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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable William A. McKinnon, Circuit Court Judge

RICHARD DOUGLAS WALDRUP,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001380

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3

4 THE STATE OF SOUTH)
CAROLINA)
5) TRANSCRIPT OF RECORD
6 -vs-) 2017-GS-11-00843
7 RICHARD DOUGLAS)
WALDRUP,) MARCH 5, 2019
GAFFNEY, SOUTH CAROLINA

8 DEFENDANT.

9

10 (VOLUME I)

11

B E F O R E:

12

THE HONORABLE J. MARK HAYES, II, JUDGE. ; And a Jury.

13

14

15

16

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

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7 identification).

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9 identification).

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17 Exhibit No. 8 for identification).

18 (Indictment No. 2010-GS-46-2304 marked as State's
19 Exhibit No. 10 for identification).

20 THE COURT: Good morning.

21 MR. MOORE: Good morning, sir.

22 RICHARD DOUGLAS WALDRUP, having been first duly
23 sworn, testified as follows:

24 MS. BARRY: May it please the court, Your Honor?

25 Mr. Waldrup is first up for trial this morning. I

1 just wanted to place a few things on the record.

2 The State made an offer. The very first offer
3 that the State made was to reduce the charge. He's
4 currently charged with burglary in the first degree. The
5 State's first offer was to reduce the charge to burglary in
6 the second degree, violent, with the 15 years, suspended to
7 12, followed by probation. That offer was rejected.

8 And Mr. Moore asked for 10, so the State agreed to
9 do 15, suspended to 10, followed by probation. That would
10 have been a negotiated sentence.

11 The State then was willing to make the offer of a
12 recommendation of 15, suspended to 10, followed by probation
13 and that offer was rejected as well.

14 It is the State's position that there are no more
15 offers. The State is prepared to go forward on the burglary
16 in the first degree charge.

17 MR. MOORE: Yes, sir.

18 May it please the court, Your Honor, that's
19 correct regarding the procedural history of the offers made
20 in this matter.

21 Mr. Waldrup and I have spoken extensively about
22 these offers, particularly concerning the difference in
23 their classification under the law for most serious and
24 serious, the potential parole eligibility, potential
25 difference in the way the South Carolina Department of

1 Corrections would calculate time under each potential offer,
2 if he were sentenced or to accept those offers.

3 In addition, as part of that that we have also
4 discussed the fact that an element of the crime he's
5 currently up for trial is two prior burglary convictions.
6 We have reviewed the certified copies of those previous
7 convictions and his understanding is that those will be most
8 likely admitted as evidence in the case in chief by the
9 State to establish the element of two prior burglary
10 convictions.

11 We have reviewed the discovery. I believe I have
12 answered all his questions regarding the offers, potential
13 sentences, and potential outcomes with both a plea and/or a
14 trial.

15 After having those discussions and answering his
16 questions, he tells me that he still wants to exercise his
17 right to a jury trial in this matter and is formally
18 rejecting all three of the State's different offers.

19 THE COURT: And you are Richard Waldrup?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. You were able to hear the
22 solicitor which she explained to me the progression of the
23 offers that were made by the State?

24 THE DEFENDANT: Yes, sir, I did.

25 THE COURT: And you do not want to take any of

1 those offers?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. You do understand that you
4 will be going on trial for burglary in the first?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Burglary in the first has a minimum
7 sentence of 15, a potential for life sentence?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you understand that the Department
10 of Corrections classifications, as far as calculation of
11 credits and stuff, is substantially different from a
12 burglary first than it is from the burglary second?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, my understanding is this last
15 offer from the State was for a burglary second degree,
16 violent, with the recommendation of 15 years, suspended to
17 10 years, followed by probation?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: My understanding is that
20 recommendation means that you would have the opportunity to
21 argue for less than that?

22 THE DEFENDANT: Right.

23 THE COURT: You could argue for a time-served
24 sentence. You could argue for less than a time-served
25 sentence. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That means that you had the potential
3 of walking out today?

4 THE DEFENDANT: I -- if it please the court, I've
5 not done nothing. I have been in jail for 22 and a half
6 months and the potential of going to prison is what gets me,
7 because what you just said, the potential of going home,
8 yes, sir, that's all I'm asking, because I have not done
9 nothing and I have confidence in this man to prove my
10 innocence.

11 THE COURT: Well, and Mr. Moore's reputation with
12 this court is very high.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: He's a very competent lawyer.

15 I'm just trying to be sure that we make a
16 sufficient record as to if this case does go south for you
17 and you are convicted of burglary in the first degree, given
18 the fact that you do have two prior burglaries already on
19 your record, that's an element that the State has to prove,
20 it seems like that element of burglary first is not going to
21 be contested because you either have the record or you
22 don't --

23 THE DEFENDANT: Right.

24 THE COURT: -- that I'm just trying to be sure
25 that you understand what you are giving up with the offer

1 the State has presented to you.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The State is giving you the
4 opportunity to be able to walk home today.

5 THE DEFENDANT: Your Honor --

6 THE COURT: Now, I can't answer any questions as
7 to the --

8 THE DEFENDANT: All I'm going to say, Your Honor,
9 honestly if I felt in my heart that the State was going to
10 send me home today, I would take it in a heartbeat, but --

11 THE COURT: Well, that's what -- well, they have
12 made an offer to you that you get to argue why you should go
13 home.

14 THE DEFENDANT: All the way up to 15 years and I
15 honestly don't feel like I should have served one day, sir.

16 THE COURT: I'm just trying to be sure that you
17 understand what the State is offering you.

18 THE DEFENDANT: I understand, yes, sir.

19 THE COURT: Okay. So you are going to give up the
20 opportunity to be able to argue that you get to go home
21 today?

22 (Off the record).

23 (Back on the record).

24 THE DEFENDANT: Could we have one second?

25 THE COURT: Sure, take as much time as you need.

1 I need to go get a book in the back anyway. I
2 will be right back.

3 (Off the record).

4 (Back on the record)

5 THE COURT: Yes, sir.

6 MR. MOORE: Yes, sir, we took that brief recess as
7 an opportunity to continue to discuss the State's most
8 recent offer and some of the implications there based off
9 the court's questions to Mr. Waldrup and his understanding
10 of that offer and potential range of discretion the court
11 would be exercising in sentencing if he were to accept that
12 offer.

13 In addition, we also talked about the potential of
14 entering a plea as an Alford Plea. However, as a result of
15 those discussions and answering his questions, Mr. Waldrup
16 still requests to have a jury trial in this matter.

17 THE COURT: All right. And Mr. Waldrup, you heard
18 the statements just made by your lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did he accurately describe your
21 feelings?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Then we will proceed with
24 a jury trial.

25 THE DEFENDANT: Thank you very much, sir.

1 THE COURT: All right.

2 I think we are ready the bring the jury up.

3 (Off the record).

4 (Back on the record).

5 (Whereupon, the jury venire panel entered the
6 courtroom)

7 THE COURT: All right, ladies and gentlemen, I
8 need to remind you that you are under oath to provide us
9 with truthful and accurate information.

10 We are now going to begin the trial of the State
11 of South Carolina versus Douglas Richard Waldrup.

12 I'll ask that Mr. Waldrup please stand and face
13 the ladies and gentlemen of the jury.

14 Ladies and gentlemen of the jury, this is Mr.
15 Richard Douglas Waldrup.

16 Now, Mr. Waldrup is charged by way of indictment
17 of burglary in the first degree.

18 The indictment, this allegation provides that Mr.
19 Waldrup did in Cherokee County, on or about April 15th,
20 2017, enter the dwelling belonging to a Teresa Smith located
21 at [REDACTED] Canty Way in Gaffney without consent and with the
22 intent to commit a crime therein.

23 Now, Mr. Waldrup has pled not guilty to this
24 indictment, and so, ladies and gentlemen, that is the
25 purpose of this trial is to -- so I have to some questions.

1 This is Mr. Waldrup.

2 Is anybody in the jury panel related by blood or
3 marriage to Mr. Waldrup, or do you have a close personal or
4 social relationship with Mr. Waldrup? If you do, please
5 stand at this time.

6 (No response)

7 THE COURT: Thank you, Mr. Waldrup. You may be
8 seated.

9 Now, again, I'm going to ask if Teresa Smith would
10 please stand and face the ladies and gentlemen of the jury?

11 This is Ms. Teresa Smith.

12 Ladies and gentlemen of the jury, if you are
13 related by blood or marriage to Ms. Smith, or if you have a
14 close personal or social relationship with Mrs. Smith, I
15 need for you to please stand at this time.

16 Thank you, Ms. Smith. You may be seated.

17 Yes, sir, tell me your juror number.

18 JUROR NUMBER 83: Juror 83.

19 THE COURT: Do you want to come around and meet me
20 at the court reporter?

21 (Whereupon, the following was an on-record-record
22 bench conference)

23 THE COURT: Give me just a moment. Let me find
24 it.

25 You are Mr. Littlejohn?

1 JUROR NUMBER 83: Yes, I am.

2 THE COURT: Yes, sir. How do you know?

3 JUROR NUMBER 83: Oh, I have been knowing her
4 since I was little. My friend and just know really.

5 THE COURT: Okay. And the fact that you have
6 those acquaintances with her, would that in any way affect
7 your ability to give both the State and the defense a fair
8 and impartial trial?

9 JUROR NUMBER 83: No, it would not.

10 THE COURT: Thank you, sir.

11 JUROR NUMBER 83: All right.

12 (Juror Number 83 returned to the jury venire
13 panel)

14 THE BAILIFF: Your Honor, number 61.

15 (Juror Number 61 approached the bench for an
16 on-the-record bench conference.

17 THE COURT: Give me just a moment. Let me find
18 it.

19 You are Michael Hemphill?

20 JUROR NUMBER 61: How are you doing, sir?

21 THE COURT: Yes, sir. You know --

22 JUROR NUMBER 61: I know her. I'm not related to
23 her.

24 THE COURT: Okay. And you know her as -- how do
25 you know her?

1 JUROR NUMBER 61: From many years. I hadn't seen
2 her in a while, but I know her.

3 THE COURT: Now, would the fact that you know her,
4 would that in any way affect your ability to give both the
5 State and the defense a fair and impartial trial in the
6 event you were selected as a member of this jury?

7 JUROR NUMBER 61: I shouldn't have no problem.

8 THE COURT: All right. Thank you, sir. Thank you
9 very much.

10 JUROR NUMBER 61: Thank you.

11 (Juror Number 61 returned to the jury venire
12 panel)

13 (Whereupon, the on-the-record bench conferences
14 were concluded)

15 THE COURT: All right, ladies and gentlemen, I'm
16 now going to read a list of potential witnesses who may be
17 called as part of this trial. I need for you to please
18 listen to these names, because after I read all these names,
19 I'm going to ask that you please stand if you are related by
20 blood or marriage to any of these individuals, or if you
21 have a close personal or social relationship with any of
22 these individuals.

23 Brent Heflin, the Cherokee County Sheriff's
24 Department.

25 Billy Austin.

1 Amanda Holley.

2 Brandon Peeler with the Cherokee County 911.

3 And Teresa Scoggins of the York County Clerk of
4 Court's office.

5 Ladies and gentlemen, if you are related by blood
6 or marriage to any of these individuals, or if you have a
7 close personal or social relationship with any of these
8 individuals, I need for you to please stand at this time.

9 (No response).

10 THE COURT: Ladies and gentlemen, I'm now going to
11 ask the lawyers that will be participating in the trial of
12 this case to please stand and introduce themselves to you.

13 Yes, ma'am.

14 MS. BARRY: My name is Adrienne Barry and I'm with
15 the Seventh Circuit Solicitor's Office and I'm with Cherokee
16 and Spartanburg Counties, and sitting with me is my
17 co-counsel Kim Leskanic.

18 MS. LESKANIC: Good morning.

19 MR. MOORE: Good morning. My name is Travis
20 Moore. I'm a private attorney from Spartanburg of the law
21 firm from Spartanburg of Anderson, Moore, Bailey & Nowell.
22 The attorneys currently associated with our firm in one
23 capacity or another are myself, Patrick Anderson, Mark
24 Nowell, Jenny Moore, and Vic Bailey, III.

25 THE COURT: Ladies and gentlemen, if you are

1 related by blood or marriage to any of these attorneys, or
2 if you have any close personal or social relationship with
3 any of these attorneys, I need for you to please stand at
4 this time.

5 Yes, sir, your juror number?

6 JUROR NUMBER 96: 96.

7 THE COURT: Do you want to come forward?

8 (Whereupon, the following was an on-the-record
9 bench conference).

10 (Juror Number 96 approached the bench)

11 THE COURT: You are Mr. Medley?

12 JUROR NUMBER 96: Yes, sir.

13 THE COURT: Yes, sir, who is it that you know?

14 JUROR NUMBER 96: Mr. Moore and I served in the
15 military together.

16 THE COURT: All right. And the fact that you have
17 that relationship with him, would that in any way affect
18 your ability to give both the State and the defense a fair
19 and impartial trial in the event you are selected as a
20 member of this jury?

21 JUROR NUMBER 96: No, sir.

22 THE COURT: Thank you, sir.

23 JUROR NUMBER 96: All right.

24 (Juror Number 96 returned to the jury venire
25 panel)

1 (Whereupon, the on-the-record bench conference was
2 concluded)

3 THE COURT: Ladies and gentlemen, if you have ever
4 been represented by any the attorneys involved in this case,
5 or if you have ever been prosecuted by any member of the
6 Cherokee County or the Seventh Circuit Solicitor's Office, I
7 need for you to please stand at this time.

8 (No response)

9 THE COURT: Has any member of the jury panel ever
10 been the victim of a burglary? If so, please stand at this
11 time.

12 All right. If you would please come down and meet
13 me down here at the court reporter.

14 THE BAILIFF: Your Honor, number 57.

15 (Whereupon, the following were on-the-record bench
16 conferences).

17 (Juror Number 57 approached the bench)

18 THE COURT: You are Mr. Harper?

19 JUROR NUMBER 57. Yes, sir.

20 THE COURT: And would that, the fact that you have
21 been the victim of a burglary, would that in any way affect
22 your ability to both the State and the defense to an fair
23 and impartial trial?

24 JUROR NUMBER 57: Yes.

25 THE COURT: Thank you, sir.

1 (Juror Number 57 returned to the jury venire
2 panel)

3 THE BAILIFF: Number 65, Your Honor.

4 (Juror Number 65 approached the bench)

5 THE COURT: You are Mr. Hollar? Just come on up
6 here. This gentleman has got to be able to hear you.

7 JUROR NUMBER 65: Okay.

8 THE COURT: The fact that you have been the victim
9 of a burglary, would that in any way affect your ability to
10 give both the State and the defense a fair and impartial
11 trial in the event that you are selected as a member of this
12 jury?

13 JUROR NUMBER 65: Yes, sir, it probably would.

14 THE COURT: Thank you, sir.

15 (Juror Number 65 returned to the jury venire
16 panel)

17 THE BAILIFF: Number 24, Your Honor.

18 (Juror Number 24 approached the bench)

19 THE COURT: This gentleman has to be able to hear
20 you.

21 You are Ms. --

22 JUROR NUMBER 24: Centeno.

23 THE COURT: The fact that you have been the victim
24 of a burglary, would that in any way affect your ability to
25 give both the State and the defense a fair and impartial

1 trial in the event that you are selected as a member of this
2 jury?

3 JUROR NUMBER 24: No, sir.

4 THE COURT: Thank you, ma'am.

5 (Juror Number 24 returned to the jury venire
6 panel)

7 THE BAILIFF: Number 38, Your Honor.

8 (Juror Number 38 approached the bench)

9 THE COURT: You are Mr. Duffie?

10 JUROR NUMBER 38: Yes, sir.

11 THE COURT: The fact that you have been the victim
12 of a burglary, would that in any way affect ability to give
13 both the State and the defense a fair and impartial trial in
14 the event that you are selected to be a member of this jury?

15 JUROR NUMBER 38: I got no problem. Actually it's
16 happened twice.

17 THE COURT: Okay. Thank you, sir.

18 (Juror Number 38 returned to the jury venire
19 panel)

20 THE BAILIFF: Number 34, Your Honor.

21 (Juror Number 34 approached the bench)

22 THE COURT: You are Mr. Dillon?

23 JUROR NUMBER 34: Yes, sir.

24 THE COURT: Yes, sir.

25 The fact that that has occurred, would that in any

1 way affect your ability to give both the State and the
2 defense a fair and impartial trial in the event that you are
3 selected as a member of this jury?

4 JUROR NUMBER 34: No, sir.

5 THE COURT: Thank you, sir.

6 (Juror Number 34 returned to the jury venire
7 panel)

8 THE BAILIFF: Number 95, Your Honor.

9 (Juror Number 95 approached the bench)

10 THE COURT: You are Ms. McAfee?

11 JUROR NUMBER 95: Yes.

12 THE COURT: Yes, ma'am, the fact that that has
13 occurred, would that in any way affect your ability to give
14 both the State and the defense a fair and impartial trial in
15 the event that you are selected to be a member of this jury?

16 JUROR NUMBER 95: No.

17 THE COURT: What?

18 JUROR NUMBER 95: No.

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

20 JUROR NUMBER 95: Uh-huh.

21 (Juror Number 95 returned to the jury venire
22 panel)

23 (Whereupon, the on-the-record bench conferences
24 were concluded)

25 THE COURT: Excluding any type of burglaries, has

1 any member of the jury panel been a victim of a violent
2 crime? If so, please stand at this time.

3 (No response)

4 THE COURT: Has any member of the jury panel been
5 arrested by the Gaffney Police Department? If so, please
6 stand at this time.

7 MS. LESKANIC: Your Honor, we have a juror --

8 THE COURT: I'm sorry.

9 MS. LESKANIC: -- to the Previous question.

10 THE COURT: All right. Do you want to come down?

11 (UNKNOWN JUROR): Yes.

12 THE COURT: Then has any member of the jury panel
13 been arrested by the Gaffney Police Department? If so,
14 please stand at this time.

15 If y'all would come down.

16 (Whereupon, the following were on-the-record bench
17 conferences)

18 THE BAILIFF: Number 113, Your Honor.

19 (Juror Number 113 approached the bench)

20 THE COURT: Ms. Pringle?

21 JUROR NUMBER 113: Yes.

22 THE COURT: Ms. Pringle, the fact that has
23 occurred, would that in any way affect your ability to give
24 both the State and the defense a fair and impartial trial,
25 in the event you are selected as a member of this jury?

1 JUROR NUMBER 113: No.

2 THE COURT: Thank you, ma'am.

3 (Juror Number 113 returned to the jury venire
4 panel)

5 THE COURT: Yes, ma'am.

6 THE CLERK: Number 11, Your Honor.

7 (Juror Number 11 approached the bench)

8 THE COURT: 11?

9 THE BAILIFF: Yes.

10 THE COURT: You are Mr. Bivens?

11 JUROR NUMBER 11: A DUI years ago.

12 THE COURT: Would the fact that that has occurred,
13 would that in any way affect your ability to give both the
14 State and the defense a fair and impartial trial in the
15 event you were selected as a member of this jury?

16 JUROR NUMBER 11: I have no problem.

17 THE COURT: Okay.

18 (Juror Number 11 returned to the jury venire
19 panel)

20 THE BAILIFF: Number 83, Your Honor.

21 (Juror Number 83 approached the bench)

22 THE COURT: Mr. Littlejohn, the fact that that has
23 occurred, would that in any way affect your ability to give
24 both the State and the defense a fair and impartial trial?

25 JUROR NUMBER 83: No.

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

2 (Juror Number 83 returned to the jury venire
3 panel)

4 THE BAILIFF: Number 127, Your Honor.

5 (Juror Number 127 approached the bench)

6 THE COURT: You are Ms. Smith?

7 JUROR NUMBER 127: Yes, sir.

8 THE COURT: And, ma'am, the fact that that has
9 occurred, would that in any way affect your ability to give
10 both the State and the defense a fair and impartial trial?

11 JUROR NUMBER 127: No, sir.

12 THE COURT: Thank you, ma'am.

13 (Juror Number 127 returned to the jury venire
14 panel)

15 THE BAILIFF: Number 120, Your Honor.

16 (Juror Number 120 approached the bench)

17 THE COURT: Mr. Robinetts, the fact that you have
18 been arrested by the Gaffney Police Department, would that
19 in any way affect your ability to give both the State and
20 the defense a fair and impartial trial in the event that you
21 are selected as a member of this jury?

22 JUROR NUMBER 120: No. And I think it was the one
23 before that.

24 THE COURT: The victim of a violent crime?

25 JUROR NUMBER 120: Yeah.

1 THE COURT: Would the fact that that has occurred,
2 would that in any way affect your ability to give both the
3 State and the defense a fair and impartial trial?

4 JUROR NUMBER 120: No, sir.

5 THE COURT: Thank you, sir.

6 (Juror Number 120 returned to the jury venire
7 panel)

8 THE BAILIFF: Number 32, Your Honor.

9 (Juror Number 32 approached the bench)

10 THE COURT: You are Mr. Davis?

11 JUROR NUMBER 32: I was arrested when I was 18 for
12 trespass.

13 THE COURT: All right. And the fact that that has
14 occurred, would that in any way affect your ability to give
15 both the State and defense a fair and impartial trial?

16 JUROR NUMBER 32: No.

17 THE COURT: Thank you, sir.

18 (Juror Number 32 returned to the jury venire
19 panel).

20 (Whereupon, the on-the-record bench conferences
21 were concluded)

22 THE COURT: Is any member of the jury panel a
23 member of any organization that does not recognize the
24 government of the United States and the State of South
25 Carolina? If so, please stand at this time.

1 (No response)

2 THE COURT: Has any member of the jury panel
3 formed or expressed an opinion about any issue or matter
4 involved in this case? If so, please stand at this time.

5 (No response)

6 THE COURT: Is any member of the jury panel aware
7 of any bias or prejudice towards either the State or the
8 defense in this case? If so, please stand at this time.

9 (No response)

10 THE COURT: Is there any member of the jury panel
11 that was a member of the Grand Jury which issued the
12 indictment in this case? If so, please stand at this time.

13 (No response)

14 THE COURT: Is there any member of the jury panel
15 who is a member of or contributor to any group which has as
16 its primary concern the promotion of law enforcement or
17 victims rights? Now, these groups would include, but
18 certainly be not limited to, such groups as MADD, SADD, or
19 CAVE, Citizens Against Violent Crime. If so, please stand
20 at this time.

21 (No response)

22 THE COURT: Does any member of the jury panel know
23 of any reason whatsoever why he or she should not serve as a
24 juror in this case with particular emphasis being placed on
25 your ability to be fair and impartial to both the State and

1 the defendant? If so, please stand at this time.

2 (No response)

3 THE COURT: Does the State have any additional
4 questions?

5 MS. BARRY: No, sir, Your Honor.

6 THE COURT: Does the defense have any additional
7 questions?

8 MR. MOORE: No, sir, Your Honor.

9 THE COURT: All right. Let's see the lawyers.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 THE COURT: All right, ladies and gentlemen, what
13 we were now going to do is the Clerk of Court has a lot
14 faster than what it used to be when I was a young lawyer.
15 We now have word processing devices that she's able to
16 randomly draw your names out of the computer system.

17 We used to have, and we still have it in
18 Spartanburg, a wooden barrel that we would actually put all
19 of your names into a capsule and put your names into a
20 barrel and we would bring over someone that was visually
21 challenged with the South Carolina School of the Deaf and
22 Blind and they would actually spin the barrel and pick your
23 names out one at a time. So jury selection sometimes would
24 take the entire day. So now we have got it computerized and
25 it goes a lot faster. So the clerk is now randomly selected

1 your names.

2 As your name is called, I'm going to ask, if you
3 would, to please come up here and stand in front of the
4 Clerk of Court and face the two tables. Bring any personal
5 belongings that you have with you. If you have a coat,
6 pocketbook, magazines, or anything, would you please bring
7 those as well when your name is called, but at this time we
8 will start the jury selection process.

9 I believe we are in agreement the strikings are
10 five and ten?

11 MS. BARRY: Yes, Your Honor.

12 MR. MOORE: Yes, sir, Your Honor.

13 THE COURT: All right.

14 THE CLERK: When I call your name, if you will
15 come forward and please stand in front of me, face back out
16 looking towards the clock on the back wall.

17 If I tell you you are to be seated, you will take
18 a seat in the jury box.

19 If you tell you that you have been excused, you
20 will take a seat back out in the jury pool.

21 Juror 69, Scott Ital.

22 What says the State?

23 MS. BARRY: Please present this juror.

24 THE CLERK: What says the defense?

25 MR. MOORE: Please seat this juror.

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

2 Juror 114, Debra Ragstole.

3 What says the State?

4 MS. BARRY: Please present this juror.

5 THE CLERK: What says the defense?

6 MR. MOORE: Please excuse this juror.

7 THE CLERK: You have been excused.

8 Juror 139, Teresa Walker.

9 What says the State?

10 MS. BARRY: Please seat this juror.

11 THE CLERK: What says the defense?

12 MR. MOORE: Please seat this juror.

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

14 Juror 138, Marquez Valentine.

15 What says the State?

16 MS. BARRY: Please present this juror.

17 THE CLERK: What says the defense?

18 MR. MOORE: Please excuse this juror.

19 THE CLERK: You have been excused.

20 Juror 96, David Medley.

21 What says the State?

22 MS. BARRY: Please present this juror.

23 THE CLERK: What says the defense?

24 MR. MOORE: Please excuse this juror.

25 THE CLERK: You have been excused.

1 Juror 12, Reginald Black.

2 What says the State?

3 MS. BARRY: Please present this juror.

4 THE CLERK: What says the defense?

5 MR. MOORE: Please seat this juror.

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

7 Juror 21, Clynthia Camp.

8 What says the State?

9 MS. BARRY: Please present this juror.

10 THE CLERK: What says the defense?

11 MR. MOORE: Please seat this juror.

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

13 Juror 128, Michelle Smith.

14 What says the State?

15 MS. BARRY: Please present this juror.

16 THE CLERK: What says the defense?

17 MR. MOORE: Please seat this juror.

18 THE CLERK: Please take a seat in the jury box.

19 Juror 40, Rosaland Foster.

20 What says the State?

21 MS. BARRY: Please present this juror.

22 THE CLERK: What says the defense?

23 MR. MOORE: Please excuse this juror.

24 THE CLERK: You have been excused.

25 Juror 108, Angel Pennington.

1 What says the State?

2 MS. BARRY: Please present this juror.

3 THE CLERK: What says the defense?

4 MR. MOORE: Please seat this juror.

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

6 Juror 120, Cory Robinette.

7 What says the State?

8 MS. BARRY: Please excuse this juror.

9 THE CLERK: You have been excused.

10 Juror 66, Samantha Humphries.

11 What says the State?

12 MS. BARRY: Please present this juror.

13 THE CLERK: What says the defense?

14 MR. MOORE: Please seat this juror.

15 THE CLERK: Please take a seat in the jury box.

16 Juror 134, Matthew Thomas.

17 What says the State?

18 MS. BARRY: Please present this juror.

19 THE CLERK: What says the defense?

20 MR. MOORE: Please seat this juror.

21 THE CLERK: Please take a seat in the jury box.

22 Juror 142, Everett Webb.

23 What says the State?

24 MS. BARRY: Please present this juror.

25 THE CLERK: What says the defense?

1 MR. MOORE: Please excuse this juror.

2 THE CLERK: You have been excused.

3 Juror 148, Seth Woods.

4 What says the State?

5 MS. BARRY: Please present this juror.

6 THE CLERK: What says the defense?

7 MR. MOORE: Please seat this juror.

8 THE CLERK: Please have a seat in the jury box.

9 Juror 33, William Deborde.

10 What says the State?

11 MS. BARRY: Please present this juror.

12 THE CLERK: What says the defense?

13 MR. MOORE: Please seat this juror.

14 THE CLERK: Please take a seat in the jury box.

15 Juror 32, Andrew Davis.

16 What says the State?

17 MS. BARRY: Please excuse this juror.

18 THE CLERK: You have been excused.

19 Juror 83, Davion Littlejohn.

20 What says the State?

21 MS. BARRY: Please present this juror.

22 THE CLERK: What says the defense?

23 MR. MOORE: Please excuse this juror.

24 THE CLERK: You have been excused.

25 Juror 103, Geraldine Pace.

1 THE COURT: Do we have a 103?

2 THE CLERK: Geraldine Pace.

3 Turn around right there. Stand right there.

4 What says the State?

5 MS. BARRY: Please excuse this juror.

6 THE CLERK: You have been excused.

7 You can have a seat, Ms. Pace. Thank you. Just
8 go back and have a seat. Thank you.

9 Juror 112, John Price.

10 What says the State?

11 MS. BARRY: Please present this juror.

12 THE CLERK: What says the defense?

13 MR. MOORE: Please seat this juror.

14 THE CLERK: Please take a seat in the jury box.

15 Juror 127, Kyria Smith.

16 What says the State?

17 MS. BARRY: Please excuse this juror.

18 THE CLERK: You have been excused.

19 Juror 46, Blake Gilfillan.

20 What says the State?

21 MS. BARRY: Please present this juror.

22 THE CLERK: What says the defense?

23 MR. MOORE: Please seat this juror.

24 THE CLERK: Please take a seat in the jury box.

25 THE COURT: One alternate.

1 MR. MOORE: Yes, sir, Your Honor.

2 THE COURT: One alternate.

3 THE CLERK: Juror 49, Teresa Goldner.

4 What says the State?

5 MS. BARRY: Please present this juror.

6 THE CLERK: What says the defense?

7 MR. MOORE: Please excuse this juror.

8 THE CLERK: You have been excused.

9 Juror 98, Michael Medley.

10 What says the State?

11 MS. BARRY: Please present this juror.

12 THE CLERK: What says the defense?

13 MR. MOORE: Please seat this juror.

14 THE CLERK: Please take a seat in the jury box.

15 THE COURT: Anything concerning the manner and

16 method of selection of the jury, from the State?

17 MS. BARRY: Nothing from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. MOORE: No, sir, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, give

21 me just a moment. I need to address the people that

22 unfortunately did not get selected to be part of our first

23 jury. I did want to thank you for your time and patience

24 while we went through the jury qualifications process. I

25 believe that the Clerk of Court has provided you with a

1 telephone number. I'm going to ask, if you would, to please
2 call back to that telephone number after six o'clock tonight
3 to receive further instructions, but if you would, I'm going
4 to allow you to leave the jury room -- send them back down
5 to the assembly room?

6 THE CLERK: They can leave.

7 THE COURT: Or y'all can enjoy your day. Your
8 service for today is concluded, but be sure to call back to
9 that number after six o'clock tonight.

10 If you would exit the courtroom. I need you to do
11 it quietly, please.

12 (Whereupon, the jury venire left the courtroom).

13 THE COURT: Let me see the lawyers for just a
14 moment.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 THE COURT: All right, ladies and gentlemen,
18 congratulations on being selected in our first jury.

19 I will give you some more instructions
20 momentarily, but some preliminary instructions is that you
21 have been selected to be the first jury in this case and
22 what you will do at the end of this case will be that you
23 will engage in deliberations where you then will discuss the
24 case among yourselves and decide the issues in this case.

25 I will tell you now, and I will remind you

1 constantly during this trial, that until you begin your
2 deliberations, which is at the end of this case, you are not
3 to have any discussions about anything involving the case
4 with anyone. That includes among yourself. So at breaks
5 don't even talk about the lawyers, or this court staff, or
6 the witnesses. Don't have any discussions about anything
7 involving the case until the end of the case when you begin
8 your deliberation.

9 I also remind you and continue to instruct you
10 that you cannot do any type of independent research or
11 investigation in this case. So like at a lunch break or in
12 the evening if you decide you want to go on the Internet and
13 possibly Google one of the lawyer's names, or my name, or
14 possibly going to hear a word that maybe you don't quite
15 understand, you cannot even go to the shelf and pull
16 Webster's Dictionary off of the shelf to look up a word,
17 because you are to base the decisions that you make in this
18 case solely on the information and evidence that you receive
19 during the course of this trial. So allow the attorneys to
20 present to you the evidence in the case and allow me the
21 opportunity to present to you the law that you will apply to
22 that evidence.

23 But, ladies and gentlemen, at this time I'll let
24 you take a short recess. I'm going to let you retire with
25 the bailiff back to the jury deliberation room. There is a

1 restroom back there. I think there is some water and stuff
2 back there as well, but we will get you back just shortly.

3 Again, don't have any discussions among yourselves
4 about anything involving the case.

5 You may go with the bailiff.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: All right, we will step down for a few
9 minutes.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: All right. Let's bring the jury in.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: All right, ladies and gentlemen, we
16 are now going to begin the trial of the case. It's the
17 State of South Carolina versus Richard Douglas Waldrup.

18 I need you to stand and raise your right hand.

19 THE CLERK: Do you solemnly swear that you will
20 truly try the issues joined in this case and true verdict
21 render according to the law and evidence, so help you God?

22 THE JURY PANEL: (Collectively said I do.)

23 THE CLERK: You may be seated.

24 THE COURT: Ladies and gentlemen, before we begin
25 this trial I want to tell you that this trial probably will

1 be different from what you might expect. Many people do not
2 have the chance to attend an actual court session, as you
3 are doing now, and may think from watching television or
4 movies or reading books trials are always full of high
5 drama, intense action and riveting circumstances. While all
6 of these things may be true at times, this trial is not for
7 entertainment. It is a fundamental part of our democracy.
8 A trial is often slow, deliberate and repetitive, just the
9 opposite of what you may have seen on television or in
10 movies or read about in books. This courtroom is a place of
11 honor, dedicated to the protection and preservation of
12 citizens rights through what many have called the greatest
13 justice system ever created.

14 The attorneys appearing before you, they are
15 advocates for the parties that they represent, but first and
16 foremost they are officers of the court, sworn to uphold the
17 integrity and fairness of our judicial system and to help
18 you in the search for the truth. You should expect them to
19 be professional, competent and ethical in their
20 representation of their client's interests, but remember
21 that you have taken an oath to try this case and reach a
22 fair and just verdict and you are also expected to be
23 professional, reasonable and ethical. I want to thank you
24 for accepting the important responsibility of jury service
25 and for your contribution today to our justice system.

1 Now, ladies and gentlemen, what I will now say is
2 intended to serve as an introduction to the trial of this
3 case. My remarks are not intended to be a charge on the law
4 in the case. I will instruct you on the law applicable to
5 this case at the end of the trial, before you retire to
6 consider your verdict. This is merely an explanation of the
7 procedures that we will follow in the trial of this case so
8 that you may better understand what may be happening.

9 The defendant is charged by way of indictment
10 filed in this court, filed in this court with the crime of
11 burglary in the first degree, the elements of which will be
12 explained to you later.

13 Now, the indictment is simply the charge by which
14 the case is brought into court and is not in any sense
15 evidence of any of the allegations contained in it.

16 The defendant has pled not guilty to this
17 indictment. The State, therefore, has the burden of proving
18 each of the elements of the indictment beyond a reasonable
19 doubt, and it will be --

20 Do not let people walk around when I'm charging
21 the jury. She may leave. I had at least three jurors look
22 away doing my instruction to them.

23 All right, ladies and gentlemen, I need you to
24 listen to me. What I'm instructing you now is very
25 important for you to understand. I need for your undivided

1 attention.

2 The indictment is simply the charge by which the
3 case is brought into court and is not in any sense evidence
4 of any allegations contained in it.

5 The defendant has pled not guilty to this
6 indictment. The State, therefore, has the burden of proving
7 each of the elements of the indictment beyond a reasonable
8 doubt. And it will be your duty, ladies and gentlemen, to
9 decide whether or not the State has met that burden.

10 Your purpose as jurors is to find and determine
11 the facts. You are the sole judge of the facts. If at any
12 time I make any comment regarding the facts, you must
13 disregard it. You are to determine the facts from the
14 testimony you hear and the other evidence introduced in
15 court. It is up to you to determine the inferences which
16 you may feel may properly be drawn from the evidence
17 presented to you. It is especially important that you
18 perform your duty of determining the facts diligently and
19 conscientiously, because ordinarily there is no way to
20 correct an erroneous determination of fact that has been
21 made by the jury.

22 Now, on the other hand and with equal emphasis,
23 the same law that makes you the judge of the facts makes me
24 the judge of the law. The law as given by the court is the
25 only law that you may consider. You must accept and follow

1 it, even though you may disregard -- even though you may
2 disagree with it. I cannot tell you what the facts are and
3 you cannot disagree with me about what the law is or should
4 be. Your job is to take the law as I give it to you and
5 apply it to the facts as you find them from the testimony of
6 the witnesses and any other evidence that is introduced.
7 After doing that you will render your verdict, a true and
8 just verdict under the solemn oath that you just took as
9 jurors.

10 Now, until I advise you to begin your
11 deliberations you must not discuss this case with anyone,
12 including your fellow jurors, friends, family members and
13 anyone that is involved with this case. This includes any
14 discussions face to face, any by telephone, e-mail, text,
15 blogs, or any other method of communication. You may not
16 use computers, cell phone, or other electronic communication
17 devices with communication capabilities at any time while in
18 this courtroom or during your deliberations. As I have
19 instructed you during lunch breaks or in the evenings do not
20 do any type of independent research or investigation. I do
21 not anticipate that there being any type of news coverage of
22 this case, but in the event that there is, disregard any
23 type of that news coverage.

24 Ladies and gentlemen, you must not consider
25 anything that you may have heard, read about this case

1 outside of the courtroom prior to trial, whether before or
2 during this trial. After this case is submitted to you, you
3 must discuss it only in the jury room with your fellow
4 jurors. The attorneys and the parties in the case have been
5 advised that they are not to talk to you at all. So if you
6 see anyone involved in the case and they do not even say
7 hello to you, they are not being unfriendly. They are just
8 following my instructions.

9 Now, it's important for you to keep an open mind
10 and not decide any issue in the case until all of the
11 evidence has been presented to you, the parties have made
12 their closing arguments and I have instructed you on the law
13 applicable to the case. It is your solemn responsibility to
14 determine the guilt or innocence of the defendant and your
15 verdict must be based solely on the evidence as it is
16 presented to you in this trial and on the law as I instruct
17 you during and at the close of the trial.

18 Now, in just a moment the solicitor will make what
19 is called an opening statement, to which the solicitor will
20 explain to you the issues in the case, or at least what the
21 solicitor thinks the issues are in the case. The attorney
22 for the defendant may also make an opening statement,
23 although he is not required to do so. What the attorneys
24 tell you during their opening statement is not evidence in
25 this case. It is only their contention as to what the

1 issues are in this case. The evidence in this case will be
2 presented to you by testimony of sworn witnesses from this
3 witness stand and any exhibits that might be introduced
4 during the course of this trial.

5 Now, from time to time during this trial you may
6 hear one of the lawyers say something like "Your Honor, I
7 believe I have a question of law or matter of law to discuss
8 with you," or, "Your Honor, may we approach the bench?" Or
9 sometimes I myself may find it necessary to excuse you from
10 the courtroom for a short while so that the attorneys and I
11 can discuss what are called matters of law. The reason for
12 this to exclude you from these decisions is because you are
13 the judge of the facts in the case and sometimes when I am
14 discussing matters of law with the attorneys, it may be
15 necessary for me to make some comment about the facts in
16 connection with ruling on whether or not a particular law
17 applies. I'm not supposed to tell you what I think the
18 facts are, so I will excuse you from the courtroom while
19 these discussions take place so that you will not be
20 influenced by anything that I say related to the facts in
21 ruling on matters of law.

22 In determining what the true facts are in this
23 case you must decide whether or not the testimony of a
24 witness is believable. It will be my responsibility to rule
25 as a matter of law whether certain testimony is admissible

1 at all or not, but once the testimony is admitted, whether
2 or not you believe it is solely for you to determine.

3 In deciding whether to believe a witness you have
4 the right to consider the interests of any witness, the bias
5 of any witness, the prejudice of any witness, the
6 opportunity for the witness to have seen the matters and
7 things about which the witness may testify, and the way the
8 witness acts on the witness stand.

9 You have a right to consider anything that is in
10 the record that would help you evaluate the testimony of the
11 witness. That means that it is your duty to pay close
12 attention to the witnesses, to observe the witnesses, to
13 listen to the witnesses, and to pay close attention to the
14 attorneys and to the court. Do not let your thoughts
15 wander, but give strict attention to the testimony in this
16 case so that at the end of all the testimony, after the
17 arguments of counsel and the charge on the law by the court,
18 you will then be in a position to determine what the true
19 facts are and to apply the law to those facts and thus
20 render a true and just verdict.

21 Now, it is your added duty, Mr. Foreman, to
22 preside in the jury room and to be the jury spokesperson
23 here in court. It will also be your duty to write the
24 verdict, but I will give you further instructions about that
25 at the conclusion of the case.

1 Now, Mr. Gilfillan, did they tell you that you are
2 going to serve as the foreperson?

3 JUROR NUMBER 46: Yes.

4 THE COURT: All right. It will be your duty to
5 write the verdict and also any time that if there is any
6 type of communication that needs to be had with the court,
7 to be sure that that communication is conveyed to one of the
8 bailiffs.

9 But, ladies and gentlemen, I want to preserve
10 everyone's rights, I will give the parties an opportunity to
11 object to anything that I have said through these
12 instructions.

13 Any objections from the State?

14 MS. BARRY: Nothing from the State, Your Honor.

15 THE COURT: Any from the defense?

16 MR. MOORE: No, sir, Your Honor.

17 THE COURT: At this time, ladies and gentlemen, we
18 will receive the opening statements from the attorneys.

19 MS. BARRY: May it please the court, Your Honor.
20 Defense counsel.

21 Ladies and gentlemen of the jury, good morning.

22 On April the 15th of 2017, Richard Waldrup, the
23 defendant who is sitting right over there, thought he could
24 go in to Teresa Smith's home at [REDACTED] Canty Way. He thought
25 that he could go in there and start taking belongings that

1 were not his, but, ladies and gentlemen, Mr. Waldrup thought
2 wrong, because Ms. Smith was home that day.

3 It was early in the morning. She was washing
4 dishes. She had just breakfast and she heard a knock on the
5 door. She looked out the window. She could see the door
6 from where she was in the kitchen and she saw a man that she
7 didn't know. She had never seen him before. She went to go
8 get her robe. She was in her pajamas. It took her about a
9 couple of minutes to get back to the door. And when she got
10 back to the door that defendant was in her garage, her home,
11 taking what wasn't his. She confronted him "what are you
12 doing here? This isn't your home. I don't know you." He
13 said "oh, oh, oh." She was able to block the doorway. That
14 is one tough lady. She gets in the middle of the doorway
15 and stops him from taking her table saw. He's got it in his
16 hand and he drops it and he tries to run away, but she stops
17 him. She is screaming for help.

18 Her son is in the home as well. He is sleeping.
19 He wakes up to his mother yelling for help, so he goes
20 outside and he sees his mother wrestling with some strange
21 man, so he gets involved. He tussles with him. He's able
22 to get him off of his mom and this defendant draws a knife.
23 He is able to get the knife out of his hand and he's able to
24 subdue him until officers can arrive.

25 You are going to hear from Ms. Smith today. She's

1 going to describe how it felt to see some strange man in her
2 home taking what wasn't his.

3 You are going to hear from Officer Heflin, who was
4 the responding officer that day. He saw the defendant
5 there. They held him there until he could get there.

6 Now, ladies and gentlemen, as the judge told you
7 earlier, he is going to charge you on the law at the very
8 end of this trial, but I want you to remember certain things
9 as you hear everyone testify.

10 The defendant is charged with burglary in the
11 first degree. So that means, in a nutshell, that he broke
12 into a dwelling, a home of Ms. Smith, with the intent to
13 commit a crime in the home. And that crime, I submit to
14 you, was stealing.

15 And for the burglary in the first degree there are
16 also aggravating factors. So those factors today are he had
17 a weapon, which was a knife. You will hear about that. He
18 hurt somebody who was not a participant in the crime. That
19 would be Ms. Smith. And also that the person committing the
20 burglary has two or more prior convictions for burglary or
21 housebreaking. And I submit to you that all of those will
22 apply to Mr. Waldrup.

23 Now, ladies and gentlemen of the jury, you are 12
24 individual jurors, 13 with the alternate. You have 12 sets
25 of eyes, 12 sets of ears, 12 individual minds, but when you

1 go back into that jury room at the end of this trial you
2 become a jury of one. And after everything that you have
3 heard, after everything that you see during this trial,
4 after everything that you learn, you will come up with one
5 verdict. And after everything, ladies and gentlemen, I will
6 ask that that one verdict be guilty. Thank you.

7 MR. MOORE: May it please the court.

8 Madam Solicitor.

9 Good morning, ladies and gentlemen. My name is
10 Travis Moore. I know I introduced myself during the
11 qualifications, but I represent Mr. Waldrup.

12 And I agree with the solicitor. You are obviously
13 here for a trial. He's been charged with burglary in the
14 first degree.

15 So what's so great -- you just heard the judge as
16 he give you your initial instruction, what's so great about
17 our country and our system of government and our system of
18 justice is that when the government, with all its resources,
19 all its officers, all its technologies, all its equipment,
20 when it accuses an individual, citizen, of breaking one of
21 its laws, the burden is on that government with those
22 resources to prove that citizen guilty beyond a reasonable
23 doubt of that offense. And obviously that's why you are
24 here, because Mr. Waldrup has said "I am not guilty of
25 this." So that burden is now on the government to prove to

1 each one of you unanimously beyond a reasonable doubt that
2 he did what they said he did.

3 Now, the solicitor just gave you a summary of a
4 lot of facts, but as the judge just told you, the evidence
5 in this case does not come from the solicitor and does not
6 come from me. The evidence in the case will come from right
7 here on this witness stand, through witnesses who will
8 testify under oath, and potentially physical evidence that
9 may be presented and admitted in this trial. That's the
10 evidence in the case. That's what you have to weigh.

11 Now, I know a lot of people on juries are often
12 concerned with how long this lasts or how long should I
13 expect to be here and things like that. And I'll be honest
14 with you, I don't think this trial will last much longer
15 than today and into tomorrow morning, but don't be
16 distracted and don't let the potential length of this trial
17 mislead you into how unimportant it may be, because it is
18 very important. There are probably hundreds of trials
19 currently going on in our country right now. I can promise
20 you that the absolute most important trial going on right
21 now to Mr. Waldrup is this trial. And probably the most
22 important trial to the State is this trial. Do not take
23 your service in this case lightly.

24 Now, I'm not trying to be over dramatic. I'm
25 being serious, because this is a very serious foundational

1 concept of our government. Watch the witnesses as they
2 testify. Listen to what they say and don't say. Be open
3 minded and fair both to the State and the defendant, and at
4 the end of the day, whether that's today, or tomorrow, or
5 Thursday, at the end of the day, after you have done all
6 that, you have been open minded, you haven't judged anybody
7 one way or the other, once at the end of that apply your
8 common sense. Apply your common sense and your life
9 experiences and ask yourself did the State leave me firmly
10 convinced that he is guilty beyond a reasonable doubt of
11 every individual element of this crime. That's the question
12 you are going to have to ask yourself. But please pay
13 attention and give us all a very fair trial. I know you
14 will. Thank you.

15 THE COURT: Is the State ready to call their first
16 witness?

17 MS. BARRY: Yes, sir, Your Honor.

18 The State would call Deputy Heflin to the stand.

19 THE COURT: Just come right up here and let the
20 Clerk of Court swear you in.

21 OFFICER BRENT HEFLING, having been first duly
22 sworn, testified as follows:

23 THE WITNESS: Yes, ma'am.

24 DIRECT EXAMINATION BY MS. BARRY.

25 Q. Deputy Heflin, could you state your name for the

1 record, please?

2 A. Brent Charles Heflin.

3 Q. And where are you currently employed?

4 A. Right now I'm currently employed at Cherokee County
5 Sheriff's Office.

6 Q. And what is your role at the sheriff's office?

7 A. I'm a deputy.

8 Q. And what does a deputy do?

9 A. Pretty much I'm just on the road and I just patrol and
10 answer my calls.

11 Q. And is that the organization that you were working for
12 on April the 15th of 2017?

13 A. No, ma'am.

14 Q. Where were you working at that time?

15 A. I was at Gaffney Police Department.

16 Q. And what was your role at Gaffney?

17 A. I was a patrolman as well there.

18 Q. With the same duties?

19 A. Yes, ma'am.

20 Q. And what was your involvement with this defendant on
21 April 15th of 2017?

22 A. We got a call, I believe it to be a burglary in
23 progress call, at [REDACTED] Canty Way within Gaffney city, within
24 the city limits of Gaffney and Cherokee County.

25 I remember running lights and sirens to the call.

1 Normally we don't run lights and sirens, but I think there
2 was some factors that gave out over the radio that I can't
3 remember at this time that made us go ahead and run lights
4 and sirens.

5 At that time I was the first one on the scene. I
6 pulled into the front -- to the front of the house drive.
7 There's a little kind of spot in the back yard that you can
8 pull in as well, but I pulled into the front. And as soon
9 as I pulled in, I looked to my left and I saw one of the
10 witnesses -- or one of the victims, Billy Austin, on top of
11 who as we found out Richard Waldrup on top of him and
12 holding him down subduing him. And once I got there, I got
13 out, I went ahead and put Mr. Waldrup in investigative
14 detention so I could figure out what's going on.

15 Talking to Billy Austin and Teresa I found out that he
16 had went into their little garage, which kind of hooked onto
17 their carport, and tried to steal a table saw or a tile saw.
18 And that's when Teresa went to try to grab him and then kind
19 of a struggle ensued and she was yelling out for help and
20 that's when Billy, her son, heard her. And then Billy came
21 out and Billy just, you know, just tried to hold him down
22 the entire time and that's when Billy said that he saw Mr.
23 Waldrup have his hands in his pockets holding onto something
24 and Billy went to grab his hand out of his pocket and that's
25 when a knife got brought to the struggle. And Billy ended

1 up getting that knife away from him at that time so he was
2 no longer, you know, in the struggle and that's when we
3 arrived pretty much at that point.

4 Q. So you arrived with Billy on top of Mr. Waldrup?

5 A. Yes, ma'am.

6 Q. How did -- were you able to speak with Ms. Smith?

7 A. I did.

8 Q. How did she seem?

9 A. From what I remember, I think she was a little
10 distraught. I can't -- I mean, I can't remember a lot, but
11 I don't think she was freaking out, per say, but I think she
12 was distraught.

13 Q. And how many of you arrived on the scene?

14 A. I remember I was the first officer on the scene,
15 followed by Officer Turner who was right behind me, I'm
16 pretty sure. And I think after it was all said and done
17 there was about four of us on the scene at that time.

18 Q. And the only other individuals were Ms. Smith, Mr.
19 Austin and Mr. Waldrup?

20 A. And there was another woman on the scene. I think it
21 was Billy Austin's girlfriend, I believe.

22 Q. Please answer any questions that Mr. Moore may have for
23 you.

24 CROSS EXAMINATION BY MR. MOORE:

25 Q. Good afternoon. How are you doing? Is it Deputy

1 Heflin now?

2 A. Yes, sir.

3 Q. All right. I have got a couple questions for you so
4 just to verify.

5 When you arrived on the scene, Ms. Smith's son was on
6 top of Mr. Waldrup, where, the carport area?

7 A. Yes, sir.

8 Q. Were you able to determine were there any evidence that
9 you recall of a breaking into any of the doors or door
10 frames or windows?

11 A. Say that again?

12 Q. Was there any evidence of any type of attempted
13 break-in of a door, a window, door frame?

14 A. I don't believe so.

15 Q. And he was outside in the carport area when you
16 arrived. So your testimony today is you never saw him in
17 the house or in the garage storage area, is that correct?

18 A. No, sir.

19 Q. Did you collect any evidence in the garage storage area
20 or the house that would have indicated to you that he had
21 been inside those places?

22 A. No, sir.

23 Q. You just testified that, quote, "Billy grabbed his hand
24 out of his pocket and pulled out a knife," is that correct?

25 A. Yes, sir.

1 Q. So it's your testimony that from your recollection, and
2 I understand it's been a while, but from your recollection
3 it was the victim's son who pulled the defendant's hand out
4 of his pocket and got the knife, is that correct?

5 A. Yes, sir, that's what I believe -- remembered what had
6 happened.

7 Q. As far of your investigation into this matter, did
8 y'all take any -- did y'all take any further forensic steps
9 as far as trying to lift fingerprints from doorknobs or the
10 tile saw that was at issue?

11 A. No, sir.

12 Q. Was there any other type of crime scene unit called to
13 the scene to essentially investigate those type of issues?

14 A. No, sir.

15 Q. Isn't it true that the defendant actually requested
16 that y'all call for somebody to come and take fingerprints
17 or --

18 A. I -- I do not recall on that one.

19 Q. You don't recall that?

20 A. No, sir.

21 Q. How many other officers were there?

22 A. At least four, maybe more, I can't guarantee.

23 Q. Were you wearing a body camera at the time?

24 A. Yes, sir.

25 Q. You were wearing a body camera at the time?

1 A. I believe I was.

2 Q. Do you know if the other officers were wearing a body
3 camera at the time?

4 A. I believe they were. I can't tell you if any were
5 activated. I can't remember any of that.

6 Q. Okay. Isn't it true as part of your investigation and
7 your attempt to identify Mr. Waldrup, you asked him to
8 provide his ID, is that correct?

9 A. I don't remember, but I assume I probably asked him
10 that. That's usually how I start off talking to people.

11 Q. Okay. Would you agree with me that he did not have his
12 wallet? It was on the ground back at the house? It had to
13 be retrieved from the victim?

14 A. I don't remember.

15 Q. You don't remember that?

16 A. No.

17 Q. You did charge him, though, right?

18 A. Yes, sir.

19 Q. With burglary in the first degree, is that correct?

20 A. Yes, sir.

21 Q. Are you aware that burglary in the first degree is
22 the -- under the law is essentially the breaking into a
23 dwelling with the intent to commit a crime therein?

24 A. Yes, sir.

25 Q. And what was the crime that he intended to commit?

1 A. He intended to steal Ms. Teresa's items.

2 Q. Did you charge him with that?

3 A. I charged him with burglary in the first degree.

4 Q. I know, but did you charge him with the underlying
5 offense of larceny of any sort in trying to steal something?

6 A. No, sir.

7 Q. Typically if there is evidence that another crime has
8 taken place, you typically charge people in that
9 circumstance?

10 A. Say that again?

11 Q. So I'm assuming that -- let's not talk about this
12 scenario. I'm talking about general law enforcement
13 responsibilities. I'm assuming when you respond to
14 situations and you are in that moment trying to determine
15 what has happened --

16 A. Uh-huh.

17 Q. -- that you review the evidence at the scene and based
18 off evidence that you collect, you determine what charges to
19 charge somebody with, is that correct?

20 A. Yes, sir.

21 Q. And then at that point you go and you seek a warrant
22 for those charges from a magistrate judge?

23 A. Yes, sir.

24 Q. And that's if you believe you have probable cause to
25 establish those charges?

1 A. Yes, sir.

2 Q. So my question is if the underlying offense was
3 potentially larceny, did you charge him with larceny for
4 attempting to steal the saw in this case?

5 A. No, sir.

6 Q. And had there been more evidence that he had tried to
7 steal a saw, would you have sought a warrant for that?

8 A. For larceny, no.

9 Q. No?

10 A. No.

11 Q. Okay. So even if there had been evidence that he had
12 tried to steal a saw, you wouldn't have charged him with
13 that?

14 A. Due to where the saw was, it was inside the shop at the
15 time. That's where he went in to retrieve the saw.

16 Q. Okay.

17 A. So that's why I charged burglary first.

18 Q. Okay. And just to clarify, I believe one of my
19 questions was, there was no evidence in that room that
20 indicated that he had been in there?

21 A. I saw no forced entry.

22 Q. Thank you.

23 THE COURT: Any redirect into what he went into?

24 MS. BARRY: Yes, Your Honor, briefly.

25

1 REDIRECT EXAMINATION BY MS. BARRY:

2 Q. You stated that there were no forensics at the crime
3 scene out there. Why is that?

4 A. Because due to when we arrived on the scene and we
5 already had the subject on the scene and after hearing all
6 the witnesses statements of what happened, we did not
7 need -- we believed we did not need to go into further
8 testing for fingerprints or items like that.

9 MS. BARRY: No further questions, Your Honor.

10 THE COURT: Thank you, sir. You may step down.
11 Watch your step as you are stepping down.

12 Let me see the lawyers for a moment.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 THE COURT: All right, ladies and gentlemen, what
16 we are going to do is we are going to take a lunch break.

17 Looking at the clock that's back on the wall, I'm
18 going to ask you, if you would, to please be back in the
19 jury deliberation room by 1:30.

20 I need to remind you again not to have any
21 discussions among yourselves about anything involving the
22 case. Do not do any type of independent research or
23 investigation. You have now heard the location. Don't like
24 on your lunch break I'm going to drive by there and find
25 out. Don't even do that. Allow the lawyers to present to

1 you the evidence that you will consider and allow me the
2 opportunity to present to you the law that you will apply to
3 that evidence.

4 Thank you for your attention this morning. You
5 may go with the bailiff and we will see you back by 1:30.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: All right. Who is your next witness?

9 MS. BARRY: It's going to be Teresa Smith, Your
10 Honor.

11 THE COURT: Okay. We will see y'all at 1:30.

12 MS. BARRY: Thank you, Your Honor.

13 THE COURT: Any requests to charge? We are going
14 to proceed with trying to prepare them, so as y'all get them
15 let us have them.

16 (Whereupon, proceedings were recessed)

17 (Whereupon, proceedings were reconvened)

18 THE COURT: I'm told that all the jurors are back.

19 Anything else before we bring the jury back in?

20 Anything from the State?

21 MS. BARRY: Nothing, Your Honor.

22 MR. MOORE: No, sir, Your Honor.

23 THE COURT: Bring us the jury.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Is the State ready to call their next
2 witness?

3 MS. BARRY: The State is ready, Your Honor.

4 The State would call Teresa Smith to the stand.

5 THE COURT: All right. Ms. Smith, just come right
6 up here and let the Clerk of Court swear you in.

7 TERESA SMITH, having been first duly sworn,
8 testified as follows:

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Watch your step as you are stepping
11 up.

12 DIRECT EXAMINATION BY MS. BARRY:

13 Q. Good afternoon, Ms. Smith.

14 Can you please state your name for the record?

15 A. Teresa A. Smith.

16 Q. And where are you currently living?

17 A. [REDACTED] Canty Way.

18 Q. And is that where you were living on the morning of
19 April the 15th of 2017?

20 A. Yes, ma'am.

21 Q. And that's here in Cherokee County?

22 A. Yes, ma'am.

23 Q. And what were you doing that morning?

24 A. That morning I had got up and I was preparing
25 breakfast, and I was washing dishes, and a knock come up on

1 the door and I looked out and at the time I didn't know his
2 name. It was Mr. Waldrup. He had on sunglasses and a
3 camouflage T-shirt, and I had on like a basketball jersey,
4 which I brought with me to show you.

5 Q. That's okay. You can keep going.

6 A. Anyway, I had on just a little jersey, so I went back
7 to get my robe and I hollered through there for Billy to get
8 the door. And when I got -- come back through I heard Mandy
9 trying to wake him up, and I come on to the door. I went to
10 get my robe in the bedroom.

11 And when I got back to the door my garage door was
12 open. And I come on out the door and I went to the garage
13 door and I was standing in the door with one arm propped up
14 in the door, and the defendant was in the garage and he had
15 like a saw in his hand. And I asked him, I say "what are
16 you doing?"

17 He said "oh, I'm here visiting friends."

18 I said "who is your friend?"

19 He couldn't tell me.

20 I say "who is your friend" again.

21 He still couldn't tell me.

22 I said "what are you doing with my saw?"

23 He say "I was looking at it."

24 I say "no," I said "you was going to take my saw." And
25 when I said that, he dropped the saw and went to running.

1 And when he went to running, by me blocking the door he
2 couldn't get out the door, so -- I.

3 Had a stroke in '97. My left hand is really weak. I'm
4 weak on the left side. So when he went to run, he went to
5 run past me underneath the arm and I grabbed him with the
6 left arm around the neck and I had my right arm and I was
7 holding it real tight and I was hollering for Billy to come,
8 call the police, you know. And I was scuffling with him. I
9 probably scuffled with him anywhere from two -- two to four
10 minutes before Billy actually got to the door. And when he
11 saw me scuffling with him, he grabbed him, you know, and he
12 said "what are you doing?"

13 I said "he was trying to break in the garage." I say
14 "he broke in the garage," but mind you, my garage -- my door
15 to the house is here. My garage door is off to the right.
16 So whenever you go to the garage door, it locks -- you can
17 lock it, but it don't lock. It's like a slip lock. Even
18 though it's locked, you have to take a little force --
19 whether it's locked or unlocked, you have to take a little
20 force to push it open.

21 So being it's that, you know, my door is here. You
22 knock on my door to come in my door. If I don't answer my
23 door, you don't go in my garage looking for anybody, because
24 don't nobody live in there. Ain't nothing in there but
25 tools and clothes and stuff like that.

1 So when Billy come to the door, he took Mr. Waldrup
2 from me and he went to, you know, sling him around. And as
3 they were scuffling he kept doing this in his pocket, you
4 know. He kept doing his hand like this in his pocket. And
5 so when Billy took and pulled his hand back, he had an open
6 knife in his hand. Him and Billy wrestled with the knife
7 for a little bit and Billy got the knife out of his hand and
8 Billy went to hit him with the knife and I jerked the knife
9 out of Billy's hand, and I was screaming, told Mandy to
10 "call the police. Call the police again," because it had
11 been like about seven minutes at that time that, you know,
12 from the time they called the police and they still hadn't
13 gotten there and I was screaming and hollering "y'all need
14 to get here. Y'all need to get here." And him and Billy
15 were scuffling around.

16 And like I said, my kitchen had caught fire. I had a
17 bunch of ceramic tile there. I had fry pots where I cook
18 out. I had a riding lawnmower there and a desk and stuff
19 there up under my carport. So as he was throwing him
20 around, you know, I seen he had maybe a little cut or bruise
21 or something on his face and I told Billy, I said "well,
22 hold him. Just hold him, you know, until they get here."

23 And after he pulled the knife, you know, pulled his
24 hand out of his pocket and Mr. Waldrup had an open knife in
25 it, it made me fear, you know, because what if Billy

1 wouldn't have been there and I would have been scuffling
2 with him, and previously having a stroke, you know, I could
3 have got cut or stabbed and nobody would have never knowed
4 nothing that happened to me, you know.

5 And he say he didn't go in my garage, but if you -- if
6 you see the pictures of my house and my door is here, I can
7 see out, but you can't see in, so he didn't see me in the
8 kitchen. And when I did come to the door and he was in the
9 garage, he had to force that door open to go in the garage
10 to get into the garage. You know, you have to bump it to
11 make it come open because the door had swollen. It's been
12 like that since I have been there. The door had swollen.
13 If it's unlocked, you have to bump it to get in, and if it's
14 locked you have to bump it to get in. So he had to push the
15 door open with force to get in the door, not necessarily to
16 break it.

17 Q. And how long did it take you to get your robe after you
18 first saw Mr. Waldrup?

19 A. Anywhere from two to four minutes.

20 Q. Ms. Smith, I'm going to show you what's been marked as
21 some State's Exhibits.

22 MR. MOORE: Your Honor, may I approach the
23 witness?

24 THE COURT: Uh-huh.

25 BY MS. BARRY:

1 Q. Do you recognize these photos?

2 A. Yes, ma'am, this is my carport.

3 Q. Just -- just wait just a second, okay?

4 A. Yes, ma'am.

5 Q. Do you recognize the photos?

6 A. Yes, ma'am, that's my carport.

7 Q. Okay. Go through them and just let me know if you
8 recognize what those are.

9 A. Yes, ma'am.

10 Q. And are those the pictures of your carport as they were
11 taken on that day?

12 A. Yes, ma'am.

13 Q. And have these -- have they been altered in any way?

14 A. Yes, ma'am.

15 MS. BARRY: Your Honor, at this time I would like
16 to admit State's --

17 THE COURT: Did you hear her answer to the last
18 question?

19 MS. BARRY: I did, sir.

20 A. The first photo -- this first photo right here, this
21 wasn't here. It was a bag of concrete tile stuff that you
22 put the tile down with. This is the tile.

23 BY MS. BARRY:

24 Q. So the -- things have just been moved?

25 A. Yes, ma'am, and my riding lawnmower was underneath

1 there.

2 Q. Okay. But these picture have not been doctored in any
3 way?

4 A. No, ma'am.

5 MS. BARRY: Your Honor, at this time I would like
6 to admit State's 1 through 6 -- excuse me, State's 1 through
7 5 into evidence.

8 MR. MOORE: Without objection, Your Honor.

9 THE COURT: Without objection, State's 1 through
10 5.

11 (Whereupon, State's Exhibit No. 1 was entered into
12 the record as evidence).

13 (Whereupon, State's Exhibit No. 2 was entered into
14 the record as evidence).

15 (Whereupon, State's Exhibit No. 3 was entered into
16 the record as evidence).

17 (Whereupon, State's Exhibit No. 4 was entered into
18 the record as evidence).

19 (Whereupon, State's Exhibit No. 5 was entered into
20 the record as evidence)

21 MS. BARRY: May I publish, Your Honor?

22 THE COURT: Yes.

23 BY MS. BARRY:

24 Q. Ms. Smith, this is State's Exhibit 1. Can you tell the
25 jury what doors are what?

1 A. The brown door is the door to my house. That's the
2 door that he knocked on.

3 And the white door goes to my garage.

4 When I saw Mr. Waldrup first, he was at the brown door,
5 which there's a lot of glass there, but you can't see
6 through the glass. Just to look through the glass, you have
7 to get up like this to see inside.

8 And the garage door is just a clear glass. Ain't
9 nothing up to the door. So when you look at the door to the
10 side, you could see everything in the garage without having
11 to peep in.

12 Q. And then this is State's Exhibit 2. Is that that door
13 that you can see through?

14 A. Yes, ma'am. As you can see, you can see particles of
15 boxes and stuff inside there without even visually being up
16 on it.

17 Q. And then this is State's Exhibit 5. You may not be
18 able to see it.

19 A. That's inside my garage. And at the bottom is a
20 generator and you can barely see it. Can I walk over there
21 and show you?

22 Right behind the -- right behind that blue thing is the
23 saw that he was coming out of the garage with.

24 MS. BARRY: Your Honor, may the witness step down
25 so she can point --

1 THE COURT: Yes.

2 MS. BARRY: -- and show the jury?

3 (Witness off the witness stand).

4 A. Right here is the saw. This is the saw that he had in
5 his hand right here.

6 BY MS. BARRY:

7 Q. And you can go have a seat.

8 A. Uh-huh.

9 (Witness back on the witness stand).

10 BY MS. BARRY:

11 Q. Where do you normally keep that saw?

12 A. I got a work bench that ran along that wall, and my
13 previous friend that died the year before this, he did
14 construction work, so we kept all the tile saw, the mitre
15 saw, the table saw, all the saws and stuff, we kept them up
16 on the table like, and all the boxed tools and stuff went
17 underneath it, and air tanks and stuff was in front of it,
18 but it was a lot of stuff in the garage because I had moved
19 some stuff out of the house at the time from it catching
20 fire.

21 I had took a lot of stuff out of the house and put it
22 in the garage also, like my clothing and stuff like that,
23 while we was remodeling the house on the inside.

24 Q. So the saw upside down in that picture?

25 A. It's upside down in that picture.

1 Q. You don't normally keep it upside down?

2 A. No, ma'am. I keep -- like this bench going here, I
3 kept everything lined up on the table.

4 Q. And where inside was -- was the defendant inside the
5 garage in that location when you saw him?

6 A. He was -- he was like from there to maybe where I'm at
7 now inside my garage.

8 Q. Deep into the garage?

9 A. Yes, ma'am.

10 Q. And you said that the defendant had a knife in his
11 pocket?

12 A. Yes, ma'am, an open knife. It wasn't only in his
13 pocket, it was open.

14 Q. Open in his pocket?

15 A. Yes, ma'am.

16 Q. I'm going to show you what's been marked as State's
17 Exhibit 6.

18 A. Yes, ma'am.

19 Q. Is that the knife that he had --

20 A. Yes, ma'am.

21 Q. -- that day?

22 A. When him and Billy were scuffling he had his hand in
23 his pocket. He kept doing like this right here. Billy
24 said -- Billy grabbed his hand and said "what you doing?
25 What you doing?" Then when he jerked his -- pulled his hand

1 out of his pocket the knife was open in his hand.

2 Q. It was open just like this?

3 A. Yes, ma'am, and Billy got to wrestling and turned his
4 hand over and took the knife out of his hand and he was
5 getting ready to hit him with it and I took the knife out of
6 Billy's hand, you know, and --

7 Q. Okay.

8 MS. BARRY: Your Honor, permission to admit
9 State's Exhibit 6 into evidence.

10 MR. MOORE: Without objection.

11 THE COURT: Without objection, State's Exhibit 6.

12 (Whereupon, State's Exhibit No. 6 was entered into
13 the record as evidence)

14 MS. BARRY: Permission to publish to the jury?

15 THE COURT: Yes, ma'am.

16 BY MS. BARRY:

17 Q. And this is the knife that he -- that's the knife that
18 he had?

19 A. Yes, ma'am.

20 Q. Where are your cars parked at your residence?

21 A. I -- at the time I had a black Equinox. It was
22 parked --

23 My house is situated on like 2.75 acres at the time
24 before they built two houses in front of me, and my car was
25 driving was parked around at the patio side. So if you

1 pulled in off the frontage road side you couldn't see it,
2 but I had a -- I also had a green Ford pickup truck that had
3 been sitting for like seven or eight months prior to this.
4 My daughter had bought me an Equinox and I left my truck
5 parked, so it really -- the house really looked abandoned
6 because I didn't have any curtains in the windows going
7 around the house and I didn't have blinds up in the house,
8 because, you know, wasn't nobody right up on my house. You
9 had to come -- and my windows set up high off the ground to
10 my bedroom, so you have to get a ladder to come up to look
11 into my bedroom. You couldn't see in.

12 Q. And when people would come to the house, what door
13 would they usually come in?

14 A. They used the patio side.

15 Q. And that's --

16 A. That's on the back other side.

17 Q. Okay. Have you -- how long had you been living at that
18 residence?

19 A. I had been living there well over seven years, almost
20 eight years.

21 Q. And have you ever seen this defendant --

22 A. No, ma'am.

23 Q. -- in those seven or eight years?

24 A. No, ma'am.

25 Q. Did he ever have permission to be inside your home?

1 A. No, ma'am, never been to my home, never been inside my
2 home, and say he had friends there, but he couldn't tell me
3 who they were.

4 Q. When you were struggling with Mr. Waldrup, did he ever
5 put his hands on you in any way?

6 A. Yes, ma'am, he -- he -- he was trying to break loose
7 from me and he left his fingernail imprinted in my arm. He
8 couldn't get my arm loose.

9 Like I said, this arm is weak. It's about numb, but I
10 took my good arm and held this arm tight. That way he
11 couldn't get loose, so he took his fingernails and had them
12 imprinted in my arm. That's -- that's why I ended up with
13 the medical bill.

14 MS. BARRY: Beg the court's indulgence, Your
15 Honor.

16 (Off the record).

17 (Back on the record).

18 MS. BARRY: Your Honor, I have no further
19 questions at this time.

20 BY MS. BARRY:

21 Q. Ms. Smith, if you will answer any questions that Mr.
22 Moore may have for you.

23 A. Thank you.

24 CROSS EXAMINATION BY MR. MOORE:

25 Q. Good afternoon Ms. Smith. How are you doing?

1 A. Good afternoon. Fine.

2 Q. Just a minute ago Ms. Barry was asking you some
3 questions regarding these pictures and there was a little
4 bit of discrepancy between -- I think y'all were talking
5 about some cement and tile and where a lawnmower may or may
6 not have been parked, things of that nature. Is that
7 because some of these pictures were not taken at the time of
8 this incident?

9 A. That first picture that she had.

10 Q. This first one?

11 A. Yes.

12 Q. State's Exhibit No. 1?

13 A. Yeah, but the tile is still in the same position that
14 it was in when this took place, and the push mower is still
15 in the same position. The only thing that changed was the
16 little -- the little stand right -- right beside the white
17 door. It had concrete.

18 MR. MOORE: May I approach, Your Honor?

19 THE COURT: Yes.

20 A. All of this is still in the same place right here. All
21 of this.

22 The only thing that's been moved was the desk that was
23 sitting here that had the concrete -- the -- the fence at
24 and the grout there. That's the only thing.

25 BY MR. MOORE:

1 Q. And I guess my questions are the reason that you are
2 having to make a distinction here is because when was these
3 pictures taken?

4 A. Huh?

5 Q. When was the pictures taken?

6 A. All the rest of them pictures was taken, except for
7 that first one, when it happened.

8 Q. So this one was taken when?

9 A. I -- I don't know when that one was taken.

10 Q. Okay. But you agree it's not from the incident date?

11 A. No, that -- that first one ain't.

12 Q. Okay.

13 A. But the rest of them is.

14 Q. Is it true that the day prior to this incident your
15 truck had been broken into in your yard?

16 A. It wasn't the day prior. It was a few days prior to
17 that my truck had been broken into. I also had an air tank
18 missing, a nail gun missing, and something else was missing
19 that I had went looking for like a week prior to this
20 incident that wasn't there.

21 Q. Would it be fair to say that due to some of these
22 recent incidents at your house that you were potentially on
23 edge?

24 A. No, I wasn't on no edge.

25 Q. You weren't?

1 A. If I was on edge I would answered the door with my gun
2 instead of a robe, thank you.

3 Q. That's a good point.

4 I'm just asking you called 911, right? You called 911
5 as part of this case?

6 A. When this happened, yes.

7 Q. And you told the 911 operator you truck had been broken
8 in the day before, is that correct?

9 A. I told the 911 operator that my truck had been broken
10 into. I couldn't tell approximately when. I can't remember
11 exactly when it got broken into.

12 Q. And did you give a statement that day to law
13 enforcement?

14 A. Yes, sir.

15 Q. Have you reviewed that statement in preparation for
16 trial?

17 A. A few weeks ago, yes.

18 Q. Do you want to look at a copy of it?

19 A. You can ask me a question off of it.

20 Q. Well, I mean, I'm not trying -- it's not trick.

21 A. No, no, when they come and asked me to give a
22 statement, they say "write down quickly, you know, what you
23 can remember" and that's what I done.

24 Q. Okay. So you have been testifying for almost
25 35 minutes and a good portion of your testimony initially

1 was a conversation you had with the defendant. So my
2 question is did you write the conversation you had with the
3 defendant in your statement the day law enforcement was
4 investigating this?

5 A. Yes, sir, I think I told them that he said he was there
6 visiting a friend and he couldn't tell me who the friend
7 was.

8 Q. A minute ago you testified to an exchange that you and
9 he allegedly had while he was holding this tile saw in the
10 garage and you just testified that you asked him this and he
11 said that and you said this and he said that. I'm just
12 asking do you recall if you wrote that in your statement the
13 day this actually happened?

14 A. I know I wrote him saying that he come there to visit a
15 friend.

16 Q. Would you like to see your statement, review it?

17 A. Yes, sir.

18 MR. MOORE: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 A. Yes, sir, it's right there at the bottom, "subject
22 states he was there visiting someone, but I had been there
23 eight years and never saw this man a day in my life."

24 BY MR. MOORE:

25 Q. Right.

1 And how about the exchange that you and he had
2 allegedly in the garage area? The conversation that you
3 just testified to? Is that --

4 A. That's what I asked him.

5 Q. Okay.

6 A. I asked him what was he doing there and he said he was
7 there visiting a friend.

8 Q. Okay. You just testified that you keep things on
9 shelves and your tile saw is in that exact spot. You had
10 things -- I guess you used that bench as a reference to talk
11 about how you kept things in that garage, is that correct?

12 A. Yes, sir.

13 Q. And I'm assuming that you were referring to the fact
14 that things were kept in such an orderly manner that you are
15 able to determine if something had been moved or not moved,
16 is that correct?

17 A. Yes, sir.

18 It's one thing about a woman. You can go in her house,
19 no matter how junkie it is, if something is out of place
20 that she didn't put there, she knows it's not there.

21 Q. Okay. I'm not disagreeing with you. Just show me --
22 just show me in one of these pictures where all these things
23 are lined up so I would know and the jury will know.

24 A. The bench is behind -- this is the bench right here.

25 Q. That's where all your different saws were lined up?

1 A. Yes, sir. This is where all the saws was lined up
2 right here.

3 Q. Will you please show the jury so they can -- you can
4 stand there. I just want you to orient the picture where
5 they can see what you are pointing to.

6 A. This right here is the work bench right here, and all
7 the saws was down through there. And as you can see, one of
8 the saws is -- one of the spots is empty right there on the
9 corner where that saw was sitting.

10 Q. Okay. I'm going to show you another one. Do you
11 recognize this?

12 A. Yes, sir, this is stuff that's in the garage. This
13 is -- this is -- this is stuff that's inside the garage.
14 You know, like I said, I had stuff packed up inside the
15 garage also.

16 Q. Okay. And I don't believe --

17 (Photograph marked as Defendant's Exhibit No. 1
18 for identification)

19 BY MR. MOORE:

20 Q. Let me show you what's been marked for identification
21 purposes only as Defendant's Exhibit No. 1. That's the
22 picture I just showed you, correct?

23 A. Yes, sir.

24 Q. And is that a fair and accurate representation of the
25 way your garage looked that day?

1 A. Yes, sir.

2 I got a lot of boxes packed up in the garage. I kept a
3 lot of -- like say, I had cleaned my house out to remodel my
4 kitchen, so I had a lot of stuff packed up in the garage.
5 And, yes, my garage is very junkie, but, yes, I do know
6 where everything is.

7 Q. I got you, but that's a fair and accurate
8 representation of the way the garage looked the day of the
9 incident?

10 A. Yes, sir, I guess it is. I got so much stuff in there,
11 yes, sir.

12 MR. MOORE: The defendant would move to have that
13 introduced into evidence, Your Honor, as Defendant's 1.

14 MS. BARRY: No objection, Your Honor.

15 THE COURT: Without objection, Defense 1.

16 (Whereupon, Defendant's Exhibit No. 1 was entered
17 into the record as evidence).

18 A. Like I say, I have got clothes down one side, boxes
19 packed up on the other side.

20 BY MR. MOORE:

21 Q. So your testimony just a minute ago was as your son was
22 scuffling, I believe was your words, with the defendant, he
23 pulled a pocketknife out of his pocket that was already
24 open?

25 A. Yes, sir, he had his hand in his pocket and he was

1 wrestling like that and when Billy grabbed his arm, he said
2 "what you doing with your hand in your pocket?" He pulled
3 his hand out and that knife was open in his hand.

4 Q. The pocketknife was open when it came out of his
5 pocket?

6 A. Yes.

7 Q. And how did you identify that knife here today?

8 A. The one that you got over there, it was like a pop
9 switchblade kind of knife. One of those knives that they
10 used to use to --

11 Q. Whittle?

12 A. Yeah, something like that.

13 Q. I'm going to show it to you again. You would agree
14 it's not a switchblade? I mean, it isn't a switchblade.

15 A. It's a hard knife, yes, sir. This is the knife. And,
16 yes, sir, it was sharp.

17 Q. Not a switchblade, though? It's a folding pocketknife,
18 correct?

19 A. Yes, sir.

20 Q. Okay.

21 A. I don't know the distinction of knives. I just know
22 you get a long knife, a butcher knife, a pocketknife,
23 whatever.

24 Q. I was a little bit confused about the fire. That fire
25 situation had nothing to do with this, though, right?

1 A. No.

2 Q. That was some previous situation that you were
3 describing that to explain a lot of stuff had been moved
4 outside?

5 A. I was -- I was using that to describe why I had tiling
6 and tile mortar and all that stuff up under the garage.

7 Q. Okay. I just wanted to clarify there was no
8 allegations there was any fire the day of this incident?

9 A. No.

10 Q. Isn't it true that your son took Mr. Waldrup's wallet
11 out of his pants?

12 A. No.

13 Q. Not --

14 A. No.

15 Q. Do you know where police retrieved the wallet from to
16 identify him?

17 A. I don't know. It may have fell out of his pocket, but
18 he didn't take no wallet out of his pocket.

19 Q. Oh, it might have fallen out?

20 A. Yes, sir, during the scuffle.

21 Q. I can ask him that question when he testifies.

22 And what about -- he pulled Mr. Waldrup's hand out of
23 his pocket?

24 A. Yes, Mr. Waldrup was trying to get it -- get something
25 out of his pocket.

1 Q. Right.

2 A. And he was, you know, doing this right here. While
3 he was -- he was holding him, he was doing this, and Billy
4 grabbed his arm. He said "what you trying to get out of
5 your pocket?" And when he pulled his hand up he had the
6 knife in it.

7 Q. So Billy pulled his hand out of his pocket?

8 A. Yes, sir.

9 Q. I think I already asked you this, but just to clarify,
10 you did call 911 that day?

11 A. Yes, sir.

12 Q. And you are aware that when people call 911, those
13 calls are recorded, is that correct?

14 A. Yes, sir.

15 (911 CD marked as Defendant's Exhibit No. 2 for
16 identification)

17 BY MR. MOORE:

18 Q. Have you listened to the 911 call?

19 A. No, sir.

20 Q. Do you -- you would agree that you called 911, though?

21 A. I think Mandy -- Mandy called them, but I was in the
22 background screaming for them to get there.

23 Q. Right.

24 And you haven't reviewed it prior to trial, though, is
25 that correct?

1 A. No, sir.

2 MR. MOORE: Your Honor, at this time the defendant
3 would like to introduce the 911 call, I believe by
4 stipulation by the parties.

5 MS. BARRY: Actually, Your Honor, may we approach?

6 THE COURT: Yes.

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record discussion)

9 MR. MOORE: Beg the court's indulgence just for a
10 moment, Your Honor.

11 (Off the record).

12 (Back on the record).

13 MR. MOORE: Just a couple more questions, Ms.
14 Smith. I appreciate your patience.

15 BY MR. MOORE:

16 Q. This was around eight a.m. on Saturday morning, is that
17 correct?

18 A. I don't know what time it was.

19 Q. Okay.

20 A. I can't remember.

21 Q. You were cooking breakfast?

22 A. Yes, sir.

23 Q. Was it breakfast for dinner or breakfast for breakfast?

24 A. It might have been brunch, I don't know.

25 Q. Okay.

1 A. I -- I -- whenever I can get up, that's when I cook.

2 Q. Okay. But you do know that you were cooking breakfast?

3 A. Yeah. I fed me, you know.

4 Q. Okay. Everybody else was still sleeping?

5 A. Yes, sir.

6 Q. And did you have any lights on, or TV on, or anything
7 like that?

8 A. The TV I can't remember.

9 Q. Okay. But generally speaking do you have lights on
10 when you are awake and the TV on when you are cooking
11 breakfast?

12 A. Yes, sir, sometimes.

13 Q. Okay. And who else was there besides you and law
14 enforcement and the defendant?

15 A. My son Billy and his girlfriend.

16 Q. They were there?

17 A. At the time Mandy, Amanda Hollis.

18 Q. And they both were there?

19 A. Yes, sir.

20 Q. Okay.

21 MR. MOORE: That's all questions that I have, Your
22 Honor.

23 THE COURT: Any redirect related to what he went
24 into?

25 MS. BARRY: Yes, sir, Your Honor, just very

1 briefly.

2 REDIRECT EXAMINATION BY MS. BARRY:

3 Q. Ms. Smith, do you remember me coming out to your house
4 last week in preparation for trial?

5 A. Yes, ma'am.

6 Q. And I brought our investigator with me?

7 A. Yes, ma'am.

8 Q. And we took pictures while we were out there, didn't
9 we?

10 A. Yes, ma'am.

11 Q. To prepare for trial today?

12 A. Yes, ma'am.

13 Q. So that first picture, the one of the door, that was
14 the picture that we took that day, isn't that right?

15 A. Yes, ma'am.

16 MS. BARRY: Your Honor, I have no further
17 questions.

18 THE COURT: Thank you, ma'am. You may step down.
19 Watch your step as you are stepping down.

20 Lawyers want to approach a moment?

21 (Whereupon, the lawyers approached the bench for
22 an off-the-record discussion)

23 THE COURT: Ladies and gentlemen, I'm going to let
24 you take a short recess. I need to remind you not to have
25 any discussions among yourselves about anything involved

1 with the case, but you may go with the bailiff back to the
2 jury room.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: We had a bench conference that was not
6 recorded. I'll summarize the bench conference. It was
7 about the playing of the 911 tape. My concern was that not
8 publishing the 911 tape as a part of this trial, that I felt
9 like if it wasn't published as part of this trial, I could
10 not allow it to be taken back to the jury room as part of
11 their deliberations then let them hear it. I felt like we
12 actually had to publish it as part of this trial and that we
13 were not in a position -- the parties were not in the
14 position yet to actually publish it. And I believe that the
15 defense is going to maybe use it as a part of its case later
16 and that the State may call in part of its case, but that
17 the 911 operator is not present.

18 Anything else y'all want to supplement on the
19 record?

20 MR. MOORE: Your Honor, just briefly.

21 I was under the impression we were going to be
22 able to stipulate to the 911 call. That's apparently not an
23 option any more, so I think there was testimony provided
24 today -- Ms. Smith testified that her truck had been broken
25 into at some point. I believe she told the 911 operator the

1 day before. I think that's relevant. I think it's
2 important, but I guess the stipulation that doesn't exist,
3 so if at all it can be admitted, we would have to do that in
4 our case in chief, if we present one, and we will try to
5 secure the 911 personnel to be able to do that
6 appropriately.

7 MS. BARRY: Your Honor, there was a stipulation,
8 but I just have a concern that he's trying to put in a
9 statement made by the defendant without having the
10 defendant -- or having his client take the stand.

11 The 911 call operator or the custodian is under
12 subpoena. I would be more than happy to get him here to get
13 the 911 call in. I just didn't think it would be right to
14 get it through the victim. She stated on the record that
15 she hadn't listened to it.

16 THE COURT: Okay.

17 MR. MOORE: I would say, Your Honor, I just
18 thought that was the purpose of the stipulation not having
19 to authenticate, so I don't understand authenticating it and
20 stipulating. So --

21 THE COURT: I would -- I would call it the same
22 thing. The 911 person is only going to come and say this is
23 theirs --

24 MS. BARRY: Right.

25 THE COURT: -- you know.

1 So I would -- if that's the only purpose of
2 calling the 911 operator, I'm not going to tell you not to
3 call the 911 operator, because somebody on the jury could
4 look at it and well, we didn't hear from the 911 operator.
5 You know, jurors will say many things that I sometimes don't
6 understand, but if you are going to stipulate to the 911
7 tape, to the disc, and you don't want to call the operator,
8 I would have allowed it in, but if you want to find the 911
9 operator, I'm not going to tell you that that's not a bad
10 strategy for a trial either, you know. So y'all want to
11 discuss this and see if y'all want the 911 operator?

12 MR. MOORE: I think we probably need to talk about
13 it, Your Honor.

14 THE COURT: Because especially if don't have a
15 witness right now.

16 MS. BARRY: Yes.

17 THE COURT: Do you think we can locate the next
18 witness, because your next witness is your York personnel,
19 right?

20 MS. BARRY: That's correct, Your Honor.

21 THE COURT: Okay. We will come back. Let me know
22 when the witness gets here.

23 (Whereupon, proceedings were recessed).

24 (Whereupon, proceedings were reconvened).

25 (911 CD marked as State's Exhibit No. 11 for

1 identification)

2 MS. BARRY: Your Honor, may we approach?

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion).

5 THE COURT: You can bring the jury in, please.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: All right, ladies and gentlemen.
9 Thank you for your patience.

10 By stipulation the parties have now agreed that
11 you are now going to be played the 911 tape in this
12 incident, so I'm going to -- we will listen to the speaker
13 and I'll ask someone to hit the button.

14 MS. BARRY: And, Your Honor, just for the record,
15 Mr. Moore and I marked it both State's and defense exhibits.
16 So it would be State's Exhibit 11 and Defendant's Exhibit 2.

17 (Whereupon, State's Exhibit No. 11 and Defendant's
18 Exhibit No. 2 was entered into the record as evidence)

19 THE COURT: All right.

20 (Whereupon, State's Exhibit 11 and State's
21 Exhibit 2, the 911 CD was played to the jury panel)

22 THE COURT: Is the State ready to call your next
23 witness?

24 MS. BARRY: Yes, the State would call Teresa
25 Scoggins to the stand.

1 TERESA SCOGGINS, having been first duly sworn,
2 testified as follows:

3 THE WITNESS: I do.

4 DIRECT EXAMINATION BY MS. BARRY:

5 Q. Good afternoon, Ms. Scoggins.

6 Can you state your name for the record, please?

7 A. Teresa Scoggins.

8 Q. And where are you currently employed?

9 A. York County Clerk of Court.

10 Q. And what is your job at the Clerk of Court's office?

11 A. I'm the deputy clerk or officer manager for the General
12 Sessions division.

13 Q. And as a part of your duties do you deal with certified
14 convictions?

15 A. Yes, we do.

16 Q. And can you briefly describe for the jury what all you
17 do with those certified convictions?

18 A. Certified convictions are supplied to anyone who needs
19 a certified copy of a document that is on file in our
20 office. We are basically the keeper of the record for the
21 General Sessions court.

22 MS. BARRY: Permission to approach the witness,
23 Your Honor?

24 THE COURT: Yes, ma'am.

25 BY MS. BARRY:

1 Q. I'm going to show you what's been previously marked as
2 State's Exhibit 7, 9 and 10. If you could take a look at
3 those for me, and do you recognize those?

4 A. Yes, I do.

5 Q. Have you had an opportunity to review those certified
6 convictions?

7 A. Yes, I have.

8 Q. And were these certified convictions maintained as a
9 part of the business records of your organization?

10 A. Yes, they are.

11 Q. And have they been altered in any way?

12 A. No, ma'am.

13 MS. BARRY: Your Honor, at this time I would like
14 to admit State's 7, 9 and 10 evidence.

15 MR. MOORE: Without objection, Your Honor.

16 THE COURT: Without objection, State's 7, 9 and
17 10.

18 (Whereupon, State's Exhibit No. 7 was entered into
19 thr record as evidence).

20 (Whereupon, State's Exhibit No. 9 was entered into
21 the record as evidence).

22 (Whereupon, State's Exhibit No. 10 was entered
23 into the record as evidence)

24 BY MS. BARRY:

25 Q. Ms. Scoggins, could you please read those convictions

1 to the jury?

2 A. One of them is a burglary second degree.

3 And then a burglary third degree.

4 And a burglary third degree.

5 Q. And all those are convictions for burglary against
6 Richard Waldrup?

7 A. Yes, ma'am.

8 MS. BARRY: I have no further questions, Your
9 Honor.

10 MR. MOORE: Just briefly.

11 CROSS EXAMINATION BY MR. MOORE:

12 Q. Ma'am, you don't know anything regarding the underlying
13 facts or circumstances of those, correct?

14 A. No, sir, I don't.

15 Q. And those were -- do those certified convictions tell
16 you whether or not those were a result of a trial or a plea?

17 A. Two of them are for pleas. The third I am not sure.
18 It does not say.

19 Q. Okay. Thank you.

20 A. You are welcome.

21 THE COURT: Any redirect on anything that he went
22 into?

23 MS. BARRY: No, sir, Your Honor.

24 THE COURT: Thank you, ma'am. You may step down.
25 Watch your step as you are stepping down.

1 Any reason why the witness cannot be excused?

2 MS. BARRY: Yes, sir, Your Honor.

3 MR. MOORE: No reason, Your Honor.

4 THE COURT: All right. Thank you, ma'am. You may
5 be excused.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you for coming.

8 All right, ladies and gentlemen, there are some
9 matters I have to take care of outside of your presence.
10 I'm going to ask -- we are going to let you take your
11 evening break and I will ask you to please be back in the
12 jury deliberation room by 9:30 in the morning.

13 Again, I need to instruct you not to have any
14 discussions with anyone about anything involved in the case,
15 and do not do any type of independent research or
16 investigation into any matter in the case, but you may go
17 with the bailiff.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: We will stand at ease for the trial.

21 (Whereupon, proceedings were adjourned to March 6,
22 2019).

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE OF SOUTH)
CAROLINA)
5) TRANSCRIPT OF RECORD
-vs-) 2017-GS-11-00843
6)
7 RICHARD DOUGLAS) MARCH 5, 2019
WALDRUP,) GAFFNEY, SOUTH CAROLINA
8 DEFENDANT.

9
10 (VOLUME II)

11 B E F O R E:

12 THE HONORABLE J. MARK HAYES, II, JUDGE. ; And a Jury.
13
14
15

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

17 ADRIENNE BARRY, ASSISTANT SOLICITOR
18 ATTORNEY FOR THE STATE

19 KIM LESKANIC, DEPUTY SOLICITOR
20 ATTORNEY FOR THE STATE

21 TRAVIS MOORE, ESQUIRE
ATTORNEY FOR THE DEFENDANT
22
23

24 MICHAEL R. WATTS
CIRCUIT COURT REPORTER
25

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1 (PROCEEDINGS, MARCH 6, 2019).

2 THE COURT: I'm told that all the jury members are
3 here.

4 Anything else before we bring the jury in?

5 MS. BARRY: Nothing from the State, Your Honor.

6 MR. MOORE: Nothing from the defense, Your Honor.

7 THE COURT: All right. Let's bring them in.

8 Y'all approach while they come in.

9 (Whereupon, the lawyers approached the bench for
10 an off-the-record discussion)

11 (The following takes place in the presence of the
12 jury panel).

13 THE COURT: Good morning, ladies and gentlemen.

14 Is the State ready to call their next witness?

15 MS. BARRY: The State is ready, Your Honor.

16 THE COURT: Yes, ma'am.

17 MS. BARRY: The State would call Billy Austin to
18 the stand.

19 THE COURT: Sir, just come right up here and let
20 the Clerk of Court swear you in.

21 BILLY AUSTIN, having been first duly sworn,
22 testified as follows:

23 THE WITNESS: I do.

24 THE COURT: Sir, watch your step up there. Have a
25 seat in the chair and speak into the microphone.

1 DIRECT EXAMINATION BY MS. BARRY:

2 Q. Good morning, Mr. Austin.

3 A. Good morning.

4 Q. Can you state your full name for the record?

5 A. Billy Wayne Austin.

6 Q. And how are you related to Teresa Smith?

7 A. Teresa is my mother.

8 Q. And were you living with her on April the 15th of 2017?

9 A. Yes, ma'am.

10 Q. And what were you doing that morning?

11 A. I was laying in bed.

12 Q. And how did you become involved with Mr. Waldrup?

13 A. While I was laying in bed with my friend girl I heard
14 my mom say "who are you? What you doing in my house?" So,
15 you know, when you been dealing with somebody in your own
16 home, you can tell when their voice is something wrong.
17 "What's wrong with my mom?" So I got up and went and seen
18 what was going on with my boxers on. I didn't even put no
19 clothes on or nothing, because it was just that alert like,
20 you know what I'm saying?

21 Q. And when you get up, where do you go?

22 A. The way my room was situated --

23 I'm sorry if y'all can't hear me.

24 My room is right here and it's a hallway to the
25 kitchen. You look to the left and you can see the back door

1 to the sun porch. So I heard -- I heard from that
2 direction, so I walked down the hallway and I just looked to
3 the left and I seen them struggling.

4 Q. Okay. And what do you do at that point?

5 A. I be like "man, who is you? Damn, get out the way,
6 momma," so I grabbed him, boom, slammed him up against the
7 wall. She was trying to keep him while I got there, you
8 know, apprehending --

9 Q. So she was --

10 A. So I grabbed him. I was like "who is you, man? What
11 are you doing in my house?" I ain't never seen this man. I
12 have been living at this house since I think it was like
13 since 2017 then. I had been at this house seven years and I
14 never seen this man a day in my life, so I'm scared like
15 "what you doing here" like.

16 Q. And what happened then?

17 A. So I seen him feeling in his back pocket like and I'm
18 asking him a question like "what you doing here? Who sent
19 you here?"

20 He like "man -- he was like "I know the guy who lives
21 there."

22 "I'm the guy that lives here. I don't know you."

23 So I say "what you doing with your back pocket," and he
24 comes out real fast. The knife was open, and, you know,
25 raised it then, you know what I'm saying?

1 I think my mom, because I slammed him down to the
2 ground, took the knife, and I was -- you know what I'm
3 saying? You know, the rage. I was going to -- my mom
4 stopped me from stabbing him, so I just really beat him
5 until the police got there, because the rage in him pulling
6 the knife out had me mad, you know what I'm saying? If he
7 wouldn't do that I would have just held him until the police
8 got there. I wouldn't even have put my hands on him.

9 Q. You did hold him there until the police got there?

10 A. Yeah, I did.

11 Q. And when you went out there and you saw your mom and
12 the defendant struggling, where were they? Were they inside
13 the garage? Were they --

14 A. He was coming -- my mom was in the entrance of the
15 garage. He was like one foot in, one foot out, and they
16 were fighting over a saw.

17 Q. Okay. And did he have the table saw at that point?

18 A. Yeah, he dropped it. He was trying to get away and my
19 mom had his arm and that's when I grabbed him.

20 Q. Okay. He grabbed your mom and then you grabbed him?

21 A. My mom was trying to grab him. He was trying to get
22 away --

23 Q. Right.

24 A. -- once he seen me and he was like this. My mom had
25 both hands on his arm like trying to.

1 Q. Okay.

2 A. "Where are you going" like.

3 Q. Where was the defendant's car?

4 A. It was parked in front of the garage.

5 Q. Okay.

6 A. Like -- it's an obstacle. Like you have to
7 intentionally want to go in my garage, because it's a slide
8 door. You can't -- you can't enter through that, so you
9 have to walk through the walkway to the back door and walk
10 into the side, you know what I'm saying? So it was almost
11 like --

12 Q. So was the car parked in front of the garage door?

13 A. He was parked in front of the garage, yes, ma'am.

14 Q. Okay.

15 A. I'm sorry.

16 Q. I'm going to show you what's already been entered as
17 State's 3 and State's 5.

18 A. That's the entrance to the garage.

19 Q. That's the entrance to the garage.

20 MS. BARRY: Your Honor, may the witness step down?

21 THE COURT: Yes, ma'am.

22 (Witness off the witness stand)

23 BY MS. BARRY:

24 Q. If you can show the jury where the table saw was.

25 A. Okay. This is the door. It's the table behind the

1 door. If you come in and you close this door.

2 Like this is the entrance, so I was to close it, I
3 would be inside. The table would be right here.

4 Q. And this is the table saw right here?

5 A. Yes, ma'am.

6 Q. Okay.

7 (Witness back on the witness stand).

8 BY MS. BARRY:

9 Q. And it's not on that table, correct, in the --

10 A. Yeah, it was, but he had it and when him and mom
11 struggling, you know what I'm saying?

12 Q. And --

13 A. I think he already had something in the car too, if I'm
14 not remembering. He already had put something in his car.

15 Q. And then is this the table that the table saw sat on?

16 A. Yes, ma'am.

17 That's with the door closed, right?

18 Q. Yes.

19 A. Yes, behind the door.

20 MS. BARRY: I have no further questions for this
21 witness.

22 BY MS. BARRY:

23 Q. Mr. Austin, if you will answer any questions that Mr.
24 Moore may have for you.

25 A. Yes, ma'am.

1 CROSS EXAMINATION BY MS. BARRY:

2 Q. Good morning, Mr. Austin. How are you doing?

3 A. Good morning.

4 Q. Good. I got just a couple of questions for you.

5 All right. You just testified that once you came from
6 your bedroom to the kitchen and then onto the carport area
7 that Mr. Waldrup was in the doorway, one foot in, one foot
8 out, is that correct?

9 A. Yeah, he was coming out, but at that point, you know,
10 you could tell he was coming out of my garage. He was still
11 in it.

12 Q. And your testimony was that he was struggling with your
13 mom in the doorway?

14 A. Yes, ma'am -- yes, sir, trying to get out, I'm sorry.

15 Q. Okay. And was he grabbing your mom's wrist or anything
16 like that?

17 A. Yeah, he was trying to get away from her.

18 Q. Okay.

19 A. I mean --

20 Q. But you said when you came out he was still holding the
21 table saw too, correct?

22 A. They was fighting over the saw. He dropped the saw and
23 was trying -- when he seen me he was trying to get away and
24 she was holding his arm.

25 Q. Okay.

1 A. That's when I grabbed him and slammed him up against
2 the wall. He was feeling in his back pocket the whole time.
3 I'm like "what you doing," and he hurried up and came out
4 with the knife.

5 Like I said, he ain't got no business being in my yard.
6 I don't know this man a day in my life.

7 Q. Have you ever held the table saw before?

8 A. Yes, sir.

9 Q. How much do you think it weighs?

10 A. 25, 20 pounds.

11 Q. Table saw, 25 pounds?

12 A. Probably -- I'm going to say 15 to 20 pounds. That's
13 just an estimate. I'm not a scale. I'm just -- you know
14 what I'm saying?

15 Q. I got you.

16 I just want to make sure it's very clear to the jury
17 how this -- how your testimony is developing here.

18 He's reaching for his back pocket. He's holding a
19 table saw and he's grabbing your mom's wrist?

20 A. No, this is a -- this is a re-account to the story.

21 You have to go -- you have to start from when I walked out
22 of my bedroom and seen him.

23 Q. Right.

24 A. Him and my mom fighting over the table saw. He seen me
25 trying to get away, she grabbed his wrist. I pulled her out

1 of the way and grabbed him.

2 Q. Uh-huh.

3 A. Then he go in his back pocket for the knife. Then I
4 slammed him on the ground, take the knife getting ready to
5 kill him. My momma stopped me saving my life as well.

6 Q. Right.

7 A. Or I would have been on the criminal side, but instead
8 I'm a business owner, just leased a building on North
9 Limestone Street, so thank you.

10 Q. You are welcome.

11 So when he saw you as he's coming out the doorway he
12 dropped the table saw?

13 A. No. He -- yeah, he dropped it when he seen me. He
14 didn't have time to get away. I guess he thought he could
15 fight a woman and just take it, but when he seen me come out
16 there I wouldn't let him get away.

17 Q. Okay. And your testimony is that he pulled the knife
18 out of his back pocket, is that correct?

19 A. Yes, sir.

20 Q. Do you remember which back pocket it was, left or
21 right?

22 A. I'm saying this is the wall. I got his arms like this.
23 So it was the left hand.

24 He come out, boom. I take and slammed him, boom. It
25 was a paint like -- I was about to hit him with the thing

1 that you stain like the wood with, like a paint stain thing,
2 but the rage, this man he wanted to take the knife, but my
3 momma took the knife from me, so I just beat him until the
4 police got there.

5 I really -- I really don't like talking about this, so,
6 you know, imagine somebody fighting your momma, man. You
7 know, that's my momma, man. Like the dude supposed to be
8 out of there, you know what I'm saying? He's supposed to be
9 out of here. And I'm not a killer, but just that level, you
10 are messing with my momma. That's my momma. That's who
11 raised me, brother. And to a total stranger, you have no
12 business in my yard.

13 Q. I understand.

14 A. Excuse me if I get emotional, Your Honor --

15 Q. I got you.

16 A. -- but I'm mad. I'm very mad at this guy. Like I
17 don't even know him, what are you doing in my --

18 Q. I got you. I'm nut trying to make --

19 A. He touched my momma, dawg.

20 Q. I'm not trying to make it any more emotional than what
21 it has to be.

22 A. I'm sorry, but this is my first time seeing him since
23 then. They said this man is from Mt. Holly somewhere. He
24 ain't got no business in Gaffney, South Carolina, in my yard
25 okay?

1 Q. You need --

2 A. He landed in the wrong yard like for real.

3 Q. You need to answer the questions.

4 You agree it's a very important, this trial is very
5 important, correct?

6 A. Yeah, it is.

7 Q. And it is very important that the jury hears the facts
8 from the witnesses who were there. Do you agree with that?

9 A. These are all the facts.

10 Q. So my question is, your testimony is he pulled an open
11 pocketknife out of the left rear pants pocket?

12 A. Yeah.

13 Q. Okay. How did his wallet end up on the carport?

14 A. I guess, you know, fighting. He was digging in his
15 back pockets. Wouldn't your wallet be in your back pocket?

16 Q. You didn't take his wallet out of his back pocket at
17 any point?

18 A. No. Why would I take his wallet?

19 Q. And you didn't pull his hand out of his pocket with the
20 knife? He did that on his own?

21 A. I took the knife out of his hand when he pulled -- when
22 his hand came out of his pocket with the knife, I seen the
23 knife open and now we are fighting for the knife. I'm no
24 longer trying to apprehend you. I'm trying to get the knife
25 to harm you, like you are trying to harm me.

1 You know, my part in this story plays different from
2 mom. She's looking at something being stole from her. Me,
3 I'm looking at somebody harming my mom, so it's like really
4 two different cases, you know what I'm saying, but in the
5 same situation.

6 Q. I got you.

7 A. So that's all I got to say. You know, that really made
8 me mad, you know. I'm sorry.

9 MR. MOORE: Beg the court's indulgence for a
10 moment, Your Honor.

11 (Off the record).

12 (Back on the record).

13 BY MR. MOORE:

14 Q. Just briefly.

15 You just testified that you believed that something,
16 some other piece of property was found in Mr. Waldrup's car?

17 A. Yeah, I -- I'm remembering something else being in his
18 car and I took it out of his car. It was another saw, I
19 think. It was a jig saw or something. It was -- they
20 didn't get that one, because I took that out of the car
21 before the police -- you know what I'm saying, I took my
22 item back, but the main thing is him being on my property
23 and he's not charged for stealing a saw. He's charged with
24 burglary and he was in my house.

25 Q. Okay. So there was a second saw in his car, is that

1 correct?

2 A. Yes, sir.

3 Q. And you personally removed it from his car?

4 A. Yeah.

5 Q. Okay. And where did you place that saw?

6 A. I just put it on the ground. I can't --

7 After that when the police came, I don't even think he
8 left in the police car. I think he left in the ambulance,
9 but I was mad. I beat him. I beat him until the police got
10 there.

11 Q. Where did --

12 A. It wasn't about him stealing. He put his hands on my
13 momma. I will never forget that.

14 Q. Where in his car did you find the second saw?

15 A. It was like a convertible, so it was in the back seat,
16 driver's side. Driver's side was this way, so it right --
17 he had a convertible, if I remember. It was like right
18 there in the back seat.

19 And then my neighbor said "man, we been seeing that red
20 car," because our house is like a flat. Me and my mom, we
21 never been on the end of the house, so we wouldn't know,
22 unless our neighbors telling us who are coming in the
23 driveway.

24 Q. What kind of saw was it, the one that you removed from
25 the car?

1 A. Like I say, it was like a -- I'm not a saw expert, but
2 I knew it was like a hand-held saw.

3 Q. Okay. Did you tell the police that you had removed
4 that saw from his car?

5 A. The police had apprehended me.

6 Q. I mean --

7 A. They thought -- they thought -- they grabbed me, put me
8 in the cuffs. "Hold on. This is my house. I'm the
9 victim."

10 Q. Did you give them a statement that day?

11 A. If I can remember, I don't think -- I don't even
12 remember, man. I was just so tired. I just remember when
13 they finally got there I was just exhausted from holding
14 him, like -- the man is screaming trying to get away the
15 whole time, I had to put my hands on him the whole time,
16 man. For a good three minutes until the police got there I
17 had him.

18 Q. So, to your knowledge, you never told the police about
19 this other saw that you removed from his car?

20 A. No, because at that point he didn't steal anything.
21 He -- everything -- he got caught stealing. You know -- you
22 know the saying caught red handed?

23 Q. Uh-huh.

24 A. He got caught red handed.

25 Q. Okay.

1 A. So why would I talk to the police about him taking
2 anything at that point? He was in my house. He -- the
3 garage ain't outside. You have to go inside of a door to go
4 in there, so that's my house, you know what I'm saying, and
5 nobody but me and my mom.

6 If I wouldn't have been there, what would it have been?

7 Q. Oh, I don't know.

8 A. A 50 year old woman? It had to be a junkie, because
9 what other reason would you break into somebody's house and
10 take a saw with them? The saw?

11 Q. Okay. Two saws.

12 A. You just want \$20 or something, don't you?

13 Q. I'm trying to make sure we are clear here. You
14 understand that it's important that we are clear and
15 accurate in what happened?

16 A. Yes, sir, I am.

17 Q. Two saws?

18 A. I make money communicating, yes, sir.

19 Q. Okay. So two saws; one of them was a table saw dropped
20 in the doorway, and the other one was maybe a skill saw that
21 you personally removed from the defendant's car but didn't
22 tell law enforcement about it, is that correct?

23 A. Yes, sir.

24 Q. Okay. Thank you.

25 THE COURT: Any redirect on anything he went into?

1 MS. BARRY: No, sir, Your Honor.

2 THE COURT: Thank you, sir. You may step down.

3 Watch your step as you are stepping down.

4 THE WITNESS: Thank you.

5 THE COURT: Any reason why the witness cannot be
6 excused?

7 MS. BARRY: No, Your Honor.

8 MR. MOORE: No, sir, Your Honor.

9 THE COURT: Thank you, sir. You may be excused as
10 well.

11 MS. BARRY: Your Honor, at this time the State
12 would rest.

13 THE COURT: All right, ladies and gentlemen, this
14 is one of those times where I have to take up a matter of
15 law with the attorneys outside of your presence.

16 I'm going to ask, if you would, to please retire
17 back to the jury deliberation room. Do not have any
18 discussions among yourselves about anything involved in the
19 case. We will get you back just shortly.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: Yes, sir.

23 MR. MOORE: May it please the court, Your Honor,
24 yes, sir, at this time the defendant would move for a
25 directed verdict.

1 Specifically the defendant's position, even when
2 the court reviews the evidence that's been presented in the
3 light most favorable to the State as it goes to several of
4 the elements of the offense, one, the State's own witness
5 testified that there was no evidence of any breaking and
6 entering through Officer Heflin.

7 In addition, he had testified that there was no
8 evidence that Mr. Waldrup had entered into the storage room.

9 You know, the defendant would argue that this
10 storage room was not a dwelling for purposes under the
11 statute, and that their own victim, Ms. Smith, testified
12 that nobody lived there, nobody stays in there.

13 And, finally, in regards to the causing injury
14 element of the burglary first degree, I'm not sure if there
15 is any evidence. There is no medical bills. There is no
16 pictures of any injuries, and -- there was testimony that he
17 had grabbed somebody's arm, but I don't believe there is any
18 evidence introduced by the State to establish the fact that
19 there was any physical injury caused.

20 So based on those positions, we would ask for a
21 directed verdict in favor of the defendant.

22 MS. BARRY: Thank you, Your Honor.

23 Your Honor, as Mr. Moore stated, it is viewed in
24 the light most favorable to the State and if there is any
25 evidence presented, then it goes to the jury. And we've

1 heard through all of our witnesses that Mr. Waldrup was in
2 the garage. There has been testimony that the garage is
3 attached to the home. There is pictures of it being
4 attached to the home making it a dwelling for purposes of
5 the statute.

6 There doesn't have to be a breaking. He did open
7 that door. He entered the dwelling.

8 As far as injury goes, Ms. Smith testified that he
9 grabbed her arm and she did say that's what the medical
10 bills were for. No, we did not put any medical bills into
11 evidence, but she did state that he grabbed her arm. His
12 nails dug into her arm causing her injury.

13 And there is evidence of his prior burglary
14 convictions. That would go towards that element of the
15 crime.

16 Based off all of that there is evidence in this
17 case. Therefore, it is the State's position that the
18 defendant's motion for directed verdict be denied.

19 THE COURT: Any reply?

20 MR. MOORE: No, sir, Your Honor.

21 THE COURT: All right. At this juncture in a
22 trial I am obligated to view the evidence in a light that is
23 most favorable to the nonmoving party here. That would be
24 the State. In doing so I'm required to draw all reasonable
25 inferences from that evidence in the light most favorable to

1 the nonmoving party, again it's the State, and my
2 recollection of the evidence I would have to deny the
3 defendant's motion.

4 All right. Is your client, has he made the
5 decision whether he wishes to testify or not?

6 MR. MOORE: Yes, sir, Your Honor, we have
7 discussed that at length and he has indicated to me he does
8 wish to testify.

9 THE COURT: All right. With that I will need to
10 get my book. Give me just a moment.

11 MR. MOORE: Yes, sir.

12 THE COURT: Mr. Waldrup, if you would please stand
13 and let the Clerk of Court swear you in. I have got a few
14 questions I need to ask you.

15 RICHARD DOUGLAS WALDRUP, having been first duly
16 sworn, testified as follows:

17 THE DEFENDANT: Yes, ma'am, I do.

18 THE COURT: All right, Mr. Waldrup, at this time I
19 am going to explain to you certain of your rights and if you
20 do not understand anything that I say, please let me know,
21 and if you want me to explain anything in more detail,
22 please let me know that as well. Do you understand that?

23 THE DEFENDANT: Yes, sir.

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

25 Mr. Waldrup, we have now reached the stage of the

1 trial where you may present your defense. You have the
2 right to claim the protections giving to you by the Fifth
3 Amendment to the Constitution of the United States.

4 Now, this amendment states, in part, no person
5 shall be compelled in any criminal case to be a witness
6 against himself. This means that you cannot be required to
7 testify in this case. You have the right to testify on your
8 behalf. However, no one can make you testify. This is a
9 personal right. No one can waive this right except you.

10 If you decide to testify, you will be subject to
11 the same rules that govern other witnesses and you may be
12 examined and cross-examined on any relevant issue in this
13 case.

14 In addition, if you have any convictions involving
15 dishonesty or false statements or crimes punishable by
16 imprisonment for more than one year and this court
17 determines that the probative value of admitting this
18 evidence outweighs its prejudicial effect to you, the
19 solicitor will be able to introduce your record to attack
20 your credibility.

21 If you decide to testify, this decision on your
22 part must be freely, voluntarily, and intellectually made
23 with knowledge of the protections given to you by the Fifth
24 Amendment and the consequences of your decision to testify.

25 If you decide not to testify, I would instruct the

1 jurors that they cannot give the fact that you did not
2 testify any consideration whatsoever and that there is to be
3 absolutely no prejudice to you because you did not testify.

4 It is left entirely up to you whether or not to
5 testify. You may talk with your lawyer, your family, your
6 friends, or anyone else. The final decision will be left
7 entirely up to you.

8 Mr. Waldrup, do you understand what I have just
9 now explained to you?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: Do you have any questions about what I
12 have just explained to you?

13 THE DEFENDANT: No, sir.

14 THE COURT: Have you discussed with your lawyer
15 whether you should or should not testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And, Mr. Waldrup, do you wish to speak
18 any further with your lawyer on the issue of whether you are
19 going to testify or not?

20 THE DEFENDANT: No, sir.

21 THE COURT: And, Mr. Waldrup, is it your
22 decision -- what is your decision concerning you testifying
23 in this case?

24 THE DEFENDANT: I definitely want to speak.

25 THE COURT: All right.

1 And, Mr. Waldrup, has anybody perhaps talked to
2 you and threatened you in any way or have they made you any
3 promises in order to get you to make your decision to
4 testify in this case?

5 THE DEFENDANT: No, sir.

6 THE COURT: Am I correct to conclude that your
7 decision to testify in this case is a free and voluntarily
8 decision on your part?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you are presently not under the
11 influence of any drug or intoxicant that would make your
12 decision to testify being influenced by that substance?

13 THE DEFENDANT: No, sir.

14 THE COURT: I'll find that the decision to testify
15 is made freely, voluntarily, knowingly and intellectually by
16 him.

17 And so what we will do is that we will bring the
18 jury back in, Mr. Waldrup. Before you are called to the
19 stand, if you wish to change your mind, just let your lawyer
20 know, but we will plan on your testifying.

21 Counsel approach.

22 (Whereupon, the lawyers approached the bench for
23 an off-the-record discussion)

24 THE COURT: All right.

25 Mr. Waldrup, I need to ask you one more series of

1 questions.

2 I'm informed that you do have a prior financial
3 transaction card fraud on your record from 2009, and that
4 under the rules of evidence that does qualify as a
5 conviction that the State would be allowed to ask you about
6 in order to impeach your credibility. Does that change your
7 decision to testify?

8 THE DEFENDANT: No, ma'am -- I mean no, sir.

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

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Let's see if they are
12 ready to be brought in.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: Is the defense ready to call their
16 first witness?

17 MR. MOORE: Yes, sir, Your Honor.

18 Defense calls Richard Waldrup to the stand.

19 THE COURT: Mr. Waldrup, just come right up here
20 and let the Clerk of Court swear you in.

21 RICHARD DOUGLAS WALDRUP, having been first duly
22 sworn, testified as follows:

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Watch your step as you are stepping
25 up, sir.

1 DIRECT EXAMINATION BY MR. MOORE:

2 Q. Good morning Mr. Waldrup.

3 A. Good morning.

4 Q. How old are you, Mr. Waldrup?

5 A. 51.

6 Q. And where are you from?

7 A. Gaston County, Mt. Holly, North Carolina.

8 Q. And I want to get this straight for the reason we are
9 here. You have been in the courtroom, obviously, and heard
10 the testimony of the State's witnesses.

11 What I'm going to ask you to do right now is explain to
12 the jury how you found yourself at [REDACTED] Canty Way on
13 April 15th, 2017.

14 A. My brother was dying of cancer and I was taking him
15 around to see some of his friends he's not seen in years.

16 A good friend of ours, Tony Young, used to live there.
17 Well, we stopped in Gaffney in Friday night and stayed
18 there. He was in the shower. I was going to go pick up
19 Tony, come back and we were going to take them to breakfast.

20 Whenever I went up there, I knocked on the door. No
21 one answered. I knocked again and no one answered. I
22 turned around and started to walk off. As I started to walk
23 off I heard the lady holler "yes, can I help you?"

24 I turned around "yes, ma'am. I'm looking for a friend
25 of mine."

1 She said "who is it?"

2 I said "it's Tony Young."

3 She said "there ain't nobody lives here by that name."

4 I said "yes, ma'am, he used to."

5 She said "well, I have been here such and such a time.

6 There don't nobody live here by that name."

7 I said "excuse me, ma'am. I apologize."

8 I turned around and started to walk off. She hollered
9 "come here a minute."

10 I turned right back around. She said "what are you
11 doing here?"

12 I said "ma'am, I just told you I'm here to see a friend
13 of mine."

14 All of the sudden she starts screaming talking about
15 "you are here trying to steal my stuff."

16 I put my hand up like that, "no, ma'am, you can look.
17 I have nothing on me." I had dress clothes on.

18 And the next thing you know -- I never once saw her son
19 come out. All I know is he blind-sided me. He hit me. I
20 turned around and he started swinging. We are fighting.

21 She grabbed me. Whenever she grabbed me, she started
22 hitting me again. Well, I did. I got a push from her and I
23 started hitting him. All the sudden he is getting of better
24 of me, she grabbed me.

25 The first time she grabbed me he put his arms around my

1 throat, come up behind her, put his arms around my throat.
2 I wake up on the concrete. I'm -- I'm laying there. This
3 man, he weighed a whole lot more than what he does now, but
4 he was on top of me stomping me. I wake up, getting hit
5 from him, and that's how that number. I'm hollering "what
6 are you doing? What are you doing."

7 He was reaching down and pushed his leg up. I had six
8 cracked ribs. He pushed his leg on my chest, reaches, pulls
9 my knife out of my front pocket. It was in my right front
10 pocket. All the sudden called 911. You can hear me "what
11 are you doing? Quit."

12 Next thing you know he reaches down and gets my wallet
13 out of my back pocket, same side, right side. Whenever he
14 did, I asked him, I said "what are you doing? Put my wallet
15 back." It's on 911. All the sudden he goes through my
16 wallet, takes my money out and throwed it to the side.

17 On the police video you will see him going to get my
18 wallet where he threw it, but, no, sir, my -- I do not drive
19 a convertible. There was nothing in my car. You will see
20 it whenever the police video. There was nothing ever took
21 out my car, because I had plenty of stuff in my car. There
22 was nothing illegal in my car.

23 Q. Mr. Waldrup, did you ever enter into that storage room
24 that's been shown in these pictures in the course of this
25 trial?

1 A. No, sir.

2 Q. Did you ask law enforcement when they arrived on the
3 scene to take fingerprints of the saw and the doorway?

4 A. After the officer put me in the cop car, he went and
5 talked to him. He come back and advised me what he was
6 charging me for. And at that point, yes, sir, I asked him
7 would he please take fingerprints, forensics, anything, and
8 show me anything I have done wrong.

9 Q. Did they do that, to your knowledge?

10 A. No, sir.

11 Q. You have to admit it's a little hard to believe that
12 you would just drive to somebody's house you haven't seen in
13 years without any prior arrangement. Can you explain that a
14 little bit?

15 A. As I say, my brother was dying of cancer.

16 I have got kids that live 30 minutes from me in
17 Stanley, North Carolina. I have not seen or talked to them
18 on the phone in probably 10 or 12 years. I mean, that's my
19 stupidity, but that's honesty.

20 Q. Well, I mean, why do you say that?

21 A. Well, I'm just giving you a for instance. That's -- I
22 have not seen Tony in probably -- at that point probably
23 nine, ten years. We don't -- we don't go around much. I
24 mean, we are pretty much -- since my brother has gotten
25 sick, that's not doing much at all.

1 Q. Did you -- the last time that you did see Tony Young,
2 was it at this address?

3 A. Yes, sir.

4 Q. What did y'all do on that occasion?

5 A. Went around and got drunk, to be honest with you.

6 Q. That's the last place that you knew where he lived?

7 A. Yes, sir, he stayed with a friend of his. I don't -- I
8 don't know when he moved, or whatever, but to my knowledge
9 he was still there.

10 Q. You heard some of the testimony. I'm going to ask you
11 this as a matter of practice. Do you keep a folding
12 pocketknife open in your pocket typically?

13 A. No, sir. It was not open.

14 Q. You acknowledge that's your knife, though? You had a
15 pocketknife, correct?

16 A. Yes, sir. My niece give me that for my birthday.

17 Q. Typically do you keep it open or closed when it's in
18 your pocket?

19 A. No, it's always closed.

20 As I said, you can hear on 911 me screaming "why are
21 you taking my knife out of my pocket?"

22 The man plainly said he held me down the whole team,
23 yet he goes to my car and gets another saw out? How is he
24 holding me and going over there too?

25 Q. Please answer any questions that the solicitor may

1 have.

2 A. Yes, sir.

3 CROSS EXAMINATION BY MS. BARRY:

4 Q. Good morning Mr. Waldrup.

5 A. Good morning.

6 Q. So it's your testimony that your brother was dying from
7 cancer?

8 A. Yes, ma'am.

9 Q. Did you visit -- did you take him to visit anybody
10 else?

11 A. Yeah, we had been around to see my sister, quite a few
12 different people.

13 Q. And where do they live?

14 A. York, South Carolina. Clover.

15 Q. Does any family member live in Cherokee County?

16 A. No.

17 Q. Did he visit any other friends in York County?

18 A. In York?

19 Q. Yes, sir.

20 A. No, ma'am.

21 Q. You say you were just taking him to visit his family?

22 A. Yes, ma'am. Family and friends.

23 Q. Okay. And you testified that your brother was in the
24 shower on the morning --

25 A. Whenever I left the -- whenever I left the hotel he was

1 taking a shower. I had just got out.

2 Q. How old is your brother?

3 A. He's five years older than me, so he would be 56 this
4 year.

5 Q. And is he still alive?

6 A. Yes, ma'am.

7 Q. And what's the address that you thought Tony lived at?

8 A. To be honest with you, I couldn't tell you the address.
9 I just knew exactly where it was.

10 Q. You knew exactly where it was, but you didn't know the
11 address?

12 A. No.

13 Q. And you said that you hadn't seen Tony in nine to ten
14 years, is that correct?

15 A. Somewhere around there.

16 Q. And you just don't go around much together any more, is
17 that correct?

18 A. Ever since my momma died when we was kids, we don't go
19 around a lot of people.

20 Q. So your mother died when you were a kid and you hadn't
21 seen Tony since then?

22 A. No, not since then.

23 Q. Okay. And what were you wearing that day?

24 A. A pair of khaki pants and a T-shirt.

25 Q. Those were your dress clothes?

1 A. I usually don't wear these unless I'm going to a
2 funeral.

3 Q. Were there any cars parked there when you got there?

4 A. There was one to the right and I parked right -- you
5 will be able to see it on the video. My front end of my car
6 is parked where -- whenever the next car coming in, they are
7 right there beside of me.

8 Q. And you said you knocked on the door twice?

9 A. Yes, ma'am.

10 Q. Nobody came out?

11 A. No.

12 Q. And you are originally from North Carolina?

13 A. Yes, ma'am.

14 Q. Have you ever been in Cherokee County before?

15 A. Ma'am?

16 Q. Have you ever been in Cherokee County before?

17 A. Years ago.

18 Q. Years ago. How many years ago?

19 A. I would say nine or ten.

20 Q. Nine or ten.

21 So from -- you were able to remember exactly how to get
22 to this Tony Young's house after not seeing him for nine to
23 ten years?

24 A. Ma'am, I went to see my mother -- I mean my father's
25 wife, the one after he died, and I hadn't been to Georgia in

1 probably 12 or 15 years and by landmarks I got straight to
2 her house. She lives in the mountains.

3 Q. And the only person that you took your brother to see
4 in Cherokee County was Tony Young, or tried to take him to
5 see?

6 A. Yeah, that's the only person we know in Cherokee.

7 Q. And everybody else is in York?

8 A. York, Clover. I got kids in Stanley and stuff.

9 Q. Mr. Waldrup, isn't it true that you have a prior
10 conviction for financial transaction card fraud?

11 A. Yes, ma'am. If you would like to hear about it, I
12 would be happy to tell you exactly about it.

13 Q. No, thank you, Mr. Waldrup.

14 Where were you staying when you were with your brother?

15 A. Where was I staying?

16 Q. Yes, sir.

17 A. Friday night we went to Gaffney Inn Motel.

18 Q. And where is that?

19 A. About a quarter of a mile from where that house is on
20 the same road.

21 MS. BARRY: I have no further questions, Your
22 Honor?

23 THE COURT: Any redirect limited to what she went
24 into?

25 MR. MOORE: No, sir, Your Honor.

1 THE COURT: Thank you, Mr. Waldrup. Watch your
2 step as you are stepping down.

3 Does the defense have any other witnesses?

4 MR. MOORE: No, sir, Your Honor.

5 THE COURT: Any reply?

6 MS. BARRY: No, sir, Your Honor.

7 THE COURT: All right, ladies and gentlemen, we
8 have now concluded the presentation of all the evidence that
9 will be presented to you.

10 There are a few matters of law that I have to take
11 up with the attorneys prior to your receiving the closing
12 arguments and the instruction on the law and naturally we
13 have to do those outside of your presence, so I'm going to
14 ask you, if you would, to please retire back to the jury
15 deliberation room.

16 Do not have any discussions with anyone about
17 anything involving this case. We will get you back just
18 shortly.

19 (Whereupon, the following takes place outside the
20 presence of the jury panel)

21 MR. MOORE: Your Honor, at this time the defendant
22 would renew all previous motions made during the course of
23 trial on the same legal and factual basis previously made.

24 MS. BARRY: And, Your Honor, based on the reasons
25 earlier the State would ask that that motion be denied.

1 THE COURT: All right. And based on again the
2 same standard of review this court is required to employ in
3 reviewing the evidence, I would have to deny the motion.

4 Have y'all had a chance to take a look at the
5 proposed jury charges?

6 MR. MOORE: I have not, Your Honor. I can look at
7 them right now.

8 THE COURT: All right. I'm going to step down for
9 just a few minutes and let y'all take a look at them and I
10 will come back. They should be pretty straightforward.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened).

13 THE COURT: Besides changing the verdict form, is
14 there any other suggestions or addition for --

15 MS. BARRY: Nothing from the State, Your Honor.

16 MR. MOORE: Nothing from the defense, Your Honor.

17 THE COURT: All right. Well, are we in agreement
18 on the process or procedures for closing?

19 MS. BARRY: It would be I would close on the law
20 and everything else. Mr. Moore would go and then I would
21 respond to anything new.

22 THE COURT: Okay. That's my understanding as
23 well.

24 MR. MOORE: Do we have that stipulation form
25 that's going to go back to the jury room?

1 THE COURT: Are you going to use it in your
2 closing?

3 MR. MOORE: No. No, sir, I just -- I didn't know
4 if they were going to go straight from closing and charges
5 and straight to the jury room. I just wanted to make sure
6 that we are ready to send everything back.

7 MS. LESKANIC: It should be ready.

8 THE COURT: Okay. All right. Then how long do
9 you anticipate?

10 MS. BARRY: Ten minutes, maybe. 10, 15 minutes.

11 THE COURT: All right. About the same?

12 MR. MOORE: Yes, sir.

13 THE COURT: Okay. All right.

14 The reason I ask is I try to not hold the jury
15 over here for more than an hour and a half at the most, but
16 I think we can get it all done in an hour and a half.

17 Let's bring them in.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: All right, ladies and gentlemen,
21 ladies and gentlemen, the parties have now presented their
22 evidence in the case. It is now time for the attorneys to
23 make their closing arguments to you. The arguments of the
24 attorneys are not evidence in the case. Their statements
25 and arguments are to help you understand the evidence and

1 apply the law to the evidence. You should disregard any
2 remarks, statement, or argument which is not supported by
3 the evidence presented during the trial or the law that I
4 will explain to you after their arguments, but at this time
5 we will receive the closing arguments from the attorneys.

6 MS. BARRY: Thank you, Your Honor.

7 May it please the court. Defense counsel.

8 Ladies and gentlemen of the jury, good morning
9 again.

10 I want to start with the very last thing that you
11 heard and it was Mr. Waldrup on the stand. He told you that
12 he was taking his brother to visit family and friend. All
13 of their family is in York, Clover, but the friend just
14 happens to be at [REDACTED] Canty Way. They got a hotel room.
15 They spend money on a hotel room coming from Mt. Holly from
16 Gastonia, 30 minutes up the road. So he spends money to get
17 this hotel room to go see his brother's friend. He doesn't
18 take his brother. They are going to go to breakfast. His
19 friend doesn't know they are going to breakfast. He didn't
20 call and tell him. So he gets there and Tony Young is not
21 there. And why is Tony Young not there? Because he doesn't
22 live there. He's never lived there. He hadn't seen Mr.
23 Young in nine to ten years, but he's going to go pay money
24 to take him to breakfast, not let him know he's coming.

25 Ladies and gentlemen, I submit to you that Tony

1 Young doesn't exists. He didn't tell officers about Tony
2 Young. And when Ms. Smith asked about Tony Young, he never
3 said Tony Young. He said "oh, I'm here visiting a friend.
4 I'm here visiting a friend." Lie. That's his story, so
5 let's go into the facts and the evidence that we have.

6 Now, when I spoke to you yesterday I wanted you to
7 remember the elements of burglary. The very first element
8 is he entered a dwelling without consent. You heard from
9 Ms. Smith who stated that that was her house. The garage is
10 attached to the house. You saw pictures of this garage and
11 where it is in relation to her back door, and you will be
12 able to take these back with you to look at them more
13 closely, but here is the garage attached to her residence.
14 The garage is her residence. That's where she keeps her
15 belongings. That's where she wants to keep them safe out of
16 the elements.

17 And he entered that residence without permission.
18 She testified that she lived there for eight years, never
19 seen this man a day in her life. He didn't have permission
20 to be there.

21 And he had to go into that residence with the
22 intent to commit a crime, and that crime was stealing her
23 table saw. You heard from Ms. Smith. She walks out the
24 door and there he is with the table saw in his hand.

25 Mr. Austin said it best. He was caught red handed

1 with that table saw in his hand. And when he gets caught,
2 he thinks all I have to do is overcome this lady. I can do
3 it, but what he doesn't anticipate is that Mr. Austin comes
4 out that door. And when he realizes that he's in trouble,
5 he tries to run.

6 The next element is that he has to be armed with a
7 deadly weapon. Ms. Smith testified that the knife was open
8 when he pulled it out of his pocket. Mr. Austin testified
9 that the knife was open when he pulled it out of his pocket.
10 And Mr. Waldrup testified that he had a knife. There is no
11 question that there was a knife.

12 He also has to harm somebody who is not a
13 participant in that crime. Ms. Smith testified that when
14 she went to put her arm around him, her weak arm because she
15 had had a stroke, she went to put the other arm around him
16 and she had him. He was able to grip her arm, dig his nails
17 into her arm and try to break free.

18 And the last element that we would have to prove,
19 or we would have to prove, is that he committed the crime
20 with two or more prior burglaries on his record, and you
21 heard Ms. Scoggins yesterday say that he has three burglary
22 convictions.

23 Now, ladies and gentlemen, Ms. Smith is going
24 about her every-day life, I believe; early in the morning,
25 making herself some breakfast, and Mr. Waldrup knocked on

1 the door. He said he knocked twice. She said he knocked
2 once. She went to go get a robe. She came back out and he
3 was in her garage. Not looking around, not walking away, he
4 was in her garage. He had the perfect opportunity to do
5 that, because the door has clear glass. So what he does is
6 he knocks on the door just to make sure that nobody is
7 there. There is an old truck parked in the driveway. There
8 is no other cars. So he parks his car, loads everything up
9 and get out of there, but he doesn't get the chance. He
10 looks through this door, sees a table saw, easy access, he
11 can pick it up and move it, but Ms. Smith stops him. He
12 drops it. You heard Ms. Smith testify that the table -- or
13 the saw is stored on this table, and it's right here. You
14 can see the empty space on that table. And I asked Ms.
15 Smith "does it always stay on that table?"

16 "Yes, ma'am.

17 "So it's never on the floor upside down?

18 "No, ma'am."

19 That's where Mr. Waldrup dropped it.

20 Now, Mr. Waldrup would have you believe that he
21 was just innocently there walking away and these people beat
22 him for no reason, but people who are beating somebody for
23 no reason don't call 911. You were able to hear the 911
24 call yesterday. You hear Ms. Smith yelling "who are you?
25 What are you doing here? This is my home."

1 You hear Mr. Austin say "what are you doing here?"
2 You hear Mr. Waldrup. What you don't hear is Tony
3 Young.

4 So, ladies and gentlemen, the evidence is that Mr.
5 Waldrup went to [REDACTED] Canty Way, saw that nobody was home,
6 thought nobody was home. He thought he could just go into
7 that garage and take whatever he wanted. And like I said
8 yesterday, he thought wrong.

9 Ms. Smith, being the strong lady that she is, went
10 out there. She went out there in her robe. Like she said
11 yesterday, she thought if something was amiss, she would
12 have gone out there with her gun, but she went out there in
13 her robe and she was going to subdue him herself, and he did
14 not count on Mr. Austin being there. Mr. Austin was able to
15 hold him until police got there. He was found on the scene.

16 Now, no, fingerprints weren't taken. This isn't
17 CSI. It's not TV. You heard Officer Heflin testify that
18 "we found him on the scene. There was no point in us doing
19 fingerprints after everything that we heard, everything
20 corroborated what they said he was on the scene."

21 So, ladies and gentlemen, like I said yesterday,
22 you are 12 individual people, 12 sets of eyes, 12 sets of
23 ears. You come in with 12 different life experiences.

24 I'm asking that after hearing everything, all the
25 evidence, all the testimony, that you go back there as a

1 jury of one and come back with the one verdict of guilty.

2 Thank you.

3 MR. MOORE: May it please the court?

4 THE COURT: Yes, sir.

5 MR. MOORE: Madam Solicitor.

6 Good morning again.

7 So as the judge just told you, this is the end of
8 the trial. You have heard all the evidence. There is no
9 more evidence coming in. The evidence we have in this case,
10 which the State is asking you to find this man guilty beyond
11 a reasonable doubt of all the elements of this offense, are
12 these pictures right here and three or four people that
13 testified. That's all the evidence there is. Nothing else
14 that's going to be offered at this point.

15 When I started talking to you yesterday I tried to
16 convey to you, without being over dramatic, how important it
17 is that when a person has been accused of a crime, that in
18 our system of government, in our system of justice, they are
19 presumed innocent. The burden is on the State with all
20 their resources and all their officers and all their
21 technology to prove that individual citizen guilty beyond a
22 reasonable doubt of each and every element, of each and
23 every element. That's their job. The burden is on them.
24 So now you are in the position to have to determine did they
25 do that.

1 The judge told you that he is the judge of the law
2 and you are the finders of the facts, meaning that he's
3 going to in a few minutes going to instruct you on the law.
4 He will tell you what the law in South Carolina is regarding
5 burglary in the first degree. He is going to tell you what
6 it means to be guilty beyond a reasonable doubt, what the
7 presumption of innocence is. He is going to instruct you on
8 that.

9 I submit to you that there is no disagreement
10 between myself and the solicitor on what the law is. The
11 disagreement, the reason we have this trial, is because we
12 don't degree on what the facts are. And as the judge told
13 you, y'all are the fact finders. Y'all have to determine
14 what happened. And then you have to take the law as the
15 judge tells you it is, as it exists, and apply it to the
16 facts and the evidence that you have heard and ultimately
17 you have to make a decision. That's your solemn duty as a
18 jury to do that.

19 And you may never have heard the term fact finder
20 before, and maybe it doesn't make sense or starting to make
21 sense, but I would like to tell you what I think it is.
22 What it means is, I think we can all agree we live in a
23 society where we have factual disputes all the time. We
24 have got politicians that can't agree on the facts. We have
25 got media that can't agree on the facts. Some of are you

1 married. I'm assuming you have had spouses from time to
2 time that y'all didn't agree on facts. We live in a world
3 where people cannot agree on facts and that's the basis of
4 our trial here. We cannot agree on the facts and we are
5 asking you to figure it out. And you may say "well, I'm not
6 sure I have the experience or the training or something like
7 that to do that. I have never been a juror before and I
8 don't have any knowledge of the Criminal Justice System,"
9 but I tell you, your common sense, your personal experiences
10 make you uniquely qualified to serve as the fact finder.

11 And I think about this last night and I'm not
12 trying to trivialize this role at all. I think it's a great
13 analogy. You serve as a fact finder in your daily life.
14 Those of you who have children, or had small children, you
15 are a fact finder all the time. Who hasn't gone through an
16 experience where you have two of your kids, or nephews, or
17 grand kids come to you with completely different stories?
18 "Momma, he hit me. Momma, she said this." You weren't in
19 the playroom. You have no idea what happened, and they are
20 both telling you completely different stories. And
21 sometimes you might not even believe either one of them
22 intentionally trying to mislead you. They have got their
23 own perspective, they have got their own memory, and they
24 have their own bias. So in that situation when you are
25 confronted with opposing facts and you weren't there to

1 observe it to see it yourself, what do you do? I would
2 imagine most of you would probably look to other evidence.
3 Is there something else out there that may corroborate one
4 version of this story or not? Or maybe you overheard part
5 of the conversation in the playroom, so you know part of it
6 through this child and not that one.

7 That's what we are here for right now. We have a
8 factual dispute. Ms. Smith testified to what she recalled.
9 Mr. Waldrup testified to what he recalled. And we can all
10 agree that neither one of those versions of the story are
11 similar, so I would submit that you need to do the exact
12 same thing that you do in any other factual dispute. Look
13 at the other evidence. See if it somehow corroborates or
14 disproves one version of the story or not.

15 So let's look at the evidence.

16 First, the State's witnesses. Officer Heflin.

17 "Officer Heflin, was there any evidence that he
18 had broken into or entered into this? Any physical
19 evidence? Broken door jamb, a prying, a broken glass?

20 "No evidence of breaking and entering." Okay?

21 "Was there any evidence that he had entered into
22 the storage room, Officer Heflin?

23 "No, sir, there was no evidence Mr. Waldrup
24 entered into the storage room.

25 "I just want to clarify, Officer Heflin. No

1 evidence that he entered into the storage room?

2 "No, sir.

3 "Okay. Did you take fingerprints of anything?

4 "No, we did not."

5 You know, four officers on the scene. They are
6 investigating a burglary in the first degree and you want to
7 know what all they did for that investigation? They
8 listened to Ms. Smith's testimony and what her son did and
9 took statements. Boom, case closed, we are done. Solved
10 it.

11 They didn't take Mr. Waldrup's statement. Besides
12 me, y'all are the first person to hear his version of the
13 story. It happened almost two years ago. They took one
14 side of the story and followed up with no investigation,
15 because he was there. He was there. So it had to be the
16 way that they said it was. Is that enough to prove somebody
17 guilty beyond a reasonable doubt? Y'all will have to decide
18 that.

19 What about the fact we just heard the solicitor
20 tell us that burglary under the law is the breaking and
21 entering into a dwelling with the intent to commit a crime
22 therein? Officer Heflin said in an exercise of his
23 discretion he didn't charge him with any underlying offense.
24 They didn't take fingerprints, no evidence of him being in
25 the storage room, didn't charge him with stealing or

1 attempting to steal the saw. Just burglary first.

2 Now, Ms. Smith testified. You heard from Ms.
3 Smith. She told us that she did not tell the 911 operator
4 that her truck had been broken into the day before. Did not
5 say that. Listen to the 911 call, that's what she said. I
6 would ask you to listen to it again, now that you have heard
7 all the evidence. Now that you have heard both versions of
8 what happened, I would ask you to listen to it again.
9 That's like hearing your children in the playroom. You have
10 heard both their stories here, but now that you remember
11 what you heard when it actually happened, does one of those
12 seem to line up more with one version of the story or not?
13 You can hear that he was there visiting a friend. Listen
14 for the name Tony Young on there. Listen to her say that
15 her truck had been broken into the day before and then
16 testified under oath she didn't say that. It goes directly
17 to credibility there.

18 And then she sat here and not only testified to
19 you, but essentially reenacted how he was reaching for the
20 knife out of his front pants pocket, clearly. Clearly
21 remembered front pants pocket. And he pulled an open
22 pocketknife. She called it a switchblade. I think if you
23 look at the picture you will clearly see it's not a
24 switchblade, but pulled an open pocketknife out of his
25 pocket. This is why you are the fact finders. You have

1 common sense. You have daily experiences. How many of you
2 walk around with pocket knives open in your pocket? How
3 many of you can put one hand in your pocket and open a
4 pocketknife without a switchblade without doing this? Does
5 that make sense? You have got to look at each one of these
6 things and see if this makes sense. It not only doesn't
7 make sense, it has to leave you firmly convinced that their
8 version of the story is true and that's what happened beyond
9 a reasonable doubt.

10 They want you to look at these pictures. And she
11 said that this -- "I had a bench and I kept everything, all
12 my saws in order on my bench." And if you look here there
13 is a hole where a table saw is missing, right next to all
14 the other saws. Look at -- are there any other saws on this
15 bench? There is an open spot. Would that table saw fit in
16 that open spot, this 15 pound table saw?

17 I don't know why the table saw is on the floor,
18 but when Mr. Austin testified Mr. Waldrup was standing in
19 the doorway holding the table saw struggling with his
20 mother. This is not even in the doorway. It's been
21 dropped. It's not even in the doorway. It sure would be
22 nice to have fingerprints, maybe follow-up investigation on
23 that, but we don't have it. We have this.

24 And then -- and Ms. Smith seems like a very nice
25 lady and she -- and she -- I thought it was funny personally

1 when she said as a woman something missing or something has
2 been moved, you know it. You know where your stuff is,
3 right? Okay. I showed her that picture and asked her what
4 all this is. I believe what she said was "I have got a lot
5 of stuff in there" -- let's see, I don't want to say it
6 wrong. "I don't remember. I have a lot of stuff in there,"
7 but she can look at it at any time and say if anything has
8 been moved at all. Does that make sense?

9 Then we heard from Mr. Austin today. Distinctly
10 remembered it was the back left pocket that Mr. Waldrup
11 allegedly pulled an open pocketknife from single-handedly,
12 opened it and pulled it out of his back left pocket.

13 And then a real surprise was that he found a
14 second saw, a saw that the officers didn't tell us about, a
15 saw that's not in any of these pictures that the State
16 introduced, a saw that is not in any statement given at the
17 time this happened, but now he says there was a saw in Mr.
18 Waldrup's car. Where did that come from? How did he hold
19 the defendant down, call 911, and restrain him until the
20 police got there, which is what he said in one instance, and
21 then, "by the way, before the police got there I went and
22 searched his car and I got a skill saw out and set it
23 somewhere and didn't tell anybody about it." That's the
24 State's witness. That's their credibility. That's what
25 they want you to believe. He held him down, struggling,

1 fighting, about to kill him, and in the meanwhile I was also
2 searching his car and finding other stuff. I submit to you
3 that's just an absolute lie. Now, you get to judge the
4 credibility of the witnesses, but to come in here today
5 under oath and bring up something that has never been
6 mentioned in the entire investigation of this case, does
7 that make sense?

8 I don't envy you in having to handle this. It's a
9 big deal. It really is. I made the analogy of children in
10 another room and overhearing that and that's -- and that's a
11 good analogy. I really believe it's a good analogy, but
12 what it doesn't do is it doesn't show you -- it doesn't
13 compare how serious this fact finding analysis is, because
14 the result of it is much, much more important. And when you
15 are dealing with that factual dispute between children, your
16 burden may just be I believe my daughter or my son doesn't
17 make sense, but that's not the burden here. The burden is
18 beyond a reasonable doubt, leaving you firmly convinced that
19 he is guilty of every element of this crime. That's a
20 pretty, pretty substantial burden, but that's part of what
21 makes our justice system so great.

22 In a minute the judge is going to instruct you
23 that if you think there is a real possibility, if you think
24 there is a real possibility that the defendant is not
25 guilty, you must give the defendant the benefit of the doubt

1 and find him not guilty. He is presumed innocent throughout
2 this trial, until you change that. And you can only find
3 him guilty if you feel the facts that you find they have
4 proved every element.

5 Please take your time and listen to the 911 call.
6 Review these photographs and ask yourself does this prove
7 him guilty beyond a reasonable doubt? Do I have any doubt
8 about how this happened or how this played out? And if you
9 do, if you have any doubt at all, you would hesitate to act,
10 I would ask you to find him not guilty. Thank you.

11 THE COURT: Yes, ma'am.

12 MS. BARRY: Thank you, Your Honor.

13 May it please the court?

14 Just a few things, ladies and gentlemen.

15 Mr. Moore keeps talking about there is no evidence
16 that he broke into the garage; no broken glass, the door
17 wasn't damaged, it wasn't -- there is no damage to the lock,
18 anything like that, but that's not what burglary is. It's
19 any kind of entering into a dwelling. The door could be
20 open. If you walk in without permission with the intent to
21 commit a crime, you have committed burglary. Whether or not
22 you break the door, leave it intact, turn the knob and walk
23 on in, it's burglary.

24 Fingerprints. Like I said earlier, he was on the
25 scene. He said he was there to visit a friend. He couldn't

1 give officers the friend's name, but Ms. Smith and Mr.
2 Austin said "he was in my garage with the table saw."

3 And Mr. Moore is right, listen to the 911 call.
4 Listen to it carefully. I know it's hard to understand,
5 there is a lot of yelling, but listen to it carefully and
6 he's right, it will match up to a version of events - Ms.
7 Smith's version of events. You can hear her say "who are
8 you? What are you doing here. I don't know this man. I
9 have never seen him a day in my life," because the call is
10 still connected when police get there. So that's what she's
11 telling the 911 caller -- the 911 operator. That's what
12 she's yelling at the defendant and that's what she's telling
13 law enforcement when they get there. That 911 call is
14 happening in real time. As they are struggling with Mr.
15 Waldrup she's yelling these things.

16 She talks about the table saw in the 911 call. If
17 you believe Mr. Waldrup, they just came up with this story
18 to cover up the fact that they beat him, but now the 911
19 call is happening in real time. They are talking about the
20 table saw. They want to know who this strange man is. They
21 are taking to the police.

22 And the open pocketknife. I don't carry a
23 pocketknife. I wouldn't carry it open, but Mr. Waldrup
24 carried it open in his pocket because he was going over to
25 this residence to commit a crime. That's why it was open

1 and that's why it was open when they pulled it out of his
2 pocket. And based off of all of the elements that I have
3 spoke to you about earlier I would ask that you find him
4 guilty.

5 (Whereupon, at 11:08 a.m., the Court instructed
6 the jury panel with their jury charge)

7 THE COURT: All right, ladies and gentlemen, the
8 indictment charges the defendant with burglary in the first
9 degree, and I will remind you that the fact that the
10 defendant was arrested, charged and indicted in this case is
11 not evidence in this case and cannot be considered by you as
12 evidence of guilt in this case, nor does it create any
13 presumption or inference of guilt. This document is simply
14 the formal written instrument which contains the charge made
15 against the defendant. It is the formal document by which
16 the case is brought into court.

17 The defendant has pled not guilty to this
18 indictment and that plea puts the burden on the State to
19 prove the defendant guilty. A person charged with
20 committing a crime offense in South Carolina is never
21 required to prove himself innocent.

22 I charge you that it is an important rule of law
23 that the defendant in a criminal trial, no matter what the
24 seriousness of the charge may be, will always be presumed to
25 be innocent of the crime for which the indictment was

1 issued, unless guilt has been proven by evidence satisfying
2 you of that guilt beyond a reasonable doubt. This
3 presumption of innocence does not end when you begin your
4 deliberation, but it accompanies the defendant throughout
5 the trial until you reach a verdict of guilt based on
6 evidence satisfying you of that guilt beyond a reasonable,
7 doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the defendant,
10 which remains with the defendant until it has been stripped
11 from the defendant by evidence satisfying you of the
12 defendant's guilt beyond a reasonable doubt.

13 The presumption of innocence is not mere legal
14 theory. It is not just a legal phrase. It is a substantial
15 right to which every defendant is entitled, unless you, the
16 jury, are satisfied with the evidence of the defendant's
17 guilt beyond a reasonable doubt.

18 What is reasonable doubt in the law? A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act.

21 The State has the burden of proving the defendant
22 guilty beyond a reasonable doubt. Now, some of you may have
23 served as juror in civil cases where you were told that it
24 is only necessary to prove that a fact is more likely true
25 than not true, such as by the greater weight or the

1 preponderance of the evidence. In criminal cases the
2 State's proof must be more powerful than that. It must be
3 beyond a reasonable doubt.

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

15 I remind you that during this trial you and I have
16 had certain duties to perform. As the trial judge it is my
17 responsibility to preside over the trial of this case and I
18 also have the duty to rule on the admissibility of evidence
19 offered during this trial. You are to consider only the
20 competent evidence before you. You are to consider only the
21 testimony which has been presented from this witness stand
22 and any exhibits which have been made part of the record of
23 this case.

24 Now, I have the additional duty to charge you the
25 law applicable to this case. As the presiding judge I am

1 the sole judge of the law in this case and it is your duty
2 as jurors to accept and apply the law as I now state it to
3 you. If you already have any idea as to what the law is or
4 what the law ought to be and it does not agree with what I
5 now tell you the law is, you must abandon this idea because
6 you were sworn to accept the law and apply the law exactly
7 as I say it to you.

8 In every case tried before a jury, the jury
9 becomes the sole and exclusive judge of the facts in a case.
10 A trial judge cannot intimate, state, comment on, or make
11 any statement to a trial jury about the facts in a case.
12 Since you, the jury, are the sole judge of the facts in this
13 case, you are not to infer from what I have said during the
14 progress of the trial in ruling on the admissibility of
15 evidence, or otherwise, or anything that I say now during
16 the course of this instruction to you that I have an opinion
17 about the facts in this case. The law does not allow me to
18 have an opinion about the facts in this case. This is a
19 matter solely for you, the jury, to determine. As jurors it
20 is your duty to determine the effect, value, weight, and
21 truth of the evidence presented during this trial.

22 There are two types of evidence which are
23 generally presented during a trial; direct evidence and
24 circumstantial evidence.

25 Direct evidence is the testimony of a person who

1 claims to have actual knowledge of a fact, such as an
2 eyewitness.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of a fact.

5 Now, the law does not -- the law makes absolutely
6 no distinction between the weight or value to be given to
7 either direct or circumstantial evidence, nor is a greater
8 degree of certainty required of circumstantial evidence than
9 of direct evidence. You should weigh all of the evidence in
10 this case. After weighing all the evidence, if you were not
11 convinced of the guilt of the defendant beyond a reasonable
12 doubt, you must find the defendant not guilty.

13 Necessarily, you must determine the credibility of
14 witnesses who have testified in this case. Credibility
15 simply means believability. It becomes your duty as jurors
16 to analyze and evaluate the evidence and determine which
17 evidence convinces you of its truth.

18 In determining the believability of witnesses who
19 have testified in this case, you may believe one witness
20 over several witnesses, or several witnesses over one. You
21 may believe a part of the testimony of a witness and reject
22 the remaining part of the testimony of the same witness.
23 You may also believe the testimony of a witness in its
24 entirety or reject the testimony of a witness in its
25 entirety. You may consider whether any witness has

1 exhibited to you any interest, bias, prejudice, or other
2 motive in this case. You may also consider the appearance
3 and the manner of a witness while on the witness stand.

4 In order to establish criminal liability, criminal
5 intent is required. For example, the mental state required
6 to be proven by the State for a particular crime might be
7 purpose, intent, knowledge, recklessness, or criminal
8 negligence. Criminal intent must be proven by the State
9 beyond a reasonable doubt. Criminal intent is always a
10 matter that must be determined by the jury from the
11 circumstances surrounding the situation. There is no way to
12 prove intent to a mathematical certainty. There is no way
13 medical science can dissect a person's brain and determine
14 what the person had in mind, so the law says that criminal
15 intent may be inferred from the circumstances shown to have
16 existed. This is how you make a determination of whether or
17 not the element requiring intent was present. It is not
18 necessary to establish intent by direct or positive
19 evidence, but intent may be established by inference in the
20 same way as any other fact, by taking into consideration the
21 acts of the parties and all the facts and circumstances of
22 the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what the defendant
25 intended to do based on circumstances shown to have existed.

1 Criminal intent can arise from action or failure
2 to act. It may arise from negligence, recklessness, or an
3 indifference to duty, or to the consequences that is
4 considered by law to be the equivalent of criminal intent.

5 Ladies and gentlemen, South Carolina Code Section
6 16-11-311 states that a person is guilty of burglary in the
7 first degree when the State has proven beyond a reasonable
8 doubt that:

9 A person enters a dwelling without consent and
10 with intent to commit a crime in the dwelling in either,

11 (1), when in effecting entry or while in the
12 dwelling or in immediate flight he or another person
13 participated in the crime:

14 (A), is armed with a deadly weapon or explosive;

15 (B), cause physical injury to a person who is not
16 a participant in the crime;

17 Or (C), uses or threatens the use of a dangerous
18 instrument; or,

19 (D), displays what is or appears to be a knife,
20 pistol, revolver, rifle, shotgun, machine gun, or other
21 firearms.

22 This Code Section also provides that a person is
23 guilty of burglary in the first degree when the State has
24 proved beyond a reasonable doubt that the burglary was
25 committed by a person with a prior record of two or more

1 convictions for burglary or housebreaking, or a combination
2 of both.

3 The State must first prove beyond a reasonable
4 doubt that the defendant entered a dwelling without consent.

5 A dwelling is any building or portion of a
6 building in which a person ordinarily sleeps. A building
7 constructed as a dwelling that has never been occupied
8 cannot be considered a dwelling for purposes of burglary,
9 but, a building is a dwelling, even if the residents are
10 temporarily absent from the building.

11 In order to prove that the defendant entered the
12 dwelling, the State does not have to show that the
13 defendant's entire body entered the dwelling. The smallest
14 entry is sufficient. It may be any part of the body, such
15 as a hand or a foot, or even an instrument, such as a hook
16 or other instrument. In addition, the State does not have
17 to prove that force was used to gain entry.

18 If a person enters a building by using deception,
19 artifice, trick, or misrepresentation to get consent to
20 enter, this is an enter without consent.

21 The State must prove beyond a reasonable doubt
22 that the defendant intended to commit a crime, either a
23 felony or a misdemeanor, at the time of the entry. The mere
24 entering into a dwelling without consent is not burglary.
25 If the intent to commit a crime is formed after the entry,

1 it is not burglary. On the other hand, if the defendant
2 intended to commit a crime at the time of the entry, it is a
3 burglary, even if the intent was abandoned after entry. It
4 does not matter that the intended crime was not completed.

5 Intent may be shown by acts or other conduct such
6 of the defendant and other circumstances for which you may
7 naturally and reasonably infer intent.

8 The State must prove beyond a reasonable doubt
9 either that, when entering, while in the dwelling, or when
10 fleeing the defendant or his accomplice was armed with a
11 deadly weapon or explosive, or caused physical injury to
12 anyone not participating in the crime, or uses or threatens
13 the use of a dangerous instrument or displays what is or
14 appears to be a knife or firearm.

15 Again, ladies and gentlemen, the State also
16 establishes burglary in the first degree if it proves beyond
17 a reasonable doubt that the burglary was committed by a
18 person with a prior record of two or more convictions for
19 burglary, or housebreaking, or a combination of both.

20 Now, ladies and gentlemen, evidence has been
21 admitted in the case of prior convictions of the defendant,
22 prior burglary convictions of the defendant. You are hereby
23 instructed that these prior convictions can only be
24 considered as evidence of whether the defendant has prior
25 burglary convictions and cannot be used or considered of the

1 question of whether he committed the currently charged
2 offense.

3 Now, Mr. Foreman, ladies and gentlemen, we have
4 prepared a verdict form for your use in the jury room. You
5 will decide unanimously whether or not the State has met
6 their burden of proof of establishing the defendant's guilt
7 beyond a reasonable doubt. And if so, then you will check
8 guilty.

9 If you believe that they have not, then you will
10 do the not guilty. Mr. Foreman, you will then sign it.

11 Your verdict has to be unanimous. Your verdict
12 must be based solely on the evidence that has been presented
13 in this case. It cannot be arbitrary or capricious and
14 cannot be based on passion or prejudice. It has to be based
15 solely on the evidence that has been presented in this case
16 and the law that I have just now instructed to you.

17 Mr. Foreman, when the jury engages in their
18 deliberations, in the event it becomes necessary for one of
19 the jurors to leave the room, go to the restroom, make a
20 telephone call, deliberations must cease, and they can only
21 resume once all 12 members are present.

22 Mr. Foreman, once the jury has reached their
23 unanimous decision and you have filled out the form, you got
24 to do one more thing. You have got to knock on the door and
25 tell the bailiff. One time I had a jury in the back. They

1 were back there for hours and hours and hours. We just
2 couldn't quite figure out what is taking them so long. The
3 bailiff went there "we didn't what we had to do after we
4 concluded," so be sure you tell the bailiff.

5 Now, ladies and gentlemen, we have also ordered
6 your lunch. It's going to be just a few minutes before it
7 arrives. There is a couple of matters I have to take up
8 with the lawyers before you begin your deliberations. I'm
9 going to ask, if you would, to please retire back to the
10 jury deliberation room, but do not begin your deliberations
11 yet. The bailiffs will bring you the evidence and tell you
12 when to begin, but you may retire with the bailiff.

13 (Whereupon, at 11:22 a.m., the jury panel retired
14 to the jury room, awaiting instruction to begin
15 deliberating)

16 THE COURT: Any objections to the charge from the
17 State?

18 MS. BARRY: Beg the court's indulgence for one
19 moment, Your Honor.

20 (Off the record).

21 (Back on the record).

22 MS. BARRY: No objection, Your Honor.

23 MR. MOORE: No objection from the defense, Your
24 Honor.

25 THE COURT: All right. If y'all will, take a look

1 at the evidence and be sure it's all correct. I wonder --
2 we have been having a discussion among the judges about
3 alternates in criminal cases. My understanding is that once
4 they begin their deliberations, the alternate is dismissed.
5 I used to keep the alternate, but I don't think that is
6 proper, unless y'all want to do otherwise.

7 MS. BARRY: I have no objection.

8 (Off the record).

9 (Back on the record)

10 MS. BARRY: I have no objection to the alternate
11 being dismissed.

12 MR. MOORE: Me neither, Your Honor.

13 THE COURT: Okay.

14 MS. BARRY: They can't go in there.

15 (Off the record).

16 (Back on the record).

17 THE COURT: We will make that a stipulation by the
18 parties.

19 COURT REPORTER: Court's Exhibit?

20 THE COURT: Yeah, it will go back, instead of the
21 sentencing sheet. They had concerns that there were too
22 much extraneous information on the sentencing sheets from
23 the prior record, so they agreed to the stipulation.

24 COURT REPORTER: We can mark it Court's Exhibit or
25 Joint Exhibit?

1 MR. MOORE: Can we do all this on the record, Your
2 Honor, just to make sure?

3 THE COURT: The parties have agreed to the
4 stipulation concerning the prior burglaries. They expressed
5 concern that there was extraneous information in the prior
6 court documents, so the parties agreed to a stipulation as
7 to the prior burglary convictions.

8 We can mark that as a Court's Exhibit then.

9 (Stipulation marked as Court's Exhibit No. 1 for
10 identification).

11 THE COURT: Put the alternate in the other room
12 until the lunch gets here. Let's step down.

13 (Whereupon, at 11:26 a.m., the jury panel was
14 instructed to begin deliberations).

15 (Whereupon, at 11:27 a.m., proceedings were
16 adjourned, pending the verdict of the jury panel).

17 (Whereupon, at 12:25 p.m., proceedings were
18 reconvened).

19 THE COURT: I'm told the jury has reached a
20 verdict.

21 Anything from the State before we bring them in?

22 MS. BARRY: No, sir, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. MOORE: No, sir, Your Honor.

25 THE COURT: Let's bring them in.

1 (Whereupon, at 12:26 p.m., the jury panel returned
2 to open court to report its verdict).

3 THE COURT: Mr. Foreman, I'm told that the jury
4 has reached a verdict, is that correct?

5 JURY FOREMAN: That's correct, Your Honor.

6 THE COURT: If you will give the verdict form to
7 the bailiff.

8 Madam Clerk, if you will please publish the
9 verdict?

10 THE CLERK: 2017-GS-11-843, State of South
11 Carolina versus Richard Douglas Waldrup, as to the charge of
12 burglary in the first degree, we, the jury, unanimously find
13 Richard Douglas Waldrup guilty.

14 Signed by Foreman Blake Gilfillan.

15 Ladies and gentlemen of the jury, if this is the
16 verdict of you all, please indicate by raising your right
17 hands.

18 (All jurors raised right hand).

19 THE CLERK: Thank you.

20 THE COURT: Thank you very much.

21 Anything before I dismiss jury, from the State?

22 MS. BARRY: No, sir, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. MOORE: No, sir, Your Honor.

25 THE COURT: Ladies and gentlemen, we are going to

1 thank you for your service this week. We have -- I have
2 just dismissed the larger jury panel. They had another case
3 that they were supposed to start today, but unfortunately we
4 had a situation that I have never faced before. The person
5 that was going to trial tried to commit suicide this
6 morning, so they had to take him into medical custody, so I
7 dismissed them. So I can also dismiss you for the week, but
8 I do want to thank you for your service.

9 We have -- when we started this week we had over a
10 130 cases on the trial docket. We have moved over 30 cases
11 already this week because of people like you willing to
12 serve on the jury. Even though you only participated in one
13 trial, it is because of your willingness to do your civic
14 and duty and serve on the jury that we were able to get our
15 system to operate and function and people get together and
16 get to work out their problems or work out the cases without
17 necessarily your involvement, but because of your
18 willingness to be involved, it makes the system work
19 successfully, so thank you very much for your service.

20 The Clerk of Court is going to take you back.
21 She's got your pay vouchers, but, Mr. Foreman, I need for
22 you also to get with the clerk. We have got to get your
23 signature on one more document.

24 Thank y'all very much. You may be dismissed.

25 (Whereupon, at 12:28 p.m., the jury panel was

1 discharged)

2 THE COURT: Ready to proceed with sentencing?

3 MS. BARRY: Yes, sir, Your Honor. We just have to
4 sign the sentencing sheet.

5 THE COURT: All right, Mr. Waldrup, I just need to
6 remind you that you remain under oath. Do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Sir, I need to ask you just a few
10 quick questions. To start with, how old are you, sir?

11 THE DEFENDANT: 51.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: 9th grade.

14 THE COURT: Did you ever obtain a GED?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Presently are you married, single,
17 divorced, widowed?

18 THE DEFENDANT: Divorced.

19 THE COURT: Do you have children?

20 THE DEFENDANT: Three.

21 THE COURT: How old are they?

22 THE DEFENDANT: 30, 28, and 26.

23 THE COURT: Prior to being arrested on these
24 charges did you have a job outside of the home?

25 THE DEFENDANT: What?

1 THE COURT: Did you have a job outside of the
2 home?

3 THE DEFENDANT: Yeah.

4 THE COURT: What were you doing?

5 THE DEFENDANT: I'm a carpenter.

6 THE COURT: Ever served in the military?

7 THE DEFENDANT: No, sir.

8 THE COURT: On this charge how long have you been
9 in jail?

10 THE DEFENDANT: Two years -- well, 22 -- almost
11 23 months.

12 MR. MOORE: He never bonded out, Your Honor.

13 I didn't calculate the exact days, but since the
14 date of his arrest, which I believe was April 17th.

15 MS. BARRY: April 15th.

16 MR. MOORE: April 15th.

17 THE COURT: Of 2017?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Any prior record?

20 MS. BARRY: He does have a prior record, Your
21 Honor.

22 From South Carolina in 1995, burglary, second
23 degree, nonviolent, and grand larceny.

24 2009, financial transaction card fraud less than
25 500.

1 2010, burglary, third degree, second offense. Two
2 counts, and a probation violation.

3 And then out of North Carolina, in 1986, driving
4 under the influence.

5 In 1993, he had 18 counts of breaking or entering.
6 Misdemeanor larceny. Felony larceny. Felony probation
7 violation. Felony larceny. Another felony larceny. Felony
8 probation violation. Felony larceny. Six more counts of
9 felony larceny.

10 1998, escape from state prison.

11 2008, driving while license revoked.

12 2014, driving while license revoked.

13 And that is the extent of his record, Your Honor.

14 THE COURT: I know I have heard the victims
15 testify. Does the victim have any other input that she
16 would like to have?

17 MS. BARRY: She did not wish to address Your
18 Honor.

19 THE COURT: Did she -- restitution?

20 MS. BARRY: There is \$175.00 medical expense.

21 THE COURT: All right. Anything else from the
22 State?

23 MS. BARRY: No, sir, Your Honor.

24 THE COURT: Yes, sir.

25 MR. MOORE: Just briefly, Your Honor, since this

1 is the result of a verdict at trial, I would just ask the
2 court to please take into account Mr. Waldrup's age.

3 Obviously the law gives the court a broad range
4 and sentencing discretion with the understanding that the
5 minimum allowed by law is 15 years. I believe, you know,
6 15 years would put him late in his sixties, almost
7 seventies.

8 I know that from my personal experience in
9 representing people charged with these types of offenses,
10 there is an entire range of burglaries in the first degree
11 and circumstances surrounding the aggravating factors and
12 some of the most egregious ones, obviously, are, you know,
13 people break in with weapons in the middle of the night and
14 things of that sort. People are hurt and injured seriously.

15 The court is well aware of the facts, having tried
16 the case for the last day and a half. I just ask the court
17 to note the fact that thankfully no one was seriously
18 injured here. Thankfully the weapon wasn't used, the
19 pocketknife, to injure anybody, and we would just ask the
20 court to recognize those facts when it determines what's an
21 appropriate sentence based off the facts of the case. And,
22 again, to recognize Mr. Waldrup's age and that pretty much
23 any sentence, including the mandatory minimum, will
24 essentially be a life sentence.

25 I would ask the court to hear anything that Mr.

1 Waldrup may want to say to address the court.

2 THE COURT: Mr. Waldrup, is there anything that
3 you would like to say or want me to know or consider?

4 THE DEFENDANT: I didn't do it. That's it. I'm
5 sorry they come back within an hour and didn't see the
6 truth, but --

7 THE COURT: Thank you.

8 THE DEFENDANT: I guess -- I guess that's my life.

9 THE COURT: Thank you Mr. Waldrup.

10 All right. I don't have to accept the plea, since
11 it was a jury verdict.

12 On this case it will be a 20 year sentence at the
13 State Department of Corrections.

14 He will get credit for 691 days.

15 Restitution has been ordered, \$175.00.

16 I have indicated there is not to be any victim
17 contact.

18 Good luck to you, sir.

19 (END OF REQUESTED TRANSCRIPT OF RECORD)
20
21
22
23
24
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 5th and 6th days of March, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

SEPTEMBER 4, 2019



Michael R. Watts
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of CherokeeRichard Douglas Waldrop #360887
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

21 CP-110472

APPLICATION FOR

POST-CONVICTION RELIEF

2021 JUL 26 AM 11:24

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

BRANDY W. MCBEE

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 Perry Correctional Institution
430 Oaklawn Rd. Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence Cherokee County
Gaffney S.C. 29340
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-1100843, Burglary First Degree
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) march, 6, 2019 Sentence date
- (b) 20 year sentence, most serious
- (c) no victim contact
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Cherokee County
- ii. South Carolina Court of Appeals
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. Appeal denied (Dismissed)
- iii. _____
- (c) the date of each such result:
- i. Submitted May 1, 2021
- ii. Filed June 9, 2021
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) Prosecutorial misconduct (Prosecution misconduct)
- (c) Due process Violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel fell below an objective standard of reasonableness, performance was deficient
- (b) misconduct related to critical part of case, manipulated evidence
- (c) Reserve the right to amend at a later date
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. Direct Appeal, Directed Verdict, Insufficient Evidence
- ii. South Carolina Court of Appeals
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. (Appeal from Cherokee Co.) In the Court of Appeals, S.C.
- ii. Gaffney S.C. (Direct Appeal)
- iii. S.C. Court of Appeals, Columbia, S.C. 29211
- iv. _____

(c) the disposition thereof:

i. Appeal Dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Submitted May 1, 2021 -

ii. Filed June 9, 2021

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Only other petition Filed was "Direct Appeal" Directed Verdict.
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

(a) the name and address of each attorney who represented you:
 i. Travis A. Moore, 240 magnolia st. Spartanburg
South Carolina, 29306
 ii. Sarah E. Shipe (Appellate Defender), P.O. Box 11589
Columbia, SC 29211-1589
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial, Sentencing
Filed For Direct Appeal
 ii. Filed, Pursuant to Anders v. California, where Fore She
ask Court to relieve her as counsel (was granted) I Filed Direct Appeal.
 iii. _____

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

For the court to give petitioner a new, "Fair", timely trial, or to
"reverse" Judgement in Favor of Defendant.
"Vacate Sentence"

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

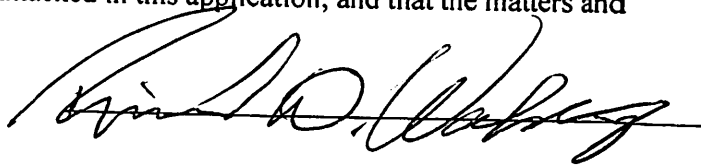
No other Sentence, nor any other charges

STATE OF SOUTH CAROLINA)

County of Cherokee)

VERIFICATION

I, Richard Douglas Waldrop, 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.



SWORN to and subscribed before me this 21
 day of July, 2021.

Tamara Conwell (L.S.)
 Notary Public

My Commission Expires: My Commission Expires
September 26, 2023

RECEIVED

JUL 21 2021

PCI MAILROOM

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

I, Richard Douglas Waldrup, 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.

Richard D. Waldrup
Applicant

SWORN or affirmed to and subscribed before me this
21 day of July, 2021.

Tamara Conwell
Notary Public

My Commission Expires: September 25, 2023

RECEIVED

JUL 21 2021

PCI MAILROOM

Certificate of Service

State of South Carolina

County of Cherokee

Vs.

Richard Douglas Waldrop (petitioner) pro-se

Application For

Post Conviction Relief

And Brief material

BRANDY W. MCBEE

2021 JUL 26 AM 11:24

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

This is to certify that I, Richard Douglas Waldrop (petitioner) have on this day 2021, Have mailed a true and exact copy of the foregoing to the Cherokee Co. Clerk of Court, Mrs. Brandy McBee to be disbursed to Attorney General's Office, etc. mailed by U.S. Postal Service.

(Brief material & P.C.R. Forms)

Pleadings: Post Conviction Relief Forms

7 pages ineffective ass. of counsel

5 pages prosecution misconduct

4 pages Arresting Off. Complaints

5 pages closing statements

From: Richard D. Waldrop ^{#36087} (petitioner) pro-se

Sig: Richard D. Waldrop #36087

Perry Corr. Inst. Q3B-104

430 Oaklawn Rd.

Pelzer, S.C. 29669

I, Richard D. Waldrop swear upon my oath that I wrote this letter (Certificate of Service), and verify its authenticity.

Signature: Richard D. Waldrop Date: 7 21 2021Subscribed to and subscribed before me this 21 day of July, 2021

Tamarra Conwell (L.S.) notary public

my commission expires,

My Commission Expires
September 25, 2023

Defense Attorney

1.) Attorney Failed beyond objective standard of reasonableness.

1.A.) The obligation to conduct a reasonable investigation.

1.B.) There is reasonable probability that the outcome of the proceedings would have been different had defense counsel done a reasonable investigation and presented the findings to the court (Jury).

1.C.) Counsel was well below legal norm or standard, e.g.a. constitutional provisions, statute, a manual rule, or an applicable professional ethics canon.

2.) A combination of physical and corroborating evidence, no finger prints, no sign of entry, nothing on defendant's person or defendant's vehicle, both states witnesses had lengthy criminal records (including) assault and battery, which was never brought to the courts (jurors) attention. See criminal history reports (enclosed)

2.A.) Attorney Failed by not presenting both witnesses criminal back ground reports to show what defendant was saying was true (had a good probability).

2.B) Rule 609 - Credibility of Witness Character.

2.C) Attorney acted in bad Faith by not offering any evidence to rebut prosecution.

3) Defendant literally begged Attorney for material that would honestly determine the truth.

3.A) Defendant requested Attorney to get and present the "Authentic" 911 call, the arresting officer's car/body cam video, the 3 officers who assisted arresting officer during arrest and investigation their body cam video.

See: Attorney Client Forms (Enclosed) Dates: May 2, 2018 Also Nov. 21, 2018

3.B) Attorney Failed to Authenticate 911 call, even after 911 personnel was subpoenaed, Attorney working against defendant.

Please read Transcript p. 88, lines 11-12 Also lines 17-20

Even Judge giving personal opinion p. 88 lines 21-23

3.D) Attorney Failed to present officer's car or body cam video during trial, which would have showed defendant was in fact telling the truth and contradicted most of what officer stated. Please see car/body cam video of arresting officer.

4) Attorney could have proved witnesses were lying but refused to by not presenting evidence requested by defendant.

4.A) Attorney never done investigation for defendant, AS for checking with Tony Young to prove he did in fact live at the residence in question with friends 10 years ago.

4.B) Attorney Failed by not questioning defendant's brother Robert V. Waldrup and presenting him on the stand to prove in fact why defendant was at said residence.

4.C) Attorney Failed by not showing officer's body / car video to prove that defendant did in fact ASK (beg) officer to do his job and check for Forensics (Finger prints), see officer's car video.

4.D) Attorney Failed by not rebutting officer's testimony where he stated he did not charge defendant with larceny concerning the first degree - burglary, but yet the officer charged defendant with 3 different driving offenses even though defendant was nowhere near his car and the plaintiffs had defendant's car keys.

5) Failed to bring to court's attention that defendant had a successful civil law suit against the captain of the Jail as well as the Sheriff of the presiding county, knowing defendant ask many times for a change of Venue because -

5.) - he was already advised he could not get a Fair trial in the same County as the one the Sheriff presided in.

5.A) Indirect questioning, lead witnesses to where he could prove they were lying, then stop right in middle of questioning then change subject. Not pursuing the truth...

5.B.) AS anyone can see Attorney Failed to properly investigate defendant's case even though defendant pleaded with attorney to properly investigate, even when Attorney knew that defendant was Facing 15 years to life in prison.

5.C.) Never came to talk with me or respond to my many unanswered letters until 1 week before the trial, used First attorney's Foot Notes.

5.D.) Never mentioned that defendant was and had been taking mental health medication for over 25 years.

6.) Attorney's and legal services
A defendant is bound by the tactical decisions of "competent counsel" and "professional responsibility".

Prosecution done everything in her power to guarantee a conviction, withholding evidence, editing 911 call, improper comments during trial, influence jurors (boosting credibility of witness), character evidence, leading witness.

Defendant was prejudiced by prosecution's performance.

Prosecution's misconduct "did" have an effect on the judgement of jurors, as well as the outcome of trial.

Defendant was prejudiced by prosecution's actions and conduct.

Under normal conditions and actions defendant (applicant) is confident the outcome of proceedings (trial) would have been different...

6.A.) Sixth Amendment guarantees criminal defendants effective assistance of counsel.

6.B.) To effect effective assistance of counsel has two components, petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense.

6.C.) Deficient performance as element of ineffective assistance of counsel, is defined as representation that falls below an objective standard of reasonableness.

6.D.) The obligation to conduct and present a reasonable investigation, (it does require counsel to make an "effort" to investigate to the obvious).

7.) The omitted evidence included, arresting officer's body cam video, body cam of assisting officers, the complete (authentic) 911 call, complete background criminal reports of state witnesses, presenting witnesses for defendant,

7.A.) Substantial likelihood of material prejudice test and specific provisions elaborating integrity of defendant also integrity of witness.

* 7.B) When the burden of proof, i.e., Burden of persuasion is shifted to defendant to disprove essential elements of crime, "Due Process" clause has been violated.

8.) The defense was prejudiced by counsel's actions, In that there is a reasonable probability that for counsel's "Unprofessional Acts" the result of the trial would have been different!

8.A) Counsel did not fulfill his ethical obligation to conduct a thorough investigation.

8.B) Counsel Failed by not following Rule 607 credibility of witness's character, Also Rule 609, Rule 404(B)(1) especially after witnesses told several conflicting stories on the stand, under oath.

9) Witness sit on stand lying about being a business man (owner), continuously badgering defendant, calling defendant a 'junkie', etc. to jurors. Counsel could have proven witness was lying at anytime by presenting witness's criminal background report (witness has at least 8 crack-cocaine, Ice, etc. charges on record (many near school zone) Also Assault and Battery Also domestic violence (High & aggravated) witness stating he is a business owner (lie) Transcript p. 107 lines 8

10.) Counsel Failed to render reasonable effective assistance under prevailing norms.

11.) Defendant was prejudiced by his counsel's ineffective performance.

12.) Counsel did not investigate some critical evidence or defense when preparing for trial.

Failure to object to hearsay
Improper comments (arguments) by the prosecution

13.) Counsel deficient for failing to object to improper charge on malice, which improperly shifted burden of proof from the state to defendant...

14.) Counsel Failed to call or investigate several critical witnesses. Defendant's Brother, Tony Young

15.) Counsel rendered deficient performance "did" have effect on the judgment of jurors, as well as outcome of trial.

Applicant was prejudiced by counsel's errors or omissions...

Exhibit 2"Prosecution misconduct"

1.) Trial prosecutor misconduct is behavior by the prosecuting attorney that over steps the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal defense.

1.A.) or an act involving an attempt to persuade the Jury to wrongfully convict a defendant or assess an unjustified punishment (conviction) which includes making improper comments during trial as well as during closing arguments.

1.B.) prosecution misconduct is generally defined as action or inaction by a prosecutor in violation of some legal norm or standard, a constitutional provision, a statute, a manual rule, or an applicable professional ethics canon.

2.) prosecution was in violation of legal norm by withholding states main (only) witness criminal history background reports during Jury trial.

2.A.) under Brady = To disclose evidence favorable to defendant is applicable even though there has been no request by defendant. (USCA Const. Amend. 5, 14)

2.B.) Instead of showing Jurors the truth about states witnesses, prosecution not only withheld valuable incriminating evidence (criminal history background reports), but also tried to (influence) boost credibility of only witnesses to Jurors by leading witnesses.

See Transcript page 70 lines 8, 10, 14 Also p. 71 line 2

Also p. 73 lines 4, 5 Also p. 102 lines 9, 20

2.C.) prosecution entered into evidence 3 prior Burglary convictions, A second degree and two third degree Burglary's. The 2 third degree were 14 years old the second degree was 24 years old.

2.D.) prosecutor even used York Co. Clerk of Court as a character witness concerning the 3 prior Burglary convictions, even had the clerk come from several counties away.

Transcript p. 93 lines 2-4

3.) Character evidence "is not" admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged.

3.A) prosecutor engaged in misconduct by repeatedly expressing her professional opinion on merits of case and credibility of witnesses.

3.B) Prosecutor's attempts to play on Jurors' sympathies.

4.) Evidence withheld by government (prosecutor) is material as would require "reversal of conviction", there is reasonable probability that had evidence been disclosed to jurors result of proceedings would have been different.

4.A) Disclose evidence favorable to the accused, that if suppressed would deprive the defendant a fair trial.

4.B) witness credibility (not submitting violent background)
Abuse of discretion - procedural errors - Rule 29 C.R.F. § 18.609

4.C) States main witness (Billy Austin) had a long criminal record, including 3 or more Assault and Battery, Exactly what the defendant reported to police from the beginning, Exactly why prosecutor withheld witness criminal record from jurors, prosecutor wanted a conviction, "Not the truth".

5.) An Abuse of discretion occurs when the trial court (prosecutor) either lack evidentiary support or are controlled by an error of law.

6.) Prosecutor Failed to disclose evidence that defense might have used to impeach the government's witness.
Brady Rule - Giglio Vs. U.S.

6.A.) Disclose evidence Favorable to the accused that if suppressed would deprive the defendant of a Fair trial.

7.) Although State is entitled to submit evidence of its own choosing, It must do so within the confines of the established rules of evidence.

8.) No state shall make or enforce any law which shall abridge the privileges or immunities of citizens.

9.) Evidence withheld by government (prosecutor) is material as would require reversal of conviction.
S.C. Rule of Evidence 609(A)(2)

9.A.) Not Submitting witness "Violent" and lengthy criminal back grounds (exculpatory evidence), witness credibility, Jury entitled to know

9.B.) Witness is accused has been convicted of a crime of dishonesty or False statement shall be admitted for impeachment.

10.) prosecution edited 911 call to the point court reporter failed to even manuscript it into Transcript. See Transcript p. 92

Arresting OFFicer

1.) OFFicer admitted they were no sign (Type) of attempted break in, windows, doors or door frames.

Transcript p. 54, lines. 8-14

2.) OFFicer admitted he never saw defendant in the house or in the garage storage area.

Transcript p. 54, lines. 15-18

3.) OFFicer admitted he did not collect any evidence in the garage storage area or in the house that would indicate that defendant had been in any of those places.

Transcript p. 54, lines. 19-22

4.) OFFicer admitted when he arrived on the scene plaintiff was on top of defendant in the carport area.

Transcript p. 54, lines 5-7

5.) Exactly where the defendant was beaten and robbed.

6.) all evidence (Facts) prove defendant's story right from the beginning, no evidence nor facts prove any of plaintiff's story (lie's).

7.) OFFICER Stumbled with his answer when questioned (Quote - Attorney) isn't it true the defendant actually requested that you call for somebody to come and take finger prints, Transcript p. 55, lines 15, 16
 "OFFICER'S Quote", I -- I do not recall on that one, Transcript p. 55, line 18



8.) Attorney Failed defendant because defendant requested (literally begged) Attorney for car/body cam video to prove he was telling truth.

See: Attorney Client work product, Dates: May 2, 2018, Also, November 21, 2018 Also see, car video Time on Tape (Video) 8:16 AM, Defendant on video requesting OFFICER to take Finger prints (Forensic's).

Also on Body worn video, While taking statement from Billy Austin (plaintiff), OFFICER runs plaintiff's name, then advised him he has a warrant and needs to go talk to Judge concerning a domestic violence charge 2 days earlier, Body worn video Time on video disc when stated 8:37 AM.

9.) With no evidence showing any type of Burglary, And defendant continuously stating he had been jumped (Beaten) and robbed, requesting Forensic's, plaintiff with violent criminal history, Also on video giving OFFICER defendant's wallet with no money in it.

10.) When OFFICER was questioned by counsel "Quote" Are you aware that Burglary in the First degree is the -- under the law is essentially the break into a dwelling with the intent to commit a crime therein, OFFICER stated yes Sir. Transcript p. 56 lines 21-24 But OFFICER never charged defendant with trying to steal the saw or anything, Because he knew there were nothing to show defendant had ever touched anything. Also p. 58 lines, 2-5

10.A.) But yet OFFICER did charge defendant with several traffic violations, even though defendant was no where near his car, nor had possession of his car keys (Witness had car keys as well as defendant's wallet.)

11.) OFFICER admitted the saw was in the shop (storage room) yet there were no proof defendant had ever been in there. Transcript p. 58 lines, 14, 15 Also 18-21

12.) OFFICER would have performed his job thoroughly as requested by defendant (see car cam video) he would have been able to determine defendant was telling the truth.

13.) With nothing taken, No Forensics showing defendant ever touched anything, No sign of entry (doors, windows, etc.), Nothing Found on defendant, Nor his car.

14.) OFFicer admitted the underlying offense was potentially larceny, But yet Failed to charge defendant with larceny, Because he knew defendant never entered nor tried to steal anything. Yet officer charged defendant with (3) different traffic Violations, even though defendant was on the patio floor when officers arrived. Defendant was no where near car, and plaintiff even had (gave) officer defendant's car keys, Along with his wallet
Transcript p. 56, lines 19-25, p. 57, lines 1-23

15.) IF OFFicer would have performed his job accordingly, (investigated properly) he would have seen all the evidence showed defendant was telling the truth, He was Assaulted and Robed...

"Reasonable Doubt"

1) A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. It is one which is not stable but one which wavers or vacillates.

* The charged is not proved beyond every reasonable doubt and you must find defendant not guilty.

Circumstantial Evidence

1) A conviction upon circumstantial evidence alone is not to be sustained unless the circumstances are inconsistent with any reasonable hypothesis of innocence.

2) Disclose evidence favorable to the accused, that if suppressed would deprive the defendant a fair trial.

3) Evidence calculated to create "prejudice" against or "sympathy" for accused.

4) Due process clause protects an accused against conviction except upon "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."

- 1) Determination of the Credibility of Witness.
- 2) The Weighing of the Evidence.
- 3) The drawing of 'justifiable' inferences of Fact, From "proven Facts".

1A) It is the Function of the Judge to deny the Jury any opportunity to operate beyond its province.

2A) The Jury may not be permitted to conjecture merely, or to conclude upon pure "speculation", or From "passion", "prejudice", or "sympathy"...

3A) The critical point in this boundary is the existence of non-existence of a reasonable doubt as to guilt.

If the evidence is such that reasonable jury must necessarily have such a doubt.

The Judge must require a verdict because no other result is permissible within the fixed bounds of Jury consideration.

Directing
to
Suits
p.1. A

"Closing Statements"

All other Post Conviction Relief Claims must attack the validity of the underlying conviction or sentence.

- 1) The conviction was in violation of the Constitution of the United States.
- 2) The evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- 3) The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error previously available under any common law statutory or other writ, motion, petition, proceeding or remedy.
- 4) Substantial likelihood of material prejudice test and specific provisions elaborating integrity of defendant, also integrity of witnesses. Rule 609
- 5) prosecutor engaged in misconduct by repeatedly expressing her personal opinion on merits of case and credibility of witnesses truthfulness.
- 6) The Due Process clause protects an accused against convictions except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

7.) Disclose evidence Favorable to the accused, that if suppressed would deprive the defendant a Fair Trial.

8.) Court (prosecutor) "can not" bolster or Vouch For Witness testimony.

9.) Witness credibility (not Submitting Violent back ground) abuse of discrees - procedural errors

10.) States main witness (Billy Austin) has a long Criminal record, including 3 or more Assault + Battery, Exactly what defendant reported to police From beginning. Exactly why prosecution with held Criminal back ground records From Jurors, prosecution wanted a conviction; Not the truth.

11.) Abuse of discretion occurs when the trial court (prosecutor) either lack of evidentiary support or are controled by an error of Law.

12.) Evidence with held by government is "material" as would require reversal of conviction, There is reasonable probability that had evidence been disclosed to Jurors result of proceedings would have been different.

Final

1.) Under Brady - To disclose evidence Favorable to defendant is applicable even though there has been "no" request by defendant.
USCA. Const. Amends. 5, 14

2.) To Succeed on Brady Claim (Favorable evidence, either exculpatory or impeaching) was willfully or inadvertently suppressed by court (prosecution) or (Attorney), Because such evidence was material (movant) was prejudiced.

3.) Defendant (Applicant) was deprived his constitutional rights to a fair impartial trial.

4.) As evidence will show prosecution, Defense Attorney, Arresting Officers were all bias towards Defendant (Applicant)

5.) Applicant request a new impartial trial, reversal of conviction, or vacate sentence.

Applicant respectfully submits all of the foregoing:

Respectfully, Richard D. Waldrup
Date,

LLMS.WEB
ICHS 003FBDFAEA from SCCH

SPTSL416

.ICHS.003FBDFAEA.SCCH.20190305 09:22:45

TO: SPTSL416-3748 20190305 09:22:45 003FBDFAEA

FROM: SCCH-12450538 20190305 09:22:45

ICHS/QH INQUIRY OF SCLED CCH FILES USING:

ATN-TRENT, D

ORI-SC042015A PUR-C

NAM-SMITH, TERESA

SOC-~~XXXXXXXXXX~~ SEX-F RAC-B DOB-~~XXXXXXXXXX~~DATE-03/05/2019 TIME-09:22 PAGE-01 OF 01

ORI-SC042015A

SCLED IDENT RESPONSE TO ICHS/QH INQUIRY

THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-SMITH, TERESA

SEX-F RACE-W

HEIGHT-508 WEIGHT-155 EYES-BRO HAIR-BLK SKIN- BORN-YY

FPC: HENRY-

NCIC-

SID-SC01231697

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--11/09/1998 DATE OF LAST UPDATE--11/09/1998

BIRTH DATES-00/00/0000

SOC SEC NUMBERS-~~XXXXXXXXXX~~

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY
SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NCIC

ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL

** END OF MESSAGE **

F B [REDACTED] JUS 110 BRO [REDACTED]

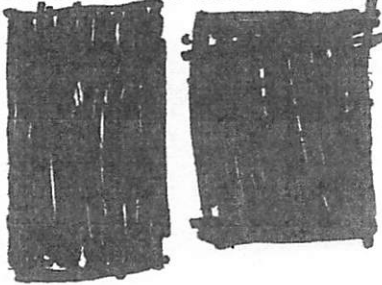
BIRTH PLACE
GEORGIA

FINGERPRINT CLASS PATTERN CLASS
PM 13 14 21 20
DI 12 18 PI 14

ALIAS NAMES
BARKS, GAYLA
BROWN, GAYLA
BURKS, GAYLA
BURKS, GLENDA DENISE
DAVIS, TERESA
JOHNSON, TERESA
SMITH, GAYLA
SMITH, SHARON
WOODSON, SHARON

BIVIN, TERESA
BROWN, TERESA
BURKS, GAYLA J
DAVID, TERESA
DAVIS, TERESA JEAN
PIPPIN, AMANDA
SMITH, JEAN
SMITH, TERESA

OTHER
BIRTH DATES SOCIAL SECURITY



IDENTIFICATION DATA UPDATED 2013/05/30

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

GEORGIA - STATE ID/GA1679964E

END - 2ND NCIC III RECORD OF MULTIPLE RESPONSE

NAME	FBI NO.	INQUIRY DATE
PORTERS, VIRGINIA	292497X6	2019/03/05

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
F	B	[REDACTED]	507	140	BRO	BLK	Y

BIRTH PLACE
NEW YORK

FINGERPRINT CLASS PATTERN CLASS
AA TT 02 O3 AA
AA TT AA O4 AA

ALIAS NAMES
EDWARDS, LISA MOORE, SABRINA

PORTIS, VIRGINIA L
REED, REGINA
SMITH, TERESA
SMITH, THERSA

PORTIS, VIRIGINA
REID, REGINA
SMITH, THERESA

OTHER
BIRTH DATES

SCARS-MARKS-
TATTOOS

SOCIAL SECURITY

SC R EYE
SC FACE
SC FHD

IDENTIFICATION DATA UPDATED 2011/09/12

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

NEW YORK - STATE ID/NY4798148J
FBI - FBI/292497X6

END - LAST NCIC III RECORD OF MULTIPLE RESPONSE

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

QH 003531C0A3 from III

SPTSL416

.QH.003531C0A3.III.20190305 09:22:49

TO: SPTSL416-3749 20190305 09:22:49 003531C0A3

FROM: III-3260579 20190305 09:22:49

3L011D43000BCC2QH

SC042015A

THIS NCIC INTERSTATE IDENTIFICATION INDEX MULTIPLE RESPONSE IS THE
RESULT OF YOUR INQUIRY ON NAM/SMITH, TERESA SEX/F RAC/B DOB/

SOC/ PUR/C

NAME

FBI NO.

INQUIRY DATE

ADAMS, THERESA ANN

889785T6

2019/03/05

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

F B 507 135 BRO BLK Y

BIRTH PLACE

GEORGIA

FINGERPRINT CLASS

PATTERN CLASS

PM PI 16 CO 20

11 16 16 CI 18

ALIAS NAMES

ADAM, TERESA

ADAM, THERESA

ADAMS, TERESA

ADAMS, TERESA ANN

ADAMS, TERESS

ADAMS, THERESA

ADAMS, THERSA ANN

KEE, ADAMS

SMITH, TERESA

SMITH, TERESA A

SMITH, TERESA ANN

SMITH, TERSA

SMITH, THERESA ADAMS

SMITH, THERESA ANN

OTHER

SCARS-MARKS-

BIRTH DATES

TATTOOS

SOCIAL SECURITY

SC L ARM

SC R ARM

SC UL ARM

SC L CHK

SC R CHK

SC LF ARM

SC R LEG

SC L THGH

SC R THGH

SC L WRIST

IDENTIFICATION DATA UPDATED 2019/01/26

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

GEORGIA

- STATE ID/GA00630365

END - 1ST NCIC III RECORD OF MULTIPLE RESPONSE

NAME

FBI NO.

INQUIRY DATE

QH 0035305865 from III

SPTSL409

.QH.0035305865.III.20190227 10:10:51

TO: SPTSL409-29578 20190227 10:10:51 0035305865

FROM: III-3168357 20190227 10:10:51

7L010B13004B552QH

SC042015A

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/AUSTIN, BILLY SEX/M RAC/B DOB/ [REDACTED] PUR/C

NAME FBI NO. INQUIRY DATE

AUSTIN, BILLY WAYNE 63581KB8 2019/02/27

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
M B [REDACTED] 511 175 BRO BLK YBIRTH PLACE
SOUTH CAROLINAFINGERPRINT CLASS PATTERN CLASS
10 AA AA TT 06
AA AA 02 02 06ALIAS NAMES
AUSTIN, BILLY WSOCIAL SECURITY
[REDACTED]

IDENTIFICATION DATA UPDATED 2013/07/18

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

SOUTH CAROLINA - STATE ID/SC01249704

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

ICHS 003FBD5791 from SCCH

SPTSL409

.ICHS.003FBD5791.SCCH.20190227 10:10:46
TO: SPTSL409-29577 20190227 10:10:46 003FBD5791

FROM: SCCH-12408721 20190227 10:10:46

ICHS/QH INQUIRY OF SCLED CCH FILES USING:

ATN-PIRKEYCS

ORI-SC042015A PUR-C

NAM-AUSTIN, BILLY

SEX-M RAC-B DOB-~~REDACTED~~

DATE-02/27/2019 TIME-10:10 PAGE-01 OF 01

ORI-SC042015A

SCLED IDENT RESPONSE TO ICHS/QH INQUIRY

THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-AUSTIN, BILLY WAYNE

SEX-M RACE-B

HEIGHT-511 WEIGHT-175 EYES-BRO HAIR-BLK SKIN- BORN-SC

FPC: HENRY-10 1 AAT- 6 NCIC-10AAAATT06AAAA020206
1AA

SID-SC01249704 FBI- 63581KB8

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--02/22/1999 DATE OF LAST UPDATE--07/18/2013

ALIAS NAMES-AUSTIN, BILLY W

BIRTH DATES-~~REDACTED~~SOC SEC NUMBERS-~~REDACTED~~

SCLED CJIS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY
SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.

FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NCIC

ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
** END OF MESSAGE **

DOC-00GS11
WARR-E760431

COURT CHARGE 01-MDP, DRUGS
SCH I B,C, LSD AND SCH
II, COCAINE-1ST
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-05/18/1999

AUSTIN, BILLY WAYNE
SC0110200 GAFFNEY PD
ATN-
WARR-F956651

06/02/2000

ARREST CHARGE 1-ASSAULT AND
BATTERY
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-SIMPLE ASSAUL
T AND BATTERY
COURT DISP-NON-CONVICTION;
DISMISSED
ATN-

DOC-R84
WARR-F956651

AUSTIN, BILLY WAYNE
SC0110000 CHEROKEE CNTY SO
ATN-
WARR-G611725
CIT-44-53-375 (B) (1)-FELONY

11/25/2002

ARREST CHARGE 1-MANUF, DISTRIB
, ETC, ICE/CRANK/CRACK COCAI
NE-1ST
OFFENSE DATE-11/25/2002
PHOTOGRAPH AVAILABLE

WARR-G611724
CIT-44-53-445 (B) (2)-FELONY

ARREST CHARGE 2-DIST, SELL, ETC
, CRACK COCAINE, OR PWID,
NR SCHOOL
OFFENSE DATE-11/25/2002

CIT-44-53-375 (B) (1)-FELONY
DOC-00GS11
WARR-G611725

COURT CHARGE 01-MANUF, DISTRIB
, ETC, ICE/CRANK/CRACK COCAI
NE-1ST
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-01/30/2003
ATN-

CIT-44-53-445 (B) (2)-FELONY
DOC-02GS1100018
WARR-G611724

COURT CHARGE 02-DIST, SELL, ETC
, CRACK COCAINE, OR PWID,
NR SCHOOL
COURT DISP-CONVICTED; 10YRS
SUSP 66DAYS CTS 3YRS PRO
250 PDF 10DAYS PSE
COURT DATE-01/30/2003

SC040015C SC DEPT CORRECTIONS 08/05/2004 CUSTODY STATUS-RECEIVED
CASE-304099 START DATE-08/05/2004
CIT-44-53-445 (B) (2)-FELONY

COURT CHARGE 01-DIST, SELL, ETC
, CRACK COCAINE, OR PWID,
NR SCHOOL

SC040015G CENTRAL FFF
CASE-110000
CIT-44-53-375 (A) -FELONY
WARR-DI

10/13/2004 CUSTODY STATUS-PROBATION
START DATE-10/13/2004

COURT CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED;2Y PROVI
DED ON 30D & PYMT OF \$5000
BAL SUSPENDED;PROBATION
2Y;FINE IS SUSPENDED TO
\$250;PAY \$515 TO PDF
COURT DATE-10/13/2004

ATN-

AUSTIN, BILLY WAYNE
SC0420700 COWPENS PD
CASE-0729005
ATN-422100098437
WARR-G564759
CIT-16-25-20 (A) -MISDEMEANOR

10/14/2005

ARREST CHARGE 1-CRIMINAL
DOMESTIC VIOLENCE 1ST
OFFENSE
OFFENSE DATE-10/14/2005
PALM PRINTS AVAILABLE

SC040015C SC DEPT CORRECTIONS
CASE-200601
CIT-44-53-445 (B) (2) -FELONY

01/18/2006 CUSTODY STATUS-RECEIVED
START DATE-01/18/2006

COURT CHARGE 01-DIST, SELL, ETC
, CRACK COCAINE, OR PWID,
NR SCHOOL
COURT DISP-CONVICTED;4 YRS
COURT DATE-01/18/2006
ATN-500200045775

CIT-44-53-375 (A) -FELONY

COURT CHARGE 02-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED;2 YRS CC
COURT DATE-01/18/2006

AUSTIN, BILLY WAYNE
SC0110000 CHEROKEE CNTY SO
CASE-20090531
ATN-110000013458
WARR-M131277
CIT-16-25-65-FELONY

05/31/2009

ARREST CHARGE 1-CRIMINAL
DOMESTIC VIOLENCE HIGH &
AGGRAVATED
OFFENSE DATE-05/31/2009
PALM PRINTS AVAILABLE

AUSTIN, BILLY WAYNE
SC0110000 CHEROKEE CNTY SO
CASE-2010

11/03/2010

WARR-50907FA
CIT-16-11-610-MISDEMEANOR

ARREST CHARGE 1-TRESPASSING
OFFENSE DATE-11/03/2010
PALM PRINTS AVAILABLE

WARR-M121812
CIT-16-9-320(A)-MISDEMEANOR

ARREST CHARGE 2-RESISTING
ARREST
OFFENSE DATE-11/03/2010

CIT-16-11-610-MISDEMEANOR
WARR-50907FA

COURT CHARGE 01-ENTERING
PREMISES AFTER WARNING
COURT DISP-CONVICTED;Fine or
Jail Time
COURT DATE-11/30/2010
ATN-110000018260

AUSTIN, BILLY WAYNE
SC0110000 CHEROKEE CNTY SO
CASE-201316576
ATN-110000026408
WARR-2013A11101 @
CIT-44-53-370(B)(2)-FELONY

07/18/2013

ARREST CHARGE 1-MANUFT, POSSES
S OTHER SUB SCH I, II, III
WITD-1ST
OFFENSE DATE-07/18/2013
PALM PRINTS AVAILABLE

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/ 63581KB8
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **

ICHR 003FBD57B1 from SCCH

SPTSL409

.ICHR.003FBD57B1.SCCH.20190227 10:13:29
 TO: SPTSL409-29579 20190227 10:13:29 003FBD57B1
 FROM: SCCH-12408753 20190227 10:13:29

ICHR REQUEST FOR RAP SHEET
 ORI-SC042015A FBI- 63581KB8 PUR-C
 ATN-PIRKEYCS

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
 AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
 BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
 SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-02/27/2019 TIME-10:13:29
 REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT
 SID-SC01249704 FBI- 63581KB8
 NAME-AUSTIN, BILLY WAYNE SEX-M RACE-B
 HEIGHT-511 WEIGHT-175 EYES-BRO HAIR-BLK SKIN- BORN-SC
 FPC-10AAAATT06AAAA020206 HENRY-10 1 AAT- 6
 1AA

PHOTOGRAPH AVAILABLE
 1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--02/22/1999 DATE OF LAST UPDATE--07/18/2013

ADDITIONAL IDENTIFIERS	BIRTH	DATES	MARKS	SOC SEC	MISC NUM
NAME					

AUSTIN, BILLY W

CONTRIBUTOR/SUBJECT	DOA/RCVD CHARGE/DISPOSITION/ETC
AUSTIN, BILLY WAYNE	01/20/1999

SC0110200 GAFFNEY PD
 WARR-46275BB

DOC-R84
 WARR-46275BB

ARREST CHARGE 1-TRESPASSING
 PHOTOGRAPH AVAILABLE
 COURT CHARGE 01-TRESPASSING
 COURT DISP-CONVICTED;\$353
 COURT DATE-01/28/1999

AUSTIN, BILLY WAYNE
 SC0110000 CHEROKEE CNTY SO
 WARR-E760431

02/27/1999

WARR-E760433

ARREST CHARGE 1-POSSESSION
 WITH INTENT TO DIST CRACK
 COCAINE
 OFFENSE DATE-02/27/1999
 PHOTOGRAPH AVAILABLE

ARREST CHARGE 2-DRUG PARAPHER
 NALIA
 OFFENSE DATE-02/27/1999



QWA 0006F8444F from NC2K

SPTSL409

.QWA.0006F8444F.NC2K.20190227 10:13:31

TO: SPTSL409-29580 20190227 10:13:31 0006F8444F

FROM: NC2K-16270415 20190227 10:13:31

1L010B13004B572QWA

SC042015A

NO NCIC WANT FBI/63581KB8

NO NCIC WANT SOC/

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

J. Patrick Anderson
 Travis A. Moore
 V. C. "Vic" Bailey, IV
 Mark A. Nowell

Jenny D. Moore
 Associate

AM ANDERSON, MOORE, BN BAILEY & NOWELL LLC

ATTORNEYS AT LAW

240 Magnolia Street • Spartanburg, South Carolina 29306
 www.upstatelawsc.com

Telephone: 864.641.6481
 Facsimile: 864.641.6485
 Toll Free: 888.234.2488

CONFIDENTIAL

DATE: May 2, 2018

LOCATION: Cherokee County Detention Center

CLIENT: Richard Waldrup (Initial Meeting)

Points of Discussion:

- Michael Berry was his attorney / Bond set at \$50k/ client can't make it
- Ready to go to trial /
- Michael Berry was "working with the solicitor"
- Got "jumped on by some black people" they took my money and I got charged
- Listen to 911 call
- Watch body cam; where Client asked LE to take finger prints/forensics etc.
- Alleged victim's son (Billy Atkins) caught me blindsided and hit me / the alleged Victim them grabbed me from behind
- When he began stomping me I blacked-out; when I came to I realized I pissed and crapped my pants; "I must of died temporarily, that's all I can figure"

Client's Concerns:

Actions:

- I need to review the discovery on my own before the Client discuss
- Client has discovery, but wants a copy of the 911 call / transcript if possible
- Wants to see body cam of him asking officer for forensics investigation

J. Patrick Anderson
 Travis A. Moore
 V. C. "Vic" Bailey, IV
 Mark A. Nowell

Jenny D. Moore
 Associate

**AM ANDERSON, MOORE,
 BN BAILEY & NOWELL LLC**
 ATTORNEYS AT LAW

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 www.upstatelawsc.com

Telephone: 864.641.6431
 Facsimile: 864.641.6435
 Toll Free: 888.234.2483

CONFIDENTIAL

DATE: November 21, 2018

LOCATION: Cherokee County Detention Center

CLIENT: Richard Waldrup

Points of Discussion:

- Will not accept any offer
- Wants a trial because he did not do anything wrong
- Requests a copy of the 911 call from victim's girlfriend and a copy of the BWC from the arresting officer

Client's Concerns:

Actions:

- Check discovery to see if we have 911 call and BWC (Torrie)

Richard D. Waldrop #360840

Perry Conn. Q3B-104

2130 OAKLAWN RD,

FELZER, SC. 29669

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2021 JUL 26 AM 11:26

BRANDY W. MCBEE

RECEIVED
JUL 21 2021

PCI MAILROOM

Cherokee Co. Clerk of Court
Mrs. Brandy McBee

Post Office Drawer 2289

Gaffney SC 29315

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Richard Waldrup, #360887,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2021-CP-11-0472

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter “PCR”) application filed on July 26, 2021, by Richard Waldrup (hereafter “Applicant”). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its June 2017 term, the Cherokee County Grand Jury indicted Applicant for first degree burglary (2017-GS-11-00843). Applicant was represented by Travis Moore, Esquire. Deputy Solicitor Kim Leskanic and Assistant Solicitor Adrienne Barry of the Seventh Circuit Solicitor’s Office prosecuted the case. On March 5, 2019, Applicant went to trial before the Honorable J. Mark Hayes, II, circuit court judge, and a jury. Applicant was found guilty at trial and Judge Hayes sentenced Applicant to twenty years’ imprisonment.

Applicant filed a timely notice of appeal on March 18, 2019, that was perfected by Sarah Shipe, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v.*

Waldrup, 2021-UP-200 (S.C. Ct. App. filed June 9, 2021). The remittitur was issued on June 28, 2021.

II. Statement of Facts

Teresa Smith, the victim, was preparing breakfast the morning of the incident, when she heard a knock on the door and saw Applicant at the door. (Tr. 61-62). When she got to the door, she saw Applicant in her garage and noticed that the back garage door was opened. (Tr. 62). The victim asked Applicant what he was doing, to which he responded “oh, I’m here visiting friends.” (Tr. 62). When she asked what he was doing with her saw, he dropped it and took off running. (Tr. 62). He tried to run past her underneath her arm, to which she grabbed him with her left arm around the neck while yelling for another resident in the house, Billy, to come and call the police. (Tr. 63). When Billy came to the door he grabbed Applicant and demanded to know what he was doing. (Tr. 63). Billy and Applicant began fighting. (Tr. 64). Applicant retrieved a knife out of his pocket, which Billy was able to wrestle out of Applicant’s hand. (Tr. 64). The victim stated that Applicant needed to use force to enter the garage like he did. (Tr. 65). The victim required medical attention because Applicant took his fingernails and imprinted them into her arm. (Tr. 73).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel fell below an objective standard of reasonableness, performance was deficient.
 - i. The obligation to conduct a reasonable investigation
 - ii. There is a reasonable probability that the outcome of the proceedings would have been different had defense counsel done a reasonable investigation and presented the findings to the court (jury).
 - iii. Counsel was well below the legal norm or standard e.g. constitutional

- provision, statute, a manual rule, or an applicable professional ethics canon.
- iv. A combination of physical and corroborating evidence, no fingerprints, no sign of entry, nothing on defendant's person or defendant's vehicle, both state witnesses had lengthy criminal records including assault and battery, which was never brought to the court's or jury's attention.
 1. Attorney failed by not presenting both witnesses criminal background reports to show that defendant was saying the truth
 2. Rule 609- credibility of witness character.
 3. Attorney acted in bad faith by not offering any evidence to rebut prosecution
 - v. Defendant literally begged the attorney for material that would honestly determine the truth
 1. Defendant requested attorney to get and present the authentic 911 call, the arresting officer's car/bodycam video. The 3 officers who assisted the arresting officer during the arrest and investigation their bodycam video
 2. Attorney failed to authenticate 911 call, even after 911 personnel was subpoenaed, attorney working against defendant.
 3. Attorney failed to present officer's car or bodycam video during trial, which would have showed defendant was in fact telling the truth and contradicted most of what officer stated
 - vi. Attorney could have proved witness was lying but refused to by not presenting evidence requested by defendant.
 - vii. Attorney never investigated for defendant, as for checking with Tony Young to prove he did in fact live at the residence in question with friends 10 years ago.
 - viii. Attorney failed by not questioning defendant's brother Robert V. Waldrup and presenting him on the stand to prove in fact why defendant was at the residence.
 - ix. Attorney failed by not showing the body/car video to prove defendant asked officers to do their job and check for forensics/fingerprints
 - x. Attorney failed by not rebutting officer's testimony where he stated he did not charge defendant with larceny concerning the first degree burglary, but yet the officer charged him with 3 different driving offenses even though defendant was nowhere near his car and the plaintiff's had defendant's car keys.
 - xi. Failed to bring to the court's attention that the defendant had a successful law suit against the captain of the jail as well as the sheriff of the presiding county, knowing defendant asked many times for a change of venue because he was already advised he could not get a fair trial in the same county as the one the sheriff presided in.
 - xii. In direct questioning, lead witnesses to where he could prove they were lying, then stop right in the middle of questioning then change the subject. Not pursuing the truth.
 - xiii. Attorney failed to properly investigate defendant's case even though

defendant pleaded with attorney to properly investigate, even when attorney knew that defendant was facing 15 to life in prison.

- xiv. Never came to talk with me or respond to my many unanswered letters until one week before the trial
- xv. Never mentioned the defendant was and had been taking mental health medication for over 25 years.
- xvi. The omitted evidence included arresting officer car/body cam video, bodycam of assisting officers, the complete (authentic) 911 call, complete background criminal reports of State's witnesses, presenting witnesses for defendant.

- 1. Substantial likelihood of material prejudice test and specific provisions elaborating integrity of defendant also integrity of witness.

- xvii. Counsel did not fulfill his ethical obligation to conduct a thorough investigation.
- xviii. Failure to follow Rule 607 credibility of witness character, also Rule 609, Rule 404(B)(1) especially after witnesses told several conflicting stories on the stand, under oath.
- xix. Witness sat on stand lying about being a business man, continuously badgering defendant by calling him a junky to jurors. Counsel could have proven witness was lying at any time by presenting witness's criminal background report
- xx. Failure to investigate some critical evidence or defense when preparing for trial
- xxi. Failure to object to hearsay
- xxii. Failure to object to improper comments by prosecution.
- xxiii. Failure to object to improper charge on malice, which improperly shifted to burden of proof from the State to the defendant
- xxiv. Failure to call or investigate several critical witnesses

- 1. Defendant's brother, Tony Young

2. Prosecutorial Misconduct.

- a. Misconduct related to critical part of the case, manipulated evidence.
- b. Prosecutor did everything she could to guarantee a conviction, withhold evidence, editing 911 calls, improper comments during trial, influence jurors (boosting credibility of witness), character evidence, leading witness
- c. Prosecutor withheld state's main (only) witness criminal history background report during trial
 - i. Withheld information concerning a crime of dishonesty (false statement)
- d. Prosecutor tried to boost credibility of only witness to jurors by leading witnesses.
- e. Prosecutor entered into evidence three prior burglary convictions, a second degree and two third degree burglaries, when the two third degrees were fourteen years old and the second degree was twenty-four years old.
- f. Prosecutor used York County Clerk of Court as a character witness concerning the three prior burglary convictions, even had the clerk come from several counties away.
- g. Misconduct for repeatedly expressing her professional opinion on merits of the

- case and credibility of witnesses.
- h. Prosecutor attempted to play on juror's sympathies
- i. Evidence withheld by government is material as it would require a "reversal of conviction"
- j. Failure to disclose impeachment material on government witness
- k. State edited 911 call to the point where the court reporter failed to put it into the transcript
- 3. Due process violation.
 - a. When burden of proof is shifted to defendant to disprove essential elements of crime "Due process" is violated.
- 4. Arresting officer¹
 - a. Officer admitted there was no sign of an attempted break in windows, doors, or doorframes
 - b. Officer admitted he never saw the defendant in the house or in garage area
 - c. Officer admitted he did not collect evidence in garage storage area or in the house that would indicate Applicant was there
 - d. Officer admitted when he arrived on the scene the victim was on top of Applicant in carport area
 - i. Where applicant was beaten and robbed
 - e. All evidence prove Applicant's story from beginning, no evidence nor facts prove other side's story
 - f. Officer stumbled with his answer when questioned isn't it true the defendant actually requested that they call for someone to come and take fingerprints
 - g. Counsel failed to request car/bodycam video to prove he was telling the truth
 - h. With no evidence showing a burglary, and applicant continuously stating he was jumped, beaten, and robbed, requesting forensics, plaintiff with violent criminal history, also on video giving officer defendant's wallet with no money in it
 - i. When officer was questioned by counsel "are you aware that burglary in the first degree is the . . . under the law is essentially the break into a dwelling with the intent to commit a crime therein", officer stated yes sir.
 - j. Officer charged Applicant with several traffic violations, even though defendant was nowhere near his car, nor had possession of his car keys
 - k. Officer's admitted to saw was in the shop, yet there was no proof defendant was in there
 - l. Officer would have performed his job thoroughly as requested by applicant he would have been able to determine applicant was telling the truth.
 - m. With nothing taken, no forensics showing applicant ever touched anything, no sign of entry, nothing found on applicant or in his car
 - n. Officer admitted the underlying offense was potentially larceny, but yet failed to charge defendant with larceny, because he knew defendant never entered nor tried to steal anything, yet officer charged defendant with three different traffic violations, even though defendant was on the patio floor when officers arrived.

¹ The State interprets these allegations as being ineffective assistance of counsel claims for failing to challenge the officer at trial during cross-examination or closing arguments, as applicable, based on the issues outlined in the application.

Defendant was nowhere near his car, and plaintiff even had given officer applicant's car keys, along with his wallet

- o. If the officer would have performed his job accordingly, he would have seen all the evidence showed defendant was telling the truth, he was assaulted and robbed.

5. Final statements

- a. A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. It is one which is not stable but one which wavers or vacillates.
 - i. This charge is not proved beyond every reasonable doubt and you must find the defendant not guilty.
- b. Circumstantial evidence
 - i. A conviction upon circumstantial evidence alone is not to be sustained unless the circumstances are inconsistent with any reasonable hypothesis of innocence.
 - ii. Disclose evidence favorable to the accused, that if suppressed would deprive defendant of a fair trial.
 - iii. Evidence calculated to create "prejudice" against or "sympathy" for accused.
 - iv. Due process clause protects an accused against conviction except upon "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.
- c. Determination of the credibility of witness.
- d. The weighing of the evidence.
- e. The drawing of justifiable inferences of fact from proven fact.
- f. It is the function of the judge to deny the jury any opportunity to operate beyond its province.
- g. The jury may not be permitted to conjecture merely or to conclude upon pure speculation or from passion, prejudice, or sympathy.
- h. The critical point in this boundary is the existence of non-existence of a reasonable doubt as to guilt.
- i. If the evidence is such that reasonable juryman must necessarily have such a doubt, the judge must require acquittal because no other result is permissible within the fixed bounds of jury consideration.

6. Closing statements

- a. The conviction was in violation of the United States Constitution.
- b. The evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- c. The condition or sentence is otherwise subject to collateral attack upon any ground of alleged error previously available under any common law statutory other writ, motion, petition, proceeding or remedy.
- d. Substantial likelihood of material prejudice test and specific provisions elaborating integrity of defendant, also integrity of witnesses.
- e. Prosecutor engaged in misconduct by repeatedly expressing her personal opinion on merits of case and credibility of witnesses' truthfulness.
- f. The Due Process Clause protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

- g. Disclose evidence favorable to the accused, that if suppressed would deprive defendant of a fair trial.
- h. Court (prosecutor) cannot bolster or vouch for witness's testimony.
- i. Witness credibility (not submitting violent background) abuse of discretion – procedural errors.
- j. State's main witness (Billy Austin) has a long criminal record, including three or more assaults and batteries, exactly what defendant reported to police from beginning. Exactly why prosecution withheld criminal background records from jurors, prosecution wanted a conviction, not the truth.
- k. Abuse of discretion occurs when the when the trial court (prosecutor) either lack of evidentiary support or are controlled by an error of law.
- l. Evidence withheld by government is material as would require reversal of conviction. There is reasonable probability that had evidence been disclosed to jurors, the result of the proceedings would have been different.
- m. Under *Brady* to disclose evidence favorable to defendant is applicable even though there has been no request from defendant.
 - i. To succeed on Brady claim, favorable evidence, either exculpatory or impeaching, was willfully or inadvertently suppressed by court (prosecution) or (attorney), because such evidence was material (movant) was prejudiced.
- n. Defendant was deprived his constitutional rights to a fair and impartial trial.
- o. As evidence will show, prosecution, defense attorney, and arresting officer were all biased towards defendant.
- p. Applicant requests a new and impartial trial, reversal of conviction, or a vacated sentence.

Attached to and incorporated herein are Applicant's Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the direct appeal records, the trial transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. See *Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) (“[A] defendant has a right to effective representation, not a right to an attorney who

performs his duties ‘mistake-free.’” (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); see *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

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

Failure to Investigate

Applicant alleges ineffective assistance of counsel for “failure to investigate.” *Strickland* makes clear that Defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* That said, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Here, Applicant shows no facts indicating that any failure to investigate on the part of Counsel occurred, let alone was unreasonable. Counsel had no obligation to investigate every conceivable defense available in the case; only to engage in reasonable investigation. The

Applicant has made no showing that Counsel's inaction regarding investigations fell outside the zone of reasonableness, nor has Applicant specifically stated what exactly Counsel failed to investigate. Thus, Respondent requests a more specific statement regarding this claim to ascertain the merit, or lack thereof, of the allegation.

Failure to Present a Defense

Applicant claims Counsel was ineffective for failure to present a defense. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a "reasonably substantial investigation" into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* "[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial." *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413

S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community). Respondent contends that Applicant likely cannot meet his burden of proof on this ground. Still an evidentiary hearing is requested to fully resolve the matter.

Failure to Communicate

Applicant alleges that Counsel was ineffective for failure to maintain communication with Applicant leading up to trial. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant has not stated with specificity any facts regarding this allegation that illustrate how he was prejudiced by the alleged deficiency of Counsel. Thus, more information is needed to determine if this allegation has merit. Consequently, Respondent respectfully requests this Court to require Applicant, through Counsel, to file an amendment with greater specificity regarding claims made in the original application.

Failure to Mention Mental Health Issues

Applicant claims Counsel was ineffective for failure to mention Applicant's mental health issues. However, he fails to state why they should have been mentioned, how it would have been helpful, why Counsel was deficient, and how Applicant was prejudiced by the deficiency. Accordingly, Respondent contends the allegations are likely without merit, but still requests an evidentiary hearing on this matter.

Failure to Object to Hearsay and Improper Statements

Applicant claims Counsel was ineffective for failure to object to hearsay and improper statements. Whether failure to object constitutes deficient performance generally hinges on whether or not a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

Applicant fails to show what exactly should have been objected to, why, how Counsel was deficient, or how he was prejudiced by the alleged deficiency. Accordingly, Respondent contends the allegations are likely without merit, but still requests an evidentiary hearing on this matter.

Failure to Object to Improper Burden Shifting

Applicant claims Counsel was ineffective for failure to object to improper burden shifting. Applicant fails to show what exactly should have been objected to, why, how Counsel was deficient, or how he was prejudiced by the alleged deficiency. Accordingly, Respondent contends the allegations are likely without merit, but still requests an evidentiary hearing on this

matter.

Failure to Call Witnesses

Applicant claims Counsel was ineffective for failing to call witnesses. At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard. v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

“In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Respondent contends this allegation likely lacks merit. However, because the allegation probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

Failure to Cross-examine Officer

Applicant alleges that Counsel was ineffective for failure to cross-examine witnesses. "Where trial counsel articulates a valid reason for employing a certain trial strategy, counsel will not be deemed ineffective." *McKnight v. State*, 378 S.C. 33, 43, 661 S.E.2d 354, 359 (2008) (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)). Counsel can be

deficient when examining witnesses if they fail to elicit testimony key to a petitioner's defense. *Miller v. State*, 379 S.C. 108, 116, 665 S.E.2d 596, 600 (2008), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (finding counsel was deficient in failing to elicit testimony about similarities between armed robberies from a witness who could corroborate where the applicant's key defense was third party guilt).

Respondent contends this allegation likely lacks merit. However, because the allegation probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

Failure to Challenge Officer Testimony in Closing

Applicant alleges Counsel was ineffective for failing to challenge the officer's testimony in his closing argument. However, he fails to state why Counsel was deficient on this ground or how he was prejudiced by the alleged deficiency. Accordingly, Respondent contends this allegation likely lacks merit. Still, the ineffective assistance of counsel allegations probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

Prosecutorial Misconduct – Improper Bolstering

Applicant claims the State improperly bolstered witnesses' testimonies. "Improper bolstering is 'testimony that indicates the witness believes the victim, but does not serve some other valid purpose.'" *Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 499-500 (Ct. App. 2019) (quoting *Briggs v. State*, 421 S.C. 316, 325, 806 S.E.2d 713, 718 (2017)). "Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that the witness believes the victim, or when there is no other way to interpret the testimony other than to mean the witness believes the victim is telling the truth." *Id.* "However, an expert's testimony is not improper bolstering 'when the expert witness gives no indication about the victim's veracity[.]'" *Id.* (quoting *State v. Perry*, 420 S.C. 643, 663, 803 S.E.2d 899, 910 (Ct. App. 2017)).

"In an ineffective assistance case, 'trial counsel's failure to object to [improper bolstering] testimony does not remove a [] [PCR] applicant's burden to prove prejudice.'" *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 246, 814 S.E.2d at 492). "The determination of whether a bolstering error is harmless depends on whether the case turns on the credibility of the victim." *State v. Chavis*, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015). "The outcome of a trial turns on the credibility of the victim when the State presents no physical evidence or 'relie[s] solely upon the victim's testimony to establish the details of the crime'" *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 248, 814 S.E.2d at 494).

Applicant has not met his burden of proof concerning this allegation. Specifically, he has not stated with any specificity what the State did that constituted improper bolstering, whose testimony was improperly bolstered, or how that impacted trial proceedings. Accordingly, because Applicant cannot meet his burden of proof, relief should be denied on this ground.

Prosecutorial Misconduct – Brady

Applicant claims a *Brady*² violation occurred. *Brady* violations occur if four conditions are met: “the evidence was favorable to the accused”, “it was in the possession of or known to the prosecution”, “it was suppressed by the prosecution”, and “it was material to guilt or punishment.” *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Whether a *Brady* violation is material and, thus, sufficient to warrant relief, is contingent on where there is a “reasonable probability that, but for the government's failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial.” *Id.* at 325. Further, whether a mistrial is warranted remains contingent on ““(1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court.”” *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011) (quoting *United States v. Anwar*, 428 F.3d 1102, 1112 (8th Cir. 2005)).

Applicant likely cannot meet his burden of proof on this ground. Accordingly, relief should be denied.

Prosecutorial Misconduct – Vindictiveness

Applicant alleges the State engaged in misconduct because of prosecutorial vindictiveness. Courts have recognized that prosecutors have many powers within the criminal justice system. Included in this, is “discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” *State v. Langford*, 400 S.C. 421, 435 n. 6, 735 S.E.2d 471, 479 n. 6 (2012). Additionally, prosecutors can use “punishment of the offender” as a proper motivation behind their behaviors and punitive motivations do not render otherwise lawful activity unlawful. *State v. Blakely*, 402

² *Brady v. Maryland*, 373 U.S. 83 (1963).

S.C. 650, 658, 742 S.E.2d 29, 33 (2013) (citing *State v. Fletcher*, 322 S.C. 256, 260, 471 S.E.2d 702, 704 (Ct.App.1996)).

However, a conviction will be reversed if the applicant can show prosecutorial vindictiveness, in that “the prosecutor acted with genuine animus toward the defendant” and “the defendant would not have been prosecuted but for that animus.” *State v. Odon*, 412 S.C. 253, 263, 772 S.E.2d 149, 154 (2015) (quoting *United States v. Wilson*, 262 F.3d 305, 314 (2001)) (quotations omitted). Otherwise, a “prosecutor’s charging decision is presumptively lawful.” *Id.* at 263-64 (quoting *United States v. Goodwin*, 457 U.S. 368, 384 n. 19 (2015)). The case in which an applicant can overcome the presumptive validity of the prosecutor’s actions is rare. *Id.* at 264 (quoting *Goodwin*, 457 U.S. at 384 n. 19).

Applicant likely cannot meet his burden of proof in showing the State acted vindictively. Accordingly, relief should be denied on this ground.

Prosecutorial Misconduct –Improper use of Prior Convictions

Applicant claims the prosecutor engaged in misconduct for improperly using his prior convictions against him. Rule 404, SCRE states that evidence of “other crimes, wrongs, or acts” are excluded if offered to “prove the character of a person in order to show action in conformity therewith.” Rule 404(b), SCRE. However, an exception to this rule exists, permitting such evidence to be entered if “testimony is offered to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. *Anderson v. State*, 354 S.C. 431, 435, 581 S.E.2d 834, 835-36 (2003). “Evidence of other crimes is admissible under the res gestae theory when the other actions are so intimately connected with the crime charged that their admission is necessary for a full presentation of the case. *Id.* Prejudice cannot be shown if the statements or acts were admissible and an objection would not have prevailed before the

court. *Id.* at 436.

Applicant has failed to show why these prior convictions were improperly used, how the State engaged in misconduct by doing so, how Counsel was deficient for failing to object, or how he was prejudiced as a result. Thus, Applicant likely cannot meet his burden of proof. Accordingly, relief should be denied on this ground.

Prosecutorial Misconduct –Manipulated Evidence

Applicant claims the prosecutor manipulated evidence to obtain a conviction. Applicant has failed to make any showing rising beyond mere speculation that any evidence was manipulated or that he was prejudiced as a result of the manipulation. Thus, Applicant likely cannot meet his burden of proof. Accordingly, relief should be denied on this ground.

Prosecutorial Misconduct –Called Improper Witness

Applicant takes issue with the State calling the clerk of court to testify. However, he has failed to show how this was improper, how the State engaged in misconduct by doing so, how Counsel was deficient for failing to object, or how he was prejudiced as a result. Thus, Applicant likely cannot meet his burden of proof. Accordingly, relief should be denied on this ground.

Prosecutorial Misconduct –Improper Statements Evoking Emotion

Applicant claims the State engaged in misconduct for using improper statements that evoked emotions in the jury, especially in closing. To find whether a prosecutor's comments in closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. *Fortune v. State*, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019).

“It is undisputed that closing argument is not merely a time for recitation of

uncontroverted facts, but rather the prosecution may make fair inferences from the evidence.” *United States v. Francisco*, 35 F.3d 116, 120 (4th Cir. 1994); *see also State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) (“Undoubtedly, a Solicitor may argue the State’s version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony.”). A prosecutor should “prosecute with earnestness and vigor” and “may strike hard blows, [but] is not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 88 (1935). “If a Solicitor’s closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs.” *New*, 338 S.C. at 319, 526 S.E.2d at 240. “On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury’s passions or prejudice.” *Id.* “[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.” *Berger* at 88.

“Improper comments do not automatically require reversal if they are not prejudicial to the defendant.” *Id.*, 428 S.C. at 550, 837 S.E.2d at 40 (quoting *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). A PCR court must view the alleged impropriety of the prosecutor’s argument in the context of the entire record, and the applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.*

Respondent contends Applicant has failed to show what statements were improper, why they were improper or should have been objected to, how the prosecutor engaged in misconduct by stating them or Counsel was deficient for failing to object to time, or how he was prejudiced. Thus, Respondent requests relief be denied on this ground.

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant’s allegations.

Applicant alleges that plea counsel was constitutionally ineffective and the prosecutor engaged in misconduct. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel or what the misconduct consisted of. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explain in this return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to Section 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 the Court grants leave upon good cause shown. 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 withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
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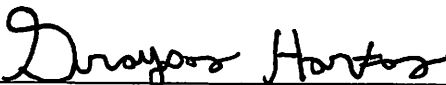
January 19, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	FOR THE SEVENTH JUDICIAL
	)	CIRCUIT
Richard D. Waldrup, #360887	)	
	)	Case No.: 2021-CP-11-0472
Applicant,	)	
	)	
v.	)	Certificate of Service by Mail
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

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

Mr. Rodney W. Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this 19th day of January, 2022.



 Grayson Horton, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COMMON PLEAS COURT
3
4 Richard waldrup,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2021-CP-11-0472
7 The State.) June 7, 2022
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 WILLIAM A. MCKINNON, JUDGE
12

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

14 RODNEY WADE RICHEY, ESQUIRE
15 Attorney for the Applicant

16 CHELSEY FAITH MARTO, ESQUIRE
17 Attorney for the State
18
19

20 Linda D. Moffitt
21 Circuit Court Reporter
22
23
24
25

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1 (Proceedings June 6, 2022)

2 THE COURT: Yes, ma'am, Ms. Marto.

3 MS. MARTO: Good afternoon, Your Honor. May it please
4 the Court.

5 My name is Chelsey Marto and I represent the
6 respondent in this case and Mr. Rodney Richey represents
7 the applicant.

8 This is the case of Richard Waldrup vs. the State of
9 South Carolina, Docket No. 2021-CP-11-0472. He is
10 presently confined in the South Carolina Department of
11 Corrections.

12 In June of 2017 he was indicted for first degree
13 burglary. He was represented by Mr. Travis Moore. Deputy
14 Solicitor Kim Leskanic and Assistant Solicitor Adrienne
15 Barry of the Seventh Circuit Solicitor's Office prosecuted
16 the case.

17 On March 5th of 2019 he went to trial before the
18 Honorable J. Mark Hayes and a jury, and applicant was found
19 guilty at trial and Judge Hayes sentenced applicant to 20
20 years imprisonment.

21 He filed a timely notice of appeal March 18th of 2019
22 that was perfected by Sarah Shipe who filed a brief
23 pursuant to Anders vs. California. South Carolina Court of
24 Appeals dismissed it by unpublished opinion and the
25 remittitur was issued June 28th of 2021.

Robert Waldrup
Direct examination by Mr. Richey

1 The post-conviction-relief application was filed
2 July 26th of 2021 and the return was made January 19th of
3 2022.

4 With that, I'll turn it over to Mr. Richey.

5 THE COURT: Mr. Richey.

6 MR. RICHEY: Thank you. We'd call Mr. Waldrup --
7 Robert Waldrup.

8 ROBERT WALDRUP, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. RICHEY

11 Q Sir, would you state your name, please?

12 A Robert Waldrup.

13 Q And, Mr. Waldrup, do you know Richard Waldrup?

14 A Yes.

15 Q And how do you know him?

16 A He's my brother.

17 Q Okay. And you -- do you recall when he was charged
18 with this burglary in this case?

19 A Yes, sir.

20 Q Okay. And -- and where -- where was this burglary at?
21 Do you know? Was it in Cherokee County?

22 A Cherokee County.

23 Q Okay. And your brother -- do you know why your brother
24 was at this residence in Cherokee County?

25 A Yes, sir. We's going to -- to visit a friend of ours

Robert Waldrup
Direct examination by Mr. Richey

1 -- Tony Young.

2 Q Okay. You're going to have to speak up and speak a
3 little clearer.

4 You were in Cherokee at the residence because of what?

5 A Going to visit a friend of ours -- Tony Young.

6 Q Okay. When the last time you had seen Tony?

7 A I'd been several years, probably eight -- seven, eight,
8 nine, ten years maybe.

9 Q Okay. How was Tony connected to y'all?

10 A He's my brother-in-law's brother.

11 Q He was your brother-in-law's brother.

12 A Yes, sir.

13 Q Okay. That's your sister --

14 A Friend of ours.

15 Q That's your sister's --

16 A Husband --

17 Q -- husband's brother.

18 A Yes, sir.

19 Q Okay. And you knew he lived in Cherokee County.

20 A Yes, sir.

21 Q Okay.

22 A We visited him there before.

23 Q On the -- on the date that this incident happened,
24 where were you at? Where were you?

25 A I had gotten into the shower at the motel room.

1 Q Okay. And where was that hotel room at?

2 A The same road of the house, where the house was at.

3 Q Okay.

4 A Right down the street not far.

5 Q And so after you -- after he went to the residence,

6 what was he going to do, come back and pick you up or

7 something?

8 A Yes, sir. We was going to go eat breakfast and visit a

9 while.

10 Q why -- why did y'all go see Tony? I mean, why?

11 A We hadn't seen him in while. We was going around

12 visiting friends.

13 Q Okay. Was you sick at this point?

14 A Yes, sir. I been sick for quite a while. I've had

15 cancer for quite a while.

16 Q Okay. And you had that back in 2019 and 2018?

17 A Yes, sir.

18 Q Okay. So when your brother got arrested for this did

19 that kind of shock you or anything?

20 A Yes, sir.

21 Q And why did it surprise you?

22 A Because the motel -- I figured, I mean, if he had -- if

23 he wasn't living there, if Tony hadn't been living there no

24 more, it seemed like the most that they could've charged him

25 with would've been trespassing. I mean, at the most.

Robert Waldrup
Cross-examination by Ms. Marto

1 Q Okay. So -- so -- so he had no intent or no need to
2 burglarize these people's house.

3 A No, sir.

4 Q Okay. Answer any questions the attorney general has
5 for you.

6 CROSS-EXAMINATION

7 BY MS. MARTO

8 Q Good afternoon, sir.

9 A Good afternoon.

10 Q So were you at the trial that day?

11 A No, ma'am.

12 Q Okay. Did anybody ever talk to you about testifying at
13 trial?

14 A No, ma'am. They sure didn't, and I was sick also. I
15 was very sick.

16 Q And were you in any conversations with counsel about
17 this case?

18 A No, ma'am. They didn't notify me.

19 Q Do you recall hearing anybody besides your brother say
20 you were present that day?

21 A Ma'am?

22 Q Are you aware of anybody beyond your brother saying
23 that you were present that day at the house?

24 A I don't understand it.

25 Q The only person you heard say, yes, we went to the

1 house to visit my friend, was your brother, correct?

2 A Right.

3 Q Okay. Now, you hadn't seen this friend in almost a
4 decade, right?

5 A No. Probably -- probably about seven or eight years.
6 Probably around seven years, probably.

7 Q And did you call first before stopping by?

8 A No. We didn't have his phone number, but he lived over
9 there the last time we'd seen him and we figured he was
10 still there.

11 Q So you figured that because he lived there almost a
12 decade ago, you figured he still lived there and wanted a
13 visit?

14 A Uh-huh.

15 Q Did you visit at nighttime?

16 A Ma'am?

17 Q What time did you --

18 A It was early in the morning.

19 Q Early in the morning?

20 A About 9:00 o'clock maybe. Maybe 9:30 or 10:00 o'clock,
21 something like that.

22 Q Okay. So you'd say you were on the scene that day,
23 correct?

24 A Ma'am?

25 Q You say you were at the scene at the house that day?

Robert Waldrup
Redirect examination by Mr. Richey

1 A No. I was not there. I was at the motel taking a
2 shower, and they was going to come back and get me and we
3 was going to go eat breakfast.

4 Q Okay. So why did he stop by first?

5 A Ma'am?

6 Q why -- why would your brother go there, come back to
7 pick you up and then go there again?

8 A while I took a shower.

9 Q Okay. No further questions.

10 A Yes, ma'am.

11 MR. RICHEY: No other questions.

12 Step down, sir.

13 THE COURT: Let me make sure, Mr. Waldrup.

14 Your testimony is you showed up at the house of a man
15 you hadn't seen in seven years --

16 THE WITNESS: Uh-huh.

17 THE COURT: -- without calling or anything at
18 9:00 o'clock in the morning?

19 THE WITNESS: Yeah.

20 THE COURT: why would you do that?

21 THE WITNESS: why not? I mean, that's where he lived
22 at to begin with, sir.

23 THE COURT: Okay.

24 MR. RICHEY: Sir --

25 THE WITNESS: Ain't trying to be smart, Your Honor.

Crystal Anderson
Direct examination by Mr. Richey

1 MR. RICHEY: Okay. Are you finished? I'm sorry.

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. RICHEY

5 Q Sir, did y'all go to -- y'all went to the motel the
6 night before, is that correct?

7 A Yes, sir.

8 Q And then while y'all were there y'all were going to go
9 by the house and see him, is that correct?

10 A Right.

11 Q And this is not some stranger. This is your
12 brother-in-law, correct?

13 A Right.

14 Q Okay. No other questions. Answer any questions the
15 attorney general has for you.

16 MS. MARTO: Nothing further, Your Honor.

17 THE COURT: Mr. Richey.

18 MR. RICHEY: No other questions.

19 THE COURT: You can step down, sir.

20 MR. RICHEY: We call Ms. Crystal Anderson.

21 CRYSTAL ANDERSON, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. RICHEY

24 Q Ma'am, can you state your name, please?

25 A Crystal Anderson.

Crystal Anderson
Direct examination by Mr. Richey

1 Q And, Ms. Anderson, do you know this Tony guy we're
2 talking about?

3 A Yes, sir. I do.

4 Q And how do you know him?

5 A He is my mother's sister's husband's brother.

6 Q Okay.

7 A Wait a minute. Yes. My mother's sister's
8 husband-brother.

9 Q Okay. Slow down. I'm sorry. He's your mother's
10 sister's?

11 A Husband's brother.

12 Q Okay. All right. I got it. I'm sorry.

13 Okay. At the time all of this was going on did you
14 have any idea that they were going over there?

15 A Yeah. That's why I'm getting kind of upset about it,
16 because why was -- why is it such a big deal if someone goes
17 and sees their family? Y'all are acting like, uh, seven
18 years, why would you just pop up and see them. Because we
19 can do that. Our family, if we haven't seen each other in
20 15 or 20 years, we can just pop up and see them.

21 Now, I wasn't with them. But I know what our family
22 does.

23 Q Okay. And -- and -- and were you aware of any time
24 that they were planning on doing that?

25 A No. I wasn't. But I knew that we were all going to

1 get together with my -- his brother has been passed away --
2 Jerry. And they all wanted to get together and have
3 breakfast or dinner. But, no, I wasn't aware they were
4 going that day, no.

5 Q Right. So but Tony is a real person.

6 A Tony is a very real person.

7 Q What's his last name?

8 A Young.

9 Q Tony Young.

10 A I used to live with him.

11 Q Okay. So, and -- and do you recall him living in
12 Cherokee County?

13 A I do.

14 Q Okay. Had you ever been to his house in Cherokee
15 County?

16 A No. I've been to his home in Clover, South Carolina.

17 Q Okay. He's in Clover now.

18 Where did y'all live?

19 A I live in Clover. I have no idea where Tony lives
20 right now. I haven't see him probably in -- I would say
21 five years, because I did see his other brother.

22 Q Do you know whether he's still -- he's still living,
23 correct?

24 A Yes, he's still living, sir.

25 Q Okay. All right. One moment, ma'am.

Richard Waldrup
Direct examination by Mr. Richey

1 (Pause.)

2 Q Okay. Answer any questions the attorney general has
3 for you.

4 A Sure.

5 CROSS-EXAMINATION

6 BY MS. MARTO

7 Q Good afternoon, ma'am.

8 A Good afternoon.

9 Q So when did you visit him in Clover?

10 A I didn't visit him. I never said that. I said I lived
11 with him in Clover.

12 Q When did you live with him in Clover?

13 A I lived with him in Clover in 2006.

14 Q Okay. Were you aware his address changed over the
15 course of the past decade?

16 A Sure. I was.

17 Q When did you find out about that?

18 A I don't exactly know the date. Like I said, he is my
19 mother's sister's brother. And they moved. I mean, I don't
20 know the exact date. I don't keep up with that kind of
21 stuff. People move. I mean, there's no reason for me to
22 know the exact date.

23 MS. MARTO: No further questions.

24 MR. RICHEY: No other questions for her.

25 THE COURT: You can step down, ma'am.

Richard Waldrup
Direct examination by Mr. Richey

1 MR. RICHEY: We'd call Mr. Richard Waldrup.

2 RICHARD WALDRUP, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. RICHEY

5 Q Sir, state your name, please.

6 A Richard Douglas Waldrup.

7 Q And, Mr. Waldrup, were you convicted in Cherokee
8 County?

9 A Yes, sir.

10 Q And what were you convicted of?

11 A First degree burglary.

12 Q Okay. And who represented you on those cases?

13 A Travis Moore.

14 Q Okay. And you filed an application for post conviction
15 relief, is that correct?

16 A Yes, sir.

17 Q And you filed it because you believe that Mr. Moore did
18 not effectively represent you.

19 A Yes, sir.

20 Q Okay. How much time did you receive?

21 A Twenty years.

22 Q Okay. And that's 85 percent, correct?

23 A Yes, sir.

24 Q Okay. You have raised some allegations, and I'm going
25 to go through this first one, and then we're going to follow

Richard Waldrup
Direct examination by Mr. Richey

1 up with the rest of them.

2 At the trial, you alleged that, "I was there to see the
3 guy," correct, "Tony"?

4 A Sure.

5 Q Excuse me. I'm going to -- Tony.

6 A Yes, sir.

7 Q And -- and before the trial did you -- what did you or
8 counsel do to get your brother to testify at trial?

9 A Nothing. To be honest with you, I only talked to
10 Travis Moore three days before trial.

11 I wrote him letter after letter. I sent letters to the
12 jailers whenever he'd come see other people. I done my very
13 best to get him to talk to me to try to get something going
14 to where we could get this straightened out, but no.

15 Q Well, tell me. Did you ask him to subpoena your
16 brother and get him to that trial?

17 A Yes, sir. I asked him if he'd find Tony. I asked him
18 to get my brother up here. I asked him if he would get
19 the -- the officer's video -- the cam -- the body cam.

20 Q Don't talk. Let's just -- try to break out in one.

21 Okay. So -- so you knew you were going to trial,
22 correct?

23 A Yes, sir.

24 Q And you knew your theory was going to be I knew Tony
25 and I was not showing up to burglarize these people's house,

Richard Waldrup
Direct examination by Mr. Richey

1 correct?

2 A Right.

3 Q And to support that theory you had your brother to do
4 that, correct?

5 A Right.

6 Q And you asked your lawyer to subpoena him and talk to
7 him.

8 A He wouldn't -- yes, sir, but he wouldn't even had to
9 subpoena him.

10 I got in here where I've got over six different letters
11 from the attorney before I ever met him saying you going to
12 court this month, you going to court this month -- month
13 after month after month after month. I've got these papers.
14 And while I'm in the jail, I can't never get ahold of
15 nobody, but yet I'm trying to --

16 Q Your brother was available like he was today --

17 A Yes, sir.

18 Q -- to walk in and testify. You didn't need a subpoena
19 for your brother to come to court, right?

20 A No. He would have come.

21 Q So if Mr. Moore had asked him to come to give the
22 testimony he gave today, are you confident that he would
23 come in in court and do it?

24 A Yes, sir.

25 Q Okay. And that's something you wanted to do.

Richard Waldrup
Direct examination by Mr. Richey

1 A Yes, sir.

2 Q And do you believe Tony -- as I think Ms. Anderson is
3 your niece, correct?

4 A Sure.

5 Q And Ms. Anderson says she lived with Tony, correct?

6 A Right.

7 Q So Tony is a real person, correct?

8 A Yeah. He's my brother-in-law's brother -- seven
9 brothers.

10 Q Okay. So Mr. Moore -- there's other allegations in
11 this case. You believe that Mr. Moore should have done
12 other things, correct?

13 A Yes, sir.

14 Q And, first of all, did he communicate with you during
15 the case?

16 A No.

17 Q Okay.

18 A No.

19 Q All right. How many times do you think he talked to
20 you?

21 A One time before trial. That was a Friday.

22 Q One time.

23 A One time.

24 Q He came. Did he go to the jail?

25 A He come to the county jail and talked to me, and we

Richard Waldrup
Direct examination by Mr. Richey

1 probably talked about ten or fifteen minutes. And my main
2 thing was, is what are you doing for trial, you tell me
3 we're going now Monday. Oh, well, Mr. Waldrup, yes. I hope
4 you're prepared.

5 THE COURT: Sir, let me make sure I'm understanding.
6 You're telling me your attorney met with you a single
7 time for 15 minutes.

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay.

10 Q Okay. So you had no contact with him at all. He just
11 showed up 15 minutes and said we're going to trial and
12 that's the end of it.

13 A We were going to trial. He come on a Friday. He
14 talked to me almost probably wasn't 15 minutes because he
15 got irritated because I got ill, but he told me we was going
16 to trial Monday.

17 Q Okay. During that 15-minute conversation did you ask
18 him about getting your brother or Tony?

19 A Yes.

20 Q You did.

21 A Yes.

22 Q And what was his response?

23 A He said, well, where they at. I told him, I said,
24 look, I been in here 21 and a half months. I ain't hardly
25 got no contact with no one. Most of my family is deceased.

Richard Waldrup
Direct examination by Mr. Richey

1 Q Okay.

2 A That right there is most of my family, right there.

3 Q So -- so at that time you could have told him to call
4 your niece or your brother, right?

5 A Well, at that time I really didn't have no numbers. I
6 didn't have nothing in there.

7 Q Okay.

8 A Whenever I got locked up, I didn't even have probably
9 nothing that was except for my wallet because they got my
10 wallet from the man that beat me too. I mean, he robbed me
11 and took all -- everything.

12 Q And so if you met with Mr. Moore 15 minutes one time,
13 then you didn't have any time to discuss the strategy or
14 anything.

15 A No.

16 Q You didn't have time to ask him to do anything really,
17 right?

18 A Whenever we went on trial and started talking, he even
19 says it on the transcript, this is the first time me or
20 anybody else has ever heard Mr. Waldrup's story. That's
21 sad. He's my lawyer, and this is the first time he's heard
22 my whole story.

23 Q And -- and so the -- before trial you never sat down
24 and told him any of that, or you didn't have the time to,
25 right?

1 A I didn't have time, no, sir.

2 Q Okay. So you made several requests for him to get
3 information, correct? And what information was that?

4 A I asked him. I've got -- I've got confidential
5 attorney-client papers that his secretary sent me -- and I'm
6 grateful that she sent them -- where I had sent time after
7 time requesting will you please get the car -- I mean, the
8 car body cam video of the officers that arrested me. I'd
9 liked to have a phone, a 9-1-1 call. And the only reason --

10 Q Okay.

11 A The only reason I'm asking for these things is because
12 I can't tamper with nothing like that.

13 Q Well, let me --

14 A That's just straight-out evidence. Nobody can do
15 nothing with that.

16 Q Hold, hold. Let's cut it in half -- let's cut it in
17 half.

18 A Yes, sir.

19 Q You want the body cam for what purpose?

20 A To show right off the top where I was at, where --
21 whenever the man put me in -- at first he told me he was
22 restraining me to see what's going on.

23 Then he come back and told me he's charging me with
24 first degree burglary. And I went off. I said, well,
25 you're charging me with what. He said I'm charging you with

Richard Waldrup
Direct examination by Mr. Richey

1 first degree burglary. I said, sir, I'm the one that got
2 jumped on. I got beat down and my money took.

3 Q Okay. Well, let's go back. Let's go back a little
4 bit.

5 Okay. Let's go back to the day you get outta your car
6 to that house. What happens?

7 A I went up to the door, knocked on the door. Nobody
8 answered. I knocked again. Nobody answered.

9 I turned around and started walking off. As I started
10 walking off, I heard somebody holler, hey, excuse me, what
11 are you doing.

12 I turned around and it was an older lady, so I turned
13 around and walked, started walking back toward her. I told
14 her, I said, "Ma'am, I'm here to see Tony."

15 "They ain't no Tony lives here."

16 I said yes, sir, I mean, excuse me, I said, "Yes,
17 ma'am. Tony does live here."

18 "No. He does not."

19 I said, "Well, I apologize. The last time I was here,
20 Tony lived here."

21 And about the time I'm starting to turn -- I don't know
22 where he come from or whatever, but big old -- big old tall
23 black fellow, he went to wielding, I mean, and I --

24 Q He went to what?

25 A Swinging.

Richard Waldrup
Direct examination by Mr. Richey

1 Q Okay.

2 A But I stood my ground for a little bit, but his mama
3 grabbed me and I stopped. And he started hitting me again.
4 The third time that she grabbed me, he come up behind me and
5 put me in a chokehold, and I wake up on the concrete and
6 he's stomping me.

7 He's done took my wallet outta my pocket. And
8 according to what he told the officers on the stand, that he
9 even went to my car and took another saw out of my car.

10 Now, I had all sorts of tools and stuff in my car -- my
11 stuff -- but yet this man is robbing me and I'm being
12 charged.

13 Q So they claim -- they -- and the state claimed that
14 they saw you in this lady's garage and knows that -- that
15 you had a saw that belongs to them. Where does all of that
16 come from?

17 A Sir, this here is -- this is one of the -- one of the
18 main reasons I wanted that body cam.

19 Q Yes, sir.

20 A Is because everywhere that officer walked, it showed
21 what everything looked like. The saw that they tried to say
22 was messed with, even the pictures will show you. This room
23 was completely cluttered. You could barely get in by the
24 doors swinging open.

25 The way this officer's body cam picked this saw up,

Richard Waldrup
Direct examination by Mr. Richey

1 it's in a junk pile underneath a bunch of stuff behind the
2 door.

3 Now, in their statements on the trial, everything else,
4 but supposedly I'm coming running outta this, this room,
5 with the saw in my hand whenever we started fighting. No,
6 sir. That body cam would've showed everything I said was
7 true. That's the only reason I wanted that.

8 Q And so you talked. So you asked Mr. Moore for that.

9 A Yes.

10 Q And you've got it in writing, correct?

11 A Yes.

12 Q And you have that in writing.

13 A I've got -- I've got his attorney-confidential
14 statements. As far as the letters and stuff whenever I got
15 transferred to prison, no, all of that got wherever.

16 Q Well, you -- you have some letters about that.

17 A Oh, I got -- I got a good bit of stuff, yes.

18 Q Right. And so -- so that's why you wanted the body
19 cam.

20 What's the other document you wanted?

21 A The criminal history background checks because this
22 man, he's got a record, a criminal record of beating people
23 and taking their money. Domestic violence, assault and
24 battery high and aggravated natures, selling crack cocaine
25 in school zones and this and that and the other, which that

Richard Waldrup
Direct examination by Mr. Richey

1 ain't -- that -- that wasn't even the issue. The issue was
2 as soon as I got arrested I told the officer what happened.
3 I got jumped on and my money took.

4 If they would've showed this man's criminal background
5 history, it would've showed, well, evidently Mr. Waldrup was
6 telling the truth.

7 Q And do you have an application? Do you have a copy of
8 the application?

9 A Yes, sir.

10 Q Take that out.

11 (Pause.)

12 Q Hold on.

13 A I got it.

14 Q Okay. You have it. Okay. All right. In this
15 application -- I want you to turn to, like, the last three
16 or four pages on it.

17 THE COURT: Mr. Richey, let me -- I'm thinking
18 something in my mind here.

19 Mr. Waldrup, you just listed off a bunch of offenses
20 that you say that the man had been convicted of, right?

21 THE WITNESS: Yes, sir.

22 THE COURT: How -- where did you get that? Where did
23 you get those list of convictions?

24 THE WITNESS: At the time I didn't even know he had
25 any record like that.

Richard Waldrup
Direct examination by Mr. Richey

1 THE COURT: So where did you get them? That's my
2 question.

3 THE WITNESS: This here come from the same -- the
4 documents that Mr. Moore's secretary -- like I say, they
5 some of them I'm sure she wasn't supposed to send me, but I
6 got these from the --

7 THE COURT: So you got the rap sheet from your
8 attorney.

9 THE WITNESS: Whenever -- Ms. Shipe --

10 THE COURT: Right.

11 THE WITNESS: -- had filed my direct appeal. I wrote
12 her. I have letters of that too.

13 THE COURT: Yes, sir.

14 THE WITNESS: Where I wrote Ms. Shipe and asking her
15 for the criminal background history and stuff, and she told
16 me I had -- I needed to get anything and everything from
17 him.

18 THE COURT: Right.

19 THE WITNESS: So I started writing him, and his
20 secretary sent me all of this documents.

21 THE COURT: Mr. Waldrup, I don't understand how you're
22 telling me. You're asking the P.C.R. for relief because
23 you say your attorney didn't get that, but yet you have it.

24 THE WITNESS: Okay. Yeah. Okay. Now I understand
25 where you're coming from, yes, sir.

Richard Waldrup
Direct examination by Mr. Richey

1 These -- these documents were printed out three days
2 before trial -- one of them. It's got on there when it was
3 printed, and the other one was printed the same day as
4 trial.

5 THE COURT: Okay.

6 THE WITNESS: My attorney never once presented it. I
7 don't know if they was printed out by the solicitor or they
8 was printed out by the attorney. But the documents I
9 received come from the whenever I wrote my -- I wrote -- I
10 wrote some extra. I wrote a brief, I slip-in copy, that
11 went in my direct appeal.

12 After Ms. Shipe asked to be relieved, I done a thing
13 of my own, and that's how she told me. She said anything
14 you need, you have to write to Mr. Moore.

15 I wrote and wrote and wrote. And the only way I ever
16 started getting these -- which it don't matter how I did --
17 but, anyway, she -- as I say, right here's the dates on
18 them -- 2/27/2019.

19 THE COURT: Mr. Waldrup, let me stop you.

20 I thought what you told me just now -- you told your
21 attorney -- was you had an issue with your lawyer because
22 you asked him to get the criminal record and he didn't do
23 it.

24 THE WITNESS: I wanted them presented in court, yes,
25 sir.

Richard Waldrup
Direct examination by Mr. Richey

1 THE COURT: Okay. So the issue is not he didn't get
2 it. You wanted him to present the records in court.

3 THE WITNESS: Yes, sir, yes, sir. I apologize. I
4 didn't understand the question. I apologize. I'm sorry.

5 Q Okay. So -- so your -- on this application, you have
6 attached the criminal record that you received, correct?

7 A Yes, sir.

8 Q And you have the gentleman's criminal record.

9 A Parts of it.

10 Q And you have the lady's on here, correct?

11 A I get her cover sheets on it.

12 Q Okay. And in looking through these records did you and
13 your lawyer discuss what can and can't be used in terms of
14 the sentence, the date and what they carry and all of that
15 stuff?

16 A I never once received these documents with my attorney.

17 Q Okay.

18 A I got these -- these through the mail after I'd filed
19 my direct appeal while I was in prison.

20 Q Okay, so okay. Let me just put it this way. If you
21 talked to your lawyer only 15 minutes, there's nothing that
22 you could have discussed meaningful in your case.

23 A No.

24 Q The body cams or nothing.

25 A No.

1 Q So you had -- so let me make sure that this is correct.

2 I want to make sure that this is right.

3 Your lawyer in your case had a jury trial, correct?

4 A Yes, sir.

5 Q And you -- and you testified in the case, correct?

6 A Yes, sir.

7 Q Okay.

8 A I'm on there.

9 Q Okay. And you -- and you're saying that your lawyer
10 spent a total of 15 minutes with you going over your case.

11 A If 15. That's about the most.

12 Q Okay. He did not go over what the witnesses were going
13 to say against you.

14 A No, no, no.

15 Q He didn't go over -- I'm assuming -- did you get the
16 discovery?

17 A I -- no.

18 Q You know what discovery is, right?

19 A Yeah.

20 Q Information about your case.

21 A Right.

22 Q Did you get the discovery?

23 A I had gotten that from my public defender. See, the
24 public defender, I had him for almost a year while I was
25 waiting in jail.

Richard Waldrup
Direct examination by Mr. Richey

1 I was 20, 21 and a half, 23 and a half months in jail.
2 But during this time the public defender I had had to get
3 off my case because evidently he had to represent Billy, the
4 dude that jumped me, on another case, so conflict of
5 interest. He had to get off, and that's when they give me
6 Travis Moore.

7 Q Okay.

8 A And for almost -- and it's on the -- the sentencing for
9 the paperwork -- where the whole time I had him it even
10 shows he -- he didn't -- he requested discovery and
11 everything else. But no --

12 Q So you --

13 A As far as coming and seeing me, no, sir. He never did.

14 Q So you got -- where did you get discovery from? Where?
15 Did you ever get the discovery?

16 A The --

17 Q Who gave it to you?

18 A The one that I got from my public defender, I did have
19 partial discovery, yes.

20 Q From the public defender.

21 A Yes.

22 Q Did you get any additional discovery from Mr. Moore?

23 A No, no, no, no.

24 Q You didn't.

25 A No.

1 Q So -- so -- so all of these allegations you have
2 against him in this application, I mean, you had no time to
3 discuss any of this with him, right?

4 A Only -- the only way he even knew -- and I guess that's
5 why on the client confidential attorney papers I got --

6 Q Yeah.

7 A I guess the only reason it's got it on there what I'm
8 requesting is from my public defender letting him know and
9 from the letters, because, I mean, on that confidential,
10 client-attorney confidential paperwork, it plainly states
11 he, Mr. Waldrup, is requesting 9-1-1 call authenticated,
12 he's requesting the body cam. It had everything that I was
13 requesting on there. But no.

14 He never got nothing; he never talked to me about
15 nothing. I never even knew he had that until, like I say,
16 his secretary evidently -- and I appreciate her sending me
17 what she did.

18 Q Okay. So -- so, I mean, you know, all of these
19 allegations, I mean, just you basically talked to -- your
20 testimony is you basically talked to him 15 minutes and
21 y'all went out and tried the case.

22 A Yes, sir.

23 Q Okay.

24 A He come -- well, actually he come the next Monday and
25 brought me a suit to wear.

1 Q So -- so let me -- so during that 15 minutes you told
2 him about your brother and all of that, right?

3 A During that 15 minutes I asked him, I said, "what are
4 you planning on doing with -- doing about my defense?" He
5 said, "what are you talking about?" I said, "well, first of
6 all, I'd love to have my brother here. I'd like for you to
7 done had Tony here. I need all of these people here to be
8 on my side."

9 Q And what did he say?

10 A "Seems to me like we should've done had that done." I
11 said, "Damn. You going to." And that's why I started
12 getting ill with him. I told him, I said, "This is the
13 first time you've come to see me. I tried and tried to talk
14 to you."

15 Q Okay. Thank you. Answer any questions the attorney
16 general has.

17 CROSS-EXAMINATION

18 BY MS. MARTO

19 Q Good afternoon, sir.

20 A Good evening.

21 Q So you testified at your trial, correct?

22 A Yes, ma'am.

23 Q And what you testified to is the same thing that you
24 testified to, as well as a couple of your family members, is
25 that correct?

1 A Yes. Exactly.

2 Q Yeah. So all of that evidence was already presented at
3 trial, correct?

4 A Yes, ma'am.

5 Q Okay. And, again, you were visiting an individual you
6 hadn't seen in nine or ten years, correct?

7 A It probably -- it was probably about nine or ten years,
8 yeah.

9 Q And you never called first or anything.

10 A Ma'am, I've got -- I've two daughters -- I mean, I got
11 two sons and one daughter that lives not even 30 minutes
12 from me. And, sad to say, I hadn't seen them in probably
13 five or six years before that. So no.

14 Q Would you call them first before stopping by?

15 A No. Sure wouldn't.

16 Q No. Now, why did you go there while your brother was
17 at the motel room and then come back?

18 A I took a shower first. And once I got outta the
19 shower -- I know my brother's in bad health. I told him, I
20 says, brother, while you're in the shower I'm going to go
21 ahead and go get Tony, I'll be back in a few minutes.

22 And he even -- and I'm -- I'm to this day, I'm sorry I
23 didn't wait. But he hollered through the bathroom door,
24 "Hold on, brother. I'll go with you." I said, "I'll be
25 back by the time you get outta the shower." I'm sorry to

1 say, no, I never made it back.

2 Q Now, the people that were living in that house, they
3 didn't know you, right?

4 A No. I didn't know them.

5 Q And did they testify that they saw you rambling through
6 their garage?

7 A No. What they done, according to what they said on the
8 stand and the transcript and everything, they -- she
9 observed me coming outta her utility room with a saw in my
10 mind.

11 And, as I say, that's why I wanted the body cam. That
12 body cam would've showed it. That's saw was under a bunch
13 of junk behind the door. Now, how did I come out of a door
14 with a saw in my hand but yet all of a sudden me and this
15 man fighting? Come on.

16 Q And then did she testify that you tried to run under
17 her arm into the house?

18 A Ma'am?

19 Q Did she testify that you tried to run under her arm and
20 into the house?

21 A Had to run?

22 Q What she said was you went from trying to enter the
23 utility closet to entering the house. Do you remember?

24 A No. Never.

25 Q No?

1 A No. That was never said.

2 THE COURT: Ms. Marto, let me ask the question.

3 Mr. Waldrup, your testimony, as I understand it, is
4 your plan was to pick Tony up and go to breakfast with him.

5 THE WITNESS: Yes.

6 THE COURT: What if he said he'd already had
7 breakfast? I mean, you said you left your brother at the
8 hotel --

9 THE WITNESS: Yes, sir.

10 THE COURT: -- to go get Tony. But he didn't -- he
11 hadn't agreed to have breakfast with you. What if he
12 didn't want to go to breakfast? Why did you not wait for
13 your brother and y'all go together?

14 THE WITNESS: Well, we ain't -- way I grew up -- most
15 of my family died when we was kids. We the type that I
16 come over to your house. Even if you done had breakfast,
17 you're going to come and go out with us and sit around and
18 talk, whatever, because he don't visit around --

19 THE COURT: Instead of inviting you in --

20 THE WITNESS: Huh?

21 THE COURT: I mean, if I saw a relative I hadn't seen
22 in a long time, I think I'd invite him in.

23 THE WITNESS: He lived there with friends. He didn't
24 -- he didn't -- this was not just his house. He lived
25 there with friends the last time I was there.

1 THE COURT: Okay.

2 THE WITNESS: And this was on Easter weekend. It was
3 something like 8:00 o'clock in the morning. April the --
4 April the 17th at 8:00 o'clock.

5 THE COURT: So you were so sure that a man you hadn't
6 seen in eight to ten years was going to come out with you
7 on Easter -- the Easter-weekend morning at 8:00 o'clock in
8 the morning.

9 THE WITNESS: Oh, yeah. He would have been more than
10 happy.

11 THE COURT: You're so sure he was going to do that
12 that you left your brother at the motel?

13 THE WITNESS: Yes. He would've been more than happy
14 to.

15 THE COURT: Okay.

16 Q Sir, looking at page 63 of the transcript starting with
17 line four.

18 It says -- this is the female that lived in the house.
19 It says, "So when he went to run, he went to run past
20 underneath the arm."

21 She had been talking about how her left arm was weak.
22 And that she grabbed you with a left arm around the neck.
23 And then she had a right arm and was going to hold it real
24 tight. And she started hollering for her son. Do you
25 recall any of that?

1 A No, no, no.

2 Q why -- did you try to run away from the house once you
3 realized you made a mistake?

4 A No. I walked back to her when she come out and asked
5 me what I was doing there. I was talking to her whenever I
6 got blindsided.

7 Q So you didn't say, "My bad, I got the wrong house"?

8 A Oh, if you would have -- trust me. If I could have had
9 that authentic 9-1-1 call, you would really -- Mr. Waldrup,
10 you was saying that. And this call was made by this
11 fellow's girlfriend. To my knowledge, it was his
12 girlfriend. Now, why she didn't, up here in court -- and
13 they played a cassette instead of a C.D. in court, I mean,
14 come on.

15 Q And you and the man in the house began fighting, right?

16 A Yes, ma'am.

17 Q Did you attempt to pull out a knife?

18 A No. He pulled my knife outta my pocket before he
19 pulled my wallet out while I'm on the ground and him
20 stomping me. And if I had that 9-1-1 call, I know it would
21 played that. That's what I say.

22 Everything I have said, it would be verified by choking
23 that, cannot be changed. And the authentic 9-1-1 call is
24 something that it would -- I made it. It would showed them.
25 But I just wanted it because I know it would tell the truth.

1 Q I'm looking at page 64 of the record starting with line
2 six, and it says, "Him and Billy wrestled with the knife for
3 a bit. Billy got the knife out of his hand and went to hit
4 him with the knife." That wasn't your knife?

5 A That was my knife.

6 Q And it was in your pocket?

7 A Whenever he pulled my knife outta my pocket, I swear to
8 the good Lord, you should've been able to hear me on that
9 9-1-1 call. If I had authentic, you should have been able
10 to hear me, what're you doing in my pocket? What are you
11 doing with my knife? Put my knife down. Then he reaches in
12 and starts grabbing my wallet. I had on khakis, dress
13 pants.

14 Q Were you reaching for your pocket at the time?

15 A No. I'm -- I'm on the ground, done been beat silly,
16 and I'm waking up from him stomping me.

17 Q And do you recall the female at the trial saying that
18 you were grabbing something in your pocket?

19 A Do I remember her saying that I was? Yeah, but no,
20 ma'am. I was not. That's the same as her saying that I had
21 the saw in my hand coming out that door. In the video my
22 hand -- good Lord. The video only showed it behind that
23 door.

24 Q And you -- you denied all of this.

25 A Yes.

1 Q All of the things she said at trial too, right?

2 A Yes.

3 Q Okay. And you never wanted to take a plea deal in this
4 case, right?

5 A I never what?

6 Q You never wanted to plead in this case?

7 A No, no, ma'am.

8 Q Even when --

9 A If I done something to take a plea and I would have
10 been self-conscious for taking something been dealing with,
11 yes, ma'am, I would've took that plea, but no.

12 Q And what position were you in when the police arrived
13 at the house?

14 A I was on the concrete on my back. He was stomping. He
15 was still stomping me when they pulled up.

16 Q So you were still engaged in a fight when the police
17 got there.

18 A Well, I really wouldn't say it was much of a fight
19 because I'm waking up with him on top of me stomping me.
20 He's a whole lot bigger man.

21 Q Okay. And, again, your attorney didn't bother to talk
22 to you at all until the Friday before your Monday trial.

23 A Friday before. The jail docket -- they had to sign in
24 and sign out every time. The jail documents would prove
25 that, yes, ma'am.

1 Q And why didn't you bring it to the Court's attention
2 you weren't ready to go to trial that day?

3 A Oh, I -- I even told him. I told the judge. I said,
4 "Look." I said, "I'm trying to get my brother."

5 "Well, you wanted to do this and you" -- that's why --
6 that's why the judge -- I believe it was Mr. Hayes or
7 whatever -- but he even asked me, said, "Well, hold on a
8 minute. Would you like to take a plea?"

9 I said, "What are you talking about?"

10 He said, "Well, the state's offered you 15 and -- 15
11 violent and probation or whatever."

12 And I said no.

13 He said, "Hold on." He said I'm going to make an
14 offer. He says -- I believe it was ten -- zero to ten or
15 something like that. And he said you had the opportunity to
16 go home today, it's in the discretion of the Court.

17 And I did. I told him, I said, "Ma'am, if -- if I knew
18 for sure I was going home, I'd plead to murder right now,"
19 because I'd done been in there for either 21 or 23 months.
20 But I told him. I said, "I'd plead to murder right now if I
21 knew I was going straight home." I said but no, I've not
22 nothing, I'm not pleading to something that I've not done.

23 Q So the judge very clearly stated to you before the
24 trial that if you were to plead you could walk out of jail
25 that day, correct?

1 A Yeah.

2 Q And you still rejected it.

3 A He said -- he said I could probably leave, yeah, but
4 I'm -- I'm probably -- I've had too many probablies in my
5 life. They always turned out like nothing. So no, ma'am.

6 Q Okay.

7 A If that judge would've promised me I could leave, like
8 I say, yes, ma'am. I would've told him I'll plead to
9 anything you want me to.

10 Q And you still believe that going to trial was in your
11 best interest?

12 A Well, yeah, because I'm -- I'm stuck either way. If I
13 would've took a plea and I'd went to prison, I'm still
14 stuck.

15 At least this way it's on record that what I done is
16 not what they saying. And all the way to this time, I'm
17 still begging for the authentic 9-1-1 call.

18 I had the officer's body cam footage there at the
19 prison and it -- it shows everything what I been staying. I
20 mean, and that's all I ask for, is documents that I can't
21 tamper with.

22 MS. MARTO: One moment, Your Honor.

23 (Pause.)

24 Q Now, the 9-1-1 call, that was entered and played at
25 trial, correct?

Richard Waldrup
Redirect examination by Mr. Richey

1 A They actually played a cassette. Now, the 9-1-1
2 dispatch -- my niece has already went one time and got one,
3 and they -- Mr. Richey said the other one I had come from
4 SLED. So no.

5 They -- they supposed to be on a disc. It's not a C.D.
6 I mean, it's not a cassette. And -- and to beat it all it
7 was supposed to been from the time the lady called all the
8 way up until the time the officer got there, almost 15
9 minutes. This here was about a 2-minute cassette.

10 Q Okay. But it was still the 9-1-1 call, correct?

11 A I reckon it was. It wasn't nothing like what I was
12 supposed to had, no, ma'am.

13 MS. MARTO: No further questions.

14 THE COURT: I have just one quick question.

15 Sir, the transcript, the beginning of the case,
16 there's a discussion about a plea offer from the state and
17 your attorney says -- this is on page 11 of the transcript.
18 Your attorney describes it as the state's most recent
19 offer.

20 So that suggests to me that there had been prior plea
21 offers. Did your attorney bring you plea offers from the
22 state?

23 THE WITNESS: That Friday he told me that they was
24 offering me 15 years with, I believe it was, five years
25 probation, intense probation, and something else.

Richard Waldrup
Redirect examination by Mr. Richey

1 THE COURT: So and your testimony is that's the only
2 time a plea was ever communicated to you, was the Friday
3 before trial?

4 THE WITNESS: Yes.

5 THE COURT: Mr. Richey, any questions?

6 REDIRECT EXAMINATION

7 BY MR. RICHEY

8 Q These plea offers that were made to you and about this
9 going-home stuff, how much time -- you had done 23 months in
10 the county, correct?

11 A Yes, sir.

12 Q And if you had got five years, do you understand what
13 that really means in terms of what -- what that means in
14 terms -- I'm just asking.

15 A It actually does, but it don't.

16 Q No, no. If you had gotten four years with 23 months
17 would you have been --

18 A I would still had to come to prison.

19 Q You'd have been closer to coming home, correct?

20 A I would've -- yes. I would've probably done been home
21 by now but --

22 Q You'd probably --

23 A It would've been --

24 Q You understand that, correct?

25 A Yes.

Richard Waldrup
Recross-examination by Ms. Marto

1 Q Did your lawyer discuss that with you while these plea
2 offers were being made?

3 A As far as?

4 Q As far as how much time you actually would have to
5 serve, the benefits and the con, parole versus non-parolable
6 and all of that. Did he discuss that with you?

7 A I was relying on -- I'm not going to sit here and lie
8 and say one way or another, because, no, sir, I don't
9 remember that.

10 Q Okay. All right. And -- and this is a -- let me...

11 MR. RICHEY: Can I approach him?

12 THE COURT: Yes, sir.

13 Q Okay. This is -- this is a tape. Is that what you're
14 referring to, 9-1-1 tape?

15 A If this come from dispatch, yes, sir.

16 Q Okay. Let me see that.

17 Now, if your -- your attorney did not go over this tape
18 with you.

19 A No.

20 Q Would it surprise you he had this in his possession?

21 I'm just asking you. Would it surprise you?

22 A Would it surprise me?

23 Q Yes.

24 A No, sir.

25 Q Okay. So but he never shared with you at all.

Travis Moore
Direct examination by Mr. Richey

1 A No.

2 Q Okay. And okay. All right. Thank you.

3 MR. RICHEY: No other questions.

4 RECROSS EXAMINATION

5 BY MS. MARTO

6 Q So you never listened to the 9-1-1 call with your
7 attorney?

8 A No, ma'am. The only time I ever heard -- and I really
9 flipped out whenever they mashed that cassette player
10 because I knowed they ain't no cassettes being made then.

11 THE COURT: Mr. Waldrup, if I tell Mr. Richey to play
12 that, your testimony under oath is there will be you saying
13 let go of my knife, stop messing with my knife.

14 THE WITNESS: Yes, sir.

15 THE COURT: well, if you're on that recording.

16 THE WITNESS: Yes, sir. If that's from 9-1-1 dispatch
17 and it had been authenticated, yes, sir. I promise you.
18 Yes, sir.

19 MS. MARTO: Do you want me to play it?

20 MR. RICHEY: Your Honor, we're going to publish this
21 if it's okay.

22 THE COURT: I think -- I mean, this last chance.

23 Mr. Waldrup, you testified twice now that you
24 repeatedly told the other gentleman to let go of your
25 knife, correct?

Travis Moore
Direct examination by Mr. Richey

1 THE WITNESS: Yes.

2 THE COURT: And we're going to hear that on this
3 audio.

4 THE WITNESS: If that -- if that come from the 9-1-1
5 dispatch, it's not been tampered with --

6 THE COURT: I'm going to assume it is. Okay.

7 THE WITNESS: Yes, sir. No. I promise you. That's
8 all I'm asking you. If it come from 9-1-1 dispatch --

9 THE COURT: And your testimony will be if that's not
10 on there, you're going to say it's been tampered with.

11 THE WITNESS: No. If this -- if that -- can I ask
12 you, Mr. Richey? Where did that come from?

13 THE COURT: Sir, you don't get to ask the questions.
14 Okay. I think this is actually not going to be useful.
15 It's an exercise. Counsel, I appreciate you being willing
16 to indulge me, but I don't think it's relevant.

17 MR. RICHEY: No other questions. Step down please.

18 We call Travis Moore.

19 TRAVIS MOORE, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. RICHEY

22 Q Sir, can you state your name, please?

23 A Travis Moore.

24 Q And, Mr. Moore, do you recall representing Mr. Richard
25 Waldrup?

Travis Moore
Direct examination by Mr. Richey

1 A Yes. I do.

2 Q And did you represent him in Cherokee County?

3 A That's correct.

4 Q And prior, the testimony from Mr. Waldrup was that you
5 saw him Friday before the trial and spent a total of 15
6 minutes with him.

7 Is -- is that how much time you -- his testimony was
8 you spent a total of 15 minutes with him on this case and
9 that 15 minutes was the Friday before trial. Is that your
10 recollection of the time you spent with him?

11 A Total like ever?

12 Q Total ever.

13 A No. That's not correct.

14 Q Okay. Can you tell me what time you spent with him?

15 A You know, I have a practice of trying to keep notes of
16 when I meet with clients. I know I don't do it every single
17 time. I know I met with him on November 21st of 2018 at the
18 detention center.

19 Q And how do you know that?

20 A I create these memorandum of record where I keep track
21 of what day I met with somebody, and then the notes and if
22 they had any concerns or issues and what actions my office
23 needs to take in response to those issues.

24 Q Okay. So I'm looking at one of these things on here.
25 It says May the 2nd of 2018, location Cherokee County

Travis Moore
Direct examination by Mr. Richey

1 Detention Center, client Richard Waldrup, initial meeting.
2 Is that -- and I'm looking at a document that looks like
3 this.

4 A That's correct.

5 Q So you're saying this is a memorandum of the time you
6 met with him.

7 A Yes. It summarizes our points of our discussion and
8 what actions I wanted my office to take in response to those
9 actions.

10 Q So this thing November -- this thing November 21st of
11 2018 is -- this one -- is that -- is that another time
12 you -- you're testifying that you saw him?

13 A Yes. In person at the Cherokee County Detention
14 Center.

15 Q And -- and so do you have more these two?

16 A I have the one that he's referring to, which is
17 March 1st. It's a 2-page one. That's the one prior to the
18 trial.

19 Q Okay.

20 A That's the one in which we reviewed the body-cam
21 footage and the 9-1-1 call.

22 Q When you say reviewed it, do you -- let me...

23 MR. RICHEY: Can I approach the witness, Your Honor?

24 THE COURT: Yes, sir.

25 Q Okay. Sir, did you -- do you recognize what this is?

Travis Moore
Direct examination by Mr. Richey

1 A Yeah. It's a copy of a 9-1-1 call that I made from our
2 office server onto a C.D.

3 Q And -- and did you furnish that to me today?

4 A I did.

5 Q Okay. You were asked -- well, first, is this --
6 this -- your testimony is you sat down and y'all listened to
7 this or y'all reviewed it, or how?

8 A I don't remember exactly if we listened to it on my
9 Microsoft surface, which I'm allowed to take into the
10 detention center.

11 He -- he never made bond. He was in custody the entire
12 time. So we either listened to it on the actual Microsoft
13 surface or we reviewed the CAD sheet, the summary of the
14 call. I'm not sure which one it was.

15 Q And -- and the body cam, did you review the body cam
16 with him, or how?

17 A My notes say that we during the visit reviewed the
18 body-cam footage, 9-1-1 call and reviewed the client's
19 potential testimony in defense for upcoming trial.

20 Q Okay.

21 A And I had a -- I had a paralegal with me that day too.
22 She's not present here though.

23 Q Okay. How long did you think that entry would take you
24 to do? How long would that stuff take for you to do, just
25 do you know?

Travis Moore
Direct examination by Mr. Richey

1 A well, just those alone would have taken at least, I
2 don't know, 30 minutes or so -- 30 or 45 minutes.

3 Q well, do you have any idea why Mr. Waldrup would
4 testify you only spent 15 minutes with him total? Do you
5 have any idea why he would testify to that?

6 A No, sir.

7 Q All right. As to -- sir, you understand that
8 Mr. Waldrup's defense was that he was at that house to meet
9 with a Tony who was the -- let me say this right -- who is
10 his niece's mother's sister's brother? Do -- were you aware
11 that's why, his purpose for being there?

12 A That's what he had told me, yes. He said that he had
13 known somebody who had lived at that house and he thought --
14 I think he thought they still lived there, and he was going
15 to visit them or something like that. He gave me a name. I
16 can't remember the exact name -- Tony.

17 Q Tony Brown?

18 A Brown. That's right.

19 Q Did he tell you who went with him to go see this
20 gentleman? Did he tell you that his brother was with him?

21 A No.

22 Q Okay.

23 A The day of the incident?

24 Q The day of the incident, the night before. Did he tell
25 you that his brother was with him and was staying in a hotel

Travis Moore
Direct examination by Mr. Richey

1 and he left his brother and went over to see Tony, they were
2 going out for breakfast?

3 A Yeah. He said something like that. Yeah. I do
4 remember that.

5 Q And did you take any kind of action of getting his
6 brother as a witness?

7 A Yes. When we meet -- let me go back to my notes. When
8 we met that day he told me -- I -- I updated him on the most
9 current offer from the state, which was, I believe,
10 burglary. He was charged with burglary first based off his
11 convictions, but he was offered burglary second violent, 15
12 suspended to ten if I remember correctly.

13 So we went over that most updated offer. I also made
14 him, being the week before trial, sign a letter recognizing
15 what the offer was, potential penalties and what my advice
16 was based off the evidence.

17 We went over that. He rejected the offer formally,
18 said he didn't want to take it.

19 Then we started getting into reviewing the discovery,
20 finishing watching the videos and talking about what you're
21 talking about, which his brother was in town, he knew this
22 guy named Tony Young who used to live at this house and they
23 were going to go over there.

24 And he had told me that I needed to contact -- let's
25 see. After rejecting the offer -- the offer -- the client

Travis Moore
Direct examination by Mr. Richey

1 provided the name and number of a woman named LeAnn. He
2 asked if I'd contact her because she would be able to
3 provide me contact information for his brother and Tony
4 Young, potential defense witnesses.

5 He claimed that his brother would be able to
6 corroborate his story regarding the reason for traveling to
7 Gaffney and the purpose for looking for Tony Young.

8 Client claimed that Tony Young would testify that he
9 had previously lived at that location. That's what he told
10 me that day.

11 Q And did -- do you know whether his brother was
12 available to testify?

13 A I don't believe he was. But if I could finish, I did.
14 So he gave me a number for a later call.

15 Q Okay.

16 A When I got back to my office this person had already
17 called my office. Her name was a LeAnn.

18 So I called her back on the same day, and she told me,
19 quote, that she would not lie for Mr. Waldrup. She told me
20 that he had called her and told her, quote, it would take
21 her several days to run down that info and would make this
22 case get rescheduled.

23 She told me that the client's brother was either in
24 S.C.D.C. or North Carolina Department of Corrections for
25 other burglaries they had committed.

Travis Moore
Direct examination by Mr. Richey

1 She also told me that she didn't believe Tony Young was
2 a real person and she didn't know who that was.

3 Q Did she believe he was or was not?

4 A Was not.

5 Q Okay.

6 A I also searched the register of deeds for the incident
7 location to see if anybody had owned the property under the
8 name of Tony Young or Anthony Young or anything like that.

9 There's only two prior registered owners of the
10 property, and I think since 2005, and neither one of them
11 were a Tony or Young or anything like that.

12 Q You stated you had him sign something?

13 A Yeah. It's a -- it's a letter advising him of the
14 offer and his formal rejection of the offer before trial.

15 Q And you say you discussed this with him on March the
16 1st. So did you do any kind of investigation other than
17 that phone call into whether his brother was out there or
18 anything?

19 A No. I called the witness he asked me to contact who he
20 told me would provide me the contact information for the
21 other two witnesses.

22 One she said was unavailable; and one she said she
23 didn't believe existed.

24 And then I searched the public records for the
25 ownership history of the -- the real property and house

Travis Moore
Direct examination by Mr. Richey

1 located at the incident location.

2 Q Okay. And I'm going to direct you to the courtroom.

3 Have you seen these people before?

4 A Not -- I don't believe so.

5 Q Okay. You don't -- you don't know that that's his
6 brother?

7 A It looks like his brother.

8 Q What's that?

9 A I said it looks like his brother but I don't think
10 we -- I never met them.

11 Q And his niece.

12 A I don't believe I ever met them.

13 Q So they never came to your office and said, hey, we got
14 some information to give?

15 A No. I don't think so.

16 Q Okay. And this is very difficult because Mr. Waldrup
17 alleged that you only spent 15 minutes with him.

18 What type of other investigation did you do -- well,
19 let me ask this question. There's the 9-1-1 tape that was
20 played at the trial. Okay. Is it the same as this tape,
21 this same information, or do you know?

22 A I haven't even listened to that copy. We keep all of
23 our discovery on a server.

24 Q Right.

25 A So that was the discovery in his file. It was a zip

1 file that said 9-1-1 from the incident date, so.

2 Q And yeah.

3 A I wouldn't have any other version than the ones they
4 gave me the state provided.

5 Q Yes, sir. And he -- he -- his -- he said he was not
6 guilty of this, correct?

7 A That's correct.

8 And just to clarify the offer situation, that letter
9 that we referred to had an offer of like 15 years suspended
10 to ten.

11 Before we started the trial on Monday morning the state
12 made a new, another offer of burglary second violent
13 straight up, which is probably recognized in the transcript,
14 so to leave it as probation eligible, because he had served
15 a considerable amount of time if I remember correctly.

16 So that -- that offer was made and conveyed orally in
17 the jail room outside of the courtroom in Cherokee County
18 before we started the trial.

19 Q Did he -- did he have an understanding that -- that he
20 had done 23 months and that zero to ten I think that was
21 floating out there that -- did he have an understanding if
22 the Court sentenced him to four years he'd probably get out,
23 that the Court didn't have to sentence him to probation for
24 him to get out? He -- if the Court sentenced him to three
25 to four years with the 23 months that he had, do you believe

Travis Moore
Cross-examination by Ms. Marto

1 he understood that he could -- basically, it'd be a
2 turn-around? Do you know what I mean when I say
3 turn-around?

4 A I know what you mean, I remember Judge Hayes telling
5 him based off the amount of time he'd served there was --
6 there's a real possibility that he wouldn't serve any
7 additional time when he went over the -- because Judge Hayes
8 went over the formal rejection of the offer on the record
9 since it was a new offer that wasn't included in this
10 letter.

11 Q Do you think he understood that?

12 A I think so. He -- yeah. He's been adamant that he was
13 not guilty the entire time.

14 MR. RICHEY: One moment, Your Honor.

15 (Pause.)

16 Q Thank you. Answer any questions the attorney general
17 has.

18 CROSS-EXAMINATION

19 BY MS. MARTO

20 Q Good afternoon, sir.

21 A Good afternoon.

22 Q So you shared all of the discovery you received in this
23 case with the applicant, correct?

24 A Yes.

25 Q And the judge held a colloquy with him on the record

1 stating that he could even walk out that day if he pled?

2 A I haven't reviewed it. I'm sure y'all have in
3 preparation for this. It was something to that effect.

4 It was definitely on the record. Judge Hayes typically
5 does that if there's an outstanding offer before they'll
6 start a trial. He wants to make sure that's on the record.

7 Q And his story about Tony Young, he testified similarly
8 at trial.

9 A Correct.

10 Q And any witnesses that you could have otherwise
11 presented in his defense either weren't available, didn't
12 have plausible testimony or the like, is that correct?

13 A The only witness that I was given contact information
14 for was a lady named LeAnn he had told me he had dated or
15 been a girlfriend or something along those lines. That's
16 the only person that I had contact information for.

17 MS. MARTO: One moment, Your Honor.

18 (Pause.)

19 MS. MARTO: No further questions.

20 MR. RICHEY: No other questions.

21 THE COURT: Thank you, sir. You can step down.

22 MR. RICHEY: No other witnesses.

23 MS. MARTO: No witnesses.

24 THE COURT: Argument?

25 MR. RICHEY: Your Honor, at this case, we're going to

1 ask the Court to rely on the testimony of his brother, his
2 niece and the trial transcript and my client's testimony.
3 We ask the Court to grant his P.C.R.

4 THE COURT: Ms. Marto.

5 MS. MARTO: Your Honor, we rely on the record and the
6 testimony as presented in court today.

7 THE COURT: I'll take this under advisement.

8 MR. RICHEY: Thank you, Your Honor.

9 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Cherokee County, South Carolina, on the 7th day of June 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 14, 2022

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP1 100472

Richard Douglas Waldrup

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCIES OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ William A. McKinnon

2761

9/16/2022

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

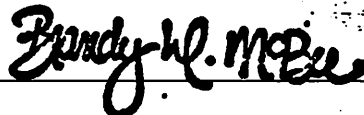
This judgment was entered on , 09/16/2022 and a copy mailed first class or placed in the appropriate attorney's box on 09/16/2022, to attorneys of record or to parties (when appearing pro se) as follows:

Rodney Wade Richey PO Box 10916 Greenville, SC
29603-0916

Alan McCrory Wilson S.C. Attorney General's Office PO
Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Brandy W. McBee - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

Richard Waldrup, #360887,
Applicant,)

Case No.: 2021-CP-11-00472

v.)

ORDER OF DISMISSAL

State of South Carolina,
Respondent.)

FILED IN THE OFFICE
CLERK OF COURT
2022 SEP 14 A 11:08
BRANDY W. MCBEE
CHEROKEE COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed July 26, 2021. Respondent made its return on January 19, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 7, 2022, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's family members Robert Waldrup and Krystal Anderson, as well as Counsel Travis Moore also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its June 2017 term, the Cherokee County Grand Jury indicted Applicant for first degree burglary (2017-GS-11-00843). Applicant was represented by Travis Moore, Esquire. Deputy Solicitor Kim Leskanic and Assistant Solicitor Adrienne Barry of the Seventh Circuit Solicitor's Office prosecuted the

case. On March 5, 2019, Applicant went to trial before the Honorable J. Mark Hayes, II, circuit court judge, and a jury. Applicant was found guilty at trial and Judge Hayes sentenced Applicant to twenty years' imprisonment.

Applicant filed a timely notice of appeal on March 18, 2019, that was perfected by Sarah Shipe, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Waldrup*, 2021-UP-200 (S.C. Ct. App. filed June 9, 2021). The remittitur was issued on June 28, 2021.

Summary of Relevant Facts

Teresa Smith, the victim, was preparing breakfast the morning of the incident, when she heard a knock on the door and saw Applicant at the door. (Tr. 61-62). When she got to the door, she saw Applicant in her garage and noticed that the back garage door was opened. (Tr. 62). The victim asked Applicant what he was doing, to which he responded "oh, I'm here visiting friends." (Tr. 62). When she asked what he was doing with her saw, he dropped it and took off running. (Tr. 62). He tried to run past her underneath her arm, to which she grabbed him with her left arm around the neck while yelling for another resident in the house, Billy, to come and call the police. (Tr. 63). When Billy came to the door, he grabbed Applicant and demanded to know what he was doing. (Tr. 63). Billy and Applicant began fighting. (Tr. 64). Applicant retrieved a knife out of his pocket, which Billy was able to wrestle out of Applicant's hand. (Tr. 64). The victim stated that Applicant needed to use force to enter the garage like he did. (Tr. 65). The victim required medical attention because Applicant took his fingernails and imprinted them into her arm. (Tr. 73).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective assistance of counsel.
 - a. Counsel fell below an objective standard of reasonableness, performance was deficient.
 - i. The obligation to conduct a reasonable investigation
 - ii. There is a reasonable probability that the outcome of the proceedings would have been different had defense counsel done a reasonable investigation and presented the findings to the court (jury).
 - iii. Counsel was well below the legal norm or standard e.g. constitutional provision, statute, a manual rule, or an applicable professional ethics canon.
 - iv. A combination of physical and corroborating evidence, no fingerprints, no sign of entry, nothing on defendant's person or defendant's vehicle, both state witnesses had lengthy criminal records including assault and battery, which was never brought to the court's or jury's attention.
 1. Attorney failed by not presenting both witnesses criminal background reports to show that defendant was saying the truth
 2. Rule 609- credibility of witness character.
 3. Attorney acted in bad faith by not offering any evidence to rebut prosecution
 - v. Defendant literally begged the attorney for material that would honestly determine the truth
 1. Defendant requested attorney to get and present the authentic 911 call, the arresting officer's car/bodycam video. The 3 officers who assisted the arresting officer during the arrest and investigation their bodycam video
 2. Attorney failed to authenticate 911 call, even after 911 personnel was subpoenaed, attorney working against defendant.
 3. Attorney failed to present officer's car or bodycam video during trial, which would have showed defendant was in fact telling the truth and contradicted most of what officer stated
 - vi. Attorney could have proved witness was lying but refused to by not presenting evidence requested by defendant.
 - vii. Attorney never investigated for defendant, as for checking with Tony Young to prove he did in fact live at the residence in question with friends 10 years ago.
 - viii. Attorney failed by not questioning defendant's brother Robert V. Waldrup and presenting him on the stand to prove in fact why defendant was at the residence.
 - ix. Attorney failed by not showing the body/car video to prove defendant asked officers to do their job and check for forensics/fingerprints

- x. Attorney failed by not rebutting officer's testimony where he stated he did not charge defendant with larceny concerning the first degree burglary, but yet the officer charged him with 3 different driving offenses even though defendant was nowhere near his car and the plaintiff's had defendant's car keys.
 - xi. Failed to bring to the court's attention that the defendant had a successful law suit against the captain of the jail as well as the sheriff of the presiding county, knowing defendant asked many times for a change of venue because he was already advised he could not get a fair trial in the same county as the one the sheriff presided in.
 - xii. In direct questioning, lead witnesses to where he could prove they were lying, then stop right in the middle of questioning then change the subject. Not pursuing the truth.
 - xiii. Attorney failed to properly investigate defendant's case even though defendant pleaded with attorney to properly investigate, even when attorney knew that defendant was facing 15 to life in prison.
 - xiv. Never came to talk with me or respond to my many unanswered letters until one week before the trial
 - xv. Never mentioned the defendant was and had been taking mental health medication for over 25 years.
 - xvi. The omitted evidence included arresting officer car/body cam video, bodycam of assisting officers, the complete (authentic) 911 call, complete background criminal reports of State's witnesses, presenting witnesses for defendant.
 - 1. Substantial likelihood of material prejudice test and specific provisions elaborating integrity of defendant also integrity of witness.
 - xvii. Counsel did not fulfill his ethical obligation to conduct a thorough investigation.
 - xviii. Failure to follow Rule 607 credibility of witness character, also Rule 609, Rule 404(B)(1) especially after witnesses told several conflicting stories on the stand, under oath.
 - xix. Witness sat on stand lying about being a business man, continuously badgering defendant by calling him a junky to jurors. Counsel could have proven witness was lying at any time by presenting witness's criminal background report
 - xx. Failure to investigate some critical evidence or defense when preparing for trial
 - xxi. Failure to object to hearsay
 - xxii. Failure to object to improper comments by prosecution.
 - xxiii. Failure to object to improper charge on malice, which improperly shifted to burden of proof from the State to the defendant
 - xxiv. Failure to call or investigate several critical witnesses
 - 1. Defendant's brother, Tony Young
2. Prosecutorial Misconduct.
- a. Misconduct related to critical part of the case, manipulated evidence.

- b. Prosecutor did everything she could to guarantee a conviction, withhold evidence, editing 911 calls, improper comments during trial, influence jurors (boosting credibility of witness), character evidence, leading witness
 - c. Prosecutor withheld state's main (only) witness criminal history background report during trial
 - i. Withheld information concerning a crime of dishonesty (false statement)
 - d. Prosecutor tried to boost credibility of only witness to jurors by leading witnesses.
 - e. Prosecutor entered into evidence three prior burglary convictions, a second degree and two third degree burglaries, when the two third degrees were fourteen years old and the second degree was twenty-four years old.
 - f. Prosecutor used York County Clerk of Court as a character witness concerning the three prior burglary convictions, even had the clerk come from several counties away.
 - g. Misconduct for repeatedly expressing her professional opinion on merits of the case and credibility of witnesses.
 - h. Prosecutor attempted to play on juror's sympathies
 - i. Evidence withheld by government is material as it would require a "reversal of conviction"
 - j. Failure to disclose impeachment material on government witness
 - k. State edited 911 call to the point where the court reporter failed to put it into the transcript
3. Due process violation.
- a. When burden of proof is shifted to defendant to disprove essential elements of crime "Due process" is violated.
4. Arresting officer¹
- a. Officer admitted there was no sign of an attempted break in windows, doors, or doorframes
 - b. Officer admitted he never saw the defendant in the house or in garage area
 - c. Officer admitted he did not collect evidence in garage storage area or in the house that would indicate Applicant was there
 - d. Officer admitted when he arrived on the scene the victim was on top of Applicant in carport area
 - i. Where applicant was beaten and robbed
 - e. All evidence prove Applicant's story from beginning, no evidence nor facts prove other side's story
 - f. Officer stumbled with his answer when questioned isn't it true the defendant actually requested that they call for someone to come and take fingerprints
 - g. Counsel failed to request car/bodycam video to prove he was telling the truth
 - h. With no evidence showing a burglary, and applicant continuously stating he was jumped, beaten, and robbed, requesting forensics, plaintiff with violent criminal history, also on video giving officer defendant's wallet with no money in it

¹ The State interprets these allegations as being ineffective assistance of counsel claims for failing to challenge the officer at trial during cross-examination or closing arguments, as applicable, based on the issues outlined in the application.

- i. When officer was questioned by counsel "are you aware that burglary in the first degree is the . . . under the law is essentially the break into a dwelling with the intent to commit a crime therein", officer stated yes sir.
 - j. Officer charged Applicant with several traffic violations, even though defendant was nowhere near his car, nor had possession of his car keys
 - k. Officer's admitted to saw was in the shop, yet there was no proof defendant was in there
 - l. Officer would have performed his job thoroughly as requested by applicant he would have been able to determine applicant was telling the truth.
 - m. With nothing taken, no forensics showing applicant ever touched anything, no sign of entry, nothing found on applicant or in his car
 - n. Officer admitted the underlying offense was potentially larceny, but yet failed to charge defendant with larceny, because he knew defendant never entered nor tried to steal anything, yet officer charged defendant with three different traffic violations, even though defendant was on the patio floor when officers arrived. Defendant was nowhere near his car, and plaintiff even had given officer applicant's car keys, along with his wallet
 - o. If the officer would have performed his job accordingly, he would have seen all the evidence showed defendant was telling the truth, he was assaulted and robbed.
5. Final statements
- a. A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. It is one which is not stable but one which wavers or vacillates.
 - i. This charge is not proved beyond every reasonable doubt and you must find the defendant not guilty.
 - b. Circumstantial evidence
 - i. A conviction upon circumstantial evidence alone is not to be sustained unless the circumstances are inconsistent with any reasonable hypothesis of innocence.
 - ii. Disclose evidence favorable to the accused, that if suppressed would deprive defendant of a fair trial.
 - iii. Evidence calculated to create "prejudice" against or "sympathy" for accused.
 - iv. Due process clause protects an accused against conviction except upon "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.
 - c. Determination of the credibility of witness.
 - d. The weighing of the evidence.
 - e. The drawing of justifiable inferences of fact from proven fact.
 - f. It is the function of the judge to deny the jury any opportunity to operate beyond its province.
 - g. The jury may not be permitted to conjecture merely or to conclude upon pure speculation or from passion, prejudice, or sympathy.
 - h. The critical point in this boundary is the existence of non-existence of a reasonable doubt as to guilt.

- i. If the evidence is such that reasonable juryman must necessarily have such a doubt, the judge must require acquittal because no other result is permissible within the fixed bounds of jury consideration.
6. Closing statements
- a. The conviction was in violation of the United States Constitution.
 - b. The evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
 - c. The condition or sentence is otherwise subject to collateral attack upon any ground of alleged error previously available under any common law statutory other writ, motion, petition, proceeding or remedy.
 - d. Substantial likelihood of material prejudice test and specific provisions elaborating integrity of defendant, also integrity of witnesses.
 - e. Prosecutor engaged in misconduct by repeatedly expressing her personal opinion on merits of case and credibility of witnesses' truthfulness.
 - f. The Due Process Clause protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.
 - g. Disclose evidence favorable to the accused, that if suppressed would deprive defendant of a fair trial.
 - h. Court (prosecutor) cannot bolster or vouch for witness's testimony.
 - i. Witness credibility (not submitting violent background) abuse of discretion – procedural errors.
 - j. State's main witness (Billy Austin) has a long criminal record, including three or more assaults and batteries, exactly what defendant reported to police from beginning. Exactly why prosecution withheld criminal background records from jurors, prosecution wanted a conviction, not the truth.
 - k. Abuse of discretion occurs when the when the trial court (prosecutor) either lack of evidentiary support or are controlled by an error of law.
 - l. Evidence withheld by government is material as would require reversal of conviction. There is reasonable probability that had evidence been disclosed to jurors, the result of the proceedings would have been different.
 - m. Under *Brady* to disclose evidence favorable to defendant is applicable even though there has been no request from defendant.
 - i. To succeed on Brady claim, favorable evidence, either exculpatory or impeaching, was willfully or inadvertently suppressed by court (prosecution) or (attorney), because such evidence was material (movant) was prejudiced.
 - n. Defendant was deprived his constitutional rights to a fair and impartial trial.
 - o. As evidence will show, prosecution, defense attorney, and arresting officer were all biased towards defendant.
 - p. Applicant requests a new and impartial trial, reversal of conviction, or a vacated sentence.

At the PCR hearing, Applicant proceeded forward on the following allegations:

- 1. Ineffective assistance of counsel
 - a. Failure to contact and call witnesses Robert Waldrup and Krystal Anderson.

- b. Brevity of time in consultation.
- c. Failure to discuss trial strategy.
- d. Failure to obtain criminal history on the victim.
- e. Failure to review discovery with Applicant.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Brother Testimony

Applicant's brother, Robert Waldrup, testified at the PCR hearing. He stated that Applicant was going to visit their friend Tony. He stated that Tony is his sister's husband's brother. He stated he has had cancer for a while. He stated that it was shocking to him when his brother was arrested, because he had "no need to burglarize." He stated he had not seen Tony is seven or eight years before the incident.

On cross-examination, he stated he did not attend his brother's trial. He stated that the plan was for Applicant to drive to Tony's house, go back to the motel he was staying at, pick him up, and go back to visit Tony again. He stated this was the plan because he was taking a shower. He stated they did not call before stopping by.

Anderson Testimony

Anderson stated that in her family it is common to stop in on family members without calling, no matter how long it has been since they last saw each other. She stated that the friend Applicant allegedly attempted to stop in on is a real person that is still alive. She stated she has never been to his house, but he has visited her in her house in Clover. She stated she was aware Tony's address had changed but was unsure when that happened.

Applicant Testimony

Applicant stated that he testified at trial that he intended to visit his friend Tony. He stated he only talked to Counsel three days before trial. He stated he talked to Counsel for ten to fifteen minutes total before trial. He stated he asked his attorney to subpoena Tony and Applicant's brother. He stated he wished his brother went to his trial and that a subpoena was not needed to do that. He stated he asked Counsel to contact his brother, but that Counsel did not have his phone number. He testified that he never discussed trial strategy with him. He stated he wanted the 911 calls and body camera footage, but never obtained these. Regarding the incident, Applicant stated he knocked on the door, and while he was walking away the woman in the home asked who he was. He stated that the man in the home came over and robbed and beat him. He stated that the body camera and 911 call would have corroborated his side of the story. Applicant stated he wanted the criminal history on the person that robbed him. He stated he received the discovery in the case from the public defender's office. He stated Counsel was the second attorney because the original public defender had a conflict of interest. He never received any discovery from Counsel.

On cross-examination, Applicant stated his testimony at trial was the same as at the PCR hearing. Applicant stated that at both hearings he testified that he went to visit Tony without calling ahead. He stated he had not seen Tony in about a decade. He stated that he went to the home with the intent to pick his brother up and head back over to the home because his brother was in bad health. He stated he did not know the people residing at the home. Applicant testified that the 911 call would substantiate his side of the story. He stated he got into a fight with the man in the home. Applicant stated that the man was the person reaching for Applicant's knife, not Applicant. He stated that they were still engaged in a fight when the police arrived. Applicant

stated he never wanted to plead. He stated he was not ready for trial and brought this to the Court's attention. Applicant stated that the Court clearly stated that if he pled, he could walk free the day of trial. Regardless, he still decided to proceed to trial. He stated that he thought trial was in his best interest. Applicant testified that the 911 call was played at trial.

On re-direct, Applicant testified that he did not remember Counsel informing him of the plea offer. On re-cross, Applicant stated that Counsel never reviewed the 911 call.

Counsel Testimony

Counsel testified that he met with Applicant multiple times before trial. He stated they met in person on November 21, 2018. He stated that they reviewed the 911 call and body camera footage the Friday before trial. He stated he was unsure why Applicant would say they only met for fifteen minutes total before the trial day. Counsel testified that Applicant rejected all plea offers. Counsel stated he got the rejection in writing, and this was signed by Applicant. He stated he reached out to a woman named LeAnn to get Applicant's brother's contact information. Counsel testified that Applicant's nephew and niece never came to him. Counsel testified Applicant always stated he was not guilty. Counsel testified he thought Applicant understood the plea offers he rejected.

On cross-examination, Counsel testified that he shared all discovery with Applicant. He stated Applicant testified at trial that he went to the home to visit his friend Tony. He stated the only contact information he received from Applicant was regarding a woman named LeAnn but was never able to get ahold of her.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg

County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the

scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Failure to Call/Contact Witnesses

Applicant alleged Counsel was ineffective for failure to call and contact witnesses Robert Waldrup and Krystal Anderson. At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

“In most PCR cases in which the applicant seeks relief for trial counsel’s failure to call witnesses, the PCR court’s analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel’s performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner’s statement to the police would be entirely consistent with the supposed witness’s statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540

(1995) (finding that counsel was deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant that the trial proceedings result may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Counsel credibly testified that the only contact information Applicant provided him with was for a woman named LeAnn, but that that contact never proved fruitful. Counsel is not expected to reach out to people he is unaware of or otherwise was not provided contact information concerning. Additionally, the only information these witnesses would have provided was duplicative testimony supporting Applicant's defense of the case: namely that they were looking to drop in on a friend named Tony whom they did not talk to in the decade preceding the incident and whom they did not call before dropping by. Not only does this Court find Applicant's story unlikely, but this Court also finds to be credible Counsel's testimony that he ran a search on all individuals that have owned that home and found that none of them had the name Tony. Therefore, Counsel did not render deficient performance and in any event Applicant has not shown that he suffered prejudice. Accordingly, the Court declines to grant relief on this claim.

Brevity of Time

Applicant alleges that Counsel was ineffective for failure to maintain contact with him to “properly go over the case.” “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

This Court finds Applicant not credible in his assertion that Counsel only spoke to Counsel for fifteen minutes before trial. Counsel credibly testified that he met with Applicant multiple times to discuss trial strategy, discovery, and the plea offer. Further, Applicant has failed to show how more time spent in consultation with Counsel would have changed the outcome at trial. Accordingly, Counsel neither performed deficiently nor caused Applicant prejudice. Therefore, relief is denied on this claim also.

Failure to Discuss Trial Strategy

Applicant claims Counsel was ineffective for failure to discuss trial strategy. However, Counsel credibly testified that he met with Applicant multiple times before trial and discussed the discovery with Applicant and the possibility of any favorable witnesses supporting his theory that he went to the home to visit a long-lost friend. This Court finds Counsel did discuss trial

strategy with Applicant and that Applicant failed to present evidence of anything Counsel did not discuss with him that would have contributed to the defense's trial strategy. Specifically, this Court finds Counsel did discuss the defense's theory—that Applicant went to visit his friend—thoroughly. Counsel is not deficient on this ground and additionally no prejudice has been established.

Failure to Obtain Criminal History

Applicant claims Counsel was ineffective for failure to investigate and obtain the victim's criminal history. *Strickland* makes clear that Defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel's judgments” applied. *Id.* That said, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff'd*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government's forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others,

there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Applicant failed to show what the criminal history consisted of, how it was relevant, how Counsel was unreasonable or deficient in failing to procure the history, or how it would have changed the results of the proceedings. Thus, Applicant has not met his burden of proof on either prong of the *Strickland* analysis and relief is denied.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to review discovery. However, Applicant stated he received his discovery from the public defender’s office. Counsel also credibly testified that he shared all discovery with Applicant prior to trial, including the body camera footage and the 911 call. Thus, Applicant seemingly received and reviewed discovery before the trial. Therefore, Counsel was not deficient on this point.

Conclusion

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

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

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 6 day of September, 2022.

William A. McKinnon 2761
WILLIAM A. MCKINNON
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

2017A1120200139

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 6-22-17

VERDICT

GUILTY

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO.

17-GS-11-00843

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

June 22 2017 TERM

THE STATE

vs.

RICHARD DOUGLAS WALDRUP

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

FILED IN THE OFFICE
CLERK

2017 JUN 22 A 10:35

CHEROKEE COUNTY, SC

RECEIVED
MAR 18 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on June 22 2017, the Grand Jurors of Cherokee County present upon their oath:

BURGLARY, FIRST DEGREE

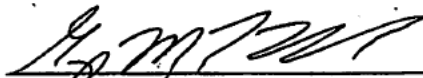
(DWELLING)

That the Defendant, Richard Douglas Waldrup did in Cherokee County on or about April 15, 2017, enter the dwelling belonging to Teresa Smith, located at [REDACTED] Canty Way, Gaffney, South Carolina without consent and with the intent to commit a crime therein; and either:

- (1) when, in effecting entry or while in the dwelling or in immediate flight:
 - (a) was armed with a deadly weapon or explosive; or
 - (b) caused physical injury to any person who was not a participant in the crime; or
- (2) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both,

in violation of §16-11-311, Code of Laws of South Carolina (1976) as amended.

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



ASSISTANT SOLICITOR