

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to York County

Honorable Walton J. McLeod, IV, Circuit Court Judge

ANTONIO JORDAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000149

APPENDIX

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County of York	)	2014-GS-46-01543
	)	
	)	
State of South Carolina,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Antonio Jordan.	)	
	)	
	)	

January 26th-28th, 2015
York, South Carolina

BEFORE:

THE HONORABLE ROGER L. COUCH, JUDGE; and a jury.

APPEARANCES:

CHRISTOPHER EPTING, ASSISTANT SOLICITOR
RYAN NEWKIRK, ASSISTANT SOLICITOR
Attorney for the State

DAVID COOK, ESQ.
Attorney for the Defendant

AMINAH R. HARDY, CM
Official Court Reporter

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P R O C E E D I N G S

(State's Exhibits 1-5 were marked.)

MR. EPTING: Your Honor, the State calls the case of Antonio Jordan. He's being tried today on multiple counts. The first charge, amended indictment 2014-GS-46-01543. That's one count of burglary first degree. He's also being tried on multiple handgun charges, one count of possession of a handgun by a person crime of violence. That is indictment 2014-GS-46-03-735. One count of possession of a stolen handgun. That's off of indictment 2014-GS-46-03-777. One count of possession of a firearm by a person convicted of a violent crime. That's indictment 2015-GS-46 -- Your Honor, I apologize, I'm missing the final four digits on my copy. That is a direct indictment that we would ask the Court to have him arraigned on today. The burglary indictment is also amended indictment we'd ask he be arraigned on as well.

THE COURT: We're on the record in the case of the State of South Carolina versus Antonio R. Jordan. I've been presented with four indictments: Burglary first, possession of a stolen handgun, possession of a handgun by a person convicted of a crime of violence, and possession of a firearm by a person convicted of a violent offense. Mr. Jordan is present, represented by counsel.

Mr. Jordan, before you entered, your attorney said

1 that you might have some matters that you would want to
2 take up directly with the court; is that true?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: All right. Place Mr. Jordan under oath.

5 ANTONIO JORDAN, after having first being duly sworn,
6 testified under oath as follows:

7 THE COURT: Mr. Jordan, before we talk about whatever
8 it is you'd like to talk about -- you can put your hand
9 down -- I do want to make you aware of certain of your
10 constitutional rights. First of all, this is a court of
11 record and anything that you say or do in this courtroom
12 is a matter that could be brought up in a court of law.
13 There's a record being taken of what's being said, so I
14 just caution you in that regard. You have the absolute
15 right at all times to remain silent. You're not required
16 to testify in any case against yourself, and I'll make you
17 aware that if you discuss matters with me at this point in
18 time, it will be on the record and it would be something
19 that could and would be used against you in the future in
20 a court of law if the prosecution felt it was appropriate
21 and the Court agreed it was admissible. Do you understand
22 that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, you're here with your attorney
25 today. You have the right to consult with your lawyer at

1 any time during our discussions concerning what you're
2 talking to me about, and I would urge you to do that. Do
3 you understand that, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, do you need to talk to your attorney
6 about anything before we begin?

7 THE DEFENDANT: No, sir.

8 THE COURT: Then I'll be happy to hear from you as to
9 what you'd like for me to consider.

10 THE DEFENDANT: I would like a motion to continuance,
11 give me another time to get me a new lawyer. Me and
12 Mr. Cook here, it's like we ain't on the same page. Like
13 when I first met, he told me -- on 12/15, I first met him;
14 approximately like 8:15 at night. He told me he knew my
15 solicitor, were the best of friends. They went to the
16 same -- they went to the same school, that they went to
17 the same law school together. I feel that's a conflict of
18 interest on my behalf because --

19 THE COURT: Because they were in the same school
20 together?

21 THE DEFENDANT: He said -- he hadn't did nothing and
22 he said he was going to do for me.

23 THE COURT: Specifically.

24 THE DEFENDANT: I been up here in the holding cell
25 two times for a bond. I didn't get a bond. I asked for

1 my motion. I ain't got the rest of my motions.

2 THE COURT: Tell me specifically what you're talking
3 about. You didn't get your bond? You mean the judge
4 didn't grant a bond to you?

5 THE DEFENDANT: No, I never got called in. I just
6 got called up here and never seen.

7 THE COURT: So there was never a bond hearing held?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. And you said you didn't get
10 your motions. What do you mean by that?

11 THE DEFENDANT: Photographs and -- it's photographs.

12 THE COURT: Talking about discovery?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. So you say you have not
15 received any discovery or reviewed any discovery with your
16 lawyer?

17 THE DEFENDANT: I got parts, the parts of it.

18 THE COURT: What's missing?

19 THE DEFENDANT: Photographs, DNA reports.

20 THE COURT: Let me hear from your lawyer. Yes, sir.
21 Just one second. Anything else he hasn't done?

22 THE DEFENDANT: Yeah, and he haven't -- I hadn't seen
23 the video.

24 THE COURT: Video. Okay. I'll hear from your
25 lawyer.

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

2 THE COURT: Yes, sir.

3 MR. COOK: I want to begin by saying for the record
4 that I'm still very glad to represent Mr. Jordan if he has
5 a change of heart and that I do understand his frustration
6 in regard to the bond. But nevertheless, please allow me
7 to explain. Taking piecemeal each item that he brought
8 up, I would first like to explicitly say for the record,
9 and I would hope that Mr. Jordan would agree, I also said
10 that despite the fact that Chris Epting and I went to law
11 school together, that he would give me no favors
12 whatsoever. And that that only instills cordiality
13 between us so that we can approach each other about
14 possible negotiations. But I want to be clear --

15 THE COURT: So your discussion was that you felt
16 free -- confident that you could discuss the case freely
17 with Mr. Epting? Is that what I'm hearing?

18 MR. COOK: That's it. Just simply that the solicitor
19 was accessible, Your Honor.

20 THE COURT: I understand.

21 MR. COOK: And I also explained to Mr. Jordan that
22 there was numerous times when Solicitor Epting gave me
23 offers in the past that I thought could be better. But
24 nevertheless, I just want to be clear with that for the
25 record.

1 In regards to the bond, I had the defendant up here
2 twice in the holding cell trying my very best to get him a
3 bond hearing. The last time was when Judge Alford
4 retired. And I had two cases that were supposed to go for
5 that hearing, and unfortunately, the -- His Honor wasn't
6 obviously available to hear the cases. Mr. Jordan is
7 upset that there was some DNA evidence in this case
8 initially that was thought to have been from inside the
9 home that was the subject property of the burglary. Later
10 the DNA -- the evidence came back that it was, in fact,
11 not inside the home; it was a mistake, that it was from
12 outside the home in a toboggan.

13 THE COURT: So you don't anticipate that being used
14 at trial?

15 MR. COOK: I anticipate the toboggan in the yard
16 being used at trial, yes, sir. But in the summertime,
17 around July, there was a hearing where the judge denied
18 his bond because he thought the -- the judge thought at
19 the time the evidence was showing it was coming from
20 inside the house. I came on the case. I was hired in
21 early December. I met with my client as fast as I could
22 from when I was retained. I think maybe a few days to a
23 week past. I came to see him in the jail, and I did get
24 him in the holding cell before Christmas for a bond
25 hearing with the understanding that I explained to

1 Mr. Jordan, I didn't think the judge would be amenable to
2 a bond because his trial was supposed to have been set for
3 January 12th. The only reason it hasn't gone by now --

4 THE COURT: Bond had been previously denied?

5 MR. COOK: Yes, sir. But I tried to get him for a
6 quick hearing, maybe he could get out for Christmas.
7 Nevertheless. Let's see. So I made efforts.

8 THE COURT: What video is he talking about?

9 MR. COOK: The video, two or three days after the
10 alleged burglary, my client was pulled over riding on a
11 moped. The officer at that arrest noticed that a gun was
12 underneath the moped. The gun ended up coming from the
13 burglary. The -- the officer's dash cam was running the
14 entire time. My client expressed an interest in seeing
15 the video. I gave what I thought was the video a look.
16 The video doesn't function. I approached the solicitor.
17 The solicitor showed me the video from his computer that
18 did work. And I watched the entire video, looking for
19 possible redaction issues.

20 THE COURT: Uh-huh.

21 MR. COOK: I explained the nature of the video to my
22 client, entirely everything that I saw, and today I
23 brought a -- I saw my client last night in the jail to
24 prepare for the trial. When I left -- it was my
25 understanding when I left last night that I would be

1 counsel today. I brought a DVD player so that he could
2 see it in the holding cell because -- and I don't want to
3 bring too much to the Court's attention, but I was still
4 negotiating today, trying to get an offer again, and I
5 wanted him to at least see the video before he accepted or
6 rejected the new offer.

7 THE COURT: But the video is here and available?

8 MR. COOK: Yes, sir. It's here and available. Takes
9 about two minutes to watch.

10 THE COURT: Okay.

11 MR. COOK: And in regards to the rest of his
12 discovery, I did -- and again, perhaps I'm falling on my
13 sword, but there were -- there was a note from his public
14 defender that he was still trying to get some more
15 discovery from the summertime. I noticed that Mr. Jordan
16 had a lot of the relevant discovery and pretty much I
17 would say all the relevant discovery, already digested and
18 was explaining it to me when I was meeting with him,
19 specifically showing me his evidence sheet that showed the
20 items that was taken from the scene, how they were tested
21 from evidence.

22 I think that the new evidence that he's referring to
23 was simply the resume of the forensics lab DNA specialist.
24 And last night I showed him that resume, explained to him
25 the entire process, that, you know, the State had to

1 submit her as an expert witness. But I do, in all candor,
2 think that he saw the overwhelming majority of the
3 evidence that's inculpatory.

4 Now, having said that -- well, I believe that answers
5 Your Honor's question, but I would just like to state --

6 THE COURT: I'm trying to think if there's something
7 we haven't talked about that he brought up.

8 Is there anything else we haven't talked about that
9 you brought up?

10 THE DEFENDANT: About the -- like from the first time
11 to the -- from the first time I met him, we been
12 negotiating a plea zero to five.

13 THE COURT: Negotiations can go on up until the time
14 of trial. In fact, they can go on during a trial. I
15 stopped cases before when people finally reached a final
16 negotiation. So it's not unusual for negotiations between
17 both sides to continue even through the trial. So I'm not
18 surprised they're still going on.

19 THE DEFENDANT: I understand that, Your Honor, sir.
20 But I was sat down and given a negotiation of zero to five
21 years cap, and it's my understanding -- I never reject no
22 plea or nothing. I signed the zero to five.

23 THE COURT: Let me find out right now what the offer
24 is. What's the offer, Mr. Solicitor?

25 MR. EPTING: The offer as of last court term was a

1 negotiated cap of seven. It's my understanding that the
2 defendant wanted five within that seven, which I would not
3 concede to.

4 THE COURT: So you haven't agreed to the five?

5 MR. EPTING: I have not agreed to five, Your Honor.
6 Should he have pled to that, I would have asked for seven.

7 THE COURT: Your lawyer has an obligation to make you
8 aware of what the most recent offer is. I assume that
9 you're aware of that. That's what they're offering. I
10 can't make them settle, and I can't make you settle, for
11 that matter.

12 THE DEFENDANT: I understand that, Your Honor, sir,
13 but that's not what the offer my lawyer or his paralegal
14 offered me, though. They offered me zero to five.

15 THE COURT: Well, the State is who makes the offer.
16 And I just talked to him.

17 THE DEFENDANT: What I signed, my offer --

18 THE COURT: Do you know what he's talking about?

19 MR. COOK: Yes, sir, if I may. I would maintain that
20 I told Mr. Jordan his offer was a cap of seven, that he
21 wasn't amenable to taking the seven years. I explained to
22 him that the victim was very vocal in this matter, that I
23 could try to see if I could perhaps find a judge that
24 might be willing to take an offer for five years, but I
25 was unable to do that. I explained it clearly to

1 Mr. Jordan when he signed the plea sheet in the holding
2 cell. He made it clear to me that I'm only signing this
3 if you can get me five years. I came back and told him I
4 wasn't able to do that, and then I got him seven if he
5 wants it. He took the offer --

6 THE COURT: Mr. Jordan, here we are is at seven.
7 That's what he's saying.

8 MR. EPTING: Your Honor, pursuant to our office
9 policy, once a case is called to trial --

10 THE COURT: Deal is off?

11 MR. EPTING: That's correct, Your Honor.

12 THE COURT: So the deal is off now?

13 MR. EPTING: That is correct, Your Honor. I should
14 have clarified that.

15 MR. COOK: If I may, Your Honor, just in the interest
16 of defending my client. During qualifications this
17 morning, I went and spoke with the higher-ups, for lack of
18 a better word, in the Solicitor's Office because at this
19 point Mr. Epting is not -- doesn't have the authority to
20 give me a better offer. And I spoke with Betty Miller,
21 and we -- I got a new offer. I don't know if it's proper
22 to mention it right now, but I approached my client with
23 that offer as well. I explained to my client throughout
24 the process how I thought the trial would shake down,
25 being that he was --

1 THE COURT: Well, where we are right now is
2 apparently, Mr. Jordan, you've not accepted any offers
3 that have been presented to you?

4 THE DEFENDANT: No, sir, Your Honor.

5 THE COURT: So I'm not sure what the complaint is.

6 THE DEFENDANT: My lawyer. I want --

7 THE COURT: You thought he should have gotten a
8 better offer?

9 THE DEFENDANT: No, sir. We had like two conflicts.
10 He done had a conflict with my family and two conflicts --

11 THE COURT: That's the first time I heard anything
12 about a conflict with a family. I didn't hear that
13 earlier. What's that mean? What does that mean?

14 THE DEFENDANT: Him and my mom -- him and my mother,
15 they ain't agree on a lot of stuff.

16 THE COURT: He doesn't represent her.

17 THE DEFENDANT: Also me and him don't agree on a lot
18 of stuff, sir.

19 THE COURT: Well, sir, again, I'm trying to figure
20 out -- here's where we are. Your case has been called for
21 trial. You have the right to an attorney. You have one
22 who's hired. I'm trying to determine if he's in a
23 position to go forward with the trial. He is. Your
24 constitutional right is to have a trial by a jury. And
25 we're ready to do that.

1 Now, if you don't feel comfortable with him
2 representing you during that trial, if you don't think he
3 would do a good job, you have every right in the world to
4 release him from representing you. Now, the question then
5 becomes whether I feel like that was justified or not. If
6 I feel like that that release of your attorney was not
7 justified, then I can require you to go on to court
8 without a lawyer today. So that's where we are, and I'm
9 trying to determine if your releasing your lawyer in this
10 circumstance would be justified or not. And right now it
11 appears that he has conveyed whatever offers he had to
12 you, that you were not happy with those offers, and you've
13 not agreed to them and he hasn't told anybody that you
14 have agreed to any of them. The State says -- they were
15 not willing to make any better offer than that. They did
16 not make any better offer than that, and now they're
17 telling me the case has been called for trial, they will
18 not make that offer now.

19 MR. EPTING: And, Your Honor, if I can briefly put
20 just a little bit of development on the record on this
21 case.

22 THE COURT: Yes, sir. I haven't let you talk. I
23 should have. Go ahead.

24 MR. EPTING: I should have spoken up, Your Honor.
25 This case is a little over a year old. Initially it was

1 handled by a different solicitor and a different public
2 defender named Mark McKinnon. Some delay in the case was
3 attributed to waiting for the DNA report that was
4 referenced by the defense. Once we got that report, we
5 started discussing negotiations or possibility of trial.
6 That went on for a long time, and we went down from, in
7 candor to the Court, a much higher number in this case to
8 a much lower number based upon some of the DNA evidence.

9 THE COURT: Right.

10 MR. EPTING: It's my understanding that the -- his
11 relationship with Mr. McKinnon devolved to such a degree
12 that one of Mr. McKinnon's supervisors became involved, BJ
13 Barrowclaugh. He was involved in that case, I believe,
14 from early fall of 2014 up until the hiring of Mr. Cook,
15 which occurred the week --

16 THE COURT: So he had a public defender, but he has
17 now released the public defender?

18 MR. EPTING: That is correct. In my view, he's had
19 two public defenders.

20 THE COURT: I see, Mr. Barrowclaugh and the original.

21 MR. EPTING: That's correct, Your Honor.

22 THE COURT: Mr. Jordan, I guess the question becomes
23 what do you think your lawyer needs to -- what do you
24 think your lawyer hasn't done that he needs to do to be
25 prepared to try your case?

1 THE DEFENDANT: I -- in the whole time I done met
2 with him, I hadn't -- I hadn't seen him a whole hour yet.
3 We haven't prepared for no trial.

4 THE COURT: Well, sir, we're not going to start the
5 trial today. You can have all night to talk to him today
6 if you'd like. We're talking about pulling a jury, but
7 we're not going to start the trial of the case until
8 tomorrow.

9 MR. COOK: Your Honor, if I may just to -- I suppose
10 at this point just because the allegation was made on the
11 record, I will think that I've met with Mr. Jordan a lot
12 more than an hour. I would think that I've met with
13 him -- there's some occasions that I spent an hour per
14 visit with him at the jail, and I'm not trying to talk
15 against my client. I still want to represent him.

16 THE COURT: You have a right to tell me what you
17 think the case is --

18 MR. COOK: I just don't want Your Honor to think
19 that --

20 THE COURT: I -- again --

21 MR. COOK: And I understand his frustration, but it's
22 not up to me to understand anything here, Your Honor.

23 THE COURT: I'm going to give him time to talk to
24 you. Like I say, you can have the next 12, 14 hours if
25 you'd like.

1 Again, my question is what -- you're telling me but
2 you're not telling me exactly what it is your lawyer
3 hasn't done to be prepared for trial. He's reviewed the
4 video, and the video is ready for you to review if you'd
5 like before we start the trial. It's here. So the video
6 has been looked at already, but you have a right to look
7 at it, and I want you to see it before we go forward. I
8 don't have a problem with you reviewing that video and be
9 prepared yourself.

10 What else is it? You didn't like the fact that he
11 didn't get you a bond, but you did have a bond hearing and
12 your bond was denied by a judge. I realize he didn't get
13 you back in front of a judge, and that was a function,
14 apparently, of a judge retiring and not being available
15 for hearings on a particular day. And I understand that
16 that happened. It's frustrating to you. But of course
17 you did have a bond hearing, and the judge did deny your
18 bond at some point in time. What other problems did you
19 have?

20 THE DEFENDANT: The evidence missing that --

21 THE COURT: Evidence is missing?

22 MR. COOK: If I may, Your Honor, my client says that
23 when he was arrested, a cell phone was taken off of his
24 person and two receipts were taken off of his person that
25 might be exculpatory in that the cell phone might serve as

1 an alibi device as well as the receipts. I asked -- I
2 told him that I hadn't come across any of that evidence.
3 He said that his prior public defender looked into that
4 and couldn't find the evidence, so I explained to my
5 client I'm going to draw that out during cross-examination
6 with the detectives and make light of that --

7 THE COURT: Does the State have any of that,
8 anything?

9 MR. EPTING: I can't speak to receipts. There is a
10 cell phone that was in evidence that I believe was locked
11 to the point that nothing could be done with it by law
12 enforcement.

13 THE COURT: So do you have it?

14 MR. EPTING: It's down in evidence right now, Your
15 Honor.

16 THE COURT: Okay. I'm going to ask that you make it
17 available to the defense if they want it.

18 MR. EPTING: Certainly.

19 THE COURT: I won't ask you. I'll direct you to make
20 it available.

21 MR. EPTING: Certainly, Your Honor.

22 THE COURT: Yes, sir, Mr. Jordan.

23 THE DEFENDANT: That's it, Your Honor.

24 THE COURT: Sir?

25 THE DEFENDANT: That's it's, Your Honor.

1 THE COURT: Well, now, I guess the question becomes
2 whether you wish to proceed with or without your attorney.

3 THE DEFENDANT: Wish to go without him.

4 THE COURT: You want to go without?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that you'd be
7 representing yourself in this matter?

8 THE DEFENDANT: I'm not -- I'm not capable of
9 representing myself, Your Honor.

10 THE COURT: Tell me about that. How old are you?

11 THE DEFENDANT: 30 years old.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: Ninth grade.

14 THE COURT: Did you ever get a GED?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: So you have a GED?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Married?

19 THE DEFENDANT: No, sir.

20 THE COURT: Children?

21 THE DEFENDANT: One.

22 THE COURT: What age?

23 THE DEFENDANT: 13.

24 THE COURT: Were you employed when you were arrested?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: What kind of job did you hold?

2 THE DEFENDANT: Mechanic.

3 THE COURT: All right. And do you handle your own
4 business affairs, pay your own bills when you're not
5 incarcerated?

6 MR. EPTING: Sometimes.

7 THE COURT: Somebody does it for you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Who is that?

10 THE DEFENDANT: Either one of my girlfriends or my
11 mother.

12 THE COURT: I see. So you feel that you're not able
13 to pay your own bills?

14 THE DEFENDANT: I can.

15 THE COURT: You could. So you're capable of doing
16 it; you just chose not to do that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you suffer from any mental, physical,
19 or nervous conditions that keeps you from being able to
20 make good decisions?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you taken or used any drugs or other
23 medications that would affect your reasoning abilities?

24 THE DEFENDANT: No, sir.

25 THE COURT: So do you know what you're doing?

1 THE DEFENDANT: Not.

2 THE COURT: Sir?

3 THE DEFENDANT: Not dealing with the laws, Your
4 Honor, I don't.

5 THE COURT: Yes, sir, but we're in a position where
6 you let go of your public defenders, two of them, and now
7 you're wanting to let go of your private attorney. And
8 the Court's not inclined to appoint another lawyer for
9 you, so you're going to end up representing yourself.
10 Because it sounds like to me you have an education. You
11 handle your own business affairs. You're not incompetent.
12 You don't have mental problems. You aren't on drugs at
13 the present time. Are you following me?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So you intend to retain a new attorney,
16 pay a new attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So you want to hire a private lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. I'm going to hear from you,
21 sir. Anything further?

22 MR. COOK: Nothing from me, Your Honor.

23 THE COURT: All right. Hear from the State before I
24 make the final decision. What's the State's position in
25 regard to this matter?

1 MR. EPTING: Providing it does not prolong the trying
2 of this case, then we would leave that in the Court's
3 discretion; however, we do feel strongly the case needs to
4 be tried this week. Obviously there's an age to the case,
5 as Mr. Cook alluded to. We put it off largely so that he
6 would have time to consider his offer and make a voluntary
7 and a knowing rejection of that offer. Basically my
8 victim is in a bind here where he keeps calling back into
9 court and updates and it's kind of a never-ending thing
10 for him. I would like this case tried this week, Your
11 Honor, I guess is the State's position.

12 MR. COOK: I suppose that I feel inclined to let the
13 Court know I'm retained as well.

14 THE COURT: You're what?

15 MR. COOK: I'm retained.

16 THE COURT: Oh, I understand that you're retained.

17 MR. COOK: I didn't know if you knew that.

18 THE COURT: Yeah, I gathered that from what we were
19 saying here.

20 MR. COOK: Yes, sir.

21 THE COURT: I really don't find that there's anything
22 your attorney has not yet done that can't be remedied
23 before the court tomorrow. So I'm going to direct that
24 you go forward in the case. Now, you can keep your lawyer
25 if you would like. I can appoint him just to sit of

1 counsel to you, in other words, be available to answer
2 your questions as the trial goes forward, if you would
3 like me to do that. Your decision, Mr. Jordan. If you'd
4 like to take a few moments to talk with your attorney
5 right now, I'll give you a chance to do that. We'll take
6 a short recess. You can return him to the holding cell if
7 y'all like to talk.

8 (A recess was taken from 3:16 p.m. to 3:40 p.m.)

9 THE COURT: We're back on the record versus Antonio
10 R. Jordan. Mr. Jordan, you've had an opportunity to
11 consult with your attorney again. Do you wish to proceed
12 with that attorney, or do you wish to change attorneys?
13 You wish to proceed with your lawyer?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. You've had an opportunity to
16 consult with him at this time --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: -- is that right? All right.
19 Mr. Jordan, there's some things I need to go over with you
20 before we go into jury selection. First of all, I'm going
21 to go over the indictments in these cases with you. I'm
22 sure you probably are aware of the indictments, but I want
23 to be sure that you're aware of them. So I'm going to
24 read them to you. When I finish reading them to you, I'll
25 be asking you whether or not you're pleading guilty or not

1 guilty at this time to the indictments. Do you understand
2 what I'm doing, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The first case that I will go over with
5 you is case number 2014-GS-46-3777. That indictment is
6 for possession of a stolen handgun. The indictment states
7 that the defendant Antonio R. Jordan did on or about
8 November 14 of 2013 in York County, South Carolina,
9 unlawfully possess or acquire a handgun that was stolen,
10 all in violation of Section 16-23-30 and 50(A)(1) of the
11 South Carolina Code of Laws, 1976, as amended against the
12 peace and dignity of the state in contrary to the statute
13 in such case made and provided.

14 Now, as to that charge, are you pleading guilty or
15 not guilty?

16 THE DEFENDANT: Guilty, Your Honor.

17 THE COURT: Pleading guilty? Talk to your lawyer,
18 please.

19 (A discussion was held off the record.)

20 THE COURT: Mr. Jordan, you indicated you might be
21 pleading guilty. Are you pleading guilty or not guilty to
22 the possession of a stolen handgun?

23 THE DEFENDANT: Pleading guilty to a possession of a
24 handgun.

25 THE COURT: Possession of a stolen handgun.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Apparently he does wish to
3 enter a guilty plea on that charge?

4 MR. COOK: If I may clarify, Your Honor, it's been
5 our trial strategy all along in preparation that he was in
6 possession of that. That's what this video shows.

7 THE COURT: Okay.

8 MR. COOK: And he's contesting the burglary charge.

9 THE COURT: I understand. So what I'm going to do is
10 we will hold this aside to receive a guilty plea on that
11 charge.

12 All right. The second charge is the burglary first
13 charge. That indictment states that the defendant Antonio
14 R. Jordan did on or about November 8, 2013, in York County
15 enter a dwelling belonging to Derek Clark without consent
16 and with the intent to commit a crime therein. The
17 defendant while in the dwelling or while in immediate
18 flight was armed with a deadly weapon. The defendant has
19 been convicted on two or more convictions of burglary or
20 house breaking or a combination of both. All in violation
21 of code section 16-11-311 of the code of laws of South
22 Carolina, 1976 as amended, against the peace and dignity
23 of the state in contrary to the statute in such case made
24 and provided.

25 Pleading guilty or not guilty to the burglary first?

1 THE DEFENDANT: Not guilty, Your Honor.

2 THE COURT: Now, the next charges are possession of a
3 handgun by a person convicted of a crime of violence.
4 This is case number 2014-GS-46-3735. This indictment
5 states that the defendant, you, Antonio R. Jordan, did on
6 or about November 14 in -- of 2013, in York County, South
7 Carolina, unlawfully possess or acquire a handgun after
8 having been convicted of a crime of violence in any court
9 of the United States, the several states, the
10 commonwealths, territories, or possessions or the District
11 of Columbia or as otherwise a fugitive from justice, all
12 in violation of Section 16-23-30 and 50(A)(1) of the code
13 of laws of South Carolina, 1976, as amended against the
14 peace and dignity of the state in contrary to the statute
15 and such case made and provided.

16 Pleading guilty or not guilty to that charge?

17 MR. COOK: I apologize, Your Honor, what was the
18 charge again? Is this one of the gun charges?

19 THE COURT: Yes, this is possession of a handgun by a
20 person who has been convicted of a crime of violence.
21 Pleading guilty?

22 The other charge is possession of a firearm by a
23 person convicted of a violent offense. The difference is,
24 I've been told by the prosecution, he has been convicted
25 of burglary first, second violent --

1 MR. EPTING: He has one separate conviction for
2 burglary second nonviolent, which under my reading of the
3 statute in definition of crime of violence is a crime of
4 violence, just generic burglary. He has also been
5 convicted of a burg second violent. That looks like it
6 was pled down from a burg first. So should these have
7 gone to trial, my theory would have been the burglary
8 nonviolent is a crime of violence and the burglary second
9 violent is a violent crime statutorily.

10 THE COURT: Do you understand the difference, sir?

11 MR. COOK: I do, Your Honor, yes, sir.

12 THE COURT: They carry separate CDR codes and
13 apparently have different elements.

14 MR. COOK: Yes, sir, for all intents and purposes.

15 THE COURT: It's the same handgun, the same
16 possession that's being alleged; it's just that in one
17 case he was convicted of one type of a crime, the other
18 case he was convicted of another type of a crime. On his
19 record, on his prior record.

20 Sit down with him and talk to him for a minute. Be
21 sure he understands. I want to be sure he understands it.

22 MR. COOK: Yes, sir, Your Honor.

23 (A discussion was held off the record.)

24 THE COURT: Counselor, I'm not accepting a plea at
25 this time. I'm simply wanting to know if he wants to go

1 forward with a trial on these charges or whether he
2 intends to offer a plea on these charges. That's all I'm
3 asking right now. Does he understand that?

4 MR. COOK: He does, Your Honor.

5 THE COURT: Okay. Now, the two charges that we have
6 gotten to that we have not been able to proceed on is the
7 charge of possession of a firearm by a person who has been
8 convicted of a violent offense and the other one is
9 possession of a handgun by a person convicted of a crime
10 of violence. Have you had an opportunity to discuss that
11 with him?

12 MR. COOK: I have, Your Honor. I explained --

13 THE COURT: And they both stem out of the same event
14 that occurred on November 14, 2013.

15 MR. COOK: Yes, sir.

16 THE COURT: All right. Now, Mr. Jordan, do you
17 understand the two charges?

18 THE DEFENDANT: No, sir, I don't.

19 THE COURT: Tell me what you don't understand.

20 THE DEFENDANT: I'm confused right now, Your Honor.

21 THE COURT: Then I would suggest you plead not guilty
22 and go forward with to trial on these.

23 MR. COOK: If I may, Your Honor, I was explaining to
24 my client that he -- in his past he has a burglary on his
25 record that was deemed nonviolent in name, and he has

1 another burglary that's deemed to be violent.

2 THE COURT: By name?

3 MR. COOK: By name. And I was explaining to my
4 client that although the burglary is deemed nonviolent by
5 name, there's another statute that would consider any
6 generic burglary to be a violent crime so that it would
7 trigger this very statute for which he's being arraigned.

8 THE COURT: That's what I've been told.

9 MR. COOK: Yes, sir. And I believe as much as well,
10 and I'm explaining to my client, and I understand the
11 confusion. It's one gun. Why are there two charges? And
12 I don't think he's trying to be obstinate here, for the
13 record. I just think --

14 THE COURT: I didn't suggest that he was.

15 MR. COOK: Yes, sir. And -- but having said that, I
16 can't explain it in any other way than that. It's a
17 technicality. I've explained to him that I don't think --

18 THE COURT: Well, again, the only issue right now is
19 if he does not think he's guilty of these crimes, I'm
20 urging him to plead not guilty and be tried by a jury.

21 MR. COOK: I understand that, Your Honor. And I've
22 explained to him that I'm not sure how you could be guilty
23 of one and not guilty of the other since it's the same
24 gun.

25 THE COURT: The question is whatever he's been

1 convicted of on his criminal record. I have no knowledge
2 of that. I don't know what he's been convicted of, so I'm
3 not trying that right now.

4 MR. COOK: Yes, sir..

5 THE COURT: So the only issue I'm presenting to
6 Mr. Jordan right now is these charges have been presented
7 to me. He has the right to plead either guilty or not
8 guilty. I'm trying to determine which of these charges he
9 wishes to go to trial by a jury on. And so if he wants to
10 plead not guilty, I'd urge him to do so and we'll present
11 those to the jury and let the jury decide if he's guilty
12 or not..

13 So, again, my question to you: Are you pleading
14 guilty or not guilty to these two crimes? Now, again, it
15 is 2015-GS-46-64, and that's the one that is possession of
16 a firearm by a person convicted of a violent crime. The
17 other case is 2014-GS-46-37-35. That is possession of a
18 handgun by a person convicted of a crime of violence.
19 Those are the two charges. Now, you have the right to
20 plead either guilty or not guilty of those charges. How
21 do you plead?

22 THE DEFENDANT: I plead guilty.

23 THE COURT: Plead guilty to both charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Now, what I'm going to do is

1 I'm not going to present these to the jury this afternoon.
2 As we pick the jury, we will go through the guilty pleas
3 in the morning before I swear the jury and we proceed with
4 the trial. Is that acceptable to the State?

5 MR. EPTING: It is, Your Honor.

6 MR. COOK: Your Honor, before --

7 THE COURT: I understand we're going to trial on a
8 burglary first charge. Is that correct, Mr. Jordan?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you wish to be tried by a jury?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right.

13 MR. EPTING: Your Honor, for the record, I would like
14 to put on the record that there was some accompanying
15 grand larceny charge with that burglary first, and at the
16 conclusion of this case, we plan on dismissing that with
17 prejudice.

18 THE COURT: That's your position.

19 Is that your understanding, Counsel?

20 MR. COOK: Yes, sir, Your Honor.

21 Your Honor, given the wealth of patience the Court
22 has already demonstrated. May I --

23 THE COURT: Abundance, I would say.

24 MR. COOK: Yes, sir. I think that I may actually be
25 close to a plea, and this --

1 THE COURT: Do you want to bring the jury back in the
2 morning and pick the jury in the morning?

3 MR. COOK: Yes, sir. I was proposing maybe to have a
4 few minutes, and if we plead today, we wouldn't need the
5 jury for this case in the morning.

6 THE COURT: Why don't y'all take a few minutes. But
7 now we're at 4:00. We need to make a move one way or the
8 other.

9 MR. COOK: This is five more minutes, Your Honor.

10 THE COURT: I'll give you five more minutes. I'm
11 going to stay on the bench.

12 (A discussion was held off the record.)

13 MR. COOK: Well, Your Honor, I feel compelled to
14 mention that my client just asked me if he could take his
15 pleas back that he just made in the arraignment.

16 THE COURT: Certainly. If he wishes to be tried on
17 all those, I'll be glad to give him a jury trial on all
18 the charges that are before the court. Absolutely. But
19 we're going to go ahead and do something.

20 THE DEFENDANT: Your Honor, sir, I was confused. I
21 didn't --

22 THE COURT: You don't have to say anything other than
23 you wish to withdraw that plea of guilty and you wish to
24 enter a plea of not guilty and want a trial by jury. Is
25 that what you want to do on all charges?

1 THE DEFENDANT: No, sir.

2 THE COURT: So how do you wish to proceed?

3 Mr. Jordan, we've been all afternoon working on this. At
4 this time we got a jury waiting, and this case is on the
5 docket to be tried. So we're going to try the case. Now,
6 do you wish to be tried on all four charges, or do you
7 wish to plead guilty on any or all of those charges?

8 You have a constitutional right to a trial by jury,
9 and we're here to see that you get that fair trial.

10 THE DEFENDANT: On the first degree?

11 THE COURT: You want to --

12 THE DEFENDANT:

13 THE COURT: Well, again, let me just go over them
14 again so I'm sure -- this is becoming difficult,
15 Mr. Jordan. Burglary first, are you pleading guilty or
16 not guilty?

17 THE DEFENDANT: Not guilty.

18 THE COURT: You wish a trial by jury?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Now, as to the possession of
21 a stolen handgun, how do you plead?

22 THE DEFENDANT: Guilty.

23 THE COURT: Guilty.

24 As to possession of a handgun by a person convicted
25 of a violent offense, how are you pleading?

1 THE DEFENDANT: Guilty.

2 THE COURT: As to possession of a handgun by a person
3 convicted of a crime of violence, how are you pleading?

4 THE DEFENDANT: Guilty.

5 THE COURT: All right. So you wish to have a trial
6 on the burglary first?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay, sir. That's a trial by jury; is
9 that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Thank you, sir. You can be
12 seat. I'll ask the attorneys to approach briefly.

13 (WHEREUPON, a bench conference was held.)

14 THE COURT: Mr. Jordan, what we're going to do is I'm
15 going to go forward at this time with the pleas on the
16 three that you're pleading guilty to. Because of the
17 lateness of the hour, we don't have time to pull a jury on
18 the other case. We will do that first thing in the
19 morning. So we'll start the burglary first trial in the
20 morning. I'm going to accept your plea in the other cases
21 this afternoon. So while they get the paperwork ready for
22 that, I'll take up another matter, then we'll call you
23 back to the courtroom shortly. Thank you, sir.

24 (A recess was taken from 4:20 p.m. to 4:50 p.m.)

25 MR. EPTING: Thank you, Your Honor. May it please

1 the Court. Your Honor, I'm before the court today. I'm
2 precepting on behalf of the Solicitor's Office. Also
3 present is Dave Cook as well as Antonio Jordan. Your
4 Honor, we were on record earlier attempting to call this
5 case to trial. The three charges that I believe the
6 defendant wishes to enter a plea today were set for trial
7 along with a separate burglary first charge.

8 THE COURT: Yes, sir.

9 MR. EPTING: During arraignment, Your Honor, as Your
10 Honor heard, the defendant indicated that he wishes to own
11 up, to admit guilt to the three pistol charges, each are
12 felonies and carry a possibility of five years. This
13 plea, given that it's without recommendation from
14 negotiation, is straight up.

15 Your Honor, we have complied with the Victims' Rights
16 Act. The victim feels strongly about the case. Has been
17 very involved in all aspects. We told him about the
18 possibility of sentencing here today. He told through our
19 victim advocate that he was fine with us going forward
20 today and passed along some information he wanted me to
21 relay.

22 THE COURT: All right. At the appropriate time, I'll
23 receive that.

24 MR. EPTING: Thank you, Your Honor. Your Honor, it's
25 my understanding that all the indictments in this case

1 have been true billed; that he's pleading guilty to one
2 count of possession of a stolen pistol, one count of
3 possession of a crime -- of possession of a pistol by a
4 person convicted of a crime of violence, and a separate
5 count of possession of a pistol by a person convicted of a
6 violent crime.

7 MR. COOK: I beg the Court's indulgence. We're
8 signing the new indictments, Your Honor.

9 THE COURT: Mr. Jordan, you have previously been
10 placed under oath concerning your discussions with this
11 court. Do you acknowledge that you're under oath at this
12 time?

13 THE DEFENDANT: Yes, sir, Your Honor."

14 THE COURT: All right. Now, Mr. Jordan, the cases
15 that are before me today, we've been over them earlier,
16 but I want to be sure that you understand them. The first
17 case that I will discuss with you is the possession of a
18 stolen pistol. Now, that particular offense carries a
19 possible sentence of not more than five years and/or a
20 fine of not more than \$2,000. Are you aware of that
21 charge, sir?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: Are you aware of the possible sentence?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: That case has gone to the grand jury. It

1 has been indicted. It's being presented to this court
2 without any further recommendations or negotiations as to
3 that plea.

4 The next charge is possession of a pistol by a person
5 who's been convicted of a crime of violence. That
6 particular offense, can you tell me what the maximum
7 sentence is on that?

8 MR. EPTING: I believe on all three, Your Honor, it's
9 possible --

10 THE COURT: It's five years?

11 MR. EPTING: Certain fine or five years.

12 THE COURT: And/or a fine?

13 And the other charge is possession of a firearm by a
14 person convicted of a violent offense. All three carry up
15 to five years. That means the maximum I could sentence
16 you to is a maximum of 15 years on all three added
17 together. Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: They've all been presented to the grand
20 jury, and they've all been presented to me without further
21 negotiations. Now, Mr. Jordan, do you suffer from any
22 mental, physical, or nervous conditions that might affect
23 your ability to understand what you're doing today?

24 THE DEFENDANT: No, sir, Your Honor.

25 THE COURT: Have you taken or used any drugs that

1 would affect your abilities to understand what you're
2 doing today?

3 THE DEFENDANT: No, sir, Your Honor.

4 THE COURT: You're here with your lawyer. You've had
5 some discussions with him today. Are you now satisfied
6 with what he's done thus far?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: Is there anything else you need to talk
9 with him about now?

10 THE DEFENDANT: No, sir.

11 THE COURT: And is there anything else you want him
12 to do as it relates to these three charges?

13 THE DEFENDANT: No, sir, Your Honor.

14 THE COURT: Now, Mr. Jordan, you have the right to
15 plead either guilty or not guilty. I know in the
16 arraignment you told me you wish to plead guilty. Now I'm
17 asking for your plea. How do you plead?

18 THE DEFENDANT: Guilty, Your Honor.

19 THE COURT: On all three charges?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: Counselor, have you discussed this
22 decision with your client?

23 MR. COOK: If it please the Court, yes, sir, Your
24 Honor.

25 THE COURT: And are you satisfied that he's

1 understood the advice you've given him thus far?

2 MR. COOK: Yes, sir, Your Honor, I am.

3 THE DEFENDANT: Has he been able to assist you in his
4 defense?

5 MR. COOK: Yes, sir, Your Honor, he has.

6 THE COURT: And based on your knowledge of his case,
7 do you agree with his decision to offer these pleas?

8 MR. COOK: Yes, sir, Your Honor, I do.

9 THE COURT: You're 30 years of age, Mr. Jordan?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: And I think you indicated to me that you
12 had gone -- the school. And how far did you complete?

13 THE DEFENDANT: GED, Your Honor.

14 THE COURT: Right. Are you married?

15 THE DEFENDANT: No, sir, Your Honor.

16 THE COURT: Any children?

17 THE DEFENDANT: One.

18 THE COURT: And that child resides with you if you're
19 not incarcerated or not?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: It does. Did you have a job on the
22 outside, Mr. Jordan?

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: Tell me about the job.

25 THE DEFENDANT: My family owns a mechanic shop. I do

1 a little detailing cars and putting on rims and tires.

2 THE COURT: I see. So you work around the mechanic
3 shop?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Jordan, has anyone threatened you,
6 coerced you, put pressure on you, used violence against
7 you, in other words, done something to force you to enter
8 these pleas?

9 THE DEFENDANT: No, sir, Your Honor.

10 THE COURT: Have you thought about it and is it --
11 are you doing this of your own free will?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: Have you had sufficient time to think
14 about this?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: And has anyone offered you anything to
17 get you to plead?

18 THE DEFENDANT: No, sir, Your Honor.

19 THE COURT: And has anyone promised or guaranteed you
20 anything, including about such matters as pardon, parole,
21 probation, or early release? Has there been any promises
22 or guarantees made to you to get you to plead?

23 THE DEFENDANT: No, sir, Your Honor.

24 THE COURT: When you plead guilty to these charges,
25 you give up your constitutional rights as they relate to

1 these charges. I have to be sure you understand what
2 you've done. So I'll go over your rights with you. When
3 I finish, if you have a question, let me know.

4 You have a constitutional right to have a grand jury
5 consider these charges, and they've already done that.
6 You have a constitutional right to an attorney. He's
7 present. He's available if you need him. You have a
8 right to have these cases in front of a jury. During the
9 jury trial, you'd be presumed to be innocent of these
10 charges. That presumption would continue until the State
11 proved your guilt to the jury. They would have to prove
12 that guilt beyond a reasonable doubt. You would not have
13 to prove anything at a trial. You're presumed innocent.

14 Now, at the trial, you'd have the right to have the
15 clerk's office issue subpoenas to witnesses on your behalf
16 to make them come to the hearing. You would have the
17 right to question or confront anyone who testified during
18 the trial. You would have the right at your trial to
19 present your defenses. You'd also be given the
20 opportunity to try to suppress the State's evidence
21 against you, and that includes any statements you might
22 have previously made. At every stage of a criminal
23 proceeding, you have the right to remain silent. And if
24 you chose to remain silent during your trial, the judge
25 handling that trial is required to instruct the jury that

1 your silence could not be used against you in any manner
2 whatsoever.

3 Now, Mr. Jordan, did you understand those rights?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: Do you have any questions about them?

6 THE DEFENDANT: No, sir, Your Honor.

7 THE COURT: Do you realize if I accept the plea on
8 these three charges, you will have given up those
9 constitutional rights as they relate to these charges?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Now, does that fact cause you to want to
12 change your plea in any way?

13 THE DEFENDANT: No, sir, Your Honor.

14 THE COURT: And are you pleading guilty to these
15 possession of pistol charges because you are guilty of
16 those charges?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: Now, I'm going to ask the solicitor to go
19 over the facts in the case with me as it relates to these
20 charges. When he finishes, I'll ask you about what he
21 said, so please listen to him. Yes, sir.

22 MR. EPTING: Thank you, Your Honor. This incident
23 occurred on November 14th of 2013 in York County.
24 Officers initially stopped behind the defendant's moped
25 when he observed the defendant run a stop sign. At that

1 point the moped was stationary on the side of the road.
2 The officer pulled up behind him, began to speak with him,
3 figured out that Mr. Jordan did not appear to have a valid
4 driver's license. In candor to the Court, in preparation
5 of a possible suppression hearing, we went and got copies
6 of those tickets and it did appear that Mr. Jordan had
7 stepped up and pled guilty to those charges, which we
8 believe would have negated any issue.

9 It's -- in the course of doing that seemingly
10 ordinary traffic stop, he's speaking with Mr. Jordan. He
11 would testify, possibly will testify that Mr. Jordan
12 appeared to be nervous. At some point he gets the VIN
13 number off of the moped. In order to write the ticket, he
14 has to move the moped approximately 3 feet off the side of
15 the road because it's kind of close to the side of the
16 road, a little bit dangerous, and in moving that and
17 returning to the moped he notices that he now sees a
18 pistol on the ground. He noticed that the pistol appeared
19 to be fresh, that it had snowed a day or two before that
20 and the pistol did not appear to have wear and tear.

21 At that point he placed Mr. Jordan under arrest, and
22 through subsequent investigation, they were able to link
23 that pistol through serial numbers to a burglary that
24 occurred approximately six days before, which we're
25 planning on trying tomorrow. Your Honor, the defendant

1 does have priors on his record, but I can read to the
2 Court at the Court's request.

3 THE COURT: Mr. Jordan, did you hear what he said
4 about the facts?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Is that information true?

7 THE DEFENDANT: Not one hundred. Yes, sir.

8 THE COURT: I'm just asking about the gun now.

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: So that information about the gun at the
11 moped stop is true?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you been honest with me today,
14 Mr. Jordan?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Did anyone tell you how to answer my
17 questions?

18 THE DEFENDANT: No, sir, Your Honor.

19 THE COURT: The answers you've given me, have they
20 been your own answers?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: I'm going to accept the plea. It's my
23 finding that it's been freely and voluntarily entered.
24 You're aware of the possible charges, possible penalties.
25 Had the advice of counsel. You're satisfied with that

1 advice. There's a factual basis for the plea. Now, my
2 understanding is that we're about to try you concerning
3 the burglary first. What I intend to do is accept the
4 pleas today. I'll defer sentencing until after that trial
5 so that we can wrap everything up at one time. So at this
6 time I've accepted the pleas, and we'll proceed later with
7 the trial.

8 Yes, sir.

9 MR. COOK: I'm not sure if this appropriate, Your
10 Honor, and I always want to be proper before the Court.

11 THE COURT: Yes, sir.

12 MR. COOK: I was hoping that Your Honor might
13 consider a sentence today.

14 THE COURT: I might, but then I might sentence him
15 consecutively if he's convicted of something else. And I
16 might consider making them concurrent if I sentence him
17 all at one time.

18 MR. COOK: I suppose --

19 THE COURT: I don't mind sentencing him today.

20 MR. COOK: Yes, sir. I -- it's my hope, and this is
21 defense strategy and it may blow up in my face, but I was
22 hoping if the victim in this matter received what they
23 might be looking for with this that the State might --

24 THE COURT: I can't answer that. State have any
25 objection to my sentencing now?

1 MR. EPTING: We do not, Your Honor, but prior to
2 sentencing, we would like to read his record and relay the
3 thoughts and State --

4 THE COURT: We're going to do that right now. I'll
5 hear from you first.

6 MR. COOK: Thank you, Your Honor. Your Honor
7 understands my client's bio-graphics, and I would say that
8 in all candor, I have stopped by this shop. It is a valid
9 mechanic shop. I do think he's worked there and learned a
10 trade. I want to say this, Your Honor. And I don't know
11 if I have -- my client has been diagnosed with prostate
12 cancer, and that has driven his entire decision process,
13 if I may be frank, throughout this entire ordeal. And
14 he's been worried about dying in prison. And he's been
15 worried about the level of care. And I tried to explain
16 to him that he'll probably even get better care inside
17 than he would out --

18 THE COURT: I can't vouch for that, although I do
19 think the care is more than adequate.

20 MR. COOK: I think it's excellent. Well, I think
21 it's definitely more than adequate, and given the fact
22 that he doesn't have any coverage, what he would be paying
23 for on the outside --

24 THE COURT: Again, I can't make a representation, so
25 I --

1 MR. COOK: Of course not, Your Honor. But I just
2 wanted the judge to realize what's been driving my
3 client's decisions.

4 THE COURT: I understand.

5 MR. COOK: And I think I'll just digress at that. He
6 does have a very loving family that cares about him a lot
7 and calls me, highly concerned. His mother is very
8 involved. She would be here today except for work. She's
9 planning on obviously being here tomorrow. Hopefully we
10 won't need to be here tomorrow, Your Honor.

11 THE COURT: We'll see.

12 MR. COOK: And having said all that, I've made my
13 client perfectly aware that Your Honor could run this
14 concurrent. I told him that I've seen this judge run
15 cases concurrent. I don't want to put a number in Your
16 Honor's mind. I would just say that my client is truly
17 throwing himself on the mercy of the Court. He and -- he
18 has adamantly maintained his innocence in regard to --

19 THE COURT: Now, the burglary is not in front of me
20 right now.

21 MR. COOK: Yes, sir, Your Honor. And I think I maybe
22 should digress at that point. I just wanted to make a few
23 of those points noted to the Court.

24 THE COURT: Now, Mr. Jordan, anything you want to
25 tell me?

1 THE DEFENDANT: Yes, sir, Your Honor. I'd just like
2 to apologize to the Court and to the victim once again
3 because even though -- I do got a past record, Your Honor,
4 sir, but I'm not -- I did not break into no house and take
5 no gun.

6 THE COURT: Again, the only question is whether you
7 were in possession at that traffic stop of that weapon.
8 You told me you were guilty of that. That's the only
9 thing that's in front of me right now.

10 THE DEFENDANT: Okay. Yes, Your Honor. I bought the
11 weapon. It's on the video on my phone showing that I did
12 buy the weapon, you know what I mean, and prove that I did
13 not steal the weapon nor take the weapon.

14 THE COURT: Again, the only question I have is were
15 you in possession of a stolen weapon --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- at that time when that traffic stop
18 happened?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: And you told me you were guilty of that.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: We'll get to those other issues tomorrow.
23 I'm not trying that case right now. That's the way you
24 told me you wanted to handle it. You wanted that one to
25 be a trial. Right now, as far as the Court's concerned,

1 you're innocent of that. You're presumed innocent.

2 Now, priors.

3 MR. EPTING: Yes, Your Honor. Could I get two
4 preliminary matters? This is --

5 THE COURT: Sure.

6 MR. EPTING: -- sort of an unusual posture. Pursuant
7 to Your Honor's court order, since he mentioned the phone,
8 I do have Jason Dalton, one of our investigators, who has
9 checked the phone out from and has that present and
10 available for the defense's review after this proceeding.

11 I also want to put on the record that I don't want
12 the defendant to have any illusions about the burglary
13 charge tomorrow. I hope he's expecting to plead guilty
14 today and still go forward tomorrow. I just want to
15 make --

16 THE COURT: That's what the Court intends to do at
17 this point in time.

18 MR. EPTING: That's also what we intend to do at
19 present.

20 Your Honor, his prior conviction consists of a 2001
21 conviction for burglary second, non-violent. I provided
22 copies of his burglary conviction to the defense for their
23 review. That was in 2001. He received a suspended
24 sentence on probation, which appears that he had violated
25 the next year. Financial transaction card, fraud charge,

1 as well as a B & E auto for one year. He has a public
2 disorderly conduct from 2003, a simple possession of
3 marijuana from 2004, and a 2005, a slew of charges,
4 amongst them grand larceny, receiving stolen goods,
5 unlawful use of a motor vehicle, failure to stop for a
6 blue light, and a burglary second violent that appears
7 from the paperwork an indictment that I've again provided
8 to the defense, was pled down from a burglary first
9 degree. It appears on the plea on that case he received a
10 13-and-a-half-year sentence. So doing the math on that
11 one, I don't know how soon -- I don't know exactly when he
12 got out, but it can't have been too long when this crime
13 was committed, and I'd hope the Court would take that into
14 consideration fashioning any sentence. Your Honor, we've
15 been in active contact with this victim on this case from
16 day one. He's been very good about keeping up with it.
17 Very interested, very involved. He wished he could be
18 here today, but at the same time, he didn't want to hold
19 anything up.

20 THE COURT: Now, when you say "victim," he apparently
21 was the owner of this gun at some point in time?

22 MR. EPTING: That's correct, the owner of the gun.
23 Both the owner of the gun as well as the owner of the
24 house where the burglary was committed.

25 THE COURT: He's not been found guilty of the

1 burglary.

2 MR. EPTING: That's correct, Your Honor. And the
3 majority of his comments concern the burglary, so unless
4 Your Honor just wishes to hear --

5 THE COURT: I want you just tell me what he had to
6 say about the gun being missing.

7 MR. EPTING: He has -- in prior conversations with me
8 and discussing the case, we've reviewed the elements of
9 the case, probably similar to what Mr. Cook does with his
10 client, risks that we have, what we have to prove and how
11 we're going to prove it. He has expressed on numerous
12 occasions his concern that a person with Mr. Jordan's
13 history is in possession of one of his firearms and what
14 he might be doing with that given that he is prohibited
15 any number of ways from having it. He has asked me to ask
16 the Court to give the defendant, Mr. Jordan, the maximum
17 sentence under the law. And that's what he asked me to
18 relay to the Court.

19 THE COURT: All right. Is he claiming credit for any
20 time served?

21 MR. COOK: Yes, sir, Your Honor. He -- and I
22 apologize for not having the exact day-to-day calculation.
23 He's been incarcerated since -- I've got his booking sheet
24 here, I believe. And I don't -- I apologize.

25 MR. EPTING: We'll look that up, Your Honor.

1 MR. COOK: Just to let Your Honor know, it's
2 roughly --

3 THE COURT: Let's do it exactly so I don't --
4 "roughlies" tend to come back on me if I do that.

5 MR. COOK: Yes, sir. I'll get that, Your Honor.

6 THE COURT: Y'all go ahead and figure it up. I'll
7 wait till you get it.

8 MR. EPTING: We have him as incarcerated on the
9 burglary charge since January 22nd, but he was served with
10 the pistol charge November 14th. So the only question
11 then would be when he bonded out on November the 14th.

12 MR. COOK: He's been on the pistol charge since
13 November 2013.

14 MR. EPTING: He's been on the burglary charge since
15 January 22nd. It appears that he bonded out on the pistol
16 charge. We just have to find out how many days it was --
17 so 367 from the January date. I beg the Court's
18 indulgence.

19 THE COURT: Uh-huh.

20 MR. EPTING: Your Honor, I apologize, I reviewed our
21 record, and it doesn't appear that we have the bond
22 paperwork in there, but on the jail website, it only lists
23 burglary charges, which in my experience tends to indicate
24 that he's not in on the other, but that could be --

25 THE COURT: I can always just say the Department of

1 Corrections will figure it up. That usually doesn't work
2 out so well for the defendant.

3 MR. COOK: I agree.

4 MR. EPTING: But we know he's entitled to the 368
5 from January. The only question is the 11/14. In the
6 interest of economy, I guess, the State would not
7 necessarily be opposed to the Court just granting that --

8 THE COURT: So how much would the total then be?

9 11/14. I want you to agree on a number of days, then
10 I'm going to ask Mr. Jordan because I want to be sure he
11 agrees on it.

12 MR. EPTING: And again, Your Honor, I apologize about
13 this. This is something I should have figured out prior
14 to this.

15 MR. COOK: This is something I should have figured
16 out.

17 MR. EPTING: 438 days, approximately a month and a
18 half.

19 THE COURT: You agree on that, 438 days?

20 I have sentenced him concurrently on these charges
21 with each other. I've given credit for the 438 days. The
22 sentence is he be confined in the State Department of
23 Corrections for a period of three years. Good luck to
24 you, sir.

25 (The proceedings were adjourned at 5:15 p.m. on

1 January 26th, 2015 and resumed at 9:58 a.m. on January
2 27th, 2015.)

3 THE COURT: We'll go on the record in the case of the
4 State of South Carolina versus Antonio R. Jordan.
5 Mr. Jordan, overnight you had indicated you wished to meet
6 with your lawyer to discuss some things, and also I
7 believe there was one piece of evidence you wanted the
8 opportunity to view. I believe it was a cell phone. Want
9 to be sure that those things have been taken care of.

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: So you've been able to talk with your
12 lawyer?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: Have you been able to view the cell
15 phone?

16 THE DEFENDANT: You can't get the code back.

17 MR. COOK: We've had the opportunity to attempt to --

18 THE COURT: You've received the cell phone and you've
19 had an opportunity to view it; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: The code that you haven't been able to
22 get, is that your password?

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: So that would have been your information?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Okay. All right. But it's been
2 presented to you for your review and inspection?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Okay. Is there anything else you feel we
5 need to do before we proceed at this time?

6 THE DEFENDANT: No, sir, Your Honor.

7 THE COURT: Counsel, you feel confident you're able
8 to go forward?

9 MR. COOK: Yes, sir, Your Honor. I'm prepared.

10 THE COURT: Now, I have received from the State a
11 list of potential witnesses. Is there a list from the
12 defense?

13 MR. COOK: If it please the Court, if I may approach.

14 THE COURT: Yes, sir.

15 MR. COOK: Got a witness list and just some standard
16 voir dire cases. I don't have any motions in limine, Your
17 Honor.

18 THE COURT: Has the State reviewed the requested voir
19 dire? I think there's a couple.

20 MR. EPTING: We have, Your Honor.

21 THE COURT: Any objections?

22 MR. EPTING: We do not object; however, we would ask
23 that any question asked on here be made reciprocal. For
24 instance, do you have a close friend or anyone in your
25 family for any type of law enforcement, we would ask

1 defense attorneys, I guess, the opposite of law
2 enforcement.

3 THE COURT: I'm not sure what that is.

4 MR. EPTING: That was inarticulate. If they have
5 friends who might show a bias towards the defense.

6 THE COURT: I'll attempt to do that.

7 MR. EPTING: Thank you, Your Honor.

8 MR. COOK: I have no objections, Your Honor. And one
9 of those questions I heard Your Honor ask during the
10 general voir dire about --

11 THE COURT: If they work within a courthouse?

12 MR. COOK: Yes, sir.

13 THE COURT: That's already made.

14 MR. COOK: So I suppose the only one that's relevant
15 is if there are any victims of burglary.

16 THE COURT: And if they ever worked for any type of
17 law enforcement.

18 MR. EPTING: In candor to the Court, I believe Your
19 Honor's question in qualifications was limited to whether
20 the jurors themselves work within the walls of a
21 courthouse.

22 THE COURT: That's right. I'll take care of that.

23 Now, is there any specific voir dire request by the
24 State other than your request just now?

25 MR. EPTING: None from the State, Your Honor.

1 THE COURT: Then I think we're ready to bring the
2 potential jury panel in.

3 MR. EPTING: And I don't know Your Honor's
4 preference, but I do have several witnesses present here
5 in the courtroom today and I did instruct them when their
6 name is called by Your Honor to stand so that the jury can
7 see them.

8 THE COURT: All right.

9 MR. EPTING: We have Eddie Covert, the victim, and --

10 THE COURT: Why don't you ask them to come sit right
11 behind you there, if at all possible. They'll be in front
12 of the jury.

13 MR. COOK: I don't think my witnesses have shown up
14 yet, Your Honor.

15 THE COURT: That's all right. They don't have to be
16 here.

17 (The jury panel entered the courtroom at 10:02 a.m.)

18 (A discussion was held off the record.)

19 THE COURT: Good morning, ladies and gentlemen.
20 We're about to begin the trial of the State of South
21 Carolina versus Antonio R. Jordan. I'm going to go over a
22 little bit of information with you at this point in time
23 so that you perhaps will be in a position to more fully
24 answer some questions that I'm going to ask you that
25 pertain specifically to this trial. First of all, I have

1 been presented with an indictment in this case. The
2 indictment is in case number 2014-GS-46-15-43. That
3 indictment is for the offense of burglary in the first
4 degree. I will go over with you briefly part of the
5 indictments so that you will know a little bit about
6 what's been alleged in this case. I will point out to you
7 that an indictment is simply the document that brings the
8 case into this court. It informs this court of the charge
9 that's to be tried. It informs the defendant of the
10 charge that has been lodged against the defendant.

11 So it's a notice document. It does not constitute
12 evidence of the commission of any crime, and it cannot be
13 used by a jury in any matter whatsoever in determining the
14 guilt or the innocence of a defendant. It is simply the
15 document that informs us of the charge that we are here
16 to -- concerning in this trial.

17 Now, as I indicated, the indictment is for the
18 offense of burglary in the first degree. The indictment
19 alleges that the defendant, Antonio R. Johnson, did on or
20 about November 8 of 2013, in York County, enter a dwelling
21 belonging to Derek Clark without consent and with the
22 intent to commit a crime therein, and the defendant while
23 in the dwelling or in immediate flight therefrom was armed
24 with a deadly weapon. That's some of the allegations that
25 are made, but I wanted to let you know when this allegedly

1 occurred, the alleged victim, and what the State is
2 alleging occurred in this case. I'm doing that so that
3 later on when we ask you some questions about this case,
4 you might more fully be able to answer the questions that
5 I'm asking you about this particular incident. But again,
6 the indictment is simply the document that brings the case
7 into the court. It informs us of the charge to be tried.

8 Also I'm going to inform you of the -- concerning the
9 attorneys that are involved in this case. I'm going to
10 ask the attorneys representing the State introduce
11 themselves to you. If you would do that at this time.
12 Thank you.

13 MR. EPTING: Thank you, Your Honor.

14 I'm Chris Epting. I'm a senior assistant solicitor
15 with the 16th Circuit Solicitor's Office.

16 MR. NEWKIRK: Ryan Newkirk. I'm an assistant
17 solicitor with the 16th Judicial Circuit Solicitor's
18 Office.

19 THE COURT: Thank you. And the attorney for the
20 defense, if you would introduce yourself.

21 MR. COOK: Yes, sir. I'm Dave Cook for the defense.

22 THE COURT: And the defendant, Mr. Jordan, if you
23 would stand and face the jury panel so they can place a
24 name with a face. This is the defendant, Antonio R.
25 Jordan. Thank you, sir, you can be seated.

1 Now, ladies and gentlemen, we're going to go through
2 a process, and I think maybe you've already -- some of you
3 may have been involved in this process with Judge
4 Griffith, but we're going to go through a process similar
5 to what we did in jury qualification. I'm going to ask
6 you a series of questions that pertain to this case. If
7 you have a response to those questions, I'll be asking
8 that you stand. Again, I'll need your name and juror
9 number on the record before I discuss whatever response
10 you might have to the questions that I'm asking. So
11 that's the process that we're going to go through.

12 Now, it's important, very important, that the
13 information you provide us during this questioning is
14 truthful, honest, and complete information. And for that
15 reason, I'm going to ask that the clerk again swear you
16 concerning your responses that you're about to give to the
17 court.

18 Madame Clerk, if you would put the potential jury
19 under oath for me.

20 (The jury panel was sworn.)

21 THE COURT: Now, if there was any member of the
22 potential jury panel who either failed or refused to take
23 the oath that was just administered by the clerk, please
24 stand. The court record then will reflect that all
25 potential jurors have been sworn concerning the

1 questioning that I'm about to ask.

2 All right. First question I have: Is there any
3 member of the jury panel who has ever been related by
4 marriage or have you -- or are you related by blood to
5 either the defendant, Antonio R. Jordan, or the alleged
6 victim, Derek Clark? If that's true, please stand.

7 Has any member of this jury panel ever had a close
8 personal or a social relationship with either the
9 defendant, Antonio R. Jordan, or the alleged victim, Derek
10 Clark? If that's true, please stand.

11 Has any member of the jury panel ever been
12 represented by any of the attorneys who are involved in
13 this case or have they ever appeared on the other side of
14 a legal matter from you? If that's happened, please
15 stand.

16 Has any member of this jury panel ever had a close
17 social or a personal relationship with any of the
18 attorneys that are involved in this case? If that's true,
19 please stand.

20 Now I'm going to read to you a list of people that I
21 have been informed by the parties to be potential
22 witnesses in this case. Some of them may be in the
23 courtroom, so if I call a name and that person is in the
24 courtroom, I'll ask that you stand, face the jury panel so
25 that the jury can place a face with the name that I've

1 called. I want you to listen carefully to the list of
2 people that I'm identifying. When I finish this list,
3 I'll be asking you some questions concerning these
4 individuals.

5 First one is Crystal -- I think it's Kissell or is
6 that Kissel? Kissel. She's with the York County
7 Sheriff's Office DNA lab. Next is Pete Branham, also with
8 the York County Sheriff's Office. Brian Schettler with
9 the York County Sheriff's Office. Thank you, sir. Travis
10 Shealy with the York County Sheriff's Office. Cheryl
11 Gregory. Derek Clark. Thank you, sir. Deputy Eddie
12 Covert with the York County Sheriff's Office. Thank you.
13 Randy Clinton with the York County Sheriff's Office K-9
14 unit. Kevin Tolson, Solicitor's Office investigator.
15 George Weeks with the forensic services unit. Teresa
16 Scoggins from the York County Clerk of Court's office.
17 Carol Williams, Lancaster County Clerk of the Court.
18 Jason Dalton. Cheryl Guzman with the York County
19 detention center. Maryann Jordan. Thank you, ma'am.
20 Eddielena Boyd. Thank you, ma'am.

21 Now, as to the individuals that I just named as
22 possible witnesses in this case, has any member of the
23 jury panel ever been related by marriage or are you
24 related by blood or have you ever had a close social or a
25 personal relationship with any person that I've named as a

1 possible witness in this case? If that is true, please
2 stand.

3 Has any member of the jury panel or a member of your
4 immediate family or a close personal friend of yours ever
5 been a victim of a burglary? If that's true, please
6 stand. Sir, I'll need your name and number, please.

7 JUROR: Karl Wichmann, 232.

8 THE COURT: Who was the person that was the victim of
9 the burglary?

10 JUROR: My mother was mugged, and they subsequently
11 robbed her house.

12 THE COURT: I see. Now, has that case been ended at
13 this point in time?

14 JUROR: Yes, sir.

15 THE COURT: Now, would the fact that that occurred in
16 your family, would that affect your ability to be fair and
17 impartial to both the State and the defense if you were
18 selected as a juror in this case?

19 JUROR: No, sir.

20 THE COURT: Thank you. You can be seated.

21 Name and number, sir?

22 JUROR: James Pugh, 170.

23 THE COURT: Your situation is?

24 JUROR: My apartment was burglarized.

25 THE COURT: Was that some time ago or recently?

1 JUROR: Some time ago.

2 THE COURT: Has that case then been resolved?

3 JUROR: It's been resolved.

4 THE COURT: .Would the fact that that has occurred to
5 you in the past, if you were selected to serve on the jury
6 panel, would that affect your impartiality?

7 JUROR: No, sir.

8 THE COURT: Thank you. You can be seated.

9 Ma'am, name and number?

10 JUROR: Heidi Hall, 83.

11 THE COURT: Your situation, ma'am?

12 JUROR: House was burglarized. I wasn't in it.

13 THE COURT: `So that occurred some time ago?

14 JUROR: (The witness nods her head.)

15 THE COURT: Would the fact that that has occurred to
16 you in the past, if you were selected to serve on the
17 jury, would that affect your impartiality to either the
18 State or the defense?

19 JUROR: No.

20 THE COURT: Thank you, ma'am.

21 Ma'am, name and number?

22 JUROR: Donna Blankenship, 21.

23 THE COURT: Your situation, ma'am?

24 JUROR: The home was burglarized.

25 THE COURT: Has that been some time ago?

1 JUROR: This past summer.

2 THE COURT: This past summer? So fairly recently,
3 then?

4 JUROR: Yes.

5 THE COURT: Now, would the fact that that had
6 occurred to you, would that affect your impartiality if
7 you were selected to serve on the jury panel?

8 JUROR: Yes.

9 THE COURT: Then ma'am, I'm going to exclude you from
10 the jury at this time. I'll ask you to be seated. You no
11 longer have to answer my questions.

12 Name and number, sir?

13 JUROR: Roger Ross, 185.

14 THE COURT: Yes, sir.

15 JUROR: My house was burglarized about 15 years ago.

16 THE COURT: Now, would the fact that that had
17 happened in the past to you, would that affect your
18 impartiality in this case?

19 JUROR: No, sir.

20 THE COURT: Thank you, sir.

21 Name and number, sir?

22 JUROR: Brent Hamilton, 85.

23 THE COURT: Yes, sir.

24 JUROR: My car was stolen.

25 THE COURT: Would the fact that that -- did that

1 happen some time ago?

2 JUROR: Within the last ten years.

3 THE COURT: I see. Now, would the fact that that had
4 happened to you in the past, would that affect your
5 impartiality in this case if you were on the jury?

6 JUROR: To be honest, it might.

7 THE COURT: All right, sir. I want you to be honest.
8 I'll exclude you, then, from this case. You no longer
9 have to answer the questions. You can be seated.

10 Anyone else?

11 Has any member of the jury panel or a member of your
12 immediate family or a close personal friend of yours ever
13 been employed by any type of law enforcement agency? That
14 would be civilian and/or military law enforcement agency.
15 If that's true, please stand.

16 Name and number, sir?

17 JUROR: James DalSanto, 54.

18 THE COURT: And your situation?

19 JUROR: My cousin is currently on Clover police
20 force.

21 THE COURT: Would that fact affect your impartiality
22 if you were to serve on the jury?

23 JUROR: No, sir.

24 THE COURT: Thank you, sir.

25 Ma'am, name and number?

1 JUROR: Heidi Hall, 83.

2 THE COURT: Yes, ma'am.

3 JUROR: My brother is a deputy sheriff.

4 THE COURT: What county? Here in York?

5 JUROR: No, he's in Virginia.

6 THE COURT: In Virginia. I see. Would that fact
7 affect your impartiality if you were to serve on the jury?

8 JUROR: No, sir.

9 THE COURT: Thank you.

10 Sir, name and number?

11 JUROR: Roger Rockholt, 182.

12 THE COURT: Yes, sir, your situation?

13 JUROR: My sister worked for York County Sheriff's
14 Department.

15 THE COURT: She no longer does?

16 JUROR: No, sir.

17 THE COURT: Would that fact affect your impartiality
18 in you were selected to serve on the jury?

19 JUROR: No, sir.

20 THE COURT: Thank you.

21 Sir, name and number?

22 JUROR: Akevion Hinton, 94.

23 THE COURT: Yes, sir.

24 JUROR: My uncle is a former law enforcement cop in
25 Detroit, Michigan.

1 THE COURT: I see. Would that fact affect your
2 impartiality if you were to be selected on the jury?

3 JUROR: No, sir.

4 THE COURT: Thank you, sir. Anyone else?

5 Has any member of this jury panel received any
6 information such that it would have caused you to either
7 express or form an opinion concerning any issue or matter
8 that might be involved in this trial? If that's true,
9 please stand.

10 Is any member of the jury panel aware of a bias or
11 prejudice that you might have either for or against either
12 the State or the defense in this case? If that's true,
13 please stand.

14 Is there any member of this jury panel who is a
15 member of or a contributor to any group which has as its
16 primary concern either the promotion of law enforcement or
17 victims' rights? These groups would include, but not be
18 limited to, groups such as Mothers Against Drunk Driving,
19 Students Against Drunk Driving, Citizens Against Violent
20 Crime, the South Carolina Troopers Association, the South
21 Carolina Sheriff's Association, or other similarly
22 oriented organizations. So if you're a member of or a
23 contributor to such a group, please stand.

24 Does any member of this jury panel know of any reason
25 whatsoever why he or she should not serve as a juror in

1 this case, with particular emphasis placed upon your
2 ability to be both fair and impartial to both the State
3 and the defense? If you know of any such reason, please
4 stand.

5 Does the State have any additional questions at this
6 time?

7 MR. EPTING: Nothing from the State, Your Honor.

8 THE COURT: Defense have any additional questions?

9 MR. COOK: No, sir, Your Honor.

10 THE COURT: Then I'll declare that the remaining
11 members of the jury panel are qualified to serve as jurors
12 in this case. Now, ladies and gentlemen of the jury, what
13 we're going to do is we have a computer program here, and
14 it's one that's approved by the court system, and that
15 program makes a random selection of people from your
16 number, and I've received a printout of that particular
17 random list. What we'll do is the clerk will begin to
18 call the names and numbers off that list in the order in
19 which the computer has put them on the list. When your
20 name is called, I'm going to ask that you come down front.
21 The clerks are right here where this computer screen is.
22 Come down and stand right in front of them. At that time
23 the parties will be in a position to exercise the strikes
24 that they're allowed in this case by law. And in this
25 case, the state will have five strikes. The defense will

1 have ten strikes. Once we have selected a 12-person jury,
2 we'll select one alternate, with the state having one
3 strike and the defense having two strikes.

4 So at this time, Madame Clerk, you can begin the jury
5 selection process.

6 THE CLERK: When your name and number is called,
7 bring your personal belongings with you, come up front and
8 stand next to the bailiff.

9 THE COURT: What she means by that, if you have
10 anything that you brought with you into the courtroom,
11 bring that up with you because if you're selected, you'll
12 have a seat in the jury box. You won't be going back to
13 your seat. So if you have anything with you, bring it
14 with you when your name's called. I'm sorry. Go ahead,
15 ma'am.

16 THE CLERK: Number 86, Carrie Hamilton. What say you
17 for the State?

18 MR. EPTING: Please present this juror.

19 THE CLERK: Defense?

20 MR. COOK: Please seat the juror.

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

22 Number 221, Floyd Turk. What say you for the State?

23 MR. EPTING: Please present this juror.

24 THE CLERK: Defense?

25 MR. COOK: Please excuse the juror.

1 THE CLERK: You've been excused from this case.

2 Number 210, Linda Springs. What say you for the
3 State?

4 MR. EPTING: Please present this juror.

5 THE CLERK: Defense?

6 MR. COOK: Please seat the juror.

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

8 Number 76, Pamela Gill-Williams. What say you for
9 the State?

10 MR. EPTING: Please excuse this juror.

11 THE CLERK: You've been excused in this case.

12 Number 137, Debra Meeks. What say you for the State?

13 MR. EPTING: Please excuse this juror.

14 THE CLERK: You've been excused from this case.

15 Number 215, Pamela Stewart. What say you for the
16 State?

17 MR. EPTING: Please present this juror.

18 THE CLERK: Defense?

19 MR. COOK: Please excuse this juror.

20 THE CLERK: You've been excused from this case.

21 Number 176, Nickie Richardson. What say you for the
22 State?

23 MR. EPTING: Please present this juror.

24 THE CLERK: Defense?

25 MR. COOK: I'm sorry, Madame Clerk, what was that

1 juror number?

2 THE CLERK: 176.

3 MR. COOK: Please seat the juror.

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

5 Number 55, Kathryn Davis. What say you for the
6 State?

7 MR. EPTING: Please present this juror.

8 THE CLERK: Defense?

9 MR. COOK: I'm so sorry, Madame Clerk, is that --
10 what number --

11 THE CLERK: 55.

12 MR. COOK: Please seat the juror.

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

14 Number 129, Nicholas Martin. What say you for the
15 State?

16 MR. EPTING: Please present this juror.

17 THE CLERK: Defense?

18 MR. COOK: Please seat the juror.

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

20 Number 35, Amanda Burns. What say you for the State?

21 MR. EPTING: Please present this juror.

22 THE CLERK: Defense?

23 MR. COOK: Please seat the juror.

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

25 Number 79, Paula Graham. What say you for the State?

1 MR. EPTING: Please present this juror.

2 THE CLERK: Defense?

3 MR. COOK: Please seat the juror.

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

5 Number 94, Akevia Hinton. What say you for the
6 State?

7 MR. EPTING: Please present this juror.

8 THE CLERK: Defense?

9 MR. COOK: Please seat the juror.

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

11 Number 95, Andrew Hitchcock. What say you for the
12 State?

13 MR. EPTING: Please excuse this juror.

14 THE CLERK: You've been excused for this case.

15 Number 116, Anthony Lamonica. What say you for the
16 State?

17 MR. EPTING: Please present this juror.

18 THE CLERK: Defense?

19 MR. COOK: Please excuse this juror.

20 THE CLERK: You've been excused from this case.

21 Number 19, James Berry. What say you for the State?

22 MR. EPTING: Please present this juror.

23 THE CLERK: Defense?

24 MR. COOK: Please excuse the juror, Your Honor.

25 THE CLERK: You've been excused from this case.

1 Number 54, JD. What say you for the State?

2 MR. EPTING: Please present this juror.

3 THE CLERK: Defense?

4 MR. COOK: Please excuse the juror.

5 THE CLERK: You've been excused from this case.

6 Number 205, Crystal Sloan. What say you for the

7 State?

8 MR. EPTING: Please present this juror.

9 THE CLERK: Defense?

10 MR. COOK: Please seat the juror.

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

12 Juror 146, Lindsey Mullinax. What say you for the State?

13 MR. EPTING: Please present this juror.

14 THE CLERK: Defense?

15 MR. COOK: Please seat the juror.

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

17 Number 187, Lisa Ryan. What say you for the State?

18 MR. EPTING: Please present this juror.

19 THE CLERK: Defense?

20 MR. COOK: Please seat the juror.

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

22 Number 98, Tia Hope. What say you for the State?

23 MR. EPTING: Please excuse this juror.

24 THE CLERK: You've been excused from this case.

25 Number 90, Gary Hemphill. What say you for the

1 State?

2 MR. EPTING: Please present this juror.

3 THE CLERK: Defense?

4 MR. COOK: Please seat the juror.

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

6 THE COURT: All right. We're now picking the
7 alternate.

8 THE CLERK: Number 242, Andrew Winderl. What say you
9 for the State?

10 MR. EPTING: Please present this juror.

11 THE CLERK: Defense?

12 MR. COOK: Please seat the alternate.

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

14 THE COURT: Thank you, ma'am.

15 Is there any objection to the jury selection process
16 from the State?

17 MR. EPTING: Nothing from the State, Your Honor.

18 THE COURT: Any from the defense?

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

20 THE COURT: The remaining members of the jury panel,
21 I want to thank you very much for your cooperation this
22 morning. They'll be returning you to the assembly room
23 for additional instructions. Again, thank you, and you're
24 free to go at this time. Please leave quietly, if you
25 would.

1 (The jury panel left open court at 10:41 a.m.)

2 THE COURT: Ladies and gentlemen, you've been
3 selected as members of the jury panel in this case. There
4 are some matters that I do have to take up with the.
5 attorneys before we begin the actual trial of the case.
6 So I'm going to excuse you to go back to the jury room for
7 just a moment while we take care of those matters. When
8 you return to the courtroom, I'll tell you that you'll be
9 again asked to take another oath. You've been putting
10 your hand in the air a lot lately, but this oath is a
11 little different than the others. The oaths we gave you
12 earlier were concerning your responses to questions,
13 things of that nature.

14 The oath you'll take when you return to the courtroom
15 is your oath concerning your duties and responsibilities
16 as a juror on this case. And at that time, the oath will
17 be that you will decide this case based upon the law and
18 the evidence that's presented during the trial. Now, the
19 only place you're going to hear law and evidence in this
20 case is in this courtroom during the trial of the case.
21 We've gone to a great deal of trouble, as you can tell,
22 this morning to pick a jury that has an open mind
23 concerning the issues that might be involved in this
24 trial. I'm going to caution you that while you're in the
25 jury room, that even the most innocent conversation you

1 might have with a fellow juror concerning the nature of
2 the charges or the people that are involved in the trial,
3 even about the judge or whatever you decide you want to
4 talk about about this case, those discussions might begin
5 to color your decision in this case, and you haven't heard
6 the first word of evidence or the first bit of evidence
7 has not even been placed in front of you at this point in
8 time.

9 So I'm going to urge you and you will find that I
10 will instruct you every time that you leave the courtroom
11 not to discuss anything about this case until such time as
12 I ask you to begin your deliberations in this matter. So
13 it's okay to talk about the weather. It's okay to talk
14 about anything else you'd like to talk about. Don't talk
15 about this case. Don't discuss it in any way. I'll tell
16 you when to begin those discussions. And that will only
17 be after you've heard all the arguments by the lawyers,
18 you've heard all the evidence presented during the trial,
19 and you've heard my charge concerning the law to be
20 applied to the facts in this matter. So, again, I'm going
21 to excuse you for a few minutes to go back to the jury
22 room. Don't discuss anything about the case until I've
23 asked you to do that at the close of the trial. You may
24 retire to the jury room at this time. Thank you very
25 much.

1 (The jury left open court at 10:44 a.m.)

2 THE COURT: The attorneys have indicated that there
3 may be some pretrial matters that I need to discuss.
4 First of all, from the State's perspective.

5 MR. EPTING: Yes, Your Honor.

6 THE COURT: Yes, sir.

7 MR. EPTING: Your Honor, I just want to put on the
8 record that the State has complied with Rule 5 in this
9 case. We've given over all the necessary items to the
10 defense we intend to introduce in trial. We have
11 served -- we served original counsel with reciprocal
12 Rule 5 discovery notice. It's my understanding from my
13 discussions with Mr. Cook that he's allowing that to be
14 effective the second time. So I would ask for affirmation
15 that he has also complied with his reciprocal discovery
16 obligations.

17 THE COURT: Mr. Cook.

18 MR. COOK: If it please the Court that everything the
19 solicitor said is correct. I do state I've received
20 anything, and I maintain that I have complied with my
21 reciprocal Rule 5 and that I have two alibi witnesses I've
22 noticed him for.

23 THE COURT: Very good. Yes, sir.

24 MR. EPTING: Just to put on the record, one of those
25 alibi notices, I believe, to no fault of Mr. Cook but due

1 to some electronic difficulties, we were not able to get
2 her information until today. We're not asking the Court
3 to exclude that information. I pass that on to our
4 investigators to look at. It was indicated perhaps there
5 was some document or something along those lines of one of
6 the witnesses they intend to introduce. If they're
7 asserting to us they're not going to introduce that
8 document.

9 THE COURT: Is that correct, Mr. Cook?

10 MR. COOK: That's correct, Your Honor.

11 MR. EPTING: Your Honor, we have in this case this is
12 a burglary first, and one of the grounds of it's being
13 aggravated, two of first --

14 THE COURT: I did not mention to that jury during
15 selection because I wanted to be sure there was adequate
16 proof of that before I mentioned prior convictions to the
17 jury.

18 MR. EPTING: That's perfectly understandable, Your
19 Honor. Beg Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. EPTING: We've provided certified copies
22 electronically sent to the defense of both the convictions
23 we're intending to rely on to aggravate this up based upon
24 his priors. Your Honor, we're trying to balance the rules
25 of 403 here. I have prepared the sentencing sheets from

1 his two prior cases with some substantial redactions. I
2 believe that it would run afoul of 403 for the jury to
3 hear what sentence he received either way on those cases.
4 So what I have done, what I passed on to Mr. Cook is my
5 proposed redactions. I have redacted out the section on
6 the sentencing sheet that mentions --

7 THE COURT: Are those certified copies?

8 MR. EPTING: These are redactions from certified
9 copies.

10 THE COURT: I see.

11 MR. EPTING: My intention would be to enter the
12 certified copies as well as the accompanying indictments
13 as court's exhibits.

14 THE COURT: All right.

15 MR. EPTING: Which I can do at --

16 THE COURT: Let me ask you if there's an objection to
17 you doing that.

18 MR. COOK: There is none, Your Honor.

19 MR. EPTING: Just to play it extra safe here, we have
20 redacted -- looks like he pled from a burg first to a burg
21 second violent. We have taken out the word "violent."
22 Under my reading of the law, that no longer becomes
23 relevant since it's just two prior burglaries and --

24 THE COURT: Question is if there's convictions of two
25 prior --

1 MR. EPTING: That's correct, Your Honor. I have
2 discussed this with the defense as far as stipulating to
3 his social security number as well as his date of birth.
4 I believe that the defense is amenable to that. I just
5 wanted to put that on the record.

6 THE COURT: Is that correct, Mr. Cook, are you in
7 agreement with that being done?

8 MR. COOK: Yes, sir, Your Honor.

9 THE COURT: All right.

10 MR. EPTING: Your Honor, we do have somebody from the
11 Lancaster County Clerk of the Court that would save us
12 from having to call other witnesses on this case as to his
13 date of birth and social on these warrants. Beg the
14 Court's indulgence.

15 THE COURT: I think they've agreed to the
16 introduction of those. Have they been marked already?

17 MR. EPTING: They have, Your Honor, as State's 4 and
18 5. Your Honor, this --

19 THE COURT: How about the court's exhibits? Have
20 they been marked?

21 MR. EPTING: They have not been marked.

22 THE COURT: You want to pass that up and let's mark
23 those. I don't think there's an objection to that.

24 (Court's Exhibit Numbers 1 through 4 were marked for
25 identification.)

1 THE COURT: Those have been marked as exhibits. Can
2 you tell me what they are?

3 MR. NEWKIRK: Your Honor, exhibit -- Court's
4 Exhibits 1 through 4, 1 and 2 being the sentencing sheets
5 for Mr. Jordan's prior burglaries.

6 THE COURT: Certified copies --

7 MR. NEWKIRK: Yes, sir. And 3 and 4 being certified
8 copies of the indictment.

9 THE COURT: Very good.

10 MR. NEWKIRK: Would you like me to hand them up to
11 the Court?

12 THE COURT: No, no, no, that's fine.

13 MR. EPTING: We'd ask those be made a part of the
14 record.

15 THE COURT: They will be made a part of the record as
16 court's exhibit.

17 MR. EPTING: We believe that it would be necessary in
18 this case for us to ask for an order of sequestration.
19 And, of course, we would allow that -- or ask for that to
20 be applied specifically as well.

21 THE COURT: In doing that, obviously the victim would
22 be allowed to remain, and your lead investigator is?

23 MR. EPTING: That's correct. Our victim, Derek
24 Clark, is present and Brian Schettler is investigator for
25 our case agent.

1 THE COURT: All right. Any objections?

2 MR. COOK: Without objection, Your Honor, so long as
3 it's reciprocal.

4 THE COURT: I'll make it a reciprocal order. That
5 means all witnesses other than the victim and chief
6 investigator are excluded from the courtroom. You're
7 ordered not to discuss your testimony with anyone, past or
8 present, until the case has been ended. So I'll ask that
9 the other witnesses step outside as well. Thank you.

10 MR. EPTING: On the discovery issue, Your Honor
11 directed me to make available the phone to Mr. Jordan. We
12 did go into some detail. That was presented to him.

13 THE COURT: I inquired before we started jury
14 selection. Mr. Jordan indicated he had received the
15 phone. He perhaps had some difficulty in accessing it
16 because of his own access code. But it has been made
17 available; is that correct?

18 MR. EPTING: That's correct, two different occasions.
19 Last night after court broke we plugged it into that wall
20 over there, allowed them to try to access it. He
21 indicated that he was emotional and could not remember the
22 number at that time. We offered to bring the phone back
23 up this morning when he was perhaps in a more calm state
24 of mind. He again tried to remember his access code and
25 could not.

1 THE COURT: I understand. It's been made available;
2 is that correct?

3 MR. EPTING: That's correct, your Honor. And it's in
4 our custody, Your Honor, so if at any time during the
5 trial he remembers the code, then we'll make it available.

6 THE COURT: It will remain available, then.

7 MR. COOK: Thank you, Your Honor.

8 THE COURT: All right.

9 MR. EPTING: I believe our case agent was going to
10 bring -- or one of our agents was going to bring -- our
11 evidence was locked out when the jury, so we would ask --
12 I don't think we'll get into that probably until later
13 this afternoon.

14 THE COURT: We're going to take a short break in just
15 a moment, so --

16 MR. EPTING: Very good, Your Honor.

17 THE COURT: Anything else the State wants to bring
18 up?

19 MR. EPTING: I would like to put on -- we covered
20 pretty well the offers that were rejected by Mr. Jordan.
21 Mr. Cook and I discussed the possibility of a ten-year
22 violent offer to resolve his charges concurrent with what
23 he pled to yesterday. It's my understanding that
24 Mr. Jordan is rejecting that offer as well and electing to
25 go forward with trial, as is his right.

1 THE COURT: Mr. Cook, is that correct?

2 MR. COOK: That's correct, Your Honor.

3 THE COURT: Mr. Jordan, is that correct?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 MR. EPTING: We have a large number of photos in this
6 case, Your Honor. It's the defense's prerogative whether
7 they do this or not. But we would ask if they would be
8 willing to allow us to introduce these ahead of time.

9 THE COURT: Any objection to the photos?

10 MR. COOK: Without objection. We have reviewed those
11 photos.

12 THE COURT: They'll be admitted without objection.
13 You need to give me the numbers, not just like number 1
14 through 75 or whatever it is. I don't know what it is.

15 MR. EPTING: Does the Court wish me to give that now?

16 THE COURT: Yes, sir.

17 MR. EPTING: It's 1A through 1BB, 2A through 2II.
18 And there's an aerial exhibit marked State's Exhibit 3. I
19 think it would help the trial move along quicker --

20 THE COURT: Those will be admitted and made a part of
21 the record. I'll inform the jury we've done that.

22 (State's Exhibits 1-5 were admitted.)

23 MR. EPTING: Your Honor, just to clarify, I think
24 we've touched on this as well, just extra caution. We do
25 believe the case law allows us to present direct evidence

1 of his conviction for burglary. It's not the State's
2 intention in any way, shape, or form to go into the facts
3 that led to that conviction. As stated earlier, State's
4 Exhibit 4 and 5 will be presented through the Clerk of the
5 Court as the -- as an exhibit showing that he has been
6 convicted on two separate occasions of burglary.

7 THE COURT: Any objections?

8 MR. COOK: As strategy, Your Honor, I've decided to
9 not make any motions in regard to that, and I have no
10 objection.

11 THE COURT: I understand. All right.

12 MR. EPTING: We have -- we do have standard motions.
13 I don't believe these apply to Mr. Cook, but nonetheless,
14 we make these kind of prophylactic -- I believe there may
15 be some self-serving hearsay in this case that obviously
16 could come in should the defendant himself testify as to
17 statements that he made to other people.

18 THE COURT: We'll deal with that as it arises.

19 MR. EPTING: Certainly, Your Honor.

20 THE COURT: Or does not arise. We'll see.

21 MR. EPTING: Hopefully will not arise, Your Honor.
22 And I believe that's all from the State.

23 THE COURT: Defense have any matters you wish the
24 Court to consider before we swear the jury?

25 MR. COOK: None, Your Honor.

1 THE COURT: We'll take about a five- to ten-minute
2 break, everybody take a little break, and then we'll bring
3 the jury back in. Court is in recess briefly.

4 (A recess was taken from 10:54 a.m. to 11:07 a.m.)

5 THE COURT: State ready to go forward?

6 MR. EPTING: State is ready, Your Honor.

7 THE COURT: Defense ready to go forward?

8 MR. COOK: Yes, sir, Your Honor.

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

10 THE BAILIFF: Yes, sir.

11 THE COURT: Thank you.

12 (The jury entered the courtroom at 11:07 a.m.)

13 THE COURT: The record will reflect that the jury has
14 returned to the courtroom at this time. As you come and
15 go from the courtroom, we do not have assigned seats in
16 the jury panel. Sir, you're the alternate up there, so
17 you're the only one who has an assigned seat at this time,
18 so you'll always be seated in that seat. So as you come
19 in, you just fill in and sit whenever you happen to sit as
20 we go through this.

21 All right. Now, I told you that upon your return to
22 the courtroom, you would be taking an oath concerning your
23 responsibilities as jurors in this case. At this time,
24 Madame Clerk, I'll ask you swear the jury panel for me.

25 (The jury was sworn.)

1 THE COURT: You can be seated. If there was any
2 member of the jury panel who either failed or refused to
3 take the oath just administered by the clerk, please
4 stand. The record then will reflect that all jurors have
5 been sworn concerning your responsibilities in this case.
6 Now, before we begin the trial of this case, there's some
7 things I would like to go over with you. It's my belief
8 that for most of you, this is your first experience and
9 actually serving on a jury during the trial of a case in a
10 court of law. And for those of you for whom this is your
11 first experience, there's some things that I would like to
12 go over with you concerning the duties and
13 responsibilities of those who are involved in this trial
14 as well as the duties and responsibilities that you have
15 as jurors in the trial of this case.

16 If you've never been on a jury panel before, I would
17 expect that most of what you might know about what goes on
18 in trials or how juries operate or how they go about doing
19 their responsibilities you might have learned from
20 television shows that you've watched or movies that you've
21 seen, maybe books that you've read, things of that nature.
22 And while those sources of information are always full of
23 high drama and intense action and riveting circumstances,
24 I hope you understand from the fact that you can have an
25 event occur and a case tried and the matter resolved in a

1 space of one hour and they have time to stop for
2 commercials about five or six times during that
3 presentation, that those sources of information sometimes
4 are bent or twisted a little bit to fit the story lines.
5 The people who write those things take what's called
6 literary license with how things are done in a court of
7 law. And so while those things are interesting, they're
8 entertaining, they're intended for your entertainment. I
9 want you to understand that what you're engaged in today
10 is intended for anything but your entertainment.

11 I hope you understand that you're engaged in a
12 fundamental part of our governmental structure. The right
13 to a trial by jury, I mentioned yesterday, is a right
14 that's guaranteed under the Constitution, both of this
15 state and of the United States. If you were to look
16 around the world today at most of the justice systems in
17 this world, you would find that the majority of them do
18 not allow citizens to have a trial by jury of their peers.
19 Those trials in those countries are quite often conducted
20 either by government officials or by bureaucrats who
21 handle that sort of thing. The right to a trial by jury
22 of a jury of citizens is a right that's in the minority in
23 this world at this time. It's a right that many Americans
24 have fought and died for. I hope it's a right we always
25 have in this country; that is, a right to be tried by jury

1 of one's peers when you're accused of the commission of a
2 crime.

3 What you're engaged in here is a search for the
4 truth. It's an effort to see that justice is done between
5 the parties that have been brought before this court. In
6 this case, it's the State of South Carolina, which has
7 brought a charge against one of its citizens, the
8 defendant in this case. I will tell you and I think that
9 if I had walked up to you in the hallway today and I had
10 asked you what you would expect a search for the truth to
11 be like, you would have told me, well, if I'm looking or
12 trying to determine what the truth is in any situation, I
13 would want it to be slow. I'd want it to be deliberate.
14 I might want to go over things more than one time to be
15 sure I have it right. And I would expect that's what you
16 would think a search for the truth to be like. And quite
17 often in the courtrooms we do things in a slow and
18 deliberate and sometimes repetitive manner because, again,
19 we are searching for the truth here. Because I hope you
20 realize this courtroom is a place of honor. It's
21 dedicated to the preservation of citizens' rights through
22 those documents I mentioned to you, the Constitution of
23 this state and of the United States.

24 Some people believe our justice system is one of the
25 better ones ever devised on the face of this earth, and as

1 I mentioned yesterday, it's not perfect. It's run by men
2 and it's governed by men, but it's an honest and sincere
3 effort to see that justice is done between the parties
4 that are in this courtroom today.

5 Now, the attorneys who are here to represent their
6 clients are here to present their clients' cases before
7 you during this trial. But I -- I'm sure they'll do an
8 excellent job in presenting those cases to you. But first
9 and foremost, I want to point out that the lawyers in this
10 state and in most of the states of this union are also
11 officers of the court. At some point in time they
12 appeared before a court. They took an oath, an oath
13 that's described as the attorneys' oath, that's prescribed
14 by the court system in this state. And part of that oath
15 is they have sworn to assist you during this trial in your
16 search for the truth in this matter. For that reason, you
17 can expect that the lawyers will act in a reasonable,
18 professional, and an ethical manner during the
19 presentation of their cases before you during this trial.

20 I'm going to point out to you as well, you've come
21 before this court this morning. You have taken an oath to
22 decide this case based upon the law and the evidence
23 presented during the trial of this case. You too are now
24 expected to act in a reasonable, a professional, and an
25 ethical manner in the discharge of your duties as jurors

1 during this case. I want to thank you very much for your
2 willingness to accept the responsibility of making that
3 determination and assisting us in our search for the truth
4 in this case.

5 Now, what I'm telling you now is not intended to be a
6 charge concerning the law in this case. Once all the
7 evidence has been presented and once all the arguments
8 have been made, then I will be charging you concerning the
9 law at that point in time that's to be applied. What I am
10 going to go over with you again is our responsibilities
11 here during the trial, what you might expect to happen
12 during the trial so perhaps you'll understand a little
13 more about what's going on as the trial is proceeding.

14 Now, I've gone over with you this morning the
15 indictment in this case. I'll not go over it with you
16 again at this time. Later on when I charge you on the
17 law, we'll discuss the indictment again at that time. But
18 I've explained to you that the indictment is not in any
19 sense evidence in this case. It cannot be used as
20 evidence in this case. It simply represents the charge
21 that brings the case into this court.

22 To this indictment, the defendant has pled not
23 guilty. And under the laws and constitution of this state
24 and of the United States, that plea places the burden of
25 proof in this trial solely upon the state. It's the

1 state's burden to prove the allegations that are contained
2 in the indictment to you by proof beyond a reasonable
3 doubt. It will be your responsibility as jurors at the
4 close of the trial to make a determination as to whether
5 or not the state has met its burden of proof in proving
6 the allegations that are contained in the indictment in
7 this case. Now, I'll go over all those concepts with you
8 in more detail later on when I charge you on the law. But
9 again, it's your purpose as jurors here to find and
10 determine the facts in this case. And I'll tell you that
11 under our system of justice, the jury is the sole and
12 exclusive judge of the facts in this case.

13 I am not allowed as the presiding officer in this
14 trial to make any comment to you one way or the other as
15 to how you must determine the facts in this case. You
16 see, the law does not allow me an opinion on the subject
17 of the facts in this matter. You're the sole judges of
18 the law in this case. So please don't take from anything
19 I might say or do in the discharge of my duties as the
20 presiding officer to somehow indicate to you that I have
21 an opinion one way or the other as to how you determine
22 the facts in this case. You see, the law doesn't allow me
23 an opinion on the subject. I can assure you I have no
24 opinion as to how you determine the facts in this case.

25 But you know, the same law that makes you the sole

1 judges of the facts in this case makes me the sole judge
2 of the law in this case. At the close of the trial I will
3 charge you concerning the law that you are to apply to the
4 facts as you determine those facts to be. Now, the law
5 doesn't allow me to disagree with you concerning your
6 determination of the facts. The law doesn't allow you to
7 disagree with me concerning the law to be applied to those
8 facts. So the law as I give it to you at the close of the
9 trial is the only law that you can use in making a
10 decision in this case under the oath that you've taken.

11 Now, if you came into the courtroom with some notion
12 or idea or belief as to what the law is or what the law
13 ought to be, I'm going to instruct you to disregard those
14 notions or those ideas. Again, under the oath you've
15 taken, it's your job to take the law exactly as I give it
16 to you and then apply that law to the facts as you
17 determine them to be.

18 Now, I'm going to caution you and you'll find that
19 every time you leave this courthouse during the trial that
20 I'm going to warn you about certain things. Your oath is
21 to decide this case based upon the evidence presented in
22 this trial. The only place you're going to hear evidence
23 in this case is in this courtroom. For that reason, it
24 would be a violation of your oath to try to gather any
25 information about this case from any source outside this

1 courtroom.

2 Now, I'm not so naive to not realize that we have
3 computers everywhere and iPads and whatever else and with
4 a few strokes of your fingers, you can get information on
5 just about anything you would like to get. Now, the
6 veracity of that information sometimes is in question.
7 But I would tell you that it would be a violation of your
8 oath for you to try to gather any information on your own.
9 Also, I'm going to caution you not to discuss the case
10 with anyone, even among yourselves. I pointed out to you
11 earlier when you left the courtroom those discussions
12 might have you begin to make up your mind before you've
13 heard all the evidence or you've heard all the arguments
14 by the lawyers or you've heard the law as presented to you
15 by me. So I'm going to caution you during the trial not
16 to try to gather any information about the case, not to
17 discuss the case with anyone, not to allow anyone to
18 discuss the case with you. And also you should not listen
19 to, watch, or read any media reports concerning this
20 trial. Quite often media reports contain information that
21 would never be allowed in evidence in a court of law and
22 therefore should never be considered by a jury in reaching
23 a verdict in a case presented in a court of law. So,
24 again, I'll caution you each time you leave the courthouse
25 concerning those factors, and I'll be asking you when you

1 return to the courthouse as to whether or not you had been
2 able to follow my instructions in regard to those factors
3 I just talked about.

4 Now, I hope you understand it's important that you
5 keep an open mind in this case until you've heard all the
6 evidence in the case, the parties have made their
7 arguments, and I've instructed you concerning the law.
8 You've been selected as fair and impartial jurors with an
9 open mind concerning the facts that might be involved in
10 this case. And I'm going to ask you to keep that open
11 mind until such time as I ask you to begin your
12 deliberations and to begin to make up your mind in this
13 case. Because at the close of the trial, it's going to be
14 your solemn responsibility to determine the guilt or the
15 innocence of the defendant in this case. And your verdict
16 must be based solely upon the evidence as has been
17 presented to you during this trial and the law as I
18 instruct you at the close of the case.

19 Now, when we begin the trial, I'm going to allow the
20 attorneys to make what's called an opening argument or an
21 opening statement to you. And I'm going to caution you
22 or -- I won't caution you about that, but I'm going to
23 explain to you that the attorneys are allowed to address
24 you the jury directly only on two occasions during the
25 trial. At the beginning of the trial they'll make an

1 opening statement or an opening argument to you, and at
2 the close of the trial, once all the evidence is in,
3 they'll be allowed to sum up that evidence to you or ask
4 you to draw certain inferences from that evidence.
5 They'll make a closing argument at that time.

6 Now, the arguments made by lawyers at the beginning
7 of the trial and at the end of the trial, those arguments
8 are not evidence. The only evidence in the case is
9 testimony from witnesses who have been sworn to tell the
10 truth, who will testify from this witness stand over here,
11 and whatever documents or other evidence goes into the
12 record through the testimony of those witnesses or
13 evidence that comes into the record by agreement of the
14 attorneys in this case. But again, statements made by
15 lawyers do not constitute evidence in the case and should
16 not be considered by you as evidence in this case and
17 can't be used by you directly in determining the guilt or
18 the innocence of the defendant in this matter.

19 Also, I will caution you from time to time the
20 lawyers may make an objection as to the introduction of
21 evidence or the appropriateness of questions that are
22 being asked. And those will be addressed -- objections
23 will be addressed to me. Now, if during my consideration
24 of the objection that's been raised if it's my belief that
25 the discussion that I'm going to have with the lawyers

1 might enter into a discussion of some matter that's not
2 admissible under the rules of evidence that govern the
3 admission of evidence in a court of law, if I think the
4 discussion is going in that direction, I will ask you to
5 leave the courtroom while I have those discussions. Don't
6 think from the fact that I've asked you to leave the
7 courtroom during those discussions that I'm trying to
8 influence your decision in the case. It's simply me doing
9 my job.

10 Part of my job is to see to it that you only consider
11 properly admitted evidence under the rules of evidence
12 that govern the admission of those things in the case. So
13 if I think the discussion may end up discussing something
14 that's not admissible, I'll ask you to leave while I have
15 the discussion. When I've made a ruling, I'll ask you to
16 come back into the courtroom. Don't take that again,
17 though, as an effort by me to influence your decision.
18 It's just me doing my job as the gatekeeper in deciding
19 what evidence is properly admitted and what evidence is
20 not properly admitted in the courtroom. Again, you should
21 not be influenced by anything that I might say or do in
22 the discharge of my duties to influence your decisions
23 concerning the facts in this case.

24 Again, I've told you, you're the sole judges of the
25 facts in this case. And in determining what the true

1 facts are in any case, you must decide whether or not the
2 testimony that you hear from the witnesses who will
3 testify in the trial is believable or not, whether it's
4 credible. Credibility means believability. It's your job
5 as the sole judges of facts to determine the credibility
6 or the believability of the testimony that you will hear
7 during this case. Now, that decision as to whether or not
8 to believe testimony or not is solely a decision within
9 the jurisdiction or the duties of the jury.

10 Now, in deciding whether to believe a witness or not,
11 you have the right to consider such factors as any
12 interest the witness may exhibit; any bias or prejudice
13 you may believe the witness has; the opportunity the
14 witness might have had to see what the witness is
15 testifying about; and some people think it's very
16 important, the manner in which the testimony is delivered:
17 Every courtroom I've ever been in, the witness stand is in
18 full view of the jury box so that you can observe the
19 witnesses as they testify, the way they speak.

20 You have the right to consider anything that's in the
21 record that might help you evaluate the testimony of any
22 witness. That means it's your duty during this trial to
23 pay attention to what the witnesses are saying, to observe
24 the witnesses as they testify. You should use your good,
25 common sense in making a determination as to the

1 credibility or the believability of the testimony you're
2 going to hear. Every single day of your life you make
3 commonsensical decisions as to what you choose to believe
4 and what you choose not to believe, and this trial is no
5 different than any other situation you've been in. Use
6 your good, common sense and make a determination as to the
7 credibility or the believability of the testimony that you
8 hear. For that reason, I'm going to urge you not to let
9 your thoughts wander. Pay attention to what's being said
10 and listen and observe the testimony as it's being given.

11 Now, I know on television the foreperson of a jury is
12 always appointed at the beginning of the trial. I don't
13 do that. I appoint the foreperson of your jury when I
14 charge you concerning the law, and that will be the last
15 thing that you'll hear before you go in and start your
16 deliberations. I do that for one main reason. I will
17 charge you at the close of the trial that you cannot reach
18 a verdict unless it is unanimous. All of you must agree
19 on the verdict before it's the verdict of the jury. For
20 that reason, no juror is more important than any other
21 juror in your group. Sometimes I have the feeling that if
22 I were to appoint a foreperson, somebody on the jury might
23 say, "Well, that must be the smartest person or the most
24 important one; I'm going to let that person listen, and
25 I'll just do whatever they decide." Know it's important

1 that all 12 of you listen to the testimony, be in a
2 position to discuss it with each other because it's the
3 unanimous verdict of the jury that's important, not just
4 the decision of any one person. For that reason, again,
5 I'll appoint the foreperson at the close of the trial.

6 I want all of you to believe that you might be that
7 foreperson. You might be responsible for presiding over
8 the discussions of the jury. For that reason, you must be
9 prepared to be able to conduct those discussions. So,
10 again, I'll appoint the foreperson at the close of the
11 trial. I'll make that decision at that time. In the
12 meantime, if some issue comes up or something you think
13 that I should be aware of, simply talk to the bailiff
14 about it. They'll convey that to me, and I'll take
15 whatever the appropriate action is. There's no need for a
16 foreperson until we begin deliberations. At that time,
17 that person will preside over the deliberations and that
18 person will be responsible to write the verdict once it's
19 reached. So don't think I've forgotten that. I haven't
20 forgotten it. I'm fully aware that I have not appointed a
21 foreperson. I'll do that at the close of the trial.

22 Now, I want to be sure that I have not violated
23 anyone's rights in my opening comments to the jury. Does
24 the state have an objection to anything I've said to the
25 jury thus far?

1 MR. EPTING: No objections from the state, Your
2 Honor.

3 THE COURT: Anything from the defense, objections?

4 MR. COOK: None, Your Honor.

5 THE COURT: Now, ladies and gentlemen, I mentioned to
6 you earlier the state has the burden of proof in this
7 case. And because the state has the burden of proving the
8 allegations in the indictment, we allow the state to go
9 first in its arguments to you. Also it will be allowed to
10 go first, the state will go first in the presentation of
11 evidence, followed by any evidence the defense chooses to
12 put up.

13 Once all the evidence has been presented, at that
14 time the attorneys will be allowed to make their closing
15 statement or argument to you. Once that closing statement
16 has been completed, it becomes my responsibility to charge
17 you concerning the law that you're to apply in this case.
18 Once I've completed that charge, the case will be turned
19 over to you for your deliberations in the jury room.

20 So that's the process we'll go through. Opening
21 arguments, presentation of evidence, closing arguments,
22 charge on the law, and then deliberations by you. So
23 those are the steps we're going to go through. The state
24 is going first. You may proceed with your opening
25 comments.

1 MR. NEWKIRK: Thank you, Your Honor. May it please
2 the Court.

3 THE COURT: Yes, sir.

4 OPENING STATEMENT

5 BY MR. NEWKIRK:

6 Your Honor, Mr. Cook. Good morning, ladies and
7 gentlemen of the jury. Before we get started, I wanted to
8 thank y'all for your service this week. I know it can be
9 kind of a burden having to come up here, but thank you.
10 It's an important role, and this is a very important
11 trial. Hopefully a short one, but still a very important
12 one. And it starts on November the 8th of 2013, when
13 officers with the York County Sheriff's Office responded
14 to the victim's home, Mr. Clark, which was located at [REDACTED]
15 Country Manor Road in Rock Hill in York County.

16 Mr. Clark came home from dropping his children off at
17 a Boy Scout function and realized his home had been
18 ransacked, burglarized, drawers pulled out, items missing,
19 what I can imagine was a very shocking scene for him. So
20 he calls law enforcement, officers respond, and the road
21 officer began a cursory investigation of the scene. In
22 doing so, he realizes I need to call forensic services, I
23 need to call K-9, I need to call a detective. It's pretty
24 serious. We need to get some other people out here to
25 take a look at what's going on, especially when he found

1 out that some of the items that were taken from his home,
2 Mr. Clark's home, were firearms, were weapons.

3 He calls forensic services and K-9 units. Forensic
4 services begins to process the scene like you see on CSI,
5 going in there with gloves, checking for fingerprints and
6 taking pictures of everything. K-9 begins to track what
7 they believe is a scent from the person or persons that
8 were involved in the burglary. They start tracking
9 through the woods, and while they're tracking, they locate
10 certain items that were taken from the home that proceed
11 further and further away from the home. An ammo box. A
12 video game system. A gun safe. A black toboggan, which
13 was not taken from the home but will be important later.
14 A cashbox. A black do-rag.

15 And the scent abruptly ends when it reaches a parking
16 lot that's attached to a church. You'll hear from the K-9
17 detective and the officer. He'll tell you what he thinks
18 that means. But the trail ends. Detectives finish their
19 investigation. Forensic services has taken pictures of
20 everything, and they bag up what they think is the
21 relevant evidence, and that's basically where the
22 investigation ends that day. It kind of stops until about
23 six days later. Now, one thing that officers did do
24 during that investigation was to get the serial numbers
25 for all the guns that were taken, but after that, they

1 really didn't have any other information regarding the
2 burglary, so that was pretty much the end of their
3 investigation.

4 About six days later, a road officer with the York
5 County Sheriff's Office, Deputy Shealy, notices an
6 individual driving a moped that blows through a stop sign.
7 This causes him to initiate a traffic stop, which gets him
8 out of the car. He begins investigating, you know, why
9 did you go through the stop sign, can I have your license
10 and registration. He becomes suspicious, to say the
11 least, and you'll hear from him and you'll hear why he
12 felt that way. But the person that was driving the moped
13 could not provide any real clear information about where
14 he was coming from or where he was going. Eventually he
15 tells officers he's on his way to his girlfriend's house.
16 The officer says, "Well, where does your girlfriend live?"
17 He's not really sure where his girlfriend lives. He
18 eventually comes up with an address on Camden Street,
19 which coincidentally, right in front of him there's a road
20 sign that says Camden Street. But he can't provide any
21 information about exactly where the home is on Camden
22 Street. The officer is suspicious of this and begins to
23 write a traffic ticket for blowing through the stop sign
24 and some other traffic offenses that occurred while he was
25 discussing this with this person.

1 Now, during that investigation, he notices a gun
2 underneath the moped, again becomes suspicious. Seizes
3 the gun and calls into the Sheriff's Office, says, "I've
4 got this gun. Here's a serial number." Now, I told you
5 that serial numbers were collected from the burglary and a
6 detective that had been involved in the burglary
7 investigation, an alarm goes off and says, "That's our
8 gun." Now, the person that was driving that moped, the
9 person who the gun was located underneath the moped that
10 he was driving is seated in this courtroom next to his
11 counsel. That's the defendant, Antonio Jordan.

12 Now, we talked about this toboggan. This is where
13 this becomes important. Officers start to think, well,
14 the gun was located under the moped. Let's take a DNA
15 sample. So they take what I just found out is called a
16 buccal swab, where they swab the inside of your cheek.
17 DNA was taken from some items in that trail that we talked
18 about, behind the house of the victim where the gun was
19 missing. The DNA from the defendant and the DNA from one
20 of the items that was located in that trail was a hit for
21 the defendant, Mr. Jordan. And you'll hear from all of
22 the scientists that will put it in a much greater
23 perspective than I can because certainly science is not my
24 strong point.

25 Now, I do want to talk -- that's essentially where

1 our investigation is, and I do want to talk about one
2 legal premise the judge is going to instruct you on at the
3 end in the charge, but I want you to be thinking about it
4 while we're going through this trial. And it's a concept
5 in South Carolina that we refer to as the hand of one is
6 the hand of all. And kind of what I would consider
7 outdated terminology, but essentially what it means is if
8 I were to break into a house, hypothetically, and I were
9 to take some items from that house, let's say a gun, and
10 my cocounsel here, Mr. Epting, were to stand outside the
11 house and act as my lookout or he would drive the car that
12 we got away in, he is just as guilty of that burglary as I
13 am because he knows what's going on. He's outside and
14 he's actively assisting in that burglary by being a
15 lookout. So that's just kind of a concept that I want you
16 to think about through the course of this trial and while
17 you're hearing the testimony.

18 At the end of the trial, Mr. Epting is going to come
19 back and he's going to be delivering a closing argument to
20 you like the judge instructed, and he's going to argue the
21 case to you. I just wanted to kind of give you the facts
22 and kind of what you're going to hear in the next day or
23 two. At the end, though, when he does come and talk to
24 you and the judge instructs you on the law, between now
25 and then I want you to be thinking about something for me,

1 if you can, because you're going to be hearing a lot and
2 you're going to be hearing a lot of science, but I want
3 you to think about one thing. Think about what the
4 officers are going to find at the end of that trail that I
5 talked about from the house where the gun was taken and
6 burglarized to the end of the trail where the DNA was.
7 And I think that if you listen to the testimony and you
8 absorb everything, you're going to find that at the end of
9 that trail, there's only one person, and he's here, and
10 that's Antonio Jordan. Thank you for your time.

11 THE COURT: For the defense, Mr. Cook.

12 MR. COOK: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 OPENING STATEMENT

15 BY MR. COOK:

16 Mr. Epting, Mr. Newkirk, Your Honor, ladies and
17 gentlemen of the jury, my name is Dave Cook. And I
18 represent Mr. Jordan. I just want to touch on a few
19 points of law before we get into the allegations by the
20 state. However, I can't avoid saying one sentence. The
21 solicitor based a lot of things on science in his opening
22 argument. And so I would ask that you pay close attention
23 to the admission of the evidence from a scientific
24 viewpoint as well. And that will be drawn out more later
25 in my closing argument.

1 For my opening argument, I just want to touch again
2 on a few points that you've already heard, but I'd like to
3 elaborate on them with the mind-set that I believe all of
4 us are trying to get us out of here as fast as we possibly
5 can because we've got trial experience and we realize that
6 jurors have lives. But nevertheless, I would begin by
7 reiterating the quote I heard from His Honor, the judge,
8 that I think is very important, that the most important
9 duty that you can serve for your country aside from
10 serving in the service of the military is jury duty. And
11 that has been attributed to Winston Churchill, and it's a
12 very important quote that we all live by because we all
13 need to understand that people have died on the
14 battlefield and there's nothing that can replace that.
15 That's the ultimate sacrifice that you can give for your
16 country and that they fought in those wars overseas so
17 that we can have our liberties here in the United States
18 of America, which is the best nation in the world in
19 regards to judicial systems and every other facet, but
20 what's relevant today is the judicial system.

21 If you are a close study of history, beginning with
22 the Magna Carta to today, you'll find that this system is
23 the culmination of everything that's been taken that's
24 good and that works out of every judicial system in the
25 history of humanity. It separates us from the rest of the

1 world because if you were in Stalinist communist Russia,
2 when you're accused of a crime, you go to jail. That's
3 pretty much the end of it. Just the accusation itself.

4 But in the United States, per the Constitution forged
5 by our founding fathers, a defendant in this country --
6 Antonio Jordan sitting there in front of you, who has been
7 accused of this crime, who is adamantly maintaining his
8 innocence, hence the reason we're having this trial,
9 there's a little snag between the arrest and jail. And
10 that's called a jury trial and the jury of his peers, and
11 he's selected you all today along with the assistance of
12 the solicitors because we all think that you're very
13 reasonable people, very open minded and very rational.

14 And so I would say this: That I've noticed -- I
15 think all of you at the end of the day are going to go
16 home or at the end of the trial, you're going to get back
17 into your lives, pick up your kids from school, talk to
18 your spouse about what you have for work tomorrow, things
19 of that nature. And after a few days, you're probably
20 never going to think about this again unless somebody asks
21 you about it. But for my client, the decision that you
22 make today and the attention that you pay during this
23 trial is the most important facet of his life. He's
24 charged with a crime. His liberty is at stake, and he's
25 requesting a jury trial by his peers. And so all he asks

1 is simply -- he appreciates your presence. We all realize
2 you have places to go, but he asks that -- would
3 appreciate your attention in this matter. And the
4 seriousness, to appreciate the seriousness of the matter.

5 Having said that, I'll move on. So he definitely
6 appreciates your participation today. There are a lot of
7 people who shirk jury duty. Of course they'll be dealt
8 with. But nevertheless, moving on. I want to touch on
9 three quick topics. I'm going to really discuss them in
10 my closing arguments, but I want to at least touch on them
11 before you today.

12 The first is that of the presumption of innocence.
13 And I realize that that's a lofty phrase. But
14 unfortunately, I think in American culture, I call it the
15 sandbox mentality from grade school. If you're in grade
16 school, it's not you're innocent until proven guilty; it's
17 you're guilty until you prove yourself innocent. If
18 somebody says a rumor about you and you have a tendency to
19 automatically start believing that. Some of the most
20 scurrilous, unfounded rumors are automatically believed
21 until this person defends themselves.

22 So I'm asking you to fight against that tendency
23 that's instilled from grade school and realize just how
24 important it is that my client is presumed to be innocent
25 until after hearing all of the evidence. You're in the

1 deliberation room. At that point if you think he's
2 guilty, by all means, find him guilty. But if you think
3 he's not, by all means, don't. So that's my take on the
4 presumption of innocence. And that concept of the
5 presumption of innocence is intertwined with a couple of
6 other legal concepts. One of them is that the burden is
7 on the state to prove my client innocent -- guilty. The
8 burden is not on my client to prove himself innocent.
9 Those concepts are interrelated.

10 Finally, I want to address the words "beyond a
11 reasonable doubt." That's the standard that the jurors
12 are to use in deliberating criminal trials in the United
13 States of America. That phrase is from the Constitution,
14 and it's very important because there are different
15 standards in different trials. If this were a civil trial
16 about some business aspect or component where somebody
17 just cuts a check, the standard for those trials is called
18 a preponderance of the evidence. A lot of times attorneys
19 will use the two to try to delineate, distinguish them for
20 the jurors. In a trial for the
21 preponderances-of-the-evidence standard, a lot of times we
22 think about Lady Justice, who's blind. She has the scales
23 of justice here. If the scale tips in one direction
24 towards either of the litigants, then the other party has
25 met their burden of proof by a preponderance of the

1 evidence. It's 51 percent. That's all you need in a
2 civil trial.

3 In a criminal trial, we have beyond a reasonable
4 doubt. And the phrase is complex. Law professors have a
5 hard time explaining it, much less defense attorneys. But
6 the Supreme Court of this state has helped with this
7 explanation by essentially defining what that phrase means
8 for jurors. And that definition says that after hearing
9 all of the evidence, a reasonable juror while in the
10 deliberation room, if they hesitate in their deliberation,
11 then the state has not met their burden beyond a
12 reasonable doubt. The U.S. Supreme Court has said you
13 have to be firmly convinced. So I will touch on that
14 again in closing, but I would just like you to keep that
15 in mind during this trial. Thank you for your time.

16 THE COURT: State may call its first witness.

17 MR. NEWKIRK: Thank you, Your Honor. State calls
18 Deputy Covert to the stand.

19 EDDIE COVERT, after having first being duly sworn,
20 testified under oath as follows:

21 THE COURT: State your name, please.

22 THE WITNESS: Edward Covert.

23 THE COURT: Thank you.

24 Counselor, your witness.

25 MR. NEWKIRK: Thank you, Your Honor.

EDDIE COVERT - DIRECT EXAMINATION BY MR. NEWKIRK

1 DIRECT EXAMINATION:

2 BY MR. NEWKIRK:

3 Q Good morning, Deputy.

4 A Good morning.

5 Q I know you just stated your name for the record.
6 Could you please introduce yourself to the jury, though.

7 A I'm Deputy Edward Covert. York County Sheriff's
8 Office.

9 Q And, Deputy, how long have you been employed with the
10 York County Sheriff's Office?

11 A About two and a half years.

12 Q Do you have any prior law enforcement experience
13 before that?

14 A No.

15 Q In order to become a deputy with York County
16 Sheriff's Office, did you have to go through any kind of
17 training?

18 A Yes, sir.

19 Q Could you please explain to the jury what kind of
20 training you had to go through.

21 A I attended the South Carolina Criminal Justice
22 Academy for 12 weeks. It's in Columbia, South Carolina.

23 Q Do you have additional training once you were hired
24 by the Sheriff's Office?

25 A We have monthly training every month. In-service

EDDIE COVERT - DIRECT EXAMINATION BY MR. NEWKIRK

1 training. We go over, recertify in certain aspects of law
2 enforcement every month.

3 Q And currently today, you are up to date and certified
4 in everything you need to be to be an on-the-road deputy?

5 A Yes, sir.

6 Q Okay. I'm going to direct your attention to November
7 the 8th of 2013. Do you recall if you were on duty that
8 day?

9 A I was.

10 Q Did you have any reason why you may have interacted
11 with a man named Derek Clark?

12 A Yes, sir, I did.

13 Q Could you please explain that to the jury.

14 A Yes. I think 1:45 in the afternoon on November 8, I
15 received a call from my dispatcher to report a burglary.
16 And that was at -- the location was [REDACTED] Country Manor
17 Lane in Rock Hill, York County, South Carolina. At that
18 point, I responded to the scene for a reported burglary.

19 Q And could you please describe the scene upon your
20 arrival or kind of your investigation when you arrived.

21 A Yes, sir. I arrived at [REDACTED] Country Manor Lane. At
22 that point I encountered the victim, Derek Clark. He
23 informed me his home had been burglarized. When I got to
24 the residence, I noticed the back door was shattered.
25 There's a half-glass pane in the back door as well as the

EDDIE COVERT - DIRECT EXAMINATION BY MR. NEWKIRK

1 storm door was open, but it appeared there was forced
2 entry into the residence. I entered the residence and did
3 a protective sweep to make sure there wasn't anybody else
4 inside or anybody remaining in the residence.

5 General look inside the residence was that everything
6 was disheveled. Items had been gone through and rummaged
7 through, so obviously not -- as Mr. Clark conveyed to me,
8 that's not how he left his house a couple hours prior to
9 that.

10 Q Did you do anything else while you were at the house?

11 A Yeah. Based on the time frame that Mr. Clark said
12 this may have occurred, what -- being about three hours, I
13 believe. We contacted my supervisor, who then contacted
14 K-9 to have a dog come out and do a track to see if they
15 could locate any kind of scent. I also contacted forensic
16 services to come out and process the residence.

17 Q Once the K-9 unit and forensic services unit
18 responded to the scene, what, if any, was your involvement
19 in the continued investigation of this case?

20 A When K-9 arrived on scene, we had kind of a limited
21 manpower at that point. There was one officer that was
22 the dog handler. There was another officer that was with
23 him. They began that track through the woods towards Old
24 Friendship Road, and I assisted on perimeter as they were
25 tracking.

EDDIE COVERT - DIRECT EXAMINATION BY MR. NEWKIRK

1 Q And, Deputy, did you have any other involvement in
2 this case that you feel might be relevant to tell the
3 jury?

4 A No, nothing past that day.

5 Q I don't have any further questions for you, Deputy.
6 Could you please answer any questions Mr. Cook might have.

7 THE COURT: Your witness, Mr. Cook.

8 MR. COOK: No questions, Your Honor.

9 THE COURT: All right, sir. You may step down.

10 MR. EPTING: Your Honor, I don't have any further
11 questions for this deputy. May he be excused?

12 THE COURT: Any objections?

13 MR. COOK: Without objections.

14 THE COURT: Sir, you're free to go. Thank you for
15 coming today.

16 State may call its next witness.

17 MR. EPTING: Thank you, Your Honor. The state calls
18 Derek Clark to the stand.

19 DEREK CLARK, after having first being duly sworn,
20 testified under oath as follows:

21 THE COURT: Once seated, state your name, please.

22 THE WITNESS: Derek Clark.

23 THE COURT: Thank you.

24 Mr. Epting, your witness.

25 MR. EPTING: Thank you, Your Honor.

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 DIRECT EXAMINATION

2 Q How you doing, Mr. Clark?

3 A Fine, how are you?

4 Q I'm doing well. Thank you for asking.

5 Mr. Clark, could you state your current residence for
6 the record.

7 A [REDACTED] Country Manor Lane in Rock Hill.

8 Q Is that where you were living November 8th of 2013?

9 A Yes, it was.

10 Q I want you to tell the jury in your own words what
11 happened that day, when you first left the house and when
12 you first noticed something was amiss.

13 A Well, I got up that morning. I was off on Friday, I
14 believe it was. And the Boy Scouts had a campout that
15 weekend, so I had their equipment trailer at our house,
16 and I hooked it up and took it to where they were camping.
17 And I had some other errands to run, and I did that. And
18 I stopped and got lunch and returned home. And when I
19 went in through the carport door, I noticed a red Solo cup
20 that was laying in the kitchen floor, which was really out
21 of place. It wasn't like that when I left. And then as I
22 became more aware of everything, I looked up and every
23 cabinet door in the whole kitchen was standing wide open.
24 The laundry room, which is off the kitchen, the doors was
25 all open in there as well.

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 I went back outside and retrieved a pistol I had in
2 my truck and went through the rest of the house at that
3 time. And there was nobody there. The back door was
4 open. The glass was broke out of it. Every drawer in my
5 son's room had been gone through. All of his stuff,
6 clothes, personal belongings were all out on the floor.
7 Clothes were out of the closet. The bathroom had stuff
8 all pulled off the shelves in it. Every room in the house
9 was that way, the bedroom, master bedroom. Our clothes
10 were all pulled out of the drawers on the floor. Just,
11 you know, sickening feeling. Just scared, angry. That's
12 when I called the police, told them that my house had been
13 burglarized. You know, they showed up, and we went
14 through everything again.

15 Q Who was first to arrive, Mr. Clark? Do you recall?

16 A The deputy that was just here, Mr. Covert.

17 Q He was the first one to arrive and spoke with him?

18 A Uh-huh.

19 Q And fair to say your house was not left in that
20 condition?

21 A No, it was not.

22 Q And you were gone for approximately how long?

23 A Three, four hours, something like that.

24 Q This was approximately what time in the day?

25 A I probably left around nine or ten, got back around

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 one, 1:30.

2 Q We may be jumping around in time here, but at some
3 point did you determine that things had or had not been
4 taken from your house?

5 A Yes, I did.

6 Q Could you tell the jury what things you immediately
7 or eventually noticed were missing.

8 A Immediately I was concerned about pistols I had in
9 the house, and there were four of them missing.

10 Q Could you walk -- to the best of your memory, could
11 you walk the jury through those pistols, make and model.

12 A One was a Springfield XD, .40 caliber. A Taurus .357
13 revolver. A Kel-Tec .380, semiautomatic pistol. And an
14 old .32 revolver I had.

15 Q Were any modifications done to the Kel-Tec .380?

16 A The Kel-Tec .380 had a Crimson Trace laser sight
17 placed on it.

18 Q And do you usually secure those guns, or do you leave
19 them out?

20 A Usually one or so is left out. The other were in a
21 locked gun box beside the bed.

22 Q Could you describe that gun box for the jury in a
23 little bit more detail.

24 A It was a black gun vault, gun safe that had a hand
25 pad on top to unlock it.

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 Q So a hand what on top?

2 A It had a hand impression on top that you mash the
3 button to unlock it.

4 Q In theory, it would recognize your fingerprints and
5 open it; is that correct?

6 A It wouldn't recognize the fingerprints exactly. It
7 would just be a button that you mashed in a certain order
8 to open it.

9 Q Got you. I think I understand.

10 Before we get into any more detail, let me ask: Do
11 you know Antonio Jordan?

12 A No, I do not.

13 Q On the date in question, did Mr. Jordan have any
14 permission whatsoever to enter into your house?

15 A Absolutely not.

16 Q Was your wife living with you at this time?

17 A Yes, she was.

18 Q Did she give him permission?

19 A No.

20 Q And just before we're clear, your house at that time,
21 in the woods behind your house, was that in York County?

22 A Yes.

23 Q I'd like to hand you some exhibits.

24 MR. EPTING: I believe they are already in the
25 record, Your Honor --

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 THE COURT: Ladies and gentlemen, let me point out to
2 you, before you came in, the attorneys agreed on certain
3 exhibits, mostly photographic exhibits. They have already
4 been put into evidence. So those documents are already in
5 evidence at this time.

6 You may proceed.

7 MR. EPTING: Thank you, Your Honor.

8 Q I'll start out of order here, if that's all right.
9 I'd like you to look at State's Exhibit 3 and then State's
10 Exhibit 1-A through 1-BB. Double B.

11 A Okay.

12 Q Do you recognize State's Exhibit 3?

13 A Yes.

14 Q What do you recognize State's Exhibit 3 to be?

15 A It's an aerial view of our neighborhood.

16 Q Do you recognize your house on that aerial view?

17 A Yes.

18 MR. EPTING: Your Honor, we'd ask permission to
19 publish State's Exhibit 3.

20 THE COURT: You may do so. And by "publish," that
21 means we're going to show it to you on the screen.

22 Q Could you describe the roads? What's that road at
23 the top?

24 A The top is Reservation Road.

25 Q And going down one more?

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 A Coming down is Old Friendship.

2 Q And does the house -- the street next to your house
3 intersect with Old Friendship?

4 A Yes.

5 Q Can you describe that based upon State's Exhibit 3?

6 A It's Country Manor Lane and --

7 THE COURT: Sir, if you -- you can step down and
8 point it out, if you'd like.

9 THE WITNESS: If that would help.

10 THE COURT: If you'd like to do that. You may step
11 down.

12 Q And since you're stepping down, could you point to
13 which -- to your house, if it isn't even collected on this
14 map.

15 A This is my house right here.

16 Q That's your house?

17 A Yes.

18 Q That's where you were living November 8th, 2013?

19 A That's where I'm currently living and living when he
20 took it.

21 Q Please have a seat.

22 If you would, Mr. Clark, set State's Exhibit 3 down
23 and look through all of the marked State's Exhibit 1. And
24 once you're done looking through those, let me know if you
25 recognize them.

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 A Yes, sir.

2 Q Are State's Exhibits 1, all of them, are they fair
3 and accurate depictions of the state of your house when
4 you returned home November 8th, 2013?

5 A They are.

6 MR. EPTING: Your Honor, at this time, I'd like to
7 publish those exhibits.

8 THE COURT: You may do so.

9 MR. EPTING: Thank you, Your Honor.

10 Q Mr. Clark, I'd like you to walk the jury through
11 these pictures. What are we looking at here?

12 A That's the front of my house, the mailbox in the
13 front. That's a picture of the front of the house. The
14 end of the house where the garage is and the backyard.
15 The patio in the back of the house. The back door that
16 was broken into. Window that was busted out.

17 Q And that was not like that when you left?

18 A No, sir. The inside of the house, the -- right
19 inside that back door. Inside the house in the kitchen.
20 The carport door in the kitchen. The kitchen as well.
21 The kitchen again. That's stuff inside the house that was
22 went through. The living room.

23 Q Were the cushions like that when you left?

24 A No, sir.

25 Living room. Back in the kitchen, I believe. Or the

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 dining room. Yeah, the dining room. Dining room.

2 Q Is that door we see in the back the one that was
3 broken?

4 A That is. Same room. That's my son's bedroom and his
5 bed. His chest of drawers. Nightstand beside his bed.

6 Q Before we get to these next pictures, do you
7 recall -- you described a safe that had a depression
8 mechanism for a hand. Where was that usually kept?

9 A That was in the master bedroom beside the bed.

10 Q Beside the bed. Okay.

11 What are we looking at here?

12 A It's the bathroom. Bathroom. Same picture in the
13 bathroom.

14 Q Later on after you consulted with your wife, did she
15 mention any jewelry as having been taken?

16 A Later on, yes, she did. After we were able to go
17 through some things, she found some stuff that was
18 missing.

19 Q And let me ask you again: Was the jewelry box in
20 that condition when you left the house?

21 A No, it was not. Jewelry box in the bathroom. All
22 the stuff had been taken out of it and put on the floor.
23 The -- that's the master bedroom. Master bedroom. Chest
24 of drawers in all of the master bedroom. Bed. Master
25 bedroom. The closet in the master bedroom. The .

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 nightstand there on the side of the bed in the master
2 bedroom, the empty space next to the bed is where the gun
3 vault safe was sitting, right there.

4 That's master bedroom. Master bedroom. The bathroom
5 in the master bedroom. That's a spare bedroom. Spare
6 bedroom.

7 Q We're looking at in the middle of that picture
8 something that appears like a rifle. Can you explain what
9 that is for the jury.

10 A At the bottom right corner there is a air rifle,
11 pellet rifle that was left out. All the long guns I had
12 were locked up in a safe that was in that room. They
13 tried to get into it but were unable to break it open.

14 Q Is that a heavy-set?

15 A Yes, sir.

16 Q Was it bolted or secured in any way that couldn't
17 cause it to be removed easily?

18 A It is so heavy, it couldn't be removed easily.

19 Q You said there was something wrong with the safe, if
20 I'm not mistaken, right?

21 A Pry marks on the door where they tried to break into
22 it.

23 Q But that was unsuccessful, if I heard you correct?

24 A Yeah, it was unsuccessful. They were not able to get
25 into it.

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 Q That was in this room?

2 A Yes, sir.

3 Q Were any other guns stored in this room, or ammo?

4 A No.

5 Q That's all in that same room, spare bedroom. Spare
6 bedroom. Spare bedroom. Spare bedroom. Spare bedroom.
7 Computer desk in the spare bedroom. Shelves and all in
8 the spare bedroom. Spare bedroom. Back to front of the
9 house. Cycled all the way through.

10 MR. EPTING: With the Court's permission, I would
11 like to publish State's Exhibit 2, see if the victim
12 recognizes it.

13 THE COURT: Yes, sir.

14 Q While we're getting that up, Mr. Clark, did you
15 participate in the K-9 track that went behind your -- in
16 the woods behind your home?

17 A I did not participate, no.

18 Q Do you think you would be able to recognize items
19 from your house in those woods?

20 A Yes.

21 MR. EPTING: For the record, on the screen right now
22 is 2-A, and we plan to run these sequential through 2-II.

23 THE COURT: They've been previously admitted. You
24 may proceed.

25 MR. EPTING: Thank you, Your Honor.

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

- 1 Q Mr. Clark, do you recognize what's shown on
2 State's 2-I on the big screen?
- 3 A No, sir, I'm not sure what that is.
- 4 Q How about now?
- 5 A It's a Boy Scout bag, yes, sir.
- 6 Q Did that appear to be a bag from your home?
- 7 A It does.
- 8 Q Do you recognize this item?
- 9 A It's some ammo.
- 10 Q And again, another shot of the Boy Scout bag, I'm
11 assuming.
- 12 A Yes, sir, from the Scout store.
- 13 Q What are we looking at here?
- 14 A It's a box of Remington ammunition.
- 15 Q Did you have similar ammo in your home?
- 16 A I did.
- 17 Q Do you recognize these items?
- 18 A Yes. That's the gun vault, gun safe that was beside
19 the bed.
- 20 Q What about the items in the bags?
- 21 A Yeah, that's some video games and stuff, I believe.
22 An Xbox may be in that bag.
- 23 Q Is that the box that was next to your bed?
- 24 A Yes.
- 25 Q That big empty space on your nightstand?

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 A Yes.

2 Q Closer look. You mentioned earlier it was a
3 depression-activated lock; is that correct?

4 A Correct. It's a sequence you mash to make it quicker
5 to get in the box versus looking at a number or something.

6 Q And that's where you kept several of your pistols; is
7 that correct?

8 A Yes, sir, I believe there were three pistols in that
9 box.

10 Q Make more clear here the bags.

11 A Yes.

12 Q And I mentioned -- you said video game system; is
13 that correct?

14 A Yes, sir.

15 Q Another shot of the ammo box.

16 A Yeah, and that's the shelf that was inside the gun
17 safe.

18 Q And now can you tell based on this what type of video
19 game system it was?

20 A Yeah, it's an Xbox.

21 Q Is that yours or your son's or both?

22 A Both.

23 Q Was it set up inside your house or was it --

24 A I don't believe so at the time. I think he had put
25 it away.

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 Q Did that come from inside your house?

2 A No, sir.

3 Q Do you recognize this vantage point? It's okay if
4 you don't.

5 A No, I can't recognize that from the picture.

6 Q How about this one?

7 A I believe that's Old Friendship Road at the church.

8 Q You said that's a church?

9 A Yeah, Providence Baptist Church.

10 Q Do you think you could ID this church on the aerial,
11 if you were shown an aerial?

12 A Oh, yeah, yeah.

13 Q Where is the church we're looking at?

14 THE COURT: You may step down to point it out.

15 THE WITNESS: It's the building with the green roof.

16 Q Is that top left of the screen?

17 A Top left of the screen, yes, sir.

18 Q All right. I believe this is where we left off,
19 correct?

20 A I believe so.

21 Q That's the green-roofed church --

22 A Yes, sir.

23 Q -- you just identified on State's Exhibit 3. Do you
24 know what we're looking at here?

25 A That's property owned by the church.

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 Q Do you recognize this item? Did this come from your
2 house?

3 A I do not believe so.

4 Q Did anything in the picture here come from your
5 house?

6 A No. I'm not sure what that is in the bucket.

7 Q Do you recognize this?

8 A I can't from that picture. Oh, it's a cashbox
9 drawer.

10 Q Did that belong to anything that was yours? It's
11 okay if you can't remember.

12 A Yes.

13 Q What did that belong to?

14 A I believe it was a black Brink's cashbox for making
15 change and stuff, like at a bake sale or something.

16 Q And prior to leaving, that was inside your home,
17 correct?

18 A Correct.

19 Q I would like to zoom in a little bit on this. Do you
20 recognize this any better? That's okay if you don't.

21 A I believe it's the cashbox. I think it's the
22 backside. Looks like the hinge on the back of it.

23 Q Do you recognize this item?

24 A Yes, that's my I guess voter registration card.

25 Q Where was that typically kept?

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

- 1 A It was in the room with the computer.
- 2 Q This the other side of it?
- 3 A I believe so, yes, sir. That's my name on it.
- 4 Q Does this help out any?
- 5 A Yeah, that's the tumblers on the front of the
- 6 lockbox.
- 7 Q You said that came from your house, correct?
- 8 A Correct.
- 9 Q Was that in your house, to the best of your
- 10 knowledge, the morning of November 8, 2013?
- 11 A To the best of my knowledge, yes, it was.
- 12 Q Can you recognize this at all?
- 13 A Looks like an earring.
- 14 Q And your wife had some jewelry; is that correct?
- 15 A Yes, sir.
- 16 Q And if I remember correctly, correct me if I'm wrong,
- 17 didn't you state earlier your wife had some jewelry that
- 18 was missing?
- 19 A Yes, sir, she did.
- 20 Q Do you recognize this picture?
- 21 A It's a church parking lot.
- 22 MR. EPTING: Your Honor, just for the record, we've
- 23 run essentially sequentially through State's Exhibits 2-A
- 24 through 2-II. Beg the Court's indulgence.
- 25 Q At some point you mentioned earlier meeting with

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 officers who arrived; is that correct?

2 A Sir?

3 Q You met with the first officer, Deputy Covert, who
4 arrived --

5 A Yes.

6 Q -- is that your testimony?

7 At any point later on, did law enforcement contact
8 you for follow-up?

9 A Yes.

10 Q Do you remember who that was?

11 A I believe Detective Schettler called when they had
12 pulled over and -- Antonio Jordan and found the Kel-Tec
13 pistol.

14 Q Got you. And this is my fault because we skipped
15 around some. Eventually you realized some items were
16 taken from your house; is that correct?

17 A Yes, sir.

18 Q Was that before or after police processed the house?

19 A Well, I mean, we knew some of the stuff was missing
20 before, and we learned of more stuff afterwards.

21 Q And when did you learn the pistols were taken?

22 A I knew the pistols were taken immediately.

23 Q Did you provide the officers with any type of
24 identifying information for those pistols?

25 A Yes, sir, I had all the security numbers for

DEREK CLARK - DIRECT EXAMINATION BY MR. EPTING

1 everything except for the old revolver.

2 Q Okay. And you provided that to law enforcement?

3 A I did.

4 Q .And that was so they could identify it should it be
5 found; is that correct?

6 A That's correct. Yes, sir.

7 Q I have no further questions for you at this time.
8 Please answer any questions Mr. Cook may have for you.

9 THE COURT: Mr. Cook, you may cross-examine.

10 MR. COOK: No questions, Your Honor.

11 THE COURT: All right, sir. You may step down.
12 Thank you very much.

13 THE WITNESS: Thank you.

14 THE COURT: Ladies and gentlemen of the jury, we're
15 going to stop at this time for lunch. As you leave the
16 courthouse, my instructions are as follows: Please don't
17 listen to, watch, or read any media reports about the
18 case. Don't discuss the case. Don't allow anyone to
19 discuss it with you. Should someone try to contact you
20 concerning your service on this jury panel, I'd ask that
21 you report that upon your return. It's okay to tell
22 family or friends that you've been selected to serve on a
23 jury and you're in that process, then that conversation
24 should end and move on to something else. Again, don't
25 discuss anything about this case with anyone. It would be

1 improper for you to try to gather any information on your
2 own from outside the courtroom, so I'll instruct you not
3 to do that.

4 Now, upon your return to the courthouse, I'll be
5 asking you if you've been able to comply with these
6 instructions. Please be in a position to tell me you have
7 complied with the instructions. Now, I'm going to ask
8 that you be back in the jury room at 1:30. That's about
9 an hour and 15 minutes from now. That should give you
10 time to get to lunch and then get back here safely. So be
11 back here about 1:30. We should be in a position to
12 resume at that time. The bailiff will show you out.
13 Everyone remain seated while the jury retires. Thank you
14 very much. You're free to go.

15 (The jury left open court at 12:16 p.m.)

16 THE COURT: Court will be in recess until 1:30.
17 Defendant remains in custody. Thank you very much.

18 MR. EPTING: Your Honor, could we address one very,
19 very brief matter?

20 THE COURT: Oh, sure. Yes sir.

21 MR. EPTING: And I apologize. Defense has been very
22 accommodating, allow us to see this case along. If they
23 would concede to the admission of the redacted prior
24 convictions, then that would save us from having to call
25 the Clerk of Court from Lancaster.

1 MR. COOK: Without objection. I thought I already
2 had.

3 THE COURT: He's conceding to their admission. Thank
4 you very much.

5 MR. EPTING: Thank you, Your Honor.

6 MR. COOK: Thank you, Your Honor.

7 MR. EPTING: And, Your Honor, prior to the
8 introduction of these, could Your Honor give the jury a
9 redaction instruction, something to effect that items --
10 some things have been taken out pursuant to court order.

11 THE COURT: Yeah, I'll be glad to explain that these
12 are exhibits that have been agreed to and certain
13 unnecessary or prejudicial information may have been
14 removed.

15 MR. EPTING: Thank you, Your Honor.

16 (A recess was taken from 12:18 p.m. to 1:35 p.m.)

17 THE COURT: State ready to proceed at this time?

18 MR. EPTING: We are, Your Honor.

19 THE COURT: Defense ready?

20 MR. COOK: Yes, sir, Your Honor.

21 THE COURT: Let's bring the jury in, please.

22 (The jury entered the courtroom at 1:35 p.m.)

23 THE COURT: The record will reflect the jury has
24 returned to the courtroom. If there was any juror who was
25 unable to comply with my instructions during your break,

1 please stand. It appears that all jurors have been able
2 to comply with my instructions thus far.

3 When we broke earlier, the state was in the process
4 of presenting its evidence. You may call your next
5 witness.

6 MR. NEWKIRK: Thank you, Your Honor. State calls
7 Randy Clinton.

8 RANDY CLINTON, after having first being duly sworn,
9 testified under oath as follows:

10 THE COURT: State your name, sir.

11 THE CLERK: Randy Clinton.

12 THE COURT: Thank you.

13 Counselor, your witness.

14 MR. NEWKIRK: Thank you, Your Honor.

15 DIRECT EXAMINATION:

16 BY MR. NEWKIRK:

17 Q Randy, I know you just stated your name for the
18 record, but could you please introduce yourself to the
19 jury, including your name and where you currently work.

20 A Randy Clinton. I'm with the York County Sheriff's
21 Department K-9 division.

22 Q And how long have you been in that position?

23 A In the K-9 division for 27 years.

24 Q Did you have prior law enforcement experience before
25 you were attached to the K-9 division?

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 A Yes, sir.

2 Q So all in all, how long have you been in law
3 enforcement?

4 A Going on 31 years.

5 Q And could you please explain to the jury a little bit
6 about what it is that you do in the K-9 division.

7 A I'm over the K-9 division over the drug dogs,
8 tracking dogs for the Sheriff's Office.

9 Q And in order to have that position, did you have to
10 receive special training?

11 A Yes, sir.

12 Q Could you please explain that training to the jury.

13 A Been trained through South Carolina Law Enforcement
14 Division on man tracking with a dog -- without a dog, been
15 through several seminars with the National Police
16 Bloodhounds. Been on on-the-job training for 27 years.

17 Q When you say that you trained dogs, could you please
18 explain a little bit to the jury how you go about that
19 process.

20 A Like right now we got seven puppies. They are five
21 weeks old. We'll start -- when they're puppies, we'll
22 start teaching them to follow us, respond to our voice and
23 everything to get them to follow us and then we start
24 playing hide and seek with them. At the period of time we
25 start playing hide and seek, they see us walk off and then

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 also we'll go around the corner and we'll let them come
2 and chase us and find us. Just a cat and mouse game with
3 the puppies.

4 Q And what kind of dog breed do you use?

5 A Bloodhound.

6 Q And why in particular do you use bloodhounds?

7 A It is bred for tracking suspects, trailing.

8 Q And have you ever been qualified as an expert in dog
9 tracking?

10 A Approximately 10 to 12 times.

11 Q Have you been qualified as an expert in this county?

12 A Yes, sir, 10 to 12 times.

13 MR. NEWKIRK: Your Honor, considering Mr. Clinton's
14 extensive experience in the field of K-9 tracking and his
15 31 years in law enforcement, being that would be the bulk
16 of his testimony, I ask he be qualified as an expert in
17 such field.

18 THE COURT: Any objection?

19 MR. COOK: Without objection, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury, let me
21 explain to you a little bit about what we're doing right
22 now because perhaps there will be other witnesses who will
23 be in this same situation. I've talked to you earlier
24 about the rules of evidence that govern the introduction
25 of evidence in a courtroom. Those rules generally state

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 that witnesses are not allowed to state opinions when they
2 testify. In other words, they're required to testify
3 concerning facts that are within their knowledge. They're
4 not allowed to give opinions on subjects.

5 There's an exception to that general rule for
6 witnesses who are declared to be experts within some field
7 or profession or calling. For witnesses that are declared
8 experts in a particular field, they are allowed to state
9 their opinions within the area of their expertise and also
10 state the reasons why they hold those opinions. Now,
11 later on when I charge you concerning the law in this
12 case, I'll discuss expert testimony with you in a little
13 greater detail and give you some additional information.

14 But at this time, this witness is being offered as an
15 expert within his field, without objection from the
16 defense. So I will declare him then to be an expert
17 within that field. That will allow him to state his
18 opinions within the field and also the reason why he holds
19 those opinions.

20 Counselor, I'm declaring him an expert. You may
21 proceed.

22 MR. NEWKIRK: Thank you, Your Honor.

23 Q Deputy Clinton, could you -- I know we briefly
24 touched on the training that these dogs receive, but could
25 you talk more about specifically how you train these dogs

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 to track? Maybe some cues they deliver to you or the
2 process that you go through when you're tracking a
3 suspect.

4 A Like I stated, we start the puppies at an early age.
5 We start them at an early age, get them playing the cat
6 and mouse game. Then we start putting different scenarios
7 into them. Say for example, we've been training for about
8 two months or something. Then we take a hat, drop a hat
9 and let them smell the hat and find us off the hat. So
10 what we call that is a scent article. Any time anybody
11 drops an item on a track, the dog will automatically alert
12 to it by -- when I say "alert to it," he gives a different
13 body language. He's tracking the suspect down through the
14 woods or whatever. He comes up on the article that
15 somebody dropped. He'll start wagging his tail. His body
16 language will change. He won't stop there and maul it
17 unless the person laid there for a period of time.

18 Once he's laid there for a period of time, it's
19 called a scent pool. He get in the big scent pool, and
20 the dog will smell right there. He'll start going real
21 crazy right there because there's a lot of scent at that
22 one area. Normally he's got a scent trail that he's going
23 for a little -- you know, narrow down the woods. But as
24 he gets to the scent and everything, he'll start playing
25 in it more and everything. So it tells us at that point

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1 he done something at that point. He laid down. He could
2 smell him stronger at that point than he can any other
3 point.

4 Q And the dogs that you work with, do you continue to
5 train them throughout their service life?

6 A Yes, sir.

7 Q Do you keep records of their training?

8 A Yes, sir.

9 Q Let me ask you about one dog in particular. On
10 November the 8th of 2013, were you called to investigate a
11 burglary?

12 A Yes, sir. I was called to do a sweep on a burglary.
13 When I called -- when I say "a sweep," that's related to a
14 burglary that's just occurred or happened. And what we do
15 is a complete circle around the residence. If a person
16 left from that area, the dog will pick up his track and go
17 from that point.

18 Q And do you remember which dog you brought with you on
19 that particular day?

20 A Yes, sir. Hatty.

21 Q What's her name?

22 A Hatty.

23 Q Hatty? And how long have you worked with Hatty?

24 A Hatty will be seven years old come this year. So
25 she's -- we been fooling with her since she was five weeks

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 old.

2 Q How many tracks would you say you've done with Hatty?

3 A A bunch. I cannot give you an exact number, but it's
4 way up in the numbers.

5 Q And you still work with Hatty to this day?

6 A Yes, sir.

7 Q And when you're not doing active track, are you
8 training Hatty?

9 A Yes, sir, we train on Wednesdays every week.

10 Q And do you find Hatty to be a reliable source of K-9
11 tracking?

12 A Yes, sir, I do.

13 Q And what makes you say that?

14 A Hatty is the type of dog that when she picks up a
15 track, she'll start barking. Hatty barks a lot on the

16 track, when most bloodhounds will not bark on a track.

17 Hatty -- compare Hatty to a doodlebug to a Cadillac.

18 Hatty is the Cadillac. She barks. She tells you

19 everything that she does on the track. All you got to do

20 is be behind her. She tell you -- if she loses a track,

21 you'll never hear her bark again. She picks the track

22 back up, you hear her, she start back barking again.

23 She's very easy to read. She gives good body language and

24 everything. So it makes your job much easier working a

25 dog like that because she ain't trying to figure out what

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 she's doing; she's telling you what she's doing.

2 Q And you keep records of all of the training and
3 tracks that you do with Hatty?

4 A Yes, sir.

5 Q And just one more time for the jury, do you find her
6 to be reliable?

7 A Yes, sir.

8 Q In this particular call that you responded to, could
9 you kind of walk us through the process you took.

10 A Yes, sir. I received a call in reference to a
11 break-in. Get to the scene. I asked the officer at the
12 scene, "Where you been?" They told me where they been at.
13 So I get her out, put her on the harness, and I told her
14 find it. When I tell her, give her the command to find
15 it, she'll start searching, she picks up the track, and
16 then she'll start working the track, whimpering, and then
17 she'll start barking saying she's got the track.

18 Q And then once she identifies a track, what do you do
19 from there?

20 A I go with her. If she -- what I try to do, she's on
21 a 30-foot lead, so she runs, I got to run. So I try to
22 keep her toned down because I don't want to run wide open.
23 I want to kind of run at my pace because I can't outrun
24 her. So she can last longer than I can. So what I do, I
25 back her down to my pace and proceed through the woods

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 with her.

2 Q She's kind of pulling you along?

3 A She's dragging me. It's not pulling.

4 Q Okay. If I were to show you what's been entered into
5 evidence as State's Exhibit 2 -- excuse me 3 -- can we --
6 Madame Clerk, can we dim the lights?

7 Deputy, what do you recognize this to be, if you
8 recognize it at all?

9 A Can I step up?

10 MR. NEWKIRK: You absolutely can.

11 THE COURT: You may.

12 MR. NEWKIRK: I'm sorry, Your Honor.

13 THE COURT: That's all right.

14 THE WITNESS: Yes, sir. That's the area, location I
15 went to on a break-in to do the sweep.

16 Q We're going to -- if you would, could you please
17 explain to the jury where Hatty took you, what trail you
18 took?

19 A Started right here at the house and we swepted it
20 out, and Hatty picked it up -- I can't remember if
21 that's -- it's not a UPS. It's a FedEx truck. I think it
22 was a FedEx truck. It was a truck that carried boxes
23 on -- the victim worked at the company. We started right
24 there, and at that point she come off of there, she comes
25 right into here and she comes behind the vehicle into the

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 woods, right there at the corner of the yard and then she
2 cuts back. As she cuts back, we go through the woods
3 right here.

4 Q Okay. Could you continue on the trail.

5 A As we cut back to go through here, I noticed a white
6 plastic bag was ripped and she started indicating, she
7 started giving the body language, changing her body
8 language. At that point, then I looked up. I found a --
9 I seen a box of shells for a pistol. I located it. I
10 looked and I seen two bags that had other stuff in them.
11 And at that point I told officers on the perimeter that I
12 had recovered a gun box in the woods. Also looked like
13 some kind of electronic because I could see the cords in
14 the back. Also the box of bullets. And I proceeded on.

15 As I proceeded on coming through the woods, I come up
16 on the toboggan and she indicates to the toboggan. She
17 started -- the body language started changing on her
18 again. She goes by it. We come out of the corner of the
19 house up here near Old Friendship Road. We cross over.
20 As we cross over, I see a skull cap, a black skull cap
21 hanging right there at the edge of the woods, where he
22 went into the woods. She goes across into the woods where
23 she went in. And at one point we get in there. It was an
24 old mop bucket that you use right here, the janitor used
25 right here to mash the mop water in, but it don't have a

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 handle on it, just the bucket. A metal box was laying
2 inside of it. It was a change box. And the till from the
3 inside of it was sitting right beside it.

4 At that point, I proceeded on and when I proceeded
5 on, I came up just a little bit further. I seen a green
6 tie looked -- appeared to come out of the bottom of a pair
7 of camouflage pants. Each pair of camouflage pants --
8 these is brown. The ties in these is brown. Normally in
9 the camouflage, or the green pair, they got green ties in
10 the bottom. It was ripped out laying on the ground. And
11 I proceeded out, proceeded out into the -- cross into the
12 churchyard into the parking lot. Got to the parking lot,
13 she started circling. When she started circling, it told
14 me the track ended.

15 What I done at that point was she said the track
16 ended. She started out -- she started a small circle and
17 she circled out a little bit wider, so she was telling me
18 the track ended, that the foot left the ground. She can't
19 smell it no more. So at that point, I start cutting and I
20 cut it out wide. Any time -- if you take a complete
21 circle like this and you got it up to this point, if you
22 make a complete circle around an area that you're working,
23 if he walked out or he left out of that circle, you should
24 pick him back up. But if she makes that big circle around
25 the church, come back, she never picked up another track.

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1 She never picked up his track leaving that area. So it
2 told me when he cut into the parking lot of the church
3 that his track left. And also at that point, I observed
4 spun-out marks in the gravel.

5 Q Thank you. Thank you. You can have a seat. That
6 was a lot of information there. First thing I want to
7 clarify is you referenced a toboggan.

8 A Yes, sir, a black toboggan.

9 Q My dad is from New York, and he calls a toboggan a
10 sled. What would you call a toboggan?

11 A A cloth toboggan, the stretchy type that sits on your
12 hat -- on your head.

13 Q Now, at the end of the track, you said that Hatty
14 lost the scent?

15 A Yes, sir, at the -- in the parking lot at the church,
16 yes, sir.

17 Q And in your expert opinion, what would cause her to
18 lose the scent?

19 A Got in a car or left -- his feet left the ground at
20 that point.

21 Q Was there any other evidence in the area that would
22 suggest to you how he left the scene?

23 A Spun-out marks in the driveway, so there was a
24 vehicle.

25 Q And that was in the same area that Hatty lost the

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 scent?

2 A Yes, sir.

3 Q And you also said that there were several items from
4 the home to where the parking lot where the scent was
5 lost?

6 A Yes, sir.

7 Q And did Hatty have a clear trace all the way to the
8 end of that parking lot?

9 A Yes, sir. Her giving -- changing the body language
10 and I'm observing it. As she giving -- the body language
11 changing, I observe what she's doing. It's just like this
12 watch. I don't know what makes it tick inside, but I can
13 read it. I can tell you what time it is.

14 Q So you followed Hatty from the house all the way to
15 the parking lot?

16 A Yes, sir.

17 Q And we're going to take a look at some other pictures
18 because you mentioned some items that had been left.

19 A Yes, sir.

20 MR. NEWKIRK: Madame Clerk, could you dim the lights,
21 please.

22 Q Deputy, could you please describe this photograph, if
23 you recognize it at all.

24 A Yes, sir, that's the plastic bag that was tore.

25 Right up here was a box of ammunition.

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 Q And did Hatty hit on these items?

2 A Yes, sir, she went past them, yes, sir.

3 Q But indicated to you that they were on the track?

4 A Yes, sir, her body language changed.

5 Q Is this the same bag and box of ammo you were
6 referring to in the previous photograph?

7 A Yes, sir.

8 Q Do you recognize these items in this photograph?

9 A Yes, sir, that was the gun box, like a gun safe.

10 Right here is -- like I could see cords in this one when I
11 was standing over top of it. I do not touch nothing. All
12 I do is point it out. Forensic picks it up and goes from
13 that point on. All I do is point it out to them. They
14 recover it.

15 Q And did Hatty indicate to you that these items were
16 on the trail?

17 A Yes, sir.

18 Q And, again, how did she do that?

19 A By the body language changing.

20 Q Okay. Next photograph. Do you recognize this item?

21 A That's the toboggan. You pull that on your head, and
22 it's kind of -- regular what we call toboggan.

23 Q And, again, did Hatty indicate to you this was on the
24 same trail to the house?

25 A Yes, sir, we come up to the side of the fence. She

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 indicated. The body language changed. We proceeded on.

2 Q Do you recognize this view?

3 A Yes, sir, it's Old Friendship Road.

4 Q And how about this one?

5 A Yes, sir.

6 Q And what do you recognize that to be?

7 A That's where we cross the road at coming out of the
8 yard, out of the woods into that. And that's the church.
9 That's the church parking lot right there. We crossed
10 over right up back into here.

11 Q Do you recognize this photograph?

12 A Yes, sir.

13 Q And what do you recognize that to be?

14 A That's the side of the woods where the mop bucket and
15 stuff -- and the change box and the till was in the woods,
16 and we came out to the church parking lot.

17 Q And we're going to go through some additional
18 photographs, but all of those items were on the trail that
19 Hatty was leading you down?

20 A Yes, sir.

21 Q Do you recognize this photograph?

22 A Yes, sir, that's the do-rag that was in the woods.

23 Q Now, is that the same condition as it was when you
24 first saw it?

25 A No, sir. When we went back, I think we knocked it

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 down because it was hanging up on a limb like it'd been
2 snatched off his head and we went through it, and myself
3 or one of the other officers with me knocked it down. But
4 as I took forensic back into it, I pulled it out,
5 everything we done. I showed forensic everything we found
6 on the track, and forensic collected it.

7 Q And can you please describe what, if any, reaction
8 Hatty had on this item.

9 A Body language change. Anything that she smells
10 stronger than the person's scent that she's running is
11 going to be that person's scent. It goes from a small
12 amount of scent to a large amount of scent, so that's why
13 she changes her body language.

14 Q And she did, in fact, change her body language on
15 this item?

16 A Yes, sir.

17 Q Do you recognize this photograph?

18 A Yes, sir. That's the old mop bucket and that's the
19 change box, that's the money box inside the change --
20 inside the mop bucket that was throwed in there.

21 Q Thank you, Deputy.

22 A Same thing. That was the till out of the money box.
23 Several feet away.

24 Q What do you recognize that to be?

25 A That was the voter register card from the victim's

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 residence. That's the till again where it's open and the
2 water because the mop bucket had water and leaves in it
3 where it's been there for a period of time.

4 Q And the cash drawer and this box and the voter
5 registration, were all of those items on the same trail
6 that Hatty was leading you down?

7 A Yes, sir.

8 Q And to your recollection, did she react on these
9 items?

10 A Yes, sir.

11 Q And I'm assuming she changed her body language.

12 A Changed her body language and I seen it also.
13 Everything that she changed body language, I seen it and I
14 point out to forensics.

15 Right here was a earring that was a cowboy hat.
16 Little tiny earring, but it had a cowboy hat on the
17 earring. It was near the mop bucket and the till.

18 Q And, again, in Hatty's trail?

19 A Yes, sir. It was on the trail, but she -- at that
20 point I was seeing it when I went back. When we first
21 initial came through there, she was indicating in that
22 area, body language changed. I found that when we went
23 back and I was showing forensics.

24 Q So the first time you passed it, you did not see it?

25 A No, sir, I did in and out.

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 Q But Hatty did?

2 A Well, she -- I can't say that she done it on this
3 item. She changed her body language on the money box and
4 stuff and the till because the scent was still on it at
5 that point. It was in the same area, within proximity of
6 the small area.

7 Q Thank you, Deputy.

8 A Yes, sir.

9 This was coins that was strolled out right there. We
10 took it out of the till and laid it in the leaves. Found
11 that when I went back in. This right here is the string I
12 was telling you came out the bottom of a pair of
13 camouflage pants or a pair of green BDU pants because each
14 of these pants has got a drawstring at the bottom. This
15 appears to be a drawstring out of a pair of camouflage
16 pants or a pair of BDU green pants.

17 Here's the spun-out marks where it ended at right
18 here.

19 Q Is that the general vicinity where you lost or Hatty
20 lost the track?

21 A Yes, sir. See, I cut Hatty all the way around the
22 edge of the wood line, see if I could find an exit out.
23 All the way around the church, back around, made a
24 complete circle. If I make that complete circle, if he
25 left out, I should be able to find his track.

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 Q And you were unable to do so?

2 A No, sir. From that point right there, no, sir.

3 Q Thank you, Deputy. Just one final question for you
4 before Mr. Cook asks you some questions. All of the items
5 that we just looked at in those photographs were on the
6 trail that you were following behind Hatty?

7 A Yes, sir.

8 Q And again, the reflect the jury's memory -- refresh
9 their memory, where did the trail start?

10 A The trail start at the house right beside the work
11 truck. Picked it up there, went into the woods, and come
12 back into the edge of the yard. Went back into the woods.
13 That's where I found the bag and the ammunition at first.

14 Q And you don't -- do you do anything that influences
15 Hatty when she's tracking?

16 A Yes, sir. I hold on, try to slow her down. Other
17 than that, no, sir. She tells me everything she does. I
18 go from point A to point B. Lot of stuff we see, we don't
19 realize what it is until after the fact. When we take our
20 time and go back and look at it again over the track. A
21 lot of times we miss stuff because we don't see it. If a
22 dog don't have good body language, we might miss it or if
23 it's in the nighttime. Also we teach our dogs at the end
24 when they find a suspect is to pound on the suspect. The
25 reason we want them to pound on a suspect, so -- some dogs

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 when they get to a suspect at the end, they give up
2 because their job is complete. We want them to stay with
3 them. So if at -- and at that scent pool I was telling
4 you about, if he lays down there for a period of time,
5 she'll go real crazy right there because at the end she
6 knows she's going to get a treat if that suspect there
7 because we treat her, put a treat in our hand and lay down
8 and when she comes up to us and pounce on us, she gets her
9 treat. We make her crawl underneath our chest to get the
10 treat. So we make them stay on the suspect and
11 anything -- all that is, she just smell them stronger at
12 that point. She just showing us that. She's --

13 Q You didn't find a suspect in this case?

14 A No, sir. No suspect at the end.

15 Q Did she still get a treat?

16 A No, sir. Just got a praise.

17 Q I don't have any further questions, but will you
18 please answer any questions Mr. Cook might have.

19 THE COURT: Mr. Cook, your witness.

20 MR. COOK: No questions, Your Honor.

21 THE COURT: You may step down. Wish to excuse the
22 witness?

23 MR. EPTING: Yes, sir, I don't have any further
24 questions.

25 THE COURT: Any objection?

RANDY CLINTON - DIRECT EXAMINATION BY MR. NEWKIRK

1 MR. COOK: Without objection.

2 THE COURT: Officer, you're free to go. Thank you,
3 sir.

4 State may call its next witness.

5 MR. EPTING: State calls Cheryl Gregory to the stand.

6 CHERYL GREGORY, after having first being duly sworn,
7 testified under oath as follows:

8 THE COURT: Your witness, Counsel.

9 MR. EPTING: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. EPTING

12 Q Ms. Gregory, what do you do for a living?

13 A I am a forensic services unit investigator.

14 Q Could you explain to the jury what that entails.

15 A Basically a crime scene investigator. I process
16 crime scenes and I process evidence for further evidence.

17 Q Okay. Do you have any training in collection of
18 forensic evidence?

19 A Yes, sir.

20 Q Tell the jury about it.

21 A I attended a basic crime scene academy. I've had
22 several classes as far as latent print comparison. Just
23 read several books on the subject. It just is a
24 continuing thing. We take all kinds of classes and do
25 training constantly.

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 Q Outside of the formal type of training, do you get
2 any on-the-job training?

3 A Yes. Just processing crime scenes. It's an
4 experience thing. The more experience you have, the
5 better you become at it.

6 Q When you're processing crime scenes, you're looking
7 for evidence; is that right?

8 A Yes.

9 Q You're looking for fingerprints?

10 A Yes.

11 Q You're looking for possible DNA; is that right?

12 A Yes.

13 Q You mentioned processing the crime scene. Could you
14 briefly describe for the jury how you process a crime
15 scene.

16 A When I initially get to the scene, I will photograph
17 just for documentation purposes. We do what's called a
18 crime scene search. It's just searching through that
19 crime scene for any kind of evidence to collect. Process
20 anything that can be processed on scene. Then collect
21 things that could be processed in a lab. Just anything
22 that would be crucial to that case.

23 Q How do you decide what areas to sample or to try to
24 collect evidence from?

25 A Usually what I will do is once I photograph a crime

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 scene, I will have -- for example, like a victim if it's a
2 house or a car or something like that, I'll ask them, you
3 know, what in this house or what in this car has been
4 moved that you know has been touched by somebody other
5 than yourself, or if there's some damage to something like
6 a door or something like that, I know that somebody has
7 touched or done something to that item.

8 Q So it's your testimony that you kind of limit the
9 area of your sampling to where the victim tells you
10 something has changed or is different?

11 A Yes, or a place that I can tell something has
12 happened, like if there's been an assault, a place where
13 there's blood or something damaged.

14 Q And did that happen in this case? Did you meet with
15 the victim who told you things were changed or --

16 A Yes.

17 Q Why not process the entire house for fingerprints and
18 DNA?

19 A I could do that, but it would take an extremely long
20 time. It takes a lot longer than it does -- than it's
21 portrayed on TV. If I would process a house, say, and
22 everything in it, it would take me weeks, months, possibly
23 even years.

24 Q You mentioned TV. In your experience, in all the
25 crime scenes you've done in your training, is it common to

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 find a fingerprint that's identifiable to another person?

2 A Yes, it is common.

3 Q Let's talk about that. What is a fingerprint made
4 of?

5 A It's made of the oils and acids in your sweat, pretty
6 much. The -- your fingers and your hands sweat
7 constantly, and that's secreted on the ridges of your
8 fingerprint.

9 Q Is everybody's ridges different?

10 A Yes.

11 Q You said sweat or other biological fluids left on a
12 surface; is that correct?

13 A Yes, sir.

14 Q Are certain type of surfaces better or worse for
15 collection of fingerprints?

16 A Some surfaces can be better and some can be worse.
17 It depends on the type of surface. It depends on if that
18 surface is dirty or anything like that.

19 Q Would you expect to find a fingerprint on clothing?

20 A No.

21 Q Would you expect to find it on something like glass?

22 A Yes.

23 Q What about wood?

24 A It's a possibility, depending on the type of wood.

25 Q What about plastic bags?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A Yes.

2 Q What about carpet?

3 A No.

4 Q If you could, some of the terms of the trade. What's
5 a latent fingerprint?

6 A A latent fingerprint is just a fingerprint that is
7 hidden, that's gonna -- we're going to have to add
8 something to it to develop it in order to see it.

9 Q And where are latent prints usually obtained from?

10 A I've obtained them from doors, windows, items that
11 somebody touched. Could be really anywhere that the
12 surface is good for that print.

13 Q If I'm hearing you right, latent prints are found
14 prints?

15 A Yes.

16 Q What's a known print?

17 A A known print would be a print of -- like a ten-print
18 card taken of somebody when they're arrested or a lot of
19 times I will take ink fingerprints of victims to compare
20 to latent prints I get from a scene.

21 Q Is it possible to defeat leaving a fingerprint
22 somewhere? For instance, by wearing gloves?

23 A Yes.

24 Q Let's talk a little bit about DNA. How is DNA
25 collected?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A In my case, I would swab something that I thought
2 had -- could possibly have DNA on it. I would swab it.

3 Q How do you decide where to swab?

4 A Usually what I do is if it's a small surface area or
5 a place that I know somebody would touch normally, I would
6 swab that area, like a door handle or something like that.

7 Q Okay. And where is the swabbing done?

8 A If it's an item on scene that I could not take back
9 with me to the lab to swab, I would do it on scene. If
10 it's something that I could take back that's small enough
11 that I could process in a lab setting, it would be maybe
12 edges or something like that.

13 Q Does it depend at all in any way on the movability of
14 the object?

15 A Yes.

16 Q Why -- do you have preference as to where the items
17 are swabbed?

18 A Yes, we try to keep any kind of contaminants, the
19 possibility of that happening to a minimum. Actually, we
20 don't want any contaminants.

21 Q You said that and you said you have a -- your
22 preference is to swab at the lab; is that correct?

23 A Yes, it's --

24 Q Is there a lab here at the Moss Justice Center where
25 you can do that?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A Yes, sir.

2 Q Once the item is swabbed and you got the possible DNA
3 sample from something, what happens with it then?

4 A I would place it in a box, which the box is then
5 placed into an envelope and the -- where I obtained the
6 swab from, the time, the date, things like that, would be
7 placed on the envelope and it would be put into evidence.

8 Q Is the package that the -- that the swab is placed in
9 sealed or protected in any way from contamination?

10 A It is. They're prepackaged. When we get them,
11 they're prepackaged in like a sleeve to keep any kind of
12 contaminants from getting on them prior to us using them.

13 Q You say you put that in evidence. Could you describe
14 in detail a little bit more about that to the jury.

15 A What I would do is if I took a swab from a certain
16 place, I would, of course, fill out the bag or the
17 envelope and then that same information would go on an
18 evidence sheet, and that evidence sheet and the item would
19 be placed in evidence as far as a chain of custody so that
20 we can show where it come from and who had it and we
21 always know where the item is going and where it's been.

22 Q Is the evidence -- is the evidence room a restricted
23 area?

24 A Yes.

25 Q To your knowledge, who has access to the evidence

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 room?

2 A The people who work within that evidence room.

3 Q Do you know their names?

4 A For the County, I know it's Pete Mitchum, Patrick
5 Patterson, and Jenny Styles.

6 Q They're the only three that have access to that room?

7 A As far as I know, yes, sir.

8 Q Let's get into some of the facts of this case. Were
9 you involved in investigating a burglary out on Country
10 Manor Lane in November 2013?

11 A Yes, sir.

12 Q If you would, please tell the jury your involvement.
13 How'd you first get out there?

14 A I was called out or dispatched to that scene in
15 reference to a burglary that had been committed to process
16 the crime scene for any evidence.

17 Q What's your first step?

18 A Usually when I get there, I make contact with the
19 victims or the first responding officer, the officer that
20 was initially called out to the scene. Or sometimes it
21 may be an investigator.

22 Q Did you make contact with the victim in this case?

23 A Yes, sir.

24 Q What happened then?

25 A I spoke to the victim briefly about the incident,

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 basically trying to find out maybe when the last time he
2 was there, maybe a time frame, something like that, make
3 sure, you know, that there's nothing inconsistent as far
4 as the incident. And speaking with the responding
5 officer, what we would do is just make sure that -- say
6 like with the burglary, the doors were locked prior to
7 them leaving and they know that. That would be something
8 I would put in my report, just things like that, those
9 items like that.

10 Q Does that factor into where you look for evidence?

11 A Yes.

12 Q In what way?

13 A If, for example, the victim said "I locked my door
14 when I left" and I -- you know, I'm checking the residence
15 or looking for evidence outside of the residence before I
16 go inside and I notice there's a door that's very kicked
17 in or glass broken or a window left up or something like
18 that, I know from speaking to the victim prior that it was
19 not like that when he left the last time or she left the
20 last time.

21 Q Because that -- as you testified earlier, you're
22 looking for changes; is that your testimony?

23 A Yes.

24 Q Were you able to determine the point of entry on this
25 case?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A Yes.

2 Q What was the point of entry?

3 A The point of entry was the back door of the
4 residence. The screen door was standing open, and the
5 back door was open, the door was open, and there was
6 also -- the lower panel glass in the door was broken.

7 Q As an investigator, what, if anything, did you try to
8 collect at that point?

9 A I would, of course, look at the surface of the door
10 and the surrounding. I look to see if maybe there were --
11 was blood or something on the glass from it being broken.
12 I would process it for latent prints and possibly take
13 some swabs for DNA.

14 Q Did you take -- did you attempt to obtain DNA
15 evidence from that door?

16 A Yes.

17 Q From where?

18 A I actually swabbed the inside deadbolt. From what
19 the victim told me and told the first responder, he
20 dead-bolted the door when he left and whoever entered that
21 house or broke the glass would have had to stick their
22 hand inside and unlock the deadbolt.

23 Q So you swabbed the deadbolt based upon that, correct?

24 A Uh-huh.

25 Q Going back to things that were changed, things that

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 might have been touched?

2 A Yes.

3 Q In your experience as an investigator, if the
4 perpetrator wore gloves, would he or she leave DNA on that
5 deadbolt?

6 A It depends really. Sometimes, you know, some people
7 sweat more than others. With fabric, fabric will absorb
8 sweat better than anything and if they wipe their hand,
9 their mouth, anything like that, it could have gotten on
10 the outside of that glove and been transferred onto that
11 lock.

12 Q So you processed that door.

13 A Uh-huh.

14 Q Did you process any other part of the house?

15 A I processed -- well, for DNA, no.

16 Q Do you process any other part of the house for any
17 other reason?

18 A Yes, I process numerous items in the house, places
19 that I know for sure somebody -- or that I believe
20 somebody has touched, like doors that had been pulled out
21 and dumped or something like that, I would process those
22 for latent prints.

23 Q Is the victim walking around with you at this point?

24 A The initial, no.

25 Q What was the state of the house?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A It looked like somebody had went in and was searching
2 for something. Pulled drawers out, dumped them. It
3 looked like maybe knocked things over. Just searching for
4 anything.

5 Q At any point in the -- while you were inside the
6 house investigating, did you find a wall safe or a large
7 gun safe?

8 A There was a large gun safe, and it was in the back
9 bedroom or back room.

10 Q Was there anything peculiar about that?

11 A It looked as if somebody had tried to open it or
12 forced it to be open, damage to, like, the door area or
13 the panel where you would open it.

14 Q Had it been pried open successfully?

15 A It was not pried open successfully.

16 Q Did you process that gun safe?

17 A I did.

18 Q For what? Fingerprints or for DNA?

19 A I would have processed that for fingerprints.

20 Q So you -- you go inside the house. Do you take
21 pictures inside the house?

22 A Yes, that is one of the first things I do is
23 photograph.

24 Q So in addition to looking for points, possible places
25 you might need to try to collect evidence, you're also

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 photographing and taking pictures, documenting?

2 A Yes, sir.

3 Q Are other officers present in the area? Maybe not in
4 the house but in the area at the time that you're doing
5 this?

6 A Yes, there was several officers outside.

7 Q At some point did you -- at some point were you
8 directed to the woods?

9 A Yes.

10 Q And by whom? Do you remember?

11 A I don't remember who directed me to the woods, but I
12 do remember there were several people there.

13 Q Do you know what they were doing there?

14 A They were actually looking at some items that had
15 been dropped outside the residence, which was kind of a
16 wooded area.

17 Q Had there been a dog out there, to your knowledge?

18 A Yes.

19 Q And -- okay. So at some point you go out to the
20 woods to look at or collect these items?

21 A Yes.

22 Q Walk us through that. Do you walk over and pick it
23 up in evidence, or what do you do?

24 A No. What I would do first is I would photograph
25 everything. Any time there's, again, like a crime scene

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 or something, first thing we do is photograph. And then I
2 would look at the items to determine how they need to be
3 packaged to keep any further evidence from being
4 destroyed.

5 Q And did you do that in this case?

6 A I did.

7 Q Do you -- and as you store those photographs, are
8 they stored sequentially?

9 A Yes.

10 Q So first photograph that we see is the first one in
11 the series; is that right?

12 A Yes.

13 Q And then the second is as you're walking?

14 A Yes.

15 MR. EPTING: Your Honor, I'd like to publish State's
16 Exhibit 2.

17 THE COURT: You may do so.

18 Q Very briefly, very quickly, what are you seeing here?

19 A That's a plastic bag and a box for bullets, I
20 believe.

21 Q Was that -- that's the first picture. Is that the
22 first thing you see in the woods?

23 A Yes. That's actually as I'm walking into the woods.

24 Q To your knowledge, did you process that bag for
25 fingerprints or DNA?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

- 1 A Yes, I collected it and did process it.
- 2 Q Did it yield any results?
- 3 A Yes.
- 4 Q What results?
- 5 A I believe we -- excuse me, I believe I got latent
6 prints off of it.
- 7 Q And were you able to match those to anybody?
- 8 A I believe they were insufficient.
- 9 Q Explain to the jury what that means.
- 10 A That's just -- when I say insufficient in detail, it
11 just means there's not enough detail in the ridge of the
12 print to make an identification.
- 13 Q So you know that somebody left a fingerprint, but
14 it's not good enough quality to make a match; is that
15 right?
- 16 A Yes.
- 17 Q We don't know whose it is?
- 18 A Yes.
- 19 Q What are we looking at here?
- 20 A That is a box for bullets. I believe that's the same
21 bag and the same box.
- 22 Q What are we looking at here?
- 23 A That is a small gun safe, another box for bullets,
24 and the two bags had items inside of them.
- 25 Q Okay. Did you process either the bags or the safe or

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 all of them?

2 A All of them.

3 Q And what results, if any, did you get from those?

4 A I processed some -- I processed the gun safe for DNA
5 first, and then all the items were processed for latent
6 prints.

7 Q And were you able to obtain latent prints?

8 A Yes.

9 Q Were any of those identifiable?

10 A Yes.

11 Q Or sufficient ridge detail to identify?

12 A Yes.

13 Q Were you able to match those to anybody?

14 A I did match some of them to the victim.

15 Q Were you able to match any of those to Antonio
16 Jordan?

17 A No, sir.

18 Q Were you able to match -- did you get sufficient
19 print ridge details to where they would be sufficient to
20 match if we had a known?

21 A Yes.

22 Q And do you remember what item that was from?

23 A The -- there's a -- it looks like a plastic piece
24 underneath the bullet box, and that's I believe the shelf
25 that belongs inside the gun safe, and I did get several

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 prints off of there.

2 Q And you got elimination prints from the victim?

3 A Yes.

4 Q And they did not match him?

5 A Yes.

6 Q So we don't know whose print that is; is that
7 correct?

8 A Correct.

9 Q What about the bags?

10 A I did get latent prints off the bags, and they were
11 insufficient.

12 Q Insufficient to?

13 A Detail, yes.

14 Q So, again, we know somebody touched them; we do not
15 know who --

16 A Yes.

17 Q -- is that correct?

18 Can you tell how long the fingerprint has been on the
19 surface just by collecting it?

20 A No.

21 Q So we don't know when those fingerprints were put
22 there?

23 A No, sir.

24 Q Recognize this item?

25 A Yes, sir.

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 Q Let me ask you this: Did you process this item?

2 A I collected the item.

3 Q You collected it?

4 A Yes. .

5 Q And did you do anything with this them once you
6 collected it?

7 A No.

8 Q Did you submit it for further testing?

9 A I believe it was submitted for DNA testing, possibly.

10 Q And why do you not collect from this item?

11 A Whenever we find items, especially clothing items,
12 fabric items, I would submit something like that to be
13 tested by a DNA analyst.

14 Q When it's fabric, you mentioned difficulty in
15 fingerprint collection?

16 A Yes.

17 Q Is that more of an involved collection process, in
18 your opinion?

19 A Yes.

20 Q So you submitted this, according to your testimony,
21 to the DNA lab to have them try to collect DNA from this;
22 is that correct?

23 A Yes.

24 Q Okay. And, again, are these pictures in sequence?

25 A Yes.

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 Q What are we looking at here?

2 A This is Old Friendship Road. And it's actually the
3 main road that you turn off of to turn onto Country Manor
4 Lane.

5 Q So walking up to here and kind of -- take me back
6 some of your testimony to you. You walk in the woods.
7 You see the bag and the bullets.

8 A Yes.

9 Q And you walk some further, and you see the safe, the
10 bags with electronics, some more bullets. You walk
11 further. You see the hat.

12 A Yes.

13 Q You walk a little bit further. Now you're to the
14 road; is that right?

15 A Yes.

16 Q Do y'all cross the road?

17 A We do cross the road.

18 Q What are we looking at here?

19 A That is Providence Baptist Church, and it's across
20 the road.

21 Q And how are you choosing where to walk at this point?

22 A I'm actually following one of the K-9 units, the
23 officers.

24 Q They've already been through this --

25 A Yes.

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 Q -- or is this live as they're tracking?

2 A They've already walked through. They've already
3 tracked.

4 Q They're walking you back through their track?

5 A Yes.

6 Q You cross the road based on what they're telling you,
7 correct?

8 A Yes.

9 Q Do y'all go into the woods beside the church?

10 A Yes.

11 Q What are we looking at here?

12 A That is another hat or a do-rag.

13 Q Was it in that condition when you saw it?

14 A I believe it was actually semi hanging onto one of
15 the branches nearby, and when we walked through, we
16 knocked it off possibly.

17 Q Did you collect that item?

18 A I did.

19 Q Did you process that item to try to obtain DNA?

20 A I did not.

21 Q Was that the same reason as what we're calling the
22 toboggan?

23 A Yes.

24 Q Did you submit that for further testing?

25 A I did.

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

- 1 Q To whom?
- 2 A The DNA analyst, the DNA lab here at the Sheriff's
- 3 Office.
- 4 Q Because it's more involved than the collection
- 5 process, correct?
- 6 A Yes.
- 7 Q What are we looking at here?
- 8 A That is a mop bucket, and inside that mop bucket,
- 9 there's a cash drawer or cashbox.
- 10 Q Did you process that cashbox?
- 11 A I did.
- 12 Q For DNA, for fingerprints, or for both?
- 13 A I believe I did for both.
- 14 Q And were you able to obtain any latent fingerprints
- 15 off of that?
- 16 A Yes.
- 17 Q Were any of those latent fingerprints identifiable?
- 18 A Yes.
- 19 Q Were any of them identifiable to the victim?
- 20 A I believe so. I believe they were.
- 21 Q Were any of them unknown?
- 22 A Yes.
- 23 Q Were any of them insufficient?
- 24 A Yes.
- 25 Q So all three on that?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A Yes.

2 Q Some that we can't identify, some that we could
3 identify if we had a known, some to the victim because you
4 took elimination as a known, correct?

5 A Yes.

6 Q What are we looking at here?

7 A That's the cash drawer that belongs in the cashbox.

8 Q Did you process that item?

9 A I did.

10 Q And for what?

11 A I believe for latent prints and for DNA both.

12 Q Do you know if you were able to obtain latent prints
13 off of that?

14 A Yes.

15 Q Anything identifiable?

16 A I believe there was one identifiable.

17 Q Did that match anybody?

18 A No.

19 Q And, again, you get an identifiable print that
20 doesn't match, do you know how long it's been there?

21 A No.

22 Q What are we looking at here?

23 A Those are voter registration cards that actually have
24 the victim's name and their address on them. And from
25 what the victim told me, those were actually inside the

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 cashbox.

2 Q Go back over. Based on your forensic training, can
3 you tell if anything has been done to that cashbox?

4 A It appears that it has been pried open, damage.

5 Q Did you see any evidence in that surrounding area
6 that it had been successfully opened?

7 A Yes, there were -- there was a trail of quarters
8 along the way as we were walking through, and also I
9 believe there was some jewelry found too.

10 Q You mentioned jewelry. What are we looking at here?

11 A That is a earring, and it's in like a -- the shape of
12 a cowboy hat.

13 Q Did you encounter that earring earlier that day?

14 A I did.

15 Q Where?

16 A Inside the residence.

17 Q It was -- in your opinion, lay witness, not expert
18 talking here -- is that a match to the earring?

19 A Yes.

20 Q And you encountered that in the residence?

21 A Yes.

22 Q Do you remember where in the residence?

23 MR. COOK: Your Honor, I'm going to object to I
24 believe, with all due respect, the witness has not been
25 qualified as an expert, and so I'm going to object the

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 questions asking her about her opinion, the whole line of
2 questions.

3 THE COURT: I'll sustain the objection. I'll allow
4 her to testify as to her observation and what her
5 observations told her but not her opinions.

6 MR. EPTING: Certainly, Your Honor.

7 THE COURT: I'll sustain the objection.

8 Q So did you see the match to that earring?

9 A I did.

10 Q And that's based on eyewitness identification inside
11 the house?

12 A Yes.

13 Q What is that?

14 A That is a quarter.

15 Q Any idea what we're looking at here? It's okay if
16 you don't.

17 A It appears to be like a string, like a shoestring
18 almost, green in color.

19 Q What are we looking at here?

20 A That is the parking lot which is to the side of
21 Providence Baptist Church. And actually, we entered the
22 woods right close to that.

23 Q Okay. You mentioned collecting some fingerprints and
24 DNA swabs off of items; is that correct?

25 A Yes.

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 Q Of the items that you collected, were they collected
2 on the scene or back at the lab, as you mentioned?

3 A The items that I collected during the track with K-9,
4 I collected those and took those back to the lab.

5 Q Okay. The gun safe inside the house, was that
6 brought back to the lab?

7 A No.

8 Q You mentioned taking multiple DNA swabs. What do you
9 do with those?

10 A I would package them just like before, and then they
11 would be placed into evidence with an evidence sheet.

12 MR. EPTING: Beg the Court's indulgence.

13 Q At some point after your investigation was completed,
14 did you collect a DNA sample from the defendant, Antonio
15 Jordan?

16 A I did.

17 Q And is Antonio Jordan present in the courtroom today?

18 A I believe so.

19 Q The person that you collected the buccal swab from?

20 A Yes.

21 Q Would you please point to him?

22 MR. EPTING: Please let the record reflect that
23 Ms. Gregory pointed to Antonio Jordan as the person from
24 whom she collected the buccal swab.

25 THE COURT: It will so reflect. You may proceed.

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 Q Was that pursuant to a court order?

2 A Yes.

3 Q And did you submit that item to anyone?

4 A I submitted it to evidence.

5 MR. EPTING: Permission to approach, Your Honor?

6 THE COURT: You may.

7 MR. EPTING: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. EPTING: Permission to approach, Your Honor?

10 THE COURT: You may.

11 Q I'm handing you a stack of items. I don't believe
12 they need to be introduced in evidence, but I would like
13 you to look over those. Do you recognize those items?

14 A I do.

15 Q What are they?

16 A They are swabs for possible DNA.

17 Q Are those the swabs that you just described to the
18 jury? One at the scene, the rest at the lab?

19 A Yes.

20 Q And you described to the jury earlier, did you not,
21 packaging them up, securely wrapping them up, and
22 submitting them?

23 A Yes.

24 Q Do they appear to have been submitted to evidence?

25 A Yes.

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 Q Do you recognize any of the signatures on the bag?

2 A I recognize mine.

3 Q Any others?

4 A And the ones above the -- where I have labeled York
5 County Sheriff's Office evidence, that would be one of the
6 evidence clerks.

7 Q Either Patrick Patterson or Jenny Styles?

8 A Yes.

9 Q Are they the same on all of those?

10 A They appear to be, except for the buccal swab.

11 Q On the evidence chain, the chain of custody you
12 referenced earlier, do any of those appear to have been
13 submitted to the DNA lab based upon signature?

14 A I believe so. I can't be 100 percent sure.

15 Q That's okay. If you don't know 100 percent sure,
16 that's -- I don't want you to testify to something you're
17 not certain of.

18 MR. EPTING: Beg Court's indulgence.

19 THE COURT: Yes, sir.

20 MR. EPTING: Permission to approach?

21 THE COURT: You may do so.

22 Q Handing you two evidence bags. Do you recognize the
23 two items I've handed you?

24 A I do.

25 Q What's their description?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A The one in the smaller bag is a black cap which was
2 found in a wooded area near Country Manor Lane.

3 Q And the other?

4 A The other is a J and Zimmerman black toboggan found
5 in the same area.

6 Q Would those be the two that we just saw in the
7 pictures?

8 A Yes.

9 Q Did you turn those in to evidence?

10 A I did.

11 Q How can you tell that?

12 A I actually filled out the evidence recovery and then
13 I submitted to and from, from me to evidence.

14 Q So we have the toboggan that's by the fence; is that
15 correct?

16 A Yes.

17 Q And what we're calling a cap?

18 A Yes, or the do-rag.

19 Q Is that the one that was hanging by the branch?

20 A Yes.

21 Q And you submitted those -- did you submit those for
22 any form of testing?

23 A I believe they were submitted for DNA testing. They
24 would have been.

25 Q And those are ones that you did not swab yourself?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A Correct.

2 Q DNA lab was going to swab and test them?

3 A Correct.

4 MR. EPTING: Beg Court's indulgence.

5 THE COURT: Yes, sir.

6 Q Let's go back to the sample that you collected from
7 the person that you pointed out, Antonio Jordan.

8 A Yes.

9 Q How was that collected?

10 A Of course I would receive the order prior. And then
11 I would take items that I needed with me to wherever they
12 were, they were at the house or wherever I need to go to
13 find them. And I would wear gloves, of course, and then I
14 would not open any of the packaging until I was standing
15 in front of that person so that it would be -- so there's
16 not a possibility of it being contaminated.

17 Q When you say "contaminated," could you explain that a
18 little bit more in terms of DNA to the jury.

19 A Contaminated would be if I opened it prior and I
20 touched it myself without gloves on, there's a possibility
21 that my DNA could be on that swab or that I could have
22 maybe accidentally touched it to something that somebody
23 had touched and it would be somebody else's DNA.

24 Q So you take steps to make sure the DNA you're getting
25 is from the person you're swabbing?

CHERYL GREGORY - DIRECT EXAMINATION BY MR. EPTING

1 A Yes.

2 Q And in this case, who was that person again?

3 A Antonio Jordan.

4 Q Did you take those steps to make sure that no
5 cross-contamination was going to happen?

6 A I did.

7 Q What's the procedure?

8 A I would first put on gloves, of course, and then I
9 would open the packaging which the swabs were in and I
10 would then swab the inside of the mouth. And then those
11 swabs would be placed inside of a box, and the box is just
12 a small box just to put the swabs in and it's closed on
13 both ends. And then I would place that box inside an
14 envelope like this. And it would be sealed and labeled
15 accordingly.

16 Q At that point do you request further testing for
17 comparison?

18 A I don't request. Usually once we have that order
19 we're obtaining a buccal swab, it's already been requested
20 and it's used for comparison to something or going to be
21 used for comparison.

22 Q If somebody touches a surface, do they always leave
23 DNA on that surface?

24 A Not always, just like you don't always leave a latent
25 print.

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 Q If somebody does leave DNA on a surface, is that
2 always identifiable to that person?

3 A Yes.

4 Q No further questions at this time. Please answer any
5 questions Mr. Cook may have.

6 THE COURT: Mr. Cook, your witness.

7 MR. COOK: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. COOK:

10 Q Good afternoon, Ms. Gregory.

11 A Good afternoon.

12 Q Ms. Gregory, how many years of experience do you
13 have?

14 A I have -- let's see -- four years' experience. I've
15 been doing this since 2011.

16 Q And what's your occupation title again?

17 A I'm an investigator with the crime scene -- or the
18 forensic services unit.

19 Q Did you have any education to train you for that?

20 A I have been a law enforcement officer since 2007.
21 Prior to being a patrol -- not prior to being a patrol
22 officer. After I was a patrol officer, I became a
23 detective for my department and then I moved into this
24 position and I had to again go to the basic crime scene
25 academy. I've had several classes on latent print

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 examining. And like I said earlier, we do a lot of
2 continuing education training.

3 Q In that training, procedure is highly important, is
4 it not?

5 A Yes.

6 Q I mean, this is science, isn't it?

7 A Yes.

8 Q And so if you have a defect in your -- the procedures
9 you use to gather evidence, that in turn could cause a
10 false reading in your evidence; is that correct?

11 A I wouldn't say a false reading. I would say more of
12 destruction of evidence.

13 Q What procedure do you need to use to be 100 percent
14 sure whether something has been submitted to a DNA lab or
15 not?

16 A There's a form filled out.

17 Q Because I've noticed on some of those items of
18 evidence, the solicitor asked you if it had been submitted
19 to a DNA lab. Do you remember that?

20 A Yes.

21 Q And you weren't sure?

22 A Well, usually -- not usually, but the way I complete
23 the evidence form, I will put my name and then I'm
24 submitting it to evidence. And I don't know everybody's
25 signature per se, so if -- unless it had, you know, "DNA

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 lab" wrote on it, I wouldn't know for sure.

2 Q What was the item that you weren't sure whether it
3 had been submitted to the DNA lab or not?

4 A I don't recognize, you know, any of the signatures as
5 being to the DNA analyst specifically.

6 Q Tell me again, how do you -- I heard you use the verb
7 I did or I didn't process DNA off this particular item of
8 evidence.

9 A Uh-huh.

10 Q What does that mean, "process DNA"?

11 A For me, if I was to collect a swab for something to
12 possibly -- something that may have had DNA on it, I would
13 just swab that area. I don't know how the DNA analyst
14 would have done any of that.

15 Q Well, are you a DNA analyst?

16 A I'm not.

17 Q What are you?

18 A I'm a crime scene investigator.

19 Q Do you collect DNA to send to the DNA analyst?

20 A I collect swabs for areas that could possibly have
21 DNA.

22 Q And what is DNA?

23 A It's the makeup of our genes. I don't know the
24 specific terms in it. I don't know those types of things
25 to it. I'm not a DNA analyst.

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 Q What -- how do you process DNA off of an object?

2 What's the medium it's carried in? Is it sweat? Is that
3 what I heard you say?

4 MR. EPTING: Your Honor, I'm going to object to this.
5 As he stated, she's not an expert.

6 THE COURT: She stated she's not an expert within
7 that field.

8 MR. COOK: Toward -- if I may argue.

9 THE COURT: Certainly. Yes, sir.

10 MR. COOK: I'm not asking her to give her opinion as
11 a DNA expert; I'm asking her to -- I believe, Your Honor,
12 that the witness testified that she got DNA from sweat,
13 and I was asking her to follow up on that line of
14 argument. I believe it's the same question the state
15 asked, Your Honor. So to be clear, I'm not asking her to
16 analyze anything.

17 THE COURT: My understanding of her function is to
18 collect evidence at a crime scene.

19 MR. COOK: Yes, sir.

20 THE COURT: I don't have any problem with you asking
21 her where she might attempt to collect that evidence and
22 what she does that, but whether or not she actually
23 recovered DNA from any surface, that's -- she doesn't test
24 it for that. She makes collections of apparently where
25 she believes evidence might exist. So I don't mind your

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 cross-examining her as to crime scene investigation or
2 evidence collection, but if you're asking her if she
3 collects DNA from any particular location, I'm not sure
4 she knows. She knows she collects samples from which the
5 DNA might be developed.

6 MR. COOK: Yes, sir.

7 THE COURT: It's my understanding of her testimony.

8 MR. COOK: Yes, sir, Your Honor. And to be proper, I
9 believe I was asking her what medium does she collect the
10 samples from.

11 THE COURT: I'll let you ask that question. I'm not
12 sure that was the question, but go ahead.

13 Q I was asking was it sweat.

14 A It could be. I don't -- it could be --

15 MR. EPTING: Your Honor, same objection. He's asking
16 her to conjecture on what she's collecting. If he's
17 asking how she collects it, she can say that. But what
18 she's collecting is up to the analyst.

19 MR. COOK: Your Honor, if I may. I heard her use the
20 word "sweat" in her testimony when the state was directing
21 her, and I'm simply asking her to follow up on that. I
22 think it's highly proper. It's the same question the
23 state asked, with all due respect.

24 THE COURT: Rephrase the question.

25 Q So you collect evidence from crime scenes to give to

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 the DNA expert; is that correct?

2 A Yes.

3 Q What type of evidence do you collect to give to the
4 DNA expert?

5 A It could be anything. It could be a swab that I took
6 from the scene. It could be clothing.

7 Q What are you swabbing?

8 A Like I testified before, I swabbed the deadbolt lock
9 at the scene.

10 Q Okay. Do you know what you're trying -- what
11 material you're trying to collect off of that deadbolt to
12 send to a lab?

13 A DNA.

14 Q Okay. But it can come -- I understand, and I'm not
15 trying to be -- what form can the material that you
16 collect come in?

17 A It could be skin cells. It could be anything like
18 that.

19 Q Okay.

20 A Anything that has your DNA in it.

21 Q Skin cells?

22 A Blood.

23 Q Blood?

24 A Anything that has your DNA in it.

25 Q Hair?

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 A Possibly.

2 Q Thank you.

3 Did you process items inside the home in an attempt
4 to collect DNA off of them?

5 A I did the deadbolt lock.

6 Q Did you process anything of off a gun safe in the
7 house? Wasn't that your testimony?

8 A I processed the large gun safe in the house for
9 latent prints.

10 Q Now, I thought your testimony was that you processed
11 it for latent prints and for DNA.

12 A No, sir, I wouldn't process -- process that just for
13 latents print. If I had processed that for DNA, there
14 would be an additional swab for that. The smaller gun
15 safe is what I processed for latent prints and DNA in the
16 lab.

17 Q So you did not say on the stand that you processed
18 the gun safe in the house for DNA?

19 A No, sir. I did not. I processed the gun safe, the
20 larger gun safe for latent prints.

21 Q Are you aware that my client's bond was denied
22 because --

23 MR. EPTING: Your Honor, I object to this.

24 THE COURT: Ladies and gentlemen of the jury, I'll
25 ask you to step back to the jury room at this time. Do

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 not begin any discussions concerning this matter until I
2 ask you to do so. You may retire.

3 (The jury left open court at 2:45 p.m.)

4 THE COURT: The objection is?

5 MR. EPTING: Your Honor, I cannot fathom how his
6 client's being denied for any way, shape, or form has
7 relevance upon her testimony, particularly if he's going
8 to say it's by the statement of another person. That's
9 improper cross-examination. It's improper impeachment.
10 It's not relevant to this case at this time, particularly
11 not relevant to her testimony.

12 MR. COOK: And --

13 THE COURT: Mr. Cook.

14 MR. COOK: Yeah, Your Honor, I wasn't making any
15 statement of another person. The fact remains that my
16 client's bond was denied in July because the state took
17 the position that the gun safe that I'm questioning the
18 witness about had my client's DNA on it. And their -- so
19 I can't --

20 THE COURT: Two gun safes.

21 MR. COOK: Sir?

22 THE COURT: There's two gun safes?

23 MR. COOK: Yes, sir.

24 THE COURT: Your questioning up to this point in time
25 had to do with the gun safe that was in the house?

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 MR. COOK: Yes, sir.

2 THE COURT: At some point in time, though, during her
3 testimony she stated that she did process the gun safe
4 that was found outside for DNA, and you didn't follow up
5 on that. I don't know if --

6 MR. COOK: Not yet.

7 THE COURT: And, of course, she didn't test it. She
8 doesn't know whether DNA was recovered from any item.
9 That's her testimony thus far.

10 MR. COOK: Firstly, with all due respect, I would
11 disagree with --

12 THE COURT: I'll let you proffer. Ask her.

13 MR. COOK: I'm sorry, Your Honor?

14 THE COURT: I'll let you proffer, ask her if she's
15 aware of which DNA samples actually contain DNA. I don't
16 know if she's aware of it or not. I suspect that she's
17 not, but I'm going to let you proffer that, see if she is.

18 MR. COOK: Are you aware of which samples had DNA on
19 them or not?

20 THE WITNESS: No, sir.

21 MR. COOK: Okay. I understand. Perhaps this isn't
22 the right witness for this question.

23 THE COURT: That's the point I'm trying to make.

24 MR. COOK: I'll digress.

25 THE COURT: Thank you. Anything further before we

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 bring the jury back?

2 MR. EPTING: I guess we'll cross that bridge when we
3 come to it.

4 MR. COOK: I'm glad to talk about it now just because
5 I don't want the jury to keep bouncing out every time I
6 ask this question I'm going to ask --

7 THE COURT: I don't think it will come up again with
8 this witness.

9 MR. COOK: Not this witness but with the next one and
10 the next one.

11 THE COURT: Go ahead. Sure.

12 MR. COOK: Well, Your Honor, the -- if I may, the
13 fact remains that my client's bond was denied in July
14 based off of the solicitor, whom I can't cross-examine in
15 this case, stating to the judge that DNA was found inside
16 the house on the safe that connects to my client. I have
17 got -- as the defense attorney, that's highly instrumental
18 to my defense. And so if the solicitor with this
19 objection is saying that I can't ask anybody what was said
20 at that bond hearing, I'm in a conundrum. I suppose a
21 detective was present at the bond hearing.

22 THE COURT: Were you present at the bond hearing?

23 MR. COOK: No, sir, I wasn't representing my client
24 at that time.

25 MR. EPTING: Your Honor, initially there was some

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 confusion about what DNA came back for positive match or
2 not. There was some preliminary indications that the
3 DNA -- that there would have been some additional DNA
4 matches from gun safes to the defendant that turned out
5 when the final report came in were not sufficient to
6 actually make a comparison.

7 MR. COOK: See, that's the passive voice. Who made
8 these preliminary indications?

9 MR. EPTING: I believe that is a question he can put
10 to the DNA analyst in this case.

11 MR. COOK: Okay.

12 MR. EPTING: He can ask her if she made those
13 statements.

14 THE COURT: That's the point I'm trying to make.
15 This witness, though, has no responsibility for testing
16 any evidence for DNA.

17 MR. COOK: And I'm --

18 THE COURT: But she's collecting evidence that may
19 have DNA.

20 MR. COOK: I'm coming to understand that, and I'll
21 digress with this witness.

22 MR. EPTING: I think the proper person to ask that
23 question to would be the DNA analyst who supposedly made
24 those statements.

25 MR. COOK: Understood.

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 THE COURT: I wasn't at the bond hearing either. I
2 don't know if that person actually testified at the bond
3 hearing. I suspect that person did not.

4 MR. EPTING: They did not, Your Honor.

5 MR. COOK: But may I ask just who did testify at that
6 bond hearing? I couldn't --

7 THE COURT: I doubt anybody did. I imagine the
8 solicitor made a statement.

9 MR. EPTING: That's correct, Your Honor.

10 MR. COOK: Can I ask each one of his witnesses did
11 you tell the solicitor that there was DNA on --

12 THE COURT: Not each one of them because I suspect
13 there's going to be witnesses who know nothing about DNA.
14 So if that's the question, probably not. Now, if you get
15 to the person who is doing the DNA testing and getting the
16 results, I'll let you ask whether or not you gave any
17 preliminary results to a solicitor.

18 MR. COOK: Can I say this: Out of candor, I asked
19 the solicitor who gave him those results, and he can't
20 remember.

21 MR. EPTING: It was in a report. It's typed up in
22 the case summary that was provided to the defense. That's
23 what I was working on --

24 THE COURT: You may have that, apparently, is what
25 he's saying.

CHERYL GREGORY - CROSS-EXAMINATION BY MR. COOK

1 MR. COOK: I didn't see that in the case summary.

2 MR. EPTING: Court's indulgence.

3 THE COURT: I suppose. We're digressing on something
4 this witness has nothing to do with. We might be able to
5 take this up at another time during a break.

6 MR. COOK: I appreciate the Court's patience. This
7 is essentially solving a problem that would come.

8 Thank you, Your Honor. I'm clear now, and I
9 appreciate the clarification.

10 THE COURT: All right. My ruling would be the
11 question of this witness would be improper. So I'm going
12 to sustain the objection by the state at this time. Let's
13 see what happens later on. Bring the jury in.

14 (The jury entered the courtroom at 2:51 p.m.)

15 THE COURT: The record will reflect the jury has
16 returned to the courtroom. I sustained an objection by
17 the state, and the defense may proceed with
18 cross-examination.

19 MR. COOK: Thank you, Your Honor.

20 Q One last question. So the gun safe inside the house.

21 A Yes.

22 Q Did you or did you not take -- attempt to take a
23 sample of DNA off of that?

24 A I did not, not the large gun safe, no, sir.

25 Q Thank you. No further questions.

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 THE COURT: Redirect?

2 MR. EPTING: Nothing from the state.

3 THE COURT: You may step down. Thank you very much.

4 MR. EPTING: May she be relieved from the subpoena?

5 THE COURT: Absolutely, I think, unless there's an
6 objection.

7 MR. COOK: No objection.

8 THE COURT: You may retire.

9 State may call its next witness.

10 MR. NEWKIRK: Your Honor, the state would call
11 Detective Schettler to the witness stand.

12 BRIAN SCHETTLER, after having first being duly sworn,
13 testified under oath as follows:

14 THE WITNESS: Brian Schettler.

15 THE COURT: Counsel, your witness.

16 MR. NEWKIRK: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. NEWKIRK:

19 Q Detective, could you please fully introduce yourself
20 to the jury and could you please tell the jury where
21 you're currently employed.

22 A Brian Schettler. I'm currently employed with the
23 National Insurance Crime Bureau.

24 Q And prior to that, where were you employed?

25 A I was employed with York County Sheriff's Office, a

BRIAN SCHESSLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 detective. I still remain as a reserve officer, detective
2 position with the Sheriff's Office.

3 Q How long were you with the Sheriff's Office?

4 A Ten years.

5 Q Did you have any prior law enforcement experience?

6 A I did. Before that, I was a federal boarding officer
7 for the United States Coast Guard, and before that I was a
8 police officer in Cleveland, Ohio, at University Circle
9 Police Department.

10 Q So all in all, how much law enforcement experience do
11 you -- would you say you have?

12 A 15 plus years.

13 Q And in order to become a detective or in order to
14 even work with the York County Sheriff's Office, did you
15 have any training?

16 A I did. I first started out in narcotics, went to
17 basic narcotics school. Went to a number of different
18 investigation classes through that. Stayed there for five
19 years, and then I was promoted to detective, property
20 crimes. Through there I went through a number of
21 interview classes, evidence classes, investigation classes
22 while I was with the Sheriff's Office.

23 Q And working in the detective -- as a detective in the
24 property crimes department, was that your position on
25 November the 8th of 2013?

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 A Yes, it was.

2 Q And on November the 8th of 2013, did you have
3 occasion to be called to [REDACTED] Country Manor Lane?

4 A I wasn't actually called there that night, or that
5 afternoon. My partner, Detective Branham, first went to
6 the scene, basically just evaluated what we had. That
7 case was assigned to me the next morning. That's when I
8 took it over. Met with Detective Branham. There was
9 really no reason for two detectives to be there that day,
10 so I didn't actually go out to the scene the very first
11 time when it took place.

12 Q But you did have an occasion to review the
13 photographs and case summary reports that were generated
14 from other officers on the scene?

15 A That's correct, I did. I reviewed all the
16 photographs. I spoke with the officer that initially went
17 there. Spoke with Detective Branham. I had since gone to
18 Country Manor after that to see it for myself, but that
19 initial day I didn't go out there, but I have been there
20 through the investigation.

21 Q And from your recollection, did you ever have an
22 occasion to speak to the victim in this case, Mr. Clark?

23 A Yes, I spoke to him a number of times.

24 Q And what was the nature of y'all's conversation?

25 A First conversation I had with him was just general,

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 discuss the burglary with him. If he had any possible
2 suspects, you know, if there was any connection to why
3 somebody might have done it. Just general basic
4 questions. From there progressed to what kind of stuff
5 was taken from the house. We got into the serial numbers
6 on some of the items that were taken. Some of the
7 jewelry, what it looked like. Just basic parts that
8 progressed through that investigation as to what was
9 taken, what I was looking for, if he had discovered
10 anything else that was missing. Sometimes we see the
11 pictures. You don't realize what's gone. Weeks later you
12 find -- you go to find something and it's not there.

13 Q So he did provide to you serial numbers?

14 A That's correct.

15 Q And at a later occasion, did you need to reference
16 those serial numbers?

17 A That's correct. One of the concerning parts of the
18 burglary was a number of firearms was taken. Any time
19 firearms are taken, obviously they're concerned for us
20 because they can pose a danger. Nobody knows who's got
21 them, where they're at. So in order to track those,
22 firearms have serial numbers which we can enter into NCIC,
23 which is a database that goes all across the country.
24 That way if you're in Chicago and you happen to run that
25 gun, that serial number will alert that it's stolen out of

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 York County. So it's a way for us to track those items.

2 So it was important to get those serial numbers so that we
3 could track those items.

4 Q And were you ever able to relocate some of the items
5 that were taken?

6 A Yes. It was funny the way it happened. I just spoke
7 to him that morning and received a description and a
8 serial number for a Kel-Tec .380 that had a laser sight on
9 it. And upon getting that information, I heard a road
10 deputy conduct a traffic stop and run a firearm that
11 sounded very similar to the one I was looking for that I
12 received that serial number that morning. So I called him
13 and did confirm that that was the firearm I was looking
14 for.

15 Q Are you aware of where the firearm was located?

16 A I am. It was on the ground underneath the scooter
17 that was being operated by Mr. Jordan.

18 Q And did you ever have an occasion to come in contact
19 with Mr. Jordan after that?

20 A Actually, when I spoke to the officer on the phone to
21 confirm that that was the firearm that was taken from my
22 burglary, myself and Detective Branham went to the scene,
23 A, to see the firearm; B, to see what else was there; and
24 to speak with who was stopped at that time. So yes, I
25 spoke with Mr. Jordan on the scene of that traffic stop.

BRIAN SCHESSLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 Q Did you collect any evidence at that point?

2 A I did. Going through the pictures and looking at all
3 the evidence that was taken from the crime scene, there
4 was a black winter hat, toboggan, whatever term you want
5 to use for it, that was found in the woods. And
6 Mr. Jordan had one on his head that was similar to that
7 that day. So as part of the arrest, we collected that as
8 evidence.

9 Q Did you also collect the weapon?

10 A Yes, the firearm was also collected at that time.

11 Q And when you collected the winter hat, what did you
12 do with it?

13 A That was collected, put into one of the envelopes
14 like you have seen with -- the forensics guys use. We
15 went ahead and put that in there and submitted it to
16 evidence.

17 Q Did you request any additional testing for it?

18 A Yes, requested the DNA be tested on it.

19 Q And is the person that had the firearm that day and
20 the person that you took the hat off of that day in the
21 courtroom?

22 A Yes, he is.

23 Q Could you please identify him for the jury.

24 A Yes, he's sitting right over there.

25 Q And is that the person that you know to be Antonio

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 Jordan?

2 A Yes, it is.

3 MR. NEWKIRK: Your Honor, may we approach?

4 THE COURT: You may.

5 (WHEREUPON, a bench conference was held in the
6 presence but not within the hearing of the jury.)

7 THE COURT: We're going to take a short break. You
8 had a break just a moment ago, but the people here in the
9 courtroom did not. So we're going to take a short break.
10 As you retire to the jury room, you know I'm going to ask
11 you not to discuss anything about the case until I've
12 asked you to begin your deliberations. You may retire to
13 the jury room.

14 (The jury panel left open court at 3:03 p.m.)

15 THE COURT: Court will be in recess for five to ten
16 minutes. You may step down. Do not discuss your
17 testimony during the break.

18 (A recess was taken from 3:03 p.m. to 3:19 p.m.)

19 THE COURT: Bring the jury in.

20 (The jury entered the courtroom at 3:20 p.m.)

21 THE COURT: The record will reflect the jury has
22 returned to the courtroom. When we took our break, the
23 state was in the process of directly examining this
24 witness.

25 You may proceed.

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 MR. NEWKIRK: Thank you, Your Honor.

2 BY MR. NEWKIRK:

3 Q Detective, kind of get everybody back in the mindset
4 of what you were saying. You received a call from a road
5 officer; isn't that right?

6 A That's correct.

7 Q And could you please, just to remind everybody where
8 we were at, elaborate on what happened from that point on?

9 A Sure. Deputy made a traffic stop. Found a gun. We
10 generate their district reports, our county is broken up
11 into districts of crimes that happen. So the deputies
12 read them, know that we had a burglary, knew that there
13 was guns missing. When he found the gun, immediately
14 called me and said, "Hey, weren't you missing a gun?" I
15 said yes. We talked about it. Confirmed that it was the
16 gun that was taken from my burglary. And then I proceeded
17 to -- on scene to assist him with what he had at that
18 time.

19 Q And the person that was in possession of the gun that
20 you took the cap for DNA from was Mr. Jordan?

21 A That's correct.

22 Q Now, at some point did you decide to charge
23 Mr. Jordan with that burglary?

24 A Yes, I did.

25 Q And do you remember what type of burglary you charged

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 him with?

2 A Yes, it was a burglary first degree.

3 Q And did at least a part of that decision-making
4 process include his prior convictions?

5 A Yes, burglary first degree, you have to have what's
6 called elements. And there's a number of different
7 elements. Happens at night. Person becomes armed or arms
8 themselves or has two prior convictions.

9 MR. NEWKIRK: Your Honor, may I approach?

10 THE COURT: You may.

11 Q Detective, I'm handing you what's already been
12 entered into evidence as State's Exhibit Number 4 and
13 Number 5. Could you please identify those for the jury.

14 A Looks like certified copies of convictions.

15 Q Let's start with State's Exhibit Number 4. Who is
16 the individual that's listed on State's Exhibit 4?

17 A Antonio Jordan.

18 Q And can you please explain to the jury what crime
19 that conviction record is from.

20 A It was from a burglary second degree.

21 Q Moving on to State's Exhibit Number 5. Could you
22 please again tell the jury who is listed on that report.

23 A Antonio Jordan.

24 Q And could you please tell the jury what crime is
25 reflected on that sentencing sheet.

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 A Burglary second degree.

2 Q And just to be clear, could you -- on both of those
3 State's Exhibit 4 and 5, is there a date of birth listed?

4 A There is, of [REDACTED]/84.

5 Q Is that the same on both sheets?

6 A Yes, it is.

7 Q Just in an abundance of thoroughness, is there also a
8 social security number listed?

9 A There is.

10 Q And could you please confirm that they're identical
11 on both sheets and then read them for the jury.

12 A There's a social security number on State's
13 Exhibit 4, but there is not a social security number on
14 State's Exhibit 5 that I see. Social security number on
15 State's Exhibit 4 is [REDACTED].

16 MR. NEWKIRK: Your Honor, I don't have any further
17 questions for the detective, but pursuant to our previous
18 stipulation with the defense, I'd like the Court to take
19 note that those are the defendant's social security number
20 and birthday.

21 THE COURT: The matter has been previously agreed
22 upon by counsel that those records would be introduced
23 into the record. I will inform the jury that the exhibits
24 that are in the record are copies of certified records
25 from other court proceedings. They do reflect

BRIAN SCHETTLER - DIRECT EXAMINATION BY MR. NEWKIRK

1 proceedings, according to my information, that involve the
2 defendant. However, there are -- portions of them have
3 been redacted by this court. So because they weren't
4 necessary and were -- should not be presented to you. But
5 they are accurate records of convictions from, I believe,
6 York County as well as Lancaster County.

7 MR. NEWKIRK: Thank you, Your Honor.

8 THE COURT: And those have already been placed in the
9 record and agreed upon by counsel.

10 MR. NEWKIRK: Thank you, Your Honor.

11 And, Detective, I don't have any further questions.
12 Please answer any that Mr. Cook might have.

13 THE COURT: Mr. Cook, your witness.

14 MR. COOK: Thank you, Your Honor. Beg the Court's
15 brief indulgence.

16 I've got no questions for the detective.

17 THE COURT: Sir, you may step down.

18 MR. EPTING: Your Honor, we have no -- he's our case
19 agent, but in the case -- in the situation where he may
20 have to leave, may he be excused from the subpoena?

21 THE COURT: Any objection to him leaving if he finds
22 it necessary?

23 MR. COOK: None whatsoever.

24 THE COURT: You're excused if you'd like to leave.
25 You're also free to stay.

TRAVIS SHEALY - DIRECT EXAMINATION BY MR. EPTING

1 You may call your next witness.

2 MR. EPTING: State calls Travis Shealy.

3 TRAVIS SHEALY, after having first being duly sworn,
4 testified under oath as follows:

5 THE COURT: Thank you, sir.

6 Your witness.

7 DIRECT EXAMINATION

8 BY MR. EPTING

9 Q Thank you, Deputy Shealy. I think you mentioned a
10 second ago that you work for the Sheriff's Office; is that
11 correct?

12 A Yes, sir.

13 Q How long have you worked for the Sheriff's Office?

14 A Going on four years.

15 Q Try to make this brief. Were you or were you not
16 working on the day of November 14, 2013?

17 A I was working, sir.

18 Q Could -- and at that point, did you make a traffic
19 stop involving a certain individual, Antonio Jordan?

20 A Yes, sir, I did.

21 Q Is Mr. Jordan present in the courtroom here today?

22 A Yes, sir, he is.

23 Q Could you please point him out.

24 A He's sitting right there, sir.

25 MR. EPTING: Please let the record reflect that

TRAVIS SHEALY - DIRECT EXAMINATION BY MR. EPTING

1 Deputy Shealy pointed out the defendant seated at counsel
2 table.

3 THE COURT: It shall so reflect. You may proceed.

4 Q I'll leave it up to you at this point. You stated
5 you made a traffic stop on this individual; is that
6 correct?

7 A Yes, sir.

8 Q Please tell the jury about it.

9 A On that day, I was traveling on South Anderson Road
10 in Catawba, South Carolina, in the county of York. Headed
11 back towards Rock Hill on Anderson Road. As I approached
12 the intersection of Cannon Drive, I noticed a moped coming
13 down the downhill slope of Cannon Drive, did not stop at
14 the stop sign, and almost T-boned the side of my car. I
15 then had to proceed up Anderson to the next turnabout to
16 get turned back around to go back to try to stop this
17 individual. Once I got turned back around to stop the
18 individual, he had already pulled over on the side of the
19 road and went from there.

20 Q During the course of your traffic stop, did you speak
21 with him?

22 A Yes, sir.

23 Q Ordinary stuff?

24 A Yes, sir.

25 Q What kind of things?

TRAVIS SHEALY - DIRECT EXAMINATION BY MR. EPTING

1 A Asked him who he was, asked for his identification,
2 asked him where he was coming from, just general
3 information.

4 Q Could he give you a clear answer on where he was
5 coming from or where he lived?

6 A Stated he was coming from his girlfriend's house
7 supposedly on Cannon Drive, which he actually had to look
8 back at the sign to know where he was actually at that
9 day. Did -- still could not give an actual address of
10 where he was coming from, though, given being his
11 girlfriend. All he could say is "back up the road."

12 Q He couldn't give you a street address?

13 A No, sir.

14 Q Did you get some form of identification from him in
15 the course of this stop?

16 A Yes, sir.

17 Q Do you recall where that address --

18 A That address was in Lancaster.

19 Q So it was a Lancaster address?

20 A Yes, sir.

21 Q At that point, what do you do?

22 A I then -- once he gave me his identification, I then
23 started to run his information, information being his
24 name, date of birth. Make sure he doesn't have any
25 warrants. Check him with our agency, Rock Hill PD's

TRAVIS SHEALY - DIRECT EXAMINATION BY MR. EPTING

1 jurisdiction, and any surrounding agencies.

2 Q Did you -- based upon that check, were you prepared
3 to write him a ticket?

4 A .Yes, sir.

5 Q And tell the jury about that.

6 A I was -- at that point in time, I was going to write
7 him a citation for disregard for a stop sign, and he
8 also -- he had his identification that he gave me. It was
9 a regular ID card. He did not have a current moped
10 license at that time, so I also wrote him for -- I was
11 going to write him for no moped license as well.

12 Q And did you need some additional information to write
13 that ticket?

14 A Yes, sir.

15 Q Tell the jury about that.

16 A The moped that he was riding, with a traffic ticket
17 that you write, I have to have vehicle information to put
18 on that. His moped currently did not have a moped tag on
19 it, so I have to go to the next option, being of getting a
20 VIN number off of that moped.

21 Q Where was this moped parked relative to the road?

22 A At the intersection of Cannon Drive and South
23 Anderson Road. His moped was sitting directly next to the
24 lane of traffic on the side of the road on Anderson Road,
25 which is a busy highway.

TRAVIS SHEALY - DIRECT EXAMINATION BY MR. EPTING

1 Q With the moped parked in that manner, were you able
2 to get the VIN number?

3 A At that -- I went to try to get down and look at it.
4 The way the sunlight was, I had to reposition myself to
5 the opposite side of the moped closest to the roadway
6 where the cars were traveling. While I was doing that, I
7 just noticed cars kept whizzing by me, just flying by me.
8 So for my safety, I moved the moped over to a safer
9 distance farther to the side of the road closest to the
10 ditch.

11 Q Did you get the VIN at that point?

12 A Yes, sir.

13 Q And what, if anything, happened as you were returning
14 to your patrol vehicle?

15 A While I had gotten down -- once I got -- moved the
16 moped and once to get up to go back to my car, I noticed
17 there was a gun laying on the ground that was fresh. It
18 had no -- it wasn't wet or anything like that. It was
19 there right where the moped had been originally sitting at
20 before I had moved it.

21 Q Do you remember any details about that gun?

22 A It was a small caliber, .380, had a laser-type
23 sighting on it, laser-type sighting on it. Semiautomatic,
24 black in color.

25 Q Did you check that gun with anybody?

TRAVIS SHEALY - DIRECT EXAMINATION BY MR. EPTING

1 A Yes, sir, I did. We currently -- with the way our
2 district works, we have a daily -- basically it's a page
3 where any major incidents are put on. That gun matched a
4 incident that had been put on there, so I then notified
5 the detective that had been working that previous case to
6 confirm with him whether or not this gun was possibly
7 involved with that case.

8 Q After you discovered the gun, as you're walking back
9 to your patrol car, what you do?

10 A I call out that I've got a guy subject with a gun. I
11 detained Mr. Jordan at that point in time and call out for
12 the detectives to try to start heading my way.

13 Q How did Mr. Jordan react?

14 A Stated that it wasn't his. Had -- didn't want to
15 have nothing to do with that gun. Just due to the
16 circumstances of it being dry right where that moped had
17 been sitting where I observed him being with the moped at,
18 that's why I detained him for my safety -- my safety
19 foremost.

20 MR. EPTING: Beg Court's indulgence.

21 THE COURT: Yes, sir.

22 Q And this occurred in York County?

23 A Yes, sir.

24 MR. EPTING: No further questions for you at this
25 time. Please answer any questions Mr. Cook may have.

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 THE COURT: You may cross-examine.

2 MR. COOK: I've got no questions, Your Honor.

3 THE COURT: You may step down, sir.

4 THE WITNESS: Yes, sir.

5 THE COURT: Wish to excuse the witness?

6 MR. EPTING: We do, Your Honor.

7 THE COURT: Any objection?

8 MR. COOK: No, sir.

9 THE COURT: You're free to go, sir. Thank you very
10 much.

11 THE WITNESS: Thank you.

12 THE COURT: State may call its next witness.

13 MR. EPTING: Thank you, Your Honor. State calls
14 Crystal Kissell to the stand.

15 CRYSTAL KISSELL, after having first being duly sworn,
16 testified under oath as follows:

17 THE COURT: State your name, please.

18 THE WITNESS: It's Crystal Kissell, last name
19 K-I-S-S-E-L.

20 THE COURT: Thank you.

21 Your witness, Counsel.

22 MR. EPTING: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. EPTING

25 Q Ms. Kissell, could you please state your occupation

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 for the record.

2 A Yes, I'm the DNA technical leader for the York County
3 Sheriff's Office forensic biology laboratory.

4 Q How long have you been employed in that capacity?

5 A I've been employed here for just about four years.

6 Q Could you briefly describe some of the duties of your
7 job and your position to the jury.

8 A Yes. In the laboratory, we examine items of evidence
9 for body fluids -- blood, saliva, anything that comes off
10 the body. We also perform DNA analysis on those items and
11 compare those to known profiles that we obtain from
12 individuals that may be involved in an incident and
13 compare to determine if those individuals are excluded or
14 match those profiles.

15 Q If you could briefly describe your educational
16 background for the jury.

17 A Yes. I have a bachelor's in mathematics and a minor
18 in chemistry from Vanderbilt University in Nashville,
19 Tennessee. And I also have a master's degree in criminal
20 justice with an emphasis in forensic science from Virginia
21 Commonwealth University in Richmond, Virginia.

22 Q Do you have any formal training in forensic DNA
23 analysis?

24 A Yes. I completed a nine-month formal training
25 program with the Virginia Department of Forensic Sciences

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 in Richmond, Virginia. I also participate in yearly
2 continuing education that is required by the federal
3 government to maintain my status as a forensic scientist.

4 Q Including your work history here in York County, how
5 much work experience do you have for DNA collection
6 analysis?

7 A I've been employed in this field for just about 15
8 years.

9 Q How many times would you say you've made collections,
10 getting DNA samples?

11 A I have performed examinations on thousands of items,
12 probably tens of thousands of items in hundreds of cases
13 doing forensic biology analysis.

14 Q And in addition to collecting those, how many
15 comparisons over the course of your career would you say
16 you've made?

17 A Probably thousands of those as well.

18 Q Have you ever had to testify in court?

19 A Yes, I have.

20 Q Approximately how many times?

21 A Probably 25 to 30 times.

22 Q And how many times of those -- how many of those
23 testimonies involved you being qualified as an expert in
24 DNA analysis?

25 A All of those.

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 Q Do you have any additional personal certifications
2 that the court or jury need to know about?

3 A I am certified as a fellow for the American Board of
4 Criminalistics in molecular biology.

5 Q Outside of your personal certifications, you
6 mentioned that you work at a lab here in York County; is
7 that correct?

8 A Yes.

9 Q Is that lab certified as well?

10 A Yes, we obtained certification last year for the
11 laboratory.

12 Q Is that required for every lab in the United States?

13 A No. It is required, though, to have access to an FBI
14 database and to fulfill some of the things that we need to
15 do to have a forensic biology laboratory.

16 MR. EPTING: Your Honor, based on Ms. Kissell's
17 testimony, I would seek to have her qualified as an expert
18 in forensic DNA analysis.

19 THE COURT: Any objection?

20 MR. COOK: Without objection, Your Honor.

21 THE COURT: Without objection, she'll be so
22 qualified. I've explained to the jury what that
23 designation means, so you can proceed.

24 MR. EPTING: Thank you, Your Honor. In addition to
25 that, I would add collection to that as well. I

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 apologize.

2 THE COURT: Any objection to that additional
3 qualification?

4 MR. COOK: No, sir.

5 THE COURT: All right. I'll approve that. You may
6 proceed.

7 Q Ms. Kissell, I'd like to begin kind of with a general
8 discussion about DNA. What is DNA, basically?

9 A DNA is basically the blueprint of life. So for
10 humans, your DNA basically determines that you're human
11 and what your body does to live. About 90 percent of your
12 DNA or 98 percent of your DNA is the same from person to
13 person, and that's what again makes you human. It tells
14 your body how to live, how to breathe, how to digest food,
15 all those things.

16 There's 2 percent, though, that is different from the
17 person sitting beside you, and that's what determines that
18 you look different -- different hair color, different eye
19 color, just some other things that make you unique as you.
20 And it is in that 2 percent that we use to find markers
21 that we do comparisons for for criminal cases. You also
22 obtain your DNA from your mom and your dad. You get half
23 from each. And so we're also able to use that DNA profile
24 to compare for paternity purposes as well.

25 Q Let's talk a little bit about collecting DNA samples

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 from items. On occasion you're required to do that; is
2 that correct?

3 A Yes.

4 Q Are samples that have already been collected
5 sometimes submitted to you for analysis?

6 A Yes.

7 Q Generally speaking, how is a DNA sample collected?

8 A In most cases, a DNA sample is collected off an item
9 through swabbing with a swab just similar to a Q-tip,
10 except we use sterile ones that we obtain that come
11 packaged that way. There are also times that we actually
12 sample an item straight from the item itself. We'll take
13 a cutting from that item in order to try to extract the
14 DNA off of it.

15 Q On occasion are articles of clothing submitted to you
16 to sample yourself?

17 A Yes.

18 Q And how is that done?

19 A Generally for articles of clothing, if there's no
20 obvious staining, we will swab a large area of that
21 clothing to try to get as many cells off the item as we
22 can.

23 Q So you swab an article of clothing to get a sample,
24 correct?

25 A Yes.

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 Q Or a swab is already sent to you to be tested; is
2 that correct?

3 A Yes.

4 Q Can you walk the jury through how that swab becomes
5 something that you can then compare that you can develop a
6 DNA profile from.

7 A Yes. So we will take a portion of the swab or the
8 staining from whatever item we have. We will then add
9 some chemicals to that portion of the swab that will pull
10 out the cells that we're looking for, and it cleans up and
11 gets rid of all of the other stuff that may be on it --
12 just dirt, bacteria, those kind of things. Once we have
13 the cells, we open it up. We release the DNA that is
14 inside of it. We determine how much DNA we have, and then
15 once we've determined that, we will then take a small
16 portion of that sample, add some other chemicals to it
17 that will copy the areas, the DNA that we're interested
18 in. And then we'll also tag those areas so that our
19 instrument can see it in the end and can tell us what DNA
20 was actually present in that sample.

21 Q And from that you're able, if the sample is
22 sufficient, to develop a DNA profile sufficient for
23 comparison; is that correct?

24 A Yes.

25 MR. EPTING: Beg the Court's indulgence.

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 You mentioned that sometimes samples were multiplied or
2 copied?

3 A Yep.

4 Q Does that affect the validity -- does that affect the
5 reliability of the process in any way?

6 A No. We basically use the same process that your body
7 does to recreate DNA for yourself. We do the same process
8 in the lab. Just instead of copying the entire genome of
9 your DNA, we just take small area that we want to look at.
10 The processes that we use in the lab have been validated,
11 both developmentally from the companies that make our
12 instruments and our chemistry, as well as we do
13 validations in-house to ensure that what we're doing is
14 reliable and it's reproducible every time we use it.

15 Q Once you've distilled all of this into a manner that
16 you can start working with, doing a comparison, is that
17 stored in the laboratory, if possible?

18 A The original extract that we obtain from the item is
19 stored in the laboratory indefinitely, yes.

20 Q And going back to something you testified on earlier,
21 you said sometimes articles of clothing are sent to you,
22 correct?

23 A Yes.

24 Q Sometimes swabs of suspected DNA are sent to you,
25 right?

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 A Yes.

2 Q Do you require those to be packaged in a certain way?

3 A Yes, we do require that they're packaged in a manner
4 that does not allow moisture or contamination to enter
5 into those items, that they're properly sealed and labeled
6 so that we can maintain a chain of custody that's been
7 intact and the condition of the item has remained intact.

8 Q If an item is not properly packaged, do you still run
9 an analysis anyway or sampling?

10 A That would depend. Normally we would request that
11 the officer repackage and make sure the evidence is in the
12 manner that it was when they obtained it and reseal the
13 item before bringing it back to the laboratory.

14 Q What, if any, steps does the lab take to avoid
15 cross-contamination between a known item and an item
16 that's being tested?

17 A Part of the procedures that we use in the lab is that
18 we only have one item out at a time. In between items, we
19 do clean all the areas with bleach and alcohol to remove
20 any DNA that would have been left behind. We clean any
21 type of utensils, such as scissors or scalpels that we use
22 in the lab in between every item. We will also change
23 gloves, personal equipment if we were to get anything on
24 us, things like that in the lab to ensure that nothing is
25 contaminated. We also run reagent blanks with all the

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 samples through each process to ensure that if there was
2 any contamination as a whole, it would pick up in those
3 blanks as well.

4 Q And what effects would you expect from a collection
5 standpoint if a person were to wear, say, rubber gloves or
6 some other type of article covering their hands on the
7 likelihood of you collecting a DNA sample?

8 A It would lessen the amount of DNA that is deposited
9 or eliminate DNA being deposited. It would just depend on
10 the situation and how the gloves were handled as they were
11 wearing them when they touched an item.

12 Q Is it possible for somebody to touch an item or
13 surface and leave DNA that you cannot identify?

14 A Yes, it is possible that you can touch something
15 briefly, or you may be an individual who doesn't -- their
16 cells do not come off their body easily enough and just
17 not leave enough cells behind that we can pick up.

18 Q Did you perform an analysis on the items in this
19 case?

20 A Yes.

21 Q What kind of analysis did you perform?

22 A I performed a DNA analysis on several items.

23 Q Okay. Any particular type of analysis? What is STR
24 analysis?

25 A STR is a short tandem repeat. It actually describes

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 the type of DNA sequence that we're looking for. So there
2 are different types of sequences, and we use the STR, the
3 short tandem repeats, because they're -- they don't mutate
4 as easily in your lifetime or from, say, a parent to a
5 child and they also are easy, quick to copy and make a lot
6 of when we need to for a case.

7 Q Is that standard analysis run by most labs in the
8 nation?

9 A It is.

10 Q Going back to your analysis in this case, as the
11 lead, then, were you given items from two different case
12 numbers?

13 A Yes.

14 Q I'm going to refer you to case number 2013, ending in
15 37997.

16 A Yes, I have that.

17 Q If you have the report there in front of you.

18 A Yes.

19 Q What items were submitted to you?

20 A I obtained a black toboggan for that case.

21 Q Were you given anything to compare that toboggan
22 with?

23 A Yes, it was requested by the investigator to compare
24 it to a buccal swab that was submitted under another case
25 number.

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 Q And just very briefly, what's a buccal swab?

2 A Buccal swab is typically how we collect or someone
3 collects a known swab from an individual. It's a swab of
4 the inside of the cheek area to obtain skin cells so that
5 we can use that as a known DNA sample to compare to
6 evidence items.

7 Q Were these items packaged correctly?

8 A Yes.

9 Q How do you know they were packaged correctly?

10 A They came in with the proper seals that we will
11 accept with the proper identification on those items.

12 Q Did you collect a potential DNA sample from the black
13 toboggan?

14 A I did obtain a DNA profile from that black toboggan.

15 Q How did you obtain the sample?

16 A I swabbed the inside of the toboggan.

17 Q And if you would, tell the jury your conclusion or
18 the findings of your test.

19 A The DNA profile obtained from the swabbing of the
20 toboggan was consistent with a mixture of at least three
21 individuals. Antonio Jordan could not be excluded as a
22 potential contributor to the major portion of the mixture,
23 which was consistent with at least two individuals. The
24 DNA profile developed from that swabbing is approximately
25 1.4 trillion times more likely to be observed if it

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 originated from Antonio Jordan and an unknown individual
2 than if it originated from two unknown individuals in the
3 Caucasian population; 69 billion times more likely if it
4 originated from Antonio Jordan and an unknown individual
5 than if it originated from two unknown individuals in the
6 African-American population; and 40 billion more times if
7 it was observed with Antonio Jordan and an unknown versus
8 two unknown individuals in the Hispanic population.

9 Q Is it true that you're unable to develop a profile on
10 the other two minor mixtures in there?

11 A We did not have any other known samples that we
12 compared, so no comparisons were made with the remaining
13 DNA that was obtained.

14 Q Could you give a metaphor that the jury -- that I
15 might be able to wrap my head around as far as those
16 numbers?

17 A Yes. This particular statistic is referred to as the
18 likelihood ratio. So it is an odds. So, for example, if
19 we were to discuss the chances of flipping a coin and
20 getting a heads versus a tails, you would have the
21 hypothesis what is the chance of getting a heads versus a
22 tails, and in that instance it would be one to one. And
23 so in a likelihood ratio in these odds, when the number is
24 one, you have the same possibility of getting one option
25 versus the other. If that number were to go below one,

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 then your belief would be that the chance would be for the
2 opposite event to occur. But if I gave you the option of
3 what are the chances of a dice rolling a one versus any
4 other number, then your number would be one to five with
5 that being a number less than one, and so your chances of
6 rolling a one would be less significant than rolling
7 another number.

8 So in the likelihood ratio, we have two scenarios.
9 The first scenario is that the DNA profile was contributed
10 by the same individual who had the profile from themselves
11 versus the chance of that profile coming from someone
12 unknown in the population at random. And the larger that
13 that number goes away from one, the more likely that that
14 event will occur.

15 Q So in other words, it's 1.4 trillion times more
16 likely that Antonio Jordan's DNA is in that mixture than
17 not?

18 A Yes, that is correct.

19 Q And were you submitted other items from a different
20 case number?

21 A Yes.

22 Q That would be case number 2013, ending 37355.

23 A Yes.

24 Q A burglary case. What items were submitted to you?

25 A I obtained a black toboggan, a swab from a back door

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 lock, a black cap, a swab from a cashbox handle, a swab
2 from a cashbox lock, a swab from the right side of the gun
3 safe, a swab from a safe door, a swab from the top of the
4 gun safe, a swab from the left of the gun safe, a swab
5 from the back of the gun safe, swab from the bottom of the
6 gun safe, and buccal swabs from Antonio Jordan.

7 Q Could you tell the jury the results? What were you
8 able to develop? First of all, were you not able to
9 develop profiles from any of these items?

10 A Yes. I was not able to -- I obtained DNA profiles
11 from the swab from the back door lock, the swabs from the
12 cashbox handle, the cashbox lock, the right side of the
13 gun safe, the safe door, the left of the gun safe, the
14 back of the gun safe, and the bottom of the gun safe.

15 Q Were you able to develop some profiles from any of
16 the remainders?

17 A Yes, I obtained profile from the black toboggan, the
18 black cap, and the swab of the top of the gun safe.

19 Q What were your conclusions? Well, let me ask you
20 this: Were you submitted a known buccal swab from Antonio
21 Jordan, like on the other case?

22 A Yes.

23 Q And that's what -- is that what you're comparing this
24 to?

25 A Yes.

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 Q Please continue. I'm sorry to interrupt you.

2 A On the black toboggan, the DNA profile obtained was
3 consistent with a mixture; however, based on the
4 complexity of that profile, that profile was not suitable
5 for comparisons.

6 Q Okay. Were some hairs removed from the toboggan as
7 well?

8 A Yes, but no DNA was obtained from the hairs.

9 Q Can you explain to the jury why that might be.

10 A Generally on a hat or an item that you wear on your
11 head, the hairs that we find in those items generally are
12 hairs that would naturally fall out anyway. And how that
13 happens is when the root of your hair dies, your hair
14 falls out. The DNA that I need from the hair to obtain a
15 profile is actually located in that root. So as that root
16 dies, there's no DNA left to obtain a profile. So these
17 hairs were at that stage where the root was dying or was
18 dead, and there was just not sufficient cell material left
19 on those items to obtain any DNA.

20 Q Were you able to develop a profile from your swabs on
21 a black cap, item three that was submitted to you?

22 A Yes.

23 Q What was your conclusions?

24 A DNA profile was obtained from the swabbing of the
25 cap, and it was consistent with a mixture of at least two

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 individuals. The major DNA profile obtained for the
2 mixture is consistent with the DNA profile obtained from
3 Antonio Jordan. The probability of randomly selecting an
4 unrelated individual with the DNA profile matching that
5 obtained from the major profile of the mixture is
6 approximately one in 8.8 sextillion Caucasians, one in 700
7 quintillion African-Americans, and one in 190 quintillion
8 Hispanics.

9 Q So sextillion. Million billion trillion quadrillion,
10 quadrillion. I'm losing count on my crazy number.

11 A Yes.

12 Q High number?

13 A Yes.

14 Q Would you consider this, in your opinion as an
15 expert, to be a more solid sample than the other case?

16 A This was a direct comparison, a different type of
17 statistic. I was able to obtain a major profile, which
18 means the major profile was one individual and at each of
19 the low side was consistent with the DNA profile from
20 Antonio Jordan. So this number would indicate that if you
21 had 8.8 sextillion Caucasians, you would only expect to
22 see this profile one time.

23 Q You mentioned "mixture" several times to the jury.
24 Is it common or uncommon, in your experience as an
25 analyst, to find mixtures?

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 A It is common in most articles of clothing or items
2 where multiple people may have handled those items to
3 obtain mixtures.

4 Q When you're able to develop a major contributor to a
5 mixture, does that have any real-life application, again
6 based on your expertise as a DNA analyst?

7 A It can indicate that the major profile is the
8 individual that primarily wears that item or is the
9 individual that wore that item last.

10 Q And finally, item eight, I believe, the swab from the
11 top of the gun safe, were you able to develop a profile
12 from that?

13 A Yes, a DNA profile was obtained from the swab. It
14 also was a mixture of at least two individuals, and
15 Antonio Jordan was excluded as a potential contributor of
16 that mixture.

17 Q So a match to the cap. We can't say on the black
18 toboggan. Am I misstating this? The black toboggan was
19 too complex to develop a profile; is that correct?

20 A That's correct.

21 Q But you did develop a profile on 3 that consistent
22 with Antonio Jordan, and then item 8, you were able to
23 exclude him from that, but you don't know who else might
24 have touched that; is that correct?

25 A That's correct.

CRYSTAL KISSELL - DIRECT EXAMINATION BY MR. EPTING

1 Q And you also don't know when they might have touched
2 that item; is that correct?

3 A That's correct.

4 MR. EPTING: Your Honor, I'd like to have these
5 reports marked.

6 THE COURT: You may have them marked.

7 MR. EPTING: May I approach, Your Honor?

8 THE COURT: You may.

9 (State's Exhibit numbers 6 and 7 were marked for
10 identification.)

11 Q Ms. Kissell, I'm handing you what's been marked as 6
12 and 7. Do you recognize those items?

13 A Yes, they are copies of the reports that I issued on
14 the two cases I just discussed.

15 Q Are they fair and accurately represented?

16 A Yes.

17 MR. EPTING: Your Honor, at this time, I'd move to
18 introduce State's Items 6 and 7 into evidence.

19 THE COURT: Any objection?

20 MR. COOK: Without objection.

21 THE COURT: Without objection, they'll be received
22 into evidence as they've been marked.

23 (State's Exhibit Numbers 6 and 7 were admitted.)

24 MR. EPTING: Your Honor, I have no further questions
25 for this witness at this time.

CRYSTAL KISSELL -- CROSS-EXAMINATION BY MR. COOK

1 Ms. Kissell, please answer any questions Mr. Cook may
2 have for you.

3 THE COURT: Mr. Cook, your witness.

4 MR. COOK: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. COOK:

7 Q Good afternoon, Ms. Kissell. Ms. Kissell, you came
8 into contact with Detective Schettler in regards to this
9 case; is that correct?

10 A Yes, I believe we had some communication in regards
11 to the case.

12 Q You had a conversation with him on January 6 of 2014,
13 is that correct, according to the case report?

14 A Yes.

15 Q And you advised Detective Schettler that the
16 defendant, Mr. Jordan's, DNA was found on the gun case at
17 that time; is that correct?

18 A Could you specify the date again, please?

19 Q I'm reading a sentence from the case summary. It
20 says, "On January 6, 2014" -- "of 2014, I met with Kissell
21 at the DNA lab, and she advised the DNA in the hat taken
22 from Jordan matched with the DNA at the burglary. The
23 match was with a gun case and a hat from the burglary.
24 Based on this information, Jordan was" --

25 MR. EPTING: Your Honor, I object at this time.

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1 THE COURT: The objection is?

2 MR. EPTING: He's presenting her with a statement she
3 may or may not have made. He's reading from the report.

4 THE COURT: I'll sustain the objection in the manner
5 in which it's being presented.

6 Q I'll stop there and only address that I only want to
7 talk about the conversation you had with Schettler,
8 Detective Schettler. So did you or did you not tell
9 Detective Schettler that DNA from the gun case matched
10 with my client?

11 A At the time in January, I did not have a buccal swab
12 from Mr. Jordan and in the conversation from Detective
13 Schettler, he was requesting to know if the DNA profiles
14 from the evidence items had any consistency. And I did
15 inform him that in looking at the mixture profiles, there
16 was some consistency among them, but to be able to prepare
17 an accurate account of who may or may not be in those
18 mixtures, I would require a known sample.

19 Q So I take it that you wouldn't have said at that
20 point that there's one quintillion of a likelihood that
21 this is Mr. Jordan's?

22 A No, we do not perform statistics on the actual
23 evidence items themselves. Statistics are obtained based
24 on a known profile being compared to an evidence sample.

25 Q Well, I mean, let me ask you: Did you tell him that

CRYSTAL KISSELL -- CROSS-EXAMINATION BY MR. COOK

1 the match from the toboggan that was taken from him at the
2 roadside matched with the gun case; yes or no?

3 MR. EPTING: Your Honor, he can't limit her to yes or
4 no. She's allowed to answer the question.

5 MR. COOK: I thought this was cross-examination, Your
6 Honor.

7 THE COURT: It is cross-examination, but she has a
8 right to explain her answer. She's not required just to
9 say yes or no.

10 MR. COOK: Yes, sir, Your Honor.

11 THE COURT: So I'll allow her to explain her answer
12 if she wishes to do so.

13 MR. COOK: Of course, Your Honor.

14 THE COURT: All right. You may proceed.

15 A I did inform Detective Schettler there was some
16 consistencies, but I could not say for sure they were the
17 exact same individual until I had a known profile to
18 compare to each of those samples.

19 Q Well, what's the difference between a match and
20 consistencies?

21 A A match would indicate that is exactly the same.
22 Every item in each area is exactly the same. Consistency
23 would indicate that there were some that are similar, but
24 it wasn't an exact match per match per each item.

25 Q You're aware that the sentence in the report --

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1 MR. EPTING: Your Honor, I object.

2 Q What was your exact wording you said to Detective
3 Schettler in regards to that?

4 A My wording would have been that there was some
5 consistency between the two samples and there was a
6 possibility that the same individual may have been in
7 those, but there was no way to make that final
8 determination until a known sample was submitted to the
9 lab.

10 Q You said that to the detective, there's no way to
11 make a final determination until this is submitted to the
12 lab?

13 A Until a known sample was submitted, yes.

14 Q Are you aware of whether the detective used your --

15 MR. EPTING: Your Honor, I object.

16 THE COURT: Ladies and gentlemen of the jury, I'm
17 going to ask you to step back to the jury room while I
18 take up a matter with the lawyers. I'll ask you not to
19 discuss the case at this time. Thank you very much.

20 (The jury left open court at 4:01 p.m.)

21 THE COURT: All right, sir, finish the question.

22

23 MR. COOK: I was going to ask, Your Honor, are you
24 aware of what your information was used -- how your
25 information was used by the detective.

CRYSTAL KISSELL -- CROSS-EXAMINATION BY MR. COOK

1 THE COURT: All right. And the objection is?

2 MR. EPTING: That's a relevance question.

3 THE COURT: Relevance?

4 MR. COOK: Your Honor, this is the evidence that was
5 used to deny my client bond stating that he was in the
6 house and I'm --

7 THE COURT: We're here on -- this is a guilt or
8 innocence hearing. Now, what relevance does that have as
9 to whether it's more likely or less likely that he
10 committed the crime that he was charged with?

11 MR. COOK: I'm saying --

12 THE COURT: That's the test of relevance in this
13 hearing.

14 MR. COOK: Yes, sir. The state can't have it both
15 ways. They can't say at his bond hearing that we have
16 conclusive evidence that puts him in the house and then
17 today say that they don't and then not admit the mistake.

18 THE COURT: Again, what does that have to do with his
19 guilt or innocence of the crime?

20 MR. COOK: It's highly relevant because the entire
21 case is going to hinge on DNA testimony, and that the
22 state made a mistake with DNA testimony. I would love as
23 a defense attorney to punch holes in the testimony that
24 bolsters how accurate all of this DNA evidence is when, in
25 fact, the state made a mistake and my client was denied

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1 bond for half a year based on this mistake. It's highly
2 material. The officer mentioned that, Your Honor.

3 THE COURT: Yes, sir. I'm listening to the argument.

4 MR. COOK: Yes, sir. This is what my whole case is
5 based on, Your Honor. This lady --

6 THE COURT: I thought you notified of alibi witness.
7 Maybe I missed something. I don't know.

8 MR. COOK: This is what my whole case is based on,
9 Your Honor.

10 THE COURT: I just know I heard that one was noticed.
11 I'm sorry.

12 MR. COOK: Yes, sir. I do want to explain this, and
13 I want --

14 THE COURT: I want you to explain it to me because
15 again, this witness did not make any statements to that
16 court.

17 MR. COOK: I understand. But the detective made the
18 statement to the court based off of her statements.

19 THE COURT: I don't know if the detective --

20 MR. COOK: He used the word "match" --

21 THE COURT: I don't think the detective did. From
22 what I've -- I wasn't at that hearing. Do you have a
23 transcript of that hearing?

24 MR. COOK: No, sir.

25 THE COURT: All right. But I know how bond hearings

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1 are conducted. Generally it's the solicitor speaking for
2 the state and the defense attorney speaking for the
3 defendant.

4 MR. COOK: Yes, sir.

5 THE COURT: You agree with that --

6 MR. COOK: I do.

7 THE COURT: -- assessment?

8 MR. COOK: Yes, sir.

9 THE COURT: So my experience with bond hearings is
10 there may have been a statement made by a solicitor at
11 that point in time. And I understand that it may not be
12 consistent with the current testimony, but this witness
13 has explained -- you've asked her, I let you ask her
14 three, maybe four times now, about the fact that she did
15 not -- that she did not -- she did make a statement to the
16 officer that there were some consistencies between them,
17 but her testimony is that she could not make a final
18 determination until she received the control sample.
19 Which she -- had not been taken at that time. So that's
20 what this witness's testimony has been as to that
21 particular issue.

22 MR. COOK: I understand. Yes, sir.

23 THE COURT: Did she appear at the bond hearing?

24 MR. COOK: No, sir.

25 THE COURT: Did she make any statements to the judge,

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1 to your knowledge, at the bond hearing?

2 MR. COOK: Not directly.

3 THE COURT: Did she make any statements indirectly to
4 the judge at the bond hearing?

5 MR. COOK: Her evidence was used --

6 THE COURT: I think hearsay from her might have been
7 used. I don't know.

8 MR. COOK: Yes, sir. I suppose at this time can I
9 reserve a right to call the detective back on the stand?

10 THE COURT: You haven't presented your case yet.

11 MR. COOK: I understand. So --

12 THE COURT: I'm not going to tell you what or what
13 you can't -- you got every right to develop your defense.
14 I'm not trying to limit your defense. The question is
15 what you can cross-examine this witness about and whether
16 or not what was stated at a bond hearing is relevant as to
17 the guilt or innocence of the defendant. Now, if you're
18 arguing some kind of collateral estoppel argument, I
19 haven't heard that yet. I don't know if that's what
20 you're trying to argue, but that hadn't been argued yet,
21 so you -- I'm not sure what we're going to ask this
22 witness about since she did not attend the bond hearing --

23 MR. COOK: I understand.

24 THE COURT: -- didn't make a statement at the bond
25 hearing, and I'll let you ask her about the statement she

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1 made to the detective. She stated what she said to the
2 detective three times. And if that's not consistent with
3 other statements that were made by the detective later on,
4 I'm not telling you you have any burden of proof in this
5 case at all. Don't get me wrong. That's not my ruling
6 here. But has that detective already been on the stand?

7 MR. EPTING: He has, Your Honor --

8 THE COURT: And was he cross-examined by the defense?

9 MR. EPTING: I believe they asked no questions of
10 him.

11 MR. COOK: At this time, the testimony from the
12 forensics examiner hadn't been introduced, and that's why
13 I'm just simply asking if I may call -- during my case in
14 chief, which I'm putting up a case in chief for today
15 whenever, if I may give --

16 THE COURT: I don't limit you from calling any
17 witness that may have relevant testimony in the case.

18 MR. COOK: Yes, sir. So as long as I have assurances
19 the detective will be here the rest of the trial and
20 subjected to my --

21 MR. EPTING: He's our case agent, Your Honor. We
22 assure he'll be here.

23 THE COURT: I released him, but I can revoke that
24 release and tell him he needs to stay.

25 MR. COOK: I whispered when I realized my mistake

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1 that I didn't want him released.

2 THE COURT: All right. Then I'll have him stay. He
3 can stay.

4 MR. EPTING: Your Honor, the concerns I do have is
5 bringing up the bond hearing, the denial of bond, which in
6 my opinion has nothing --

7 THE COURT: Well, what I'm going to direct the
8 defense attorney to do, when he gets to that point in his
9 presentation, if he'll inform the court before he goes
10 into that, I'll exclude the jury, we'll take a proffer,
11 and we'll make a ruling at that time.

12 MR. EPTING: Thank you, Your Honor. And as a officer
13 of the court, I was the assistant solicitor representing
14 the state at the bond hearing. Part of the reason they
15 were requesting one, they actually had two, but in both of
16 them a major issue was that the DNA report had not come in
17 yet; therefore, we could not set a trial date or even give
18 a tentative trial date out in the future. So I thought it
19 was made clear at the bond hearing that the results were
20 tentative pending a conclusive report.

21 THE COURT: Well, there are transcripts of those
22 hearings available.

23 MR. EPTING: This is true.

24 MR. COOK: It was my understanding, and I would just
25 like to make this argument before Your Honor actually

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1 decides whether we exclude the jury from that line of
2 questioning --

3 THE COURT: I have not made a decision. I made clear
4 I'll let you make a proffer.

5 MR. COOK: Your Honor heard me say this three or four
6 times, but the case summary says "the match." Doesn't say
7 corollaries or similarities or anything like that, was
8 with the gun case. And so I'm obviously just trying to
9 draw that out, Your Honor, because the expert has
10 testified that there's a difference between a match and
11 correlation.

12 THE COURT: And I've let you go into that. She's
13 testified that that's true.

14 MR. COOK: Yes, sir, I understand.

15 THE COURT: I didn't prevent you from -- but now,
16 unless you show that this witness was at that hearing or
17 presented evidence at that hearing, I don't know if she
18 has any knowledge what was said at that hearing or not.

19 MR. COOK: And I agree completely, Your Honor. I'll
20 digress from that line of argument.

21 MR. EPTING: I believe some of the confusion may come
22 from -- in addition to the two bond hearings, there was a
23 Schmerber hearing that was represented by Jenny Desch at
24 which one of the detectives -- was it you, Brian? -- one
25 of the detectives did give some testimony. If it was not

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1 Brian, I don't know who it would have been. That would be
2 handled by another one of our assistant solicitors that at
3 break I can talk and try to find out what detective was
4 there. That may be part of the confusion.

5 MR. COOK: I'm satisfied, Your Honor, not that that's
6 the issue here. But I'll digress from this line of
7 questioning with this witness as long as I can call
8 Detective Schettler back at some point during this trial.
9 I'm --

10 THE COURT: Okay. I've already told him he got to
11 stay.

12 MR. COOK: Yes, sir.

13 THE COURT: Who you call as your witnesses, I'm not
14 limiting you in any way in doing that.

15 MR. COOK: Yes, sir.

16 THE COURT: Not requiring that you call any, though.

17 MR. COOK: I understand.

18 THE COURT: Very good. Bring the jury back.

19 (The jury entered the courtroom at 4:10 p.m.)

20 THE COURT: The record will reflect the jury has
21 returned to the courtroom. I've given the attorneys some
22 direction as to how to proceed.

23 At this time, you may proceed with your
24 cross-examination, Mr. Cook.

25 MR. COOK: Thank you, Your Honor.

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1 Q Ms. Kissell, you said you had a degree in
2 mathematics; is that correct?

3 A My undergraduate degree is in mathematics, yes.

4 Q And you said you've taken tens of thousands of
5 samples?

6 A I have processed, yes.

7 Q Have you ever made a mistake?

8 A In regards to -- I guess could you be a little bit
9 more specific in that regard?

10 Q Well, no. Have you ever made a mistake in any of the
11 procedures in your line of work?

12 A We have a lot of testing controls. We have positive
13 controls; we have negative controls. We have reagent
14 blanks. We have peer reviews. We have administrative
15 reviews of the entire case file before it goes out the
16 door. I'm human. There are times that the process
17 doesn't go perfectly, which is why the controls are there,
18 which is why the peer reviews are there and the
19 administrative reviews are there to ensure that if
20 something doesn't go perfectly, that it is caught and it's
21 corrected or remedial action is taken in order for that
22 case file to be as accurate as possible before it's
23 released.

24 Q Has anything ever slipped through all of your
25 controls, a mistake?

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1 A As far as reagent blank or positive control or a
2 processing control, not that my knowledge that anything
3 has gone that has ever come back. There has been an
4 occasion where a typographical error may have been written
5 in a report or on a case file, and those case files are
6 amended. An amended copy of that report is sent to the
7 agency and the attorney's office, that the original report
8 would go to as well.

9 Q Doesn't anything that a scientist does in an
10 experiment during that experiment affect that experiment?

11 A I apologize. I'm not fully understanding the
12 question.

13 Q Well, you said at one point in your testimony that
14 that didn't affect the process -- you made some
15 modification, but it didn't affect the experiment or the
16 process.

17 A If there's something that happens during the process
18 that is caught in one of the controls, then we will take
19 actions to correct that issue, whether it be that we go
20 back and we retest the item from the very beginning or we
21 rerun the sample through the instrument because we
22 detected that the instrument was having an issue or we
23 have an engineer come in and check that item or we perform
24 extra validation steps. There are -- we have certain
25 procedures that are in place to address those issues if

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1 one of those comes up.

2 Q Why did you need to take a buccal swab from my client
3 if you had DNA already from his hat?

4 A. When an item comes in for an item of evidence, we
5 cannot -- one of our procedures is that we only perform
6 stats and we only perform comparisons from an actual known
7 sample from an individual to an item of evidence. The cap
8 from the second case, the only information I had is that
9 it was obtained from a case and I was asked to see if it
10 might be similar to the profile from another item in
11 another case. Because both of those items came back as a
12 mixture, I was unable to do any type of direct comparison
13 and so that's when I required that a known buccal swab
14 must be submitted in order to do a direct comparison and
15 to provide statistics for that as well.

16 MR. COOK: Beg the Court's brief indulgences.

17 Thank you, ma'am. I have no further questions.

18 THE COURT: Redirect?

19 MR. EPTING: Nothing further from the state, Your
20 Honor.

21 THE COURT: Ma'am, you may step down.

22 Wish to excuse the witness?

23 MR. EPTING: We do.

24 THE COURT: Any objection?

25 MR. COOK: Your Honor, I don't mind. I know she

1 works in the building, so I don't have any objection to
2 her going to her lab, but I would --

3 THE COURT: She would not be released from any
4 subpoena that's been issued.

5 MR. COOK: Yes, sir.

6 THE COURT: So -- but you may leave the courtroom.

7 THE WITNESS: Thank you.

8 THE COURT: Thank you very much.

9 State may call its next witness.

10 MR. EPTING: Your Honor, at this time, the state
11 rests.

12 THE COURT: Ladies and gentlemen of the jury, we've
13 reached the stage of the proceeding where the state has
14 rested. There's some matters that I do need to go over
15 with the attorneys at this point in time. I'm going to
16 ask you to step briefly back to the jury room. Need to
17 get some idea where we are in the case and then we'll be
18 calling you back shortly. As always, when you leave the
19 courtroom, I'll instruct you not to discuss anything about
20 the case, even among yourselves. You may retire to the
21 jury room.

22 (The jury left open court at 4:15 p.m.)

23 THE COURT: Motions at this time?

24 MR. EPTING: Your Honor, prior to motions,
25 Mr. Newkirk spoke with Ms. Kissell. Part of the reason

1 that we scheduled her the way we did is that she's out of
2 town the rest of the week. I would ask if Mr. Cook is
3 going to call her to do so by end of today.

4 MR. COOK: I don't really foresee any reason to call
5 her. I do release her. I don't object to her being
6 released.

7 THE COURT: Then I think she can go.

8 MR. COOK: Once I had to think about it.

9 THE COURT: Motions?

10 MR. COOK: I would have the motion for directed
11 verdict at this point, Your Honor. Articulated --

12 THE COURT: Please articulate it.

13 MR. COOK: Well, in the light most favorable to the
14 nonmoving party, Your Honor, I believe the State's failed
15 to prove every element of their case in that I believe
16 that the cloud on the evidence would exclude it from
17 reaching beyond-a-reasonable-doubt standard.

18 THE COURT: And I'll hear from the state.

19 MR. EPTING: Your Honor, I do believe that we've
20 presented substantial circumstantial evidence sufficient
21 to carry this case to the jury, particularly in the light
22 most favorable to the state. We had the defendant found
23 with an item that was stolen from this burglary six days
24 within this burglary happening. We had a dog track that
25 tracked items from the house to clothing that has been DNA

1 tested, scientifically proven to have his DNA on it. And
2 in addition to that, we have the DNA results. I believe
3 all those things taken together equate to substantial
4 circumstantial evidence, particularly in the light most
5 favorable to the state.

6 THE COURT: Anything further?

7 MR. COOK: Nothing, Your Honor.

8 THE COURT: I will find there is sufficient evidence
9 to allow the case to go to the jury at this time. I do
10 find there is a substantial circumstantial evidence that
11 would indicate that the defendant was present at or
12 participated in the crime. So therefore, I'll allow it to
13 go to the jury.

14 MR. COOK: Yes, sir Your Honor.

15 THE COURT: Now, as to your client's right to testify
16 in this matter or not to testify, whichever way you want
17 to look at it, I will want to go over that with him. At
18 this time, I'd like you to place Mr. Jordan under oath for
19 me.

20 ANTONIO JORDAN, after having first being duly sworn,
21 testified under oath as follows:
22

23 THE COURT: Mr. Jordan, you can be seated. Thank you
24 very much. Mr. Jordan, we've reached the stage of this
25 case where you have the right to present your defense. At

1 this point in time I want to go over some of the
2 protections that are afforded to you by the 5th Amendment
3 to the United States Constitution. I'll go over this with
4 you, and then I'll give you an opportunity to ask any
5 questions that you might have and of course give you an
6 opportunity to discuss these matters with your attorney as
7 well if you feel that that's necessary. Do you understand
8 what I'm doing at this time?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: We've reached the stage of the trial
11 where again you have the right to present your defense,
12 and as part of your defense, you have the right to testify
13 in this case, but I will inform you you also have the
14 right not to testify. And I'm referring specifically to
15 the 5th Amendment to the United States Constitution which
16 reads in part that no person shall be compelled in any
17 criminal case to be a witness against himself. That means
18 that while you have the right to testify, you also have
19 the right to remain silent or not to testify.

20 Now, no -- the decision as to whether or not to
21 testify is one that is personal. You have the -- you are
22 the person who must make that decision as to whether to
23 testify or not. I'll tell you that if you do decide to
24 testify that you will be subject to the same rules that
25 govern other witnesses. You would be examined by your

1 lawyers and cross-examined by the State's attorney. And I
2 will tell you that should there be any convictions on your
3 record which involve dishonesty or false statement or for
4 crimes that were punishable by imprisonment for more than
5 one year and those occurred within the last ten years,
6 then the Court -- and the Court makes a determination that
7 the probative value of admitting this evidence as to your
8 credibility outweighs its prejudicial effect to you, if I
9 made that ruling, then the solicitor might be able to
10 introduce those convictions in order to attack your
11 credibility.

12 Now, if you decide to testify, the decision on your
13 part has to be made freely and voluntarily and
14 intelligently; that is, with knowledge of the protections
15 given to you by the 5th Amendment and the consequences of
16 a decision to testify. If you decide to testify -- excuse
17 me, if you decide not to testify, I will tell you that I
18 will instruct the jury that the fact that you did not
19 testify should not even be considered by them in their
20 deliberations. In fact, my instruction would be that they
21 could not even discuss that fact during the deliberations
22 of your case.

23 Now, the decision as to whether or not to testify is
24 entirely left up to you. You have the right to talk to
25 your lawyer, your family, your friends, or anybody else

1 you'd like to talk to about this decision, but the final
2 decision is yours and yours alone. Now, do you understand
3 the right that I've explained to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions about it?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you had an opportunity to discuss
8 this decision with your lawyer?

9 THE DEFENDANT: Not fully. I have but -- yes, sir, I
10 have.

11 THE COURT: Well, my next question is: Do you wish
12 to discuss it with him any further?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I don't know how long those
15 discussions might take. How long do you think that's
16 going to take?

17 MR. COOK: Not very long, Your Honor.

18 THE COURT: All right. Very good. Then I'll take a
19 brief break. I'll stay on the bench and let me know when
20 you're ready to start.

21 (A recess was taken from 4:22 p.m. to 4:25 p.m.)

22 THE COURT: All right. We're back on the record in
23 the case of state of South Carolina versus Antonio Jordan.

24 Mr. Jordan, have you had an opportunity to discuss
25 this decision with your lawyer?

1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: Do you wish to discuss it with anyone
3 else?

4 THE DEFENDANT: No, sir, Your Honor.

5 THE COURT: Have you made a decision as to whether
6 you wish to testify in this case?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: Are you intending to testify?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: All right. Thank you very much.

11 MR. EPTING: I know it varies from jurist to jurist,
12 but I do have a copy of his rap sheet. If Your Honor
13 would like, I can put on the record.

14 THE COURT: Why don't you put on the record if
15 there's any cases that you think you might use in an
16 attempt to impeach him.

17 MR. EPTING: Yes, Your Honor. It appears -- and we
18 provided a rap sheet to Mr. Cook as part of his criminal
19 file. It appears he has a conviction of grand larceny,
20 receiving stolen goods, two counts of financial
21 transaction card fraud, all from February 7th, 2005, which
22 would be within the ten-year range. I think those qualify
23 as crimes of dishonesty under 609. He also has a
24 conviction for failure to stop for a blue light from that
25 same date. That's not a crime of dishonesty, but that's a

1 crime that carries over a year pursuant to the other
2 subsection of rule 609. I would ask the Court's
3 instruction on how to limit my questions to him in that
4 regard.

5 THE COURT: Well, I'll hear from the defense as to
6 those charges first.

7 MR. COOK: Well, I obviously don't contest if they're
8 within the ten years, and the two financial transaction
9 frauds I believe would be a crime of moral turpitude.

10 THE COURT: It's a question whether it involved
11 dishonesty. We've gotten past moral turpitude these days.

12 MR. COOK: I apologize, Your Honor. I would just
13 simply ask that the grand larceny and receiving stolen
14 goods being felonies and not their names since I believe
15 it would be overly prejudicial and the jury incidentally
16 already heard the two burglars, so --

17 THE COURT: He's already got some record, not this
18 extensive. I would -- I'm going to exclude the failure to
19 stop for a blue light altogether as having no relevance as
20 to credibility.

21 MR. EPTING: Certainly.

22 THE COURT: I'm not going to let those come in. The
23 others, I will go with the defense's suggestion they be
24 referred to as felonies. Now, the credit card frauds do
25 involve dishonesty. I'll allow you to use those.

1 MR. EPTING: Do you wish me to limit that to have you
2 been convicted of crimes of dishonesty rather than saying
3 the name itself?

4 MR. COOK: To let the cat out of the bag, I'm
5 obviously going to ask these questions of my client when I
6 put him up --

7 THE COURT: Why don't we just see how that goes?

8 MR. COOK: I can go ahead and just for discussion's
9 sake, I'm going to say do you have two counts of financial
10 transaction fraud?

11 THE COURT: Then you decide whether you want to go
12 into it any further.

13 MR. EPTING: At that point, the impeachment value of
14 it is completed.

15 THE COURT: Yes, sir. Now, how long do you think
16 your first witness is going to take?

17 MR. COOK: My first witness is going to be the
18 detective. And that's probably five minutes. My next
19 witness will be my client, and I anticipate 30.
20 Realistically, probably 15. He doesn't have much to say.

21 THE COURT: Then there's going to be a
22 cross-examination.

23 MR. COOK: Yeah, I don't know how long the cross will
24 be.

25 THE COURT: We might be able to get those witnesses

1 in. Do you have other witnesses you do intend to call?

2 MR. COOK: Two quick alibi witnesses.

3 THE COURT: We'll probably hold those over until
4 tomorrow. I'm just trying to get an idea of where we are
5 and what they're looking at.

6 MR. COOK: Oh, it's 4:30.

7 THE COURT: It's almost 4:30 right now.

8 MR. EPTING: That will give us a little bit more time
9 on the one that we learned about. I'm not faulting the
10 defense, but that will give us a little bit more time to
11 investigate.

12 THE COURT: There is a note that I had received from
13 the bailiff from a juror that's not identified on the
14 note. In fact, I didn't even read the note. The bailiff
15 asked if it was okay if one of the jurors took some
16 Tylenol or ibuprofen. I approve them taking some Tylenol
17 or ibuprofen. I'll have this marked as a Court's exhibit
18 and put in the record showing someone asked about that.

19 MR. EPTING: And, Your Honor, I believe earlier the
20 Court indicated perhaps proffer on Detective Schettler
21 prior to --

22 THE COURT: Do you want to go ahead and do that right
23 now while we get the jury out?

24 MR. COOK: Yes, sir.

25 THE COURT: Detective, resume the stand. I'll remind

1 you that you're still under oath. You acknowledge that?

2 THE WITNESS: Yes, sir, I do.

3 THE COURT: Have a seat in the witness stand.

4 MR. COOK: And just to show my I guess ineptitude,
5 this -- I'm asking him the questions that I'm proposing to
6 ask in front of the jury.

7 THE COURT: Absolutely. The purpose of this is to
8 determine whether it in fact is relevant or not so that
9 it's not done in front of the jury and somehow be
10 prejudicial to the State's case if it's otherwise not
11 admissible.

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

13 THE COURT: So whatever you intend to ask him in
14 front of the jury, now is the time to ask him.

15 EXAMINATION

16 BY MR. COOK

17 Q Detective, did you have a conversation with
18 Ms. Kissell on January 6th, 2014 or thereabouts?

19 A Yes.

20 Q And in that conversation, did she tell you there was
21 a match -- see how I want to phrase this.

22 I guess did you generate -- let me back up and strike
23 that.

24 Did you generate this case summary?

25 A I think it is mine, but I --

DETECTIVE BRIAN SCHETTLER - PROFFER OF TESTIMONY BYMR. COOK

1 Q It's the one you did. It's got your name on top of
2 it.

3 And then I'll say did you write this paragraph on
4 January 6th, 2014, "I met with Kissell at the DNA lab and
5 she advised the DNA in the hat taken from Jordan matched
6 the DNA at the burglary. The match was with the gun case
7 and the hat from the burglary."

8 A And your question was did I write that?

9 Q Did you write that?

10 A Yes.

11 Q I'm just getting it out.

12 A I just wanted to clarify I understood your question.

13 MR. COOK: And I'm not sure I would ask much more.

14 Let me think it through. Because -- I'm just talking out
15 loud, Your Honor. Maybe I shouldn't. I believe that
16 that's all I would ask.

17 THE COURT: Does the state have any objection to
18 those questions?

19 MR. EPTING: I think that's fair.

20 MR. COOK: I got another question. Are you aware
21 that that information was used by the state? Here we go.

22 MR. EPTING: I would object to anything mentioning
23 the bond hearing or anything along those lines. That has
24 nothing to do with this case.

25 Q Did you ever tell the Solicitor's Office that a match

DETECTIVE BRIAN SCHETTLER - PROFFER OF TESTIMONY BY
MR. COOK

1 occurred based off of your conversation with Kissell
2 between the gun case and my client's toboggan?

3 A One more time. I'm sorry.

4 Q Did you ever tell the Solicitor's Office that a
5 match -- I'm using that word, "a match," because --
6 occurred between the gun case and the cap?

7 A I'm not going to be able to tell you verbatim what
8 that conversation was. I don't know if I used the word
9 "match" or not. I can't say with one hundred percent what
10 that conversation was. I know that DNA was discussed.
11 But the actual use of the word "match," I can't recall. I
12 mean, it was almost a year ago.

13 MR. COOK: I'm fine with that. Your Honor.

14 THE COURT: All right. Any objection?

15 MR. COOK: So let me be clear just 'cause I'll forget
16 and not intend to, my question specifically, I'll get him
17 to read the paragraph from here, and then I say, "Did you
18 have the conversation with Kissell about" -- I guess this
19 paragraph right here speaks for the conversation between
20 him and Kissell. And then I'll say, "Did you ever relate
21 the conversation" --

22 THE COURT: You need to talk to the -- y'all talk it
23 out and see what you -- come to an agreement on it.

24 MR. EPTING: I kind of worry we're running afoul --

25 THE COURT: I don't know that this all needs to be on

DETECTIVE BRIAN SCHETTLER - PROFFER OF TESTIMONY BYMR. COOK

1 the record is what I'm saying.

2 MR. EPTING: Yes, Your Honor.

3 THE COURT: Y'all talk about it.

4 (A discussion was held off the record.)

5 THE COURT: I'll ask the attorneys to approach.

6

7 (WHEREUPON, a bench conference was held.)

8 MR. COOK: I apologize for this, but I have one more
9 question before the jury comes back.

10 THE COURT: Hold them at the door for me.

11 MR. COOK: I apologize. I'm ready for the jury now.

12 THE COURT: Okay. Bring them in.

13 (The jury entered the courtroom at 4:38 p.m.)

14 THE COURT: The record will reflect that the jury has
15 returned to the courtroom. At this point in time, the
16 state has completed the presentation of its evidence. The
17 defense has the right to call witnesses at this time. The
18 defense may call its first witness.

19 MR. COOK: May it please the Court. I call Detective
20 Schettler to the stand.

21 THE COURT: Sir, if you'll return to the stand. I'll
22 remind you that you've been placed under oath in this case
23 already. Are you aware of that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you acknowledge that you remain under

DETECTIVE BRIAN SCHETTLER - PROFFER OF TESTIMONY BY
MR. COOK

1 oath at this time?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have a seat, please.

4 Your witness, Mr. Cook.

5 DIRECT EXAMINATION

6 BY MR. COOK

7 Q Detective, through your conversations with
8 Ms. Kissell, who is the DNA expert who just testified, do
9 you remember those conversations?

10 A I've had many conversations with her, yes.

11 Q I apologize, let me -- do you remember the
12 conversations in regards to whether a match was made -- I
13 tell you what, let me digress. Here's my question:
14 Through your conversations with Ms. Kissell, did you come
15 to the conclusion that a match was made between the
16 toboggan taken from my client at the scene of the moped
17 and a gun safe?

18 A Yes.

19 Q You generated this report; is that not correct, sir?

20 A That's my case summary that I typed, yes.

21 Q So you remember stating that on January 6 of 2014,
22 you met with Kissell at the DNA lab and she --

23 MR. NEWKIRK: Objection, Your Honor. He's already
24 stated that he remembers that conversation and has
25 testified to it. He's not inconsistent with his report.

DETECTIVE BRIAN SCHETTLER - PROFFER OF TESTIMONY BY
MR. COOK

1 THE COURT: I don't think he's testified
2 inconsistently with that report at this time. Though if
3 I'm incorrect, please correct me.

4 MR. COOK: You're correct, Your Honor. .

5 Q So you were under the impression a match occurred; is
6 that correct?

7 A The best way I can explain the way I understand it is
8 DNA is way above my pay grade. When she tells me that
9 there's two things on there, to me, it's probable cause.
10 Is it more probable that those two things match or not,
11 then that's a match to me. Whether it's one trillion, one
12 billion, one or two, I'm not a scientist; I don't pay for
13 that. I investigate the crime. Was it more probable than
14 not that those two things belonged to him? That's the way
15 I understood it, and that's the way I described it.

16 Q Did you pass that understanding on to the Solicitor's
17 Office?

18 A I typed this case summary.

19 Q That they have access to?

20 A Correct.

21 MR. COOK: Thank you. No further questions.

22 THE COURT: State wish to cross-examine?

23 MR. NEWKIRK: Very briefly, Your Honor.

24 CROSS-EXAMINATION

25 Q Detective, you testified that you are, in fact, not a

DETECTIVE BRIAN SCHETTLER - CROSS-EXAMINATION BY
MR. NEWKIRK

1 scientist, correct?

2 A That's correct.

3 Q But you did generate that report that the defense
4 attorney was referencing, didn't you?

5 A That's my case summary. It's a summary of the events
6 that took place from the start of my investigation to the
7 end. It's a summary. It's a generalized thing of what
8 happened. Doesn't tell exactly from A to B with every
9 little thing in there. It's a summary for me to paint a
10 picture of my investigation to the Solicitor's Office so
11 they know what the case is about and how to prosecute it.

12 Q But in that report, you did use the word "match,"
13 didn't you?

14 Could you answer verbally for the court reporter?

15 A Yes, I'm sorry, yes, I did use the word "match."

16 Q Last question for you is is it possible that you
17 spoke to Ms. Kissell and she used the words like
18 "scientific certainty" and "consistency" and you wrote
19 "match" as opposed to those?

20 A Ms. Kissell testified up here. She used words that I
21 don't even know what they mean. I'm a college graduate,
22 but I'm not a scientist. I don't grasp 100 percent DNA.
23 I put it into normal, everyday people words. When she
24 told me that A and B look the same, to me, it's like
25 playing go fish with your kids. It's a match.

DETECTIVE BRIAN SCHETTLER - CROSS-EXAMINATION BY
MR. NEWKIRK

1 MR. EPTING: Thank you, Detective. I don't have any
2 further questions.

3 THE COURT: Redirect?

4 MR. COOK: None, Your Honor.

5 THE COURT: You may step down, sir.

6 Mr. Cook, do you intend to call an additional
7 witness?

8 MR. COOK: Yes, sir, Your Honor. I call Mr. Jordan.

9 THE COURT: Just wait one second before he goes to
10 the stand. I've got a feeling he's going to be longer
11 than 5:00, maybe substantially longer. I don't know. But
12 why don't we just go ahead and start that fresh in the
13 morning so the jury will have all that testimony fresh in
14 their mind.

15 So at this point in time, ladies and gentlemen, it's
16 about a quarter to five. We're going to break for the
17 afternoon. I'm going to resume the trial in the morning
18 at 9:30. I'll ask that you be back in the jury room at
19 that time. We'll probably start pretty close to that, so
20 be there on time. We'll get started on time. During your
21 absence from the courthouse, I'll give you the same
22 instructions I gave at lunch: Don't attempt to gather any
23 information about this case on your own. Don't discuss
24 the case with anyone. Don't allow anyone to discuss it
25 with you. Don't listen to, watch, or read any media

DETECTIVE BRIAN SCHETTLER - CROSS-EXAMINATION BY
MR. NEWKIRK

1 reports about the case. Should someone attempt to contact
2 you about your service on the jury, please report that as
3 soon as possible so that the appropriate action can be
4 taken. Again, I'll urge you not to discuss the case with
5 anyone, even family members. It's okay to say you're on a
6 jury, but don't discuss what the case is about. You
7 certainly would have the right to do that once the case is
8 over, but not at this point in time.

9 So I'm going to release you at this time for the
10 evening. We'll be checking on my instructions in the
11 morning. 9:30 in the morning, please be back in the jury
12 room. Thank you very much.

13 (The jury left open court at 4:45 p.m.)

14 THE COURT: All right. We'll be in recess until
15 9:30. Defendant remains in custody. Thank you very much.

16 MR. NEWKIRK: Thank you, Your Honor.

17 MR. COOK: Thank you, Your Honor.

18 (The proceedings were adjourned at 4:45 p.m. on
19 January 27th, 2015 and resumed at 9:42 a.m. on January
20 28th, 2015.)

21 THE COURT: Back on the record in the case of state
22 of South Carolina versus Antonio Jordan. Mr. Jordan, when
23 I came into the courtroom this morning, your attorney
24 indicated that you may have reconsidered your decision as
25 to whether or not to testify or not. Can you tell me,

DETECTIVE BRIAN SCETTLE - CROSS-EXAMINATION BY
MR. NEWKIRK

1 have you reconsidered that decision?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: And have you had a chance to discuss it
4 fully with anybody that you'd like to talk it over with?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Do you intend to testify in this case?

7 THE DEFENDANT: No, sir, Your Honor.

8 THE COURT: So you're going to exercise your rights
9 under the 5th Amendment to remain silent?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Thank you very much. You can be seated.

12 Is the defense otherwise ready to proceed?

13 MR. COOK: Yes, sir, Your Honor.

14 THE COURT: State ready?

15 MR. EPTING: State's ready, Your Honor.

16 THE COURT: Bring the jury in.

17 (The jury entered the courtroom at 9:50 a.m.)

18 THE COURT: The court record will reflect that the
19 jury has returned to the courtroom at this time. Hope
20 everyone had a good evening. If anyone had any difficulty
21 or any problem in following my instructions concerning
22 your behavior while you were away from the courthouse,
23 please stand. It appears that all jurors have been able
24 to comply with the Court's instructions. At this time,
25 the defense is proceeding with the presentation of its

MARYANN JORDAN -- DIRECT EXAMINATION BY MR. COOK

1 evidence.

2 You may call your first witness.

3 MR. COOK: Defense calls Maryann Jordan, Your Honor.

4 THE COURT: Maryann Jordan, please.

5 MARYANN JORDAN, after having first being duly sworn,
6 testified under oath as follows:

7 THE COURT: Ma'am, have a seat here in the witness
8 stand. State your name, please.

9 THE WITNESS: Maryann Jordan.

10 THE COURT: Thank you. Mr. Cook, your witness.

11 DIRECT EXAMINATION

12 BY MR. COOK

13 Q Ms. Jordan, again, if you could just state your name
14 and introduce yourself to the jury.

15 A My name is Maryann Jordan.

16 Q And where do you reside?

17 A In Fort Mill, South Carolina.

18 Q Okay. And do you happen to know the defendant in
19 this case?

20 A Yes, I do.

21 Q How so?

22 A He's my son.

23 Q And tell us what you'd like to tell us, ma'am.

24 A On November the 8th, when they said that he broke
25 into a house, he didn't. On November the 8th, he left his

MARYANN JORDAN -- DIRECT EXAMINATION BY MR. COOK

1 girlfriend house at 8:00, 8:01. At 8:02, he walked into
2 the house. All us have to go to work at the same time.
3 We leave to go to work about 8:30; we had to be to work at
4 9:00. We went to work, and it was kind of a little slow.
5 So around about -- it was between 10:30 and 15, 11:00, we
6 left. I took him back to Fort Mill. I took him to Forest
7 Ridge and dropped him off at his girlfriend house.

8 Q Thank you, ma'am. Is there anything else you'd like
9 to add?

10 A It just the point that I know my son --

11 MR. EPTING: Your Honor, I object.

12 Q Well, ma'am, I suppose I should say that it's proper
13 to testify about the facts in this case and things along
14 those lines but not necessarily about any character of the
15 defendant or anything like that. I think that -- just
16 would like for you to stick with the facts. So with all
17 due respect, and -- and I'm not implying that there's
18 anything else you need to say. I'm just asking you, is
19 there anything else, and if there's nothing else to add,
20 that's fine.

21 A Okay.

22 Q Please answer any questions the solicitor has.

23 THE COURT: Mr. Epting, you may cross-examine.

24 CROSS-EXAMINATION

25 BY MR. EPTING

MARYANN JORDAN -- CROSS-EXAMINATION BY MR. EPTING

- 1 Q Good morning, ma'am. How you doing?
- 2 A I'm fine. And you?
- 3 Q I'm doing well. Thank you for asking.
- 4 You mentioned -- what time did you leave for work
- 5 that day?
- 6 A We left -- we always leave at 8:30.
- 7 Q Always leave at 8:30?
- 8 A Yeah.
- 9 Q When you say "we"?
- 10 A It's four of us work at the same place.
- 11 Q Four work at the same place?
- 12 A Yeah.
- 13 Q You and who else?
- 14 A Me, Antonio, my husband, and my other son.
- 15 Q Okay. And your other son's name is?
- 16 A Brandon.
- 17 Q That gets us to three. So the fourth is the
- 18 defendant?
- 19 A Yeah, Antonio.
- 20 Q Y'all always leave at the same time every day?
- 21 A We don't have no choice.
- 22 Q Work -- how many days a week would you say y'all
- 23 work?
- 24 A Six.
- 25 Q Six days a week, day in, day out, week in, week out?

MARYANN JORDAN -- CROSS-EXAMINATION BY MR. EPTING

- 1 A Yes.
- 2 Q Multiple people with you? You work the same hours?
- 3 A Yeah, we work the same hours.
- 4 Q Did y'all own the store?
- 5 A Yeah.
- 6 Q And where is the store at?
- 7 A It's going out of business now. It was Five Star
- 8 Customs.
- 9 Q Five Star Customs off of Cherry Road near a Mexican
- 10 restaurant?
- 11 A Yes.
- 12 Q Y'all work all the time?
- 13 A All the time.
- 14 Q Camera systems inside that building?
- 15 A Yes.
- 16 Q So it recorded who was there at the time y'all were
- 17 working; is that right?
- 18 A Yes.
- 19 Q Got one looking at the camera if I'm -- looking at
- 20 the counter, if I'm not mistaken, and other parts of the
- 21 building?
- 22 A Yes.
- 23 Q So it would have shown Antonio there on camera date
- 24 and time --
- 25 A Yes, it would.

MARYANN JORDAN -- CROSS-EXAMINATION BY MR. EPTING

1 Q Antonio is your son?

2 A Yes.

3 Q You love your son?

4 A Yes.

5 MR. EPTING: Beg Court's indulgence.

6 THE COURT: Yes, sir.

7 Q Just a couple more questions, ma'am. Do you know
8 Eddielena Boyd?

9 A I know of her. I don't know her that good.

10 Q Do you recall talking with her on the phone leading
11 up to this case?

12 A No.

13 Q What about last Friday?

14 A We talk off and on.

15 Q But you don't know her that well?

16 A No.

17 Q Have y'all discussed this case?

18 A No.

19 Q Did she call you last Friday and ask if she should
20 speak with investigators from the Solicitor's Office about
21 this case?

22 A Yeah.

23 Q What'd you tell her?

24 A I told her no because Dave was his lawyer and she
25 supposed to talk to Dave.

MARYANN JORDAN -- CROSS-EXAMINATION BY MR. EPTING

1 Q So even though you don't know her that well, y'all
2 were talking that day; is that correct?

3 A Yeah.

4 Q And you told her not to talk to our investigators?

5 A Yeah, I told her to talk to Dave first because I was
6 the one that gave Dave her number and her name.

7 Q Did you tell her not to talk to Dave first, or did
8 you tell her not to talk to us?

9 A I told her to talk to Dave.

10 Q But not the latter? You didn't tell her not to talk
11 to investigators?

12 A No. I told her to talk to Dave. I told her to call
13 Dave and make sure that Dave tell her she could talk to
14 y'all.

15 Q And you've spoken with your son on the phone about
16 this case numerous times, have you not?

17 A He already know the case. That's my son. I talk to
18 him every day.

19 Q You talk to him every day, sometimes about the case,
20 right?

21 A No, we ain't talk about the case since court started,
22 but he --

23 Q I'm talking about before that. How about last week?

24 A I talk to my son every day.

25 Q Did you talk to him -- did you tell him that

MARYANN JORDAN -- CROSS-EXAMINATION BY MR. EPTING

1 investigators went out to speak to Eddielena Boyd?

2 A Yeah.

3 Q And didn't he tell you that he was confused because
4 Eddielena had nothing to do with this case?

5 A No.

6 Q He didn't tell you that?

7 A Not that I can mention.

8 Q So if I understand your testimony correctly, y'all
9 work six days a week, same four of you always on this job,
10 correct?

11 A Yes, we do.

12 Q There are cameras in the place?

13 A Yes, and if we would have had enough time, we could
14 have got the camera working, brought it back up here and
15 let you seen that he was at work.

16 Q And when was Mr. Jordan arrested on this case?
17 November 14?

18 A Yes.

19 Q So it's been over a year, has it not?

20 A It's been over the year, but the sad part about it,
21 we been going through much with y'all, it ain't even
22 funny, so it's been leaving one thing after another. It's
23 just been a whole bunch of lies.

24 Q So you don't have the video?

25 A We do have the video.

EDDIELENA BOYD - DIRECT EXAMINATION BY MR. COOK

1 Q But you don't have it today?

2 A No, we don't have it today because the sad part about
3 it, when you close down a business, you pack stuff away.
4 And we didn't even think this was going to go this far.

5 Q No further questions.

6 A Thank you.

7 THE COURT: Anything further from the witness?

8 MR. COOK: Nothing, Your Honor.

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

10 The defense may call its next witness.

11 MR. COOK: Defense calls Eddielena Boyd, Your Honor.

12 EDDIELENA BOYD, after having first being duly sworn,
13 testified under oath as follows:

14 THE COURT: State your name, please, ma'am.

15 THE WITNESS: Eddielena Boyd.

16 THE COURT: Thank you.

17 Mr. Cook, your witness.

18 MR. COOK: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. COOK

21 Q Ms. Boyd, where do you reside?

22 A ■ Forest Ridge Drive, Fort Mill, South Carolina.

23 Q And what do you do for a living?

24 A Home health aide.

25 Q And how do you know the defendant today?

EDDIELENA BOYD - DIRECT EXAMINATION BY MR. COOK

1 A I met him after I had moved down here from Ohio in
2 2013, like two weeks after I moved in June.

3 Q Is he a boyfriend?

4 A Yes, he is.

5 Q Okay. And tell us what you'd like to tell us today,
6 ma'am.

7 A On November 8, 2013, I had to work that morning. I
8 had to be to work at 8:30. So I woke up around 7:00, and
9 I left the house around 8:00, and he left through the back
10 door to go to his mother's house when I left at 8:00. And
11 when I got to my client's house in Lancaster, we -- I
12 started my day with them, and he actually had an emergency
13 where he had to be rushed to the hospital, so I actually
14 got off at 10:00. And -- because I was supposed to be
15 there until 1:00. So I got off at 10:00. I called my job
16 and let them know that he was going to the hospital. And
17 so after I called them, I called Antonio. He didn't
18 answer at first. And so as I'm driving back to Fort Mill,
19 I called him again. He didn't answer. So as I was
20 reaching Fort Mill, it was about probably like little
21 after 10:30, he called me back and he was like, "What's
22 up?" I was like, my client got --

23 MR. NEWKIRK: Objection, Your Honor. This is hearsay
24 testimony.

25 THE COURT: I'm going to direct the testimony not to

EDDIELENA BOYD - DIRECT EXAMINATION BY MR. COOK

1 testify concerning what someone may have told you. That
2 would be hearsay. So I'm going to sustain the objection.

3 Q Yes, ma'am, you can't talk about conversations you
4 had with people, essentially. So without doing that,
5 continue.

6 A Okay. So I got to my house around 10:45. And he
7 called me again and said he was at his mother's house.

8 MR. NEWKIRK: Objection, Your Honor. Hearsay
9 testimony.

10 THE COURT: That's the defendant. I think she's
11 quoting at that time. I'm not sure.

12 THE WITNESS: Yeah, that's what it is.

13 THE COURT: I'll overrule the objection.

14 Q Continue.

15 A So he came to my house at 11:15. When he came in, I
16 was watching Price is Right. So he came in, and we had
17 conversation just talking regular. And so as the day was
18 going on, we was just talking, talking. And I started to
19 cook dinner, and my job called me again to ask if I can go
20 to another client. This was about 2:30, 2:45, and I said
21 yeah, I'll go to another client. So I said I was cooking
22 dinner, though, right now, so I need to finish up and I'll
23 be to them. They wanted me to be there at 3:00, but I
24 told them I was cooking dinner.

25 So what happened was I left my house around 3:15 with

EDDIELENA BOYD - DIRECT EXAMINATION BY MR. COOK

1 him still being at my house, and my son had just came in
2 from school. He got off the bus at 3:00. So when I left
3 the house around 3:15, my son and Antonio was both there.
4 As I was leaving, they was playing a game. So I got to my
5 client's house around 3:30, and I had -- was working, and
6 I -- when they went to have dinner, I called my home again
7 and -- to check on my kids, and I talked to my daughter
8 and I asked to speak to Antonio and I asked them what they
9 was doing. They said nothing, playing a game, watching
10 TV. I was like, "Okay." I was like, "Well, I get off at
11 9:00." So I got off at 9:00, I got home, and Antonio and
12 my kids were watching TV. And the day ended with us going
13 to bed eventually, and he was still at my house.

14 Q Thank you. Is there anything else you'd like to say?

15 A That's about it.

16 Q Thank you. Please answer any questions the solicitor
17 may have for you.

18 THE COURT: You may cross-examine.

19 CROSS-EXAMINATION

20 BY MR. NEWKIRK

21 Q Good morning, Ms. Boyd.

22 A Good morning.

23 Q Could you please tell the jury again what time you
24 left for work.

25 A I left at 8:00.

EDDIELENA BOYD - CROSS-EXAMINATION BY MR. NEWKIRK

1 Q And what was the date?

2 A November 8th, 2013.

3 Q And how long had you been employed at that time with
4 your current employer or with your employer at that time?

5 A I had been with Interim by that time for three
6 months.

7 Q And what time did you say that you arrived back at
8 the house and met Antonio?

9 A He actually came to my house around 11:15.

10 Q What's your birthday, Ms. Boyd?

11 A [REDACTED] 1977.

12 Q What's Antonio's birthday?

13 A His birthday is [REDACTED] -- Good Lord -- [REDACTED] 1984.

14 Q And what about -- you said you had a son at the
15 house. What's his birthday?

16 A [REDACTED] 2003.

17 Q And was it y'all's anniversary that day?

18 A No.

19 Q When you got back to the house, you said you started
20 cooking dinner -- I'm sorry, you started watching the
21 Price is Right?

22 A As he came in, I was watching the Price is Right. I
23 was just sitting in the living room watching the Price is
24 Right.

25 Q And you're sure you were watching the Price is Right?

EDDIELENA BOYD - CROSS-EXAMINATION BY MR. NEWKIRK

1 A Yes, because it comes on at 11:00.

2 Q And then you started cooking dinner?

3 A Well, no, I didn't start cooking dinner until
4 probably about 1:00. Because as I said, we were just
5 sitting in the living room having conversation.

6 Q And what did you cook for dinner?

7 A We had chicken breast, rice, and corn.

8 Q What did you have for dinner last Thursday?

9 A Last Thursday I had rice, black beans, and Brussels
10 sprouts.

11 Q Was there anything in particular special about
12 November the 8th, 2013?

13 A One thing that stands out the most that day is that
14 before I left, I didn't have the corn all the way cooked
15 because I didn't season it, so I told him, I said, make
16 sure that you season the corn and -- but don't tell the
17 kids that you seasoned it because they won't eat it. So
18 he said okay.

19 Q Now, maybe I didn't make myself clear. Is there
20 anything special about the day in particular?

21 A Just as far as my client having his emergency, and
22 that's about it.

23 Q But outside of that, it wasn't your birthday or
24 anybody close to your birthday?

25 A No.

EDDIELENA BOYD - CROSS-EXAMINATION BY MR. NEWKIRK

- 1 Q It wasn't your anniversary?
- 2 A No.
- 3 Q But you remember all of these details?
- 4 A Actually, I remember more than just the details of
- 5 that day. Just the whole week.
- 6 Q But pursuant to your testimony, you remember exactly
- 7 what time you woke up?
- 8 A Right.
- 9 Q Exactly what time you left for work?
- 10 A Uh-huh.
- 11 Q Exactly what you were watching on TV?
- 12 A Yeah.
- 13 Q Exactly what you cooked for dinner?
- 14 A Yes.
- 15 Q And exactly what you told Mr. Jordan before you left
- 16 to go back to work?
- 17 A Yes.
- 18 Q You remember all this from a day that was over a year
- 19 ago that had no other significance?
- 20 A Yes.
- 21 Q Have you ever lived on Cannon Street?
- 22 A No, I have not.
- 23 Q You never lived on Cannon Street?
- 24 A No.
- 25 Q Have you ever told anybody else this story until

EDDIELENA BOYD - CROSS-EXAMINATION BY MR. NEWKIRK

1 today? .

2 A No, I have not.

3 Q And do you know -- do you remember when Antonio was
4 arrested?

5 A Actually, he was -- the first time I remember was
6 November 14th because he was supposed to go to the dentist
7 with me that day.

8 Q So between November 14 of 2013 and today, this is the
9 first time you're telling anybody this story?

10 A Yes.

11 Q Do you have a car?

12 A Yes, I do.

13 Q Do you have a telephone?

14 A Yes.

15 Q Could you have driven to the police department and
16 told any number of law enforcement officials this story
17 before today?

18 A Yes, and I could have told the prosecutor and
19 detective last week -- when they came to my house last
20 week, I could have told them but -- decided not.

21 Q Let's talk about that. So people from the
22 Solicitor's Office, some investigators came to your house
23 last week, didn't today?

24 A Yes, they did.

25 Q And they asked you if you had anything relevant that

EDDIELENA BOYD - CROSS-EXAMINATION BY MR. NEWKIRK

1 you wanted to tell them about this case, didn't they?

2 A Well, they was more so less badgering me, and I
3 didn't feel comfortable telling them.

4 Q So you had this information regarding, in your mind,
5 where Mr. Jordan was during the time this burglary could
6 have taken place prior to you testifying, and you chose
7 not to tell anybody?

8 A I feel that telling someone that's prosecuting him
9 wouldn't help him. So as far as telling his defense
10 lawyer, I think I should have did that.

11 Q Did you have a conversation with anybody else that
12 day? Did you maybe talk to somebody on the phone?

13 A No, I didn't.

14 Q So on the day that investigators came out to talk to
15 you to try to get this story from you, you didn't call
16 anybody on the phone that day?

17 A Oh, I called someone as I was standing there to ask
18 if I should talk to you, and they advised me not to.

19 Q Who did you call?

20 A I actually called Antonio's mother.

21 Q And what did she say?

22 A She told me no, don't talk to y'all.

23 Q She specifically said, "Don't talk to the
24 investigators"?

25 A To the assistant prosecutors and the detective.

EDDIELENA BOYD - CROSS-EXAMINATION BY MR. NEWKIRK

1 Q And what you would have told them was this miraculous
2 story about where Mr. Jordan was on the day of the
3 burglary?

4 A If I --

5 MR. COOK: Objection to that question, Your Honor.
6 It calls for speculation.

7 MR. NEWKIRK: Your Honor, I believe she can answer to
8 what she would have said.

9 THE COURT: She can testify as to her intentions, and
10 so I'll allow you to ask the question.

11 THE WITNESS: Could you repeat it?

12 Q She told you not to speak to the investigators; is
13 that correct?

14 A Yes, she did.

15 Q But had you spoken to the investigators, you would
16 have told them this miraculous story with all these
17 amazing details from the day of the burglary?

18 A I don't feel that they're amazing if it's the truth.
19 That's exactly what I did that day.

20 Q And this is the truth is your testimony?

21 A Yes.

22 Q And this is the first time anybody gets to hear it?

23 A Yes.

24 MR. NEWKIRK: No further questions, Your Honor.

25 THE COURT: Redirect?

1 MR. COOK: No questions, Your Honor.

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

3 Defense may call its next witness.

4 MR. COOK: Defense rests, Your Honor.

5 THE COURT: State wish to call any witnesses in
6 reply?

7 MR. NEWKIRK: No, Your Honor.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, that completes the presentation of evidence in this
10 matter. At this time, there's some things I have to take
11 up with the attorneys outside of your hearing. So I'll
12 ask you to step back to the jury room, and as you're
13 aware, I'm going to ask you not to begin any discussions
14 about the case at all, even among yourselves, until I've
15 asked you to do so. You may retire to the jury room.

16

17 (The jury left open court at 10:11 a.m.)

18 THE COURT: Any motions at this point in time?

19 MR. COOK: None from the defense, Your Honor.

20 THE COURT: You wish to renew your directed verdict?

21 MR. COOK: Yes, sir, Your Honor.

22 THE COURT: I'll mark it as noted as being renewed,
23 and I'll issue the same order and deny the motion. Now
24 let's talk briefly about charges. Any specific request
25 for charge from the state?

1 MR. EPTING: Your Honor, I believe that it would --
2 Your Honor has probably already charged this, but out of
3 abundance of caution, since we are enhancing off those
4 priors, I believe the charge that they should apply to
5 whether the elements have been met rather than any other
6 inference would be proper --

7 THE COURT: Yes, sir, I've included that in my charge
8 on burg first.

9 MR. EPTING: I would like to inquire whether Your
10 Honor would be comfortable charging a charge of the hand
11 of one is the hand of all.

12 THE COURT: I'm a little bit torn by that because I
13 don't know that there's been any evidence that you
14 presented that anyone else was involved in the case. The
15 defense has not been any type of third-party guilt that
16 someone else is involved. In fact, the defense, if
17 anything, is he wasn't there at all.

18 MR. EPTING: I anticipate they may argue something
19 based along those lines based upon some of the fingerprint
20 evidence that was not -- we were not able to match
21 positively to any person, and I could see a possible
22 argument that there's a great deal of items in the woods,
23 perhaps more than one person could carry, but I would
24 understand and respect Your Honor's decision.

25 THE COURT: And hand of one, hand of all, though,

1 requires that you have some proof that there was a
2 agreement between the parties to jointly engage in a
3 criminal activity. I haven't heard any evidence on that
4 point either. I understand your position and why you
5 might want to charge, but I don't think the evidence is
6 sufficient for me to charge.

7 MR. EPTING: Certainly. In the absence of Your Honor
8 charging that, would we have leave to argue those
9 principles to the jury in closing?

10 THE COURT: You have the right to argue whatever
11 inferences you think might be reasonably drawn from the
12 evidence that's in the record. I'll leave it at that.
13 You have the right to -- again, whatever reasonable
14 inferences you think might be drawn from the record, you
15 can argue the jury should consider those.

16 MR. EPTING: Certainly, Your Honor. Thank you.

17 THE COURT: Defense, specific request to charge?

18 MR. COOK: Just a charge regarding
19 self-incrimination.

20 THE COURT: Okay. Yeah, as far as the failure to
21 testify?

22 MR. COOK: Yes, sir.

23 THE COURT: I do intend to do that. And I do intend
24 to charge concerning alibi, and just let me tell you what
25 that is, see if there's any objection to that. Just one

1 second. I intend to charge the defense has raised that
2 charge of alibi. It must be shown the defendant was at
3 another specified place at the time the crime was
4 committed. There's no burden on a defendant to prove
5 alibi. The burden is on the state to prove beyond a
6 reasonable doubt that the defendant was actually present
7 at the scene of a crime and actually participated in it
8 and was not somewhere else. In other words, the state has
9 the burden of disproving defendant's alibi defense.
10 That's what I intend to charge concerning that.

11 MR. COOK: That's suitable to defense, Your Honor.

12 MR. EPTING: And to the state as well.

13 THE COURT: Anything further, gentlemen, about the
14 charge before we bring the jury in?

15 MR. EPTING: Nothing from the charge. Your Honor,
16 could I have ten minutes as a bathroom break to make sure
17 I have --

18 THE COURT: Absolutely. We're going to take a short
19 recess. I'm going to stay on the bench, though. But
20 we'll take a short recess. People can move about the
21 courtroom.

22 (A recess was taken from 10:15 a.m. to 10:23 a.m.)

23 THE COURT: I do intend to charge mere presence as
24 part of the charge. Make you aware of that. You may want
25 to work that into your discussions with the jury.

1 The defense did call witnesses, so I would assume the
2 defense would be going first, followed by the state.

3 MR. COOK: Yes, sir, Your Honor.

4 THE COURT: . You ready to go?

5 MR. COOK: Yes, sir, Your Honor.

6 THE COURT: State ready to proceed?

7 MR. EPTING: State's ready.

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

9 (The jury entered the courtroom at 10:24 a.m.)

10 THE COURT: The record will reflect the jury has
11 returned to the courtroom. I told you when we completed
12 the presentation of the evidence in the case, at that time
13 the attorneys would be given their second opportunity to
14 directly address the jury in their summation or their
15 closing argument. In this case the defense will be going
16 first. So Mr. Cook, you may proceed for the defense.

17 MR. COOK: May it please the Court.

18 THE COURT: Yes, sir.

19 CLOSING ARGUMENT

20 BY MR. COOK:

21 Good morning again,
22 ladies and gentlemen. So as the judge says, these are
23 closing arguments. I would just like to bring a few
24 things to your attention to ponder. Firstly, I'd like to
25 just address one more time what I talked about in the

1 opening arguments about beyond a reasonable doubt, and
2 that's the standard in every criminal trial. The state
3 has to meet -- the burden is on the state to meet that,
4 the standard. And that the defendant is innocent until
5 proven guilty. It's the presumption of innocence.

6 And I discussed the sandbox mentality of the American
7 school system and how I think you have to prove yourself
8 innocent, unfortunately. But nevertheless, the fact
9 remains for this trial that burden is on the state and
10 there's a presumption of innocence. And the state has to
11 meet that burden beyond a reasonable doubt. Talked about
12 how the civil trials only have that 51 percent burden,
13 preponderance of the evidence, but criminal trials, it's
14 something much more than that, but it's not quantifiable
15 in those percentage terms like preponderance of the
16 evidence would be.

17 So how would you define beyond a reasonable doubt?
18 I'm glad there's a few engineers on the pool in the jury.
19 It's a difficult concept. The Supreme Court has said,
20 South Carolina, that after hearing all of the evidence and
21 at this part of the case, the rest is just argumentation
22 from the attorneys. You've heard all the evidence. After
23 hearing all the evidence, if a reasonable juror -- and,
24 again, we both sides picked you all. Both think that
25 you're reasonable, obviously -- is in the deliberation

1 room where you're going to be sitting shortly, if you
2 hesitate in your deliberations, you must acquit. The
3 state hasn't met their burden. I guess what I'm trying to
4 say is if you think that because he has a tattoo on his
5 neck and two burglaries he's definitely guilty, there's
6 not much that I want to say at this closing that's going
7 to have any influence on you. You're one of the types of
8 people that already has their mind made up.

9 However, if you noticed the testimony of the DNA
10 specialist from the state and the lead investigator, it
11 did not -- let me rephrase that. There's definitely
12 something there to hesitate about. How can you put in a
13 report and maintain that a match was made on a safe and
14 then later say, well, actually, we got it wrong; the match
15 wasn't on the safe. The match was on the toboggan. How
16 can you tout science after those two sentences have been
17 said? How can you put all your eggs in the basket for DNA
18 evidence and the CSI effect and discuss about one -- how
19 do you even dare say the number one to one quintillion.
20 Because that has this ring about it. She's a scientist.
21 She's got all of these credentials, and she's saying I'm
22 one one-quintillionth certain, but I did get it wrong
23 about the gun safe now. But see, that has to do with, oh,
24 that's -- I didn't say there was a match on the gun safe.
25 That's not what I told the detective. He got it wrong.

1 Let me put it off on him.

2 There was corollaries. I can't remember if that's
3 the word. You heard it. She said some word. I'm not a
4 scientist either. That there were corollaries to the
5 bank -- to the safe, but there was a match on the
6 toboggan. Well, how can you almost be pregnant? I
7 thought this was DNA. I thought this was all this science
8 we're talking about. How can you say we're trending
9 towards there being DNA? It possibly could eventually be
10 that there's DNA on the safe. There's corollaries there.
11 What are you talking about? Either there's DNA on the
12 safe or there isn't DNA on the safe. Period. You can't
13 hide behind your science.

14 This is a very critical point in this trial. I don't
15 know. I always get this feeling at this point, I should
16 just sit down right there. If that doesn't make you
17 hesitate, then nothing will. So I think at this time, I
18 will. Thank you very much, ladies and gentlemen.

19 THE COURT: State may proceed with its closing
20 argument. Mr. Epting.

21 MR. EPTING: Thank you. May it please the Court.

22 THE COURT: Yes, sir.

23 CLOSING ARGUMENT

24 BY MR. EPTING:

25 I'll be the last one to address you today, so this is

1 almost over. Pretty soon the case will be in your hands.
2 Out of respect for your time, you've heard all the
3 evidence, I will try to be as brief as I possibly can. To
4 organize my thoughts in a better fashion, I have prepared
5 a PowerPoint on this case. I hope you indulge with me.

6 This is why we're here today. Mr. Jordan is charged
7 with one count of burglary first degree. You heard great
8 talk about reasonable doubt, and the judge is going to
9 instruct you on that at the end of this case. Mr. Cook is
10 correct. Reasonable doubt is defined by judges and
11 lawyers. And you know lawyers love to define things about
12 a million different ways, and there are several accepted
13 definitions.

14 One of those definitions is hesitate to act. Very
15 unhelpfully the cases in the law don't quite go beyond
16 that. What does hesitate to act mean? Does it mean that
17 if you go back to a jury room and you have to hesitate for
18 any reason whatsoever that you cannot find him guilty?
19 That's pretty silly because I don't know if y'all noticed,
20 but back in the jury room are a number of chairs. You're
21 supposed to hesitate to some degree. You're supposed to
22 hesitate, to sit down, to discuss the evidence, to share
23 each other's thoughts, to share each other's on the case,
24 to review the evidence amongst yourselves. Of course you
25 hesitate. As Mr. Cook stated in his opening, this is an

1 important decision. It's important for the defendant, but
2 it's important for the state too. Hesitate. Do hesitate.
3 So don't misconstrue that. You're allowed to hesitate.
4 You're allowed to sit down, discuss the evidence, discuss
5 your concerns, share your concerns.

6 Another definition: Proof that leaves you firmly
7 convinced. After hearing all the evidence, are you firmly
8 convinced that the defendant is guilty of burglary? I
9 would submit after all that evidence you've had today, you
10 should be firmly convinced. You'll hear more instructions
11 from the judge on reasonable doubt, and there's always a
12 lot of questions. What is reasonable doubt? The judge
13 will tell you, I hope, very few things in life can be
14 proven beyond all doubt. Very few things in life. It's
15 the burden the state proved this case to you, but we don't
16 have to prove to you beyond all doubt. And I would submit
17 to you that every jury in this land who has given a guilty
18 conviction has given with some doubt. Again, what can you
19 know in life with no doubt? We're not held to that. If
20 you have a reasonable doubt as to the defendant's guilt,
21 you should acquit. No reasonable doubt, you should
22 convict if you're firmly convinced after hearing all the
23 evidence.

24 You have roles as jurors. The judge alluded to that.
25 You're the finder of the facts. You guys decide what is

1 true based upon the evidence, based upon the testimony you
2 heard on that witness stand. Our system is very unique in
3 that respect. We're the only system I know of that gives
4 that type of power to jurors. We do that for a purpose.
5 Because y'all have common sense. Y'all have eyes. Y'all
6 have ears. Y'all have the ability to hear people talk, to
7 gauge their motivations, to look at their body language,
8 to ask yourself why would somebody tell the truth about
9 the case and why would they lie? Your role. I've often
10 heard it being described by some of our older attorneys as
11 umpires. An umpire in a game has to decide -- let's say a
12 baseball game. Guy slides into first. Is he safe or is
13 he not? He's not thinking about whether he had a bad day.
14 He's not thinking about whether the player had a bad day.
15 He's not thinking about how is this going to affect his
16 career or anything like that. Is he safe or is he out?

17 Is Mr. Jordan guilty or is he not guilty? That's
18 your only consideration. That's what we're here to do.
19 Beyond that, what happens should you find him guilty is up
20 to the judge. The judge makes that call.

21 What must we show? I've sometimes heard crimes
22 referred to like a recipe. There are certain things we
23 have to prove. These are the elements: Did the crime
24 occur in York County? Did the defendant commit that
25 crime? Did he enter a dwelling of another without

1 permission or is he part of a group that did with intent
2 to commit a crime inside? That's burglary. That's
3 baseline burglary. What aggravates that up to a different
4 degree, burg first in this degree, are two different
5 things. As Mr. Schettler said, it can occur in nighttime.
6 We're not alleging this occurred in the nighttime. The
7 other two we're alleging. That a weapon was involved. If
8 a person becomes armed with a firearm at any point --
9 entering the house, inside the house, or leaving the
10 house -- he is armed for the purpose of that burglary
11 statute. Our legislation does not want people committing
12 burglaries first, and they really don't want them
13 committing them with guns involved.

14 The other, if a person has two prior burglaries on
15 their record prior to this, it aggravates this up to a
16 first degree.

17 There's some gimme elements in this. I call them
18 gimme elements, things that I don't think are really in
19 conflict. This occurred in York County? Absolutely. You
20 heard testimony from the victim, from the responding
21 officer, from multiple people that both the house and the
22 woods behind the house, all in York County. The burglar
23 or burglars did not have permission, and they entered the
24 house. You'll see in a second a shot of the back door.
25 It's broken out. Wasn't like that when the victim left

1 his house. Obviously a person who had permission to enter
2 is not going to smash a window to get inside the house.
3 Common sense.

4 The burglary convictions, we know guns were stolen.
5 I don't think that's contested. Those burglary
6 convictions are in the record. Not to show that he's a
7 bad guy or anything like that because we're not here to
8 judge his soul but to prove our elements. Did somebody
9 intend to commit a crime? You betcha. What was different
10 about the house when the victim left and when he came
11 back? A whole bunch of stuff was stolen and windows were
12 broken out. No permission to enter, obviously. Stolen
13 jewelry, things disheveled, drawers pulled out, gun
14 stolen. The only question out of all those elements is
15 who did this burglary. That's the only thing you need to
16 consider back there in the jury room and deliberations.

17 To prove some of that, let's talk about what evidence
18 we show to try to prove who did this. Y'all remember
19 Randy Clinton's testimony. Randy is a very colorful
20 fellow. Came in I think probably just like he goes out on
21 a trail. What'd he talk about? He's been training dogs
22 since they were puppies. He's been training dogs since he
23 was a puppy. He's known for that. He's a master of that.
24 He talks about how he trains those dogs to start tracking
25 from a young dog to an older dog. They start following

1 scents. It's a game to them. It makes them happy. At
2 the end of the day, they get a treat if they find the
3 person.

4 What'd he say? The dog's pulling him behind. He
5 starts at a place where he knows the crime occurred, and
6 he lets the dog take him where the dog smells the scent.
7 And then what does he say? They find articles. And if
8 the dog smells that article and determines that that's
9 part of the scent, here part of the scent from the house,
10 the dog acts excited because that's a stronger scent. And
11 that's how you know that item came from that house. He
12 doesn't do that on everything. He passes by other things.
13 You know, other things in the woods, like perhaps staples
14 or other things, and he doesn't get excited or alert, as
15 he said, on those. Passes them by. What does that tell
16 you, according to his testimony? That they're not on the
17 trail.

18 What did the dog alert on in particular in this case?
19 He said this hat. This hat that was dangling from a
20 branch. Clearly somebody in haste fleeing has their hat
21 snatched right off their head as they're running.
22 Eventually gets knocked down. The dog alerts.

23 Remember the roadside arrest. Y'all remember the
24 testimony from Travis Shealy about that, correct? What
25 did he talk about? He found the gun. Notices the

1 defendant. Put the defendant under arrest. Prior to
2 putting the defendant under arrest, what does he ask him?
3 Where you coming from? Where do you stay? Girlfriend's
4 house. Where is girlfriend's house? Looks at a street
5 sign. Cannon Street. That's where you coming from. What
6 street address on Cannon Street? Oh, he can't tell you
7 that. He's just not sure. But now, based on his
8 girlfriend's testimony, we know that that was a lie. She
9 never lived on Cannon Street. She lived on Forest Ridge.

10 So you got to ask yourself, again, common sense. If
11 he's lying about where his girlfriend lives, why would he
12 lie? I submit to you, he didn't want officers to know
13 where she lived because this is six days from that
14 burglary occurring. And I submit to you there's a
15 possibility he might have had other things there that he
16 didn't want police to check out. Why would he lie? The
17 jury's consideration. Did he say, oh, yeah, that gun's
18 mine. Absolutely. You found it under there. You got me.
19 I don't have a license. Cuff me up. No. He didn't know
20 where that gun came from. That's not his. Common sense
21 again. Why would he lie about that? Because he didn't
22 want to get in trouble. He does not want to get in
23 trouble for that gun, so he lies. So we know that he'll
24 tell a lie to try to keep himself out of trouble.

25 Again on the trail because it's important based upon

1 the location of where that hat was discovered, because we
2 didn't just pluck that out of the blue. Remember Randy
3 Clinton's testimony, follow the trail? Again, I'm
4 redundant, but follow the trail, finding items on the
5 trail, crosses the street, goes into the woods near the
6 church, finds more items. What does he find? Start with
7 the broken house. That's the start of the trail. Hard to
8 see there. Plastic bag. Then they find a safe with the
9 bullets in it and all that good stuff.

10 Continue on the trail. Obviously all involved
11 obviously leaving a steady trail of things unbroken from
12 the house. One of the toboggans that we found next to a
13 fence. Then they get to the road. Then they cross over
14 and go in the woods. They find this hat dangling from a
15 branch. It gets knocked down. The dogs alert on it.
16 We'll talk more about that hat later.

17 And then what do they find after that? Again, in
18 that same string of items, cash box dumped into some water
19 nearby. Again, all items that the victim says are from
20 his house. They're his things, his things that were taken
21 in that four-hour period, his things that were in the
22 house when he left and that are now dumped in the woods
23 when he comes back several hours later. His voter
24 registration card. Surely he didn't put that there. An
25 earring, cowboy earring that Cheryl Gregory remembers

1 having its match in the house.

2 We have things that have been stolen from this house
3 in a continuous line all grouped together. And what do we
4 have smack in the middle of that? This cap. Remember
5 what Ms. Kissell said. I think it was an educational
6 experience for all of us on the DNA thing, including the
7 officer himself. Mr. Cook made a big deal, how can she
8 say it's a match, how can he say it's a match? What did
9 Ms. Kissell say about that? It was preliminary. She
10 didn't have a known sample to compare it to, so what she's
11 telling the detectives is there's similarities. If she
12 would have told there's similarities, I know -- I know
13 nothing about DNA. I watch Maury Povich. You're the
14 father, you're not the father. It's a match or it's not
15 the match. There's not similarities, all that stuff.
16 That is some scientific evidence, scientific knowledge
17 that I think is above most people's pay grade. I don't
18 think you can fault the detective too much for hearing
19 there's similarities between the items and saying, oh,
20 it's a match. But according to Mr. Cook, that destroys
21 our evidence. That's up to y'all to decide.

22 What did she say? She talked about the stocking cap.
23 She said that she was given two reports, one hat that was
24 taken and nothing else from the roadside when they got the
25 gun, and then a slew of other items that were taken from

1 the burglary. Initially her testimony was she compared
2 that hat from the roadside to the hat and the -- and some
3 of the items from the burglary. Without a known sample,
4 everything from the field, we're unclear what quality
5 sample we have. That's when she said similarities. But
6 when she gets enough, then she can do a good comparison.
7 And what did she tell us about that -- what did she tell
8 us about the hat that was taken roadside? We know that
9 hat was taken off his head. She knows it's a match to the
10 40 billion or whatever number she threw out.

11 What did she say about the stocking cap? That was an
12 even stronger match than the one came off his head. Major
13 contributor. What did she say in her opinion as a DNA
14 analyst that indicated? That the major contributor wore
15 that item more often and probably more recently. Again,
16 that item found in that woods within a four-hour stretch
17 riddled with the defendant's DNA, hanging in a tree,
18 snatched off his head. Hat from the traffic stop is an
19 even better hit. Antonio Jordan's DNA on all of these
20 things. She testified about the steps she took to keep
21 cross-contamination from coming into play. And it sounds
22 like they have about 50 different measures to prevent
23 errors in their DNA testing that will catch an error early
24 on and then correct it.

25 How do you know it's Antonio Jordan? The dogs

1 tracked from the house, where we know things were stolen,
2 to a place where it's obvious a car fled the scene.
3 That's where the dog starts to track. He's lost the
4 trail. They hit on all the items up from the house. They
5 hit on his clothing. What does that tell you? That dog
6 is telling us with a super sensitive nose that all these
7 items came from the house, that the people were dropping
8 these items came from the house, that the hat that was
9 being worn with DNA from Mr. Jordan came from that house.

10 Talk a little bit about fingerprints. Some were
11 there we can identify. Some were matched to the victim,
12 who she took elimination prints from. But what else did
13 the victim testify to? There were other people in this -
14 house with them. We can't tell when those fingerprint
15 were there, when they're from. He testified to being
16 actively involved in Boy Scouts, and the cash box was used
17 as part of that. Who is to say, I submit an argument,
18 that that's not somebody who he lent this box to as part
19 of some type of Boy Scout fundraiser. Let's not forget,
20 and I have mentioned this yet, on top of all that, on top
21 of the trail, on top of the DNA, on top of all these
22 things, he was found with one of the pistols that we know
23 was taken from the burglary six days later. At this
24 point, either Antonio Jordan is the most unlucky man in
25 the history of civilization as to this burglary or he's

1 patently guilty.

2 You heard a little bit from the defense. The defense
3 witnesses had a chance long ago, long ago, to come tell
4 the story. You heard their testimony. You heard their
5 testimony just a second ago. What did the mom say? All
6 six of them go to work every single -- four of them go to
7 work every single day the same time. They work at this
8 place. What else did she say? There's a video system in
9 that place that within days after his arrest, they could
10 have brought to the police and shown he's innocent. She
11 mentioned that some time had passed, place had closed
12 since then, she didn't think it would go on this long. If
13 she was telling truth and she had a video of Antonio
14 Jordan at the place when this burglary occurred, would it
15 have gone on this long?

16 So you're left with two options. She's either
17 telling the truth and she just sat on this all this time,
18 this tale of where he was, this video showing where he
19 was, all these things and until the business was closed
20 and she somehow lost access to them or she still has
21 access to them but she didn't have time to get them, even
22 though it's been a year since he was arrested. I was
23 unclear about that. I think she's telling the truth about
24 that or she's lying and there's no video because Antonio
25 was not there that day, not there at that time.

1 What else did we hear? Heard from the girlfriend
2 from Forest Ridge. She came here and she testified. She
3 remembers all these very specific details about a day that
4 she would have no reason to remember. She remembers the
5 instructions for the dinner that she gave to Antonio
6 supposedly as far as spices -- putting seasoning on the
7 rice. She knew it like that. She knew what time she went
8 to work, what time she got back, what time Antonio got
9 there, what time the kid got there, what time she talked
10 to him, what they talked about, what she cooked for
11 dinner. That's conversation about seasoning and the spice
12 and all that good stuff. But how long did it take her to
13 remember Antonio's birthday? Selective memory?

14 Again, I recognize that both the girlfriend and the
15 mother are in a very difficult situation, because
16 undoubtedly they love this man. Love makes you do things
17 you might otherwise not do in certain situations.
18 Remember what the mother testified to as to Eddielena
19 Boyd, the girlfriend. Oh, does she know him? Does she
20 know Eddielena? A little bit, sort of. I know who she
21 is, but we're not that tight. I asked her, "Did you talk
22 to her the week before?" She couldn't really remember at
23 first, but then she did. It was an important
24 conversation, wouldn't you say? Investigators from the
25 Solicitor's Office just want to hear what you have to say

1 about the case.

2 What did the mom say? She never told that girl not
3 to talk. She told her to call the attorney. Never told
4 her not to talk. She wouldn't do that. What did
5 Eddielena say? I called the mom, and she told me not to
6 say a word to the Solicitor's Office. Common sense. Why
7 would the girlfriend and the mother have to lie in this
8 case about where Antonio was during the burglary? They
9 love him. They don't want to see him get in trouble.
10 They have all the motive in the world to lie. By their
11 actions they've shown that they're extremely inconsistent.
12 By their body language they've shown they're not telling
13 the truth, I would submit. And then you have to ask
14 yourself -- again, jurors, common sense -- if they are
15 getting up there and lying, what does that say as to
16 Antonio's guilt or innocence? Does an innocent person get
17 somebody to come up on the stand and lie about where they
18 were at certain times? I would submit they do not.

19 In conclusion, you have the dog track. That connects
20 all the items that are found in the woods, including the
21 hat, to the house. You have the hat. We had the DNA
22 match. One in an unreal number -- septillion, I think she
23 said -- that that is his DNA on that hat, that he has worn
24 it recently, and that he's worn it the most. He has a gun
25 on his possession less than a week, and he lies about it.

1 And then he calls his mom and his girlfriend up here with
2 extremely inconsistent statements. The mom, according to
3 her, with evidence that could completely exonerate him,
4 which we don't have here today.

5 Ladies and gentlemen, he is guilty beyond a
6 reasonable doubt. Hesitate to act long enough to share
7 any concerns you might have, discuss the evidence. But
8 given the DNA, given the dog track, given that he was
9 found with that pistol stolen from that burglary, given
10 that he lied about that, and given all the lies that were
11 told on his behalf, find him guilty of what he is guilty
12 of, burglary first degree. We eagerly await your
13 decision.

14 JURY CHARGE

15 THE COURT: Ladies and gentlemen of the jury, that
16 concludes the closing arguments by counsel. I told you
17 when we reached this stage of the proceeding, it would be
18 my responsibility to charge you concerning the law that's
19 to be applied in this case. In doing so, I will go over
20 with you additionally the indictment. Then as my charge
21 moves along, I'll go over some general propositions of the
22 law. And then I'll come to the charge that's before the
23 court and go over the law concerning this particular
24 charge.

25 When we started the case earlier, I went over the

1 indictment with you during jury selection. I'll go over
2 the indictment with you again. The indictment is in case
3 number 2014-GS-46-1543. The indictment is for the offense
4 of burglary in the first degree. The indictment states
5 that the defendant, Antonio R. Jordan, did on or about
6 November 8, 2013, in York County enter a dwelling
7 belonging to Derek Clark without consent and with the
8 intent to commit a crime therein. The defendant, while in
9 the dwelling or while in immediate flight, was armed with
10 a deadly weapon. The defendant had been convicted of two
11 or more convictions for burglary or house breaking or a
12 combination of both, all in violation of Section 16-11-311
13 of the code of laws of South Carolina, 1976, as amended
14 against the peace and dignity of the state and contrary to
15 the statute in such case made and provided.

16 Now I'll remind you the fact that a defendant has
17 been arrested and charged and indicted is not evidence in
18 the case. It can't be considered by you as evidence of
19 guilt in this case, nor does the fact that an indictment
20 has been issued by a grand jury create any presumption or
21 inference of guilt. Again, that document that I went over
22 is simply the formal written instrument which contains the
23 charges against the defendant. It's the document that
24 brings this case into this court.

25 The defendant has pled not guilty to the indictment.

1 That plea places the burden on the state to prove the
2 defendant guilty. I will tell you that a person charged
3 with a commission of a criminal offense in this state is
4 never required to prove himself innocent. It's an
5 important rule of law that every defendant in a criminal
6 trial, no matter what the seriousness of the crime might
7 be, is always presumed to be innocent of the crime for
8 which the indictment has been issued until and unless
9 guilt has been proven to you the jury by evidence that
10 satisfies you of that guilt beyond a reasonable doubt.

11 Now, the presumption of innocence doesn't end when
12 you begin your deliberations. It accompanies the
13 defendant throughout the proceedings, throughout the
14 trial, until such time as you the jury might reach a
15 verdict of guilt based on evidence that satisfies you of
16 that guilt beyond a reasonable doubt. Some people
17 describe, to give you a mental picture of the presumption
18 of innocence, somewhat like the robe that a judge might
19 wear into the courtroom. At the beginning of the trial,
20 that presumption of innocence is around the defendant's
21 shoulders just like a robe would be. It remains about the
22 defendant's shoulders throughout the trial. It
23 accompanies the defendant into your deliberations and
24 remains about his shoulders until such time as it's been
25 stripped from him by evidence that satisfies you of the

1 defendant's guilt beyond a reasonable doubt.

2 Now, the presumption of innocence is not just a legal
3 theory. It's not just a legal phrase. It's a substantial
4 right that every defendant is entitled to, unless you the
5 jury are satisfied from the evidence of the defendant's
6 guilt beyond a reasonable doubt. Now, you've heard me use
7 that standard of proof, proof beyond a reasonable doubt,
8 several times in my charge. It's an important concept in
9 our criminal justice system that someone must be proven
10 guilty beyond a reasonable doubt. And you might ask
11 yourself, well, what is the definition of a reasonable
12 doubt? What is a reasonable doubt? And I'll tell you
13 that the cases in this state have defined a reasonable
14 doubt as that kind of doubt which would cause a reasonable
15 person to hesitate to act. And the state has the burden
16 of proving the defendant guilty beyond a reasonable doubt.

17 Now, I do want to point out to you, and I think the
18 lawyers mentioned this, but I'll mention it to you as
19 well. Different types of cases in our justice system
20 require different standards of proof. In the civil
21 case -- and let me explain to you, a civil case is a case
22 where someone is seeking monetary damages. That can be
23 because someone breached a contract or failed to pay a
24 debt or perhaps injured somebody and is responsible for
25 their injuries and must pay damages for injuring someone.

1 That's a civil case. And in those cases, the standard of
2 proof is by the greater weight or the preponderance of the
3 evidence. What that means is the scales of justice, and
4 you've all seen those in pictures before, tilt ever so
5 slightly in favor of either the plaintiff or the
6 defendant. And the way in which the scales tilt ever so
7 slightly, that side is entitled to a verdict. So that's
8 what we mean by the greater weight of the evidence.
9 That's civil cases. That's not a criminal case.

10 In a criminal case, the standard of proof is more
11 powerful than that. It must be proof beyond a reasonable
12 doubt. I'll tell you that proof beyond a reasonable doubt
13 is that kind of doubt that leaves you firmly convinced of
14 a defendant's guilt.

15 Now, there's very few things in this world that can
16 be proven beyond any doubt whatsoever. And the state is
17 not required to prove things to an absolute certainty.
18 The law doesn't require proof that overcomes every
19 possible doubt. What I will tell you that if after you
20 consider all the evidence in the case, if you are firmly
21 convinced of the defendant's guilt beyond a reasonable
22 doubt, you must find the defendant guilty. However, on
23 the other hand, if you think there's a real possibility
24 that the defendant is not guilty, you must give the
25 defendant the benefit of the doubt and find him not

1 guilty.

2 I'm going to remind you that during the trial, you
3 and I have had certain duties to perform, different
4 duties, and it's been my responsibility to preside over
5 the case and rule on certain issues that came up or the
6 appropriateness of questions that might have been asked.
7 And I'll tell you that you should only consider the
8 evidence that was admitted into the record, and if there
9 was anything that I overruled or I ruled out of order or I
10 did not let go into the record, you should not consider
11 those matters at all in reaching your verdict. Again,
12 only the evidence that was admitted into the record is
13 what you should consider in reaching a verdict in this
14 case.

15 I have the additional duty of charging you concerning
16 the law. And as the presiding judge, I told you at the
17 beginning of this case, I am the sole judge of the law in
18 this case. And it's your duty as jurors to accept and
19 apply the law as I give it to you. I told you earlier and
20 I'll tell you again, if you have an idea or a belief as to
21 what the law is or what it ought to be, you should leave
22 those notions outside the jury room. Under your oath as
23 jurors, it's your duty to take the law exactly as I give
24 it to you and apply that law to the facts as you determine
25 those facts to be. And I told you also, you are the sole

1 and exclusive judges of the facts in this case. And I
2 told you earlier, you should not take from anything that I
3 say or I do in the discharge of my duties as the presiding
4 officer of this court to indicate to you that I have an
5 opinion one way or the other as to how you determine the
6 facts in this case.

7 The law doesn't allow you to disagree with me
8 concerning the law. The law does not allow me to disagree
9 with you concerning your determination of the facts. So I
10 have no opinion as to how you should determine the facts
11 in this case. Please don't think -- take from anything
12 that I might say or do, even during this charge, to
13 indicate somehow that I have such an opinion as to how you
14 should determine the facts in this case.

15 Now, as the sole judges of the law in this case, it's
16 your responsibility to evaluate the evidence you've heard,
17 give it the weight you think it has. It's your duty to
18 determine the effect, the value, the weight, and the truth
19 of the evidence which has been presented to you during
20 this trial. Now, there's two different types of evidence
21 that a jury has the right to consider. Those two types of
22 evidence we refer to as direct evidence, and then the
23 other type of evidence the jury can consider is what's
24 referred to as circumstantial evidence. Now, direct
25 evidence is testimony by a person who claims to have

1 actual knowledge of the facts about which that witness
2 testifies. That's someone who was an eyewitness to an
3 event, someone who actually experienced the facts about
4 which they testified and they're testifying directly on
5 the fact that's sought to be proven. That's what we mean
6 by direct evidence. Circumstantial evidence, on the other
7 hand, is proof of a chain of facts or circumstances that
8 indicate the existence of another fact.

9 Now, the law doesn't make a distinction between the
10 value or the weight that you can give to either direct or
11 circumstantial evidence. Nor is there a greater degree of
12 certainty required of circumstantial evidence than that of
13 direct. Now, as to circumstantial evidence, I like to
14 give a very simple example as to what is meant by a proof
15 of a chain of facts or circumstances. Sometimes it's
16 referred to as proof of collateral facts from which
17 another fact can be inferred. I like to give a really
18 simple example of what we mean by proof of a fact by
19 circumstantial evidence.

20 Let's say last night before you went to bed you were
21 in your bedroom and you walked to the window in your
22 bedroom and you looked outside and the stars were shining.
23 It's a pretty night outside. Pretty cold last night. And
24 let's say that you went to bed and you slept well all
25 night, didn't wake up at all. The next morning you got up

1 and you walked over to that same window in your bedroom.
2 You looked outside, and the sun was shining, but then you
3 noticed when you look a little closer that there's water
4 dripping from all the trees outside. You notice that
5 there were puddles in the driveway that weren't there the
6 night before. Maybe the grass in front of your house was
7 soaking wet.

8 Now, during the night, you slept all night. You
9 didn't see it rain and you didn't hear it rain, so you
10 can't testify directly as to whether it did or not, but
11 from that chain of facts or circumstances that you know to
12 be true, you could reasonably infer that, in fact,
13 sometime during the night it rained. So that's what we
14 mean by proof of collateral facts from which another fact
15 might be inferred. I will tell you that you should weigh
16 all of the evidence in this case.

17 Now, crimes can be proven by circumstantial evidence.
18 And, again, the law doesn't make a distinction between the
19 weight or value that you the jury can give to either
20 direct or circumstantial evidence. However, to the extent
21 that the state relies on circumstantial evidence, all of
22 the circumstances must be consistent with each other and
23 when taken together point conclusively to the guilt of the
24 accused beyond a reasonable doubt. If the circumstances
25 merely portray the defendant's behavior as suspicious,

1 then the proof has failed. The state has the burden of
2 proving the defendant guilty beyond a reasonable doubt.
3 The burden rests with the state regardless of whether the
4 state relies upon direct evidence or circumstantial
5 evidence or some combination of the two.

6 Now, I told you at the beginning of the trial as the
7 sole judges of the facts, it's going to be necessary for
8 you to determine the credibility or the believability of
9 the testimony that you heard. And that's what credibility
10 means. It means believability. It's your duty as jurors
11 to analyze and evaluate the evidence and determine which
12 of the evidence convinces you that it's true. In
13 determining believability of witnesses who testified in
14 any case, the jury has the right to believe one witness
15 against all the others. You have the right to believe all
16 the others against one. As the sole judges of the facts,
17 you have the right to believe all of, part of, or none of
18 what a witness may have told you. You may consider
19 whether a witness is exhibited to you any interest in the
20 case or a bias or a prejudice or other motive in their
21 testimony in this case. You may consider the appearance
22 and the manner in which a witness has testified on --
23 while on the witness stand. Again, you are the sole
24 judges of the facts in this case. I urged you at the
25 beginning of the trial to use your own good common sense

1 in determining the credibility and believability of the
2 testimony you've heard during this trial.

3 Now, one matter I do want to go over and emphasize to
4 you and I want to instruct you on this fact, and that is
5 the fact that the defendant did not testify in this case
6 is not a factor to be considered by you in any way in your
7 deliberations and in your consideration of the question of
8 the guilt or the innocence of the defendant. It must not
9 be considered by you in any manner whatsoever. I'll tell
10 you, a defendant has the constitutional right to remain
11 silent. And the assertion of this right by a defendant
12 must not be considered by you in your deliberations. I
13 repeat, under your oath as jurors, you are to draw no
14 conclusion whatsoever from the fact that the defendant did
15 not testify in this case. The fact that the defendant did
16 not testify should not even be discussed by you in the
17 jury room. The burden of proof in this case is solely
18 upon the state. The defendant is not required to prove
19 his innocence. The burden of proof remains upon the state
20 throughout the trial, to prove the guilt of the defendant
21 beyond a reasonable doubt.

22 I also told you that I would comment to you a little
23 further concerning testimony of expert witnesses. You may
24 recall when the first expert witness testified, I made
25 that statement to you at that time. The rules of evidence

1 ordinarily don't allow witnesses to testify about their
2 opinions or their conclusions. Now, an exception to that
3 rule is made for a witness that we call or designate as an
4 expert witness. That's a witness who because of their
5 education or experience has become an expert in an art,
6 science, profession, or some field or calling, and those
7 witnesses may state an opinion as to relevant and material
8 matters in which the witness claims to be an expert and
9 may also give the reasons for those opinions.

10 You should consider the expert opinion of a witness
11 that's been received in evidence like any other evidence
12 in the case. You as the finders of the facts can give it
13 the weight you think it deserves. Should you decide the
14 opinion of an expert wasn't based on sufficient education
15 or should you conclude that the opinion of the expert was
16 not properly supported by sound reasoning or sound science
17 or the reasons given for the opinion or that the opinion
18 is outweighed by other evidence, you have the right to
19 disregard the opinion in its entirety. The opinion of an
20 expert is to be given no greater weight simply because
21 that person was designated as an expert. And further,
22 you're not required to accept the opinion of an expert,
23 even though it might not be contradicted by other
24 evidence. In other words, you the jury should weigh that
25 evidence like any other evidence. Give it the weight you

1 think it deserves.

2 Now, I'll also charge you that it's a premise under
3 the law that the mere presence of someone at the scene of
4 a crime is not sufficient to prove someone guilty of a
5 crime. A defendant's presence where a crime is being
6 committed or mere association with a person who might
7 commit a crime does not make a defendant an accomplice, an
8 aider, an abettor of that person committing the crime.
9 The burden is upon the state to prove every element of the
10 crime charged. If you find after reviewing all of the
11 evidence the state -- that the state has proven that the
12 defendant was only present at the scene of the crime and
13 they have not proven beyond a reasonable doubt any other
14 participation in the crime, then you must find the
15 defendant not guilty. The law is that proof of someone at
16 the scene of the crime in and of itself is not sufficient
17 to find someone guilty.

18 Now, the charge in this case is burglary in the first
19 degree, and I told you I would go over the specific charge
20 with you, and I'll do that at this time. That is embodied
21 in a code section in our South Carolina code of laws, code
22 section 16-11-311. And I'll tell you that the state must
23 prove, for the charge of burglary in the first degree
24 beyond a reasonable doubt, that the defendant entered a
25 dwelling without consent. Now, a dwelling is defined by

1 the law as any building or a portion of a building in
2 which a person might ordinarily sleep. A building
3 constructed as a dwelling that has never been occupied
4 cannot be considered a dwelling for purposes of burglary.
5 But a building is a dwelling even if the residents are
6 temporarily absent from the building at the time of the
7 event. In order to prove that the defendant entered a
8 dwelling, the state does not have to prove that the entire
9 defendant's body entered. Any entry, no matter how small,
10 is sufficient for the crime of burglary. If a person
11 enters a building by deception or trick, that also would
12 be without consent.

13 Next the state must prove beyond a reasonable doubt
14 that the defendant, upon entering the building, did so
15 with the intent to commit a crime, either a felony or a
16 misdemeanor. At the time of the entry, the mere entry
17 into a dwelling without consent is not a burglary. If the
18 intent to commit a crime is formed after entry, it's not a
19 burglary. On the other hand, if the defendant intended to
20 commit a crime at the time of entry, it is a burglary even
21 if that intent is later abandoned.

22 Now, intent may be shown from the acts and conduct of
23 a defendant and other circumstances from which you might
24 reasonably infer intent. And I'll tell you, the intent
25 element of any crime is always a matter that has to be

1 proven from the facts and circumstances surrounding the
2 event. Because there's no way we can open up somebody's
3 head at the time an event occurs and be able to
4 scientifically determine what they intended to do at that
5 time. So intent is always a matter that must be proven
6 from the facts and circumstances surrounding what happened
7 in the event. So intent is always a matter that must be
8 proved by inference and not by direct evidence.

9 Finally, for the crime of burglary in the first
10 degree, the state must prove beyond a reasonable doubt at
11 least these elements: That when entering or while in the
12 dwelling or when leaving or fleeing the dwelling, the
13 defendant was armed with a deadly weapon or explosive; in
14 other words, had a deadly weapon in his possession. A
15 deadly weapon is any article or instrument which is likely
16 to cause death or great bodily harm. Whether the
17 instrument could be used as a deadly weapon depends upon
18 the facts and circumstances of each case. I'll tell you
19 that there are cases in this state which indicate that
20 deadly weapons include such things as pistols, shotguns,
21 rifles, dirk, daggers, knives, slingshot, metal knuckles,
22 razors, gasoline, fire bombs, Molotov cocktails. Those
23 are the kinds of things that we were talking about that
24 could be used as a deadly weapon.

25 Now, another thing the state could prove in order to

1 establish burglary in the first degree is that the
2 defendant at the time of the burglary had a prior record
3 of two or more convictions for burglary and/or house
4 breaking. Evidence of prior offenses committed by the
5 defendant are not offered to prove the defendant has a bad
6 character or to prove that the defendant committed the
7 burglary on this occasion. The prior convictions may be
8 considered by you only for the purpose of determining
9 whether or not it satisfies that element of the offense
10 that makes it burglary in the first degree if you enter a
11 dwelling without consent to commit a crime and have two
12 prior convictions for burglary and/or house breaking.

13 Now, before you can even consider the evidence of a
14 defendant's prior burglaries and/or house-breaking
15 convictions, you must first find that the state has proven
16 beyond a reasonable doubt that a burglary was committed in
17 this case by the defendant. If you find beyond a
18 reasonable doubt that the burglary in this case was
19 committed, then you may consider the evidence of the prior
20 convictions as evidence of one of the circumstances that
21 would make this burglary a burglary in the first degree.
22 If you do not find beyond a reasonable doubt that the
23 defendant committed these alleged prior offenses, then you
24 could not return a verdict of guilty on the crime of
25 burglary in the first degree.

1 Now, to this charge, the defendant has raised a
2 defense of alibi. In order to establish alibi, it must be
3 shown that the defendant was at another specified place at
4 the time of the crime -- the time the crime in this case
5 was committed and that it was therefore impossible for the
6 defendant to have been at the scene of the crime. Mere
7 denial of presence at the scene of a crime does not
8 constitute alibi. There is no burden on the defendant to
9 prove an alibi. The burden is on the state to prove
10 beyond a reasonable doubt that the defendant was actually
11 present at the scene of the crime, actually participated
12 in it, and was not somewhere else. In other words, the
13 state has the burden of disproving the defendant's alibi
14 defense.

15 Now, Ms. Cathryn Davis, Juror 55, raise your hand,
16 please. You're going to be the foreperson of the jury.
17 Just happens you sat in the right seat this morning. That
18 was kind of lucky. Ms. Davis, that means you're going to
19 be the person who I'm designating to preside over the
20 discussions of the jury. You'll lead those discussions.
21 Should the jury at any time during your deliberations have
22 a question that the jury wants to pose to me, you would
23 write that on a piece of paper, knock on the door, pass it
24 to the bailiff. The bailiff would bring the question to
25 me, and I will consider it. Now, I'll tell you that I

1 can't answer each and every question you may have in your
2 deliberations. I've already explained to you that I can't
3 get involved in your decisions concerning the facts in
4 this case. But, ma'am, I'm not asking you to edit the
5 jury's questions. You record it, submit it to me. I'll
6 determine what answer I can give to the questions the jury
7 might have. I can't answer questions concerning my charge
8 on the law, certain questions about the procedure we
9 followed, and perhaps assist you in reviewing the
10 evidence. So if you would just submit the questions to
11 me. I'll decide what I can answer, what I can't answer.

12 It will also be your job once a verdict has been
13 reached to record that on a verdict form, and I'm going to
14 go over this form with you in just a few minutes and
15 explain to you how the form should be completed once a
16 verdict has been reached. Now, I told you that you cannot
17 reach a verdict unless it's unanimous. Each and every one
18 out of you must agree upon the verdict before it's the
19 verdict of the jury. That means that no juror has any
20 greater say in the outcome than any other juror. I simply
21 have to appoint someone to take care of these tasks for
22 me, and I've asked Ms. Davis to do that for me. But,
23 again, each and every one of you must agree upon the
24 verdict before it's the verdict of the jury and before
25 Ms. Davis can record that verdict on the verdict form.

1 Now, that completes my charge on the law. I went
2 over a lot of things with you. I want to be sure that I
3 haven't misspoken, so I'm going to go over that with the
4 attorneys. Also, the evidence will be given to you back
5 in the jury room. I want the attorneys to agree that only
6 the properly admitted evidence is given to you in the jury
7 room, and then I'll go over the verdict form with the
8 parties to be sure there's no objection to that form. So
9 I've got some housekeeping things I need to do right now.
10 I'm going to ask you one more time to go back to the jury
11 room. Don't start any deliberations at this point in
12 time. I'm going to bring you back into the courtroom for
13 final instructions in just a few minutes. Shouldn't be a
14 long break. I'll ask you to retire again. Don't allow
15 any discussions, Madame Forelady, until I bring you back.
16 Thank you very much.

17 (The jury left open court at 11:18 a.m.)

18 THE COURT: Any objections or exceptions to the
19 charge from the state?

20 MR. NEWKIRK: Your Honor, you did at one point have a
21 slip of the tongue where you told the jury that they were
22 the sole finder of the law. But you were very clear every
23 other time that was --

24 THE COURT: I'll make it clear that they are the
25 finders of fact.

1 MR. COOK: I didn't catch that, and nor do I have an
2 objection to it if it did happen, Your Honor.

3 THE COURT: I'll be sure we got that straight.

4 Any other objections from the defense?

5 MR. COOK: No, sir, Your Honor.

6 THE COURT: I want to ask you, if you would, to come
7 forward and take a look at the exhibits and be sure we
8 have an agreement on what's going back. I have the
9 verdict form here. I'll ask you to review that and see if
10 there's an objection.

11 Any objections to the verdict form?

12 MR. EPTING: No, sir.

13 THE COURT: None from the state, none from the
14 defense. Mr. Bailiff, if you'll bring the jury back in
15 for me. Thank you.

16 (The jury entered the courtroom at 11:22 a.m.)

17 THE COURT: All right. Mr. Bailiff, if you'll hand
18 this to the foreperson for me, these two documents. Thank
19 you, sir.

20 Ms. Davis, the documents I've had the bailiff hand
21 you, the first one is the verdict form that's in use for
22 this case. Let me go over it with you. It's fairly
23 simple, but I want to be sure we have an understanding on
24 it. At the top it has the state and county that we're
25 located in and the court that we're involved in. It also

1 has the name of the case, which is the state of South
2 Carolina against Mr. Jordan. The one question that's
3 posed to the jury in the body of the verdict form is as to
4 this charge of burglary in the first degree, whether the
5 jury unanimously finds the defendant either not guilty or
6 guilty. The two choices are right under the question.
7 There's a blank before each of the choices. I'd ask that
8 you put a check or an X, a mark adjacent to the
9 appropriate verdict once the verdict has been unanimously
10 reached by the jury. Then you would sign that form, knock
11 on the door, let the bailiff know a verdict has been
12 reached. We'll bring the jury back into the courtroom to
13 receive the verdict from you.

14 The other document that I've given you is the
15 indictment in this case for your review, and I've
16 explained to you again the indictment does not constitute
17 evidence, but it does contain the charge that the State's
18 required to prove, so I give it to you for your review
19 during the deliberations in the case. Now, we're going to
20 send the exhibits back with you to the jury room so that
21 you can view those in the jury room, and you have a right
22 to take a look at those during your deliberations.

23 Now, I'm not unmindful of the fact that it's about
24 11:22. I don't know how long your deliberations are going
25 to take. Not trying to limit them in any way. But I'll

1 tell you that if you feel that lunch needs to be delivered
2 to you, then you would knock on the door, let the bailiff
3 know you would be interested in ordering lunch, and we can
4 have that brought to you. And you might want to make that
5 decision fairly early on in your deliberations. It takes
6 I guess about 45 minutes to an hour, Madame Clerk, to get
7 lunch delivered here. So if we were to order it right
8 now, it would be about 12:30 or so before it got here. So
9 it's up to you as to how you handle that. It's your
10 deliberations. I'll let you decide how that works, but it
11 would be paid for by the County and brought to you in the
12 jury room.

13 I will caution you, if you decide that you do wish to
14 order lunch, during the time that a clerk's officer is in
15 your jury room taking that order, stop your discussions
16 about the case. Don't discuss the case while there's
17 someone other than jury members in the jury room. In
18 other words, stop your deliberations, order lunch. When
19 that person leaves, you can resume your deliberations.
20 And when lunch would be delivered, if it is delivered in
21 the same situation, any time there's someone in the jury
22 room that's not a member of the jury, stop your
23 deliberations, suspend them until that person has left.
24 Then you can resume your deliberations.

25 Do you understand how that would be handled?

1 JUROR: I do.

2 THE COURT: And any question that you have, again,
3 should be written on a piece of paper, agreed upon by the
4 jury and submitted through the bailiff to me, the Court.

5 All right. At this point in time, I'm going to ask
6 you to step back to begin your deliberations. They'll
7 deliver the exhibits to you, with the exception, however,
8 of the alternate. Sir, I'm going to ask you to remain
9 seated at this time. So you may retire to the jury room
10 to begin your deliberations.

11 Oh, one other thing I wanted to clear up. I
12 understand that during my charge, I may have misspoken
13 about whether or not you were the sole judges of the facts
14 or the law. I want to reiterate to you, you are the sole
15 judges of the facts in this case. I'm the sole judge of
16 the law in this case. The law as I give it to you is
17 exactly the law that you have to take and use in this
18 case, and of course I can't have any comment or opinion
19 concerning your decision on the facts. You're the sole
20 judges of the facts in this case.

21 You may retire to the jury room. Thank you very
22 much.

23 (The jury left open court at 11:25 a.m.)

24 (Jury deliberation began at 11:25 a.m.)

25 THE COURT: Your name is Andrew -- is it Winderall?

1 JUROR: Winderall, yep.

2 THE COURT: Okay, I got that right. Mr. Winderall,
3 you are the alternate in the case, and your job was to be
4 here, be available, listen to everything that went on.
5 And in case one of the regular jury members was not able
6 to go into deliberations, you would have taken their place
7 and gone into deliberations for them. Now, all 12 have
8 retired to begin deliberations. The law says at this
9 time, your job has now ended. So I'm going to release you
10 from any further service in this case, and the good news I
11 have for you is all the cases we had on the docket that
12 were scheduled for jury trials have been disposed of by
13 other means, so not necessarily jury trials, but they've
14 been taken care of, and so we're releasing you from any
15 further service on the jury at this time.

16 JUROR: Is that for the week?

17 THE COURT: For the week, yes. So that's good news
18 for you. Now, let me mention a couple of things to you.
19 Throughout the trial I told you not to talk about this
20 case. I will tell you that you now have the right to do
21 so. You also have the right not to do so. A citizen owes
22 no one an explanation for their service on a jury panel or
23 what they did or what they thought. So you're not
24 required to talk about this case unless you choose to do
25 that.

1 Now, if someone were to try to harass you or bother
2 you about your service on the jury, please let the clerk's
3 office know. I can assure you appropriate action will be
4 taken if someone is bothering you about that. I don't
5 anticipate that, but if it happens, you let us know. Now,
6 you're -- they're going to check you out and release you.
7 If you need an excuse from your work, they'll see that you
8 get an excuse for your work. You get a -- I guess you'll
9 get a little voucher here for jury service?

10 THE CLERK: Yes.

11 THE COURT: So you'll get a little voucher from the
12 clerk's office that you'll need to take to the treasurer's
13 office at some point in time for your jury pay. I will
14 tell you, don't plan to retire on that check. It's not
15 going to be enough to do that. But it's all the law
16 allows to pay, and it's certainly not enough for your
17 time. Thank you for your help in this case, and at this
18 time, the bailiffs will show you out. You're free to go.

19 You got something from the jury already? All right.
20 They do want to order lunch, so you might go take care of
21 that right now.

22 Any objections to my final charge from the state?

23 MR. EPTING: None from the state, Your Honor.

24 THE COURT: Any from the defense?

25 MR. COOK: No, sir, Your Honor.

1 THE COURT: We'll be in recess in this case until a
2 verdict is reached. Thank you.

3 (A recess was taken from 11:29 p.m. to 1:38 p.m.)

4 (The jury entered the courtroom at 1:38 p.m.)

5 THE COURT: The record will reflect that the jury has
6 returned to the courtroom. I have received several
7 inquiries from the jury. The first inquiry I'll deal with
8 is an inquiry as to what is the victim's occupation. For
9 me to answer that would require me to make a comment on
10 the facts as stated during the trial. I'm not allowed to
11 make such comments. So the -- I can't supplement the
12 record; in other words, if it was not in the testimony
13 that was entered during the trial, I cannot at this point
14 in time add to that testimony or add to the evidence
15 that's been placed into the record of the case. If you
16 have a specific portion of a witness's testimony in which
17 you think that might be contained, you can ask for me to
18 allow you to review that testimony. But I cannot
19 comment -- in other words, I can't answer that question
20 directly. That would require me to comment on the facts.

21 So again, if there's some particular witness's or a
22 portion of a witness's testimony that you'd like to review
23 you could tell me that. Perhaps I could respond in that
24 fashion. Same answer would apply to the question, "Was
25 the gun found under the moped tested for fingerprints?"

1 Again, I would have to answer that by commenting on the
2 testimony as presented. I cannot do that. If -- again,
3 if there's a portion of some witness's testimony or all of
4 their testimony that you'd like to hear, I can make that
5 available to you.

6 Then you asked for the definition of a hand of one is
7 the hand of all. I will tell you that I found a charge on
8 that particular theory of the law to be inappropriate for
9 this case; therefore, I chose not to charge it and
10 therefore I cannot define it to you at this point in time.

11 Now, the next question you have, the definition of
12 circumstantial evidence, I will go over my charge again
13 concerning circumstantial evidence. Hopefully this will
14 clear up any confusion that you might have in regard to
15 that. What I charged you was that there generally two
16 types of evidence which are presented during a trial of
17 the case. That is direct evidence and circumstantial
18 evidence. Direct evidence is testimony of a person who
19 claims to have direct knowledge about a fact. That would
20 be such as someone who actually experienced that
21 occurrence, an eyewitness, someone who was present and
22 testifies directly on the fact that they're seeking to
23 prove that they offer direct testimony on that fact.
24 Circumstantial evidence, on the other hand, is proof of a
25 chain of facts or circumstances that indicate the

1 existence of a fact or another fact. And I gave the
2 example of proving a fact by circumstantial evidence as
3 someone who might go to their window at night, look
4 outside on a clear evening, not see anything unusual,
5 stars shining. The next day, they get up, go to the same
6 window, sun is shining, but you notice that there's water
7 dripping from the trees, water in the grass, puddles in
8 the driveway. You didn't see it rain. You didn't hear it
9 rain during the evening, but from the facts you know to be
10 true, you could reasonably infer the fact that sometime
11 during the night, it rained.

12 So that was the example I gave, and the law doesn't
13 make a distinction between the weight or the value that a
14 jury can give to either direct or circumstantial evidence.
15 And circumstantial evidence has been defined as prove of
16 collateral facts from which a main fact might be
17 reasonably inferred. I told you there's not a greater
18 degree of certainty required of circumstantial evidence
19 than that of direct. A jury should weigh all of the
20 evidence in this case both direct and circumstantial
21 evidence in the case. And I told you that again, crimes
22 may be proven by circumstantial evidence, and, of course,
23 the law doesn't make a distinction between the weight or
24 the value that you can give to either direct or
25 circumstantial evidence. However, to the extent that the

1 state relies on circumstantial evidence, all of the
2 circumstances must be consistent with each other, and when
3 taken together point to conclusively to the guilt of the
4 accused beyond a reasonable doubt. .

5 If the circumstances merely portray the defendant's
6 behavior as suspicious, then the proof has failed. The
7 state has the burden of proving the defendant guilty
8 beyond a reasonable doubt. This burden rests with the
9 state regardless of whether the state relies on direct or
10 circumstantial evidence or some combination of the two.
11 That was my charge concerning the circumstantial evidence
12 in the case.

13 Now, you've asked me also concerning the definition
14 of burglary. What I'll do is go back over my charge on
15 burglary. I'll try to make it a little clearer as to the
16 question you have as to what elements have to be
17 established. First of all, the defendant was charged with
18 first-degree burglary. That is embodied in code section
19 16-11-311 of the South Carolina code. The first elements
20 that I'm going to go over in burglary, these elements all
21 have to be proven by the state beyond a reasonable doubt
22 as I indicate.

23 The state must prove beyond a reasonable doubt that
24 the defendant entered a dwelling house without consent and
25 with the intent to commit a crime therein. Now, those are

1 all elements that have to be proven in order for a
2 burglary to exist. I went on to define that a dwelling
3 house is a building or a portion of a building in which a
4 person ordinarily sleeps. A building constructed as a
5 dwelling house that's never been occupied is not a
6 dwelling house for purposes of burglary. But a building
7 is a dwelling even if the residents are temporarily absent
8 from the building at the time of the burglary.

9 Again, the state does not have to prove any
10 particular degree of entry by the defendant into the
11 dwelling. The smallest entry is sufficient in order to
12 establish a burglary. And if a person were to enter a
13 building by deception or artifice or trick in order to get
14 consent to enter, that's a entry without consent.

15 Now, the state must prove beyond a reasonable doubt
16 the fact that the defendant intended to commit a crime,
17 either a felony or a misdemeanor, at the time of the
18 entry. The mere entry into a dwelling without consent is
19 not burglary if the intent to commit a crime did not exist
20 at the time of the entry. If the intent to commit the
21 crime is formed after the entry, it is not a burglary. On
22 the other hand, if the defendant intended to commit a
23 crime at the time of the entry, it is a burglary even if
24 that intent was later abandoned. It does not matter
25 whether the intended crime was completed or not.

1 And I told you intent is always something that has to
2 shown by the fact and circumstances that existed at the
3 act was committed; in other words, by circumstantial
4 evidence. Intent may be shown by acts and conduct of the
5 defendant and other circumstances from which you might
6 reasonably and naturally infer intent. And I explained to
7 you that's because there's no way that you can open
8 someone's head at the time they commit an act and be able
9 to scientifically determine what they intended to do. So
10 intent is always a matter that must be shown from the
11 facts and circumstances that surrounded the event or the
12 occurrence.

13 Now, the next elements I'll go over with you, the
14 final ones, these -- either of these can be proven. In
15 other words, if either of these exist then -- and the
16 state had proved the elements I just went over with you,
17 then a burglary would have been committed. Finally, the
18 state must prove beyond a reasonable doubt that when
19 entering or while in the dwelling or when fleeing, the
20 defendant was armed with a deadly weapon or explosive, and
21 I explained that a deadly weapon is any article or
22 instrument which is likely to cause death or great bodily
23 injury. Whether an instrument has been used as deadly
24 weapon depends on the fact and circumstances of the case.
25 And I gave some examples that had been determined to be

1 deadly weapons such as a pistol, a shotgun, rifle, a dirk,
2 a dagger, a knife, slingshot, metal knuckles, razors,
3 gasoline, firebombs, and Molotov cocktails. So again, it
4 depends on the facts and circumstances as to whether an
5 item at any particular time might be considered a deadly
6 weapon.

7 The other element the state -- say again the state
8 must prove one of these two, that the defendant has a
9 prior record of two or more convictions for burglary
10 and/or housebreaking. Evidence of a -- prior offenses
11 committed by the defendant in this case was not offered to
12 prove the defendant has a bad character or to prove that
13 the defendant committed the burglary on this occasion.
14 The prior convictions may be considered by you only for
15 the purpose of determining whether or not it satisfied
16 that element of the offense that makes the burglary a
17 first-degree burglary. And again, it would be a
18 first-degree burglary if the perpetrator entered a
19 dwelling without consent with the intent to commit a crime
20 therein, and that person had two prior convictions for
21 burglary and/or housebreaking.

22 Before you can even consider the evidence of the
23 defendant's prior burglary and/or housebreaking, you must
24 first find that the state has proven beyond a reasonable
25 doubt that a burglary was committed by the defendant; in

1 other words, there was the entry of the dwelling without
2 consent with the intent to commit a crime therein. Once
3 you have found that, you may consider the evidence of
4 prior convictions as evidence of one or the circumstances
5 which would make a burglary a first-degree burglary. If
6 you do not find beyond a reasonable doubt that the
7 defendant committed the alleged prior offenses, then you
8 could not return a verdict of first-degree burglary in
9 that case.

10 Now, that was my charge concerning burglary. I hope
11 that answers your questions as to what has to be proven by
12 the state in order to establish that crime. The last
13 thing that I think that you asked me about was to hear the
14 dog trainer's testimony, and I've asked the court reporter
15 to be prepared to play that testimony in its entirety for
16 you. So I will take a break and let her get set up to do
17 that so that you can listen to the testimony.

18 (Testimony was read back to the jury.)

19 THE COURT: Madame Forelady, I think that's the
20 testimony you requested. I think that responds to the
21 question I've received thus far, so I'll ask you to return
22 to your deliberations. Thank you very much.

23 (The jury left open court at 1:39 p.m.)

24 THE COURT: Any objection to my responses from the
25 state?

1 MR. EPTING: Nothing from the state.

2 THE COURT: Any from defense?

3 MR. COOK: No, Your Honor.

4 THE COURT: The inquiries will be made a court
5 exhibit and part of the record. We'll be in recess until
6 verdict is reached.

7 (Court's Exhibits 5-6 were marked.)

8 (A recess was taken from 1:39 p.m. to 1:44 p.m.)

9 THE COURT: I've been informed by the bailiffs that
10 the verdict has been reached. Is the state ready to
11 receive the verdict?

12 MR. EPTING: State's ready, Your Honor.

13 THE COURT: Defense ready?

14 MR. COOK: Yes, sir, Your Honor.

15 THE COURT: Bring the jury in.

16 (The jury entered the courtroom at 1:44 p.m.)

17 THE COURT: The record will reflect the jury has
18 returned to the courtroom. I've been informed by the
19 bailiffs that a verdict has been reached. Is that true?

20 JUROR: Yes.

21 THE COURT: Pass the form to the bailiff, please.
22 Sir, if you'll pass it to me. Thank you. Clerk may
23 publish the verdict.

24 VERDICT

25 THE CLERK: In the state of South Carolina versus

1 Antonio R. Jordan, under indictment 2014-GS-46-1543, we
2 the jury unanimously find the defendant,
3 Antonio R. Jordan, concerning the offense of burglary
4 first-degree, guilty. Certify this decision was a
5 unanimous decision of the jury, signed by the foreperson,
6 dated today's date.

7 If this be your verdict, so say you all by raising
8 your right hand. Let the record show all jurors affirmed
9 this verdict.

10 THE COURT: Thank you, Madame Clerk.

11 Anything further from the state before I release the
12 jury?

13 MR. EPTING: Nothing from the state.

14 THE COURT: Anything further from the defense?

15 MR. COOK: No, sir, Your Honor.

16 THE COURT: Ladies and gentlemen, this completes your
17 service in this case, and I'm happy to inform you that all
18 of the cases that were on our jury trial docket for this
19 week have now been resolved, so I'm releasing you from any
20 further service on the jury panel for the rest of the
21 week. Now, I've told you throughout the trial that you
22 should not discuss this case with anyone. I will tell you
23 now that you have the right to do so. You also have the
24 right not to do so. A citizen owes no one an explanation
25 for their service on a jury panel, so you're not required

1 to discuss it unless you choose to do that.

2 Now, if someone were to harass you or bother you
3 concerning your service on this jury panel, please report
4 it to the clerk's office immediately. Appropriate action
5 will be taken should that take place. Now, you are
6 entitled to a excuse for your work. If you need that, the
7 bailiffs will assist you in taking care of that when
8 you're checked out. You'll receive a voucher for your pay
9 later on. It won't be enough to pay you for your time,
10 but it's all the law allows, and we certainly do
11 appreciate your service in this case. So I'm going to
12 release you at this time. The bailiffs will check you out
13 now.

14 Madame Forelady, you'll need to meet with the clerk
15 for just a moment. There's some matters that you'll need
16 to sign on the indictments before you leave. So if you'll
17 just step down to the clerk's table. Thank you very much.
18 You're free to go at this time.

19 (The jury left open court at 1:49 p.m.)

20 THE COURT: Anything further from the state before
21 sentencing?

22 MR. EPTING: Nothing from the state.

23 THE COURT: Any from the defense?

24 MR. COOK: Your Honor, motion for a judgment non
25 obstante veredicto and for a new trial based on the cloud

1 of evidence.

2 THE COURT: That motion is noted. I have reviewed
3 the case thoroughly. The motion is respectfully denied.

4 MR. COOK: Yes, sir, Your Honor.

5 THE COURT: You have the documents ready to work on
6 sentencing? Let me know when you're ready.

7 Mr. Jordan, having been convicted by a jury of your
8 peers, the Court at this time will consider appropriate
9 sentencing. I'll hear from your attorney first. Then
10 I'll give you an opportunity to speak if you would like to
11 speak to me about that. I don't know if other family
12 members would like to speak on his behalf, but certainly
13 they will be given that opportunity should they choose to
14 do so. So at this time I'll hear from you, Mr. Cook.

15 MR. COOK: May it please the Court, Your Honor. I
16 believe Your Honor remembers my client is 30 years old.
17 He's a father of one child, I believe, and worked as a
18 mechanic. Lived in the area his entire life. I have
19 received an indication from his mother that she would like
20 to speak at the appropriate time. For what it's worth,
21 Your Honor, I would just say that I can see where my
22 client was -- made the decisions that he made given the
23 history at the bond hearing and the evidence. And I would
24 respectfully request the Court to consider fashioning a
25 sentence to where he could have some modicum of a life

1 once he gets out.

2 I realize that life is the possible maximum sentence
3 in this case. My client has been through a long, hard
4 road in his life. He's served a lot of time already, and
5 he obviously hasn't learned from those mistakes, but I
6 believe that he'll learn from this one. And he's loved by
7 his family. He does have a support network here. And
8 I'll digress there, Your Honor.

9 THE COURT: Thank you.

10 Mr. Jordan, you wish to speak to the Court?

11 THE DEFENDANT: Yes, sir. I just like to apologize
12 to each and every one of -- each and every man and woman
13 in the room for my actions, having stole the pistol. I
14 took fully responsible for that, and I'd just like to
15 apologize and say may the Court have condolences. I
16 apologize once again.

17 THE COURT: Thank you.

18 You indicated the mother might wish to speak?

19 MR. COOK: Yes, sir, Your Honor. It's Maryann
20 Jordan.

21 THE COURT: Yes, Ms. Jordan, I'll be happy to hear
22 from you.

23 MS. JORDAN: I just want to say I wish y'all could
24 take it light on my son because I'm dying and I know my
25 son didn't break into that house. But we just didn't have

1 enough proof. He learned from his mistake. He just came
2 home from doing time, and he was doing good. I just wish
3 y'all could take mercy on him.

4 THE COURT: Thank you, ma'am.

5 MS. JORDAN: You're welcome.

6 THE COURT: I'll hear from the state. Prior record
7 for the individual?

8 MR. EPTING: Your Honor, I believe we've gone over
9 his prior record in substance in deciding whether he was
10 going to testify or not. He has multiple counts of
11 financial transaction card fraud, failure to stop for a
12 blue light, grand larceny charges, in addition to the two
13 burglaries which have been entered as Court's exhibits.
14 Your Honor, the victim is present still here in the
15 courtroom. I don't believe he wishes to address the
16 Court.

17 THE COURT: Well, we'll ask. Sir, do you wish to be
18 heard?

19 MR. CLARK: No, sir, I'm fine. Thank you.

20 THE COURT: I think we did a calculation on his time
21 that he had already served the other day. Do you recall
22 that number?

23 MR. COOK: 438 days.

24 THE COURT: But that's been two days ago, so it would
25 be 440 days at this point in time.

1 SENTENCE OF THE COURT

2 THE COURT: All right, Mr. Jordan, it's the sentence
3 of this Court that you be confined in the state Department
4 of Corrections for a period of 25 years. I have given you
5 credit for the 440 days you've already served. I have run
6 it concurrent with the previous sentence that I've given
7 you. Good luck to you, sir.

8 MR. COOK: Thank you, Your Honor.

9 (Whereupon, the proceedings were concluded.)

10 (Court's Exhibit Number 7 was marked.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

I, Aminah R. Hardy, CM, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for York County, South Carolina, on the
26th-28th day of January, 2015.

June 26th, 2015

Aminah R. Hardy, CM

FORM 5
FILED-RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ANTONIO R. JORDAN #292329

Full name and prison number (if any) of Applicant

2019 APR -8 PM 3:28

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

CERTIFIED TRUE COPY
2019 APR 19 AM 9:40
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2019 CP46-1277

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Rd., Columbia, SC 29210
2. Name and location of Court which imposed sentence York County Court of General Sessions, Moss Justice Center, P.O. Box 649, York, SC 29745
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 14-GS-46-3735 - Possession of Weapon
 - (b) 14-GS-46-3777 - Possession of Weapon
 - (c) 14-GS-46-1543 - Burglary 1st Degree
 - (d) 15-GS-46-0064 - Poss Fire arm/Ammo by a Felon

Revised 3/2003

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 29, 2015 - 3 years, concurrent
 - (b) January 29, 2015 - 3 years, cuncurrent
 - (c) January 29, 2015 - 25 years, cuncurrent
 - (d) January 29, 2015 - 3 years, concurrent
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 Court of Appeals 2/2/2015
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. December 28, 2017
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Mark McKinna, Esq., 1675 York Hwy, Ste 1E, York, SC 29745-7495
 - ii. Susan B. Hackett, Esq., P.O. box 11589, Columbia, SC 29211-1589
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial and sentencing
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

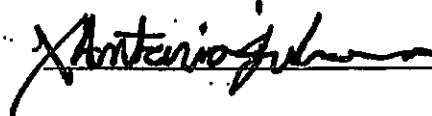
no

STATE OF SOUTH CAROLINA)

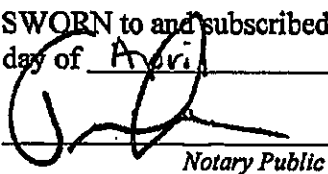
County of Richland)

VERIFICATION

I, Antonio Jordan, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 4th
day of April, 2019.



(L.S.)

Notary Public

My Commission Expires: 3/17/24

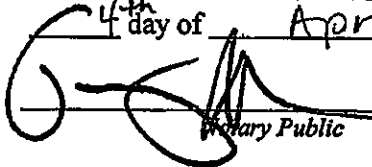
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Antonio Jordan, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
4th day of April, 2019.


Notary Public

My Commission Expires: 3/17/24

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Antonio Jordan, #292329,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-46-1277

RETURN AND MOTION TO DISMISS

2019 JUN 25 AM 11:34
DAVID HAMILTON
C.P. 808
YORK COUNTY, SC

FILED-RECEIVED

The State (Respondent), making its Return to the application for Post-Conviction Relief filed by Tommy A. Thomas, Esquire, on behalf of Antonio Jordan (Applicant) on April 8, 2019, Respondent would respectfully show this Court:

I. Procedural History

Applicant is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In December 2014, the York County Grand Jury indicted Applicant for two counts of possession of a handgun by a person convicted of a crime of violence (2014-GS-46-3735) and possession of a stolen handgun (2014-GS-46-3777). In January 2015, the York County Grand Jury also indicted Applicant for first-degree burglary (2015-GS-46-1543), and possession of a firearm by a person convicted of a violent offense (2015-GS-46-00064).

On January 26, 2015, Applicant appeared before the Honorable Roger L. Couch and pled guilty to all of the charges as indicted except for the first-degree burglary. Applicant entered a plea of not guilty and proceeded to a jury trial solely on the first-degree burglary charge. David C. Cook, Esquire, represented Applicant. Assistant Solicitors Christopher Epting and Ryan Newkirk of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On January 26, 2015, Judge Couch proceeded with Applicant's guilty plea hearings for three of his indictments. At the conclusion of the plea hearing, Judge Couch sentenced Applicant to three years on each charge to run concurrently. Applicant was also given credit for 438 days.

On January 28, 2015, the jury found Applicant guilty of first-degree burglary. Following the verdict, Judge Couch sentenced Applicant to imprisonment for twenty-five years with credit for 440 days. Judge Couch ran this sentence concurrent to the sentences imposed on Applicant on January 26, 2015.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense perfected Applicant's appeal solely on the first-degree burglary charge. Ms. Hackett submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). She also petitioned the court to be relieved as counsel. The South Court of Appeals dismissed the appeal and granted appellate counsel's motion to be relieved. The remittitur was issued on January 17, 2018.

II. Factual History

On November 8, 2013, Derek Clark (Victim) returned home and found some of his property out of place. (Trial Tr. 120-121.) Victim retrieved a firearm from his truck and proceeded through his residence, but did not locate anyone inside. (Trial Tr. 121.) Victim noticed the back door was open and the glass had been broken. (Trial Tr. 121.) Victim's entire house had been ransacked and he called police. (Trial Tr. 121.) Victim was concerned about his firearms and when he went to check on those he discovered four of his firearms missing. (Trial Tr. 122.)

On November 14, 2013, Applicant was pulled over while riding a moped after he drove through a stop sign. (Trial Tr. 44.) Officers noticed Applicant was nervous during their encounter. (Trial Tr. 45.) The officer had to move the moped about three feet to the side of the road for safety

purposes and, when the moped was moved, the officer located a firearm on the ground. (Trial Tr. 45.) The officer noted it appeared to be “fresh” with no wear and tear on it from the recent snow in the area. (Trial Tr. 45.) At that point, Applicant was placed under arrest and through a subsequent investigation, the firearm recovered was linked to the burglary at Victim’s residence. (Trial Tr. 45.)

III. Current Application

In his application for post-conviction relief, Applicant sets forth numerous allegations that Respondent is interpreting as follows:

1. Ineffective Assistance of Counsel

As his requested relief, Applicant states he is seeking a new trial.

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Allegation of Ineffective Assistance of Counsel are Untimely and Should be Summarily

Dismissed

Respondent submits Applicant’s allegation of ineffective assistance of counsel should be summarily dismissed for his failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Guilty Pleas

In the present case, Applicant pled guilty to three of his charges on January, 26 2015. Applicant did not seek appellate review of his guilty pleas, so his post-conviction relief application had to have been filed by January 27, 2016. Applicant did not file this post-conviction relief application until April 8, 2019, which is just shy of three years beyond the statutory filing period.

First-Degree Burglary Trial

Applicant was found guilty of first-degree burglary on January 28, 2015. Applicant did pursue a direct appeal solely on his conviction for first-degree burglary. An appellate brief pursuant to Anders v. California, 386 U.S. 738 (1967) was filed on Applicant’s behalf and the South Court of Appeals dismissed the appeal and granted appellate counsel’s motion to be relieved. The remittitur was issued on January 17, 2018. Thereafter, any post-conviction relief action regarding Applicant’s first-degree burglary conviction must have been filed on or before January 18, 2019. As noted above, Applicant filed his application on April 8, 2019, which after the one-year statutory filing period had expired. Applicant’s application for post-conviction relief was not timely filed for any of his charges and, therefore, all allegations should be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

Our courts have held that “statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). Moates explained:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id. Statutes of limitations should be followed as strict rules in order to set a hard deadline to ensure an organized legal system.

In rare circumstances, the statute of limitations will be equitably tolled to allow a petitioner the opportunity to exercise his or her rights when they were denied the chance to do so. This doctrine has been specifically extended into the context of post-conviction relief cases, as well. Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008). Pelzer explains that the court typically applies the extraordinary circumstances doctrine when the plaintiff has been actively misled by another party. “It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights.” Id. However, the equitable tolling doctrine does not require wrongful conduct on the part of the State, such as fraud or misrepresentation. Id.

Pelzer explained the doctrine should be limited to very exclusive circumstances. “[E]quitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” Pelzer, 378 S.C. at 521, 662 S.E.2d at 620. Pelzer cited to an opinion from the Fourth Circuit Court of Appeals in denying equitable tolling to a party as “particularly illuminating:”

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Pelzer, at 378 S.C. 522-23, 662 S.E.2d at 621 (citing Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir.2000) (holding habeas petitioner's missing filing deadline due to erroneous advice from counsel not extraordinary circumstance requiring equitable tolling)).

In Pelzer, a post-conviction relief applicant notarized and mailed his application before the statute of limitations expired, but mailed it to the Office of Appellate Defense instead of to the county Clerk of Court for filing. 378 S.C. at 518, 662 S.E.2d at 619. The Office of Appellate Defense forwarded it to the Clerk, but it was not received by the Clerk until after the statute of limitations had expired. Id. at 518-19, 662 S.E.2d at 619. The circuit court dismissed the application as untimely. The Court of Appeals affirmed, finding that mailing did not constitute filing and “the narrow window by which Pelzer's application missed the statute of limitations

[could not] be considered as so exceptional a circumstance as to warrant equitable tolling.” Id. at 522, 662 S.E.2d at 621.

This Court has also chosen not to extend the doctrine of equitable tolling to situations where the applicant claimed he was ignorant of the statute of limitations because he was incarcerated in another state. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005) (holding incarceration in another state does not toll the running of the statute of limitations). Leamon explained the applicant had a full year to submit a post-conviction petition, and ignorance of the statute of limitations is not an excuse for late filing. Id., 363 S.C. at 435, 611 S.E.2d at 496.

This Court has held that the statute of limitations should be equitably tolled for the filing of a post-conviction relief application in limited circumstances. See Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009) (finding the statute of limitations should be equitably tolled when a mentally incompetent PCR applicant was prevented from timely filing by his mental incompetency, and the applicant should proceed with his PCR action only if the application was filed within one year of the applicant regaining competency); Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (2017) (allowing equitable tolling where the applicant notarized and relinquished control of his application to prison authorities for mailing seventeen days prior to the filing deadline, but due to circumstances outside applicant’s control, the application was not filed until three days past the deadline). Equitable tolling has also been allowed where “extraordinary circumstances prevented the plaintiff from filing despite his or her diligence” and where “the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.” Pelzer, 378 S.C. at 521, 662 S.E.2d at 621.

In the present case, Applicant submitted an affidavit explaining he was convicted on January 29, 2015 of two counts of possession of a weapon, first degree burglary, and possession

of a firearm and ammunition by a felon and received a 25 year sentence.¹ Applicant explains he sought appellate review, which was denied in January 2018. Thereafter, Applicant states he believed his family would be retaining counsel for his post-conviction relief action, but discovered they did not in March of 2019. On February 7, 2018, Applicant states he was moved to Lee County Correctional where a murder of an inmate occurred on February 18, 2018 and the institution went into lockdown. On April 15, 2018, a riot occurred at that facility and Applicant states he was confined to his cell “basically 24 hours a day” and was not able to communicate with family. Applicant states the only inmates who were allowed out of their cells for legal reasons were those who were involved with “Direct Appeals.” Applicant states he was later moved to Broad River in November of 2018 and found that facility to also be on lockdown due to a riot in the mental health dorm. Applicant states he was unable to communicate with anyone and found out in March 2019 that an attorney had not been retained by his family.²

Respondent submits there are no extraordinary circumstances present to warrant tolling of the statute of limitations. Here, Applicant had time between the dismissal of his direct appeal and his transfer to a facility that went into “lockdown” at some point after his arrival to timely file his post-conviction relief application and/or hire counsel. Applicant has failed to show any “sufficiently rare and exceptional circumstances” prevented him from being able to file a post-conviction relief application within the one-year statutory filing period. Additionally, Applicant pled guilty to three of his charges January 26, 2015, and, since he did not seek appellate review of those convictions, Applicant could have filed a timely application for post-conviction relief while

¹ Applicant pled guilty on January 26, 2015, to three of the charges and then was found guilty by a jury on January 28, 2015, of first-degree burglary.

² The affidavit states Applicant did not learn that his family had not hired an attorney until March of 2018, but Respondent believes that is a typo and March 2019 was intended.

his direct appeal for the burglary charge was pending. However, Applicant failed to file his application and has not asserted this nearly three year delay was due to a facility lockdown or other such circumstance. As such, Applicant has failed to set forth any circumstances that would allow for equitable tolling in both his guilty plea convictions and his first-degree burglary conviction.

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests an evidentiary hearing be held solely on Respondent's motion to dismiss Applicant's post-conviction relief application as being barred by the statute of limitations.

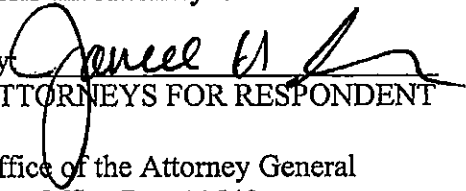
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 20, 2019

STATE OF SOUTH CAROLINA
COUNTY OF YORK

ANTONIO JORDAN, #292329,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2019-CP-46-1277

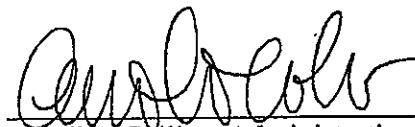
AFFIDAVIT OF SERVICE BY MAIL

FILED-RECEIVED
2019 JUN 25 AM 11:34
DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

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 to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

DATED this the 20th day of June, 2019.



Caroline Collins, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Antonio R. Jordon #292329)
Applicant,)

DOCKET NO.: 2019-CP-46-01277

v.)

AMENDMENT TO POST-CONVICTION
RELIEF APPLICATION

STATE OF SOUTH CAROLINA,)
Respondent.)

2020 AUG -3 PM 4: 49
DAVID HAMILTON
C.C.P. #292329
YORK COUNTY, SC

FILED-RECEIVED

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his original Post Conviction Relief Application. The Applicant re-alleges those grounds contained in the original Application for Post-Conviction Relief as if fully repeated herein.

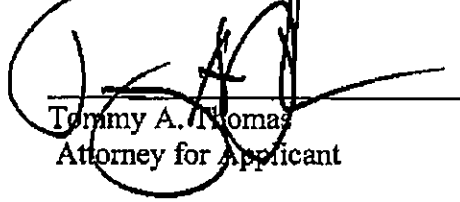
1. That in December, 2014, the Applicant was indicted for two counts of Possession of a Hand gun by a Person Convicted of a Crime of Violence and Possession of a stolen handgun. In January, 2015, the Applicant was further indicted for First Degree Burglary and Possession of a Firearm by a person convicted of a violent offense. On January 26, 201, the Applicant pled guilty to all charges except the First Degree Burglary. Applicant was told by Trial Counsel that it would be advantageous for him to plea to the gun charges, prior to a trial on the Burglary 1st. The Applicant had been informed that if he pled to the gun charges that these could not be used against him at trial on the Burglary 1st and that it was advantageous to dispose of these charges prior to trial. Applicant is informed and believes that it was not in his best interest to plea to these crimes prior to trial. That the plea to the gun charges was used against him at trial for the Burglary 1st. Applicant was also informed and

believed that if he accepted the plea to the gun charges that the Burglary 1st charge would be not pressed. This did not happen and he received a sentence of twenty five (25) years after the jury found him guilty on the 1st Degree Burglary charges.

2. That the Applicant believes that trial counsel was unprepared to proceed to trial on the Burglary case. That a request for continuance was made and denied. Trial Counsel appeared to have no theory of defense despite facts to the contrary.
3. That the Appellant was advised by trial counsel not to take the stand and testify. The Appellant took this advice and is now informed and believes that this decision was made in error. That he should have taken the stand and testified. He did not completely understand the danger of waiving his right to take the stand and believes that counsel was ineffective in advising him regarding this matter.
4. Counsel was ineffective for failure to follow up on DNA evidence. That a DNA expert should have been retained regarding this matter. Trial Counsel appeared to not understand or be able to interpret the DNA evidence.
5. That the Applicant accepted what he understood to be a negotiated plea for a sentence of seven (7) years. He was later advised that this plea offer had been withdrawn because of an error. He was never advised by counsel what this error was, nor was it ever explained to him why this plea offer was or could have been withdrawn.
6. The Applicant is informed and believes that he had potential alibi defenses, which were not properly investigated nor presented at trial on his behalf.

That Applicant reserves the right to amend the Application as may become necessary.

Respectfully submitted,



Tommy A. Thomas
Attorney for Applicant

July ~~28~~ 2020

STATE OF SOUTH CAROLINA)
COUNT OF YORK)
Antonio Jordan #292329,)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-46-1277

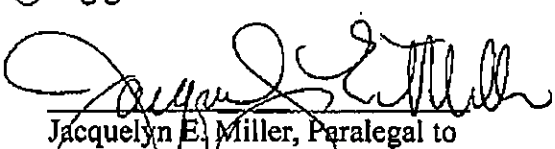
CERTIFICATE OF SERVICE

2020 AUG -3 PM 4: 49
DAVID HAMILTON
C.C. # 868
YORK COUNTY, SC

FILED-RECEIVED

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Appellant
hereby certify that emailed, a copy of an Amendment to Post Conviction Relief Application to:

Brianna Schill, Esq.
Assistant Deputy Attorney-General
P.O. Box 11549
Columbia, SC 29211-1549
briannaschill@scag.gov


Jacquelyn E. Miller, Paralegal to
Tommy A. Thomas, Esq.
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

July 28, 2020

Jackie Miller

From: Jackie Miller
Sent: Tuesday, July 28, 2020 4:24 PM
To: briannaschill@scag.gov
Subject: Antonio R. Jordan - Amendment
Attachments: Jordan.Antonioamendment.pdf

Jackie Miller

Paralegal to Tommy Thomas, Esq.

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK CASE NO. 2019-CP-46-1277

ANTONIO R. JORDAN,)
)
 Plaintiff,)
)
 -vs-) TRANSCRIPT OF RECORD
)
STATE OF SOUTH)
CAROLINA,)
)
 Defendant.)
_____)

December 8, 2022
York, South Carolina

B E F O R E:

Honorable Walton J. McLeod, IV, Judge.

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

Mr. Tommy A. Thomas
Attorney at Law
Attorney for the Plaintiff
Irmo, South Carolina

Mr. Zachary Jones
Assistant Attorney General
Attorney for the Defendant
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1			<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	DAVID COOK				
4	Mr. Thomas	5			
5	Mr. Jones		22		
6	Mr. Thomas			30	
7	Mr. Jones				31
8	ANTONIO JORDAN				
9	Mr. Thomas	32			
10	Mr. Jones		47		
11	Mr. Thomas			49	
12	NEIL JORDAN				
13	Mr. Thomas	50			
14	Mr. Jones		53		
15	DAVID COOK				
16	Mr. Jones	54			
17	Certificate	59			
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1 THE COURT: All right. State ready to proceed?

2 MR. JONES: Yes, Your Honor.

3 THE COURT: All right. What's the next case?

4 MR. JONES: Thank you, Your Honor. This is the matter
5 of Antonio Jordan versus the State of South Carolina, case
6 number 2019-CP-46-1277. My name is Zachary Jones for the
7 State of South Carolina. Mr. Jordan is here, along with his
8 attorney, Tommy Thomas.

9 THE COURT: All right. Mr. Thomas, --

10 MR. THOMAS: Your Honor, --

11 MR. JONES: Oh. I'm sorry. I was just going to say
12 Mr. Jordan was indicted by the York County Grand Jury in
13 December, 2014 for two counts of possession of a handgun by
14 a person convicted of crime of violence, case number 2014-
15 GS-46-3735, and possession of a stolen handgun, case number
16 2014-GS-46-3777.

17 In January, 2015, the York County Grand Jury also
18 indicted him for first degree burglary, case number 2015-GS-
19 46-1543 and possession of a firearm by a person convicted of
20 a violent offense, case number 2015-GS-46-64.

21 On January 26th, 2015, Mr. Jordan appeared before the
22 Honorable Roger L. Couch and pled guilty to all the charges
23 as indicted except the first degree burglary. He entered a
24 plea of not guilty and proceeded to a jury trial solely on
25 the first degree burglary charge.

1 David Cook represented Mr. Jordan and Assistant
2 Solicitors Christopher Epting and Ryan Newkirk of the
3 Sixteenth Circuit Solicitor's office prosecuted the
4 case.

5 THE COURT: All right. Mr. Thomas, you ready to call
6 your first witness?

7 MR. THOMAS: Yes, Your Honor. If it please the Court,
8 in addition, we do intend to proceed on the issues as set
9 forth in the amended petition unless something new comes up
10 at trial.

11 THE COURT: And that would be the petition filed on
12 August 3rd, 2020?

13 MR. THOMAS: That is correct, Your Honor.

14 THE COURT: All right. So noted.

15 MR. THOMAS: Your Honor, if it please the Court, we'll
16 call Mr. Cook to the stand.

17 THE COURT: Mr. Cook?

18 MR. THOMAS: Yes, sir.

19 THE COURT: All right. Very well.

20 MADAM CLERK: Place your left hand on the Bible and
21 raise your right.

22 (DAVID COOK, being first duly sworn, was examined and
23 testified as follows):

24 MR. THOMAS: Your Honor, please the Court.

25 THE COURT: Yes, sir.

1 DIRECT EXAMINATION

2 DAVID COOK BY MR. THOMAS:

3 Q. Mr. Cook, thank you for being here this morning.

4 A. Yes, sir.

5 Q. I just want to -- you are familiar with Mr. Antonio
6 Jordan?

7 A. I'm sorry. I couldn't hear.

8 Q. You had an opportunity to represent Mr. Jordan?

9 A. Yes, sir.

10 Q. Okay. And in that, were you retained or appointed?

11 A. I was retained.

12 Q. All right, sir. And were you the attorney from the
13 beginning? In other words, you were representing him when
14 he got arrested?

15 A. No, sir. It's my understanding that there were two
16 public defenders that represented him prior to my
17 representation.

18 Q. Okay. And when did you actually pick up
19 representation?

20 A. I was retained on December 10th of 2014.

21 Q. And then this was pled --

22 A. January -- late January, I believe, the 18th.

23 Q. All right. Did you have an ample opportunity to
24 prepare the case?

25 A. Yes, sir.

1 Q. All right. Could you tell us a little bit about kind
2 of the description of what he was charged with?

3 A. Yes, sir. Well, the gun charges stemmed from an
4 incident where Mr. Jordan was on a Moped and he was riding
5 down the road and the police officer stated that he ran
6 through a red light and almost hit the police car and so he
7 pulled Mr. Jordan over and in then the process of trying to
8 locate the VIN number on the Moped, he had to move the Moped
9 off the road and he saw a gun there, laying in the snow. He
10 was the gun was fresh, that it didn't have any mud or
11 anything on it and so that resulted in the gun charges.
12 Then there was --

13 Q. I'm sorry. What were those charges?

14 A. They were possession of a weapon by a person convicted
15 of a crime of violence.

16 Q. Right.

17 A. Possession of a weapon by a person convicted of a
18 violent crime, possession of a stolen pistol.

19 Q. So are we just talking about one gun?

20 A. Yes, sir.

21 Q. All right. But three charges?

22 A. Yes, sir.

23 Q. Okay. Now, what happened after -- what happened after
24 that?

25 A. Well, the arresting officer on the gun charge noticed

1 that the serial number matched up with a serial number that
2 was in the data base for a gun that was taken from a
3 burglary six days prior and that ultimately led to Mr.
4 Jordan being charged with the burglary first degree charge
5 as well.

6 Q. Okay. How much time in between those, when they --
7 the cross-reference to the serial number on the gun?

8 A. I'm sorry. I believe it --

9 Q. Do you remember?

10 A. Well, I'm not sure I understand your question. I'm
11 sorry.

12 Q. Okay. In other words, he was charged -- he was
13 arrested on the Moped and charged with possession of the
14 gun?

15 A. Uh-huh.

16 Q. And then was it right after that that he was then
17 charged with the burglary charge or was that further down
18 the road?

19 A. I'm not sure of the amount of time that passed there.
20 I don't think it was too much long -- longer, because the
21 officers -- it took some time for it to hit the database and
22 for the officers to come to the realization.

23 Q. Okay. And you had how much time to put it together?

24 A. About a month and a half, two months. No. Well, about
25 a month and a half.

1 Q. Okay. Why such a short amount of time?

2 A. Well, I had no control over when the solicitor called
3 the case. I believe that -- you know, I'm not sure how to
4 answer that question other than I don't think that the judge
5 would have granted a continuance, because the case was old
6 and it's just what I had to deal with.

7 Q. Okay. Did you ask the Court for a continuance or do
8 you remember?

9 A. I don't believe I did.

10 Q. So would it be fair to say that you felt that you were
11 adequately prepared for -- for this case for representation?

12 A. Yes, sir.

13 Q. Okay; all right. And you had an opportunity to talk to
14 Antonio?

15 A. Yes, sir.

16 Q. Was he in the detention center or was he on bond?

17 A. He was in the detention center.

18 Q. Okay. Do you remember how many times you went to see
19 him?

20 A. I looked through my notes to see if I had a record. I
21 don't know. I know in the trial transcript he said that I
22 came to see him around three times. I -- that may be right,
23 maybe not -- wouldn't be much more than that.

24 Q. Okay. And when you got the case, what was -- what is
25 your standard procedure and what did you do in this case to

1 prepare this case either for a trial or plea?

2 A. Well, I went to visit him in the jail. I generally
3 would have a contact visit and go over the evidence with
4 the client and all of the discovery materials. I spoke with
5 his family members on several occasions. I put forth two
6 alibi witnesses, his mother and his girlfriend. I spoke
7 with them and a lot of the majority of this was really
8 strategy discussions with my client.

9 Q. So did you have kind of a theory of defense? I mean,
10 how were -- as far as if you took to trial?

11 A. Yes, sir. Well, in speaking with my client, he was
12 telling me that, you know, he was denying any involvement in
13 the burglary and -- but he didn't deny involvement with the
14 gun to me. At -- well, at -- you know, I don't think he
15 did. I mean, he -- .

16 Q. All right.

17 A. We discussed the gun and, you know, my theory in the
18 case was that I remember I had him a seven-year offer and I
19 was telling him -- I, basically, explained, you know, how a
20 trial would proceed and in my opinion I thought that the
21 jury would have a lot of suspicion if he denied the gun and
22 I also want to mention that in the burglary there was a
23 toboggan that was recovered from the K-9 unit who traced the
24 exit path of the burglar through the woods to a parking lot
25 at a church nearby and there was a toboggan there that had

1 some DNA evidence that was linked back to my client through
2 a buccal swab and -- and also that toboggan, the DNA
3 evidence indicated that there may have been two people that
4 wore that cap, but he was, in my opinion, stuck with the gun
5 because it was on the ground and it -- you know, the officer
6 would testify that it was fresh. That was the word the
7 officer used. I was concerned that if he denied the gun and
8 the burglary, that the jury would be suspicious of that and
9 convict him of both charges, but if he admitted to
10 possession of the gun, which he was claiming to me that he
11 bought it from a friend, that he might be able to distance
12 himself from the burglary because the -- you know, it wasn't
13 conclusive that the toboggan had been worn by only him and
14 it's a matter of I thought the jury might be -- if there was
15 any way to get an acquittal on the burglary, I thought that
16 it would have to come with the jury thinking that, well, he
17 admitted to the gun and he was honest about that and he's
18 denying the burglary and so that that might be more
19 believable to them, that he might have been in possession of
20 this gun, but didn't commit the burglary.

21 Q. Right; right. Let me -- let's talk about those two
22 issues, the toboggan and gun charges. In regards to the
23 toboggan, so that it was sent to SLED for analysis for DNA?

24 A. Yes, sir.

25 Q. And you received those reports from SLED?

1 A. Yes, sir. I can't remember if I received the actual
2 reports, but I received some indication in the discovery
3 that the toboggan had been matched with my client's buccal
4 swab.

5 Q. All right. So was it actually matched to him from the
6 arrest or was it a match that he was in the system? Do you
7 know how --

8 A. I don't know. I think it came from a buccal swab.

9 Q. From him?

10 A. Yeah. I imagine they had a Schmerber hearing.

11 Q. Okay.

12 A. I don't know whether they did. I just was aware that
13 -- and, again, it's been seven years,---

14 Q. I know.

15 A. ---but I think that it was just a buccal swab.

16 Q. All right. And was there another -- I'm a little bit
17 confused. Were there two toboggans? Was there a toboggan
18 seized off of the Moped as well or --

19 A. Yes, sir. There was -- there was a toboggan, now that
20 you mention it, that was taken off him at the arrest with
21 the Moped also.

22 Q. Okay. And do you know whether or not that was tested
23 or do you know whether or not that would have used as
24 evidence in regards to a trial or --

25 A. I don't know.

1 Q. Okay.

2 A. May I get a sip of water, please?

3 Q. Oh, yeah. Certainly.

4 THE WITNESS: I apologize. I suppose I should ask Your
5 Honor, if I may.

6 (WHEREUPON, the witness was provided water.)

7 MR. THOMAS: Let me do the honors. All right. Cheers.
8 If you need more, let me know.

9 THE WITNESS: Thank you.

10 A. Yes, sir.

11 Q. Yeah. I'm a little bit confused and that's why I asked
12 you the question about the play of the toboggan from the
13 motorcycle and the toboggan allegedly found at the
14 residence.

15 A. Yes, sir. I don't think, in my mind, that the toboggan
16 that came from the Moped made much of an -- or was mentioned
17 in the trial. I'm not sure. I don't think it was. I think
18 that, from my memory, that it was the link with the buccal
19 swab that connected it up to the -- at least that the
20 testimony of the DNA expert during the trial.

21 Q. Right. You made a -- I guess, a decision, a tactical
22 decision or -- to plea or to suggest to him that he plea to
23 the gun charges first?

24 A. Yes, sir. I want to be clear. I didn't make any of
25 these decisions, Mr. Jordan did.

1 Q. Right.

2 A. I counseled him and---

3 Q. Yes, sir.

4 A. ---explained to him the factors that would be involved
5 with everything.

6 Q. Okay.

7 A. As I do all of my clients.

8 Q. So I guess maybe I should rephrase that in that you
9 made a tactical suggestion to him--

10 A. Yes, sir.

11 Q. ---in regards to pleaing to the gun first---

12 A. Yes.

13 Q. ---or the gun charges?

14 A. That was my idea.

15 Q. Okay. And why would you want to do that?

16 A. Well, for the reasons that I already stated, that --
17 not to be coy, but just---

18 Q. Yeah.

19 A. ---simply that I was walking into this trial. It was a
20 very serious trial with a lot of time at state and I was
21 thinking through my mind's eye what could be done to
22 convince the jury to acquit him of the burglary. If they --
23 if he denied the gun and the burglary and the gun came up in
24 one location and the serial numbers were linked back to the
25 burglary and then his toboggan came up at the burglary, I

1 didn't think that the jury would believe him on any of that
2 and I thought that if he at least admitted to the gun
3 charge, it might make him seem more credible to the jury if
4 he were going to deny the burglary and, you know, a lot of
5 that would hinge on whether he testified or not. He would
6 obviously have had to have testified, but -- or he wouldn't
7 obviously have had to testified, but---

8 Q. Right.

9 A. ---but it would have, in my opinion, been helpful if he
10 would have put forth his explanation that maybe that
11 toboggan was worn by somebody else that had -- you know, got
12 it from me that I wasn't aware of.

13 Q. So your theory of defense would have been if he took
14 care of these gun charges that you were going to actually
15 use -- were you going to use that at trial that he had pled
16 to those charges or what were you going to do at trial?

17 A. Well, now, I wasn't planning on, you know, lingering on
18 that point in front of the jury---

19 Q. Right.

20 A. ---at the trial, but I was going -- I explained to him
21 the possible repercussions. You know, I explained to him he
22 was going to get jail time if he -- you know, when he pled
23 to the -- to the gun charges. It was situation where he
24 was, for lack of a better word, kind of desperate, because
25 he kept explaining to me that he had prostate cancer and he

1 didn't want to die in jail and that would take a long time
2 or, rather, you know, if he got a burglary sentence, he
3 would be in jail and he thought he would die in jail and I
4 think that was maybe affecting his judgment and I explained
5 to him that, you know, you're definitely going to catch some
6 time on the gun charge. You can fight the gun charge, it's
7 just that you're going to have to convince a jury that this
8 gun that happened to be right next to your Moped, that you
9 had nothing to do with it. It was on -- the circumstances
10 were such that it was just on a road that I'm not sure why a
11 gun would be laying there on the side of the road, I thought
12 the jury would think,---

13 Q. Right.

14 A. ---right there by your Moped and also, he had trouble
15 fumbling with the officer when the officer was asking him
16 where are you going, where are you coming from, and he said
17 that he kept -- he kept saying he was coming from his
18 girlfriend's house, but couldn't give the officer the
19 address of the girlfriend's house and then he finally said,
20 I can't remember, I believe he said it was Canton Road or
21 some road like that and the officer noticed that the road
22 sign that was right in front of him and thought that he was
23 just making it up on the spot and he couldn't remember his
24 girlfriend's address on Canton Road.

25 Q. Right.

1 A. And so that all -- I certainly didn't want to have to
2 address all of that in addition to the toboggan and a
3 burglary at a trial and I thought it would look real
4 suspicious and -- and it is an avenue of possibility in a
5 juror's mind, I thought, that he could have been in
6 possession of that gun because he bought it from a friend
7 and he was going to -- he kept telling me and, you know, was
8 that if he would have testified that would have been his
9 testimony and, again, I was just trying to separate the two
10 issues and make -- and come up with a defense strategy that
11 would have been believable to a jury.

12 Q. Right. And I'm just trying to kind of think through a
13 line as to how that would work. Did he testify at trial?

14 A. No, sir. He -- there was an irregular colloquy there
15 where he had intended to testify and he, at one point, told
16 the judge he was going to testify and the judge, I believe,
17 said that, okay, well, that will last too long, so we'll
18 pick it up in the morning and then by the time we got here
19 the next morning, he had changed his mind and said that he
20 didn't want to testify.

21 Q. All right. Did --

22 A. I --

23 Q. Go ahead. I'm sorry.

24 A. I'm sorry. No, I don't have anything to add. I
25 apologize.

1 Q. Okay. So getting back to the guns,---

2 A. Yeah.

3 Q. ---if he had changed his mind and said he wasn't going
4 to testify, did information about the guns come into the
5 trial before the jury? In other words, was that information
6 -- was the State able to link that gun through the DNA to
7 the burglary in front of the jury?

8 A. Well, there was no DNA found on the gun.

9 Q. Okay.

10 A. Yeah.

11 Q. But the serial number?

12 A. The serial number, yes.

13 Q. All right.

14 A. I mean, I knew that the gun was going to be discussed
15 in front of the jury. The State had every right to bring up
16 the gun to the jury, in my opinion, but it was just how it
17 was treated.

18 Q. All right. So part of that key would have been, to
19 your strategy, was that he needed to testify?

20 A. Again, you know, I -- every client that I've ever had,
21 I never -- I never tell them what they have to do as far as
22 testifying, because that will certainly come back, you know,
23 ---

24 Q. Right.

25 A. ---but I explained to him it's your decision. I gave

1 him advice, what I thought the factors were, you know, and I
2 believe I probably -- I don't have any memory specifically,
3 to be candid, about the conversation, but it seems that I
4 would have encouraged him to testify.

5 Q. One more question on that issue, then we'll move on. I
6 apologize. If the decision was that he wasn't going to
7 testify, did you derive any benefit from having him plea
8 or suggesting -- I'm sorry -- suggesting that he plea to the
9 guns prior to the trial on the burglary?

10 A. Well, at the time we pled, I was under the impression
11 that he was going to testify. He changed that decision
12 during the course of the trial after we had already pleaded.

13 Q. Right. Okay. Now, so what was your theory of defense
14 at the trial on the burglary charges?

15 A. Well, I was going to, obviously, try to -- at the time
16 I thought that my client was going to take the stand and
17 state that he wasn't there.

18 Q. Right.

19 A. I mean, we put two alibi witnesses up that he was very
20 insistent upon.

21 Q. Right.

22 A. And that was his mother and his girlfriend and so, you
23 know, my defense for the burglary at the trial was that he
24 wasn't present.

25 Q. Okay. Did you actually put up alibi witnesses?

1 A. Yes, sir, two of them.

2 Q. Two.

3 A. His mother and his girlfriend.

4 Q. Mother and his girlfriend. Okay. Did you talk to his
5 brother?

6 A. Often.

7 Q. Okay.

8 A. I don't know how many brothers he has, but I talked to
9 one of his brothers.

10 Q. One of his brothers.

11 A. Yes, sir.

12 Q. And was that -- were you going to use that brother as
13 an alibi witness or --

14 A. You know, I remember he had my cell phone number. He
15 would call me at night and so we had several conversations--
16 -

17 Q. Yeah.

18 A. ---and I -- he never, to my recollection or memory,
19 ever approached me about being an alibi witness. Had he
20 done so, I would have put him up along with his mother and
21 my client's girlfriend.

22 Q. Okay. Now, let's go back to the plea offers. You said
23 that there was a seven-year plea offer?

24 A. Yes, sir.

25 Q. And what happened to that?

1 A. Again that whole colloquy was extremely irregular, you
2 know, meaning during -- on the trans- -- the trial
3 transcript there was there's an exchange with the Court
4 wherein we're discussing the offers and what they were and
5 that he had a seven-year offer, but that he rejected it and
6 I was desperately trying to get that back on the table and I
7 was explaining to him you've agreed to the plead to the gun
8 charge and you understand from me that you're going to get
9 some jail time from that. You know, I never know how much a
10 judge is going to give, but I explained to him that I very
11 -- I've never seen a judge sentence anyone consecutively in
12 my sixteen-year career. I've heard of one judge doing it in
13 Columbia once. I can't remember -- Judge Lloyd, Reginald
14 Lloyd. I heard him do it once and I've appeared in front of
15 him on several occasions, but I explained to him that I
16 rarely see judges run sentences consecutively and that
17 you're pleading to these three charges. I can imagine that
18 you're probably going to get somewhere around five years.
19 The judge ended up giving him three years and I was
20 explaining to him that if you've got an offer of seven years
21 and you're agreeing to plead to the gun charge of your own
22 volition, the difference in that is two or three years and I
23 would impress on him why are you risking twenty-five years
24 at a trial for an extra three years? And I understand that
25 you have prostate cancer and I would have conversations with

1 him about that, that, you know, you're going to get care in
2 the penitentiary for your prostate cancer. That's on the
3 record with the judge.

4 Q. Right.

5 A. And I just don't see why you should risk so much over
6 an extra three years that you could get, in fact, it was a
7 cap of seven and I maybe could have even have talked to the
8 judge down to just running everything concurrent for five
9 years and there's a risk benefit analysis there that I think
10 every criminal defense attorney with their clients as to "do
11 you realize you're risking twenty-five years to save three?"

12 Q. So the plea offer, and that what I was a little bit
13 confused about, the plea offer was seven for everything?

14 A. Yes, sir, a cap of seven.

15 Q. A cap of seven for the gun charges and the burglary-
16 charge?

17 A. Yes, sir. That was my understanding.

18 Q. Okay. And -- go ahead.

19 A. I was going to add that in that exchange on the record,
20 Solicitor Epting then, you know, at the day -- on the eve of
21 the trial, the day of the trial, he said that it was out of
22 his hands and he couldn't put that offer back on the table,
23 so I even went and talked to Solicitor Brackett or,
24 actually, Betty -- I can't remember he last name right now.
25 She's his chief assistant, along with Willie Thompson and I

1 spoke with Betty about it and she wasn't amenable to putting
2 the seven back on the table.

3 Q. Okay. And when was -- when was that?

4 A. Just during -- during that morning.

5 Q. That morning of the trial?

6 A. Yes, sir.

7 Q. Okay.

8 A. Simply because Mr. Epting said that it wasn't -- he
9 didn't have the authority at that point.

10 MR. THOMAS: If I can beg the Court's indulgence, Your
11 Honor.

12 THE COURT: All right.

13 Q. But you feel like -- just one last question. You feel
14 like that in a month and a half you were able to come up to
15 full steam in regards to a trial on this burglary charge?

16 A. Yes, sir.

17 Q. Okay; all right.

18 MR. THOMAS: Your Honor, if I can beg the Court's
19 indulgence.

20 THE COURT: Very well.

21 MR. THOMAS: No further questions, Your Honor.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 DAVID COOK BY MR. JONES:

25 Q. Thank you, Mr. Cook.

1 A. Yes, sir.

2 Q. So Mr. Thomas has asked you about the process of the
3 plea offer in this situation. Was there ever a plea offer
4 for zero to five years?

5 A. I know that I was trying to get the solicitor
6 desperately to five years, because I believe Mr. Jordan told
7 me he would take the five years and that's why the whole
8 thing seemed, you know, there's just a two year difference
9 here and the whole thing blew up over that two year
10 difference and so there was talk of the five years, but it
11 was never put on the table. He had -- from when I was in
12 representation.

13 Q. The only offer that was put on the table while you were
14 representing him that you know of was the seven-year cap?

15 A. Yes, sir.

16 Q. And on the -- I believe on the day of the trial you
17 told the judge you had spoken to Betty Miller?

18 A. Betty Miller.

19 Q. Yes, about getting that plea offer back?

20 A. Yes, sir. I can't remember if that was on the
21 transcript, but I remember speaking with Betty.

22 MR. JONES: And I'll just direct the Court's attention
23 to page 14 and 15 of the transcript.

24 Q. Did you ever tell the applicant that the -- that his --
25 that the gun found in the -- near the Moped could not be

1 used against him at the burglary trial?

2 A. Absolutely not. Never.

3 Q. It was your understanding that it could and, in fact,
4 would come in in the burglary trial?

5 A. If anything, I told him it would definitely come in in
6 the burglary trial, 'cause, again, it's how we treated it.
7 It was coming in.

8 Q. And that's because it had the serial number that was
9 reported for the gun that was stolen during the burglary?

10 A. Correct.

11 Q. And you believed that there was a potential defense in
12 that of -- that he pled to receiving -- possessing a stolen
13 pistol, he might have had a defense regarding he got the
14 pistol from somebody else?

15 A. Yes. You know, my theory was sometimes jurors think,
16 well, he was honest about that, maybe he's being honest
17 about everything. It would -- I realize that it's irregular
18 and extraordinary that he pled to that, but that was almost
19 part of the theory, the strategy.

20 Q. And at the -- your understanding going into the trial
21 was that he did intend to testify?

22 A. Yes.

23 Q. And, in fact, I believe you mentioned that on the first
24 half of the trial, during the colloquy,---

25 A. Uh-huh.

1 Q. ---he told the judge he intended to testify?

2 A. He did. I think he got cold feet over the night.

3 Q. And the -- now, as to the toboggan, do you recall the
4 State's DNA expert stating that the DNA on the toboggan
5 could have been consistent with two individuals?

6 A. Correct.

7 Q. And was that also part of what your strategy on trial
8 was going to point out?

9 A. Yes, sir.

10 Q. Did you ever tell him that if he pled to the gun
11 charges, that the burglary first charge would be nolle
12 prossed?

13 A. Absolutely not. In fact, he knew he was facing that
14 trial, you know, he was aware that he was about to attend
15 that trial. There was no discussion of it being nolle
16 prossed.

17 Q. Do you recall why -- you said you were the third
18 attorney to handle this case. Do you recall what happened
19 to the prior two attorneys?

20 A. I believe that there's some discussion on the record or
21 that he had Mark McKinnon, who is a public defender and I
22 think that there was some relationship issues that developed
23 between him and Mr. McKinnon and so B.J. Barrowclough was
24 brought in who was -- now the head public defender here. I
25 don't -- I can't remember if he was then or if Harry Dest

1 was still in the office. I had worked in that public -- I
2 started my career in that public defender's office and I
3 knew B.J. and I knew Mark and they are really good attorneys
4 and they had had the case for a long time and so I think
5 that there was some relationship issues with both of them
6 and that, you know, --

7 Q. At the time you were brought on, you knew that the
8 trial was coming up?

9 A. Yes, sir. I was -- you know, at that time in my
10 practice, I was a trial attorney and had several trials, not
11 at the same time, but I mean, I was trying cases at Moss
12 Justice Center in those days and I think he probably heard
13 my name in the -- from the jail cells.

14 Q. So to clarify, did you ever advise him not to take the
15 stand and testify?

16 A. Never in my life have I ever advised any client not to
17 take the stand and testify.

18 Q. And --

19 A. Well, let me rephrase that.

20 Q. Okay.

21 A. I may have advised some of my -- you know, thinking
22 back through all the cases, I've never made a client, I've
23 never made a client, I've never made that decision for a
24 client. I've never explained to them you have to do it my
25 way.

1 Q. All right.

2 A. I give advice and I explain both sides of the coin and
3 thoroughly explain to them, as the judge did on the
4 colloquy, that it's only your decision whether you testify
5 or not.

6 Q. All right. And your understanding was that he was
7 going to testify when you started out for trial?

8 A. It was.

9 Q. And you did not have a problem with that?

10 A. No. I mean, he had put forth the theory to me the
11 entire time that he was never at that burglary and he bought
12 that gun from a friend.

13 Q. As for the DNA evidence, did you -- I already mentioned
14 the DNA evidence showing two individuals linked to the
15 toboggan,---

16 A. Yes, sir.

17 Q. ---did you think to challenge that DNA evidence with
18 your own expert?

19 A. I did have that thought, but with the -- I don't think
20 that the family had the money to retain a DNA expert. I'm
21 not positive that they even paid all -- well, let me say
22 this: I don't think that the family had the money to retain
23 a DNA expert and I don't think that we had the time to bring
24 one about, but even more importantly, I don't -- you know,
25 challenging DNA results, you have cases where, for instance,

1 there may be a CSC case and there may DNA evidence on a
2 victim and through -- it's -- it would be relevant to hire a
3 DNA expert there because the STR's may show that the DNA was
4 saliva instead of semen or rather sweat instead of saliva or
5 semen. This wasn't one of those cases. I mean, I don't
6 think -- I think we could have paid a DNA expert \$10,000 and
7 they would have come back and said the same results that the
8 State had. I mean, that's pretty conclusive about that. So
9 I had time constraints, I had monetary constraints and then
10 for the other reason that I stated, it's not one of the type
11 of cases where I think a DNA expert can come in and say, no,
12 there wasn't any DNA on the toboggan actually.

13 Q. All right. Did you ever communicate to him that the
14 State was giving him an offer of the seven years cap?

15 A. Yes.

16 Q. All right.

17 A. Yeah. I was encouraging him to take that.

18 Q. And I believe you testified that you did put up two
19 alibi witnesses.

20 A. Yes, sir.

21 Q. Could you recall a little bit more about those
22 witnesses and what --

23 A. Yeah. That didn't go very well at all. It was his
24 mother and his sister and, you know, of course, when you
25 propose alibi -- or not his sister, his girlfriend, I

1 apologize, and when you put forth alibi witnesses due to
2 reciprocal discovery, Reciprocal Discovery Rule, you have to
3 inform the solicitor's office within ten days of the trial
4 of all of their -- you know, they biometrics and their
5 address, their phone number and things of that nature so
6 that they can run a criminal background check on the
7 witnesses and that they can also send an investigator out
8 there. They sent an investigator out to the girlfriend and
9 the girlfriend refused to talk to the investigator and she
10 called the mother and the mother said, don't talk to those
11 investigators until you talk to Cook and I wasn't privy to
12 any of that and that all came into the record, that she was
13 hesitant to talk to the investigators, you know, through her
14 testimony. I put them forward because my client was adamant
15 about putting them forward and I spoke with both of them,
16 you know, in preparation before they -- you know, before the
17 trial by telephone days before the trial, and -- and I even
18 noticed that, you know, with -- I'll just say that, you
19 know. So that -- I did put forth two alibi witnesses. Yes,
20 sir.

21 Q. Did anyone, either the applicant or anyone else who
22 communicated with you, give you any indication that there
23 were other potential alibi witnesses?

24 A. Not at any time or I would have called them to bolster
25 this -- and support the testimony of the other alibi

1 witnesses.

2 MR. JONES: Beg the Court's indulgence for one moment.
3 I think that's all the questions I have for you, Mr. Cook.

4 THE COURT: Redirect?

5 MR. THOMAS: Yes, sir, Your Honor.

6 REDIRECT EXAMINATION

7 DAVID COOK BY MR. THOMAS:

8 Q. Mr. Cross, -- I'm sorry. Mr. Cook,---

9 A. Yes, sir.

10 Q. ---the -- just a couple of questions. You negotiated
11 the plea, which included the guns and the burglary charge
12 and you have testified that it was for seven years?

13 A. Yes, sir, and I'm not positive if I negotiated that or
14 if it was on the table when I was retained.

15 Q. Okay; okay. All right.

16 A. Yeah.

17 Q. Fair enough. So when you pled to the guns, why didn't
18 you take care of the burglary charge at the same time?

19 A. 'Cause my client refused to plea to it.

20 Q. Okay. So he was willing -- so what was the deal on the
21 guns? Could he have gotten seven?

22 A. He could have. Yes, sir. I mean, if it were run
23 consecutively.

24 Q. He could have gotten, what, ten?

25 A. Could have gotten fifteen.

1 Q. Fifteen?

2 A. Yeah.

3 Q. Yeah. So --

4 A. And I explained that to him. He ended up getting
5 three.

6 Q. All right.

7 A. Concurrent.

8 Q. Concurrent. Okay. And you mentioned one thing when
9 you're talking about DNA, you said time constraints, but the
10 time constraints didn't hamper your ability to put these
11 cases together for trial?

12 A. Correct.

13 Q. Okay; all right. And you also testified that had you
14 known about any other alibi witnesses, you would have called
15 them.

16 Q. Okay; all right.

17 MR. THOMAS: Your Honor, I have no further questions.

18 THE COURT: Recross?

19 MR. JONES: Just very briefly.

20 RECROSS EXAMINATION

21 DAVID COOK BY MR. JONES:

22 Q. I believe you testified that your main reason for not
23 pursuing a DNA expert was that you did not believe the DNA
24 expert's testimony would be helpful to your client?

25 A. Correct.

1 Q. All right.

2 A. I -- that's correct.

3 Q. All right. Thank you.

4 THE COURT: All right. Witness may step down.

5 THE WITNESS: Thank you, Your Honor. Next witness.

6 MR. THOMAS: Your Honor, please the Court. We'd call
7 Mr. Jordan to the stand.

8 THE COURT: Very well.

9 MADAM CLERK: Place your left hand on the Bible and
10 raise your right.

11 (ANTONIO R. JORDAN, being first duly sworn, was
12 examined and testified as follows):

13 MADAM CLERK: Thank you. Please be seated.

14 MR. THOMAS: If it please the Court.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 ANTONIO R. JORDAN BY MR. THOMAS:

18 Q. Mr. Jordan, you're currently in South Carolina
19 Department of Corrections?

20 A. Yes, sir.

21 Q. All right, sir. And you were arrested -- remember
22 when? What year?

23 A. 2014.

24 Q. 2014.

25 A. November -- November 14.

1 Q. Okay. And then do you remember what your charges were
2 when you were arrested?

3 A. Unlawful possession of a stolen pistol.

4 Q. Okay. And so then you were taken to the detention
5 center?

6 A. Yes, sir.

7 Q. When did these burglary charges show up?

8 A. Approximately, like, sixty days later.

9 Q. Okay. Did you make bond or you were still in the
10 detention center?

11 A. I made bond -- I made bond on the same day on the gun
12 charges.

13 Q. Oh, you did?

14 A. Yeah.

15 Q. Okay. And then what happened? Were you re-arrested or
16 how did that happen?

17 A. At my initial appearance on January -- in January, I
18 came to court for the -- for a sentencing plea of two years
19 for the gun and at the sentencing -- at the arraignment, I
20 got arrested for a burglary charge.

21 Q. All right. So you made, basically, a first appearance?

22 A. Yes, sir.

23 Q. And then when you went to the first appearance, you
24 were arrested for the burglary charge?

25 A. Yes, sir.

1 Q. Okay. And who was representing you at the time or were
2 you represented?

3 A. Mark McKinnon.

4 Q. Public defender's office?

5 A. Yes, sir.

6 Q. Okay. And so now you had, what, two gun charges?

7 A. Yeah. Yes, sir.

8 Q. And the burglary charge?

9 A. Yes, sir.

10 Q. All right. Now, when did you retain Mr. Cook?

11 A. I can't -- I can't say that exact date, 'cause I didn't
12 retain him, my family retained him.

13 Q. Oh. Your family retained him?

14 A. Yeah.

15 Q. Okay. But he was representing you?

16 A. Yes, sir.

17 Q. Okay. And you pled when? Do you remember when that
18 was?

19 A. The morning of January -- January 26th.

20 Q. Of what year?

21 A. 2015.

22 Q. 2015?

23 A. Yes, sir.

24 Q. Okay. So we're dealing with a -- what kind of time
25 span there from your arrest on the guns to when you entered

1 into the plea?

2 A. I'd say fourteen months.

3 Q. Fourteen months. All right. Now, we've talked about
4 all of this. You understand that you're asking -- you filed
5 a post-conviction?

6 A. Yes, sir.

7 Q. You understand that you're asking that your sentence be
8 set aside?

9 A. Yes, sir.

10 Q. And that you be granted a new trial or new plea?

11 A. Yes, sir.

12 Q. We talked about what risks that you may have as a
13 result of doing that and that, in other words, you could be
14 taken back to trial?

15 A. Yes, sir.

16 Q. You could, potentially, face more exposure?

17 A. Yes, sir.

18 Q. And you're willing to run that risk?

19 A. Yes, sir.

20 Q. You want to go forward today?

21 A. Yes, sir.

22 Q. Okay. And you are serving what kind of sentence, Mr.
23 Jordan?

24 A. A twenty-five -- twenty-five-year sentence.

25 Q. And does that include -- that encompasses the gun

1 charges as well?

2 A. Yes, sir.

3 Q. When's your max out?

4 A. 2036.

5 Q. 2036. How old are you?

6 A. Thirty-eight.

7 Q. Thirty-eight. Okay. Now, when Mr. Cook, when he was
8 retained for you, did you have an opportunity to meet with
9 him?

10 A. Yes, sir.

11 Q. And how many times did you meet with him?

12 A. Approximately four times.

13 Q. Do you remember how long he actually was your attorney?

14 A. I'd say maybe twenty-six days.

15 Q. How long?

16 A. Twenty-six days.

17 Q. Twenty-six days?

18 A. Yes, sir.

19 Q. Okay. Now, during that period of time, what did y'all
20 do to prepare this case?

21 A. We never actually prepared for a case. He was hired --
22 he was retained for a bond hearing, to get me a bond. My
23 bond was denied three times by the State on the first degree
24 burglary, so Mr. Cook was retained to get me a bond for
25 Christmas.

1 Q. All right. And after he was retained for the bond,
2 then, he was further retained to represent you. Is that
3 correct?

4 A. No, sir. He was only retained for the bond. That's
5 it.

6 Q. So why was he representing you at the for -- the trial
7 and the plea?

8 A. It's my understanding, we went for the two bond
9 hearings, he offered a plea at the third -- third time -- he
10 took me up to the courtroom two times for a bond hearing,
11 which I just got called up there inside a holding cell,
12 never seen nobody and took right back to the cell.

13 Q. All right. But he was there on your behalf for the
14 plea and the trial?

15 A. Yes, sir.

16 Q. Okay. Now, did you have an opportunity to go over the
17 discovery with him? Do you know what that means?

18 A. Yes, sir.

19 Q. Okay. Whatever the State had, whatever evidence the
20 State had against you?

21 A. No, sir. I never got the full disclosure.

22 Q. Did you receive anything from him?

23 A. No, sir.

24 Q. Did you receive anything from the public defender's
25 office?

1 A. Yeah. On the gun charges.

2 Q. On the gun charges?

3 A. Yes, sir.

4 Q. Okay. Now, I'm a little bit confused about the gun
5 charges and all that. So as far as your concentration or
6 working with Mr. Cook about resolving all of this stuff, did
7 you concentrate on the guns first or what happened?

8 A. Yes, sir. We concentrated on the gun -- on the gun
9 charge. I took initiative that I, you know, they found a
10 gun, so I plead to the gun.

11 Q. All right. And it was your position that you'd bought
12 that gun from somebody else?

13 A. Yes, sir.

14 Q. Okay. Now, did you talk to Mr. Cook about the burglary
15 charges?

16 A. Yes, sir.

17 Q. And what was your understanding about the burglary
18 charges, about what proof they had to be able to, if you
19 went to trial, to either convict you or what your chances
20 were at trial?

21 A. My understanding is there was never going to be a trial
22 for the burglary.

23 Q. Okay. And why was that? Why did you think there was
24 never going to be a trial for burglary?

25 A. 'Cause the negotiated plea was for five years for the

1 gun, two years for the victim advocate right, with a
2 dismissal of the grand larceny and burglary charge.

3 Q. All right. So what do you mean by two years for the
4 victims advocate?

5 A. I never -- to be honest, I never heard of it. I never
6 heard of it, but that was what brought to me, a five-year
7 plea for the gun and two years for the victim advocate
8 right, so a seven year total.

9 Q. So was it that they were asking, in other words, the
10 State was asking for seven years?

11 A. Yes, sir.

12 Q. Okay; all right. And did you accept that plea?

13 A. Yes, sir, I did.

14 Q. Okay. And did -- you heard Mr. Cook's testimony. Did
15 you ever understand that you were pleading to seven years
16 for the gun and the burglary charge?

17 A. No, sir.

18 Q. What did you think that plea offer was?

19 A. What I just stated. Five years for the gun and two
20 years for the victim advocate right.

21 Q. For a total of seven?

22 A. For a total of seven years counting.

23 Q. Okay. And the burglary charge was going to go away?

24 A. Yes, sir.

25 Q. Why would they dismiss the burglary charge?

1 A. They -- they was going off DNA evidence that's
2 inconclusive.

3 Q. Because it could have been two different people?

4 A. Yes, sir.

5 Q. Okay. And you expressed or you told Mr. Cook that you
6 wanted to take that plea?

7 A. Yes, sir.

8 Q. To resolve all those issues---

9 A. Yes, sir.

10 Q. ---that you had charges against you?

11 A. Yes, sir.

12 Q. Okay. You have prostate cancer?

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

14 Q. Did you have prostate cancer?

15 A. No. I had issues in --

16 Q. You had prostate issues?

17 A. Yeah. I had issues in the county and that's -- that's
18 -- they thought it was, but --

19 Q. Okay; okay. All right. I just hadn't heard that
20 before, so I just wanted to ask you that. Now, in regards
21 to preparing this case for trial, when -- at what time did
22 you make a decision that you were going to take the case for
23 trial?

24 A. At what time? Excuse me?

25 Q. I mean, when did you decide to take the case to trial?

1 A. Oh. On the morning -- after the plea -- the negotiated
2 plea expired. On the morning of -- on January -- on January
3 15th I was called -- I was called up here to the holding
4 cell by Mr. Cook and his paralegal, Ms. Sheila, for a
5 negotiated plea for the seven years. I only took -- I told
6 them I only accept it if it's in writing. So I came -- so
7 we came up here to the courtroom, I got called and I seen --
8 I didn't see Mr. Cook that morning, I seen his paralegal. I
9 seen his paralegal. I can't remember her name, but I know
10 her first name started with Ms. Sheila, Ms. Shirley or Ms.
11 Sheila, something like that. I seen Ms. Sheila that morning
12 and sat down, was supposed to sign a negotiated plea of
13 seven years, so I signed up into the point where it supposed
14 to have said seven years, but it say fifteen to thirty, so I
15 stopped signing right there and they took me out and put me
16 in the holding cell and that was supposed to been like a
17 reckless error. Next thing I know they took me back to the
18 -- they took be back to -- back down to C block and a couple
19 days later he said he was ready for trial.

20 Q. So did you have an opportunity to talk to Mr. Cook
21 about that fifteen to thirty notation?

22 A. No, sir.

23 Q. Did anybody ever explain that to you?

24 A. No, sir.

25 Q. And you had been willing to accept the seven years?

1 A. I accept it. I accepted the seven.

2 Q. Okay; all right. But when they put it in writing, it
3 had a fifteen to thirty notation on it?

4 A. The same -- it was the same plea sheet that me and Mark
5 McKinnon parted ways with. That's the reason me and Mark
6 McKinnon parted ways for that same -- he brought that same
7 plea sheet to me and we parted ways, 'cause I told him I
8 refuse that. This don't carry -- a gun charge don't carry
9 fifteen to thirty years.

10 Q. All right. But the burglary, was the burglary involved
11 in that?

12 A. Not -- not -- me and Mr. Cook, with the burglary, the
13 burglary was dismissed as well as the grand larceny for
14 seven year, five years for the gun, two years for that
15 victim advocate right.

16 Q. All right. So in other words, you were always confused
17 about what was going to happen to the burglary charge?

18 A. Yes, sir.

19 Q. Okay. Now, you heard Mr. Cook's testimony in regards
20 to pleaing to the guns. Did you ever realize that if you
21 pled to the guns or whatever, that the guns would have come
22 back to haunt you in regards to the burglary trial?

23 A. No, sir.

24 Q. So why were you pleaing to the guns?

25 A. On advised -- on advice of my counsel, Mr. Cook.

1 Q. And what was the benefit of that going to be?

2 A. That they couldn't -- they couldn't bring it up in
3 trial, in the burglary trial.

4 Q. So you thought the purpose of the plea to the guns was
5 to prevent them from using it against you?

6 A. Yes, sir.

7 Q. Okay. And was that part of the reason and the decision
8 that you made to go to trial on the burglary?

9 A. Yes, sir.

10 Q. Had you known that by pleading to the guns that it could
11 be used at trial, would you have gone to trial or would you
12 try to plead to it all?

13 A. I would try to plead to it all.

14 Q. Okay. Why did you not testify?

15 A. On advice of my counsel that my prior conviction would
16 be used against me.

17 Q. But you told the judge that you were going to be
18 willing to testify,---

19 A. Yeah.

20 Q. ---that you were going to testify?

21 A. I was. The morning -- the afternoon before court shut
22 down, I was going to testify.

23 Q. Right.

24 A. Upon coming in the next morning, Mr. Cook advised me
25 that it wouldn't be a smart decision to testify, 'cause they

1 was going to bring up my prior record of card -- transaction
2 card theft and two prior burglaries and all crimes of moral
3 turpitude or whatever you --

4 Q. All right. Did you know that that was going to be a
5 problem with the strategy of you pleading to the guns first?

6 A. No, sir.

7 Q. Did you discuss that with Mr. Cook?

8 A. Not -- no, sir.

9 Q. And you talked to him about the DNA?

10 A. Yes, sir.

11 Q. And it seemed like you had mentioned to me, were there
12 two toboggans involved?

13 A. Actually, it was three tops. It was three involved.

14 Q. And what were those different toboggans?

15 A. I don't -- I don't -- I never got the -- I never got to
16 inspect either one. I just know -- at the on-view arrest, I
17 had a ski mask on.

18 Q. Right.

19 A. A black ski mask was taken off my head and compared
20 with supposed to been a black toboggan left at the crime
21 scene.

22 Q. And you were wearing a ski mask. Was it cold?

23 A. Yes. It was snowing.

24 Q. When you were riding your Moped?

25 A. Yeah; yeah. It was snowing.

1 Q. Okay; okay. And did you have an opportunity to sit
2 down with Mr. Cook and talk about those toboggans and how
3 that could be used to link you to anything or --

4 A. No, sir.

5 Q. Okay. Did you talk about the serial numbers on the
6 gun?

7 A. No, sir.

8 Q. What did you think was going to happen to you at trial?

9 A. I thought -- I thought I had a winning chance, 'cause
10 all they had was circumstance -- circumstantial evidence of
11 a toboggan, one taken off my head, saying that they
12 compared it with one at a crime scene.

13 Q. All right. Now, Mr. Cook testified that your mom and
14 your girlfriend testified.

15 A. Yes, sir.

16 Q. As alibi?

17 A. Yes, sir.

18 Q. And as the alibi witness, you were with them or with
19 them some part of the day?

20 A. Yes, sir.

21 Q. Okay. Mr. Jordan, I always ask this question. You've
22 been waiting for a long time for this case to come to trial.
23 Is there anything that I may have overlooked or is there
24 anything else that you would like to bring to the attention
25 of the Court?

1 A. I mean, as far as the DNA evidence, like --

2 Q. Whatever -- whatever you'd like to -- if there's
3 anything else you'd like to --

4 A. Yeah. As far as -- as far as the DNA evidence, is like
5 it was a mix up and the DNA -- the hat/toboggan came back,
6 it -- I was excluded from a potential -- I was excluded from
7 the hat comparison. It wasn't the hat comparison. It came
8 back as a black hat was -- it was a Do-Rag. That was the
9 misunderstanding of the DNA evidence. It wasn't the black
10 hat came back as a Do-Rag, a black Do-Rag, a black cap.

11 Q. All right. Can you clarify that a little bit? I don't
12 quite understand. You're saying that the evidence that came
13 back from the analysis from SLED was saying that it was a
14 Do-Rag?

15 A. No. Throughout the bond hearings and the trial, they
16 used a black hat.

17 Q. Right.

18 A. All the State was representing was black hat, black
19 cap, black hat, black hat, so it was a misunderstanding, so
20 the black hat came back I was excluded. My DNA was excluded
21 from the black hat. It was a black cap instead of a black
22 hat.

23 Q. All right. I got you. So there was a wrong
24 description?

25 A. Yes, sir.

1 Q. All right; okay.

2 MR. THOMS: Your Honor, I have no further questions.

3 THE COURT: All right. Cross-examination.

4 CROSS-EXAMINATION

5 ANTONIO R. JORDAN BY MR. JONES:

6 Q. Thank you, Mr. Jordan. Mr. Jordan, do you recall
7 having a discussion at the beginning of the trial with the
8 Court about the prior plea negotiations in this---

9 A. Yes, sir.

10 Q. ---case? And do you recall stating then that you were
11 offered zero to five?

12 A. Yes, sir.

13 Q. Do you also recall the Court stating -- asking you
14 whether you'd accepted any offers that had been presented to
15 you? -

16 A. Yes, sir.

17 Q. And do you recall your response to that?

18 A. I agreed that I accepted my role (ph.) in seven.

19 Q. Do you have a copy of the transcript?

20 A. Yes, sir.

21 Q. With you?

22 A. Yes, sir.

23 Q. Can you turn to page 15?

24 A. Yes, sir.

25 Q. And at the top of page 15 do you see where the Court

1 says, Well, where we are right now is apparently, Mr.
2 Jordan, you've not accepted any offers that have been
3 presented to you, and then can you read your response to the
4 Court?

5 A. No, sir, Your Honor.

6 Q. All right. Thank you. Do you recall the testimony of
7 the State's DNA expert?

8 A. Some of it.

9 Q. All right. Do you recall her characterizing -- stating
10 that she compared the evidence from the black toboggan to
11 your buccal swab?

12 A. Yes, sir.

13 Q. And stating that -- and, again, I'm on page 230 at line
14 21. Are you there?

15 A. You said 230?

16 Q. Yes, sir.

17 A. Line?

18 Q. Line 21.

19 A. Okay; okay.

20 Q. Do you see where the expert says, Antonio Jordan could
21 not be excluded as a potential contributor to the major
22 portion of that mixture?

23 A. Yes, sir.

24 Q. All right. Now, whose idea was it -- or did you
25 ultimately make a decision to plead to the gun charges?

1 A. On counsel's advice, yes, sir.

2 Q. And I believe you told Mr. Thomas that your thinking
3 was they found the gun, so you pled to the gun?

4 A. Yes.

5 Q. All right. And all those charges, you received three
6 years and they were all ran concurrently?

7 A. Yes, sir.

8 Q. All right. Mr. Jordan, I think that's all the
9 questions I have for you at this time. Thank you.

10 THE COURT: Redirect.

11 MR. THOMAS: Your Honor, just one.

12 REDIRECT EXAMINATION

13 ANTONIO R. JORDAN BY MR. THOMAS:

14 Q. Mr. Jordan, if you'd go back to counsel had asked you
15 about page 230 of the transcript.

16 A. Yes, sir.

17 Q. And we're back down on line, I think he said, 21, but
18 if you go down to 22, what does that say?

19 A. It says, the contributed portion of the mixture (ph.)
20 which was consistent with at least two individuals.

21 Q. Two individuals. Right?

22 A. Yes, sir.

23 Q. Okay.

24 MR. THOMAS: Your Honor, I have no further questions.

25 THE COURT: Recross?

1 MR. JONES: No recross, Your Honor.

2 THE COURT: All right. The witness may step down.

3 Thank you. Next witness.

4 MR. THOMAS: Your Honor, please the Court. We just
5 have one more witness and we would call Mr. Jordan's brother
6 to the stand.

7 THE COURT: What's his name?

8 MR. NEIL JORDAN: Neil.

9 THE COURT: Neil?

10 MR. NEIL JORDAN: Yes, sir.

11 THE COURT: And your last name, sir?

12 MR. NEIL JORDAN: Jordan.

13 THE COURT: Neil Jordan.

14 MR. NEIL JORDAN: Yes, sir.

15 THE COURT: All right.

16 MADAM CLERK: Place your left on the Bible, raise your
17 right.

18 (NEIL JORDAN, being first duly sworn, was examined and
19 testified as follows):

20 MADAM CLERK: Thank you. Please have a seat.

21 MR. THOMAS: Please the Court.

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 NEIL JORDAN BY MR. THOMAS:

25 Q. Mr. Jordan, you're related to Antonio?

- 1 A. Yeah. He's my brother.
- 2 Q. All right. And you understand that you're under oath
- 3 today?
- 4 A. Yes, sir.
- 5 Q. You understand that you're under oath to tell the
- 6 truth?
- 7 A. Yes, sir.
- 8 Q. Do you intend to tell the truth?
- 9 A. Yes, sir.
- 10 Q. All right. Did you have an opportunity to talk to Mr.
- 11 Cook?
- 12 A. Several times.
- 13 Q. Okay. And were you involved in retaining Mr. Cook?
- 14 A. Yeah. I the one retained him.
- 15 Q. You did?
- 16 A. Yes, sir.
- 17 Q. Okay. And you retained him to represent Antonio?
- 18 A. Yes, sir.
- 19 Q. All right. Both in the gun and the burglary charge?
- 20 A. Yes, sir.
- 21 Q. All right. Now, you were also -- had spoken to Mr.
- 22 Cook about you being an alibi witness?
- 23 A. Yes, sir.
- 24 Q. Do you know what that means, as far as alibi?
- 25 A. Yes, sir.

1 Q. Okay. And that -- what did you explain to Mr. Cook
2 about your -- what you could say on the stand?

3 A. All right. Well, can I go into detail?

4 Q. Oh, yeah. Sure.

5 A. Okay. I talked to Mr. Cook several times, several
6 times. He come by the shop -- I own my business -- come by
7 and talk to me several times. I told Mr. Cook where
8 Antonio was -- where he was and that I could be on the
9 stand, but he was saying -- yo know what I'm saying, my
10 brother wanted to put his girlfriend on the stand and put my
11 mom on the stand. So I asked Mr. Cook could he put me on
12 the stand, too, but -- but Mr. Cook thing was was he wanted
13 my brother to plead guilty -- plead guilty, but I say that's
14 that same deal that the public defender office already offer
15 him. The public defender office already offered him seven
16 years -- seven years on these charges. So that's why I
17 retained Mr. Cook, because I said he didn't do it, why he
18 going to plead guilty to something he didn't do, you know,
19 so that's why I retained Mr. Cook on that thing, but Mr.
20 Cook kept giving me feedback, tell your brother plead
21 guilty, tell your brother plead guilty of seven years, like,
22 he was demanding for him to plead guilty, but I said you got
23 to do your job, you know what I'm saying, your job is to
24 defend him. That's what we paying you for, but he didn't do
25 that. In this case he didn't do that. He didn't properly

1 represent my brother.

2 Q. All right; all right. But in regards to the alibi, you
3 were able to testify what?

4 A. Yeah. That I picked my brother up that morning from --
5 from his girlfriend house.

6 Q. Okay. And that he was with you?

7 A. Yeah.

8 Q. Okay.

9 A. And dropped him back off at my mother house.

10 Q. Okay; all right. And you were willing to testify?

11 A. Yes, sir.

12 MR. THOMAS: Your Honor, I have no further questions.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 NEIL JORDAN BY MR. JONES:

16 Q. Thank you, Mr. Jordan.

17 A. Yes, sir.

18 Q. Just very briefly. Do you remember what time you
19 picked your brother up from --

20 A. Yeah. It was at 8:45.

21 Q. And what time you dropped him off?

22 A. That was about 4:45. No. It was about five o'clock.

23 My bad. About five -- it was about five when I dropped him
24 off.

25 MR. JONES: I have no further questions for Mr. Jordan.

1 Thank you.

2 THE COURT: Redirect?

3 MR. THOMAS: No, Your Honor.

4 THE COURT: Thank you. The witness is excused.

5 MR. THOMAS: Your Honor, please the Court. That's the
6 applicant's case.

7 THE COURT: All right. Does the State wish to put up
8 any additional witnesses?

9 MR. JONES: Your Honor, the State would call Mr. David
10 Cook again.

11 THE COURT: All right.

12 DIRECT EXAMINATION

13 DAVID COOK BY MR. JONES:

14 Q. Mr. Cook, do you remember --

15 THE COURT: Obviously, Mr. Cook, you're still under
16 oath.

17 THE WITNESS: Yes, sir, Your Honor.

18 THE COURT: All right. Thank you.

19 Q. Mr. Cook, do you remember the -- talking to the Court
20 about the zero to five, about whether Mr. Jordan had ever
21 received a plea offer for zero to five? Do you have a copy
22 of the transcript?

23 A. I left the transcript. If I may go back to retrieve
24 it.

25 Q. Well, I can --

1 MR. JONES: Your Honor, may I bring the transcript up?

2 THE COURT: Sure.

3 MR. JONES: All right.

4 A. To answer your question without reviewing the
5 transcript, I have a memory of discussing with the Court
6 that I believe, you know, the trajectory or concern in the
7 plea offers. I'm not positive whether I discussed the five-
8 year offer or the seven-year offer with the Court. It may
9 be in the record if you clarify.

10 MR. JONES: Well, Mr. Thomas, will you stipulate to
11 whatever's in the record?

12 MR. THOMAS: I would.

13 MR. JONES: All right. In that case, I'll move on
14 then.

15 Q. Did you understand that you were being retained to
16 represent him all the way through the proceedings or just
17 for the bond?

18 A. All right way through the proceedings and my contract
19 here says, you know, for grand larceny, burglary first, two
20 counts unlawful, stolen pistol and so it's all listed on the
21 contract. The contract was signed by his mother for
22 Antonio.

23 Q. All right. And did anything in the contract restrict
24 that to just the bond proceeding?

25 A. No. I have a separate contract in my office for bond

1 purposes only and would have used that if it were only for
2 bond purposes.

3 Q. All right. I believe you heard the testimony of Mr.
4 Jordan about that he asked you to call him as a witness for
5 Mr. Antonio Jordan's alibi?

6 A. Uh-huh.

7 Q. Do you -- does that match your recollection?

8 A. Not at all. No, sir. And I could stop there, but I
9 would -- I would even go further to say I'm not positive
10 that his time line matched up with the two alibi witnesses
11 that testified at the trial and it might have been more
12 inculpatory than exculpatory.

13 Q. Once again, I'll state that the record demonstrates
14 what the time line was, what the alibi witnesses gave at
15 trial.

16 A. Yes, sir.

17 Q. You did give -- you did put up two alibi witnesses at
18 trial?

19 A. Yes, sir.

20 Q. Would you have put up additional alibi witnesses if
21 you'd known about them?

22 A. Absolutely.

23 Q. Would you say that an alibi defense was a major part of
24 your defense to this --

25 A. I would say that was the only defense that I had.

1 Q. All right. I believe that's all the questions I have
2 for you, Mr. Cook. Thank you.

3 A. Thank you.

4 THE COURT: All right. Cross-examination.

5 MR. THOMAS: No questions, Your Honor.

6 THE COURT: All right. Witness is excused. Anything
7 else from the State?

8 MR. JONES: The State rests, Your Honor.

9 THE COURT: All right. Mr. Thomas?

10 MR. THOMAS: Your Honor, if it please the Court.

11 THE COURT: Yes, sir.

12 MR. THOMAS: Instead or in lieu of just an oral
13 argument, do you find if I just submit a very brief
14 memorandum in this case?

15 THE COURT: That will be fine. -

16 MR. THOMAS: That will give me an opportunity to kind
17 of get my thoughts together and put it on paper for you.

18 THE COURT: That'd be fine.

19 MR. THOMAS: Okay.

20 THE COURT: And State, you're free to do the same upon
21 seeing what Mr. Thomas submits.

22 MR. JONES: All right. Thank you, Your Honor.

23 MR. THOMAS: I'll send it to him first.

24 THE COURT: The matter will be under advisement.

25 MR. THOMAS: Thank you, Your Honor.

1 MR. JONES: Thank you.

2 THE COURT: Court will be in recess.

3 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)

) C E R T I F I C A T E

COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Common Pleas Court for York County, South Carolina, on the 8th day of December, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

In witness whereof, I have hereunto subscribed my name, this 1st day of March, 2023.

Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Antonio Jordan, #292329,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-46-1277

ORDER OF DISMISSAL

FILED-RECEIVED
2024 FEB -6 AM 8:19
ANGIE M. BRYANT
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Tommy A. Thomas, Esquire, on behalf of Antonio Jordan ("Applicant") on April 8, 2019, and amended on August 3, 2020. The Court convened an evidentiary hearing into the matter on December 8, 2022, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Mr. Thomas. Assistant Attorney General Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

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:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In December 2014, the York County Grand Jury indicted Applicant for possession of a handgun by a person convicted of a crime of violence (2014-GS-46-3735) and possession of a stolen handgun (2014-GS-46-3777). In January 2015, the York County Grand Jury also indicted Applicant for first-degree burglary (2015-GS-46-1543), and possession of a firearm by a person convicted of a violent offense (2015-GS-46-00064).

On January 26, 2015, Applicant appeared before the Honorable Roger L. Couch and pled guilty to all of the charges as indicted except for the first-degree burglary. Applicant entered a plea of not guilty and proceeded to a jury trial solely on the first-degree burglary charge. David C. Cook, Esquire (“Counsel”), represented Applicant. Assistant Solicitors Christopher Epting and Ryan Newkirk of the Sixteenth Circuit Solicitor’s Office prosecuted the case.

On January 26, 2015, Judge Couch proceeded with Applicant’s guilty plea hearings on the three gun charges. At the conclusion of the plea hearing, Judge Couch sentenced Applicant to three years on each charge to run concurrently. Applicant was also given credit for 438 days.

On January 28, 2015, the jury found Applicant guilty of first-degree burglary. Following the verdict, Judge Couch sentenced Applicant to imprisonment for twenty-five years with credit for 440 days. Judge Couch ran this sentence concurrent to the sentences imposed on Applicant on January 26, 2015.

Applicant filed a timely notice of appeal. Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense perfected Applicant’s appeal solely on the first-degree burglary charge. Ms. Hackett submitted a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). She also petitioned the court to be relieved as counsel. The South Court of Appeals dismissed the appeal and granted appellate counsel’s motion to be relieved. The remittitur was issued on January 17, 2018.

FACTS GIVING RISE TO THE CONVICTION

On November 8, 2013, Derek Clark (“Victim”) left his home between approximately 9:00 a.m. and 1:30 p.m.; when he returned home, he discovered his house had been broken into. Victim retrieved a firearm from his truck and proceeded through his residence, but did not locate anyone inside. Victim noticed the back door was open and the glass had been broken.

Victim's entire house had been ransacked, and he called police. Victim discovered four of his firearms were missing. Investigators used a K-9 unit to follow the burglar's trail from Victim's house through the nearby woods, finding numerous scattered items that were later identified as having been taken from Victim's house, including Victim's voter registration card. The K-9 unit also found a black skull cap along the trail.

On November 14, 2013, Applicant was pulled over while riding a moped after he drove through a stop sign. Officer Travis Shealy moved the moped farther to the side of the road in order to safely inspect the VIN number. After he did so, he noticed a firearm lying on the ground where the moped had been. The officer inferred the gun was dropped by Applicant because it appeared to be "fresh" and dry despite there being snow on the ground. At that point, Applicant was placed under arrest, and subsequent investigation revealed the serial number on the gun matched one of the guns stolen during the burglary at Victim's residence.

A buccal swab was taken from Applicant, and that DNA was compared to DNA found on the black skull cap discovered by the K-9 unit at the scene of the burglary. The DNA obtained from the cap was consistent with a mixture of at least two individuals, and the major DNA profile was consistent with Applicant's DNA profile. The probability of randomly selecting an unrelated individual with a matching DNA profile was determined to be anywhere from one in 190 quintillion to one in 8.8 sextillion.

CURRENT APPLICATION

In his initial application for post-conviction relief, Applicant raised a single allegation of "Ineffective assistance of counsel" without additional detail. As his requested relief, Applicant requested a new trial. Respondent moved to dismiss the application as untimely. Following a hearing on August 12, 2019, the Honorable Roger E. Henderson found that Applicant's delay in

filing the application was due to extraordinary circumstances outside his control and directed that an evidentiary hearing be held on the merits of Applicant's allegations.

Applicant filed an amended application on August 3, 2020, raising the following grounds for relief:

1. Trial Counsel told Applicant that, if Applicant pled to the gun charges, then his plea could not be used against him in his trial on the burglary charge. Applicant was also informed that the burglary charge would be nolle prossed if he accepted the plea to the gun charges.
2. Trial Counsel was unprepared for trial and appeared to have no theory of defense.
3. Trial Counsel was ineffective for advising Applicant not to testify.
4. Trial Counsel failed to retain a DNA expert and appeared not to understand the DNA evidence.
5. Applicant believed he had accepted a plea offer for a negotiated sentence of seven years, but he was later told the offer was withdrawn due to an unexplained error.
6. Trial Counsel failed to investigate and present potential alibi defenses.

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 York County Clerk of Court regarding the subject convictions, Applicant's appellate records, the original and amended applications for post-conviction relief, and a post-hearing memorandum filed by Applicant. 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 Counsel, Generally

Applicant's allegations of ineffective assistance of trial 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), SCRCP. 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. A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. “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 performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, 466 U.S. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.” *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

I. Advice concerning Applicant's plea to the gun charges

Applicant claims he believed he was pleading to the gun charges so that the burglary charge would be dismissed. At the PCR hearing, however, Counsel testified he never told Applicant his burglary charge would be dismissed, nor did he tell Applicant that the gun found at the traffic stop could not be used against him during the burglary trial. Instead, Counsel testified that he advised Applicant to plead to the gun charges—for which Applicant received a sentence of three years, concurrent—because Counsel believed Applicant would gain credibility with the jury during his burglary trial if he admitted to possessing the gun. Counsel testified that Applicant denied any involvement with the burglary but did not deny involvement with the gun in his conversations with Counsel. Counsel explained that the defense strategy was for Applicant to testify that he bought the gun from somebody else, rather than stealing it from the Victim; therefore, Counsel believed that Applicant needed to take responsibility for the gun charges to convince the jury that he was being honest about the gun. Applicant himself testified at the evidentiary hearing that he pled guilty to the gun charges for this reason:

A. Yes, sir. We concentrated on the gun—on the gun charges. I took initiative that I, you know, they found a gun, so I plead to the gun.

Q. All right. And it was your position that you'd bought that gun from somebody else?

A. Yes, sir. (PCR Tr. 38, lines 8–13).

The Court finds Counsel credible as to this issue. Based on Counsel's account, the Court finds Counsel did not advise Applicant that the burglary charge would be dismissed if he pled to the gun charges. The Court finds Counsel's advice regarding the gun charges was not deficient: the evidence against Applicant on the gun charges was very strong, and there was a substantial risk that Applicant would have been convicted of those charges anyway if he had not pled guilty. In addition, he would have forfeited his ability to claim that he bought the gun from somebody

else, which would have deprived him of a plausible defense to the much more serious burglary charge he was facing. The Court finds Counsel's advice to Applicant to enter the guilty plea as to the gun charges was given in furtherance of a valid defense strategy.

Because Counsel's advice in this matter was not deficient, the Court finds Applicant has failed to satisfy the *Strickland* test as to this allegation. Accordingly, this claim is denied and dismissed with prejudice.

II. Preparation and Theory of the Defense

Applicant claims Counsel was unprepared for trial and appeared to have no theory of the defense. Applicant alleges Counsel was only retained to represent him in his attempt to secure a bond, not to represent him at his plea or trial. The Court finds this allegation meritless. Counsel credibly testified that he had a contract to represent Applicant throughout all proceedings regarding his charges, and he testified that his office used a separate contract in cases where his representation was limited to bond issues.

Moreover, as already discussed, Counsel had a theory of the case. Counsel's theory of the case was that Applicant had not stolen the gun that connected him to the burglary; rather, he had bought it from some third person. The only other evidence linking Applicant to the burglary was the DNA on the cap, which Counsel argued was inconclusive because it contained a mixture of DNA from at least two individuals. Unfortunately, Applicant's unexpected refusal to testify resulted in Counsel being unable to fully develop this theory.¹ Counsel also presented alibi witnesses for Applicant.

¹ As discussed further in response to Applicant's allegation 3, below, the Court finds Counsel was not to blame for Applicant's unanticipated decision not to testify.

The Court finds Counsel proceeded to trial with a sound defense theory and pursued a valid trial strategy. Moreover, from a review of the record, the Court is satisfied that Counsel was well prepared to defend Applicant at trial. Accordingly, the cCurt finds Applicant has failed to prove Counsel was deficient, and this allegation must be denied and dismissed with prejudice.

III. Applicant's decision not to testify

Applicant claims Counsel advised him not to testify because his prior convictions would be used against him. The Court finds this allegation is meritless. Counsel credibly testified that, while he did advise Applicant of the risks associated with testifying, the plan was always for Applicant to testify in his own defense and to explain that he had bought the gun from a third party. Counsel testified he did not expect that Applicant would refuse to testify. This is supported by the transcript of Applicant's trial: at the close of the State's case, the trial court explained Applicant's right to testify or to remain silent, as well as the risk of prior convictions coming in if he chose to testify. The trial court allowed Applicant a few minutes to discuss the matter with Counsel. After Applicant indicated that he had discussed the issue with Counsel and did not need to discuss it any further, the court asked him whether he intended to testify, and Applicant said he did. However, when the trial resumed the following day, Applicant indicated he had changed his mind and no longer wished to testify.

The Court finds Applicant has not met his burden of proving, by a preponderance of the evidence, that Counsel was deficient. Although Counsel advised Applicant that he risked having his prior convictions used against him if he testified, which was reasonable and necessary advice under the circumstances, Counsel did not tell Applicant not to testify and planned from the beginning of trial that Applicant would testify to buying the gun from a third party. Applicant's refusal to testify was not brought about by any deficient act or omission of Counsel. Therefore,

the Court finds Applicant has failed to prove Counsel was ineffective as to this issue, and this allegation is denied and dismissed with prejudice.

IV. Failure to retain DNA expert or to understand DNA issues

Applicant claims Counsel did not appear to understand the DNA evidence and should have retained a DNA expert to refute the State's expert testimony linking his DNA to the cap found at the crime scene. However, Applicant did not present any expert testimony to substantiate his claim. *See Dempsey v. State* 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his trial counsel's failure to hire an expert because he did not have an expert testify at his PCR hearing), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). When asked, at the PCR hearing, to explain what was wrong with the State's DNA evidence, Applicant merely complained that the State represented that the DNA was taken from "a black hat," when it was actually taken from "a black Do-Rag." The Court finds that whether the garment in question is characterized as a hat, cap, or "Do-Rag" is immaterial. Therefore, Applicant has failed to prove prejudice. In addition, Counsel credibly testified that Applicant's family did not have enough money to pay for a DNA expert, and he had no reason to expect that analyzing the DNA a second time would be helpful to the defense. Therefore, the Court also finds Counsel's decision not to retain a DNA expert was not deficient. Accordingly, this allegation is denied and dismissed with prejudice.

V. Acceptance of seven-year guilty plea offer

Applicant claims he believed he accepted an offer to plead guilty to the burglary charge for a negotiated sentence of seven years, but the offer was subsequently withdrawn without explanation. The Court finds this claim meritless. At the beginning of his trial, Applicant insisted he had accepted a plea offer of zero-to-five years, but the solicitor denied ever making such an

offer and said the lowest offer was a negotiated cap of seven years. The trial court asked Counsel his understanding of the plea issues, and Counsel explained that Applicant had requested an offer of zero-to-five, but the lowest offer the State would give was a cap of seven, which Applicant would not agree to. Once the trial began, the seven-year offer was taken off the table, but Counsel spoke to the “higher-ups” in the solicitor’s office and obtained another offer, which he relayed to his client. The trial court then asked Applicant if he had “accepted any offers that have been presented,” and Applicant replied, “No, sir, Your Honor.”

At the evidentiary hearing, Counsel testified that the lowest offer made to Applicant was the seven-year offer, which Applicant refused to take. Counsel told Applicant he had already been sentenced to three years on the gun charges, so he was only facing a few more years if he took the seven-year offer, whereas he was facing twenty-five years if he lost at trial. Nevertheless, Applicant insisted on a five-year offer. Counsel testified “the whole thing blew up over that two-year difference.” The Court finds Counsel’s testimony is consistent with the trial transcript and credible. Therefore, the Court finds Applicant did not attempt to accept the seven-year plea offer. This allegation is, therefore, denied and dismissed with prejudice.

VI. Failure to present alibi defense

Applicant claims Counsel failed to investigate and present potential alibi witnesses. At the evidentiary hearing, Applicant presented the testimony of his brother, Neil Jordan, who stated he picked Applicant up from his mother’s house at 8:45 AM and dropped him off at his girlfriend’s house at 5:00 PM on the day of the crime. Jordan testified he told Counsel this information and offered to take the stand in his brother’s defense, but Counsel did not call him as a witness.

Counsel testified that he spoke to Jordan numerous times, and Jordan never asked him to call him as an alibi witness. The trial transcript reveals that Counsel did call two alibi witnesses:

Applicant's mother, Maryann Jordan, and Applicant's girlfriend, Eddielena Boyd. Counsel testified that he would have put up additional alibi witnesses if he had known about them. However, Counsel noted that Jordan's account did not match the timeline given by other two alibi witnesses, so he thought it might have been more inculpatory than exculpatory.

The Court finds Counsel's testimony credible, and Jordan's testimony not credible, as to this issue. At trial, Applicant's mother testified that she left home with Applicant to work at their family-owned store at 8:30 AM; because work was slow, she left with Applicant between 10:30 AM and 11:00 AM and dropped him off at his girlfriend's house. Applicant's girlfriend testified she got a call from Applicant at 10:45 AM saying he was at his mother's house. Applicant came to her house at 11:15 AM, and they stayed together until 3:15 PM. Jordan, who was not mentioned by either Applicant's mother or his girlfriend, testified he picked Applicant up at 8:45 AM and dropped him off at 5:00 PM, which is not consistent with the testimony of either alibi witness who actually testified at trial. Accordingly, the Court finds Applicant has failed to prove either that Counsel was deficient for failing to call Jordan to testify or that Applicant was prejudiced thereby. Therefore, this allegation is denied and dismissed with prejudice.

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.

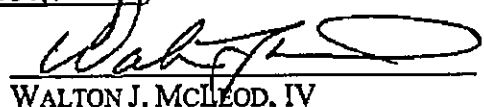
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453,

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. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

IT IS SO ORDERED this 2nd day of January, 2024.


 WALTON J. MCLEOD, IV
 Presiding Judge
 Sixteenth Judicial Circuit

Lexington

South Carolina

WITNESSES

YCSO / Schettler

ARREST WARRANT NUMBER

2014A4610100054

ACTION OF GRAND JURY

True Billed 5/29/2014 /s/ Rebecca Meares

TRUE BILL

Shirley Bowman Sanders

Foreperson of Grand Jury

Date: 1/22/15

VERDICT

Guilty

Kathryn C. Davis 1-28-15

Foreperson of Grand Jury

Date:

**AMENDED
DOCKET NO. 2014-GS-46-01543**

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 22, TERM 2015

THE STATE

VS.

ANTONIO R JORDAN

INDICTMENT FOR

BURGLARY, FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

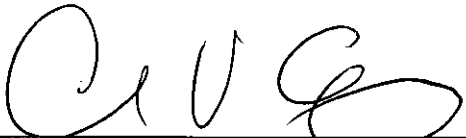
INDICTMENT

At a Court of General Sessions, convened on January 22, 2015, the Grand Jurors of York County present upon their oath:

BURGLARY, FIRST DEGREE

The defendant, Antonio R Jordan, did on or about November 8, 2013, in York County, enter a dwelling belonging to Derek Clark without consent and with intent to commit a crime therein. The defendant while in the dwelling or while in immediate flight was armed with a deadly weapon. The defendant has been convicted of two or more convictions for burglary or housebreaking or a combination of both. All in violation of 16-11-0311, *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

WITNESSES

YCSO / Shealey

ARREST WARRANT NUMBER

2013A4610201801

**ACTION OF GRAND JURY
TRUE BILL**

Rebecca W. Meares
Foreperson of Grand Jury
Date: 12/11/14

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2014-GS-46-03735

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 11, TERM 2014

THE STATE

VS.

ANTONIO R JORDAN

INDICTMENT FOR

**POSSESSION OF A HANDGUN BY A
PERSON CONVICTED OF A CRIME OF
VIOLENCE**

SC Code: § 16-23-0030, 0050(A)(1)
CDR Code: 2364

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

X
Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio R Jordan
Defendant

Witness:

Shirley C. Smith
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on December 11, 2014, the Grand Jurors of York County present upon their oath:

**POSSESSION OF A HANDGUN BY PERSON CONVICTED OF A CRIME OF
VIOLENCE**

The defendant, Antonio R Jordan, did on or about November 14, 2013, in York County, South Carolina, unlawfully possess or acquire a handgun after having been convicted of a crime of violence in any court of the United States, the several states, the commonwealths, territories, possessions or the District of Columbia or is otherwise a fugitive from justice. All in violation of 16-23-0030, 0050(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

WITNESSES

YCSO / Shealey

ARREST WARRANT NUMBER

2013A4610201802

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 12/11/14

VERDICT

Foreperson of Grand Jury

Date:

DOCKET NO. 2014-GS-46-03777

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 11, TERM 2014

THE STATE

VS.

ANTONIO R JORDAN

INDICTMENT FOR

POSSESSION OF A STOLEN HANDGUN

SC Code: § 16-23-0030, 0050(A)(1)

CDR Code: 2364

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on December 11, 2014, the Grand Jurors of York County present upon their oath:

POSSESSION OF A STOLEN HANDGUN

The defendant, Antonio R Jordan, did on or about November 14, 2013, in York County, South Carolina, unlawfully possess or acquire a handgun that was stolen. All in violation of 16-23-0030, 0050(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

WITNESSES

YCSO / Shealey

ARREST WARRANT NUMBER

DI2013A4610201801

ACTION OF GRAND JURY

TRUE BILL

Shirley Bowman Sanders

Foreperson of Grand Jury

Date: 1/22/15

VERDICT

Foreperson of Grand Jury

Date:

DOCKET NO. 2015-GS-46-00064

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 22, TERM 2015

THE STATE

VS.

ANTONIO R JORDAN

INDICTMENT FOR

**POSSESSION OF A FIREARM BY A
PERSON CONVICTED OF A VIOLENT
OFFENSE**

SC Code: § 16-23-0500(A)

CDR Code: 3434

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

454

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio R Jordan
Defendant

Witness:

A. Rutledge - Jury Spec.
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

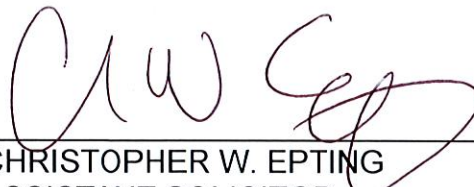
INDICTMENT

At a Court of General Sessions, convened on January 22, 2015, the Grand Jurors of York County present upon their oath:

**POSSESSION OF A FIREARM BY A PERSON CONVICTED OF A VIOLENT
OFFENSE**

The defendant, Antonio R Jordan, did on or about November 14, 2013, in York County, South Carolina, willfully and unlawfully have in his possession a firearm and/or ammunition. Said Defendant has been convicted of a felony which is classified as a violent crime, as defined by South Carolina Code Section 16-1-60. All in violation of 16-23-0500(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

456

STATE OF SOUTH CAROLINA

COUNTY OF York
STATE VS.
Antonio R Jordan

AKA: Jail
Race: BLACK Sex: M Age: 30
DOB: 1984 SS#: [REDACTED]
Address: York Street
City, State, Zip: Lancaster, SC
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4601543
A/W#: 2014A4610100054
Date of Offense: 11/8/2013
S.C. Code § : 16-11-0311
CDR Code #: 0079

ORIGINAL
SENTENCE SET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) § 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: C. V. E. O. 76321 [Signature] [Signature] 75081
Epting, Christopher W SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 440 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$
TOTAL \$ 130.00

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Aminah Hardy
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2135
Sentence Date: 01-28-2015

BS
PB

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE VS.

ANTONIO R JORDAN

AKA: Antonio Rodriguez Jordan

Race: Black Sex: M Age: 30

DOB: 1984 SS#: [REDACTED]

Address: York Street

City, State, Zip: Lancaster, SC

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: **Possession of a pistol by a person prohibited (Crime of violence)**

In violation of § 16-23-0030, 0050(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2364

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Christopher W. Epting, Assistant Solicitor SC Bar # 76321

Defendant

Attorney for Defendant

SC Bar # 75081

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 3 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: 1/26/15

☒ 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. 438 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ 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 47.9 (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 \$ _____

Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 130.00

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Aminah Hardy

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

457

INDICTMENT/CASE#: 2014GS4603735
A/W: 2013A4610201801
Date of Offense: 11/14/2013
S.C. Code §: 16-23-0030, 0050(A)(1)
CDR Code #: 2364

ORIGINAL
SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge: _____

Judge Bar ID: _____ Judge Code: 2135

Sentence Date: 1-26-15

ANTONIO R JORDAN

AKA: Antonio Rodriguez Jordan

Race: Black Sex: M Age: 30

DOB: 1984 SS#: [REDACTED]

Address: York Street

City, State, Zip: Lancaster, SC

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of a stolen pistol

In violation of § 16-23-0030, 0050(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2364

INDICTMENT/CASE#: 2014GS4603777
A/W: 2013A4610201802
Date of Offense: 11/14/2013
S.C. Code §: 16-23-0030, 0050(A)(1)
CDR Code #: 2364

SENTENCE SHEET
ORIGINAL

☐ CONVICTED OF or ☐ PLEADS

5 yr & 2000

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

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

Christopher W. Epting, Assistant Solicitor SC Bar # 76321

Antonio Jordan
Defendant

Attorney for Defendant SC Bar # 75081

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 3 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: 1/26/15

☒ 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. 438 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 130.00

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Aminah Hardy

SCCA/217 (03/2011)

Presiding Judge: _____

Judge Bar ID: _____ Judge Code: 2135

Sentence Date: 1-26-15

COUNTY OF YORK

STATE VS.

ANTONIO R JORDAN

AKA: Antonio Rodriguez Jordan

Race: Black Sex: M Age: 30

DOB: 1984 SS#: [REDACTED]

Address: York Street

City, State, Zip: Lancaster, SC

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☐ PLEADS

TO: Possession Of A Firearm By A Person Convicted of A Violent Offense

In violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434

INDICTMENT/CASE#: 2015GS4600064

A/W: DI2013A4610201801

Date of Offense: 11/14/2013

S.C. Code §: 16-23-0500(A)

CDR Code #: 3434

ORIGINAL
SENTENCE SHEET☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Christopher W. Epting, Assistant Solicitor SC Bar # 76321

Defendant

Attorney for Defendant

75081
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 3 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: 1/26/15☒ 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. 438 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: 1-26-15Judge Code: 2135Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Amirah Hardy

SCCA/217 (03/2011)

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL		\$ <u>130</u>