. Cone, 535 U.S. 685, 702 (2002) (citing Strickland). Based on the foregoing, this Court finds as below to as to each specific allegation of ineffective assistance of counsel:

Allegation: Failure to disclose and explain plea offers to Applicant and failure to accurately and fully explain the consequences of refusing a plea offers and proceeding to trial

Applicant alleges trial counsel failed to present and explain plea offers, as well as the consequences of refusing those offers, to him prior to trial. Applicant asserts he did not want to proceed forward to trial and failed to accept favorable plea offers from the State due to counsel’s failure to properly advise him. The Court finds this allegation to be without merit based on the testimony provided at the evidentiary hearing.

A defendant has the right to effective assistance of counsel during the plea bargaining process, even if he ultimately elects to proceed to trial. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). Here, the uncontroverted testimony establishes that counsel advised Applicant of favorable plea offers from the State and advised him that it was in Applicant’s best interest to accept these plea offers due to the strong case the State would present at trial, but that Applicant never accepted any of these offers due to his own hesitance and unwillingness to make a decision

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on whether to proceed to trial versus plea guilty. Notably, trial counsel testified at length regarding the difficulties he had with getting Applicant to understand the consequences of rejecting plea offers, as well as the fact that the charges would not simply disappear as Applicant wanted. This Court finds counsel's performance was reasonable, as he properly conveyed the State's plea offers to Applicant and advised him to seriously consider accepting the State's offers based on the strength of the State's case. Therefore, this allegation is denied and dismissed.

Allegation: Failure to ensure that the jurors did not witness the Applicant in leg shackles

Applicant alleges counsel was ineffective for allowing him to proceed to trial in shackles. Applicant alleges the jury saw these shackles when he began walking to the witness stand during trial. See Tr. p. 132. This Court finds Applicant has failed to meet his requisite burden of proof as to this allegation.

Generally, it is improper for a defendant to appear for a jury trial dressed in readily identifiable prison clothing. Humbert v. State, 345 S.C. 332, 337, 548 S.E.2d 862, 865 (2001). However, to establish that counsel was ineffective for allowing his client to be tried in shackles or prison attire, an applicant must establish he was prejudiced by counsel's error. Id. (finding a robbery defendant was not prejudiced by counsel's deficient performance in allowing trial to proceed while defendant was wearing prison clothing, and thus, defendant could not prevail on ineffective assistance claim; evidence of defendant's guilt was overwhelming, where store clerk identified defendant as the perpetrator and defendant was driving a truck that matched description of getaway vehicle). Indeed, the United States Supreme Court has explained that "[r]ecognizing that jurors are quite aware that the defendant appearing before them did not arrive there by choice or happenstance, we have never tried, and could never hope, to eliminate from trial procedures every reminder that the State has chosen to marshal its resources against a

defendant to punish him for allegedly criminal conduct.” Holbrook v. Flynn, 475 U.S. 560, 567 (1986).

In the present case, there is overwhelming evidence establishing Applicant was guilty of the charged offense, including an identification by a victim who knew Applicant by sight and testimony from a cooperating co-defendant. This Court finds there is no reasonable likelihood the result of Applicant’s trial would have been different but for the fact that the jury saw Applicant in shackles. For these reasons, this allegation is denied and dismissed.

Allegation: Failure to object to admission the Applicant's prior conviction for Receiving Stolen Goods

Applicant alleges counsel was ineffective for failing to make an argument that Applicant’s prior conviction for receiving stolen goods was not admissible for impeachment purposes. Applicant argued that his prior conviction was not a crime of moral turpitude¹ and was more prejudicial than probative, and therefore, was inadmissible. However, this argument is without merit, as Applicant’s prior conviction was admissible for impeachment purposes at the time of Applicant’s trial in 2011.

Rule 609(a)(2), SCRE, provides that a witness’s character for truthfulness may be attacked “by evidence of a criminal conviction for any crime regardless of the punishment, the

¹ At the hearing, Applicant repeatedly argued that his prior conviction was not a “crime of moral turpitude.” Prior to the adoption of the South Carolina Rules of Evidence, conduct constituting a crime of moral turpitude was admissible to impeach a witness. See State v. Outlaw, 307 S.C. 177, 179, 414 S.E.2d 147, 148 (1992) (holding defendant may be questioned about prior bad acts that relate to credibility and prior convictions for crimes of moral turpitude); State v. Majors, 301 S.C. 181, 184, 391 S.E.2d 235, 237 (1990) (finding past transactions affecting credibility can be inquired into on cross-examination); State v. McGuire, 272 S.C. 547, 550, 253 S.E.2d 103, 104 (1979) (finding trial judge erred in refusing to permit cross-examination concerning crimes of moral turpitude). However, the common law rule applying the moral turpitude standard is no longer appropriate in light of the adoption of the Rules of Evidence in 1995. See Rule 1103(b), SCRE (“these rules shall become effective September 3, 1995.”); State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (holding the common law moral turpitude standard was replaced with the adoption of Rule 609(a), SCRE).

evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving – or the witness’s admitting – a dishonest act or false statement.” Such convictions may be used to impeach a defendant witness who elects to take the stand in his defense.

At the time of Applicant’s trial in 2011, receiving stolen goods was recognized as a crime of dishonesty pursuant to Rule 609(a)(2), SCRE. See State v. Williams, 380 S.C. 336, 669 S.E.2d2d 640 (Ct. App. 2008) (acknowledging a witness’ conviction for receiving stolen goods was a crime of dishonesty). Therefore, counsel was not ineffective for failing to object or otherwise present an argument as to why Applicant’s prior conviction for receiving stolen goods should have been inadmissible for impeachment purposes.

Allegation: Failure to object to the Allen charge

Applicant alleges counsel was ineffective for failing to object to the trial court’s jury instruction during deliberations encouraging the jury to attempt to reach a unanimous verdict, often referred to as an Allen² charge. Pursuant to S.C. Code Ann. § 14-7-1330, “[w]hen a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation.”

The record reflects the jury began deliberations on the afternoon of June 28, 2011. (Tr. p. 172-73). After sending in several jury notes, including notes to watch the surveillance video again, the court excused the jury for the evening. (Tr. p. 173-79). The jury returned the following morning and resumed deliberations. (Tr. p. 179). After a few more hours of deliberation, a discussion with the jury off the record, and a discussion with counsels in-chambers, the trial court elected to give the jury an Allen charge. (Tr. p. 185-192).

² Allen v. United States, 164 U.S. 492 (1896).

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In order for the judicial process to properly function, it is important for cases to reach a final resolution at some point. See Nickles v. Seaboard Air Line Ry., 74 S.C. 102, 142, 54 S.E. 255, 268 (1910) ("It is important that the trial of causes should be ended."). As a result, trial judges have a duty to urge juries to agree upon a verdict. State v. Kelly, 372 S.C. 167, 171, 641 S.E.2d 468, 470 (Ct. App. 2007). However, trial judges are not permitted to coerce juries into doing so. See State v. Darr, 262 S.C. 585, 587, 206 S.E.2d 870, 870 (1974) ("It is the duty of the trial judge to urge the jury to agree upon a verdict provided he does not coerce them."); State v. Ayers, 284 S.C. 266, 269, 325 S.E.2d 579, 581 (Ct. App. 1985) ("The trial judge has a duty to urge the jury to agree on a verdict, so long as he is not coercive.").

"The typical judicial mechanism for encouraging an indecisive jury is the Allen charge, in which jurors are instructed on, among other things, their duties to approach the evidence with an open mind and consider the opinions of their fellow jurors." State v. Robinson, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004). In giving the supplemental charge to the jury, a trial judge is permitted to encourage the jury to reach a verdict in a number of ways, including by advising the jurors in the majority and minority to consider each other views, by asking the jurors to give deference to one another's opinions, by instructing the jurors to try to reach a decision if they are capable of doing so, and by explaining the high societal costs associated with the retrial of a case to the jury. See Allen v. United States, 164 U.S. 492, 501 (1896) (finding no error in a supplemental charge to a deadlocked jury instructing that absolute certainty cannot be expected, that the verdict must be the verdict of each juror and not mere acquiescence in the views of the others, that they should examine the case with candor and give proper deference and regard to one another's opinions, that they had a duty to decide the case if they could conscientiously do so, that they should listen to each other with a disposition to be convinced,

and that they should consider the position of jurors holding a differing opinion); see also Nickles, 74 S.C. at 141-142, 54 S.E. at 268 (finding a supplemental jury charge to a deadlocked jury in which the trial judge instructed the jury that the expenses associated with trying the case were a “very strong reason” that the jury ought to get together and agree upon a verdict was not coercive or erroneous). Significantly, the presentation of such a supplemental charge “has long been sanctioned[,]” and, by doing so, a trial judge is merely discharging his duty to the public. Lowenfield v. Phelps, 484 U.S. 231, 237 (1988); see Nickles, 74 S.C. at 142, 54 S.E. at 268 (“A circuit judge is but discharging his duty to the public, and especially to the litigants, when he urges the jury to reach a verdict, provided nothing like coercion takes place.”).

In reviewing a trial judge’s jury instructions, a reviewing court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). In particular, when reviewing an Allen charge to determine if the charge was unconstitutionally coercive, the court must judge the charge in the proper context and under the totality of the circumstances. Dawson v. State, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002). Factors that may be considered include: (1) whether the charge was specifically directed at minority jurors; (2) whether the charge included any mandatory language about the necessity to return a verdict; (3) whether the trial judge made any inquiries into the jury’s numerical division; and (4) how long the jury’s deliberations lasted. Tucker v. Catoe, 346 S.C. 483, 493-494, 552 S.E.2d 712, 717-718 (2001). Significantly though, it is not coercive for the trial judge to instruct the jury that every juror has a right to their own opinion, that no juror needs to surrender their opinion merely to reach an agreement, or that the failure to reach a verdict will result in additional costs. See State v. Singleton, 319 S.C. 312, 316, 460 S.E.2d 573, 575-576 (1995) (“It is not coercion when a trial judge instructs the jury that failure to reach a

verdict will require a new trial at additional expense, or states that every juror has a right to his own opinion and need not give it up merely for the purpose of reaching agreement." (footnotes omitted)); Ayers, 284 S.C. at 269, 325 S.E.2d at 581 ("It is not coercive to charge that failure to reach a verdict will require a new trial at additional expense.").

In the present case, the trial court instructed the jury that an agreement is not always easy to reach, that absolute certainty cannot be reached or expected in most cases, that the jurors had a duty to make every reasonable effort to reach a verdict, that they should listen to one another's opinions and discuss their differences, that they each had a right to their own opinion and should not give up that opinion merely to be in agreement with the others, and that both the majority and minority should carefully and respectfully consider each other's positions and re-evaluate their own opinions. When considered as a whole and in the proper context, those supplemental instructions were even-handedly delivered to both the minority and majority jurors, did not convey to the jury that reaching a verdict was mandatory, and constituted a correct statement of the law. Cf. Green v. State, 351 S.C. 184, 195, 569 S.E.2d 318, 323-324 (2002) ("The entire charge shows the trial judge adequately and correctly told the jurors they should listen to what the other side had to say; to be open to change one's mind; and to not change one's mind if it would do violence to one's conscience. The charge was neutral in its direction, not impermissibly aimed at the minority, instead suggesting members of each side examine their own position in light of the other view's position."). As a result, the trial judge committed no error in fulfilling his duty to encourage the jury to reach a verdict in Applicant's case. See State v. Middleton, 218 S.C. 452, 457, 63 S.E.2d 163, 165 (1951) (instructing that a trial judge has the duty "to admonish the jury as to the desirability and importance of trying to reconcile their differences and agreeing upon a verdict" when a jury is unable to agree). Therefore, because this



Court finds the Allen charge was properly given, trial counsel was not ineffective for failing to object to it.

Despite the apparent propriety of the Allen charge itself, Applicant argues the instruction was nonetheless impermissible because the jury did not state on the record that it was deadlocked or otherwise unable to reach a verdict. However, this argument is without merit, as there is no such requirement before the trial court can give an Allen instruction. See Darr, 262 S.C. at 587, 206 S.E.2d at 870 ("It is the duty of the trial judge to urge the jury to agree upon a verdict provided he does not coerce them."); Ayers, 284 S.C. at 269, 325 S.E.2d at 581 ("The trial judge has a duty to urge the jury to agree on a verdict, so long as he is not coercive."). Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Failure to file Notice of Appeal

Applicant asserts counsel was ineffective for failing to file a direct appeal on his behalf following the denial of his motion to reconsider his sentence. By the time Applicant's motion to reconsider his sentence was denied, he had already filed an application for post-conviction relief.

"Following a trial, counsel must make certain the defendant is made fully aware of the right to appeal." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (internal citations omitted). "In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967)." Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (internal citation omitted). "To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." Simuel, 390 S.C. at 271, 701 S.E.2d at 740 (citing Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) (internal citation omitted).

In the present case, this Court finds Applicant made a knowing and intelligent decision to

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forego a direct appeal and proceed directly to post-conviction relief remedies. Once his motion to reconsider his sentence was denied, Applicant proceeded forward with filing a second post-conviction relief application and did not request his counsel file a direct appeal on his behalf. This Court finds Applicant has failed to meet his burden of proof and denies this allegation.

IV. CONCLUSION

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

This Court notes 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. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, 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 South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of April, 2018.


 G. THOMAS COOPER, JR.
 Presiding Judge - Fifth Judicial Circuit

Chandler, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Mitchell Logan Hinson,	)	C.A. No. 2016-CP-28-963
S.C.D.C. No. 346676,	)	
	)	
Applicant,	)	MOTION TO ALTER/AMEND
v.	)	JUDGEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Counsel for the Applicant has received the Order of the Court dismissing Applicant's claims for Post-Conviction Relief. Pursuant to South Carolina Rule of Civil Procedure Rule 59(e), the Applicant hereby requests this Court consider to Alter or Amend the current Judgement based upon the following argument:

- a) Ineffective assistance of counsel for failure to disclose and explain plea offers to Applicant and failure to accurately and fully explain the consequences of refusing a plea offers and proceeding to trial.

The Court's Order states:

Here, "the uncontroverted testimony establishes that counsel advised Applicant of favorable plea offers from the State and advised him that it was in Applicant's best interest to accept these plea offers due to the strong case the State would present at trial, but that the Applicant never accepted any of these offers due to his own hesitance and unwillingness to make a decision on whether to proceed to trial versus plead guilty

This statement is incorrectly reflects the testimony presented in the hearing.

The Applicant testified that he never wanted a trial, never asked for a trial, and never thought he was likely to win at trial. His charge had been pending for only five months at the time it was called for trial and he never actually rejected any of the plea offers which were eventually revoked. He testified that, rather than reject the offers, he expressed his concern regarding what would happen with his pending probation case. The Applicant testified that trial counsel responded that he would get back with the Applicant about those concerns. Counsel never came back and attempted to explain the possible legal consequences of the plea offers as they relate to the probation case. Counsel also testified in the hearing that he never contacted the Applicant's probation agent despite being aware of Applicant's concerns. The Applicant is claiming that he never had a meaningful opportunity to accept the plea offers because he was never fully informed by his counsel about the potential consequences of any plea even after the Applicant made his concerns known.

Counsel confirmed that he never informed the State that the Applicant was rejecting an offer, and rather, the offers were deemed revoked by the State when the Applicant did not accept the offer after some period of time. Counsel testified that the Solicitor had not put an expiration date on the plea offers but counsel knew they wouldn't last forever. He admittedly did not share this or any time limit with the Applicant. Although the Applicant would assert his innocence at times, counsel agreed that the Applicant never wanted a trial. Counsel acknowledged that he believed the Applicant would likely be convicted at trial and did not believe trial was in his best interest.

It is also important to remind this Court that during the PCR hearing trial counsel admitted to initially advising the Applicant to accept a plea offer to a YOA sentence, while

knowing the Applicant was currently serving a YOA sentence. Trial counsel's advice for the Applicant to intentionally enter into an agreement for an illegal sentence with unknown consequences was completely unreasonable.

The Applicant asks that this Court reconsider the totality of the evidence proving that that trial counsel was not reasonable in the advice he gave to the Applicant. Applicant believes that counsel's improper and insufficient legal advice regarding the possible consequences of the plea offers and their terms of expiration, coupled with counsel's failure to investigate the Applicant's probation matter show that his representation was below professional norms in this instance. The Applicant was prejudiced because all reasonable plea offers were revoked before the Applicant had an opportunity to make a knowing and intelligent acceptance or rejection, and as a result the Applicant was forced to go through with trial for an offense which carried a mandatory minimum fifteen year sentence.

- b) Ineffective assistance of counsel for failing to ensure that the jurors did not witness the Applicant in leg shackles.

The Applicant would simply ask the Court to review the argument previously presented in the proposed order granting post-conviction relief.

- c) Ineffective assistance of counsel for failing to object to pitting the witnesses.

The Applicant has previously withdrawn this allegation.

- d) Ineffective assistance of counsel for failing to object to admission the Applicant's prior conviction for Receiving Stolen Goods.

The Court's Order simply rejects the Applicant's allegation on the basis that under 609(a)(2), SCRE "a witness's character for truthfulness may be attacked 'by evidence of a

criminal conviction for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required providing -- or the witness's admitting- a dishonest act or false statement.”

However, in the Applicant's case the Court did not determine that this conviction involved a dishonest act or false statement because trial counsel failed to present any argument whatsoever regarding use of this prior conviction for impeachment purposes. Trial counsel could have argued that a conviction for receiving stolen goods is not a crime which “involves some element of deceit, untruthfulness, or falsification bearing on the accused's propensity to testify truthfully.” *State v. Broadnax*, 414 S.C. 468, 477 (2015). Trial counsel could have also requested that the Court conduct an analysis regarding the general probative value of the prior conviction weighed against its prejudicial effect. Finally, counsel could and should have requested the Court to conduct a 403 analysis on the matter specifically focusing on the fact that the conviction for Receiving Stolen Goods is substantially similar to what was being alleged in the Burglary trial and accordingly is overly prejudicial.

e) Ineffective assistance of counsel for failing to object to the Court's Allen charge.

The Order of the Court spends several pages defending the propriety of an Allen charge in general, which has not been contested by the Applicant in this matter. Rather, the Applicant argues that the Court cannot and should not provide an Allen charge to the jury when the jury has not yet indicated that it is deadlocked. The Applicant contends that trial counsel should have objected to the use of an Allen charge under these circumstances. The Applicant argues that an Allen charge given to a still-deliberating jury is coercive in nature as it may cause an individual abandon their own opinions and bend to the will of the group or rush to judgement. Due to the

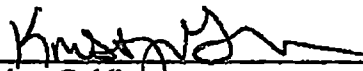
fact that the jury reached a verdict very shortly after the Allen charge was given there is a reasonable likelihood that the charge affected the jury's deliberations. (See, trial transcript pages 185-193).

f) Ineffective assistance of counsel for failing to file Notice of Appeal after the Motion to Reconsider was disposed of March 24, 2016.

The Court's Order dismisses this ground on the basis that the "Applicant made a knowing and intelligent decision to forgo a direct appeal and proceed directly to post-conviction relief remedies." The Applicant would argue that this finding does not reflect the testimony and evidence offered in the evidentiary hearing.

The testimony reflects that the Applicant unequivocally requested that notice of appeal be filed, and after the five year delay trial counsel Riley was no longer overseeing the Applicant's case and had not left instructions with anyone in his office regarding the Applicant's wishes. Further, Attorney Kirinchich never consulted with the Applicant to determine if he wanted a notice of appeal filed on his behalf or if he wanted to waive that right.

In summation, the Applicant hereby reasserts and reaffirms all evidence and argument previously presented in this Post-Conviction Relief matter in the Amended Application, during the evidentiary hearing, and submitted in the Applicant's proposed order for post-conviction relief submitted to this Court previously.



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Columbia, South Carolina

This 24th day of April, 2018

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Mitchell Logan Hinson,
S.C.D.C. No. 346676

Applicant,

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS

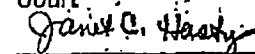
C/A No. 2016-28-0963

ORDER DENYING DEFENDANT'S
MOTION TO ALTER OR AMEND
JUDGMENTFILED FOR RECORD
2018 SEP -5 AM 11:25
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

This Court has reviewed the Applicant's Proposed Order Granting Post-Conviction Relief, the Applicant's Motion to Alter/Amend Judgment, this Court's Order of Dismissal and the transcript of Applicant's trial. After careful consideration of the Defendant's Motion, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Defendant's Motion pursuant to Rule 59(e) SCRCF to Alter or Amend the Judgment Order of Dismissal entered on or about April 12, 2018. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


 G. Thomas Cooper, Jr.
 Presiding Judge, Fifth Judicial Circuit
September 5, 2018
 ATTEST: True, Correct & Certified
 Copy of Original on File in this
 Court


 Janet C. Hasty
 Clerk of Court Kershaw County