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STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Diane Schafer Goodstein, Circuit Court Judge

FRED FREEMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2023-001221

APPENDIX

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

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

DANIELLE E. DIXON
Assistant Attorney General

PO Box 11549
Columbia, SC 29211-1549
(803) 734-3970

ATTORNEY FOR PETITIONER

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

300-B California Avenue
Moncks Corner, SC 29461
(843) 719-4529

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF BERKELEY) CASE NO. 2015-GS-08-02183
2015-GS-08-02184

3
4 STATE OF SOUTH)
CAROLINA,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 FRED FREEMAN,) Date: August 28, 2017
August 29, 2017
8 Defendant.)

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11 B E F O R E:

12 The Honorable Maite Murphy

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18 Denise J. Lauder, RPR

19 Ninth Judicial Circuit

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1 A P P E A R A N C E S

2

3 REPRESENTING THE STATE OF SOUTH CAROLINA

4 BRYAN ALFARO, DEPUTY SOLICITOR

5 BENJAMIN DENNIS, ASSISTANT SOLICITOR

6 Berkeley County Solicitor's Office

7 300B California Avenue

8 Moncks Corner, SC 29461

9

10 REPRESENTING THE DEFENDANT:

11 JOHN CHURCH, PUBLIC DEFENDER

12 KEISHA WHITE, PUBLIC DEFENDER

13 Berkeley County Public Defender's Office

14 219 North U.S. Highway 52

15 Moncks Corner SC 29461

16

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19

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JURY SELECTION

1 (The following proceedings were had
2 8/28/17, Berkeley County General Sessions Court,
3 11:34 a.m.)

4 THE COURT: Solicitor, you may call the
5 first case.

6 MR. ALFARO: Thank you, Your Honor.
7 The State calls Fred Freeman, Indictment
8 2015-GS-08-2183; a charge of burglary, first
9 degree. Indictment 2015-GS-08-02184, a charge of
10 possession of a weapon during the commission of a
11 violent crime.

12 THE COURT: Thank you, Solicitor.

13 Ladies and gentlemen of the jury panel,
14 the State has called the first case for trial this
15 week and that is the State versus Fred Freeman.
16 Before we begin the jury selection, I will read to
17 you the indictments in this case; and the purpose
18 of me doing that is to see if you've heard anything
19 about the case prior to today, or know anything
20 about it, or have any ideas about this case.

21 Again, the indictments are only the
22 allegations of what is charged and not evidence.
23 So I'm going to read -- the first indictment is
24 Indictment 2015-GS-08-2183, and that is for
25 burglary in the first degree.

JURY SELECTION

1 It states that in Berkeley County,
2 South Carolina, on or about October 3, 2015, the
3 Defendant, Fred Freeman, did enter the dwelling of
4 Ashley Kulas and Jeremiah Kulas, without consent,
5 and with the intent to commit a crime therein. In
6 addition to said entry, or remaining occurred in
7 the nighttime and/or the Defendant displayed what
8 appeared to be a knife, pistol, revolver, rifle,
9 shotgun, machine gun, or other firearm; and/or the
10 Defendant has a prior record with two or more
11 convictions for burglary, house breaking, or a
12 combination of both. This is in violation of South
13 Carolina Code of Laws, as amended.

14 The next indictment is Indictment
15 2015-GS-08-2184. And it states that in Berkeley
16 County, South Carolina, on or about October 3,
17 2015, the Defendant, Fred Freeman, did possess
18 firearm, or did physically display what appeared to
19 be a firearm, or did visibly display a knife in the
20 commission of, or attempted commission of a violent
21 crime, to wit: Burglary, first. This in violation
22 of the South Carolina Code of Laws, as amended.

23 Ladies and gentlemen, before we begin
24 the jury selection, I would ask the Solicitor to
25 please stand and introduce himself and members of

JURY SELECTION

1 his office.

2 MR. ALFARO: Thank you, Your Honor. My
3 name is Bryan Alfaro. I'm the Deputy Solicitor for
4 the Berkeley County Solicitor's Office. I work for
5 the elected Solicitor for the Ninth Circuit which
6 covers Berkeley and Charleston County, Scarlett
7 Wilson.

8 Trying the case with me this week is
9 Assistant Solicitor Benjamin Dennis, and the
10 paralegal in our office, Denita Brown, and Shane
11 Musgrove, the investigator in our office who will
12 be in and out.

13 THE COURT: Thank you, Solicitor.

14 Is there any member of the jury panel
15 related by blood or marriage or have a close
16 personal or social relationship with any members of
17 the Solicitor's Office, or have ever been
18 represented by any of the attorneys there in any
19 capacity? If so, please stand.

20 I find there is no one standing.

21 Counsel for the defense, if you would
22 please do the same.

23 MR. CHURCH: Thank you, Your Honor.

24 My name is John Church. I represent
25 Mr. Freeman, who is seated at the table with us;

JURY SELECTION

1 and Keisha White, she is co-counsel. Together, we
2 are going to be representing Mr. Freeman.

3 THE COURT: Thank you, Counsel.

4 Ladies and gentlemen, same question
5 applies. Anyone related by blood or marriage or
6 have a close personal or social relationship with
7 any of the attorneys for the defense, or has ever
8 been represented by them in any capacity? If so,
9 please stand.

10 I find that there is no one standing.

11 Ladies and gentlemen, I'm going to read
12 to you a list of potential witnesses in this case,
13 and after I read that list to you, I will ask you
14 the same question. And if the witnesses are in the
15 courtroom, if you would please stand so that the
16 jury can see you.

17 Jeremiah Kulas, Ashley Kulas, Jeffrey
18 Porter, Officer Ted Davis with Goose Creek Police
19 Department --

20 Sir, I will ask you at the end.

21 Officer Lindsay Taylor Wright, Guy
22 Riccio, Captain Dave Aarons, Leroy Goodyear, Shawn
23 McWilliams, Wendy Meyers, Micah Fogle, Don
24 Snedeker, Chris Harrison, Jackie M. Davis, and
25 Adrian Keffney.

JURY SELECTION

1 Any member of the jury panel connected
2 by blood or marriage, or have a close social or
3 personal relationship with any of the potential
4 witnesses? If so, please stand.

5 Yes, sir. Could you come forward?

6 PROSPECTIVE JUROR: I have a social
7 relationship with Jeremiah Kulas.

8 THE COURT: When you say social
9 relationship --

10 PROSPECTIVE JUROR: Through work. He
11 -- in my former position as a commercial manager,
12 he bought parts from me many times, and we had many
13 conversations. So I know him very well. I know
14 his whole family.

15 THE COURT: Do you visit in each
16 other's homes, that type of --

17 PROSPECTIVE JUROR: No. No. No.

18 THE COURT: Has he ever talked to you
19 about this case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: You know nothing about this
22 case?

23 PROSPECTIVE JUROR: I didn't know about
24 it until you said his name. Yeah. I know Jeremy,
25 as he's called.

JURY SELECTION

1 THE COURT: Anything about that
2 relationship -- obviously it's a social
3 relationship. You don't visit in each other's
4 homes --

5 PROSPECTIVE JUROR: No.

6 THE COURT: -- and have dinner --

7 PROSPECTIVE JUROR: No. But I know him
8 very well. You know, I wouldn't want to be biased.

9 THE COURT: Well, that's my next
10 question. Do you think you can set that aside?

11 PROSPECTIVE JUROR: I don't know. I
12 can't answer that honestly.

13 THE COURT: Okay. I appreciate that.
14 What I'm going to do is, I'm going to sit you out
15 for this trial, but keep you in the panel for the
16 next trial.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: Thank you, sir.

19 THE BAILIFF: Juror 184.

20 THE COURT: Morning.

21 PROSPECTIVE JUROR: Morning.

22 THE COURT: Mr. Vondohlen?

23 PROSPECTIVE JUROR: Yes. I know
24 Jeremiah Kulas.

25 THE COURT: How do you know him?

JURY SELECTION

1 THE WITNESS: He's one of our
2 customers, and we've dealt for years together.
3 We're social a little bit, but nothing -- he has
4 disclosed the case a lot to us.

5 THE COURT: You have discussed this
6 particular case with him?

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: Why don't we do this? I'm
9 going to hold you off on this case, but keep you in
10 the panel for the next case.

11 PROSPECTIVE JUROR: Absolutely. Thank
12 you.

13 THE BAILIFF: Juror 79.

14 THE COURT: Good morning.

15 PROSPECTIVE JUROR: Morning.

16 THE COURT: You're Mr. Haigler?

17 PROSPECTIVE JUROR: Yes. I'm terribly
18 sorry; I should have come up earlier. My wife and
19 I both have medical appointments tomorrow. I have
20 a cardiac evaluation tomorrow. She is having minor
21 surgery which will impair her --

22 THE COURT: Well, goodness gracious,
23 you've got a lot going on.

24 All right. So, Mr. Haigler, have you
25 been transferred before?

JURY SELECTION

1 PROSPECTIVE JUROR: No, ma'am.

2 THE COURT: Is there a week that would
3 be better for you?

4 PROSPECTIVE JUROR: Any time, I guess.

5 THE COURT: How about November 6th?
6 Are you okay with November 6th?

7 PROSPECTIVE JUROR: I think so.

8 THE COURT: Okay. Do you want to plan
9 on that date then? I can give you another date if
10 you don't think --

11 PROSPECTIVE JUROR: I think that would
12 be fine.

13 THE COURT: Okay. We'll see you
14 November 6th.

15 PROSPECTIVE JUROR: Okay. Thank you.

16 MS. WHITE: Juror 139 is my husband's
17 first cousin.

18 THE COURT: Would Juror 139,
19 Mr. Prioleau, please come forward? Come on up,
20 sir.

21 You are not in trouble. Come on up. I
22 just have a question for you.

23 How are you, Mr. Prioleau?

24 PROSPECTIVE JUROR: I'm all right.

25 THE COURT: Come up a little bit closer

JURY SELECTION

1 so she can take down what you're saying. I
2 understand that you know the Solicitor here,
3 Ms. White, that you're related to her?

4 PROSPECTIVE JUROR: Oh, yeah. Yes,
5 ma'am.

6 THE COURT: Is there a reason you
7 didn't tell me that?

8 PROSPECTIVE JUROR: I didn't hear what
9 you were talking about.

10 THE COURT: You didn't hear my
11 question?

12 PROSPECTIVE JUROR: Yes. Yes, ma'am.

13 THE COURT: So you're related to her
14 cousin; is that right?

15 PROSPECTIVE JUROR: Yes, ma'am.

16 THE COURT: All right. And do you
17 visit in each other's homes?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: So you're a close family?

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: So, obviously, you probably
22 like her a lot.

23 Do you think maybe we could transfer
24 him to the second case?

25 Well, let me ask you this, though. She

JURY SELECTION

1 works with the Solicitor's Office. Do you know
2 anybody else in the Solicitor's Office?

3 MR. ALFARO: She works in the Public
4 Defender's Office.

5 THE COURT: I'm sorry. I'm getting my
6 sides mixed up. With the Public Defender's Office?

7 PROSPECTIVE JUROR: No, ma'am. The
8 police, I know the police here. Not him.

9 THE COURT: All right. Why don't we do
10 this. Would you be more comfortable serving in a
11 civil term?

12 PROSPECTIVE JUROR: Sure. Sure. I
13 don't know what that is.

14 THE COURT: It's not like a crime
15 involved, an alleged crime.

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: Why don't we do this,
18 Mr. Prioleau, we'll just keep you out of the panel
19 for the first trial since your cousin here is on
20 the defense. We'll put you aside for the first
21 trial.

22 PROSPECTIVE JUROR: Okay.

23 THE COURT: Have a seat, though.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: And would Juror No. 107,

JURY SELECTION

1 Mr. Livingston, come forward?

2 Good morning, sir.

3 PROSPECTIVE JUROR: Morning.

4 THE COURT: How are you today?

5 PROSPECTIVE JUROR: Fine. Fine.

6 THE COURT: Mr. Livingston, do you know

7 John here?

8 PROSPECTIVE JUROR: Yes, I do.

9 THE COURT: And how do you know him?

10 PROSPECTIVE JUROR: Well, we've come to
11 the oyster roast in Hanahan for a bunch of years.

12 THE COURT: So other than eating
13 oysters together, you don't socialize in each
14 other's homes?

15 PROSPECTIVE JUROR: No, sure don't.

16 THE COURT: Are you okay -- could you
17 set your personal relationship aside in this case?

18 PROSPECTIVE JUROR: Sure. Sure.

19 THE COURT: Can you be fair and
20 impartial to both the State and the defense?

21 PROSPECTIVE JUROR: I would think.

22 THE COURT: Okay. Well, I need more
23 definite than you would think.

24 PROSPECTIVE JUROR: Do you want a yes
25 or no?

JURY SELECTION

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR: Yes.

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

4 You can be seated.

5 Ladies and gentlemen, is anyone related
6 by blood or marriage or have a close personal or
7 social relationship with Mr. Fred Freeman? And,
8 Mr. Freeman, if you would please stand so the jury
9 can see you.

10 THE DEFENDANT: Sure.

11 THE COURT: This is Mr. Freeman here.
12 Anyone related by blood or marriage or have a close
13 personal relationship with Mr. Freeman? If so,
14 please stand.

15 You can have a seat, sir. Thank you.

16 I find there is no one standing.

17 Ladies and gentlemen of the jury panel,
18 I read to you the indictments in this case so that
19 you have somewhat of an idea of what the
20 allegations in this case are. Anything about your
21 prior experiences, whether it's your work, your
22 family situations, anything about your prior
23 experiences or that of your immediate family or
24 friends that gives you any hesitation about your
25 ability to be fair and impartial to both the State

JURY SELECTION

1 and to the defense in this case? If so, please
2 stand.

3 I find there is no one standing.

4 Has any member of the jury panel formed
5 or expressed an opinion about any issue or matter
6 involved in this case? If so, please stand.

7 I find there is no one standing.

8 Is there any member of the jury panel
9 who is a member of or contributor to any group
10 which has as its primary concern the promotion of
11 law enforcement or victims' rights? Those groups
12 would include but are not limited to MADD, SADD, or
13 Citizens Against Violent Crime. Anything in that
14 nature as far as any contribution to any law
15 information type of agencies. If so, please stand.

16 I find there is no one standing.

17 Is there any member of the jury panel
18 aware of any bias or prejudice towards either the
19 State or to the defense in this case? If so,
20 please stand.

21 I find there is no one standing.

22 Is there any member of the jury panel
23 that was a member of the grand jury that issued the
24 indictments in this case? If so, please stand.

25 I find there is no one standing.

JURY SELECTION

1 Is there any member of the jury panel
2 who has heard, read, have any kind of information
3 about this case prior to today? If so, please
4 stand.

5 I find there is no one standing.

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

12 I find there is no one standing.

13 Ladies and gentlemen, that would
14 conclude the list of questions that would be asked
15 prior to the selection of this jury.

16 Madame Clerk, you need a few minutes?

17 THE CLERK: Yes.

18 You want one alternate?

19 THE COURT: Let's do two.

20 This might be a good time for us to
21 take a brief, restroom break. Be back in the
22 courtroom in ten minutes and we will begin the jury
23 selection. Do not discuss the case amongst
24 yourselves or with anyone else.

25 Be back in ten minutes.

JURY SELECTION

1 (A recess transpired.)

2 THE COURT: Would Juror No. 159,
3 Mr. Southard, please come forward.

4 Morning, sir. Mr. Southard, I
5 understand that you know Deputy Grainger that's
6 court security.

7 PROSPECTIVE JUROR: Yes, I guess so. I
8 know his daughter.

9 THE COURT: You know his daughter. And
10 he's not a witness in this case, he's not involved
11 in this case, but would the fact that you know him,
12 can you set that aside in this case --

13 PROSPECTIVE JUROR: Absolutely, yes,
14 ma'am.

15 THE COURT: Will you follow the law as
16 I give it to you?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Would you be fair to both
19 the State and the defense?

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: All right, sir. Thank you.
22 State ready?

23 MR. ALFARO: Yes, Your Honor.

24 THE COURT: Defense?

25 MR. CHURCH: Defense is ready.

JURY SELECTION

1 THE CLERK: Ladies and gentlemen of the
2 jury, as I call your name, please come forth and
3 bring your personal belongings with you. If I say,
4 seat the juror, have a seat in the jury box. If I
5 say, excuse the juror, please return to your
6 original seating and follow the instructions of the
7 bailiff standing here in the burgundy jacket.

8 Juror 86, Lucas Hodges.

9 What say you for the State?

10 MR. ALFARO: Please seat the juror.

11 THE CLERK: What say you for the
12 defense?

13 MR. CHURCH: Please seat the juror.

14 THE CLERK: Seat the juror.

15 Juror 41, Doris Dantzler.

16 What say you for the State?

17 MR. ALFARO: Seat the juror.

18 THE CLERK: What say you for the
19 defense?

20 MR. CHURCH: Seat the juror.

21 THE CLERK: Seat the juror.

22 Juror 52, Sharon Dupree.

23 What say you for the State?

24 MR. ALFARO: Seat the juror.

25 THE CLERK: What say you for the

JURY SELECTION

1 defense?

2 MR. CHURCH: Please seat the juror.

3 THE CLERK: Seat the juror.

4 Juror 111, Michael Malinski.

5 What say you for the State?

6 MR. ALFARO: Seat the juror.

7 THE CLERK: What say you for the

8 defense?

9 MR. CHURCH: Please excuse the juror.

10 THE CLERK: Excuse the juror.

11 Juror 42, William Davis.

12 What say you for the State?

13 MR. ALFARO: Seat the juror.

14 THE CLERK: What say you for the

15 defense?

16 MR. CHURCH: Seat the juror.

17 THE CLERK: Seat the juror.

18 Juror 36, William Connors.

19 What say you for the State?

20 MR. ALFARO: Seat the juror.

21 THE CLERK: What say you for the

22 defense?

23 MR. CHURCH: Seat the juror.

24 THE CLERK: Seat the juror.

25 Juror 21, Emily Buchanan.

JURY SELECTION

1 What say you for the State?

2 MR. ALFARO: Seat the juror.

3 THE CLERK: What say you for the
4 defense?

5 MR. CHURCH: Seat the juror.

6 THE CLERK: Seat the juror.

7 Juror 116, Lillie Mazyck.

8 What say you for the State?

9 MR. ALFARO: Seat the juror.

10 THE CLERK: What say you for the
11 defense?

12 MR. CHURCH: Seat the juror.

13 THE CLERK: Seat the juror.

14 Juror 127, Nicholas Morris Conklin.

15 What say you for the State?

16 MR. ALFARO: Seat the juror.

17 THE CLERK: What say you for the
18 defense?

19 MR. CHURCH: Seat the juror.

20 THE CLERK: Seat the juror.

21 Juror 16, Richard Brinson.

22 What say you for the State?

23 MR. ALFARO: Seat the juror.

24 THE CLERK: What say you for the
25 defense?

JURY SELECTION

1 MR. CHURCH: Excuse the juror.

2 THE CLERK: Excuse the juror.

3 Juror No. 8, Rita Bennett.

4 What say you for the State?

5 MR. ALFARO: Seat the juror.

6 THE CLERK: What say you for the

7 defense?

8 MR. CHURCH: Excuse the juror.

9 THE CLERK: Excuse the juror.

10 Juror No. 140, Jacinto Ramos.

11 What say you for the State?

12 MR. ALFARO: Seat the juror.

13 THE CLERK: What say you for the

14 defense?

15 MR. CHURCH: Seat the juror.

16 THE CLERK: Seat the juror.

17 Juror 95, Darlene Kidd.

18 What say you for the State?

19 MR. ALFARO: Seat the juror.

20 THE CLERK: What say you for the

21 defense?

22 MR. CHURCH: Excuse the juror.

23 THE CLERK: Excuse the juror.

24 Juror 175, Deborah Thomerson.

25 What say you for the State?

JURY SELECTION

1 MR. ALFARO: Seat the juror.

2 THE CLERK: What say you for the
3 defense?

4 MR. CHURCH: Excuse the juror.

5 THE CLERK: Excuse the juror.

6 Juror 89, David Hopkins.

7 What say you for the State?

8 MR. ALFARO: Excuse the juror.

9 THE CLERK: Excuse the juror.

10 Juror No. 39, Cheryl Crandell.

11 What say you for the State?

12 MR. ALFARO: Seat the juror.

13 THE CLERK: What say you for the
14 defense?

15 MR. CHURCH: Seat the juror.

16 THE CLERK: Seat the juror.

17 Juror 134, Richard O'Brien.

18 What say you for the State?

19 MR. ALFARO: Seat the juror.

20 THE CLERK: What say you for the
21 defense?

22 MR. CHURCH: Excuse the juror.

23 THE WITNESS: Excuse the juror.

24 Juror 9, Trevor Boling.

25 What say you for the State?

JURY SELECTION

1 MR. ALFARO: Seat the juror.

2 THE CLERK: What say you for the
3 defense?

4 MR. CHURCH: Seat the juror.

5 THE CLERK: Seat the juror.

6 Juror 107, Charles Livingston.

7 What say you for the State?

8 MR. ALFARO: Excuse the juror.

9 THE CLERK: Excuse the juror.

10 Juror No. 59, Rowland Ford.

11 What say you for the State?

12 MR. ALFARO: Seat the juror.

13 THE WITNESS: What say you for the
14 defense?

15 MR. CHURCH: Seat the juror.

16 THE CLERK: Seat the juror.

17 For the first alternate. Juror 159,
18 Jason Southard.

19 What say you for the State?

20 MR. ALFARO: Seat the juror.

21 THE CLERK: What say you for the
22 defense?

23 MR. CHURCH: Excuse the juror.

24 THE CLERK: Excuse the juror.

25 Juror 35, Linda Compston.

JURY SELECTION

1 What say you for the State?

2 MR. ALFARO: Seat the juror.

3 THE CLERK: What say you for the
4 defense?

5 MR. CHURCH: Excuse the juror.

6 THE CLERK: Excuse the juror.

7 Juror 132, Philip Nelson.

8 What say you for the State?

9 MR. ALFARO: Excuse the juror.

10 THE CLERK: Excuse the juror.

11 Juror 196, Curtisha Moreno.

12 Any challenge for cause from the State?

13 MR. ALFARO: No.

14 THE CLERK: Any challenge for cause
15 from the Defendant?

16 MR. CHURCH: No.

17 THE CLERK: Seat the juror.

18 For our next alternate, Juror 167,
19 Billy Sturgeon.

20 What say you for the State?

21 MR. ALFARO: Seat the juror.

22 THE CLERK: What say you for the
23 defense?

24 MR. CHURCH: Seat the juror.

25 THE CLERK: Seat the juror.

JURY SELECTION

1 THE COURT: Any exceptions or
2 objections to the selection of the jury from the
3 State or the defense?

4 MR. ALFARO: Nothing from the State.

5 MR. CHURCH: Nothing from the defense.

6 THE COURT: Ladies and gentlemen of the
7 jury panel that was not selected for the trial of
8 this case, I'm going to ask you to call the clerk's
9 office after 6:00 p.m. tonight to receive further
10 instructions as to when to call back.

11 You are free to go, but please be sure
12 to call back after 6:00 tonight. Thank you.

13 (Jury panel out, 12:23 p.m.)

14 THE COURT: Ladies and gentlemen of the
15 jury that were selected for the trial of this case,
16 it's almost 12:30. I'm sure that you're probably
17 starving by now, so it's a good time for us to take
18 our lunch break. I'm going to ask you to return to
19 your jury room at 1:45. That should give you
20 enough time to see your jury room, see where you
21 are to report and come back and check in at 1:45,
22 that way we can get started with the trial of the
23 case.

24 Do not discuss this case with anyone or
25 allow anyone to discuss the case with you, and that

1 includes amongst yourself. Obviously, you need to
2 hear the evidence as it comes from the witness
3 stand in this courtroom and not from anyone else.

4 If you see any of the parties involved
5 in this case at lunch and they don't speak to you,
6 they are not being rude. They are following the
7 Court's instruction as they are not to have contact
8 with you.

9 Have a nice lunch, and we will see you
10 at 1:45. The bailiff here will show you where to
11 go.

12 (Jury panel out, 12:25.)

13 THE COURT: Counsel, I understand there
14 are several pretrial motions that you would like to
15 place on the record.

16 MR. CHURCH: There is. We have a
17 motion for -- to exclude prior bad acts and prior
18 convictions, except what the State is entitled to.

19 THE COURT: And, Solicitor, I
20 understand there will be a stipulation that you
21 will either write out for the Court to publish or
22 you will publish as far as the necessary elements
23 of the burg, first; is that correct?

24 MR. ALFARO: That's correct, Your
25 Honor. There are two prior convictions for

1 burglary that this defendant has that we will be
2 using to meet that element, the aggravating factor
3 for a burg, first.

4 THE COURT: Okay. And other than that,
5 any other prior bad acts, obviously, we will cross
6 that bridge as far as the 609 analysis would go, if
7 the defendant decides to testify, that we will go
8 over after the State rests their case; but your
9 position is not to introduce anything but those
10 prior convictions; is that correct?

11 MR. ALFARO: For our case in chief,
12 those are the only prior bad acts that we intend to
13 have any kind of reference to at all. As you
14 stated, if he does elect to testify, there are some
15 convictions that may be applicable for impeachment,
16 and we will address exactly what those are before
17 he testifies.

18 THE COURT: Anything further?

19 MR. CHURCH: Motion to sequester
20 witnesses.

21 THE COURT: Okay. Of course, other
22 than the victims and main case officer, any
23 objection to that?

24 MR. ALFARO: No, Your Honor.

25 MR. CHURCH: And then, Your Honor, we

1 have a motion to dismiss and quash the indictments
2 presented from the defense based on, in this case,
3 when he was initially brought for a preliminary
4 hearing. The officer came to the preliminary
5 hearing with warrants with another individual's
6 name listed in the warrant, an Earl Johnson.

7 At that point, they were dismissed at
8 the prelim -- during the prelim and was
9 subsequently served new warrants and indicted off
10 of that. We would make a motion to dismiss based
11 on that. We believe violation of the Fourth
12 Amendment rights that we are going to apply to
13 this.

14 Do you have something you want me to
15 read?

16 THE DEFENDANT: Yes, sir. Under the
17 South Carolina Constitution, this is -- (inaudible)
18 United States and this is the exclusionary rule.
19 This is applicable and declared by the State.

20 MR. CHURCH: Okay. Your Honor, grounds
21 for the motion would be United States -- 357 U.S.
22 480 (1958). It was held that to support the
23 issuance of a warrant, there must contain an
24 addition statement of the essential facts
25 constituting the offense, Rule 3. Statement of

1 facts relied upon by the complainant to establish
2 probable cause; a warrant legally and duly issued,
3 authorized by law enforcement officer, to arrest
4 the individual named therein.

5 South Carolina Constitution provides
6 that no warrant shall issue but upon probable cause
7 supported by oath or affirmation and particularly
8 describing the person to be seized. An arrest
9 under warrant not supported by oath or affirmation
10 showing probable cause is illegal entitling the
11 person arrested to be discharged.

12 Anyone arrested for a crime without
13 formal process whether a felony or a misdemeanor is
14 entitled to magistrate review of probable cause
15 within 48 hours. U.S. Constitution Amended,
16 Atwater v. City of Lago Vista, 532 U.S. 318, 121
17 Supreme Court 1536, 149 L edition 2nd 549.

18 Exclusionary Rule; any of various rules
19 that excludes or suppresses evidence gathered by
20 government agent in violation of the Fourth and
21 Fifth Amendment to the United States Constitution
22 cannot be admitted against the defendant. The rule
23 is available primarily in criminal trial and quasi
24 criminal proceedings. A punitive administrative
25 hearing must be observed by the State Court.

1 No exigent circumstances; Fourth
2 Amendment requires that arrest warrant be based
3 upon probable cause supported by oath or
4 affirmation, must be satisfied by indictment
5 returned to the grand jury, but not by mere filing
6 of criminal charges and unsworn information signed
7 by prosecution.

8 U.S. Constitution Amended IV, Kalina v.
9 Fletcher, 1185 S.Ct. 502, 139 L. edition 2nd, 471
10 U.S. 1997.

11 Based on the previous read into the
12 record, my client asks that the charges against him
13 be dismissed with prejudice.

14 THE COURT: Thank you, Mr. Church.
15 Solicitor.

16 MR. ALFARO: Your Honor, without
17 delving into the cases and the case law that was
18 cited just provided to the State, procedurally
19 speaking, this Defendant was, in fact, originally
20 arrested on Warrant 201580820200784, charge of
21 burglary, first degree, on October 9th, 2015; and
22 the last two ending 86 for possession of a weapon
23 during a violent crime.

24 As Mr. Church indicated, those were
25 dismissed at prelims based upon a scrivener's

1 error. We believe that the magistrate could have
2 amended that on the record, but chose not to and
3 dismissed those. As a result, out of an abundance
4 of caution, the State or arresting agency obtained
5 new warrants by appearing in front of the
6 magistrate on December 4, 2015.

7 Those are the warrants that were used
8 to -- as the basis for the true billed indictment
9 of December 2015. So he was not indicted on the
10 previous charges that were dismissed at prelim.
11 Additional warrants that reflected those
12 corrections of the scrivener's error with provided
13 affidavits were sufficient to provide him notice of
14 what he was charged with.

15 The indictment itself is based upon --
16 the indictments themselves are based upon those
17 valid warrants; therefore, the State believes that
18 the motion to quash any of the indictments based
19 upon the magistrate judge's ruling on two other
20 different warrants is not appropriate, and the
21 State should be allowed to proceed to trial with
22 the indictments that have been true billed by
23 Berkeley County Grand Jury in December 2015.

24 THE COURT: Anything further?

25 MR. CHURCH: My client would like for

1 me to point out the previous section where one
2 arrested for a crime without formal process,
3 whether felony or misdemeanor, is entitled to
4 magistrate review of probable cause within
5 48 hours. He claims that he was not given review
6 until 1,488 hours.

7 THE COURT: I'll take the time to
8 review the cases that you have cited, and I will
9 place my ruling on the record prior to the jury
10 coming in at 1:45. We will be at ease until 1:45.

11 MR. ALFARO: Thank you, Your Honor.

12 (STATE'S EXH. 35, DVD, was marked for
13 identification.)

14 (A luncheon recess transpired.)

15 MR. CHURCH: I would like to supplement
16 the motion that we made right before we took a
17 recess wherein the defense made a motion to dismiss
18 all charges based on the erroneous warrants
19 presenting at the preliminary hearing.

20 We would like to place on the record
21 that we do not agree with the State's assertion
22 that this was a harmless scrivener's error, and we
23 believe the charges should be dismissed as a matter
24 of him being -- based on an erroneous arrest
25 warrant.

1 THE COURT: Anything further from the
2 State on this issue?

3 MR. ALFARO: No, Your Honor.

4 THE COURT: Based upon the arguments of
5 counsel and review of the applicable law, the Court
6 respectfully denies the motion, Mr. Church, based
7 upon the fact that there was an error in the
8 warrant, a scrivener's error, however you want to
9 describe it, that was subsequently corrected by a
10 correct warrant, which the subsequent indictment
11 was based upon.

12 Further, pursuant to State versus
13 Kennan, there is no longer in existence of the
14 State constitutional right to a preliminary
15 hearing, and the State could actually have directly
16 indicted your client subsequent to that, so your
17 motion is denied.

18 This Court has proper jurisdiction to
19 hear this case, and we will proceed accordingly.

20 MR. CHURCH: Thank you, Your Honor.

21 THE COURT: Anything further before I
22 bring the jury out?

23 MR. DENNIS: The only thing, Your
24 Honor, is we had evidentiary-wise the State and the
25 defense had agreed that they would stipulate to the

1 chain of custody related to cuttings that were
2 taken from that cushion as well as the buccal swabs
3 that were sent to SLED; and the results of the
4 analysis, no human blood was found.

5 So to avoid the analyst coming from
6 SLED, the chain of custody witnesses, we have
7 agreed that the case agent would be able to testify
8 that is what happened.

9 THE DEFENDANT: Your Honor.

10 THE COURT: Yes, sir.

11 THE DEFENDANT: Yes, ma'am. If it
12 pleases the Court. I don't know if I'm allowed to
13 address the Court. I think you've made a ruling,
14 Your Honor; however, the ruling itself -- I'm no
15 person of the law or with a legal background, but
16 we're dealing not just with a warrant, we're
17 dealing with a sworn complaint.

18 THE COURT: I understand, Mr. Freeman,
19 and I have made the ruling, so further argument
20 would not be proper.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Let's have our jury,
23 please.

24 MR. CHURCH: Your Honor, we did
25 stipulate because nothing tied Mr. Freeman to the

COURT'S OPENING

1 DNA.

2 (Jury in, 2:05 p.m.)

3 THE COURT: Welcome back, ladies and
4 gentlemen of the jury. You may have a seat.

5 Madame Clerk, if you would please swear
6 in the jury.

7 THE JURY,

8 being first duly sworn, testified as follows:

9 THE CLERK: Please be seated.

10 THE COURT: Ladies and gentlemen of the
11 jury, thank you for accepting the important
12 responsibility of jury service and for your
13 contribution today to our system of justice.

14 What I will now say to you is intended
15 to serve as an introduction to the trial of this
16 case. These remarks are not a charge on the law in
17 this case. I will instruct you on the law
18 applicable to the case at the end of the trial
19 before you retire to consider your verdict.

20 This is merely an explanation of the
21 procedure that we will follow so you may better
22 understand what is going on during the trial. You
23 are not allowed to take notes during the trial.

24 Ladies and gentlemen, the Defendant in
25 this case is charged by an indictment filed in this

COURT'S OPENING

1 court with the crime of burglary in the first
2 degree, with the crime of possession of a weapon
3 during the commission of a violent crime. The
4 elements of each of these indictments will be
5 explained to you later.

6 The indictment is simply the charge by
7 which the case is brought into this court, and it
8 is not in any sense evidence of any of the
9 allegations that it contains.

10 The Defendant has pled not guilty to
11 these indictments, and the State, therefore, has
12 the burden of proving each of the elements of each
13 indictment beyond a reasonable doubt.

14 Ladies and gentlemen, it will be your
15 duty to decide whether the State has met that
16 burden. Your purpose as jurors is to find and
17 determine the facts. You are the sole judges of
18 the facts. If at any time I make any comment
19 regarding the facts, you must disregard that. You
20 are to determine the facts from the testimony that
21 you hear and any other evidence that is properly
22 introduced during the trial of this case.

23 It is up to you to determine the
24 inferences which you feel may be properly drawn
25 from the evidence. It is especially important that

COURT'S OPENING

1 you perform your duty of determining the facts
2 diligently and conscientiously, because ordinarily
3 there is no way to correct an erroneous
4 determination of the facts by a jury.

5 On the other hand, and with equal
6 emphasis, the same law that makes you the judges of
7 the facts makes me the judge of the law. The law
8 as given by the Court is the only law that you may
9 consider. You must accept it and follow it even
10 though you may disagree with it.

11 I cannot tell you what the facts are
12 and you cannot disagree with me about what the law
13 is or what the law should be. Your job is to take
14 the law as I give it to you and apply it to the
15 facts as you find them from the testimony of the
16 witnesses and any other evidence that is
17 introduced. After doing that, you will render your
18 verdict under the solemn oath that you just took as
19 jurors.

20 Until I advise you to begin your
21 deliberations, you must not discuss this case with
22 anyone. This includes any fellow jurors, friends,
23 family members, anyone involved in this case. This
24 includes any face-to-face discussions, anything by
25 telephone, e-mails, text, blogs, or any method of

COURT'S OPENING

1 communications. You may not use a computer, cell
2 phone, or any other electronic device with
3 communication capabilities at any time while in the
4 courtroom or during your deliberations.

5 During your breaks or for meals, or
6 overnight, if necessary, you may use these devices;
7 however, you may not at any time use these devices
8 to get or send information about this case. This
9 includes any information about a party, a witness,
10 an attorney, any court officers, any news accounts
11 about the case, research on any topics that are
12 raised, any topics that you think would be helpful
13 in deciding the case, or any testimony that's
14 presented by a witness.

15 During this trial, please do not listen
16 to, read, watch, or listen to any news reports
17 about this case. That includes anything that may
18 be in the newspapers, TV, radio, Internet. You may
19 not consider anything that you may have heard or
20 read about this case outside of this courtroom,
21 whether before or during the trial of this case.

22 After the case is submitted to you, you
23 must discuss it only in the jury room with your
24 fellow jurors. The attorneys and the parties in
25 this case have been advised not to talk to you. If

COURT'S OPENING

1 you see them coming in and out of the courthouse
2 and they don't speak to you, they're not being
3 rude. They're just following the Court's
4 instructions.

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

10 It is your solemn responsibility to
11 determine the guilt or innocence of the defendant,
12 and your verdict must be based solely on the
13 evidence as it is presented to you in this trial
14 and the law that I instruct you at the close of the
15 trial.

16 In just a moment, the Solicitor will
17 make an opening statement in which the Solicitor
18 will explain to you what the issues in the case
19 are, or at least what he thinks they are. The
20 attorney for the defense may make an opening
21 statement; although, they are not required to do
22 so.

23 What the attorneys tell you during
24 their opening statements is not evidence in this
25 case. It is only their contention as to what the

COURT'S OPENING

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

6 From time to time during the trial, you
7 may hear one of the attorneys say something like,
8 Your Honor, we have a matter of law to discuss with
9 you, may we approach the bench? Or sometimes I
10 myself may find it necessary to excuse you for a
11 short while so that the attorneys and I can discuss
12 a matter of law.

13 The reason for this is because you are
14 the judges of the facts in this case, and sometimes
15 when I'm discussing matters of law with the
16 attorneys, it may be necessary for me to make some
17 comment as to the facts in connection with whether
18 a particular law applies. I'm not supposed to tell
19 you what I think the facts are, so I will excuse
20 you from the courtroom for a short while while
21 these discussions take place so that you in no way
22 will be influenced by anything I may say or do in
23 connection with the facts of the case.

24 In determining what the true facts are
25 in this case, you must decide whether or not the

COURT'S OPENING

1 testimony of a witness is believable. It will be
2 my responsibility to rule as a matter of law
3 whether or not testimony is admissible or not, but
4 once the testimony is admitted, whether or not you
5 believe it is solely for you to determine.

6 In deciding whether to believe a
7 witness, you have the right to consider the
8 interest of any witness, the bias of any witness,
9 the prejudice of any witness, the opportunity for
10 the witness to have seen the matters and things
11 about which the witness may testify, and the way
12 that the witness acts on the witness stand.

13 You have the right to consider anything
14 that is in the record that will help you evaluate
15 the testimony of the witnesses. That means it is
16 your duty to pay close attention to these
17 witnesses, to observe the witnesses, to listen to
18 the witnesses and to pay close attention to the
19 attorneys and to the Court.

20 Please do not let your thoughts wander,
21 but give strict attention to the testimony in this
22 case so at the close of the trial, after the
23 arguments of counsel and you've been instructed on
24 the law, you will then be in a position to
25 determine what the true facts are and render your

OPENING STATEMENT - BY THE STATE

1 verdict.

2 It will be the added duty of the
3 foreperson, which I will allow you to elect amongst
4 yourselves, to write the verdict on the verdict
5 form. I will give you special instructions as to
6 that at the close of the trial.

7 In order to preserve everyone's rights,
8 are there any objections from either the State or
9 from the defense to the opening instructions?

10 MR. ALFARO: None from the State.

11 MR. CHURCH: None from the defense.

12 THE COURT: Solicitor, you may proceed.

13 MR. DENNIS: Thank you, Your Honor.

14 May it please the Court.

15 THE COURT: Yes, sir.

16 MR. DENNIS: Afternoon, ladies and
17 gentlemen of the jury. This case is very
18 straightforward. We are here today because the
19 Defendant, Fred Freeman, is accused of burglary in
20 the first degree, as well as possession of a weapon
21 during the commission of a violent crime.

22 Now, you'll hear over the next few days
23 testimony from victims and officers that will go to
24 prove that on October 3, 2015, Mr. Freeman broke in
25 to a home at [REDACTED] Pointer Drive, stole some

OPENING STATEMENT - BY THE STATE

1 articles, fled that area, and was chased by the
2 victim in this case, Jeremiah Kulas. He was then
3 wrestled to the ground until officers came and was
4 arrested.

5 Now, the judge in this case will give
6 you the law. I'm going to give you a brief summary
7 of it. Burglary in the first degree is whenever a
8 person enters a dwelling without consent and with
9 intent to commit a crime inside of that dwelling.

10 Now, dwelling, in this case, is a home.
11 Somewhere where someone has recently been staying
12 or is actually currently staying.

13 Now, for it to be burglary in the first
14 degree, one out of the three of these following has
15 to be true. And over the next two days you will
16 hear more than one of these being true.

17 First off, someone has to either enter
18 the dwelling during the nighttime, dusk or it's
19 dark outside. Or that person has to display what
20 appeared to be a firearm. You will hear testimony
21 concerning that.

22 And just keep these things in mind as
23 you're listening to the witnesses' testimony and
24 you're looking at other evidence that the State --
25 that we are going to present to you.

OPENING STATEMENT - BY THE STATE

1 The next charge is possession of a
2 weapon during a violent crime. In this case,
3 you're going to hear some discussion and testimony
4 about a gun, and whether or not the gun was
5 possessed by the defendant during that is going to
6 be up to you.

7 Finally, burglary in this case is
8 considered a violent crime, so if you find the
9 Defendant is guilty of burglary, then you can find
10 that he's in possession of a weapon during a
11 violent crime and he's guilty of that.

12 Now, during the next few days you're
13 going to be asked to weigh the testimony that you
14 hear. In the end, the judge is also going to
15 advise you about the burden of proof in this case.
16 Burden of proof in all criminal cases in South
17 Carolina is proving it beyond a reasonable doubt.

18 And all that means is -- and, again,
19 the judge is going to instruct you on this. At the
20 end of these next two days, after you listen to all
21 of the testimony and you've seen all of the
22 evidence that the State is going to produce, that
23 you will be firmly convinced that Fred Freeman, the
24 Defendant in this case, is guilty of burglary in
25 the first degree as well as possession of a weapon

OPENING STATEMENT - BY THE DEFENSE

1 during the commission of a violent crime. Thank
2 you.

3 MR. CHURCH: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. CHURCH: I will be very brief in my
6 opening. The devil is in the details. Basically,
7 that means that things that look simple or easy on
8 the surface sometimes are a lot more complicated
9 once you get down to it.

10 In this case, Mr. Freeman is not the
11 devil, and the details are not going to add up to a
12 conviction. The State would like for you to think
13 that right now Mr. Freeman is guilty. But right
14 now he's just as innocent as anybody in this
15 courtroom. He's only guilty when you decide if
16 he's guilty or not guilty.

17 The judge told you, please do not have
18 any preconceived notions; do not make your mind up
19 until you've heard all of the evidence. The
20 evidence in this case is going to come from the
21 stand and the witnesses who sit up there and answer
22 questions from the lawyers in this case.

23 Mr. Freeman does not have to do
24 anything. The judge will explain this to you
25 later. He does not have to testify. He does not

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 have to put any witnesses forward. That is all the
2 burden of the State. They have to prove every
3 limit of every charge beyond a reasonable doubt.

4 The evidence in this case is going to
5 show that Mr. Freeman is a 58-year-old man, and it
6 was a dark and stormy night, a lot of rain, and
7 there's going to be a lot of confusion. So pay
8 attention to the details in this case, don't make
9 your mind up until you've heard all of the
10 evidence, and at that point, I'm going to ask you
11 to find him not guilty.

12 THE COURT: Call your first witness.

13 MR. ALFARO: Thank you, Your Honor.
14 The State calls Jeremiah Kulas.

15 JEREMIAH KULAS,
16 being first duly sworn, testified as follows:

17 THE CLERK: Please state your full name
18 for the record and spell your last.

19 THE WITNESS: My name is Jeremiah
20 Michael Kulas, K-U-L-A-S.

21 THE COURT: Your witness.

22 MR. ALFARO: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. ALFARO:

25 Q. Mr. Kulas, could you tell the jury a

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 little bit about yourself. Are you married?

2 A. I am.

3 Q. And what is your wife's name?

4 A. Ashley Kulas.

5 Q. How long have you been married?

6 A. For eight years.

7 Q. And do you have any kids?

8 A. Two.

9 Q. And their names?

10 A. Jocelyn and Kennedy.

11 Q. How old are they?

12 A. Jocelyn is 13 and Kennedy is six.

13 Q. And where do you live?

14 A. At [REDACTED] Pointer Drive.

15 Q. And where is that? What city?

16 A. That's in the city of Goose Creek.

17 Q. And what county is that?

18 A. Berkeley County.

19 Q. And were you living in that -- living
20 at that same address on the night of this incident,
21 October 3, 2015?

22 A. Yes, sir.

23 Q. And what subdivision is that in?

24 A. It's Quail Hill, which is located in
25 the new part of Boulder Bluff.

1 Q. So let's talk about that night,
2 October 3, 2015. What had you done that day?

3 A. I own a shop right here in Moncks
4 Corner, so I was at work until about 5:30.

5 Q. What kind of shop is it?

6 A. It's Cool Towing and Automotive. It's
7 towing and repo and automotive repair.

8 Q. And you were there until 5:30 you said?

9 A. Roughly, 5:30.

10 Q. Where did you go when you left there?

11 A. We had -- because of the storm, we --
12 you know, family pulls together. We had a family
13 dinner at my mother-in-law's that started about
14 6:15.

15 Q. Did you go straight to your
16 mother-in-law's after work?

17 A. She lives in Sedgefield, so on the way
18 through I stopped at my house and I took a shower.

19 Q. And when you left your home, you were
20 going to your mother-in-law's?

21 A. That's correct, yes, sir.

22 Q. And when you got home from work before
23 you went to your mother-in-law's, was there
24 anything out of place or unusual about your house?

25 A. No, sir. I have electric front doors

1 with a key pad. I opened the front door. At that
2 time, the power was on. I attended to my two dogs,
3 I took a shower, I put my one firearm away that I
4 carry with me, and then I left with the porch light
5 on and the dogs put up.

6 Q. Okay. You mentioned a firearm. You
7 normally carry that with you to work?

8 A. I do.

9 Q. And you were leaving that at home? You
10 weren't taking that with you?

11 A. To a family get-together with babies
12 and old people, no, sir.

13 Q. Okay. You had two dogs that you took
14 care of before you left. What kind of dogs do you
15 have?

16 A. Two pit bulls.

17 Q. Were they full grown? Puppies?

18 A. One of them is about 60 pounds; she's a
19 female. The other one was just a puppy at that
20 time; he was three or four months.

21 Q. Where were they normally kept?

22 A. Usually they roam the house. At that
23 time, at the very back of my house, the back corner
24 is the office, and it has tile. So because of the
25 storm and their feet were wet, the puppy was in the

1 kennel in the office area, and the pit pull was
2 with the door closed in the office area.

3 Q. I know you said they were pit bulls.
4 Are they aggressive? Friendly?

5 A. They're very friendly. I mean, I have
6 -- the one grew up with my oldest daughter and the
7 other with my youngest daughter.

8 Q. So you took a shower and then you went
9 to your mother-in-law's. When you left the house,
10 was it locked up? Closed up?

11 A. Yes, sir.

12 Q. And did you go straight to your
13 mother-in-law's?

14 A. Yes, sir.

15 Q. And did your wife and kids attend the
16 dinner as well?

17 A. They did.

18 Q. And did you ride together or rode
19 separately?

20 A. No; she was already there.

21 Q. Okay. So by the time you got home from
22 work and showered and went there, they were there?

23 A. Yes, sir.

24 Q. And how long did you stay there at your
25 mother-in-law's?

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 A. Until, roughly, 7:45, 8:00. About the
2 time the kids go to bed.

3 Q. Was it dark when you left your
4 mother-in-law's?

5 A. Yes, sir.

6 Q. And did you have anything to drink, any
7 alcohol at the dinner?

8 A. No, sir.

9 Q. You rode there separately. Did you and
10 your wife ride back home together or stay in
11 separate cars?

12 A. No. We -- we followed each other
13 because that's when all the severe flooding was.

14 Q. And did you both go straight home?

15 A. We did.

16 Q. And you mentioned rain. Was it -- can
17 you tell for the jury what the weather was like
18 that night?

19 A. It was very, very torrential rain.
20 That's when the big flood was here, you know,
21 during that time about two years ago.

22 Q. And you both came -- got home, followed
23 each other home and got home the same time. Did
24 you walk up to the door together?

25 A. We did.

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 Q. And were both of your daughters with
2 you?

3 A. No. The oldest daughter, her mother
4 has visitation every other weekend. She was at her
5 mother's.

6 Q. So it would have been you, your wife,
7 and your youngest daughter?

8 A. Yes.

9 Q. And that's Kennedy?

10 A. Kennedy, yes, sir.

11 Q. How old would she have been?

12 A. She would have been four. She's
13 special needs, so she has equipment that goes with
14 her everywhere.

15 Q. And so you walked up to the door
16 together?

17 A. That's correct. I had her, and the
18 wife carried her bags.

19 Q. And tell the jury what happened when
20 you went to your front door and went into your
21 house?

22 A. We walked up to the door and the porch
23 light was off, but the neighborhood was dark anyway
24 because the power was out. So I walked up to the
25 door and, you know, it's a battery-operated pad. I

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 punched the code in and, for whatever reason, I
2 thought maybe my fingers were wet. It didn't work.
3 I punched it in again; it didn't work. I hit the
4 reset, and it worked the third time. I thought,
5 well, that's new.

6 So as soon as we opened the door, there
7 was a large black man, roughly 12 to 15 feet in
8 front of me, galloping sideways, barking like a
9 dog, saying I got a gun, and barking like a dog,
10 and heading out of the house.

11 Q. When you say barking, do you literally
12 mean that?

13 A. Barking like a full-grown dog, woof,
14 woof, woof, yes, sir. As he galloped, like side
15 stepping.

16 Q. So he's in your living room?

17 A. Facing, like you and I are facing, but
18 -- he's looking at me, but moving to the left. So
19 probably another 15 to 20 foot and then trying to
20 proceed backwards to the office.

21 Q. Okay. And what did you do?

22 A. My first response was, get the fuck out
23 of my house.

24 THE COURT: Sir?

25 THE WITNESS: I'm sorry.

1 THE COURT: No profanity in my
2 courtroom. You can say an abbreviation for it --

3 THE WITNESS: Okay. Okay. That was my
4 first response. I threw the baby down behind me as
5 he --

6 BY MR. ALFARO:

7 Q. You mean you threw her?

8 A. No. No. No. I didn't toss her, but I
9 -- like I said, I put her down. And then at that
10 point there, he was moving -- he was trying to back
11 up. Like, look at me still, but walk backwards
12 into the office area out of the living room, in
13 which there's a threshold from the tile to
14 hardwood. There's a transition piece, and he
15 stumbled.

16 His feet caught that and he stumbled.
17 At that time, he was probably 15 foot in front of
18 me, so I advanced him. And I grabbed hold of him,
19 and then him and I both went through the back door.

20 Q. So your office leads to the back door
21 of your house?

22 A. Yes.

23 Q. Was that back door open or closed when
24 you first went after him?

25 A. It was already opened.

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 Q. Was it closed when you left the house
2 earlier?

3 A. Yes, sir.

4 Q. And so you follow him into your office.
5 Were you able to get hold of him, get your hands on
6 him?

7 A. I did. I did. Like I said, right as
8 he's -- as he looked down at his feet at the
9 threshold piece, that's the time I grabbed hold of
10 him.

11 Q. And were you able to keep hold of him
12 there or was he able --

13 A. I did. As I was advancing, the weight
14 of the two of us, fell out the back door onto the
15 concrete slab where -- I guess it was his jacket,
16 where I had the jacket. And he was now from me to
17 the chair in front of me moving towards the fence
18 holding a gun in a bag.

19 Q. So when he gets out in your backyard,
20 did you follow him out there?

21 A. I did.

22 Q. What did you do out there?

23 A. As far as following, I didn't stop. He
24 never got more than three or four foot in front of
25 me. When he turned around with the one bag and the

1 gun, my fence line is probably out of the back door
2 ten foot.

3 So he was advancing towards the double
4 gate area. I seen the gun, and he turned to grab
5 the fence, and there was lawn chairs on the back
6 porch. I struck him with the lawn chair.

7 Q. And so before you hit him with the lawn
8 chair, you saw the gun in his hand?

9 A. Yes, sir.

10 Q. And what happened when you hit -- did
11 you throw the chair at him or swing it at him? How
12 did you hit him?

13 A. I had the chair, I guess you could call
14 it -- I had one side of the chair as he went to
15 reach for the fence, and I hit him with the chair.

16 Q. So when you hit him you still had your
17 hands on the chair?

18 A. That's correct.

19 Q. He was trying to get over the fence at
20 that time?

21 A. That's right.

22 Q. And what happened when you hit him with
23 the chair?

24 A. He fell back to the fence, the bag fell
25 off, and now he had just the gun in his hand.

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 Q. And then what happened?

2 A. Then he persisted. I grabbed the lawn
3 chair like I was going to hide behind it, thinking
4 it might stop a bullet. And then as he went to go
5 over the top of the fence, halfway over, I caught
6 hold of him, and him and I both went over
7 simultaneously.

8 Q. So how tall is the fence?

9 A. It's a six-foot privacy fence.

10 Q. Is the way that your yard set up, is it
11 the same six-foot drop from the top to the outside?

12 A. No, sir. The outside side -- my side
13 yard is probably on a 30-degree bank. And so the
14 edge of the fence, the outside starts the
15 embankment. So it's probably seven feet on the
16 outside.

17 Q. A little farther drop?

18 A. That's correct, seven foot onto a
19 concrete slab.

20 Q. And you both went over the fence at the
21 same time?

22 A. That's correct. Like I said, I had
23 hold of him. As his weight fell over the back
24 side, that's what pulled me and my weight over the
25 top.

1 Q. How did he land?

2 A. We both kind of fell flat on our butts.

3 And, like I said, he was first, so I fell on top of
4 him at that point.

5 Q. So when you fell over the fence, you
6 landed on him?

7 A. Yes, sir. I believe it was his legs,
8 but like to that part there. (Indicating) I was
9 on part of his body.

10 Q. And what happened when you both went
11 over the fence and you landed on top of him?

12 A. He proceeded to try to get up, in which
13 case, I grabbed the hand that he was still holding
14 the gun. It was the gun that I keep in my sock
15 drawer. I grabbed the hand with his gun, and I
16 just began beating him and trying to wrestle the
17 gun out of his hands.

18 Q. And were you able to -- you said you
19 were wrestling with him. Was he able to get away
20 from you --

21 A. No, sir.

22 Q. -- at that point?

23 A. No, sir.

24 Q. And then what happened?

25 A. Then my neighbor, who actually had

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 followed us, he was the third car behind us coming
2 into the neighborhood. He had just walked in his
3 door when he heard us walk in. So he heard the
4 commotion and so he walked out as we were fighting
5 over the gun in the road -- on the concrete side of
6 the driveway to the road to my fence.

7 Q. What's your neighbor's name?

8 A. Jeff.

9 Q. And you said Jeff came into the -- back
10 into the neighborhood at the same time as us. Was
11 he at the dinner with you?

12 A. No. No, it was just a coincidence.

13 Q. And you said he came outside during the
14 struggle?

15 A. That's correct.

16 Q. And what did -- what happened then once
17 he got outside?

18 A. He seen us fighting and he seen a gun.
19 And he seen that I had a hold of -- like I said, he
20 didn't have enough of the gun because I had his
21 forearm right there. (Indicating) So he come and
22 removed -- he come up and assisted in removing the
23 gun.

24 Q. Your neighbor Jeff got the gun?

25 A. That's correct.

1 Q. And after that, were you still holding
2 the Defendant down?

3 A. I was.

4 Q. And at any time after Jeff, your
5 neighbor, took the gun, did the Defendant get away
6 from you?

7 A. No, sir.

8 Q. Did you maintain control of him or
9 wrestling with him until the police arrived?

10 A. I did.

11 Q. And so the same person that you went
12 over the fence with and held down is the same
13 person that you were holding down when the cops
14 arrived?

15 A. Yes, sir.

16 Q. When the cops arrived, what happened?
17 What did you do then?

18 A. The police come up and they -- they
19 come up and -- immediately, they come up with the
20 headlights and we was all blinded. They come up
21 and pulled me off of him, and they put me in
22 handcuffs and separated us.

23 One officer detained -- detained
24 Mr. Freeman. Another officer escorted me to my
25 neighbor's porch, and I remained in handcuffs until

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 the house was cleared four hours later.

2 Q. Did the officers that arrived take
3 control of the gun that your neighbor had taken
4 from the Defendant?

5 A. Yes, sir. At the time of which the
6 police pulled up, Jeff had went to go check on my
7 family when -- as soon as he removed the gun. And
8 he had come back and the police -- at first they
9 went to detain him as well before they realized
10 that he was just calming the situation.

11 Q. Okay.

12 A. And at that time they took -- they took
13 the gun that he had recovered.

14 Q. And when the police arrived, had you
15 taken the gun from Jeff to clear it?

16 A. No, sir.

17 Q. So the gun that was taken from the
18 Defendant was given to the officers at that time?

19 A. That's correct.

20 Q. And were you present when the officers
21 handcuffed and detained the Defendant?

22 A. I was.

23 Q. And were you present when they
24 recovered any of the property belonging to you from
25 him?

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 A. I was. I was -- they had us separated
2 probably six to eight feet. That's when she was --
3 she was checking his pockets, and she removed my
4 wallet with my hunter safety course card in it; and
5 the pictures of my two blond-hair, blue-eyed, white
6 children; and one of my wife's engagement rings
7 which we provided, you know, the appraisal with the
8 pictures of it and the custom edging inside from
9 his pockets.

10 Q. Okay. And did they keep you out there
11 for a while?

12 A. Yes, sir, four hours.

13 Q. Okay. And did you eventually get back
14 into the house to walk them through and tell them
15 what was disturbed and what wasn't disturbed?

16 A. I did, yes, sir.

17 Q. I'm going to show you what was
18 previously marked for identification as State's
19 Exhibit 1. Are you familiar with the area
20 contained in that?

21 A. I am.

22 Q. And does it fairly and accurately
23 depict the layout of your neighborhood?

24 A. It does.

25 MR. ALFARO: At this time, we would

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 like to admit State's Exhibit 1 into evidence.

2 THE COURT: Any objection?

3 MR. CHURCH: No objection.

4 THE COURT: All right. It's
5 in.

6 (STATE'S EXH. 1 in evidence.)

7 BY MR. ALFARO:

8 Q. I'm going to show you State's Exhibit
9 1. I will give you a laser pointer if you want to
10 turn around. If you can, show us where your house
11 is on that map.

12 A. My house is right here, [REDACTED].

13 (Indicating)

14 Q. Okay. And you're [REDACTED] Pointer?

15 A. Yes, sir, right here. (Indicating)

16 Q. And the one that's marked with [REDACTED],
17 whose house is that?

18 A. This is Jeff's house, my neighbor.

19 Q. And so I will hold the pointer for a
20 second. That line there (indicating), is that --

21 A. That's my back fence, the back fence.

22 Q. And so your backyard backs up to the
23 side of Jeff's?

24 A. Yes, sir.

25 Q. And is this the entrance into your --

1 A. Yes, sir. That's all the way down
2 here.

3 Q. And if you can show with this pointer,
4 just kind of point out where your back door is on
5 your house and where you went over the fence with
6 Mr. Freeman.

7 A. All right. Right here on the back
8 corner of the house, this is the back office door.
9 Right here is a concrete pad where the lawn chair
10 was. (Indicating) And this yellow has kind of got
11 it -- that's the double gate right here.
12 (Indicating) That area right there is where all
13 the altercation took place.

14 Q. Okay. And can you point with that
15 pointer where the area is outside of your fence
16 where you detained him until the cops got there?

17 A. Right at the bottom where that yellow
18 line and the sidewalk meet right there.
19 (Indicating)

20 Q. Okay. All right. You can keep that.
21 I will show you a few more pictures if you want to
22 turn back around for a second.

23 A. Yes, sir.

24 Q. I'm going to show you State's Exhibit 2
25 through 25 and ask you to kind of go through that

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 stack and take a look. Once you've had a chance to
2 look at all of those, I'm going to ask you a couple
3 of more questions.

4 A. Okay. Do I need to remember the
5 numbers --

6 Q. No. No. Just -- all I want you to do
7 is look through the stack and I will ask you some
8 questions.

9 A. Okay.

10 Q. You can put them right back up there.
11 Try to keep them in the same order.

12 A. Yes, sir.

13 Q. Now that you've had an opportunity to
14 review State's Exhibits 2 through 25 for
15 identification, do each the photographs fairly and
16 accurately depict your home the night of October 3,
17 2015?

18 A. Yes, sir.

19 MR. ALFARO: Your Honor, at this time
20 we would ask that State's Exhibits 2 through 25 be
21 admitted into evidence.

22 THE COURT: Any objection?

23 MR. CHURCH: No objection.

24 THE COURT: They're in.

25 (STATE'S EXH. 2 - 25 in evidence.)

1 BY MR. ALFARO:

2 Q. We'll start with State's Exhibit 2.

3 Again, these will be on the screen behind you.

4 Some of these aren't super clear, but -- with the
5 pointer what part of your house is that?

6 A. That is my front porch.

7 Q. State's Exhibit 3?

8 A. All right. That's my front entryway
9 into my house, the porch into the living room.

10 Q. You're probably going to have to turn a
11 little sideways so you can talk into the
12 microphone. Maybe go the other way so you can
13 still look at it and talk into the microphone. She
14 has to write down everything you say.

15 A. That's the front doorway into my living
16 room, my front entryway.

17 Q. And that's the door you came in that
18 night when you came home?

19 A. That's correct.

20 Q. And State's Exhibit 4.

21 A. That is the exit of my living room into
22 the office area.

23 Q. And so in relationship to the picture
24 we just saw, State's Exhibit 2, your front door --
25 if you were standing in the front door, that's what

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 you see?

2 A. That's correct.

3 Q. And during your testimony earlier, you
4 said that as he was backing out of your living room
5 into your office, he stumbled over a -- I think you
6 called it a threshold?

7 A. Yes.

8 Q. Can you show us what that is?

9 A. Right here. (Indicating) That's my
10 hat where I first grabbed him.

11 Q. So the threshold, is that like a --
12 what's that made out of?

13 A. It's a hardwood threshold, from tile to
14 hardwood.

15 Q. Like a frame for that?

16 A. Yeah.

17 Q. Okay. And State's Exhibit 5?

18 A. That is -- the bottom would be the
19 threshold, and that's the office out the back --
20 out the back door.

21 Q. And that's the area you chased him
22 through?

23 A. That's correct. That's the area where
24 I had hold of him at first.

25 Q. Okay. All right. You said you had an

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 opportunity to go through the house with the police
2 later.

3 A. Yes.

4 Q. Are they the ones that took these
5 pictures we're talking about?

6 A. They are.

7 Q. And I will try to walk you through
8 these in some order. State's Exhibit 8.

9 A. That would be my oldest's bedroom, her
10 jewelry box and piggie bank.

11 Q. Is that normally the position the
12 piggie bank is left in?

13 A. No, sir. Nor the two jewelry boxes,
14 nor the bag on the dresser.

15 Q. And State's Exhibit 9?

16 A. That's -- that's where the jewelry box
17 was pulled out and the drawers rummaged through.

18 Q. Those drawers there, do they normally
19 go in that?

20 A. Yes, sir.

21 Q. Now, State's Exhibit 11.

22 A. That would be my dresser and my jewelry
23 box in the middle and my wife's jewelry box to the
24 left.

25 Q. Would that be what is commonly called

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 the master bedroom?

2 A. Yes, sir.

3 Q. And that drawer in the center, what is
4 normally kept in there?

5 A. That's where my wallet -- the wallet
6 that has my hunter safety course card and bank
7 cards, things you don't use in your everyday
8 wallet.

9 Q. Do you carry some other type of wallet
10 or something for every day?

11 A. I do. I carry a money clip and a
12 credit card and driver's license. And then there
13 also were some M&M's in that drawer, and they are
14 identifying because they have -- they're from
15 overseas. The writing on the back of them is
16 overseas writing.

17 Q. Are those normally kept in that same
18 drawer?

19 A. That's correct. The red box there is
20 where --

21 Q. If you can point to it with the pointer
22 so the jury knows what you're talking about.

23 A. This is the box that the ring -- the
24 custom engagement ring and engagement ring was in.

25 Q. And State's Exhibit 13?

1 A. That's -- that's my wife's jewelry box.
2 This is where all of her other rings, gold -- this
3 is where, you know, an expensive, like a Michael
4 Kors watch, is located usually. You know, her
5 earrings and necklaces are also in here.

6 Q. And State's Exhibit 15?

7 A. That's one of the -- this is one of the
8 drawers from the box that just -- that's one of her
9 play jewelry, earrings and stuff.

10 Q. That's still in the master bedroom?

11 A. Yes, sir. That is directly -- that's
12 four foot behind the last picture.

13 Q. And State's Exhibit 16?

14 A. That's standing in the doorway to my
15 bedroom looking into it. This is my underwear
16 drawer where the jar of change sits there, and it's
17 also where one of the pistols that was recovered
18 was located right here in this drawer.

19 (Indicating)

20 Q. It was normally kept in that drawer
21 or --

22 A. Yes, sir. I keep it right next to
23 where I sleep right there.

24 Q. But when you came back in, it wasn't in
25 that drawer; is that correct?

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 A. No, sir. When we came back in the
2 house, that's how the room was.

3 Q. Okay. And State's Exhibit 18?

4 A. This is in my office. It has four
5 windows. This is the middle window on the side
6 that has three of them. This will be the back door
7 to the office right here. (Indicating) And this
8 is a window and this is a window and this is the
9 middle window. (Indicating)

10 Q. And was that window in that condition
11 when you first left the house that evening?

12 A. No, sir.

13 Q. And that window, so we're clear, is
14 that located in the same office that you said you
15 chased the defendant through?

16 A. It is, yes, sir.

17 Q. And on State's Exhibit 20, is that --
18 what room is that?

19 A. This is in the office. This is the
20 window that was broken. And this is a bench that
21 sits underneath it and there was -- this is -- this
22 is the bedding that the oldest pit bull would have
23 been laying on.

24 Q. What's this on the --

25 A. That's the broken glass from the

1 window.

2 Q. Okay. Now, State's Exhibit 21.

3 A. That is --

4 Q. Let me kind of walk you through this
5 picture. There are a few things I want to make
6 sure that we're clear on what you're talking about.
7 This item here, what is that? (Indicating)

8 A. That is the wallet that was located in
9 my dresser, in the middle drawer.

10 Q. Now, again, just so we're clear for the
11 jury, you say located in, does that mean that's
12 where it's normally kept?

13 A. Yes, sir; it stays there.

14 Q. That night where was it actually
15 recovered?

16 A. It was taken out of Mr. Freeman's pants
17 pocket.

18 Q. Okay. And these items there, what is
19 that?

20 A. This right here is the engagement ring.
21 This is the jewelry that came from the collection
22 from my house. This is the pistol that is kept in
23 that -- in the -- in the underwear drawer. This is
24 -- it's my confirmation pendent and tie clips.
25 This is the M and Ms here. If you zoom in on that,

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 you can see all the writing is from Europe. I
2 don't know what the description is there, but --

3 Q. Let's talk about the gray box. You
4 said that was confirmation pins?

5 A. Yes, sir.

6 Q. Where was that normally kept?

7 A. That was kept right next to the wallet
8 in the middle drawer, in the top of the dresser.

9 Q. And was that also recovered from the
10 defendant that night?

11 A. It was.

12 Q. And you said this pistol is normally
13 kept where?

14 A. That's the one that sits in the -- in
15 my underwear drawer, the drawer that was on the
16 floor underneath the jewelry boxes.

17 Q. And on State's Exhibit 22. Is that the
18 same pistol that we just talked about, or is that a
19 different pistol?

20 A. That is the same one.

21 Q. Okay. Are those -- the M & Ms you're
22 talking about --

23 A. You can see the writing up there on the
24 left-hand side of that.

25 Q. Okay. Probably not going to be able to

1 zoom in here, but they'll have the picture back in
2 the jury room.

3 A. You can see on the top of the M&M
4 packet there where the writing is.

5 Q. Okay. So those are the pictures that
6 they took the night of the -- you can turn around
7 now, I'm sorry.

8 A. Yes, sir.

9 Q. That property that we showed you, the
10 gun -- the guns and the wallet and the jewelry, was
11 that all returned to you that night?

12 A. Yes, sir.

13 Q. And you mentioned at some point that he
14 had taken a bag of some other stuff from your house
15 in addition to those items. Were you -- did they
16 show you that bag or show you what was in it?

17 A. They did.

18 Q. And what do you recall being in that
19 bag?

20 A. That bag -- like he was going grocery
21 shopping. It had a ham in there, Coca-Cola in
22 there. It had my gray pistol that was kept on top
23 of the refrigerator where the other items come
24 from.

25 Q. So how many refrigerators do you have

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 in your house?

2 A. There is two.

3 Q. So one pistol -- the pistol -- or the
4 refrigerator that you said the pistol was kept on
5 top of, where is that located in the house?

6 A. That one is in my kitchen area and
7 that's where the ham was. We were hosting dinner
8 that next night, so there was a ham thawing out.

9 Q. And your other refrigerator, where is
10 that?

11 A. It's in the garage.

12 Q. And were any of the items that were
13 taken and recovered that night removed from that
14 refrigerator?

15 A. There was. There was -- that's where
16 all the sodas and the soft drinks and all that
17 stuff are kept in there.

18 Q. Okay. State's Exhibit 7. Turn around
19 real quick.

20 A. Yes, sir.

21 Q. Is that your -- which refrigerator is
22 that?

23 A. The one right there with the USA stamp
24 saying, United, that is in the garage.

25 Q. That's where the soda was kept?

1 A. That's correct.

2 Q. Now, after that night, did the police
3 come back to your house after that to take some
4 more pictures?

5 A. They did. They returned the next
6 morning. It was -- I think it was 1:00 or so in
7 the morning before they cleared it. And then they
8 thought there was a second subject, so we had to
9 wait for the fire department or -- they put a gas
10 leak into the rest of the house to clear anybody
11 out if anybody else was in there. So this was late
12 when they came back.

13 Q. I'm going to show you what was marked
14 as State's Exhibits 26 through 33. You can take a
15 look at those exhibits and then I will ask you some
16 questions about those as well.

17 Do you recognize what is in the
18 photographs?

19 A. Yes.

20 Q. Do they each fairly and accurately
21 depict what your house looked like the next day
22 when the police arrived to take more picture?

23 A. It's early in the morning. You can see
24 the lighting there.

25 MR. ALFARO: At this time, Your Honor,

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 the State would ask that State's Exhibits 26
2 through 33 be admitted into evidence.

3 THE COURT: Any objection?

4 MR. CHURCH: No objection.

5 THE COURT: All right. They're
6 in.

7 (STATE'S EXH. 26 - 33 in evidence.)

8 BY MR. ALFARO:

9 Q. Start with State's Exhibit 26. Is that
10 the replacement for the broken window?

11 A. That is. That's the broken one. That
12 next morning, the broken one in the trash can, and
13 that's a new window.

14 Q. Okay. And that -- do you have the
15 pointer?

16 A. No.

17 Q. I took it from you.

18 Is that the same white cushion that had
19 the glass on top of it?

20 A. It is.

21 Q. And State's Exhibit 30. What -- do you
22 recognize what that is?

23 A. That is the jacket that Mr. Freeman was
24 wearing when we went through the back door. That's
25 what I had in my hand as we hit -- exited the door.

1 Q. And how did you end up in possession of
2 it?

3 A. Like I said, in the struggle, when we
4 went through the -- talking about when I first
5 grabbed it or when it was in the threshold piece?

6 Q. Maybe let me ask it this way. He was
7 wearing it when you --

8 A. When I grabbed --

9 Q. Let me finish -- we can't talk at the
10 same time because she has to type that down and
11 it's just going to be a bunch of garble if we do
12 that.

13 He was wearing -- you grabbed hold of
14 that jacket on the defendant at some point in your
15 house?

16 A. Yes, sir.

17 Q. Okay. And at some point, did the
18 jacket come off?

19 A. It did. As we exited the house, that's
20 where I had it connected to, it was on his
21 shoulder. So as we fell, it come off of one arm
22 and he pulled his other arm out of it.

23 Q. In that picture, it looks like it's
24 hanging on a -- looks like a boat trailer kind of
25 thing. Is that what that is?

JEREMIAH KULAS - DIRECT EXAM BY MR. ALFARO

1 A. It is.

2 Q. Did you hang it there or did it -- how
3 did it end up hanging on that spot?

4 A. That's where the police put it to take
5 a picture of it.

6 Q. Okay. So it wasn't in that position
7 all night?

8 A. No, sir. No, sir. That boat
9 trailer -- my boat is 42 feet, from the tail to the
10 tip. So the trailer is actually right about where
11 my back porch is. So they just put it up there so
12 they could get a good picture of it because in the
13 rain and the mud you could barely see it.

14 Q. Now, in your course of trying to stop
15 Mr. Freeman from getting out of your house and
16 trying to hold him down until the cops got there,
17 did you suffer any injuries?

18 A. I did. I broke my right arm in
19 multiple places, arm, hand, and finger.

20 Q. Did you have to go to the hospital?

21 A. I did.

22 Q. And I show you State's Exhibit 31. Is
23 that you?

24 A. That's correct.

25 Q. And that's the injury you were talking

1 about with your arm?

2 A. Yes, sir.

3 Q. Is that a splint or cast?

4 A. It's a hard cast underneath it.

5 Q. How long did you have to wear that?

6 A. Four weeks.

7 Q. All right. Just a couple more things,

8 Mr. Kulas. I want to talk to you about the dogs

9 again. Were the dogs still in your house when you
10 got home?

11 A. Yes, sir.

12 Q. Where was the oldest one?

13 A. The oldest one, as soon as we opened
14 the front door, she come bolting out. And that was
15 -- that's initially what made my wife jump back.

16 She was like, how did she get out of the office?

17 Q. So she didn't follow you out into the
18 back yard?

19 A. No, sir. I think she was protecting me
20 with my girls.

21 Q. Okay. But not by following you out
22 there to help you?

23 A. No. No.

24 Q. Where was the little one?

25 A. He was locked in his kennel.

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 Q. Okay. And one more thing, Mr. Kulas.

2 MR. ALFARO: Actually, I don't have any
3 more. Answer any questions that the defense has
4 for you.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. CHURCH:

8 Q. Mr. Kulas?

9 A. Kulas, yes, sir.

10 Q. How old are you?

11 A. I'm 33.

12 Q. And do you work out, practice martial
13 arts, go to the gym?

14 A. I do. I did. I haven't, up until
15 about two and a half years ago.

16 Q. What was that that you did?

17 A. Brazilian jujitsu, kickboxing.

18 Q. Have you ever seen Mr. Freeman before?

19 A. At my house that night.

20 Q. Any other time?

21 A. No, sir.

22 Q. Never seen him?

23 A. Just at the bond hearing.

24 Q. Never seen him walking down the street
25 in your neighborhood?

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 A. No, sir.

2 Q. You've seen other people walking down
3 the streets and sidewalks?

4 A. Yes, sir. I'm the seventh house, so I
5 know everybody in the neighborhood.

6 Q. There were some people out walking
7 around this night, weren't there?

8 A. No, sir.

9 Q. You didn't see anybody else during the
10 time that the police were there during all of those
11 hours? Nobody else walked by?

12 A. When I got home, you couldn't see -- I
13 mean, there was -- it was raining buckets. At the
14 end of my driveway, the police were squatting in a
15 foot and a half of water.

16 Q. Okay. So it was raining so hard you
17 couldn't really see?

18 A. You couldn't see outside, no, sir.

19 Q. Okay. And then that's what it was like
20 when you returned home?

21 A. Yes, sir.

22 Q. What was the lighting in your house
23 like when you opened the door?

24 A. There was a -- like I said, you could
25 see. Every time the lightning would strike, it was

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 very visible. There are a lot of windows in my
2 house.

3 Q. But only when the lightning was
4 striking?

5 A. Yes, sir. And there was a tropical
6 storm, so it was striking pretty regularly.

7 Q. So the power was still off?

8 A. Yes, sir.

9 Q. And the person that was in your house,
10 they were wearing a jacket?

11 A. That blue jacket, yes, sir.

12 Q. So it was a blue jacket?

13 A. Yes, sir.

14 Q. Okay. And you chased this person out
15 of the house?

16 A. I tackled the person out of the house,
17 yes, sir.

18 Q. Well, you left the house after this
19 person left?

20 A. I left the house with the person in my
21 possession, yes, sir.

22 Q. Okay.

23 A. I didn't follow him. I had hold of
24 him.

25 Q. The whole time?

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 A. Before we left the house, yes, sir.

2 Q. You didn't put any of that in your
3 statement though, did you?

4 A. Yes, sir. I said, I advanced him and
5 then I caught him at the fence.

6 Q. Right. Well, that's totally different
7 from what you're saying now. You're saying you had
8 a hold of him and basically he drug you, the person
9 who practiced Brazilian jujitsu? He drug you out
10 of the house and to the fence?

11 A. No, sir. As I grabbed him -- you know,
12 I'm 210 pounds. So as myself and another body was
13 moving at a -- you know, call it a sprint, we
14 naturally moved to the back door at a pretty good
15 pace falling to the ground.

16 Q. And he came out of his jacket?

17 A. That's correct.

18 Q. And you believed that the person had a
19 gun?

20 A. He had a gun.

21 Q. And you left your wife and your
22 four-year-old daughter alone in the dark house
23 while you were doing this?

24 A. No, sir. I had pushed them behind me.

25 Q. In the house?

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 A. No, sir. They were back on the front
2 porch. They were at the doorway. As we opened the
3 front door, that's when he came around the corner.
4 So we were at the doorway at the front of the
5 house, at the threshold to the front of the house.

6 Q. And you left them there to chase this
7 person out the back?

8 A. Yes, sir.

9 Q. And you didn't know whether there might
10 have been anybody else in there?

11 A. He said, we've got your guns. And it
12 didn't occur to me at that time what the word, we,
13 meant. That there was possibly somebody else in
14 the house.

15 Q. Okay. So you chased the person with
16 the gun in the dark even though the person said,
17 we?

18 A. Yes, sir.

19 Q. And left your wife and your daughter on
20 the front porch?

21 A. Yes, sir.

22 Q. And you got your hands on this person,
23 but you couldn't hold him there the first time you
24 got hold of him?

25 A. When we went out -- like I said, as I

1 grabbed him, we -- and we exit -- when we went out
2 of the house, there's another step down, so we both
3 hit the ground. So, naturally, you know, unless
4 you're coddled to somebody, you know, you don't
5 have a firm grip on them. So I had a hold of the
6 jacket and one arm was still in and then he pulled
7 that arm out of it.

8 Q. As he was on the ground?

9 A. As he was coming up off the ground on
10 the back patio.

11 Q. And you said you used to practice
12 Brazilian jujitsu?

13 A. Yes, sir.

14 Q. Isn't that a grappling ground sort of
15 martial arts?

16 A. It is.

17 Q. And you were not able to secure him to
18 the ground at that point?

19 A. That is -- as I've already said.

20 Q. And I think you testified before that
21 the privacy fence was approximately six feet tall?

22 A. Yes, sir.

23 Q. Maybe seven feet on the other side?

24 A. That's correct.

25 Q. And is the gate locked?

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 A. It is locked.

2 Q. And he was able to get up to the top of
3 the fence without you stopping him?

4 A. When we hit the ground and he turned
5 around, he pointed a gun at me. Like I said, at
6 that point there at the other end of the gun that I
7 recognized as mine, and I know it's loaded -- so at
8 that point there, he advanced towards the fence
9 still holding the gun. So when he turned his head
10 again, that's when I grabbed him the second time.

11 Like I said, it's probably no more than
12 eight -- eight foot from the corner of my back
13 porch to the fence.

14 Q. Okay. And this was in the dark and in
15 the pouring rain?

16 A. Yes, sir.

17 Q. And you can't see through the fence,
18 can you?

19 A. What's that?

20 Q. The privacy fence, it's a solid --

21 A. Right. It has, you know, the half-inch
22 gaps.

23 Q. You can't see anything on the other
24 side?

25 A. Unless you're peaking through one of

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 the cracks.

2 Q. And you weren't doing that?

3 A. No, sir.

4 Q. You were worried that the person had a
5 gun?

6 A. He was still in the yard, so I knew he
7 had a gun.

8 Q. Okay. And so then I think you
9 testified that he got to the top and you grabbed
10 hold of him, and when he fell that was enough
11 weight to yank you out of the back yard a little
12 bit?

13 A. That's correct. As he went to get to
14 the top, that's when I lunged at the fence and
15 grabbed hold of him. And as his body weight fell
16 over, naturally, I went over with it.

17 Q. And you weren't afraid of getting shot?

18 A. I didn't think about that then.

19 Q. But at some point you were hiding
20 behind a chair, weren't you?

21 A. That's when he went to grab the fence,
22 and I had hit him with the chair. That's when I
23 picked up the chair, yes, sir.

24 Q. And before that, you were hiding?

25 A. No. At that time, when he finally got

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 over the fence, two seconds before that is when he
2 grabbed the fence the first time and I struck him
3 with the chair. When he fell off the fence and he
4 pointed the gun at me the second time, I took a
5 step back. And the chair is sitting right next to
6 him on the ground, so I'm on the other side of the
7 chair, yes, sir.

8 Q. Okay.

9 A. It's a vinyl strap chair, and you can
10 see it clearly.

11 Q. And at some point you were holding the
12 chair up and advancing towards him with the chair?

13 A. I don't understand the question. Which
14 point are you talking about?

15 Q. At any time in the backyard.

16 A. I grabbed the chair as soon as we
17 exited the back -- as soon as when we went to get
18 up off the ground in the backyard, the chair was
19 sitting next to him when he turned for the fence, I
20 grabbed the chair.

21 Q. Okay. Would it be fair to say that you
22 were under duress and a lot of stress during all of
23 this?

24 A. Are you talking about at home or just
25 in the altercation?

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 Q. In the altercation.

2 A. Naturally.

3 Q. Okay. And so your sense of time might
4 not be completely accurate?

5 A. Probably not, no, sir.

6 Q. Okay. You stated that when you fell
7 over the fence and landed on the ground, that's
8 where you-all started fighting?

9 A. That's correct.

10 Q. When the police showed up, you were
11 down by the sidewalk in front of your neighbor's
12 house, weren't you?

13 A. My neighbor's house is at the bottom of
14 that -- that is on the, like I said, a 30-degree
15 driveway right there that's probably ten foot long.
16 When we landed on the driveway, naturally we
17 rolled. The driveway runs into the sidewalk.

18 Q. For how far?

19 A. About ten feet. From the fence to the
20 driveway, about ten feet.

21 Q. Okay. So right now you're telling this
22 jury that you and him rolled over and over and --

23 A. On a 30-degree grade, yes, sir.

24 Q. To the point where you ended up?

25 A. On the sidewalk, yes, sir.

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 Q. Down in front of your neighbor's house?

2 A. Not down the sidewalk. We rolled down
3 my driveway at least into my back yard.

4 Q. Right. And then you were roughly by
5 your neighbor's mailbox?

6 A. Correct.

7 Q. Down by the road?

8 A. Yes, sir, on the sidewalk which runs
9 parallel to the road.

10 Q. Did you have your chair with you during
11 all this time?

12 A. It was right there -- right there at
13 the fence.

14 Q. And did it end up down there by you by
15 the road?

16 A. I don't recall.

17 Q. You don't recall if you took it down
18 there or not?

19 A. I don't remember. I know it was -- I
20 don't recall where it was at that point.

21 Q. Okay. Would it surprise you if you
22 found out it was down there by the road?

23 A. No. Because, like I said, we were just
24 -- everything -- like I said, you hit somebody with
25 the chair, the chair flies.

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 Q. So the chair rolled with you-all, all
2 the way down the driveway, made little bit of turn
3 in front of your neighbor's house --

4 A. We didn't turn. The mailbox is in
5 front of that driveway.

6 Q. It's not in front of the driveway
7 because it would block the driveway, right?

8 A. Well, there's a picture if you would
9 like to look at it.

10 Q. Okay. The State can show that if they
11 want to.

12 Just to be clear, you rolled from the
13 fence over and over and over with the chair until
14 you got to this point?

15 A. Yes, sir.

16 Q. Okay. And did you give the gun to the
17 police?

18 A. No, sir.

19 Q. Who gave the gun to the police?

20 A. Jeff.

21 Q. Okay. And they put you in handcuffs,
22 too?

23 A. They detained both of us, yes, sir.

24 Q. And they had you --

25 A. They immediately separated us as soon

JEREMIAH KULAS - CROSS EXAM BY MR. CHURCH

1 as they pulled up. They -- they immediately --
2 they had me in handcuffs on the front of the police
3 car at first, and then they told me to go to his
4 porch.

5 Q. And at some point they made you lean
6 over the police car with your hands on the car?

7 A. That's correct. As soon as we first --
8 yes. That's when they first came up and separated
9 us.

10 Q. Okay. And the broken window in the
11 house, there's a door right near the window, isn't
12 there? Just a foot or two away?

13 A. About four feet to the right, yes, sir.

14 Q. And the door has a lot of glass and the
15 center part is glass, right?

16 A. That's correct.

17 Q. Okay. And they showed a picture -- the
18 State showed a picture a few minutes ago of a gun,
19 some M&Ms, a jewelry box and all that. Is it your
20 contention that all of that property was worth
21 about \$11,000?

22 A. The single engagement ring by itself,
23 the appraisal is \$11,000.

24 Q. Do you have that written down anywhere?

25 A. Yes, sir; the police took a copy of the

1 appraisal.

2 Q. Okay. And talking about the police,
3 the jacket -- they moved the jacket to take a
4 picture of it?

5 A. They took a picture of it on the ground
6 and then they -- where it laid, and then they put
7 it up there because it was laying in the -- it had
8 been raining, you know, so it was laying in the
9 water, to take a better picture of it. But they
10 had a picture of it on the ground, yes, sir. And
11 then they hung it on the front of the boat to get
12 it stretched out.

13 MR. CHURCH: Court's indulgence?

14 THE COURT: Yes, sir.

15 BY MR. CHURCH:

16 Q. When did you tell the police about
17 taking the jacket off of him?

18 A. At which point?

19 Q. Yeah.

20 A. When I was talking to them.

21 Q. Okay. But when? I mean, you talked to
22 them that night and then during the next week you
23 talked to the police?

24 A. Oh, they came back the next -- we
25 talked about it that night and the next morning.

JEREMIAH KULAS - REDIRECT EXAM BY MR. ALFARO

1 Q. So you told them that night --

2 A. Yes.

3 Q. -- that was the jacket that the person
4 was wearing?

5 A. Yes, sir.

6 Q. The blue jacket?

7 A. That's correct.

8 MR. CHURCH: Okay. No further
9 questions.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION

12 BY MR. ALFARO:

13 Q. Mr. Kulas, you were asked about your
14 Brazilian jujitsu background, the training?

15 A. Yes, sir.

16 Q. How long did you do that?

17 A. For eight years.

18 Q. During the course of that eight years,
19 did you ever do any sparring or actual training?

20 A. Yes, sir.

21 Q. In those eight years, did you ever go
22 outside and do it in the middle of a pouring rain
23 storm at night?

24 A. No, sir.

25 Q. You were also asked if you were under

1 duress or stress during this time. And I believe
2 you said yes; is that correct?

3 A. Yes, sir.

4 Q. And you conceded that your remembrance
5 of some details or some time might not be exact,
6 right?

7 A. That is correct, yes, sir.

8 Q. Just so we're clear for the jury, when
9 he was in your house, when the defendant was in
10 your house with you, did you ever lose sight of
11 him?

12 A. No, sir.

13 Q. How far would you say was the farthest
14 he got away from you while in your house?

15 A. Once I first grabbed him for the first
16 time inside the house, when we hit the back porch,
17 we may have separated three foot, you know. When
18 we exited and went down that step, he fell. He
19 fell probably three foot to the side of me.

20 Q. And when you both made it outside
21 through your office back door into the yard, the
22 farthest he got was to your gate at first, right?

23 A. Yes, sir. As he -- when he got up off
24 the ground, you know, and he turned around and
25 showed the gun the first time, I grabbed the chair.

JEREMIAH KULAS - REDIRECT EXAM BY MR. ALFARO

1 That's when he turned around and grabbed the fence.

2 It's no more than eight foot from that porch line

3 to that fence.

4 Q. Okay. How close were you to him would

5 you estimate when you saw the gun before he went

6 over the fence?

7 A. The width of a lawn chair, two and a

8 half, three foot.

9 Q. And was your testimony that as you --

10 as he went over the fence, you grabbed hold of him

11 -- you were in contact with him when he went over

12 the fence?

13 A. That's correct.

14 Q. And you went over the fence

15 simultaneously?

16 A. Yes, sir.

17 Q. And Mr. Church asked you if you -- when

18 you hit, you went down the -- I think you said

19 30-degree --

20 A. I'm not exactly sure, but it's a steep

21 grade. The yard -- the yard lifts about five and a

22 half foot. From the roadway to the sidewalk is

23 three. So from three plus to the ten foot, so

24 13 foot the yard banks. So it's a steep grade.

25 Q. So after you both go over the fence and

JEREMIAH KULAS - REDIRECT EXAM BY MR. ALFARO

1 you land on him and then there's some rolling, did
2 you ever lose touch of him or contact with him from
3 the time you went over the fence?

4 A. No, sir. I had a definite grip on the
5 arm with the gun.

6 Q. And you maintained contact with him
7 until the police arrived; is that correct?

8 A. That's correct, yes, sir.

9 Q. And the same person that the police
10 came and detained is the person that you had gone
11 over -- gone through the house and then over the
12 fence with; is that correct?

13 A. Yes, sir.

14 MR. ALFARO: No further questions.

15 THE COURT: You may step down, sir.

16 Thank you.

17 You may call your next witness.

18 MR. ALFARO: The State calls Jeffrey
19 Porter.

20 JEFFREY PORTER

21 being first duly sworn, testified as follows:

22 THE CLERK: Please state your full name
23 for the record and spell your last.

24 THE WITNESS: Jeffrey Porter,

25 P-O-R-T-E-R.

JEFFREY PORTER - DIRECT EXAM BY MR. ALFARO

1 THE COURT: Your witness.

2 MR. ALFARO: Thank you.

3 DIRECT EXAMINATION

4 BY MR. ALFARO:

5 Q. Mr. Porter, can you tell the jury where
6 you live?

7 A. [REDACTED] Ether Drive, Goose Creek, South
8 Carolina 29445.

9 Q. Okay. And what neighborhood is that
10 in?

11 A. It's right near Boulder Bluff.

12 Q. And is that in Berkeley County?

13 A. Yes, sir.

14 Q. How long have you lived there?

15 A. About eight years now.

16 Q. And do you know your neighbor, Jeremiah
17 Kulas?

18 A. At the time -- well, yes. Yes, I do.

19 Q. And where do you live in relation to
20 Mr. Kulas?

21 A. The side of my house is against the
22 back of his house; we're neighbors. So it's -- his
23 back yard fence is my side yard.

24 Q. I'm going to show you State's Exhibit
25 1. It's going to be on the screen behind you. You

1 can use that laser pointer, point to where your
2 house is.

3 A. That one right there. (Indicating)

4 Q. And your address is the Ether Drive
5 address?

6 A. Yes.

7 Q. And that is where Ether Drive is?

8 A. (Indicating)

9 Q. And Mr. Kulas lives where?

10 A. Right there. (Indicating)

11 Q. And so you're essentially next-door
12 neighbors?

13 A. Yes.

14 Q. And is your house one story or two
15 stories?

16 A. It's two stories.

17 Q. And were you living at that same
18 address on October 3, 2015?

19 A. Yes.

20 Q. And around 8:25 that night, did
21 anything unusual happen?

22 A. I sat down, I had just gotten back from
23 Walmart, and my neighbor was -- I heard some loud
24 yelling outside of my window.

25 Q. You had come -- recently come home from

1 Walmart?

2 A. Yes.

3 Q. What were you doing in your house?

4 A. I was changing out -- I was trying to
5 take the back off of a watch. I had just bought a
6 watch battery.

7 Q. Where were you at in your house?

8 A. I was in the family room over the
9 garage.

10 Q. And so over the garage. Obviously, the
11 second floor?

12 A. Yes.

13 Q. And from that room, are you able to see
14 any part of Mr. Kulas's house, or yard, or
15 property?

16 A. Yeah. I have an east-facing window
17 which overlooks his backyard. I can see -- looking
18 out that window, I can see from the corner of his
19 house over to -- well, he has a shed in the
20 backyard that kind of blocks on the other side, but
21 that's as far as I can see on that side.

22 Q. Where you were sitting in that window
23 faces his backyard?

24 A. Yeah.

25 Q. And you said you heard some yelling

1 going on?

2 A. Yeah, which is unusual. Normally, he's
3 a very quiet neighbor.

4 Q. And what did you do when you heard the
5 yelling?

6 A. Well, I was kind of curious. Not
7 normally hearing that coming from him, I was
8 looking in the backyard and thinking in my head,
9 all right, they're having a fight or something.

10 And so I just saw him in the backyard
11 and he was yelling at someone. I couldn't see the
12 other person. And so I was like, well, they'll
13 calm down. I went back to working on my watch.

14 Q. Okay. So when you first heard the
15 yelling, was it dark outside?

16 A. It was starting to turn dark.

17 Q. And so you went outside at that point?

18 A. No. I went outside -- I had gone up a
19 second time when the yelling didn't stop and looked
20 out the window. And I had seen my neighbor was
21 crouched behind a chair in his backyard that he had
22 on his patio. And I just -- I thought that was
23 unusual.

24 And then he was yelling and poking his
25 head out and yelling from behind the chair. And he

JEFFREY PORTER - DIRECT EXAM BY MR. ALFARO

1 threw the chair at the person that was off away
2 from him. I was like, oh, okay, something is
3 really going on. And then I went downstairs.

4 Q. And when you went downstairs, did you
5 go outside?

6 A. Yes, sir.

7 Q. And what did you see when you went
8 outside?

9 A. I walked out and walked between the
10 cars in my driveway and poked my head around the
11 corner. And it had started to rain. This is the
12 day that we had a lot, of lot of rain. And I poked
13 my head out from in between the cars and said, is
14 everything all right. And I saw two people
15 wrestling right by my mailbox.

16 Q. What happened then?

17 A. Well, as soon as I said, is everything
18 all right, I heard, he's got a gun. And so in my
19 head I was like, nobody is dying today. So I went
20 down there and I saw tangled arms, and I just
21 reached in in the tangle of arms, felt the gun, and
22 pulled it out.

23 Q. So you were able to get possession of
24 the gun?

25 A. Yes, sir.

1 Q. And had you called the police at this
2 point or at any point?

3 A. Not at that point. Once I pulled the
4 gun out, I tucked it up under my arm, which I kept
5 it there until the officers arrived. I kept it
6 tucked up under my arm, and I called 911 after that
7 and starting talking with the dispatcher.

8 Q. Okay. Did you stay on the phone with
9 the police until they got there?

10 A. I believe so, or I might have hung up
11 just right before.

12 Q. And after taking the gun and calling
13 police, did you stay there or go somewhere or walk
14 somewhere?

15 A. I was kind of pacing back and forth
16 alongside my truck that's there at the bottom of
17 the driveway. I was going back and forth. You
18 know, after my neighbor had wrestled the other
19 person to the ground and was kind of holding him
20 down kind of spread-eagle style, and at some point
21 while I was talking to the dispatcher, Jeremy let
22 me know that the person that he was holding down
23 told him that there's another person in the house.

24 And Jeremy wanted me to get his wife
25 and kid out of the house. And so I was like, all

JEFFREY PORTER - DIRECT EXAM BY MR. ALFARO

1 right. So I started going to the door and told the
2 dispatcher what I was doing, and they said, don't
3 go in the house. Absolutely, don't go in the
4 house. I walked all the way around to the front of
5 his house -- well, walked around the side of his
6 house to his front door and I thought about it;
7 well, the dispatcher knows something that I don't.

8 I stopped there and I walked back over
9 and stayed right by where Jeremy had the guy
10 pinned.

11 Q. So he was still pinned in the same
12 position?

13 A. Uh-huh.

14 Q. When the officers arrived, what
15 happened?

16 A. When the officers arrived, I grabbed
17 the gun out from under my arm and I made sure I was
18 holding it with my two fingers and it was pointed
19 down with the butt sticking out away from me. That
20 way they could -- you know, it was in full view.
21 It was pouring, so you can't hardly see. It's hard
22 to make out more than just the general shape of
23 things it's pouring so bad.

24 I wanted to make sure they knew where
25 the firearm was at the time. And as soon as the

JEFFREY PORTER - CROSS EXAM BY MR. CHURCH

1 cops got there, Jeremy got up and he grabbed -- he
2 grabbed the firearm, cleared it, and set it down,
3 and then the cops took the firearm at that point.

4 Q. So when you say, you were holding the
5 gun by two fingers, can you show the jury using
6 this piece of paper what you mean?

7 A. Like this, thumb and finger pointed
8 that way, barrel pointed down. (Indicating)

9 Q. Would you say you're comfortable or
10 uncomfortable with handguns?

11 A. I've been shot at before, so I'm not
12 very comfortable around guns.

13 Q. Okay. All right. So the gun that you
14 were able to get hold of while they were wrestling,
15 that's the gun that the cops took custody of that
16 night?

17 A. Yes.

18 MR. ALFARO: Thank you. Please answer
19 any questions that Mr. Church has.

20 THE COURT: Cross-examination?

21 MR. CHURCH: May it please the Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. CHURCH:

25 Q. Mr. Porter, where did you say you were

JEFFREY PORTER - CROSS EXAM BY MR. CHURCH

1 in your house?

2 A. I was in the family room over the
3 garage.

4 Q. And did you say it wasn't completely
5 dark?

6 A. No, because I could see Jeremy quite
7 clearly. And it wasn't completely dark, no.

8 Q. Okay. So you could see Jeremy quite
9 clearly, but you couldn't see anybody else, could
10 you?

11 A. There was -- no, I couldn't see who he
12 was yelling at or talking to.

13 Q. Okay. So it's possible that person was
14 on the other side of the fence at that time?

15 A. I don't know. Possibly.

16 Q. But if you could see Mr. Kulas clearly,
17 you would have seen anybody that was within
18 approximately eight feet of him, wouldn't you?

19 A. I don't -- I don't know. Just depends
20 on -- no. I probably wouldn't have seen much
21 past -- because I can't see much past his back
22 patio from my window. If they were eight feet
23 towards me, yes, but, off to the left it cuts off
24 pretty much where I was able to see him at.

25 Q. Okay. You got up and looked out the

1 window?

2 A. Yes, sir.

3 Q. And you couldn't see anybody else other
4 than Mr. Kulas?

5 A. No.

6 Q. And you said there was yelling and
7 whatnot going on?

8 A. Yes.

9 Q. And at first you thought it might be
10 some people getting into an argument and you sat
11 back down?

12 A. Right. I thought it was neighbors
13 having an argument between each other.

14 Q. Okay. But then the yelling got louder?

15 A. It just kept going. I don't know that
16 it was any louder.

17 Q. Could you hear anybody screaming for
18 help, or call 911?

19 A. No; it was just noise. We've got
20 pretty good insulation because the planes fly
21 overhead and we have a train about a half mile
22 away.

23 Q. And then you saw your neighbor holding
24 a chair and walking toward the gate?

25 A. He grabbed the chair and kind of flung

JEFFREY PORTER - CROSS EXAM BY MR. CHURCH

1 it. Didn't look like it flew very far though.

2 Q. And you gave a written statement to the
3 police, right?

4 A. Yes.

5 Q. Okay. And I'm going to -- I saw my
6 neighbor holding the chair and walking toward his
7 back gate. He was still yelling. Does that sound
8 familiar?

9 A. Yeah.

10 Q. Okay. And at this point was when he
11 throws the chair and runs toward the gate?

12 A. Yes.

13 Q. That's what your statement --

14 A. Yeah.

15 Q. At this point, my neighbor throws the
16 chair and runs at the back gate?

17 A. Yes.

18 Q. Okay. And then that's when you decided
19 to go downstairs to see what was going on?

20 A. Yes.

21 Q. And at no time up until this point have
22 you seen a second person?

23 A. Right.

24 Q. And you approached between two cars?

25 A. Yes.

JEFFREY PORTER - CROSS EXAM BY MR. CHURCH

1 Q. Okay. And you saw people on the
2 ground?

3 A. Not when I first walked up. When I
4 first walked up and poked my head around the
5 corner, they were standing up and wrestling. They
6 were wrapped around each other.

7 Q. They were standing up?

8 A. Yeah. Yes.

9 Q. Okay. They weren't rolling on the
10 ground?

11 A. No.

12 Q. Okay. And they were down kind of in
13 front of your house? Near his driveway, but in
14 front of your house by the mailbox?

15 A. They were -- yeah. They were about two
16 feet to the right of my mailbox.

17 Q. And you can't say for sure that the
18 person that was on the ground -- or was standing up
19 wrestling when you came down there was the person
20 that had been in the backyard or in his house?

21 A. I don't know.

22 Q. Okay. I mean, you can't say that?
23 That you saw them in either one of those places?

24 A. No, I can't.

25 Q. And then I believe the statement says

JEFFREY PORTER - CROSS EXAM BY MR. CHURCH

1 you took the gun from the pile of limbs --

2 A. Yeah.

3 Q. -- that was pressed on the ground?

4 A. Yeah. I could see where the arms were
5 and I stuck my hands in there and grabbed the metal
6 when I felt in there.

7 Q. But you can't say that you took it out
8 of Mr. Freeman's hand?

9 A. No.

10 Q. Okay. What did you do with the gun?

11 A. I tucked it up under my arm until the
12 police got there.

13 Q. And it was still pouring down rain?

14 A. Absolutely, pouring.

15 Q. And I think we went over this. It was
16 about this point when you called 911?

17 A. Yeah. Once I grabbed the gun, called
18 911 right after I --

19 Q. And you tried to get into the backyard
20 and the gate was locked, didn't you? At some
21 point?

22 A. Yeah, because he said to go into the
23 house. So I tried to get into the back gate, but I
24 couldn't move the gate.

25 Q. Okay. Who gave the gun to the police,

1 you or Mr. Kulas?

2 A. He grabbed the gun from me and he
3 cleared it and then set it down. The lady officer
4 took it at that point.

5 Q. She didn't take it from you?

6 A. No.

7 MR. CHURCH: Okay. Beg the Court's
8 indulgence?

9 No further questions.

10 THE COURT: Any redirect?

11 MR. ALFARO: No, Your Honor.

12 THE COURT: You may step down, sir.

13 Thank you.

14 Ladies and gentlemen of the jury, are
15 you okay or do you need a brief break?

16 THE FOREPERSON: We're good.

17 THE COURT: All right. You may call
18 your next witness.

19 MR. DENNIS: The State calls Officer
20 Ted Davis.

21 TED DAVIS,

22 being first duly sworn, testified as follows:

23 THE CLERK: Please state your full name
24 for the record and spell your last.

25 THE WITNESS: Ted Davis, and it's

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 D-A-V-I-S.

2 THE COURT: Your witness.

3 MR. DENNIS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. DENNIS:

6 Q. Afternoon, Officer Davis. Where are
7 you currently employed?

8 A. City of Goose Creek Police Department.

9 Q. How long have you been there?

10 A. I started there in 2006.

11 Q. What are your current responsibilities
12 with the City of Goose Creek?

13 A. Currently, I'm a patrol sergeant, which
14 is a team supervisor.

15 Q. And what does that involve?

16 A. Just involves management, personnel,
17 calls, and administrative duties.

18 Q. Were those your duties on October 3rd
19 of 2015?

20 A. No.

21 Q. Okay. What were your duties on that
22 day?

23 A. At that time, I was assigned to the
24 traffic team, which is a unit that deals with any
25 and everything involving the roadway, from

1 collisions to disabled vehicles, to any kind of
2 issues with the road.

3 Q. Okay. And while you were working that
4 night, did you have opportunity to be dispatched to
5 [REDACTED] Pointer Drive?

6 A. Yes.

7 Q. And what time was that?

8 A. It was around 8:30, I believe.

9 Q. Where is that address located?

10 A. In the -- I believe it's the Boulder
11 Bluff subdivision.

12 Q. What city?

13 A. Goose Creek.

14 Q. And what county?

15 A. Berkeley County.

16 MR. DENNIS: Your Honor, may I approach
17 the witness?

18 THE COURT: Yes, sir.

19 BY MR. DENNIS:

20 Q. Officer Davis, take a look at what I've
21 handed you. What is that?

22 A. This is a DVD containing the footage
23 from my in-car camera documenting my response to
24 the incident in question.

25 Q. Okay. And how do you know that?

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 A. Because I reviewed this specific DVD on
2 today's date verifying the content as such.

3 Q. Does that DVD fairly and accurately
4 depict the events of that night?

5 A. Yes, sir.

6 MR. DENNIS: Your Honor, may I approach
7 the witness again?

8 THE COURT: Yes, sir.

9 MR. DENNIS: Your Honor, at this time
10 the State would move to have what has been
11 premarked as State's Exhibit 35 admitted into
12 evidence.

13 THE COURT: Any objection?

14 MR. CHURCH: No objection.

15 THE COURT: It's in.

16 (STATE'S EXH. 35 in evidence.)

17 BY MR. DENNIS:

18 Q. Would you explain why you were sent to
19 that address that evening?

20 A. Sure. Like I previously stated, my
21 roles and duties typically were traffic related.
22 In instances where all of your patrol guys are tied
23 up on other things, I'm there to supplement and
24 respond to calls as needed.

25 This was one such case were we were

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 dispatched to this location of a report of a
2 burglary that just occurred and the homeowner had
3 fled -- I'm sorry, the homeowner had pursued the
4 burglar who was in his home. The burglar fled his
5 home, and the homeowner pursued him and was in an
6 altercation with the burglar just outside of the
7 residence.

8 MR. DENNIS: Your Honor, at this time
9 the State would move to publish this and play it
10 for the jury.

11 THE COURT: Yes, sir.

12 MR. DENNIS: Officer Davis, if you will
13 turn around, I'm going to play the recording.

14 (DVD played in open court.)

15 BY MR. DENNIS:

16 Q. Just briefly, what is this that we're
17 watching?

18 A. This is the footage from my in-car
19 camera system. The dash camera is mounted on the
20 inside of the windshield.

21 (DVD played.)

22 BY MR. DENNIS:

23 Q. Officer Davis, would you explain what
24 we just watched?

25 A. Sure. So, like I said, I was -- I

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 responded to the area of a report of a burglary in
2 the residence. The homeowner chased him out of the
3 home and was restraining him when I arrived on
4 scene.

5 So it's important for us when we arrive
6 first on scene to just settle everything. Make
7 sure that no additional crimes are committed. We
8 just want to secure everything and separate
9 everybody. So what you saw is, I went in, made
10 contact with the defendant and secured him in
11 handcuffs.

12 I told Mr. Kulas, the homeowner, to go
13 stand by my car while I did that. So after he was
14 secured, I could tell that the -- Mr. Kulas was --
15 he was upset, he was frantic about something. You
16 could see him in the video; he kept walking back,
17 looking around his house, hands on his head. He
18 was visibly upset.

19 So he explained to me he believed there
20 was another burglar in his home. So at that point
21 in time, I left Officer Taylor, the other officer
22 on scene, I turned the defendant over to her and
23 then I went to the residence to secure -- to
24 attempt to locate this second burglar.

25 Q. So that first initial approach we saw

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 on the video, who were the different people that
2 are in that frame basically?

3 A. Right. Yeah. So the guy you saw
4 laying on his back, the black guy, was Mr. Freeman,
5 Fred Freeman. The guy that was on top of him
6 holding him down was the homeowner, Mr. Jeremiah
7 Kulas.

8 And then there was another guy standing
9 off to the side, that was Mr. Porter. I don't know
10 his name. He was the neighbor, one of the people
11 that called police.

12 Q. And who else was with you that
13 responded at the same time that you did?

14 A. That will be Officer Wright. At the
15 time her name was Taylor. She's since been married
16 and her name is now Wright.

17 Q. So upon detaining the suspect, you then
18 left to go to the front of the house?

19 A. That's correct.

20 Q. Okay. Why did you do that again?

21 A. Well, I wanted to -- Mr. Kulas told me
22 his wife was still there and he believed that there
23 was another person inside his house. So I went to
24 the residence to tell his wife she needed to leave
25 the scene until we could make sure that everything

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 was safe.

2 So I actually sent her around the
3 corner to the church parking lot until such a time
4 that I could go in the house and clear it.

5 Q. How did you know that was his wife at
6 the front of the house?

7 A. She identified herself as such.

8 Q. Who was with her at that time?

9 A. You know, I don't remember.

10 Q. Okay. Did she follow your
11 instructions?

12 A. Yes.

13 Q. Now, once you were there at the house,
14 what did you do -- and after you instructed her to
15 leave the location, what did you do next?

16 A. Yeah. So when at all possible, we
17 always like to go into a residence, especially when
18 we're looking for potential suspects with no less
19 than two police officers. We didn't have that.

20 Like I said, the only reason I was
21 responding there is because all of the other
22 officers on the road were tied up on a whole
23 different incident. So it was myself and Officer
24 Wright who were available at the time, and now
25 she's tied up with Mr. Freeman over on the side of

1 the house, so it was just me.

2 We called down to the Berkeley County
3 Sheriff's Office to see if they could send us a
4 deputy to assist clearing the residence. They did.
5 They sent one over, and while I was waiting on that
6 deputy to arrive, I just maintained the front
7 perimeter of the house in the event that the
8 suspect were to come out.

9 Q. So you were positioned at the front of
10 the house?

11 A. Yes.

12 Q. Where was the other officer that -- and
13 where was she watching?

14 A. Officer Wright was also -- if you're
15 looking at the front of the house, Officer Wright
16 was behind and to the right side.

17 Q. And how long before another officer was
18 able to get to your location?

19 A. I don't think it was that long. I'm
20 not sure; maybe five to ten minutes.

21 Q. What did you do once you had the other
22 officer?

23 A. Once she arrived on scene, I kind of --
24 before she arrived on scene, I actually went and
25 spoke -- while I was waiting on the deputy, I spoke

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 to Mr. Kulas trying to figure out why he thought
2 somebody else was in the residence. After I spoke
3 to him and I got that information, I returned and
4 waited.

5 When the deputy arrived, I believe it
6 was Deputy Gist from Berkeley County Sheriff's
7 Office, we made entry into the house and we cleared
8 the house of any suspect. We didn't find anybody
9 in the residence.

10 There was only one area we weren't able
11 to clear and that was the attic. And the reason
12 that I didn't clear the attic was because the attic
13 door was down, which is kind of an unusual thing.
14 Most of the time the attic doors are up. This one
15 was down, which led me to believe maybe there was
16 somebody in the attic.

17 When I kind of looked up in there,
18 there were a lot of what we call points of likely
19 opposition, you know, places where people could be
20 hiding. It wasn't safe for me to go up there. It
21 was too much exposure.

22 So at that time, what I did, I called
23 our SWAT commander and told him everything we had,
24 what was going on, the information that was
25 available to me at this time. He decided to

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 activate the SWAT team.

2 SWAT team responded to the scene, and
3 we ended up going up and clearing the attic. There
4 was nobody in the attic and the scene was secured.

5 Q. Let's back up just a bit, when you and
6 Deputy Gist are in this house and you're clearing
7 it, what does that mean? What do you do?

8 A. Essentially -- so, you know, we'll
9 stick together and we'll clear room by room. So we
10 go in the front door and, I believe, if I remember
11 correctly, this residence opened up, and it was
12 like a little foyer and maybe -- I believe the
13 living room was directly ahead, and also to the
14 right was the kitchen and then their bedrooms off
15 to the left.

16 So we would start and we'd go in and we
17 just clear, you know, from the right. We go
18 through the kitchen, we come through the living
19 room, and we just clear room by room sticking
20 together and watching each other's back and making
21 sure that nobody is coming up behind us when the
22 other person is occupied when looking in a
23 particular area.

24 Q. And once you had determined that the
25 house was clear and checked the attic, what

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 happened next?

2 A. So once the house was clear, we checked
3 the attic, the -- Mr. Kulas had reported to me that
4 he had -- I believe he said three firearms in the
5 residence, and he told me what they were
6 specifically. Two of them were handguns, and I
7 believe one of them was a shotgun.

8 And so we searched the residence for
9 those firearms and we only found one shotgun. The
10 two handguns were missing from the residence. So
11 once the scene had been secured, we turned the
12 scene over to investigators. The investigative
13 team showed up. I believe it was Investigator
14 Riccio, if I remember correctly, who showed up to
15 process the crime scene and conduct his
16 investigation.

17 Q. Okay. Did you have the opportunity to
18 take any written statements while you were there?

19 A. I was -- I was there when the written
20 statements were done. I don't believe that I
21 collected the statements. I remember being there
22 while they were writing statements. I'm not sure
23 whether or not it was me who signed the form or
24 not.

25 I do remember being there when

TED DAVIS - DIRECT EXAM BY MR. DENNIS

1 Mr. Kulas and his wife were doing their statements.

2 Q. What other involvement did you have
3 with the case once you had cleared the house?

4 A. That was pretty much all I had.

5 MR. DENNIS: Just one moment, Your
6 Honor.

7 BY MR. DENNIS:

8 Q. Officer Davis, just a few brief
9 follow-up questions. We watched that video, and it
10 would seem to be dark in that video. Was that
11 video turned on immediately when you were
12 dispatched to the location?

13 A. You know, I don't know if it was or
14 not. The way our camera systems work is, when we
15 -- there are several different triggers to turn the
16 camera on. I can do it manually. I believe what
17 triggered this camera system to turn on is when I
18 turned my lights on to respond.

19 I think initially it was respond to
20 this burglary, and then we were told over the radio
21 that there was a gun involved and an altercation.
22 And that's when I decided to activate my lights and
23 sirens to get there, and I believe that's what
24 triggered it. So I don't believe that I activated
25 as soon as I received the call.

TED DAVIS - CROSS EXAM BY MR. CHURCH

1 Q. Was it dark when you arrived at the
2 location?

3 A. Yes.

4 Q. And was it dark on the way to the
5 location?

6 A. Yes, sir.

7 MR. DENNIS: Thank you. Your Honor, no
8 further questions.

9 THE COURT: Cross-examination?

10 MR. CHURCH: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. CHURCH:

14 Q. Officer Davis, I was looking at the
15 video, you probably remember, it was pouring down
16 rain that night?

17 A. Yes.

18 Q. Poor visibility?

19 A. Yes, sir.

20 Q. That was the thousand-year flood or
21 rain, or whatever --

22 A. Yeah. I believe that might have been
23 the first day of the rain we got from that big
24 flood.

25 Q. About two years ago?

TED DAVIS - CROSS EXAM BY MR. CHURCH

1 A. Yes, sir.

2 Q. Okay. And when you got there, they
3 were on the ground kind of in a dog pile, right?

4 A. Yes, sir.

5 Q. And you don't know what happened before
6 that point?

7 A. All I know is the information that was
8 given to me by our dispatchers.

9 Q. Right. But you have no personal
10 knowledge of who might have been in the house or
11 who was in the backyard --

12 A. Right.

13 Q. It was just a pile of people when you
14 got there. And you handcuffed -- was it you that
15 handcuffed Mr. Kulas?

16 A. Yes, sir.

17 Q. And he was kind of agitated too, wasn't
18 he?

19 A. No, I didn't handcuff Mr. Kulas. Is
20 that what you asked?

21 Q. Yeah. Did somebody handcuff him?

22 A. I don't know.

23 Q. Might one of the other officers have
24 handcuffed him?

25 A. Sir, I handcuffed Mr. Freeman. I did

TED DAVIS - CROSS EXAM BY MR. CHURCH

1 not place Mr. Kulas in handcuffs.

2 Q. Okay. So reading from your report,
3 tell me if this sounds familiar: I instructed
4 Jeremiah to release Freeman. Jeremiah followed my
5 direction at which time I rolled Jeremiah over and
6 placed him in handcuffs.

7 A. That's a mistype. I never placed
8 Mr. Kulas in handcuffs. It was Mr. Freeman I put
9 in handcuffs.

10 Q. And so you felt like you couldn't
11 safely clear the attic, so that's when you called
12 Captain Aarons?

13 A. That's correct.

14 Q. And activated SWAT?

15 A. That's correct.

16 Q. And that's because you believed there
17 might be another person in there?

18 A. That's correct.

19 Q. Or somewhere in the house?

20 A. Yes.

21 Q. And you don't remember whether you took
22 statements from the Kulases or not?

23 A. I remember being there and their
24 writing statements, but as far as who put the
25 signature on the statement, I don't know if that

TED DAVIS - CROSS EXAM BY MR. CHURCH

1 was me or Investigator Riccio or Investigator
2 Wright. I'm not sure.

3 Q. When you got there, was there a white
4 lawn chair sitting by where they were?

5 A. You mean when I first arrived?

6 Q. Yes.

7 A. Yeah, I believe there was. Yes, sir.

8 Q. And that was on the video?

9 A. Yes, sir, I think that's what I saw.

10 (DVD played in open court.)

11 BY MR. CHURCH:

12 Q. That's a white lawn chair sitting up
13 right there, right?

14 A. Yes, sir.

15 MR. CHURCH: Okay. No further
16 questions.

17 THE COURT: Any redirect?

18 MR. DENNIS: Nothing further, Your
19 Honor.

20 THE COURT: You may step down, sir.

21 THE WITNESS: Thank you.

22 THE COURT: Any objection to Officer
23 Davis being released from his subpoena?

24 MR. CHURCH: No, Your Honor.

25 THE COURT: You are free to go.

LINDSAY WRIGHT - DIRECT EXAM BY MR. ALFARO

1 THE WITNESS: Thank you, ma'am.

2 THE COURT: Call your next witness.

3 MR. ALFARO: The State calls Lindsay
4 Taylor Wright.

5 LINDSAY TAYLOR WRIGHT,

6 being first duly sworn, testified as follows:

7 THE CLERK: Please state your full name
8 for the record and spell your last.

9 THE WITNESS: Lindsay Taylor Wright,
10 W-R-I-G-H-T.

11 THE COURT: Your witness.

12 DIRECT EXAMINATION

13 BY MR. ALFARO:

14 Q. Tell us where you work. Where do you
15 work?

16 A. City of Goose Creek Police Department.

17 Q. And how long have you been with Goose
18 Creek?

19 A. Since January of 2014.

20 Q. And what is your current rank and duty
21 assignment?

22 A. I'm currently an investigator with our
23 criminal investigations bureau.

24 Q. How long have you been in
25 investigations?

1 A. Since May of this year.

2 Q. And what was your assignment on
3 October 3, 2015?

4 A. I was a patrol officer.

5 Q. And in that capacity as a patrol
6 officer, did you have the opportunity to respond to
7 a call in progress at [REDACTED] Pointer Drive at
8 approximately 8:25 p.m.?

9 A. Yes, sir.

10 Q. And what type of call were you
11 dispatched to?

12 A. We were dispatched to a burglary in
13 process.

14 Q. And do you recall whether it was dark
15 outside when you responded to the scene?

16 A. Yes, sir, it was.

17 Q. And can you tell us what the weather
18 was like that night?

19 A. There was heavy rain.

20 Q. And what other officers were dispatched
21 to the call with you?

22 A. Myself and Officer Davis.

23 Q. And do you recall who got there first?

24 A. Officer Davis pulled in right before
25 me. We got there about the same time.

LINDSAY WRIGHT - DIRECT EXAM BY MR. ALFARO

1 Q. And what did you see when you arrived?

2 A. When I arrived, I saw the victim,
3 Mr. Kulas, and he was holding down the defendant,
4 Mr. Freeman.

5 Q. And when you say holding down, were
6 they struggling or kind of still? What do you
7 recall?

8 A. There was a little bit of a struggle.
9 For the most part, it seemed as though they were
10 cooperative with each other.

11 Q. Okay. And was there anyone else at the
12 scene when you arrived?

13 A. Yes, sir.

14 Q. Do you recall who?

15 A. It was Jeffrey Porter. He was the
16 neighbor.

17 Q. And what else did you see when you
18 arrived at the scene?

19 A. Mr. Porter was holding a firearm by the
20 handle. He was holding it out to the side like
21 this (indicating), and he was holding it with two
22 fingers by the grip. Not in a threatening matter.

23 Q. What happened with the gun next?

24 A. I believe that he handed it to
25 Mr. Kulas who cleared the weapon and I instructed

1 Mr. Kulas to put it on the ground, at which time I
2 retrieved it.

3 Q. And what did you do with the gun after
4 you retrieved it?

5 A. I secured it in the trunk of my patrol
6 vehicle.

7 Q. And were you present when Mr. Freeman
8 was placed in handcuffs?

9 A. Yes, I was.

10 Q. And when he was handcuffed, was he
11 searched?

12 A. Yes.

13 Q. And what do you recall finding on his
14 person?

15 A. He had a black wallet in his rear
16 pocket; he had a lighter and a gray jewelry box in
17 his front right pocket; and then he had assorted
18 jewelry and a bag of M&M's in his left front
19 pocket.

20 Q. Were you able to determine who that
21 property belonged to, specifically the wallet?

22 A. Yes, sir; it belonged to Mr. Kulas.

23 Q. What about the jewelry?

24 A. He said that it had belonged to him as
25 well.

LINDSAY WRIGHT - DIRECT EXAM BY MR. ALFARO

1 Q. And were those items also secured?

2 A. Yes. They were secured in the trunk of
3 my patrol vehicle.

4 Q. And other than that property that you
5 described, were you present when any other property
6 taken from the Kulas's home was found in that area?

7 A. There was a bag of groceries. I
8 remember I glanced inside and it had cheese inside
9 of it.

10 Q. Okay. And did you go into the Kulas
11 home?

12 A. I did not.

13 Q. And when Officer Davis went into the
14 home, what did you do?

15 A. When he went into the home, Mr. Freeman
16 had been complaining of injuries, and I notified
17 medics. Because of the rain, I held his head out
18 of the water until the medics arrived on scene.

19 Q. So you called for EMS?

20 A. I did.

21 Q. And why didn't you move him?

22 A. I'm not a trained medical professional.
23 He said his hip was possibly broken, and I was
24 scared of making it worse.

25 Q. And, to your knowledge, was he taken

1 from the scene to a hospital?

2 A. Yes.

3 Q. And did you go with him?

4 A. I did. I rode in the ambulance with
5 him.

6 Q. Okay. And the property that you had
7 secured in the trunk, the gun, the wallet, the
8 jewelry box, the jewelry, the M&M's, what was done
9 with that property?

10 A. Whenever I was able to get back to my
11 patrol vehicle, I turned it over to Investigator
12 Riccio.

13 Q. Outside of turning over that property,
14 did you have any other involvement in that case?

15 A. Not that I recall.

16 MR. ALFARO: Thank you. Please answer
17 any questions that Mr. Church has.

18 THE COURT: Cross examination?

19 MR. CHURCH: May it please the Court?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. CHURCH:

23 Q. When you got there, who had the weapon?

24 A. Mr. Porter.

25 Q. And you retrieved it from either

LINDSAY WRIGHT - CROSS EXAM BY MR. CHURCH

1 Mr. Porter or Mr. Kulas?

2 A. I instructed one of them to put the
3 weapon on the ground, and I retrieved it from the
4 ground.

5 Q. So you don't know who had the weapon
6 prior to you arriving on scene?

7 A. Mr. Porter had the weapon when I
8 arrived on scene. I don't know who had it prior.

9 Q. You have no personal knowledge of
10 anything that happened before you arrived on scene?

11 A. I did not witness that, no.

12 Q. You stated that you rode with
13 Mr. Freeman in the ambulance?

14 A. Yes.

15 Q. Was he conscious?

16 A. Yes.

17 Q. And his clothes were cut off of him?

18 A. They were.

19 Q. And they were not saved?

20 A. No, sir, they were discarded.

21 Q. They didn't want to save them for
22 evidence?

23 A. (No response.)

24 Q. Was he in severe pain?

25 A. He appeared to be.

LINDSAY WRIGHT - CROSS EXAM BY MR. CHURCH

1 Q. Okay. And it was basically a chaotic
2 scene on account of the weather and how everybody
3 was acting, right?

4 A. Yes, sir.

5 Q. Did you have Mr. Kulas stand with his
6 hand on the car?

7 A. I instructed him to remain by my patrol
8 vehicle.

9 Q. And that was when he was standing
10 leaning over with his hands on the car?

11 A. Yes, sir.

12 Q. Did you put him in handcuffs at any
13 time?

14 A. I did not.

15 MR. CHURCH: Beg the Court's
16 indulgence.

17 BY MR. CHURCH:

18 Q. Do you remember what kind of clothes he
19 had on?

20 A. I don't recall at this time.

21 MR. CHURCH: Okay. No further
22 questions.

23 THE COURT: Any redirect?

24 MR. ALFARO: No, Your Honor.

25 THE COURT: You may step down, ma'am.

1 Thank you.

2 MR. ALFARO: May we approach, Your
3 Honor?

4 THE COURT: Yes, sir.

5 (Bench conference.)

6 THE COURT: Ladies and gentlemen, it's
7 about ten after 4:00. It's a good time for us to
8 take our afternoon break, but we have some problems
9 with potential witnesses, so it's actually a good
10 time for us to break for the afternoon. We can
11 resume testimony at -- if you would be back in your
12 jury room at 9:15, and we'll get back started with
13 the trial at that point.

14 Please remember my previous
15 instructions. Do not discuss this case with
16 anyone, and that includes amongst yourselves. Have
17 a nice evening and we will see you in the morning.

18 (Jury out, 4:07 p.m.)

19 THE COURT: Anything further before we
20 recess for the evening?

21 MR. ALFARO: Nothing from the State.

22 MR. CHURCH: Nothing from the defense.

23 THE COURT: We'll be at ease until
24 9:15.

25 (These proceedings were recessed at

1 4:14 p.m., 8/28/17, to be resumed 8/29/17 at 9:15
2 a.m.)
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DONALD SNEDEKER - DIRECT EXAM BY MR. ALFARO

1 (The following proceedings were held
2 8/29/17, Berkeley County General Sessions Court, at
3 9:40 a.m.)

4 MR. ALFARO: State is ready.

5 MR. CHURCH: Defense is ready.

6 THE COURT: Let's have our jury,
7 please.

8 (Jury in, 9:35 a.m.)

9 THE COURT: Morning, ladies and
10 gentlemen. I hope you had a nice evening. We are
11 ready to proceed with the trial of the case. You
12 may call your next witness.

13 MR. ALFARO: Thank you, Your Honor.
14 The State calls Don Snedeker.

15 DONALD SNEDEKER,
16 being first duly sworn, testified as follows:

17 THE CLERK: Please state your full name
18 for the record and spell your last.

19 THE WITNESS: My name is Donald, last
20 name is S-N-E-D-E-K-E-R.

21 THE COURT: Your witness.

22 DIRECT EXAMINATION

23 BY MR. ALFARO:

24 Q. Morning, sir.

25 A. Morning.

1 Q. Could you tell the jury where you work?

2 A. I work for Berkeley County EMS.

3 Q. How long have you been with Berkeley
4 County EMS?

5 A. I've been there eight years.

6 Q. What's your current rank? Kind of give
7 the jury an idea of what your responsibilities are.

8 A. I'm a lieutenant field training officer
9 paramedic. I'm in charge of helping with
10 orientating new employees and remediating employees
11 of additional training.

12 Q. What type of educational background do
13 you have for your current assignment?

14 A. I have a two-year associate's degree.
15 I'm also certified nationally and statewide for a
16 paramedic, I have my advanced cardiac life support,
17 pediatric advanced life support, and a couple of
18 other certifications that are required for the
19 grade.

20 Q. And were you working for Berkeley
21 County EMS on October 3, 2015?

22 A. Yes.

23 Q. And on that date did you have the
24 opportunity to be dispatched to [REDACTED] Pointer Drive,
25 Goose Creek, approximately 8:55 p.m.?

DONALD SNEDEKER - DIRECT EXAM BY MR. ALFARO

1 A. I believe so.

2 Q. And do you recall what time you
3 arrived?

4 A. I believe the report said we arrived on
5 scene at around 2105, which would be 9:00, 9:05 in
6 the evening.

7 Q. Okay. And when you arrived, was the
8 Defendant, Fred Freeman, still at the scene?

9 A. Yes, sir.

10 Q. And do you recall where he was and what
11 you saw when you got to the scene?

12 A. In my report I stated he was sitting on
13 the side of the road in a chair, handcuffed, in
14 police custody.

15 Q. And was that the person that you had
16 been sent there to treat?

17 A. Yes, sir.

18 Q. And what type of injury was he
19 complaining of?

20 A. At the time, right hip pain.

21 Q. Okay. And did you do -- was he
22 conscious when you arrived?

23 A. Yes, sir.

24 Q. And did you provide any treatment at
25 the scene?

1 A. We did an assessment on the patient and
2 then loaded him on the stretcher and put him in the
3 ambulance.

4 Q. Did he report or was there any report
5 of any loss of consciousness?

6 A. No, sir.

7 Q. Any report of other type of pain other
8 than the hip pain?

9 A. Not to my recollection.

10 Q. And you said he was transported by
11 ambulance. Where was he taken?

12 A. Trident Emergency Room.

13 MR. ALFARO: Thank you. Please answer
14 any questions that the defense may have.

15 THE COURT: Cross-examination?

16 MR. CHURCH: Thank you, Your Honor.
17 May it please the Court.

18 CROSS-EXAMINATION

19 BY MR. CHURCH:

20 Q. You don't know what happened before you
21 got there, do you?

22 A. No, sir.

23 Q. And people that have head injuries, any
24 mild injuries, get confused sometimes, don't they?

25 A. That's possible, yes, sir.

DONALD SNEDEKER - CROSS EXAM BY MR. CHURCH

1 Q. So he could have been unconscious at
2 some point before you got there?

3 A. Yes, sir. We weren't there, so I don't
4 know.

5 Q. And you did not keep his clothes, you
6 cut them off?

7 A. No, sir, we did not cut his clothes
8 off. We did an assessment and he had his clothes
9 on.

10 Q. What happened to his clothes?

11 A. I don't know, sir.

12 Q. And were you -- you were in the
13 ambulance, right?

14 A. Yes, sir.

15 Q. You didn't cut his clothes off and
16 dispose of them?

17 A. I don't believe so. If they were cut
18 off, they were transported with him to the
19 hospital.

20 MR. CHURCH: Beg the Court's
21 indulgence?

22 No further questions.

23 THE COURT: Any redirect?

24 MR. ALFARO: No, Your Honor.

25 THE COURT: You may step down, sir.

GUY RICCIO - DIRECT EXAM BY MR. ALFARO

1 Thank you.

2 You may call your next witness.

3 MR. ALFARO: Thank you. The State
4 calls Guy Riccio.

5 GUY RICCIO,

6 being first duly sworn, testified as follows:

7 THE CLERK: Please state your full name
8 for the record and spell your last.

9 THE WITNESS: Guy Michael Riccio,
10 R-I-C-C-I-O.

11 THE COURT: Your witness.

12 MR. ALFARO: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. ALFARO:

15 Q. Mr. Riccio, could you tell the jury a
16 little bit about your work history, professional
17 background?

18 A. 15 years in the Marine Corps and
19 17 years as a police officer.

20 Q. And where were you a police officer?

21 A. At the City of Goose Creek.

22 Q. You were there 17 years?

23 A. I was with the City of Goose Creek for
24 15 years.

25 Q. Okay. And do you currently work for

GUY RICCIO - DIRECT EXAM BY MR. ALFARO

1 them?

2 A. No, I retired.

3 Q. When did you retire?

4 A. April of last year.

5 Q. Okay. April 2016?

6 A. Yes, sir.

7 Q. And when you were working for -- were
8 you working for Goose Creek on October 3rd, 2015?

9 A. Yes.

10 Q. And in what capacity?

11 A. I was the on-duty investigator.

12 Q. And so you were in investigations at
13 the time?

14 A. Yes, sir.

15 Q. And did you have the opportunity in
16 that capacity to respond to [REDACTED] Pointer Drive in
17 Goose Creek that night?

18 A. Yes, sir, I did.

19 Q. When you arrived, was the Defendant
20 still there?

21 A. No, sir.

22 Q. Was the victim still there?

23 A. Yes, sir, the victim was there.

24 Q. And when you -- what time did you
25 arrive?

1 A. I believe it might have been close to
2 midnight, or after. I was -- prior to that, I was
3 at another crime scene.

4 Q. When you arrived, had the house been
5 cleared by other law enforcement officers?

6 A. Yes, sir.

7 Q. And when you arrived at the house, was
8 it still raining?

9 A. Yes, it was.

10 Q. What did you do when you got to the
11 house?

12 A. Initially, I spoke with Officer Davis
13 who was the officer on scene.

14 Q. And what's the reason for speaking with
15 Officer Davis?

16 A. Just to get a rundown of the situation,
17 what information he gathered from any witnesses and
18 victim.

19 Q. And when you arrived at the scene, were
20 you able to determine the likely point of entry?

21 A. Yes, sir.

22 Q. And what was that?

23 A. That was the rear of the residence. It
24 was an area in the back by the back door window,
25 large window on the right side where the -- on the

GUY RICCIO - DIRECT EXAM BY MR. ALFARO

1 outside there was a large, large boulder that the
2 suspect had picked up and broke the window out.
3 Was able to reach in and unlock the window to open
4 it.

5 Q. And when you were at the scene, were
6 you -- was any property belonging to the victim
7 recovered from the defendant turned over to you?

8 A. When I first got there, there was
9 property in the garage. I went in -- entered
10 through the garage area.

11 Q. Do you recall what the items were?

12 A. It was a 9-millimeter; I believe it was
13 a Kel-Tec. There was some jewelry, some other odds
14 and ends, a little jewelry box.

15 Q. I'm going to show you what was admitted
16 into evidence. Let me ask you a question before
17 then. Did you take pictures at the scene?

18 A. Yes, sir.

19 Q. I'm going to show you what was entered
20 into evidence as State's Exhibits 2 through 25.
21 You can just kind of flip through those, and I will
22 ask you some specific questions.

23 Do you recognize those as the pictures
24 you took that night?

25 A. Yes, sir.

GUY RICCIO - DIRECT EXAM BY MR. ALFARO

1 Q. Let's start with State's Exhibit 21.

2 They are going to be on the screen behind you.

3 Can you describe what is contained in
4 that exhibit?

5 A. The Kel-Tec 9-millimeter, the clip for
6 it, cigarette lighter, M&M's, a little gray jewelry
7 box, ring box, wallet, and another lighter. And
8 there was some actual jewelry and costume jewelry.

9 Q. And are those the items that were
10 recovered from the Defendant's person?

11 A. Yes, sir.

12 Q. Did you go to the area -- were you
13 shown the area outside where the Defendant was
14 taken into custody?

15 A. Yes, sir.

16 Q. And did you observe any evidence at
17 that location?

18 A. Yes, sir. There was -- it was like a
19 cloth bag, I believe a blue cloth bag, and inside
20 the cloth bag was another 9-millimeter handgun and
21 some food items. I believe it was ham and cheese
22 package and stuff. The 9-millimeter did belong to
23 the victim.

24 Q. Okay. Were you able to determine if
25 both guns belonged to the victim?

GUY RICCIO - DIRECT EXAM BY MR. ALFARO

1 A. Yes, sir.

2 Q. And did you -- you said it was still
3 raining when you got there?

4 A. Yes, sir.

5 Q. Was it still raining -- did you try to
6 take any pictures outside?

7 A. I tried to take pictures outside, but
8 it was raining outside. They didn't come through
9 at all.

10 Q. And what was done with the victim's
11 property that had been recovered, specifically the
12 two 9 millimeters?

13 A. All the property recovered was itemized
14 on a Goose Creek evidence control form and
15 identified as the victim's property, and everything
16 was -- before I left that night, everything was
17 turned over to the victim.

18 Q. Now, did you attempt to take any
19 fingerprints or anything inside the house that
20 night?

21 A. I don't believe I did, no.

22 Q. So did you take any evidence from the
23 scene that night, or was it all just turned over to
24 the victim?

25 A. All the property was returned back to

1 the victim.

2 MR. ALFARO: Thank you. Please answer
3 any questions that the defense has for you?

4 THE COURT: Cross examination?

5 MR. CHURCH: Thank you, Your Honor.
6 May it please the Court.

7 CROSS-EXAMINATION

8 BY MR. CHURCH:

9 Q. Morning, Detective.

10 A. Morning.

11 Q. So you took photographs of the gun and
12 the jewelry?

13 A. Yes, sir.

14 Q. And you gave it back to the owner?

15 A. Yes, sir.

16 Q. Did you run the gun through the system
17 to see if it was stolen or it had any kind of
18 history or who it might have belonged to?

19 A. I don't believe I did. I'm not sure if
20 Officer Davis did, but the victim was on scene the
21 whole time and identified both weapons.

22 Q. You took his word for it, you didn't
23 independently verify it?

24 A. I don't recall if I did or not.

25 Q. You don't have any reports where you

GUY RICCIO - CROSS EXAM BY MR. CHURCH

1 did that?

2 A. No, sir.

3 Q. Okay. And you didn't fingerprint the
4 guns or have anyone try to extract any DNA off the
5 guns?

6 A. No, sir.

7 Q. And the family showed you things that
8 has been disturbed in the residence?

9 A. Like drawers and that kind of thing
10 rummaged through, yes, sir.

11 Q. Drawers, and, I believe, some glass
12 piggy banks or some kind of bank?

13 A. Yeah, that and some jewelry boxes, yes,
14 sir.

15 Q. And none of that was fingerprinted or
16 checked for DNA? You didn't have anybody from the
17 crime scene come and do that?

18 A. No, sir.

19 Q. And then one of them was some cash left
20 in the bank?

21 A. There was an -- I'm not sure if it was
22 plaster or glass, but a large, almost like a
23 pickle-style jar, and I believe it was in the
24 child's bedroom that had some change and a few
25 dollar bills in it.

GUY RICCIO - CROSS EXAM BY MR. CHURCH

1 Q. We've heard several times about ham and
2 cheese. Was any pictures taken of a ham or any
3 cheese?

4 A. It was recovered outside. It was never
5 photographed outside, no.

6 Q. It was never photographed, right?

7 A. No.

8 Q. Did you find a jacket at the scene?

9 A. I was shown a jacket at the scene.

10 Q. Where was it when it was shown to you?

11 A. In the backyard.

12 Q. Where in the backyard; do you remember?

13 A. Somewhere between the back door and --
14 the privacy fence had a gate on it that was
15 partially opened. Somewhere in that area.

16 Q. Was it tested for DNA or anything?

17 A. No. It was saturated.

18 Q. But on the inside there could have been
19 DNA possibly recovered.

20 A. It was like sitting in a mud puddle of
21 water. The rain was coming down really hard for
22 hours.

23 Q. You didn't have anybody from forensic
24 look at it?

25 A. No, sir.

GUY RICCIO - CROSS EXAM BY MR. CHURCH

1 Q. And you found a rock by a broken glass
2 window?

3 A. It was a large rock outside of the
4 window, yes, sir.

5 Q. Wasn't there like a door right near the
6 window, a lot of glass in the door?

7 A. The windows -- as you walk out of the
8 house through the back door, the window that was
9 broken is off to the right, and the back door was
10 straight ahead just a few feet.

11 Q. A few feet. And it had a lot of glass
12 in it, right?

13 A. I don't recall.

14 Q. And do you know whether a SWAT team was
15 deployed?

16 A. While I was on the other crime scene,
17 the SWAT team cleared the residence. I don't know
18 where they got the information from that there was
19 possibly a second suspect involved. So the SWAT
20 team eventually came out and cleared the residence
21 up in the attic space and deemed the house was
22 cleared, no other suspects.

23 Q. Okay. But at some point somebody must
24 have believed somebody had been in the house
25 because that's why the SWAT team was called out?

GUY RICCIO - REDIRECT EXAM BY MR. ALFARO

1 A. Yeah. I don't know what transpired,
2 why they called the SWAT team, why they thought
3 there was. I had no -- no privy to anything that
4 went on. I was at another crime scene.

5 Q. So with the possibility of another
6 suspect, there still was not any DNA or
7 fingerprints or anything taken from any of the
8 items in the house?

9 A. No.

10 Q. Even when you were shown the items that
11 has been moved or disturbed, forensics would have
12 known where to look for DNA or fingerprints, still
13 none was checked for?

14 A. Correct.

15 MR. CHURCH: Beg the Court's
16 indulgence?

17 No further questions.

18 THE COURT: Any redirect?

19 MR. ALFARO: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. ALFARO:

22 Q. You mentioned on direct, as well as
23 cross, that you were at another crime scene before
24 you came to this house?

25 A. Yes.

GUY RICCIO - REDIRECT EXAM BY MR. ALFARO

1 Q. And was that other crime scene in any
2 way related to this incident?

3 A. No, sir.

4 Q. And when you arrived at the Kulas's
5 home after leaving that other scene, at the time
6 you arrived, was the Defendant already in custody
7 at that time?

8 A. Prior to arriving at the scene?

9 Q. Yes, sir.

10 A. Yes. I was told he was in custody and
11 was already -- was already left the scene, yeah.

12 MR. ALFARO: Okay. Thank you. No
13 further questions.

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

16 You may call your next witness.

17 MR. DENNIS: State calls Sean
18 McWilliams.

19 SEAN MCWILLIAMS,

20 being first duly sworn, testified as follows:

21 THE CLERK: Please state your full name
22 for the record and spell your last.

23 THE WITNESS: Sean Michael McWilliams,
24 M-C-W-I-L-L-I-A-M-S.

25 THE COURT: Your witness.

SEAN MCWILLIAMS - DIRECT EXAM BY MR. DENNIS

1 MR. DENNIS: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. DENNIS:

4 Q. Mr. McWilliams, would you state for the
5 record where you currently work?

6 A. I'm currently not employed. I retired
7 in February of this year.

8 Q. Okay. And what did you do before you
9 retired?

10 A. I worked for the Goose Creek Police
11 Department.

12 Q. How long did you work for the Goose
13 Creek Police Department?

14 A. 14 days shy of 11 years.

15 Q. What were your responsibilities while
16 you were employed at the City of Goose Creek Police
17 Department?

18 A. I was a general investigator.

19 Q. And were these your duties on
20 October 5, 2015?

21 A. Yes, sir.

22 Q. And are you aware of the case that
23 we're here today examining?

24 A. Yes, sir.

25 Q. How did you become associated with the

SEAN MCWILLIAMS - DIRECT EXAM BY MR. DENNIS

1 case?

2 A. I was assigned to meet with the victim,
3 Mr. Kulas, and collect a DNA sample from him, which
4 I did on October 15th, I believe.

5 Q. Okay. What involvement did you have
6 with this case on October 5th of 2015?

7 A. I'm sorry, I don't have my glasses on.
8 Pardon me. Yes. On October 5th, at approximately
9 1845 hours, which is 6:45 p.m., I responded to the
10 incident location at [REDACTED] Pointer Drive. I met with
11 the victim, Mr. Jeremiah Kulas, where he showed me
12 some blood droplets on a cushion near the window
13 that was broken to allow access.

14 Q. Let's back up just briefly. Where did
15 you go to meet with the victim in this case?

16 A. At Pointer Drive, at his residence.

17 Q. Where was the cushion located?

18 A. Underneath the window that had been
19 broken out -- broken in.

20 Q. Did you take any pictures of this
21 particular cushion?

22 A. I did. I took some photographs of it.

23 MR. DENNIS: Your Honor, may I approach
24 the witness?

25 THE COURT: You may.

1 BY MR. DENNIS:

2 Q. Investigator McWilliams, I'm showing
3 what was premarked as State's Exhibit 28. If we
4 can pull that up. Is that the cushion that you
5 took a picture of?

6 A. Yes, sir.

7 Q. And what did you do after taking that
8 picture with the cushion?

9 A. I collected the cushion and took it
10 with me.

11 Q. What did you do once you took it with
12 you?

13 A. It was along with the other items I
14 collected I placed into evidence.

15 Q. What else did you take pictures of that
16 day?

17 A. I took pictures of -- the window had
18 been subsequently replaced. I took pictures of the
19 window and old window that had been set outside.

20 MR. DENNIS: Your Honor, may I approach
21 the witness again?

22 THE COURT: Yes.

23 BY MR. DENNIS:

24 Q. Investigator McWilliams, I have given
25 you what's been previously marked 26 through 33.

SEAN MCWILLIAMS - DIRECT EXAM BY MR. DENNIS

1 If you will look at those.

2 A. Yes.

3 Q. Did you take all of those pictures?

4 A. I did.

5 MR. DENNIS: May I approach again?

6 THE COURT: You may.

7 BY MR. DENNIS:

8 Q. Investigator McWilliams, if you will
9 turn around, I have a few questions regarding these
10 pictures.

11 What is this a picture of?

12 A. That's a picture of the window having
13 been replaced.

14 Q. And what day was this taken?

15 A. That's not the full picture -- I'm
16 sorry, that's not the full picture. You can see --
17 scroll down. This was taken on the 5th of
18 October 2015.

19 MR. DENNIS: Would you please display
20 State's 29?

21 BY MR. DENNIS:

22 Q. What is this a picture of?

23 A. That's the old window that had been
24 replaced in the meantime, between the incident and
25 the day I got there.

SEAN MCWILLIAMS - DIRECT EXAM BY MR. DENNIS

1 Q. What happened to that window?

2 A. Say again.

3 Q. What happened to that window? Did you
4 collect it?

5 A. That window -- no, I did not collect
6 that window. I just took a picture. It was large;
7 it wouldn't have fit in my car.

8 Q. Did you attempt at any point to take
9 fingerprints from that window?

10 A. No.

11 Q. Why was that?

12 A. It had been sitting outside in the
13 rain. That was -- it had been there in constant
14 rain that entire time, and it had been handled by
15 the people that replaced it.

16 MR. DENNIS: Would you please -- would
17 you please display State's 33?

18 BY MR. DENNIS:

19 Q. Investigator, what is this a picture
20 of?

21 A. That's the rock that I was advised had
22 been used to make the hole in the window.

23 Q. During the investigation, how did you
24 determine this was the rock used?

25 A. The victim, Mr. Kulas, told me that.

SEAN MCWILLIAMS - DIRECT EXAM BY MR. DENNIS

1 MR. DENNIS: Would you please display
2 State's 30?

3 BY MR. DENNIS:

4 Q. What is this picture displaying?

5 A. While I was there, Mr. Kulas stated
6 that he had found a jacket in the backyard, at some
7 point after the incident, after the officers had
8 cleared, and this is that jacket. I don't know if
9 that's where Mr. Kulas found it, but that's where I
10 found it at the time. And, again, the jacket was
11 still completely waterlogged, but I did collect it.

12 Q. Were any attempts made to try to
13 extract DNA from the jacket?

14 A. Not by me. At the point, it would have
15 been -- the likelihood there would be any DNA, the
16 jacket was waterlogged, was low, I did not. I
17 don't believe the CSI would have either.

18 Q. And Investigator McWilliams, you said
19 earlier that you had a chance to speak with the
20 victim on that day?

21 A. Yes, sir.

22 Q. During your investigation, what types
23 -- what observations did you make about that
24 victim?

25 A. He had -- his hand was bandaged.

SEAN MCWILLIAMS - DIRECT EXAM BY MR. DENNIS

1 Q. And were you able to take a picture of
2 that?

3 A. I did. I took probably a couple.

4 MR. DENNIS: Would you please display
5 State's 31?

6 BY MR. DENNIS:

7 Q. And is this a picture that you took of
8 the victim in this case?

9 A. Yes.

10 Q. What date was this taken?

11 A. On October 5, 2015.

12 Q. What other evidence did you collect
13 while you were at the home?

14 A. I swabbed the victim to collect a DNA
15 swab from the inside of his mouth.

16 Q. Why did do you that?

17 A. For any other DNA that had been
18 potentially collected. The blood on the cushion
19 was probably -- if it was, in fact, blood, if there
20 was any other DNA tested, you would want a sample
21 of the victim's to be able to eliminate him from
22 being a contributor.

23 Q. What did you do once you left the home?

24 A. I placed the items in evidence.

25 Q. And did you have any other involvement

SEAN MCWILLIAMS - DIRECT EXAM BY MR. DENNIS

1 in this investigation?

2 A. I don't believe I did, other than
3 uploading the pictures, the digital images that I
4 took, to the network.

5 MR. DENNIS: If I have a moment, Your
6 Honor.

7 (Brief pause.)

8 Your Honor, may I approach one more
9 time?

10 THE COURT: Yes, sir.

11 BY MR. DENNIS:

12 Q. Investigator McWilliams, I've given you
13 what was previously marked as State's 28 and 33.

14 A. Yes.

15 Q. Why is there a ruler used in that
16 picture?

17 A. Just to give a sense of scale of the
18 size of the droplets.

19 Q. And what length did those droplets
20 cover on that cushion?

21 A. That scale is six inches. I would say
22 that is probably roughly four inches.

23 MR. DENNIS: And if you will bring up
24 State's 33.

25 BY MR. DENNIS:

SEAN MCWILLIAMS - CROSS EXAM BY MS. WHITE

1 Q. And, again, what is this -- why is
2 there a scale or ruler on this particular picture?

3 A. Without the scale you would have no
4 idea how big the rock was.

5 Q. How large was this rock?

6 A. It's larger than six inches. It's
7 probably, just estimating, nine or ten inches long
8 and six inches deep.

9 Q. And why were there no attempts to take
10 any fingerprints from the rock?

11 A. The rock was porous. It wouldn't --
12 there is no way fingerprints would be on this rock.

13 MR. DENNIS: May I approach the witness
14 again?

15 THE COURT: Yes, sir.

16 MR. DENNIS: Nothing further from the
17 State, Your Honor.

18 THE COURT: Cross examination?

19 CROSS-EXAMINATION

20 BY MS. WHITE:

21 Q. Officer McWilliams, who was the lead
22 case agent on this case?

23 A. Investigator Riccio.

24 Q. Investigator Riccio?

25 A. Yes.

SEAN MCWILLIAMS - CROSS EXAM BY MS. WHITE

1 Q. It's not Officer Goodyear?

2 A. It -- apparently, it is. I was
3 mistaken. My part in it was -- after everybody had
4 gone home, I was on-call that night, so I actually
5 had mistakenly though -- but it is assigned to
6 Investigator Goodyear.

7 Q. And you responded on October 5, two
8 days after the incident?

9 A. Yes.

10 Q. And your duty was to collect evidence?

11 A. Yes, sir.

12 Q. And was it -- in this case was some of
13 the evidence that you collected, was it pointed out
14 to you by Mr. Kulas?

15 A. Yes.

16 Q. When you arrived there, you mentioned
17 the window that had been broken. Were there any
18 shards of glass there at the time that you went on
19 October 5th?

20 A. Not to my recollection.

21 Q. So that, evidently, the glass had been
22 cleaned up prior to your arrival?

23 A. There was a child in the home, and I
24 don't think it would have been practical for them
25 to leave it with the child there.

SEAN MCWILLIAMS - CROSS EXAM BY MS. WHITE

1 Q. So it was cleaned up?

2 A. Yes, sir.

3 Q. You mentioned that the rock that was
4 collected was used to break the window. That
5 information was given to you by whom?

6 A. I believe the victim, Mr. Kulas, but I
7 may have been told that by whichever supervisor
8 assigned me to go collect the evidence.

9 Q. And beyond what you have testified to
10 on direct examination, you had no other part in
11 this case?

12 A. No, sir.

13 MS. WHITE: Thank you.

14 THE COURT: Any redirect?

15 MR. DENNIS: Nothing further from the
16 State, Your Honor.

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

19 THE WITNESS: Thank you.

20 MR. DENNIS: State calls Investigator
21 Goodyear.

22 LEROY GOODYEAR,

23 being first duly sworn, testified as follows:

24 THE CLERK: Please state your full name
25 for the record and spell your last.

LEROY GOODYEAR - DIRECT EXAM BY MR. DENNIS

1 THE WITNESS: It's Leroy Goodyear,
2 G-O-O-D-Y-E-A-R.

3 THE COURT: Your witness.

4 MR. DENNIS: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. DENNIS:

7 Q. Investigator Goodyear, where are you
8 employed?

9 A. I retired from the City of Goose Creek
10 Police Department last October.

11 Q. Okay. And how long did you work for
12 the City of Goose Creek Police Department before
13 that?

14 A. I was with that agency eight years
15 before I retired.

16 Q. What were your responsibilities while
17 you were employed there?

18 A. I was in the criminal investigations
19 division, primarily investigating vice and
20 violent-type crime.

21 Q. And were those your duties on
22 October 5, 2015?

23 A. Yes, sir.

24 Q. What case did you become involved in on
25 that day?

LEROY GOODYEAR - DIRECT EXAM BY MR. DENNIS

1 A. I became involved in the first degree
2 burglary that occurred at [REDACTED] Pointer Drive.

3 Q. How did you become associated with the
4 case?

5 A. At the time, when the -- the division
6 had several very involved cases going at once, a
7 case like this was very involved, so numerous
8 people -- even though Investigator Riccio initially
9 responded, others of us were assigned to assist.

10 Q. Where did your investigation take you
11 that day?

12 A. I went to -- I went -- I attempted to
13 interview the Defendant.

14 Q. Where did the interview or attempted
15 interview occur?

16 A. At Trident Hospital.

17 Q. And where is that located?

18 A. In North Charleston in Charleston
19 County.

20 Q. And please explain to the jury why you
21 were there.

22 A. I was there in an attempt to interview
23 the Defendant in reference to the events that
24 occurred --

25 MR. DENNIS: Excuse me just a moment.

LEROY GOODYEAR - DIRECT EXAM BY MR. DENNIS

1 (Off-the-record conference.)

2 BY MR. DENNIS:

3 Q. Investigator, let's stick to what you
4 did that day. Did you take any photographs while
5 you are there?

6 A. I'm going to refer back to the incident
7 report.

8 Q. If you don't remember, that's okay.

9 A. I don't recall that I took any that
10 day.

11 Q. What did you do you after concluding
12 that meeting at the hospital?

13 A. After concluding the meeting, I went
14 back to the Goose Creek Police Department and
15 attempted to make contact with the victim and his
16 wife.

17 Q. When did you do that?

18 MR. CHURCH: Your Honor, I would
19 object. He's reading out of the report instead of
20 testifying.

21 THE COURT: Lay the proper foundation
22 if he needs to refresh his recollection.

23 MR. DENNIS: Sure.

24 Your Honor, may I approach the witness?

25 THE COURT: Yes, sir.

1 BY MR. DENNIS:

2 Q. Investigator Goodyear, may I use --
3 would you please look at your report to refresh
4 your memory?

5 A. Yes, sir.

6 Q. Investigator Goodyear, did you prepare
7 a report in this investigation?

8 A. Yes, sir.

9 Q. Okay. And after looking at your
10 report, does that refresh your recollection of what
11 you did during your time investigating this case?

12 A. Yes, sir. I believe there were two
13 other elements that I initiated.

14 Q. Let's try this again. What did you do
15 on October 7th, 2015?

16 A. A search warrant for DNA of the
17 defendant was drafted. The original one was done
18 in the City of Goose Creek, but being that he was
19 located in Charleston County, I obtained a search
20 warrant for the DNA of the defendant from the
21 Charleston County magistrate.

22 I proceeded to the hospital and swabbed
23 the Defendant and made a search warrant return back
24 to the Charleston County magistrate.

25 Q. Why did you take the DNA sample?

LEROY GOODYEAR - DIRECT EXAM BY MR. DENNIS

1 A. To be compared with any potential
2 evidence that may be located at the scene. I knew
3 some of the situations surrounding the prior
4 evening, and I knew there would be some crime scene
5 investigation to follow.

6 Q. And when you take a DNA sample, what is
7 the procedure for that?

8 A. There is sealed swabs and there are
9 also boxes to return them in. You unwrap one swab,
10 they are individual, swab the inside of the
11 defendant's cheek, that is placed in that box. And
12 then you repeat the process with the second one.

13 Q. And did you collect all of the DNA
14 evidence in this case?

15 A. I only collected the DNA from the
16 defendant.

17 Q. Where was that DNA -- those DNA samples
18 sent?

19 A. They would have been sent to -- I
20 turned them in to the Goose Creek Police
21 Department, secured them in the evidence locker.
22 From there, I don't recall whether they were sent
23 to the SLED laboratory, but that's generally the
24 practice.

25 Q. Okay. Through your investigation, did

LEROY GOODYEAR - DIRECT EXAM BY MR. DENNIS

1 you have a chance to review the results of the SLED
2 laboratory work?

3 A. I have not, sir.

4 Q. Okay. Did you have any other
5 involvement in this case?

6 A. Just the drafting and service of the
7 arrest warrants.

8 Q. Let's go back. Were you involved in
9 the case throughout the rest of the time that you
10 were at the Goose Creek Police Department?

11 A. Yes, sir.

12 Q. Okay. Did you prepare a supplemental
13 report later on in December of 2015?

14 I have a copy if you -- if I can --

15 MR. DENNIS: Your Honor, may I approach
16 the witness?

17 THE COURT: Yes, sir.

18 THE WITNESS: December 4th.

19 BY MR. DENNIS:

20 Q. Have you had a chance to review it?

21 A. I do remember that. I'm familiar with
22 it, sir.

23 Q. Okay. After reviewing this report,
24 does that refresh your recollection of the events
25 that day?

LEROY GOODYEAR - CROSS EXAM BY MR. CHURCH

1 A. Yes, sir.

2 Q. What happened that day?

3 A. On that date a preliminary hearing was
4 scheduled. I appeared in court in Moncks Corner at
5 which time --

6 Q. One moment.

7 MR. DENNIS: Nothing further at this
8 time, Your Honor.

9 THE COURT: Cross examination?

10 MR. CHURCH: Thank you, Your Honor.
11 May it please the Court.

12 CROSS-EXAMINATION

13 BY MR. CHURCH:

14 Q. Officer Goodyear, you're the lead agent
15 on this case?

16 A. Yes, sir, I ended up becoming the case
17 agent.

18 Q. And when did you go to the scene?

19 A. I did not go to the crime scene. I
20 can't remember the date of when I went there, but I
21 was not the responding officer. I was not there
22 the night of the incident.

23 Q. So do you know whether the scene was
24 dusted for fingerprints or DNA collected?

25 A. I know that at some point during the

LEROY GOODYEAR - CROSS EXAM BY MR. CHURCH

1 investigation, there was some swabs taken at the
2 residence. I don't recall when.

3 Q. And you don't know what they were taken
4 of?

5 A. I believe it was of the -- I remember
6 one of them being of a blood stain.

7 Q. Okay. But you've never seen any report
8 come back on that?

9 A. No, sir. That information wasn't back
10 before I retired.

11 Q. Okay. So as lead agent, you didn't
12 direct anybody to take any fingerprints or DNA off
13 of any items that had been disturbed during this
14 incident?

15 A. The only involvement I had along those
16 lines was on a date that I wanted to meet with the
17 victim; they wouldn't be available until much later
18 in the evening. So the person who was the duty
19 investigator works in the evening time, which was
20 Investigator McWilliams. I asked him to meet with
21 the victim, which he did.

22 Q. And you were the person that was
23 representing Goose Creek at the preliminary hearing
24 on this case?

25 A. Yes, sir.

LEROY GOODYEAR - CROSS EXAM BY MR. CHURCH

1 MR. CHURCH: Okay. Beg the Court's
2 indulgence?

3 BY MR. CHURCH:

4 Q. At the preliminary on that day, the
5 cases were dismissed because the name in the
6 warrant was Earl Johnson; is that correct?

7 A. Not on the warrant, but the warrant
8 affidavit. A copy was returned to this person.
9 There was a typographical error or a scrivener's
10 error.

11 Q. And it wasn't a misspelling of a name.
12 It was a whole another person's name, right?

13 A. There was, but only a copy was returned
14 to this person, this Defendant.

15 Q. Okay. But on the affidavit, the
16 described incident said Earl Johnson; is that
17 correct?

18 A. It was on the affidavit portion. As I
19 said, there was a scrivener's error.

20 Q. And that's why the charges were
21 dismissed on that day?

22 A. They were, but the judge allowed me a
23 four-hour window to redo them and have them
24 re-signed.

25 Q. So these are -- burglary first is a

LEROY GOODYEAR - CROSS EXAM BY MR. CHURCH

1 pretty serious crime; would you agree?

2 A. Yes, sir.

3 Q. And you didn't proofread the warrant
4 before you went to the preliminary?

5 A. Yes, sir, it was proofread, not only by
6 myself, but others as well. That's why it's called
7 a scrivener's error. It was not intentional, it
8 does not change the facts of the case, and it was
9 corrected.

10 Q. Okay. But nonetheless, multiple people
11 from Goose Creek --

12 MR. DENNIS: Objection, Your Honor;
13 asked and answered.

14 THE COURT: He hasn't finished the
15 question. Let him finish the question.

16 BY MR. CHURCH:

17 Q. Right. Multiple people besides you
18 proofread this warrant?

19 A. At least one other person.

20 Q. At least one other person, and they did
21 not pick up on Earl John was not Mr. Freeman?

22 A. No, sir.

23 MR. CHURCH: Okay. No further
24 questions.

25 THE COURT: Any redirect?

ASHLEY KULAS - DIRECT EXAM BY MR. DENNIS

1 MR. DENNIS: Nothing further from the
2 State.

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

5 You may call your next witness.

6 MR. DENNIS: The State calls Ashley
7 Kulas.

8 ASHLEY KULAS,

9 being first duly sworn, testified as follows:

10 THE CLERK: Please state your full name
11 for the record and spell your last.

12 THE WITNESS: Ashley Kulas, K-U-L-A-S.

13 THE COURT: Your witness.

14 DIRECT EXAMINATION

15 BY MR. DENNIS:

16 Q. Good morning, Ms. Kulas.

17 A. Hi.

18 Q. Where do you currently reside?

19 A. [REDACTED] Pointer Drive.

20 Q. And what do you do for a living?

21 A. I'm a mammography technologist.

22 Q. And back to the address, what city is
23 that located in?

24 A. Goose Creek.

25 Q. And where -- what -- do you know what

1 county that's located?

2 A. Berkeley.

3 Q. And where were you living during
4 October of 2015?

5 A. [REDACTED] Pointer Drive.

6 Q. And please tell the jury what you were
7 -- and were you living in that location October 3,
8 2015?

9 A. Yes.

10 Q. What happened that day?

11 A. I met -- my husband met me that evening
12 at my parents' house; we had dinner. It was
13 raining really bad that evening, and we drove
14 separately. He met me at my parents' house.

15 He followed me to home and -- we live
16 on a corner house. And the first thing I noticed
17 was that there were no lights on. And I thought,
18 crap, we didn't turn on the front porch or the back
19 light like we normally do.

20 We parked our vehicles, and I grabbed
21 my daughter and our bags and went to the door. And
22 we have, like, a keypad door entry. It didn't work
23 at first, and then I did it again and swung up open
24 the door. And the first thing I did was put my
25 hand in, there's a light switch to the right, and I

ASHLEY KULAS - DIRECT EXAM BY MR. DENNIS

1 flicked the light switch.

2 And, like, I was looking straight at
3 the same time and I noticed a man in my living
4 room.

5 Q. Let's go back just briefly.

6 A. Okay.

7 Q. Did you have anything to drink with
8 your meal?

9 A. No.

10 Q. What time of day did you return back to
11 your house?

12 A. It was probably like 8:30ish.

13 Q. Okay. Was it dark?

14 A. It was.

15 Q. And once -- we'll go back. What did
16 you see once you entered your home?

17 A. I just saw a man standing in my living
18 room.

19 Q. What did you do when you saw this man
20 in your living room?

21 A. It was like I looked up and saw the
22 man; my dog ran out the front door. And I remember
23 him, like -- the gentleman barking. And then I
24 literally turned around and grabbed my daughter and
25 ran to the car.

1 Q. And what did you do once you got to the
2 car?

3 A. I called 911.

4 Q. And what happened after you called 911?

5 A. I just stayed in my vehicle until the
6 officers arrived. And then once they did, they
7 directed me to go park at a church and wait for
8 further direction.

9 Q. While you were still in your car, did
10 you see anyone else come to the front of your
11 house?

12 A. Yes. While I was there looking at the
13 house, a gentleman walked up. I couldn't really
14 recognize the person because it was raining so bad,
15 but he never liked approach the vehicle or
16 anything.

17 Q. Do you remember anything else about
18 him? What he was doing?

19 A. He was -- it looked like he was on the
20 phone.

21 Q. How long from when you saw that person
22 until when the officer approached you at your
23 window?

24 A. Three or four minutes.

25 MR. DENNIS: Your Honor, may I approach

ASHLEY KULAS - DIRECT EXAM BY MR. DENNIS

1 the witness?

2 THE COURT: Yes, sir.

3 BY MR. DENNIS:

4 Q. Mrs. Kulas, if you will take a look at
5 that for me.

6 A. Okay.

7 Q. What is that that I've just handed you?

8 A. A recording of the 911 call.

9 Q. How do you know what that is?

10 A. I have my signature on the casing.

11 Q. Okay. Have you had a chance to review
12 that recording?

13 A. Yes.

14 Q. And does that recording fairly and
15 accurately depict the events of that night?

16 A. Yes.

17 MR. DENNIS: The State would move to
18 admit State's Exhibit 34.

19 THE COURT: Any objection?

20 MS. WHITE: Without objection, Your
21 Honor.

22 THE COURT: It's in.

23 (STATE'S EXH. 34 in evidence.)

24 MR. DENNIS: I would move at this time
25 to publish the disk.

ASHLEY KULAS - CROSS EXAM BY MS. WHITE

1 (CD recording played in open court.)

2 MR. DENNIS: Nothing further, Your

3 Honor.

4 THE COURT: Cross examination?

5 CROSS-EXAMINATION

6 BY MS. WHITE:

7 Q. Mrs. Kulas?

8 A. Yes.

9 Q. You said that you returned to your home
10 at approximately 8:30. And at that time, was it
11 already dark outside?

12 A. It was.

13 Q. You indicated that you punched the
14 keypad to get into your home?

15 A. Correct.

16 THE COURT: If you could speak up a
17 little bit, the Court Reporter is taking it down.

18 THE WITNESS: Correct.

19 BY MS. WHITE:

20 Q. And you had to punch it twice?

21 A. Yes.

22 Q. Okay. Do you know why?

23 A. It's finicky. And sometimes if the
24 batteries are going dead, you have to do it a
25 couple of times.

ASHLEY KULAS - CROSS EXAM BY MS. WHITE

1 Q. And you indicated that you entered the
2 home?

3 A. I never --

4 Q. Did you enter first?

5 A. I never entered the home. I kind of
6 opened the door, but I don't remember crossing over
7 the threshold.

8 Q. Okay. Was the power out in the house,
9 or was it on?

10 A. It was completely -- nothing was on in
11 the home when we got home, but when I turned the
12 light switch on, I remember the porch light came
13 on.

14 Q. So the power wasn't out. It's just
15 that all of your lights had been turned off?

16 A. Correct.

17 Q. You described it being pitch black?

18 A. Correct.

19 Q. Was that inside the home that you were
20 referring to?

21 A. Right. Both.

22 Q. Okay.

23 A. I mean, we have a streetlight on our
24 corner.

25 Q. Was the streetlight on?

ASHLEY KULAS - CROSS EXAM BY MS. WHITE

1 A. It was.

2 Q. You described the person that you saw
3 in your home on the 911 tape as being a black male
4 wearing a white shirt?

5 A. Correct.

6 Q. And I know that you had -- you had been
7 in the home and it was really quick.

8 A. Correct.

9 Q. Did you see -- were you able to see
10 anything else?

11 A. In reference to the person?

12 Q. In reference to the person in the home.

13 A. No, ma'am.

14 Q. Were you ever shown any sort of photo
15 lineup?

16 A. No, ma'am.

17 Q. And did you provide a statement to the
18 police?

19 A. I did.

20 Q. A written statement?

21 A. Correct.

22 Q. You -- you were not in the backyard
23 that night?

24 A. No, ma'am.

25 Q. Okay. And so were you aware of what

ASHLEY KULAS - CROSS EXAM BY MS. WHITE

1 happened prior to you leaving your residence and
2 going into your vehicle? Are you aware what
3 happened in the home?

4 A. No, ma'am.

5 Q. Are you aware of any physical
6 altercation? Did you see any physical altercation
7 in the home?

8 A. No, ma'am.

9 Q. And you weren't in the backyard that
10 night at any point?

11 A. No, ma'am.

12 MS. WHITE: Beg the Court's indulgence?

13 BY MS. WHITE:

14 Q. Also, in your statement -- do you
15 remember what you wrote in the statement?

16 A. Yes.

17 Q. And I indicated previously that you --
18 in the 911 call, you said that the person was
19 wearing a white shirt?

20 A. Yes.

21 Q. And in your statement, did you say the
22 same thing?

23 A. Yes, ma'am.

24 MS. WHITE: No further questions.

25 THE COURT: Any redirect?

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

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: You may call your next
6 witness.

7 MR. ALFARO: Your Honor, we have a
8 matter of law to address before -- this is our last
9 witness. We have one more issue to address.

10 THE COURT: All right. Ladies and
11 gentlemen of the jury, let's take a brief recess.
12 Would you please go to your jury room? Remember my
13 previous instruction not to discuss the case.
14 Thank you.

15 (Jury out, 10:44 a.m.)

16 MR. ALFARO: Your Honor, the issue that
17 we have is the stipulation that we had discussed
18 yesterday regarding the Defendant's prior
19 convictions. I've submitted to the defense counsel
20 a proposed stipulation that included some of the
21 language that the defense wanted me to add.

22 I don't know if they agree to that or
23 not at this point.

24 MR. CHURCH: We agree, Your Honor.

25 THE COURT: Okay.

1 MR. ALFARO: If I can, I will hand it
2 up to -- if I can have it marked as a Court's
3 Exhibit.

4 (COURT'S EXH. 1, Stipulation, was
5 marked for identification.)

6 MR. ALFARO: What's been marked as
7 Court's Exhibit 1 is the proposed language along
8 with two of the certified convictions of the
9 Defendant's prior burglary conviction.

10 THE COURT: All right. So I know we
11 had discussed this a little bit earlier as far as
12 how you would like to proceed with that. Do you
13 want the Court to read the proposed stipulation
14 prior to the witness testifying, or do you want to
15 -- or do you want to do that?

16 MR. ALFARO: In lieu of having someone
17 from the clerk's office testify to the conviction,
18 we have agreed just to have that stipulation used.
19 If Your Honor can read it to the jury, we're fine
20 with that if the defense has no objection.

21 MR. CHURCH: No objection.

22 MR. ALFARO: And after that, we will be
23 resting.

24 THE COURT: After the stipulation?

25 MR. ALFARO: That's the last piece of

1 evidence.

2 THE COURT: Okay. So then for planning
3 purposes, Counsel for defense, have you had an
4 opportunity to discuss with your client whether or
5 not he's going to testify?

6 MR. CHURCH: Not yet, Your Honor. We
7 need further discussion.

8 THE COURT: Do you want to take about
9 ten minutes or so? Because if they rest, what we
10 can do then is, I can go ahead and put your client
11 under oath to, you know, advise him of his rights
12 as to whether or not he wishes to testify before
13 then.

14 It's only 11. So would you be ready to
15 proceed to closing?

16 MR. ALFARO: The State would prefer
17 maybe 30 minutes just -- there are some things that
18 I have to add into my PowerPoint for the closing,
19 just based off of some of the testimony today. So
20 I need a couple of minutes for that.

21 THE COURT: How about you, Mr. Church?

22 MR. CHURCH: At least 30 minutes.

23 THE COURT: We can -- you can rest, I
24 can send the jury to maybe an early lunch, and that
25 way they're not just sitting around for 30 minutes,

1 and we can get started a little bit earlier right
2 after lunch. That gives us a chance to go over the
3 jury instructions.

4 MR. ALFARO: And just, Your Honor, you
5 inquired yesterday regarding the defendant's prior
6 record. The State has no -- doesn't believe there
7 is any convictions that we would be immediately
8 able to impeach him with. If he were to testify,
9 however, if he were to open the door to some of
10 these prior convictions, we would reserve the right
11 to then approach Your Honor and put those in.

12 As far as immediate impeachment, just
13 based off of his convictions, we don't believe
14 there's anything in his record that would justify
15 that. There is one of the burglary convictions
16 from 1996. We do believe his release from prison
17 falls within the allowable time frame; however,
18 just based on a prejudicial versus probative
19 analysis, because it is natural burglary, we would
20 agree that it would not be admissible just for
21 immediate impeachment.

22 However, if he were to open the door,
23 we believe that we would be able to use that.

24 THE COURT: We can cross that bridge
25 depending on whether or not he wishes to testify.

1 I suppose the most sufficient thing to
2 do then is to bring the jury out now. I can read
3 the stipulation, you can rest, and we will let them
4 go for a little while. We can stay, I'll put him
5 under oath, after you have an opportunity to talk
6 to him, and then we can talk about jury
7 instructions.

8 MR. ALFARO: Yes, Your Honor.

9 THE COURT: Let's have the jury back,
10 please.

11 (Jury in, 10:52 a.m.)

12 THE COURT: Welcome back, ladies and
13 gentlemen. The parties have entered into an
14 agreement, which is a stipulation, which I will now
15 place on the record and read for you.

16 The Defendant is on trial for burglary
17 in the first degree. One of the statutory elements
18 that the State may elect to prove beyond a
19 reasonable doubt to convict the Defendant of
20 burglary in the first degree, is that the Defendant
21 has two or more convictions for burglary on his
22 record.

23 In this case, rather than seeking to
24 have each of the Defendant's prior convictions
25 admitted into evidence, the State and the defense

1 have agreed to stipulate that this Defendant's
2 prior record does, in fact, contain two prior
3 convictions for burglary; therefore, you, the jury,
4 may find that this specific element has been proven
5 beyond a reasonable doubt.

6 That is the stipulation of the parties
7 in this case.

8 Solicitor, any other witnesses?

9 MR. ALFARO: No, Your Honor. At this
10 time, the State rests.

11 THE COURT: Ladies and gentlemen of the
12 jury, the State has rested their case at this
13 juncture. I know it's a little bit early -- there
14 are some matters that we must take care of outside
15 of your presence. I hate to do this to you, but
16 it's about 11:00, and I'm hoping that maybe you
17 have a couple of errands to run and maybe grab some
18 lunch.

19 If you would please be back in your
20 jury room at 12:30. That should give you
21 sufficient time to do a couple of things and grab
22 some lunch and be back in your jury room, and we'll
23 proceed with the trial of this case.

24 Although the State has rested their
25 case, please remember my previous instructions. Do

1 not discuss this case with anyone and that includes
2 amongst yourselves. Have a nice lunch.

3 (Jury out, 11:00 a.m.)

4 THE COURT: Any motions?

5 MR. CHURCH: Yes, Your Honor, from the
6 defense. Your Honor, at this time, the defense
7 would ask for a directed verdict on both charges.
8 Even taken in the light most favorable to the
9 State, there's been no evidence presented to put
10 Mr. Freeman inside of this home of this burglary.
11 There is no DNA; there has been no lineups, nothing
12 that physically puts him inside the home, and the
13 gun charge would be related to that, and we would
14 ask for a directed verdict.

15 THE COURT: Solicitor.

16 MR. ALFARO: Your Honor, looking at the
17 evidence in the light most favorable to the State,
18 the State believes we have presented enough
19 evidence to take this case to the jury. The
20 elements that we are required to prove burglary in
21 the first is that the Defendant entered the home
22 with the intent to commit a crime therein.

23 Initially, the victim's testimony that
24 he saw the Defendant inside his residence, chased
25 him through the house to the backyard without

1 losing sight of him, and then went over the fence
2 with him and detained him immediately upon getting
3 over the fence.

4 And the fact that this Defendant was,
5 in fact, being held down by the victim when the
6 police arrived, I believe that's more than enough
7 to put this Defendant in the home committing the
8 burglary.

9 The fact that he was found with the
10 property belonging to the victim in his pockets and
11 in his possession is enough to prove the intent to
12 commit a crime therein.

13 As far as the aggravating factors that
14 make that burglary of his dwelling a burglary
15 first, there was a stipulation to the two prior
16 convictions. In addition, there's been numerous or
17 multiple witnesses that testified that it was dark
18 when the incident occurred and/or when they
19 responded to the incident.

20 And there's also been testimony from
21 the victim that the Defendant was armed with a
22 weapon at the time that he was inside the home
23 and/or leaving the home. We believe that there's
24 been enough to get past the directed verdict motion
25 for the burglary first.

1 Regarding the possession of a weapon
2 during the commission of violent crime, based upon
3 the same argument that we have made to establish
4 that we've proven burglary first. Part of that,
5 the fact is that the burglary first is a violent
6 crime.

7 Based on that and the testimony that
8 the defendant was, in fact, in possession of not
9 one, but two weapons during the entering or the
10 remaining and/or the fleeing of the residence, we
11 believe we have established enough to get it past
12 the directed verdict motion and it should be
13 submitted to the jury.

14 THE COURT: Thank you, Solicitor.

15 The Court agrees based upon the
16 testimony as presented in argument of counsel that
17 the State has established both direct and
18 circumstantial evidence intending to establish that
19 each of the elements of these crimes charged;
20 therefore, the motion is respectfully denied.

21 MR. CHURCH: Your Honor, we would like
22 to renew our motion to have the charges dismissed
23 based on faulty warrant presented at the prelim.

24 THE COURT: Yes, sir, and as previously
25 stated for the same reasons, your motion is

1 respectfully denied.

2 MR. CHURCH: Thank you.

3 THE COURT: Do you need some time to
4 talk to your client?

5 MR. CHURCH: I do.

6 THE COURT: If you want to -- do you
7 want to break, or do you want to talk to him first
8 and then put that on the record and then we can --

9 MR. CHURCH: We would like to talk to
10 him first.

11 THE COURT: Sure. Let's take about a
12 ten-minute break while you talk to him and then put
13 on the record his decision as to whether or not he
14 wishes to testify. That way we can get the jury
15 instructions ready.

16 Let us know when you're ready.

17 THE COURT: Counsel, have you had an
18 opportunity to discuss with your client whether or
19 not he wishes to testify?

20 MR. CHURCH: We have, and he has
21 elected to not take the stand.

22 THE COURT: Okay. Mr. Freeman, if you
23 will please stand.

24 THE DEFENDANT: Yes, ma'am.

25 (The Clerk administering oath.)

EXAM BY THE COURT

1 THE DEFENDANT: Ma'am, I decline to
2 testify.

3 THE COURT: Yes, sir.

4 THE DEFENDANT: I invoke my Fifth
5 Amendment right.

6 THE COURT: Yes, sir. I have the duty
7 to charge you what your rights are on the record,
8 and then you can answer the questions as to whether
9 or not you wish to testify. That's all I'm going
10 to go through with you. So what she's asking you
11 as she's swearing you in is if you swear to tell
12 the truth, the whole truth, and nothing but the
13 truth so help you God.

14 THE DEFENDANT: Yes, ma'am.

15 EXAMINATION

16 BY THE COURT:

17 Q. all right, sir. Mr. Freeman, at this
18 time, I'm going to explain to you certain of your
19 rights. If you do not understand anything that I
20 say, please let me know. If you want me to explain
21 anything in more detail, also, please let me know.
22 Okay?

23 A. Yes, ma'am.

24 Q. You have now reached the stage of the
25 trial where you may present your defense. You have

EXAM BY THE COURT

1 the right to claim the protections given to you by
2 the Fifth Amendment of the Constitution of the
3 United States.

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

12 If you decide to testify, you will be
13 subject to the same rules that govern other
14 witnesses and you may be examined and
15 cross-examined on any relevant issues in this case.
16 If you have any convictions involving dishonesty or
17 false statement or for crimes punishable by
18 imprisonment for more than one year, and I
19 determine that the probative value of admitting
20 this evidence outweighs its prejudicial effect to
21 you, the Solicitor will be able to introduce your
22 record and attack your credibility.

23 If you decide to testify, this decision
24 on your part must be made freely, voluntarily, and
25 intelligently with the knowledge of the protections

EXAM BY THE COURT

1 given to you by the Fifth Amendment and the
2 consequences of your decision to testify.

3 If you decide not to testify, I will
4 instruct the jury that they cannot give the fact
5 that you do not testify any consideration
6 whatsoever, and that there is absolutely no
7 prejudice to you because you did not testify.

8 It is left entirely up to you whether
9 or not you wish to testify. You can talk to your
10 attorneys, family, friends, but the final decision
11 is ultimately up to you. Do you understand what I
12 have explained to you?

13 A. Yes, ma'am, I have.

14 Q. Do you have any questions about what I
15 explained to you?

16 A. No, ma'am.

17 Q. Have you discussed with your attorneys
18 whether or not you should testify?

19 A. Yes, ma'am, I have.

20 Q. And do you need any more time to talk
21 to them about this decision?

22 A. No, ma'am.

23 Q. Do you wish to testify?

24 A. No, ma'am.

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

1 You may have a seat.

2 Counsel, what we can do is break, and
3 if you-all would meet in chambers about 12:15, we
4 can go over the proposed jury instructions and make
5 sure that we're on the same page before the jury
6 comes back at 12:30.

7 MR. ALFARO: Thank you.

8 MR. CHURCH: Thank you.

9 (A luncheon recess transpired.)

10 THE COURT: I understand that you would
11 like to place something on the record regarding the
12 jury instructions?

13 MR. CHURCH: Yes, Your Honor. The
14 defense would be asking for the lesser included
15 charges of burglary, third degree, and burglary,
16 second. In addition, we would also like to renew
17 our previous motions about having the charges
18 dismissed for the faulty warrants presented during
19 the prelim and renew our directed verdict motions.

20 THE COURT: Anything from the State?

21 MR. ALFARO: Your Honor, just regarding
22 the directed verdict and the pretrial motion
23 regarding dismissal, we would rely on our previous
24 arguments as well as the Court's prior ruling on
25 those.

1 Regarding the jury charge, we don't
2 believe that there is any evidence to support a
3 jury charge of any lesser included and that goes to
4 the offense of burglary, second and third.

5 THE COURT: And upon consideration of
6 the testimony that was presented, I do find that
7 there was no evidence to support a charge on the
8 lesser included offense of burglary, second degree,
9 and burglary, third degree. And, especially
10 considering the fact that if the jury does find
11 burglary at all, then the stipulation that he has
12 two more prior burglaries certainly meets that
13 element bumping it up to a first degree.

14 Again, the Court does not find any
15 other evidence to support the lesser included
16 offenses, so I will decline to charge those.

17 As far as the previous motions for
18 directed verdict and to dismiss the charges for the
19 same reasons, the motions are respectfully denied.

20 MR. CHURCH: Thank you.

21 THE COURT: Anything before we bring
22 out the jury?

23 MR. ALFARO: No, Your Honor.

24 MR. CHURCH: No, Your Honor.

25 THE COURT: Let's have our jury,

CLOSING ARGUMENT - BY MR. ALFARO

1 please.

2 (Jury in, 12:53 p.m.)

3 THE COURT: Welcome back.

4 MR. CHURCH: The defense rests, Your
5 Honor.

6 THE COURT: Thank you.

7 Ladies and gentlemen of the jury, both
8 sides have rested their cases in this matter. It
9 is now time for closing argument. Please pay close
10 attention.

11 MR. ALFARO: Home sweet home; a man's
12 home is his castle; home is where the heart is.
13 Those are sayings -- common sayings that you may
14 have found embroidered on a little needlepoint in
15 your mother's or your grandmother's or your
16 great-grandmother's house. Home sweet home; home
17 is where the heart is.

18 All those things mean is that people in
19 this country, this county, have a right to feel
20 safe and secure and at peace inside the walls of
21 their home. Whether you live in a mansion, you
22 live in a house, you live in a trailer, you live in
23 an apartment, you have the right to feel safe and
24 secure in your home.

25 Most people get to go through life

CLOSING ARGUMENT - BY MR. ALFARO

1 feeling that way; they get to feel safe. They come
2 home -- no matter what the world brings you in the
3 course of your day, whether it's at school or work
4 or whatever drama there is in your life, when you
5 come home, you should be able to feel safe; finally
6 made it home.

7 And for the Kulases that was ripped
8 away from them by Fred Freeman. Because when the
9 Kulases were having a dinner at their in-laws'
10 house, Fred Freeman had taken it upon himself to
11 break into their home and pillage and plunder and
12 go room by room taking guns, jewelry, food, and
13 whatever his heart desired.

14 Now, the minute Fred Freeman broke the
15 window and broke in to that house, the Kulases were
16 never going to have that same peace and sanctity
17 and comfort in their home; because if they had come
18 home and he would have been gone by then, they
19 would have found a house in shambles. Drawers
20 pulled out, clothes laid out, property missing,
21 engagement rings, confirmation pins, things that
22 meant something to them taken. Their house just
23 ripped through by that man.

24 But whether it's fortunately, or
25 unfortunately, they caught Fred Freeman red-handed

CLOSING ARGUMENT - BY MR. ALFARO

1 inside their living room. They walked into the
2 house and he's standing there, barking like a dog,
3 backing up, whatever he was doing, whatever his
4 reaction was to being caught, that's his reaction.
5 In much the same way, whatever Mr. Kulas's reaction
6 was, was his reaction.

7 Was it smart to chase after the guy?
8 In 20/20 hindsight, maybe not. But it's reflexes.
9 No one knows what they will do until they are in
10 that situation. When he was confronted with that
11 situation, he chose to fight and try to catch the
12 man that had ripped that peace from their home, had
13 taken that property from their home.

14 He went after him. He grabbed hold of
15 him. He ran from the living room into the back
16 part of the house, the office, out the back door.
17 He was able to pull away and get to a fence.
18 Mr. Kulas reacted, threw a chair at him, hit him,
19 they both go over the fence at the same time. Mr.
20 Kulas lands on top of the Defendant.

21 And you heard testimony that the
22 Defendant got his hip hurt in the process of
23 getting hit by the chair and going over the fence
24 and smacked into the concrete, but because of that,
25 just that itself, he wasn't going anywhere. But,

CLOSING ARGUMENT - BY MR. ALFARO

1 then, when Mr. Kulas got on top of him and held him
2 down until the cops got there, he was still at the
3 scene when the police arrived.

4 This is not a whodunit? This is not
5 where they came home and find their house
6 burglarized and a week, a month, a year later they
7 caught the guy they think did it. The guy who did
8 it was still in the house. The guy who did it
9 barely left the property.

10 The testimony was maybe 8 to 13 feet
11 from the fence; that's as far as he got. He never
12 got away. And you don't need fingerprints, you
13 don't need DNA, you don't need photo lineups to
14 know the person that they saw is the person he
15 chased and the person that he caught and person
16 that he held on the ground until the cops showed
17 up. The same person that their neighbor,
18 Mr. Porter, took the gun when they were wrestling
19 with it. That's all common sense.

20 You're going to hear instructions from
21 the Judge that's a lot of the law, and I'm going to
22 go over a little bit of it with you. But one of
23 the things that's most important for all of you to
24 remember is that, everything you need to make the
25 obvious and clear-cut verdict of guilty in this

CLOSING ARGUMENT - BY MR. ALFARO

1 case, you brought with you the day you walked into
2 this courthouse Monday morning; common sense and
3 plain ordinary common sense. That's all it is.

4 Would it be nice if you had a video of
5 him doing it? It would be nice if they had
6 surveillance inside their house. They don't. We
7 still know it's him.

8 Would it be nice if there were
9 fingerprints? Maybe. We still know it's him.

10 Would it be nice if there was DNA?
11 Maybe. We'd still know it's him.

12 Would it be nice to have anything else
13 other than Mr. Kulas's testimony? Oh, wait, you
14 do. You have the in-car camera from Officer Davis.
15 As he pulls up, Mr. Kulas is on top of Mr. Freeman,
16 exactly as he said he was, holding him down until
17 the police got there to take custody of him.

18 What happened then? They didn't just
19 rely on what Mr. Kulas said. They went through
20 Fred Freeman's pockets. They found Mr. Kulas's
21 wallet; not Fred Freeman's. They found Mr. Kulas's
22 jewelry box with a confirmation pin in it; not Fred
23 Freeman's. They found jewelry from the house
24 belonging to Mr. and Mrs. Kulas; not Fred Freeman.
25 They found guns in the bag with food, also

CLOSING ARGUMENT - BY MR. ALFARO

1 belonging to the Kulases.

2 Mr. Freeman took possession of those
3 guns when he stole them out of their house, which
4 makes him guilty of those charges he was charged
5 with.

6 Just because he decided to go into
7 their house and take them, that doesn't make it his
8 stuff either. Just because you break into
9 somebody's house, climb through a window, or open a
10 window and get into a house, doesn't mean that
11 anything in that house belongs to you.

12 It means you stole it. It means you
13 went into that house with the intent to steal, and
14 steal is exactly what he did.

15 Now, Mr. Freeman is charged with
16 burglary, first degree, and possession of a weapon
17 during the commission of a violent crime. What is
18 burglary first? Burglary first is the unlawful
19 entry into a dwelling of another. We have that.
20 This is the Kulas's dwelling, not Mr. Freeman's.

21 Unlawful entry; nobody gives him
22 permission to break a window and come in when
23 they're not home. Without consent; same thing. He
24 broke a window when they weren't home and went in
25 on his own without any kind of permission or

CLOSING ARGUMENT - BY MR. ALFARO

1 consent. With the intent to commit a crime
2 therein; pocket full of jewelry, guns, bag of food,
3 M&M's with fancy overseas writing on it. That's
4 what he took.

5 That's what he did when he went in. He
6 went in to steal and he stole. That's the basis
7 for burglary, first degree. That's a burglary.
8 What he did there, just that slide is a burglary.

9 That part there that says, and either,
10 leads us to this. If that first slide, plus any of
11 these three -- any; not two, not three, just one.
12 If any of those apply, he's guilty of burglary,
13 first degree. I submit that he's guilty under all
14 three of those things, but we only have to prove
15 one.

16 The testimony that you heard and the
17 stipulation that you heard means he's guilty of all
18 three. Because while entering or while inside that
19 house, he was armed with a deadly weapon, he had
20 two of them; or caused physical injury to a person
21 who is not a participant, we saw the injury to
22 Mr. Kulas. That happened during the burglary.

23 Uses or threatens the use of a deadly
24 weapon. You heard Mr. Kulas say when he got to the
25 fence he turned and he saw the gun. And that also

CLOSING ARGUMENT - BY MR. ALFARO

1 ties into these. All of those under Number 1 are
2 or's. Any of those four prove that. All four of
3 those do.

4 And, again, we just have to prove -- we
5 could stop there. That's enough for you to find
6 him guilty of burglary first, but in this case you
7 also have Number 2. Even though you don't need it,
8 you have Number 2. The stipulation that the judge
9 read to you, that these burglaries were committed
10 by a person, Mr. Freeman, with two or more prior
11 convictions on his record, burglary, got that.

12 Or Number 3. Again, you've already got
13 one, you've got two. That's twice as much as you
14 need; you only need one, but you have three. The
15 entering or remaining occurred in the nighttime.
16 Mr. Kulas, Mrs. Kulas, Mr. Porter, the responding
17 officer all say that it was dark when this
18 happened.

19 It's the entering or remaining. He
20 could have walked in there at 6:00 in the daylight,
21 but the fact that he's still in there at 8:30 when
22 the Kulases get home, that means it's still
23 nighttime; if you go in, or if you stay in there
24 long enough for it to turn dark. We know that he
25 went in after Mr. Kulas stopped by and took a

CLOSING ARGUMENT - BY MR. ALFARO

1 shower and then went to his in-law's.

2 So even if he came in right after that
3 and it was daylight, he clearly was still there
4 when the Kulases got home that night. It's clearly
5 -- you saw the in-car video of Officer Davis.
6 Pitch black, blue lights and headlights, pouring
7 down rain. Clearly, all three elements have been
8 met.

9 He's also charged with possession of a
10 weapon during the commission of a violent crime.
11 First of all -- if you find that he committed
12 burglary first, which is clear that he did, that's
13 the violent crime. Burglary first is considered a
14 violent crime in South Carolina. By committing
15 that and doing that while he had a gun, that's
16 commission -- possession of a weapon during the
17 commission of a violent crime. Clearly guilty of
18 both of those; no question. Common sense and the
19 evidence tells you that.

20 Now, the Judge is going to charge you
21 on reasonable doubt. Reasonable doubt is doubt
22 that would cause a reasonable person to hesitate to
23 act. Not beyond all doubt, not beyond any doubt.
24 Normally, you're told that there are very few
25 things in this world that I could convince you of

CLOSING ARGUMENT - BY MR. ALFARO

1 beyond any doubt. Any doubt at all. That's not
2 the standard. The standard is any reasonable
3 doubt.

4 Now, clearly, he's caught in the house.
5 Clearly, he's chased through the house. Clearly,
6 he's caught on the way over the fence and held down
7 until the police got there. No doubt about that.
8 Let's say you want to fall into some of those
9 devil-in-the-details argument, things that -- red
10 herrings as I like to call them.

11 Is it possible that some other person
12 was walking down that street in the middle of what
13 one person called the great flood, this monsoon or
14 rainstorm, just happened to be walking down the
15 street. Mr. Freeman happened to be walking down
16 the street and the other person runs, gets chased
17 out of Mr. Kulas's house, and the other person gets
18 chased over the fence, and the other person gets
19 tackled by Mr. Kulas.

20 Or maybe it's as they're going over the
21 fence, when Mr. Kulas goes over the fence, the
22 other person who actually broke into the house is
23 the one carrying the bag with food and the guns
24 that belonged to Mr. Kulas.

25 Common sense, does that sound like it

CLOSING ARGUMENT - BY MR. ALFARO

1 holds any water? Does it make any sense at all?
2 Common or otherwise? No. That's nonsense is what
3 that is. It's just this poor guy minding his own
4 business, walking through a neighborhood that he
5 didn't live in, in the middle of the night in a
6 rainstorm, just happened to be landed on by the
7 homeowner that his house got broken into.

8 That's the kind of unreasonable doubt
9 that you would have to believe was the truth to
10 find him not guilty. As I said, when you walked in
11 through that door on Monday, common sense tells you
12 that is ridiculous to think it's anything other
13 than that man broke into their house, got caught
14 red-handed, got chased and tackled, and was found
15 with the property.

16 That's the other thing you have to
17 find. Not only did this poor guy get tackled for
18 no reason at all as he was walking down the street,
19 somebody shoved the jewelry box, some M&M's, a hand
20 full or bag full of jewelry into his pockets, and a
21 wallet that belonged to Mr. Kulas. It's asking an
22 awful lot.

23 Common sense tells you there is no
24 other possibility than this man broke into their
25 house and got caught doing it. Again, common

CLOSING ARGUMENT - BY MR. ALFARO

1 sense, dark outside, caught in the house, chased
2 into the office, through the back door.

3 Again, said he never left his sight.
4 Chased him outside, never left his sight. Victim
5 landed on the Defendant. The neighbor, Mr. Porter,
6 finds him wrestling over a gun and takes the gun.
7 Still being held down when the police arrive.
8 Wallet, jewelry, jewelry box in his pockets, bag
9 belonging to the victim, and another gun is
10 outside. Again, pouring down rain.

11 And, also you heard Mrs. Kulas's
12 testimony she called 911 as soon as she got in the
13 car, locked her kid and her dog in the car. This
14 big ferocious pit bull that ran right out the front
15 door when this happened. Locked him in the car and
16 called the police immediately.

17 You saw the police video. The officer
18 said he hit his blue lights on the way to the call,
19 that's when the video came on. And it's dark in
20 the video. She called 911 immediately, and that
21 proves it's dark when it happened.

22 At the beginning of this, Mr. Church
23 told you the devil's in the details. Again, like I
24 told you, there's details and then there's red
25 herrings. Again, no fingerprints. You don't need

CLOSING ARGUMENT - BY MR. ALFARO

1 it. Clearly, he got caught in the house. Clearly,
2 he was held until the police got there and,
3 clearly, he had the property in his pocket.

4 No DNA. Clearly, he was caught in the
5 house; clearly, he got chased through the house;
6 and, clearly, he got tackled and held down; and,
7 clearly, he had the property in his pocket.

8 No photo lineups. That was asked of
9 Mrs. Kulas. You don't need a photo lineup when the
10 person who broke into your home is held down until
11 the cops pull up and find him right there. Like I
12 said, this wasn't something that got solved a day
13 later or however later -- a day later, a week
14 later, a year later. It got solved right then and
15 there. Is that why the cops didn't do more inside?
16 Maybe.

17 The purpose of doing fingerprints and
18 DNA and photo lineups is to identify the suspect.
19 The suspect is identified when he's being held
20 facedown on the road until the cops get there. Oh,
21 and he's got the stolen property in his pockets.

22 The details are right in front of you.
23 Just like the Defendant was right in front of the
24 Kulases when they came home and was right on the
25 ground when the cop pulls up and you see it on

CLOSING ARGUMENT - BY MR. ALFARO

1 video.

2 Again, there is no doubt that he's
3 guilty of burglary, first degree. It happened at
4 night, it's dark outside, he's the one that is
5 caught in the house and chased. No question he had
6 a gun. No question he had their property inside
7 his pocket. Guilty of burglary, first degree, and
8 unlawful entry into the dwelling of Mr. and
9 Mrs. Kulas and their two daughters, without their
10 consent, with the intent to commit a crime therein,
11 and -- not or, but, and while entering or while
12 inside, he was armed with a weapon -- deadly
13 weapon.

14 He caused injury to Mr. Kulas, he used
15 or threatened that dangerous -- that instrument,
16 that gun, displaying that gun or pistol; and, he
17 had two or more burglaries on his record when he
18 did it; and, not or, it happened at night.

19 So, again, any of those three make him
20 guilty of burglary first. All three doesn't mean
21 he's any more guilty of burglary first. It's just
22 that he's guilty of burglary first. Any of those
23 things you have to find him guilty of burglary
24 first.

25 And, again, the possession of a weapon

CLOSING ARGUMENT - BY MR. ALFARO

1 during the commission of a violent crime; clearly,
2 he's guilty of burglary first which by law is a
3 violent crime. And, clearly, the evidence shows
4 you that he had at least one -- two, not just one,
5 but two guns in his possession at the time it
6 happened.

7 Ladies and gentlemen, I told you
8 reasonable doubt doesn't mean any and all doubt.
9 This is about as close as you're ever going to get
10 to something that's proven beyond any doubt.

11 Fred Freeman, on October 3, 2015,
12 burglarized the home of Jeremiah Kulas, Ashley
13 Kulas, their two daughters; he stole stuff that
14 didn't belong to him and he got caught. He got
15 caught red-handed. He got caught, at the most,
16 13 feet from the fence of the back yard. No
17 question.

18 This is not a mistaken identity. This
19 is Fred Freeman got caught. Because Fred Freeman
20 got caught, Fred Freeman is guilty of burglary,
21 first degree, and possession of a weapon during the
22 commission of a violent crime.

23 THE COURT: Counsel.

24 MR. CHURCH: May it please the Court.

25 THE COURT: Yes, sir.

CLOSING ARGUMENT - BY MR. CHURCH

1 MR. CHURCH: Ladies and gentlemen, this
2 case is not as clear as the State just told you it
3 was. The devil is in the details and Mr. Freeman
4 is not the devil. The devil is someone wearing a
5 white shirt. There's been no testimony in this
6 case that Mr. Freeman was wearing a white shirt.

7 You heard Mrs. Kulas testify on the 911
8 call the person is wearing a white shirt. She
9 testified that she wrote that in her statement and
10 she testified again today on the stand, that the
11 person is wearing a white shirt.

12 You also heard that -- the Solicitor
13 gave a story about how, you know, this could have
14 been some unknown person walking down the road and
15 it was a case of mistaken identity. The reason
16 they told you that story is because they considered
17 that. Mr. Freeman was found by the road and by the
18 sidewalk where he has a right to be. Not everybody
19 has a car. Sometimes when you have to go places,
20 even if it's in a torrential downpour, you have to
21 walk through the rain to get where you're going.

22 So let's go through some of the stuff,
23 and I'll show you where the details do not add up.
24 Let's start with in the house and Ashley Kulas said
25 the person was wearing a white shirt. She was very

CLOSING ARGUMENT - BY MR. CHURCH

1 adamant about that.

2 Mr. Kulas says that he leaves with
3 somebody with a gun. He leaves the wife and
4 four-year-old daughter to go chase after somebody
5 in the dark not knowing what's going on and whether
6 there was anyone else in the house. Does that make
7 sense? People react different, but that doesn't
8 make any sense. It's hard to believe that that's
9 what happened.

10 He testified that the person in the
11 house fell down at the threshold and he was able to
12 grab him. Mr. Kulas also testified that he knew
13 Brazilian jujitsu and he worked out, and he could
14 not contain this person on the ground right there
15 by the door. As you can look at Mr. Freeman, he's
16 no spring chicken. Mr. Kulas is the martial arts
17 person. If it would have been Mr. Freeman, he
18 would have held him down right there, and that's
19 where the police would have found him and it would
20 have been him.

21 Let's talk about what happened out in
22 the yard. Mr. Kulas stated that he had a hold of
23 him the whole time, that he was attached. He went
24 with him out the house holding on to him and over
25 the fence holding on to him. With that ridiculous

CLOSING ARGUMENT - BY MR. CHURCH

1 story that when he fell over the fence, that
2 flipped him over the fence too, and they rolled all
3 the way down, end over end, all the way down to the
4 sidewalk where they were eventually found with the
5 chair sitting upright.

6 Mr. Kulas said it must have rolled with
7 them the whole time, because he didn't testify that
8 he took the chair over the fence or through the
9 gate. Somehow it just miraculously ended up with
10 him.

11 And you can go back and look at the
12 video, it's on the video. It's sitting perfectly
13 upright by the mailbox. You have Mr. Kulas saying
14 they were attached the whole time; but the neighbor
15 right next door, looking out his window, looks out,
16 and he said he sees Mr. Kulas holding the chair,
17 cowering behind it, advancing the chair, throwing
18 the chair, but he never sees anybody else in the
19 backyard. He doesn't see anybody else.

20 He also testified that there was a
21 little bit of a time lapse between -- you know,
22 first he heard some people yelling. He goes and
23 looks out the window, doesn't see anything or sees
24 Mr. Kulas. He goes and sits back down and hears
25 some more yelling, he goes on outside, and that's

CLOSING ARGUMENT - BY MR. CHURCH

1 when he finds them by the road.

2 It was also testified too that this is
3 a privacy fence, at least six feet tall with solid
4 boards so you can't see through it. So common
5 sense will tell you that at some point Mr. -- or
6 whoever was -- Mr. Freeman was found out by the
7 road. Whoever was leaving the yard, got over the
8 fence, and it was at some point where he was not
9 visible to Mr. Kulas.

10 So it is plausible that someone ran
11 from the yard as Mr. Freeman was walking up the
12 road about the time that Mr. Kulas got over the
13 fence carrying a chair without anybody else and
14 assumed that Mr. Freeman walking down the sidewalk
15 was the person that had been in the house, even
16 though there was no testimony that he was wearing a
17 white shirt.

18 And Mr. Porter, the neighbor, said he
19 took the gun from a pile of limbs on the ground.
20 Didn't say he took it from Mr. Freeman. And the
21 State talks about red herrings with all of this
22 evidence: There's no DNA, no fingerprints, no
23 blood. There's not, but they could have easily
24 taken that evidence because they know where the
25 person in the house touched. He touched drawers,

CLOSING ARGUMENT - BY MR. CHURCH

1 he touched glass banks, jewelry boxes. There was a
2 lot of places that was touched, a window that was
3 broken. That jacket -- they could have checked all
4 of those for fingerprints or hairs or anything.
5 They didn't.

6 They also testified they found some
7 blood on the cushion underneath a broken window.
8 Nobody came to this court to testify that was blood
9 or that was related to Mr. Freeman in any way,
10 shape, or form. And do you know why? Because it
11 had nothing to do with Mr. Freeman.

12 If there had been anything linked to
13 him, there would have been somebody from like one
14 of those CSI crime shows sitting up there telling
15 you how it belonged to him and only he could have
16 left it. No witnesses to that.

17 Like I said, if anyone were to check
18 for the DNA, fingerprints -- the firearms. Those
19 would have been easy to check for fingerprints or
20 DNA. They didn't even run them through the system
21 to see if they had been stolen. They could have
22 easily done all of this. All the police have
23 personnel that handle these kinds of investigations
24 and inquires, but for some reason they chose not
25 to.

CLOSING ARGUMENT - BY MR. CHURCH

1 Okay. Let's talk about the lead
2 detective a little bit. He went to the prelim with
3 these serious changes with somebody else's name on
4 the warrants. He didn't even proofread the
5 warrants before he went. Who is this other person
6 and why was his name in the warrants? Ask yourself
7 that.

8 Neither of the police officers admitted
9 to handcuffing Kulas at the scene. Kulas got up
10 here and said he was handcuffed by one of the
11 police officers. When I pointed out that to one of
12 the police officers, he said, oh, that must have
13 been a mistake in my report where I said I
14 handcuffed him. Mr. Kulas testified that he was
15 handcuffed. The police don't even know what's in
16 their reports.

17 You also heard testimony about how they
18 brought SWAT out to look for somebody else in the
19 house. They believed that there was somebody else
20 in this house; there was nobody found. Nobody. If
21 they thought that somebody else was there, they
22 should have taken DNA or fingerprints just to find
23 if another person was in there, but they didn't do
24 that.

25 You've heard a lot about ham and

CLOSING ARGUMENT - BY MR. CHURCH

1 groceries. Haven't seen any pictures of ham or
2 groceries. They didn't take any of the evidence
3 into evidence. They just photographed it without
4 checking anything and gave it back to the
5 defendant.

6 So the EMT person said they didn't know
7 what happened to the clothes. The officer that
8 rode in the ambulance said the clothes were
9 disposed of. These were the clothes that
10 Mr. Freeman was wearing. Why didn't they keep
11 those for evidence?

12 Because there wasn't a white shirt in
13 those clothes. That's why. If there was a white
14 shirt, you can bet they would have had it here in
15 court showing it to everybody. They didn't check
16 the guns, don't know who had the gun.

17 Stuff found in his pockets, how do you
18 know it was really found in his pockets? The
19 police don't know what the other police officers
20 were doing. How do you know that wasn't a mistake?
21 How do you know it wasn't just found on the ground
22 and the police officers just assumed that it was
23 found in the pockets?

24 You saw the police officers. Half of
25 them didn't know what was in their reports. Some

CLOSING ARGUMENT - BY MR. CHURCH

1 of them had to re-read their reports; they couldn't
2 remember. The lead investigator on this case, I'm
3 not sure really what he did other than go to the
4 prelim. And he didn't know what all had been
5 tested for evidence or who had been at the scene.

6 What does that leave us with? This was
7 a dark and stormy night. There was a lot of
8 confusion. It was poor visibility. Mr. Freeman
9 could have been walking down the street and
10 somebody came running by him. That person could
11 even have been throwing stuff that he picked it up.

12 You know the time line of Mr. Kulas is
13 not correct because he said he was attached to him
14 the whole time, but based on the neighbor's
15 testimony, you know that's not true. There could
16 easily have been enough time when the person he
17 chased from the house was out of his view and
18 Mr. Freeman come walking up the street. It was
19 just the wrong time.

20 Like I said, not everybody has a car.
21 If you have to go somewhere and it's raining, you
22 have to be out in the rain. Too many
23 inconsistencies in this case for you to find
24 Mr. Freeman guilty beyond a reasonable doubt. The
25 State has not proven their case; there's too many

JURY CHARGE

1 inconsistencies and other explanations, so this is
2 beyond a reasonable doubt. This is substantial
3 doubt. Please find Mr. Freeman not guilty of these
4 charges.

5 THE COURT: Would you please approach
6 one second?

7 (Bench conference.)

8 THE COURT: Ladies and gentlemen of the
9 jury, it is now time for me to charge you on the
10 law in this case. The indictments in this case
11 charge the Defendant with burglary in the first
12 degree, possession of a weapon during the
13 commission of a violent crime.

14 I remind you that the fact that the
15 defendant was arrested, charged and indicted in
16 this case is not evidence in this case. It could
17 not be considered by you as evidence of guilt in
18 this case, nor does it create any presumption of
19 inference of guilt. The indictment is simply the
20 formal written instrument which contains the charge
21 made against the Defendant. It's the formal
22 document by which the case is brought into court.

23 The indictments in this case alleged
24 two different offenses against the Defendant. The
25 charges are burglary in the first degree and

JURY CHARGE

1 possession of a weapon during the commission of a
2 violent crime. Each indictment charges a separate
3 and distinct offense. You must decide each
4 indictment separately on the evidence in the law
5 applicable to it uninfluenced by your decision as
6 to any other indictment.

7 The Defendant may be convicted or
8 acquitted on any or all of the offenses charged.
9 You will be asked to write a separate verdict of
10 guilty or not guilty for each indictment.

11 The Defendant has pled not guilty to
12 the indictments, and that plea puts the burden on
13 the State to prove the Defendant guilty. A person
14 charged with committing a criminal offense in South
15 Carolina is never required to prove himself
16 innocent.

17 I charge you that as an important rule
18 of law, the defendant in a criminal trial, no
19 matter what the seriousness of the charge may be
20 will always be presumed to be innocent of the crime
21 for which their indictment was issued unless guilt
22 has been proven by evidence satisfying you of that
23 guilt beyond a reasonable doubt.

24 The presumption of innocence does not
25 end when you begin your deliberation but

JURY CHARGE

1 accompanies the defendant throughout the trial
2 until you reach a verdict of guilt based on the
3 evidence satisfying of that guilt beyond a
4 reasonable doubt.

5 The presumption of innocence is like a
6 robe of righteousness placed about the shoulders of
7 the defendant and remains with the Defendant until
8 it has been stripped from him by evidence
9 satisfying you of the defendant's guilt beyond a
10 reasonable doubt.

11 The presumption of evidence is not a
12 mere legal theory. It's not just a legal phrase.
13 It is a substantial right to which every defendant
14 is entitled to unless you, the jury, are satisfied
15 from the evidence of the defendant's guilt beyond a
16 reasonable doubt.

17 What is a reasonable doubt in the law?
18 A reasonable doubt is the kind of doubt that would
19 cause a reasonable person to hesitate to act. The
20 State has the burden of proving the defendant
21 guilty beyond a reasonable doubt.

22 Some of you may have served as jurors
23 in civil cases where you were told it is only
24 necessary to prove that a fact is more likely true
25 than not true, such as by the greater weight or the

JURY CHARGE

1 preponderance of the evidence.

2 In criminal cases, the State's proof
3 must be more powerful than that. It must be beyond
4 a reasonable doubt. Proof beyond a reasonable
5 doubt is proof that leaves you firmly convinced of
6 the defendant's guilt. There are very few things
7 in this world that we know with absolute certainty,
8 and in criminal cases the law does not require
9 proof that overcomes every possible doubt.

10 If based upon the consideration of the
11 evidence you are firmly convinced the defendant is
12 guilty of the crime as charged, you must find the
13 Defendant guilty. If, on the other hand, there is
14 a real possibility that the defendant is not
15 guilty, you must give the Defendant the benefit of
16 the doubt and find him not guilty.

17 I remind you that during the trial you
18 and I have certain duties to perform. As a trial
19 judge, it's my responsibility to preside over the
20 trial of this case, and I also have duty to rule on
21 the admissibility of evidence offered during the
22 trial.

23 You are to consider only the competent
24 evidence before you. If there was any testimony
25 ordered stricken from the record during the trial,

JURY CHARGE

1 you must disregard that testimony. You are to
2 consider only the testimony which has been
3 presented from the witness stand, any exhibits that
4 were made part of the record in this case, and any
5 stipulations of counsel.

6 I have the additional duty to charge
7 the law applicable to this case. As the presiding
8 judge, I'm the sole judge of the law. It is your
9 duty as jurors to accept and apply the law as I
10 state it to you. If you have any idea as to what
11 the law is or what the law ought to be, and it does
12 not agree with what I now tell you the law is, you
13 must abandon this idea because you are sworn to
14 accept the law and apply the law exactly as I now
15 state it to you.

16 In every case tried before the Court,
17 the jury becomes the sole and exclusive judges of
18 the facts in the case. A trial judge cannot
19 intimate, state, comment on, or make any statement
20 to the trial jury about the facts in the case.
21 Since you, the jury, are the sole judges of the
22 facts, you are not to infer from anything I have
23 said during the progress of this trial in ruling
24 upon the admissibility of evidence, or otherwise,
25 or anything that I say now during the course of

JURY CHARGE

1 this instruction to you that I have any opinion
2 about the facts in this case. The law does not
3 allow me to have an opinion about the facts in this
4 case.

5 This is a matter solely for you, the
6 jury, to determine. As jurors it is your duty to
7 determine the effect, value, weight, and truth of
8 the evidence presented during this trial. There
9 are two types of evidence which are generally
10 presented during the trial; direct evidence and
11 circumstantial evidence. Direct evidence is the
12 testimony of a person who claims to have actual
13 knowledge of a fact, such as an eyewitness.

14 Circumstantial evidence is proof of a
15 chain of facts and circumstances indicating the
16 existence of a fact. The law makes no distinction
17 between the weight or value to be given to either
18 direct or circumstantial evidence, nor is a greater
19 degree of certainty required of circumstantial
20 evidence over direct evidence.

21 You should weigh all of the evidence in
22 this case. After weighing all of the evidence, if
23 you are not convinced of the guilt of the defendant
24 beyond a reasonable doubt, you must find the
25 Defendant not guilty. Necessarily, you must

JURY CHARGE

1 determine the credibility of witnesses who have
2 testified in this case.

3 Credibility simply means believability.
4 It becomes your duty as jurors to analyze and to
5 evaluate the evidence and determine which evidence
6 convinces you of its truth. In determining the
7 believability of witnesses who have testified in
8 this case, you may believe one witness over several
9 witnesses, or several witnesses over one witness.

10 You may believe a part of the testimony
11 of a witness and reject the remaining part of the
12 testimony of that same witness. You may believe
13 the testimony of a witness in its entirety or
14 reject the testimony of the witness in its
15 entirety.

16 You may consider whether any witness
17 has any interest, bias, prejudice, or other motive
18 in the case. You may also consider the appearance
19 and manner of a witness while on the witness stand.

20 I instruct you and emphasize that the
21 fact the defendant did not testify is not a factor
22 to be considered by you in any way during your
23 deliberations and in your consideration on the
24 question of guilt or the innocence of the
25 defendant. It must not be considered by you in any

JURY CHARGE

1 manner whatsoever.

2 A defendant has the constitutional
3 right to remain silent, and the assertion of this
4 right must not be considered by you in your
5 deliberations. I repeat, under your oath, you are
6 to draw no conclusion whatsoever from the fact that
7 the Defendant in this case did not testify. The
8 fact that this defendant did not testify should not
9 even be discussed in the jury room.

10 The burden of proof, as I stated to
11 you, is on the State. The Defendant is not
12 required to prove his innocence. The burden of
13 proof remains on the State to prove guilt beyond a
14 reasonable doubt.

15 In order to establish criminal
16 liability, criminal intent is required. For
17 example, the mental state required to be proven by
18 the State for a particular crime might be purpose,
19 intent, knowledge, recklessness, or criminal
20 negligence. Criminal intent must be proven by the
21 State beyond a reasonable doubt.

22 Criminal intent is always a matter that
23 must be determined by the jury from the
24 circumstances surrounding the situation. There is
25 no way to prove intent to a mathematical certainty.

JURY CHARGE

1 There is no way that medical science can dissect a
2 person's brain and determine what this person has
3 in mind. The law says criminal intent may be
4 inferred from the circumstances shown to have
5 existed.

6 This is how you make a determination of
7 whether or not the element requiring intent was
8 present. It is not necessary to establish intent
9 by direct and positive evidence, but intent may be
10 established by inference in the same way as any
11 other fact, by taking into consideration the act of
12 the parties and all of the facts and circumstances
13 that are in the case.

14 Criminal intent is a mental state, a
15 conscious wrongdoing. It is up to you to determine
16 what the Defendant intended to do based upon the
17 circumstances shown to have existed. Criminal
18 intent can arise from action or a failure to act.
19 It may rise from negligence, recklessness, or an
20 indifference to the consequences. That is
21 considered by the law to be the equivalent of
22 criminal intent.

23 The Defendant is charged with first
24 degree burglary. The State must first prove beyond
25 a reasonable doubt that the defendant entered the

JURY CHARGE

1 dwelling without consent. A dwelling is any
2 building or portion of a building which the person
3 ordinarily sleeps. A building constructed as a
4 dwelling that has never been occupied cannot be
5 considered a dwelling for the purpose of burglary,
6 but a building is a dwelling even if the residents
7 are temporarily absent from the building.

8 In order to prove the Defendant entered
9 the dwelling, the State does not have to show the
10 defendant's entire body entered the dwelling. The
11 smallest entry is sufficient. It may be any part
12 of the body such as a hand, foot, or even an
13 instrument such as a hook or other instrument. In
14 addition, the State does not have to prove that
15 force was used to gain entry.

16 If a person enters a building by using
17 deception, artifice, trick, or misrepresentations
18 to get consent to enter, this is an entry without
19 consent.

20 Next, the State must prove beyond a
21 reasonable doubt that the defendant intended to
22 commit a crime, either a felony or misdemeanor at
23 the time of the entry. The mere entry into the
24 dwelling without consent is not burglary. The
25 intent to commit a crime is -- if the intent to

JURY CHARGE

1 commit a crime is formed after the entry, it is not
2 burglary.

3 On the other hand, if the Defendant
4 intended to commit a crime at the time of the
5 entry, it is a burglary even if the intent was
6 abandoned after the entry. It does not matter that
7 the intent of the crime was not completed. Intent
8 may be shown by acts and conduct of the defendant
9 and other circumstances which you may naturally
10 infer intent.

11 Finally, the State must prove beyond a
12 reasonable doubt that, one, when entering, while in
13 the dwelling, or when fleeing, the Defendant or an
14 accomplice was armed with a deadly weapon or
15 explosive.

16 A deadly weapon is any article,
17 instrument, or substance which is likely to cause
18 death or great bodily harm. Whether an instrument
19 has been used as a deadly weapon depends on the
20 facts and circumstances of each case.

21 The following are examples of
22 instruments that may be a deadly weapon: A pistol,
23 shotgun, a rifle, a dirk, a dagger, a knife, a
24 slingshot, metal knuckles, a razor, gasoline or
25 firebomb, a Molotov cocktail and lighter fluid. A

JURY CHARGE

1 gun may be a deadly weapon even if it's not
2 operating.

3 Two, when entering in the dwelling or
4 when fleeing, the Defendant or an accomplice caused
5 physical injury to anyone not participating in the
6 crime.

7 Three, when entering, while in the
8 dwelling, or when fleeing, the Defendant or an
9 accomplice used or threatened to use a dangerous
10 object.

11 Four, when entering, while in the
12 dwelling, or while fleeing, the defendant or an
13 accomplice displayed what looked like or appeared
14 to be a knife, pistol, revolver, rifle, shotgun,
15 machine gun or other firearm.

16 Five, the Defendant has a prior record
17 of two or more convictions of burglary and/or
18 house-breaking. Evidence of prior offenses
19 committed by the Defendant, which was not offered
20 to prove the Defendant has a bad character or to
21 prove that the Defendant committed the burglary on
22 this occasion, the prior convictions may be
23 considered by you only for the purpose of
24 determining whether or not it satisfies the element
25 of the offense that makes it first degree burglary

JURY CHARGE

1 if you enter a dwelling without consent to commit a
2 crime and you have two prior convictions for
3 burglary and/or house-breaking.

4 Before you can even consider the
5 evidence of the Defendant's prior burglary and/or
6 house-breaking convictions, you must first find
7 that the State has proved beyond a reasonable doubt
8 that the burglary was committed by the Defendant.

9 If you find beyond a reasonable doubt
10 that the burglary was committed, then you may
11 consider the evidence of the prior convictions as
12 evidence of one of the circumstances which would
13 make the burglary first degree burglary. If you do
14 not find beyond a reasonable doubt the Defendant
15 committed these alleged prior offenses, then you
16 cannot return a verdict of first degree burglary.

17 The Defendant has entered or remained
18 -- that's number six. The Defendant entered or
19 remained in the dwelling in the nighttime.
20 Nighttime is the period between sunset and sunrise
21 during which there is not enough daylight to
22 recognize the person's face except by artificial
23 light or moonlight.

24 The Defendant is charged with
25 possession of a weapon during the commission of or

JURY CHARGE

1 attempt to commit a violent crime. The State must
2 prove beyond a reasonable doubt that the Defendant
3 was in possession of a firearm or visibly displayed
4 what appeared to be a firearm during the commission
5 of a violent crime.

6 A firearm means any machine gun,
7 automatic rifle, revolver, pistol, or any weapon
8 which is designed to or may be readily converted to
9 expel a projectile.

10 In order to find the Defendant guilty
11 of possession of a weapon during the commission of
12 a violent crime, you must first find the Defendant
13 guilty of either committing a violent crime or
14 attempting to commit a violent crime.

15 Burglary in the first degree is a
16 violent crime. The State must prove beyond a
17 reasonable doubt that a weapon further advanced or
18 helped in the commission of the crime.

19 Ladies and gentlemen, there are two
20 possible verdicts on each of the charges. You will
21 have the verdict form in the jury room, and it's
22 rather self-explanatory. It goes through each of
23 the charges the Defendant is facing.

24 And it states: As to the charge of
25 burglary in the first degree; we, the jury,

JURY CHARGE

1 unanimously find the Defendant -- and then you
2 circle the appropriate verdict -- either not guilty
3 or guilty.

4 And then it goes on to the second
5 charge. As to the charge of possession of a weapon
6 during the commission of a violent crime; we, the
7 jury, unanimously find the Defendant -- and then
8 you would circle the appropriate verdict on the
9 verdict form.

10 Ladies and gentlemen, as I just stated,
11 your verdict must be a unanimous verdict. Once you
12 reach a verdict, if you would please knock on the
13 door and we will bring you back in here to receive
14 your verdict.

15 Please do not start your deliberations
16 quite yet. When you get into the jury room and you
17 receive the verdict form, along with the exhibits,
18 then you may begin your deliberations.

19 You may retire to your jury room.

20 (Jury out, 1:35 p.m.)

21 THE COURT: Any objections to the
22 charge on the law from the State or the defense?

23 MR. ALFARO: No, Your Honor.

24 MR. CHURCH: None from the defense.

25 THE COURT: I'm going to go release the

1 two alternates. If you would, get together and
2 make sure that we have all of the exhibits.

3 (A recess transpired.)

4 THE COURT: We are back on the record
5 in this matter. The jury has submitted several
6 questions, which we will mark as Court's Exhibits
7 after we answer the questions. It's actually
8 two pages. The first page contains seven questions
9 and the second page stated, request DVD player to
10 view a dash cam -- to view the dash camera
11 recording.

12 We've discussed these matters -- these
13 questions in chambers and we agree to the
14 following: On questions 1, 2, and 4, which
15 question 1 says, does Mr. Freeman live in the
16 neighborhood; and number 2, if not, why was he
17 there; number 4, what happened to the blood stain
18 on the bench? Was it taken for DNA? And results?

19 To those questions, it's agreed upon by
20 all parties that the Court will answer: You have
21 all the competent evidence before you to make your
22 decision based upon the evidence that was properly
23 submitted in questions 1, 2, and 4.

24 As to questions 3 and 5, we can
25 certainly replay the testimony of both Mr. and

1 Mrs. Kulas; and both parties agree to that.

2 Question 6 would be, is -- the question
3 was, other two convictions for -- with weapon or
4 armed robbery, question mark. The parties have
5 agreed that the Court will re-read the proposed
6 stipulation by the parties.

7 Question 7, a copy of burglary in the
8 first degree definition. The parties have agreed
9 that the Court will reread the definition of
10 burglary first as we have discussed.

11 And at the end, of course, we can
12 replay the DVD of the dash cam.

13 What I would propose to do is bring in
14 the jury, answer those questions as we have agreed
15 upon, play the DVD, and while we're playing the
16 DVD, the Court Reporter can pull up the testimony
17 of Mr. and Mrs. Kulas.

18 It's my understanding that because of
19 the acoustics in this courtroom, she has to take
20 her laptop in the jury room and replay those
21 testimonies so they can properly hear that.

22 Is that a correct statement of the
23 agreement from the State and from the defense?

24 MR. ALFARO: That's correct.

25 MR. CHURCH: That's correct, from the

1 defense.

2 THE COURT: Okay. Let's have the jury,
3 please.

4 (Jury in, 2:19 p.m.)

5 THE COURT: Welcome back, ladies and
6 gentlemen. I have received your questions, which I
7 will mark as a Court's Exhibit, and I will answer
8 them as follows.

9 Question 1 states, does Mr. Freeman
10 live in the neighborhood?

11 Question number 2 states, if not, why
12 was he there?

13 And I will skip to question 4, because
14 we have the same answer on each of these three
15 questions. Question 4 states, what happened to the
16 blood stain on the bench, question mark. Was it
17 taken for DNA, and the results?

18 The answers to questions 1, 2, and 4 is
19 that you have all the competent evidence before you
20 to make your decision based upon the evidence that
21 was properly submitted.

22 Your question 3 was, who approached the
23 door first, Mr. or Mrs. Kulas?

24 And your question number 5, testimony
25 from Mr. Kulas printed please.

1 Our court reporter is able to pull up
2 that testimony for you. She will have to go into
3 the jury room with you and play that testimony on
4 her laptop because of the acusticus and equipment
5 available to us.

6 The other questions, she will pull up
7 that testimony for you to listen to that testimony
8 and, hopefully, that would answer those two
9 questions for you.

10 Question number 6 deals with the other
11 two convictions for, and it states, with weapon,
12 armed robbery. What I will do is I will re-read
13 the stipulation of those two convictions for you so
14 that that will, hopefully, answer that question for
15 you.

16 The stipulation was as follows: The
17 Defendant is on trial for burglary in the first
18 degree. One of the statutory elements the State
19 may elect to prove beyond a reasonable doubt to
20 convict the Defendant of burglary in the first
21 degree is that the Defendant has two or more
22 convictions for burglary on his record.

23 In this case, rather than seeking to
24 have each of the Defendant's prior convictions
25 admitted into evidence, the State and defense have

1 agreed to stipulate that this Defendant's prior
2 record does, in fact, contain two prior convictions
3 for burglary; therefore, you, the jury, may find
4 that this specific element has been proven beyond a
5 reasonable doubt.

6 So that would be the answer to your
7 question number 6.

8 Question number 7, request a copy of
9 the burglary in the first degree definition.
10 Rather than giving you a copy of just that portion
11 of the charge, I'm going to re-read it for you and
12 it is as follows: The Defendant is charged with
13 burglary in the first degree. The State first must
14 prove beyond a reasonable doubt that the Defendant
15 entered a dwelling without consent.

16 A dwelling is any building or a portion
17 of a building in which a person -- a person
18 ordinarily sleeps. A building constructed as a
19 dwelling that has never been occupied cannot be
20 considered a dwelling for purposes of a burglary,
21 but a building is a dwelling even if the residents
22 are temporarily absent from the building.

23 In order to prove that the Defendant
24 entered the dwelling, the State does not have to
25 show that the Defendant's entire body entered the

1 dwelling. The smallest entry is sufficient. It
2 may be any part of the body, such as a hand or foot
3 or even an instrument such as a hook or other
4 instrument.

5 In addition, the State does not have to
6 prove that force was used to gain entry. If a
7 person entered the building by using deception,
8 artifice, trick, or misrepresentation to get
9 consent to enter, this is an entry without consent.

10 Next, the State must prove beyond a
11 reasonable doubt that the Defendant intended to
12 commit a crime, either a felony or a misdemeanor,
13 at the time of entry. The mere entry into a
14 dwelling without consent is not burglary.

15 If the intent to commit a crime is
16 formed after the entry, it is not burglary. On the
17 other hand, if the Defendant intended to commit a
18 crime at the time of the entry, it is a burglary
19 even if the intent was abandoned after the entry.
20 It does not matter that the intended crime was not
21 completed.

22 Intent may be shown by acts and conduct
23 of the Defendant and other circumstances from which
24 you may naturally and reasonably infer intent.

25 Finally, the State must prove beyond a

1 reasonable doubt that either, one, when entering,
2 while in the -- when entering, while in the
3 dwelling, or when fleeing the Defendant, or an
4 accomplice, was armed with a deadly weapon or
5 explosive.

6 A deadly weapon is any article,
7 instrument, or substance which is likely to cause
8 death or great bodily harm. Whether an instrument
9 had been used as a deadly weapon depends on the
10 facts and circumstances of each case.

11 The following are examples of
12 instruments which may be deadly weapons: A pistol,
13 shotgun, a rifle, dirk, dagger, a knife, a
14 slingshot, metal knuckles, a razor, gasoline, a
15 firebomb, or Molotov cocktail and lighter fluid. A
16 gun may be a deadly weapon even if it's not
17 operating.

18 Or two, when entering, while in the
19 dwelling, or when fleeing the Defendant, or an
20 accomplice, caused physical injury to anyone not
21 participating in the crime.

22 Or three, when entering, while in the
23 dwelling, or fleeing the Defendant, or an
24 accomplice, used or threatened to use a dangerous
25 object.

1 Four, when entering, while in the
2 dwelling, or when fleeing the Defendant, or an
3 accomplice, displayed what was or appeared to be a
4 knife, pistol, revolver, rifle, shotgun, machine
5 gun, or other firearm.

6 Five, the Defendant has a prior record
7 of two or more convictions for burglary and/or
8 housebreaking.

9 Evidence of prior offenses committed by
10 the Defendant was not offered to prove the
11 Defendant has a bad character or to prove that the
12 Defendant committed the burglary on this occasion.

13 The prior convictions may be considered
14 by you only for the purpose of determining whether
15 or not it satisfies that element of the offense
16 that makes it first degree burglary if you enter a
17 dwelling without consent to commit a crime and you
18 have two prior convictions for burglary and/or
19 housebreaking.

20 Before you can even consider the
21 evidence of the Defendant's prior burglary and/or
22 housebreaking convictions, you must first find that
23 the State has proven beyond a reasonable doubt that
24 a burglary was committed by the Defendant. If you
25 find beyond a reasonable doubt that the burglary

1 was committed, then you may consider the evidence
2 of the prior convictions as evidence of one of the
3 circumstances which would make the burglary first
4 degree burglary.

5 Or six, the Defendant entered or
6 remained in the dwelling in the nighttime.
7 Nighttime is the period between sunset and sunrise
8 during which there is not enough daylight to
9 recognize a person's face except by artificial
10 light or moonlight.

11 Ladies and gentlemen, that is the
12 definition of burglary in the first degree.

13 What we will do now is play the DVD of
14 the dash cam. And I understand that you also want
15 to hear the recording of the 911; is that correct,
16 Mr. Foreman?

17 THE FOREMAN: No. Just the recording
18 of the dash cam.

19 THE COURT: The dash cam. Okay. We'll
20 replay that, please.

21 (DVD was played in open court.)

22 (A recess transpired.)

23 (COURT'S EXH. 2, Jury note, was marked
24 for identification.)

25 (COURT'S EXH. 3, Jury note, was marked

1 for identification.)

2 (Jury out, 2:35 p.m.)

3 THE COURT: We've received a note from
4 the jury requesting that the Court Reporter be
5 cancelled, and so they have the information that
6 they needed.

7 So we do not need to replay that
8 testimony, Madame Court Reporter.

9 This question was shown to both counsel
10 and they both agreed that that's appropriate.

11 MR. ALFARO: Yes, Your Honor.

12 MR. CHURCH: Yes, Your Honor.

13 (COURT'S EXH. 4, Jury Note, was marked
14 for identification.)

15 (A recess transpired.)

16 THE COURT: It's my understanding that
17 we have a verdict. Anything before we bring the
18 jury out?

19 MR. ALFARO: Nothing from the State.

20 MR. CHURCH: Nothing from the defense.

21 THE COURT: Let's have our jury,
22 please.

23 (Jury in, 2:48 p.m.)

24 THE COURT: Mr. Foreman, has the jury
25 reached a verdict?

VERDICT

1 THE FOREMAN: Yes, we have.

2 THE COURT: Would you please hand it to
3 the bailiff?

4 Madame Clerk, please publish the
5 verdict.

6 THE CLERK: State of South Carolina
7 versus Fred Freeman, Indictment 2015-GS-08-2183 and
8 2184. As to the charge of burglary, first degree,
9 we, the jury, unanimously find the Defendant
10 guilty. As to the charge of possession of a weapon
11 during the commission of a violent crime, we, the
12 jury, unanimously find the Defendant guilty.
13 Signed, Jury Foreperson.

14 Ladies and gentlemen of the jury, if
15 this is your verdict, please signify by raising
16 your right hand.

17 THE JURY: (Raised hands)

18 THE COURT: Thank you, ladies and
19 gentlemen. If you would return to the jury room
20 for the last time, I will be in there momentarily.

21 (Jury out, 2:44 p.m.)

22 THE COURT: Anything before I release
23 the jury?

24 MR. ALFARO: Nothing from the State.

25 MR. CHURCH: Your Honor, the defense

1 would renew its motion, notwithstanding the jury's
2 verdict, for a directed verdict and have the
3 charges dismissed for the erroneous warrants
4 presented at the preliminary hearing.

5 THE COURT: Thank you, Counselor.
6 Again, for the same reasons that was previously
7 stated by the Court, the motion is respectfully
8 denied.

9 If you would, prepare the sentencing
10 sheet, Solicitor.

11 MR. ALFARO: Yes, Your Honor.
12 Mr. Dennis is bringing those up now.

13 (A recess transpired.)

14 THE COURT: Are the parties ready to
15 proceed to sentencing?

16 MR. ALFARO: State is ready, Your
17 Honor.

18 THE COURT: Happy to hear from you.

19 MR. ALFARO: Thank you, Your Honor.
20 You've heard the facts of the case throughout this
21 trial, so I will not go back into them right now.

22 I think the Defendant's prior record
23 speaks for itself. His prior record dates all the
24 way back to 1975 where he had a conviction for
25 housebreaking and grand larceny; 1976, burglary of

1 a U.S. Post Office and shoplifting; 1978,
2 embezzlement; 1982, interference with police; 1983,
3 housebreaking and grand larceny times two, failure
4 to stop for blue lights, grand larceny, unlawful
5 pistol, and housebreaking; 1989, two convictions
6 for burglary, second, grand larceny; 1993, two
7 convictions for grand larceny and shoplifting;
8 1996, conviction for burglary, first, petit
9 larceny, and burglary tools.

10 Your Honor, that 1996 burglary first,
11 he was sentenced to 20 years.

12 The State feels after speaking with the
13 victims -- Mr. Kulas remained in the courtroom;
14 Mrs. Kulas was unable to maintain being in the
15 courtroom after going through the testifying and
16 hearing the 911 tape during the trial.

17 Based off of the Defendant's prior
18 record, which makes him eligible for life without
19 parole as does the conviction in and of itself for
20 burglary first, the State is asking for a life
21 sentence for Mr. Freeman at this time.

22 THE COURT: Do the victims care to
23 address the Court?

24 MR. ALFARO: They do not -- or Mr.
25 Kulas does not. He's just in agreement with the

1 sentencing that I'm asking for.

2 THE COURT: Counsel for the defense.

3 MR. CHURCH: Your Honor, may it please
4 the Court.

5 THE COURT: Yes, sir.

6 MR. CHURCH: Your Honor, Mr. Freeman is
7 60 years old. From my information, he indicates he
8 only made it through ninth grade at Goose Creek
9 High School. His life started out bad and he had
10 some convictions right after that, that put him on
11 a bad path in life. We would ask the Court not to
12 sentence him to life.

13 He's 60 years old now. He's not in
14 very good health. The State could have served him
15 life without parole notifying him before trial. We
16 would just ask you to show as much mercy as
17 possible. Even a minimum sentence would put him at
18 an age where he would be pretty decrepit when he
19 got out. He won't be a threat to society just
20 based on his age. So we would ask the Court to
21 show as much mercy as possible.

22 THE COURT: Anything else further from
23 anyone?

24 MR. ALFARO: Nothing from the State.

25 MR. CHURCH: Nothing from the defense.

SENTENCING

1 THE COURT: Mr. Freeman, it's always
2 difficult to see this kind of circumstance where
3 you continuously disobeyed the law, and after
4 having a 20-year sentence in your background to
5 continue to engage in this kind of conduct,
6 breaking into people's homes at night. Stealing
7 firearms is certainly not something that our
8 community can tolerate and something that these
9 victims should not have to endure, quite frankly.

10 On Indictment 2016-GS-08-02183, that is
11 the indictment for burglary first degree, you are
12 hereby committed to the State Department of
13 Corrections for a period of 45 years. That is
14 concurrent to Indictment 2016-GS-08-02184, you are
15 hereby committed to the State Department of
16 Corrections for a period of five years.

17 Those two sentences are concurrent to
18 each other and you will receive credit for the time
19 that you have served.

20 MR. ALFARO: Thank you, Your Honor.

21 MR. CHURCH: Thank you, Your Honor.

22 (These proceedings were concluded at
23 3:03 p.m.)

24

25

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 10th day of January, 2018 at
13 Charleston, Charleston County, South Carolina.

14

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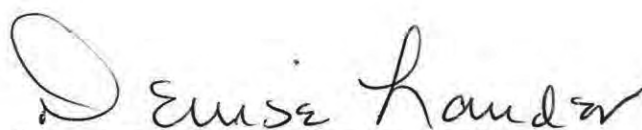
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25



Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

STATE OF SOUTH CAROLINA

County of BETKELEY CO.FRED FREEMAN

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2019-CP-08-2558

APPLICATION FOR
POST-CONVICTION RELIEFLEARNER'S COURT
CLERK OF COURT
BETKELEY COUNTY, SC

19 OCT 15 PM 2:13

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIEBER CONNECTIONAL INSTITUTION
P.O. BOX 205 RIDGEVILLE, S.C. 29472
2. Name and location of Court which imposed sentence BETKELEY COUNTY
NINTH CIR. 300B CAL AVE MONCKS CORNER
S.C. 29461
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-08-02183
 - (b) 2016-GS-08-02184.

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) AUGUST 29/2017
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF
- ii. APPEAL, BY JOHN T. CHURCH,
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. ANDEAS BRIEF, REMITTAL FORWARDED
- ii. FROM COURT OF APPEALS, UNPUBLIC
- iii. JUNE 05/2019
- (c) the date of each such result:
- i. UNPUBLIC OPINION
- ii. JUNE 05/2019
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A UNPUBLIC
- ii. OPINION NO. 2019-UP
- iii. 200
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF COUNSEL'S,

- (a) CONFLICT OF INTEREST; OBSTRUCTIONS OF
 (b) AGAINST ADMINISTRATION JUSTICE; CRIMINAL
 (c) CONTEMPT-CONSPIRACY; NO PROBABLE CAUSE;

11. State concisely and in the same order the facts which support each of the grounds set out in (10): BRADY VIOLATION; PRIOR CONVICTIONS;
MR. CHURCH REPRESENTED MR. KULAS AND
STATE; CODE 1996 § 16-9-380, 18 U.S.C.A.

- (a) PAGES 1503, 1506, 1507; VIOLATIONS OF
 (b) 4, 5, 6, 14 UNITED STATES CONST AMENDS,
 (c) PLEASE SEE ATTACHMENTS

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

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

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

(a) the specific nature thereof:

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

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

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

ATTACH

MENTS,

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. APPELLATE DEFENSE;
- ii. ORIGINAL-ORDER S.C. COURT
- iii. COURT OF APPEAL, UNPUBLISHED
- iv. OPINION JUNE 05/2019;

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?

- _____
- _____

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: VARIANCE; DEFECTIVE INDICTMENT;
 (a) PROSECUTORIAL MISCONDUCTS; BRADY
 (b) VIOLATIONS; INCE WINSHIP; CAGE V.
 (c) LOUISIANA; DUE PROCESS VIOLATIONS
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?
TRIAL COUNSEL DID NOT FILE ANY
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. CHAD SHELDON - PRELIMINARY EXAM,
JOHN T. CHURCH, K. WHITE - TRIAL,
- ii. COUNTY OF APPEAL ATT PACHAK,
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. PRELIMINARY HEARING - ATT. CHAD
SHELDON, TRIAL - CHURCH, WHITE,
- ii. PACHAK COUNTY OF APPEALS,
- iii. _____

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

VACATE SENTENCES

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

N/A

STATE OF SOUTH CAROLINA)

County of BENKELEY)

VERIFICATION

I, Fred Freeman, 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.

Fred Freeman

SWORN to and subscribed before me this 5th
day of October, 2019.

Lawrence Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

LEAH WERNER, CLERK
CLERK OF COURT
BERKELEY COUNTY, SC

19 OCT 15 PM 2:14

SM
FILED

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

I, Fred Freeman, 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.

Fred Freeman
Applicant

SWORN or affirmed to and subscribed before me this
5th day of October, 2019.

Ludheen Bryant
Notary Public

My Commission Expires: May 26, 2020

LEAH J. JONES, CLERK
CLERK OF COURT
BERKELEY COUNTY, SC

19 OCT 15 PM 2:13

FILED

F.F.

19 NOV 12 PM 4:39
LEAH GUERRY, DUPLICATE
CLERK OF COURT, 33C
BERKELEY COUNTY, SC

FILED

PAGE 3, CONTINUES, SECTION 11

AT ALL TIMES RELEVANT TO THE
COUNSEL INEFFECTIVE, ACTUAL
CONSTRUCTIVE DENIAL OF TRIAL
COUNSEL U.S.C.A. CONST AMEND,
§ " DEFENDANT WAS PREJUDICE
WHERE COUNSEL WAS IN TOTAL
AGREEMENT FOR STIPULATIONS
OF PRIOR CONVICTIONS OF
BURGLARY, WITHOUT DEFENDANT
BEING ON WITNESS STAND.

DEFENDANT WAS DENIED
U.S.C.A. CONST AMENDS, 5,
6, 14,

DEFENDANT WAS DENIED
WAS DENIED COUNSEL AND
PREJUDICE A RESULT OF
COUNSEL AGREEMENT OF
CRIMINAL CONTEMPTS OF
COURT, WHERE JUDICIAL'S
WERE PROVIDED FELONY
OUSLY FALSE ENTRY OF

cc: FF
Smt 11/12/19

FF

CONVICTIONS OF ARMED ROBBERY/
WEAPON, PREJUDICIAL EFFECT,
IS BEYOND SUCH SORT OF
CHARACTER EVIDENCE, IS NOT
ADMISSIBLE TO PROVE ACCUSED
POSSES A CRIMINAL CHARACTER,
OR HAVE A PROPENSITY TO
COMMIT THE CRIME WITH
WHICH HE IS CHARGED.

~~STATE V. BROWN (S.E. 2001);~~

~~344 S.E. 2d 552~~

STICKLAND V. WASHINGTON,
STATE V. LYLE, STATE V. GORE,

18 U.S.C.A. § 1506

§ 1506, THEFT OR ALTERATION
OF RECORD OR PROCESS, False
Bail, CAGE V. LOUISIANA,

498 U.S. 39, 115 Ct. 328
(1990),

JURY NOTE TO COURT,
QUESTION SIX, WANTING
TO KNOW ABOUT CONVICTION
ARMED ROBBERY/WEAPON →

FF.

1.1 PRESUMPTION AND THE BURDEN OF, DUE PROCESS DEMAND THAT THE PROSECUTION PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT OF THE OFFENSE CHARGED.

IN RE WINSHIP, 397 U.S. 358, 90 S.Ct. at 1068, 25 L.Ed. 2d 368 (1970), WHILE JURY CAN USE STATUTORY INFERENCES TO ASSIST IN INTERPRETING THE EVIDENCE, ANYTHING WHICH REASONABLY BINDS THE DISCRETION IS UNCONSTITUTIONAL 18 U.S.C.A. 1506, S.C. CODE 16-9-380, 18 U.S.C.A. 1507, 18 U.S.C.A. 1503, 18 U.S.C.A. 1506,

IN CHAPMAN V. CALIFORNIA, 368 U.S. 18, 23, 87 S.Ct. 827, 17 L.Ed. 2d 705 (1967), CONSTITUTIONAL RIGHTS ARE "SO BASIC TO A FAIR TRIAL, THAT THEIR INFRACTION CANNOT

ff.

BE TREATED AS HARMLESS ERROR,
 AMONG THESE RIGHTS IS THE
 RIGHT TO ASSISTANCE OF COUNSEL
 AT TRIAL, & at 23 n. 8. 87 S. Ct.
 827 n. 8; SEE GIDEON v. WAIN-
 WRIGHT, 312 U.S. 335, 83 S. Ct.
 792, 9, L. Ed. 2d 799 (1963),
 EFFECTIVE ASSISTENCE COUNSEL
 IS ENTAILED BY THE RIGHT
 TO COUNSEL AND ABRIDGMENT
 OF FORMER IS EQUIVALENT
 OF THE LATTER, COUNSEL
 PERFORMANCE DEPARTED
 FROM CONSTITUTIONAL
 PRESCRIBED STANDARD,
 DEFENDANT WAS PREJUDICE,
 DENIED U.S. C.A. CONST'
 AMENDS 5, 6; 14.

COUNSEL ACTIONS WERE
 SO PREJUDICIAL, COUNSEL
 AT ALL TIMES RELEVANT TO
 ENGAGED WITH SUCH
 FORMS OF CORRUPTIONS,
 THE LIED, MISLEADED

FF, JURY, THAT DEFENDANT HAS PRIOR CONVICTION FOR ARMED ROBBERY/WEAPON, THATS FALSE ENTRY TO JURY; NOT ONLY ITS DEFINITIONS OF CORRUPTIONS, ITS OBSTRUCTION OF JUSTICE AGAINST ADMINISTRATION OF JUSTICE, ITS SUBVERTING JUDICIAL PROCESS, CONSPIRACY.

COUNSEL INEFFECTIVE DELIBERATELY, THE COURT ADDRESSED THIS ISSUE WHEN, WHEN IT STATED THE FOLLOWING, A PRESUMPTION WHICH WOULD PERMIT BUT NOT REQUIRE THE JURY TO ASSUME INTENT FROM AN ISOLATED FACT WOULD PREJUDICE A CONCLUSION WHICH THE JURY SHOULD REACH OF ITS OWN VOLITION, A PRESUMPTION WHICH WOULD PERMIT THE JURY TO MAKE AN ASSUMPTION WHICH ALL THE EVIDENCE

CONSIDERED TOGETHER DOES NOT LOGICALLY ESTABLISH WOULD GIVE TO A PROVEN FACT AN ARTIFICIAL AND FICTIONAL EFFECT. IN EITHER CASE, THIS PRESUMPTION WOULD CONFLICT WITH THE LAW ENDS THE ACCUSED AND WHICH EXTENDS TO EVERY ELEMENT OF THE CRIME.

THE JURY IN THIS CASE WAS FORCED TO MAKE THEIR DECISION; THERE NO TELLING HOW MANY FALSE ENTRIES JURY RECEIVED RECEIVED FROM COURT OFFICIALS,

BRADY V. MARYLAND, 373 U.S. 83 S. CT. 1194, 10 L. ED. 2d 215 (1963), EXCULPATORY EVIDENCE, DNA, JURY ALSO REQUESTED FOR RESULT, MATERIALITY OF FAVORABLE EVIDENCE, WAS DENIED - SUPPRESSED.

UNITED STATE V. AGURS, 427 U.S. 97, 112, 96 S. CT. 23 93, 2401, 49 L. ED 2d 342 (1976), SEE UNITED

FF.
 STATES V. BADLEY - BADLEY, 473 U.S.
 667, 682, 105 S. Ct. 3375, 3383, 87
 L. Ed. 2d 481 (1985),

DEFENDANT IS CONSTITUTIONALLY
 GUARANTEED FAIR TRIAL BY IMPARTIAL
 JURY, JURY IN CASE AT BAR DID
 NOT RENDER THEIR VERDICT FREELY
 PRIVATE COMMUNICATION OF COURT
 COURT OFFICIALS TO MEMBERS OF
 OF JURY SANCTITY, WAS VIOLATED,
 SUBJECTS OF COMMUNICATIONS,
 FALSE ENTITIES.

THAT AS RESULT OF 403 SCHE,
 THE DETERMINATION OF PREJUDICE
 MUST BE BASED ON THE ENTIRE
 RECORDS AND THE RESULTS WILL
 GENERALLY TURN ON FACTS OF
 EACH CASE. STATE V. BROOKS,
 SUPRA EVIDENCE IS UNFAIRLY
 PREJUDICE IF IT HAS AN UNTEND,
 UNDUE TENDENCY TO SUGGEST A
 DECISION ON AN IMPROPER
 BASIS, SUCH AS AN EMOTIONAL
 ONE. DEFENDANT WAS DENIED
 WAS, AS A RESULT OF TRIAL
 COUNSEL IN EFFECTIVE ASSISTANCE
 WAS PREJUDICE, DUE TO COUNSEL
 INVOLVEMENT AS COCONSPIR-
 ATEUR, PROVIDING JURY WITH
 FALSE ENTRIES, CRIMINAL →

H,

CRIMINAL CONTEMPT OF COURT,

TRIAL COUNSEL INEFFECTIVE, HE
 AGREED WITH SOLITON - PROSECUTOR,
 JUDGE TO ENTER PRIOR CONVICTIONS,
 DEFENDANT WAS PREJUDICE, DENIED
 U.S.C.A. CONST AMENDS 5, 6, 14

PAGE 31, COUNSEL INEFFECTIVE,
 HE RAISED MATTERS OF WARRANTS,
 DECEMBER 04/2015 PRELIMINARY
 JUDGE DISMISSED DUE TO NO
 PROBABLE CAUSE, AFFIDAVIT(S)
 STATES EARL JOHNSON, JR, ALL
 CHARGES DISMISSED, AGAINST DEFENDANT

GENERAL SESSION LACK SUBJECT
 SUBJECT MATTER JURISDICTION,
 PROSECUTION DID NOT APPEAL
 ORDER OF DISMISSAL(S), THE
 GRAND JURY DID NOT ISSUE
 WARRANTS, DEFENDANT WAS
 DENIED COUNSEL, U.S.C.A.
 CONST AMEND, 6,

DIDN'T COUNSEL INEFFECTIVE
 ASSISTANCE, AND HIS REFUSAL
 TO USE INVESTIGATIVE REPORTS,
 JURY QUESTIONS WERE
 NOT PROVIDED TO THEM.

JURY ASKED DOES MR. FREEMAN
 FREEMAN LIVE IN NEIGHBORHOOD

15

2

ff,

MR. KULAS TESTIMONY;
 DEFENDANT FAMILY LIVES
 IN NEIGHBORHOOD, SINCE 1900,
 JURY DISCOVERED SAID MR. KULAS
 REPEATEDLY TELLING, NO
 POLICE PLACED HIM IN HAND-
 CUFFS.

GENERAL INVESTIGATOR
 SEAN MC WILLIAMS TESTIFIED
 THAT ON OCTOBER 05/2015,
 SAID MR. KULAS, TOLD HIM
 HE FOUND BLUE JACKET, AFTER
 POLICE CLEARED, NO POLICE
 OFFICERS CORROBORATED HIS
 STORIES LIES.

DEFENDANT WAS DENIED
 U.S.C.A. CONST AMEND. 6,

NEIGHBOR, NEIGHBOR
 JEFFERY PORTER TESTIFIED,
 IT WAS NOT DARK, THAT
 HE COULD SEE JEREMIAH
 CLEAR.

FF.

TRIAL COUNSEL INEFFECTIVE, SEE
PAGE 34 PROSECUTOR ALFARO,
ASSERTED DEFENDANT WAS NOT
INDICTED ON CHARGES THAT WERE
DISMISSED AT PRELIMINARY HEAR-
ING, ALFARO FURTHER ALLEGES
DEFENDANT WAS INDICTED 2015
TERM, DEFENDANT WAS PREJUDICE
WHERE FACTS ARE ALL CHARGES
WERE DISMISSED, NOT INDICTED.

SEE PUBLIC INDEX'S, ALL
FOUR CHARGES OF ARMED
UPON WERE DISMISSED.

DECEMBER 04/2015, DEFEND
ANT WAS DENIED COUNSEL(S),
U.S.C.A. CONSTATMENT. 6.

SEE PAGE 242 SPECIFIC
REQUEST'S FROM JULY FOR
MR. KULAS TESTIMONY TO BE
REPLAYED, TRIAL JUDGE DENIED
THE JULY SAME, JULY QUESTION
6 - SIXTH, WANTING TO KNOW
ABOUT PRIOR CONVICTION OF
ARMED ROBBERY WITH WEAPON

FP,

PAGE 243 QUESTION MARK, WAS
 ENTERED, QUESTION 3 AND 5
 MR. KULAS AND MRS. KULAS, AND
 BOTH PARTIES AGREE TO. JULY
 ARRIVED 2:19 PM, INSTEAD OF
 COURT ANSWERING JULY QUESTIONS,
 JUDGE PROCEEDED WITH BIAS,
 PREJUDICE, THAT AT MOST, TRIAL
 COUNSEL AGREED TO IMPEACH-
 MENT WITHOUT DEFENDANT
 TAKING WITNESS STAND, TRIAL
 JUDGE STOOD UP FACING JULY,
 ABUSE OF DISCRETION, INSTRUCT-
 ING JULY THAT THEY MAY
 INFER STATE HAS ESTABLISHED
 ITS ELEMENT OF BURGLARY,
 WEAPON CHARGE.

TO INFER MANDATORY
 PRESUMPTION, JULY INS-
 TRUCTION PLACED AN IM-
 PROPER BURDEN OF PERSASION
 UPON DEFENDANT, VIOLATION
 OF U.S.C.A. CONSTATMENTS
 5.6.14, CONSTITUTIONAL MAND

ATONY PRESUMPTION.

THE ONLY PREDICATES ARE
OBSTRUCTION OF JUSTICE, CRIMINAL
CONSPIRACY, SUBVERTING JUDICIAL
PROCESS,

DEFENDANT WAS CONVICTED
UPON 2016 INDICTMENTS.

PUBLIC INDEX'S OF DECEMBER
09/2015, STATES DISMISSAL'S
NOT INDICTED.

WHOLE RECORDS SHOWS
VARIANCE, UN DUE VARIANCE,
FATAL VARIANCES,

COUNSEL PROCEEDED BY CONFLICT,
APPELLATE DEFENSE PACHAK PLAN
ERRON, U.S.C.A. CONST AMENDS
Q. 14.

October 05/2019
Fred Freeman

19

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Fred Freeman #235180,

Case No.: 2019-CP-08-2558

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

FILED
20 JUL 20 PM 12:09
CLERK OF COURT
BERKELEY COUNTY, SC

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on October 15, 2019, would respectfully show this Court:

I. PROCEDURAL HISTORY

Carlos Ruiz (Applicant) is presently confined pursuant to orders of the Berkeley County Clerk of Court. In December 2015, the Berkeley County Grand Jury indicted Applicant for Burglary First Degree (2015-GS-08-02183) and Possession of a Weapon During the Commission of a Violent Crime (2015-GS-08-02184). On August 28-29, 2017, Applicant proceeded to trial before the Honorable Maite Murphy and a jury. Applicant was represented by John Church, Esquire and Keisha White, Esquire. The State was represented by Assistant Solicitors Bryan Alfaro and Benjamin Dennis of the Ninth Circuit Solicitor's Office. The jury convicted Applicant as indicted on both charges. Judge Murphy sentenced Applicant to 45 years imprisonment for the burglary first degree and five years for the possession of a weapon during the commission of a violent crime, the sentences were to run concurrently. Applicant filed a timely notice of appeal. Applicant was represented on appeal by Robert Pachak, Appellate Defender for the South Carolina Commission on Indigent Defense Division of Appellate Defense. Appellate counsel filed a brief

pursuant to *Anders* on May 24, 2018. The South Carolina Court of Appeals dismissed Applicant's appeal by Unpublished Opinion No. 2019-UP-200, filed on June 5, 2019. The Remittitur was issued to the lower court on June 21, 2019.

I. CURRENT APPLICATION

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

1. "Ineffective assistance of counsel"
2. "Conflict of interest"
3. "Obstruction of against administration on justice"
4. "Criminal contempt-conspiracy"
5. "No probable cause"
6. "Brady violation"
7. "Prior convictions"
8. "Mr. Church represented Mr. Kulas and State"

In relief sought, Applicant is seeking: "Vacate sentences."

Attached to this Return and incorporated by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials. Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

II. INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

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.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are

not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. PROSECUTORIAL MISCONDUCT

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Respondent submits, notwithstanding the procedural bar, Applicant cannot meet this burden. For these reasons, Respondent submits that this allegation should be summarily dismissed.

V. DUE PROCESS VIOLATIONS

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights as afforded to him under the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "...specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make 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). Because Applicant has failed to make a prima facie showing that his constitutional right to due process was violated, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based and relief is sought.

VI. MOTION FOR A MORE DEFINITE STATEMENT

In his application for relief, Applicant fails to set forth with specificity the facts and circumstances upon which his allegations of ineffective assistance of appellate counsel are based. The Uniform Post- Conviction Procedure Act requires that the Applicant 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 an application for post-conviction relief, it is incumbent upon Applicant 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. MacDoueall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v.State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant fails to provide any supporting information for his claims.

Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in 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 his application.

VII. ANY FUTURE AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b),

SCRCP; *Mangal v. State*, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCP.

VIII. RESPONSE TO ANY AND ALL OTHER ALLEGATIONS

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

IX. REQUEST FOR AN EVIDENTIARY HEARING

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: s/ Benjamin H. Limbaugh
ATTORNEY FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

July 6, 2020

Flynn, Sean

From: Christopher L. Murphy <cmurphy@rlattomeys.com>
Sent: Friday, April 16, 2021 8:17 AM
To: Goodstein, Diane S. Law Clerk (Lauren Mims); Benjamin Limbaugh
Cc: Goodstein, Diane S. Secretary (Karen Parker); Sammie Weidauer; Murphy, Christopher
Subject: Fred Freeman - 9:30 PCR

Judge Goodstein:

We have this PCR case this morning and I want to give you a skinny on the case and issues. Factually, defendant broke into the victim's house and stole some items while the folks were eating dinner, the victims heard the defendant rummaging and then chased him down. They caught him and held him until the cops came. The police found the victim's wallet and other items on defendant. Despite that, my fellow says he is completely innocent.

I plan on raising the following issues:

- 1) R 230/23 - 26 - Improper standard for reasonable doubt. The court uses the words "real possibility" to find not guilty in the charge which I will say is burden shifting – rest on the record
- 2) D did not take the stand and presented no defense – This is not any defense at all and defendant maintains his innocence and will explain his defense.
- 3) D wants to say 'no probable cause for the arrest – I will raise it for the record
- 4) D also wants to there says "No objection to the prior burglaries coming into evidence" – This deals with the 2 prior burg or break ins which are part of the statute and element. This was the stipulation right before state rested.
 - Best I can tell is that he says he did not have prior Burglaries. I don't have his criminal record so I will ask him about that was well.
- 5) Finally, he mentioned note 6 from the jury but there is not a note 6.

I hope this will help streamline the case.

STATE OF SOUTH CAROLINA
COUNTY OF BEREKELY

COURT OF GENERAL
SESSIONS FOR THE
9TH JUDICIAL
CIRCUIT
Case no.
2019CP082558

FRED FREEMAN,

Applicant

-against-

STATE OF SOUTH CAROLINA,

Respondents.

PCR HEARING

(Virtual)

DATE: April 16, 2021

TIME: 10:01 a.m.

HON.: DIANE S. GOODSTEIN

Natalie A. Williams
Court Reporter
(914) 610-8863
natalieawilliams726@gmail.com

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

S.C. ATTORNEY GENERAL POST CONVICTION RELIEF
DIVISION

NINTH CIRCUIT

Attorneys for the Respondent

BY: MR. BENJAMIN H. LIMBAUGH

and MS. SAMANTHA WEIDAUER

(803) 734-3737

WILLIAMS & WALSH ATTORNEYS AT LAW

Attorneys for the Applicant

652 Rutledge Ave., Unit B

Charleston, SC 29403

BY: MR. CHRISTOPHER J. MURPHY

(843) 722-0157

I N D E X

<u>WITNESS</u>	<u>DESCRIPTION</u>	<u>PG/L</u>
Fred Freeman	In-camera colloquy by the Court	24/9
	Direct Examination by Mr. Murphy	71/10
	Cross-Examination by Ms. Weidauer	96/18
	Redirect Examination by Mr. Murphy	111/22
John T. Church Jr.	Direct Examination by Mr. Murphy	98/12
	Cross-Examination by Ms. Weidauer	106/19

1 THE COURT: Introduce your case
2 for me, please.

3 MS. WEIDAUER: Judge, so I will
4 be representing the State. I want to start
5 by noting that or having the Court take
6 note that in the return Mr. Freeman's name
7 was incorrectly noted as Carlos Rivas. It
8 has no bearing on the case. All of the
9 subsequent information is correct within
10 that return, and I just want that on the
11 record moving forward.

12 THE APPLICANT: Excuse me, Your
13 Honor? May I speak, please? Hello, good
14 morning.

15 THE COURT: Good morning.

16 THE APPLICANT: Good morning,
17 may I speak, please? I don't see
18 Mr. Christopher Matthews, ma'am. He was
19 the one assigned by the Attorney General to
20 represent me. It says he was appointed to
21 represent me, ma'am, Ms. Goodstein. Hello?
22 Good morning. I don't think she can hear
23 me. Hello? Hello?

24 THE COURT: Are you Mr.
25 Freeman?

1 THE APPLICANT: Yes, ma'am, I
2 am.

3 THE COURT: Good morning, Mr.
4 Freeman. Are you referring to Mr. Murphy?

5 THE APPLICANT: Yes, ma'am.
6 Christopher Murphy, yes, ma'am.

7 THE COURT: Okay.

8 THE APPLICANT: He's not
9 present.

10 THE COURT: Yes, sir.
11 Mr. Murphy does represent you in this PCR
12 matter, that is correct.

13 THE APPLICANT: Yes, ma'am.
14 Also, Ms. Goodstein, I was supposed to send
15 you a letter as well, ma'am, but I sent a
16 letter prior to the South Carolina Supreme
17 Court. Mr. Christopher Murphy, he was here
18 and he was present, I still have no way of
19 being able to understand where we're at
20 because I don't know what page he's on,
21 because he never sent me an amended
22 application. In addition to that, ma'am, I
23 think he's related to the judge who
24 sentenced me. He's got the first name and
25 the last name.

1 THE COURT: Who is that? Who
2 is that judge, Mr. Freeman?

3 THE APPLICANT: It was Ms.
4 Maggie Murphy, ma'am.

5 THE COURT: Yes, Mr. Freeman,
6 let me help you. I understand that concern
7 completely, but let me just stop you for
8 just a second.

9 THE APPLICANT: Yes, ma'am.

10 THE COURT: Ms. Murphy's
11 husband's name is Chris Murphy, so I
12 absolutely understand your concern. But
13 just for your informational purposes, I
14 have known your lawyer, Chris Murphy, for a
15 longer period of time than I have known
16 both Judge Murphy and her husband, Chris
17 Murphy. They are two -- they're not the
18 same person. I know that is concerning, I
19 understand why that would be of concern,
20 clearly.

21 THE APPLICANT: Yes, ma'am.

22 THE COURT: But I happen to
23 know them both and I've known both for a
24 very long time. I've actually known your
25 lawyer a little longer than I have known

1 Judge Murphy's Chris Murphy. So, while I
2 understand that concern, trust me, they are
3 not the same person.

4 THE APPLICANT: Yes, Your
5 Honor, I trust you.

6 THE COURT: Actually, but Mr.
7 Freeman, I understand that concern but they
8 are not. In fact, I'm sure that they know
9 each other because they're both members of
10 the bar and the low country, but I would
11 submit to you that beyond that
12 acquaintanceship, that would be it. But
13 they are very much two separate people.

14 THE APPLICANT: Yes, Your
15 Honor.

16 THE COURT: Now, are you
17 concerned about going forward this morning?

18 THE APPLICANT: Can you repeat
19 that, Your Honor, please?

20 THE COURT: You asked -- I'm
21 sorry. Are you concerned about going
22 forward this morning?

23 THE APPLICANT: Yes, ma'am, I
24 am. Mr. Christopher Murphy has not sent me
25 any document whosoever amending my appeal,

1 my PCR, ma'am. As a result, I don't know
2 what page he's on. Actually, I don't see
3 Mr. Christopher, and in actuality I've
4 never seen Mr. Christopher. So, I can't
5 really distinguish, other than Mr. White
6 over there, I know Mr. White, my former
7 attorney. Other than that, the other
8 gentleman I don't know him whosoever. I
9 don't see Mr. Christopher, ma'am.

10 THE COURT: Okay. You can't
11 see him on the Webex? Well, I can see him,
12 he just raised his hand. Did you see him?

13 THE APPLICANT: Oh, that's him.
14 Okay, sorry, Mr. Christopher. Yes, ma'am,
15 Your Honor.

16 THE COURT: And that's just one
17 of the difficulties of Covid, no doubt,
18 that we're all having to work with the
19 Webex.

20 THE APPLICANT: Yes, ma'am.

21 THE COURT: Now, you're saying
22 you have not seen the amended PCR
23 application?

24 THE APPLICANT: No, ma'am, I
25 haven't.

1 THE COURT: Is that right?

2 Okay. I'll just ask Mr. Murphy to speak to
3 it. Is there an amended application for
4 PCR, Mr. Murphy, that should have gone to--

5 MR. MURPHY: Yes, ma'am. May
6 it please the Court. Just for the record,
7 I have not actually met Mr. Freeman in
8 person. I have talked to him on the phone
9 and have corresponded with a lot of letters
10 back and forth. I had sent the Attorney
11 General the amended application with the
12 issues we were going to raise and I also
13 sent them to you this morning, just to make
14 things easier for this.

15 THE COURT: Yes, yes.

16 MR. MURPHY: The issues as
17 follows would be; number one, is that there
18 was a burden shifting allegation in the
19 reasonable doubt charge. That's the first
20 issue we're going to rest on the record.

21 Number two, is that the
22 defendant did not take the stand and in
23 fact presented no defense as all. Enlight
24 with the facts that were presented by the
25 State, not presenting any witnesses or

1 taking the stand is the same as ineffective
2 assistance of counsel.

3 Mr. Freeman also wanted me to
4 raise that there was no probable cause for
5 his arrest.

6 Then as the fourth element or
7 fourth issue would be, as part of the
8 elements of the burglary there were two
9 prior convictions for breaking in or
10 burglaries as an element of the charge, as
11 you know. He states that there was no
12 objection to that stipulation to those
13 prior charges coming in.

14 And then finally, Judge, when I
15 spoke with him he mentioned a note six from
16 the jury, but there was no note six in the
17 record. So, that's a moot point. So, we
18 really have four issues that we're raising
19 in this PCR.

20 THE COURT: Okay. You heard
21 that, Mr. Freeman?

22 THE APPLICANT: Yes, ma'am.
23 Your Honor, I have a transcript of record
24 right here with me.

25 THE COURT: Yeah.

1 THE APPLICANT: Yes, ma'am,
2 Your Honor, I have a transcript of record
3 here with me and--

4 THE COURT: Hold on, whoa, whoa
5 whoa. Mr. Murphy just went over the
6 amended PCR application with you. And your
7 concern with regard to having perceived
8 the -- with regards -- hears what concerns
9 me. What concerns me is where the two of
10 you are, Mr. Murphy and Mr. Freeman. I
11 think perhaps the two of you need to have a
12 conversation. I don't want to get in to
13 where we are. Your client is concerned
14 about how we are proceeding. We don't have
15 dual representation in to State of South
16 Carolina. Mr. Murphy, you represent him,
17 we're now moving into a dual representation
18 situation and it's not appropriate.

19 If there is a means where you
20 can have a conversation with him that's
21 fine. Otherwise, we're going to have to
22 continue this matter today because you've
23 got to be able to talk to him. I can't be
24 in this position where I'm dealing with
25 dual representation. Do you understand?

MR. MURPHY: Yes.

THE APPLICANT: Your Honor, I understand, Your Honor, but specifically reading this transcript of record, note six--

THE COURT: I got to stop you, sir, I got to stop you. Let me tell you why, Mr. Freeman, you got a lawyer. You're talking to me, he's talking to me and you're now testifying, you're representing yourself and Mr. Murphy is trying to represent you as well. What is occurring is what's called dual representation and we don't have dual representation in South Carolina. So, you gentlemen must get on the same page. You're not on the same page at this moment.

THE APPLICANT: Yes, Your Honor. Your Honor? Yes, Your Honor, with all due respect.

THE COURT: Again, Mr. Freeman, you need to stop.

THE APPLICANT: Yes, ma'am.

THE COURT: Mr. Murphy, what do you want to try and do? Do you want to try

1 and have a conversation with your client
2 now or do you need to continue this matter
3 so the two of you can get on the same page?

4 MR. MURPHY: I think first, the
5 primary issue, Judge, is I would ask the
6 Court to inquire if Mr. Freeman wants to
7 continue with me representing him or if he
8 wants to--

9 THE COURT: No, no. I'm not
10 going to do that.

11 MR. MURPHY: Okay, thank you.
12 I am happy to talk with him on the phone if
13 I have a means to do that today. I would
14 like to get this over with if we can. I
15 know in Federal Court there is -- we're not
16 in Federal Court obviously, but I think Mr.
17 Freeman wants to be in person in talking
18 with him in prior conversations and
19 listening to him now, rather than doing
20 this virtual. And so, if he wants to
21 continue it to do it in person, I don't
22 have any problem with that if the Court
23 doesn't have any issue with that. But I'm
24 happy to talk to him, whatever the Court
25 pleases, I'm happy to do it.

1 THE COURT: All right. Mr.
2 Limbaugh are you aware -- or Ms. Weidauer,
3 are either one of you aware of whether
4 there is an ability for SCDC to connect the
5 dots for a phonecall?

6 MR. LIMBAUGH: May it please
7 the Court, Your Honor.

8 THE COURT: Yes.

9 MR. LIMBAUGH: What we've been
10 doing is if Mr. Freeman could get whoever
11 was there supervising him to give
12 Mr. Murphy a number to call right now and
13 Mr. Murphy could get it and speak to him,
14 and hopefully we can resolve whatever
15 issue.

16 THE COURT: That would be
17 great.

18 THE APPLICANT: Your Honor?
19 May I say something, Your Honor, please?

20 THE COURT: Okay.

21 THE APPLICANT: I request
22 Mr. Christopher Murphy to be relieved
23 because he made a false statement. There
24 in fact is a note six and it specifically
25 says the jury wanted to know about the two

1 prior convictions for armed robbery. I've
2 never committed an armed robbery. And this
3 is on page 243, ma'am, of the transcript.
4 He made a false statement.

5 He's not willing to represent
6 me, he's never sent me an amended
7 application. Ma'am, please, I'm requesting
8 him to be relieved, ma'am. He made a false
9 statement, please.

10 THE COURT: I will proceed as I
11 did a moment ago and ask the State if there
12 is a means for a telephone call.

13 MR. MURPHY: Okay.

14 THE COURT: Yes?

15 MS. WEIDAUER: So, we can try
16 to get a hold of SCDC to make that call
17 happen and get a number that Mr. Murphy can
18 maybe call instead.

19 THE COURT: Okay.

20 MS. WEIDAUER: And we'll give
21 them Mr. Murphy's number.

22 MR. MURPHY: Do you want my
23 number now?

24 MS. WEIDAUER: Yes, I'll write
25 that down.

1 THE COURT: I'm going to give
2 you guys like 10 minutes to work that out.
3 And I'm going to step away and see if y'all
4 can get that done.

5 MS. WEIDAUER: Thank you so
6 much, Judge.

7 THE COURT: Thank you, guys.
8 (Whereupon, a brief recess was
9 taken.)

10 MR. MURPHY: Okay, here's the
11 judge. I'll do the talking, Mr. Freeman.

12 THE COURT: Okay, I'm back.

13 MR. MURPHY: Thank you, Your
14 Honor.

15 THE COURT: Yes, Mr. Murphy?

16 MR. MURPHY: May it please the
17 Court. I did just have a conversation with
18 Mr. Freeman. Talking with him the three or
19 the two main allegations that he raises and
20 has problems with is the admission of the
21 prior charges into the record. The second
22 is he thinks that his arrest was invalid
23 for no probable cause.

24 Now, he alleges all sorts of
25 criminal conspiracies and contempt by the

1 Court and conspiracy by the lawyer, which I
2 told him, we're not going to get into those
3 allegations. We're going to present the
4 issues that he wants to and we are ready to
5 do so today. However, he does not want me
6 to represent him anymore and he asks that I
7 move to be relieved as counsel. If Your
8 Honor relieves me, we can continue it. If
9 you say no, I am happy to proceed and ready
10 to proceed right now.

11 THE APPLICANT: Your Honor,
12 excuse me. This is documentation -- I'm
13 sorry, Your Honor? This is documentation
14 that the magistrate court, is says
15 dismissed and not indicted. January 2003,
16 there's further documentation. January 3
17 of 2020, it says dispose of, dismissed, not
18 indicted. Ma'am, the last warrant is
19 invalid. All charges were dismissed. The
20 subsequent arrest is invalid. I'm not Earl
21 Johnson, Jr. I don't know who he is.

22 The so called victim, ma'am, I
23 know you probably read the transcript but,
24 ma'am, the court does not have the equipped
25 acoustic to replay his testimony. The jury

1 discovered that this man lied, he's a dope
2 smoker and he sells drugs. My family has
3 lived there since the early 1900's and I
4 had the right to be there. And the
5 neighbor also says it wasn't dark. When I
6 went in the area, on my family's -- my late
7 cousin's mother, Ms. Bryant -- the name on
8 this is Eather Road. I had all the right
9 to be on Eather Road. And the neighbor
10 says it wasn't dark--

11 THE COURT: Mr. Freeman.

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: Mr. Freeman, we
14 don't have dual representation in South
15 Carolina. The issue before the Court at
16 this moment is a motion to be relieved.

17 THE APPLICANT: Yes, ma'am.

18 THE COURT: Okay. All right.
19 Now, we have some -- I'm concerned that we
20 have witnesses who have got lots of things
21 to do and I know are very busy folks. So,
22 let me address them, really out of courtesy
23 at this moment. I see you're here,
24 Mr. Church, have you been subpoenaed to be
25 a witnesses in this matter?

1 MR. CHURCH: I don't know if I
2 actually got a subpoena but I got a notice,
3 so I'm here.

4 THE COURT: Thank you for being
5 here. And obviously there's some matters
6 that I need to attend to and I'm very
7 concerned about you, and Ms. White,
8 obviously you're here and I know there are
9 other things you have to do. And I'm
10 cognizant that at this moment I think I'm
11 waisting your time.

12 Do you all want to drop off and
13 we can call you back in you're needed
14 today? Would that be all right? Or y'all
15 can just hang on, if you're able to work
16 and just hang on till we're done. Either
17 way. I feel like I'm waisting your time at
18 this moment.

19 MR. CHURCH: Your Honor, I had
20 prelims but I cleared my schedule to be
21 here this morning, so I can hang around.

22 THE COURT: What time -- do you
23 have prelims that you need to go to?

24 MR. CHURCH: No, I had them
25 continued so I would be available for this

1 hearing.

2 THE COURT: Well, I'm sorry for
3 that, Mr. Church, if we're not able to go
4 forward. But there is no way of knowing
5 that we would have these concerns. But
6 obviously Mr. Freeman has some concerns
7 that need to be addressed. So, if you can
8 stay with us and continue to work and maybe
9 mute us so we're not disturbing you and
10 same is true for you, Ms. White, same is
11 true for you.

12 MS. WHITE: Yes, ma'am.

13 THE COURT: If you can stay
14 with us and drop off and continue to work,
15 if you need to go some place let me know.
16 I'm just -- I'm very mindful of your time
17 but there are matters that are concerning
18 Mr. Freeman that I need to deal with.

19 MS. WHITE: Yes, ma'am.

20 THE COURT: So, I just want
21 ya'll to know that I know you're there and
22 I'm concerned. So, if you can, I don't
23 know that we'll be able to go forward today
24 and but I need to hear from counsel and I'm
25 certainly mindful of your time. I just

1 wanted you to know that.

2 MS. WHITE: Yes, ma'am, thank
3 you.

4 MR. CHURCH: Thank you, Your
5 Honor.

6 THE COURT: All right. So, if
7 y'all could just mute, stop your video, go
8 do your thing. And if we're able to go
9 forward, you know, I know you're needed.
10 Wonderful, thank you both.

11 All right now, Mr. Murphy has,
12 on behalf of his client, made a motion to
13 be relieved. Obviously I have to hear that
14 outside of the presence of the State so
15 that I can preserve his attorney/client
16 privilege. Ms. Weidauer, Mr. Limbaugh,
17 y'all are ready to go forward, correct?

18 MS. WEIDAUER: Yes, Your Honor.

19 THE COURT: Okay. And you're
20 prepared and ready to go forward and I
21 gather at this late stage you would object
22 to Mr. Murphy being relieved, correct?

23 MS. WEIDAUER: Yes --

24 THE APPLICANT: I object.

25 MS. WEIDAUER: -- the State is

1 prepared to move forward with this hearing
2 today and Mr. Murphy has provided those
3 amended allegations, that he spoke of
4 before, to the State. So, we would request
5 that this hearing move forward today and
6 that Mr. Murphy not be relieved as counsel.

7 THE COURT: Got it. Now, what
8 I need you to do is I need you and Mr.
9 Limbaugh, Mr. Church and Ms. White, I need
10 all of you to drop off. You can, you know,
11 return in 10 minutes. Because I need to be
12 able to conduct an in-camera hearing with
13 Mr. Murphy and Mr. Freeman in order to
14 preserve his attorney/client privilege.
15 So, set your timer and if you would just
16 jump off.

17 MR. LIMBAUGH: Yes, Your Honor.

18 THE COURT: Same for you, Mr.
19 Limbaugh, same for you Ms. White and you
20 Mr. Church and then come on back in 10
21 minutes, okay?

22 MS. WEIDAUER: Yes, Your Honor.

23 THE COURT: Thank you all.

24 THE APPLICANT: Your Honor,
25 before you go--

1 THE COURT: I'm not going, I'm
2 right here. Lauren can you chat with
3 Ms. White and tell her to drop all the way
4 off? Because she is still on.

5 Now, Mr. Freeman.

6 THE APPLICANT: Yes, ma'am.

7 THE COURT: I need you to
8 understand that people who will be present
9 in this hearing. Ms. Williamson is the
10 clerk from Berkeley County, it's
11 appropriate that she remain on.
12 Ms. Williams, Natalie Williams is our court
13 reporter and it is appropriate that she
14 would remain on. Lauren Mims is my law
15 clerk and it's appropriate that she remain
16 on. And it is appropriate obviously that
17 Mr. Murphy would remain on. And we'll
18 conduct that hearing as soon as Ms. White
19 has dropped off.

20 Now, Ms. Williams and
21 Ms. Williamson, Ms. Mims and obviously
22 Mr. Murphy doesn't need an instruction with
23 regards to attorney/client privilege, but
24 everyone else, I just need you all to be
25 mindful that as I go into the motion to be

1 relieved that this needs to be sealed,
2 Ms. Williams, this part of the hearing
3 would be sealed. And Ms. Williams, Ms.
4 Mims, Ms. Williamson, you all will be under
5 an order not to be disclose anything that
6 you hear. And the reason for that, of
7 course, is to preserve Mr. Freeman's
8 attorney/client privilege.

9 (Whereupon, the following
10 proceedings were held as an in-camera
11 motion to be relieved.)

12 THE COURT: All right. Now,
13 for our record the people currently on the
14 Webex are Ms. Mims my lawyer clerk,
15 Ms. Williamson the clerk, Mr. Murphy who
16 represents Mr. Freeman, Natalie Williams
17 our court reporter, and of course Mr. Fred
18 Freeman, the PCR applicant. Now, Mr.
19 Murphy, you made a motion to be relieved
20 and that is based upon the request of Mr.
21 Freeman, is that correct?

22 MR. MURPHY: Yes, Your Honor.

23 THE COURT: All right. Mr.
24 Freeman, tell me why you wish for Mr.
25 Murphy to be relieved from representing

1 you.

2 THE APPLICANT: Yes, Your
3 Honor. Your Honor, outraged more than
4 three constitutional violations. In
5 addition, I don't know what page Mr. Murphy
6 is on. I requested Mr. Murphy,
7 respectfully, to spend me a copy of this
8 amendment. He requested me months ago to
9 summarize, and I summarized my
10 constitutional violation, and I constantly
11 wrote Mr. Murphy and he has not yet
12 responded. One of the letters he wrote me
13 back stating I use such big words, and that
14 lead me to believe, along with the other
15 letters, he's not advocating for me, ma'am.

16 THE COURT: Hold on, hold on,
17 Mr. Freeman.

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: Mr. Murphy, have
20 you been able to send to Mr. Freeman the
21 amended PCR application?

22 MR. MURPHY: The specific
23 amendments that we spoke about, I do not
24 believe I sent them to him. We spoke on
25 the phone about them last week or right --

1 it was about a week ago that we spoke on
2 the phone and we discussed those issues.
3 Actually, I told him I would send those
4 issues to the Attorney General's Office and
5 make sure that we raise them at the hearing
6 and he would be protected.

7 THE COURT: Okay. So, the
8 issues that he was concerned about. But he
9 does not have them in writing?

10 MR. MURPHY: He does not have
11 those -- that is correct, yes, Your Honor.

12 THE COURT: Okay. So, now tell
13 me your other concerns.

14 THE APPLICANT: Yes, Your
15 Honor. As a result, no direct response
16 from Mr. Murphy, I set forth to write to
17 the Federal Bureau of Investigation because
18 the jury was predisposed to, at large, what
19 they call it -- what they call it -- an
20 alleged conviction of armed robberies. The
21 jury got this note and sent it to the
22 Court, and as a result of the same, they
23 manifested that, well, he could have
24 commits armed robberies and he has a bad
25 background as well. So, in there --

1 Mr. Murphy should have a copy of this, it
2 says, there is no response to plea. I
3 never commit no armed robberies, ma'am.

4 There were certain things that
5 occurred in that courtroom, for instance,
6 Mr. Church is not here and Ms. White is not
7 here, but no one will admit it. All the
8 jurors that were selected, all their names
9 were highlighted ma'am, in green. There is
10 so much going on in that courtroom, ma'am,
11 honestly. And for the record, in 1982,
12 even though this is not on the air right
13 now, they had recorded the jury room, and
14 recorded the prosecutor's room and the
15 courtroom. And I was in the court
16 attorney's office and heard it all. There
17 is so much going on in that courtroom.

18 I am not guilty of no crime.
19 Matter of fact, I have a bad background but
20 I am not guilty of no crime. What they're
21 doing is not right, and not because what
22 the magistrate did, this is not about 68
23 days where prelim hearing and the
24 magistrate dismissed all the charges. This
25 is about the disposition that came out on

1 the December 9, 2015, dismissed it, not
2 indicted. What we're saying here is the
3 subsequent arrest after that, Your Honor.
4 The subsequent arrest is not supported,
5 it's invalid. There is no valid warrants,
6 there is no affidavits. They falsified the
7 document.

8 Ma'am, what I'm saying is that
9 I'm not arguing with you, Your Honor, I
10 know better than to do that. I know other
11 people try that.

12 THE COURT: I'm trying to --
13 but I am trying to follow you. So,
14 Mr. Freeman, your concern is that you
15 believe that you were tried on an invalid
16 indictment. Is that right?

17 THE APPLICANT: Yes, ma'am.

18 THE COURT: Okay. All right.

19 THE APPLICANT: In addition,
20 may I say one thing, Your Honor?

21 THE COURT: Okay.

22 THE APPLICANT: The prosecution
23 in this case -- the prosecution alleged
24 that the warrants -- Mr. Christopher just
25 said it too, that the warrants are

1 defective because of a Scrivener's Error.
2 Your Honor, that's what the prosecution
3 stated on all four of these documents that
4 I got from them, and it says that I didn't
5 appear for nine times, but however the
6 Clerk of Court of the county somewhere
7 changed that around because I was in jail.
8 However, the thing about it, all these
9 warrants were dismissed, nolle processed
10 [sic]. And how can it be nolle processed
11 when there is no valid warrant? It was
12 disposed of, dismissed, not indicted. I
13 can't understand it. This is what's
14 costing the state a lot of money, because
15 people -- I have a background, but people
16 are being falsely convicted. Being back
17 here in this prison, I can tell you people
18 are here that shouldn't be here.

19 THE COURT: Well, you're going
20 into things that--

21 THE APPLICANT: Yes, ma'am.

22 THE COURT: Let's stay on
23 point, Mr. Freeman. All right. So, your
24 position is that there is -- you were tried
25 on an ineffective indictment, right?

THE APPLICANT: Yes, ma'am.

THE COURT: All right. Well that will get raised in the PCR. That gets raised in the introduction of the case. I am confident that the first thing that the State will present will be the indictment on -- which was prevailed, that lead to your trial. Okay? Now, lets get back to why you want Mr. Murphy relieved as your lawyer.

THE APPLICANT: Well, Mr. Murphy seems like he's on the same page as the public defender and the prosecutor in this case. Where also the prosecutor stated it was dismissed--

THE COURT: He's not --

THE APPLICANT: -- that's not what.

THE COURT: -- he's not. Mr. Freeman, he's not. He's advocating for you. He's not on anybody's page. Mr. Murphy is representing you and he is attempting to raise, on your behalf, the constitutional issues that you believe are appropriate. He's done that in the form of

1 an amended application. He's done that and
2 he's prepared to do that by calling you as
3 a witness and going through those
4 allegations with you. So, no, he's not on
5 the same tune of music as anybody, other
6 than Mr. Murphy. Now, tell me your other
7 concerns.

8 THE APPLICANT: Yes, ma'am. In
9 addition -- is this my actual PCR hearing?
10 Your Honor?

11 THE COURT: This is a motion to
12 relive Mr. Murphy.

13 THE APPLICANT: Yes, ma'am,
14 okay. Yes, Your Honor. In addition, Your
15 Honor, as these cases proceed -- well only
16 go way back there before I can actually
17 capture what actually happened in general.
18 What we have here is that -- let's see what
19 we got here. Your Honor, in addition, even
20 when the judge in this case, Ms. Murphy,
21 the jury had asked for specific questions,
22 like for instance they wanted to rehear
23 testimony of Mr. Coulis. And the Court
24 proceeded and says, well in the beginning
25 that they can replay his testimony and then

1 all of a sudden they decided, well, they
2 don't want to replay the testimony because
3 the jury discovered that Mr. Coulis planted
4 himself about four times. I never was on
5 his property. I never was on his property,
6 Your Honor.

7 THE COURT: Mr. Freeman, stay
8 with me.

9 THE APPLICANT: Yes, ma'am.

10 THE COURT: Tell me why you
11 want Mr. Murphy not to be your lawyer.

12 THE APPLICANT: Well, for one,
13 Your Honor, he doesn't want to represent me
14 effectively. If he would have, he would
15 have more or less discussed it with me. He
16 would have sent the amended application to
17 me. I sent the summary, he asked me to
18 summarize it. Your Honor, I do a lot of
19 writing here and it's not an easy task, but
20 what I'm doing and what I say comes in
21 facts. What Mr. Murphy has not done, which
22 is uncommon, for a lawyer not to amend his
23 client's PCR application. If he would
24 amend it then I could have time to go over
25 it, however he's alleging only now, only

1 three issues that I've raised. Your Honor,
2 my PCR application and amendment it's more
3 than ten. He's saying there's only three.

4 THE COURT: Yeah. Well, okay.
5 Some of the things I've heard you mentioned
6 would have been for a direct appeal rather
7 than PCR so, you know, I don't know if he
8 has gone through those things or not, but
9 he'll have a chance to speak to those in
10 just a minute. So, you're concerned also
11 about the fact that Mr. Murphy believes
12 that three grounds ought to be presented
13 and you think there ought to be ten
14 grounds.

15 THE APPLICANT: Your Honor.
16 Yes, Your Honor.

17 THE COURT: Okay.

18 THE APPLICANT: The applicant
19 has a right to preserve his issues, and
20 what issues he does not preserve is not a
21 bite at the apple. And the only thing I'm
22 requesting for, was Mr. Murphy be removed,
23 because the constitutional violations that
24 I've raised, is proper, based upon what
25 counsel's done and how he was ineffective,

1 and how I was prejudice, Your Honor. But
2 it's not being raised. Like, for instance,
3 the investigative report, counsel tried to
4 make it look like I had no reason to be in
5 the area. The jury should have been
6 exposed to that and the jury was not
7 exposed to that. The investigative report
8 shows that my family has lived there for
9 years, since -- it shows on that document
10 by the probate court, it shows that my
11 family has lived there, the Freemans, since
12 the early 1900's, Your Honor.

13 In addition to that, what I
14 don't understand is that when I research
15 and I find what happens and I put the facts
16 of what happened with the law, I'm told by
17 Mr. Murphy there's only three issues to be
18 raised. There is more than three, Your
19 Honor. And that's not right, because
20 what's right and what's wrong, is that I
21 want to bring the truth against the alleged
22 victim. I know what I smell, I know what I
23 saw, I know why my leg got broken, I know
24 why somebody had a gun to my head. The gun
25 was never sent to SLED. It's like

1 Mr. Church said, that was excluded from the
2 transcript. I don't know what's going on,
3 you know. I mean certain things occurred
4 that should not have occurred. Why would
5 that have been taken out of the record?
6 You know what I mean? I don't understand.
7 Mr. Church is not here but surely he'll be
8 glad to admit that, or somebody in the
9 courtroom will admit that. It was taken
10 out and the record, Your Honor, I mean over
11 and over.

12 So, I know, you don't have much
13 time here, you got other cases to go over
14 and I don't mean to take up all your time,
15 Your Honor, but the only reason why I ask
16 Mr. Murphy be relieved is because he would
17 not raise all the issues, Your Honor, that
18 I raised. And you know, I mean me and Mr.
19 Murphy is not on the same page, so how do I
20 know how to -- what questions to ask? I'm
21 in the dark, it's like I am in the dark
22 because I don't know what questions to
23 be -- I can answer those questions, however
24 he's not raising them all. That's the
25 problem.

1 THE COURT: Okay. I got it.
2 Any other reasons, other than you think
3 additionally that Mr. Murphy is not
4 prepared to present all of the grounds that
5 you believe ought to be prepared. Any
6 other reasons why you believe that Mr.
7 Murphy ought to be relieved?

8 THE APPLICANT: Well, I can go
9 through all of this right now but I don't
10 want to take up all your time, Your Honor.
11 If he sent me the amended application--

12 THE COURT: -- I got that.
13 You've talked about the amended
14 application, you've talked about that there
15 are addition grounds that Mr. Murphy is not
16 prepared to present to the Court that you
17 were concerned about. Anything additional
18 grounds? I'm just trying to get the basis
19 for the motion at this time.

20 THE APPLICANT: Yes, ma'am. In
21 addition to that there is question of Brady
22 versus Maryland, I have a document here
23 that says no human blood found. However,
24 Mr. Church never would object to it, as a
25 result saying the solicitor brought it up,

1 the solicitor brought it up. Mr. Church,
2 apparently he didn't say much about it
3 whatsoever, but it says no human blood
4 found. I spoke to Mr. Murphy one weekend
5 and he was in agreement, not with this, he
6 says there was human blood found. So who's
7 blood is it? It's not my blood, Your
8 Honor, I've never been on the guy's
9 property. He alleged he took a jacket off
10 me. He told the investigator that he took
11 a jacket off me, no, the investigator came
12 to court and testified and said, no, he
13 told them he found it after the police.
14 And this guy's wife said he was chasing
15 somebody down Forrest Drive. I've never
16 been on Forrest Drive in my life, I didn't
17 even know Forrest Drive exists. And the
18 neighbor says, well it was dark and he saw
19 his neighbor outside in the backyard
20 hiding. He acted like he was delusional
21 the night that he was by police cars, and
22 he alleged the police officers put him in
23 handcuffs. No one corroborated that. If
24 you look on the screen at the court, the
25 Berkeley County Court, you can see it, from

2015, Mr. Church didn't represent me. He consistently was over there by Mr. Coulis. All the time, Your Honor. I mean I'm not saying this where I cannot verify without the footage to show it to you, but, Your Honor, that's where he was at. When I turned around and looked at him he'd move back in his chair. He asked me once, do I have a lawyer. He tried to trick me into taking the witness stand. When I walked back into the courtroom the clerk of court says, Mr. Freeman, do you swear to tell the truth? I said, ma'am, I invoke my fifth amendment right. And the judge said very well. I sat back down, judge took a recess, Mr. Church took me into the conference room and says, do you have a lawyer? You're going to testify. He was trying to get me on the witness stand to testify, Your Honor, to impeach me about my prior background. It's not right, Your Honor.

What I'm trying to say now about Mr. Murphy, I'd like to go over all of this. Now, I know you don't have time

1 to go over all this, but only thing I
2 ask -- only thing I want you to ask of
3 Mr. Murphy, based upon the subsequent
4 arrest is for defective representation.
5 However, Your Honor, what we have here is
6 there is no document whatsoever I have
7 stating that he is going to provide me
8 effective representation that would be on
9 the same page he would be on, Your Honor.
10 And I mean it's very unusual for an
11 attorney not to provide his client with
12 amended application. In this case, I've
13 not received one.

14 THE COURT: Okay, okay. All
15 right. Got it.

16 THE APPLICANT: Also, Your
17 Honor, it says the 4th circuit statute,
18 pursuant to preliminary hearing, dismissal,
19 disposition, not indicted, the order became
20 dismissal with prejudice against the State.
21 As a result, Your Honor, why am I put in
22 prison?

23 THE COURT: That's not -- I
24 don't think that's happened in your
25 instance, Mr. Freeman. I think that there

1 was an indictment and I think there was a
2 trial and I think there was a conviction.

3 THE APPLICANT: Yes, ma'am.

4 THE COURT: And this obviously
5 is not federal court, this is state court.
6 So, are there any other grounds that you
7 want Mr. Murphy to be relieved, other than
8 the ones you have already told me?

9 THE APPLICANT: He's not
10 willing to represent me, Your Honor. He's
11 not willing to represent me to -- based
12 upon all the grounds that I've raised. I
13 could sit here and go over all the grounds.

14 THE COURT: You've already said
15 that.

16 THE APPLICANT: Yes, ma'am.

17 THE COURT: You've already said
18 that, yes, sir. Okay. All right, then
19 Mr. Murphy. I'm going to now hear from Mr.
20 Murphy, Mr. Freeman. Mr. Murphy?

21 MR. MURPHY: Yes.

22 THE COURT: Mr. Freeman says
23 that there are ten grounds and he's
24 concerned that you only intend to raise
25 three grounds.

1 MR. MURPHY: Yes.

2 THE COURT: Are you aware of
3 the ten grounds that he says he is
4 concerned about?

5 MR. MURPHY: Judge, for the
6 record, Mr. Freeman and I have had a lot of
7 correspondence going back and forth. He's
8 been writing a lot of letters. I'm aware
9 of the grounds and I understand listening
10 to him, it boils down to basically three
11 issues. He's concerned about facts that
12 could have been presented or should have
13 been cross-examined at trial. That goes
14 under the overarching category of not
15 taking the stand and not presenting the
16 defense, which we are going to question him
17 about. So he's going to get to testify as
18 to why -- what facts he understood, why he
19 maintained his innocence and you'll be able
20 to judge his credibility and decide whether
21 or not he was prejudice by that. So, he is
22 going to get to talk about all the things
23 he just mentioned. That is category number
24 one.

25 THE COURT: Okay.

1 MR. MURPHY: The second
2 category is the prior charges with the
3 stipulation coming in. It is an element of
4 the charge burglary having two priors.
5 He's confused that they were going to be
6 used for impeachment and they should not
7 have been admitted because he took the
8 stand. We'll preserve that issue for
9 appeal or in this record and discuss that
10 as well.

11 And then the probable cause --
12 the no probable cause, goes back to the
13 warrant that he says was defective. If
14 there was no probable cause. So we're
15 going to raise all of the issues he spoke
16 about today.

17 THE COURT: Got it. In other
18 words, he's been -- the ten that he's
19 speaking of, he set them out with more
20 specificity, all you have done is that you
21 have grouped them into three different
22 categories?

23 MR. MURPHY: That's correct.
24 And I advised him. He's used a lot of
25 constitutional terms and a lot of issues,

1 and I've tried to explain we're focused
2 only on errors of counsel, and this is the
3 way we can present his case with everything
4 that he wants to present.

5 THE COURT: Okay. I think I
6 get it. Okay, thank you. Mr. Freeman, any
7 response?

8 THE APPLICANT: Yes, Your
9 Honor. The Court has recognized that the
10 right to counsel is the right to effective
11 assistance of counsel. The government
12 violates effective assistance of counsel
13 when it enters -- the court held prejudice
14 presume, when counsel in Berkeley by actual
15 conflict of interest, Your Honor. And
16 trial counsel at all times was ineffective.
17 Prejudice presumed actual or constructive
18 denial of counsel altogether is legally
19 presumed to result in prejudice and
20 precarious act of conspiracy. Prejudice
21 due to circumstances, is likely that case
22 by case inquirment [sic] to prejudice for
23 the various acts during trial counsel.
24 What I don't understand --

25 THE COURT: Mr. Freeman. Mr.

Freeman.

THE APPLICANT: Yes, Your Honor.

THE COURT: You're not being responsive, okay?

THE APPLICANT: Yes, ma'am.

THE COURT: What Mr. Murphy is telling me is that he wants to give you an opportunity to raise these issues before the Court, alleging that your trial counsel, that they were ineffective. He's trying to give you that opportunity to do that.

THE APPLICANT: Your Honor, I understand what you're saying, Your Honor, but my paper -- because he's telling me there's only three issues, I've basically numbered every issue. What I did in representation to the point of Brady violation, a burden non disclose, have the same effect on a proceeding as a delivered concealment, in this case, trial counsel was ineffective by prejudice. Because Brady -- the analysis would have showed specifically whose DNA it was and proved

1 that I was not on this man's property, but
2 also proved, one, that it was inadmissible.
3 Counsel was ineffective. He didn't say
4 nothing about it.

5 In addition to the affidavits,
6 Your Honor, I did a lot of reading and
7 learning. I'm not a judge, I'm not a
8 lawyer, I wish I was. But what I'm trying
9 to say is this, Mr. Dennis is a very
10 intelligent man, Solicitor Dennis. He
11 brought up the issue of the affidavits. He
12 opened the door for Mr. Church, and
13 Mr. Church knows you cannot introduce an
14 affidavits the next step. You must file a
15 memorandum. He didn't file no memorandum.
16 It was so prejudicial. And these are
17 matters I bring up in my summation for
18 Mr. Matthews [sic]. And he knows, he's a
19 lawyer. I used to be a welder, I used to
20 be a plumber. In this case Mr. Murphy is
21 leaving everything out, and it's leaking.

22 The only thing I'm asking for,
23 Your Honor, he's a skilled lawyer, I used
24 to be a skilled welder. The only thing I'm
25 trying to say, Your Honor is this; one,

1 issues are right and fairness. I've not
2 receive it, Your Honor. If I received it
3 why would the judge tell the jury, you may
4 have heard that the State has established
5 all it's elements. He's not brought that
6 up. That's one reason why I thought he was
7 related to Ms. Murphy, because that's
8 totally prohibited, the burden shifting.
9 The issue here is that he's not raising
10 that and the reason why, Your Honor -- I'm
11 just frustrated, and I'm not frustrated
12 with the Court, I'm just mad at John Church
13 on what's right and what's wrong, Your
14 Honor. He entirely knew as well, and it's
15 not a Brady -- Batson versus Kentucky. Not
16 raised.

17 Also every juror that was
18 called was highlight, Your Honor. He would
19 not admit that, but maybe Ms. Kiesha White
20 would, she's the one that showed me the
21 paper. The only people that were called,
22 Your Honor, were those people listed and
23 highlighted. That only tells me one of the
24 two, Your Honor, what's going on in these
25 courtrooms, it should stop. I know you

1 don't have this stuff but I've heard from
2 convicted felons -- you follow the law and
3 you follow the constitution.

4 So, what I'm asking for
5 Mr. Matthews -- Mr. Murphy be relieved, for
6 this to be continued for Mr. Murphy to
7 bring out the issues that I'm actually
8 raising that are constitutional, ma'am.
9 That's the only thing I ask for. To be
10 presented to you in a rightful manner, as I
11 presented it. But he told me in his last
12 letter he wrote to me, he said "you use
13 such big words." I get the words out of
14 law books, I'm learning. And if I'm wrong
15 doing that why would he say you use such
16 big words? And I'm not prejudice, and I'm
17 not saying that Mr. Murphy is prejudice.
18 There are Caucasians that will sit here
19 today and say I'm not prejudice. And this
20 is my point, Your Honor, this letter I
21 sent, Your Honor--

22 THE COURT: Okay --

23 THE APPLICANT: Can I say this,
24 please? The letter I sent, I used black
25 code and he said, you use such big words.

That's why I want him to be relieved, Your Honor, and I got the letter, he should have the letter too. That's Article one, fourteenth amendment, deny -- fifth amendment, and then equal protection -- due process, equal protection. Deny to fair trial, Article one. He did not present none of those, Your Honor. So, only thing I'm saying is this; if I have to educate myself and speak accordingly by law and what happened the night I was arrested based upon the subsequent arrest in this matter, Your Honor, I should have the right for the presentation of Mr. Murphy to raise the issues based upon the constitutional violation, as I raised it, Your Honor. And he has not, he's only raised three. That's not right.

THE COURT: Okay. Got it. Got it, Mr. Freeman, all right. Now, Mr. Freeman, let me say this, I'm satisfied that Mr. Murphy is going to raise the issues that you want raised. The difference is is that he has grouped them in three categories. But I've listened to

1 both of you, and I've listened to both of
2 you extensively, and I'm satisfied that Mr.
3 Murphy is prepared to raise all of the
4 issues that you're concerned about. Now,
5 is he going to, you know, allow you to just
6 have a narrative that will go on to perhaps
7 areas that he would believe are not
8 pertinent? Probably not. However, I'm
9 satisfied that he intends to raise all of
10 the issues that you've expressed to me,
11 your concerns. So, I'm not prepared to
12 relieve Mr. Murphy.

13 Having said that, Mr. Freeman,
14 if you wish to proceed without a lawyer you
15 have a right to do that. And there is an
16 examination that I would do of you to make
17 sure that you are someone who can represent
18 themselves, and that's called a Faretta
19 hearing. And the reason is, let me be as
20 clear as I know how to be Mr. Freeman, I
21 believe that Mr. Murphy has listened to you
22 and has heard your concerns and is prepared
23 to present those to the Court. So, I don't
24 believe that there is any other lawyer who
25 I could appoint that would do substantially

1 differently than Mr. Murphy is prepared to
2 do. So, that is my position with regards
3 to relieving Mr. Murphy. I don't have any
4 reason to believe that any other appointed
5 counsel would do differently than
6 Mr. Murphy is prepared to do.

7 Now, let me say to you that
8 under a case called United States versus
9 Faretta, you have a right to represent
10 yourself, if you wish. Obviously there are
11 dangers in self-representation and we
12 certainly -- I would do an examination of
13 you. So, really, where we are now, is that
14 I'm prepared to go forward and hear from
15 you. And Mr. Murphy is prepared to make
16 your presentation for you, and obviously
17 the Attorney General is prepared to defend.
18 So, the question becomes, whether or not
19 you wish for Mr. Murphy to represent you or
20 do you wish to represent yourself?

21 THE APPLICANT: It takes a fool
22 to represent themselves. No, ma'am, I'm not
23 going to represent myself. However, ma'am,
24 if I may say that in addition, Mr. Murphy
25 has not raised nothing about Brady versus

1 Maryland either. These are founding
2 issues, exculpatory evidence. Why would
3 any defendant want an attorney that's not
4 going to raise the pertinent issues? Brady
5 versus Maryland is a pertinent issue to
6 prove, not just only one, it proves points,
7 Your Honor, and he hasn't raised that, and
8 I presented that to him, Your Honor. I
9 mean, I don't understand this. And the
10 other thing -- the other thing, Your Honor,
11 is that there's matters relating to --
12 where is it at? There's matters relating
13 to -- it's a federal crime to conceal
14 facts, making false statements, using
15 documents knowing to be false. All times
16 relevant to trial counsel of Mr. Church,
17 advocating with the prosecution, Your
18 Honor. These issues were pertinent to
19 Mr. Church, and Mr. Murphy had not raised
20 them, Your Honor.

21 During the trial, the jury
22 wanted to know specifics, and why would a
23 judge -- I'm not holding nothing against
24 the judge, she was doing her job, I'm just
25 following the constitution, Your Honor.

1 Why would the judge face the jury when the
2 jury asks for more specific information
3 about Mr. Coulis, you know, in relation to
4 they want to hear his testimony again, and
5 the Court stated due to the acoustics we
6 have in the courtroom, and would not allow
7 it. Your Honor, the jury discovered that
8 Mr. Coulis perjured himself, over and over
9 and over, and that perjury was, he never
10 took the jacket off me. He claimed he fell
11 over the bench with me, he's 250 pounds, I
12 was 179 pounds, and that's on record
13 because I went to the hospital, Your Honor.
14 It's physically impossible for 179 pounds
15 to lift 250 on the bench, Your Honor. In
16 addition to that, he has fabricated and
17 clearly committed perjury.

18 THE COURT: Okay.

19 THE APPLICANT: What I'm saying
20 is that, there is an issue, Your Honor,
21 that are constitutional violations, and you
22 know, exculpatory. When I go back to
23 exculpatory, there in fact, evidence would
24 have produced a different verdict. I was
25 prejudice over and over--

1 THE COURT: Mr. Freeman, let me
2 stop you again, because that is the basis
3 of the PCR, that's why we're all here.
4 Because you alleged that your lawyers, your
5 trial lawyers, were ineffective. Mr.
6 Murphy is prepared to present those issues
7 to the Court. You have indicated to me
8 that you wish to go forward with counsel
9 representing you, and so --

10 THE APPLICANT: I ask Mr.
11 Murphy be relieved, Your Honor, please.

12 THE COURT: I know that. I'm
13 not going to do that. I have denied your
14 motion, I note your exception for the
15 record so it is preserved. If I should
16 have relieved Mr. Murphy then the appellate
17 court can reverse me on that. Okay? So
18 your issue is preserved, and I'll make sure
19 when we go back out and the other folks
20 join us, that that issue is preserved for
21 you for appellate reasons, okay?

22 THE APPLICANT: Yes, Your
23 Honor.

24 THE COURT: Now, here's what
25 we're going to do now. So, Mr. Freeman, I

1 want you to take a breath, I don't know
2 about you but I need a little comfort
3 break, about five minutes.

4 THE APPLICANT: Yes, Your
5 Honor.

6 THE COURT: I want you to take
7 a comfort break, okay? I'm going to ask,
8 you know, if you need to take a comfort
9 break I want you to have one. And then my
10 law clerk, Ms. Mims, is going to reach back
11 out to the Attorney General and the
12 witnesses to let them know that we're going
13 to begin your hearing in about five
14 minutes, okay?

15 THE APPLICANT: Yes, Your
16 Honor.

17 THE COURT: Perfect. Thank
18 you. Five minutes and we'll start our
19 hearing.

20 (Whereupon, a brief recess was
21 taken.)

22 THE APPLICANT: Your Honor, if
23 I may, please before we proceed?

24 THE COURT: Yeah.

25 THE APPLICANT: This is what's

1 going on, Your Honor. The stipulation, I
2 found copies of stipulation where Mr.
3 Church agreed that the jury hear the
4 stipulation.

5 THE COURT: What I want to do,
6 Mr. Freeman, is I want to put some things
7 on the record and then I'm going to hear
8 from Ms. Weidauer, she is going to
9 introduce the case. But let me put this on
10 the record, okay? Because I promised you
11 that I preserve your rights and I certainly
12 want to live up to what I told you.

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: Out of the presence
15 of defense counsel -- excuse me, out of the
16 presence of the Attorney General and trial
17 defense counsel, with only my law clerk,
18 Mr. Murphy, PCR counsel, the clerk and our
19 court reporter present, with an instruction
20 not to discuss the matters that went on in
21 the hearing, I had an ex parte hearing on
22 the record with regards to the motion for
23 Mr. Murphy to be relieved. I have denied
24 that motion.

25 I have heard from Mr. Murphy

1 and I've heard from Mr. Freeman,
2 extensively, and I have denied that. Mr.
3 Freeman has accepted to my ruling and I
4 told him that I would put all of that on
5 the record when we came back out so that it
6 is my intention to preserve his objection,
7 his exception to my ruling not to relieve
8 Mr. Murphy. He has, he being Mr. Freeman,
9 has indicated to me, however that he wishes
10 to have counsel represent him, he would
11 prefer, he requested that there would be
12 someone other than Mr. Murphy to represent
13 him and I have denied that request.

14 So, let me also say that that
15 part of this record has been sealed and it
16 certainly can be unsealed in the event that
17 that issue is appealed and the Court needs
18 that part of the record. Which I
19 anticipate that they would.

20 Now, at this point I'm prepared
21 to proceed. So, on behalf of the Attorney
22 General, if you would please introduce the
23 case.

24 MS. WEIDAUER: My name is
25 Samantha Weidauer and I'm here representing

1 the Attorney General's Office. Fred
2 Freeman is presently confined pursuant to
3 orders of the Berkeley County Clerk of
4 Court.

5 In December 2015 the Berkeley
6 County Grand Jury indicted the applicant
7 for burglary first degree and possession of
8 a weapon during the commission of a violent
9 crime. On August 28th through 29th of
10 2017, applicant proceeded to trial before
11 the Honorable Maite Murphy and a jury.
12 Applicant was represented by John Church
13 and Keshia White. The State was
14 represented by Assistant Solicitors Bryan
15 Alfaro and Benjamin Dennis of the 9th
16 Circuit Solicitor's Office. A jury
17 convicted applicant, as indicted on both
18 charges, and Judge Murphy sentenced
19 applicant to 45 years of imprisonment for
20 the burglary first degree and five years
21 for the possession of a weapon.

22 Applicant filed a timely notice
23 of appeal, which was perfected by the South
24 Carolina Commission on Indigent Defense
25 Division of the Appellate Defense Office.

1 Applicant defense filed a brief pursuant to
2 Anders, and the South Carolina Court of
3 Appeals dismissed applicant's appeal and
4 remitter was issued to the lower courts
5 June 21, 2019. This PCR application
6 follows.

7 THE COURT: Thank you so much.
8 With that, Mr. Murphy, I'll hear from you.
9 You're muted.

10 MR. MURPHY: I apologize, Your
11 Honor, may it please the Court.

12 THE COURT: Yes.

13 MR. MURPHY: The first issue
14 that I would raise for Mr. Freeman's PCR is
15 an improper burden shifting charge, which
16 is on page 230 of the transcript. The
17 charge deals with the standard of proof and
18 beyond reasonable doubt. And the beginning
19 of the charge is typical and it goes
20 through the difficulties for the burden of
21 the State, however starting at line 13, it
22 states, if on the other hand there is a
23 real possibility that the defendant is not
24 guilty, you must give the defendant the
25 benefit of the doubt. My, specifically the

1 argument, is the use of the word real,
2 shifts that burden and puts it on -- the
3 heavier burden on the defendant to prove
4 his innocence. I think the proper word
5 should be any, rather than real. We do not
6 have any case law to support that and I
7 realize this is a very common charge, but
8 we would rest on the record simply for that
9 issue and raise that one for Mr. Freeman's
10 PCR.

11 THE COURT: Thank you.

12 MR. MURPHY: The next issue we
13 would raise is that defendant did not take
14 the stand and he has a lot of facts that he
15 could have presented that would help
16 support his innocence and not lead to the
17 conviction. For that element or for that
18 ground, we would need Mr. Freeman to
19 testify and we would ask you to swear him
20 in, Your Honor.

21 THE COURT: All right. In
22 other words, he exercised his Fifth
23 Amendment right?

24 MR. MURPHY: That is correct.

25 THE COURT: Now, before I swear

1 him in, let me ask you this question, was
2 there an examination performed by Judge
3 Murphy with regards to his understanding of
4 his Fifth Amendment right to remain silent
5 and his right to testify?

6 MR. MURPHY: There was, Your
7 Honor, and it started on page 199 of the
8 transcript.

9 THE COURT: So, that did occur?

10 MR. MURPHY: Yes, Your Honor,
11 it did occur.

12 THE COURT: Okay. And--

13 MR. MURPHY: If I might give--

14 THE COURT: Okay.

15 MR. MURPHY: If I might give
16 the Court a little bit of background. The
17 evidence presented at trial was that the
18 defendant entered the dwelling, with a
19 weapon, took some property. The folks, the
20 owner's of the house walked in, chased him
21 down and held him down until the police
22 were called. Police came, held him at the
23 residence, found some items in his pockets
24 that belonged to the house and lead to his
25 conviction. This was a very short trial.

1 So, the question -- the
2 allegation that I'm raising is that it's in
3 effective assistance of counsel not to put
4 him up on the stand or not to explain the
5 consequences of not presenting his case,
6 because he's maintained his innocence the
7 entire time in this. And effectively, he
8 did not put up any defense at all. Which,
9 I would argue, is ineffective in itself.
10 When you have someone that's maintained
11 their innocence based on the overwhelming
12 evidence against them.

13 THE COURT: Let me ask you this
14 question, in the colloquy that was held by
15 Judge Murphy, does she ask at the end of
16 that colloquy whether or not Mr. Freeman
17 wished to testify or not testify?

18 MR. MURPHY: She did, Your
19 Honor, yes. She did on page --

20 THE COURT: And what was--
21 okay, go ahead.

22 MR. MURPHY: Page 201 of the
23 transcript.

24 THE COURT: Okay.

25 MR. MURPHY: It starts about

1 line 17. The question is, have you
2 discussed with your attorneys whether or
3 not you should testify? The answer, yes,
4 ma'am. I have. Question, do you need more
5 time to talk about this decision? Answer,
6 no ma'am. Question, do you wish to
7 testify? Answer, no ma'am.

8 So there was that colloquy that
9 went on. There is no question about it.

10 THE COURT: Okay. And so what
11 is the basis for the infective assistance
12 of counsel, where the Court has examined
13 Mr. Freeman individually, and I gather
14 explained to him his right to testify, his
15 right not to testify. Tell me, what --
16 first of all, how can that be infective
17 assistance of counsel when that is a
18 personal individual choice on behalf of the
19 defendant?

20 MR. MURPHY: What I think is
21 that Mr. Freeman will explain that he
22 didn't fully understand the consequences of
23 not testifying. His trial strategy, which
24 to me does not appear like any trial
25 strategy, and he has a lot of facts that he

1 wanted to present that would maintain --
2 that would show his innocence and by not
3 being able to explain those facts or
4 choosing not to explain those facts, based
5 on the advice of counsel, it lead to his
6 conviction.

7 THE COURT: That all goes to
8 the issue of prejudice, right?

9 MR. MURPHY: That's correct.

10 THE COURT: So, I've got the
11 ineffective assistance of counsel. The
12 right to testify or not to testify is a
13 personal right.

14 MR. MURPHY: Yes, ma'am.

15 THE COURT: And in the colloquy
16 with Judge Murphy, does she discuss with
17 him that you should consult with your
18 lawyers, family, friends and other people
19 who you trust but at the end of the day
20 this is a personal right, a personal
21 decision which must be made by you. Is
22 that in the colloquy?

23 MR. MURPHY: Those exact words
24 are not used, but the effect of those
25 words, yes. The basis, that is, Your

Honor.

THE COURT: All right. And so how does that -- how does that overcome based upon Mr. Freeman's argument?

MR. MURPHY: Because what I believe is that his decision not to testify based on the advice of his counsel, was done for failure to bring out his prior records for impeachment, rather than explain why he was innocent in this case. So, I agree that there is some strategy involved with not testifying, which would overcome his PCR standard in this case, but our argument is that he based the decision on an improper decision not to impeach himself to bring out that prior record, when really he needed to explain why he was innocent, why he wasn't there at the time that he was alleged. Otherwise they had no witnesses or no evidence to contradict anything that was presented.

THE COURT: Okay, all right. Well, I think that what I need you to do is be sure that he tells me that he talks about how he overcomes colloquy with Judge

1 Murphy first. And then I know that he
2 wants to talk about the things he wishes he
3 was able to testify to, however, you know,
4 that would be the first concern.

5 MR. MURPHY: Yes, ma'am.

6 THE COURT: All right. And
7 then the third, there is a third category,
8 is that right?

9 MR. MURPHY: Yes, ma'am. The
10 third category is that there was no
11 objection to the stipulation of his prior
12 convictions which were an element of the
13 charge of burglary. Those were stipulated
14 to by counsel at the end of State's case.

15 THE COURT: Okay, all right.
16 And tell me specifically what the
17 stipulation -- two prior burglaries?

18 MR. MURPHY: There's two prior
19 burglaries, a breaking in is the statute
20 and there is a stipulation. Mr. Freeman
21 claims that he was not convicted of those
22 crimes and that those crimes prejudice him
23 for being entered.

24 THE COURT: Okay. And is there
25 any evidence that he in fact was not --

1 that those were non convictions?

2 MR. MURPHY: No, Your Honor.
3 We don't have any evidence and from what I
4 can tell looking at the record he had prior
5 charges or prior convictions.

6 THE COURT: For what?

7 MR. MURPHY: Specifically, well
8 there was -- and this is where it gets a
9 little bit complicated. The jury asked a
10 question once they were brought in and the
11 question was whether his prior convictions
12 involved a weapon, such as armed robbery.
13 There was no evidence of that, but they
14 just surmised that question. The judge
15 responded that, and I have the colloquy
16 here, but the judge and defense counsel
17 agreed that -- the Court explained what the
18 stipulation was and that they can infer
19 that there was convictions for those
20 charges as an element of the offense.

21 THE COURT: Okay, all right.
22 So, with regards to the prior convictions
23 that were part of the stipulation, what
24 was -- read to me, if you would, the
25 stipulation.

1 MR. MURPHY: Yes, ma'am.

2 MS. WEIDAUER: The stipulation
3 should be on page 193.

4 THE COURT: Thank you, thank
5 you.

6 MR. MURPHY: Oh, okay. All
7 right. Yes, Your Honor, here it is.
8 Starting on line 16. "The defendant is on
9 trial for burglary in the first degree.
10 One of the statutory elements of the
11 state -- that the State may elect to prove
12 beyond a reasonable doubt to convict the
13 defendant of burglary in the first degree,
14 is that the defendant has two or more
15 convictions for burglary on his record.

16 In this case rather than
17 seeking to have each of the defendant's
18 prior convictions admitted into evidence,
19 the State and the defense agreed to
20 stipulate that this defendant's prior
21 record does in fact contain two prior
22 convictions for burglary. Therefore, you
23 jury, may find that this specific element
24 has been proven beyond a reasonable doubt."

25 THE COURT: Ah, okay. And so

1 the question then came back from the jury
2 and the jury said, were the prior
3 convictions for armed robbery, is that
4 right?

5 MR. MURPHY: Yeah. They asked
6 if a weapon was involved, yes.

7 THE COURT: Was a weapon
8 involved, okay, okay. Got it. And Mr.
9 Freeman's concern is the response of the
10 Court that said, what?

11 MR. MURPHY: His concern is
12 that saying that the charges, the prior
13 charges have been proven beyond a
14 reasonable doubt, is an improper comment on
15 the facts. It would be an improper comment
16 by the Court to talk about that or
17 instruction, I'm sorry.

18 THE COURT: I understand. And
19 his precondition is that defense counsel
20 was ineffective for failing to object to
21 the Court's comment to the jury?

22 MR. MURPHY: And failing to
23 object to the admission of those charges in
24 the first place.

25 THE COURT: Okay, the

1 stipulation?

2 MR. MURPHY: Right.

3 THE COURT: I understand, I
4 understand.

5 MR. MURPHY: So, we can rest on
6 the record for the failure to admit or to
7 stipulate to those prior convictions.

8 THE COURT: All right. If you
9 look at his record, what are the
10 convictions, the burglary convictions?

11 MR. MURPHY: And that is --
12 there are -- I'm looking at, Your Honor, a
13 1993 burglary in the second degree, 1982
14 breaking into a dwelling, a 1989 burglary
15 in the second degree. And that is what I
16 can tell from the record that I have. I
17 don't have an official NCIC, and I think
18 the AG might have the official SLED report.
19 But that's what I can tell from his SCDC
20 records that I have.

21 THE COURT: Okay.

22 MS. WEIDAUER: Your honor, if
23 you would like, I have the SCDC records
24 here.

25 THE COURT: Okay.

1 MS. WEIDAUER: So, I'm unsure
2 if the -- let's see here. So, burglary in
3 the second degree in 1993, burglary second
4 degree in 1989, a burglary first in 1996.
5 And I believe that's it.

6 MR. MURPHY: And then finally,
7 Judge, Mr. Freeman does not believe there
8 was probable cause for the warrant and the
9 arrest warrant. Basically what happened,
10 Judge, at the preliminary hearing there was
11 an improper name or the name wasn't right
12 on the warrant or the affidavit and it got
13 dismissed. It was then amended and before
14 he could even get out it was presented.
15 So, the arrest and everything stood. It
16 was amended and invalid at that point.

17 THE COURT: Okay.

18 MR. MURPHY: But this kind of
19 goes back to the same thing. His issue
20 one, of not presenting facts, because I
21 believe what he's saying is he alleges that
22 the facts in the warrant or the testimony
23 in the warrant is not true.

24 THE COURT: Sure, sure.
25 Absolutely. All right, thank you so much.

1 Mr. Murphy, call your first witness.

2 MR. MURPHY: Yes, we call Mr.
3 Freeman.

4 F R E D F R E E M A N, the Applicant in
5 this case, having been first duly sworn by
6 the Clerk, was examined and testified as
7 follows:

8 MR. MURPHY: Thank you. May it
9 please the Court.

10 DIRECT EXAMINATION BY MR. MURPHY:

11 Q Now Mr. Freeman, I'm going to
12 ask you a number of questions, okay?

13 A All right.

14 Q And what I want you to do is
15 answer those questions and try not to put
16 anything in addition to those. Just answer
17 the questions, okay? I know you have a lot
18 you want to say but I'm trying to keep you
19 focused and on track, okay?

20 A Okay.

21 Q If you see me raise my hand I'm
22 just going to ask you to stop answering the
23 question and let me redirect you, okay,
24 sir?

25 A All right.

1 Q The next thing before we go is
2 you don't have to cite court cases or
3 president in this case. The judge is
4 concerned about the facts of this case and
5 she can make those decisions as to how the
6 law applies to these facts. All right,
7 sir?

8 A All right.

9 Q Now, you heard the amendments
10 or the issues that we raised in your
11 application and I understand that during
12 the course of this did you -- you've
13 maintained your innocence of these charges,
14 is that correct?

15 A Yes, sir.

16 Q Now, you did not take the stand
17 in your own defense, did you?

18 A No, sir.

19 Q Let me just get a little bit of
20 background first. I want to ask you, how
21 far did you go in school?

22 A Ninth grade.

23 Q I'm sorry, ninth grade?

24 A Yes, sir.

25 Q All right. And why did you

1 drop out of school?

2 A I don't know, it's kind of
3 crazy. I dropped out -- I think I went to
4 work, doing construction work. And there
5 was more or less, prior to that time at
6 school I went to the beach with a lot of my
7 peers. Like, I remember the principal
8 coming up and said -- her name is
9 Ms. Diceman, told the kids put me back in
10 school. But I learn nothing there and we
11 would take off to the beach.

12 Q So, you figured you'd start
13 making some money?

14 A Pardon me?

15 Q You figured you'd start making
16 some money?

17 A That didn't last long, I got
18 fired. It was an older black guy, I think
19 his name was Rooster, he and pointed out I
20 was smoking pot. And I did as a teenager
21 and I felt bad. That's where everybody was
22 smoking.

23 Q Okay. Now, what I'm trying to
24 do is I want to establish your educational
25 level, and that's really all I'm trying to

1 do at this point. I'm not trying to tick
2 you at all. Let's talk about these
3 charges, you were represented by
4 Mr. Church, correct?

5 A Uh, correct, he was there.

6 Q Ultimately. And then before
7 that you had an attorney before,
8 Mr. Shelton, I believe?

9 A Mr. Shelton, yes, his record
10 was sealed.

11 Q Okay. But he was relieved at
12 some point, right?

13 A Yes, sir.

14 Q You went to trial ultimately
15 with Mr. Church and Ms. White, is that
16 correct?

17 A Yes, sir.

18 Q Let me ask you, how many times
19 did you meet with your attorneys to discuss
20 the case?

21 A I recall the first time I met
22 Mr. Church he asked me if I had money and
23 he wanted it too, I don't think he would
24 deny that. However, I was unable to
25 interpretate that and never did question

1 him about that. There is reason behind
2 that of this case, prior to court -- well,
3 not with me however but with someone else.

4 Q Let me -- again, there are some
5 elements that I'm trying to establish, sir,
6 and it -- just try to answer the questions.
7 Do you recall meeting with Mr. Church or
8 Ms. White before trial?

9 A Yes, I did.

10 Q Do you recall about how many
11 times that happened?

12 A No, sir, but I know it's more
13 than three times.

14 Q Okay. Now, were you able to
15 get in contact with them when you wanted to
16 before trial?

17 A To my knowledge you can send a
18 request, however there's always other
19 people they have to see, so I'm not going
20 to sideswipe or say something wrong,
21 because I can't really answer that. Yeah,
22 I did send them, I sent a various amount
23 and I still have those requests to Mr.
24 Church and to Mr. Shelton. I didn't
25 really get a response directly, but when I

1 did get a response it was a negative
2 response. It wasn't a response, I thought,
3 this was the way it's supposed to be.

4 Q Let me ask you this.

5 A But he never did go over the
6 evidence whosoever.

7 Q Sir, you got to stick with my
8 questions, okay? Now, when you spoke with
9 him and your attorneys, did you talk about
10 the facts of your case? And that is what
11 the State was alleging you did, what
12 witnesses they were produce to discuss your
13 case?

14 A The facts of the case, I
15 basically told them prior but I didn't know
16 the witnesses. All these people showed up
17 at trial, like they were supposed to be
18 witnesses to something, and Mr. Church made
19 a comment something about, I think it went
20 of all the people that was there, I was in
21 the hospital. There wasn't nobody there,
22 the ambulance took me to the hospital. And
23 the judge in this case tried to say--

24 Q Sir, sir. You got to listen to
25 me. We're not talking about what the judge

1 said. We're talking about when you spoke
2 with your attorneys, did they talk to you
3 about the State's witnesses or what
4 evidence the State would present in your
5 prosecution?

6 A Never did.

7 Q Okay. And did you see any
8 paperwork or any affidavits or police
9 reports about your case?

10 A Yes, I did.

11 Q Did you have time to read those
12 reports?

13 A Yes, sir, I did.

14 Q Did you -- were you able to
15 talk to Mr. Church or Ms. White about what
16 was in those reports?

17 A Basically, the questions asked,
18 I was never really given a direct answer
19 to. Like, for instance, Ms. Coulis, I only
20 saw her once in my life.

21 Q Okay. We'll get to Ms. Coulis
22 in a second but, again, my question is, and
23 specifically, did you present or tell them
24 about any evidence or did you discuss any
25 defenses to your case with them?

1 A I just told them. I told Mr.
2 Church and the investigator that there is
3 no relationship. And Mr. Aire made a
4 statement about the alleged victim also.
5 There's something wrong with his hand and
6 he's handcuffed. They cut all that out.
7 They didn't want the jury to see that, they
8 cut him off.

9 Q Let me ask you this, was your
10 defense all along that this was not you
11 that was being accused? You were
12 completely innocent, is that what you're
13 saying?

14 A Yes, sir, it was not me. I did
15 not wear a white shirt. Ms. Coulis says
16 that her husband was chasing somebody with
17 a white shirt. I didn't have no white
18 shirt on, I had a dark shirt on.

19 Q Now, based on your position
20 that you claim you're innocent, did you
21 have any evidence or witnesses to present
22 that could have helped you or supported you
23 with this position?

24 A I was living in Orangeburg
25 County at the time. Came to Charleston, my

1 parents -- mother is deceased, I was going
2 to my sister's house, she lives off of
3 Eather Drive, my whole family lives off of
4 Eather Drive. Somebody came running by,
5 they hit me pretty hard, I got back up--

6 Q Well, let me ask you this.

7 A -- and the two guys, I don't
8 know who they are, one was Mr. Coulis, he
9 was supposed to weigh 250--

10 Q Hold on.

11 A -- but the individual at trial
12 in court, he said he didn't weigh 200
13 pounds.

14 Q Sir, you got to stick with me
15 with this. Like I said, you're talking
16 about -- I'm trying to ask you specific
17 questions. We're going back to -- the
18 question is, and it might be that it was a
19 bad question by me. So, in terms of
20 maintaining your innocence, was it you --
21 were you the only person that had knowledge
22 of the facts that could be presented to
23 maintain your innocence or were there other
24 witnesses, independent witnesses that could
25 have corroborated your story?

1 A There wasn't nobody else,
2 whosoever that knew that I was on Eather
3 Drive.

4 Q So, the only possible witness
5 or defense you could have put forth, would
6 have been your testimony?

7 A Basically, yes, sir.

8 Q Now.

9 A My family lived there, in that
10 area.

11 Q I understand. But you could
12 have testified to where your family lived.

13 A I could have testified but I
14 would have been impeached and I didn't take
15 the witness stand.

16 Q We're going to get to that, I
17 promise you, sir. So, at this point we
18 know that the only evidence that you could
19 have presented to help yourself would have
20 been your testimony.

21 A Yes, sir.

22 Q Did you discuss that with your
23 trial counsel?

24 A I told trial counsel more than
25 once Mr. Shelton and Mr. Church, I did not

1 commit no crime. I told them what was
2 going on, that I smelled drugs. I stopped,
3 I looked over and I saw barrels of drugs
4 coming out of a boat, it was Mr. Coulis.

5 Q I gotcha, we're going to get
6 there. Right now we have -- we've got you
7 with -- I'm sorry. Right now, you are the
8 person that could have presented evidence
9 and that the only evidence would have been
10 from you, and you've discussed that with
11 your attorneys? That there was no other
12 body that could testify or present other
13 than you getting up on the stand. Is that
14 correct?

15 A That's correct.

16 Q All right. Now, ultimately,
17 you went to trial, correct?

18 A Yes, sir.

19 Q And when you went to trial you
20 decided or the Court asked you whether or
21 not you want to take the stand in your
22 defense, is that correct?

23 A Yes, sir.

24 Q Now, at that point you decided,
25 and the record is clear, that you did not

1 want to take the stand.

2 A Yes, sir. I was not going to
3 take the witness stand, I would be
4 impeached.

5 Q And the reason was you were
6 afraid you were going to be impeached for
7 your prior convictions, is that correct?

8 A Yes, sir.

9 Q Did you have that discussion
10 with counsel?

11 A The judge, I remember recalling
12 the judge asked counsel if he had enough
13 time to talk to me before I take the
14 witness stand or not. Prior to, is when
15 went into the court for recess and the
16 clerk of court asked me, said Mr. Freeman,
17 do you swear to tell the truth and nothing
18 but the truth? However, I'm way over here
19 with counsels. So, I started thinking over
20 a period of time after being convicted, if
21 I agreed to be sworn there, what would
22 actually happen to the record? Which there
23 is a record. As of today there is altered
24 record. How do I prove the altered record?
25 Maybe somebody in the courtroom knew that

1 Mr. Church said, well--

2 Q We're not going to talk about
3 any altered records or fabricated records.
4 What I want to talk about is, if I
5 understand what you're saying, you did not
6 take the stand because you were afraid of
7 being impeached, is that correct?

8 A Yes, sir.

9 Q My question is, did you discuss
10 with your counsel and specifically, did you
11 weigh the pros and cons of not taking the
12 stand for impeachment, versus you as the
13 only person able to present evidence of
14 your innocence?

15 A I told Mr. Church repeatedly I
16 was not going to take the witness stand.

17 Q All right. So, that was a
18 decision you made no matter what?

19 A Yes, sir.

20 Q Based on that, is there any
21 other evidence that you could have
22 presented or Mr. Church could have
23 presented to support your innocence?

24 A Yes, sir, there was. In
25 addition, there was a failure to

1 investigate to prove that I had rights to
2 be on Eather Drive. Mr. Church made it
3 sound like I didn't have rights to be on
4 that area, however, I'm a black man, that's
5 how the jury preceded, what's he doing in
6 the area? That's not fair, because my
7 family has lived there all they life. My
8 mother was born back there, I was born back
9 there. All of us were born by midwife,
10 except for one of us, my youngest sister.

11 However, also the merits -- the
12 merits also as related to Mr. Coulis wife's
13 testimony, he was chasing somebody down.
14 And Mr. Porter the neighbor says he looked
15 in the backyard and saw Mr. Coulis hiding.
16 That night he was on some type of drugs.

17 Q You've got to wait. I got to
18 try -- and you're throwing a lot of
19 information out. Now, you're talking about
20 Mr. Coulis, Mr. and Mrs. Coulis, correct?

21 A Yes, sir.

22 Q You mentioned them. Those were
23 the people, the victims that testified
24 against you at trial, right?

25 A Yes, sir.

1 Q And what you're saying, this
2 happened if I'm correct it was on Pointer
3 Drive in Goose Creek is where they lived,
4 is that correct?

5 A Uh, yes. Pointer Drive and
6 Eather Drive.

7 Q Yes.

8 A His wife said he was chasing
9 somebody down Pointer Drive.

10 Q So nobody is alleging or it's
11 not an element of the crime whether or not
12 you had a right to be there or not, okay,
13 you understand that?

14 A Yes, sir.

15 Q All right. So, the question
16 is, is that we had testimony from Mr. and
17 Mrs. Coulis that they saw you in the house
18 and we have testimony that they chased down
19 somebody and held the person down till the
20 police came, and they identified you as
21 that person. So my question is, what
22 evidence, besides you denying that, could
23 you have put forward? If any existed?

24 A Ms. Coulis testimony said that
25 she saw someone with a white shirt,

1 resulting in Mr. Coulis chasing that person
2 down Pointer Drive. Mr. Coulis committed
3 perjury. He says in his testimony that he
4 took a blue jacket off of me.

5 Q Now, listen.

6 A And in addition Mr. Church was
7 so -- his action was so infective and
8 prejudicial he was blustering and well, I
9 said, what's the word? He was blustering
10 and vouching for Mr. Coulis asking the
11 question and answering the question for Mr.
12 Coulis throughout the course of the whole
13 trial. He was working with Mr. Coulis.
14 The record shows -- and I was present there
15 at the time and all the people in the
16 courtroom can say the same thing. But what
17 gets me is this, I was never on Mr. Coulis
18 property.

19 MS. WEIDAUER: Your Honor, I
20 would like to object as this is not
21 responsive to the question.

22 THE COURT: All right.
23 Sustained.

24 MR. MURPHY: Thank you, Judge.
25 And I apologize, Your Honor.

1 Q Mr. Freeman, we've got to be
2 careful. Just because the jury disagreed
3 with certain testimony or you disagreed
4 with it, that's a question of fact. That
5 doesn't constitute perjury. So, the
6 question is, if you didn't have any
7 evidence to present that would support your
8 innocence and you did not take the stand,
9 are you saying that was your own personal
10 choice not to take the stand and present to
11 deny these charges?

12 A This is what occurred, sir. As
13 a result of Mr. Coulis's testimony, he
14 specifically stated and what he stated the
15 jury wanted to rehear his testimony. The
16 jury was denied that right to hear
17 testimony because the Court stated that due
18 to the acoustic and the equipment, it would
19 now allow us to replay that testimony. Mr.
20 Church, by all means he's a licensed
21 lawyer, he could use rebuttal to bring the
22 testimony forward of what the jury wanted
23 to hear.

24 Q The jury asked for a question
25 to repeat, they wanted to hear the

1 testimony again, correct?

2 A Yeah, they wanted to hear
3 Mr. Coulis's testimony.

4 Q And again, no question that
5 Mr. Coulis, the victim, testified in the
6 State's case, correct?

7 A Correct.

8 Q And you would have had an
9 opportunity to testify or put up -- testify
10 to rebut or state your own position of
11 facts to create that question for the jury,
12 right?

13 MS. WEIDAUER: Your Honor,
14 objection. Asked and answered.

15 THE COURT: You're correct, Ms.
16 Weidauer, let me begin by telling you that.
17 I'm going to let a little bit of leeway on
18 that particular issue.

19 MS. WEIDAUER: Thank you, Your
20 Honor.

21 THE COURT: So, Mr. Murphy, ask
22 the question again.

23 MR. MURPHY: Thank you, Your
24 Honor.

25 Q The question goes back to

1 evidence or witnesses. You were present
2 when you heard the State's case, put up
3 their witnesses and their facts, correct?

4 A Yes, sir.

5 Q And you obviously had a chance
6 to present testimony or evidence in
7 opposition to that case, correct?

8 A Yeah. I'd like to continue
9 with my Fifth Amendment rights in this case
10 because I knew that I could be impeached.

11 Q And there is no question about
12 that. You had a choice to either remain
13 silent and put the burden and on the State
14 to prove their case or you could have
15 presented your own evidence. And what you
16 did was you decided to remain silent,
17 correct?

18 A Yes, sir.

19 Q Prior to the judge asking you
20 whether or not you wish to exercise your
21 right, did you have a conversation with
22 your lawyers about the probabiltly of
23 getting convicted based on the State's case
24 alone?

25 A Mr. Church asked me, do I have

1 a lawyer? I didn't know what he was
2 talking about and I'm going to say this,
3 because Keshia White is not here. She
4 stated to me, pay close attention to
5 Mr. Church. From that point forward I kept
6 looking at him and when I tried to get his
7 attention he would roll his chair away from
8 me. The third recess, I came back from my
9 holding cell, Mr. Church is over there
10 talking to Mr. Coulis. Not to me.
11 Throughout the whole case he would not
12 interact with me.

13 Q All right. You're throwing me
14 off when you try to do these adlibs and add
15 questions or answer questions that you want
16 rather than what I'm asking you. All
17 right, sir?

18 A Okay.

19 Q So, what you were just talking
20 about dealt with at trial versus -- you
21 were talking about something that had
22 occurred, the conversation with Mr. Church
23 that happened during your trial, correct?

24 A Yes, sir.

25 Q My question is, did you ever

1 have a discussion with Mr. Church about the
2 likelihood that you would be convicted
3 without putting on a defense at all or
4 without taking the stand?

5 A That came about when I received
6 Mr. Church provided me documentation from
7 the Solicitor's Office stating that I can
8 receive up to 30 years, if I can find it
9 here. I've got it all in these papers
10 here. Stating that I can received 30
11 years. That was the deal that the
12 Solicitor was going to make. All along I'm
13 telling Mr. Church. Your Honor--

14 THE COURT: Mr. Freeman, you
15 need to listen to Mr. Murphy's question and
16 you need to answer that question. Because
17 I'm interested in your answer. Ask the
18 question again, Mr. Murphy.

19 MR. MURPHY: All right.

20 Q And Mr. Freeman, you're talking
21 about an offer from the State and I'm going
22 to get into that offer in a little bit, but
23 this is what I'm saying. There is a
24 sequence I want to go through to make sure
25 there is a clean record.

1 A Yes, sir.

2 Q My question is, did you have a
3 conversation with Mr. White about the
4 likelihood you would get convicted if you
5 went to trial?

6 A I think he said something to
7 that extent of 30 years based upon the
8 e-mail that he received.

9 Q You're not listening. It's not
10 a question of how much time you would get,
11 it's whether or not the jury would find you
12 guilty going to trial.

13 A No, we never discussed that.
14 No, sir.

15 Q All right. And did you ever
16 have a discussion with Mr. Church or
17 Ms. White about whether it would make any
18 difference if you took the stand at your
19 trial, in your defense?

20 A No, sir. When I went in the
21 conference room he asked me, do I have a
22 lawyer. Because--

23 Q We got that already.

24 A Okay.

25 Q My question was, did you have a

1 conversation about whether it would make a
2 difference at trial if you took the stand
3 versus not taking the stand?

4 A I don't recall, no, sir.

5 Q All right. Now, we're going to
6 talk about the offers that you got from the
7 State, okay? Typically in almost every
8 case, the State will give what's called a
9 plea deal. And you understand that, right?

10 A Yes, sir.

11 Q Did you get any offers from the
12 State in this case?

13 A The e-mail says no human blood,
14 30 years. There's supposed to be blood to
15 my knowledge but I'm concerned about that.

16 Q Let's not talk about human
17 blood. This is about the 30 year offer by
18 the State.

19 A All right.

20 Q Is it your understanding that
21 the State was going to offer you a 30 year
22 deal?

23 A Yes, sir.

24 Q Do you know anything -- was
25 there any other negotiations that you know

1 of?

2 A No, sir, not to my knowledge.

3 Q Did you have any conversations
4 with your attorney about whether or not
5 going to trial if you're convicted, you
6 would get more than 30 years?

7 A No, sir.

8 Q Did you have any conversation
9 about whether you would get more time or
10 less time if you plead guilty versus going
11 to trial?

12 A Your first question, relation
13 to that, yes, I think he did tell me I
14 could get a life sentence.

15 Q Okay. So, you knew if you went
16 to trial you could get a life sentence
17 possibly?

18 A Yes, sir.

19 Q Now, if you plead guilty to
20 charges, your understanding -- did you have
21 any understanding how the sentence, the
22 length of the sentence could change or most
23 likely would change if you plead guilty
24 versus going to trial and getting
25 convicted?

1 A Sir, I'm going to answer that
2 in two parts. I wasn't going to take the
3 witness stand. And the reason for that is
4 because I could be impeached. And the
5 other reason was by taking the witness
6 stand, with my background, I would be
7 convicted.

8 Q All right. Can you explain --
9 well, let me ask you this. Would it be
10 fair to say that your trial strategy was to
11 have the government meet its burden of
12 proof of beyond reasonable doubt?

13 A Can you repeat that, please?

14 Q What was your trial strategy?

15 A I'm innocent. I did not commit
16 no crime and I told Mr. Church that.

17 Q And I understand that. And we
18 already talked about the evidence and we
19 already talked about your choice not to
20 proceed and you also did not put up any
21 defense, is that correct?

22 A No, sir. No defense was put up
23 whatsoever. He didn't object to nothing.

24 Q Now, Mr. Church can't make up
25 stuff he's got to present -- did you give

1 him any evidence that he could have
2 presented or did he just refuse to present
3 something that you wanted?

4 A Just that I did not commit no
5 crime.

6 Q Okay.

7 A And investigative report would
8 have proved or showed that I had the right
9 to be in the area, sir.

10 MR. MURPHY: I believe that is
11 all I have, Your Honor.

12 THE COURT: All right.

13 MR. MURPHY: I believe
14 cross-examination is appropriate at this
15 point.

16 THE COURT: All right. Yes,
17 Ms. Weidauer?

18 CROSS-EXAMINATION BY MS. WEIDAUER:

19 Q Mr. Freeman, you were the one
20 who decided not to take the stand, correct?
21 Your attorney, John Church, your other
22 attorney Keshia White, they did not tell
23 you what to do?

24 A No, ma'am. It was my decision
25 because I know I could be impeached.

1 Q And fully your decision?

2 A Yes, ma'am.

3 Q You were not pressured in any
4 way not to take the stand?

5 A No, ma'am.

6 Q You made that decision
7 yourself?

8 A Yes, ma'am.

9 Q Your counsel did inform you
10 that there was an offer on the table?

11 A Yes, ma'am, they did.

12 Q And did you tell counsel that
13 you did not want to take the plea?

14 A Yes, ma'am. I told counsel
15 initially in the beginning that I wasn't
16 going to take the plea. I had a right to
17 be there and I didn't commit no crime.

18 Q So, you told them no matter
19 what, you wanted to go to trial?

20 A Yes, ma'am.

21 MS. WEIDAUER: That is all, Mr.
22 Freeman, thank you so much.

23 THE APPLICANT: Yes, ma'am.

24 THE COURT: Redirect?

25 MR. MURPHY: Nothing, Your

1 Honor.

2 THE COURT: Very good.
3 Anything further from Applicant?

4 MR. MURPHY: We could call Mr.
5 Church.

6 THE COURT: Yes, Mr. Church.
7 Ms. Williamson will swear you in.

8 J O H N T. C H U R C H, J R., a
9 Witness called on behalf of the Applicant,
10 having been first duly sworn by the Clerk,
11 was examined and testified as follows:

12 DIRECT EXAMINATION BY MR. MURPHY:

13 Q Thank you, Mr. Church.
14 Obviously you recall representing Mr.
15 Freeman?

16 A I do.

17 Q And do you recall him
18 maintaining his innocence all the time?

19 A To the best of my knowledge, he
20 did.

21 Q And did you go over the facts
22 that the State would present at trial if he
23 was prosecuted?

24 A I believe we had a lot of
25 discussions about it and he gave his story

1 every time.

2 Q All right. And what was his
3 story, specifically?

4 A I believe it might have changed
5 a little bit here and there. But basically
6 he was walking down the street and some guy
7 attacked him out of nowhere and held him
8 till the police came and he was arrested.
9 I think he was hurt too.

10 Q Was there anything to
11 corroborate those facts as he had stated
12 them?

13 A Well, there was some in-car
14 camera video when the police pulled up, I
15 believe the homeowner laying on top of Mr.
16 Freeman at the street corner of the
17 driveway by the mailbox. If I remember
18 correctly.

19 Q Let me ask you this, this is a
20 bad question. Did Mr. Freeman give you any
21 evidence or witnesses or leads or anything
22 that you could have presented in his
23 defense?

24 A Nothing I recall. And looking
25 at my notes I have asterisks where I have

1 no witnesses. And I sent my investigator
2 to talk with him one time and work up
3 whatever she could work up, and I don't
4 think there was anything of any
5 significance.

6 Q I know, Mr. Church, you've been
7 doing this for a long time, is that
8 correct?

9 A Approximately 20 years.

10 Q That's about the same as me.
11 In this case, prior to going to trial, did
12 you have any opinions as to the likelihood
13 that Mr. Freeman would get convicted?

14 A I believe that I thought there
15 was at good chance he was going to be
16 convicted and we had several conversations
17 about some evidence found in Mr. Freeman's
18 pockets that he alleged was planted there,
19 and I believe I had concerns about how to
20 get around that.

21 Q And I can tell you, Mr. Church,
22 I'm not trying to trick you. When I read
23 this if I was a defense attorney I don't
24 think see how there was any way he could
25 not get convicted, would that be a fair

1 statement?

2 A I always hold out a little
3 hope. I've seen a couple of crazy things
4 happen in trial. The possibility was slim,
5 but in my defense, I did not have a lot of
6 hopes for winning this trial.

7 Q Let me ask you this, there was
8 talk about an offer a 30 year offer, can
9 you tell the Court about what you recall
10 with that offer?

11 A I can read it from the e-mail.

12 Q You can read it or summarize
13 it, however you want.

14 A It's not very long, I'll go
15 ahead and read it. This is the prosecuting
16 solicitor, Bryan Alfaro, who was the Deputy
17 Solicitor in Berkeley County at the time.
18 "He's charged with burglary first, armed
19 robbery, possession of a weapon during
20 crime of violence. Based on facts and his
21 record there is not anything beneficial I
22 can recommend outside of not asking for
23 life. If he pleads to armed robbery and
24 burglary first." Then he says, "I
25 understand that at his age 30 years is

1 basically life, but I can cap the burg at
2 30 and you can ask for less than 30." We
3 could have asked for the minimum of 15 and
4 he was going to ask for 30.

5 Q Did you have that specific
6 discussion with Mr. Freeman about the range
7 that he could have faced if he pled guilty?

8 A Yes. If I refer to my other
9 notes and I have asterisks by it, I gave
10 him the offer, the relayed over. And then
11 several times I told him that he was LWOP
12 eligible and he could be served with life
13 without parole before trial. And that was
14 a possibility we had to be concerned about.

15 Q Okay. In your experience --
16 did you talk to him about the likelihood
17 that he would receive a longer sentence if
18 he was convicted versus pleading guilty?

19 A I don't remember specifically
20 talking to him about that, but I usually
21 tell my clients if you get convicted at
22 trial the sentence is probably going to be
23 longer than what you would get if you plead
24 guilty.

25 Q And let me ask you, do you

1 recall having any conversations with him
2 about his right to take the stand?

3 A Yes. I'll refer to my notes.
4 I have on one date, July 19th, I put down
5 he doesn't want to testify. And then there
6 was another date where this was on March
7 22nd 2017, he said he's not going to take
8 the stand, taking the Fifth. And then I
9 got notes that Keshia White explained to
10 him the right to take the stand or not, and
11 the Fifth. And I think we might have said
12 something about he really wasn't taking the
13 Fifth, because I believe that is where you
14 take the stand and then say you're taking
15 the Fifth Amendment. He would just not be
16 taking the stand, but it looks like we
17 might have had that conversation.

18 Q Let me ask you this, did you
19 have any conversation with him as to the
20 likelihood of his conviction, whether he
21 took the stand or not took the stand at
22 trial?

23 A I don't specifically see that
24 in the notes. Generally, when people are
25 telling me that they want to go to trial

1 and they have some story, I generally tell
2 them I can't testify for you to tell your
3 story. I can only try to ask questions and
4 raise doubts and cross-examine people. I
5 don't have any specific note to that. So,
6 I don't want to say that I did. It's
7 possible, but I'm not going to swear that I
8 did.

9 Q In your standard practice,
10 would that be something that you would
11 typically talk to clients about?

12 A If they're postering that they
13 might want to go to trial and it looks like
14 that that might be where we're heading,
15 generally I'll talk to him to some extent.

16 Q Now, do you recall the
17 stipulation about the prior convictions
18 coming into evidence?

19 A I do.

20 Q And do you recall agreeing to
21 that stipulation?

22 A I did.

23 Q Can you tell us why you agreed
24 to that?

25 A That was our trial strategy. I

1 would rather them just read a piece of
2 paper than bring witnesses in. And I was
3 hoping it might just get lost in the
4 shuffle and maybe the jury wouldn't pay
5 that much attention to it versus if they
6 brought witnesses in from the Clerk's
7 Office with certified prior convictions and
8 all of that. I felt like that would be
9 worse. And that was trial strategy to draw
10 less attention to it, if possible.

11 Q Did you have that conversation
12 with Mr. Freeman?

13 A I don't have notes but I
14 believe that we did. I don't have notes to
15 back that up.

16 Q Now, there was a question about
17 Mr. Freeman has raised that there was no
18 probable cause for this warrant. Did you
19 look at challenging the warrant, the arrest
20 warrant in this case?

21 A I believe I made some kind of
22 motion to that effect before the trial. I
23 didn't have any hopes of it going anywhere,
24 but I believe I made some type of motion.

25 Q And you did file or argue some

1 other preliminary motions at trial before
2 this, if I recall?

3 A It's been awhile, I can't
4 remember all the motions that I argued.

5 Q I'm sorry. There was a motion
6 to dismiss and to quash the indictment that
7 was denied.

8 A That sounds familiar.

9 Q Okay. And then obviously upon
10 the conviction you filed an appeal?

11 A To the best of my knowledge,
12 generally I do, except in some
13 circumstances. But in this case I filed an
14 appeal.

15 MR. MURPHY: That is all I
16 have.

17 THE COURT: All right.

18 Cross-examination?

19 CROSS-EXAMINATION BY MS. WEIDAUER:

20 Q Mr. Church, I'm going to try
21 and go through these in an order to clean
22 up the record a little bit. So, first off
23 I'm going to ask you about what Mr. Murphy
24 he was talking about in regards to the
25 improper standard.

1 So, he is discussing at page
2 230, if you have the record in front of
3 you, he discussed that was an improper jury
4 charge was there a reason you did not
5 object to that jury charge, on page 230
6 line 10 through 16?

7 A From what I remember it was the
8 standard jury charges. To my knowledge, I
9 hadn't heard anything about those being
10 improper. And that I think was the best of
11 my recollection. I didn't think there was
12 anything improper about it.

13 Q Are you aware that in similar
14 jury instructions, for example in State v.
15 Simmons and State v. Mead, the Court of
16 Appeal and the South Carolina Supreme Court
17 have found that that instruction is not an
18 error?

19 A I'm not familiar with those
20 particular cases, but it kind of comes back
21 to I hadn't heard anything that there was
22 anything improper with the standard
23 instruction.

24 Q Okay. As to the defendant
25 taking the stand, you said you did discuss

1 with defendant in depth, his right to take
2 the stand?

3 A I have notes that that was
4 discussed a couple of times and it seems
5 like he was pretty adamant that he was not
6 going to take the stand. And generally, if
7 there is concern about a prior record a lot
8 of times I can make a motion to suppress
9 that, but I always warn them that even if
10 it gets suppressed, they can slip up and
11 say something that would open the door, so
12 there is always the risk of your prior
13 record coming in.

14 Q Had he seemed to understand
15 that trial strategy?

16 A I think from where it looks
17 like from my notes, that he was just
18 adamant that he didn't want to take the
19 stand. He was worried about being
20 impeached.

21 Q You discussed offers. Is the
22 State required to offer a plea?

23 A No. I've spent 12 years as an
24 Assistant Solicitor and we did that just as
25 a matter to try and move cases along. But

1 the State is not required to give any
2 offer, and if they did give hi an offer
3 they could withdraw that offer before
4 trial.

5 Q And the offer that you did
6 receive in this case, you did communicate
7 that to the applicant?

8 A I did.

9 Q You believe that he understood
10 the offer in full and still made the
11 decision to proceed to trial?

12 A Yes, I believe so.

13 Q We also went into probable
14 cause for the arrest. Can you explain your
15 understanding of the facts of this case and
16 what you thought the pros and cons were of
17 proceeding to trial?

18 A The cons of going to trial
19 would there could possibly be a life
20 without parole issue. The State could have
21 noticed him for that even though they
22 didn't. The cons, you know, being
23 convicted and spending a lot of time in
24 prison, and I believe burglary first
25 carries a minimum of 15 years so, even a

1 plea to it the best you were going to get
2 would be 15 years.

3 The pros of going to trial is
4 you never know what's going to happen in
5 trial. There could be possibility a jury
6 nullification or something could happen.
7 I've seen a couple of crazy trials not
8 many, but seen the verdict seemed to defy
9 the evidence that was presented.

10 Q And you would have explained
11 that to Mr. Freeman?

12 A Generally, I don't explain too
13 much because I don't want them to say that
14 I told them that if we went to trial that
15 that would happen. But I say basically you
16 don't know what's going to happen when you
17 go to trial, it could be good, it could be
18 bad. And if you lose a trial the sentence
19 is probably going to be worse than if you
20 take a plea. That's generally what I tell
21 my clients.

22 Q As to the motion you made in
23 pretrial based on the Scrivener's error in
24 the warrant, the judge denied that motion?

25 A That's correct.

1 Q And you didn't pursue that any
2 further?

3 A Yeah, I believe when the judge
4 denied it I thought that they could pick
5 that up on appeal if there was going to be
6 a conviction.

7 Q And the stipulation was agreed
8 on by the State and the defense, correct?

9 A That's correct.

10 MS. WEIDAUER: That is all I
11 have, Your Honor. Thank you.

12 THE COURT: All right. Any
13 redirect, Mr. Murphy?

14 MR. MURPHY: Nothing, Your
15 Honor.

16 THE COURT: All right, very
17 well. Call your next witness, please.

18 MR. MURPHY: Very briefly, Your
19 Honor, we would recall Mr. Freeman.

20 THE COURT: All right, go
21 ahead.

22 REDIRECT EXAMINATION BY MR. MURPHY:

23 Q Mr. Freeman, you're still under
24 oath, sir.

25 A Yes, sir.

1 Q Now, my question, I just want
2 to focus solely on the offer. You heard
3 Mr. Church say the offer, the least you
4 could have got was 15 years, you could have
5 got as much as life. Did you understand
6 that testimony?

7 A Yes, sir, I did.

8 Q All right. Going back to trial
9 was that your understanding of what the
10 offer was?

11 A Going back to trial, what do
12 you mean?

13 Q When the offer was made when
14 you were back in Berkeley County, did you
15 understand that you could get as little as
16 15 years?

17 A I understand that, but if the
18 facts were presented I would have been
19 proven -- acquitted.

20 Q All right. My question is,
21 would -- you understood that you would have
22 gotten as little -- the judge had the right
23 to sentence you to 15 years under that plea
24 offer?

25 A Yes, sir.

1 MR. MURPHY: Okay. That's all
2 I have, Your Honor.

3 THE COURT: All right, thank
4 you. Any other witnesses? Oh,
5 cross-examination, I'm sorry.

6 MS. WEIDAUER: No cross, Your
7 Honor.

8 THE COURT: Very well. Now,
9 Mr. Murphy, any other further witnesses?

10 MR. MURPHY: Nothing, Your
11 Honor.

12 THE COURT: All right, thank
13 you. Now on behalf of the State, do you
14 have any witnesses?

15 MS. WEIDAUER: No, Your Honor.

16 THE COURT: All right, very
17 well. And I'll hear brief, brief closing
18 arguments, Mr. Murphy.

19 MR. MURPHY: Thank you, Your
20 Honor I will be brief. We would still
21 stand by the improper allegations for the
22 burden shifting charge, for reasonable
23 doubt. And based on the testimony we
24 would, for the record, note the lack of
25 objection to the stipulation for the prior

1 crimes coming in. And we would also, for
2 the record, allege that the failure to --
3 there was no probable cause in this case
4 for that would have lead to his conviction.

5 THE COURT: Very well. As well
6 as the other matters that you have raised?

7 MR. MURPHY: That's correct.

8 THE COURT: I don't want to
9 take any as having been abandoned. All
10 right, Ms. Weidauer, let me hear from you.

11 MS. WEIDAUER: Thank you, Your
12 Honor. As to the issue of the improper
13 standard for the jury instruction, I would
14 like to cite a couple of cases for your
15 consideration.

16 The first case is State v.
17 Simmons, 384S.C.145, and this case found
18 that similar language to that use in the
19 jury charge, specifically the language of
20 real possibility, the Supreme Court and the
21 Court of Appeals has found that that is
22 acceptable language to have in that jury
23 charge.

24 Another case that cites this
25 language is State v. Meads, 333S.C.134. We

1 would rest on that case law. Though
2 applicant alleged ineffective assistance of
3 counsel, we believe that that case law is
4 settled.

5 As for Applicant's allegation
6 that the defendant did not take the stand
7 and that he was prejudice because he did
8 not take the stand, we would rest on
9 Applicant's testimony and the colloquy that
10 rebut that allegation entirely. He stated
11 he was afraid to be impeached and that he
12 did not want to testify.

13 As to the third issue that
14 there was no probable cause, the State
15 rests on the facts and the State's
16 testimony that is sufficient to support
17 probable cause.

18 As to issue four that there was
19 not an objection to the stipulation, that
20 is trial strategy by Applicant's attorney.
21 And we would say that those burglaries
22 would have come in regardless, even if it
23 wasn't trial strategy.

24 We would rest on the other
25 points argued during Mr. Freeman and Mr.

Church's testimony. Thank you, Your Honor.

THE COURT: Thank you very much. All right. That will then conclude this matter. I will take the matter under advisement and I'll notify both sides of my decision and I'll ask one side to prepare proposed order for me. Thank you all for your time. I will say this, Mr. Murphy, I do need you to draft for me an order denying the motion to be relieved.

MR. MURPHY: Yes.

THE COURT: If you'd be so kind to do that.

MR. MURPHY: Yes, Judge.

THE COURT: All right. Thank you so much, Mr. Freeman, for your participation. Thank you so much, Ms. White and Mr. Church for your participation.

THE APPLICANT: Thank you, Your Honor.

THE COURT: Everyone be safe and well.

(Time noted: 12:47 p.m.)

1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)
5 COUNTY OF BERKELEY)
6

7 I, Natalie A. Williams, retired Official
8 Court Reporter for the Ninth Judicial
9 Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true,
11 accurate and complete Transcript of Record
12 of the proceedings had and evidence
13 introduced in the PCR Hearing of the
14 captioned case, relative to appeal, in the
15 Court of General Sessions for Berkeley
16 County, South Carolina, on the sixteenth day
17 of April, 2021.

18 I do further certify that I am neither
19 of kin, counsel, nor interest to any party
20 hereto.
21

22 April 29, 2024
23

24 Natalie A. Williams

25 Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

2023 JUN 22 PM 12:03

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Fred Freeman #235180,

LEAN GUELLI DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

Case No.: 2019-CP-08-2558

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Fred Freeman (Applicant) on October 15, 2019. On April 16, 2021, an evidentiary hearing convened before the Honorable Diane S. Goodstein. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney Generals Benjamin H. Limbaugh and Samantha Weidauer represented Respondent. ~~At the hearing, the trial transcript~~ *based upon the transcript reviewed and* *presented* and the testimony and evidence ~~presented~~ at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice. *was*

PROCEDURAL HISTORY

Applicant is confined in the Department of Corrections serving a forty-five-year sentence. In December 2015, the Berkeley County Grand Jury indicted Applicant for first-degree burglary (2015-GS-08-02183) and possession of a weapon during the commission of a violent crime (2015-GS-08-02184). On August 28-29, 2017, Applicant proceeded to a jury trial before the Honorable Maite Murphy. John Church, Esquire and Keisha White, Esquire, represented Applicant, and Assistant Solicitors Bryan Alfaro and Benjamin Dennis represented the State. The jury convicted Applicant as indicted, and Judge Murphy sentenced him to concurrent terms of forty-five years burglary and five years for the weapon charge.

Applicant filed a timely notice of appeal, and Appellate Defender Robert Pachak filed a brief pursuant to Anders v. California. The South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Anders, and the remittitur was sent June 21, 2019.

SUMMARY OF EVIDENCE PRESENTED AT TRIAL

At trial, Jeremiah Kulas testified he was returning home one evening with his wife and their four-year-old daughter; when he opened the door to the house, "there was a large black man, roughly 12 to 15 feet in front of [him], galloping sideways, barking like a dog, saying I got a gun, and barking like a dog, and heading out of the house." (Tr. 55-57). Kulas pursued the man outside and struck him with a lawn chair. (Tr. 57-59). He stated the man attempted to climb over a fence; Kulas caught him and they "both went over simultaneously." (Tr. 59-60). Kulas stated the man attempted to get up but Kulas grabbed him. He testified his neighbor Jeff approached and took the gun from the man. (Tr. 60-62). Kulas held the man until police arrived. (Tr. 63).

Ashley Kulas recalled returning home that evening and seeing a man in her living room; she ran outside with her daughter and called 911. (Tr. 182-83). During her testimony, the State played her 911 call for the jury. (Tr. 184-85).

Jeffrey Porter, Kulas's neighbor, testified he heard yelling outside his home; he looked outside and saw Kulas fighting another man. (Tr. 103-06). Porter went outside and heard Kulas say the man had a gun; Porter took the gun from the man. (Tr. 106). Porter called 911, and police arrived shortly thereafter. (Tr. 107-09).

Officer Ted Davis testified he was dispatched to the home around 8:30 p.m.; when he arrived, Kulas was restraining Applicant and Porter was standing to the side. (Tr. 117-21). During Officer Davis's testimony, the State played videos from Officer Davis's police car; according to Officer Davis, the video depicted Kulas detaining Applicant. (Tr. 119-21).

Investigator Lindsay Wright testified she was also dispatched to the home; when she arrived, Kulas “was holding down” Applicant and Porter was holding a firearm. (Tr. 132-34). Investigator Wright stated Applicant was arrested and searched; police recovered Kulas’s wallet, a jewelry box, and some jewelry from his pockets. (Tr. 135). Investigator Guy Riccio testified police recovered two guns: the gun that Porter took from Applicant and a second gun in a cloth bag in the area where Applicant had been detained. Both guns belonged to Kulas. (Tr. 151-52).

Donald Snedeker, an employee with Berkeley County EMS, testified he responded to the home. (Tr. 142-43). He stated he transported Applicant to the emergency room because Applicant was complaining of hip pain. (Tr. 144-45).

Following the State’s witnesses, the parties stipulated that Applicant had two prior convictions for burglary. (Tr. 194). Thereafter, the State rested. (Tr. 194). Applicant did not testify or present a defense.

CURRENT APPLICATION

Applicant timely filed this PCR application on October 15, 2019, alleging he is being held in custody unlawfully for the following reasons:

1. “Ineffective assistance of counsel”
2. “Conflict of interest”
3. “Obstruction of against administration on justice”
4. “Criminal contempt-conspiracy”
5. “No probable cause”
6. “Brady violation”
7. “Prior convictions”
8. “Mr. Church represented Mr. Kulas and State”

Prior to the PCR hearing, Applicant amended his application. At the hearing, Applicant proceeded on the following allegations:

1. Counsel was ineffective for not objecting to a burden-shifting language in the reasonable doubt charge;

2. Counsel was ineffective for not calling Applicant as a witness or presenting a defense;
3. Counsel was ineffective for not objecting to the stipulation of Applicant's prior convictions.
4. There was not sufficient probable cause for his arrest.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are Berkeley County Clerk of Court records regarding the subject convictions, the trial transcript, and the records from this PCR action. This Court has had the opportunity to review these records. This Court has further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly.¹ After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d

¹ This Court will reference the PCR testimony where relevant below.

at 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness (deficiency) and (2) the applicant was prejudiced by counsel's deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. Under the deficiency prong, an attorney's performance is measured by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

In addition to deficiency, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to object to burden-shifting language in reasonable doubt charge

Applicant asserts counsel was ineffective for not objecting to burden-shifting language during the jury charge. This Court finds Applicant has not met his burden of proof for this ground.

During the jury charge, the trial judge instructed the jury:

If based upon the consideration of the evidence you are firmly convinced the defendant is guilty of the crime as charged, you must find the Defendant guilty. If, on the other hand, there is a real possibility that the defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

(Tr. 230). Counsel did not object.

At the PCR hearing, PCR counsel asserted the use of the word “real” shifted the burden of proof and placed a heavier burden on the defendant to prove his innocence. PCR counsel averred the court should have used the word “any” rather than “real.” However, he acknowledged this was “a very common charge” and he did not have any case law to support that it was improper. Trial counsel testified this was a standard jury charge, and he did not object because he had never heard anything to suggest it was improper.

This Court finds counsel articulated a valid reason for not objecting in that he did not find the language objectionable. This Court further finds Applicant has not submitted anything to show this language was objectionable and thus has not met his burden of proving deficiency. Likewise, Applicant has not shown a reasonable probability the outcome would be different had counsel objected to this language. Notably, our appellate courts have examined identical language and determined it does not shift the burden of proof. See, e.g., State v. Darby, 324 S.C. 114, 116, 477 S.E.2d 710, 711 (1996) (“Courts specifically addressing whether the “real possibility” language lessens the government's burden of proof have held it does not in the context of the preceding language requiring that the juror be “firmly convinced” of the defendant's guilt.”); State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009) (finding trial court’s instruction that jury must find defendant not guilty if it thought there was “a real possibility that he is not guilty” did not shift the burden of proof). Because this language is not objectionable, Applicant has not met his burden of proof, and this claim is denied.

Failed to call Applicant as a witness or present a defense

Applicant contends trial counsel was ineffective for not calling him as a witness or presenting a defense. Applicant has not met his burden of proof in this regard.

At the PCR hearing, Applicant maintained he was innocent. He recalled meeting with trial counsel “more than three times” before trial. Although Applicant testified counsel never discussed the State’s witnesses or evidence, he acknowledged reviewing affidavits and police reports about his case. Applicant stated he did not have any witnesses he could call to support his innocence other than himself. However, he stated he did not want to testify because he did not want to be impeached. Applicant recalled the judge asking if counsel had sufficient time to discuss whether Applicant should testify. Applicant reiterated he did not testify because he was afraid of being impeached. He stated he told trial counsel “repeatedly” he was not going to take the witness stand. Applicant agreed it was ultimately his decision not to testify. He also agreed he had an opportunity to testify or present evidence, but he wanted to maintain his right to remain silent because he knew he could be impeached. Applicant testified he was innocent and he told trial counsel he did not commit the crime. Applicant claimed he did not commit the crime because he was not wearing a white shirt; he had on a dark shirt. He stated his family lived on the street where the victim lived, and he was walking down the street when somebody came running by and hit him pretty hard. He stated one of the guys was the victim. Applicant also claimed he smelled drugs, looked over, saw barrels of drugs coming out of a boat, and saw the victim. When asked whether he gave trial counsel any evidence that he could present to prove his innocence, Applicant replied, “Just that I did not commit no crime.” He agreed it was fully his decision not to testify, and he was not pressured to not testify.

Trial counsel testified Applicant maintained his innocence and claimed he was walking down the street when some guy attacked him and held him until police arrived. When asked if there was anything to corroborate Applicant’s story, counsel stated the video from the police car showed the victim laying on top of Applicant in the street as police arrived. Counsel did not recall

Applicant providing any evidence or witnesses to present in his defense. Trial counsel stated his investigator spoke with Applicant to “work up whatever she could work up” but did not recover anything significant. Trial counsel stated he believed Applicant would likely be convicted, especially because police recovered the victim’s items from Applicant’s pockets. He stated Applicant averred those items had been planted there, but counsel had concerns about how to get around that. Trial counsel stated he discussed with Applicant his right to take the stand; however, on at least two occasions—March 22, 2017, and July 19—counsel notated that Applicant said he did not want to testify. Counsel stated Applicant was adamant that he did not want to testify.

This Court finds Applicant has not met his burden of proof. This Court finds credible Applicant’s testimony that he did not want to testify. Likewise, this Court finds credible trial counsel’s testimony that he discussed with Applicant his right to testify, and Applicant did not want to testify. This Court further finds credible counsel’s testimony that Applicant did not present him with any witnesses or evidence to investigate or present at trial. In fact, counsel’s testimony

here was consistent with Applicant’s PCR testimony that he did not have anyone to present to *in 9*
DSG *Applicant's defense* ~~prove his innocence~~ Ultimately, trial counsel did not have any witnesses to present to support a defense and thus was not deficient. Likewise, as Applicant admitted, it was Applicant’s decision not to testify. Applicant was advised of this right by the trial court and told the trial court he did not wish to testify. (Tr. 199-201). Because it was Applicant’s decision to not testify, trial counsel was not deficient in this regard. Finally, this Court finds Applicant’s testimony that (1) he was merely walking down the street when he was attacked and (2) he saw the victim unloading drugs from a boat was not credible. Applicant did not present any testimony—through himself or another witness—at the PCR hearing that would have been reasonably likely to change the outcome of trial. Thus, Applicant did not prove prejudice, and this claim is denied.

Stipulated to prior convictions

Applicant asserts counsel was ineffective for not objecting to a stipulation that he had two prior burglary convictions. Applicant has not met his burden of proof in this regard.

At trial, the solicitor relayed he had presented to trial counsel a stipulation concerning Applicant's prior convictions. (Tr. 189). He stated, "In lieu of having someone from the clerk's office testify to the conviction, we have agreed just to have that stipulation used. If Your Honor can read it to the jury, we're fine with that if the defense has no objection." (Tr. 190). Trial counsel did not object. (Tr. 190). Thereafter, the trial court read the following stipulation to the jury:

The defendant is on trial for burglary in the first degree. One of the statutory elements that the State may elect to prove beyond a reasonable doubt to convict the Defendant of burglary in the first degree, is that the Defendant has two or more convictions for burglary on his record.

In this case, rather than seeking to have each of the Defendant's prior convictions admitted into evidence, the State and the defense have agreed to stipulate that this Defendant's prior record does, in fact, contain two prior convictions for burglary; therefore, you, the jury, may find that this specific element has been proven beyond a reasonable doubt.

(Tr. 193-94).

At the PCR hearing, trial counsel testified he agreed to the stipulation as part of his trial strategy. He stated he would rather have the prior convictions read off a piece of paper than have the State bring in witnesses to testify about them. Trial counsel explained he hoped "it might just get lost in the shuffle and maybe the jury wouldn't pay that much attention to it versus if they brought witnesses in from the Clerk's office with certified prior convictions and all of that." Trial counsel stated he believed it would be worse for the defense if the State brought in witnesses as opposed to reading a stipulation, and his strategy was to draw less attention to the prior convictions.

This Court finds counsel articulated a valid strategy in stipulating to the prior convictions in lieu of having someone from the clerk's office testify to the prior convictions in that he believed it would draw less attention to the prior convictions for the jury. This Court further notes that at trial, the State indicated it wanted to do the stipulation in lieu of calling witnesses, indicating the State would have called witnesses to establish this element if necessary. Ultimately counsel articulated a valid strategy for stipulating to this information, and Applicant has failed to show counsel was deficient. Likewise, it is not reasonably likely the outcome would have been different if counsel had objected to this stipulation because the State would have been able to call a witness from the clerk's office to testify to these prior convictions. Thus, Applicant has not shown prejudice, and this claim is denied.

Arrest warrant lacked probable cause

Applicant claims there was not probable cause for his arrest warrant. Applicant has not shown he is entitled to relief based on this allegation.

At the PCR hearing, PCR counsel explained that Applicant did not believe probable cause existed for the arrest warrant. He explained the initial arrest warrant was dismissed at the preliminary hearing because the supporting affidavit had the wrong name; thereafter, it was amended and presented to the grand jury. PCR counsel further explained that Applicant believed the testimony supporting the warrant was untrue. Applicant, however, offered no testimony at the PCR hearing on this issue. Trial counsel recalled making a pretrial motion to challenge the arrest warrant, although he explained he did not have any hope that it would be successful.

This Court finds Applicant has not shown he is entitled to relief on this claim. As a threshold matter, Applicant did not frame this as a claim of ineffective assistance of counsel. Nevertheless, this Court notes counsel *did* raise this issue pretrial and renewed his motion to

dismiss the charges based on a faulty warrant at the close of the State's case. (Tr. 197). Thus, counsel challenged this issue and preserved it for appeal, and Applicant has not shown he was ineffective in this regard. Cf. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("[T]he post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.").

Further, this Court has ^{had for its review} ~~reviewed~~ the arrest warrant and supporting affidavit—which was submitted to this Court by Respondent as part of the Clerk of Court records—and finds ^{there} ~~the affidavit~~ ^{was} ~~contained~~ sufficient probable cause to support the arrest warrant. Ultimately, this Court finds no basis to grant relief based on Applicant's claim that the arrest warrant lacked probable cause. Thus, this claim is denied and dismissed with prejudice.

[Conclusion and signature page follows]

CONCLUSION

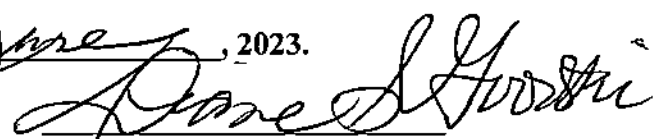
Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. 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 an appellate counsel's assistance in seeking review of the denial of PCR. If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.7(g), SCRPC. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 5 day of June, 2023.


 DIANE S. GOODSTEIN
 Presiding Judge
 Ninth Judicial Circuit

at Charleston, South Carolina

DOCKET NO. 2015-GS-08-02183

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

THE STATE

VS.

FRED FREEMAN

B/M DOB: [REDACTED] 1957

Indictment for

BURGLARY, FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

BAA/0309852
WITNESSES

Goose Creek Police Department

AGENCY CASE NUMBER

2015-4816

ARREST WARRANT NUMBER

2015A0820201015

DATE OF ARREST

10/09/2015

ACTION OF GRAND JURY

12-15-15

Date:

12-15-15

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

15 DEC 15 PM 3:07

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY S.C.

FILED

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

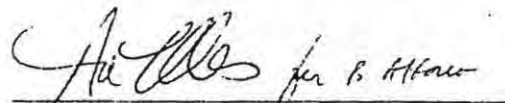
INDICTMENT

At a Court of General Sessions, convened December 15, 2015, the Grand Jurors of Berkeley County present upon their oath:

BURGLARY, FIRST DEGREE

That in Berkeley County, South Carolina on or about October 3, 2015, the Defendant Fred Freeman, did enter the dwelling of Ashley Mashea Kulas and Jeremiah Michael Kulas without consent and with the intent to commit a crime therein. That, in addition, said entry or remaining occurred in the nighttime; and/or the defendant displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the defendant has a prior record with two or more convictions for burglary, housebreaking or a combination of both; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


BRYAN A. ALFARO
DEPUTY SOLICITOR

FILED
15 DEC 15 PM 3:07

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY SC

HH

DOCKET NO. 2015-GS-08-02184

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

THE STATE

VS.

FRED FREEMAN

B/M DOB: [REDACTED] 1957

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

BA/V0309852
WITNESSES

Goose Creek Police Department

AGENCY CASE NUMBER

2015-4816

ARREST WARRANT NUMBER

2015A0820201017

DATE OF ARREST

10/09/2015

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

12-15-15

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened December 15, 2015, the Grand Jurors of Berkeley County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Berkeley County, South Carolina, on or about October 3, 2015, the Defendant, Fred Freeman, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Burglary 1st and/or Armed Robbery; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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



BRYAN A. ALFARO
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

FRED FREEMAN

AKA

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

FO Burglary First DegreeIn violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury

(def's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

ATTEST:

Bryan A. Alfaro, Deputy Solicitor 70502
SC Bar #

Defendant

Attorney for Defendant

68550
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____ plus costs and assessments as applicable*: the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 8/21/17☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender and

Other: _____

☐ Appointed PD or appointed other counsel.

§47.12 requires \$500 be paid to Clerk during probation.

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)

\$

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2995 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

Proviso 61.6 (Public Def/Prob)

\$500

§14-1-212 (Law Enforce. Funding)

\$25

§14-1-213 (Drug Court Surcharge)

\$150

§50-21-114 (BUI Breath Test Fee)

\$50

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

\$

TOTAL

\$128.75

Clerk of Court/Deputy Clerk:

Court Reporter:

Presiding Judge:

Judge Code:

Sentence Date:

Nate Kuy
2166
8/24/17

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

FRED FREEMAN

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED]SID# [REDACTED]N/DL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO Possession Of A Weapon During The Commission Of A Violent CrimeIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC winner 1st or Lewd Act)

The charge is

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury

(def's initials)

The plea is

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

AFFEST.

Bryan A. Alfaro, Deputy Solicitor

70502

SC Bar #

Defendant

Attorney for Defendant

68550

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 8/21/11☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days-hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.

§47-12 requires \$500 be paid to Clerk

during probation.

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv Surchage)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surchage)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 61.6 (Public Def Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surchage)

\$150

\$ _____

§50-21-114 (DUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$ _____

\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter: Denise LauderPresiding Judge: Maite' KingJudge Code: 2166Sentence Date: 8/21/11