

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Newberry County

Honorable Daniel McLeod Coble, Circuit Court Judge

STERLING MAYBIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001760

APPENDIX

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State of South Carolina)
County of Newberry) Court of General Sessions

2019-GS-30-00429-00433

State of South Carolina)
 vs.) Transcript of Record
)
Sterling Maybin)
 Defendant)

August 26th - 28th, 2019
Newberry, South Carolina

B E F O R E:

Honorable Donald B. Hocker, Judge

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

Dale Scott, Deputy Solicitor
Taylor Daniel, Assistant Solicitor
Attorneys for the State

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Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

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

2 (Whereupon, a bench conference was held in the
3 presence of the jury panel but out of the hearing of
4 the jury panel.)

5 THE COURT: All right, ladies and gentlemen, the
6 first case that is being called for trial is the State of
7 South Carolina versus Sterling Maybin. Mr. Maybin is
8 seated next to his lawyer, Mr. Verner. Thank you. Now,
9 Mr. Maybin has been indicted on five separate charges.
10 Let me first explain to you, the fact that Mr. Maybin has
11 been indicted, charged with a criminal offense, that is
12 not proof whatsoever of any guilt on his part. The
13 allegations in the indictment are just that, they are
14 allegations. And it is up to the State of South Carolina
15 to prove these allegations to you beyond a reasonable
16 doubt standard. So you cannot hold that against Mr.
17 Maybin, the fact that he has been indicted in this case.
18 These indictments serve two purposes and two purposes
19 only. The first purpose that it puts Mr. Maybin and his
20 attorney on notice of the charge or charges that they
21 intend, that the State intends to try him on. Okay. And
22 secondly, it gets the case to where we are today for a
23 trial, no other purpose. So don't consider these
24 documents as proof of guilt whatsoever on Mr. Maybin's
25 part. Okay. But I need to publish the indictments to you

1 so you will have an idea of what this case is about.

2 The first indictment which is 2019-GS-36-433. It is
3 for burglary second degree, violent. And it is alleged,
4 the indictment alleges the following. The Defendant,
5 Sterling Maybin, did on or about April 21, 2019 to April
6 24th of 2019 in Newberry County, South Carolina enter a
7 building belonging to a Bessie Mathis without consent and
8 with the intent to commit a crime therein. Okay.

9 The second, and that is in violation of section
10 16-11-312, subsection b; codes of law for South Carolina.
11 And the second indictment is also for burglary second
12 degree, violent. And it states that Sterling Maybin, the
13 Defendant, did on or about April 23, 2019 in Newberry
14 County, South Carolina enter a building belonging to Larry
15 Hazel without consent and with intent to commit a crime
16 therein. The same statute involved there. And that is
17 indictment 432.

18 Then I have before me three indictments for petty
19 larceny. The first indictment which is 431 reads as
20 follows. The Defendant, Sterling Maybin, did on or about
21 April 24th of 2019 in Newberry County, South Carolina did
22 feloniously take and carry away the personal property of
23 Larry Hazel to wit: a yellow McCulloch chainsaw with the
24 total value of \$2,000.00 dollars or less with the intent
25 to deprive the owner permanently of such property. That

1 is in violation of section 16-13-30, subsection a; and
2 16-157 of the code of laws for south Carolina.

3 The next indictment for petty larceny which is
4 indictment 430 reads as follows. The Defendant, Sterling
5 Maybin, on or about April 23 of 2019 in Newberry county,
6 South Carolina did feloniously take and carry away
7 personal property of Larry Hazel to wit: miscellaneous
8 tools and a Husquarvana push weed eater with the total
9 value of \$2,000.00 dollars or less with the intent to
10 deprive the owner permanently of such property. The same
11 statute is involved in that.

12 And the last indictment which is 429 reads as
13 follows. That the Defendant, Sterling Maybin, did on or
14 about April 21, 2019 to April 24, 2019 in Newberry County,
15 South Carolina did feloniously take and carry away the
16 personal property of Bessie Mathis to wit: a Murray weed
17 eater with the total value of \$2,000.00 dollars or less
18 with the intent to deprive the owner permanently of such
19 property. And the same two statutes involved there.

20 Now, I am going to ask you a series of questions that
21 are specifically related to this case. And the same rules
22 apply. Insofar as speaking with me privately, if I ask
23 you a question that you are reluctant to respond to in
24 front of everybody then I will give you an opportunity to
25 speak with me privately in just a little bit. There may

1 even be a question or questions that I ask you that I
2 specifically direct that you not respond to, respond to in
3 front of everyone. Don't anticipate that but there may
4 be. Any member of the jury panel related by blood or
5 marriage, either now or formerly to either Sterling
6 Maybin, Bessie Mathis or Larry Hazel. If so, please,
7 stand.

8 (No response.)

9 THE COURT: Any member of the jury panel have or have
10 in the past a close, personal or social relationship with
11 either Sterling Maybin, Bessie Mathis or Larry Hazel. If
12 so, please, stand.

13 (No response.)

14 THE COURT: I am going to read to you, for this next
15 question, a list of potential witnesses. When I say
16 potential they may or may not testify. I have already
17 named Bessie Mathis and Larry Hazel. Officer Justin
18 Weaver with the Newberry Police Department; Investigator
19 Will Bouknight with the Newberry Police Department;
20 Investigator Allison Moore with the Newberry Police
21 Department; Captain Kevin Goodman with the Newberry Police
22 Department; Chief Roy McClurkin with the Newberry Police
23 Department and Officer Janson Bell with the Richland
24 County Sheriff's Department. Any member of the jury panel
25 related by blood or marriage either now or formerly, any

1 of those people that I just listed or any member of the
2 jury panel have or had in the past a close, personal or
3 social relationship with any of those people that I just
4 named. If that applies to you please stand. Your name
5 and number.

6 JUROR: Kayla Turner, 69. I know Justin Weaver.

7 THE COURT: You know Justin Weaver. Are you close
8 personal friends with Mr. Weaver?

9 JUROR: Yes.

10 THE COURT: All right. The fact that you are close
11 personal friends with Justin Weaver, would that prevent
12 you in some fashion from being fair and impartial to both
13 sides in this case?

14 JUROR: No.

15 THE COURT: You could still be fair and impartial to
16 both sides?

17 JUROR: Yes.

18 THE COURT: Okay. Yes sir, your name and number.

19 JUROR: 180, Donald Woods. I know Will Bouknight, I
20 watched him grow up.

21 THE COURT: You could still be fair and impartial to
22 both sides?

23 JUROR: Yes, sir.

24 MR. SCOTT: Judge, I didn't have him, but can I have
25 Walter Bentley added to our witness list.

1 THE COURT: Walter Bentley is also added to the
2 witness list. So the same question, related, now or
3 formerly, blood or marriage or have or had in the past a
4 close, personal or social relationship with Walter
5 Bentley.

6 (No response.)

7 THE COURT: I will give the attorneys now an
8 opportunity to introduce themselves. I will allow the
9 State to go first.

10 MR. SCOTT: I am Dale Scott, Deputy Solicitor of the
11 Eighth Circuit. We cover Abbeville, Greenwood, Laurens
12 and Newberry Counties. I represent the State. And
13 helping me today is Taylor Daniel, Assistant Solicitor of
14 the Eighth Circuit and our Investigator, Walter Bentley.

15 THE COURT: Thank you. Mr. Verner.

16 MR. VERNER: My name is Charles Verner, I am a lawyer
17 in Newberry, I practice with my Dad across the street next
18 to the Cabana Restaurant, Jay Verner. My name is Charles
19 Verner and my office is right across the street.

20 THE COURT: Thank you. I know these lawyers very
21 well, they try a lot of cases in my court before and I can
22 tell you, not to say this about everybody, but I can tell
23 you these lawyers are excellent lawyers and do a very good
24 job in what they do. Any member of the jury panel ever
25 been represented by any of the lawyers in this case or

1 anyone in their respective law firms or offices. If so
2 please stand. Yes sir, your name and number.

3 JUROR: Christopher Odom. I think his father has
4 been my lawyer before.

5 THE COURT: His father has represented you before?

6 JUROR: Yes, sir.

7 THE COURT: The fact that Mr. Verner's father, Jay
8 Verner, has represented you before, can you still be fair
9 and impartial to both sides?

10 JUROR: I don't know.

11 THE COURT: You don't know?

12 JUROR: I don't know. But I don't want to be a
13 conflict of interest.

14 THE COURT: If you are not sure that is fine, you are
15 being honest with me, I appreciate that. I will excuse
16 you from the trial of this case but stay with us. Okay.
17 Thank you.

18 Any member of the jury panel related by blood or
19 marriage either now or formerly to any of the attorneys
20 involved in this case or anyone in their respective
21 offices or law firms or any member of the jury panel have
22 or had in the past a close personal, social relationship
23 with any of the attorneys involved in this case or anyone
24 in their respective law firms or offices. If so please
25 stand. Yes sir, your name and number?

1 JUROR: Charles Edwards, number 60. I know Dale.

2 THE COURT: The fact that you know Solicitor Scott,
3 would that prevent you from being fair and impartial to
4 both sides?

5 JUROR: No, sir.

6 THE COURT: You could still make a fair and impartial
7 decision?

8 JUROR: Yes, sir.

9 THE COURT: Okay. Thank you. Any member of the jury
10 panel already formed or expressed any opinion about any
11 issue or matter involved in this case. And I understand
12 you know very little other than what I have just read to
13 you from the indictments. But already formed or expressed
14 any opinion about any issue or matter involved in this
15 case, I need to know that so please stand.

16 (No response.)

17 THE COURT: Any member of the jury panel aware of any
18 biased or prejudiced towards either the State or the
19 Defendant in this case. If so please stand.

20 (No response.)

21 THE COURT: Any member of the jury panel who is a
22 member of or a contributor to any group which has as its
23 primary concern promotion of law enforcement or victims
24 rights. And these groups would include, certainly not
25 limited to, MADD, SADD or CAVE. If that applies to you

1 please stand.

2 (No response.)

3 THE COURT: Any member of the jury panel need to
4 speak with me privately about any question that I have
5 asked you or if you have any particular concern or issue,
6 if so please stand. All right, we will do like we did
7 last time, form a line at the wall there.

8 (Whereupon, jurors formed a line to talk to the
9 Court.)

10 THE COURT: All right, sir. What is your name.

11 JUROR: Demanurian Young.

12 THE COURT: Yes sir, Mr. Young.

13 JUROR: Bessie Mathis is my aunt.

14 THE COURT: Who?

15 JUROR: Bessie Mathis.

16 THE COURT: Okay, I am going to excuse you from the
17 trial of the case but stay with us.

18 What is your name?

19 JUROR: Joy Nikonchuk, 116.

20 THE COURT: Yes, ma'am.

21 JUROR: I don't mind being one of the jurors. It is
22 just I am a Jehovah Witness. So any opinion that I have,
23 I am going to get it from the Bible.

24 THE COURT: Okay.

25 JUROR: Okay.

1 THE COURT: That's fine.

2 JUROR: Just so you know.

3 THE COURT: That is fine, thank you.

4 Any member of the jury panel know of any reason
5 whatsoever why he or she should not serve as a juror in
6 this case with particular emphasis being placed on your
7 ability to be fair and impartial to both the State and the
8 Defendant. That is the key, that is what we want, we want
9 completely fair and impartial jurors to hear this case.
10 If you believe there is some reason that you could not be
11 fair and impartial I need to know that and please stand at
12 this time.

13 (No response.)

14 THE COURT: Does the State have any exceptions to the
15 Court's voir dire, any additional questions?

16 MR. SCOTT: No, Your Honor.

17 THE COURT: And the Defense?

18 MR. VERNER: No, Your Honor.

19 THE COURT: Thank you. Ladies and gentlemen, what,
20 when the internet is working, of course the internet
21 assist us in putting out a list at random of some of you,
22 for the names to be called out. What we have to do at
23 this time, we have to resort back to the old time method.
24 You see this, I will call it a cylinder. And the Clerk is
25 going to wind it up and, this is how they use to do it a

1 long time ago when I first started practicing law, they
2 use to do it that way. So with the internet down we are
3 going to go back to this. The list is going to be
4 prepared from that, it is going to take a few minutes and
5 I will explain to you what we will do next. Everybody be
6 at ease.

7 (Whereupon, everyone at ease until the Clerk of Court
8 processes a jury list.)

9 THE COURT: Ladies and gentlemen, if your name is
10 called out bring whatever belongings that you have and
11 come around and you will stand with your back to the
12 microphone right there.

13 MR. SCOTT: Briefly, Your Honor, sidebar?

14 THE COURT: As soon as Mr. Verner gets back.

15 MR. SCOTT: We can continue the general instructions.

16 THE COURT: Okay. And come down, you will hear words
17 like swear the juror or we accept the juror or strike the
18 juror from the trial of this case. And if you are not you
19 selected after having come down here, don't take that
20 personally, don't take offense to that. These lawyers,
21 they have certain reasons for wanting certain people on
22 the jury and other reasons for not. So don't take it
23 personally. Okay. But if you are selected then the
24 Bailiffs will instruct you to be seated in the jury box.
25 Just for your information, if you are selected, we are not

1 starting the trial under tomorrow. So you will have an
2 afternoon off. Okay. This will be ten and five. And we
3 will have two alternates, two and one for each. All
4 right, we are ready.

5 MADAM CLERK: Number 17³, Sabrina Williams. What
6 says the State?

7 MR. SCOTT: Please present the juror.

8 MADAM CLERK: What says the Defense?

9 MR. VERNER: Please seat the juror.

10 THE COURT: What I think we are going to do. Since
11 it is a little cumbersome to have to walk all the way
12 around, when your name is called out just stand where you
13 are. And then if you are accepted just come around. But
14 I just remember last time I was holding court here in
15 Newberry that is the way we did it. It is a little bit
16 more efficient. Okay.

17 MADAM CLERK: 58, Jane Doolittle. What says the
18 State?

19 MR. SCOTT: Please present the juror.

20 MADAM CLERK: The Defense?

21 MR. VERNER: From todays case I am going to excuse
22 you.

23 MADAM CLERK: Number 12, John Bearden. What says the
24 State?

25 MR. SCOTT: Please present the juror.

1 MADAM CLERK: The Defense?

2 MR. VERNER: Please seat the juror.

3 MADAM CLERK: Number 43, Jimina Cohen. What says the
4 State?

5 MR. SCOTT: Please excuse the juror from this trial.

6 MADAM CLERK: Number 69, Kayla Turner. What says the
7 State?

8 MR. SCOTT: Please present the juror.

9 MADAM CLERK: The Defense?

10 MR. VERNER: From todays case I am going to excuse
11 this juror.

12 MADAM CLERK: Number 133, Abraham Rikabi. What says
13 the State?

14 MR. SCOTT: Please present the juror.

15 MADAM CLERK: What says the Defense?

16 MR. VERNER: Please seat the juror.

17 MADAM CLERK: Number 78, Garrick Wise.

18 MR. SCOTT: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Whereupon, a bench conference was held in the
21 presence of the jury panel but out of the hearing of
22 the jury panel.)

23 THE COURT: Sir, you can have a seat.

24 MADAM CLERK: Number 81, Timothy Hawkins. What says
25 the State?

1 MR. SCOTT: Please present the juror.

2 MADAM CLERK: The Defense?

3 MR. VERNER: I will excuse you from this trial.

4 MADAM CLERK: Number 104, Lisa Clark. What says the
5 State?

6 MR. SCOTT: Please present the juror.

7 MADAM CLERK: The Defense?

8 MR. VERNER: Seat the juror.

9 MADAM CLERK: Number 85, Sharon Hunter. What says
10 the State?

11 MR. SCOTT: Please present the juror.

12 MADAM CLERK: The Defense?

13 MR. VERNER: Please seat the juror.

14 MADAM CLERK: Number 185, Latresa Wright. What says
15 the State?

16 MR. SCOTT: Please present the juror.

17 MADAM CLERK: The Defense?

18 MR. VERNER: Please seat the juror.

19 MADAM CLERK: Number 57, Ann Dominick. What says the
20 State?

21 MR. SCOTT: Please present the juror.

22 MADAM CLERK: The Defense?

23 MR. VERNER: Please seat this juror.

24 MADAM CLERK: Number 115, Robert Newberry. What says
25 the State?

1 MR. SCOTT: Please present the juror.

2 MADAM CLERK: The Defense?

3 MR. VERNER: From this case I am going to excuse Mr.
4 Newberry.

5 MADAM CLERK: Number 98, John Lindsay. What says the
6 State?

7 MR. SCOTT: Please present the juror.

8 MADAM CLERK: The Defense?

9 MR. VERNER: From this case I am going to excuse you.

10 MADAM CLERK: Number 114, Krystal Nance. What says
11 the State?

12 MR. SCOTT: Please present the juror.

13 MADAM CLERK: The Defense?

14 MR. VERNER: Please seat the juror.

15 MADAM CLERK: Number 186, Lynn Yarborough. What says
16 the State?

17 MR. SCOTT: Please present the juror.

18 MADAM CLERK: The Defense?

19 MR. VERNER: Please seat the juror.

20 MADAM CLERK: Number 23, Benjamin Bouknight. What
21 says the State?

22 MR. SCOTT: Please present the juror.

23 MADAM CLERK: The Defense?

24 MR. VERNER: From todays case I am going to excuse
25 Mr. Bouknight.

1 MADAM CLERK: Number 100, Scott Martin. What says
2 the State?

3 MR. SCOTT: Please present the juror.

4 MADAM CLERK: The Defense?

5 MR. VERNER: Please seat Mr. Martin.

6 MADAM CLERK: Number 68, Douglas Fulmer. What says
7 the State?

8 MR. SCOTT: Please present the juror.

9 MADAM CLERK: The Defense?

10 MR. VERNER: Please seat Mr. Fulmer.

11 MADAM CLERK: Number 38, Patricia Cardenas. What
12 says the State?

13 MR. SCOTT: Please present the juror.

14 MADAM CLERK: The Defense?

15 MR. VERNER: Please seat Ms. Cardenas.

16 THE COURT: That is twelve, we will have two
17 alternates. Two and one strikes.

18 MADAM CLERK: Number 180, Donald Woods. What says
19 the State?

20 MR. SCOTT: Please present the alternate.

21 MADAM CLERK: The Defense?

22 MR. VERNER: Please seat the alternate.

23 MADAM CLERK: Number 75, Tiffany Gossett. What says
24 the State?

25 MR. SCOTT: Please present the alternate.

1 MADAM CLERK: The Defense?

2 MR. VERNER: Please seat the alternate.

3 THE COURT: Congratulations, ladies and gentlemen,
4 you have been selected as the trial jury in this case.
5 What I want you to do, this is the jury room and I will
6 need you to go to the jury room in just a minute. But I
7 need to talk to you about a couple of things. One is, you
8 cannot at any time during the course of this case,
9 starting with right now until the very end, you cannot
10 begin any discussion among yourselves about anything
11 related to this case. I know you know very little, but
12 whatever you have already seen, heard, whatever, you
13 cannot have any early discussions about anything related
14 to this case. Your discussions cannot start until I tell
15 you to begin your deliberations and that is at the end of
16 the case when all of the evidence is in, the lawyers have
17 made their closing arguments to you and I have instructed
18 you on the law. So, don't engage in any premature
19 discussions. Okay. And I will have a few other
20 instructions in just a little bit. Secondly, what I want
21 you to do, when you go back to the jury room and you have
22 had an opportunity to kind of introduce yourselves, I want
23 you to select a Foreperson of the jury. Now, if it is a
24 male it is a Foreman, if it is a female it is a Forelady.
25 Let me tell you what a Foreperson of the jury does. First

1 I need someone to serve as go between, between the jury
2 and the Court. If at any time during the course of the
3 trial, if there is any issue that comes up or when you
4 begin your deliberations and you have a question or
5 questions then I need someone to communicate with the
6 Court. How I want it done is written down, you have paper
7 back there and you can write it down and sign your name as
8 Foreperson. Secondly, I need someone to make sure all of
9 my instructions are being followed, even though that is
10 everyone's responsibility. For example, no early
11 discussion about this case. So I need someone to wear
12 that hat and certainly if any of my instructions have been
13 violated I need to know that immediately. And thirdly,
14 once I give you the case to begin your deliberations I
15 need someone to organize and get the deliberations started
16 in order to reach a unanimous verdict in the case. Now,
17 the Foreperson's vote carries no greater weight than the
18 vote of the other eleven. So those are the hats that a
19 Foreperson wears. Now, let me explain to you the
20 alternates. You two alternates, your role is very
21 important. It is not unusual that during the course of a
22 trial that one of the twelve has to be excused for illness
23 reasons or emergency, at home reasons and that sort of
24 thing. So I need someone who sat and listened to all of
25 the evidence and the testimony up to that point to be able

1 to come in and fill the shoes of one of the twelve. Okay.
2 So your role is very important. So I need for you to go
3 back and select a Foreperson and just write the name down
4 of the Foreperson being selected. The alternates can vote
5 on the Foreperson. So, I need you to go back and
6 accomplish that. Now, when you come back out the
7 Foreperson will always maintain the front seat right here
8 on the first row. The two alternates are maintaining the
9 seats that you will maintain throughout this trial.
10 Everybody else can sit where ever you like. And I tell
11 jury's this and it really, it holds true. Most of the
12 time jurors like to sit in the same seat throughout the
13 trial. Kind of like a church, you have got your own seat,
14 your own pew and hopefully nobody will take your seat.
15 But that is totally up to you, whether or not you want to
16 maintain your same seat throughout the trial or not,
17 totally up to you. But the Foreperson and the two
18 alternates have designated seats. Go back to the jury
19 room, no discussion about this case, select the Foreperson
20 and then I will send for you in just a little bit. Okay.

21 (Whereupon, the jury was excused from the courtroom.)

22 THE COURT: Does the State have any exceptions to
23 jury selection?

24 MR. SCOTT: No, Your Honor.

25 THE COURT: And the Defense?

1 MR. VERNER: No, sir.

2 THE COURT: Okay. Thank you very much. All right,
3 ladies and gentlemen, I know some of you probably are glad
4 that you were not selected. Some of you probably are
5 disappointed. Let me explain to you, jury's play a very
6 important and vital role to our judicial system, a system
7 that is the best judicial system anywhere in the world
8 without question and jury's play a very important role in
9 our judicial system in this State and in this Country. So
10 your presence here today is very important. Now, just
11 because you were not selected on this particular case
12 doesn't mean that you won't get selected if we do call
13 another case for trial later on in the week. So you may
14 still have a shot at serving on a jury. Now, what you
15 need to do, is on the card it has a call-in number. I
16 need you to call that number after 6:00 this evening and
17 it will give you instructions on what to do next. Whether
18 or not to come back tomorrow, or call back after 6:00
19 tomorrow evening. Don't forget to call after 6:00 so you
20 can hear that recording information. With that said, you
21 are free to go. We will hopefully get to see you back
22 later on. Don't forget to call that number.

23 (Whereupon, the remaining jury panel was excused from
24 the courtroom.)

25 THE COURT: Mr. Verner, I understand that on the two

1 burglary charges Mr. Maybin needs to be arraigned and then
2 we can get to your continuance request after I have done
3 that. So, Mr. Maybin, if you would please stand.

4 MR. VERNER: May I have one second?

5 THE COURT: Yes.

6 (Whereupon, Mr. Verner talks to Mr. Maybin.)

7 THE COURT: All right, Mr. Verner, you and your
8 client waive the publication of these two indictments at
9 this arraignment hearing?

10 MR. VERNER: Yes, sir.

11 THE COURT: Okay. And, Mr. Maybin, I need to ask you
12 two questions. One, concerning the two burglary charges,
13 how do you plead, guilty or not guilty?

14 MR. MAYBIN: Not guilty.

15 THE COURT: Okay. And do you wish to be tried by God
16 and your Country on these two charges?

17 MR. MAYBIN: Yes.

18 THE COURT: Thank you, sir. You can have a seat.
19 Now, Mr. Verner, back in-chambers you had indicated that
20 you and your client wanted to make a motion for a
21 continuance. I will be glad to hear from you at this
22 time.

23 MR. VERNER: Yes, sir. I will note, we are willing
24 to plead for the larceny charges today. It is the
25 burglary that would be the crux of the case, Judge. These

1 are two open buildings, burglary. But he has been in jail
2 since late April. Shortly after he was arrested his
3 parole was violated and he is serving an active three year
4 parole sentence in SCDC. He was brought here today by
5 SCDC. He has been gone for about four months. I know I
6 met with him about twice when he was first arrested,
7 Judge, and we reviewed the charges then. But at that
8 point, primarily, in the plea negotiating type setting.
9 As far as I know the State has given us all of the
10 evidence that they have. But because he has been in SCDC,
11 he was hoping to make bond at some point but he had the
12 parole hold on him. But he would ask the Court for more
13 time before the jury trial for continuance. And on his
14 own behalf, Judge, I know Your Honor presided at the last
15 case and he was asking that Your Honor would step aside
16 for a new Judge. I don't, myself, see that as a legal
17 conflict of interest. But he would feel more confident if
18 the Court stepped aside, having Your Honor presided at the
19 last trial.

20 THE COURT: Okay.

21 MR. VERNER: But it is a case, if the State would
22 help us resolve it we are prepared to try to resolve it
23 too.

24 THE COURT: I am not inclined to grant a continuance
25 at this time since we are not starting the case until

1 tomorrow. What I will do, Mr. Verner, after you have
2 taken today's opportunity to do whatever preparation or
3 work or discussion with Mr. Maybin and find yourself
4 tomorrow just really at a disadvantage I may would
5 reconsider. But at this time I am not going to continue
6 it. And now concerning Mr. Maybin's request. I can
7 assure you, Mr. Maybin, the fact that I presided over the
8 last case is in no way going to influence me whatsoever
9 concerning how I preside over this case insofar as
10 rulings, decisions on admissibility of evidence, ruling on
11 motions and that sort of thing. I can assure you that I
12 will not be influenced whatsoever by the fact that I
13 presided over your last case. I will continue as I do in
14 every case that I serve as a Judge. I try to be as fair
15 and as impartial to both sides and that is what I intend
16 to do in this case. So without any specifics of why I
17 should recuse myself on this case, other than the fact
18 that I presided over your last case in 2014, 2015 time
19 range, without any specifics then I am going to deny your
20 request. All right. You want, Solicitor Scott, you want
21 to respond. I think Mr. Verner has extended, indicated
22 that they would get this resolved if, in fact, the State
23 would accept a plea of, the three petty larceny charges.
24 You want to put your position on the record that is fine.
25 MR. SCOTT: Yes, sir. We have briefly discussed

1 possible plea agreements. And we were at odds with what
2 Mr. Maybin is requesting. His record, simply, I feel
3 compelled as, and as a servant of this community to -- he
4 is going to have to plea to the burglary. He wants to
5 plead to the burglary as part of the deal. His record
6 dictates that he faced the consequences of the burglary
7 charge and I am not willing to drop that charge, simply
8 put.

9 THE COURT: All right. Let's be at ease for just a
10 moment. I want to give the jury a couple of more minutes
11 to make sure they have got a Foreperson selected. So we
12 will be at ease for just a minute.

13 (Whereupon, a short break was taken.)

14 THE COURT: Let's bring the jury in.

15 (Whereupon, the jury came into open court at
16 approximately 12:15 p.m.)

17 THE COURT: Let the record the jury is back in. Mr.
18 Fulmer, you have been selected by your fellow jurors being
19 the Foreman of this jury.

20 FOREMAN: Yes, I have.

21 THE COURT: Okay, congratulations. All right. A
22 couple of instructions before I let you go for the day.
23 My instruction insofar as no discussion among yourselves
24 also applies when you leave here and your family members,
25 friends, neighbors, coworkers, whomever, you cannot

1 discuss this case with them either. You can tell them you
2 have been selected on a jury but leave it at that. Also,
3 if at any time during the course of this trial, during a
4 lunch break, you were to go to a local restaurant here in
5 town, leave your juror badge visible. And the reason for
6 that is, if you are at a local restaurant and sitting
7 right next to you, some of the lawyers or witnesses in the
8 case and they don't recognize you being on the jury and
9 they start talking about the case and you overhear it,
10 that is not a good thing. So if they see the jury badge
11 then they will know not to speak so loud to where you
12 could hear them. Lastly, very, very important and I will
13 go into more detail about this tomorrow. You may be very
14 tempted for you to do some research into this case
15 concerning the charges or the lawyers involved or the
16 Defendant involved or witnesses, any related to this case.
17 It may be very tempting for you to go on the internet,
18 social media and try to uncover some information. Do not
19 do that. Tomorrow I am going to give you, what I consider
20 to be potentially tragic situation in a case that I tried
21 about six months ago in Laurens where some jurors
22 completely violated my instructions and, in fact, did some
23 research. And that is not a good thing so please don't do
24 that. After the case is over with you can do as much
25 research as you want but not until this case is over with

1 because your decision that you reach in this case has to
2 be based one-hundred percent on what is brought out in
3 this courtroom. And if you are off doing research,
4 getting information, that is information that is not
5 coming out in the courtroom. So do not do it. What the
6 law provides is that if jurors violate the Court's
7 instruction that is contempt. And contempt powers of a
8 Circuit Court Judge are unlimited which include fined,
9 imprisonment or both. So don't do it, I am not making
10 threats, I am just telling you what your role is, what you
11 can do and not do. Okay. What, lastly, what I need you
12 to do is call back after 6:00 o'clock this evening. On
13 your card you have got a call-in number, okay. Just want
14 to make sure we are still on go for tomorrow.

15 CLERK OF COURT: If we can just call them if
16 something happens.

17 THE COURT: So, I am corrected. If something happens
18 to where you don't have to come tomorrow you will be
19 called so do not call that recording at least as far as
20 today. With that said, have a good rest of the afternoon.
21 9:30 in the morning and be prompt. Allow yourself enough
22 time. Yes sir, Mr. Fulmer.

23 FOREMAN: May I approach?

24 THE COURT: You want to ask me something outside the
25 presence of the other jurors?

1 FOREMAN: Yes, sir.

2 THE COURT: Okay, come on up here.

3 (Whereupon, a bench conference was held with the
4 Court and the Foreman.)

5 THE COURT: Just have a seat and let me see the
6 lawyers.

7 (Whereupon, a bench conference was held with the
8 Court and the lawyers.)

9 THE COURT: Okay, ladies and gentlemen, you are free
10 to go and if something were to develop we will call you.
11 Get you a good nights rest and we will see you in the
12 morning at 9:30. Have a good evening.

13 (Whereupon, the jury was excused from open court for
14 the day.)

15 THE COURT: Let me put on the record that the, before
16 I dismissed the jury the Foreman approached and indicated
17 that the female alternate, I don't have her name, made
18 some comment back in the jury room essentially to the
19 extent that she felt like the Defendant was already
20 guilty. As a result of that she is going to be called
21 today and told not to come back. So she would not serve
22 on this jury. Okay, Mr. Maybin, do you understand that?

23 MR. MAYBIN: Yes.

24 THE COURT: I could have brought her out and
25 questioned her about it. I don't see how the Foreman

1 could have made that up, I am sure he was being honest
2 with me in relaying that information. So I think the best
3 way to handle it is, we are just going to tell her that
4 she does not need to come back.

5 MR. SCOTT: Just so we are clear, I have that as
6 alternate number 75, according to my records.

7 THE COURT: Is that correct?

8 CLERK OF COURT: Yes, sir.

9 THE COURT: Very good. Anything else we need to put
10 on the record before we go ahead and adjourn for today?

11 MR. SCOTT: No, Your Honor.

12 MR. VERNER: Judge, on the larcenies and on the
13 burglaries, my understanding on both that he is indicted
14 for the larceny third offense. We would stipulate that
15 the prerequisite convictions for the larceny, for the
16 reason that would be, there would be no need for the State
17 to introduce prior records.

18 MR. SCOTT: On the petty larceny we would never.

19 MR. VERNER: And likewise on the burglaries, that
20 would be my understanding. If I am not wrong, is that the
21 prior burglaries would enhance this to the burglary second
22 violent. We would also stipulate the prerequisite
23 burglaries for the purpose that the State would not need
24 to offer evidence of prior burglaries, Your Honor.

25 THE COURT: Solicitor.

1 MR. SCOTT: I am going to look at the case law. I
2 feel like there is--

3 THE COURT: There is some case law. On the
4 burglaries, that is an element of the offense and I think
5 we have dealt with that.

6 MR. VERNER: I acknowledge the case law is contrary
7 to my position. That may or may not, I don't know that it
8 is mandatory to let the State do it. But I understand the
9 appellate court cases certainly offer the opportunity for
10 the State to do it. That hopefully won't be the law
11 forever. In case it changes I would like to have it out
12 there that my client stipulated.

13 THE COURT: Okay. Right now and I do want to just
14 review the case law. But right now I am going to allow
15 the state to offer those as an element of the offense.
16 But I do want to look at the case law just to make sure.

17 MR. SCOTT: I have got two citations for your Law
18 Clerk.

19 THE COURT: Let me write those down. What are those,
20 Solicitor.

21 MR. SCOTT: State v. Benton, B-E-N-T-O-N. 338 SC
22 151.

23 THE COURT: Okay.

24 MR. SCOTT: And then I also have State v. Hamilton.

25 THE COURT: What is the last one?

1 MR. SCOTT: Hamilton.

2 THE COURT: Hamilton?

3 MR. SCOTT: 327 SC 440. But Benton would be the
4 newer one, that is a 2000 case.

5 THE COURT: I just want to, it has been a while since
6 I have dealt with that issue. I just want to read it
7 again but I am most certain, as you are, Mr. Verner, that
8 they would allow the State to bring it out solely as an
9 element of the offense. I think it requires and I will
10 have to look at this too, I think it requires some sort of
11 limiting instruction from the Court concerning the jury's
12 use of that information. All right. We will bring it
13 back up in the morning. Do the lawyers need to see me
14 about anything else?

15 MR. SCOTT: No, sir.

16 MR. VERNER: No, sir.

17 THE COURT: We will resume in the morning at 9:30.

18 (Whereupon, the trial will resume the next morning at
19 9:30 a.m.)

20 August 27, 2019

21 THE COURT: We're on the record this morning.
22 Gentlemen, anything we need to put on the record before we
23 bring the jury out and get started with this case?

24 MR. SCOTT: Nothing from the State, Your Honor.

25 THE COURT: And from the Defense?

1 MR. VERNER: No, Your Honor.

2 THE COURT: Thank you very much. All right. Madam
3 Bailiff, if you'll bring the jury out, please.

4 (Whereupon, the jury came into open court at
5 approximately 10:15 a.m.)

6 THE COURT: Good morning, ladies and gentlemen.
7 Thank you for your patience. We had some matters that we
8 needed to deal with. So we try to -- to the best that we
9 can, we try to minimize the amount of time that you are
10 back in the jury room. Of course, before you begin your
11 deliberations, we try to keep that at a minimum, but
12 sometimes it's just necessary to deal with things coming
13 throughout the trial or even other issues. And so, we
14 thank you for your patience. The first item we need to
15 tend to is you need to be sworn in as the trial jury in
16 this case. Madam Clerk.

17 MADAM CLERK: Yes, sir.

18 (WHEREUPON, the jury was sworn at 10:17 a.m.)

19 THE COURT: Ladies and gentlemen, I'm going to give
20 you or make some preliminary remarks before the lawyers
21 engage in their opening arguments to you. Basically, how
22 this case will go, the State will present their case
23 first. They go first because they have the burden of
24 proof in this matter. And then, the Defense, if it elects
25 to, can put up a case. The Defense does not have to

1 because they have no burden of proof. And then, if the
2 Defense does put up a case, then the State would have the
3 right to put up any reply case to that. The lawyers then
4 will make their closing arguments to you and then I will
5 charge you the law on the case. Now, it's real important,
6 ladies and gentlemen, that you be very attentive
7 throughout this trial, be alert throughout this trial. I
8 do not permit note taking. Some Judges do, but I don't
9 permit note taking because I have found that jurors are
10 more -- pay more attention to the actual note taking than
11 they are listening to the testimony from the witness stand
12 or any comments or arguments made by the lawyers in this
13 case. So be very attentive and be very alert so that when
14 I do give you the case to begin your deliberations, then
15 collectively you'll have a really good memory of what all
16 has been brought out in this case. And the reason why is
17 to have a good memory of what has been brought out in this
18 case is because you are the sole judge of the facts in
19 this case. I am the sole Judge of the law. I decide what
20 law applies to this case and I'll explain all that to you
21 at the end of the case, but you are the sole judge of the
22 facts in this case. So in order to properly judge what
23 the facts are in this case, you have to be attentive,
24 alert and have a good memory. Okay. Now, as I mentioned
25 to you yesterday, these indictments are not evidence

1 whatsoever. The fact that the Defendant was arrested and
2 indicted in this case is not proof whatsoever. It just
3 puts them on notice of what the charges are, gets us into
4 the court today, where we are today. And as I also stated
5 yesterday, the State and the State alone has the burden of
6 proof in this case to prove these crimes to you beyond a
7 responsible doubt. As Mr. Maybin sits before you today,
8 he is presumed innocent. That presumption of innocence
9 began when he was arrested and that presumption of
10 innocence will remain with him unless you, at the end of
11 this case, decide that the State has met their burden of
12 proof. I've already mentioned to you that we will try to
13 keep at a minimum the amount of time that you have to
14 spend back in the jury room. The candy that is back in
15 the dish, that's compliments of the Judge. So, you know,
16 if that can help a little bit while you're back there
17 waiting on us, then I hope that it does. It's all sugar
18 free and I've had some jurors say, why can't you give us
19 some sugar candy, you know, but I feel like sugar free is
20 probably for some of those individuals who cannot have the
21 sugar for whatever reason. So that's why it's sugar free.
22 Now, I mentioned to you yesterday that the instructions
23 with respect to no early discussion about this case among
24 yourselves or with anybody that you come into contact with
25 and absolutely no research into this case and I told you I

1 would tell you or give you a war story and I'll keep it
2 short, but to make my point. I tried a very serious case
3 in Laurens about six months ago and I instructed the jury
4 not to do any research and several jurors disregarded my
5 instruction and went on Google and found out some
6 information on the Defendant that was completely
7 inadmissible. In other words, it could not come in as
8 evidence in the case. And if we had not learned of what
9 had happened, and it was just by chance that I learned of
10 what they had done, that individual who was on trial could
11 have very well been convicted based upon inadmissible
12 evidence, and what a tragedy that would have been if that
13 would actually have happened. Well, of course, what I had
14 to do is declare a mistrial because we could not go
15 forward because of that and it's just because several
16 jurors took it upon themselves to think, well, I don't
17 care what the Judge has told us, I'm going to do what I
18 want to anyways, and that is so sad. That is so sad. And
19 so, that's why it is so important because I think, as I
20 told you yesterday, your verdict can only be based
21 one-hundred percent on what is brought out in this
22 courtroom, by way of testimony, exhibits and my
23 instruction on the law and it cannot be based on anything
24 else. So lastly, ladies and gentlemen -- very, very
25 important. Keep an open mind. Don't pass judgment early

1 on. Don't make any decisions early on. Keep an open mind
2 until this entire case is presented to you. And I'm
3 confident that we have 13 very reasonable, prudent,
4 intelligent individuals sitting on this jury today and I
5 thank you in advance for your jury service. Solicitor,
6 are one of the Solicitor's ready to make their opening
7 arguments?

8 MR. DANIEL: We are, Your Honor.

9 THE COURT: Okay. You may proceed.

10 MR. DANIEL: Thank you, Your Honor. May it please
11 the court. Mr. Foreman, members of the jury, good
12 morning. Just a refresher from yesterday, my name is
13 Taylor Daniel. I'm one of the prosecutors assigned to
14 this case and I'll be trying this case alongside Dale
15 Scott, and as prosecutors our job is to present this case
16 on behalf of the State of South Carolina -- present this
17 criminal case on behalf of the State. And you might be
18 familiar with this process, but if you're not, a crime was
19 committed, a crime was reported to the police. The police
20 got out there and they investigate and they develop a
21 suspect and they make an arrest. So from the arrest, all
22 the information and evidence has been forwarded to our
23 office, to the Solicitor's Office, and our job is then to
24 decide if there's enough evidence to proceed with a trial.
25 So an individual who's charged with a crime, such as Mr.

1 Sterling Maybin, who's standing before you on trial, when
2 his case comes up for trial he has the decision to enter a
3 plea of guilty or not guilty and, obviously, it's a trial.
4 He's entered a plea of not guilty. So a whole host of
5 constitutional rights are then afforded to Mr. Maybin and
6 first and foremost is a jury trial. So when he requested
7 a jury trial, that's means 12 members of Newberry County,
8 12 residents, get to decide his fate, get to decide guilt
9 or innocence. And then, the burden is on us as the State
10 to prove his guilt beyond a responsible doubt. So that's
11 what's going on here today. Mr. Maybin has Mr. Charles
12 Verner representing him. So he's afforded counsel, and
13 His Honor is here to declare what evidence you guys get to
14 hear. So His Honor is protecting the rights of all the
15 parties involved and to make sure everyone follows the
16 rules. So that's what we're going to do today because all
17 we can do is present evidence from this witness box.
18 That's the only thing you can consider, and what Mr.
19 Maybin -- the crimes he's accused of and we're talking
20 about, roughly, a 48 to 72 hour period and it's three
21 different incidents of theft that we're dealing with.
22 It's two victims of three different incidents where Mr.
23 Maybin stole property from two members of the Newberry
24 community. Two people who lawfully had these items in
25 their possession. They paid for it and used their hard

1 earned money. Mr. Maybin went onto their property on
2 several occasions and took all of it, and I'm talking weed
3 eaters, chainsaws, some other miscellaneous tools that
4 were out in the yard, and that's the case before you.
5 He's charged with burglary and petty larceny, and the
6 burglary comes in because some of these tools were stored
7 in a structure where all the lawn equipment was. They
8 were open air, had an awning, but a designated area where
9 you put your lawn equipment. People store lawnmowers,
10 weed eaters, chainsaws, et cetera. And so, he went
11 underneath this little storage area and took property from
12 Larry Hazel and Bessie Mathis and both of these
13 individuals have a stable residence in Newberry -- the
14 City of Newberry. And April 24th of this year, about four
15 months ago, is when all of this comes to light and is
16 reported to law enforcement, to the City of Newberry
17 Police Department. And the reason it comes to light is
18 because of technology. 21st century technology where
19 people have these little trail cams, surveillance footage
20 systems. Both of these victims in this case, Bessie and
21 Larry, have this and that's how this crime was detected.
22 They noticed items were missing, they checked their camera
23 systems and saw an individual, and we believe it to be the
24 same individual, Mr. Sterling Maybin, on camera taking
25 items. And the first victim to report it to law

1 enforcement on April 24th that morning was Larry Hazel.
2 He lives on Boundary Street. He noticed that a chainsaw
3 was missing, checked his footage of -- the surveillance
4 camera footage and sees an individual on that footage
5 remove a chainsaw from his property right near his pickup
6 truck and that was the morning of April 24th. That was a
7 Wednesday. And this individual is a black male wearing a
8 red stocking cap. He has on kind of a burgundy maroon
9 colored type hoodie, wearing gloves and dark pants and
10 dark shoes, and sees him take his chainsaw from his truck.
11 And it's a motion sensor activated kind of camera, and
12 they're becoming more popular and they're a great
13 deterrent for crime. They really are. So that's one
14 incident. So that's what prompts Larry Hazel to call the
15 police that morning, that Wednesday morning on April 24th.
16 So Officer Janson Bell who -- with the City of Newberry
17 Police Department comes out there. He's now with the
18 Sheriff's Office in Richland County. He's the officer
19 that takes the report. Larry shows Officer Bell the
20 footage. And so, that's when the police start to do their
21 job. So they have the suspect caught on tape. The crime
22 was committed on surveillance footage. So then, Officer
23 Bell utilizes -- other people in the department help him
24 ID this suspect, and at that point he passes off the
25 surveillance footage, still shots and that kind of thing

1 of this individual and passes it on to his superiors. We
2 have Lieutenant Allison Moore, we have Captain Kevin
3 Goodman, and then we have the actual chief of police, Roy
4 McClurkin, who all looked at this surveillance footage,
5 and they're members of the community, as well, just
6 because they work here. They're also, first and foremost,
7 they're residents of this community. And so, they
8 recognize the individual on tape and they recognize it to
9 be Sterling Maybin. And so, that's initially how he's
10 ID'd. Later on that same day, April 24th, Larry continues
11 to review all of his surveillance footage and notices,
12 actually, the day before the same individual wearing,
13 essentially, the same clothing attire was on his property
14 the day before, April 23rd. He didn't know that at first.
15 He just thought it was the 24th when the chainsaw was
16 taken. But he also goes back to the previous day and sees
17 him go underneath this -- excuse me, this shed. This open
18 air shed with a cover top, and that's when weed eaters and
19 some other miscellaneous tools were taken. So he sees
20 that individual wearing, essentially, the same clothing,
21 the same build, everything. So it's the same guy as it
22 was taking the chainsaw on the 24th. So, again, they ID'd
23 that person as Sterling Maybin and they, also, again --
24 now, I'm going back -- I'm sorry. It might be confusing,
25 but I'm going to go back to the 24th. We have a second

1 victim, Bessie Mathis, who lives on Digby Avenue in the
2 City of Newberry. She so happened to have one of these
3 same surveillance camera systems. It was hooked to a tree
4 on her property and she, again, has kind of the same open
5 air, open bay garage where she kept lawn equipment. She
6 kept a weed eater. She just so happened to notice that
7 weed eater was missing, and this is just after Easter
8 weekend. She checks her surveillance footage and there's
9 a black male subject wearing the same jacket -- or not
10 necessarily the same jacket, but similar attire. Similar
11 clothing. I'm not going to say it's the exact same, but
12 again, you can kind of tell by the build, the MO, just
13 that he's targeting people who have lawn equipment
14 outdoors, but this is the same person, too. The police
15 reviews this surveillance footage once it's reported to
16 them. So all of this is kind of going on, on the same
17 day. It's all reported on the same day and Officer Janson
18 Bell was the first responding officer to take the call
19 when these reports were made. He actually locates
20 Sterling Maybin that same day and he locates him in the
21 vicinity. He's still in the jurisdiction of the City of
22 Newberry, and Sterling has on the same clothes as what's
23 depicted in Larry's surveillance footage when the chainsaw
24 was taken on the 24th. He's still wearing -- he doesn't
25 have the jacket on, but he's got a white T-shirt on,

1 wearing gloves, the same color pants, the same kind of
2 shoes, and he also has a red stocking cap -- red stocking
3 cap in his cargo pants pocket. And, again, in this
4 surveillance footage, this individual has on a red
5 stocking cap, wearing gloves, dark pants and shoes. It
6 all matches. They don't recover any of the stolen
7 property, but this is the guy. The police recognize that
8 individual from the tape as Sterling Maybin. They catch
9 him -- or they make contact with him later that day. He's
10 wearing similar clothing. And that's the case, ladies and
11 gentlemen. He's ID'd. Old fashioned -- I mean, besides
12 the surveillance footage, it's basically just, I spotted
13 him there from the surveillance, I see him out in the
14 street wearing similar clothing, I recognize that to be
15 Sterling Maybin and they make the arrest right then and
16 there. There's really not much more to it than that.
17 Technology solved this crime. And then, the police who
18 just happened to know Sterling Maybin identified him from
19 the video. So that's the evidence we're going to present
20 to you. And so, these are the things you'll have to
21 consider. And so, ultimately, we will be asking you to
22 find Mr. Maybin guilty of going into two different
23 out-buildings, so to speak. Two different open air sheds.
24 And the law defines a building as a structure where goods
25 are stored, and that's what a building is and that's where

1 he took the weed eaters from Larry and Bessie Mathis and
2 also stole some other property on a separate occasion from
3 Mr. Larry Hazel's house, the chainsaw. So all of these
4 charges stem from those incidents I just described. We're
5 just asking for a verdict that's consistent with the
6 evidence and that speaks the truth and it's our contention
7 that Mr. Maybin is the individual on the video and he is
8 the individual responsible for unlawfully taking away
9 these individuals property. Their hard earned property
10 that they paid good money for and he had no right to be
11 there on those particular dates and fortunately, the two
12 victims in this case had surveillance footage because
13 otherwise, I don't know if this crime would have ever been
14 solved, but for technology. So that's the good news in a
15 case like this. We're not asking you to pass judgment on
16 anybody's character. We're just asking you to make a
17 decision based on the evidence. We have no agenda here.
18 It's nothing political. It's just a crime has been
19 committed and we feel that we have enough evidence that
20 will leave you firmly convinced of his guilt. And so, we
21 ask you just to listen to the evidence, and we'll get to
22 speak to you again at the conclusion of this case and we
23 will ask that you return a verdict of guilty. Thank you.

24 THE COURT: All right. Solicitor, thank you. Mr.
25 Verner.

1 MR. VERNER: May it please the Court, Your Honor.

2 THE COURT: Certainly.

3 MR. VERNER: Mr. Foreman and members of the jury,
4 again, I'm Charles Verner. I'm from Newberry. I grew up
5 on College Street, was born on College Street, and maybe
6 I'm parochial. This is -- I don't understand why we're
7 here. This is absolutely a gamey trial and it's because
8 the Greenwood solicitors have come here and have chosen a
9 kind of novel definition of guilt for you to decide and
10 it's just gamesmanship, and maybe I'm parochial. Sterling
11 admitted from the beginning, I stole this stuff. He is
12 guilty of a felony larceny. You got me. From the very
13 first day they got him, he said, yeah, I stole it. It's a
14 felony larceny. We admit it. We're ready to move on.
15 The Solicitor's Office -- and I'm a lawyer here in
16 Newberry, I'm a Public Defender. When you look at
17 Newberry Observer today, I've been told -- I haven't seen
18 it, but last week was my 15th year of being a Public
19 Defender in Newberry and this is an absolutely novel case
20 to me where the Solicitor believes that outdoor storage
21 carports -- they've got no walls, but they've got a roof
22 and poles, constitutes a building for the purpose of these
23 violent burglary statutes and it is my legal position they
24 don't, that they're not buildings, they are not structures
25 as we think of them. The legislature passes the laws and

1 when they write laws, they design laws to be written in
2 the common language. You know, they used to write laws in
3 Latin and nobody understood what they were except the
4 people who wrote the laws, but they write laws in plain
5 language so we understand what the rules are. A common
6 person can read the laws and know what is forbidden. It
7 says you cannot go in a building. A building is designed
8 as a structure -- in this case, it's designed many ways.
9 A house, it can be an RV that you live in, a building that
10 they use to store goods in. Under the State's theory, if
11 you find him guilty -- and I ask you not to find him
12 guilty for just common sense reasons. I've been here 15
13 years. I would not advise a client to plead guilty if
14 this is a building, regardless of what the verdict is, I
15 submit that it is not a building. This would mean, if I
16 have a client that goes to Mollohan Park and steals
17 something off one of those picnic tables where they have
18 the outdoor cooking, they're going to charge him with
19 burglary. This means that if somebody goes to the jockey
20 lot and steals something that's for sale in one of those
21 little buildings that's got no walls on it, but it's got a
22 roof, they're going to charge him with burglary, violent
23 burglary, and that is just preposterous for somebody here
24 in Newberry. I have Googled, because we're entitled to
25 know what the laws are in plain language. And I submit to

1 you, a building is a building. If it's a building,
2 convict him. I have Googled a building -- and I'll print
3 one out for you, but all I can do right now is take a
4 screen shot of it. How does Google -- the Webster
5 dictionary, how do they define building. A structure with
6 a roof and walls such as a house, school, store or
7 factory. Synonymous with structure, construction,
8 edifice, erected, et cetera. Just going to an outdoor
9 carport that's got no walls, no enclosures and taking
10 something from there is a larceny. It is not a violent
11 burglary and this is important because the Judge is going
12 to charge you that when somebody commits a crime, they
13 have to have the criminal knowledge that what they are
14 doing is illegal." If a common person in Newberry believes
15 that an outdoor structure with no walls, a carport, is a
16 building, then I stand corrected. I just stand for the
17 proposition that in Newberry, that is not a building.
18 It's just not a building. They have overcharged him.
19 This is just gamesmanship to put as many charges on
20 somebody as they can. It's not fair. It's not right.

21 MR. DANIEL: Your Honor, that's not a proper argument
22 and I would object to that.

23 THE COURT: Well, ladies and gentlemen, of course,
24 opening arguments are not evidence. It's just what these
25 lawyers believe the evidence will show and what they

1 believe this case is about. So you may proceed.

2 MR. VERNER: Thank you, Your Honor. That's not a
3 building. That's not a building. That's not a verdict
4 because that's not a building. You know who also agrees
5 with me? The three officers back there who didn't charge
6 him with burglary. I stand for the proposition that you
7 do what is right, and a right verdict in this is guilty of
8 felony larceny. An unjust verdict is guilty of burglary.
9 It's just that simple. Thank you.

10 THE COURT: Thank you, Mr. Verner. I've got one
11 little matter that I need to tend to, ladies and
12 gentlemen. So I'm just going to ask that we go ahead and
13 take -- maybe a little early morning break and let me tend
14 to that and we'll get you back out. I don't mind, when
15 you come back out, if you want to have a bottle of water
16 with you or, I guess, there's coffee back there. I think
17 there's some soft drinks. You know, if you want to bring
18 a drink out -- don't bring any food out, but if you want
19 to bring a drink out, that's perfectly fine with me.
20 Okay. But if you'll go back in the jury room and let me
21 tend to this other matter and we'll get you back out
22 shortly. Thank you.

23 (Whereupon, the jury was excused from open court for
24 a break.)

25 (Whereupon, a short break was taken.)

1 THE COURT: Solicitor, are you all ready?

2 MR. SCOTT: Yes. We are, Your Honor.

3 THE COURT: Okay. Thank you. Let's bring the jury
4 out, please.

5 (Whereupon, the jury came into open court at
'6 approximately 11:10 a.m.)

7 THE COURT: Let the record reflect the jury is back
8 in. That kind of threw me off there. We had two empty
9 seats and --

10 JUROR: Looking for a warmer spot.

11 THE COURT: Well, unfortunately, you know, this
12 afternoon it may be warm in here. So it kind of
13 fluctuates back and forth. Solicitor, are you ready to
14 call your first witness?

15 MR. SCOTT: I am, Your Honor.

16 THE COURT: Okay.

17 MR. SCOTT: The State calls Bessie Mathis.

18 Bessie Mathis, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Scott:

22 A Bessie Mathis.

23 Q Hey, Ms. Mathis. Tell us your address. Where do you
24 live?

25 A [REDACTED] Digby Avenue, Newberry, South Carolina, 29108.

1 Q That's in Newberry County, but, specifically, that's
2 within the City of Newberry?

3 A Yes.

4 Q Okay. How long have you lived at that address?

5 A About 20 some years.

6 Q And you and I have met out there twice, have we not?

7 A Yes.

8 Q Is it fair to say you enjoy doing yard work?

9 A Yes.

10 Q Okay. And I recall, one day, it must have been close
11 to 100 degrees. You were cutting the grass wearing a jump
12 suit.

13 A Yes.

14 Q You spend a lot of time out in your yard?

15 A Yeah.

16 Q Okay. What is that? Is that your favorite pastime?

17 A Yes. Garden and flowers is my favorite pastime.

18 Q We've got -- this looks like a street view kind of
19 image, but this is State's 25. What is that a picture of?

20 A That's a picture of the garage. My garage.

21 Q Okay. That's your property?

22 A Yeah. This is my property.

23 THE COURT: Ms. Mathis, will you put that microphone
24 a little bit closer to you? Not real close, but a little
25 bit closer.

1 THE WITNESS: That's good enough?

2 MADAM COURT REPORTER: I'm going to move it in just a
3 little bit.

4 THE WITNESS: All right.

5 A Yes. That's my garage and my yard.

6 Q Okay. That building we're looking at there, what is
7 -- what do you use that building for?

8 A I use it for a garage and a shed.

9 Q Okay. And what do you keep in there?

10 A Sometimes, as you can see, my truck, and most of the
11 time, my lawnmowers and my other gardening and yard tools.

12 Q Okay. Lawnmower and what other kind of --

13 A Weed eater, pressure washer, riding mower and push
14 mower.

15 Q Okay. Any tools or anything like that?

16 A Yeah. My son has his motorcycle back there and he
17 have a whole lot of tools that -- you know, ratchet tools,
18 a grinder and we also have all the stuff that you use for
19 a yard like a chainsaw, a smaller chainsaw and stuff like
20 that.

21 Q Okay. So mostly -- may I have that? Mostly, just
22 vehicles, lawn tools and lawn equipment? Is that safe to
23 say?

24 A Yes.

25 MR. SCOTT: The State offers State's Number 25.

1 MR. VERNER: Without objection.

2 THE COURT: All right. 25 into evidence for the
3 State.

4 (Whereupon, State's Exhibit number 25 was admitted
5 into evidence).

6 Q So if we're looking at that picture on the left, that
7 building with the truck in it, that's the one you were
8 just describing that you keep all your tools --

9 A Yeah.

10 Q -- and other goods in?

11 A Yeah.

12 Q And tell us, April of this year, did you find things
13 you were looking for in there to be missing?

14 A Yes. I hadn't recognized it was missing. I was
15 cutting the grass and my son came home from work and he
16 was looking for something to work on his motorcycle and he
17 stopped me from the lawnmower and he says, Mom, somebody's
18 been stealing stuff. I said, boy, ain't nobody been
19 stealing nothing. So then, I got off the lawnmower and
20 looked under the garage and the shed and that's when I
21 said, yes, it is. Both of my weed eaters was gone. Then,
22 we looked around and different other stuff was gone. My
23 chainsaw and grinder, tools is some of the stuff.

24 Q Do you have any idea, off the top of your head, who
25 it would be?

1 A No.

2 Q Okay. So what did you and your son decide to do --
3 well, first of all, I see the gates here. They're closed.
4 Do you usually kind of try to lock those gates?

5 A No. But after the theft -- because the truck,
6 sometimes, is parked and it's blocking the gate up on this
7 (indicating). After the theft, I called the police and
8 they advised me that it might be in my best interest, you
9 know, to purchase a camera and I told my son, I said, I'm
10 not going to buy no camera. I said, because they done
11 stole everything they needed to steal. I said, they're
12 not coming back. I got up the next morning. Our pressure
13 washer was gone and some more items was gone. And so,
14 then, that's when I said, enough is enough. So my son
15 went and purchased a camera, he installed it, and then
16 that's when I secured my gate. He bought some chain and
17 some locks and locked each gate. And then, later on,
18 after the camera, my son and I checked it every weekend.
19 So at first, we didn't get nobody. Then, we checked it
20 one weekend and -- he checked it and he said, Mama, we got
21 somebody. So then, I went running upstairs and looked at
22 it on the computer and there was an individual, you know.
23 So then, I called the police and the police came and they
24 looked at it.

25 Q This is -- what road is this we're looking at your

1 house and your storage building from? What road is this?

2 A Leita.

3 Q Say again.

4 A I'm on the corner of Digby and Leita.

5 Q Leita?

6 A Yeah.

7 Q Okay. And if we're looking at the storage building
8 there, on the other side of it, is that where your camera
9 was?

10 A Yeah. The camera was on -- in my yard on the other
11 side of the --

12 Q Okay. So let me show you State's Number 4. Is that
13 kind of the angle that your camera filmed towards?

14 A Yes. Yes. This gate here (indicating) is leading
15 into my yard --

16 Q Right.

17 A -- and the camera is facing this gate right here
18 (indicating).

19 Q State's Number 4 is kind of the opposite view of your
20 storage building?

21 A Uh-huh (affirmative response).

22 Q That's looking at the building from the yard?

23 A Yeah.

24 MR. SCOTT: Okay. Your Honor, the State offers
25 State's Number 4 for admission.

1 MR. VERNER: Without objection.

2 THE COURT: Without objection, 4 for the State into
3 evidence.

4 (Whereupon, State's Exhibit number 4 was admitted
5 into evidence).

6 Q So this is just the building from the yard looking
7 out towards the road --

8 A Yeah.

9 Q So you said you found some footage. Did you -- you
10 called the police the same day that you found the video
11 footage --

12 A Yes.

13 Q -- of the person in your garage?

14 A Yes.

15 Q Bessie, this is State's Number 3. Do you recognize
16 this?

17 A Yes.

18 Q How do you recognize this?

19 A I viewed that in the office and it was of my garage
20 and shed and I initialed it because I recognize it, what I
21 give the officer.

22 Q And this is the video that your camera --

23 A Yeah.

24 Q -- filmed?

25 A Picked up.

1 Q Okay. And could you tell, when you watched the
2 video, about when it happened?

3 A No. Not really because I didn't have no date, but
4 from the time -- it happened on the weekend -- Easter
5 weekend up until that Wednesday when I called the officer.

6 Q Okay. So you reported it on April 24th?

7 A Yeah.

8 Q And Easter Sunday was April 21st?

9 A Right.

10 Q So you know it happened sometime --

11 A Sometime in between there.

12 Q Between Easter and the 24th?

13 A Yeah.

14 MR. SCOTT: Your Honor, the State's going to offer
15 Number 3 -- State's 3 for admission into evidence and
16 we're going to go ahead and publish it now.

17 MR. VERNER: That's the video?

18 MR. SCOTT: Yeah.

19 THE COURT: Any objection?

20 MR. VERNER: Without objection.

21 THE COURT: Without objection, number 3 into evidence
22 for the State.

23 (Whereupon, State's Exhibit number 3 was admitted
24 into evidence and published for the jury).

25 MR. SCOTT: It's broken up into five different clips.

1 Okay. Pause it real quick, Walter.

2 Q Bessie, do you want to -- I don't know if you want to
3 stand over here and watch it because I've got it playing
4 right here.

5 A Okay.

6 Q And speak up so everybody can hear you, if you choose
7 to talk. This is the video camera up under the palm
8 tree --

9 A It's under the palm tree.

10 Q -- and it's filming that side of your shed?

11 A Directly up under my shed.

12 Q Okay.

13 THE COURT: Solicitor, could she stand on your other
14 side? It's a little closer to the Court reporter. Thank
15 you.

16 MR. SCOTT: Okay. Walter, you can play it.

17 (Whereupon, State's Exhibit number 3 was published to
18 the jury).

19 MR. SCOTT: That particular clip didn't catch
20 anything. Next one.

21 Q Did you recognize this man?.

22 A No.

23 Q Did you give this man consent to enter your building?

24 A No.

25 MR. SCOTT: Next.

1 Q So he is now inside of your building?

2 A Yes. He is.

3 MR. SCOTT: Next. Walter, can you back it up?

4 There's some kind of icon that keeps showing up. It's
5 blocking.

6 Q He's got a backpack. Was that your backpack?

7 A No.

8 Q Okay. He came with that backpack?

9 A Apparently, because it's not mine, but I know that's
10 my weed eater because part of it is missing.

11 Q Okay. But we see him carrying off -- that was your
12 weed eater?

13 A That's my weed eater.

14 Q And did you ever get that weed eater back? "

15 A No.

16 MR. SCOTT: Let me see the last clip, Walter, please.
17 Okay. That didn't catch anything either.

18 Q Okay. But the two videos where he's in -- that was
19 what your game camera caught?

20 A Yeah.

21 Q Okay. You can take a seat. Okay. So what did you
22 find to be missing besides the weed wacker?

23 A Well, some tools, the grinder and stuff like that.

24 Q Okay. But as far as the video capturing anything
25 being stolen, the only thing the video captured was the

1 weed wacker being taken?

2 A The weed wacker, but, you know, the backpack was full
3 and my son had some ratchet sets with a whole lot of
4 wrenches because he works on his lawnmower. Not his
5 lawnmower, but his motorcycle, up under there. So that's
6 the stuff I'm missing and he can't find his socket
7 wrenches and stuff. So -- but that weed eater is
8 definitely mine.

9 Q Let me show you just another -- this is State's
10 Number 9. Is that just another picture of the building?

11 A Yeah. Yes.

12 Q All right. And then, State's Number 5, why is that
13 picture relevant?

14 A That's a picture of my building entrance from the
15 road.

16 Q Okay. Is that the gate we first see him at?

17 A Yeah. I think from this picture here, that had to be
18 the gate that he came across because that's entering into
19 my garage from the road.

20 MR. SCOTT: Okay. The State, Your Honor, offers
21 number 9 and number 5 for admission.

22 MR. VERNER: Again, without objection.

23 THE COURT: Without objection, 9 and 5 for the State
24 into evidence.

25 (Whereupon, State's Exhibit numbers 5 and 9 were

1 admitted into evidence).

2 MR. SCOTT: Okay. Let me -- let's have Number 5,
3 Walter, please.

4 (Whereupon, State's Exhibit number 5 was published to
5 the jury).

6 Q So you were saying this gate, that was where -- when
7 we first see him walk up to the building, that low portion
8 of the gate is where he's standing?

9 A Uh-huh (affirmative response).

10 Q Okay. And let me ask, the weed wacker and the
11 ratchet set that were missing, those were stored in that
12 building?

13 A Yes.

14 Q Okay. Not on the outside of the building?

15 A No.

16 Q -- under the cover of the building? Okay. And was
17 this the officer -- Officer Weaver, is he the one who came
18 out --

19 A Yes.

20 Q -- and took your report?

21 A He's the officer that came out.

22 Q And you told him what had happened and showed him the
23 video?

24 A Yes.

25 Q Did you give him a copy of the video?

1 A Yes. I did.

2 Q Why do you have this storage building? What's the
3 purpose of it? To keep your tools and your lawn?

4 A To keep my garden tools, my yard tools and sometimes,
5 when I don't fill it up, I park the truck up under there.
6 But most of the time, we have, you know, stuff stored up
7 under there like the weed eater and my riding lawn mower
8 and my push mower and all the stuff -- my hose and
9 shovels, everything that pertains to do yard work with.

10 Q For storage?

11 A Yeah. For storage.

12 Q And do these things that were taken have value to
13 you?

14 A Yes.

15 Q Do you know about how much you had to pay to replace
16 these items?

17 A Well, with the total items that was missing from my
18 home, it would come to \$2,000.00 and something dollars.

19 Q And have you even been able to replace all of them?

20 A No.

21 MR. SCOTT: All right. Ms. Mathis, answer any
22 questions Mr. Verner has for you, please.

23 CROSS-EXAMINATION

24 By Mr. Verner:

25 Q Good morning, Ms. Mathis.

- 1 A Good morning.
- 2 Q This is like a deer camera?
- 3 A Yeah.
- 4 Q Kind of like a box video?
- 5 A Yeah.
- 6 Q And you just mounted it on the tree?
- 7 A Yeah.
- 8 Q Okay. It stores the pictures of the video on like a
9 little disc? A little small --
- 10 A A little small disc that you put into the computer.
- 11 Q So it doesn't report to you when something happens?
12 You have to kind of look through it every once in a while?
- 13 A Yeah. We make it a habit of trying to check it
14 every -- at the end of the weekend.
- 15 Q If something sets it off, does it have like a
16 blinking light?
- 17 A It'll have a red blinking light if you set it off.
- 18 Q So if you look at it and the light's not blinking,
19 you know that nothing is really on it, but if the blinking
20 light is on it, it means it captured something?
- 21 A Well, usually, I have noticed, when I go cross it,
22 there's a blink. Like it'll catch me and it'll blink.
- 23 Q Okay. Well, I mean, it could be a lot of things, but
24 typically --
- 25 A Yeah.

1 Q When it records, it starts blinking so you'll know
2 later on to look at it?

3 A Uh-huh (affirmative response).

4 Q And then, if you don't see anything on it, you just
5 kind of move on? You hit the button showing you checked
6 it and it starts over, I guess?

7 A No. I just make it -- we make it a habit of just
8 checking it every end of the week. Like from that week to
9 the weekend.

10 Q Yes, ma'am. The stuff that was stolen out of your
11 carport -- is it fair to say that some people call it a
12 carport?

13 A Yeah. Some people call it a carport.

14 Q Okay. And you typically keep either your truck or
15 your son's motorcycle or your outdoor tools out there?

16 A Yeah.

17 Q And you?

18 A But mostly, I keep my outdoor tools and my lawn mower
19 because like I said, I fill it up and I can't get the
20 truck up under there.

21 Q Pretty much anything that you keep outside that you
22 don't want to get rained on directly?

23 A Yes.

24 Q Okay. Now, you've seen -- what we've played for the
25 jury -- or what the Prosecutor and you played for the jury

1 just a second ago, is that all of the video from your deer
2 camera?

3 A Yeah. That's all the video from my deer camera.

4 Q That you know of pertaining to this?

5 A Yeah.

6 Q And just so I -- what part of Newberry do you live
7 in, again?

8 A I live in Digby Avenue --

9 Q Digby?

10 A -- over by the new tennis court they built.

11 Q Okay. So that's going towards the Oakland Mill?

12 A That's right.

13 Q Okay. And there used to be a baseball field there,
14 but they put tennis courts?

15 A Yeah. In the park.

16 Q So it's over in the Oakland Mill area?

17 A Yes.

18 Q And on the video, what do you see clearly identified
19 of yours that's been taken?

20 A The weed eater.

21 Q Okay. Without a doubt, you see the weed eater in the
22 man's hand?

23 A Yes.

24 Q Okay. On the video, does it show him taking anything
25 else out of there?

1 A No. But on the video that I watched, it shows him
2 walking around up under my garage like he may be looking
3 for something very comfortable and I can see him -- on the
4 video, you can see him when he crossed the gate, which was
5 locked with a chain, with my weed eater.

6 Q Now, I don't -- when these things -- when these deer
7 cameras first start filming, do they just shoot like a
8 five second clip or do they keep shooting as long as there
9 is motion?

10 A Well, from the look of the video, I think it kept
11 shooting as long as there was motion up under there.

12 Q As long as there's something in front of it?

13 A Yeah.

14 Q So it could be 20 seconds or 10 seconds --

15 A Yeah.

16 Q Just depending on how much movement it sees?

17 A Yeah.

18 Q Okay. It just doesn't do like five seconds at a time
19 or anything?

20 A No. It don't seem to do that.

21 Q Okay. Do you keep anything that you sell? Do you
22 sell anything out of that --

23 A No.

24 Q -- storage unit? Okay. Is it attached to your
25 house at all?

1 A No.

2 Q Okay. It doesn't have doors, does it? I know you've
3 got fences on both sides of it, but does it have doors?

4 A No. But it have gates, which I had chained up --

5 Q Right.

6 A -- after the theft.

7 Q Which is what we're looking at right now, Ms. Mathis?

8 A Yeah.

9 Q These -- by talking about the gate, you're talking
10 about this fence?

11 A Yeah. That gates to the garage.

12 Q The chain link fence?

13 A I mean, the fence and the garage and the shed, it
14 got --

15 Q Right. But that --

16 A Each one have a door to it.

17 Q It's got the gates?

18 A Yeah. The gates.

19 Q But that fence runs around your whole yard, right?

20 A Yeah.

21 Q Okay. And so, you know for a fact the man who took
22 something, he took, at least, a weed eater that day,
23 right?

24 A Yeah.

25 Q Can you see anything else taken? You know other

1 stuff was missing?

2 A I know other stuff was missing, but I couldn't see
3 him picking it up, but I saw other stuff was missing
4 and --

5 Q That's just my question.

6 A -- I could see him looking around, you know, but all
7 I could see him with is the weed eater.

8 Q You clearly see him leaving with the weed eater?

9 A That's right.

10 Q Can you ballpark for me, Ms. Mathis -- I know you've
11 got other stuff missing, too. Some other outdoor stuff
12 that your son talked to you about?

13 A Uh-huh (affirmative response).

14 Q The ballpark -- what period of time do you think --
15 when was the last time you think you would have been in
16 the carport to have noticed that stuff? Over what period
17 of time was it taken? Like within a matter of days or
18 weeks?

19 A Well, the first time I had the theft, it was taken
20 back to back. Like it was taken, maybe, on a Wednesday --
21 or the last time, it was taken on a Thursday. He came
22 back to back and got the pressure washer and that's when I
23 cameraed up and after that, maybe, a week or so -- it
24 might have been a couple of days or so. Nothing was
25 missing, but then, you know, we kept looking at footage

1 and we could see animals in the yard and my son could see
2 me walking through the yard. But this is the first time
3 that we've seen somebody up under the -- in the yard up
4 under the shed and garage.

5 Q And I think you told us when the pressure washer was
6 taken, that's when you said, this is the last straw, I'm
7 putting up -- I'm letting my son put up a deer camera?

8 A That's right.

9 Q But you don't know -- I understand that you clearly
10 have suspicions, but do you know who stole your pressure
11 washer?

12 A No. But I know who stole my weed eater. That person
13 on the camera.

14 Q Right. And that leads you to think, he's probably
15 also the same guy who took my pressure washer?

16 A Well, if he came and stole that time, I have -- I
17 can't prove that he stole --

18 Q Right.

19 A -- the other two, but something led him back for the
20 last theft.

21 Q I agree with you. It's reasonable -- a reasonable
22 person would assume that somebody who took something from
23 me the second time could have taken something from me the
24 first time.

25 A That's right.

1 Q That's the first person I'd look at, right?

2 A Right.

3 Q But I'm just -- as far as who took your pressure
4 washer and when, we really don't know?

5 A Well, whenever the police report -- I called the
6 police the first time I had the theft. The first time I
7 had the theft, I notified -- called the police department.

8 Q Right.

9 A It's been a while back. So I can't tell you what
10 date, but if they have the police report, they know when
11 the first theft occurred at my house. I called the police
12 and now, I can't recall whether I called them the second
13 time, but I know the second time, after the pressure
14 washer was, I said, well, they keep coming back, I've got
15 to do something. So that's when I purchased the camera.

16 Q Okay. How long do you think you had the camera
17 before April 24th? How long had it been up there?

18 A Maybe, a couple of weeks.

19 Q Okay. So the pressure washer was taken a couple of
20 weeks?

21 A Probably.

22 Q Possibly, a month?

23 A It might have been.

24 Q Okay. And that's when you had the other thefts?

25 A Uh-huh (affirmative response).

1 MADAM COURT REPORTER: Is that a yes?

2 THE WITNESS: Yes, ma'am.

3 MADAM COURT REPORTER: Is that a yes or a no?

4 THE WITNESS: Yes.

5 Q Okay. Well, I'm sorry you're here today, Ms. Mathis,
6 for this, but we appreciate it. If the prosecutor has
7 any.

8 MR. SCOTT: No, Your Honor. Thank you, Ms. Mathis.

9 THE COURT: You can step down, ma'am.

10 (Whereupon, the witness steps down from the witness
11 stand).

12 THE COURT: Solicitor, your next witness.

13 MR. DANIEL: Your Honor, the State calls Officer
14 Justin Weaver.

15 JUSTIN WEAVER, being
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Daniel:

19 A My name is Justin Weaver.

20 Q You're Officer Justin Weaver with the City of
21 Newberry Police Department, correct?

22 A Yes, sir.

23 Q How long have you been employed with that agency?

24 A Fourteen years.

25 Q Okay. All right. So four months ago, roughly, April

1 24th, were you on-duty that day?

2 A I was.

3 Q Did you have a chance to respond to a call that
4 originated from [REDACTED] Digby Avenue?

5 A Yes, sir.

6 Q And what was the nature of that call?

7 A We received a call from Ms. Bessie Mathis about a
8 theft from her garage.

9 Q And Bessie Mathis is the lady who just testified,
10 correct?

11 A Yes, sir.

12 Q And what time did you arrive at her house that day?

13 A I arrived at her house at, approximately, 1:32 in the
14 afternoon.

15 Q And the photos that were just admitted into evidence,
16 you recognized all of those photos, correct?

17 A Yes, sir.

18 Q And what was reported stolen?

19 A I believe it was her weed eater and a battery
20 charger.

21 Q And where, specifically, did -- where were these
22 reported taken from on the premises?

23 A From Ms. Mathis' garage.

24 Q So they were stored underneath the garage?

25 A Yes, sir.

- 1 Q And we saw photos of that earlier, correct?
- 2 A Yes, sir.
- 3 Q Did you -- were there previous reports from that
- 4 location of thefts?
- 5 A Yes, sir. I believe there were.
- 6 Q Okay. So you did have reports on-file where other
- 7 thefts had been reported by Ms. Bessie Mathis?
- 8 A Yes, sir.
- 9 Q And so, about 1:00 p.m., you respond on April 24th.
- 10 Did you have an idea of who the suspect was behind these
- 11 thefts at that time?
- 12 A Not at that time. No, sir.
- 13 Q And did you review surveillance footage from Ms.
- 14 Bessie Mathis' house?
- 15 A I did.
- 16 Q And that was the tape we just viewed, correct?
- 17 A Yes, sir.
- 18 Q And at the time, did you pass that information along
- 19 to investigators?
- 20 A I believe the video was relayed to them later on that
- 21 afternoon. Yes, sir.
- 22 Q Did you recognize that individual on the surveillance
- 23 system?
- 24 A I did not, at the time I viewed it. No, sir.
- 25 Q Were other -- were you aware if any other members of

1 the police department were aware of who that individual
2 was?

3 A I'm not sure.

4 Q That would have been passed along to investigators,
5 correct?

6 A Yes, sir. Later that afternoon.

7 MR. DANIEL: Thank you, Officer. Nothing further.

8 THE COURT: Verner, any cross-examination?

9 MR. VERNER: Just a couple.

10 CROSS-EXAMINATION

11 By Mr. Verner:

12 Q The house is in the Oakland community?

13 A Yes, sir.

14 Q And is it fair to say that there's a lot of walk
15 through traffic through Oakland?

16 A Yes, sir.

17 Q Okay. Because there are large apartment complexes
18 between downtown Newberry and Oakland, right?

19 A There are some apartment complexes in the area. Yes,
20 sir.

21 Q There's the Grant Housing Authority?

22 A Yes, sir.

23 Q And then, what's the apartment -- the little
24 apartment complex behind the little gas station on Kendall
25 Road?

1 A I believe you're referring to College Park
2 Apartments.

3 Q College Park. And then, Nance Forest is kind of on
4 the Western side?

5 A Yes, sir.

6 Q Okay. So it's fair to say that there's a good bit of
7 traffic -- foot traffic and other traffic going through
8 there from that part of town -- this part of town?

9 A Yes, sir.

10 MR. VERNER: Thank you, Officer Weaver.

11 THE COURT: Anything on redirect?

12 MR. DANIEL: No, Your Honor.

13 THE COURT: You can step down, sir. Thank you.

14 THE WITNESS: Thank you.

15 (Whereupon, the witness steps down from the witness
16 stand).

17 THE COURT: Next witness.

18 MR. SCOTT: The State calls Larry Hazel.

19 LARRY HAZEL, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Scott:

23 Q State your name.

24 A Larry Hazel.

25 Q Mr. Hazel, where do you live?

1 A [REDACTED] Boundary Street, Newberry.

2 Q Boundary Street?

3 A Boundary.

4 Q Okay. That's in Newberry County. Is that also
5 within the city limits of Newberry?

6 A Right.

7 Q How long have you lived at that address?

8 MR. VERNER: Mr. Hazel's going to have to speak up a
9 little bit. I can't hear.

10 MADAM COURT REPORTER: Just talk --

11 THE COURT: Make sure to speak up a little bit, sir.

12 THE WITNESS: Okay.

13 A I've lived there about 50 years.

14 Q Fifteen?

15 A Fifty.

16 Q Fifty years. Okay. Do you remember April 24th of
17 this year?

18 A Yes. I do.

19 Q Okay. You heard Ms. Mathis testify. Did you have
20 kind of a video surveillance system installed, as well?

21 A Yes. I do.

22 Q What made you put that up?

23 A Well, this has been going on for a while with me. I
24 really got it -- I was ready to throw my hands up in the
25 air and ready to give up on this and my wife talked me

1 into going to get a surveillance -- surveillance, I can't
2 even say it, security. So I put it up as the last resort.
3 And on that particular morning, I had got up, I had been
4 sore because I've got a hip replacement, a bad disc, but I
5 sat down and I fell asleep in the chair and when I awoke
6 that morning, I said, I'm going to check my computer for
7 any mail that I might have got. And as I checked it, I
8 said, well, I'm going to check the camera, and that's when
9 I seen the gentleman walking off with the chainsaw and we
10 called the police force.

11 Q Okay. So what do you mean, you got the camera as a
12 last resort? Had stuff been going missing for a while or
13 something?

14 A It's been going on for a while.

15 Q Did you have any idea who was taking your stuff?

16 A I had no idea.

17 Q So the idea is, you're going to get a video camera to
18 hopefully catch who's doing it?

19 A That was the idea.

20 Q And so, did you realize your chainsaw was missing
21 before you watched the video or did you only discover it
22 was missing after watching the video?

23 A Only discovered that one was missing after the video.

24 Q Okay. And could you tell -- April 24th is when you
25 called the police, correct?

1 A Right.

2 Q Could you tell when that video was filmed of him
3 taking the chainsaw?

4 A Yeah. We had video.

5 Q Okay. When was that video captured?

6 A That was that morning on the 24th. That particular
7 one.

8 Q Okay. So that -- the first video of him taking the
9 chainsaw happened that day on April 24th?

10 A Right.

11 Q Let me show you -- first of all, let me go through
12 this. What is -- I've got State's 26, State's 6 and
13 State's 7. First of all, in regard to State's 26, what is
14 that a picture of?

15 A This is a picture of my house and the vehicle was in
16 my storage building.

17 Q Okay. And that's looking at your house and the
18 storage building from Boundary Road?

19 A From Boundary Street.

20 Q Okay. Boundary Street?

21 A Yeah. The road.

22 MR. SCOTT: All right. The State offers Number 26
23 for admission.

24 MR. VERNER: Without objection.

25 THE COURT: Without objection, 26 for the State into

1 evidence.

2 (Whereupon, State's Exhibit number 26 was admitted
3 into evidence).

4 Q Okay. Now, can you see from there, point to your
5 house on here.

6 A Right here, (indicating).

7 Q All right. You're pointing to the house on the
8 right, correct?

9 A Right.

10 Q All right. Just for the record, he's pointing to the
11 home on the right that's identified as his home. All
12 right. The storage building that you had different goods
13 missing from, can you point to that building?

14 A That would be in this area right here, (indicating).

15 Q Okay. Let the record show, he's pointing to the
16 white roofed building in between the two residences in the
17 picture. Okay. State's Number 6 and 7. What are these
18 pictures of?

19 A My storage building.

20 Q Okay. And these are just close up pictures of the
21 structure you've identified in State's Number 26?

22 A Right.

23 MR. SCOTT: Your Honor, the State offers State's 6
24 and 7 for admission.

25 MR. VERNER: Without objection to both.

1 THE COURT: All right. Without objection, 6 and 7
2 for the State.

3 (Whereupon, State's Exhibit numbers 6 and 7 were
4 admitted into evidence).

5 Q All right. This is State's Number 6. Okay.

6 MR. SCOTT: Can you blow that up a little bit,
7 Walter?

8 Q Well, this is the storage building that you pointed
9 out in the last picture?

10 A That's right.

11 Q All right. And what kind of goods do you store in
12 this building?

13 A Well, I mean, all sorts of construction, masonry and
14 small landscaping property. When I come in from the day,
15 I usually -- sometimes, I unload the truck and I store
16 some tools in there.

17 Q Okay. So tools, you said landscaping equipment and I
18 see a boat in there.

19 A Yes.

20 Q What else? Tools, landscaping equipment and what
21 other goods do you keep in there?

22 A Well, I've got tools that I work with on equipment
23 and things like that. I have my Shop Vac, air compressor
24 and just all sorts of tools. I mean, tools to work in the
25 yard, I have lawnmowers, I have weed eaters, I have pick

1 shovels in there. Everything I work with. I have my
2 masonry tools, I have my -- I have some battery operated
3 tools that I work with.

4 Q Okay. Are these goods valuable to you?

5 A That's my living.

6 Q Okay. What do you do for a living?

7 A I do masonry and construction and things like that.
8 I do some carpentry, small landscaping. I have a few
9 yards that I cut.

10 Q Okay. So the goods you store in this building, you
11 use as part of your profession?

12 A That's right.

13 MR. SCOTT: Let me see -- Walter, just publish
14 State's Number 7 real quick.

15 (Whereupon, State's number 7 was published for the
16 jury).

17 Q On State's 7 -- okay. This is just -- what is this?
18 A different angle of your building there?

19 A That's right.

20 Q It doesn't have walls on it, does it?

21 A No. It's next to my -- it's next to where my shed
22 is. The wires and the air comes from my shed are all up
23 in there.

24 Q Okay. But we're not saying this building has any
25 walls, are we?

1 A No.

2 Q But we are saying that you store your goods in it?

3 A Right.

4 Q Okay. You can sit back up on the stand. Let me show
5 you State's Number 1. Do you recognize this?

6 A Yes. This is a video with my initials on it.

7 Q Okay. And that's the video captured from which
8 incident?

9 A This is on the 24th.

10 Q Okay. That's the first video you found of him taking
11 the chainsaw, you mentioned?

12 A That's right.

13 MR. SCOTT: The State offers State's Number 1 for
14 admission into evidence.

15 MR. VERNER: Without objection.

16 THE COURT: Without objection, 1 for the State.

17 (Whereupon, State's Exhibit number 1 was admitted
18 into evidence).

19 MR. SCOTT: Go ahead and publish it.

20 (Whereupon, State's Exhibit number 1 was published
21 for the jury).

22 Q All right. This individual, do you recognize this
23 person?

24 A I didn't recognize him. No.

25 Q Okay. Did you give him consent to take your

1 chainsaw?

2 A No.

3 MR. SCOTT: Walter, go ahead and play Number 3 for us
4 real quick).

5 (Whereupon, State's Exhibit number 3 was published
6 for the jury).

7 MR. SCOTT: That's a duplicate, I think.

8 Q Okay. That particular angle -- this camera we're
9 looking at, where is it mounted, Larry?

10 A This is inside of the shed itself.

11 Q Okay. That last angle we looked at was from inside
12 the shed?

13 A Right.

14 Q Okay. And this is your boat that we see from the
15 other pictures?

16 A Right.

17 MR. SCOTT: Pause it, Walter.

18 Q Okay. This is kind of a good angle. I see a
19 trolling motor, a boat. What's some of the other goods
20 you've got stored up under here?

21 A Well, I mean, I've just got to have for my work. I
22 have got tools in this bucket, all up through here I have
23 got tools laying there. This here is a bucket and it is
24 full of tools, I work on my equipment. You can see my air
25 compressor. Here is a bucket full of half inch drive

1 tools when I just want to work on my equipment. I've got
2 some screws laying here. I've got -- it's not there now.
3 I had a brand new Husqvarna sitting right here.

4 Q This building we're looking at here, this storage
5 building, what is that?

6 A It's for my lawnmowers and things like that.

7 Q What that's building?

8 A It's just an added part of this. It's just a part of
9 my shop. I store more tools in there and I have another
10 air compressor inside of there, this one here. I'm
11 working in there, working out.

12 Q All right. So you -- did you show -- I think his
13 name is Janson Bell. He's the officer that came out to
14 interview you. Is that right?

15 A Right.

16 Q And so, did you show him this video?

17 A Yes. I did.

18 Q All right. And then, did he leave after taking that
19 report?

20 A He did leave. We went back in and checked our view
21 to this computer -- I mean, to this surveillance and
22 that's when we found -- I called him back and said we had
23 something on the 23rd.

24 Q Okay. So he takes your report of the chainsaw
25 incident on the 24th and he leaves to go back to the

1 station. After he left, you went back to check further
2 videos and you found one from the 23rd, the day before?

3 A Right. The day before.

4 Q Okay. And what did you see on that video?

5 A I remember him taking the --

6 THE COURT: Solicitor, could you -- unless he needs
7 to point at the pictured video, can he come back to the
8 stand or he needs to speak up if you're going to stand
9 away from the microphone.

10 A I remember him taking the -- on the 23rd, he took my
11 half inch drive tools, which had a half inch impact in it
12 and laid it down into the bucket. And, basically, I'd
13 have to look at the video to remember. I'm nervous right
14 now.

15 Q Well, how can I help you with that? Do you want some
16 water or anything?

17 A I'm fine.

18 Q All right. Well, let me show you -- the video you're
19 describing happened on April 23rd. Let me show you
20 State's number 2, Larry. Do you recognize this?

21 A Yes.

22 Q What's that?

23 A That's the video from the 23rd and I've got my
24 initials on it.

25 MR. SCOTT: The State offers State's number 2 for

1 admission into evidence, Your Honor.

2 MR. VERNER: Without objection.

3 THE COURT: Okay. Number 2 into evidence.

4 (Whereupon, State's Exhibit number 2 was admitted
5 into evidence).

6 Q And it's broken up into a number of clips. Is that
7 right?

8 A Right.

9 Q And so, do you recognize this person here? Is that
10 somebody you gave consent to be on your property?

11 A No. It's not. At this point, he's checking my
12 neighbor's house out.

13 Q That's your neighbor's home right there?

14 A Yeah.

15 MR. SCOTT: That's a duplicate. Next one, Walter,
16 please.

17 A I do remember, on the 23rd is when he pushed my
18 Husqvarna out of the front yard with my gas can.

19 Q What kind of Husqvarna?

20 A And tools.

21 Q You're talking about the push weed eater?

22 A It was a brand new one. I had just bought a brand
23 new Husqvarna weed wacker, a push. You can see my
24 Husqvarna on the end there.

25 Q Now, is he inside of your building or is he on the

1 outside of your building in this picture?

2 A He's inside of my building.

3 Q Did you give him consent to enter your building?

4 A No. I did not.

5 Q What is that bucket he's taking away? What's in
6 there?

7 A That's my half inch drive set of sockets and my
8 impact driver and I have a chisel hammer that I use for my
9 masonry work in there. And I have some, I had one, in
10 that particular bucket, I had one battery operated impact
11 driver, Dewalt.

12 Q That bucket of tools that he took that day, did you
13 ever get any of those back?

14 A No.

15 Q Did that chainsaw go missing, too?

16 A Yeah.

17 Q So two chainsaws, he got from you?

18 A All together, I had three chainsaws missing.

19 Q Okay. What is that he's in right there at the bottom
20 right?

21 A That's my freezer.

22 Q Is that the Husqvarna weed wacker you were describing
23 earlier?

24 A Yes, sir.

25 Q That backpack he's wearing, did he get that from you?

1 Is that backpack your property?

2 A No. No. The backpack isn't.

3 Q Okay. So he came with the backpack? He didn't get
4 that from you?

5 A Right. He came with it.

6 Q Okay. You can have a seat. Mr. Hazel, you can have
7 a seat back up there. Okay. So after you reviewed that,
8 you called Officer Bell back out to the scene to show him
9 that video, as well?

10 A Yes. I sure did.

11 Q And -- okay. Why do you have that storage building
12 on your property? What's the purpose of it?

13 A Well, I need it when I come in from work to store my
14 tools in there.

15 Q You store items that are valuable to you in that
16 building?

17 A Yeah. Yes, sir.

18 Q Okay. So this video of him taking the chainsaw
19 around the pickup truck was the 24th, and then those last
20 series of videos we just watched was from April 23rd?

21 A That's right.

22 MR. SCOTT: All right. Answer any questions Mr.
23 Verner has for you, please.

24 CROSS-EXAMINATION

25 By Mr. Verner:

1 Q Good morning, Mr. Hazel.

2 A How are you doing?

3 Q I think you told us you live on Boundary Street?

4 A Yes, sir.

5 Q Okay. I don't mean -- but just roughly, do you live
6 near the Boundary Street school or in what general area?

7 A I am, between the two schools.

8 Q Between Boundary and Gallman?

9 A Right.

10 Q Okay. So is it just -- is it over the Drayton Street
11 railroad tracks?

12 A Right. It's a little bridge over the railroad tracks
13 on the left.

14 Q So I would have to pass what's now the Magistrate's
15 Office, the Westview area, and go over that bridge and go
16 over the railroad tracks?

17 A You'd have to cross Nance Street.

18 Q Okay. And then, it's just a couple of blocks --

19 A Right.

20 Q -- down that way? Okay. So it's closer to the old
21 Gallman School than Boundary?

22 A Well, it's about a block. It would be the second
23 house on the left as you're coming over the bridge.

24 Q And that -- sometimes, people in Newberry call that
25 either West End or the Drayton Street area?

1 A Drayton is on down to the next red light.

2 Q Okay. Is it fair to say that the carport we're
3 talking about has no walls?

4 A Correct.

5 Q Okay. I guess, do you use extension cords for the
6 power, to get power in there?

7 A No.

8 Q How is it --

9 A I've got receptacles all the way around in the
10 building.

11 Q And did you put those in?

12 A I had them put in.

13 Q Okay. And it's near what appears to be an enclosed
14 storage shed?

15 A Do what now?

16 Q The carport's right next to -- within a couple of
17 feet of another storage shed?

18 A Maybe, a foot. The doors opens up into the storage.

19 Q And you saw the video just like the rest of us a
20 second ago, right?

21 A I'm sorry. I didn't understand you.

22 Q You, again, watched the video just a second ago, too.
23 It appears that man attempted to try to get in your
24 storage shed, too?

25 A Correct.

1 Q In fact, to me, it looks like he tried to put
2 something in the deadbolt lock or something to jimmy the
3 lock?

4 A Correct.

5 Q And then, he also -- you can see him looking through
6 your window that you have in there?

7 A I saw that. Yeah.

8 Q Okay. But you keep that building locked, right?

9 A I do now.

10 Q Well, it appeared you did on that day, too, because
11 you can see the man turning the lock.

12 A Yeah.

13 Q Okay. Well, was anything stolen out of that
14 building?

15 A Not this time.

16 Q Okay. And you've told me -- or you told everybody
17 that you've been having some thefts in your yard. You
18 said it's been going on for long enough or some period of
19 time?

20 A (Nods head.)

21 THE COURT: Verbal answer, please, sir.

22 A Yeah. For a month or so.

23 Q For a month or months or years?

24 A A couple of months.

25 Q Okay. Now, do you have two different video cameras?

1 Because we saw two -- one that was a video camera kind of
2 pointing towards your neighbor's yard. And then, there's
3 clearly a video camera underneath your shed.

4 A I had one security that has got three cameras.

5 Q Okay. So you've got three separate video cameras?

6 A Right.

7 Q Okay. In different locations?

8 A Right.

9 Q Okay. One of them points out towards your neighbor's
10 driveway?

11 A Right.

12 Q One of them points almost straight down underneath
13 your shed?

14 A Right.

15 Q And then, where's the third?

16 A It's not -- it wasn't on at the time. It's in the
17 front yard.

18 Q So really, you've got two cameras for this particular
19 part of your property?

20 A At that time, I had two working.

21 Q Okay. And unlike Ms. Mathis, these aren't like deer
22 cameras. These are actually like Wifi cameras or
23 something because they're sending videos to your computer?

24 A Right. It will, the telephone, too, but I don't -- I
25 didn't have a Smartphone at the time.

1 Q But these are actually like little cameras you go and
2 they'll send you videos directly to your Wifi or your
3 computer. So these are -- okay, a different kind than Ms.
4 Mathis talked about having? These aren't like deer
5 cameras?

6 A No.

7 Q Okay. Do you keep -- and it's fair to say, like Ms.
8 Mathis, what you keep under the carport are items you use
9 outside for the most part?

10 A Right.

11 Q It appeared that that was a Jon boat or a fishing --

12 A No. It's a bass boat.

13 Q Okay. A fishing -- it's not a house boat, it's a
14 fishing boat?

15 A Right.

16 Q Okay. And your carport is not attached to your
17 house, right?

18 A No.

19 Q Okay. Do you keep any kind of goods that you sell
20 underneath the carport?

21 A No.

22 Q I know you keep trade tools, but do you keep any kind
23 of mercantile items that you sell underneath the --

24 A No.

25 Q Okay. And your house, as I remember it --

1 MR. VERNER: Can we have, Mr. Bentley, the photograph
2 that we first saw of his house and the garage? That's
3 possibly 26. No. The house --

4 MR. SCOTT: It's 26.

5 Q Okay. And if you need to step down and look at it --
6 is this a picture that one of the police officers took or
7 you took later on?

8 A This is a -- I believe the police officer took this
9 one.

10 Q Okay. The same day?

11 A I don't know when.

12 Q Okay. Would he have been standing in the street to
13 take this picture?

14 A There's a road that would be right here,
15 (indicating).

16 Q Okay. So, I mean, whoever took this picture would be
17 standing in the street looking towards your property?

18 A Yeah.

19 Q Okay. And you've also -- you've got porches that are
20 covered too? You've got a roof over your porch?

21 A Do I have a roof over my porch?

22 Q I see you've got a front porch and a side porch.

23 A Yeah. I've got a roof over it.

24 Q Okay. They're open, but they do have roofs?

25 A Right.

1 Q And you keep items under the porch? You don't keep
2 chairs or --

3 A That's just my wife's. Whatever she keeps under
4 there.

5 MR. VERNER: Okay. Thank you, Mr. Hazel. You can
6 sit down and I think that's it, but let me double check,
7 Your Honor.

8 THE COURT: Sure. Take your time.

9 Q Watching the video that you have, Mr. Hazel, it
10 appears that the guy clearly takes away your push weed
11 eater?

12 A He did take it.

13 Q Okay. How much was that -- and you said it was
14 fairly new, right?

15 A I'm sorry?

16 Q You said it was fairly new to you?

17 A Yeah.

18 Q Do you remember how much you paid for it?

19 A It was about \$300.00 bucks from Lowes.

20 Q Okay. And we know we can see him taking that bucket,
21 the masonry bucket, the plastic bucket, in which you had a
22 drill?

23 A It was an impact driver.

24 Q Which is like a drill?

25 A Well, it works off air. It takes the lugs off of

1 cars.

2 Q Okay. And does it come with like bits or separate
3 pieces to it that you have to change out?

4 A You put the sockets on the end of it.

5 Q Okay. So it does come with sockets?

6 A Well, I had half-inch sockets in there, half-inch
7 drive.

8 Q What's, roughly, the value of the driver and sockets,
9 if I had to go to Lowes?

10 A Between \$400.00 and \$500.00 dollars.

11 Q Okay. And then, what else can you clearly see that
12 was taken that day?

13 A I think back but my mind is going blank. But I had a
14 DeWalt.

15 Q A DeWalt what?

16 A The little impact driver.

17 Q Also, the same kind of --

18 A It was in the bucket and I had the chisel hammer that
19 I use in my masonry.

20 Q All total -- all the stuff that you know that was
21 taken that day, what would be the value of it, roughly, if
22 I had to go to Lowes and replace that stuff?

23 A Well, from what got gone that day, I'd say over
24 \$2,000.00 dollars.

25 Q About \$2,000.00 or more?

1 A Over.

2 Q The big one would be the \$400.00 dollars for the bush
3 hog and \$400 for the --

4 A Well, the DeWalt impact driver is \$300 bucks.

5 Q And there were two of them taken?

6 A I got them at Lowes.

7 Q There was two of them taken?

8 A No. That particular one in that bucket was the one
9 that day.

10 Q And you told me it was worth about \$400.00 dollars?

11 A No, they are \$300.00.

12 Q \$300.00 and we know that --

13 A And the chisel hammer is probably about \$80 bucks.

14 Q Okay. So that's \$400, plus the \$400 for the -- and
15 then, about \$1,000.00 worth of other small tools, right?

16 A Said, overall, it's over \$2,000.00. I don't know,
17 roughly. I can add it all up for you.

18 Q But the two big items for you would be the --

19 A The two biggest items would be the Husqvarna, the
20 impact driver and the DeWalt would probably cost the most.
21 The tools itself, all of them together, would probably
22 run, you know, over \$300 bucks.

23 Q Okay. So somewhere in the area, maybe, slightly
24 lower or, maybe, slightly above, but in the \$2,000.00
25 dollar estimate range?

1 A I believe it's over \$2,000.00.

2 MR. VERNER: Okay. Well, I'm sorry you're here
3 today, but I appreciate you for answering. If he's got
4 any followup questions.

5 THE COURT: Solicitor?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Thank you. You can step, sir.

8 (Whereupon, the witness stepped down from the witness
9 stand).

10 THE COURT: Solicitor, your next witness, do you
11 anticipate that witness being very long?

12 MR. SCOTT: No, sir.

13 THE COURT: Okay. Let's call one more witness, and
14 then we'll break for lunch.

15 MR. DANIEL: Your Honor, the State calls Officer
16 Janson Bell.

17 JANSO BELL, being
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Daniel:

21 A My full name is Janson Bell.

22 Q Okay. And you're now Deputy Janson Bell with the
23 Richland County Sheriff's Office, correct?

24 A Yes, sir.

25 Q When did you accept employment with that agency?

1 A June 10th of 2019. This year.

2 Q Okay. So prior to June 10th though, you were working
3 at the City of Newberry Police Department, correct?

4 A That's correct.

5 Q Okay. And how long -- until you left in June, how
6 long had you been with the City of Newberry Police
7 Department?

8 A Close to three and a half years.

9 Q Okay. All right. So you would have been on-duty
10 April 24th of this year, correct?

11 A That's correct.

12 Q All right. And were you working a morning shift?

13 A Yes, sir.

14 Q Okay. All right. So April 24th, that would have
15 been a Wednesday. Is that right?

16 A Yes, sir.

17 Q Okay. And did you have an occasion to respond out to
18 a call at [REDACTED] Boundary Street, a residence?

19 A That's correct. It's established within the city
20 jurisdiction.

21 Q Okay. The City of Newberry in Newberry County and
22 what was the nature of that call?

23 A It was a larceny call.

24 Q And who had reported this larceny or this theft?

25 A The victim, Mr. Larry Hazel.

1 Q Larry Hazel who just testified, correct?

2 A That's correct.

3 Q All right. And what did he have to report to you
4 specifically?

5 A When I arrived on the scene, he advised me that the
6 subject on camera that took his chainsaw, when I arrived
7 there, which was positioned by his red Ford F-150.

8 Q Okay. So he tells you that he has surveillance
9 footage of somebody taking a chainsaw that was located
10 right next to his red F-150?

11 A That's correct.

12 Q So he showed you that surveillance footage?

13 A Yes, sir.

14 Q How did you view that surveillance footage?

15 A It was on his computer inside his house and we were
16 able to review it.

17 Q Okay. And we've already played the video with Mr.
18 Hazel. What kind of clothing description did this suspect
19 have that took the chainsaw?

20 A The subject, he was wearing a red colored skull cap
21 on top of his head. Like his head was covered at eye
22 level. He also had on a burgundy hoodie or jacket and a
23 white T-shirt underneath it. This subject also had on
24 dark blue navy pants with cargo pockets on the side and he
25 had on dark tennis shoes.

1 Q What about gloves?

2 A That's right. He also had on -- from where the
3 camera was positioned, he had on light colored gloves.

4 Q And male or female?

5 A A male subject.

6 Q And race?

7 A Black male.

8 Q Height and weight, roughly?

9 A From the camera, he looked to be about six foot tall.
10 Roughly, 175 to 195 pounds.

11 Q Okay. And did you personally identify this subject
12 from this video footage?

13 A No, sir. What I did was, I took some still shots.
14 This was when I first went there to the house to conduct
15 this report. I took some still shots and sent them out to
16 my superior officers that would have more years of
17 experience here just to see if they can identify who he
18 is.

19 Q Because you had only been working in the City of
20 Newberry for about three years, correct?

21 A Yes, sir.

22 Q Okay. So you sent this -- these still shot images to
23 your superiors?

24 A Yes, sir.

25 Q Who exactly did you send them to within your agency?

1 A I sent them to my lieutenant, Justin Weaver, and
2 Chief Roy McClurkin.

3 Q Okay. And at that time, were they able to help you
4 identify this individual?

5 A Yes, sir.

6 Q And were you given a name by any of your fellow
7 officers?

8 A It was later on when I was able to really identify
9 who he was, but, yes. They were able to provide a name.

10 Q Okay. And later on, what are you referring to by
11 later on?

12 A Like within an hour or two.

13 Q Okay. So once they kind of passed these photos
14 around within the agency, they were able to come up with a
15 name for this individual on the tape?

16 A That's correct.

17 Q Okay. And what was the name of that individual?

18 A The Defendant, Sterling Maybin.

19 MR. DANIEL: And, Your Honor, let the record reflect
20 Officer --

21 MR. VERNER: I would respectfully object because he's
22 testifying to what other people have identified. It would
23 be beyond his personal knowledge. So I think he can
24 testify he sent everything out to be identified, but for
25 him to base it on what other people have told him is --

1 THE COURT: Solicitor, do you intend to call these
2 other officers who made the identification?

3 MR. DANIEL: Yes, Your Honor.

4 THE COURT: I would allow it in conditioned upon
5 those officers testifying, but your point is correct.

6 MR. VERNER: Thank you.

7 Q Officer Bell -- all right. So at that point, that's
8 around -- what time did you respond to Mr. Hazel's
9 residence that morning?

10 A I was dispatched to his residence at the approximate
11 time of 9:38 in the morning.

12 Q Okay. All right. And so, at that point, just a
13 chainsaw was reported stolen by Mr. Hazel. Is that
14 correct?

15 A Yes, sir.

16 MR. DANIEL: Okay. And -- beg the Court's
17 indulgence.

18 Q All right. So at that point, you have the report and
19 you have the physical description of the suspect from the
20 video. Is that correct?

21 A Yes, sir.

22 Q Okay. And then, you forwarded these images from the
23 surveillance footage to your superiors. Do you then leave
24 the scene?

25 A Yes, sir. Then, I returned back about thirty minutes

1 later, after Mr. Hazel, he advised me that he had extra
2 footage that he seen on the 23rd and wanted me to respond
3 back out to look at that video as well.

4 Q Okay. So you were called back out there by Mr.
5 Hazel. And, again, did this -- this surveillance footage,
6 did it have specific time stamps and dates?

7 A Yes, sir. When I was reviewing them, at that
8 particular time, yes. I don't know why it is not showing
9 up here.

10 Q Okay. So the chainsaw, that occurred the day it was
11 reported on April 24th. Is that correct?

12 A That's correct.

13 Q And then, you --

14 A At the time of 8:27 a.m. in the morning.

15 Q Okay. And what was the time stamp for when that --
16 you said 8:27?

17 A Yes, sir.

18 Q April 24th is when the chainsaw --

19 A April 24th. Yes, sir.

20 Q Okay. And that's according to the time stamp that
21 Mr. Hazel provided you?

22 A That was on the computer screen. Yes, sir.

23 Q Okay. And then, you vacate the scene, but only to
24 return later when Mr. Hazel reported another incident?

25 A Yes, sir.

1 Q Okay. And tell us about -- approximately, what time
2 did you respond back out to [REDACTED] Boundary Street?

3 A I responded back there around about 10:00, 10:08.

4 Q Okay. All right. What information did Mr. Hazel
5 have at approximately 10:08?

6 A Basically, he just said that he was reviewing his
7 camera footage and saw that the gentleman, as you can see
8 in the video, return back and making several trips and
9 taking miscellaneous tools and lawnmowers and things of
10 that sort.

11 Q And that's the view -- that's the footage the jury
12 previously saw?

13 A That's correct.

14 Q And this time, though, that the thefts occur, the
15 property was underneath the open air storage shed?

16 A That's correct. The garage.

17 Q Okay. So all the thefts that Mr. Hazel reported the
18 second time you returned, that all had to do with property
19 that was underneath this storage shed. Is that correct?

20 A Yes, sir.

21 Q Okay. And what was reported taken from the storage
22 shed?

23 A It was numerous things. What we can see from the
24 camera footage is miscellaneous tools that were inside of
25 buckets and, I guess, he had a chainsaw. The chainsaw

1 that was on the 24th and some saws and things of that
2 sort.

3 Q Weed eater, hedge trimmer and things of that nature?

4 A Hedge trimmer, a push lawn mower.

5 Q So miscellaneous landscaping equipment?

6 A That's correct.

7 Q All right. And what was the time stamp for that
8 particular footage of this second incident?

9 A Just give me a moment. Footage had been taken from
10 the second incident on April 23rd. It started from 9:25
11 a.m. and lasted until 12:30 p.m.

12 Q Okay. So this second incident that Mr. Hazel
13 reported, this was ongoing? This was involving multiple
14 trips by this individual going to and from the property.
15 Is that right?

16 A That's correct.

17 Q Okay. And this was a three hour time period,
18 roughly?

19 A Yes, sir.

20 Q Okay. And this individual, this appeared to be the
21 same individual as was captured in surveillance from April
22 24th?

23 A That's correct. The subject had on the same attire.

24 Q All right. Now, eventually, is it your testimony
25 that the name Sterling Maybin was developed from this

1 surveillance footage?

2 A That's correct.

3 Q All right. So you all had -- did you have an APB or
4 a be on the lookout for Sterling Maybin?

5 A No. The only information I put out is the photos
6 that I sent to the higher ups.

7 Q But once the higher ups developed him or identified
8 him as Sterling Maybin, did they -- were you all on the
9 lookout for Sterling Maybin at that point?

10 A Yes, sir. We were on patrol. Yes.

11 Q All right. So you stayed on patrol after you went to
12 Mr. Hazel's house twice?

13 A Yes, sir.

14 Q Okay. Did you have an occasion to make contact with
15 this Sterling Maybin individual?

16 A Yes, sir. I did.

17 Q Approximately, when and where did you make contact --
18 first make contact with Sterling Maybin?

19 A It was on Hillcrest. I don't remember the time. It
20 was probably around about the afternoon time or 1:00
21 o'clockish. It was around Hillcrest.

22 Q Is that near an apartment complex or what are you
23 describing exactly?

24 A It's pretty much over here by Oakland side, pretty
25 much near Digby and Leita. In that general area.

1 Q Okay. A residential area within the City of
2 Newberry?

3 A That is correct. It was a residential area.

4 Q Okay. And this was around, approximately, what time?

5 A One o'clockish, I believe, 1:00 o'clock.

6 Q And this was on April 24th, correct?

7 A Yes, sir.

8 Q Okay. And I'm going to hand you what's been marked
9 for ID purposes as State's 10, 11, 12, 13, 14, 15. That's
10 10 through 15. Then, I have 16, 17, 18, 19, 20. Okay.
11 It must actually just be 10 through 24. State's 10
12 through 24. Do you recognize these photographs?

13 A Yes, sir. I took the pictures.

14 Q Okay. And what are those pictures of?

15 A It's the Defendant there, Sterling Maybin.

16 Q The Defendant, Sterling Maybin?

17 A Yes, sir.

18 Q And you took those pictures, you said, correct?

19 A Yes, sir.

20 Q And that's when you encountered Mr. Maybin in the
21 Hillcrest area?

22 A Correct.

23 MR. DANIEL: Okay. Your Honor, I offer State's 10
24 through 24 for admission into evidence.

25 MR. VERNER: Can I see them real quick?

1 THE COURT: Do you need to take a look at them, Mr.
2 Verner?

3 MR. VERNER: Double check.

4 THE COURT: Sure.

5 MR. VERNER: Without objection.

6 THE COURT: Without objection, 10 through 24 into
7 evidence for the State.

8 (Whereupon, State's Exhibit numbers 10 through 24
9 were admitted into evidence).

10 Q All right. And those are pictures of Sterling Maybin
11 from the Hillcrest area of the City of Newberry and that's
12 the afternoon of April 24th, correct?

13 A Yes, sir.

14 Q And this is all after Larry Hazel had reported these
15 incidents of theft at his residence, correct?

16 A Yes, sir.

17 Q All right. And I'll just start with Number 10 and
18 we're going to publish these for the jury on the TV.

19 (Whereupon, State's Exhibit numbers 10 through 24
20 were published for the jury).

21 Q Officer Bell, if you could, step down. All right.
22 This is State's number 10. All right. And in this
23 picture, that's Sterling Maybin, correct?

24 A Yes, sir.

25 Q Wearing a white T-shirt?

1 A Yes, sir.

2 Q All right. Let's go to number 11. All right.

3 What's that?

4 A You can see the cargo pocket. Also, you can see
5 there's a red skull cap in his cargo pocket on the right
6 side.

7 Q Now, that is a skull cap or would some people
8 describe it as a toboggan?

9 A Yeah.

10 Q And is that consistent with the red hat that the
11 individual in Mr. Hazel's theft videos had on?

12 A Yes, sir. It was very consistent.

13 Q Okay. And these are dark in color cargo pants, navy
14 blue?

15 A Yes, sir.

16 MR. DANIEL: Okay. Next picture, Walter.

17 Q Again, another picture of the red hat. All right.
18 And Mr. Maybin -- these are gloves that Mr. Maybin had on.
19 Is that correct?

20 A Yes, sir. They're white in color or gray in color
21 gloves.

22 Q And the individual in both of Mr. Hazel's videos, is
23 that individual wearing gloves?

24 A Yes, sir.

25 MR. SCOTT: Next picture, Walter.

1 Q Okay. And was Mr. Maybin on a bicycle? Is that Mr.
2 Maybin's bicycle when you encountered him?

3 A Yes, sir. He was on a bike.

4 Q He was riding a bike when you first encountered him?

5 A Yes, sir.

6 MR. DANIEL: Okay. Next picture.

7 Q Another picture of the gloves, correct? All right.
8 Now, these are tennis shoes that Mr. Maybin had on?

9 A Yeah. Those are the shoes.

10 Q All right. Were you able to pause the video from Mr.
11 Hazel's thefts and observe what type of tennis shoes or
12 shoes this individual had on in the video?

13 A Yes, sir. Yes, sir.

14 Q And the shoes that Mr. Maybin had on when you first
15 encountered him, were those shoes consistent with the
16 shoes the individual was wearing in the videos?

17 A They were very consistent.

18 Q Same kind of color scheme?

19 A Same design. Everything. Yes, sir.

20 Q Okay. I see they're gray, but then, they have kind
21 of black stripes throughout?

22 A Yes, sir.

23 MR. DANIEL: Next picture, Walter.

24 Q And did Mr. Maybin have a jacket with him when you
25 first encountered him?

1 A I couldn't tell. He did have a book bag on the
2 scene. It could have possibly been inside of the book
3 bag.

4 MR. DANIEL: Okay. Next.

5 COURT REPORTER: I can't hear.

6 A I said -- yes, ma'am. I said he could have possibly
7 had a jacket, but it was inside of his book bag. So I
8 couldn't tell.

9 THE COURT: Please speak up loud so the court
10 reporter can pick you up.

11 Q All right. And that's just another view of the
12 shoes.

13 MR. DANIEL: All right. Next picture, please.

14 Q Okay. And Mr. Maybin's build. Again, is his build
15 -- Mr. Maybin's build consistent with the individual
16 captured on Mr. Hazel's two videos?

17 A Yes, sir.

18 MR. DANIEL: All right. Next picture.

19 Q Okay. You referenced a book bag earlier. Is that
20 the book bag in this image that you referenced?

21 A That's correct. That's the book bag he had in his
22 possession.

23 Q And then, what color --

24 MR. DANIEL: All right. Next picture, Walter. It's
25 just another one of the shoes. Next one. Next one. That

1 seems to be 10, again. Is that 10 again, Walter? Okay.
2 This is State's 22. We've got two more. All right. Next
3 one, Walter.

4 Q All right. What kind of shoes are these? What kind
5 of brand?

6 A Jordans. They're the Jordan brand.

7 Q Okay. They say number 23 on the back. Is that
8 correct?

9 A Yes, sir.

10 Q Okay. To signify Michael Jordan's number.

11 MR. DANIEL: All right. And State's 24, Walter.

12 Q Okay. That's the book bag Mr. Maybin had in his
13 possession?

14 A Yes, sir.

15 Q And the individual from Mr. Hazel's video, at some
16 point, that individual did have a backpack, correct?

17 A That's correct.

18 Q A dark in color backpack?

19 A That's correct.

20 Q All right. So what items of clothing did Mr. Maybin
21 have on that you saw firsthand that the individual
22 appeared to have in those videos from Mr. Hazel's house?

23 MR. VERNER: Respectfully, asked and answered many
24 times in the last -- and, of course, the jury's seen the
25 video and the pictures.

1 THE COURT: Yeah. I think it's been asked and
2 answered.

3 Q All right. Officer, you can have a seat. And there
4 was a video taken from another victim, as well, correct?

5 A Say again.

6 Q Another victim had a surveillance footage of a theft?

7 A Yes, sir.

8 Q Okay. And was that Bessie Mathis?

9 A Yes, sir.

10 Q Okay. But that was Officer Weaver that took that
11 report, correct?

12 A That's correct.

13 Q Okay. And, again, who identified Sterling Maybin
14 from the surveillance footage? What officers?

15 A It was the Chief, Roy McClurkin; Kevin Goodman and
16 Weaver.

17 MR. DANIEL: All right. Please, answer any questions
18 the defense attorney has.

19 THE COURT: Cross-examination, Mr. Verner?

20 CROSS-EXAMINATION

21 By Mr. Verner:

22 Q Just out of curiosity, what happened with the book
23 bag. Did you all take it into custody or search it or do
24 you know?

25 A We were able to get a warrant on him. I think when

1 we apprehended him, it was --

2 Q Was he arrested when you stopped him after this?

3 A No, sir. It was a couple hours after that and he
4 tried to take off on a bike, on a crossing area and he
5 ditched his bicycle behind a house. So he could have
6 ditched his book bag there.

7 Q But at this time, you had not put him under arrest?
8 You were just trying to identify him?

9 A Me--

10 Q -- okay. And so, he was allowed -- he was given his
11 book bag back and allowed to leave?

12 A That's correct.

13 Q Okay. And then, later on, an investigator or
14 somebody beyond you made the decision to go ahead and get
15 an arrest warrant for him?

16 A Yes, sir. Once he was properly identified.

17 MR. VERNER: Okay. Thank you, Officer Bell -- Deputy
18 Bell.

19 THE COURT: Anything on redirect, Solicitor?

20 MR. DANIEL: No, Your Honor.

21 THE COURT: You can step down, sir.

22 THE WITNESS: Yes, sir.

23 (Whereupon, the witness stepped down from the witness
24 stand).

25 THE COURT: All right. Mr. Foreman and ladies and

1 gentlemen of the jury, this would be a good time to break
2 for lunch. I want you back at 2:15 and I'll remind you,
3 if you do go to a public restaurant for lunch, just keep
4 the juror badge visible and don't have any discussion with
5 anyone about this case and we'll see you back at 2:15.
6 Have a good lunch.

7 (Whereupon, the jury was excused from open court for
8 a lunch break.)

9 THE COURT: All right. We'll be in recess until
10 2:15. Have a good lunch.

11 (Whereupon, a lunch break was held).

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

13 (Whereupon, the jury came into open court at
14 approximately 2:31 p.m.)

15 THE COURT: Let the record reflect the jury is back
16 in. Good afternoon, ladies and gentlemen. I hope you had
17 a good lunch break and I see some jackets and I hope
18 everybody tried to stay as warm as possible. Solicitor,
19 are you ready to call your next witness?

20 MR. SCOTT: Yes, sir, Your Honor. The State calls
21 Investigator Allison Moore.

22 THE COURT: Come around, please, ma'am.

23 ALLISON MOORE, being
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 By Mr. Scott:

2 A My name is Allison Moore.

3 Q Detective Moore, what is your job with the police
4 department in Newberry?

5 A I'm an investigator with the Newberry Police
6 Department.

7 Q Okay. Do you remember April 24th of this year?

8 A Yes, sir.

9 Q And did you have an occasion to take the report of
10 some burglaries and some larcenies that happened at Digby
11 Avenue, and then another at Boundary Road?

12 A That's correct. Lieutenant Weaver and Corporal
13 Janson Bell, at the time, brought it to my attention that
14 they had a couple of reports of larcenies at those
15 locations.

16 Q Okay. Were you made aware at that time that there
17 were video surveillance --

18 A Yes.

19 Q -- capturing the suspect?

20 A Yes. I was.

21 Q Okay. And let's see. So Weaver did Ms. Bessie
22 Mathis' case, is that your recollection?

23 A Yes, sir.

24 Q And then, Janson Bell handled Larry Hazel's break-in,
25 is that what your understanding was?

1 A Yes, sir.

2 Q Okay. And then, both Weaver and Janson Bell, did
3 they report to you --

4 A Did they --

5 Q -- their findings?

6 A Yes, sir. They brought their reports to me and they
7 said that some items were missing underneath some
8 buildings and structures and they said that they also had
9 video surveillance at Mr. Hazel's and they also had some
10 -- I guess, a digital SD card from Ms. Mathis.

11 Q Okay. At the time, were you able to review the
12 videos?

13 A Yes, sir. I was.

14 Q Okay. And do you recall, at some point later that
15 day, April 24th, Officer Janson Bell getting out with
16 Sterling Maybin?

17 A Yes, sir. Corporal Bell called me and said that he
18 had just gotten out with him and that he had taken
19 photographs of him and he was bringing them to me for
20 review.

21 Q Okay. And what was the purpose of getting out and
22 taking pictures of Sterling Maybin?

23 A Because to Corporal Bell, he looked like the
24 individual that was in the surveillance images at Mr.
25 Hazel's house.

1 Q And that would be what we're talking about as State's
2 10 through 24, the pictures that we produced earlier where
3 he's out on the side of the road --

4 A Yes, sir.

5 Q -- taking pictures?

6 A Yes, sir.

7 Q Tell us why, at that time, was the decision not made
8 to go ahead and arrest Mr. Maybin.

9 A Because it was still, basically, under investigation.
10 We were still making sure that we were looking at the
11 photos, looking at all of the video and looking at it,
12 making sure that we had the right individual. And then,
13 we obtained arrest warrants for his arrest.

14 Q Okay. Did you use Mr. Larry Hazel's video in order
15 to try and identify the suspect?

16 A Yes, sir.

17 Q Okay. Was there one particular video that you were
18 able to see his face clearly?

19 A Yes, sir. There was one video that I believe the
20 jury's already seen where you can clearly see his face.

21 MR. SCOTT: Walter, I believe that's in, State's
22 Number 2. Do you have that clip? Can you see, Allison?
23 All right. You can go ahead and play --

24 (Whereupon, the video was played.)

25 Q Is this the clip right here?

1 A Yes, sir. It is.

2 Q That is a clip, State's Number 2, and I think it's
3 labeled 1021. Okay. All right. You can have a seat.
4 Investigator Moore, you watched that video and after
5 watching, who did you determine the suspect to be?

6 A Sterling Maybin.

7 Q And did you review the video with anyone else in your
8 office?

9 A Yes, sir. Captain Kevin Goodman and Chief Roy
10 McClurkin.

11 Q Okay. And then, at what point was the decision made
12 to arrest Mr. Maybin?

13 A After we had been in my office and we clearly
14 established that this was Sterling Maybin. After looking
15 at all the evidence in the case, we decided to go ahead
16 and get a warrant on Mr. Maybin that day. And then, later
17 on that afternoon, he was apprehended.

18 MR. SCOTT: Okay. Thank you.

19 THE COURT: Cross-examination, Mr. Verner?

20 MR. VERNER: I don't think, has he finished?

21 MR. SCOTT: I am, sorry, Your Honor, yes.

22 CROSS-EXAMINATION

23 By Mr. Verner:

24 Q Good afternoon, Detective Moore.

25 A Good morning or good afternoon. I'm sorry.

1 Q How many warrants did you obtain -- how many warrants
2 for arrest did you -- basically, when the police sees a
3 crime committed, in your own personal sight, you make an
4 arrest right then without a warrant, right?

5 A Yes, sir. On misdemeanors, yes.

6 Q Okay. If you see somebody hit somebody out in the
7 street or commit a crime right in front of your own
8 personal -- you've got the authority to go ahead and make
9 the arrest?

10 A That's correct.

11 Q But when you rely on -- investigating a case or what
12 people tell you, at that point, if it's a felony, you have
13 to get an arrest warrant in general?

14 A In general. Yeah. In general. Yeah. In cases like
15 this, we want to make sure that we obtain the proper
16 warrants on the proper person and put the right person in
17 jail.

18 Q And an arrest warrant is the authority to put
19 somebody in custody that's signed by the Magistrate Judge
20 in Newberry?

21 A Yes sir or the Municipal Judge. Yes.

22 Q But it's largely prepared by the police department?

23 A That's correct.

24 Q And the allegations come -- usually come from the
25 police department?

1 A Usually.

2 Q I guess, a victim can go in front of a Magistrate and
3 try to swear a warrant?

4 A No, sir.

5 Q It would have to be the police officers?

6 A Yeah. That's correct, sir.

7 Q Okay. How many warrants did you obtain against
8 Sterling Maybin?

9 A I obtained three of them.

10 Q And what were they for?

11 A They were all for larceny enhancement.

12 Q Okay. Felony larceny?

13 A Felony larceny. Yes.

14 Q And larceny is just the legal term for stealing?

15 A Yes, sir.

16 Q Okay. And you are not just a patrol officer, you're
17 actually a detective?

18 A That's correct, sir.

19 Q Do you have a college degree?

20 A Yes, sir. I do.

21 Q Okay. Are you familiar with the general term, goods
22 and services?

23 A In what sense, sir?

24 Q In just a common -- that's a phrase you've heard
25 before, haven't you?

1 A Yes, sir.

2 Q And services are typically people who offer to do
3 something for a price?

4 A Yes, sir.

5 Q Such as cut your lawn or paint your house?

6 A Yes, sir.

7 Q But it's something that's offered in exchange for
8 being paid for it?

9 A Yes, sir.

10 Q And goods are typically items that are offered for
11 sale in exchange for money?

12 A Yes, sir.

13 Q So goods would be bananas at a grocery store or nails
14 in a hardware store or anything at Walmart?

15 A Yes, sir.

16 Q And that's not a fancy definition. That's just -- I
17 mean, that's a fairly common understanding of goods and
18 services?

19 A I would say, that's a common understanding.

20 MR. VERNER: Thank you, Detective.

21 THE WITNESS: Thank you.

22 THE COURT: Any followup?

23 MR. SCOTT: Just briefly.

24 REDIRECT EXAMINATION

25 By Mr. Scott:

1 Q Investigator Moore, do you have a law degree?

2 A No, sir.

3 Q Okay. Is it -- would you say it's common for you or
4 another one of your investigators to come to my office and
5 review a case with one of us to determine whether the
6 charges are proper, whether they're improper or whether
7 additional charges should be filed? Is that --

8 A Absolutely. We do that very frequently. We bring
9 the cases forward and we get their judgment on further
10 charges.

11 Q And sometimes, we'll tell you, do not make a charge?

12 A That's correct.

13 Q Sometimes, we'll tell you to make a different charge?

14 A Yes, sir.

15 Q And sometimes, we'll advise you to make other
16 charges, additional charges. Is that safe to say?

17 A That's safe to say.

18 MR. SCOTT: All right. Thank you. No further
19 questions.

20 MR. VERNER: No more.

21 THE COURT: You can step down, ma'am. Thank you.

22 THE WITNESS: Thank you, sir.

23 (Whereupon, the witness steps down from the witness
24 stand).

25 THE COURT: Any other witnesses, Solicitor?

1 MR. DANIEL: Your Honor, the State calls Officer
2 Kevin Goodman.

3 KEVIN GOODMAN, being
4 first duly sworn, testified as follows

5 DIRECT EXAMINATION

6 By Mr. Daniel:

7 Q All right. You're Captain Kevin Goodman, correct?

8 A That's right.

9 Q City of Newberry Police Department?

10 A That's correct.

11 Q And you've been there at that agency for quite some
12 time, is that right?

13 A Twenty-four years.

14 Q Twenty-four years. And how long have you been --
15 you've been an investigator, too, for a long period of
16 time, as well?

17 A I've been in the investigative division since 1999.

18 Q And as a captain, you don't investigate cases,
19 necessarily, anymore?

20 A Not necessarily. I assist, if need be.

21 Q Okay. So you're kind of -- right now, you're in more
22 of a supervisory capacity?

23 A That's right.

24 Q But you've spent years as an investigator in the
25 investigative division and you're from Newberry. Is that

1 correct?

2 A That's right.

3 Q Were you born and raised here?

4 A Born and raised in Pomaria.

5 Q And your son, he is a good football player for
6 Newberry High School?

7 A He's a football player at Coastal Carolina right now.

8 Q That's right. Okay. So you have roots in this
9 community?

10 A That's right.

11 Q Okay. I want to go back to April 24th of this year.
12 Did you have an occasion to become involved in this case
13 involving Sterling Maybin?

14 A I did.

15 Q Did you have an occasion to review this surveillance
16 footage that's been placed into evidence?

17 A Yes, sir. I did.

18 Q Okay. And what was your role in investigating this
19 case?

20 A Merely, I was asked to look at the video that
21 Lieutenant Moore had in her office to help identify the
22 individual on the surveillance video and that's it.

23 Q So Lieutenant Moore was the actual investigator
24 assigned to this case?

25 A Yes.

1 Q And she asked for your assistance in identifying the
2 individual in this surveillance footage?

3 A That's right.

4 MR. DANIEL: And, Walter, I'm going to go to State's
5 Number 2.

6 Q Was there any particular footage that had the best
7 vantage point to where you could identify the suspect on
8 the surveillance footage?

9 A Yes, sir. The one that was shown earlier where he's
10 walking almost toward the camera, facing the camera.

11 MR. DANIEL: Okay. And, Walter, if you could, play
12 State's Number 2 and, Officer Goodman, if you could --

13 THE WITNESS: Yes, sir.

14 (Whereupon, State's Exhibit number 2 was published
15 for the jury).

16 Q All right. And if we paused it right there --

17 MR. DANIEL: If you could, go back, Walter. Pause
18 it.

19 A Right here (indicating). Yes.

20 Q All right. Is that the particular image that
21 captured the identity the best for you?

22 A Yes. It did.

23 Q And upon viewing that, were you able to determine who
24 that individual was captured on tape?

25 A I was.

1 Q Okay. And who was that?

2 A Sterling Maybin.

3 Q And that's the individual on trial?

4 A That's right.

5 Q And how do you -- is Sterling Maybin -- to your
6 knowledge, is he a resident of Newberry?

7 A Yes.

8 Q And you've known him for years?

9 A For years. Twenty, at least. Can I sit back down?

10 Q Yeah. You can sit down. And so, you're familiar
11 with his appearance, how he walks -- the gait and how he
12 walks and things like that?

13 A Yes.

14 Q Were other officers -- was there a consensus amongst
15 the officers that this was Sterling Maybin besides your
16 identification of him?

17 MR. VERNER: Respectfully, Your Honor, I do think
18 that that would be inappropriate.

19 THE COURT: Right. Sustained. The other officers
20 can testify.

21 Q The other officers did review this footage, correct?

22 A That's right. Yes, sir.

23 Q But you've known him for years as a resident of
24 Newberry?

25 A Yes.

1 MR. DANIEL: That's all I have for you, Officer
2 Goodman. Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Verner.

5 CROSS-EXAMINATION

6 By Mr. Verner:

7 Q Did you play with the Newberry Bulldogs?

8 A Did I play with them?

9 Q You said you were a high school football player?

10 A I was, but I played with Mid-Carolina. My son played
11 with Newberry.

12 Q Mid-Carolina.

13 A Yes.

14 MR. VERNER: I think that's the only question I have
15 for you, Captain.

16 THE COURT: Okay. All right. You can step down,
17 sir. Thank you.

18 (Whereupon, the witness steps down from the witness
19 stand).

20 MR. SCOTT: Chief McClurkin.

21 ROY MCCLURKIN, being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Scott:

25 A Roy McClurkin.

1 Q Chief, did you grow up in Newberry, too?

2 A I grew up in Whitmire.

3 Q Okay. In Newberry County?

4 A Yes.

5 Q How long have you known Sterling Maybin?

6 A Over 20 years.

7 Q Okay. Just being in the community, you've been
8 around him and been knowing him for 20 something years?

9 A Yeah. I've been with the City of Newberry Police
10 Department for 35 years.

11 Q Okay. And did they bring this video to you, too, on
12 April 24th?

13 A I went down to Lieutenant Moore's office to view it.

14 Q Okay. And how long did it take you to make an ID on
15 this case as far as who it was?

16 A Not very long. Just long enough to look at the
17 video.

18 Q All right. And who did you determine the subject in
19 the video to be?

20 A Sterling Maybin.

21 Q Okay. Was there any doubt?

22 A No, sir.

23 MR. SCOTT: Thank you. Answer any questions the
24 Defense has.

25 MR. VERNER: I don't have any questions for the

1 Chief.

2 THE WITNESS: No football?

3 THE COURT: You can step down, sir. Thank you.

4 (Whereupon, the witness steps down from the witness
5 stand).

6 THE COURT: Solicitor, any other witnesses for the
7 State?

8 MR. DANIEL: One more, Your Honor, and that would be
9 Investigator Walter Bentley.

10 THE COURT: Okay.

11 WALTER BENTLEY, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Daniel:

15 Q You're Investigator Walter Bentley with the Eighth
16 Circuit Solicitor's Office, correct?

17 A Correct.

18 Q So you work with our office in helping us to prepare
19 cases for trial. Is that right?

20 A I do.

21 Q How long have you been with us?

22 A I've been with the Solicitor's Office since 2013.

23 Q And prior to that, you were a police officer,
24 correct?

25 A Yes, sir. 1996 to 2013. I was a police officer for

1 a couple of those years and in the bulk of those years, I
2 was an investigator for first, the Laurens County
3 Sheriff's Office. And then, from 2000 to 2013, the
4 Laurens Police Department.

5 Q And this is a burglary/larceny case. Did you
6 investigate a lot of those cases in your law enforcement
7 career?

8 A I did.

9 Q All right. So you've helped us prepare this case for
10 trial, correct?

11 A Correct.

12 Q And as part of you investigative file, do you review
13 an individual's criminal record?

14 A I do.

15 Q And in this particular incidence -- in this
16 particular case, being a burglary case, is it relevant to
17 review someone's criminal history?

18 A It is.

19 Q And why, for a burglary case, is that relevant?

20 A For certain numbers of convictions or prior
21 convictions, it can enhance the charge that we use when we
22 go to trial.

23 Q All right. And did you have an occasion to go
24 through Sterling Maybin's criminal history?

25 A I did.

1 Q And did you find any convictions that would be
2 specifically relevant --

3 MR. VERNER: Subject to my earlier point, Your Honor.

4 THE COURT: So noted on the record previously.

5 Q And, Investigator Bentley, did you find any
6 convictions relevant to this burglary trial?

7 A I found two prior convictions for burglary.

8 Q Okay. And I'm going to hand you what's been marked
9 for ID purposes as State's Number 30. Do you recognize
10 these?

11 A I do.

12 Q What are we looking at?

13 A These are -- there's two documents here. Both of
14 them are a part of State's Number 30. The first one is an
15 indictment with a sentence written on it. It looks like
16 the indictment was in 1992 for Sterling Maybin along with
17 two other co-defendants for the crime of burglary. It's
18 marked with a stamp on the back, which is from the Clerk
19 of Court here in Newberry that certifies it as a true and
20 accurate record. And on the back is -- this is where he
21 was -- where Mr. Maybin was -- he either pled guilty or
22 convicted, I can't tell from this, and was sentenced.

23 Q And is there another document along with that?

24 A There is. There's another document. This one is a
25 2014 case. It looks like a 2015 indictment. It is also

1 for burglary. Also, stamped true and accurate by the
2 Clerk of Court here in Newberry where Mr. Maybin pled
3 guilty to a burglary of the third degree, second offense,
4 here in Newberry County.

5 Q So what you just read out are court certified
6 documents from the Newberry Clerk of Courts Office showing
7 two convictions for burglary. Is that correct?

8 A That's correct.

9 Q One, in '92, and then one in 2015?

10 A Correct.

11 Q And how do we know that's the same Sterling Maybin as
12 the one who's on trial today?

13 A On the newer conviction, it actually has his personal
14 information, which I was able to verify and match personal
15 information Mr. Maybin gave in this case. On the 1992
16 case, I had to go a little further and check some public
17 record databases and found, obviously, the name matches.
18 But I also found that the year of birth matched, also.
19 The date of birth matched. So I was able to verify both
20 of these as being Mr. Maybin.

21 Q Okay. The '92 and 2015 convictions indicate the same
22 date of birth for Sterling Maybin -- the same date of
23 birth for this Sterling Maybin on trial?

24 A The same as Mr. Maybin sitting over there,
25 (indicating).

1 MR. DANIEL: Okay. Your Honor, I'd offer State's
2 Number 30 for admission into evidence.

3 THE COURT: Subject to what's already been --

4 MR. VERNER: Can I see it?

5 THE COURT: Sure.

6 MR. VERNER: Judge, the only thing I would say is
7 one, I mean, the evidence is going to the jury
8 uncontested. So I don't know that the document's really
9 pertinent to them and the second one's got a sentence
10 sheet, which is typically not added to an indictment.
11 But, I mean, they're going unchallenged to the jury. I
12 don't know that the jury needs the actual indictments in
13 there.

14 THE COURT: All right. I will -- what I will do is,
15 I will allow it into evidence, but -- to review them, to
16 determine what part of the document, if any, would go to
17 the jury. Okay? And ladies and gentlemen, let me explain
18 to you something. Evidence of the Defendant's prior
19 convictions can only be considered by you in determining
20 whether or not the Defendant is guilty of one of the
21 elements of the crime of burglary second, violent. It
22 cannot and should not be considered by you as evidence of
23 any bad character on the part of the Defendant or that the
24 Defendant acted in accordance with any prior conduct.

25 (Whereupon, State's Exhibit number 30 was admitted

1 into evidence).

2 THE COURT: All right. You may proceed.

3 MR. DANIEL: Thank you, Your Honor.

4 Q All right, Investigator Bentley. So these are in
5 evidence and it denotes a '92 and 2015 convictions for
6 burglary?

7 A That's correct.

8 Q And that Sterling Maybin on both of those court
9 records has a date of birth that's the same as the
10 Sterling Maybin who's on trial today, correct?

11 A Correct.

12 Q And it's relevant to a burglary prosecution how,
13 again?

14 A Because certain crimes, if you have multiple
15 convictions, two or more, especially in burglary, it
16 enhances the type of burglary charge that we can go to
17 trial with.

18 Q Okay. So there's different degrees of burglary is
19 what you're saying?

20 A Yes. It increases the degree.

21 Q So otherwise, it would be -- one degree of burglary
22 can be elevated to another degree if they have two or more
23 prior burglary convictions?

24 A That's correct.

25 Q So that's why it's relevant?

1 A Yes.

2 MR. DANIEL: Thank you, Investigator.

3 THE COURT: Solicitor, hand those to me so I'll
4 remember to review them.

5 MR. VERNER: Can I look at them just one second?

6 THE COURT: Yeah. Just hand them to me whenever
7 you're finished with them.

8 MR. DANIEL: And I'm sure we can stipulate to
9 whatever--

10 CROSS-EXAMINATION

11 By Mr. Verner:

12 Q I'm just trying to clarify -- Walter, do you know if
13 this is second degree or third degree burglary from 1992?

14 A I can look. There's a public index form on the table
15 there, Charles. I think it's a third, if I'm not
16 mistaken.

17 Q And then, this one's clearly third degree because of
18 the sentence sheet?

19 A That's correct. I'd have to verify on the first one,
20 but I'm looking on that sheet from the public index.

21 Q And third degree burglary is going into a shed or a
22 non-occupied building or do you know?

23 A That's typically correct.

24 MR. VERNER: No more questions, Investigator.

25 THE COURT: Solicitor, anything to followup?

1 MR. DANIEL: No, sir, Your Honor.

2 THE COURT: You can step down, sir.

3 (Whereupon, the witness steps down from the witness
4 stand).

5 THE COURT: Any other witnesses?

6 MR. SCOTT: The State rests, Your Honor.

7 THE COURT: Okay. The State has rested. Mr. Foreman
8 and ladies and gentlemen of the jury, I'm going to ask you
9 to go back to the jury room for a few minutes and I need
10 to discuss some matters with the lawyers and we'll get you
11 back out shortly. Okay.

12 (Whereupon, the jury was excused from open court.)

13 THE COURT: All right. Let's be at ease for just a
14 moment. And then, we'll entertain Mr. Verner's motion for
15 directed verdict. Everybody be at ease for just a little
16 bit.

17 (Whereupon, a short break was taken.)

18 THE COURT: All right. Let's go back on the record.
19 Mr. Verner, do you have any motions you want to place on
20 the record at this time?

21 MR. VERNER: On the counts of the burglary, Your
22 Honor, I do. On the directed verdict motions, the Court
23 has seen the photographs and heard the testimony of the
24 buildings, which are -- I characterize them as carports,
25 they are pole buildings. One more than the other, but

1 they both, essentially, have four poles and a roof type
2 situation with no doors, they are outdoor. I submit they
3 don't qualify as a building. I have submitted for -- I
4 would call attention to the Court as consistent with my
5 opening argument. The Webster definition of a building
6 says it has some kind of enclosure. It's just a common
7 definition that a structure with a roof and walls is the
8 Webster definition of a building, such as a house, school,
9 store, factory. The State is going to use the technical
10 definition of structure, which is designed to store goods.

11 THE COURT: Right, under the statute.

12 MR. VERNER: Right.

13 THE COURT: Yeah.

14 MR. VERNER: Well, if the State is going to use the
15 statutory definition as opposed to what is the common
16 understanding of a building, there's been no testimony
17 that goods are stored underneath buildings -- these
18 structures. The goods also has a statutory definition,
19 which is items that are held for sale. I'll call the
20 Court to that definition.

21 THE COURT: Okay. All right. Where is goods defined
22 in the statute?

23 MR. VERNER: Goods is defined in the UCC at several
24 indications and in the UCC South Carolina argues the
25 definition of goods is moveable property that is subject

1 to a contract, which, of course, is what UCC implies. But
2 the legal definition, the Black's legal definition of
3 goods, which I submit they're going to use -- if they're
4 not going to use the statute to define goods, then perhaps
5 they'll use the legal definition, which would be the
6 Black's Law definition, which defines goods as chattels
7 and the Court's aware that chattels are goods that are
8 mercantile as opposed to personal property. It defines
9 goods as commodities. I'm trying to find -- a good -- the
10 standard Blackstone legal definition of goods are goods
11 or items held for sale in the regular course of business.
12 I think, to that extent, the statute contemplates that a
13 warehouse would be a building for the purpose of the
14 burglary statute. But that is a structure that is
15 specifically held -- built to hold goods, a store
16 warehouse, a factory warehouse. A carport which is open
17 to the public -- well, open to access for multiple reasons
18 does not qualify as a building, Judge. In this case, as I
19 indicated, there's nothing that would prevent the State
20 from charging somebody with burglary for going into
21 Mollohan Park and taking items off the picnic table. That
22 would be burglary. If they went in with the intent to
23 take something off of a picnic table, that would be a
24 burglary. If you went with the intent to shoplift from
25 the flea market, that would be a burglary, which is an

1 open air. The State's definition, I just submit is, in
2 congruence with the definition of a structure held to hold
3 goods -- built to hold goods is a warehouse. And then, of
4 course, there's the -- the only case I could find -- or
5 the 'closest South Carolina Appellate Court case I could
6 find is the Middleton case.

7 THE COURT: I'm familiar with that.

8 MR. VERNER: Middleton involved a crawlspace issue
9 and I think it's important on several -- every time the
10 Court said that this crawlspace would be encompassed in
11 the burglary statute, it mentioned that it was enclosed.
12 Not just by a roof, but enclosed on the sides.

13 THE COURT: Doesn't Middleton also cite the Black's
14 Law Dictionary, which defines building as a structure
15 designed for storage. The Middleton case, and also State
16 versus Myers cites the same Black's Law Dictionary
17 building structure designed for storage.

18 MR. VERNER: And maybe -- I assume that's correct
19 since the Court brought it up, Your Honor, and obviously
20 has it in front of the Court. The only argument I would
21 add on to that is the code specifically says storage of
22 goods. So while a building, in the commonsense, might be
23 held for storage, under the burglary statute it
24 specifically says storage of goods.

25 THE COURT: All right. Let me ask you this, Mr.

1 Verner. Let's say I were to use the phrase, stolen goods.
2 All right. Just the normal everyday definition of stolen
3 goods. Would you take the position that it would have to
4 be items held for sale in order to qualify as being,
5 "stolen goods."

6 MR. VERNER: In fairness, by common -- first
7 interpretation, stolen goods would be anything stolen that
8 somebody has on them. If I thought about defining it more
9 specifically, I would say shoplifted or mercantile items
10 that were stolen. The only -- again, the counter argument
11 is if a term is used in a statute, then we should be able
12 to look at the statute for a definition of it. And if
13 it's ambiguous at all then, obviously, the burglary
14 statute is a penal statute, which means if there is any
15 doubt about the construction of it it has to be in favor
16 of the Defendant's view of it. I would -- a layperson, I
17 think, would think that stolen goods would be anything
18 stolen that would be moved -- capable of being moved, Your
19 Honor.

20 THE COURT: Well, you make some good arguments.
21 Solicitor Scott, you appear to be deep in thought. What
22 do you have to say?

23 MR. SCOTT: Just, I will start with the goods
24 argument. That would indicate that -- typically, in these
25 cases, as Mr. Verner's alluded to a number of times, we

1 have a shed or an outbuilding. Let's suppose we have a
2 homeowner with a shed in the back portion of their
3 property. You know, same kind of thing. It's enclosed.
4 It's a traditional enclosed ceiling, four walls and a door
5 and it's a homeowner storing their tools in it. Clearly,
6 we wouldn't be arguing whether those goods were for sale.
7 We'd say it's a burglary third and call it a day. I don't
8 think we would have a directed verdict on that. So the
9 argument that goods means items for sale would negate
10 almost every burglary third of a building we have because
11 typically, there's a homeowner with some personal property
12 that they're storing in this outbuilding. I've got -- I'm
13 happy to hand my copy up. I've got my Black's Law
14 Dictionary here. I just looked up goods and it seems to
15 define it as more of a traditional -- what Your Honor kind
16 of had a good example, stolen goods, what you think about
17 stolen goods. The Black's Law definition, in my
18 definition I'm reading, tangible or moveable personal
19 property other than money. Okay. And certainly, these
20 items that Ms. Mathis and Mr. Hazel identified, they said
21 they had certain value to them. They were their own
22 personal property. So I don't think anywhere in the
23 statute -- I've never heard the argument before that in
24 order to be a building items for sale had to be stored in
25 that building. Certainly, the statute does not make

1 mention of that. I believe that would be in the
2 definition of building, that it would have to be items for
3 sale are stored there. Let me address the structures in
4 question being buildings. Certainly it's defined -- and
5 we're just going to argue the plain meaning of -- the
6 plain language of the statute. "Building, any structure
7 where goods are stored." Those are the only two -- the
8 only portion of that whole statute that we're arguing
9 applies here. Certainly, this is a structure. Certainly,
10 Ms. Mathis and Mr. Hazel have indicated that they store
11 valuable personal belongings of theirs in these
12 structures. I think it meets the statute definition of a
13 building.

14 THE COURT: Okay.

15 MR. VERNER: Briefly, the legislature would have --
16 if they meant something differently, they would have said
17 where property is kept. If they didn't mean goods in the
18 understood definition of goods, then the statute clearly
19 would have said a building where property is kept if they
20 meant non-mercantile property. I think they use goods for
21 a reason.

22 MR. SCOTT: Your Honor, just briefly. We'll also
23 note the petty larceny code section describes goods.

24 THE COURT: What, Solicitor? I'm sorry.

25 MR. SCOTT: Petty larceny, the definition is, "Simple

1 larceny of any article of goods." So, of course, we
2 understand larceny not being theft of only items that were
3 meant for sale. The same argument as being made here for
4 a building, Your Honor.

5 THE COURT: Well, it's an interesting argument and
6 the statute says any structure where goods are sold.
7 Black's Law says, structure designed for storage in
8 defining the word, building. And so, I think this --
9 however close an issue this is, I think this carport, in
10 this case, two carports, do qualify as a building under
11 the statute of the Black's Law Dictionary. The State
12 versus Middleton and the State versus Myers both quoted
13 the Black's Law Dictionary and the definition of goods. I
14 just don't see where goods are confined to items held for
15 sale. When you look at Black's Law definition of goods
16 being tangible and moveable for personal property. It's
17 an interesting argument, Mr. Verner. You always -- you
18 always come up with some good arguments. But I'm going to
19 respectfully deny your motion for a directed verdict. I
20 find that there's sufficient evidence to send this case to
21 the jury.

22 MR. VERNER: Judge, just part and parcel of the -- if
23 I had asked for a jury charge on a definition of goods, is
24 the Court inclined to --

25 THE COURT: I'll be glad to, you know, take a close

1 look at anything that you want to offer the Court on jury
2 charge. I'll be glad to look at -- as well, as the State.
3 All right. While we're outside the presence of the jury,
4 let me just give the -- go through the colloquy on the
5 right to testify and give me just a moment to pull that
6 up. Give me just a minute. And would you swear Mr.
7 Maybin in, please, while I'm pulling this up.

8 STERLING MAYBIN, being
9 first duly sworn, testified as follows:

10 THE COURT: All right. Mr. Maybin, at this time, I'm
11 going to explain to you certain of your rights. If you do
12 not understand anything I say, please let me know. If you
13 want me to explain anything in more detail, please let me
14 know that, as well. Do you understand, sir?

15 MR. MAYBIN: Yes, sir.

16 THE COURT: We've now reached the stage of the trial
17 where you may present your defense. You have the right to
18 claim the protections given to you by the Fifth Amendment
19 to the Constitution of the United States. This amendment
20 states, in part, "No person shall be compelled in any
21 criminal case to be a witness against themselves." This
22 means that you cannot be required to testify in this case.
23 You have the right to testify on your behalf. However, no
24 one can make you testify. This is a personal right. No
25 one can waive this right except you, sir. If you decide

1 to testify, you'll be subject to the same rules that
2 govern other witnesses and you may be examined or
3 cross-examined on any relevant issue in this case. In
4 addition, if you have any convictions involving dishonesty
5 or false statement or for crimes punishable by
6 imprisonment for more than one year and this Court
7 determines that the probative value of admitting this
8 evidence outweighs its prejudicial effect to you, the
9 Solicitor would be able to introduce your record to attack
10 your credibility. If you decide to testify, this decision
11 on your part must be freely, voluntarily and intelligently
12 made with knowledge of the protections given to you by the
13 Fifth Amendment and the consequences of your decision to
14 testify. If you decide not to testify, this also must be
15 decided on your part freely, voluntarily and intelligently
16 made, and if you decide not to testify I will instruct the
17 jurors that they cannot give the fact that you did not
18 testify any consideration whatsoever and there is to be
19 absolutely no prejudice to you because you did not
20 testify. This is left entirely up to you whether or not
21 you testify. You have the right to talk with Mr. Verner
22 and any family or friends or anyone else, but the final
23 decision will be left up entirely to you. Have you
24 understood what I've explained to you, sir?

25 MR. MAYBIN: Yes, sir.

1 THE COURT: Is that a yes?

2 MR. MAYBIN: Yes, sir.

3 THE COURT: And do you have any questions about what
4 I've explained to you?

5 MR. MAYBIN: No, sir.

6 THE COURT: Have you made a decision as to whether or
7 not you'll testify?

8 MR. MAYBIN: I'm not going to testify.

9 THE COURT: You're not going to testify --

10 MR. MAYBIN: No, sir.

11 THE COURT: Is that correct?

12 MR. MAYBIN: Yes, sir.

13 THE COURT: And is that decision not to testify, has
14 that been made by you freely, voluntarily and
15 intelligently? Is that decision made by you freely,
16 voluntarily and intelligently?

17 MR. MAYBIN: Yes, sir.

18 THE COURT: Is that a yes, sir? I'm having a hard
19 time hearing you.

20 MR. MAYBIN: Yes.

21 THE COURT: Okay. Thank you, sir. All right. You
22 can step -- sit down. I'm thinking what we'll do -- it's
23 already close to 3:00 o'clock and I need to work on the
24 charge. So I'm going to send the Defendant -- the jury
25 home and have them back at 9:30 in the morning. Does

1 anybody have any objection to that? And assuming, Mr.
2 Verner, you're not going to put up a case, assuming that,
3 then we can argue and charge in the morning. Does that
4 suit everybody?

5 MR. SCOTT: Yes, sir.'

6 THE COURT: Okay. Mr. Verner, does that suit you?

7 MR. VERNER: I think my client would prefer to get it
8 done today, Your Honor, but I understand the Court's --

9 THE COURT: Well, I just -- I don't have a charge
10 ready to present to you guys and you just mentioned that
11 you wanted to submit something to me. So I'd like --

12 MR. VERNER: I did.

13 THE COURT: -- to spend this afternoon working on a
14 charge and we'll have the jury back at 9:30 in the
15 morning. Okay?

16 MR. VERNER: We don't have -- there will be no
17 additional witnesses, so we would just--

18 THE COURT: -- okay. All right. What we'll do is
19 when I bring the jury out, I'll just get you to rest. And
20 then, we'll close the record in the case and then finish
21 up tomorrow. Okay. Madam Bailiff, if you'll bring the
22 jury out. And we'll talk about this exhibit, too, after
23 we've finished with the jury.

24 (Whereupon, the jury came into open court at
25 approximately 3:30 p.m.)

1 THE COURT: Let the record reflect the jury is back
2 in. Mr. Verner, anything from you, sir?

3 MR. VERNER: Your Honor, if the State has rested,
4 I'll renew my argument with the State to dismiss the
5 burglary counts.

6 THE COURT: Okay. All right.

7 MR. VERNER: If that is denied, as I believe the
8 Court has indicated it is, legally, then I think the jury
9 has heard what they need to hear.

10 THE COURT: -- okay. All right. So the Defense
11 rests?

12 MR. VERNER: The Defense rests and is prepared to
13 argue.

14 THE COURT: Okay. All right. The evidentiary record
15 in this case is now closed. Ladies and gentlemen, what
16 we're going to do -- I'm going to go ahead and send you on
17 home today. What we have left to do is the lawyers will
18 make their closing arguments, and then I will charge you
19 the law that applies to this case. I have not completed
20 my charge yet. So I need some time to work on that. So
21 I'm going to let you go on home and have you back here at
22 9:30 in the morning and remember all of my instructions
23 that I've given to you, they still apply, and we'll see
24 you at 9:30 in the morning. Have a good afternoon and
25 evening.

1 (Whereupon, the jury was excused from open court for
2 the day.)

3 THE COURT: All right. We'll be in recess until 9:30
4 in the morning. I'm going to be back here working on the
5 charge. If you all want to get me anything to look at,
6 try to do that this afternoon and we'll go from there.
7 And then when I get a draft -- you all have tried enough
8 cases with me. I'll get you a draft of my charge, let you
9 look at it and we'll go from there. Okay?

10 MR. VERNER: The Court indicated he was going to make
11 a decision about the indictments coming in?

12 THE COURT: Yeah. Because Exhibit 30 is, basically,
13 sentencing sheets -- well, there is maybe one indictment.
14 I'm just going to have this marked as a Court's exhibit.
15 The evidence is already into the jury, uncontested, that
16 Mr. Maybin had the two prior convictions, '92 and 2015,
17 but I'll have this as a Court's exhibit.

18 (Whereupon, Court's Exhibit number 1 was marked for
19 identification purposes).

20 (Whereupon, the trial will resume the next morning at
21 9:30 a.m.)

22 August 28, 2019

23 THE COURT: Okay. We are back on the record. The
24 Court has provided the attorneys with the proposed jury
25 charge. And I am going to -- even though I gave a

1 limiting instruction to the jury concerning the prior
2 convictions, I am going to include that in my charge. It
3 may not actually be in the written charge, but it will be
4 in the charge I give them. And then I think the State was
5 okay with the remaining charge. Correct, Solicitor?

6 MR. SCOTT: Yes, sir.

7 THE COURT: Okay. And then, Mr. Verner, you had an
8 objection to the charge concerning the definition of
9 building.

10 MR. VERNER: Not so much an objection to your charge,
11 Your Honor, so much, just a request to define -- give the
12 legal definition of goods.

13 THE COURT: Right.

14 MR. VERNER: And before I start that, Your Honor, may
15 I just to protect myself, the Defense has rested, I
16 believe, yesterday --

17 THE COURT: Right.

18 MR. VERNER: -- and I'm just renewing my directed --

19 THE COURT: Sure.

20 MR. VERNER: -- verdict motions.

21 THE COURT: Sure.

22 MR. VERNER: I assume with the same visible chance of
23 success as after the State has closed. But the --

24 THE COURT: I wouldn't necessarily say visible, but
25 my ruling made yesterday will remain in effect.

1 MR. VERNER: Okay. Thank you, Your Honor. And so, I
2 don't object to the Court's charge. I would just ask for
3 goods to be defined for the jury, please.

4 THE COURT: Okay. And this will be in relationship
5 to our discussion yesterday with respect to your motion
6 for directed verdict and I'm not going to add anything to
7 the charge as it relates to definition of goods.

8 MR. VERNER: And I think the Court indicated earlier
9 that you'd just let me briefly put on the record?

10 THE COURT: Sure. Whatever you need to.

11 MR. VERNER: Are you ready now, Judge?

12 THE COURT: Yeah, go ahead. Let's get that on the
13 record, and then we'll bring them out for closing
14 arguments.

15 MR. VERNER: The definition of goods I am proposing,
16 Your Honor, in Black's Law and other legal authorities is,
17 "Goods are generally defined as a chattel, which is
18 generally subject to sale." And because chattel is not a
19 word that's regularly used anymore, I would just argue
20 that personal property, which is generally subject to sale
21 or property which is generally subject to sale. Of
22 course, we talked about the Middleton case yesterday, Your
23 Honor, where -- that's more of the enclosure issue. But
24 just some places where the General Assembly has
25 distinguished between goods and personal property, of

1 course, is in the arson and the defrauding insurer statute
2 16-11-130 where the statute specifically indicates goods
3 comma, wares, merchandise, all comma, and then for other
4 chattels or personal property. So in the arson statute,
5 goods and personal property are individually identified.
6 In the malicious damage statute 16-11-510, "Personal
7 property, comma, or goods and chattels of another."
8 Again, that's a separate statute where the legislature was
9 aware that personal property and goods are separate. The
10 Heilker versus the Zoning Board of Beaufort case, which
11 specifically talks about the storage of goods and goods
12 are identified as mercantile or merchandise. And then,
13 Your Honor, as far as the -- on the issue of whether an
14 open air building can be -- and I know this is different
15 than the goods issue, Judge. I just want to note that
16 under 16-11-430, which is the defense of habitation
17 statute -- and all of these statutes are in the same
18 burglary articles or very close to it. The dwelling is
19 defined as, "Can include anything with a roof over it."
20 So there the legislature's clearly aware -- when they talk
21 about persons that are entitled to defend their home, the
22 legislature clearly distinguishes something that is open
23 air but has a roof over it and they include that in the
24 definition of what can be a dwelling. And then in the
25 State versus Stone case, which is 250 South Carolina --

1 350 South Carolina 442, it was a 2002 case. Again, they
2 talk about -- for the burglary statute, a porch -- for a
3 porch being included in a burglary, the Court of Appeals
4 noted that the porch was fully enclosed and appurtenant to
5 the home. And, therefore, could be -- encompass a
6 burglary conviction, which is consistent with Middleton's
7 crawlspace has to be enclosed. State versus Stone, the
8 porch has to be enclosed. And so, again, Your Honor,
9 that's more on my motion for a directed verdict. But a
10 reasonable person would not necessarily see a building --
11 an open space as a -- I understand the Court's decision on
12 that.

13 THE COURT: Right. And as I mentioned yesterday,
14 Middleton does cite Black's Law Dictionary that says, "A
15 building is any structure designed for storage." You
16 know, I appreciate your efforts. I really do and, I
17 guess, it's, you know, somewhat of a close issue. But I'm
18 going to remain consistent with my ruling and the basis
19 for my ruling yesterday. Okay. All right. Well, let's
20 bring the jury out for closing and we'll probably take a
21 short little break before -- between closing and charges.
22 Okay.

23 (Whereupon, the jury came into open court at
24 approximately 10:00 a.m.)

25 THE COURT: Let the record reflect the jury is back

1 in. Good morning, ladies and gentlemen.

2 THE JURY: Good morning.

3 THE COURT: You're doing well. It doesn't seem to be
4 quite as chilly this morning as it was yesterday. So
5 hopefully, it will remain that way. As I told you
6 yesterday before we broke for the evening, what remains in
7 this case, the lawyers will make their closing arguments,
8 we'll take a little break, and then I will charge you the
9 law applicable to this case. This is the last opportunity
10 that these good lawyers have to advocate for their
11 respective sides. So please give your undivided
12 attention. Solicitor Scott, you ready, sir?

13 MR. SCOTT: Yes, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 MR. SCOTT: On April 24th of this year, that's when
17 Bessie Mathis -- Bessie, raise your hand, and Larry Hazel,
18 raise your hand. Two homeowners here in Newberry, live in
19 the town limits, contributing members of your society,
20 finally had enough when they found various goods that they
21 kept in their buildings that turned up missing. Bessie,
22 she talked about one of her favorite things to do is
23 landscaping. I've been there. I'll tell you, it's
24 meticulous. It's meticulously kept. You can tell the
25 fruits of her labor. She spends a lot of time out there,

1 and in doing so she needs a lot of lawn equipment. And
2 she did over time go on to find things missing. Likewise,
3 Larry, as part of his job he needs these tools. And
4 imagine the frustration going out there and looking for an
5 impact driver, or whatever else he needs to do a job and
6 it's just gone. And so, sadly, the reality nowadays and
7 certainly for these two is that they have to spend money,
8 that I'm sure they would have liked to have spent on other
9 things, to purchase surveillance equipment and it paid
10 off. April 24th is when they went to check the videos and
11 that's when they see Sterling Maybin walking around the
12 property like he's living there, like he owned the place,
13 taking their stuff that they worked hard for, earned money
14 and purchased. And then, just traipsing around their
15 yards and their buildings taking at will. That's what the
16 case is about. It's about productive members of society
17 and takers. People who don't contribute that take from
18 others. It's a burglary second degree, violent. That's
19 how the statute reads. That's how the legislature has
20 coded this section, 16-11-312. A person who's guilty of
21 burglary in the second degree, the purpose -- the person
22 enters a building without consent and with the intent to
23 commit a crime inside. What takes it from being a
24 burglary third up to a burglary second, violent, is that
25 you have to have an aggravating factor. That can be it

1 happened at nighttime, somebody was injured during the
2 burglary or it can be something like the person had two or
3 more prior burglary convictions. You heard yesterday that
4 Sterling Maybin has two prior burglary convictions.
5 That's what makes it burglary second violent. That's what
6 he's charged with. Just briefly I want to show you. It's
7 complicated, but our General Assembly decided this is how
8 we're going to categorize burglaries. You basically have
9 four different flavors of burglary. Burglary first is
10 the, I guess, what you probably are more familiar with.
11 That's somebody breaking into your house, right, and what
12 makes it burglary first is they go inside a dwelling, a
13 home, and there's an aggravating factor. Again, that
14 aggravating factor could be they're armed with a weapon,
15 caused an injury to somebody in the home, it happened
16 during the nighttime or they had two prior -- two or more
17 prior convictions. Okay. So that's the burglary first.
18 That's the kind we're all familiar with. The other kind
19 of burglary into a dwelling is if they break in but don't
20 have all these aggravating factors. Let's say they break
21 in during the daytime, nobody's hurt and there's no
22 evidence they were armed with a weapon and there's no
23 proof that they have prior convictions. That would be
24 called a burglary second, nonviolent. Okay. So
25 dwellings, your home, that's one subset of burglaries.

1 Breaking into buildings, that's another set. Okay. He's
2 been accused of breaking into a building. If you break
3 into a shed at somebody's house and you don't have an
4 aggravating factor, you break into somebody's outbuilding
5 and you don't have one of these, they're not armed with a
6 weapon, they don't cause injury, it doesn't happen at
7 nighttime, they don't have any prior convictions, that's
8 what's called a burglary third. Okay. Why he's got a
9 burglary second violent is because of the two prior
10 convictions. Does that make sense? So he's broken into a
11 building and there's one aggravating factor. That's his
12 two prior convictions. I just wanted to explain it to
13 you. I'm certain Mr. Verner has a chance to explain how
14 he understands burglary charges, but it doesn't
15 necessarily have to mean somebody's breaking into your
16 home. All right. I hope I've kind of explained that to
17 you because what he's been accused of doing is breaking
18 into these buildings. Let's see. I've got to cut it on
19 first. Again, three elements to burglary second. Enter a
20 building, which he did. You saw the pictures of Bessie
21 Mathis' building and you saw the pictures of Larry Hazel's
22 building. Clearly he entered. We've got him on video
23 doing it, without consent. Each one of these homeowners
24 has said, I don't know the guy, I certainly didn't allow
25 him to go into my building, with the intent to commit a

1 crime therein. What crime did he intend to commit inside?
2 Well, for Bessie Mathis, we've got him on camera stealing
3 a weed wacker and a backpack full of whatever else.
4 Probably her son's motorcycle tools. Larry's, we can see
5 him taking chainsaws. We see him taking buckets of tools.
6 By the way, that video, you all get to watch it as many
7 times as you want, in case you want to watch it. That
8 goes back into evidence with you guys. You can watch it
9 some more if you want to. Okay. So you've got all those,
10 but all we've got right there is a burglary third, what I
11 showed you a minute ago. What bumps it up to what he's
12 charged with, burglary second violent, two or more prior
13 burglary convictions. Okay. All right. A building. We
14 talked about that he's got to enter without consent into a
15 building. What is a building? His defense attorney says
16 that is not a building, that's not a building, that's not
17 a building. Let me tell you, this Judge is going to read
18 you this and I think he handed you back the jury charges.
19 If you look at page six, this is what this Judge, on this
20 bench, which you swore an oath to this Court and you're
21 going to get charged on it, he's going to say, as the
22 presiding Judge, I am the sole Judge of the law of this
23 case and it is your duty as jurors to accept and apply the
24 law as I now state it to you. If you already have an idea
25 as to what the law is or what the law ought to be and it

1 does not agree with what I now tell you the law is, you
2 must abandon this idea because you have sworn to accept
3 the law and to apply the law exactly as I state it to you.
4 What he's going to tell you a building is, it means any
5 structure where goods are stored. This is the long
6 version. "Any structure, vehicle, watercraft or aircraft
7 where people assemble for purpose of business." That can
8 be an office building. Government, that could be a Court
9 House. Education, a school. Religion, a church, right?
10 You can't break into a church. Entertainment, how about a
11 movie theater. That would be a building for
12 entertainment. Public transportation, how about the bus
13 stop building downtown; or public use, that could be a
14 public park or something with a building. What we have
15 here though, we're not talking about a vehicle, watercraft
16 or aircraft, and we're not talking about where people
17 assemble for purpose of business, government, education,
18 religion, entertainment, public transportation or public
19 use. We're talking about where goods are stored. So a
20 building means any structure where goods are stored. You
21 saw the evidence. We've talked about all the goods that
22 were stored and how they talked about over time how their
23 things were missing left and right. So he got so
24 frustrated, Larry Hazel said, my wife -- you know, she
25 said we've got to get this camera. Can't afford it, but I

1 was tired of finding all this stuff missing, so I had to
2 buy it. This is Bessie's building. Okay. Certainly this
3 is a structure and certainly, and certainly she has goods
4 stored in it. Used to have a lot more before they started
5 showing up missing. She's done her best to kind of put
6 gates up and lock them, but that's not going to stop
7 somebody like Sterling Maybin. He's an opportunist. So
8 when he sees something he can get for free, he's going to
9 take it. He doesn't care how Bessie Mathis paid for it or
10 how much she needs it. That doesn't bother him. So when
11 she stores goods in here and he enters this building
12 without consent and takes those goods when there's two
13 prior burglary convictions, that is a burglary second
14 violent. The charge you're going to be considering, a
15 petty larceny. Okay. The petty larceny is actually
16 taking the things from these buildings and leaving with
17 them and never having returned them to her. So he's got
18 petty larcenies from stealing her weed wacker and the
19 burglary is entering into a building. That's Larry's
20 building right there, (indicating). He was the one on
21 Boundary Street, and this building sits off the road from
22 Boundary. We've got that one picture where you can see it
23 from the road, and Sterling really had to walk up through
24 his yard and go through. I don't know. From watching
25 that video, he really seems to have no concern of getting

1 caught or invading anybody else's property. That does not
2 concern someone like Sterling Maybin. But if you look,
3 here's the camera one that we see some of those angles
4 from. The other one is -- it's somewhere back up in here
5 in the ceiling portion of the building that showed the
6 inside, but there you go. You've got a petty larceny in
7 Larry Hazel's case because April 24th, that's when he
8 takes the chainsaw. We can't really tell from the video
9 whether it came from inside the building or he got it out
10 the back of the truck. So all he's charged with for April
11 24th is just a petty larceny for the chainsaw. But then
12 what you'll recall is Janson Bell, when he came out -- the
13 police officer who came out there when Larry called him on
14 the 24th and showed him the video. Janson took the report
15 and left and Larry said, hey, come back here. I watched
16 some more video. It looks like the guy was here
17 yesterday, as well, April 23rd, taking stuff. Those are
18 the videos you saw on here where he's in there taking the
19 buckets, messing around with the boat and generally,
20 putting his nose in other people's property and looking
21 around for something to take. April 23rd is when he had a
22 burglary on Larry Hazel's property. That's when we found
23 him on video going inside the building, and then we have
24 him on video taking. He took the push weed eater and he
25 took that bucket of tools. We have him on video doing

1 that. So in Larry Hazel's case, April 24th, just a petty
2 larceny. April 23rd was a burglary plus a petty larceny.
3 Does that make sense, we've got two petty larcenies, one
4 burglary for Larry Hazel. For Bessie, one burglary and
5 one petty larceny. ID, it sounded like they've all but
6 conceded this is him, but just to show you. You know,
7 it's tragic in a way that people have to have these
8 cameras. I mean, if you can afford it, look what you can
9 capture. I mean, this is Larry Hazel's house and here you
10 have Sterling with his trademark red stocking cap, his Air
11 Jordans, his backpack, the red hoodie. Remember when
12 Janson stopped him later that day and got out with him.
13 Look at those shoes. I remember those shoes. There he is
14 wearing them when Janson gets out with him and the navy
15 blue cargo pants. You know, there you go. There's him at
16 the scene and there's him later on that day when Janson
17 gets out with him. Every good burglar needs to come
18 prepared. You need to have something to kind of cover up
19 your face, your head. Gloves are good, too, because
20 you're not going to leave fingerprints, right? You're not
21 going to leave DNA. Sterling certainly knows how to
22 prepare himself for a burglary. He's got it down. He's
23 got the gloves on. He's not going to leave any
24 fingerprints on that doorknob. Walter, will you click it?
25 Gray gloves. Click it again. He's still wearing the

1 gloves when Janson gets out with him later that afternoon.
2 I don't know why, but he's still wearing the gloves.
3 Janson gets out with him. Keep going. He's got the
4 backpack on that he was wearing earlier that day. They
5 didn't search it because at that point they didn't have an
6 arrest warrant in-hand. They wanted to go out and get it
7 so they could arrest him later. They actually took these
8 pictures of him and let him go. Keep going. Is that it?

9 MR. BENTLEY: That's it.

10 MR. SCOTT: Clearly, ID is not an issue. You have
11 the video. There's a couple times he walks right toward
12 the camera. His face, we can clearly see. We've got Roy,
13 in law enforcement for 35 years in Newberry. Lifelong
14 Newberry County resident. Chief Roy McClurkin looked at
15 it and said one-hundred percent, Sterling Maybin. So
16 that's the case. I mean, it's just two contributing
17 members of this community who just -- they got tired of
18 it. They got of tired of having their hard earned items
19 taken right out from under them. I mean, you can put them
20 in your storage buildings all you want. But, you know,
21 Sterling Maybin's going to find them unless you capture
22 him and put him on video of him taking. That's really
23 what you've got to do with somebody like Sterling. Let's
24 look at the case, and let's listen to the Judge's
25 instructions. He can tell you what the law is. He's

1 going to remind you of your oath that you took to follow
2 the law. You're the judge of the facts. Okay. The facts
3 are, was that Sterling Maybin, number one, did he enter
4 the building. Number two, did he have consent to enter.
5 Did he commit a crime while he was in there, right. That
6 is what you decide. He's going to instruct you the law,
7 but that is a building. That is a structure where they
8 stored their goods. So, you know, if the Defense attorney
9 tries to convince you it's not a building, all you've got
10 to do is read the Judge's instructions. Okay. If you're
11 unclear on that, just read his instructions. That's it.
12 I told them I'd only take about 20 minutes. I hadn't
13 timed myself. Hopefully it was about that. You just need
14 to be firmly convinced of his guilt. The Judge is going
15 to tell you, you've got to decide this case beyond a
16 reasonable doubt. I think all of this evidence is
17 overwhelming to leave you firmly convinced. That's what
18 I'm asking you to do. I'm going to ask you to find him
19 guilty of taking Ms. Bessie Mathis' equipment, and then
20 going into her building without consent. I want a charge
21 of petty larceny for Ms. Bessie Mathis' trouble and
22 burglary second for going into her building. For Mr.
23 Hazel, I expect you to find him guilty of the burglary of
24 his building and two petty larcenies. One from April 24th
25 and one from April 23rd. Thank you guys for your

1 attention and, again, I ask you to be firmly convinced in
2 the evidence that's presented and find him guilty of these
3 charges. Thank you.

4 THE COURT: Solicitor, thank you. Mr. Verner, are
5 you ready, sir?

6 MR. VERNER: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. VERNER: Mr. Bentley, can you -- the definition
9 of burglary, can you pull that up, where it talks about
10 the -- where it lists -- maybe the one below that. Okay.
11 Yeah. And while he's doing that, members of the jury,
12 I've been a Public Defender for 15 years. I'm from
13 Newberry. I'm fond -- I don't know Ms. Bessie Mathis. I
14 don't know Larry Hazel personally. I'm fond of them as
15 Newberry people. I'm from Newberry. I'm also not the
16 type of person who's going to put my thumb on the scales
17 to help them out, or to say I did you a solid. You took
18 an oath. You owe a duty to the community of Newberry.
19 Not to Larry Hazel. Not to Bessie Mathis. And I'm not
20 saying they are not good people because they are. And
21 this case is about Sterling Maybin. But for me, as a
22 Public Defender, it is also about everybody in Newberry,
23 and it just boils down, to me, a case of -- I think we've
24 got to stand up to creative prosecution and just creative
25 definitions of what the law is. And I understand the

1 zealousness and I appreciate the zealousness. I'm like
2 anybody else. If you commit the crime, you need to be
3 punished. I don't disagree with that. They've got him
4 dead to rights. He admitted, he's the thief. He's the
5 one who took it, but that's not -- nobody's -- that's not
6 why we're here. Nobody's denying that. Why we're here is
7 that the State insists that this is a burglary. We just
8 do not believe it is. There's nobody in Newberry who
9 reasonably believes that four poles and a roof constitutes
10 a building. And I thought it was interesting when the
11 Solicitor talks about, you know, this is the statute and
12 how it defines buildings, and there's nobody after you
13 today that would -- sometimes the juries tell me there's
14 somebody in the Court of Appeals and there's somebody who
15 will look and see what we did and they will fix it if we
16 get it wrong. No. The Judge is going to tell you, that's
17 not how the jury system works. If you rule that this a
18 building, that is it. There is no calvary who's going to
19 correct what you do here if you make an incorrect
20 decision. Just -- I wasn't going to bring this up, but I
21 just thought it was interesting where they talk about a
22 building is any structure and they list them. A
23 government building like the Court House, a school, a
24 church, a movie theater. All of these buildings, what do
25 they have all in common, they are enclosed. They have

1 walls. They have doors. What the legislature meant when
2 they say a structure, where they store goods are
3 warehouses, buildings that are designed to hold goods.
4 That is what that is supposed to be. It is not supposed
5 to be open carports. Mr. Bentley, can you pull the
6 picture of Mr. Hazel's garage and the house from the
7 street? The argument would just be, there's nobody in
8 Newberry who looks at four poles and a roof and says that
9 that is a building because if this here is a building --
10 that's a roof and four poles (indicating). Somebody --
11 I've got people who are going to be charged with burglary
12 for going on somebody's porch. I don't see any legal
13 difference between a roof and poles, roof and poles, and
14 people going on porches, and that is a burglary. If I had
15 clients go to Mollohan Park and steal something from the
16 picnic tables -- do you all know the Mollohan Park?
17 They're open buildings. They're open air buildings, but
18 they've got roofs and I call them buildings, but they're
19 not. There's nobody -- if you went to a picnic at
20 Mollohan under the roof, nobody in Newberry says, I was
21 inside. You weren't. You were in an open air building.
22 There's nothing -- I just stand for the proposition that
23 that's not a building. That porch is not a building.
24 That side porch is not a building. That awning is not a
25 building. The Mollohan picnic table is not a building.

1 What the State is doing is they've taken -- and the
2 Prosecutor told you, but the thinking is, is just, you
3 know, they're tired of it. So they're going to go ahead
4 and slam the charges on somebody. And I'm not saying
5 people don't -- he's clearly guilty of two or three
6 felonious larcenies. No question about it. Is he guilty
7 of a house-breaking, a burglary? No. That's just
8 absolutely -- I submit to you, just legally just a
9 spurious, ludicrous argument. The legislature meant
10 warehouses. That's what a structure is, it houses goods.
11 I'll be kind of interested -- what's the definition of
12 goods? You don't think the legislature, in those law
13 books or other books -- other things has defined goods?
14 We all know what goods are. Goods and services are the
15 property that is held out for sale. That is what people
16 mean by goods. Now, they might use it off-hand now and
17 then, but goods are merchandise or retail property. I
18 mean, it's chattel that's designed to be sold as part of a
19 contract. I am not trying to condone these larcenies and
20 I'm not trying to weasel somebody out or bleeding hearts
21 somebody out of punishment. I'm really not. I'm really
22 trying to stand up for the proposition that the State
23 needs to punish people for the charges and for the crimes
24 that they committed. He's committed several counts of
25 felonious larceny, unquestioned. The State's decided to

1 play hardball with him and they are just being creative in
2 the definitions and I would ask you to say, no, because
3 you are opening up bad doors for people and problems. At
4 the end of the day -- you know, I try cases probably every
5 month. The Prosecutors here try cases every month in
6 Laurens and Newberry and Greenwood. When your verdict is
7 over, we'll accept it. I've never second guessed a jury's
8 verdict, because I've got a trial again next month, and
9 you're under oath and I believe that you will do what you
10 think is your honest best and nobody can second guess it,
11 but I would ask you to consider what you're doing. It is
12 just a simple, fundamental proposition. I like the
13 victims in this case. I like Ms. Mathis, I like Mr.
14 Shealy. I'm not willing to put my thumb on the scale to
15 do somebody a solid and I'll ask that you not either. But
16 the Judge has heard the case just like you have. I think
17 the case is really easy for you to decide. Actually,
18 nobody's disputed anything. We're disputing that open air
19 sheds are buildings under the statute, that they're not
20 warehouses. On the burglary counts -- on the burglary
21 second violent counts -- and he does have two burglary
22 third convictions in '92 and in 2015. He's got one in '92
23 and one in 2015. He qualifies -- if you decide this is a
24 burglary, it is a burglary violent, second degree. That's
25 not the issue. The issue is whether an outdoor -- whether

1 a reasonable person in Newberry recognizes an outdoor
2 awning as a building or a warehouse. I submit they're
3 not. That's the verdict I -- I submit as far as the
4 burglary counts go, I am not asking for a favor. I'm just
5 asking that you all do what you know is right and that is
6 to punish somebody for the crimes he's done. Thank you.

7 THE COURT: Thank you, Mr. Verner. Mr. Foreman,
8 ladies and gentlemen of the jury, we're going to take a
9 short break. And then I'll bring you back out and give
10 you the final jury charge on the law. So if you'd go back
11 to the jury room, don't begin your deliberations yet and
12 we'll get you back out shortly.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: Okay. We'll take a short little break.
16 Do you all want to come up and take a look at the verdict
17 form and make sure you're okay with it?

18 (Whereupon, a short break was taken.)

19 THE COURT: All right. Madam Bailiff, if you'll
20 bring the jury out, please.

21 (Whereupon, the jury came into open court at
22 approximately 10:40 a.m.)

23 THE COURT: Let the record reflect the jury is back
24 in. Mr. Foreman, ladies and gentlemen of the jury, I now
25 will charge you the law that applies to this case. You

1 must consider the charge as a whole and not focus on some
2 portions to the exclusion of others. The indictments
3 charge the Defendant with burglary second degree violent,
4 two counts; petty larceny, three counts. I'll remind you,
5 the fact that the Defendant was arrested, charged and
6 indicted in this case is not evidence in this case and
7 cannot be considered by you as evidence of guilt in this
8 case, nor does it create any presumption or inference of
9 guilt. These documents are simply the formal written
10 instruments which contain the charges made against the
11 Defendant. They are the formal documents by which this
12 case is brought into this court. The indictments in this
13 case allege five different offenses against the Defendant.
14 The charges are, again, petty larceny, three counts;
15 burglary second degree, violent, two counts. Each
16 indictment charges a separate and distinct offense. You
17 must decide each indictment separately on the evidence and
18 the law applicable to it, uninfluenced by your decision as
19 to any other indictment. The Defendant may be convicted
20 or acquitted on any or all of the offenses charged.
21 You'll be asked to write a separate verdict of guilty or
22 not guilty for each indictment. I have a verdict form,
23 Mr. Foreman, that at the end of my charge, I will show
24 you. It's very easy to complete.

25 The Defendant has pled not guilty to these

1 indictments and that plea puts the burden on the State to
2 prove the Defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself innocent. I charge you that it
5 is an important rule of the law that the Defendant in a
6 criminal trial, no matter what the seriousness of the
7 charges may be, will always be presumed innocent of the
8 crime for which the indictment was issued unless guilt has
9 been proven by evidence satisfying you of that guilt
10 beyond a reasonable doubt. This presumption of innocence
11 does not end when you begin your deliberations, but it
12 accompanies the Defendant throughout the trial unless you
13 reach a verdict of guilt based on evidence satisfying you
14 of that guilt beyond a reasonable doubt. The presumption
15 of innocence is like a robe of righteousness placed about
16 the shoulders of the Defendant which remains with the
17 Defendant until it has been stripped from the Defendant by
18 evidence satisfying you of the Defendant's guilt beyond a
19 reasonable doubt. This presumption of innocence is not
20 merely a legal theory. It's not just a legal phrase. It
21 is a substantial right to which every Defendant is
22 entitled unless you, the jury, are satisfied from the
23 evidence of the Defendant's guilt beyond a reasonable
24 doubt.

25 Now, concerning reasonable doubt, some of you may

1 have served as jurors in civil cases where you were told
2 that it is only necessary to prove that a fact is more
3 likely true than not true, such as by the greater weight
4 or the preponderance of the evidence. In criminal cases,
5 the State's proof must be more powerful than that. It
6 must be beyond a reasonable doubt. Proof beyond a
7 reasonable doubt is proof that leaves you firmly convinced
8 of the Defendant's guilt. Now, there are very few things
9 in this world that we know with absolute certainty and in
10 criminal cases, the law does not require proof that
11 overcomes every possible doubt. If based on your
12 consideration of the evidence you are firmly convinced
13 that the Defendant is guilty of the crime charged, you
14 must find the Defendant guilty. If on the other hand you
15 think there's a real possibility that the Defendant is not
16 guilty, you must give the Defendant the benefit of the
17 doubt and find him not guilty.

18 I remind you that during this trial you and I have
19 certain duties to perform. As a trial Judge it has been
20 my responsibility to preside over the trial of this case
21 and I also have the duty to rule on the admissibility of
22 the evidence offered during this trial. You are to
23 consider only the competent evidence before you. If there
24 was any testimony ordered stricken from the record in this
25 case during this trial, I don't believe that there was,

1 but if there was, you must disregard that testimony. You
2 are to consider only the testimony which has been
3 presented from the witness stand, any exhibits which have
4 been made a part of the record in this case and any
5 stipulations of counsel.

6 I have the additional duty to charge you the law that
7 applies to this case. As the presiding Judge, I am the
8 sole Judge of the law in this case. It is your duty as
9 jurors to accept and apply the law as I now state it to
10 you. If you already have any idea as to what the law is
11 or what the law ought to be and it does not agree with
12 what I now tell you the law is, you must abandon your idea
13 because you are sworn to accept the law and apply the law
14 exactly as I state it to you. In every case tried in this
15 court before a jury, the jury becomes the sole and
16 exclusive judge of the facts of the case. A trial Judge
17 cannot intimate, state, comment on or make any statement
18 to the trial jury about the facts of the case. Since you,
19 the jury, are the sole judge of the facts of this case,
20 you are not to infer from what I have said during the
21 progress of this trial in ruling upon the admissibility of
22 evidence or otherwise or anything that I say now during
23 the course of this instruction to you that I had any
24 opinion about the facts in this case. The law does not
25 allow me to have an opinion about the facts in this case.

1 This is a matter solely for you, the jury, to determine.
2 As jurors it is your duty to determine the effect, value,
3 weight and truth of the evidence presented during this
4 trial.

5 Now, Mr. Foreman, ladies and gentlemen of the jury,
6 there are two types of evidence which are generally
7 presented during a trial. That being direct evidence and
8 circumstantial evidence. Direct evidence directly proves
9 the existence of a fact and does not require deduction.
10 Circumstantial evidence is proof of a chain of facts and
11 circumstances indicating the existence of a fact. Crimes
12 may be proven by circumstantial evidence. The law makes
13 no distinction between the weight or value to be given to
14 either direct or circumstantial evidence. However, to the
15 extent the State relies on circumstantial evidence, all of
16 the circumstances must be consistent with each other and
17 when taken together point conclusively to the guilt of the
18 accused beyond a reasonable doubt. If these circumstances
19 merely portray the Defendant's behavior as suspicious, the
20 proof has failed. The State has the burden of proving the
21 Defendant guilty beyond a reasonable doubt. This burden
22 rests with the State regardless of whether the State
23 relies on direct evidence, circumstantial evidence or some
24 combination of the two.

25 Necessarily, you must determine the credibility of

1 witnesses who have testified in this case. Credibility
2 simply means believability. It becomes your duty as
3 jurors to analyze it and evaluate the evidence in
4 determining which evidence convinces you of its truth. In
5 determining the believability of witnesses who have
6 testified in this case, you may believe one witness over
7 several witnesses or several witnesses over one witness.
8 You may believe a part of the testimony of a witness and
9 reject the remaining part of the testimony of that same
10 witness. You may believe the testimony of a witness in
11 its entirety or reject the testimony of a witness in its
12 entirety. You may consider whether any witness has
13 exhibited to you any interest, bias, prejudice or other
14 motive in this case. You may also consider the appearance
15 and manner of a witness while on the witness stand.

16 Mr. Foreman, ladies and gentlemen of the jury, I
17 instruct you and emphasize the fact that the Defendant did
18 not testify is not a factor to be considered by you in any
19 way in your deliberations and in your consideration on the
20 question of the guilt or innocence of the Defendant. It
21 must not be considered by you in any manner whatsoever. A
22 Defendant has the constitutional right to remain silent
23 and that assertion of this right must not be considered by
24 you in your deliberations. I repeat, under the oath that
25 you took, you are to draw no conclusion whatsoever from

1 the fact that the Defendant in this case did not testify.
2 The fact that this Defendant did not testify should not
3 even be discussed in the jury room. The burden of proof,
4 as I have stated to you several times, is on the State.
5 The Defendant is not required to prove his innocence. The
6 burden of proof remains on the State to prove guilt beyond
7 a reasonable doubt.

8 Now, in order to establish criminal liability,
9 criminal intent is required. For example, the mental
10 state required to be proven by the State for a particular
11 crime might be purpose, intent, knowledge, recklessness or
12 criminal negligence. Criminal intent must be proven by
13 the State beyond a reasonable doubt. Criminal intent is
14 always a matter that must be considered by the jury from
15 the circumstances surrounding the situation. Now, there's
16 no way to prove intent to a mathematical certainty.
17 There's no way medical science can dissect a person's
18 brain and determine what the person had in mind. So the
19 law says that criminal intent may be inferred from the
20 circumstances shown to have existed. This is how you make
21 a determination of whether or not the element requiring
22 intent was present. It's not necessary to establish
23 intent by direct and positive evidence, but intent may be
24 established by the inference in the same way as any other
25 fact by taking into consideration the acts of the parties

1 and all the facts and circumstances of the case. Criminal
2 intent is a mental state. A conscious wrong. It's up to
3 you to determine what the Defendant intended to do based
4 on the circumstances shown to have existed.

5 Now, as I've already stated, the Defendant is charged
6 with two counts of second degree burglary, violent. The
7 State must first prove the following elements of the
8 charge beyond a reasonable doubt. That the Defendant
9 entered a building without consent with the intent to
10 commit a crime therein and the Defendant has a prior
11 record of two or more convictions of burglary or
12 house-breaking or both. A building is any structure where
13 goods are stored. As I instructed you yesterday, evidence
14 of the Defendant's prior convictions should only be
15 considered by you in determining whether or not the
16 Defendant is guilty of one of those elements of the crime
17 of burglary second, violent. It should not be considered
18 by you as evidence of the Defendant's bad character or
19 that the Defendant acted in accordance with prior conduct.
20 The Defendant is also charged with three counts of petty
21 larceny. The State must prove beyond a reasonable doubt
22 that the Defendant took and carried away the property of
23 another against the will or without the consent of the
24 other person. The slightest removal of the property or
25 the complete possession of the property, even for an

1 instance, by the Defendant is enough to show a taking and
2 carrying away of the property. The State must also prove
3 beyond a reasonable doubt that the Defendant intended to
4 permanently deprive the owner of the property. And
5 finally, the State must prove that the value of the
6 property taken was \$2,000.00 dollars or less in value.

7 Now, Mr. Foreman, ladies and gentlemen of the jury,
8 there are two possible verdicts for each indictment. Not
9 guilty and guilty. Your verdict as to each indictment
10 must be unanimous among the 12 of you and when a unanimous
11 verdict is reached, you're to knock on the door and notify
12 the Bailiff that a verdict has been reached. I'm going to
13 come down and I'm going to show you the verdict form.
14 Now, that was a lot that I just read to you. I understand
15 that. You're going to be given a copy of this charge to
16 take back to the jury room and use in whatever manner that
17 you feel like is necessary, if any. Okay. Mr. Foreman,
18 this is the verdict form. This is what you will complete
19 and it breaks down each indictment, showing the charge and
20 the person involved, and you will put your initials as to
21 the verdict for each indictment. There's two pages. One
22 indictment on the back. You place your initials on either
23 guilty or not guilty as to each indictment and sign the
24 second page. Okay. Now, here's what I want you to do. I
25 want all 13 of you to go back in the jury room, but you're

1 not to begin your deliberations yet. I'm going to check
2 with the lawyers and make sure that there are no additions
3 or changes to my charge. I don't anticipate there being
4 any, but I need to check with them first. And if there
5 are none, then when the Bailiff hands you the verdict
6 form, the copy of the charge and the exhibits, then that
7 will be your cue for two things to happen. I need for the
8 alternate to exit the jury room and come back here for
9 further instructions, and then you can begin your
10 deliberations, but don't start quite yet. So all 13 of
11 you, go back in there.

12 (Whereupon, the jury was excused to the jury room.)

13 THE COURT: Does the State have any objections or
14 exceptions to the Court's charge?

15 MR. SCOTT: No, Your Honor.

16 THE COURT: And other than what has been noted on the
17 record, Mr. Verner, do you have any additional objections
18 or exceptions to the charge?

19 MR. VERNER: Nothing beyond what we've already
20 raised, Your Honor.

21 THE COURT: Thank you very much. All right. We will
22 be off the record.

23 (Whereupon, the alternate juror was excused from the
24 trial of the case.)

25 (Whereupon, the jury began deliberations at 10:58

1 a.m.)

2 THE COURT: All right, gentlemen. I understand the
3 jury has reached a verdict in this case. I need to put on
4 the record, the jury submitted a question to the Court
5 asking for the definition of a building and I wrote on
6 that note, "Please, refer to page 12 of the jury charge".
7 And for whatever reason, the Foreman tore the note up.
8 And so, it's in pieces. Just make sure that the record is
9 complete. So we have the pieces of the note, but I'm
10 putting it on the record, the fact that that note did
11 exist.

12 (Whereupon, Court's Exhibit 2 was marked for
13 identification only.)

14 MR. VERNER: So it did -- the note did reach the
15 jury, then, at least the Foreman?

16 THE COURT: It did.

17 MR. VERNER: Then just on that, Your Honor. I had
18 emailed -- I don't know if the clerk -- did you get my
19 email? Are we able to print that out? This is a Court's
20 Exhibit, Your Honor.

21 THE COURT: Sure.

22 MR. VERNER: I would offer as a Court's Exhibit my
23 proposed--

24 THE COURT: -- right. And you had indicated, when we
25 were discussing the jury question, that's what you wanted

1 and I indicated I was just going to refer them to the jury
2 charge. But we can certainly print it out and have it
3 marked as a Court's Exhibit.

4 (Whereupon, Court's Exhibit 3 was marked for
5 identification only.)

6 MR. VERNER: Thank you, Judge.

7 THE COURT: No problem. All right. Let's bring the
8 jury out, please, Madam Bailiff.

9 (Whereupon, the jury came into open court with a
10 verdict at approximately 11:45 a.m.)

11 THE COURT: Let the record reflect the jury is back
12 in. Mr. Foreman, without telling me what your verdict is,
13 have you reached a unanimous verdict as to all five
14 indictments?

15 THE FOREMAN: Yes, we did.

16 THE COURT: Okay. Would you hand the verdict form to
17 Madam Bailiff. Okay. Madam Clerk, if you would publish
18 the verdict. Mr. Maybin, if you'd please stand.

19 MADAM CLERK: The State of South Carolina versus
20 Sterling Maybin. As to indictment 2019-GS-36-433, the
21 charge of burglary degree, violent, Bessie Bookman, we,
22 the jury, unanimously find the Defendant guilty.

23 As for indictment 2019-GS-36-429, the charge of petty
24 larceny, Bessie Bookman, we, the jury, unanimously find
25 the Defendant guilty.

1 As for indictment 2019-GS-36-432, the charge of
2 burglary second, violent, Larry Hazel, we, the jury,
3 unanimously find the Defendant guilty.

4 As for indictment 2019-GS-36-430, the charge of petty
5 larceny, April 23rd, 2019, Larry Hazel, we, the jury
6 unanimously find the Defendant guilty.

7 As for indictment 2019-431, the charge of petty
8 larceny, April 24th, 2019, Larry Hazel, we, the jury,
9 unanimously find the Defendant guilty.

10 Signed Douglas Fulmer, Foreperson. Ladies and
11 gentlemen, if this is your verdict, please indicate by
12 raising your right hand.

13 (Whereupon, the members of the jury raised their
14 right hands).

15 THE COURT: Let the record reflect that all 12 hands
16 were raised. Mr. Verner, do you request individual
17 polling of this jury?

18 MR. VERNER: Yes, please.

19 THE COURT: Is that a yes?

20 MR. VERNER: I do.

21 THE COURT: Okay. All right. Madam Clerk.

22 MADAM CLERK: Yes, sir. As I call your name, please
23 indicate. Sabrina M. Williams, is this your verdict and
24 is still your verdict?

25 THE JUROR: Yes.

1 MADAM CLERK: John A. Bearden, is this your verdict
2 and is still your verdict?

3 THE JUROR: Yes.

4 MADAM CLERK: Abraham Rikabi, is this your verdict
5 and is still your verdict?

6 THE JUROR: Yes.

7 MADAM CLERK: Lisa Clark, is this your verdict and is
8 still your verdict?

9 THE JUROR: Yes.

10 MADAM CLERK: Sharon Hunter, is this your verdict and
11 is still your verdict?

12 THE JUROR: Yes.

13 MADAM CLERK: Latresa Wright, is this your verdict
14 and is still your verdict?

15 THE JUROR: Yes.

16 MADAM CLERK: Ann Dominick, is this your verdict and
17 is still your verdict?

18 THE JUROR: Yes.

19 MADAM CLERK: Krystal Nance, is this your verdict and
20 is still your verdict?

21 THE JUROR: Yes.

22 MADAM CLERK: Lynn Yarborough, is this your verdict
23 and is still your verdict?

24 THE JUROR: Yes.

25 MADAM CLERK: Scott Martin, is this your verdict and

1 is still your verdict?

2 THE JUROR: Yes.

3 MADAM CLERK: Douglass Fulmer, is this your verdict
4 and is still your verdict?

5 THE JUROR: Yes.

6 MADAM CLERK: Patricia Cardenas, is this your verdict
7 and is still your verdict?

8 THE JUROR: Yes.

9 THE COURT: Thank you, Madam Clerk. Mr. Foreman and
10 ladies and gentlemen of the jury, I want to thank you for
11 your jury service. The verdict that you reached in this
12 case does not matter to me. What matters to me is that my
13 jury performs its duties conscientiously and efficiently,
14 that you were attentive throughout the trial, and you did
15 all of those things and I appreciate that very much. I
16 hope that you have found your experience with us
17 educational. An experience that you've not had the
18 opportunity to be a part of previously and that sometime
19 down the road that you would like to maybe sit on another
20 jury, whether it's in the criminal arena or in the civil
21 arena. We will more than likely be calling another case
22 for trial this week. However, we believe that we have
23 enough in the remaining jury panel to not have you come
24 back and be a part of that panel and possibly being
25 selected again. So I'm going to excuse you and you are

1 good for the remainder of the week. I do like to shake
2 the hands of my jury. So I'm going to come down as you
3 exit. Mr. Foreman, the indictments in this case -- hang
4 around and get with the Clerk because you'll need to sign
5 the back of each indictment indicating the guilty verdict.
6 So if you would hang around for a few minutes, but the
7 others are free to go.

8 (Whereupon, the jury was excused from open court.)

9 THE COURT: Concerning sentencing, we can just do
10 that later on because I've got a 12:00 o'clock matter. I
11 think you all have got maybe a couple of pleas to put up.
12 So we'll deal with your sentencing, Mr. Maybin, sometime
13 before the end of the week. We can either do it this
14 afternoon or tomorrow, but I'm going to go ahead and deal
15 with my 12:00 o'clock, and then whatever pleas you all
16 have up.

17 MR. SCOTT: Can I check with the victims just real
18 quick to see if--

19 THE COURT: If you want to, because if they want to
20 be back for the sentencing, just go ahead and get with Mr.
21 Verner and decide on a day and time, whether it's this
22 afternoon or tomorrow or whatever, so they'll know when to
23 come back.

24 (Whereupon, a break was taken.)

25 THE COURT: All right, Solicitor.

1 MR. SCOTT: Thank you, Your Honor. You have heard
2 the facts of the case now. Criminal history is a 1988
3 public disorderly --

4 THE COURT: I'm going to write those down, so don't
5 go so fast.

6 MR. SCOTT: Okay. '88, public disorderly conduct.
7 '89, public disorderly conduct and unlawful weapon charge.
8 '91, two counts of assault and battery. '92, the first
9 burglary. That's a burg third and receiving stolen goods.
10 In '93, he had a YOA and an armed robbery charge and a
11 distribution, imitation drugs. '98, another public
12 disorderly conduct. '99, shoplifting and trespass. 2000,
13 two counts of distribution, crack. 2003, conspiracy.
14 2004, two counts of auto breaking. 2006, auto breaking.
15 2007, assault and battery and interfering with officers.
16 2009, grand larceny and a property enhancement charge.
17 2011, public disorderly conduct. 2014, obstruction of
18 justice, resisting arrest, simple possession of marijuana.
19 And then in this courtroom on July 10th, 2015 he was
20 convicted of burglary third, second offense, and petty
21 larceny enhanced. My recollection was he got 10 years on
22 that. He was, again, convicted July 10th, 2015. My notes
23 from SCDC shows a release August 13th, 2018 and, of
24 course, these crimes were committed in April of 2019.

25 MR. VERNER: Your Honor, I don't want to intrude on

1 it, but my understanding from talking to Sterling is the
2 armed robbery would be a strong armed robbery. Armed
3 robbery would always be a non-qualifying youthful offender
4 offense but he may have been charged with armed robbery.
5 It appears likely that he was actually convicted of strong
6 armed robbery.

7 THE COURT: Okay. Anything further from the State as
8 it relates to sentencing?

9 MR. SCOTT: Yes, Your Honor. I believe Mr. Hazel
10 wants to address the Court. I don't think there's any
11 surprise from my point of view. I see Mr. Maybin as just
12 the poster boy of recidivism. He's a career criminal. He
13 sat in this courtroom and was tried before a jury, it
14 seems like just yesterday to me, and he's already out --
15 he was out four or five months before he was doing the
16 same thing again. And these people had their property
17 gradually show up missing over time until they're finally
18 forced to get a camera and catch him in the act. So, you
19 know, none of us in this courtroom are so naive to think
20 those were the only isolated incidents that he committed
21 while he was out. He has just shown a general refusal to
22 comply whatsoever -- he knows it's against the law to
23 steal from people. That's all I ask, very simple, just
24 stop victimizing people like Mr. Hazel and Ms. Mathis.
25 He's either unwilling or incapable of doing it. I would

1 hope for a sentence that reflects that. He got 10 years
2 last time. I don't see how he can get just 10 years this
3 time. It's got to be worse. He's got to, you know, face
4 the facts of his record. There it is in black and white
5 and -- anyway. I don't want to protest too much and I
6 don't think that would be a surprise, Your Honor, how I
7 feel about this kind of recidivism. At any rate, Mr.
8 Hazel I think wishes to address the Court, Your Honor.

9 THE COURT: Okay. All right. I need to have you
10 sworn in, Mr. Hazel.

11 LARRY HAZEL, being
12 first duly sworn, testified as follows:

13 THE COURT: All right. Mr. Hazel, I'll be glad to
14 hear from you, sir.

15 MR. HAZEL: All right. As you know, I'm Larry Hazel.
16 I'm 62. A construction worker. I'm self-employed. I've
17 worked hard all my life and I'll continue to keep going
18 for my children and my grandchildren until the Lord says
19 otherwise. In this case, Your Honor, I just ask that you
20 would consider -- as you watched the video, you seen that
21 this Defendant had no fear whatsoever in him and since
22 then has shown no remorse to his victims. I seriously
23 believe this Defendant is very dangerous. I believe in
24 the future someone could possibly hurt him or he could
25 possibly hurt somebody seriously, and I'm not asking

1 anything out of a vengeful heart. I pray for this
2 Defendant. I pray somewhere down the line he'll accept
3 Christ in his heart. At this time, I'm just asking you to
4 consider the maximum penalty under the law in this
5 decision and I believe this will help this individual.
6 And I'd like to go on and thank everyone who was involved
7 in this case. I'd like to thank everyone. I appreciate
8 what everyone's done. Thank you.

9 THE COURT: All right. Thank you. Thank you very
10 much, Mr. Hazel. All right. Mr. Verner, anything you'd
11 like to tell me?

12 MR. VERNER: Your Honor, first and foremost,
13 Sterling's been in custody since August 28th of this year.
14 So that would be a sentence start date, at least, August
15 28th.

16 THE COURT: Today's August 28th.

17 MR. VERNER: I'm sorry. April 28th. April. I
18 apologize, Judge.

19 MR. SCOTT: April 24th.

20 MR. VERNER: April 24th. Okay.

21 THE COURT: Do you know the number of days? I can
22 just round it off by months.

23 MR. VERNER: As long as that's listed as a sentence
24 start date on the order, then -- about six months.

25 MR. SCOTT: April 24th was 126 days ago.

1 THE COURT: 126?

2 MR. SCOTT: Yes, sir.

3 THE COURT: Defense, you good with that?

4 MR. VERNER: Six months and six days.

5 THE COURT: Are you good with 126 days?

6 MR. VERNER: Yes, sir. I don't have any reason to
7 dispute that. Judge, from the beginning, Sterling wanted
8 to plead guilty, as I think the Court inadvertently
9 overheard us indicating that he was prepared to plead,
10 straight up, to three counts of third degree property
11 enhancement which would have been zero to 30 year
12 exposure. Obviously, they're 10 year crimes.

13 THE COURT: Right.

14 MR. VERNER: I don't quibble with the jury's verdict,
15 but just looking at the spectrum of severity of
16 burglaries, home breakings at night with weapons, which
17 is, you have got, on the spectrum of burglary, pilfering
18 through yard items as opposed to actually going into
19 enclosed buildings or home invasion type. I do stand by
20 that on the spectrum of burglaries this is a low-end,
21 obviously, you've got his record. But the fact wise and
22 the Court has seen the video. But this is basically
23 rummaging through items in somebody's yard under a
24 carport, garage type situation. Sterling and I have tried
25 to get the State to accept a 10 year plea, which is a

1 very, for a larceny type case, which is what this is. I
2 understand it's going into the carport and stealing but it
3 is just largely just -- we do think a 10 year sentence is
4 the -- if his record wasn't so bad, fact-wise, 10 years
5 would be grossly disproportionate to basically, this type
6 of petty theft. Just, we want it known that he offered to
7 plea to considerable exposure long before the jury was --
8 the Court's heard our argument that an open building is
9 certainly on the lower end of a spectrum of burglary
10 severity situations. So we'd ask the Court to consider a
11 10 year sentence. It's a larceny, but he was careful just
12 to keep it in the yard to try and minimize the severity of
13 it. Is there anything -- you don't have to, but is there
14 anything you want to say?

15 MR. MAYBIN: Yes, sir. Your Honor, ever since
16 Monday, I wanted to plead. I never wanted to go to a
17 jury. But I was forced and I was also pressured into the
18 jury trial. Even through the jury, I kept telling my
19 attorney here, Charles Verner, to stop the jury. I wanted
20 to go ahead and plead. Whatever the plea were, I wanted
21 to plead. I constantly kept telling him that, Monday,
22 Tuesday and Wednesday, each day, stop the jury, I want to
23 plead, let's plead. Even when you saw me in the hallway,
24 coming inside the courtroom, with my tinge, (phonetic) on,
25 and you said something about I needed to go back there and

1 change. So I am saying, I told you then, I'm not going to
2 have no jury. I'm going to go ahead and plead, I want to
3 plead. Mr. Verner, you know, he talked me into it, you
4 know. So I went back there and I got dressed, I came back
5 out and even through the jury trial then, I kept telling
6 him, I don't feel right about going through with the jury.
7 I want to go ahead and plead, man, let's plead, I want to
8 plead. Whatever it is they had offered, still, I want to
9 plead. I don't want to go to no jury. I want to plead
10 and go back to SCDC to whatever time that they had to
11 offer me. And I just wanted the Court to know that.
12 Thank you.

13 THE COURT: Thank you. Everybody be at ease for just
14 a moment. Did you want to respond, Solicitor?

15 MR. SCOTT: Well, that's wholly inaccurate what he
16 just said. What you saw was the tip of the iceberg.
17 Negotiations were made, he does want to plea on his own
18 terms. That being petty larceny for 10 years, which we
19 were never amenable to.

20 THE COURT: I understand.

21 MR. SCOTT: He wanted to plea, but not with what we
22 wanted him to plead to would be the long and short of it.

23 THE COURT: All right. Everybody be at ease for just
24 a moment.

25 (Whereupon, a brief recess was held).

1 THE COURT: All right. My. Maybin, come back up
2 here. Mr. Verner. Let me make just a few comments, not
3 very long. Mr. Maybin, the fact that you indicated some
4 willingness to plea is of no consequence whatsoever. What
5 is important to me is the fact that you are absolutely a
6 menace on society. Looking at this record, it's terrible,
7 it's absolutely terrible. And I appreciate Mr. Verner's
8 comments. But quite honestly I don't really distinguish
9 between going in someone's house or going out in their
10 yard. You violated -- you violated their privacy and
11 their right to have themselves and their property remain
12 safe and you violated that, you violated it. So I really
13 don't see much difference of going in a home or -- and
14 stealing something or going in a carport and stealing
15 something. I don't see much difference. You were in my
16 court back in 2015, found guilty and sentenced and I think
17 Solicitor Scott said that four months after being released
18 from prison you're back out committing crimes. All right.
19 On two petty larceny indictments, 429 and 430, it will be
20 a 10 year consecutive so that makes it 20 years. And on
21 the other petty larceny indictment, that will be a 10 year
22 concurrent. And on the burglary second, each will be
23 eight years concurrent. So you've got 20 years. Good
24 luck to you.

25

1 (Whereupon, State's Exhibit numbers 8, 27, 28 and 29
2 were marked for identification only.)

3 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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4 CERTIFICATE OF REPORTER5
6
7
8 State of South Carolina)
9)
10 County of Newberry)11
12 I, Joy E. Holston, Official Court Reporter for the
13 Eighth Judicial Circuit of the State of South Carolina, do
14 hereby certify that the foregoing is a true, accurate and
15 complete transcript of record of the proceedings had and
16 evidence introduced in the trial of the captioned case,
17 relative to appeal, in the County of Newberry, South
18 Carolina, on the 26th through 28th days of August, 2019.19
20 I do further certify that I am neither of kin,
21 counsel nor interest to any party hereto.22
23 December 7, 201924
25 

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

WITNESSES

Richard Mercer

Newberry Police Department

WARRANT NUMBER

2019A3620200080

TRUE BILL

W. de P. K.

Foreman of the Grand Jury

Date: *July 19, 2019*

VERDICT

Guilt

Douglas Palmer

Foreman

8-28-19

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

July Term, 2019

Indictment # 2019-GS-36-00429

THE STATE

vs.

STERLING MAYBIN

INDICTMENT FOR

Petit Larceny

SC Code: § 16-13-003(A)

CDR: 3596

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

INDICTMENT FOR

Petit Larceny
§16-13-0030(A)

At a Court of General Sessions, convened on the 19th day of July, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Sterling Maybin, did on or about April 21, 2019 to April 24, 2019, in Newberry County, South Carolina, feloniously take and carry away the personal property of Bessie Mathis, to wit: Murray Weed Eater, with a total value of two thousand dollars (\$2,000) or less, with the intent to deprive the owner permanently of such property, and said defendant has been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved. All in violation of 16-13-0030(A) and 16-1-57, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Taylor Daniel
Assistant Solicitor

WITNESSES

Richard Merier

Newberry Police Department

WARRANT NUMBER

2019A3620200079

~~TERNA DIST~~

Wade Dukes

Foreman of the Grand Jury

Date: *July 19, 2019*

VERDICT

Guilty

Douglas Palmer

Foreman

8-28-19

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

July Term, 2019

Indictment # 2019-GS-36-00430

THE STATE

vs.

STERLING MAYBIN

INDICTMENT FOR

Petit Larceny

SC Code: § 16-13-0030(A)

CDR: 3596

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

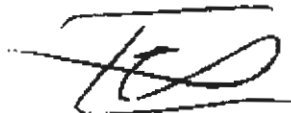
COUNTY OF NEWBERRY

INDICTMENT FOR**Petit Larceny
§16-13-0030(A)**

At a Court of General Sessions, convened on the 19th day of July, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Sterling Maybin, did on or about April 23, 2019, in Newberry County, South Carolina, feloniously take and carry away the personal property of Larry E. Hazel, to wit: miscellaneous tools and a Husqvarna push weed eater, with a total value of two thousand dollars (\$2,000) or less, with the intent to deprive the owner permanently of such property, and said defendant has been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved. All in violation of 16-13-0030(A) and 16-1-57, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Taylor Daniel
Assistant Solicitor

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

July Term, 2019

Indictment # 2019-GS-36-00431

THE STATE

vs.

STERLING MAYBIN

INDICTMENT FOR

Petit Larceny

SC Code: § 16-13-0030(A)

CDR: 3596

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

WITNESSES

Richard Mercer
Newberry Police Department

WARRANT NUMBER

2019A3620200078

TRIAL BILL

Wade D. Hester
Foreman of the Grand Jury

Date: *July 19, 2019*

VERDICT

Guilty
Douglas Palmer
Foreman

8-28-19

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

INDICTMENT FOR**Petit Larceny
§16-13-0030(A)**

At a Court of General Sessions, convened on the 19th day of July, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Sterling Maybin, did on or about April 24, 2019, in Newberry County, South Carolina, feloniously take and carry away the personal property of Larry E. Hazel, to wit: a yellow McCullough chain saw, with a total value of two thousand dollars (\$2,000) or less, with the intent to deprive the owner permanently of such property, and said defendant has been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved. All in violation of 16-13-0030(A) and 16-1-57, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Taylor Daniel
Assistant Solicitor

WITNESSES

Richard Mercer

Newberry Police Department

WARRANT NUMBER

Direct Indictment

TRUE BILL

Wade Pink

Foreman of the Grand Jury

Date: *July 19, 2019*

VERDICT

Guilty

Douglas Palmer

Foreman

8-28-19

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

July Term, 2019

Indictment # 2019-GS-36-00432

THE STATE

VS.

STERLING MAYBIN

INDICTMENT FOR

Burglary, Second Degree, (Violent)

SC Code: § 16-11-0312(B)

CDR: 0086

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

INDICTMENT FOR**Burglary, Second Degree, (Violent)
§16-11-0312(B)**

At a Court of General Sessions, convened on the 19th day of July, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Sterling Maybin, did on or about April 23, 2019, in Newberry County, South Carolina, enter a building belonging to Larry Hazel without consent and with intent to commit a crime therein. The defendant has been convicted of two or more convictions for burglary or housebreaking or a combination of both. All in violation of 16-11-0312(B), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Taylor Daniel
Assistant Solicitor

WITNESSES

Richard Mercer

Newberry Police Department

WARRANT NUMBER

Direct Indictment

Wade Dinkley

Foreman of the Grand Jury

Date: *July 19, 2019*

VERDICT

Guilty

Foreman

8-28-19

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

July Term, 2019

Indictment # 2019-GS-36- 00433

THE STATE

vs.

STERLING MAYBIN

INDICTMENT FOR

Burglary, Second Degree, (Violent)

SC Code: § 16-11-0312(B)

CDR: 0086

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

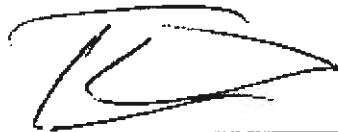
COUNTY OF NEWBERRY

INDICTMENT FOR**Burglary, Second Degree, (Violent)
§16-11-0312(B)**

At a Court of General Sessions, convened on the 19th day of July, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, Sterling Maybin, did on or about April 21, 2019 to April 24, 2019, in Newberry County, South Carolina, enter a building belonging to Bessie Mathis without consent and with intent to commit a crime therein. The defendant has been convicted of two or more convictions for burglary or housebreaking or a combination of both. All in violation of 16-11-0312(B), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Taylor Daniel
Assistant Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF NEWBERRY
STATE VS.STERLING MAYBIN

AKA: _____
 Race: Black Sex: M Age: 49
 DOB: 1/19/70 SS#: ██████████ 5700
 Address: 1404 Harris Street
 City, State, Zip: Newberry, SC
 DL# ██████████ (10#) SID# SC00625155

*CDI. Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Petit Larceny, Third or Subsequent Property CrimeIn violation of § 16-13-0030(A) and 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 3596
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 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:

 Taylor Daniel, Assistant Solicitor SC Bar # 100588 Defendant Attorney for Defendant 10033
 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 10 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: 2019 GS-36-00430☒ 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. Credit 126 Days☐ 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 _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(I) (Vehicle Assessment) \$40/ea \$ 3753% to County (if paid in installments) \$ 75TOTAL \$ 628

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,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge: _____

Judge Code: 2162Sentence Date: 8/28/19Clerk of Court/Deputy Clerk: Eileen L. P. HallCourt Reporter: Jay L. Hall

COUNTY OF NEWBERRY

STATE VS.

STERLING MAYBIN

AKA:

Race: Black Sex: M Age: 49DOB: 1970 SS#: 5700Address: 1404 Harris StreetCity, State, Zip: Newberry, SCDL# ID# SID# SC00625155*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Petit Larceny, Third or Subsequent Property CrimeIn violation of § 16-13-030(A) and 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 3596INDICTMENT/CASE#: 2019GS36-00430A/W: 2019A3620200079Date of Offense: 04/21/2019S.C. Code §: 16-13-030(A) and 16-1-57CDR Code #: 3596

SENTENCE SHEET

☒ CONVICTED OF or☐ PLEADS☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)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:

Taylor Daniel, Assistant Solicitor 100588
SC Bar #

Defendant

Attorney for Defendant 10033
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 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: 2019 GS-36-00429☒ 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 HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Ordered PTUP days/hours Public Service EmploymentObtain 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 FundOther: Recipient: *Fine: §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3.753% to County (if paid in installment(s)) \$ TOTAL \$ 128.75Clerk of Court Elizabeth P. HallCourt Reporter: Presiding Judge: Judge Code: 2167Sentence Date: 8/28/19

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF NEWBERRY
STATE VS.STERLING MAYBINAKA: _____
Race: Black Sex: M Age: 49
DOB: 1970 SS#: 5700
Address: 1404 Harris Street
City, State, Zip: Newberry, SC
DL# 9 (ID#) SID# 90625155INDICTMENT/CASE#: 2019GS36-00431
A/W: 2019A3620200078
Date of Offense: 04/21/2019
S.C. Code §: 16-13-0030(A) and 16-1-57
CDR Code #: 3596

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Petit Larceny, Third or Subsequent Property CrimeIn violation of § 16-13-0030(A) and 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 3596☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)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:

Taylor Daniel, Assistant Solicitor 100588 Defendant Attorney for Defendant 10033
SC Bar # SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 12 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: 2019-65-36-00429/430☒ 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. Credit 126 Days☐ 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 Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before
any other fees.

Presiding Judge: _____

Judge Code: 21677Sentence Date: 8/28/19Clerk of Court/Deputy Clerk: Elyse ButlerCourt Reporter: Jay Wilson

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

STATE VS.

STERLING MAYBIN

AKA:

Race: Black

Sex: M

Age: 49

DOB: 11/19/70

SS#: 5700

Address: 1404 Harris Street

City, State, Zip: Newberry, SC

DL# (ID#)

SID# SC00625155

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary, Second Degree, (Violent)

In violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

INDICTMENT/CASE#: 2019GS36-00432

A/W:

DIRECT INDICTMENT

Date of Offense:

04/21/2019

S.C. Code §:

16-11-0312(B)

CDR Code #:

0086

SENTENCE SHEET

0-15 yrs

☒ CONVICTED OF or☐ PLEADS☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment in Grand Jury.

(def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Taylor Daniel, Assistant Solicitor

100588
SC Bar #

Defendant

Attorney for Defendant

10033
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 8 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: 2019-GS-36-00429/430☒ 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. Credit 126 days☐ 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 Fund

Other: _____

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 (Public Def/Prob)

\$500

§14-1-212 (Law Enforc. 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: Elyahuta P. HallCourt Reporter: Jay HobbsPresiding Judge: UJudge Code: 467Sentence Date: 8/28/19

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF NEWBERRY

STATE VS.

STERLING MAYBIN

AKA:

Race: Black

Sex: M

Age: 49

DOB: 1970

SS#: 5700

Address: 1404 Harris Street

City, State, Zip: Newberry, SC

DL# (ID#)

SID# SC00625155

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED ☐ PLEADSTO: Burglary, Second Degree, (Violent)

In violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

SENTENCE SHEET

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st o CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Taylor Daniel, Assistant Solicitor

100588
SC Bar #

Defendant

Attorney for Defendant

10033
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 8 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: 2019 - 65 - 36 - 00429 / 430☒ 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. Credit 126 Days☐ 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/Alco. hTesting ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Pro viso(Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court: Elizabeth P. PaulCourt Reporter: Jay [Signature]

Presiding Judge: _____

Judge Code: _____

Sentence Date: 8/28/19

FORM 5

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
County of <u>Newberry</u>	)	
	)	
<u>Sterling Maybin</u>	)	
Full name and prison number (if any) of Applicant	)	
	)	
v.	)	
	)	APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF
	)	
	)	
	)	

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460
Broad River Rd. Columbia, South Carolina - 29210
2. Name and location of Court which imposed sentence Newberry County, General
Sessions Court, S.C. 29108
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: 3rd degree Petit Larceny, 2019-GS-3600430
(a) 2nd degree Burglary, 3rd degree Petit Larceny
(b) 2019-GS-3600432 2019-GS-3600431

- (c) 2nd degree Burglary, 2019-GS-3600433
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 3rd Petit Larceny, 8/28/19 (10)yrs. 3rd Petit Larceny
- (b) 8/28/19 (10)yrs. 3rd Petit Larceny (10)yrs. 2nd Burglary
- (c) 8/28/19 (10)yrs. 2nd Burglary, 8/28/19 (8)yrs.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____ x _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina, In The Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed: Affirmed Coviction
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted October 15, 2021, Filed October 20, 2021
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2021-UP-358
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing: N/A
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) Ineffective Assistance of Appellate Counsel
- (c) Prosecutorial Misconduct, Abuse of Discretion
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Applicant, reserve the rights for PCR counsel to amend
- (b) Applicant reserve the rights for PCR counsel to amend
- (c) Applicant reserve the rights for PCR counsel to amend
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal From Newberry County, General Session
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. N/A
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____ N/A _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____ N/A _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____ N/A _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A at this time, Reserve rights for PCR counsel
to amend

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____ N/A _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____ N/A _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective Assistance of Counsel
 - (b) Ineffective Assistance of Counsel
 - (c) Ineffective Assistance of Counsel
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?

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. Charles Verner, (Public Defender) P.O. Box 484 Newberry
South Carolina - 29108
 - ii. Charles Verner, (Public Defender) P.O. Box 482 Newberry
South Carolina - 29108
 - iii. Sarah E. Shipe, (Appellate Defender) P.O. Box 11589
Columbia, South Carolina - 29211-1589
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Sentencing
 - iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

New Trial and/or Vacate Sentence

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

County of Newberry)

VERIFICATION

I, Sterling Maybin, 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.

Sterling Maybin

SWORN to and subscribed before me this 28th
day of October, 2021.

[Signature] (L.S.)
Notary Public

My Commission Expires: 7-27-2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Sterling Maybin # 302360, 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.

Sterling Maybin
Applicant

SWORN or affirmed to and subscribed before me this
28th day of October 2021.

[Signature]
Notary Public

My Commission Expires: 7-27-2026

FILED
NEWBERRY COUNTY
2021 NOV -5 AM 11:34
ELIZABETH P FOLK
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT	
	)		
Sterling Maybin #302360,	)	Case No.: 2021-CP-36-00464	
Applicant,	)		
	)		
v.	)	RETURN AND MOTION FOR MORE	
	)	DEFINITE STATEMENTS	
State of South Carolina,	)	(Counsel Appointed)	
Respondent.	)		

FILED
 NEWBERRY COUNTY
 2022 FEB -9 AM 9:05
 ELIZABETH P. FOLEY
 CLERK OF COURT

In response to application for post-conviction relief filed by Applicant Sterling Maybin on November 05, 2021, and received by the State of South Carolina, on November 12, 2021. Respondent makes the following return and requests Applicant, through his appointed counsel, file an amended application for post-conviction relief before an evidentiary hearing is held to resolve the claims as set forth in Applicant's application for post-conviction relief. In support of this return, Respondent respectfully shows the Court:

I. Procedural History

Applicant is currently confined in the South Carolina Department of Corrections (SCDC). During its July 2019 term, the Newberry County Grand Jury indicted Applicant for three counts of Petit Larceny (2019-GS-36-00429, -00430, -00431) and two counts of Burglary, Second Degree (2019-GS-36-00432, -00433). Applicant was represented by Charles Verner, of the Eighth Circuit Public Defender's Office. Deputy Solicitor Dale Scott, and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case.

On August 26-28, 2019, Applicant appeared for a jury trial before the Honorable Donald B. Hocker, circuit court judge, and a jury. At the conclusion of Applicant's trial, the jury found Applicant guilty as indicted. Judge Hocker sentenced Applicant to imprisonment for two consecutive terms of ten years for the petit larceny charges ending in -00429, and -00430, for a

total of twenty years of imprisonment. Judge Hocker also sentence Applicant to imprisonment for ten years for the petit larceny charge ending in -00431, and eight years for each Burglary, Second Degree charge, these sentences were to run concurrent to the two consecutive sentences for Petit Larceny.

Applicant timely filed a notice of appeal, and an appeal was perfected on August 25, 2020, by Sarah Shipe of the South Carolina Commission on Indigent Defense, Appellate Defense Division. In Applicant's brief to the South Carolina Court of Appeals, Applicant raised the following issue:

1. Whether the trial court erred by denying Appellant's motion for a directed verdict as to second-degree burglary where video evidence at trial showed a detached, open-air carport, which did not meet the statutory definition of a "building" for purposes of the burglary statute?

Following briefing the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion, *State v. Sterling Maybin* 2021-UP-358 (Filed October 20, 2021). The Remittitur was issued on November 12, 2021.

II. Facts Giving Rise to the Conviction

On April 24, 2019, Larry Hazel, a member of the Newberry community reviewed security camera footage of his property after noticing that items from the shop in his yard were disappearing. Tr. p. 78-79. Following his review of the footage, Mr. Hazel saw an individual leaving the shop with a chainsaw that belonged to Mr. Hazel. Tr. p. 79. Mr. Hazel proceeded to call the police to allow them to review the footage. Tr. p. 79. Officer Jason Bell arrived to Mr. Hazel's house and reviewed the footage. Tr. p. 86. Officer Bell saw an individual wearing a red colored skull cap, a burgundy hoodie, a white t-shirt, and dark navy pants with cargo pockets. Tr. p. 102-103. Officer Bell sent still shots from the footage to his supervisor who identified the individual as Applicant. Tr. p. 103.

Mr. Hazel reviewed additional footage from his cameras and noticed an individual taking more property from his shop on April 23, 2019. Tr. p. 87. Officer Bell returned to Mr. Hazel's house to watch the additional footage, and confirmed that the same individual was recorded in both videos. Tr. p. 106-108.

Bessie Mathis, who also lived in Newberry, installed a camera after realizing she was missing weed eaters and some other tools from her property. Tr. p. 56. On April 24, 2019, Ms. Mathis reviewed the footage on her camera and saw a man, later identified as Applicant, taking a weed eater out of her shed. Tr. p. 60-61. Ms. Mathis reported the incident to police and Officer Justin Weaver of the Newberry Police Department arrived to review the videos. Tr. p. 74-76.

Captain Kevin Goodman of the Newberry Police Department reviewed the surveillance videos taken from Ms. Mathis and Mr. Hazel, and identified the individual in the footage as Applicant. Tr. p. 130. After Applicant was identified, Officer Bell encountered him on a bicycle while wearing the same clothes he had on in the videos collected from Ms. Mathis and Mr. Hazel. Tr. p. 109-113. Applicant was ultimately arrested and charged with two counts of Burglary, Second Degree, and three counts of Petit Larceny.

III. Current Application

Applicant commenced this PCR action on November 5, 2021. In his application for post-conviction relief, Applicant asserts he is being held in custody unlawfully for the following:

1. Ineffective Assistance of Counsel
2. Ineffective Assistance of Appellate Counsel
3. Prosecutorial Misconduct, Abuse of Discretion

As requested relief, Applicant is seeking "new trial and/or vacate sentence."

Attached herewith and incorporated herein are the Newberry County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the trial transcript, the

records of Applicant's direct appeal, and the records of this PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

In his application, Applicant alleges counsel was ineffective however Applicant has failed to state any actions by his counsel which would constitute ineffective assistance. Respondent contends this allegation is without merit.

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion

of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced 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. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before

examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

As set forth above, it is impossible to discern what Applicant is raising on post-conviction relief application, as Applicant has failed to allege any actions taken by his counsel which could be considered ineffective assistance.

Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test, as the record establishes he was represented by competent counsel who diligently represented him. However, without specific allegations of ineffective assistance of counsel, it is impossible to respond to the claim of ineffective assistance of counsel precisely. Accordingly, Respondent requests Applicant, through his appointed counsel, amend his application to include the specificity required to support an allegation of ineffective assistance of counsel.

V. Response to Allegations of Ineffective Assistance of Appellate Counsel

Applicant alleges his appellate counsel was constitutionally ineffective. However, Applicant has failed to provide any details or evidence in support of these assertions. Respondent contends this allegation is without merit.

Beyond the right to effective assistance of counsel at trial, a criminal defendant is constitutionally entitled to the effective assistance of appellate counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, (1985) (finding that to be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair). However, appellate counsel is *not* obligated to raise every non-frivolous issue that is presented by the record. *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990); *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000); *cf. Jones v. Barnes*, 463 U.S. 745, 752 (1983) (“There can hardly be any question about the importance of having the

appellate advocate examine the record with a view to selecting the most promising issues for review.”). Indeed, “[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.” *Smith v. Murray*, 477 U.S. 527, 536 (1986). “For [courts] to second-guess reasonable professional judgments and impose on [appellate] counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” *Jones*, 463 U.S. at 754. Similarly, our courts have refused to impose a duty on appellate counsel to pursue rehearing following the decision of the Court of Appeals in a criminal direct appeal. *See Douglas v. State*, 369 S.C. 213, 215, 631 S.E.2d 542, 543 (2006).

In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *E.g., Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). The applicant must demonstrate (1) that his “counsel’s representation fell below an objective standard of reasonableness” in light of the prevailing professional norms, *Strickland*, 466 U.S. at 688, and (2) that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different,” *Id.* at 694; *see Smith v. Robbins*, 528 U.S. 259 (2000) (holding that habeas applicant must demonstrate that “counsel was objectively unreasonable” in failing to file a merits brief addressing a nonfrivolous issue and that there is “a reasonable probability that, but for his counsel’s unreasonable failure . . . , he would have prevailed on his appeal”).

As set forth above, it is impossible to discern what Applicant is raising on post-conviction relief application, as Applicant has failed to allege any actions taken by his counsel which could be considered ineffective assistance.

Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test, as the record establishes he was represented by competent counsel who diligently represented him. However, without specific allegations of ineffective assistance of counsel, it is impossible to respond to the claim of ineffective assistance of counsel precisely. Accordingly, Respondent requests Applicant, through his appointed counsel, amend his application to include the specificity required to support an allegation of ineffective assistance of counsel.

VI. Response to Allegations of Prosecutorial Misconduct

Applicant has alleged he is entitled to a new trial due to “Prosecutorial Misconduct, Abuse of Discretion.” However it is impossible to respond to Applicant’s allegations as Applicant has failed to provide any facts or evidence in support of this allegation.

Respondent submits this allegation is without merit, however without specific allegations of prosecutorial misconduct, it is impossible to properly respond to the claims as set forth in Applicant’s application for post-conviction relief. Therefore, Respondent requests Applicant, through his appointed counsel, amend his application to include the specificity required to support an allegation of prosecutorial misconduct.

VII. Motion for a More Definite Statement

The State submits Applicant’s allegations of ineffective assistance of counsel, ineffective assistance of appellate counsel, and prosecutorial misconduct are without merit. However, it is impossible for the State to adequately respond to this claim because Applicant has failed to set forth facts to “support each ground” or to explain with specificity the facts upon which his claims are based. S.C. Code Ann. § 17-27-50 (requiring an applicant to “specifically set forth the grounds upon which the application is based”). For example, when asked for facts which support each of

the grounds set forth in Applicant's application for post-conviction relief, applicant has stated "Applicant, reserve the right for PCR counsel to amend."

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP, and the Post-Conviction Procedure Act. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

VIII. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed

amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

IX. 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.

X. Conclusion

WHEREFORE, the State requests this Court grant its motion for a more definite statement, and thereafter convene an evidentiary hearing on the claims of ineffective assistance of counsel, ineffective assistance of appellate counsel, and prosecutorial misconduct.

Respectfully submitted,

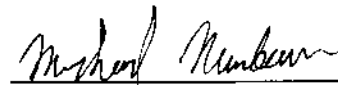
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL J. NEUBAUER
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

February 9, 2022

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	2021-CP-36-00464
	)	
STERLING MAYBIN, #302360	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
McMahan Law, LLC
Post Office Box 50536
Columbia, South Carolina 29250

DATED this 9th day of February, 2022.



 Joshua Osborne, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

	)	Case No. 2021-CP-36-00464
Sterling Maybin, #302360	)	
Applicant,	)	
Vs.	)	AMENDMENT TO
	)	P.C.R. APPLICATION
State of South Carolina	)	
Respondent,	)	
	)	

SCANNED

ELIZABETH J. CLARK
CLERK OF COURT

NOW COMES, Applicant to amend the following into Applicant's
P.C.R. Application:

AMENDMENT No. ONE

Trial Court erred in ruling that open air structure eg.
Carport was building under burglary statute.

The so called building in this matter is an umbrella
structure an open air structure, or carport, [which] was designed
to be fully open on all sides and thus would still be open to the
elements, including rain, snow, ice, and leaves depending on the
season" Town of Irmo 2020 WL 2322714 (USDC for SC 2020), So with
no walls or inclosure in which to enter as required by common and
statutory law. The structure in this matter has been called many
things in an attempt to change the open air structure into a
building with walls in which a person would have to enter. Some of
these are as follows: 1. A "Garage" Trp. 74-L8, 2. A "White roofed
building" Trp. 81-L16, 3. A "building" Trp. 83-L11, 4. A "shed, TRp.

70-L16, 5. "Storage Unit" Trp 69 -L11, 6. a "Carport" Trp. 92 -L2, etc. The jury became confused with all these different types of names of structures being used. The State even called it a "Shop" in thier return to this P.C.R. Now, "we have heard that it is pointless to close the barn door after the horse has gotten out. . But if there are no walls, there is no barn, and the horse is free to leave anytime, this venerable aphorism is not just a metaphor, but tells us something practical about barns: they must have walls and a door to keep the horse in. If there are no walls, there is no barn." In Re Amber S. 33Cal. App.4th 185, 39 Cal. Rptr.@d 672 (1995); and so no.Walls, no doors, no building.

However, this dose not change the fact that the structure in this matter ~~is~~ a structure having no walls, consising of a roof suppprted by columns and haveng no exit or enterance or incloseure of which to enter. See: National Flood Ins. Act of 1968, § 1302 et seq., Se also: People V Thorn, 176 cal. App. 4th 255, 2010 WL 28487, ("Carport was not ... building under burglary statues because it did not carry a reasonable expecta~~tion~~ of protection from intrusion")

This 'entering' See: 13 AM. Jur.2d burglary § 18 (§18. entry as element of burglary [is] for entry to a building to costitute burglary, a structure must generally be closed; otherwise the entry is merely a trespass, not a breaking and a burglary neither a forced entry nor an entry without consent is a requisite element of burglary.") See: Foster, V. State, 281 So.3d 229 (2019) See also: Dean V. State, 295 So.3d 575, element is a requirement and is clearly stated in both common as well as S.C. statutte, Thus, it

is clear that a building is a enclosed structure as an element of burglary and not “an umbrella structure having no walls and consisting of a roof supported by columns.” Riverside Building v. Federal Emergency Management 723F. (4th Cir. 1983). See also: People v. Gibbons, 206 Cal. 112 (1928) (“Building” for purposes of burglary means a structure with four walls and a roof”). State v. Cook 2010 ME 85, 2A.3d 333 (ME 2010), State v. Barker/Phelps. 86 Or.App. 394. 397, 739 p.2d 1045 (1987); Day v. State, 534 S.W.2d 681 (TX 1976) (“Structure built of concrete blocks with three large doorways that were not capable of being closed was not burglary.” People v. Labaer, 88 Cal. App.4th 289, 296, 105 Cal. Rptr. 2d 629 (2001) (“Under burglary statute building is generally defined to mean a place that has walls on all sides and is covered by a roof”)

Now burglary is, according to Black’s Law Dictionary, “The modern statutory offense of breaking and entering...” and “When there is entire failure of proof as to the breaking, the only remedy is [...] a new trial” State v. Dawkins, 32 SC17, 10 SE 772 (1890); also applied in: State v. Nesmith, 213 SC 60 48 SE2d 595 (1948); White v. State, 265 SC 110, 2085 SE2d 35 (1974); State v. Callahan, 263 SC 35, 208 SE2d 284 Cert den 420 US 981, 43 LE 2d 663, 95 Sct 1411 (1974), This ‘breaking’ requirement is there to show that by destroying a lock, a door, a window, or etc. Access to the inside was made, thus making it clearly understood that a building under both common and statutory burglary, is an enclosure with some form of control of entering and exiting. See: People v.

Gibbons, 206 Cal.112 (1928) State v. Cook, 2010 me 85, 2A. 3d 333 (me. 2010);
State v. Barker/Phelps, 86 Or. App. 394, 397, 739 P.2d 1045 (1987); In Re.
 Amber S. 33 Cal. App. 4th 185, 39 Cal. Rptr. 2d 672 (1995)

South Carolina Statute § 16-11-312 B Reads in part as follows:

“A person is guilty of burglary in the second degree if the
 person enters a building without consent and with intent to
 commit a crime therein...”

To ‘enter’ is “1. To go or come into” Merrian Webster, “into” is “1. To go
 inside of,” Merrian Webster; and “inside” is “1. On the innerside 2. In or into the
 interior,” Merrian Webster

Therefore, let’s remember “No wall, No barn,” No interior. See: In Re
 Amber S. 33 Cal. App. 4th 185, 39 Cal. Rptr. 2d 672 (1995). For by common and
 statutory Law a person must enter into an interior of some form of enclosure, and
 the umbrella structure in this matter fails as a building as it hasn’t any “area
 enclosed [or even enclosed] partly by walls” Cleveland v. Young, 236 Miss 639,
 III 502d 29 (1953), See also: People v. Thorn, 176 CAL. APP. 4th 255, 2010 WL
 28487, In Re Ambers. 33 CAL. APP 4th 185, 39 CAL. RPTR. 2d 672 (1995)
 Thosly, the umbrella structure or “carport [...] designed to be fully open on all
 sides” U.S. v. Town of Irmo 2020 WL 2311 714 (USDC for S.C. 2020), Could not

be entered as required by the law of burglary. For no walls, no doors, no building.

With this, the PCR must be granted, for "The only remedy is [...] a New Trial"

State v. Dawkins 32 SC17, 10 SE2d 772 (1890).

DATE: 5 124 / 2022

STERLING MAYBIN

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 2021-CP-36-00464

Sterling Maybin, #302360
Applicant,

Vs.

THE STATE OF SOUTH CAROLINA

CERTIFICATE
OF
SERVICE

I, the undersigned, hereby swear that I did this 27 day
of JUNE, 2022, serve the Applicant's AMENDMENT TO P.C.R.
APPLICATION on Allan M. Wilson at Post Office Box 11549,
Columbia, South Carolina.

Sterling Maybin

24 June 2022
Kathleen Maybin Notary
Exp: 8/30/2026

SCANNED

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

C/A No. 2021-CP-36-00464

Sterling Maybin -- Applicant,

-vs-

State of South Carolina -- Respondent,

APPLICANT'S DEFINITIVE STATEMENT

AND

AMENDED POST CONVICTION RELIEF

APPLICATION

DATE MARCH 1, 2023.

Sterling Maybin
SCDC# 302360
Tyger River. Corr. Inst.
200 Prison Rd.
Enoree, Sc. 29335.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)

Sterling Maybin) C/A No.2021-CP-36-00464
Applicant,) APPLICANT'S DEFINITIVE STATEMENT
- vs-) AND AMENDED POST CONVICTION
State of South Carolina) RELIEF APPLICATION
Respondent,)

I.

Introduction

COMES NOW, above captioned Applicant, Sterling Maybin, by and through attorney of record, respectfully lodging a more definitive statement and amended post conviction relief issues.

Applicant in the instant matter filed a pro-se application for post conviction relief on or about November 5, 2021, alleging ineffective assistance of counsel. On February 9, 2022, Respondent filed a Return and Motion for More Definitive Statement, alleging Applicant is not entitled to relief.

II.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a 20-year aggregate sentence. Applicant was indicted by the Newberry County Grand Jury for three counts of Petit Larceny (2019-GS-36-429; 430; 431) and two counts of Second Degree Burglary (2019-GS-36-432).

Applicant was represented by Charles Verner, Esquire of the Newberry Public Defender's Office. The State was represented by Solicitors Dale Scott and Taylor Daniel.

On August 26-28, 2019, a jury trial was conducted before the Honorable Donald B. Hocker. Applicant was convicted as indicted and Judge Hocker sentenced Applicant to two consecutive terms of ten years for the petit larceny charges, ending in an aggregated 20-year sentence. The burglary second charges were ordered concurrently.

A timely notice of appeal was filed and the appeal was perfected by the South Carolina Office of Indigent Defense. Sara Shipe represented Applicant. In an unpublished opinion the South Carolina Court of Appeals denied relief. State v. Maybin, 2021-UP-358 (Filed Oct.20, 2021) and the remittur was handed down November 12, 2021.

III.

Applicant respectfully moves this Honorable Court pursuant to Rule 15, SCRPC to amend the original Application in this matter to include the following issues and relevant supporting facts as follows:

Trial counsel rendered constitutionally ineffective assistance when counsel failed to object to the solicitor's numerous improper statements during closing summation. The solicitor in this case gave a closing argument that violated established law in several respects, yet, trial counsel did not object. Counsel's failure to object to several egregious remarks by the solicitor prejudiced Applicant and requires reversal of his conviction. Strickland v. Washington, 466 U.S. 668 (1984).

(a). At the onset of the closing the solicitor told the jury that the victims in the case were "contributing members of your (the jury's) society," and further told the jury "this case is about 'productive members of society and takers.'" tr.p.158, 1.18-19; Tr.p.159, 1.15-17. Reasonable jurist could have easily interpreted this comment to mean the jury and victims are "the productive members of society" against Applicant, "the taker," "that's what this case is all about," Id. The solicitor's argument invokes improper argument that defendant is "a taker." It invited the jurors to take sides against Applicant. A solicitor's argument is bound by the rules of fairness and may not be calculated to arouse the jurors passions or prejudices. *Vasquez v. State*, 388 S.C. 447, at 458, 698 S.E.2d 561 at 566.

(b). Trial counsel was ineffective when counsel failed to object when the solicitor injected another element of unfairness when the solicitor improperly bolstered the State case by telling the jury: "Bessie talked about one of her favorite things to do is landscaping. I have been there. I'll tell you, it's meticulous. It's meticulously kept. You can tell the fruits of her labor. She spends a lot of time out there. Tr.p.158, 1.21-25. The solicitor's "I" statements served only to bolster Bessie's testimony and the State's case against Applicant.

(c). Trial counsel was ineffective for failing to object when the solicitor asked the jury to convict Applicant on a different standard than "the State proving each element of the offenses necessary to sustain a conviction. Instead here the solicitor told the jury: "I want a charge of petit larceny for Ms. Bessie's trouble and a burglary second fore going in her building."

Tr.p.168, 1.20-22. For Mr. Hazel, I expect to find him guilty of the burglary of his building and two petit larcenies. Tr.p.168, 1.22-24. Here, the solicitor's statements injected an arbitrary and irrelevant factor into their deliberations, (i.e. what the solicitor wants and expects Id). A solicitor cannot inject material outside the evidence, but must confine himself to the record in the case and sure improper statements like this the solicitor was in essence testifying. Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004); State v. Copeland, 321 S.C. 318, 486 S.E.2d 620 (1996).

The solicitor's comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Donnelley v. DeChristoforo, 416 U.S. 637, 643 (1974). This determination requires the Court to look to 'the nature of the comments, the judge's charge, and whether the errors were isolated or repeated." Bennett v. Angelone, 92 F.3d 1336, 1345-46 (4th Cir.1996)(internal citations omitted).

(d). trial counsel was ineffective when counsel failed to object to the court's ruling that the open air-car port was a building under the burglary statute. Trial counsel erroneously relied on the Middleton case in support of Applicant's position. However, Middleton is not applicable to Applicant's case at all. Middleton dealt with a crawl space under the building, and in the instant case the issue is whether a car port is considered a building. There is no case law on point so Applicant submits the tenable nature and description of open air structure in South Carolina. Town of Irmo, 2020 WL 2322714 (USDC for SC 2020) which described a car port as being designed to be fully open on all

sides and thus still open to the elements including rain, snow, ice and leaves depending on the season. Other circuits have held "a car port was not a building under the burglary statutes because it did not carry a reasonable expectation of protection from intrusion). *People v. Thorn*, 176 Cal. App.4th 255, 2010 WL 28487. Looking at another persuasive position is the tariff Classification of car ports. The Tariff reports described the car port a a car shelter in which the features inherent to the car shelter neither comply with the requisite characteristics of permanency as intended by the tariff for prefabricated building, nor does it fit within the common or commercial meaning of "building." [2006 WL 4040048, *Tariff Classification of Car ports*].

Trial counsel could have no valid strategy as to why he sat mute. Strickland, supra.

There is a reasonable probability that had counsel objected and preserved the issue for appellate review the results of the appeal would have been different. Applicant is entitled to reversal of his conviction and be granted a new trial.

CONCLUSION

Based on the foregoing, Applicant has been constitutionally denied his right to the effective assistance of counsel and his right to a fair trial.

Therefore, Applicant respectfully prays the Court will grant a new trial in this matter.

Respectfully Submitted,

/s/ Sterling Maybin
Sterling Maybin

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

C/A No. 2021-CP-36-00464

Sterling Maybin -- Applicant,

-vs-

State of South Carolina -- Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Definitive Statement and amended PCR issues on the persons whose names and addresses appear below.

This was done by placing the aforesaid in properly addressed, first-class postage affixed envelopes and placed in the U.S. Mail this 1 of MARCH, 2023.

Those Served:

Office of the Clerk
of Court for Newberry County
P.O. Box 278
Newberry, SC. 29108

Assistant Attorney General
Michael J. Neubauer
P.O. Box 11549
Columbia, SC. 29211

Respectfully Submitted,

/s/ Sterling Maybin
Sterling Maybin

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 1 DAY OF MARCH, 2023

[Signature]
NOTARY PUBLIC

My Comm. Expires 4/14/24

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
 COUNTY OF NEWBERRY)
) Case No.: 2021-CP-36-00464

Sterling Maybin,
 SCDC # 302360,

Applicant,

v.

State of South Carolina.

**AMENDED POST-CONVICTION
 RELIEF APPLICATION**

FILED
 NEWBERRY COUNTY
 2023 MAY 22 PM 12:44
 ELIZABETH P. HOLMES
 CLERK OF COURT

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on November 5, 2021, to add the following allegations:

1. Ineffective assistance of counsel for

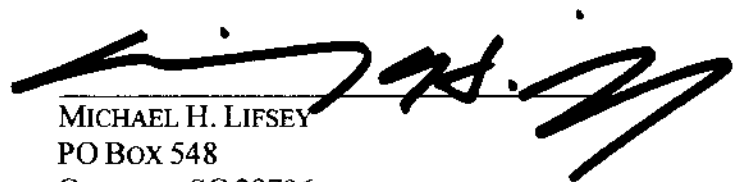
- (a) Applicant's trial counsel refused to let Applicant plead guilty shortly after his arrest despite Applicant's desire to do so and despite the solicitor's willingness to allow him to plead guilty solely to three counts of petty larceny.
- (b) Applicant's trial counsel did not meet with Applicant a sufficient number of times prior to his trial, did not explain the elements of the crime, did not explain possible defenses, and did not adequately prepare for trial.
- (c) Applicant's trial counsel did not object to the state being allowed to proceed to trial, or move for a continuance of that trial, on two counts of Burglary despite Applicant only being informed that he was charged with those two counts of Burglary on the same day that his trial began.
- (d) Applicant's trial counsel did not object to his client being seated in the courtroom at one point prior to the trial beginning in view of potential jurors while shackled and wearing SCDC clothing.

- (e) Applicant's trial counsel was ineffective for not requesting that a juror who was excused because she "made some comment back in the jury room essentially to the extent that she felt like the defendant was already guilty" (see pp. 32-33 of the trial transcript) be further examined on the record to determine what, if anything, she said in the presence of other jurors that may have prejudiced Applicant.
- (f) Applicant's trial counsel's was ineffective because his entire theory of the case, both as to the definition of a building under the burglary statute and the definition of the term goods, were not consistent with the existing state of South Carolina law and trial counsel did not advise Applicant of the futility of making such arguments in light of existing South Carolina law.
- (g) Applicant's trial counsel was ineffective for not objecting to the statements in the solicitor's opening statement that "our job is then to decide if there's enough evidence to proceed with a trial" (see p. 40 of trial transcript) and "[w]e have no agenda here. It's nothing political. It's just a crime has been committed and we feel that we have enough evidence..." (see p. 47 of trial transcript) despite these being improper arguments that "lessen the jury's sense of responsibility by reference to preliminary determinations of the facts." see *State v. Thomas*, 287 S.C. 411, 339 S.E.2d 129 (1986), *Fortune v. State*, 428 S.C. 545, 837 S.E.2d 37 (2019) and many other cases.
- (h) Applicant's trial counsel was ineffective for not objecting to statements in the solicitor's closing argument that "that's what the case is about. It's about productive members of society and takers." (see p. 159 of trial transcript) and "that's not going to stop somebody like Sterling Maybin. He's an opportunist. So when he sees something he can get for free, he's going to take it. He doesn't care how (Victim's name) paid for

it or how much she needs it. That doesn't bother him" (see p. 164 of the trial transcript) despite these being statements that were designed to inflame the passions and prejudices of the jury.

- (i) Applicant's appellate counsel was ineffective for not arguing as persuasive authority cases from other jurisdictions that may have bolstered the argument that the carports from which items were stolen in this case should not be considered buildings for the purposes of the burglary statute.
2. The ineffective assistance of counsel as described above, both individually and in cumulative effect, resulted in prejudice to the Applicant and absent such ineffective assistance of counsel, the results of his trial would have been different.
3. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



MICHAEL H. LIFSEY
PO BOX 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR NO. 015154
ATTORNEY FOR APPLICANT

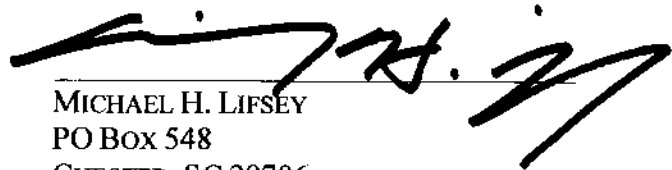
May 19, 2023

CERTIFICATE OF SERVICE

I certify that I have served this document via first class mail on:

Zachary W. Jones
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

This 19th Day of May, 2023.

A handwritten signature in black ink, appearing to read "M. H. Lifsey", is written over a horizontal line.

MICHAEL H. LIFSEY
PO Box 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR No. 015154
ATTORNEY FOR APPLICANT

May 19, 2023

Michael H. Lifsey
Attorney at Law
 141 Main Street
 Post Office Box 548
 Chester, South Carolina 29706

Telephone: (803) 899-5040

Email: michael.lifsey@gmail.com

May 19, 2023

The Honorable Elizabeth P. Folk
 Newberry County Clerk of Court
 PO Drawer 10
 Newberry, SC 29108
 ATTN: Common Pleas/PCR

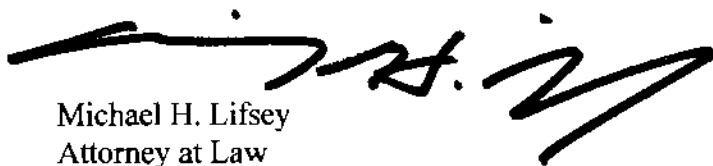
FILED
 NEWBERRY COUNTY
 2023 MAY 22 PM 12:47
 ELIZABETH P. FOLK
 CLERK OF COURT

Re: Maybin v. State
 2021-CP-36-00464

Dear Ms. Folk:

Enclosed for filing please find an Amended Application for Post-Conviction Relief on the above referenced case.

Sincerely,



Michael H. Lifsey
 Attorney at Law

cc: Zachary W. Jones
 Assistant Attorney General
 Office of the Attorney General
 PO Box 11549
 Columbia, SC 29211

Sterling Maybin
 Tyger River Correctional Institution

1 STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT OF
2) THE EIGHTH JUDICIAL CIRCUIT
3) 2021-CP-36-00464
4)
5 COUNTY OF NEWBERRY)

5 STERLING MAYBIN,)
6)
7 Applicant,)
8 vs.) TRANSCRIPT OF RECORD
9 STATE OF SOUTH CAROLINA,)
10 Respondent,)

11

12 July 17, 2023

13 Newberry, South Carolina

14

15 B E F O R E:

16

HONORABLE DANIEL COBLE, JUDGE

17

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

18

Michael H. Lifsey, Esquire
Attorney for the Applicant

19

Zachary W. Jones, Esquire
Attorney for the State

20

21

22

23

Lisa G. Amick
Official Court Reporter

24

25

INDEX OF WITNESSES

(SW) - Denotes State's witness

(DW) - Denotes Defense witness

(DW) Mr. Maybin

Direct examination by Mr. Lifsey: 5

(SW) Mr. Verner

Direct examination by Mr. Jones: 22

Cross examination by Mr. Lifsey: 26

Recross examination by Mr. Lifsey: 44

Certificate of Reporter 57

EXHIBITS

(NO EXHIBITS INTRODUCED.)

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1 MR. JONES: Thank you, Your Honor. This first matter
2 before the Court is the case of Sterling Maybin versus the
3 State of South Carolina, case number 2021-CP-36-464. Mr.
4 Maybin is here as is his attorney, Mike Lifsey, and I'm Zachary
5 Jones for the State of South Carolina. Mr. Maybin was indicted
6 by the Newberry County Grand Jury for three counts of petty
7 larceny during its July 2019 term, those counts are 2019-GS-36-
8 429, 430, and 431. He was direct indicted for two counts of
9 burglary second degree, 2019-GS-36-432 and 433. He was
10 represented by Charles Verner of the Eighth Circuit Public
11 Defender's Office and was prosecuted by Deputy Solicitor Dale
12 Scott, and Assistant Solicitor Taylor Daniel, of the Eighth
13 Circuit Solicitor's Office. On August 26th through the 28th of
14 2019, Mr. Maybin appeared for a jury trial before the Honorable
15 Donald B. Hocker and a jury. At the conclusion of his trial,
16 the jury found him guilty as indicted. Judge Hocker sentenced
17 Mr. Maybin to imprisonment for two consecutive terms of 10
18 years for the petty larceny charges ending in 429 and 430, to
19 imprisonment for 10 years for the petty larceny charge ending
20 in 431, and 8 years for each burglary second degree charge,
21 with both sentences to run concurrent to the two consecutive
22 sentences for petty larceny for a total of 20 years of
23 imprisonment. Mr. Maybin filed a timely notice of appeal which
24 was perfected on August 25th, 2020 by Sarah Shipe of the South
25 Carolina Commission on Indigent Defense and ultimately his

1 conviction and sentence were affirmed in an unpublished
2 opinion, State v. Sterling Maybin, case number 2021-UP-358
3 filed on October 20th, 2021. The remittitur was issued on
4 November 12th, 2021, this application was timely filed on
5 November 5th, 2021, and Mr. Maybin has since filed an amended
6 application, post-conviction relief application on May 22nd,
7 2023. With that, I'll turn it over to Mr. Lifsey to begin his
8 case.

9 THE COURT: Okay.

10 MR. LIFSEY: We're ready to proceed, Judge. I call
11 Mr. Maybin to the stand.

12 THE COURT: Mr. Maybin, if you'll come up and be
13 sworn.

14 CLERK: Sir, would you raise your right hand. Do you
15 solemnly swear or affirm that the testimony you give this Court
16 will be the truth, the whole truth, and nothing but the truth
17 so help you God?

18 MR. MAYBIN: Yes, ma'am.

19 THE COURT: Sir, if you'll just speak up so this
20 Court reporter can hear you. State your full name for the
21 record, please.

22 MR. MAYBIN: Sterling Maybin.

23 THE COURT: Answer any questions your attorney has
24 for you.

25 DIRECT EXAMINATION

1 BY MR. LIFSEY?

2 Q Hey, Mr. Maybin. How are you doing today?

3 A Fine.

4 Q Alright. Mr. Maybin, where are you currently
5 incarcerated?

6 A At Tyger River Correctional Institution.

7 Q Alright. Why are you at Tyger River Correctional, why are
8 you incarcerated, what convictions are you serving time on?

9 A I'm serving, burglary second degree and petty larceny.

10 Q Okay. Where were you arrested, who represented you, by
11 the way, on those charges?

12 A Charles Verner.

13 Q Alright. First of all, I want to talk about, when did you
14 get arrested?

15 A I got arrested on April the 24th, 2019.

16 Q Now, after you got arrested, did you come to Court the
17 first time to try to plead guilty, did that happen?

18 A After I got arrested on April the 24th, 2019 for three
19 counts of petty larceny at that time, I worked, Solicitor Dale
20 said that I was scheduled to go to Court on that day. I told
21 him about my charges, and I also told him about the probation
22 parole that I had on me, and I told him that I wanted to plead
23 guilty that day to 10 years. So he told me that ---

24 Q Alright. Let me stop you just a minute. You were on
25 probation parole, is that right?

1 A At that time, yes, I was.

2 Q And you were incarcerated, I guess, here in the Newberry
3 County Jail?

4 A Yes.

5 Q You sent a letter to who?

6 A I sent a note to the solicitor, I sent it by an inmate to
7 get to the solicitor to let him know that I wanted to plead
8 guilty to three counts of petty larceny.

9 Q Alright. Had you talked to your lawyer at that point?

10 A No. I didn't have no lawyer at that time.

11 Q So you sent a letter to the solicitor saying you wanted to
12 plead guilty. What happened next?

13 A So what happened next was he told the inmate to tell me,
14 he said, okay. I was already up on the list to come down, but
15 to tell me that if I don't plead guilty, don't come, don't
16 waste his time. So on April the 25th of 2019, I was on the
17 Court list that morning to go to Court.

18 Q That's the list of inmates they bring over from the jail
19 to try to work out guilty pleas?

20 A Right. Exactly.

21 Q So what happened?

22 A So when I got here to Court, I was taken into the holding
23 cell, and I was later got out the holding cell by the
24 solicitor. He came and got me out and escorted me into the
25 Courtroom ---

1 Q This Courtroom?

2 A Yes.

3 Q Okay.

4 A And he sit me down over there in the bull pen over there
5 on the side over there?

6 Q Yes, sir.

7 A And he told me, he said, he said, look, I did what you
8 told me to do and that was to get me down here to plead guilty
9 to the three counts of petty larceny to 10 years. So he said,
10 now, he said, this is what you're to do, he said, you are to go
11 straight up and plead to all three petty larceny to 10 years.
12 He said, since they are 48 to 72 hours a part and that the
13 Judge would more likely would run it concurrent and all three
14 of them together as one, so ---

15 Q Did he say anything about burglaries or were burglaries
16 even talked about?

17 A I didn't, I didn't have no burglaries then.

18 Q Gotcha. So did you want to plead guilty then to what the
19 solicitor told you?

20 A Yes.

21 Q Alright. Well, did you plead guilty?

22 A Well, he said, he said that he had to get Charles Verner
23 from in the back, so that's what he did, he had the deputy
24 officer to go back there and get Mr. Verner to let him know
25 that we was ready.

1 Q Alright.

2 A So Mr. Verner come inside the Courtroom, and he was
3 looking around and he looked at the solicitor and he looked at
4 me and he said, I don't remember seeing him, he's not on my
5 docket, I don't have his file. And so the solicitor said, oh,
6 this is Sterling Maybin, he sent me a note and he's saying that
7 he wanted to plead guilty today to 10 years. And the solicitor
8 said, I have all three of his bench warrants right here in my
9 hand, if you want to look over them, I'll be glad to hand them
10 over to you so that you can look over them. And he said that
11 being that he don't ---

12 Q Alright. He said, say names because you've got two people
13 ---

14 A Okay. Solicitor told Mr. Verner, he said I will be glad
15 to let you look over them if you want to. But he said that
16 being that Sterling said that he willing to plead guilty to the
17 three counts of petty larceny, he said that he would just read
18 the charges out to the Judge. Then, so, Charles Verner said
19 that 10 years was too much for a property crime, he said, is it
20 only 60 days, the solicitor said, no, and Mr. Verner said,
21 well, give him 5 years, that's down the middle, meet us
22 halfway, so solicitor said, no, he said that he will have to
23 plead to 10 years, he going to have to go straight up. Then so
24 Charles Verner disagreed with the solicitor's willingness to
25 make me plead guilty. Had Mr. Verner taken me up to plead

1 guilty to the petty larceny I would have pled guilty to those
2 charges, and I wouldn't be in this position that I'm in now.

3 Q How much time are you doing now, 20 years?

4 A I'm doing 20 years for, for his failure to let me plead
5 guilty.

6 Q So what exactly did Mr. Verner tell the solicitor about
7 your plea that day?

8 A He told the solicitor, he said, I don't even, I don't have
9 his file, I don't have nothing on him. Then he said, 10 years
10 is too much, he said, those just property crimes, he said, give
11 him six months, and solicitor said, no, he said, well, meet us
12 down the middle, that's halfway, the solicitor again said,
13 no.

14 Q And then what did Mr. Verner say?

15 A Then so Mr. Verner then said, then so the solicitor and
16 them, you know, they had walked away, and they gave me and Mr.
17 Verner a few moments to talk. So Mr. Verner asked me, he said,
18 he said, how long you been locked up, I said, for a couple
19 days. He said, a couple days, he said, you just got locked up,
20 you fresh off the streets, he said, don't rush it, that's just
21 the first offer, make the solicitor come down on his offer, he
22 said, come back when you have at least six months under your
23 belt. Then I was taken back to the county.

24 Q Well, did the solicitor ever come off or come to you with
25 a better offer?

1 A I haven't talked to the solicitor since, since the first
2 day I saw him on April the 25th of 2019.

3 Q Alright. And at the time you had this conversation, you
4 were not then charged with burglary?

5 A No, sir.

6 Q Alright. Well let's talk about it. So then what happens?
7 Did at some point after, you did not plead in April?

8 A Okay. So I didn't plead then, so what I did was that I
9 had three more other charges, misdemeanor charges, and I had a
10 resisting arrest, disorderly conduct, and possession of
11 marijuana. So I asked my probation parole officer if I was to
12 go ahead and plead to them would he violate me, and he said,
13 yeah. And so I went ahead and I pled to those charges because
14 I didn't want to sit in the county, for one, and for two, I had
15 a hold on me and I couldn't make bond. So I ended up, I went
16 to SCDC and that was on May, maybe, no, that was on about the
17 fifth month of 2019.

18 Q When's the next time you had any contact with Mr. Verner
19 for anything about your charges?

20 A Next time I heard from Mr. Verner was the day of my trial.
21 And that's when he told me, he said, he said, oh, solicitor's
22 office just now decided that they want to go ahead and charge
23 you with a burglary second. I said, I don't know nothing about
24 no burglary charge, and I said, I wasn't charged with burglary,
25 I was charged with three counts of petty larceny. I said, you

1 never told me about that, I said, you never gave me nothing and
2 let me know that I was charged with burglary, I said, I'm not
3 pleading to it.

4 Q Okay. Now, I want to make sure, when was that in relation
5 to the charge, was that the day of, the day before?

6 A That was the day of my trial when he told me this.

7 Q Let's take these issues one at a time. Did you then
8 between the time you had this one conversation in April about
9 when you were going to plea and the day you went to trial, did
10 you have any contact with Mr. Verner?

11 A I had zero contact with Mr. Verner.

12 Q Alright. And you were, I presume, where? During that
13 time period you were either in the local jail or SCDC?

14 A During that time, I was at Goodman Correctional
15 Institution what happened to be at a level one.

16 Q Alright. So before then, the day of your trial, did you
17 know anything about being charged with burglary?

18 A Knew nothing about this charge, I had no knowledge of this
19 charge.

20 Q At any time prior to the date of trial, did you and Mr.
21 Verner meet to discuss the incidents or the elements of the
22 crime or anything like that?

23 A You said before?

24 Q (Nonverbal response).

25 A No. I wasn't facing no burglaries then.

1 Q Alright. Tell the Judge a little bit about what happened
2 when you got to Court the day of your trial.

3 A So the day of my trial, I came from Goodman Correctional
4 Institution at a level one facility where we was wearing tans,
5 level one wear tans, level two wear oranges. So when I got
6 here August 26th, I went to Mr. Verner's office and the first
7 thing Mr. Verner said to me, he said, oh, why ain't you
8 dressed. So I looked at him, I said, what you mean why I ain't
9 dressed, he said, oh, solicitor just now decided that they want
10 to go ahead and charge you with a burglary second as well as
11 petty larceny. I said, you got the wrong person, I said, I'm
12 not charged with no burglary, I said, I've been charged with
13 petty larceny. And he said, well, then he showed me my picture
14 on his laptop, and he said, ain't that you, and I said, yeah,
15 that's me, but I don't know nothing about no burglary charge,
16 and he said, yes. And so I asked for the, and so I asked to
17 see the indictment, he said that he don't have it. And I asked
18 for the arrest warrant for the burglary, he said he don't have
19 it. So I asked for the police report, he said he don't have
20 it, he said he don't have my file, he said the video tape was
21 all it was, that the solicitor handed it over to him. So
22 that's when I said, well, if you don't have my file and you
23 can't produce no document to me, I said, well, you ain't ready
24 for no trial and I said, I ain't ready for no trial. I say,
25 you taking me out here and you throwing me up under the bus,

1 you taking me out here to be slaughtered by wolves, that's the
2 conversation that I had with him.

3 Q Okay. In response to that, did he try to get the case
4 continued to another term so y'all could have time to talk
5 about things?

6 A I, I brought that to his attention, I said, look, I said,
7 you need to go up there and you need to tell the Judge that you
8 don't know nothing about no burglary charge and I don't know
9 nothing about no burglary charge, and you telling me that you
10 just now find out this and I said that you ain't got nothing to
11 give me, you never told me this. I said, I don't even know
12 what I'm fighting, I don't even know what's in the indictment,
13 he ain't got the indictment, he don't even have my file, he
14 said the only thing he got was a video tape. He said the video
15 tape was all that they needed.

16 Q So did your case, in fact, begin that day?

17 A My case began that same day that Mr. Verner told me that
18 the solicitor office just now decided that they would go ahead
19 and charge me today with burglary second. The solicitor told
20 me either you going to plead to 11 years violent today or we're
21 going to trial today, which one. I said, I don't know nothing
22 about it, I said I don't know nothing about the burglary
23 charge, y'all ain't told me nothing, y'all ain't gave me
24 nothing and I'm not pleading to it.

25 Q Now, let's talk about your clothing. You

1 mentioned earlier that Mr. Verner asked you why weren't you
2 dressed out, is that right?

3 A Yes. So he was trying to get me to dress out, so I'm
4 like, I don't have no clothes, I mean, I said I'm not going to
5 trial, I don't know what I'm going to trial for. So me and Mr.
6 Verner end up coming out of his office, we was walking down the
7 hallway coming toward the Courtroom ---

8 Q You're talking about right back behind here?

9 A Right. So the Judge, he was coming out from in the
10 Courtroom through the same door right here, and the Judge seen
11 me and Mr. Verner coming towards him trying to come into the
12 Courtroom, but at that time, I still have my chains on and ---

13 Q Were you shackled?

14 A I was shackled, sure. And then the Judge asked Mr.
15 Verner, he said, why ain't he dressed, is that what he wearing
16 to trial. Mr. Verner said, he's denying trial, so I was
17 escorted inside the Courtroom ---

18 Q This Courtroom?

19 A Inside this Courtroom, but the Judge told Mr. Verner could
20 he see him in his chambers. And then I was escorted into the
21 Courtroom by the sheriff's deputy because Mr. Verner told him
22 to escort me in here and set me down at this table.

23 Q So where did they sit you, one of these two tables?

24 A They set me over there where the Attorney General and them
25 at. And so as I was coming in through the door, the other

1 doors back there, yes, those double doors to the right
2 entrance, they were open, both doors were open ---

3 Q Okay.

4 A --- and the jury seen me coming in here and I saw them.
5 And then Mr. Verner finally came back from in the Judge's
6 chambers, he said who opened them doors, how long them doors
7 been open. At that time, the jury done seen me already. And
8 so Mr. Verner came over there to the table talking to me, he
9 said, look, I told the Judge what you said, I told the Judge
10 you don't know nothing about no burglary charge, nobody never
11 told you that and the Judge said, okay, okay. And he said that
12 the Judge want us to go ahead and pick the jury first and then
13 he going to let us know about a continuance after we pick the
14 jury. I said, I'm not picking no jury, I'm not having no
15 trial. Mr. Verner said, I gotcha, I gotcha, I'm like, no, man,
16 I don't know nothing about no burglary charge, I'm not taking
17 no trial. And so he kept telling me, come on, I got it, I got
18 it, so finally I got up, I went back to the back and I got
19 dressed and he gave me some old clothes that was too big for
20 me, so I went back there and I got changed and I came back out.

21 Q Were there ever any motions that you heard or made
22 regarding the fact that potential jurors could see you wearing
23 your SCDC outfit and your shackles?

24 A My trial counsel did not raise any objection to that or
25 any motion to that.

1 Q Alright. So the trial, you start to pick a jury, is that
2 right?

3 A Right.

4 Q Alright. And once a jury's picked, is there a dispute
5 about one of the jurors or anything?

6 A It was alternate number 75, she made a statement, she said
7 that the Defendant looked like he's already guilty. And that
8 because they saw me in my prison uniform and restraints.

9 Q Alright. So you're saying after a trial jury was picked,
10 they were sent to the back and one of the jurors indicated that
11 they thought you were already guilty?

12 A Right, exactly.

13 Q That juror ultimately was excused, right?

14 A She wasn't excused on the first day. What the trial Judge
15 said that he was going to call her back out that day, that same
16 day and excuse her, but he never did. She stayed on the trial
17 for the three days that I had my trial.

18 Q Well, my point is, was there any examination, the record
19 seems to indicate that the juror was excused. But my question
20 to you is, was there any examination of the rest of the panel
21 to find out what effect her comments had on the rest of them?

22 A No. He did not question any of the other jurors about
23 whether they was influenced by anything that she might had said
24 that would make them, you know, think some type of way. But
25 no, he didn't question them.

1 Q Alright. So you go to trial?

2 A (Nonverbal response).

3 Q Alright. Your trial, you picked a jury one day, and would
4 it start the next day, is that the way it worked?

5 A I picked the jury one day and after we got finished doing
6 that and I was immediately taken to the county jail.

7 Q Yes, sir.

8 A And I had no time even to speak with Charles Verner
9 whatsoever.

10 Q And the next morning, y'all started the trial?

11 A The next morning we started the trial.

12 Q Did your lawyer move again the next morning for a
13 continuance or anything?

14 A No, he did not.

15 Q What was your lawyer's theory on the case, what did he,
16 what was his defense?

17 A He didn't have no strategy because he just found that out
18 about this burglary charge on the day of my trial, so what he
19 told me, he said, well, he just going use a form to type up the
20 definition of a building and the type of goods and he's going
21 to use that. So I told him, I'm like, man, I told him, like, I
22 don't want no jury trial, man, I want you to get the petty
23 larceny 10 years back for me.

24 Q So did your lawyer, I mean, your lawyer's defense, I
25 guess, was first that it wasn't a building?

1 A Yes.

2 Q And did he explain to you South Carolina law and what
3 South Carolina law says?

4 A He did not explain it to me whatsoever.

5 Q And he also argued that the items were not goods, is that
6 right?

7 A He said, he was arguing that, he was arguing something
8 about did they sell goods or did you have any goods up under
9 your carport that you sell, you know.

10 Q Well, let me ask you this, I mean, did y'all have any time
11 to discuss with your lawyer how good or bad of a defense that
12 was? I mean...

13 A Like I said, he didn't discuss the elements to me or
14 nothing. The only thing that he said is what I'm telling you
15 right now, he said that he's going to type in, he's going to
16 have his cell phone and type up the definition.

17 Q Now, I don't want to repeat myself or beat a dead horse
18 too much, but just to clarify, your meetings prior to the day
19 of trial, you're saying you only talked to your lawyer that one
20 day that you tried to plead, but he didn't want you to plead?

21 A Exactly. I met with my trial counselor on April the
22 25th of 2019 and that wasn't, and that was the first time
23 that I wanted to plead to the petty larceny charge and the
24 second time was on August the 26th, 2019, the date of my
25 trial.

1 Q Okay. Alright. I gotcha. So your trial starts, at any
2 point did your lawyer object during the solicitor's opening
3 statement?

4 A He didn't object to anything.

5 Q So when the solicitor indicated in his opening statement
6 that our job is then to decide if there's enough evidence to
7 proceed with a trial, we have no agenda here, etcetera,
8 etcetera, your lawyer didn't object to that?

9 A No, he did not object to it, he just let him do what he
10 wanted to do to me.

11 Q Okay. How about in the closing statement, did, when you
12 were referred to, they start making a different, it said there
13 were productive members of society and takers and said of you,
14 he's an opportunist, if he sees something he can get for free,
15 he's going to take it, he doesn't care how to pay for it, did
16 he object to any of that?

17 A He didn't object to anything.

18 Q Alright. You also, you said you had some complaints about
19 your appellate counselor?

20 A Yes. Yeah. Because I sent my appellate counsel some
21 cases from other jurisdictions that's dealing with open
22 carports. And I wanted her to use those cases, and she said,
23 and she wrote me back, and I think you have a copy of that
24 letter that I sent you, and she said that South Carolina don't
25 usually visit the cases from other jurisdictions.

1 Q She basically said South Carolina law considered it a
2 building, right?

3 A Right.

4 Q Any other complaints you want to make about your appellate
5 counsel?

6 A I feel like that she was ineffective for not using cases
7 from other jurisdictions that deal with open carports with no
8 walls. I feel that, you know, I was prejudiced by her on this.

9 Q Alright. Let me ask you, it's your PCR, so it's your time
10 to say whatever you've got to complain about. Do you have
11 other complaints about your trial, the performance of your
12 lawyer, or anything else you want to raise at your PCR hearing?

13 A Yeah. I'm here challenging my conviction due to the fact
14 that I'm being held involuntarily against my will and my
15 Constitutional Rights have been violated, my Sixth and
16 Fourteenth Constitutional Rights of effective counsel and due
17 process. And, Your Honor, and I also feel like since I didn't
18 have no notice of the burglary charge, I feel like that the
19 State is in violation of South Carolina Article 1, section 11,
20 no person should be held to answer in any court adjudication
21 without the presentment or indictment. I also feel like that
22 the Court error in my trial in ruling that an open-air carport
23 was a building in the burglary statute, and I feel that my
24 charge should be, my regular charge should be expunged off my
25 record.

1 Q Alright. Anything else you want to say?

2 A No, sir, not at this moment, no, sir.

3 Q Alright.

4 MR. LIFSEY: You answer any questions the Attorney
5 General has for you.

6 MR. MAYBIN: Alright.

7 MR. JONES: I have no questions for Mr. Maybin, thank
8 you.

9 THE COURT: Thank you, sir, you may step down and be
10 seated with your attorney.

11 MR. MAYBIN: They ain't going to ask me no questions?

12 THE COURT: No, sir.

13 MR. LIFSEY: May I have just one second, Judge?

14 THE COURT: Yes, sir.

15 MR. LIFSEY: That's it, Judge, Defense rests.

16 MR. JONES: Thank you, Your Honor. The State calls
17 Charles Verner.

18 CLERK: Do you solemnly swear or affirm that the
19 testimony you give this Court will be the truth, the whole
20 truth, and nothing but the truth so help you God?

21 MR. VERNER: Yes, ma'am. Charles Verner, V-e-r-n-e-
22 r.

23 DIRECT EXAMINATION

24 BY MR. JONES:

25 Q Thank you, Mr. Verner. Could you, well, first of

1 all, how long have you been practicing law?

2 A I graduated from USC Law School in '95, November of '95.

3 Q And about how much of your practice has been criminal law?

4 A I clerked initially after law school for the Chief
5 Administrative General Sessions Judge, I was the public
6 defender in Greenwood in 1998, then I've been the public
7 defender or assistant public defender, I've been the public
8 defender here since 2005, but I've been in a public defender's
9 office since 1998.

10 Q Alright. Thank you. Do you recall how you became
11 involved with Mr. Maybin's case?

12 A Well, I'm the only public defender in Newberry County, he
13 was in jail, so I would have automatically picked him up. I
14 will say I have represented Sterling; this was the ninth or
15 tenth felony representation since 2006 that I've represented
16 him in this Court, so I was very familiar with Sterling. I
17 have represented him probably nine times before and in fact, we
18 had gone to trial together in 2015 on a burglary third degree
19 very similar to where he was sentenced to 10 years and he only
20 recently was out on parole prior to getting into this trouble.
21 So I'm familiar with Sterling.

22 Q Alright. At those prior, in your prior representations of
23 Mr. Maybin, have you discussed the elements of burglary?

24 A Again, we went to trial in this Courtroom in 2015 for
25 burglary third where he was convicted and sentenced to 10

1 years, that's what he was on parole for in 2019. Sterling's
2 right when he was first charged with this offense, they brought
3 him over, I believe they wanted him to plead guilty to three
4 counts of larceny enhanced, straight up, it was also a parole
5 violation. And it was only after he declined to plea that they
6 direct indicted him for the burglary charges. They did
7 threaten him at the time that they were going to charge him
8 with burglary if he didn't plead to the larceny charge.

9 Q How often did you meet with Mr. Maybin prior to the trial?

10 A I don't know, I don't think I would have, it's possible I
11 would have seen him in jail prior to May 30th, but May 30th is
12 the first time I've got handwritten notes talking to him where
13 we went over the files against him. That was a term of Court
14 in Newberry, I think it was, Judge Hocker was holding Court, so
15 he probably, he was arrested April 24th, so the next term of
16 Court after that would have been May 27th, so I don't believe
17 he probably came to Court until the May term of Court in
18 Newberry. But I've got notes where he and I went over all
19 three cases together on that week. And my notes indicate, and
20 I remember they had threatened that, he was just charged with
21 larceny, but they were alleging that these were larceny from a
22 shed so it would constitute burglary.

23 Q Alright. The, Mr. Maybin mentioned the existence of
24 videos in this case. Can you describe the video evidence that
25 the State was going to use against Mr. Maybin?

1 A I do have a clear recollection of one of them, I don't
2 know the other, but it's basically, the lady's name was Bessie
3 Mathis noticed a weed eater was gone, and in that neighborhood,
4 there were a lot of thefts in the neighborhood. She watched
5 her video, saw someone steal a weed eater and then another
6 neighbor that seen, they also had video on his yard, and those
7 would have been the burglary charges where, and that's the
8 video that I remember where there are open buildings, they
9 don't have walls, they've got four posts on the corners and a
10 roof, they probably did have electricity attached to them. And
11 I think that's what Sterling was talking about where we were
12 arguing about the goods, that for a building to be, or a
13 structure to be a building, it has to be attached to another
14 building, I think the statute says, well case law says,
15 ordinarily used for storage of goods. And I think that that
16 was what he was talking about our argument was what goods was.
17 But the Judge and the jury didn't buy the argument of goods,
18 legally it's items that are offered for sale, these items were
19 just yard items stolen, weed eaters and that type that would
20 have been the burglary argument, but he was on video taking the
21 items, but it would have been a plain old-fashioned larceny as
22 opposed to burglary.

23 Q Alright. Can you describe what you recall about the plea
24 negotiation process in this case?

25 A Sterling's well known to the prosecutors and he

1 at that point in his career was dealing a lot of times directly
2 with the solicitors and working out his cases. My recall is
3 they probably did offer him to plead guilty straight up to
4 petty larceny enhanced three counts. The, my recollection is
5 he declined to plea, they were angry, they said it was going to
6 be a burglary trial and in fact, they indicted him and called
7 him to trial and basically, he was arrested on April 24th,
8 thereabouts, of '19, his first appearance was the week of May
9 30th and he declined to plea, they were displeased with him and
10 they put him on the top of the August term of Court. There
11 were June and July terms of Court, but he was within three
12 months of declining their plea offers and was the first up for
13 trial.

14 Q Alright.

15 MR. JONES: Thank you, Mr. Verner. I think
16 that's all the questions I have for you at this time. I
17 appreciate it.

18 MR. LIFSEY: Your Honor, I beg the Court's
19 indulgence for one second, I'm trying to find something,
20 Thank you.

21 **CROSS EXAMINATION**

22 BY MR. LIFSEY:

23 Q Mr. Verner, let me ask you about a couple quick
24 things. First of all, regarding the plea negotiations, didn't
25 you tell the Court several times during the transcript that

1 your client was ready to plea to the three burglaries, to the
2 three larcenies? I'm sorry.

3 A I think by the time of trial he probably was. If I said
4 on the transcript that, I don't have a clear recollection of
5 that today, but if I said it on the transcript then he would
6 have represented to me that he was ready to plead on the
7 larcenies.

8 Q He didn't tell you that from the very beginning you're
9 saying?

10 A I don't know why he didn't plead or why it fell through
11 from the beginning. The ---

12 Q Do you have a recollection of the conversation that he
13 recited on the stand about you not having the file, not knowing
14 he was on the list to come from the jail that day?

15 A No. That sounds accurate ---

16 Q Oh, I believe it, I was just wondering what, I'm sure
17 periodically they show up with clients and that I don't even
18 know are going to be on the list because the client or someone
19 indicated that they wanted to plead guilty.

20 A Right. But my notes indicate they had given me the files
21 on May 30th, and I went over them with Sterling, all three.

22 Q Where did you do that?

23 A That would have been my office behind the Courtroom. At
24 that time, the solicitor's office would have kept the physical
25 copies of the file here in their office behind the Courtroom,

1 too. And probably what would have happened is when he was
2 brought over, and they would bring over how ever many inmates
3 during the term and then I would speak to each of them when I
4 could. And at that time, I probably just said, you know, give
5 me the original file the solicitor had and that was their
6 practice where they would just hand me the file the solicitor
7 had himself and I would just have to go over it physically with
8 the client in person. Now it's by electronic means, but at
9 that time I probably would have just picked up the file and
10 gone to my office.

11 Q You're saying that happened in May?

12 A May 30th.

13 Q And I want to focus on the April meeting that he described
14 shortly after his arrest, you just don't have memory of it?

15 A I don't think he had an April meeting with the solicitor
16 because he was arrested the week of April 24th so the next term
17 of Court, the day he was arrested, they were having General
18 Sessions Court that very same day. I think it's unlikely they
19 would have brought him in within a day or two of being arrested
20 before the solicitor would have even known he got arrested. So
21 I think Sterling probably means he was brought over in May,
22 that would have been his first time going to Court.

23 Q But do you have a definitive memory?

24 A No. And it is, his version might be, they were familiar
25 with Sterling, so they may have known right off the bat he got

1 arrested, and it's not unheard of to bring somebody the same
2 week he's been arrested.

3 Q Especially, if they send a note from the jail saying he's
4 ready to plead guilty?

5 A Right. But I think that's unlikely, I think he's
6 confused. But probably May would have been more likely, just
7 the way things typically run.

8 Q Alright. By your then account, by your testimony, you
9 only recall a May meeting?

10 A My first meeting, I mean, it's possible I met him
11 incidentally before that, but I actually record it when I
12 actually open the file with the client and go over the file,
13 and then that's May 30th when he would have probably first seen
14 his file, the police incident reports. He may not have seen
15 the video on that day, but that's the day I note that I opened
16 the file and went over the three cases with him. The ---

17 Q Did you meet with him again before the trial?

18 A I don't, I have no recollection, I would have met with him
19 probably the week he came back ---

20 Q Was he at SCDC?

21 A I don't know, he said he got violated on his parole and
22 was sent back to SCDC, and I don't dispute that. I know he was
23 indicted directly on the burglary charge on August the 6th, and
24 of course, it went to trial the last week of August. It is
25 likely, we still anticipated him pleading and it going as a

1 plea. I do remember that that day they got frustrated with him
2 because the plea did not go through on the larcenies, and they
3 told him that he would come back to trial on the burglary.
4 When he says he wasn't aware until the week of Court that he
5 was going to trial for burglary, that's possible. I know they
6 had threatened it, but I know they didn't actually indict
7 him until August the 6th, so ---

8 Q Do have any notes in your file indicating you went to
9 SCDC?

10 A I do not, I'm pretty sure I probably did not see him at
11 SCDC.

12 Q So by your testimony, you had one meeting with him prior
13 to the trial?

14 A I know that I would have met with him, in my notes several
15 times the week he was called to trial, but ---

16 Q What day of the week did his trial start; do you remember?

17 A Well, the jury would come in Monday and so that's probably
18 when I would have met with him, but the Judge continued the
19 trial to Tuesday to start, so I mean, two or three times is
20 probably all I met with him.

21 Q But you picked a jury that day?

22 A Right.

23 Q So by your testimony, the only time you met with him
24 prior to picking a jury was the one time you testified in
25 May?

1 A No, I might have met with him in August. And this would
2 have been an extended meeting with him on May 30th because we
3 were going back and forth trying to get a plea worked out and
4 going over the files, but I'm sure I met with him Monday at
5 trial. And it is possible they brought him back earlier than
6 the week of trial and I don't remember, but I can't say that.
7 May 30th, extensively, and then I would have started meeting
8 with him pretty much exclusively the Monday of the Court term.

9 Q What was the hold up in getting the plea? Because it
10 sounds like, he testified he wanted to plead to the larceny, so
11 he told the Judge in the transcript he wanted to plead to
12 larceny?

13 A Right.

14 Q So you're saying now the solicitor was the problem in
15 getting it pled?

16 A And again, I don't have a great recollection of the day he
17 pled or tried to plea on the larcenies. It would have been
18 Sterling backing out of the plea or not wanting the 10 years,
19 but there is no reason ---

20 Q Do you remember when that happened, what day?

21 A It probably would have been the May 30th day, I would not,
22 I thought he was guilty, it was clearly on the video of the
23 larcenies, maybe not the burglaries, but there had been so much
24 dispute with the thefts and I do remember them getting
25 frustrated with Sterling and threatening to call him to trial

1 on the burglary and I do remember us talking about that it was
2 not a building per se, I don't remember the actual plea itself,
3 but I really think that Sterling did not want to plead.

4 Q Let's talk about his clothes, obviously, he came from
5 SCDC, so he didn't have clothes. So you heard him testify that
6 he was brought out and set out here in his SCDC outfit and
7 shackles, do you remember that?

8 A Vaguely, I do because he did not want to go to trial and
9 at that point we were saying, you know, he will plead to
10 larceny now. The solicitor at that point was saying, no, it's
11 too late, so I do think we had a hearing before the trial where
12 we asked for a continuance for the plea.

13 Q Do you remember the door being open and the jurors in the
14 hall?

15 A Not at all. My notes indicate, no, I don't remember that,
16 again. I do know that we struck one juror for cause, and I
17 only know that because I was looking at my trial notes while
18 Mr. Sterling was testifying. I don't remember the lady seeing
19 him or what the cause was, but we struck one juror, 178, for
20 cause, but that might not even be related to seeing him at all.

21 Q Do you remember a juror, after a jury had been picked, a
22 juror being excused?

23 A No.

24 Q You don't have a copy of the transcript?

25 A I do not. And that might or may not refresh

1 my recollection, but I don't remember a juror being
2 excused.

3 MR. LIFSEY: Judge, just for the record, I note
4 that I'm referring to pages 32 and 33 of the trial
5 transcript.

6 A I wouldn't dispute the transcript.

7 Q Did you ever, did you ask that inquiry be made as to the
8 rest of the jurors that were present if they were prejudiced by
9 her comments?

10 A If it's not on the record, I didn't, I don't dispute the
11 record at all, and I don't have any recollection of that lady
12 at all. And if I saw them looking at him, I might have excused
13 them, but I don't have any clear recollection, so I would have
14 to stand by the transcript.

15 Q Alright. Let me ask you about your theory of the case.
16 You basically argued that the structure was not a building, is
17 that correct?

18 A I think that's what the crux of the defense was, not so
19 much contesting the thefts, well, we probably contested that
20 too, but particularly that there were four poles and a roof,
21 not buildings.

22 Q Were you aware of any South Carolina case law supporting
23 your position on that?

24 A I think I probably argued some. My notes indicate that I
25 argued the definition of goods.

1 Q Alright. I'll talk about goods in a minute, but now I'm
2 talking about the building issue first, just to make sure I
3 nail that down and cover that for the record.

4 A Yeah. And I've had the issue come up more than Sterling's
5 situation where these burglaries are out in the carport or open
6 areas, and I disagree with the logic of it, but I think case
7 law would support that if it's the curtilage of a house, that
8 it can be burglary, but I deal with a lot of carport type
9 burglaries and so this would not have been the first time I
10 looked at it.

11 Q I guess what I'm trying to, you were aware, obviously, of
12 what the Judge was going to instruct the jury about what
13 constituted a building?

14 A Right. We would have a, Judge Hocker does let you look at
15 the charge and that was largely our battle was that none of
16 these would have been burglary.

17 Q Okay. Obviously, what the Judge charged, your argument
18 could not have been successful if the jury listened to what the
19 Judge charged in regards to the burglary, correct? Or were you
20 just kind of hoping for sort of a jury nullification on this
21 issue?

22 A No. I don't hope for jury nullification, I think that the
23 Judge disagreed with me, I think I may have started out the
24 trial arguing one thing and then I had the Court, after hearing
25 the arguments, rule somewhat differently, I think we were

1 hoping for the benefit of the doubt which is a little bit, not
2 quite nullification type. I will take nullification, but I
3 don't argue for nullification ever, so I think that I would
4 characterize it as just benefit of the doubt.

5 Q Fair enough. Let me ask you about your argument, would
6 you explain to the Judge what your argument was in regards to
7 the goods, the definition of goods?

8 A The definition for burglary is it's an open-air, carport
9 or structure is the curtilage has to be used for storage of
10 goods, primarily used in storage of goods. I think I argued,
11 and I don't know if it was for just the Judge or the jury, too,
12 I probably argued to both that the items stolen were not goods
13 by the legal definition because goods are items that are
14 traditionally held for sale, whereas these items were weed
15 eaters and yard implements. So they were just personal items,
16 and goods are legally items held for sale. So these weren't
17 burglaries of homes.

18 Q So by that logic if someone broke into a storage shed
19 in someone's backyard, you're saying it could never be
20 burglary?

21 A Well, I mean, I think the argument is whether it's closed
22 or not, I'd probably go with that argument, but in this
23 situation, we weren't arguing about any closed storage units,
24 but goods. For something to be in the curtilage then it has to
25 be traditionally used for storing goods. I think I found a

1 case somewhere that said goods are items that are held for
2 sale.

3 Q And you referenced the UCC, I think.

4 A Right. But legally, the definition of goods are just
5 items that are available for sale, therefore, this would not be
6 a curtilage that was used for holding goods, because these were
7 just used for holding personal items, whereas goods has a
8 specific legal definition. But because the case law said that
9 the curtilage is areas that are traditionally used for storing
10 goods, I thought I'd go ahead and argue that and maybe, because
11 the thefts are largely on video tape, and the structure of the
12 building is on video tape showing four poles and a roof. So I
13 think we're just arguing legal definition of what the law says
14 about the curtilage of the house.

15 Q Alright. And obviously, the Judge did not accept that
16 argument?

17 A Well, I think the Judge was sympathetic because he gave
18 him less time on the burglaries than he did for the larcenies
19 which I think, well, I don't get into his head, but he gave him
20 less time than what I would consider the more serious charge,
21 the burglaries over the larcenies. So I think the Judge
22 factored in there that they were not intrusive burglaries, so
23 to speak.

24 Q Alright. Let me ask you about the opening statement of
25 the solicitor, if I could just hand you the transcript.

1 A Well, I heard the, I'll read it, too, but I heard ---

2 Q Do you remember the solicitor saying, our job is to decide
3 if there's enough evidence to proceed with trial? Do you
4 remember him saying that?

5 A No. But that's fairly a typical, I remember him saying
6 basically words similar to that many times before, it would be
7 a fairly standard opening for him.

8 Q Do you remember him saying we have no agenda here, it's
9 nothing political, it's just a crime has been committed and we
10 feel we have enough evidence ---

11 A I don't remember it, but I'm satisfied that that what was
12 said.

13 Q Did you object to either of those statements?

14 A No.

15 Q Are you familiar with State v. Thomas, 287 S.C. 411 and
16 Fortune v. State which is 428 S. C. 545 and other cases that
17 cautions solicitors not to make statements that tend to lessen
18 the jury's sense of responsibility by reference to preliminary
19 determination of facts?

20 A I'm familiar with the, just of that ---

21 Q Just basically, a solicitor shouldn't be saying, I've
22 already looked at this and know that a crime's been committed -
23 --

24 A I agree with you there.

25 Q --- which is what he argued.

1 A And I guess my answer would be, I did not feel that it was
2 significant enough in the text and the scope of his opening
3 statement. I routinely object to opening statements,
4 particularly that solicitor at the time, but the openings are a
5 little bit broader than, and I don't, like, I heard you read
6 the statement, I don't think it's an egregious violation, I'm
7 not even sure it's a violation at all because the solicitors
8 prosecute the case. So, I heard the statement, I disagree that
9 it would be an objectionable opening argument, maybe it comes
10 closer than I believe it does and other attorneys can look at
11 it differently, but ---

12 Q So you did not believe those statements were objectional?

13 A Philosophically, I don't object unless there's a wound
14 generated, objections just reemphasize what was said before.
15 I'm not opposed to objecting at all and I object all the time
16 to opening arguments ---

17 Q I'm just trying to get at ---

18 A Right. I understand your point that the solicitor is
19 getting close to saying that he's looked at the evidence and
20 that it's compelling and the jury can be satisfied that he's
21 looked at it and confirmed the guilt of the Defendant.

22 Q I guess what I'm trying to get at is this, as I see it, I
23 don't want to testify ---

24 A I ---

25 Q There's two possible alternatives, either you didn't

1 think it was objectionable at all or you didn't object to it
2 because you didn't notice it or you didn't object to it because
3 while it was objectionable, you didn't think it was worth
4 objecting to it? I guess that's three alternatives.

5 A I don't think it's objectionable at all, I might be
6 mistaken on that, just from hearing it from hindsight, that's
7 not a statement I would object to. I think it still preserves
8 the role of the jury where the solicitor, in my opinion, is
9 saying we believe we've got a prima facie case to present to
10 you. The, particularly with the Judge's closing, I don't think
11 that's objectionable, I might be wrong, but I stand by that.
12 But I would not have objected to it, I didn't think it was
13 wrong and chose not to object. I don't think that comes close
14 enough to a violation.

15 Q Fair enough. Let's look at closing arguments. Did you
16 find the solicitor's remarks to be calculated and inflamed or
17 prejudiced before the jury, or what was your, do you remember
18 him just being, describing the Applicant as an opportunist, he
19 sees something, he would get it for free, he's going to take
20 it, he doesn't care how the victim paid for it or how much she
21 needs it, that doesn't bother him. Did you see those as
22 objectionable?

23 A I think they're getting, again, a little bit more
24 emotional and I think are encroaching, but no, I don't take
25 them as a little ---

1 Q The purpose of the trial is to determine whether or not
2 the State's proved beyond a reasonable doubt he's guilty or not
3 ---

4 A I agree.

5 Q --- but calling him names and talking about the victim
6 really doesn't have anything to do with that, does it? I mean,
7 what's the purpose of that other than to have a jury mad at
8 him?

9 A Well, I agree with you. And in pure principle, I don't
10 know that talking about an opportunist in general, and that's
11 how I still take the argument as the Defendant is an
12 opportunist and that he's, I think just given the burden of
13 persuasion on the State, I think that does not cross any clear
14 ---

15 Q Okay. How about the distinction between productive
16 members of society and the takers and referring to Mr. Maybin
17 as taker, what probative value or even what argument inference
18 makes the elements of the crime more likely than not, I mean --
19 -

20 A I agree with you that the, again, if that was Mr. Scott,
21 and it sounds like Mr. Scott, I had no shortage of objecting,
22 he is a prosecutor from Columbia who can really push the
23 envelope. Again, the grand scope of the case and burden of
24 persuasion, I would not have felt that that would have been
25 worth an objection, that probably would have been a tactical

1 reason. In the grand totality of the case, that would not have
2 been a clear violation to me in the closing argument.

3 Q What tactical or strategic advantage did you have of not
4 objecting?

5 A Well, again, I guess, you have to tailor a case around the
6 way that you try a case and how the solicitor tries their case.
7 This was largely a case where we were arguing these other
8 charges, it is a larceny case, it's not a burglary case, I
9 don't know that we specifically admitted that he was guilty of
10 the larceny either. But I think we were fighting the burglary
11 charges and the expectation that they would have been treated a
12 little bit more viciously by the Judge if he was convicted.
13 The, but we, the scope of the case, and I don't, you know, some
14 lawyers say don't interrupt in closing arguments, I will if I
15 think they are unfair. Just in my opinion, they didn't
16 reach the unfairness that would have unfairly affected the
17 jurors.

18 MR. LIFSEY: Your Honor, beg the Court's indulgence
19 for just a moment.

20 Q Let me, I did mean to ask you about this. You did
21 actually, it seems like, my memory is, you asked for a
22 continuance before the jury got picked?

23 A Yes.

24 Q You did?

25 A I'm sure I did, I'd be surprised if I didn't.

1 Q The Judge said, no, we're going to go ahead and pick the
2 jury, but you can ask me again in the morning. You never did
3 in the morning, so I'm trying to figure out what changed
4 overnight that you would not have sought a continuance?

5 A I think when Sterling was talking about he brought in his
6 tans from SCDC ---

7 Q And he wore them into Court?

8 A We came in requesting a continuance and he personally
9 would have participated in that. I likely would have gone
10 ahead and requested a continuance in the morning, but if it's
11 not in the transcript then I didn't. But I think at that point
12 the Judge had said we're going forward with trial, you have the
13 rest of the day to talk to him and either work it out or get
14 ready for trial, that's traditionally how it goes. I would
15 have moved for a continuance; it would have been denied and the
16 Judge said, you have the rest of the day to spend with your
17 client.

18 Q Okay.

19 MR. LIFSEY: I don't have any further questions.

20 THE COURT: Anything from the State?

21 MR. JONES: Nothing from the State, Your Honor, thank
22 you.

23 THE COURT: Let me just ask one quick question.

24 August 6th was the indictment for the burglary, does that sound
25 correct?

1 MR. VERNER: By my notes, and I'm not sure I would
2 have gotten it that day ---

3 MR. JONES: Your Honor, we do have the burglary
4 indictments in the Court's packet.

5 THE COURT: And what day?

6 MR. JONES: Mine look like they were true billed on
7 July 19th, 2019.

8 THE COURT: You don't know what day he was served
9 with those; do you know from your recollection?

10 MR. VERNER: I do not know, it was clear that his
11 first charges would have been larceny charges, my notes
12 indicate that they threatened to charge on the burglary, I
13 don't believe that he believed them that they would, but it
14 looks like I was notified August 6th that they direct indicted
15 him for the, and that's probably the same time I would have
16 gotten the trial notice for him as well. Although, when he
17 didn't plea that week of Court that they had told him he's
18 going to trial, that doesn't count as trial notice, but they
19 clearly said if you don't plead, you're going to trial. And
20 then they, within a month or two, had indicted him directly for
21 the burglaries. But from my notes, we had discussed the
22 burglary as potential charges early as May 30th because they
23 were threatening if you don't plead, we're going to, it's
24 coming. And then I believe I would have moved probably, I'm
25 surprised, and I'll defer to the transcript, but I'm surprised

1 I didn't bring it up to the Judge that the indictments came
2 within a month of trial.

3 THE COURT: Thank you. Any follow up questions?

4 MR. LIFSEY: Just briefly, based on your questions,
5 Judge.

6 RECROSS EXAMINATION

7 BY MR. LIFSEY:

8 Q So there was never a formal arraignment?

9 A If it's not in the transcript, I don't know, now they
10 don't do it as much, but they have it sometimes of giving you
11 one or two more indictments prior to trial that they had just
12 thought of as they were spit balling you for trial. I would
13 have got charged with four or five indicted cases and then they
14 would hand me one or two more the week of trial. And so I
15 would object and the Judge would either let them go forward or
16 not, but the, I don't think that that's quite this case because
17 they had threatened with the burglary when the pleas did not go
18 through with the larcenies. He would have, I believe he
19 probably, I'll defer to the transcripts, but I believe he would
20 have been arraigned by Judge Hocker on the charge, that's
21 traditionally how it's done. But if it's not in the
22 transcript, I don't have any independent recollection of how he
23 was arraigned for the charges.

24 Q I guess I'm trying to figure out, because I've
25 seen no evidence there was an actual arraignment,

1 and you're saying you don't have any memory of the arraignment?

2 A I mean, they would have filed the indictments here in the
3 Courtroom. If it's not in the transcript, I don't have any
4 independent recollection of the arraignment, but a lot of times
5 when I have objected to the indictment before trial the Judge
6 would pull them up right before the trial and read the
7 indictment to them, sometimes they do that in front of the
8 jury, but not often. If it's not in the transcript, I don't
9 recall.

10 MR. LIFSEY: I don't have any further
11 questions.

12 THE COURT: Okay. Any further questions for Mr.
13 Verner?

14 MR. JONES: No, sir, nothing further for Mr. Verner,
15 thank you.

16 THE COURT: Alright. You may step down. Any other
17 witnesses from the State?

18 MR. JONES: Nothing further from the State, Your
19 Honor.

20 THE COURT: I'm going to take a 15 minute break.
21 We'll come back at 11:30. Are there any more witnesses from
22 the Defense?

23 MR. LIFSEY: None, other than potentially I may ask
24 to call him one second on something else, but if you'll give me
25 just a couple minutes I will check.

1 THE COURT: We'll take a 15 minute break, come back
2 for any further witnesses or your client, and then have closing
3 arguments. Alright. 15 minutes.

4 (Off the record.)

5 MR. LIFSEY: I don't have anything further, Judge,
6 thank you.

7 THE COURT: Anything else from the State?

8 MR. JONES: Nothing further from the State, Your
9 Honor.

10 THE COURT: Alright. Before we adjourn, I need a
11 little bit of closing arguments about this case.

12 MR. LIFSEY: Well, thank you, Your Honor. I mean,
13 obviously, there are certain issues that are credibility
14 issues, and you'll have to make decisions, you heard the
15 testimony. I will say, I'm not calling anybody falsehoods or
16 anything at all because I mean, especially if you have a lot of
17 cases, and obviously, I'm not really great at taking notes, but
18 I will say that a lot of the credibility issues I think fall in
19 Mr. Maybin's favor based on the transcript. I mean, it appears
20 to me from the, my reading of the transcript that throughout it
21 it's, you know, they're talking about the larcenies, he's
22 willing to plead to the larcenies, he's, you know, those things
23 tend to support his account of what happened. And I would say
24 just from practicing in a small town, the idea that, you know,
25 that the solicitor would bring over people from the jail just

1 because they got a note, and the public defender hasn't even
2 had any time to talk to them does not surprise me at all
3 because it happens to me all the time. So I would ask you to
4 take that in mind when you consider the credibility issues. As
5 to the burglary and notice of the burglary, in full candor, we
6 looked it over, there actually was an arraignment in the
7 transcript, but it was the day, I can't remember now if it was
8 the day they picked the jury for the day before they started,
9 but there was an arraignment in the transcript, but it wasn't
10 earlier than that.

11 THE COURT: What's the notice requirement for ---

12 MR. LIFSEY: Well, you know, I've always heard, and I
13 have no idea if this is supported by statute, but I used to
14 hear lawyers talk about the 10 day citing [sic] the indictment.
15 That's one of those things I've heard as a lawyer for a long
16 time.

17 THE COURT: You can't tell someone they're being
18 charged with this and try them on the same day, correct?

19 MR. LIFSEY: Correct. And of course, that's his
20 testimony, his testimony is he did not know it until the day
21 they picked the jury. Now, Mr. Verner testified differently,
22 but obviously, when the Court looks over the transcript, I
23 would ask you to look over the transcript, and especially Mr.
24 Verner's continuance arguments because I think they tend to
25 support his account of that issue. And even if Mr. Verner's

1 arguments aren't a hundred percent accurate, we're not
2 conceding to that at all, we're still only talking about one
3 week prior to trying a burglary case. And I mean, I, it just,
4 a burglary case is different than a larceny case, a burglary
5 case has different elements. It's not surprising at all that a
6 client presented, you got to go to trial today or you're
7 pleading on a burglary today or not would say no as opposed to
8 if you had time and several meetings with your client to
9 educate them on the elements, to discuss the factual scenarios
10 that you could talk your client into coming to a more
11 reasonable position because clients aren't lawyers, you know,
12 they're not aware of the elements of the crime. And from a
13 commonsense perspective, it's unusual for this to have been
14 charged a burglary, but I do think it is consistent with the
15 law. That leads me into my argument in regards to Mr. Verner's
16 trial strategy in this case. I understand that sometimes you
17 just got to argue what you got. But the trial strategy really
18 doesn't make any sense to me, and I mean that respectfully, but
19 it's not consistent with South Carolina law. I mean, this was
20 a structure, the fact that the Judge denied his motion for a
21 directed verdict and the fact that Appellate Courts made short
22 market on all of it supports that if you go into a trial on
23 theory then it just doesn't really frankly make sense, and it's
24 not consistent with South Carolina law as to the burglary.
25 And as to the goods, I mean, I understand the argument, but it

1 also doesn't make sense because by that same logic, you know,
2 you could break into the shed in somebody's backyard and it not
3 be a burglary, that's just not the law. So I would argue
4 there's no, he went to trial with a strategy that was not
5 consistent with South Carolina law. And if that was my
6 client's wish which he did not testify it was because he says
7 he didn't know about the burglary until the day of trial, but
8 even if he knew about it, and even if he wanted to go to trial
9 with that strategy, those are even further reasons why multiple
10 consultations are needed between your attorney and your client
11 so as to educate your client as to the law, not what we wish
12 the law to be. As to the solicitor's arguments in his opening
13 statement, you can read them, I think they're violative in the
14 State versus Thomas, and Fortune v. State, I cited those two
15 cases, and there are others as well, I cited those two in my
16 application. I don't see any trial strategy reason for not
17 objecting to it. I also don't see a trial strategy reason for
18 not objecting to the name calling in the closing argument, it
19 doesn't add anything, especially when your whole argument is,
20 if I understood the trial counsels argument at trial, the whole
21 argument is it's really not a burglary, then why do you let the
22 solicitor get away with calling your client names and talking
23 about what a bad guy he is doesn't make any sense to me. Like
24 I say, I would ask you to find the credibility issues in my
25 client's favor based on his testimony, based on the lack of

1 memory of specifics as to trial counsel's testimony and based
2 on the transcript. I would argue even if you do find the trial
3 counsel's argument more credible or State's more credible as to
4 when you're reading, even by that, you're only talking about
5 one meeting prior to trial which is not sufficient to prepare a
6 client for a burglary trial, Your Honor. Thank you.

7 THE COURT: Alright. Thank you, sir.

8 MR. JONES: Thank you, Your Honor. I'm just going to
9 go through the allegations in the amended post-conviction
10 relief application. The first, Mr. Maybin alleges that Mr.
11 Verner refused to let him plead guilty despite his willingness
12 to do so and the solicitor's willingness to do so. I'd just
13 like to direct the Court's attention to page 197 of the
14 transcript where the solicitor, where Mr. Maybin raises this
15 claim after his conviction and the solicitor says, well, that's
16 wholly inaccurate what he just said. What you saw was the tip
17 of the iceberg, negotiations were made, he wants to plead on
18 his own terms, that being petty larceny for 10 years which we
19 were never amenable to. He wanted to plead but with what he
20 wanted to plead to would be the long and short of it.

21 THE COURT: Who was that, the solicitor?

22 MR. JONES: That was Dale Scott, yes, sir. So we
23 submit the transcript completely refutes that allegation, that
24 there was some preexisting agreement between him and the
25 solicitor that Mr. Verner wouldn't let him plead to. The

1 second issue that whether Mr. Verner met with him a sufficient
2 number of times, explained the elements of the crime, explain
3 possible defenses or didn't accurately prepare for trial,
4 again, regarding this, an ineffective assistance of counsel
5 claim, one of the elements that must be proved is the element
6 of prejudice. So what other defenses should Mr. Verner have
7 raised instead of the defense that he did raise, which, by the
8 way, I would submit was a, an arguable defense based on the
9 statute or definition of a building. It's not like there was a
10 preexisting case that had considered the exact same facts and
11 ruled against it, this was whether these carports constituted a
12 building was a perfectly valid thing for Mr. Verner to argue.
13 I don't agree that it was obviously foreclosed by South
14 Carolina law. Now, ultimately, he argued it, he lost that
15 argument at the directed verdict stage and then it was raised
16 again on appeal, and it lost at the Court of Appeals, but until
17 then, it was a live issue. And we submit that there was no,
18 that it was a perfectly reasonable trial strategy to pursue.
19 Again, especially in this case, Mr. Maybin was caught on camera
20 committing the crimes. There's no dispute that he's the party
21 who went into these structures and took these lawncare
22 equipment machines out of them. There's no dispute whether he
23 was correctly charged with petty larceny, everyone seems to
24 concede that what he did constituted petty larceny, I just
25 don't think there was any other valid way an attorney could

1 have defended him against these charges except by making the
2 claim that he, his conduct did not satisfy the legal
3 definition. So bearing that in mind, I think that covers a lot
4 of these allegations. Regarding the continuance request, Mr.
5 Verner did make a motion for a continuance, that's on page 26
6 of the record, ultimately the Judge delayed the start of the
7 trial until the following day, but then wouldn't continue past
8 that. Mr. Verner, and at that time, again, on page, I believe,
9 26, possibly at the start of page 25, yes, the Court agrees to
10 conduct this on the record arraignment that Mr. Verner was
11 talking about where he had Mr. Maybin come up and plead not
12 guilty to the charges, the burglary charges.

13 THE COURT: That was the week, the day of the trial?

14 MR. JONES: Yes, that was the day, I believe that was
15 the day that they chose the jury, and it was the day before the
16 trial began. And again, immediately after that, Mr. Verner
17 moves for a continuance.

18 THE COURT: Immediately after that?

19 MR. JONES: Yes, sir. That would be after, at the
20 top of page 26, again, the Court says, Mr. Maybin needs to be
21 arraigned and then we can get to your continuance request after
22 I've done that. And then he asks him, he goes through his
23 colloquy with Mr. Maybin and then says, thank you, sir, you can
24 have a seat. Now, Mr. Verner, back in chambers you had
25 indicated that you and your client wanted to make a motion for

1 a continuance, so then the continuance request was made. I
2 don't see what else Mr. Verner could have done at that point.
3 Second of all, again, this just goes back to the issue of
4 adequate preparation, what else was he supposed to have done in
5 preparation, we haven't heard anything about that. And again,
6 based on the overwhelming evidence against Mr. Maybin, I'd
7 submit there was nothing else he could have done.

8 THE COURT: Do you think that's too short of time to
9 try somebody?

10 MR. JONES: Well, Your Honor, I would submit that
11 that, I don't know off the top of my head what the notice rules
12 are.

13 THE COURT: Just in general.

14 MR. JONES: In general, if that was the first time he
15 had heard of those burglary charges, I could see there being a
16 problem with that. Now, that would be a direct appeal issue
17 rather than a PCR issue, but Mr. Verner testified that he had
18 received notice at least by August 6th of the burglary charges
19 prior to the trial. So again, I would submit that's credible
20 in light of the rest of the record.

21 THE COURT: Alright. Anything else?

22 MR. JONES: Yes, just bear with me, sorry, there's a
23 number of allegations. I will skip through to the ---

24 THE COURT: Tell me about the closing argument and
25 opening argument.

1 MR. JONES: The opening argument I would submit was
2 not objectionable, again, this is where he says our job is to
3 decide if there's enough evidence to proceed with a trial, we
4 have no agenda here, it's nothing political, it's just a crime
5 has been committed and we feel we have enough evidence. Again,
6 it is totally permissible for the solicitor to say we have
7 enough evidence, and this evidence implies that a crime has
8 been committed. I don't know what the solicitor is supposed to
9 argue if they can't argue that the evidence shows the accused
10 is guilty of the crime.

11 THE COURT: What about that closing argument, the
12 takers and the keepers?

13 MR. JONES: Again, the closing argument I would
14 submit was, regardless of whether Mr. Scott pushed the envelope
15 with his rhetoric, the thrust of the defense was that yes,
16 okay, Mr. Maybin took these things, but he didn't, but he
17 didn't take them from a building as that term's defined in the
18 statute.

19 THE COURT: Trial strategy towards not objecting?

20 MR. JONES: Yes. And again, Mr. Verner testified
21 that he weighed the impact of the statements against the
22 totality of the circumstances in this and did not feel that
23 objecting to them would help his client. And once again, I
24 would say the standard for whether a solicitor's comments are
25 inappropriate is whether they so infected the trial with

1 unfairness that the resulting conviction was a denial of due
2 process. Again, because he was caught on video, because
3 there's just no question about really the facts of the case at
4 all. What matters is the legal definition of a building. I
5 would argue that there could be no prejudice in this case
6 because this conviction was not the result of an unfair
7 process. One or two more things I wanted to hit before I sit
8 down. Regarding the juror, that juror was excused, again,
9 there's no other evidence that the jury found him guilty
10 because of something a juror told them as opposed to because of
11 the video showing him committing the crimes. And ultimately,
12 the appellate counsel, the ineffective assistance of appellate
13 counsel for not raising out of jurisdiction cases as persuasive
14 authority, again, those simply aren't binding, it's totally
15 within appellate counsel's discretion to rely on or not rely on
16 the nonbinding case law that they want to bring up to the
17 extent they think it would help their case. And again, we're
18 not even talking about the same statute from one state to the
19 next. It really is not, and we haven't heard what these
20 supposed cases from other jurisdictions might have been, so I
21 would submit that there's not any proof of deficiency or
22 prejudice. Thank you, Your Honor.

23 THE COURT: Alright. Thank you. Alright. What I'm
24 going to do is I'm going to take this under advisement while I
25 consider everything I've heard today. I have a lot of

1 information to go through, the transcript, the arguments, what
2 I've heard today testimony wise, so I'm going to go through
3 that this week before I make any decision. Once I do, I'll let
4 both sides know. Thank you for being here today, Mr. Maybin.

5 (Whereupon the hearing ended at 11:56 am.)
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1 CERTIFICATE OF REPORTER

2
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4 STATE OF SOUTH CAROLINA)
5)
6)
7)
8)
9 COUNTY OF NEWBERRY)

10 I, the undersigned Lisa G. Amick, Official Court Reporter
11 for the Eighth Judicial Circuit of the State of South Carolina,
12 do hereby certify that the foregoing is a true, accurate, and
13 complete transcript of record of all proceedings had and
14 evidence introduced in the trial of the captioned case,
15 relative to appeal, in the County of Newberry, South Carolina,
16 on the 17th day of July 2023.

17 I do further certify that I am neither of kin, counsel,
18 nor interest to any party hereto.

19 January 13, 2024

20 Lisa G. Amick

21 Lisa G. Amick

22 Court Reporter

23
24 My commission expires: June 30th, 2025
25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) FOR THE EIGHTH JUDICIAL CIRCUIT

Sterling Maybin, #302306,) Case No.: 2021-CP-36-00464

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED
NEWBERRY COUNTY
2023 OCT 20 AM 10:26
ELIZABETH P. FOLK
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Sterling Maybin (“Applicant”) on November 5, 2021, and amended on May 19, 2023. The Court convened an evidentiary hearing into the matter on July 17, 2023, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Michael H. Lifsey, Esq. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Charles Verner, Esq. (“Counsel”), also testified. After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections (SCDC). During its July 2019 term, the Newberry County Grand Jury indicted Applicant for three counts of Petit Larceny (2019-GS-36-00429, -00430, -00431) and two counts of Burglary, Second Degree (2019-GS-36-00432, -00433). Applicant was represented by Charles Verner, of the Eighth

Circuit Public Defender's Office. Deputy Solicitor Dale Scott, and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case.

On August 26-28, 2019, Applicant appeared for a jury trial before the Honorable Donald B. Hocker, circuit court judge, and a jury. At the conclusion of Applicant's trial, the jury found Applicant guilty as indicted. Judge Hocker sentenced Applicant to imprisonment for two consecutive terms of ten years for the petit larceny charges ending in -00429, and -00430, for a total of twenty years of imprisonment. Judge Hocker also sentenced Applicant to imprisonment for ten years for the petit larceny charge ending in -00431, and eight years for each Burglary, Second Degree charge; these sentences were to run concurrent to the two consecutive sentences for Petit Larceny.

Applicant timely filed a notice of appeal, and an appeal was perfected on August 25, 2020, by Sarah Shipe of the South Carolina Commission on Indigent Defense, Appellate Defense Division. In Applicant's brief to the South Carolina Court of Appeals, Applicant raised the following issue:

1. Whether the trial court erred by denying Appellant's motion for a directed verdict as to second-degree burglary where video evidence at trial showed a detached, open-air carport, which did not meet the statutory definition of a "building" for purposes of the burglary statute?

Following briefing the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion, *State v. Sterling Maybin* 2021-UP-358 (Filed October 20, 2021). The Remittitur was issued on November 12, 2021.

Factual Summary

On April 24, 2019, Larry Hazel, a member of the Newberry community, reviewed security camera footage of his property after noticing that items from the shop in his yard were disappearing. Tr. pp. 78-79. Following his review of the footage, Mr. Hazel saw an individual

leaving the shop with a chainsaw that belonged to Mr. Hazel. Tr. p. 79. Mr. Hazel proceeded to call the police to allow them to review the footage. Tr. p. 79. Officer Jason Bell arrived at Mr. Hazel's house and reviewed the footage. Tr. p. 86. Officer Bell saw an individual wearing a red colored skull cap, a burgundy hoodie, a white t-shirt, and dark navy pants with cargo pockets. Tr. pp. 102-03. Officer Bell sent still shots from the footage to his supervisor who identified the individual as Applicant. Tr. p. 103.

Mr. Hazel reviewed additional footage from his cameras and noticed an individual taking more property from his shop on April 23, 2019. Tr. p. 87. Officer Bell returned to Mr. Hazel's house to watch the additional footage and confirmed that the same individual was recorded in both videos. Tr. pp. 106-08.

Bessie Mathis, who also lived in Newberry, installed a camera after realizing she was missing weed eaters and some other tools from her property. Tr. p. 56. On April 24, 2019, Ms. Mathis reviewed the footage on her camera and saw a man, later identified as Applicant, taking a weed eater out of her shed. Tr. pp. 60-61. Ms. Mathis reported the incident to the police, and Officer Justin Weaver of the Newberry Police Department arrived to review the videos. Tr. pp. 74-76.

Captain Kevin Goodman of the Newberry Police Department reviewed the surveillance videos taken from Ms. Mathis and Mr. Hazel and identified the individual in the footage as Applicant. Tr. p. 130. After Applicant was identified, Officer Bell encountered him on a bicycle while Applicant was wearing the same clothes he had on in the videos collected from Ms. Mathis and Mr. Hazel. Tr. pp. 109-13. Applicant was ultimately arrested and charged with two counts of Burglary, Second Degree, and three counts of Petit Larceny.

Present Application

Applicant commenced this PCR action on November 5, 2021. In his application for post-conviction relief, Applicant asserts he is being held in custody unlawfully for the following:

1. Ineffective Assistance of Counsel
2. Ineffective Assistance of Appellate Counsel
3. Prosecutorial Misconduct, Abuse of Discretion

As requested relief, Applicant is seeking “new trial and/or vacate sentence.”

On May 19, 2023, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

1. Counsel refused to let Applicant plead guilty shortly after his arrest despite Applicant's desire to do so and despite the solicitor's willingness to allow him to plead guilty solely to three counts of petty larceny.
2. Counsel did not meet with Applicant a sufficient number of times prior to his trial, did not explain the elements of the crime, did not explain possible defenses, and did not adequately prepare for trial.
3. Counsel did not move for a continuance despite Applicant only being informed that he was charged with burglary on the day his trial began.
4. Counsel did not object to his client being seated in the courtroom at one point prior to trial in view of potential jurors while shackled and wearing SCDC clothing.
5. Counsel failed to request that one juror, who was excused after she commented that she already believed the defendant was guilty, be examined to determine what she may have said in the presence of other jurors that may have prejudiced Applicant.
6. Counsel was ineffective because his theory of the case based on the definition of “building” in the burglary statute was not consistent with existing South Carolina law.
7. Counsel failed to object to portions of the solicitor's opening statement that referenced preliminary determinations of the facts.
8. Counsel failed to object to portions of the solicitor's closing statement that were designed to inflame the passions and prejudices of the jury.
9. Appellate Counsel failed to argue as persuasive authority cases from other jurisdictions in support of the argument that the carports from which Applicant stole the items were not “buildings” for the purposes of the burglary statute.

At the evidentiary hearing, Applicant proceeded on the allegations raised in his amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are

Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Trial Counsel

Applicant's allegations of ineffective assistance of Counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286

S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

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. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)). The court need not examine both deficiency and prejudice in every case; if it is easier to dispose of a claim of

ineffective assistance on the ground of lack of prejudice, that course should be followed. *Strickland*, 466 U.S. at 697.

In some cases, overwhelming evidence of guilt will preclude a finding of prejudice. “A reasonable probability of a different result does not exist when there is overwhelming evidence of guilt.” *Hillerby v. State*, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (Ct. App. 2020) (citing *Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991)). For evidence to be “overwhelming,” such that it categorically precludes a finding of prejudice, the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of “a reasonable probability . . . the factfinder would have had a reasonable doubt” cannot possibly be met. *Smalls v. State*, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018).

Absence of Prejudice

The Court finds Applicant cannot prove he was prejudiced by any of the alleged deficiencies of Counsel because, at his trial, the State presented overwhelming and conclusive evidence of his guilt in the form of surveillance videos depicting Applicant committing the thefts. Applicant’s face could be seen on the video, and he was wearing distinctive clothing that matched the clothing he was wearing when he was later arrested. Applicant never denied he was the culprit: he admitted he was guilty of the petty larceny charges, and his defense at trial was merely that the carports from which the items were stolen did not count as “buildings” for the purposes of the burglary statute. As Counsel told the jury in his opening statement, “Sterling admitted from the beginning, I stole this stuff. He is guilty of a felony larceny. . . . From the very first day they got him, he said, yeah, I stole it.” Tr. p.48, lines 10–13.

Applicant argues that, even though there is no dispute concerning his guilt of the larceny charges, he was still prejudiced because Counsel failed to adequately challenge the burglary charges. However, Applicant's sentences for the larceny charges—three ten-year sentences, two of which were consecutive, for a total of twenty years—were far more severe than the total of eight years, concurrent, he received for the burglary charges. Even if Applicant had been acquitted of burglary, he would have received the same aggregate sentence of twenty years for the larcenies he admitted committing.

Finally, because there was no question that Applicant entered the carports without consent and with the intent to commit larceny, and his prior convictions for burglary were a matter of public record, the only possible defense Applicant could have made to the second-degree burglary charges was to argue that the carports were not “buildings” as that term is defined in the burglary statute. Since this argument is based on the language of the statute, it presents a matter of law rather than fact. *See, e.g., State v. Tennant*, 394 S.C. 5, 17, 714 S.E.2d 297, 303 (2011) (“Statutory interpretation is a question of law.”). The matter of whether the carports at issue are “buildings” was raised to the South Carolina Court of Appeals on direct appeal from Applicant's conviction. The court of appeals ruled against Applicant on that ground, and this Court cannot contradict the court of appeals on an issue of law. Therefore, because Applicant is concededly guilty of stealing the items from the carports, he is also guilty of burglary as a matter of law. Accordingly, there is not a reasonable probability that the result of the trial would have been different but for the alleged deficiencies of Counsel.

For these reasons, Applicant cannot show that he was prejudiced by any of the alleged deficiencies of Counsel. Because a showing of prejudice is required to succeed on an ineffective assistance claim, Applicant's failure to prove prejudice is dispositive of this PCR action, and there

is no need to evaluate the deficiency prong of the ineffective assistance analysis. *See Strickland*, 466 U.S. at 697 (“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed.”). Nevertheless, for the sake of completeness, the Court will briefly address Applicant’s specific allegations of ineffectiveness:

1. Refusal to allow Applicant to plead guilty

Applicant claims Counsel refused to allow him to accept the solicitor’s offer of a guilty plea solely to the petty larceny charges for a ten-year sentence. The Court finds this claim is refuted by the record: in the transcript, the solicitor denies that there was ever an offer for Applicant to plead solely to the petty larceny charges for a ten-year sentence. Tr. p.197, lines 15–22.

2. Failure to adequately meet with Applicant and prepare for trial

Applicant claims that Counsel did not meet with him a sufficient number of times, did not explain the elements of the crime, did not explain possible defenses, and did not adequately prepare for trial. However, Applicant has not explained what other defenses he would have offered or evidence he would have introduced had Counsel more thoroughly met with him and prepared for trial—in other words, Applicant has not shown that the result of the proceeding would be any different had Counsel acted differently. In addition, at the evidentiary hearing, Counsel testified he had represented Applicant many times before, including in a prior prosecution for burglary, so there was no need to redundantly explain the elements of the crime or the trial process. Finally, the Court notes the open-and-shut nature of this case—as already explained, the facts were not in dispute, so the case depended on the legal issue of whether the carports constituted “buildings” or not. This was not a complicated case, and the Court finds Counsel was reasonably well-prepared for trial under the circumstances.

3. Failure to seek a continuance

Applicant claims Counsel was ineffective for failing to seek a continuance on the burglary charges because he received no notice that he had been charged with burglary until the day of the trial. At the evidentiary hearing, however, Counsel testified that the solicitor had threatened to charge Applicant with burglary during the unsuccessful plea negotiation process, and Applicant knew he would be facing burglary charges if he went to trial. The Court finds Counsel's testimony credible, and Applicant's testimony not credible, as to this issue. In addition, the burglary indictments in the record were dated "July 19, 2019," over a month in advance of the trial on August 26, 2019. This further corroborates Counsel's account that the defense received notice of the burglary charges well in advance of the trial.

4. *Shackling issue*

Applicant claims he was seated in the courtroom at one point prior to the trial in his SCDC uniform and shackles. He claims that the doors of the courthouse were opened and the potential jurors in the jury pool, who were outside the courtroom, could see him. He claims Counsel was ineffective for failing to object to his being seated in the courtroom while shackled and in SCDC clothing. However, Counsel testified that he recalled having a hearing on the issue. Regardless of whether Counsel raised the issue, the Court finds Applicant was not prejudiced: at the evidentiary hearing, Applicant admitted that, by the time the trial actually began, he had changed into street clothes and was no longer shackled in view of the jury. In addition, during *voir dire*, the potential jurors were examined by the trial court as to whether any of them had formed any premature opinion of the issues in the case or harbored any bias for or against Applicant. Tr. pp.8–15. All of the jurors selected to serve in Applicant's trial represented to the trial court that they could be fair and impartial and were not biased for or against Applicant. The mere possibility that unidentified potential jurors, who might not have even served on Applicant's jury, could at one

point see Applicant through the courthouse doors, briefly and at a distance, while he was shackled and in SCDC clothing prior to trial, does not create a reasonable likelihood that the result of the proceeding would have been different had Counsel acted differently.

5. Juror 75

Applicant claims Counsel was ineffective for failing to require jurors to be examined after one alternate juror, Juror 75, was excused for commenting that she had prematurely decided Applicant was guilty. The transcript reflects that the jury foreman promptly informed the trial court of Juror 75's comment, and the court immediately ruled that Juror 75 would be excused from serving on Applicant's jury. Tr. p.32, line 15–p.33, line 4. There has been no further evidence presented of premature deliberations or other juror misconduct in the case. Without such evidence, Applicant's contention that Juror 75's comment might have prejudiced him is merely speculative.

6. Counsel's theory of the case

Applicant claims Counsel's theory of the case—that the carports from which the items were stolen did not constitute “buildings” under the burglary statute—was inconsistent with state law. However, Applicant has not pointed to any state law existing at the time of Applicant's trial that unequivocally refuted Counsel's position. Although Counsel's argument was ultimately unsuccessful, the Court finds it was a reasonable argument to make based on the law existing at the time. In addition, Applicant has not suggested any alternative theory of the case, much less established that Counsel's theory was so inferior to the alternative theories that pursuing it was unreasonable. Due to the overwhelming evidence that Applicant had stolen the items from the carports, the Court finds Counsel arguably pursued the best available course by attacking the applicability of the burglary statute to the facts of the case.

7. Solicitor's opening statement

Applicant claims Counsel should have objected the solicitor's opening statement when the solicitor commented that "our job is then to decide if there's enough evidence to proceed with a trial." In context, the solicitor was merely explaining the procedure for how cases get to the point of a jury trial. Tr. pp.40–41. Applicant also challenges the solicitor's comment that "we feel that we have enough evidence that will leave you firmly convinced of his guilt." Tr. p.47. Rather than substituting the solicitor's judgment for the jury's judgment, as Applicant claims, this comment emphasizes that the jury must be "firmly convinced" of Applicant's guilt, based on the evidence, before it can return a verdict of guilty. This is an accurate statement of the "reasonable doubt" standard, and it marches the reasonable doubt instruction given by the trial court. Tr. p.177, lines 4–14. Because neither comment was objectionable or prejudicial to Applicant, Counsel was not deficient for failing to object.

8. Solicitor's closing argument

Applicant claims Counsel should have objected to portions of the solicitor's closing argument that were intended to inflame the passions and prejudices of the jury. Applicant complains that the solicitor characterized him as a "taker" and an "opportunist" who takes things from their rightful owners. Tr. p.159, p.164. Since Applicant was on trial for larceny, which necessarily involves taking things from their rightful owners, the Court finds the challenged comments were not objectionable. While it is certainly unflattering to be described as a thief, that description is unavoidable in a larceny prosecution. The Court finds that the solicitor's comments were not substantially more inflammatory than the charges themselves.

9. "Persuasive" out-of-state case law

Applicant claims appellate counsel should have argued, as persuasive authority, cases from other jurisdictions to bolster the argument that carports should not be considered buildings for the

purposes of the burglary statute. Applicant does not explain how case law from other jurisdictions, which may have very different statutory language, necessarily apply to the provisions of South Carolina's burglary statute. In addition, the allegation itself recognizes that any such cases would be merely "persuasive" authority, not binding. Finally, as explained above, the application of the statutory definition of "building" to the carports in this case has already been decided by the South Carolina Court of Appeals. Applicant is effectively inviting this Court to overrule the decision of the court of appeals on the basis of non-binding, out-of-state cases. The Court declines the invitation and finds appellate counsel was not deficient.

III. CONCLUSION

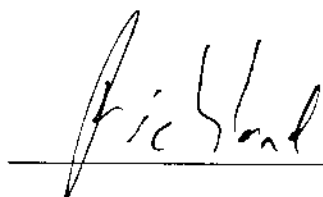
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

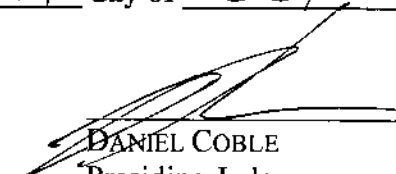
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17 day of Oct, 2023.

, South Carolina


 DANIEL COBLE
 Presiding Judge
 Eighth Judicial Circuit