

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

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S.C. Supreme Court

JOHN CURTIS MCCOY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN CURTIS MCCOY,

APPELLANT

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STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

-VS-

JOHN CURTIS MCCOY

DEFENDANT.

2005-GS-42-0642,
0643

THE FOLLOWING PROCEEDINGS WERE HELD BEFORE THE HONORABLE

RODGER L. COUCH

IN THE CIRCUIT COURT OF SPARTANBURG COUNTY (7TH JUDICIAL
DISTRICT) BEGINNING ON 9:42 AM ON THE 14TH DAY OF JUNE,
2005, IN THE SPARTANBURG COUNTY COURTHOUSE, SPARTANBURG,
SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

ORIGINAL

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
7TH JUDICIAL DISTRICT
PO BOX 280, DRAYTON, SC 29333

APPEARANCES:

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Deputy Solicitor
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..... ON BEHALF OF THE STATE

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1 THE COURT:

2 Good morning ladies and gentlemen
3 of the jury panel. I want to thank you very much for
4 your attendance this morning.

5 We have two cases we are going to
6 be beginning this morning; one in my courtroom, and one
7 in Judge McCauley's courtroom.

8 We are going to pick this jury
9 first. Then you will be asked to step over to Judge
10 McCauley's courtroom; and there will be a jury selection
11 process that occurs in that courtroom this morning as
12 well.

13 Mr. Willingham with the
14 Solicitor's office, I understand you have a case to call.
15 SOLICITOR:

16 Yes, Your Honor. We call the
17 case of the State versus John Curtis McCoy: Indictment
18 2005-GS-42-642; an Indictment, Your Honor, for assault
19 and battery with intent with intent to kill.

20 The second Indictment is: 05-GS-
21 42-643, same Defendant; Indictment for burglary in the
22 first degree.

23 Both Indictments, Your Honor, have
24 been true billed.

25 THE COURT:

1 Pass those up. Thank you.

2 Mr. Allen, the Defendant pleads
3 not guilty to the Indictments; is that correct?

4 DEFENSE COUNSEL:

5 Yes, Your Honor; that's correct.

6 THE COURT:

7 All right; thank you very much.

8 Ladies and gentlemen of the jury
9 panel, we are about to begin the trial of the State
10 versus John Curtis McCoy on two different Indictments as
11 you have heard.

12 Before we can select the jury,
13 there is some questions which I must ask you. And again,
14 we must determine whether or not your answers are
15 truthful, accurate, and complete to the questions I'm
16 going to ask you that pertain just to this case.

17 So at this point in time, I would
18 ask that the Clerk swear the jury.

19 (Whereby: the jury panel was duly
20 sworn by the Clerk.)

21 THE COURT:

22 Now, did any member of the jury
23 panel either fail or refuse to take the oath that was
24 just administered by the Clerk?

25 If so, I would ask that you now

1 please stand.

2 THE COURT:

3 All right; the record should
4 reflect that all members of the perspective jury panel
5 have been sworn.

6 All right. I'm going to go over
7 with you the Indictments in this case.

8 These Indictments have just been
9 handed up to me by the Solicitor's Office.

10 Let me tell you a little bit about
11 an Indictment before I do that.

12 An Indictment is the document
13 which is submitted to this court by the grand jury.

14 It is the charges or the formal
15 charges that have been brought against this Defendant.

16 Uh -- They do not -- cannot be and
17 should not be used by you in any fashion in determining
18 the guilt or the innocence of the Defendant in this case.

19 It's simply necessary that this
20 Court and the Defendant be informed of the exact charges
21 against him so that he might prepare a defense; and so
22 that The Court can charge -- uh -- excuse me, try the
23 correct charges against the Defendant.

24 As I go over these Indictments
25 with you, I'm doing so, so that you will have some

1 knowledge about the allegations against this Defendant;
2 and that you will be able to more fully answer the
3 questions I'm about to ask you concerning this matter.

4 First of all, in Case Number 2005-
5 GS-42-0643; this is for burglary first degree: the
6 Indictment states that: The Defendant, John Curtis McCoy
7 did in Spartanburg County on about September 29 of '04,
8 2004, willfully and intentionally enter the dwelling
9 belonging to Royal Arnelia McCoy located at 3107
10 Culpepper Xing, Duncan, South Carolina without consent
11 and with the intent to commit a crime therein; and that
12 the Defendant did enter the dwelling either in the
13 nighttime and or armed with a deadly weapon or explosive;
14 and or caused physical injury to Daniel Mack Lyles Jr.;
15 and or displays what is or appears to be a knife, pistol,
16 revolver, rifle, shotgun, machine gun or other firearm in
17 violation of Code Section 16-11-311 of the Code of Laws
18 of South Carolina, 1976 as amended.

19 The other Indictment in this case
20 is -- uh -- in Case Number 2005-GS-42-0642; this is for
21 assault and battery with intent to kill.

22 This Indictment reads that: The
23 Defendant, John Curtis McCoy did in Spartanburg County on
24 about September 29 of 2004, with malice aforethought
25 commit an assault and battery upon one Daniel Mack Lyles,

1 Jr., by shooting the victim several times with the intent
2 to kill the said victim; all in violation of Code Section
3 16-3-620 of the Code of Laws of South Carolina, 1976 as
4 amended.

5 Again; these Indictments are not
6 to be used by you in any fashion in determining the guilt
7 or the innocence of this Defendant; but they are the
8 formal charges that have now been brought before this
9 Court; and the charges upon which we're about to try this
10 case.

11 Now I'm going to go over some
12 questions with you.

13 If you have a response to my
14 questions; I'm going to ask that you please stand; and
15 then of course we will then the -- uh -- response in
16 order.

17 The first question is:

18 Has any member of the jury panel
19 ever been related by blood or marriage to either the
20 Defendant John Curtis McCoy or the alleged victims Daniel
21 Mack Lyles, Jr. or Royal Arnelia McCoy?

22 If so please stand.

23 (Whereupon: there was no
24 response.)

25 THE COURT:

1 Has any member of the jury panel
2 ever had a close personal or a social relationship with
3 either the Defendant John Curtis McCoy or the alleged
4 victims -- excuse me -- Daniel Mack Lyles, Jr. and Royal
5 Arnelia McCoy?

6 If so, please stand.

7 (Whereupon: there was no
8 response.)

9 Now the next -- next, I'm going to
10 go over with you a list of potential witnesses in this
11 case.

12 Uh -- there's a -- it's a fairly
13 lengthy list -- uh -- so, if you would, bear with me.

14 Uh -- if any member -- uh -- if
15 any of these persons are in The Court room, I'd ask that
16 they please stand when I call their names and face the
17 jury panel.

18 First of all:

19 Angela Wells?

20 Dorothy Lyles?

21 Theresa Denise Ferguson?

22 (Whereupon: a member of the jury
23 panel raised her hand.)

24 THE COURT:

25 In the back; you may want to turn

1 to see who that person is.

2 Excuse me; in the back.

3 There we go. Thank you.

4 I'm going to get you to stand up

5 in just a minute when I finish the entire list; okay.

6 Thank you, ma'am; that's all

7 right.

8 Todd W. Ruffner; not present.

9 Maryland Fitzpatrick; not present.

10 Ila N. Simmons?

11 And Christine McGomery?

12 Chris Miller?

13 He's in the back of the Court

14 room.

15 Danny Lyles?

16 Sir, if you will stand and face

17 the jury panel; thank you.

18 Royal McCoy?

19 Amy Montgomery; not present.

20 Lisa Montgomery; is not present.

21 Ira Simmons; is not present.

22 Shannon Osterhout; not present.

23 Stephen Burgess; is not present.

24 Brian Wilkins; he's not present.

25 J. W. Guffey; in the back of The

1 Court room.

2 Randy Hollifield; is not present.

3 Kip Teal; in the back of The Court

4 room.

5 Todd Ruffner; not present.

6 Randy Bogan; is not present.

7 Anthony Lachica; not present.

8 Dr. Thomas Ashley; is not present.

9 Brian Teal; is not present.

10 And Freddie Thompson; is not

11 present.

12 SOLICITOR:

13 Your Honor, we'd also ask that you

14 introduce Chief Ryan Cothran.

15 THE COURT:

16 Sir; please stand. If you will

17 introduce him, Mr. Willingham?

18 SOLICITOR:

19 This is Chief Ryan Cothran, the

20 Chief of Police of Duncan.

21 THE COURT:

22 All right.

23 SOLICITOR:

24 Thank Your Honor.

25 THE COURT:

1 Thank you.

2 Now; has any member of the jury
3 panel ever been related by blood or marriage or ever you
4 ever had a close personal or a social relationship with
5 any of the individuals that I just named as potential
6 witnesses in this case?

7 If so, now please stand.

8 (Whereupon: there were the
9 following responses.)

10 THE COURT:

11 All right, sir. I'm -- well let's
12 see -- I'll let everybody get up.

13 Ma'am, I'm going to start with
14 you. Your name and number, please?

15 JUROR:

16 Number 38, Bobby Dill.

17 I don't know if it's the same one
18 or not, because he's not here; but I do know a Brian
19 Wilkins.

20 THE COURT:

21 All right, ma'am.

22 And how did you know him?

23 JUROR:

24 A church member.

25 THE COURT:

1 All right; so he was a church
2 member with you?

3 Now, ma'am, would the fact that
4 you've been in church with that individual affect your
5 ability to be fair and impartial to either the State or
6 the Defense in this case?

7 JUROR:

8 No sir.

9 THE COURT:

10 Thank you, ma'am. You may be
11 seated.

12 Now the gentlemen in the back;
13 your name and number, please, sir.

14 JUROR:

15 Chavis Cohens -- uh -- Juror

16 Number 30.

17 THE COURT:

18 Yes sir.

19 JUROR:

20 I'm related to Daniel Lyles.

21 THE COURT:

22 All right, sir. How are you
23 related to Mr. Lyles?

24 JUROR:

25 Uh -- Second Cousin.

1 THE COURT:

2 Okay. Now would the fact that
3 your related as a second cousin to Mr. Lyles in any way
4 affect your ability to be fair and impartial to either
5 the State or the Defense in this matter?

6 JUROR:

7 No sir.

8 THE COURT:

9 Thank you very much; you may be
10 seated.

11 Yes sir; your name and number
12 please?

13 JUROR:

14 Fred Turner; Number 134. I'm some
15 kin to Angela.

16 THE COURT:

17 All right; the lady over here that
18 is one of the witnesses?

19 Some kin -- are you not for a
20 minute -- you don't know what relationship that is?

21 JUROR:

22 Cousin.

23 THE COURT:

24 Okay, sir. Would that affect your
25 ability to be fair and impartial in this case?

1 JUROR:

2 No.

3 THE COURT:

4 All right; thank you very much,
5 sir.

6 Yes ma'am; your name and number?

7 JUROR:

8 I'm Kathy Holt. I'm Number 166;
9 and I am very certain that I know both Angela and Chief
10 Cothran; they both were in school.

11 THE COURT:

12 Okay. And how -- how long ago --
13 I don't want to reveal your age; but how long ago was
14 that, ma'am?

15 JUROR:

16 Back -- that was in elementary
17 school. It has been many years --

18 THE COURT:

19 I see; okay.

20 Ma'am, would that affect your
21 ability to be fair and impartial to either the State or
22 the Defense in the case?

23 JUROR:

24 I don't think so.

25 THE COURT:

1 Okay. Thank you very much,
2 ma'am.

3 Now, ma'am; your name and number?

4 JUROR:

5 Melissa Ervin; Number 44. I keep
6 Denise Ferguson's son, part time.

7 THE COURT:

8 Okay. Now ma'am, would that
9 affect your ability to be fair and impartial in this
10 matter?

11 JUROR:

12 No.

13 THE COURT:

14 Thank you very much.

15 Yes sir. Your name and number?

16 JUROR:

17 John Edwards; Juror 41 -- uh --

18 Officer Guffey and Police Chief Ryan Cothran.

19 THE COURT:

20 Are you familiar with those
21 people?

22 JUROR:

23 I'm familiar with those people.

24 THE COURT:

25 Would that affect your ability to

1 be fair and impartial in this matter?

2 JUROR:

3 No.

4 THE COURT:

5 Thank you very much.

6 Yes ma'am; your name and number?

7 JUROR:

8 Christi Peeler, 152; and I know
9 Randy Hollifield.

10 THE COURT:

11 All right, ma'am. Would that
12 affect your ability to be fair and impartial?

13 JUROR:

14 No.

15 THE COURT:

16 Thank you very much for your
17 answer.

18 Anyone else?

19 (Whereupon: there was no
20 response.)

21 THE COURT:

22 Now, I'm going to ask that the
23 attorneys who are going to be involved in this case --
24 ask that they please stand -- uh -- identify themselves
25 to the jury panel, and they may also introduce their

1 client as well.

2 First of all, for the State:

3 SOLICITOR:

4 Thank you, Your Honor.

5 My name is Donnie Willingham; and
6 I'm a Deputy Solicitor here in Spartanburg.

7 THE COURT:

8 For the Defense:

9 DEFENSE COUNSEL:

10 I'm Clay Allen. I'm here in
11 Spartanburg and this is John Curtis McCoy.

12 Mr. McCoy; if you would stand up
13 and turn around.

14 THE COURT:

15 Thank you very much.

16 DEFENSE COUNSEL:

17 Thank you.

18 THE COURT:

19 Now; has a member of the jury
20 panel ever been represented by either of the attorneys
21 that are involved in this case; or have those attorneys
22 appeared against you on the other side of some legal
23 matter?

24 If so, please stand.

25 (Whereupon: there was no

1 response.)

2 Has any member of the jury panel
3 -- uh -- ever been -- uh -- ever had a close personal or
4 social relationship; or have you ever been related by
5 blood or marriage to either of the attorneys who are
6 involved in this case?

7 If so, please stand.

8 (Whereupon: there was no
9 response.)

10 Has any member of the jury panel
11 heard anything concerning this case or discussed anything
12 concerning this case either today or before today?

13 If so, please stand.

14 (Whereupon: there was no
15 response.)

16 Has any member of the jury panel
17 formed any opinion concerning this case based on
18 information that you have received thus far?

19 If so, please stand.

20 (Whereupon: there was no
21 response.)

22 Is any member of the jury panel
23 related by blood or marriage or are you a close personal
24 or social friend with any person employed in the seventh
25 judicial circuit solicitor's office; the Spartanburg

1 Department of Public Safety; the Duncan Police
2 Department; the Spartanburg County Sheriff's Office; the
3 Police Department of any town or municipality in
4 Spartanburg or Cherokee Counties; or the State Law
5 Enforcement Division?

6 If so, please stand.

7 (Whereupon: there were the
8 following responses.)

9 THE COURT:

10 All right, ma'am; your name and
11 number?

12 Kathy Holt, 166.

13 My husband is a police officer in
14 the city of Duncan.

15 THE COURT:

16 Okay. Ma'am, would the fact that
17 your husband serves in that capacity affect your ability
18 to be fair and impartial in this case?

19 JUROR:

20 I don't think so.

21 THE COURT:

22 Okay. Thank you very much for
23 the information.

24 I'll get you, now. Yes ma'am;
25 your name and number?

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25

JUROR:

Twelve -- uh -- my husband works
with the Spartanburg Sheriff's Office.

THE COURT:

Okay. ma'am, would that affect
your ability to be fair and impartial in this matter?

JUROR:

No.

THE COURT:

Thank you very much.

Yes ma'am; your name and number?

JUROR:

My name's Erica Dodd. My Number's
39. My brother works at the Greer Police Department.

THE COURT:

All right. Now, ma'am, would that
affect your ability to be fair and impartial in this
matter?

JUROR:

No.

THE COURT:

Thank you very much.

Now, ma'am, your name and number?

JUROR:

1 Linda Wallace, Number 136; my son
2 is a police officer in Spartanburg.

3 THE COURT:

4 All right. That's the City of
5 Spartanburg?

6 JUROR:

7 Yes sir.

8 THE COURT:

9 Now, ma'am, would that in any way
10 affect your ability to be fair and impartial to these
11 parties?

12 JUROR:

13 No, it would not.

14 THE COURT:

15 Thank you, ma'am.

16 Now sir; your name and number?

17 JUROR:

18 Chavis Cohens; Juror Number 30.

19 Uh -- I know a police officer --
20 uh -- Mr. Forrest Kerby (phonetic).

21 THE COURT:

22 Okay, sir. Would that affect your
23 ability to be fair and impartial to these parties?

24 JUROR:

25 No, sir.

1 THE COURT:

2

Thank you very much

3

Yes sir. Your name and number?

4

JUROR:

5

John Edwards, Juror Number 41. My

6

relationship would be you being my stepbrother.

7

(Laughter.)

8

THE COURT:

9

(Laughs.) This is -- this is my

10

stepbrother, John Edwards.

11

JUROR:

12

Sir?

13

THE COURT:

14

Would that affect your ability to

15

be impartial in this case?

16

JUROR:

17

No sir.

18

THE COURT:

19

Thank you, John.

20

Yes ma'am; your name and number?

21

JUROR:

22

Pamela McCoy, Juror Number 172.

23

My husband is related to -- uh -- Judge Rawl.

24

THE COURT:

25

All right.

1 JUROR:

2 They are fourth cousins.

3 THE COURT:

4 Okay. Ma'am, would that affect
5 your ability to be fair and impartial to these parties?

6 JUROR:

7 No.

8 THE COURT:

9 Thank you very much.

10 Yes ma'am; your name and number?

11 JUROR:

12 Juror Number 183, Julie Jeffers.

13 Uh -- some of the Spartanburg
14 County Sheriffs patrol the place where I work in.

15 THE COURT:

16 Okay. Ma'am, would that affect
17 your ability to be fair and impartial in this matter?

18 JUROR:

19 No, sir.

20 THE COURT:

21 Thank you very much.

22 THE COURT:

23 Has any member of the jury panel
24 been -- currently employed or have you formally been
25 employed by any civilian or military law-enforcement

1 agency?

2 If so, please stand.

3 (Whereupon: there were the

4 following responses.)

5 THE COURT:

6 Yes sir. Your name and number?

7 JUROR:

8 Cecil Brown, Juror 21.

9 THE COURT:

10 Yes sir.

11 JUROR:

12 For an eight-month period during

13 2002, I worked at GSP International as a security

14 specialist.

15 THE COURT:

16 Okay, sir. Would that affect your
17 ability to be fair and impartial in this case?

18 JUROR:

19 No sir.

20 THE COURT:

21 Thank you very much.

22 I'll take the gentleman and on
23 that side first.

24 Yes sir; your name and number?

25 JUROR:

1 My name is Jim Rogers, Juror
2 Number 120 -- former police officer and 911 dispatcher --
3 uh -- detention officer and retired. Now I'm a fire
4 Marshall.

5 THE COURT:

6 Okay, sir. You're retired from
7 those positions, or --

8 JUROR:

9 No sir. I'm still active as a
10 fire marshal.

11 THE COURT:

12 Okay, sir. Would that affect your
13 ability to be fair and impartial in this matter?

14 JUROR:

15 No.

16 THE COURT:

17 Thank you, sir.

18 All right; there was a gentleman
19 who stood and you set back down.

20 Do you have an answer for me?

21 JUROR:

22 (Inaudible remark.)

23 THE COURT:

24 I beg your pardon?

25 JUROR:

1 (Inaudible remark.)

2 COURT REPORTER:

3 I'm sorry?

4 THE COURT:

5 You -- you are going to have to
6 speak up; we can't hear you.

7 JUROR:

8 I misunderstood the question.

9 THE COURT:

10 All right. Thank you, sir.

11 Yes sir?

12 JUROR:

13 Lee Fox, Juror 48.

14 THE COURT:

15 Yes sir.

16 JUROR:

17 I worked with Spartan Security;
18 but I'm now retired.

19 THE COURT:

20 Okay, sir. Would that affect your
21 ability to be fair and impartial in this case?

22 JUROR:

23 No sir.

24 THE COURT:

25 Thank you very much.

1 Has any member of the jury panel
2 or any close friend or family member ever been the victim
3 of a burglary; housebreaking; or other breaking and
4 entering offense?

5 If so, please stand.

6 (Whereupon: there were the
7 following responses.)

8 THE COURT:

9 John Edwards, Juror 41. I had my
10 house broken into.

11 THE COURT:

12 And how long ago was that, sir?

13 JUROR:

14 It's been 15 years.

15 THE COURT:

16 Okay. Would that affect your
17 ability to be fair and impartial in this matter?

18 JUROR:

19 No, it would not.

20 THE COURT:

21 All right. Thank you very much.

22 Yes ma'am; your name and number?

23 JUROR:

24 Karyl Gaehring, Number 50.

25 Uh -- my business was broke into

1 him Greer, probably in 1999.

2 THE COURT:

3 Okay. Would that affect your
4 ability to be fair and impartial in this matter?

5 JUROR:

6 No sir.

7 THE COURT:

8 Thank you very much.

9 Yes ma'am; your name and number?

10 JUROR:

11 Bobby Dill, 38. My house was
12 broken into approximately 11 years ago.

13 THE COURT:

14 Okay. Ma'am, would that affect
15 your ability to be fair and impartial to these parties?

16 JUROR:

17 No.

18 THE COURT:

19 Thank you very much.

20 Yes ma'am; your name and number?

21 JUROR:

22 Linda Wallace, 136. My house was
23 broken into twice back in the nineties.

24 THE COURT:

25 Back when, ma'am?

1 JUROR:

2 In the nineties.

3 THE COURT:

4 Okay, ma'am. Would that affect
5 your ability to be fair and impartial in this matter?

6 JUROR:

7 No, it would not.

8 THE COURT:

9 Thank you very much.

10 Yes ma'am; your name and number?

11 JUROR:

12 Bea Dillard, Number 173. Our
13 business was broken into this year.

14 THE COURT:

15 All right. Ma'am, would that
16 affect your ability to be fair and impartial to these
17 parties?

18 JUROR:

19 No.

20 THE COURT:

21 Thank you very much.

22 Anyone else?

23 Has any member of the jury panel
24 or a member of your close -- uh -- family, or a close
25 friend, been the victim of a serious assault.

1 If so, please stand.

2 (Whereupon: there was no
3 response.)

4 THE COURT:

5 Is any member of the jury panel or
6 any member of your family a victim or a witness in a case
7 currently being prosecuted by the seventh judicial
8 circuit solicitor's office?

9 If so, please stand.

10 (Whereupon: there was no
11 response.)

12 THE COURT:

13 Has any member of the jury panel
14 or a member of your family been a victim or a witness in
15 the past in a case that was prosecuted by the seventh
16 judicial circuit solicitor's office?

17 If so, please stand.

18 (Whereupon: there was no
19 response.)

20 THE COURT:

21 Is any member of the jury panel
22 and member of, or a contributor to, citizens against
23 violent crimes; or any other organization that has as its
24 principal purpose the advocacy of victims' rights in
25 crimes?

1 If so, please stand.

2 (Whereupon: there was no

3 response.)

4 THE COURT:

5 Has any member of the jury panel

6 or any member of your family or a close friend of yours

7 lived in Culpepper Landing Apartments in Duncan, South

8 Carolina in September of 2004?

9 If so, please stand.

10 (Whereupon: there was no

11 response.)

12 THE COURT:

13 Does -- have -- do you or any

14 member of your family or any close friend of yours

15 currently live in Culpepper Landing Apartments?

16 If so, please stand.

17 (Whereupon: there was no

18 response.)

19 THE COURT:

20 I'd ask the attorneys to approach

21 for just a second, please.

22 (Whereupon: there was an off the

23 record discussion at the bench.)

24 THE COURT:

25 Is any member of the jury panel

1 aware of any bias or prejudice toward either the State or
2 the Defendant in this case?

3 If so, please stand.

4 (Whereupon: there was no
5 response.)

6 THE COURT:

7 Does any member of the jury panel
8 know at any reason whatsoever why he or she should not
9 serve as a Juror in this case with particular emphasis
10 being placed on your ability to be both fair and
11 impartial to the State and the Defendant?

12 If so, please stand.

13 (Whereupon: there was no
14 response.)

15 THE COURT:

16 Any additional questions from the
17 State?

18 SOLICITOR:

19 No sir, Your Honor.

20 THE COURT:

21 Any additional questions from the
22 Defense?

23 DEFENSE COUNSEL:

24 No, Your Honor.

25 THE COURT:

1 All right.

2 Ladies and gentlemen of the jury,
3 I'm going to declare the panel as now constituted as
4 qualified to serve in this case.

5 I will note for the attorneys that
6 Juror 51 was late in arriving.

7 Uh -- She got here -- or he got
8 here after we began our questioning; and that Juror has
9 been ex -- has been removed from this pool.

10 That Juror will be placed in the
11 pool for the next case -- that's -- Juror 51 is not in
12 the pool.

13 Any objection from the State?

14 SOLICITOR:

15 No sir, Your Honor.

16 THE COURT:

17 Any objection from the Defense?

18 DEFENSE COUNSEL:

19 No, Your honor.

20 THE COURT:

21 All right.

22 Now, ladies and gentlemen, we will
23 begin the jury selection process.

24 When your name is called, I'm
25 going to ask that you come forward.

1 You will need to stand right in
2 the center of the courtroom in front of the tables; turn
3 and face the rear of the courtroom.

4 At that time the attorneys
5 involved in the case will let us know whether they intend
6 to exercise their strikes or not.

7 It's my understanding the strikes
8 will be five for the State and ten for the Defense.

9 Is that correct?

10 DEFENSE COUNSEL:

11 Yes, Your Honor.

12 SOLICITOR:

13 Yes, Your Honor.

14 THE COURT:

15 All right.

16 Madam Clerk; you may begin the
17 jury selection process.

18 BAILIFF:

19 When your name is called, please
20 bring your personal belongings with you.

21 CLERK:

22 Number 7; David Bastarache.

23 (Whereupon: the Juror proceeded
24 to the center of the courtroom and faced the counsel
25 tables.)

1 CLERK:

2 What says the State?

3 SOLICITOR:

4 Please present the Juror.

5 CLERK:

6 What says the Defense?

7 DEFENSE COUNSEL:

8 Please seat Mr. Bastarache.

9 (Whereupon: this Juror was seated
10 for the trial of this case.)

11 CLERK:

12 Number 168, Patrick Thompson.

13 Number 168 Patrick Thompson?

14 THE COURT:

15 We'll need to check on that Juror.

16 CLERK:

17 Number 25, Ronald Campbell.

18 (Whereupon: the Juror proceeded
19 to the center of the courtroom and faced the counsel
20 tables.)

21 CLERK:

22 What says the State?

23 SOLICITOR:

24 Please present the Juror.

25 CLERK:

1 What says the Defense?

2 DEFENSE COUNSEL:

3 Please seat Mr. Campbell.

4 (Whereupon: this Juror was seated
5 for the trial of this case.)

6 CLERK:

7 Number 44, Melissa Erwin.

8 (Whereupon: the Juror proceeded
9 to the center of the courtroom and faced the counsel
10 tables.)

11 CLERK:

12 What says the State?

13 SOLICITOR:

14 Please present the Juror.

15 CLERK:

16 What says the Defense?

17 DEFENSE COUNSEL:

18 Please excuse Ms. Erwin in this
19 case.

20 (Whereupon: this Juror was
21 excused by counsel and not permitted to serve on this
22 case.)

23 CLERK:

24 Number 177, Julie Memmott.

25 (Whereupon: the Juror proceeded

1 to the center of the courtroom and faced the counsel
2 tables.)

3 CLERK:

4 What says the State?

5 SOLICITOR:

6 Please present the Juror.

7 CLERK:

8 What says the Defense?

9 DEFENSE COUNSEL:

10 Please seat Ms. Memmott.

11 (Whereupon: this Juror was seated
12 for the trial of this case.)

13 CLERK:

14 Number 50, Carol Gaehring.

15 (Whereupon: the Juror proceeded
16 to the center of the courtroom and faced the counsel
17 tables.)

18 CLERK:

19 What says the State?

20 SOLICITOR:

21 Please present the Juror.

22 CLERK:

23 What says the Defense?

24 DEFENSE COUNSEL:

25 Please excuse Ms. Gaehring in this

1 case.
2 (Whereupon: this Juror was
3 excused by counsel and not permitted to serve on this
4 case.)

5 CLERK:

6 Number 139, Tuesday Wells.

7 (Whereupon: the Juror proceeded
8 to the center of the courtroom and faced the counsel
9 tables.)

10 CLERK:

11 What says the State?

12 SOLICITOR:

13 Please excuse this Juror.

14 (Whereupon: this Juror was
15 excused by counsel and not permitted to serve on this
16 case.)

17 CLERK:

18 Number 160, Pamela Grubbs.

19 (Whereupon: the Juror proceeded
20 to the center of the courtroom and faced the counsel
21 tables.)

22 CLERK:

23 What says the State?

24 SOLICITOR:

25 Please seat the Juror.

1 CLERK:

2 What says the Defense?

3 DEFENSE COUNSEL:

4 Please seat Ms. Grubbs.

5 (Whereupon: this Juror was seated
6 for the trial of this case.)

7 CLERK:

8 Number 80, Nancy Krick.

9 (Whereupon: the Juror proceeded
10 to the center of the courtroom and faced the counsel
11 tables.)

12 CLERK:

13 What says the State?

14 SOLICITOR:

15 Please seat the Juror.

16 CLERK:

17 What says the Defense?

18 DEFENSE COUNSEL:

19 Please seat Ms. Krick.

20 (Whereupon: this Juror was seated
21 for the trial of this case.)

22 CLERK:

23 Number 125, Albert Smalley.

24 (Whereupon: the Juror proceeded
25 to the center of the courtroom and faced the counsel

1 tables.)

2 CLERK:

3 What says the State?

4 SOLICITOR:

5 Please seat the Juror.

6 CLERK:

7 What says the Defense?

8 DEFENSE COUNSEL:

9 Please seat Mr. Smalley.

10 (Whereupon: this Juror was seated
11 for the trial of this case.)

12 CLERK:

13 Number 23, Candie Burgess.

14 (Whereupon: the Juror proceeded
15 to the center of the courtroom and faced the counsel
16 tables.)

17 CLERK:

18 What says the State?

19 SOLICITOR:

20 Please seat the Juror.

21 CLERK:

22 What says the Defense?

23 DEFENSE COUNSEL:

24 Please seat Ms. Burgess.

25 (Whereupon: this Juror was seated .

1 for the trial of this case.)

2 CLERK:

3 Number 34, Sharon Covington.

4 (Whereupon: the Juror proceeded
5 to the center of the courtroom and faced the counsel
6 tables.)

7 CLERK:

8 What says the State?

9 SOLICITOR:

10 Please seat the Juror.

11 CLERK:

12 What says the Defense?

13 DEFENSE COUNSEL:

14 Please seat Ms. Covington.

15 (Whereupon: this Juror was seated
16 for the trial of this case.)

17 CLERK:

18 Number 79, Adam Kirby.

19 (Whereupon: the Juror proceeded
20 to the center of the courtroom and faced the counsel
21 tables.)

22 CLERK:

23 What says the State?

24 SOLICITOR:

25 Please present the Juror.

1 CLERK:
2 What says the Defense?
3 DEFENSE COUNSEL:
4 Please seat Mr. Kirby.
5 (Whereupon: this Juror was seated
6 for the trial of this case.)
7 CLERK:
8 Number 182, Stephanie Quinn.
9 (Whereupon: the Juror proceeded
10 to the center of the courtroom and faced the counsel
11 tables.)
12 CLERK:
13 What says the State?
14 SOLICITOR:
15 Please present the Juror.
16 DEFENSE COUNSEL:
17 What says the Defense?
18 DEFENSE COUNSEL:
19 Please excuse Ms. Quinn in this
20 case.
21 (Whereupon: this Juror was
22 excused by counsel and not permitted to serve on this
23 case.)
24 CLERK:
25 Number 140, Alex Westall.

1 (Whereupon: the Juror proceeded
2 to the center of the courtroom and faced the counsel
3 tables.)

4 CLERK:

5 What says the State?

6 SOLICITOR:

7 Please present the Juror.

8 CLERK:

9 What says the Defense?

10 DEFENSE COUNSEL:

11 Please seat Mr. Westall.

12 CLERK:

13 Number 84, Shannon Lewis.

14 (Whereupon: the Juror proceeded

15 to the center of the courtroom and faced the counsel
16 tables.)

17 CLERK:

18 What says the State?

19 SOLICITOR:

20 Please present the Juror.

21 CLERK:

22 What says the Defense?

23 DEFENSE COUNSEL:

24 Please seat Ms. Lewis.

25 (Whereupon: this Juror was seated

1 for the trial of this case.)

2 CLERK:

3 Number 127, Noel Swain.

4 (Whereupon: the Juror proceeded
5 to the center of the courtroom and faced the counsel
6 tables.)

7 CLERK:

8 What says the State?

9 SOLICITOR:

10 Please present the Juror.

11 CLERK:

12 What says the Defense?

13 DEFENSE COUNSEL:

14 Please excuse Mr. Swain.

15 (Whereupon: this Juror was
16 excused by counsel and not permitted to serve on this
17 case.)

18 CLERK:

19 Number 184, Nancy Foy.

20 (Whereupon: the Juror proceeded
21 to the center of the courtroom and faced the counsel
22 tables.)

23 CLERK:

24 What says the State?

25 SOLICITOR:

1 Please present the Juror.

2 CLERK:

3 What says the Defense?

4 DEFENSE COUNSEL:

5 Please seat Ms. Foy.

6 (Whereupon: this Juror was seated
7 for the trial of this case.)

8 THE COURT:

9 Okay. We'll select one
10 alternate. The State will have one strike; the Defense
11 will have two.

12 CLERK:

13 Number 161, Theresa Gossett.

14 (Whereupon: the Juror proceeded
15 to the center of the courtroom and faced the counsel
16 tables.)

17 CLERK:

18 What says the State?

19 SOLICITOR:

20 Please present the Juror.

21 CLERK:

22 What says the Defense?

23 DEFENSE COUNSEL:

24 Please excuse Ms. Gossett in this
25 case.

1 (Whereupon: this Juror was
2 excused by counsel and not permitted to serve on this
3 case.)

4 CLERK:

5 Number 39, Erica Dodd.

6 (Whereupon: the Juror proceeded
7 to the center of the courtroom and faced the counsel
8 tables.)

9 CLERK:

10 What says the State?

11 SOLICITOR:

12 Please seat the Juror.

13 CLERK:

14 What says the Defense?

15 DEFENSE COUNSEL:

16 Please seat Ms. Dodd.

17 (Whereupon: this Juror was seated
18 for the trial of this case.)

19 THE COURT:

20 Any objection to the jury
21 selection process from the State?

22 SOLICITOR:

23 No sir, Your Honor.

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25 THE COURT:

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Any objection to the jury
selection process from the Defense?

DEFENSE COUNSEL:

No, Your Honor.

THE COURT:

All right.

All right; to the remaining
members of the jury panel, they are going to need you
across the hall in Judge McCauley's courtroom.

So I'm going to excuse you at this
point in time.

The bailiffs in the back assist
you in going over.

Thank you very much.

(Whereupon: the remaining jury
panel members not selected exited the courtroom.) 10:21am

THE COURT:

All right; ladies and gentlemen on
this panel, we have been going at it for about an hour
here this morning and -- uh -- we're soon to launch into
the trial of case and that will take -- we'll get into
even more testimony and opening statements and things of
that nature; so at this point in time, I am going to let
you take a little break back in the jury room.

1 If anyone needs to go to the
2 restroom or whatever; stretch your legs; smoke a
3 cigarette; we'll let you do that before we get started.

4 So we'll take about a ten --
5 fifteen minute break and then we'll start the trial of
6 the case.

7 I'm going to caution you, though,
8 before you retire -- uh -- please to not begin to discuss
9 any aspect of this case among yourselves or with anyone
10 else.

11 As I will instruct you throughout
12 the trial and at all of our breaks, it is very unfair for
13 you to begin discussions concerning any case until you've
14 heard all the evidence and you've heard -- been charged
15 with the law on the case -- uh -- because invariably, if
16 you begin conversations concerning matters involved in
17 this case, you may begin to formulate opinions which
18 could later taint your final decision.

19 So again, please don't begin any
20 discussions concerning this matter.

21 I know you know very little about
22 it at this point in time, but don't discuss it until such
23 time as I've instructed you to do.

24 You're excused at this point in
25 time to return to the jury room.

1 The Bailiff will just show you
2 where.

3 (Whereupon: the jury empanelled in
4 the case withdrew from the courtroom and was no longer
5 present during the following proceedings.) Tuesday, June
6 14, 2005 10:24:35 AM

7 THE COURT:

8 Mr. Allen, you indicated you
9 wanted to review something concerning the lineup before
10 we begin the trial?

11 DEFENSE COUNSEL:

12 I did, Your Honor.

13 THE COURT:

14 Have -- have you had an
15 opportunity to review those documents?

16 DEFENSE COUNSEL:

17 Yes, Your Honor.

18 THE COURT:

19 Is there any motion as a result of
20 your review?

21 DEFENSE COUNSEL:

22 No, Your Honor.

23 THE COURT:

24 Okay; so we are ready to begin
25 trial of the case? Is that a correct statement --

1 DEFENSE COUNSEL:

2 Yes sir.

3 THE COURT:

4 -- from the Defense?

5 State ready?

6 SOLICITOR:

7 Yes, sir, Your Honor.

8 THE COURT:

9 All right. We'll take about a
10 ten minute break. I'm going to stay on the bench; so
11 we'll start back in just about ten minutes.

12 (Whereupon: The Court was
13 recessed.) 10:25:12 AM

14 (Whereupon: The Court was called
15 to order by the Bailiff and all pertinent parties and
16 their counsel were back and present in the courtroom.)

17 THE COURT:

18 Ready? All right, sir; bring the
19 jury back.

20 (Whereupon: the jury empanelled
21 in the case returned to the courtroom and was present
22 during the following proceedings.) 6/14/05 10:42:54 AM

23 THE COURT:

24 All right; the record should
25 reflect that all the Jurors have returned to The Court

1 room.

2 Ladies and gentlemen of the jury,
3 you've been selected to serve as Jurors on this case and
4 at this point in time it is necessary that you take an
5 oath concerning your service as Jurors as it pertains to
6 this specific case.

7 In taking the oath, you should pay
8 close attention to what the oath states because it sets
9 forth your duties as Jurors in this matter.

10 Madam Clerk, you may now swear the
11 jury.

12 (Whereupon: the Jurors selected
13 in this case were properly and duly sworn by the Clerk.)

14 THE COURT:

15 Now ladies and gentlemen of the
16 jury -- uh -- I am going to go over some matters with
17 you, preliminarily; so that you will have some idea about
18 what this trial is about and your duties and
19 responsibilities as Jurors as relates to this particular
20 trial.

21 I will tell you that what I'm
22 about to tell you now is not a charge on the law that's
23 to be applied to this case.

24 Our rules require that I charge
25 you concerning the law once all of the evidence has been

1 presented to you.

2 And I will have a concerning the
3 law that's to be applied to the facts in the case later
4 on in the trial.

5 As I told you when we went through
6 the jury selection process, there are two different
7 Indictments that have been submitted to this Court for
8 trial today.

9 I read those Indictments to you.

10 I'm going to do that again to
11 refresh your memory concerning the charges that are to be
12 tried here today.

13 Again, I will tell you, an
14 Indictment simply is the formal charge that brings the
15 case before this Court.

16 It cannot be used against you in
17 any fashion in determine the guilt or the innocence of
18 the Defendant.

19 It's simply necessary that the
20 documents be filed so that the Court is aware of the
21 charges and the Defendant is aware of the charges against
22 him so that he might prepare his defense.

23 In this case, the first case is
24 2005-GS-42-643.

25 That case is for burglary, first

1 degree.

2 Again, the Indictment states:

3 The Defendant John Curtis McCoy
4 did in Spartanburg County on or about September 29, of
5 2004, willfully and intentionally enter the dwelling
6 belonging to Royal Arnelia McCoy located at 3107
7 Culpepper Landing, Duncan, South Carolina, without
8 consent and with the intent to commit a crime therein.

9 And that the Defendant did enter
10 the dwelling either in the nighttime; and/or armed with a
11 deadly weapon or explosive; and/or caused physical injury
12 to Daniel Mack Lyles, Jr.; and/or displays what is or
13 appears to be a knife, pistol, revolver, rifle, shotgun,
14 machine gun, or other firearm, in violation of Section
15 16-11-311 of the Code of Laws of South Carolina, 1976, as
16 amended.

17 That's the first Indictment that
18 we're going to be trying.

19 The second Indictment before this
20 Court today is for assault and battery with intent to
21 kill.

22 This Indictment is Case Number
23 2005-GS-42-642.

24 This Indictment states:

25 That the Defendant John Curtis

1 McCoy, did in Spartanburg County, on or about September
2 29, of 2004 with malice aforethought commit an assault
3 and battery upon one Daniel Mack Lyles, Jr., by shooting
4 the victim several times with the intent to kill the said
5 victim; all in violation of Code Section 16-03-620 of the
6 Code of Laws of South Carolina, 1976, as amended.

7 These are the Indictments before
8 The Court today; and these are the Indictments which we
9 are about to try.

10 Now before we began the trial, I
11 want to tell you that this trial will probably be
12 different from other experiences that you may have had
13 concerning the court system.

14 Most of you have never served on
15 a jury at this level; and we have determined that from
16 our questioning already of you.

17 And perhaps your only view or the
18 way you have seen the courtroom is through TV dramas,
19 movies, books; things of that nature.

20 And while those cases are full of
21 riveting facts and high drama and good actors and things
22 of that nature; those particular experiences are designed
23 for your entertainment.

24 And I can assure you that this
25 trial is not designed for your entertainment.

1 This trial, however, represents a
2 search for the truth.

3 It's an effort to see that justice
4 is done between the parties that are before The Court
5 today.

6 It's a fundamental part of our
7 democracy -- uh -- that we conduct this search for the
8 truth in the matter in which we conduct it.

9 Uh -- I can assure you that the
10 search for the truth is a slow and deliberate process;
11 and quite often the facts and actions in The Court are
12 repetitive.

13 It's probably the opposite of what
14 you've seen on TV or in movies.

15 I can assure you this trial will
16 not fit into neat time segments. And it will not end an
17 hour from now or two hours from now. It will end once
18 all of the facts have been presented to you by the
19 parties that they desire to bring before you and then I
20 have charge you with the law; and you will then -- will
21 deliberate concerning those matters.

22 This program is a place of honor.

23 It's its dedicated by our
24 government for the protection and the preservation of
25 citizens' rights through what many people have called the

1 greatest justice system devised on this planet thus far.
2 Uh -- It's a system that allows
3 you as ordinary individuals to come out of your ordinary
4 lives -- your daily lives -- and come into the court and
5 directly participate in the justice process by
6 determining the important questions of fact that are
7 before this court today.

8 I want to thank you very much for
9 taking the time and your willingness to serve this
10 important function for our government and for the State
11 in this case.

12 Now the attorneys that are going
13 to appear before you today are attorneys who are here to
14 represent their clients and I'm sure they will represent
15 the best case possible for their clients in this
16 courtroom.

17 But first and foremost those
18 attorneys are also officers of this court and they are
19 sworn in to assist you in your search for the truth in
20 this courtroom.

21 You can expect from them that they
22 act in a professional, competent, and ethical manner in
23 representing their clients before this Court.

24 And I will remind you too, that
25 you have now taken an oath to act as Jurors in this

1 court.

2 You, too, are expected to act in
3 professional, reasonable and ethical manner in your
4 dealings with this court.

5 Again, I want to thank you for
6 accepting the important responsibility of jury service,
7 and for the contribution that you are making today to our
8 justice system.

9 Now what I'm again -- am telling
10 you now is not intended as instructions concerning the
11 law; but it's to tell you a little bit about the
12 procedure and the responsibilities of various people in
13 the courtroom.

14 As I have told you, there is two
15 Indictments that we are to try.

16 The Indictment is simply the
17 charge that brings the case before this Court.

18 And the Defendant in this case has
19 pled not guilty to both of those Indictments.

20 Therefore, because of that not
21 guilty plea, under the -- our law and Constitution, the
22 State now has the burden of proving each and every
23 element of the Indictments beyond a reasonable doubt.

24 It will be your duty, ladies and
25 gentlemen of the jury, at the end of this case to decide

1 whether the State has met that high burden in determining
2 the facts of this case.

3 Your sole purpose of -- as Jurors
4 is to find the facts in this case.

5 You are the sole judges of the
6 facts in this case.

7 If at any time during this trial I
8 make any comment or you believe that I have any opinion
9 concerning how you should determine the facts in this
10 case, I will tell you now to disregard that notion.

11 Our law and our constitution does
12 not allow me to have an opinion concerning how you
13 determine the facts in this case. And I can assure you,
14 I have none.

15 It's especially important that you
16 perform your duty of determining the facts in this case
17 diligently and conscientiously. Because under our system
18 of justice, ordinarily there are -- there is no means of
19 correcting an erroneous determination of facts by a jury.

20 Now; the same law that makes you
21 the sole judges of the facts in this case makes me the
22 sole judge of the law in this case.

23 It is my responsibility to preside
24 over this trial and see that a fair and impartial trial
25 is conducted.

1 And at the close of the case, it
2 will be my responsibility to charge you concerning what
3 law you are to apply to the facts as you find them to be.

4 Just as I cannot disagree with you
5 on your determination of the facts, you may not disagree
6 with me concerning what the -- or what the law is, or
7 what you believe the law ought to be.

8 You must take the law as I give it
9 to you at the close of the case; apply it to the facts as
10 you find them to be; and thereby, you will reach a just
11 and a true verdict in this matter.

12 Now; until I advise you to begin
13 your deliberations in this case, you must not discuss
14 this case with anyone, including your fellow Jurors,
15 friends, or family members.

16 After I have submitted the case to
17 you for your deliberation, you must discuss it only in
18 the jury room with your fellow Jurors.

19 The attorneys in this case are
20 instructed, and the parties know, that they should not
21 try to communicate with you in any fashion whatsoever
22 during the trial of this case.

23 And should anyone attempt to
24 communicate with you concerning any matter involved in
25 this trial, please inform The Court and I will take the

1 appropriate action.

2 Now, during this trial, you should
3 not read; listen to; or hear any news report or media
4 report that may be -- uh -- placed in the media about
5 this case; because invariably, matters are discussed in
6 those reports which do not involve admissible evidence.

7 Your oath is to take only the
8 evidence admitted from this witness stand -- uh -- and
9 the facts as you find them to be, along with the exhibits
10 that are introduced through those witnesses; and thereby,
11 determine the facts in this case.

12 For you to use anything you may
13 hear as outside of this courtroom in making that
14 determination would be against the oath that you have
15 taken as Jurors in this case.

16 It is your solemn responsibility .
17 at the close of this trial to determine the guilt or the
18 innocence of the Defendant. And your verdict must be
19 based solely upon the evidence as presented in this case
20 and the law as I instruct you at the close of the trial.

21 In a few minutes, I'm going to
22 allow the attorneys to make an opening statement to you
23 concerning their case.

24 I will tell you now, as I will
25 tell you at the close of the trial, statements made by

1 attorneys in this case are not evidence and should not be
2 used by you in determining the guilt or the innocence of
3 the Defendant.

4 They do, however, serve to let you
5 know the position that they expect to prove during the
6 trial of the case at the beginning of the case and to sum
7 up the evidence as they believe you should consider it in
8 reaching your verdict.

9 But again, attorney's statements
10 are not evidence. The only evidence that's introduced in
11 this trial will come from witnesses who are sworn and
12 appear on this witness stand and testify before you; and
13 any evidence that is admitted in this court through that
14 testimony.

15 Now; during this trial, it will be
16 necessary for me to rule on questions of the
17 admissibility of evidence. And again, in doing so, you
18 should not take from my ruling that I have any opinion
19 whatsoever as to how you should determine the facts of
20 this case.

21 It's simply my responsibility to
22 see to it that only proper and admissible evidence is
23 presented you in your consideration of the case.

24 Those discussions concerning the
25 admissibility of evidence sometimes require that we

1 discuss matters that you should not consider in reaching
2 your verdict; so at those times I will ask you to leave
3 the courtroom while I have those discussions with the
4 attorneys.

5 Again, that's not an effort on my
6 part to influence your decision on the facts. However,
7 again, it's my responsibility to see that only properly
8 admissible evidence is used in the trial of this case;
9 and that will require sometimes you being excused from
10 the courtroom while we discuss those matters.

11 Now in determining what the true
12 facts are in any case, it will be your responsibility as
13 Jurors to decide whether or not the testimony that you
14 hear from this witness -- these witnesses -- is
15 believable.

16 It will be my responsibility to
17 rule as a matter of law as to whether it's admissible or
18 not. But as to the believability of the evidence once
19 it's been admitted that is your decision as jurors alone.

20 In deciding whether to believe a
21 witness, you have the right to consider the interest the
22 witness may have in the outcome of the case; whether or
23 not the witness is biased or prejudiced in some fashion;
24 whether or not the witness had the actual ability to see
25 or know the facts about which that witness testifies.

1 And perhaps most importantly of
2 all, we place the witness stand here in front of the jury
3 box, so that you can observe the demeanor and the manner
4 in which people testify -- those witnesses testify;
5 because that's also an important consideration in
6 determining the believability of the witnesses that will
7 testify before you in this case.

8 Because of that, I do not allow
9 Jurors to take notes during the trial.

10 It's my belief that if you are
11 looking down and writing down what someone's saying,
12 you're not observing them and watching them as they
13 testify.

14 And it's my belief that that's an
15 important factor in determining the believability of the
16 witnesses; plus this may be a longer trial; you may tire
17 in taking notes and not write everything down that
18 someone's saying.

19 You may only take partial notes;
20 and those notes might be used to influence other Jurors.

21 I believe that the collective
22 memory of all 12 of you, once you begin your
23 deliberations, about what was said and how it was said by
24 the witnesses is this the most important factor that you
25 can use in determining the believability of the witnesses

1 and in ultimately determining what the true facts are in
2 this case.

3 You have the right to consider any
4 relevant factor that in the record that will help you
5 evaluate the testimony of the witnesses.

6 So you see it's very important
7 that you play close attention to the witnesses as they
8 testify; and the attorneys as they try their case.

9 Please do not let your thoughts
10 wander; but give -- give strict attention to what's going
11 on in the courtroom.

12 I can assure you I'll try to take
13 as many breaks as I find that is necessary for you to
14 refresh yourself and be able to pay attention closely to
15 what goes on in the courtroom.

16 If you do that, you will be a
17 position at the close of this case to determine what the
18 true facts in this case and again live up to your oath to
19 render a just and true verdict in this -- this -- uh --
20 case.

21 Now; at the close of the trial, I
22 normally appoint the foreperson at that time of the jury.

23 And I will talk about the duties
24 of the foreperson when I charge you on the law.

25 So during the trial, I will be

1 considering who I will want to serve as the foreperson of
2 the jury.

3 However, I can assure you, that in
4 no way should affect the verdict, since the foreperson
5 has no great say in the ultimate outcome of this case
6 than any other person on the jury.

7 Now; ladies and gentlemen, as I
8 told you, the Defendant has pled not guilty to both of
9 these Indictments.

10 That places the burden on the
11 State to prove its case on both Indictments -- uh --
12 beyond a reasonable doubt.

13 Therefore, we say that the State
14 now has the burden of proof.

15 In a criminal case, the Defense
16 has no burden because the law does not require any
17 Defendant to prove himself innocent of any charges.

18 Therefore, the State has the
19 burden and we allow the State to go first in making its
20 arguments and in presenting its evidence.

21 Now; in order to be sure I've
22 protected everyone's rights:

23 Mr. Willingham, for the State, do
24 you have any objection to my opening statements?

25 SOLICITOR:

1 No sir, Your Honor.

2 THE COURT:

3 Mr. Allen, any objection from the
4 Defense?

5 DEFENSE COUNSEL:

6 No, Your Honor.

7 THE COURT:

8 All right; at this time, I will
9 allow Mr. Willingham for the State to make the State's
10 opening statement.

11 Mr. Willingham?

12 SOLICITOR:

13 If it please The Court?

14 THE COURT:

15 Yes sir.

16 SOLICITOR:

17 Ladies and gentlemen, I want to
18 take you back to September 29th of last year.

19 Daniel Lyles, seated third chair
20 over, called a friend of his, Royal McCoy, seated next to
21 him.

22 He called her -- What are you
23 doing -- can I come over?

24 He went over to his friend's house
25 or apartment at Culpepper Crossing over in Duncan.

1 He went in -- met her -- started
2 talking -- started watching TV.

3 Some time passed -- there was a
4 knock on the door (demonstrates by knocking on railing).

5 Ms. McCoy -- it's her apartment --
6 gets up -- looks out the peep holes and doesn't see
7 anybody.

8 Another knock (demonstrates by
9 knocking on railing) -- still nothing.

10 The next knock, she hears a voice
11 that says: Can I come in -- or: Let me in.

12 It's the voice of John McCoy.

13 John McCoy is Royal McCoy's
14 estranged husband. They are separated.

15 This happens in September --
16 they're separated since March.

17 He wants in.

18 She says: No, you're not coming
19 in.

20 He says: Let me in.

21 No.

22 Let me in. I got to go to the
23 restroom.

24 No, you're not coming in. It's
25 1:30 in the morning. You're not coming in.

1 Over and over, she told him no.

2 The next knock that she heard was
3 the front door of being kicked in so hard that it left a
4 mark in the drywall where the doorknob hit.

5 At that point, she's running down
6 the hall to gather up her children so she can hide in her
7 back bedroom where she thinks that she keep her baby
8 safe.

9 One person who wasn't safe was Mr.
10 Lyles -- sitting in there in the living room -- because
11 after John McCoy comes through that front door, he's got
12 a gun.

13 He takes that gun and shoots Mr.
14 Lyles.

15 Mr. Lyles is able to get up and
16 try to run away -- try to get away from the man with the
17 gun -- try to get away from that man (pointing to the
18 Defendant).

19 He runs out of the apartment. He
20 chases him; shooting at him as he runs until finally Mr.
21 Lyles falls in the parking lot from his injuries and that
22 man stands over him and shoot him.

23 After he is done shooting Mr.
24 Lyles over and over and over again; he turns; goes back
25 to his white Jeep Cherokee out in the parking lot; gets

1 in; and drives away.

2 He drives back to his apartment at
3 Whispering Pines.

4 Meantime, Ms. McCoy has called the
5 police; has called 911:

6 I'm in the back bedroom with my
7 babies and -- tells them what's going on.

8 Police come out there; and they
9 find Mr. Lyles out in the parking lot in his car bleeding
10 from his arms and from his chest.

11 EMS comes -- ambulance takes him
12 to the hospital; and when all is said and done, Mr. Lyles
13 has nine bullet holes in him.

14 I'm not saying nine shots; but
15 nine bullet holes in him.

16 He's taken to the hospital to
17 undergo surgery; and thankfully, he's here today.

18 As I told you, my name's Donnie
19 Willingham; and I'm the prosecutor here, in Spartanburg.

20 It's my job to prove those facts
21 to you; and the way I'll do that is: by calling witnesses
22 right here to this witness stand.

23 You're going to hear from Ms.
24 McCoy about what happened.

25 You're gone hear from Daniel Lyles

1 about what happened.

2 You'll hear from the police

3 officers that responded to the scene; what they did; how

4 they investigated this case; what evidence they

5 collected; and what they found.

6 This, ladies and gentlemen, may

7 not be an incredibly long case.

8 We may finish it today; we may

9 finish it in the morning.

10 But it's a very important case;

11 not only to the State of South Carolina, but particularly

12 to Ms. McCoy and Mr. Lyles; and to that man (pointing to

13 the Defendant).

14 And for that reason, I want to

15 thank you in advance for the attention that I know that

16 you will give to these witnesses.

17 When all the evidence is over --

18 is presented -- I will have a chance to come back and

19 told to you one more time. And we will talk about the

20 law that the judge is going to give at the end of the

21 case -- that he's going to give to you.

22 He's going to tell you about

23 burglary; he's going to tell you about assault and

24 battery with intent to kill.

25 I want to tell you help a little

1 bit about it. It's not a substitute for what he's gone
2 tell you; but just so you kind of know what to look for
3 as we go through this trial together.

4 Burglary -- a lot of people think
5 burglary is stealing; it's not -- it's not -- that's
6 larceny. Stealing is larceny.

7 Burglary is a separate offense.
8 It's the entering of someone else's home without their
9 permission intending to commit a crime inside.

10 In this case, the crime committed
11 inside was the assault and battery with intent to kill.

12 It happened at nighttime; that
13 makes it burglary, first degree.

14 It caused great physical injury to
15 Mr. Lyles. That makes it burglary in the first degree.

16 He was armed with a firearm. That
17 makes it burglary, first degree.

18 And he displayed the firearm.

19 Those are all four things that
20 make it burglary, first degree.

21 Assault and battery with intent to
22 kill is basically what it says: You assault someone
23 prepared and you batter them with -- in this case, a
24 bullet -- with malice -- with malice aforethought -- an
25 ill will -- a hatred.

25 Uh -- Jury service we know is an

1 imposition. But that, along with military service, is
2 probably the greatest two services any citizen can give
3 to his or her country or his or her community; and we
4 thank you for your willingness and ability to do.

5 In this case, you're going to hear
6 a great deal of discussion -- you heard some of it
7 already -- concerning the presumption of innocence and
8 the burden of proof.

9 Because; even though the State's
10 brought charges against Mr. McCoy; as he sits there at
11 that table beside me now charged with these offenses, I
12 want you to think there sits an innocent man.

13 Because: that is what we -- we're
14 talking about with the presumption of innocence.

15 Another way to look at this is --
16 it's not going to happen, by the way -- but as if at the
17 conclusion of my remarks, you're asked to decide this
18 case; you'd only have one -- actually two -- verdicts to
19 return: verdicts of not guilty as to each charge.

20 Why? Because you haven't heard
21 any evidence.

22 As the judge said, what the
23 lawyers say is not evidence. And nothing has been
24 presented in the way of testimony or evidence to change
25 your mind that there sits an innocent man.

1 That's the way I want you to think
2 of Mr. McCoy as we go through this process.

3 He sits there, innocent and he
4 sits there not required to prove to you anything.

5 Why? Because he's presumed
6 innocent.

7 Now; the State's brought these two
8 charges; and they must prove them beyond a reasonable
9 doubt.

10 They must prove each and every
11 element or each and every fact that's required to prove
12 these charges. And they must prove them beyond a
13 reasonable doubt.

14 The State will attempt to prove
15 that somewhere in the vicinity of 1:30 to 2 o'clock, Mr.
16 McCoy went over to that apartment at 3107 Culpepper
17 Crossing; that he had entered; and that he entered with
18 the intent to commit a crime..

19 And they will also attempt to
20 prove that he shot Mr. Lyles who was there in the
21 apartment. And furthermore, they've got to prove or
22 attempt to prove that he did so with the intent to kill
23 him

24 Now; I'm going to ask you to
25 listen carefully and closely to all the testimony and all

1 the evidence that's presented; not only to the response
2 to the questions -- uh -- that the witnesses give to Mr.
3 Willingham; but also the response that they give to me as
4 well.

5 The State's test -- the State's
6 evidence will primarily consist of the witnesses'
7 testimony concerning what Mr. McCoy's involvement, if
8 any, was in these offenses.

9 There will be very little in the
10 way of scientific evidence or forensic evidence that will
11 be presented to prove that Mr. McCoy did anything wrong
12 or anything criminal in this case.

13 And although we are not required
14 to prove anything in this case, as His Honor has already
15 said, we will attempt to show you that Mr. McCoy is,
16 indeed, innocent.

17 Now keep in mind that we're not
18 required to prove that; again; because he's presumed
19 innocent; and because the State has the full burden in
20 this case; the burden to prove its charges that they
21 brought against Mr. McCoy beyond reasonable doubt.

22 We will at least try to show you
23 some reasonable doubt that Mr. McCoy did not commit these
24 offenses.

25 If you're not satisfied that he is

1 innocent, you don't have to be; because at the conclusion
2 of this case, I will be asking you to find him not guilty
3 because of reasonable doubt in this case.

4 Again, we thank you for your
5 careful attention in this very important matter for Mr.
6 McCoy and for the State of South Carolina.

7 THE COURT:

8 Mr. Willingham, the State may call
9 its first witness.

10 SOLICITOR:

11 Thank Your Honor. We call Royal
12 McCoy.

13 ROYAL ARNELIA MCCOY, HAVING BEEN
14 FIRST DULY SWORN, WAS EXAMINED AND GAVE EVIDENCE AS
15 FOLLOWS:

16 DIRECT EXAMINATION BY MR. WILLINGHAM:

17 Q. Tell the jury who you are.

18 A. Royal Arnelia McCoy.

19 Q. I'll tell you what. You barely talked -- softly. I
20 knew the answer, so I knew what you said. But I'm
21 not sure everybody else heard you; so I need you to
22 speak out loud. Speak to me and those people behind
23 me; and if I can hear you, I think all the Jurors
24 will be able to hear you; okay.

25 A. My name is Royal Arnelia McCoy.

1 Q. All right. Ms. McCoy, where do you live?

2 A. 3107 Culpepper Crossing, in Duncan.

3 Q. Who do you live with?

4 A. Myself and my two children.

5 Q. How old are your children?

6 A. Eight and ten.

7 Q. Boys and girls, or --

8 A. Two boys.

9 Q. Two boys; and they are eight and ten. How do you
10 know John McCoy?

11 A. I've been married to him December will be ten years.

12 Q. Okay. Y'all got married in --

13 COURT REPORTER: I'm sorry, ma'am; I didn't get your last
14 answer.

15 A. I've been married ten years in December. I think we
16 married in December of '95.

17 Q. How do you know Mr. Lyles?

18 A. I've known him since January '95 from employment I
19 had at -- filing taxes.

20 Q. September of last year -- September 29th of last
21 year, what was your marriage like? What was your
22 status?

23 A. We were separated. He had his own apartment and I
24 had my own place.

25 Q. Okay. And you lived at this Culpepper Crossing?

1 A. I lived at Culpepper and he lived in Whispering
2 Pines.

3 Q. Speak up, I'm sorry.

4 A. I lived in Culpepper and he lived in Whispering
5 Pines.

6 Q. Okay. How long had y'all been separated?

7 A. Since March of 2004.

8 THE COURT:

9 Is she hitting the microphone?

10 SOLICITOR:

11 No sir. I think it's because
12 there's a hole in the filter that's causing it.

13 I'm not sure that's going to be
14 any better.

15 Q. All right. Tell me again how long y'all been
16 separated?

17 A. Since March of 2004.

18 THE COURT:

19 Just do the best we can.

20 SOLICITOR:

21 Thank you, Judge. I'm sorry.

22 Q. Since March of 2004?

23 A. Yes.

24 Q. All right. Now what was your relationship with Mr.
25 Lyles?

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1 A. I may see him off and on throughout the years. It
2 wasn't nothing constant.

3 Q. Were y'all boyfriend and girlfriend?

4 A. No.

5 Q. Just friends?

6 A. Just friends.

7 Q. Okay. On September 29th, of 2004, who was home with
8 you that night?

9 A. It was me and my two children. I worked at night the
10 28th. And I gave my son a surprise party at my
11 husband's grandmother's house when I got off about
12 eight. We didn't leave her house till about 12. He
13 actually turned 8 on September 28th. And we got
14 home about 12:00 or 12:30 -- home about 12:30 and
15 they bathed and everything and got in the bed.

16 And I spoke to Daniel on my way
17 home. And I told him I was tired; but he was like:
18 Well, can I come see you?

19 I said: That's fine. I'll
20 probably fall asleep anyway because I'm tired.

21 So around that time it was just me
22 and the children home; and by the time that Danny
23 got to my home, the children were already in the
24 bed, asleep.

25 Q. Okay. And when you say Danny, you're talking about

1 Daniel Lyles?

2 A. Daniel Lyles.

3 Q. Okay. Whenever Danny got there, what did y'all do?

4 A. I let him in. And -- uh -- he sat on the loveseat
5 which is right in front of the door. I sat on the
6 couch which is against the wall. And we started
7 watching -- we talked a little bit and we started
8 watching TV and I fell asleep.

9 Q. Okay.

10 A. And I woke up minutes before my husband -- well, John
11 started knocking.

12 Q. All right. Tell the jury about that. Tell the jury
13 about the knock you heard on the door?

14 A. The first knock; I didn't see anyone. They didn't
15 say anything.

16 Q. Did you look out the window? Did you look out of
17 the peephole? How did you -- how did you look the
18 time you didn't see anything?

19 A. I looked out the people and didn't see anyone or
20 hear anything. And I got back on the couch.

21 Q. Okay. Then what?

22 A. And we started talking a little more; then -- uh --
23 he was talking about how tired I was. I did go to
24 sleep. Then I heard another knock.

25 So the second knock, I still

TESTIMONY OF ROYAL ARNELIA MCCOY

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1 looked out the peephole. There was nobody; nothing
2 said.

3 I then walked down the hall and
4 got my cell phone because I don't have a house
5 phone. I have a cell phone.

6 Q. Okay.

7 A. And then, at that time, because I had it in the back
8 room on a charger. At that time, I did look out the
9 blind when I came back up the hall.

10 His jeep was parked outside.

11 Q. Whose jeep?

12 A. John's.

13 Q. You said his jeep; we need to know whose jeep you're
14 talking about?

15 A. John's; John McCoy.

16 Q. All right. John McCoy. What kind of jeep does he
17 have?

18 A. A white Jeep Cherokee.

19 Q. Okay. What did you do then?

20 A. I then went back to the door and looked out the
21 peephole. I still didn't see him. By the time I
22 went back towards the -- uh -- couch to sit down;
23 there was a third knock. And that's when he was --
24 he said that he needed to use a restroom -- to let
25 him in, he needed to use a restroom.

1 Q. Did you recognize his voice at that time?

2 A. Yes.

3 Q. I think you said, y'all had been married for ten
4 years.

5 A. Ten years.

6 Q. All right. When he said -- what did he say? What
7 did he say?

8 A. He just asked me to let him in so he could use the
9 restroom. I told him: No; he passed a lot of
10 restrooms between Duncan and Spartanburg; and there
11 was a lot of restrooms, so I wasn't going to open
12 the door.

13 And he say: I'm just going to use
14 the restroom and leave. Just let me in.

15 And I told him, no.

16 And being that he knows how things
17 are at the house at that time of night that I'm
18 either in the bed or if me and the children are all
19 up that time of night, we'd be in the living room
20 with a light on.

21 He knew that either we were up or
22 I had to have company for me to tell him no; I hade
23 to have company.

24 So I told him: I'm not letting you
25 in. I have company, anyway.

1 Q. So you told him you had company?

2 A. Yes.

3 Q. Did he go away?

4 A. No.

5 Q. What happened?

6 A. After I made that statement, I started walking
7 halfway down the hallway checking on my children
8 with my phone in my hand; and midway down, is when I
9 heard the door open -- when he -- he kicked in the
10 door -- forced in the door.

11 Q. Okay. When that happened, what did you do?

12 A. I just took like a quick glance back; then I ran
13 down the hall and got the children out of their beds
14 and put them in a corner behind me.

15 And that's where I stayed until
16 the police escorted us out.

17 Q. Okay. I want you to describe your apartment for
18 this jury. You -- you -- you described the front
19 door -- it obviously comes into your living room.

20 A. Yes; and it is an open area. The living room and
21 dining area is combined.

22 Q. Uh-huh.

23 A. To the right is the living area -- and to the right
24 is the dining area. And it's just a long extended
25 hall where rooms just branch off.

1 The first room's a bedroom; and
2 then there's the kitchen on the left. Then, as you
3 go on down the hall, you bear to the right -- is the
4 washer and dryer; and the bathroom and my boys
5 bedroom on the left side of that -- of that left --
6 of that little hall; but straight down the hall is
7 my bedroom?

8 Q. Okay. Whenever the door came open; you said you
9 glanced back?

10 A. Yeah; I was like in the kitchen area -- me -- right
11 between the kitchen --

12 Q. What did you see?

13 A. Uh -- He had came into the home, then. He was
14 facing --

15 Q. When you say he, you need to tell me again?

16 A. John McCoy had came into the home. He was facing --

17 Q. Okay. You recognized him?

18 A. Yes.

19 Q. Okay.

20 A. He came --

21 Q. Do you know what he was wearing?

22 A. A red shirt and blue jeans.

23 Q. Okay. And what did you do then?

24 A. I ran down the hall and got the children out of
25 their beds and put them in a corner behind me.

1 Q. You put them where?

2 A. In a corner behind me.

3 Q. Okay. And whose bedroom did you put them in?

4 A. The boy's bedroom.

5 Q. So you went to their bedroom and holed up in the
6 room?

7 A. Yes.

8 Q. Why'd you do that?

9 A. Because that's where I needed to be with them and
10 they needed to be -- I was trying to protect them.

11 If anything -- I didn't know if he
12 would come down the hall or not.

13 I had to have them behind me in a
14 corner; and there was no lights on; so he had to
15 basically come into the room to see us.

16 Q. Did he?

17 A. No.

18 Q. Okay. When you were in that the back bedroom,
19 where had you left Mr. Lyles?

20 A. In my living room.

21 Q. Okay. On that seat -- sitting on the loveseat
22 still?

23 Q. Uh -- actually, he was already standing up. On the
24 third knock, he began to stand up himself.

25 Q. Right. What is the next thing you know happened?

- 1 What is the next thing you heard?
- 2 A. Uh -- I heard Danny -- Daniel Lyles yelled: No man.
- 3 And I heard the gunfire -- gunshot.
- 4 Q. How many gunshots did you hear?
- 5 A. One.
- 6 Q. Okay. Did you hear anything else?
- 7 A. Uh -- glass -- I have a lot of crystal in my house.
- 8 I heard some glass breaking.
- 9 Q. Okay.
- 10 A. And I was on the phone then, with the police.
- 11 Q. So you had your cell phone with you?
- 12 A. Yes.
- 13 Q. Back there in the bedroom?
- 14 A. In the bedroom with my children.
- 15 Q. And you called 9-1-1?
- 16 A. Yes.
- 17 Q. Okay. How long did you stay in that back bedroom?
- 18 A. Until I was escorted out by the officers. They
- 19 asked us not to move.
- 20 Q. The police came and got you?
- 21 A. They came and got -- they got and the children out
- 22 the room.
- 23 Q. Okay. Ms. McCoy, did John have permission to be at
- 24 your -- or in your apartment on September 29th,
- 25 2004?

- 1 A. No.
- 2 Q. Whose name's on the lease?
- 3 A. Mine's and my two children.
- 4 Q. Did he have the keys to that apartment?
- 5 A. No.
- 6 Q. How do you know that?
- 7 A. Well, once we separated, I changed the locks myself.
- 8 And they somehow jammed; and then Culpepper changed
- 9 the locks themselves.
- 10 Q. So he had lived there?
- 11 A. He had -- before --
- 12 Q. With you?
- 13 A. Yes.
- 14 Q. Okay. But he moved on -- he moved out in March?
- 15 A. In -- back in March.
- 16 Q. Okay. And you had the locks changed?
- 17 A. Yes.
- 18 Q. Who changed them?
- 19 A. The first time I did; the second time, the -- uh --
- 20 management changed them?
- 21 Q. Okay. After you changed -- when you changed them
- 22 the first time, did you give him keys?
- 23 A. No.
- 24 Q. Okay. Did they have to be changed again?
- 25 A. Yes. They had -- uh -- I didn't do it right.

1 Q. I'm sorry?

2 A. I didn't do it right.

3 Q. You didn't do it right. All right. So they had to
4 be changed again. I think he said the apartment
5 manager did that or somebody --

6 A. They changed them.

7 Q. -- at the apartment complex changed it.

8 A. They changed them.

9 Q. Did they give you the keys?

10 A. Yes.

11 Q. It was obviously to your door. Did you give those
12 keys --

13 A. No.

14 Q. -- to John McCoy?

15 A. No.

16 Q. Did you know the address of the place where he was
17 staying? You said: Whispering Pines. Do you know
18 -- can you give us more details than that?

19 A. Uh -- I think his -- the street addresses 408 Abner
20 Road, Apartment -- I think it was A 22.

21 Q. Okay.

22 Q. Or 22-A.

23 Q. Tell this jury about the damage that was done to
24 your door?

25 A. It was -- uh -- right where it connects with the

1 door knob and the latch -- uh -- it was kicked in.
2 It was bent in; and also my knob is oval, so there's
3 a hole in the back door -- actually, those holes are
4 still in my wall.

5 There's a hole right behind the
6 door where he opened up and hit by the dry -- the
7 wall itself.

8 As far as -- uh -- the damage to
9 the door -- but my other wall that's in my living
10 room directly across from my living -- from where
11 the front door is, there was a bullet hole which
12 went through my lamp shade.

13 It hit, like right in corner part
14 on the front wall -- is where the bullet hole hit.

15 Q. And did the police come and dig the bullet out of
16 your wall?

17 A. Yeah; they cut all that out to get the bullet hole
18 out the wall -- the bullet out the wall.

19 Q. Okay. If you would for me and for the jury, point
20 out the man that came there that night that caused
21 you to run to your back bedroom with your children?

22 A. John McCoy. (Whereupon: the witness pointed to the
23 Defendant.)

24 Q. Tell me what he's wearing?

25 A. Uh -- White shirt; grey suit; glasses.

1 SOLICITOR:

2 If you answer any questions for
3 Mr. Allen and this court, I'll appreciate it.

4 WITNESS:

5 Okay.

6 THE COURT:

7 Mr. Allen; your witness.

8 DEFENSE COUNSEL:

9 Thank you, Your Honor.

10 THE COURT:

11 Yes sir.

12 CROSS-EXAMINATION BY MR. ALLEN:

13 Q. Let's talk for a moment about the lease. You said
14 Mr. McCoy's name was not on the lease; correct?

15 A. Yes.

16 Q. That lease term was -- and I'm talking about the one
17 that was effective September of 2004 -- ran from
18 October 1st, of 2003 to the -- September of 2004;
19 correct?

20 A. Yes.

21 Q. Okay. And he had -- you admit that he was living
22 there at some time during that lease; correct?

23 A. Yeah, he did.

24 Q. Okay. But yet even though he was living there at
25 some time during that lease, his name was not on the

1 lease; correct?

2 A. It actually hadn't been on there for awhile; because
3 he wouldn't go to the office and sign.

4 Q. I'm sorry; I didn't hear that.

5 A. He would not go to the office to remove himself; so
6 he hasn't been on there for awhile.

7 Q. Well you -- I -- I realize you are the one
8 responsible for paying it; correct?

9 A. Yes.

10 Q. And you have the right to list the residents on --

11 A. On my lease.

12 Q. -- on that lease; and of course that's where you put
13 the two children on the lease, as well as -- and you
14 could have put his name on it as well; correct?

15 A. Actually, I removed him from it.

16 Q. Okay.

17 A. He had been on there years before.

18 Q. Yes ma'am. Well, what I guess I'm getting at is --
19 you indicated his name was not on the lease; and yet
20 you also indicated that he was living there up until
21 at least March of 2004; correct?

22 A. Yeah, but that didn't -- he didn't move back in.
23 Our relationship has been in and out.

24 Q. Right.

25 A. He didn't move back in till like probably September

1 or October or '04.

2 Q. Okay. Uh --- and --

3 A. '03; I apologize.

4 Q. '03?

5 A. Yes.

6 Q. Okay. You did not get an order of separate
7 maintenance and support from the family court on --
8 in March of 2004, did you?

9 A. No; because I don't have \$1,300.00 to pay to get
10 that when I have to take care of my children.

11 Q. Okay. So there is no Court order, ordering him out
12 of the house; correct? Or, out of the apartment;
13 correct?

14 A. No; just the removal of him from the lease.

15 Q. I'm sorry?

16 A. Just removal of his name from the lease.

17 Q. Which was done before he was living there?

18 A. True?

19 Q. And you never got the lease changed while he was
20 living there?

21 A. It's been changed.

22 Q. What I'm getting at is the lease you signed --

23 A. No; I didn't add him back on when he moved over.

24 Q. Okay. So he was living there during the time the
25 lease was effective and he was never on the lease,

TESTIMONY OF ROYAL ARNELIA MCCOY

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1 is what you're telling me?

2 A. Yeah; but when he moved out, he got his own lease in
3 his own name.

4 Q. Okay. Be that as it may -- uh -- Now he would come
5 back and -- and see you at times during -- after
6 March of 2004; correct?

7 A. No. I would call him constantly trying to get him
8 the spend time with our children. And it was lies
9 after lies.

10 Q. Okay. Well, I'm --

11 A. There was no relationship with him coming by or
12 nothing like that. That marriage was over.

13 Q. Uh -- he didn't come and stay with you -- uh -- even
14 for one night -- uh -- all during that time;
15 correct?

16 A. No.

17 Q. And you have since filed for a divorce; correct?

18 A. Yes. As far as I know, he's been served.

19 Q. Right. And -- uh -- of course you're -- the ground
20 that you're claiming for divorce is separation for a
21 period of one year that year beginning March 15 of
22 2004; correct.

23 A. Yeah.

24 Q. Okay. Now September 28th -- uh -- is your -- is
25 your and Mr. McCoy's son's birthday; isn't that

1 correct?

2 A. Yes; which is actually the night everything
3 happened.

4 Q. Right. Uh -- of course, we're talking early-morning
5 hours --

6 A. Yeah; about one.

7 Q. -- of September 29th; correct?

8 A. Uh-huh. Yes.

9 Q. And you mentioned that you had given a surprise
10 party to your son?

11 A. The party was at John's grandmother's house.

12 Q. Okay.

13 A. She watches the children while I work.

14 Q. Okay. And -- uh -- but you didn't tell Mr. McCoy
15 about that?

16 A. We didn't really have any communications. He didn't
17 -- he lived like ten minutes if that far from his
18 grandmother's. He didn't even visit the -- visit
19 the children; call them; or anything. So why should
20 I tell him about that?

21 Q. Well wasn't he calling you all during that day on
22 September 28th?

23 A. No. I was at work. His grandmother even stated
24 that he didn't eve call them --

25 Q. I'm not asking you what his mother said. That would

1 be called -- considered hearsay --

2 A. Well, yeah; hearsay. But, no; he had no
3 communication --

4 Q. What I want to do, is ask you if he was calling you?

5 A. No.

6 Q. And you had a cell phone then, right?

7 A. Yes; and he also knew where I worked.

8 Q. So it's your testimony, you didn't receive any phone
9 calls from him during that day?

10 A. No. I don't have any phone -- I didn't get any
11 phone calls from him.

12 I had learned to ignore his calls,
13 if he did call; because it was all lies.

14 But, as far as I know, he didn't
15 call at all.

16 Q. Okay. Well, so is it now your testimony that you
17 don't remember if you received any call from or not
18 because you --

19 A. That night, I know he didn't call. I had my cell
20 phone.

21 Q. Okay. I'm talking about during the day of
22 September 28th?

23 A. No. He didn't call.

24 Q. Do you -- do you remember one way or the other is
25 what I'm getting at?

1 A. He did not call me September 28th during the day --

2 Q. Did he attempt to call you?

3 A. How would I know if he attempt? I was at work.

4 Q. Well, doesn't the number -- don't you you're your

5 things programmed in your cell phone where the

6 number -- the people calling you doesn't show up?

7 A. The caller I do. But, if I'm at work in different

8 areas, I won't receive any calls. It'll go straight

9 to the voice mail.

10 Q. Okay. And -- uh -- do you show missed phone calls

11 on your cell phone?

12 A. Not if it goes straight to the voicemail.

13 Q. Okay. Did you listen to your voice mail?

14 A. Yes.

15 Q. Uh -- When you heard Mr. McCoy's voice, you -- he

16 didn't sound upset or anything; did he?

17 A. On the third knock, he just asked me to let him in.

18 DEFENSE COUNSEL:

19 Okay. Let me just have a minute,

20 Your Honor.

21 THE COURT:

22 Yes sir.

23 DEFENSE COUNSEL:

24 No more questions, Ms. McCoy.

25 THE COURT:

TESTIMONY OF CHRIS MILLER

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1 Redirect, Mr. Willingham?

2 SOLICITOR:

3 No sir, Your Honor.

4 THE COURT:

5 Ma'am, you may step down.

6 THE COURT:

7 Mr. Willingham, you may call your

8 next witness.

9 SOLICITOR:

10 Thank Your Honor. Chris Miller.

11 THE COURT:

12 Sir; come forward and be sworn.

13 CHRIS MILLER, HAVING BEEN FIRST

14 DULY SWORN, WAS EXAMINED AND GAVE EVIDENCE AS FOLLOWS:

15 THE COURT:

16 Mr. Willingham, your witness.

17 SOLICITOR:

18 Thank you, Your Honor.

19 DIRECT EXAMINATION BY MR. WILLINGHAM:

20 Q. Tell the jury who you are.

21 A. Christopher Miller.

22 Q. Mr. Miller, where do you work?

23 A. Duncan Police Department.

24 Q. And what you do with them?

25 A. I'm a patrol officer on night shift.

1 Q. On the third shift? What time's third shift go on?

2 A. 7:00 p.m. to 7:00 AM.

3 Q. Okay. How long you been in law-enforcement?

4 A. For approximately a little over six years.

5 Q. All that been in Duncan?

6 A. No sir. I worked for three years at the

7 Spartanburg Public Safety Department.

8 Q. Okay. You were working on September 29th, 2004?

9 A. Yes. I was.

10 Q. And did you get a call around 1:54 in the morning?

11 A. Yes sir; from Spartanburg communications.

12 Q. Okay. What was the nature of that call?

13 A. They stated that -- uh -- the initial call, I

14 believe, come in as: a subject had kicked a door in

15 at the 3107 apartment --

16 DEFENSE COUNSEL:

17 I'm going to object to the

18 substance of the call being hearsay.

19 SOLICITOR:

20 I'm just offering it for the truth

21 of the matter; sir. This is offered to show why this

22 officer went down to the location and not for the subject

23 of the conversation.

24 THE COURT:

25 Overruled; you may proceed.

TESTIMONY OF CHRIS MILLER

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1 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

2 A. I received a call to respond to 3107 Culpepper
3 Apartments in reference to a subject had kicked the
4 door in and was -- entered into the apartment.

5 Q. Okay. And 3107 Culpepper Crossing; where is that?

6 A. It's -- uh -- located just off Highway 290 off of
7 Pine Street in the city limits of Duncan, South
8 Carolina.

9 Q. And so is the city of Duncan -- all of the city of
10 Duncan is in the county of Spartanburg?

11 A. County of Spartanburg; yes.

12 Q. And when you got to that -- Did you go to that
13 location?

14 A. Yes sir.

15 Q. When you got there; what did you find?

16 A. Uh -- Right before I got there, they -- uh --
17 advised me that there was a -- a subject had been
18 shot out in the parking lot.

19 Whenever I arrived, I seen a -- uh
20 -- subject sitting beside black Acura; got out -- uh
21 -- I think it was Mr. Lyles -- uh -- his shirt was
22 covered with blood. He was on his left arm.

23 At that time, I -- uh -- they
24 didn't give me any description on who the shooter
25 was or anything of that nature; so I patted him down

1 to make sure he didn't have any weapons on him or
2 anything like.

3 He then told me he had been shot;
4 and I told him the ambulance was on the way.

5 Q. Okay. And this is the fellow that you met out in
6 the parking lot?

7 A. Yes, it is.

8 Q. After you checked on him; what did you do next?
9 Where did you go?

10 A. I then went into the apartment to -- uh -- Mr. Lyles
11 had stated he wasn't sure if -- uh -- the person
12 that shot him had left or not --

13 DEFENSE COUNSEL:

14 I would object at this point to
15 anything Mr. Lyles would have told him as being
16 hearsay.

17 THE COURT:

18 Sustained.

19 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

20 A. He did not know if the -- if the suspect had left or
21 not.

22 I then went in to the apartment to
23 make sure there was no one else inside.

24 And I -- uh -- found -- uh -- Mr.
25 McCoy in the back bedroom with her children.

1 Q. Okay. And when you say Ms. McCoy, you're talking
2 about this lady, here?

3 A. Yes.

4 Q. She was in the back bedroom with how many children?

5 A. Two children.

6 Q. Okay. After you did these actions; who were you
7 looking for?

8 A. I then asked -- uh -- Ms. McCoy who had been over
9 there. And she stated that it was her husband, John
10 McCoy.

11 I asked if she knew what kind of
12 vehicle he drove. And she said he drove a white
13 Jeep Cherokee; and that he lived in some apartments
14 in the city of Spartanburg.

15 Q. And did you put a BOLO out to Spartanburg
16 Communications?

17 A. Yes, I did. That way they could notify any other
18 law enforcement agencies between here and there.

19 Q. Tell the jury what a BOLO is.

20 A. It's a: Be On the Look Out. We give a description
21 of the vehicle and the direction they might be
22 traveling and who is inside the vehicle.

23 That way, if they come across him,
24 they will know what's going on.

25 Q. Okay. Did you remain on the scene at Culpepper

1 Crossing?

2 A. Yes, I did.

3 Q. Did you ever receive word that anyone was in
4 custody?

5 A. Yes. I received -- uh -- word from the Spartanburg
6 County Sheriff's Office that they had Mr. McCoy --

7 DEFENSE:

8 I object to the hearsay, Your
9 Honor, as to what the people from the Spartanburg County
10 Sheriff's Office said.

11 SOLICITOR:

12 Again; it's back to the original
13 statement. It's not offered for the truth of the matter;
14 sir. It is offered to show what -- why he did what he
15 did next, Your Honor.

16 DEFENSE COUNSEL:

17 You can go into what he did next
18 without going in --

19 THE COURT:

20 Yeah, I'm going to sustain the
21 objection.

22 I'll allow you to go into what he
23 did next.

24 SOLICITOR:

25 All right.

1 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

2 Q. What was the next thing you did?

3 A. We had -- uh -- secured the crime scene and roped
4 off the crime scene and began taking statements from
5 -- uh -- Ms. McCoy; along with other officers that
6 were on the scene.

7 And -- uh -- at that time, Chief
8 Cothran was on the scene. And he advised he was
9 going to the police department to speak with Mr.
10 McCoy.

11 Q. Did you ultimately obtain the warrants in this case?

12 A. Yes; at Spartanburg County Detention Facility
13 through a Master Judge.

14 Q. For -- against who?

15 A. John McCoy.

16 Q. For what charges?

17 A. For assault and battery with intent to kill, and
18 burglary, first.

19 Q. And did you also obtain search warrants?

20 A. Uh -- yes. We obtained a search warrant for Mr.
21 McCoy's residence located at Whispering Pines
22 Apartments and for his vehicle which was a white
23 Jeep Cherokee.

24 Q. Okay. And you presented that to a magistrate?

25 A. Yes.

1 Q. Was a warrant issued?

2 A. Yes, it was.

3 Q. Were you part of the search of those two locations?

4 A. Uh -- those two locations -- uh -- were in the
5 county -- uh -- located in the County's
6 jurisdiction.

7 At that time, I believe the
8 Sheriff's Office executed the search warrant for
9 those locations.

10 SOLICITOR:

11 Officer Miller, I appreciate your
12 time. If you would answer any questions Mr. Allen
13 might have for you.

14 THE COURT:

15 Mr. Allen, your witness.

16 DEFENSE COUNSEL:

17 Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. ALLEN:

19 Q. So, it's my understanding then, that you did not --
20 that you were not part of the search. You didn't
21 attempt to find anything?

22 A. No sir.

23 Q. And the reason for that was because it was out of
24 your jurisdiction; your jurisdiction being the town
25 of Duncan?

1 A. The city of -- the city of Duncan.

2 Q. The city of Duncan?

3 A. Yes sir.

4 DEFENSE COUNSEL:

5 Nothing further, Your Honor.

6 THE COURT:

7 Anything further?

8 SOLICITOR:

9 No sir.

10 THE COURT:

11 You may step down, sir; thank you.

12 Mr. Willingham, you may call your

13 next witness.

14 SOLICITOR:

15 Thank you, Your Honor.

16 We call Brian Wilkins.

17 THE COURT:

18 Sir; come forward and be sworn.

19 BRIAN WILKINS, HAVING BEEN FIRST

20 DULY SWORN, WAS EXAMINED AND GAVE EVIDENCE AS FOLLOWS:

21 THE COURT:

22 Mr. Willingham; your witness.

23 SOLICITOR:

24 Thank Your Honor.

25

1 DIRECT EXAMINATION BY MR. WILLINGHAM:

2 Q. Tell the jury who you are.

3 A. My name is -- uh -- Brian Wilkins.

4 Q. And it's obvious from your uniform you work for the
5 Sheriff's Office?

6 A. Yes sir. That's correct.

7 Q. How long you been with the Sheriff's Office?

8 A. Uh -- January of this coming year will be 16 years.

9 Q. Okay. And what do you do for them?

10 A. I am a Sergeant on uniform patrol.

11 Q. Were you a Sergeant back in September of 2004?

12 A. Yes, I was.

13 Q. And were you working that night?

14 A. Yes sir; I was.

15 Q. Or that early morning hour?

16 A. I was.

17 Q. Uh -- did you receive any information concerning
18 anything that happened at Culpepper Crossing?

19 A. Yes, sir. The information was given out over our
20 dispatch channel what had occurred at Culpepper
21 Crossing.

22 Uh -- We -- uh -- actually did
23 have units -- uh -- responding to that location in
24 the City of Duncan in Spartanburg County to back up
25 the city of Duncan at that time because of it being

TESTIMONY OF BRIAN WILKINS

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1 this point in time.

2 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

3 Q. Did you go to Whispering Pines Apartments?

4 A. Yes, I did.

5 Q. Did you find a white Jeep Cherokee there?

6 A. Yes, sir. I did.

7 Q. Okay. Was it secured?

8 A. It was. It was locked.

9 Q. Okay. What did you do when you arrived on the
10 scene; or did you have your officers do?

11 A. The tag had been run and came back to Mr. McCoy
12 through our communications center; so we knew it was
13 his tag.

14 It also identified the Apartment
15 as Alpha 22, which is a building on the right hand
16 side as the go into the complex -- almost to the
17 front, closest to Abner Road.

18 Uh -- Once we -- uh -- arrived,
19 identified the apartment -- uh -- Mr. McCoy had been
20 seen in the window of the residence --

21 DEFENSE COUNSEL:

22 Objection. There is --

23 WITNESS:

24 -- and -- uh -- or a subject
25 fitting that description --

1 late night hours and with a firearm being involved.

2 We were not sure where the suspect
3 was. So I did have units in route.

4 At that point, it was my job to
5 facilitate that.

6 At the same time, we received the
7 BOLO from our communications center for Mr. McCoy --
8 John McCoy and the white Jeep Cherokee; and a
9 possible location to apartments in the city of
10 Spartanburg.

11 Q. What were those apartments?

12 A. Uh -- Whispering Pines.

13 Q. Okay. And was his vehicle located there?

14 A. Yes. I had -- two of my officers responded to
15 Whispering Pines -- uh -- deputies Osterhout and
16 Burgess.

17 They located the -- uh -- white
18 Cherokee --

19 DEFENSE:

20 I would object as to what they
21 found as being hearsay, Your Honor.

22 THE COURT:

23 You have to lay a foundation as to
24 what his knowledge would be as to what they did.

25 So, I'll sustain the objection at

TESTIMONY OF BRIAN WILKINS

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1 THE COURT:

2 Just one second.

3 Your objection?

4 DEFENSE COUNSEL:

5 No foundation as to how this
6 officer knew -- if he discussed prior to -- hearsay.

7 THE COURT:

8 I'll again sustain the objection
9 and ask that you set a foundation for his knowledge.

10 You may proceed.

11 SOLICITOR:

12 Thank you.

13 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

14 Q. Did you have information of where Mr. McCoy was?

15 A. Yes.

16 Q. And where was that?

17 A. Inside the a --

18 DEFENSE COUNSEL:

19 I think he's -- objection. I
20 mean, unless he states -- if this officer knew of his
21 personal knowledge --

22 THE COURT:

23 Well, he's already testified that
24 they ran the tag and it came back to an address there
25 Alpha 22 and the tag was for Mr. McCoy.

1 So I'm gonna allow -- he's set a
2 foundation for his testimony.

3 I'll overrule the objection.

4 SOLICITOR:

5 Thank you, Your Honor.

6 THE COURT:

7 As to the -- as to the potential
8 location.

9 You may proceed.

10 DIRECT CROSS-EXAMINATION BY CONTINUED:

11 Q. After finding that location, what did you do with
12 the other residents in that -- Well, describe --
13 describe Whispering Pines to the jury.

14 A. Whispering Pines -- if you go into it, is a series
15 of apartments. In those apartments, the way they
16 are made, you have two apartments upstairs and two
17 apartments downstairs on each end. And they back up
18 to each other.

19 So you got residents both up and
20 down stairs separated by the walls; and then side-
21 by-side on each level.

22 Uh -- At that time my job was --
23 and my concern was for public safety.

24 Therefore, we set up a perimeter
25 around the entire apartment building to insure that

TESTIMONY OF BRIAN WILKINS

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1 it was secure.

2 In that time, I directed officers
3 to knock on doors and remove residents who were
4 asleep at that time from their apartments and take
5 him to a safe location where an officer did stay
6 with them.

7 Q. Okay. Once that was completed -- how long did that
8 take?

9 A. Uh -- several minutes. Uh -- I would guess 10 to --
10 10 to 12 minutes to get that in action.

11 I had a lot of things going on; so
12 that just a guesstimate; but I would say 10, 12, 15
13 minutes to get those people secured; get them to a
14 safe location; and get the go ahead from my officer
15 on the scene that they were secure; and that all
16 parties had been removed from residences at that
17 time.

18 Q. Okay. And at that point, after everybody had been
19 secured, did you go to a particular apartment you
20 believed was McCoy's?

21 A. Yes.

22 Q. And what did you do then?

23 A. Well, we knocked on the door several times -- this
24 following two attempts to call cell phone numbers
25 believed to be Mr. McCoy's that were given to me --

1 uh -- through the Duncan Police Department to make
2 contact with him.

3 At this time, I didn't know what
4 his mental state was.

5 Uh -- We didn't know if he was
6 still armed.

7 There was a lot of questions to
8 the danger to other individuals; as well as to
9 himself, at that point in time.

10 So we --

11 Q. After you knocked on the door, what happened?

12 A. After we knocked on the door several times, and very
13 loudly, a subject came to the door.

14 A subject came to the door. We
15 pulled him outside and secured him.

16 We did not know at that time if it
17 was Mr. McCoy or not. Other officers were
18 questioning him.

19 Three others also came out and
20 were secured; none of them fitting the description
21 of Mr. McCoy.

22 At that time, not knowing if there
23 were other victims inside the apartment; we entered
24 the apartment and did what is called in law
25 enforcement a protective sweep to insure that there

1 are no other victims there, whether it be Mr. McCoy,
2 himself, or other victims whatsoever.

3 Mr. McCoy was located in the rear
4 bedroom and identified by his ID -- uh -- and
5 removed from the residence and placed in Deputy
6 Osterhout's car.

7 Q. Was he placed in custody?

8 A. Yes.

9 Q. Okay. Uh -- and he was secured in Deputy
10 Osterhout's car?

11 A. Yes.

12 Q. Was he ultimately transported to the Duncan Police
13 Department?

14 A. That is the direction that I gave her.

15 Q. To be -- For what purpose?

16 A. To transport him to the Duncan Police Department for
17 their investigation.

18 Q. Okay. Now after arresting the Defendant, was a
19 search warrant executed on that apartment?

20 A. Yes sir.

21 Q. And were you present for the execution of the search
22 warrant?

23 A. I was.

24 Q. And did y'all search -- y'all searched the
25 apartment?

1 A. Correct?

2 Q. Did you find anything?

3 A. No sir.

4 Q. Okay. No weapons?

5 A. No sir.

6 Q. No ammunition?

7 A. No.

8 Q. Where you involved in the search of the Jeep
9 Cherokee?

10 A. Yes sir.

11 Q. That was also pursuant to search warrant?

12 A. Correct.

13 Q. Was there anything found there?

14 A. Yes sir. A shell casing was found, as well as -- uh
15 -- a box that -- uh -- ammunition at one time held?

16 Q. I show you what has been previously marked as
17 State's Exhibit Number 4; and ask if you recognize
18 that?

19 A. Yes sir. This is an evidence bag, which -- uh -- I
20 filled out an -- uh -- evidence description.

21 It says: one Winchester box and
22 one shell.

23 Q. Okay. And looking inside that, is that what that
24 bag contains?

25 A. This is the box that I -- uh -- that I recovered

1 from the vehicle.

2 Uh --- I actually executed the
3 search warrant in the county; and I recovered this
4 box.

5 And this is actually a round of
6 ammunition -- uh -- that was also located within the
7 vehicle.

8 Q. Now were those items in the same condition when you
9 recovered them on September the 29th, 2004?

10 A. Yes sir.

11 SOLICITOR:

12 Your Honor, at this time I move
13 State's Exhibit 4 into evidence.

14 THE COURT:

15 Any objection?

16 DEFENSE COUNSEL:

17 No, Your Honor.

18 THE COURT:

19 Without objection, they are
20 receive as marked.

21 You may proceed.

22 SOLICITOR:

23 Thank Your Honor.

24 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUE:

25 Q. Uh -- Deputy, what caliber is that round? Can you

1 tell me?

2 A. I apologize. I can't read it off the -- uh --

3 Q. That's Okay.

4 A. -- the casing.

5 Q. That's okay. All right. Does it appear in size
6 and consistency based on your experience as a law
7 enforcement officer to be a 25 caliber round?

8 A. Yes, sir. It does.

9 SOLICITOR:

10 Okay. Thank you.

11 If you would, answer any questions

12 Mr. Allen has for you. Thank you.

13 WITNESS:

14 Yes sir.

15 THE COURT:

16 All right. Mr. Allen; your
17 witness.

18 DEFENSE COUNSEL:

19 Thank you, Your Honor.

20 CROSS-EXAMINATION BY MR. ALLEN:

21 Q. How many boxes did you find?

22 A. Uh -- that was the single box.

23 Q. Just one box?

24 A. Correct.

25 Q. Now, Winchester also sells -- I mean, you described

1 this as an ammunition box; can you show me where on
2 this box it says that this thing once held
3 ammunition?

4 A. It's been my experience as a police officer and also
5 as a gun owner that this is the type of box in which
6 ammunition come in. I do not see it notated on the
7 box, sir.

8 Q. Now -- uh -- Winchester also sells multi tool sets,
9 you know, like the -- several tools in one; right?

10 A. Uh -- I don't have personal knowledge of that.

11 Q. Okay. Uh -- Winchester also sells 25 caliber rounds
12 and boxes that are actually more square than this;
13 right?

14 A. I can't say that. I mean, I testified to you what I
15 think that box is.

16 Q. On the back of this box, it indicates the words:
17 Carolina Knife and Tool, 14200 South -- SW, 77nd
18 Ave., Portland, Oregon, made in China.

19 A. Yes sir. I see that.

20 Q. Now wouldn't that be more consistent with this box
21 holding a multi-tool, a knife, or something to that
22 effect; as opposed to ammunition rounds?

23 A. Well being a gun owner myself and a police officer,
24 I do realize that items that do sell like those
25 items, also sell ammunition.

1 Uh -- so I can't testify to -- to
2 what the Defense is -- is talking about.

3 I would say it -- in my opinion,
4 it's consistent with the fact that those places also
5 sell ammunition.

6 Q. But you have not been qualified in the -- in any
7 area of expertise as a gun owner or a -- knowing
8 anything about Winchester, have you?

9 A. No sir. I haven't been -- as an expert witness, no I
10 haven't.

11 Q. Now -- so you don't know what those words: Carolina
12 Knife and Tool means as it relates to this box?

13 A. I do not.

14 Q. And you don't really know what was held in this box
15 and I'm referring to State's Exhibit 4; do you?

16 A. I said in my opinion it was ammunition.

17 Q. In your opinion?

18 A. Yes. That's what I stated, sir.

19 Q. And you didn't see any ammunition in the box?

20 A. No I didn't see any ammunition in a box when I
21 collected it as evidence.

22 Q. You would have -- uh -- collected all boxes that it
23 -- would indicate that it contained any ammunition
24 when you did the search of the vehicle; right?

25 A. Yes, I would. That's primary what we were looking

1 for; any items that pertained to a firearm, the
2 firearm itself or anything like that.

3 So that was specifically what I
4 was looking for; so if another box had been located,
5 it would have been collected.

6 Q. You didn't -- I think it's announced that you didn't
7 find any weapon; did you?

8 A. No.. I did not find any weapon in the apartment.

9 I also -- upon the search of the
10 vehicle, pursuant to the search warrant, did not
11 locate a -- a weapon inside there either.

12 Q. And you were specifically looking for a weapon,
13 weren't you?

14 A. Weapon; ammunition; anything that would indicate a
15 firearm or its usage.

16 Q. Now; did you search the apartment pretty good?

17 A. Uh -- yes. What we did initially, was once we
18 secured the apartment and we knew that no other
19 victims were there; that -- uh -- Mr. McCoy was not
20 a harm to himself -- because he was secured -- we
21 backed out; secured the door of the apartment.

22 At that time, a search warrant for
23 that residence was secured. And we did execute a
24 search warrant in there.

25 Uh -- In my opinion, it was -- it

1 was searched very well?

2 A. Okay. And you found no evidence inside the
3 apartment that anyone owned a handgun, in the way of
4 -- like you didn't find --

5 A. No; we didn't find anything. At the end of a search
6 warrant, it has to be returned back to the county
7 magistrate who issued the warrant.

8 You have to indicate any item that
9 you take; or if no items were taken, that must be
10 indicated; and also returned and signed by the
11 magistrate.

12 So, upon completing the search of
13 the residence, I did what is administratively known
14 as closing out the search warrant; which is slashing
15 the return area where you put such items; and put in
16 the date and time there.

17 And no; we -- we did not take any
18 evidence from the apartment at that time.

19 Q. So you didn't find any evidence that anyone in that
20 apartment had access to a handgun?

21 A. No evidence was taken into our custody.

22 Q. And no evidence of other Winchester boxes, or boxes
23 of any other -- or any ammunition; correct?

24 A. Correct.

25 Q. You said, I believe, that you checked Mr. McCoy's I

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1 do. when you --

2 A. That's correct; that's correct. He was secured in
3 the rear bedroom of the -- uh -- the residence.

4 And his wallet was also in there
5 that had his ID in there.

6 Q. His ID that you checked, was that his driver's
7 license?

8 A. Correct. There were other officers there. I was
9 facilitating --

10 Q. Okay.

11 A. -- at the time.

12 Q. You saw the driver's license?

13 A. I did not. It was checked by other officers.

14 Q. You don't know what address is on that driver's
15 license; do you?

16 A. I do not?

17 DEFENSE COUNSEL:

18 Thank you.

19 THE COURT:

20 Redirect?

21 SOLICITOR:

22 Very briefly.

23 THE COURT:

24 Yes sir.

25 REDIRECT EXAMINATION BY MR. WILLINGHAM:

1 Q. You said that Whispering Pines Apartments is in the
2 City of Spartanburg?

3 A. No sir. Whispering Pines is outside the -- right at
4 the city line.

5 Q. Okay. Tell me, and tell the jury, exactly where
6 that is.

7 A. Okay. If you are familiar with the west side of
8 Spartanburg County, Highway 29 or W. O. Ezell
9 Boulevard; you can come in from the Westgate Mall
10 side, or you can come out from the city side; which
11 is where the Steeple Drive In is -- from that side
12 of the city.

13 Uh -- I'm going to take you from
14 the city -- uh -- if you're coming from the Steeple
15 Drive In towards Westgate Mall -- uh -- the Pizza is
16 up on a hill -- and that's in the city of
17 Spartanburg.

18 Uh -- You turn right on Powell
19 Mill Road -- uh -- like you're going to Spartanburg
20 Methodist College.

21 Uh -- there is also an elementary
22 school down there on the left; and I don't know the
23 name of it.

24 Uh -- Abner Road turns -- bears to
25 the right; and -- uh -- I can't think of the name of

1 the subdivision; but it kind of spurs off of that.

2 There is a church there; and then
3 you have the entrance to the apartment building.

4 There's one way in and one way
5 out.

6 Q. How far is Whispering Pines Apartments from
7 Culpepper Crossing?

8 A. Uh -- I would guess -- and it's just an estimate --
9 12 miles; 12, 13 miles.

10 Q. In Duncan is -- 29 is out past 85 at.

11 A. Correct. And 85, to I-26; then I-26 passed Westgate
12 Mall; and then a left there at the Pizza Inn --
13 would be onto Powell Mill.

14 So it could be -- it could be
15 probably traveled within I would guess 10 or 12
16 minutes.

17 SOLICITOR:

18 All right. Thank you.

19 THE COURT:

20 Any cross?

21 DEFENSE COUNSEL:

22 No, Your Honor.

23 THE COURT:

24 You may step down, sir.

25 WITNESS:

1 Thank you, sir.

2 THE COURT:

3 Mr. Willingham, you may call your

4 next witness.

5 SOLICITOR:

6 Your Honor, we call Amy

7 Montgomery.

8 THE COURT:

9 Come forward and be sworn, ma'am.

10 AMY MCGOMERY, HAVING BEEN FIRST

11 DULY SWORN, WAS EXAMINED AND GAVE EVIDENCE AS FOLLOWS:

12 THE COURT:

13 Your witness, Mr. Willingham.

14 SOLICITOR:

15 Thank Your Honor.

16 DIRECT EXAMINATION BY MR. WILLINGHAM:

17 Q. Tell the jury who you are?

18 A. I'm Amy Montgomery.

19 Q. I need you to speak up; okay.

20 A. Amy Montgomery.

21 Q. That's great. And -- uh -- back on September of

22 2004, where did you live?

23 A. I lived on 313 Ponder Road.

24 Q. That was in Greer?

25 A. Uh-huh.

1 Q. Okay. Did you have any family members that lived
2 at Culpepper Crossing?

3 A. Yes; my mother and my sister.

4 Q. Okay. Uh -- and were you visiting them on the
5 night of the 28th and the early-morning hours of the
6 29th?

7 A. Yes, I was.

8 Q. And what apartment was that? Do you remember?

9 A. 3907.

10 Q. Okay. Okay. And, anything unusual happen that
11 night?

12 A. Yes.

13 Q. Well, let me ask you this. What were you doing over
14 there that night -- at your mom and Lisa's?

15 A. I had got off work late and come over to watch TV
16 and stay the night.

17 Q. Okay. Anything happen unusual that night?

18 A. (Nods in the affirmative.)

19 Q. Tell me what happened?

20 A. We were sitting there watching TV; and we heard a
21 loud boom hit the door.

22 So, she opens the door and we --
23 there's two guys fighting --

24 Q. Okay. And when you say: she opens the door, who is
25 she? I mean was it your mom or was --

- 1 A. My sister -- my sister, Lisa.
- 2 Q. Okay. She opens the door; and what do you see?
- 3 A. There are two guys fighting and glass being thrown.
- 4 Q. Okay.
- 5 A. So -- uh -- I holler: shut the door, shut the door.
- 6 Q. Okay.
- 7 A. And -- uh -- I ran to the window --
- 8 Q. Uh-huh.
- 9 A. -- and -- to look out.
- 10 Q. Right.
- 11 A. -- and I seen a smaller slim guy chasing --
- 12 Q. A slim --
- 13 A. -- a slim, small guy --
- 14 Q. Okay.
- 15 A. -- chasing a heavysset guy.
- 16 Q. Okay.
- 17 A. And --
- 18 Q. What -- were these people white or black?
- 19 A. They were black.
- 20 Q. Okay. And they were two men?
- 21 A. Uh-huh.
- 22 Q. And one was a skinny guy and one was a heavysset guy?
- 23 A. (Nods in the affirmative.)
- 24 Q. We need you to answer out loud.
- 25 A. Uh-huh. Yes.

1 Q. Okay. What was the skinny guy wearing?

2 A. I think he had on a red shirt.

3 Q. Okay. What was the heavier set guy wearing?

4 A. Uh -- a striped shirt.

5 Q. Okay. You think you would recognize them again if
6 you saw them?

7 A. No; probably not. It was dark.

8 Q. Okay. And that's fine.

9 A. Uh-huh.

10 Q. What was the slim, red-shirted guy doing?

11 A. Chasing the heavyset guy.

12 Q. Where did they go?

13 A. They went to the apartments ahead of us --

14 Q. Uh-huh.

15 A. -- to a fence.

16 Q. Okay. And what happened there?

17 A. I seen three fired shots.

18 Q. Okay. Could you tell who was shooting?

19 A. The smaller skinny guy.

20 Q. The smaller skinny guy was shooting. What was he
21 shooting at?

22 A. The heavyset guy.

23 Q. Okay. Uh -- and you said you saw three -- or heard
24 three gunshots?

25 A. Uh-huh. I heard three shots.

1 Q. Okay. What did the heavysset guy do?

2 A. He just laid there.

3 Q. What did the skinny guy do?

4 A. Walked back to his jeep and got in and drove away.

5 Q. What kind of jeep was it?

6 A. It was a white Jeep Cherokee.

7 Q. Okay. And you saw him drive away?

8 A. Uh-huh.

9 SOLICITOR:

10 Thank you. Please answer any
11 questions Mr. Allen has for you.

12 THE COURT:

13 Mr. Allen; your witness

14 CROSS EXAMINATION BY MR. ALLEN:

15 Q. How long did this take; just a matter of seconds?

16 A. Uh -- I would say a minute -- few minutes.

17 Q. A few minutes?

18 A. From the fighting to the fence.

19 Q. I'm sorry?

20 A. From the fighting to the fence.

21 Q. Okay.

22 A. Probably a minute.

23 Q. And did you go out of your apartment -- or the
24 apartment in which you were in?

25 A. No. No sir.

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1 Q. How far away was the fence?

2 A. Probably a good seventy five -- hundred feet.

3 Q. 75 to a hundred feet or thereabouts?

4 A. Uh-huh.

5 Q. Okay. You didn't hear anything before you heard
6 this noise at the -- was it at -- at your door?

7 A. Uh-huh. Yes.

8 Q. Was it as if somebody had run into the door?

9 A. Yes.

10 Q. Had knocked up against the door and caused the door
11 to shake or thump?

12 A. Uh-huh.

13 Q. Okay. Uh -- But you didn't hear anything prior to
14 that?

15 A. No.

16 Q. You said that you heard, I think I, I think I heard
17 you say that you heard glass breaking? Did you say
18 that?

19 A. Yes.

20 Q. Did you see anyone with glass?

21 A. I didn't see anyone; but there was -- I heard glass
22 hitting -- hitting the side of the wall along with
23 the thump.

24 Q. Okay; so you -- that was when you first heard that
25 loud noise; right.

1 A. Yes.

2 Q. Uh -- But the window of the apartment that you were
3 in was not broken?

4 A. No. No sir.

5 Q. So you don't know where that glass came from?

6 A. No.

7 Q. Or what glass was broken or --

8 A. (Nods in the negative.)

9 Q. I'm sorry?

10 A. No sir.

11 DEFENSE COUNSEL:

12 No further questions; thank you.

13 THE COURT:

14 Redirect?

15 SOLICITOR:

16 No sir, Your Honor. We'd ask that
17 Ms. Montgomery be excused and let her go back to her
18 regular business.

19 THE COURT:

20 Any objection to this witness
21 being excused?

22 DEFENSE COUNSEL:

23 No, Your Honor.

24 THE COURT:

25 Ma'am, you're excused. Thank you

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1 very much for coming today.

2 WITNESS:

3 Thank you.

4 SOLICITOR:

5 Thank Your Honor.

6 THE COURT:

7 Mr. Willingham, you may call yhour

8 next witness.

9 SOLICITOR:

10 We would call Officer Teal.

11 THE COURT:

12 Sir; come forward and be sworn.

13 KIP TEAL, HAVING BEEN FIRST DULY

14 SWORN, WAS EXAMINED AND GAVE EVIDENCE AS FOLLOWS:

15 THE COURT:

16 Mr. Willingham, your witness. . .

17 SOLICITOR:

18 Thank you, Your Honor.

19 DIRECT EXAMINATION BY MR. WILLINGHAM:

20 Q. Tell the jury who you are.

21 A. Kip Teal.

22 A. Mr. Teal, you work for the Duncan Police Department?

23 A. Yes sir.

24 Q. How long you been in law enforcement?

25 A. Nine years?

1 Q. Nine years. Were you working back on September
2 29th, of 2004?

3 A. Yes sir.

4 Q. And what was your duties or job that night?

5 A. Patrolman.

6 Q. You were a patrol officer?

7 A. Uh-huh.

8 Q. Were you scheduled to work that night?

9 A. No sir. I --

10 Q. Or in the early morning hours of -- night of the
11 28th or the early morning hours of the 29th?

12 A. I was scheduled to work that day; but I wasn't
13 supposed to come in until 9 AM.

14 Q. Were you asked to come in early?

15 A. Yes sir.

16 Q. To -- to help with this particular case?

17 A. I was asked to come in to help answer calls just in
18 case there was some calls to come in; because the
19 officers that was working was tied up on this case.

20 Q. Okay. Did you ultimately go to Culpepper Crossing?

21 A. Yes sir.

22 Q. And did you -- uh -- help in looking for evidence in
23 this case?

24 A. Yes sir.

25 Q. And where did you look?

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1 A. Whenever -- uh -- after speaking to -- uh -- Chief
2 Cothran -- uh -- he advised to -- uh -- meet him at
3 Culpepper Crossing in front of the 3100 building.

4 When I arrived -- uh -- I was told
5 -- uh -- where the -- uh -- what had happened --

6 Q. Okay.

7 A. -- and what was going on that morning.

8 Uh -- and advised me where the
9 incident actually occurred; and -- uh -- possibly
10 where the -- uh -- across from beside another
11 building -- which is the 3200 building, where some
12 of the shots were fired.

13 Q. Okay. And, so you were out there looking for
14 casings or bullets or any thing that could been
15 fired?

16 A. Yes sir.

17 Q. Did you find anything?

18 A. Yes sir.

19 Q. What did you find?

20 A. Uh -- while looking in the grass area close to the
21 fence beside the 3200 building, as I was walking
22 around -- uh -- I observed two -- uh -- shell
23 casings laying on the ground in the east side of the
24 -- uh -- 3200 Building.

25 Q. Okay. And did you collect those two shell casings?

1 A. Yes sir.

2 Q. I show you what's been previously marked as State's
3 Exhibit Number 5 and ask if you recognized that?

4 A. Yes sir. It is my handwriting.

5 Q. And what was -- what is it?

6 A. Uh -- it's two -- uh -- two 25 caliber shell
7 casings.

8 Q. And those are the items that you recovered?

9 A. Yes sir.

10 Q. And those were secured by you and placed in that
11 evidence bag?

12 A. Yes sir.

13 Q. Are those items in the same condition as when you
14 received -- recovered them back on September the
15 29th, of 2004?

16 A. Yes sir.

17 SOLICITOR:

18 Your Honor, at this time I would
19 move State's Exhibit Number 5 into evidence.

20 THE COURT:

21 Mr. Allen; any objection?

22 DEFENSE COUNSEL:

23 No objection.

24 THE COURT:

25 Without objection, they will be

1 received as marked.

2 You may proceed, Mr. Willingham.

3 SOLICITOR:

4 Thank Your Honor.

5 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

6 Q. You said these were 25 caliber?

7 A. Yes sir.

8 Q. Now, you say you've been in law enforcement for --

9 A. Nine years.

10 Q. Nine years. Now, I'm not going to qualify you as a
11 firearm's expert; but when you talk about a casing,
12 what are you talking about?

13 A. It's the casing after the -- uh -- firearm has been
14 fired?

15 Q. Okay. So those little metal things has a bullet or
16 a projectile attached to end of it?

17 A. Yes sir.

18 Q. And this is what you find after the bullet has been
19 fired?

20 A. Yes sir.

21 Q. The projectile is gone?

22 A. Yes sir.

23 Q. Okay. Which is different from State's Exhibit
24 Number 4 -- that's got the casing and the projectile
25 still in it?

1 A. Yes sir.

2 Q. That's what -- what people like me commonly just
3 refers to -- a lay person refers to as a bullet;
4 right?

5 A. Yes sir.

6 Q. Okay. Now; were you also asked, as part of this
7 investigation, to conduct a photo lineup?

8 A. Yes sir.

9 Q. What is a photo lineup?

10 A. A photo lineup -- uh -- is six different pictures of
11 individuals that's put on a sheet of paper.

12 And -- uh -- what you do is:
13 whenever you got a crime that's occurred and
14 somebody has identified -- or did see somebody
15 leaving a crime scene -- then you go get a photo
16 lineup, which is -- contains six different people on
17 paper; and then you just take that and let them look
18 at it and see if they can figure out the individual
19 that they seen leaving the crime scene.

20 Q. And did you do that in this case?

21 A. Yes sir.

22 Q. I show you State's Exhibit Number 2 and ask if you
23 recognize that?

24 A. Yes sir; I do.

25 Q. And what is it?

1 A. It's the photo lineup that -- uh -- I presented to
2 the victim -- uh -- Mr. Daniel Lyles, Jr.

3 Q. Okay. You showed it to this fellow, here; Mr.
4 Lyles?

5 A. Yes sir.

6 Q. When did you show it to him?

7 A. Uh -- It was November the 4th --

8 Q. Okay.

9 A. -- of 2004.

10 Q. Okay. Couple of months; a couple of months after
11 this happened?

12 A. Yes sir.

13 Q. Uh -- a month and a half. And those had six
14 photographs; is that correct?

15 A. Yes sir.

16 Q. Are they all males?

17 A. Yes sir.

18 Q. Are they all black males?

19 A. Yes sir.

20 Q. Are they all similarly situated in appearance?

21 A. Yes sir.

22 Q. Same basic hair styles; the same facial hair?

23 A. Yes sir.

24 Q. Would that be fair?

25 A. Yes sir.

1 Q. Is that -- uh -- exhibit in the same condition as
2 whenever you used it with Mr. Lyles?

3 A. Yes sir.

4 Q. No different pictures; no different order of
5 pictures?

6 A. No sir.

7 SOLICITOR:

8 Okay.

9 Your Honor, at this time I move
10 State's Exhibit Number 2 into evidence.

11 DEFENSE COUNSEL:

12 Your Honor, may I approach?

13 THE COURT:

14 Yes, you may.

15 (Whereupon: counsel for each party
16 conferred off the record with The Court at the bench.)

17 THE COURT:

18 Ladies and gentlemen of the jury
19 this is one of those cases that I'll need to take up
20 something with the attorneys outside of your hearing.

21 Uh -- as I told you at the
22 beginning of the trial, from time to time this is
23 necessary.

24 I'm going to caution you at this
25 point in time: again, do not begin any discussions.

1 concerning this case, even among yourselves.

2 You have not heard all of the
3 evidence in this case.

4 You have not been charged with the
5 law; and it would be improper for you to begin to
6 formulate any opinion concerning this trial until such
7 time as you have received all of the evidence and the
8 charge of the law.

9 I will excuse you at this time to
10 go back to the jury room.

11 As soon as we have completed out
12 discussion, I'll ask you to return.

13 Thank you very much.

14 (Whereupon: the jury empanelled in
15 the case withdrew from the courtroom and was no longer
16 present during the following proceedings.) 6/14/05

17 12:03:11 PM

18 THE COURT:

19 Mr. Allen, you had an objection?

20 DEFENSE COUNSEL:

21 Yes, Your Honor. I do.

22 Uh -- The exhibit that the State's
23 trying to offer has the signature of what appears to be
24 Mr. Lyles -- uh -- or at least the written name of Mr.
25 Lyles -- underneath four of the photographs.

1 And underneath it is -- uh -- my
2 client's photograph.

3 It essentially seems to me that
4 the State without having called Mr. Lyles to testify can
5 make any identifications that could allow them to get in
6 hearsay evidence through this officer.

7 There hasn't been any testimony
8 elicited about what Mr. Lyles did with the -- with the
9 photographs -- having been objected to -- hearsay
10 evidence.

11 And so, essentially, they're
12 trying to get in hearsay evidence -- uh -- and the
13 identification of my client by Mr. Lyles through the use
14 of a photographic lineup that really -- uh -- I mean, all
15 the markings on it haven't been explained.

16 And of course, had they been
17 explained, I would be objecting to that, as well.

18 Mr. Lyles is apparently present.

19 If the State intends to call him;
20 then imagine he can make whatever identification.

21 And if he's forgotten, then they
22 can recall officers and all that.

23 But -- uh -- he doesn't need to
24 put up the identification before they put up the witness.

25 THE COURT:

1 Mr. Willingham?

2 SOLICITOR:

3 Your honor, this officer was
4 present. He was able to observe the actions of the -- uh
5 -- victim, Mr. Lyles.

6 He was present. He can testify as
7 to the -- uh -- how certain the victim was; how quickly
8 he picked him out; and what the victim did as far as
9 looking at it; and ultimately signing it; executing the
10 affidavit.

11 He was present for all that.

12 I don't believe that hearsay.

13 If it is; I fully intend to call
14 Mr. Lyles.

15 I feel a little bit like -- a
16 little bit like Perry Mason when he says: Judge, I'll
17 connect it up later; but I will.

18 Uh -- Mr. Lyles is going to
19 testify.

20 He will be a witness -- uh -- in
21 this case.

22 I anticipate him being my last
23 witness.

24 That's the reason I'm calling this
25 officer now; because he's going to show to them -- he's

1 the one that can testify that he didn't suggest anything
2 to the victim.

3 And he can tell what the victim
4 did.

5 I think that is proper. And
6 again, to any degree that it is hearsay; which I don't
7 think it is, I will connect it up.

8 I assure you -- The Court -- as an
9 officer of The Court that I intend to call Mr. Lyles.

10 I'm not trying to sandbag the
11 case.

12 THE COURT:

13 I understand that. My -- What I
14 will allow you to do, is to allow this witness to
15 describe the procedure that he followed; the instructions
16 that he gave to -- to Mr. Lyles, if he were present when
17 Mr. Lyles -- uh -- viewed the lineup.

18 He can also testify as you stated
19 as to Mr. Lyles demeanor -- uh -- and what he did in
20 response to those instructions.

21 As to Mr. Lyles mental processes
22 or what he may have said in the identification; I will
23 sustain the objection as to those matters.

24 Do you follow what I'm saying?

25 In other words, he can testify

1 that he gave him the lineup; instructed him to look at
2 it; sign his -- I assume this is what he's gonna say --
3 sign his name to the person that identified as the
4 perpetrator.

5 He can identify how Mr. Lyles went
6 about doing that; how he looked and acted during that
7 period of time; those are all matters within his direct
8 observation. He saw it.

9 As to any statement Mr. Lyles may
10 have made in that process, verbal statement; I'll leave
11 that for Mr. Lyles to testify to; and that would be
12 hearsay if offered for the truth of matter asserted.

13 SOLICITOR:

14 I want to make sure that I
15 understand The Court's ruling so I don't step over it
16 when the jury gets back.

17 I will be allowed to ask this
18 officer if the victim looked at the line up; if he was
19 able to pick out anybody; and did he have him sign who he
20 picked out with certainty?

21 THE COURT:

22 If that's the instructions -- if
23 that's the instructions he gave him.

24 He needs to testify as to the
25 instructions he gave him.

1 SOLICITOR:

2 And the reason I ask that, Judge;
3 is because he picked out Number five.

4 And I want to ask this officer,
5 who picture Number five is.

6 THE COURT:

7 Well, if he knows from his own
8 knowledge, he can state as to who -- he made -- he made
9 up the lineup, he said.

10 I assume he knows who he put in
11 slot Number five.

12 He can testify from his own
13 knowledge as to who he put in slot Number five.

14 SOLICITOR:

15 I just don't want to -- want to
16 run afoul of -- Mr. Allen standing up and saying: the . .
17 fact -- the fact that Mr. Lyles picked out Number five is
18 hearsay.

19 Uh -- that -- that's what I want
20 not to do.

21 THE COURT

22 What he can -- Again, he could
23 testify if he told him to sign -- put his -- sign his
24 name under the person he picks out --

25 SOLICITOR:

1 Yes sir.

2 THE COURT:

3 And can say: he signed his name
4 under Number five and is Mr. -- if it is --

5 SOLICITOR:

6 Okay.

7 THE COURT:

8 -- the Defendant -- uh -- because
9 he made up the lineup.

10 I'm not going to allow him to
11 describe any statements made by Mr. Lyles.

12 SOLICITOR:

13 Yes sir.

14 THE COURT:

15 Mr. Lyles will have to testify to
16 explain his own mental process that he went through; and
17 what he may have said at that occasion.

18 SOLICITOR:

19 Yes sir. Thank you.

20 THE COURT:

21 You understand my ruling, Mr.
22 Allen?

23 DEFENSE COUNSEL:

24 I think I do.

25 But; for the -- I just want to

1 make sure that I'm covered on -- on the record, as well.

2 But to the extent that your ruling
3 allows this officer to testify that he signed his -- that
4 he signed his name underneath a picture; and that picture
5 -- in response to a -- to a direction he gave, as far as
6 identifying; I would object as being hearsay -- uh -- at
7 this time and --

8 THE COURT:

9 Well, that's describing actions.
10 That's not describing statements.

11 I mean, he said the physical act
12 of signing one's name on a piece of paper.

13 If he saw somebody to do; that's
14 his personal knowledge; that he saw the man sign it in a
15 particular location on the Page.

16 DEFENSE COUNSEL:

17 While that is true -- but if the
18 direction were to sign your name underneath the picture
19 of the --

20 THE COURT:

21 The directions given by this
22 witness, I assume.

23 I'm -- I'm going to let him
24 testify as to what directions he gave him.

25 DEFENSE COUNSEL:

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1 Yes sir.

2 THE COURT:

3 And then the man physically did
4 something in response.

5 That's not a statement.

6 That's a physical act.

7 The physical act of signing one's
8 name to a piece of paper is a physical act.

9 That's something I can -- I can
10 tell whether you've signed your name to anything since
11 I've been watching you for the last few minutes.

12 And I can describe that of my own
13 personal knowledge without you having told me anything.

14 Do you follow me?

15 DEFENSE COUNSEL: Yes, Your Honor.

16 THE COURT:

17 These are physical acts; these are
18 not statements by someone.

19 DEFENSE COUNSEL:

20 Well I just respectfully differ
21 with you.

22 THE COURT:

23 I understand that and your
24 objection is noted on the record.

25 DEFENSE COUNSEL:

1 Yes sir.

2 THE COURT:

3 Okay. But my ruling will be that
4 he can describe the physical acts that the gentleman did
5 in response to the instructions.

6 As to the mental process and what
7 that meant; Mr. Lyles will have to testify as to what he
8 meant by that act.

9 DEFENSE COUNSEL:

10 Thank Your Honor.

11 THE COURT:

12 Okay. Return the injury.

13 (Whereupon: the jury empanelled
14 in the case returned to the courtroom and was present
15 during the following proceedings.) 6/14/05 12:19:31 PM

16 THE COURT:

17 All right.

18 The record should reflect that the
19 ladies and gentlemen of the jury have returned.

20 My ruling is to sustain the
21 objection as to any statements by this witness as to
22 statements that may have been made by Mr. Lyles in this
23 process.

24 I have overruled the objection as
25 to this witness describing the physical acts and -- uh --

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1 matters that went on within his observation.

2 You may proceed.

3 SOLICITOR:

4 Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

6 Q. Tell this jury how you conducted this photo lineup.

7 A. A photo lineup is -- uh -- Officer Miller asked me
8 to -- uh -- get a photo lineup.

9 And at that time, I went to the
10 Spartanburg County Sheriff's Office.

11 I'm not an ID Officer.

12 Whenever I need a lineup, I either
13 go to Spartanburg County Detention Center and get
14 their ID Officer to do me -- do me a lineup -- or
15 either I go to the Spartanburg County Sheriff's
16 Office.

17 Q. All right. Once, you've got -- but you did that in
18 the case -- and that would be State's Exhibit Number
19 4, I think; yeah.

20 And you actually got a set of six
21 photographs?

22 A. Yes sir.

23 Q. State's Exhibit Number 2; I'm sorry. And you got
24 six photographs similarly situated and did it;
25 right?

- 1 A. Yes sir.
- 2 Q. All right. When you got the victim in, what did you
- 3 tell the victim?
- 4 A. When -- uh -- When I sat down with the -- uh -- the
- 5 victim, which was at his father's house -- uh -- we
- 6 set down in the living room and I explained it to
- 7 him that I had a photo lineup.
- 8 And at that time, I have a photo
- 9 lineup and also I have an affidavit I get him to
- 10 sign --
- 11 Q. Thank you.
- 12 A. -- which shows the date that he is looking at the
- 13 photo lineup; the exact location where he is doing
- 14 the photo lineup; and he signs it.
- 15 And also, he puts on there -- I
- 16 always -- uh -- advise them -- like on this one --
- 17 it's got -- the pictures are Numbered 1, 2, 3, 4, 5,
- 18 6.
- 19 Q. Okay.
- 20 A. And I advise them: if it's anybody on the top, sign
- 21 above the picture. If it's anybody on the bottom,
- 22 sign below the picture.
- 23 Q. Okay. And did you suggest to Mr. Lyles who he
- 24 needed to pick out?
- 25 A. No sir.

1 Q. Okay. And was -- did Mr. Lyles sign his name?

2 A. Yes sir.

3 Q. Where did he sign his name?

4 A. He signed it -- uh -- below -- uh -- picture Number
5 five.

6 Q. Picture Number Five; and who does picture Number
7 five belong to?

8 A. Mr. McCoy.

9 Q. John McCoy?

10 A. Uh-huh.

11 SOLICITOR:

12 Okay. Your Honor, at this time I
13 move State's Exhibit Number 2 into evidence.

14 THE COURT:

15 Any objection?

16 DEFENSE COUNSEL:

17 Subject to my prior objection.

18 THE COURT:

19 Subject to your prior objection?

20 DEFENSE COUNSEL:

21 Yes sir.

22 THE COURT:

23 That objection's noted.

24 It will be admitted as marked.

25 Q. I show you State's Exhibit Number 1; and ask if you

1 recognize that?

2 A. Yes sir; I do.

3 Q. What is it?

4 A. It's the -- uh -- affidavit for a photo lineup that
5 -- uh -- I get the -- uh -- the victim to sign; and
6 also -- uh -- put whatever -- there are six pictures
7 in there; the number beside it; which number picture
8 it is; and -- uh -- I get the victim to sign it; and
9 then, I witness and date it.

10 Q. Okay. And that was done in this case?

11 A. Yes sir.

12 Q. Is that form in the same condition as when you did
13 it back on November the 4th of 2004?

14 A. Yes sir.

15 SOLICITOR:

16 All right. Thank you.

17 If you would please answer any
18 questions the Defense lawyer has for you.

19 WITNESS:

20 Okay.

21 THE COURT:

22 Mr. Allen; your witness.

23 DEFENSE COUNSEL:

24 Thank you, Your Honor.

25 CROSS-EXAMINATION BY MR. ALLEN:

1 Q. You didn't go into the apartment at 3701 Culpepper
2 Crossing; did you?

3 A. 3701; no I --

4 Q. Excuse me. 370 -- 3107 what about that one?

5 A. That -- uh -- that afternoon I went in.

6 Q. Okay. Did you notice any photographs?

7 A. Any photographs?

8 Q. Any photographs -- of the children; the Defendant?

9 A. I can't recall any.

10 Q. You can't recall? So you don't know if there was
11 any photographs of Mr. McCoy in the apartment with
12 the children or by himself; do you?

13 A. I can't recall any.

14 Q. You can't recall? Uh -- You don't know what, if
15 any, contact Mr. Lyles had with Ms. McCoy before
16 November -- between September 29th and November 4th;
17 do you?

18 A. No sir.

19 Q. Okay. The -- uh -- casings that you found -- that
20 were found where?

21 A. They was found -- you got the 3100 Building and then
22 across the parking lot where everybody parks at; you
23 got the 3200 Building on the right side.

24 If you're looking at the 3200
25 Building, on right side of that building in a grassy

1 area.

2 Q. Okay. How far away from the building?

3 A. What -- from which building; 3100 or 32?

4 Q. 3200 Building?

5 A. 3200 Building? Approximately -- it was close. I

6 found one close -- not far from the building. I

7 found one down next to where the fence is.

8 Q. Okay. Uh -- did you find any others at the fence?

9 A. The only one's I've got is just the two that I

10 recovered -- is all I can answer to.

11 Q. Okay. Now -- uh -- When did you search for these

12 casings?

13 A. Sir?

14 Q. When did you look for these casings or find these

15 casings?

16 A. It was in -- it was that afternoon.

17 Q. Oh; no wonder I can't find it. Thank you.

18 Okay. You put the time and date of recovery on the

19 envelope; did you not?

20 A. It should be. I'd have to look at it and tell you.

21 Q. Is that the envelope?

22 A. That's the envelope that -- yes sir -- the date and

23 time of recovery; yes sir.

24 Q. Okay. And that would be 12 25?

25 A. Yes sir.

1 Q. 25 minutes after noon on the 29th; correct?

2 A. Yes sir.

3 Q. Okay. Uh -- and you searched over this whole area
4 pretty well for casings?

5 A. Yes. I was looking for any -- any casings that I
6 could find in the area; and that's the only two that
7 I located.

8 Q. Okay; the only two you could locate? When you say
9 you were looking in the area; where all did you
10 look?

11 A. Well, whenever I arrived on the scene, I was at the
12 apartment complex. Uh -- I was advised which way
13 the victim and the Defendant was running. And
14 that's where I looked at.

15 Q. Okay; the path that was described to you?

16 A. Yes sir.

17 Q. Would that -- so did you look in the parking lot
18 between the 3100 and 3200 buildings?

19 A. Yes sir.

20 Q. And you looked into that area to the right of the
21 3200 Building?

22 A. Yes sir.

23 Q. When you say the right of the 3200 Building, you're
24 talking about the right as you're looking at it --

25 A. If you look at the front of the building to the

1 right side of the building.

2 Q. Okay. So you didn't look in any areas, other than
3 the path as described to you; correct?

4 A. I looked in the -- in the area that possibly they
5 could have -- the shell casings could have went
6 while the shooting was going on.

7 DEFENSE COUNSEL:

8 Okay. Nothing further; thank you.

9 THE COURT:

10 Redirect?

11 SOLICITOR:

12 Nothing further of this witness,

13 Your Honor.

14 THE COURT:

15 Sir; you may step down.

16 WITNESS:

17 Yes sir.

18 THE COURT:

19 Ladies and gentlemen of the jury,
20 at this point in time we have reached a point in the
21 trial where it is 12:30.

22 Uh -- we've reached the end of a
23 witnesses' testimony.

24 I'm gone to break at this time for
25 lunch.

1 Uh -- we're going to allow you to
2 go to lunch. You are free to go anywhere you would like
3 to go.

4 But I'm going to give you some
5 words of caution before you go.

6 Again -- uh -- should you hear,
7 see, or read, any news report concerning the trial of
8 this case, I'm going to ask that you do not listen,
9 watch, or read those reports.

10 Uh -- again, they may contain
11 information which cannot be used by you in any fashion in
12 determining the verdict of this case.

13 It would be highly improper for
14 you to consider any of that information in reaching a
15 verdict.

16 Also, do not discuss this case
17 among yourselves or with anyone else.

18 It's okay to tell a family member
19 you've been picked on a jury; and once the trial is
20 completed, you will explain it all to them, if you choose
21 to do that.

22 But at this point in time, again;
23 discussions concerning this case will invariably lead to
24 your formulating opinions prior to the time that you've
25 heard all of the evidence and been charged with the law.

1 Should anyone attempt to contact
2 you during the break concerning any matter in this case,
3 please let me know and I will take appropriate action
4 concerning that matter.

5 Spartanburg is not such a big
6 place that while you are at lunch, you may not see
7 someone participating in this trial having lunch at the
8 same location.

9 Please don't locate yourself in so
10 close a proximity to those people that you would overhear
11 their conversations.

12 They may not be attempting to
13 communicate with you; but you may hear something, that
14 again you should not consider in reaching a verdict in
15 this case.

16 Your obligation and your oath is
17 to consider only the competent evidence given from this
18 witness stand; and evidence that's introduced through
19 those witnesses.

20 So, again, please don't put
21 yourself in a position where your decision might be
22 influenced by something that should not be considered in
23 this case.

24 I will ask that you return to the
25 jury room at 2 o'clock this afternoon.

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1 At that point in time, we should
2 be -- uh -- in a position to again begin the trial of
3 this case.

4 You're excused at this time for
5 lunch. We'll see you at 2 o'clock.

6 Thank you very much.

7 (Whereupon: the jury empanelled in
8 the case withdrew from the courtroom and was no longer
9 present during the following proceedings.) 12:29:58 PM
10 THE COURT:

11 All right. The Court will be at
12 ease until 2 o'clock.

13 The Defendant remains in custody.

14 Thank you very much.

15 (Whereupon: The Court was recessed.) 12:30:32 PM 14/6/05

16 (Whereupon: The Court was called to order by the Bailiff
17 and all pertinent parties and their counsel were back and
18 present in the courtroom.) 6/14/05 1:56:37 PM

19 THE COURT:

20 Thank you very much. You may be
21 seated.

22 All right. Is the State ready?

23 SOLICITOR:

24 The State's ready, Your Honor.

25 THE COURT:

1 Is the Defense ready?

2 DEFENSE COUNSEL:

3 Yes, Your Honor.

4 All right; you can bring the jury

5 back.

6 (Whereupon: the jury empanelled

7 in the case returned to the courtroom and was present

8 during the following proceedings.) 6/15/05 2:07:39 PM

9 SOLICITOR:

10 Your Honor, may we approach?

11 THE COURT:

12 Yes, you may.

13 (Whereupon: counsel for each party

14 conferred with The Court off the record at the bench.)

15 THE COURT:

16 Ladies and gentlemen of the jury,

17 if you will just bear with us a minute; apparently one of

18 the witnesses stepped out about the time I asked them to

19 bring you in, so let's -- we're trying to get back in the

20 courtroom.

21 All right. The record should

22 reflect that all of the Jurors have returned to the

23 courtroom.

24 I trust that all of you had a good

25 lunch and you are ready to begin -- uh -- again, now that

1 we've completed our lunch break.

2 Mr. Willingham; who do you intend
3 to call as your next witness?

4 SOLICITOR:

5 Your Honor, it would be Deputy
6 Ruffner, with the Spartanburg County Sheriff's Office.

7 THE COURT:

8 All right. As soon as he
9 arrives, we'll put him on the stand.

10 SOLICITOR:

11 Thank Your Honor.

12 While we are waiting on Officer
13 Ruffner, I can call Chief Cothran; if I can call Chief
14 Cothran back, if I need to, after Mr. Ruffner's
15 testimony.

16 THE COURT:

17 All right. That's go ahead and
18 call that witness; and we'll try to work with you.

19 SOLICITOR:

20 Thank Your Honor.

21 THE COURT:

22 All right. Come forward and be
23 sworn, sir.

24 RYAN COTHRAN, HAVING BEEN FIRST
25 DULY SWORN, WAS EXAMINED AND GAVE EVIDENCE AS FOLLOWS:

1 DIRECT EXAMINATION BY MR. WILLINGHAM:

2 Q. To tell the jury who you are?

3 A. Ryan Cothran, Chief of Police of the Duncan Police
4 Department.

5 Q. How long have you been in law-enforcement?

6 A. Going 18 -- 19 years.

7 Q. How long have you been the Chief of Duncan?

8 A. Since 1999.

9 Q. Okay. And were you working on the early-morning
10 hours of September the 29th, of 2004?

11 A. No sir; I was called out.

12 Q. Okay. And when you were called, or got called out;
13 where did you go?

14 A. I went straight to Culpepper Apartments.

15 Q. Okay. What did you do when you arrived there?

16 What were your duties as the senior law-enforcement
17 officer on the scene?

18 A. The first thing I had to do was to make sure that
19 the scene was secured and the -- uh -- well, you
20 know, establish a basically command -- command; and
21 -- uh -- checked on the victims that were still on
22 the scene.

23 And -- uh -- then I went to -- uh
24 -- Officer Miller and he gave me a briefing of what
25 was going on.

1 Q. Okay. And did you direct the searching of the
2 shell casings -- shell casings and other type of
3 evidence that may have been left behind?

4 A. Yes, sir. I did.

5 Q. Now; did you also have an opportunity to, at some
6 point, talk to the Defendant in this case, John
7 McCoy?

8 A. Yes, I did.

9 Q. And tell the jury where that took place?

10 A. That took place at our -- at my Police Department.

11 When Spartanburg County located
12 him, they brought him and transported him back to my
13 Police Department. I met him there.

14 Captain Hollifield had read him
15 his rights and -- uh -- witnessed that and had him
16 sign a waiver that he had -- uh -- had been advised
17 of his Miranda Warning and rights.

18 Q. Okay. And was anything used to assist you and
19 Captain Hollifield in informing him of those rights?

20 A. Yes. I have a form.

21 Q. I'm showing you State's Exhibit Number 3, and ask if
22 you recognize that?

23 A. Yes, sir. I do. This is the -- uh -- Statement Of
24 Rights Pre-Irrigation Waiver Form.

25 Q. And you were present when those rights were advised

1 to the Defendant?

2 A. Yes sir.

3 Q. Did -- tell -- to the jury what those rights are?

4 When you talked about Miranda Rights; what are those
5 rights?

6 A. Those rights are basically telling you -- Before we
7 start questioning a suspect, we read them directly
8 off the sheet:

9 You have a right to remain silent
10 and anything you say can and will be used against
11 you in a court of law.

12 You have the right to talk to a
13 lawyer and to have one -- a lawyer present with you
14 while you are being questioned.

15 If you cannot afford to hire a
16 lawyer, a lawyer will be appointed free of any cost
17 to represent you before you -- before any
18 questioning begins.

19 You have the right to stop
20 answering questions at any time.

21 Q. Okay. And did he appear to understand those rights
22 when they were read to him?

23 A. Yes sir. He signed it.

24 Q. He signed and indicated he did understand his
25 rights?

1 A. Yes, he did.

2 Q. There's a second part on that form, called a Waiver
3 of Rights.

4 Uh -- explain to the jury what
5 that is.

6 A. That paragraph is -- it says:

7 Fully understanding my rights as
8 they have been explained to me, I wish to waive --
9 give up my rights; and talk to Officer Hollifield
10 and -- my name, Cothran -- in reference to the case
11 in question.

12 I have waived my rights freely and
13 voluntarily without being threatened or coerced; and
14 without being promised any leniency or reward.

15 And he signed in both places.

16 Q. Okay. Is that form in substantially the same
17 condition as when y'all used it on September 29th?

18 A. Yes.

19 SOLICITOR:

20 Your Honor, at this time I move
21 State's Exhibit Number 3 into evidence.

22 THE COURT:

23 Any objection.

24 DEFENSE COUNSEL:

25 If we may approach, Your Honor?

1 THE COURT:

2 Yes, you may.

3 (Whereupon: counsel for each party conferred with The
4 Court off the record at the bench.)

5 THE COURT:

6 Mr. Allen, you have no objection
7 at this time; is that my understanding?

8 DEFENSE COUNSEL:

9 Yes, Your Honor.

10 THE COURT:

11 Without objection, it will be
12 received as marked.

13 You may proceed, Mr. Willingham.

14 SOLICITOR:

15 Thank you, Your Honor.

16 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

17 Q. Uh -- Whenever you talked to him, you say that he
18 appeared to understand his rights?

19 A. Yes sir.

20 Q. Did he appeared appear to be under the influence of
21 alcohol or drugs?

22 A. Not at that time.

23 Q. Uh -- did you have -- uh -- was his speech coherent?

24 A. Yes sir.

25 Q. Were you able to understand him when he talked?

1 A. Yes sir.

2 Q. Did he appear to understand you?

3 A. Yes sir.

4 Q. Did you force him to give you a statement?

5 A. No sir.

6 Q. Did you threaten him in any way?

7 A. No way.

8 Q. Did you promise him anything in order to get a
9 statement out of him?

10 A. No sir.

11 Q. And did he agree to talk to you?

12 A. Yes, he did.

13 Q. He waived that right to remain silent?

14 A. Yes, he did.

15 Q. Did he ever ask for a lawyer?

16 A. No sir.

17 Q. Okay. What did he tell you?

18 A. Basically, what he told me was, is that -- uh -- he
19 had -- that -- when I -- When I started questioning
20 him after giving him his rights, he basically told
21 me that he had been -- was going to a club; but that
22 the club was closed; and -- uh -- so they went to
23 the Hot Spot on Union Street and got some beer; and
24 then went to the BP and got some chicken wings.

25 And they too them home and set on

1 the porch and drank beer and ate chicken wings for
2 awhile.

3 And he stated that he does not
4 remember the time that he did that.

5 Uh -- But he stated that he went
6 to -- to his apartments and he fell asleep later
7 that night.

8 Uh -- He -- -- uh -- He went into
9 telling me who was there with him.

10 Uh -- He named Richard Drayton;
11 Dray Burger; Germaine Griggs; Travis Faint; and --
12 uh -- Keith Wells. (All phonetic.)

13 And he stated that he did drive a
14 white Jeep Cherokee.

15 And -- uh -- he told me that
16 nobody had drove it except for his cousin the
17 morning before -- uh -- this -- uh -- before the
18 29th of September.

19 And then he -- He stated that him
20 and his wife Royal McCoy had been separated for
21 about six to seven months?

22 Q. Okay. And did he indicate to you what time that he
23 went -- him and that friend went to the club?

24 A. He said he didn't remember what -- he said around 11
25 PM that he -- that he went to the club and they were

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1 closed.

2 Q. So he went and got chicken wings and beer; and then
3 he came home?

4 A. Right.

5 Q. And then went to sleep watching TV?

6 A. Right.

7 Q. All right. Were you involved in the search of that
8 white Jeep Cherokee?

9 A. I was present. I wasn't involved.

10 Q. Okay. On -- Tell me again what was recovered from
11 that white Jeep Cherokee?

12 A. Uh -- It was one bullet out of the center console;
13 and a Winchester Ammunition box --

14 Q. Okay.

15 A. -- that was between the seat and console.

16 Q. And that's the things that we have already
17 introduced into evidence as State's Exhibit 4; is
18 that fair?

19 A. Yes sir.

20 Q. The Winchester box and one -- that live round?

21 A. Yes sir.

22 Q. Okay. Now; at some point, you went back to
23 Culpepper Crossing; is that -- is that right?

24 A. Yes sir: about 11:30 AM that morning.

25 Q. What your purpose of going back to that apartment?

1 A. To recover the bullet out of the -- uh -- wall.

2 Q. And how did you do that?

3 A. I basically cut into the drywall; and dug the bullet
4 out of the insulation.

5 Q. I show you what's marked as State's Exhibit Number
6 7; and ask if you recognize that?

7 A. Yes sir. That's my handwriting of one gold bullet
8 that was taken out of the wall at 3107 Culpepper
9 Crossing?

10 Q. And that was done on the 29th of September?

11 A. Yes sir; 11:30.

12 Q. You took it in evidence and put it in that evidence
13 bag?

14 A. Yes sir.

15 Q. And it's been secured ever since?

16 A. Yes sir.

17 Q. Is it in the same condition as when you received it?

18 A. Yes sir.

19 SOLICITOR:

20 Your Honor, at this time I would
21 move State's Exhibit Number 7 into evidence.

22 THE COURT:

23 Any objection?

24 DEFENSE COUNSEL:

25 No objection.

1 THE COURT:

2 Without objection, it's received
3 as marked.

4 You may proceed.

5 SOLICITOR:

6 Thank Your Honor.

7 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

8 Q. I show you State's Exhibit Number 6 and ask if you
9 recognize these items?

10 A. Yes. This is a one 25 -- uh -- 25 caliber empty
11 casing that was inside the apartment; and then one
12 25 caliber live round.

13 Q. And you received that from who?

14 A. Uh -- Officer Ruffner of the Spartanburg County
15 Sheriff's Office.

16 Q. All right. Thank you. Were any of these live
17 rounds or spent casings sent to the State Law-
18 Enforcement Division for analysis?

19 A. No sir; because the weapon was never recovered.

20 Q. So you're the senior or ranking law enforcement
21 officer on this case; and there was no weapon found
22 during -- in the investigation; is that right --
23 fair?

24 A. No sir. There was no weapon found.

25 Q. So if there's no weapon, there's no way to compare a

1 bullets to a particular weapon because you've got to
2 have the gun to do that?

3 A. That's correct.

4 Q. Is that -- that's right?

5 A. That's correct.

6 SOLICITOR:

7 If you would, answer any questions
8 the Defense lawyer might have for you.

9 THE COURT:

10 Mr. Allen, your witness.

11 DEFENSE COUNSEL:

12 Thank Your Honor.

13 CROSS-EXAMINATION BY MR. ALLEN:

14 Q. You are aware, aren't you, Chief Cothran that spent
15 casings can be viewed by the folks down at SLED to
16 see if they were fired from the same weapon --- if
17 they have similar markings -- even if you don't have
18 a weapon; can't they tell?

19 A. Yes sir.

20 Q. Okay. So these cases were never sent down to SLED
21 to determine if there were fired from the same
22 weapon or a different weapon?

23 A. SLED was contacted, and the Solicitor's Office was
24 contacted; and we determined not to, because SLED
25 said there was no weapon to match it to.

1 Q. So you didn't even ask them to see what -- well,
2 let's see if it -- if it was all fired by one
3 weapon?

4 A. Yes -- Yes, I did. But SLED -- SLED's case load is
5 so big, they said: unless we absolutely needed it --

6 Q. Okay. So it was decided y'all didn't absolutely
7 need it? Would that be a fair statement?

8 A. Well, we didn't have a weapon to match it to.

9 Q. Okay. I understand that. I understood that part.
10 So, let's go over something else.

11 You -- you're calling State's
12 Exhibit 4 the box, an ammo box?

13 A. Yes sir. That's the way it's logged into the
14 evidence; Yes sir.

15 Q. Okay; but in showing you this box again -- and
16 you've heard my questions of the other officer;
17 correct?

18 A. Yes sir.

19 Q. Would you say this is really an ammunition box; or a
20 box that contained a multi tool?

21 A. Could be either or.

22 Q. Either or?

23 A. There's box -- there's ammunition boxes that size.

24 Q. Okay. Well, there are some that size --

25 A. Uh-huh.

- 1 Q. -- but don't they have listed on there the
2 ammunition -- what type of ammunition it is?
- 3 A. Usually they have the -- the caliber on there; yes
4 sir.
- 5 Q. Okay. You happen to have in your -- uh -- evidence
6 locker in connection with another case --
- 7 A. Right
- 8 Q. -- a box of Winchester 25 caliber ammunition;
9 correct?
- 10 A. Yes, I do.
- 11 Q. Okay. And you didn't offer this into evidence
12 because this is in connection with another case;
13 correct?
- 14 A. Yes sir; it is.
- 15 Q. But I'm showing you a Winchester box --
- 16 A. Yes sir.
- 17 Q. 25 caliber automatic --
- 18 A. Uh-huh.
- 19 Q. -- ammunition.
- 20 A. Uh-huh.
- 21 Q. And it's -- uh -- about the same size; but it's a
22 white box --
- 23 A. A little bit smaller; yes sir.
- 24 Q. -- red letters. You see the black letters that say
25 25 caliber -- uh -- 25 R?

1 A. Yes sir.

2 Q. Clearly delineating this as an ammunition box?

3 A. Yes sir.

4 Q. Okay. If I can get my glasses here; and you don't
5 see on the back of this box the words: Carolina
6 Knife and Tool in Portland Oregon on the -- you
7 don't see on the back of the box I'm showing you,
8 the one that's marked 25 R.

9 A. No sir.

10 Q. In fact, this is marked -- uh -- Winchester, East
11 Alton, Illinois; correct?

12 A. Yes sir.

13 Q. Okay. And the box of ammunition I'm showing you
14 even indicates how many cartridges would be in
15 there; correct?

16 A. Yes sir.

17 Q. Okay. You also received a -- what's called a
18 gunshot residue test; correct?

19 A. Yes sir.

20 Q. Okay. Is that in this big box here?

21 A. Yes sir, it is.

22 Q. You want to and come down and --

23 A. Sure. I'll be glad to.

24 DEFENSE COUNSEL:

25 Let me have this marked as a

1 defense exhibit, please.

2 CROSS-EXAMINATION BY MR. ALLEN CONTINUED:

3 Q. I'm showing you Defense Exhibit 1; is this the
4 gunshot residue --

5 A. Yes. This is the gunshot residue kit that was
6 performed on John Cutis McCoy by Officer Ruffner
7 with the Sheriff's Department.

8 Q. Okay. And was it turned over to you for
9 safekeeping?

10 A. Yes sir, it was.

11 Q. Okay. So you received it as you received it from
12 Mr. Ruffner; correct?

13 A. Yes sir.

14 Q. Okay. But you did not actually perform the test?

15 A. No sir; I did not.

16 Q. Were you present when the test was performed?

17 A. Yes sir.

18 Q. Okay. And do you know what happened to this doc --
19 to this test?

20 A. It was sent to SLED to be processed.

21 Q. Okay. Were there any other gunshot residue
22 collection kits taken in connection with this case?

23 A. Yes sir. We did perform a -- uh -- another officer
24 from Spartanburg County performed a gunshot residue
25 kit on the -- uh -- steering wheel of the Jeep

1 Cherokee; later that morning, around probably 9 or
2 10 o'clock, I believe.

3 But I don't remember right off the
4 top of my head; but I think it was around 9 or 10
5 that morning.

6 Q. Was there a gunshot residue collection kit taken
7 from Mr. Lyles -- Daniel Mack Lyles, Jr.?

8 A. No sir.

9 Q. Okay. So just those two -- uh -- one from Mr.
10 McCoy and one from the steering wheel -- and I
11 believe it was the steering wheel and gear shift?

12 A. Yes sir.

13 Q. Right?

14 A. Yes sir.

15 Q. Okay. So just -- just those two; is that correct?

16 A. Right.

17 Q. Did you make a tape recording of your conversation
18 with Mr. McCoy?

19 A. No sir; I did not.

20 Q. Uh -- And of course, no -- you didn't write it down
21 on a statement for him to sign; did you?

22 A. No; he -- he did not want to write a statement; so I
23 did not make him.

24 Q. Okay. Uh -- Now; I see that you are testifying
25 from -- from typed notes; is that correct?

1 A. Yes sir.

2 Q. Okay. Uh -- Do you recall when those typed notes
3 were prepared?

4 A. That same morning.

5 Q. That same morning?

6 A. Yes sir.

7 DEFENSE COUNSEL:

8 Okay.

9 Nothing further, Your Honor.

10 Chief Cothran, thank you.

11 THE COURT:

12 Anything on redirect?

13 SOLICITOR:

14 No sir, Your Honor.

15 THE COURT:

16 Sir, you may step down; thank you
17 very much.

18 WITNESS:

19 Thank you.

20 SOLICITOR:

21 Your Honor, the State would now
22 like to call, Officer Ruffner.

23 THE COURT:

24 Officer Ruffner, come forward and
25 be sworn.

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1 TODD RUFFNER, HAVING BEEN FIRST
2 DULY SWORN, WAS EXAMINED AND GAVE EVIDENCE AS FOLLOWS:
3 THE COURT:

4 Your witness, Mr. Willingham.

5 SOLICITOR:

6 Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. WILLINGHAM:

8 Q. Mr. Ruffner, tell the jury who you are?

9 A. Who I am?

10 Q. Uh-huh. Your name.

11 A. I am Todd William Ruffner.

12 Q. And where do you work?

13 A. I am employed at the Spartanburg County Sheriff's
14 Office.

15 Q. What do you do for the Sheriff?

16 A. I'm a Crime Scene Investigator slash Forensic
17 Technician; I guess is what the official job title
18 is.

19 Q. All right. And tell me where I'll understand it;
20 what is that?

21 A. Uh -- I process crime scenes; collect evidence -- uh
22 -- to be turned over to the agency who would process
23 them for -- or to be sent to SLED.

24 Q. How long you been doing that?

25 A. Two years.

1 Q. Okay. Were you working back in September of 2004?

2 A. Yes, I was.

3 Q. And did you get a call on September 29th about 3
4 o'clock in the morning to go out to 3107 Culpepper
5 Crossing?

6 A. Yes, sir. I did.

7 Q. When you got there, what did you do?

8 A. I met with the officer on scene, which I believe was
9 Officer Miller.

10 Uh -- I got information that I
11 needed -- uh -- pertinent information -- what
12 information he had about victims, suspect, what had
13 occurred -- uh -- a brief synopsis of -- of the
14 entire scene -- uh -- and then I began to process
15 the scene?

16 Q. And when you say process the scene; what does that
17 mean?

18 A. Each -- each scene tells something different. On
19 this particular scene, I used Duncan's digital
20 camera to take digital photographs of the residence;
21 and of all the evidence -- uh -- the spent shell
22 casings; the live shell casing; the blood splatter
23 and smears inside the residence and outside the
24 residence on a vehicle.

25 Q. And I've shown you those pictures; haven't I?

- 1 A. Yes; you've shown them to me.
- 2 Q. Is it fair to say they are of very poor quality?
- 3 A. Oh; they came out very badly.
- 4 Q. Okay. I mean, it's fair to say you really can't
5 see a whole lot in those pictures you took at the
6 scene?
- 7 A. Yeah; on those photos, you can't really see a whole
8 lot.
- 9 Q. Okay. Now, as far as additional processing of
10 evidence -- uh -- in your processing the crime
11 scene; does that involve collecting evidence?
- 12 A. Yes, sir. It does.
- 13 Q. And did you collect evidence in this case?
- 14 A. Yes, sir. I did. I collected a -- uh -- spent
15 shell casing from --
- 16 Q. Where did you find that?
- 17 A. It was inside the residence, behind a couch. I also
18 collected a live round from behind a Acura.
- 19 Q. Okay. And that was of course out in the parking
20 lot?
- 21 A. It was in the parking lot next -- kind of next to
22 the residence.
- 23 Q. All right. I show you State's Exhibit Number 6 --
24 State's Exhibit Number 6 and see if you recognize
25 those items?

1 A. It is the live round and the spent casing that I
2 contacted from 3107 Culpepper Crossing.

3 Q. Are those in the same condition as they were when
4 you recovered them?

5 A. Yes sir, they are.

6 SOLICITOR:

7 Your Honor, at this time, I would
8 move State's Exhibit Number 6 into evidence.

9 THE COURT:

10 Any objection?

11 DEFENSE COUNSEL:

12 No objection.

13 THE COURT:

14 Without objection, they will be
15 admitted as marked.

16 You may proceed.

17 SOLICITOR:

18 Thank Your Honor.

19 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

20 Q. Uh -- Did you at some point go out to 408 -- before
21 -- uh -- what else did you do at the Culpepper
22 Crossing scene?

23 A. I proceeded to take blood samples from inside the
24 residence. I believe I took one from the door and
25 from the couch.

1 Q. Okay.

2 Q. Uh -- I asked if they would like blood samples from
3 the Acura; they said that no blood sample was
4 required from there.

5 Q. Okay.

6 A. Uh -- and then I turned everything over to them; and
7 then responded to their police department.

8 Q. How about fingerprints?

9 A. No sir.

10 Q. Can you tell me why not?

11 A. I don't believe they were requested.

12 Q. Okay. All right. You went into 408 Abner Road;
13 is that fair?

14 A. Yes, I did.

15 Q. And that was at 6:58 in the morning?

16 A. Yes sir. That's correct.

17 Q. And you went to Apartment A 22?

18 A. Yes sir.

19 Q. Uh -- Did you process that scene?

20 A. We were there to serve a search warrant and assist
21 the service of the search warrant.

22 Uh -- prior to entry, we read the
23 search warrant to see what items were sought.

24 We made entry. Photographs of the
25 apartment were taken -- uh -- but nothing was found

1 at the apartment.

2 Q. No weapons at the apartment?

3 A. No sir.

4 Q. No ammu -- ammunition at the apartment?

5 A. No sir.

6 SOLICITOR:

7 Okay. All right. If you would,
8 answer any question the Defense lawyer has; thank
9 you.

10 WITNESS:

11 Thank you.

12 THE COURT:

13 Mr. Allen?

14 DEFENSE COUNSEL:

15 Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. ALLEN:

17 Q. You also did the gunshot residue collection kit?

18 A. Yes, sir. I did.

19 Q. Okay. And you did one of Mr. McCoy; correct?

20 A. Yes sir; I did.

21 Q. And I'm showing you Defense Exhibit 1; is -- uh --
22 this the -- uh -- gunshot res -- gunshot residue
23 collection kit that you obtained from Mr. McCoy?

24 A. Yes sir, it is.

25 Q. Okay. And you turn -- turned this over to --

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1 A. I turned it over to Chief Cothran.

2 Q. Okay. Now you're trained in -- in taking this --
3 uh -- collection kit?

4 A. Yes sir. Uh -- there is simple instructions inside
5 that anybody can do to do it.

6 Q. Okay. And essentially, what do you do to collect
7 gunshot residue?

8 A. Uh -- Once you open the kit, they provide a pair of
9 gloves for you. You place those gloves on your
10 hands -- uh -- and then you follow the steps.

11 Uh -- they have a -- I don't even
12 know what it's called -- you dab the back of the
13 hands -- it doesn't say what it's called.

14 It just has: use this container.

15 You dab it; and it has for the
16 palm -- it has for the back of the hands and it has
17 for the palm of each hand.

18 And then you do a swab of each
19 hand; and then place them into their separate
20 containers.

21 And it has a questionnaire that
22 you have to fill out -- which you ask the person
23 that you are conducting it on, their name; social
24 security number; hobbies; activities; and then you
25 place everything back into the kit and place the red

1 seal on it.

2 Q. Okay. And --- Now the first thing that you do, I
3 mean, that's got like a sticky side to it?

4 A. It's either -- uh -- sticky or maybe a magnet to
5 pick up trace metals.

6 I'm not exactly sure what it is.

7 It doesn't specify in the kit.

8 Q. You're not sure what chemicals are in this --

9 A. No sir. I'm not.

10 Q. -- to make it work; right?

11 A. No sir.

12 Q. And you're not trained to -- to read it?

13 A. No sir, I'm not. That's what SLED's for.

14 Q. Right. Now do you recall -- or do you know -- what
15 time you collected the gunshot residue kit from Mr.
16 McCoy?

17 A. I arrived at the police department at 4:15 in the
18 morning; and shortly thereafter, I would have done
19 the kit; after -- I do the questionnaire prior to
20 the kit, so probably 10 to 15 minutes to fill out
21 the questionnaire.

22 Q. Now you -- is this a copy of the questionnaire that
23 you filled out?

24 A. Yes sir.

25 Q. Okay. It's got your signature on it?

1 A. Yes sir. Oh; actually 4:15's when I did it.

2 Q. Okay.

3 A. That's when I actually did it, then.

4 Q. Right. Okay. But this is more accurate, obviously,
5 than your memory --

6 A. Yes.

7 Q. -- from several months ago; right?

8 A. Yes sir.

9 Q. Okay. Now the -- the live round that you
10 collected; you collected that from behind the Acura,
11 not inside?

12 A. No. It was -- it was on the ground behind the
13 Acura, outside.

14 Q. Okay. Uh -- you were looking -- uh -- for other
15 rounds and --

16 A. I did a brief look with -- uh -- the police
17 department. They had -- actually had marked almost
18 everything prior to my arrival.

19 Q. Okay. And you were also looking for spent
20 cartridges as well; correct?

21 A. Yes sir.

22 Q. And other than the two items that you talked about,
23 which I believe was one spent cartridge and one live
24 round; you didn't find any other cartridges?

25 A. I did not find any other cartridges.

1 DEFENSE COUNSEL:

2 Nothing further for this officer.

3 THE COURT:

4 Redirect?

5 SOLICITOR:

6 Very briefly, Your Honor.

7 REDIRECT EXAMINATION BY MR. WILINGHAM:

8 Q.. What -- uh -- the cartridge and the round that you
9 found -- I may have asked you this, but I want to be
10 sure -- uh -- what caliber was it?

11 A. They were 25 autos.

12 Q. Okay. Uh -- And you said you filled out that
13 gunshot residue information form?

14 A. Yes sir.

15 Q. And that you got the information from -- some of the
16 information from the Defendant?

17 A. Yes sir.

18 Q. In fact, he indicates on there, he drank beer and
19 ate some wings; did that come from him?

20 A. Yes sir. I asked -- all the questions I have on
21 here are what I directly asked him.

22 Q. Okay. And it was unknown to you if he had washed
23 his hands?

24 A. It was unknown.

25 SOLICITOR:

1 Okay. All right.

2 Thank Your Honor.

3 THE COURT:

4 Recross?

5 DEFENSE COUNSEL:

6 No Your honor.

7 THE COURT:

8 You may step down. Thank you

9 very much.

10 Mr. Willingham, you may call your

11 next witness.

12 SOLICITOR:

13 Thank Your Honor.

14 We call Daniel Lyles.

15 THE COURT:

16 Sir; come forward to be sworn.

17 DANIEL LYLES, HAVING BEEN FIRST

18 DULY SWORN, WAS EXAMINED AND GAVE EVIDENCE AS FOLLOWS:

19 THE COURT:

20 Mr. Willingham, your witness.

21 SOLICITOR:

22 Thank you, Your Honor.

23 DIRECT EXAMINATION BY MR. WILLINGHAM:

24 Q. Mr. Lyles, we've heard a lot about you; but I need

25 you to introduce yourself to the jury.

1 A. Uh -- my name is Daniel M. Lyles, Jr.

2 Q. I'm going to need you to speak up; okay.

3 A. Yes; my name is Daniel M. Lyles, Jr.

4 Q. Okay. That's good. Mr. Lyles, where do you live?

5 A. I live at -- uh -- in Duncan, South Carolina in
6 Duncan Station?

7 Q. Who do you live with?

8 A. I live by myself.

9 Q. Okay. Uh -- Do you know Ms. Royal McCoy?

10 A. Yes.

11 Q. And how do you know her?

12 A. Uh -- Previous acquaintance from awhile back -- we
13 had -- uh -- got together on and off.

14 Q. For how long is that? Just -- just guesstimate it.

15 A. Approximately it would be around -- I think the
16 first time I met her it was probably at -- uh -- it
17 was at -- uh -- the tax office.

18 I think it was like in the mid-
19 90s.

20 Q. Okay. All right. What -- how would you describe
21 your relationship with Ms. McCoy?

22 A. Just friends.

23 Q. Okay. I'll tell you what, Mr. Lyles; if you could
24 just sit back from the mic a little bit; and you
25 can just talk louder.

1 Sometimes it comes on; and
2 sometimes it doesn't.

3 If you'll just speak loud enough,
4 I think we all can hear.

5 You got a good strong voice.

6 Uh -- Y'all are friends?

7 A. Yes sir.

8 Q. Not boyfriend and girlfriend?

9 A. No sir.

10 Q. Okay. Uh -- back on September 29th, y'all were
11 just friends?

12 A. Yes sir.

13 Q. Did you go to her house?

14 A. Yes sir.

15 Q. What time did you go over there?

16 A. It was somewhere around about 1 o'clock or so.

17 Q. In the morning?

18 A. Yes sir.

19 Q. Were the children there?

20 A. Uh -- to my knowledge, they were.

21 Q. Okay. You didn't check in on them, yourself?

22 A. No; I didn't go back and check on them.

23 Q. What were y'all doing?

24 A. We -- we had sat down and was talking for a minute
25 and watched TV.

1 Q. Okay. What happened then?

2 A. After hours we was there for a minute; she had dosed
3 off; whatnot. And I was sitting there just watching
4 TV for a minute.

5 And I heard a knock on the door.

6 And then, she got up and went to
7 the door to see who it was.

8 And she said couldn't see nobody.

9 So she set back down.

10 And then, another knock; and then,
11 she still didn't see nothing; then another knock;
12 then somebody said: Can I come in. I just want to
13 use the bathroom.

14 And then she was like: Well, no,
15 you cannot.

16 Q. Did you recognize the voice?

17 A. No; not really.

18 Q. Did you know John McCoy?

19 A. No; not really.

20 Q. Okay. Never had any real interaction with him?

21 A. No sir.

22 Q. Okay.

23 A. Except for one time. I had seen him awhile back for
24 one time; that was it.

25 Q. Okay. Uh -- after she said: I'm not letting you

1 in; what happened then?

2 A. Then there was a pause for a minute; and then the.
3 door got kicked open; and he came through.

4 Q. Okay. Where were you sitting?

5 A. I was on the couch.

6 Q. Okay.

7 A. But I had stood up towards the door.

8 Q. Okay. And after you stood up, you said that he
9 came in?

10 A. Yes sir.

11 Q. Okay. Who's he?

12 A. Uh -- John McCoy; the guy sitting with the grey suit
13 and the black skirt.

14 Q. All right. And he came in; and what happened then?

15 A. He had a gun in his hand and he said: What are you
16 doing here?

17 Q. You know what kind of gun it was?

18 A. It looked like a silver, small handgun, looking like
19 gun --

20 Q. Okay.

21 A. -- to me.

22 Q. And he said what to you?

23 A. He said: What are you doing here?

24 Q. And what did you say?

25 A. I said: I'm not doing nothing.

- 1 Q. Okay. Then what happened?
- 2 A. Then he just shot me.
- 3 Q. Where did he shoot you?
- 4 A. He shot me right in my mind arm; right over here, as
- 5 you can see.
- 6 Q. Okay. When he shot you in the arm, what did you do?
- 7 A. I fell over towards the wall and I broke a vase or
- 8 something -- some glass something.
- 9 Q. Okay. After you broke that, what happened?
- 10 A. I just kind of gathered myself to get up a little
- 11 bit; and he was doing something.
- 12 I don't know what he was doing;
- 13 but he -- probably was doing something -- I don't
- 14 know if he was reloading some more bullets in his
- 15 gun or what.
- 16 Q. He was still in the apartment with you?
- 17 A. Yes sir.
- 18 Q. Okay. And he -- he actually came inside of the
- 19 apartment?
- 20 A. Yes sir.
- 21 Q. He wasn't shooting from out -- outside the door; was
- 22 he?
- 23 A. No; he was shooting at me from -- as close as from
- 24 me to the guy whose right here.
- 25 Q. When you say: guy; you mean The Court reporter right

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1 here?

2 A. Yes sir.

3 Q. How far do you think that is; probably 12 - 15 foot?

4 A. Yeah; at the most.

5 Q. Okay. And while he's doing whatever he's doing,
6 you said you were trying to collect yourself; what
7 did you do?

8 A. I kind of paused and just said a prayer to myself; a
9 real quick prayer; and I just jetted out the door.

10 Q. You tried to get away?

11 A. Yes sir.

12 Q. Where was Royal?

13 A. She had went back to the back.

14 Q. Did you see her go back to the back?

15 A. Briefly.

16 Q. Okay.

17 Q. I seen her go back there; but I know she went back
18 there.

19 Q. Do you remember what he was wearing?

20 A. It was a bright colored skirt. It was a red shirt,
21 though.

22 Q. Okay. And you said you tried to get out of there?

23 A. Yes sir.

24 Q. Where did you go?

25 A. I went out towards the parking lot.

1 Q. Okay. You -- you were parked out there?

2 A. Yes sir.

3 Q. You drove -- you drive the Acura that's -- that's
4 been referenced a good bit here?

5 A. Yes.

6 Q. All right. Uh -- Did you make it?

7 A. Well, as I got out there and was going through the
8 parking lot -- because I really wasn't gone go to my
9 car -- but to probably hide; and in the process of
10 doing that, he came behind me.

11 But he was still a far way -- far
12 off a little bit still.

13 Q. Okay.

14 A. And he was like: Where you going; Where you going;
15 like that.

16 Q. Okay. So what did you do?

17 A. So I started running --

18 Q. Okay.

19 Q. -- across the parking lot.

20 Q. All right. What happened as you were running
21 across the parking lot?

22 A. I run across the parking lot and I tripped -- or
23 somehow I fell.

24 I -- it was -- my arm was numb a
25 little bit -- anyway; and I had kind of fell after I

1 got over the sidewalk part.

2 I'm thinking I tripped over that.

3 And then I tripped over there and
4 fell into the grass part that's close to the fence
5 towards the other set of buildings on the other
6 side.

7 I thought it was something where I
8 could go around it; but I don't think it was.

9 And I fell.

10 Q. What happened when you fell?

11 A. After I fell, I was trying to gather myself to get
12 up; but my hand was kind of -- my arm was kind of
13 numb or what not; so I really couldn't really push
14 up too good.

15 But I was -- I was trying to; it
16 was -- as I looked up; he was right there on me..

17 Q. Who was right there?

18 A. Uh -- John McCoy.

19 Q. Okay. What happened then?

20 A. And then he just started shooting me. And I was --
21 moved my body like this -- kind of like back and
22 forth to try to dodge anything, if I could; but I
23 didn't.

24 Q. Okay. How many shots do you remember hearing or
25 seeing?

- 1 A. It was -- it was close to 10. Because he only shot
2 me one time in the apartment; and then, he shot me
3 the rest of the times outside.
- 4 Q. Okay. How many bullet holes did you end up with?
- 5 A. Uh -- I got 9.
- 6 Q. Tell the jury where?
- 7 A. Okay. I got -- I got three in my arm right here.
- 8 Q. Uh-huh.
- 9 A. In my left -- my left arm.
- 10 Q. Okay.
- 11 A. And also I got 2 on this arm.
- 12 Q. Okay.
- 13 A. I got one down here.
- 14 Q. When you say down here, what do you mean?
- 15 A. It's towards -- it's towards my --
- 16 Q. Stand up so they can see.
- 17 A. It's down here.
- 18 Q. Okay.
- 19 A. And I got 2 up here close to my heart; and I got one
20 in my back.
- 21 Q. You got one in your back? And where did you say the
22 other two --
- 23 A. And two -- and two on my right arm.
- 24 Q. Okay. And you went to the hospital?
- 25 A. Yes sir.

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1 Q. And you went to surgery?

2 A. Yes sir.

3 Q. How long were you in the hospital?

4 A. I was in the hospital for about a week, I'm
5 thinking; a week or maybe a little bit longer,
6 because they had to do emergency surgery on me
7 because it had perforated my -- I think it was my
8 lung.

9 So they had to stitch it up or
10 whatnot in order to alleviate and fix it.

11 Q. Okay.

12 A. Or it could a been my liver; it's one of my organs.

13 Q. Okay. When did he stop shooting you?

14 A. I'm thinking he stopped shooting after he ranned out
15 of bullets to shoot.

16 Q. What did you do then?

17 A. He just started running back towards the other set
18 of buildings; and got in his vehicle and drove off.

19 Q. And when you were in apartment, you testified that
20 he was about this close to you; is that right?

21 A. From the first gunshot; yeah.

22 Q. Okay. When he was standing over you and you were
23 own the ground; how close was he?

24 A. He was a little bit closer.

25 Q. Show me -- tell me when to stop?

- 1 A. About right there.
- 2 Q. About six foot; is that fair?
- 3 A. About that -- about that much; five or six feet;
- 4 yeah -- close range.
- 5 Q. Did you get a good look at him?
- 6 A. Yes sir.
- 7 Q. Were you shown some photo lineups?
- 8 A. Yes sir.
- 9 Q. I show you State's Exhibit Number 2; and ask if you
- 10 recognize that?
- 11 A. Yes sir.
- 12 Q. Is that the photo lineup that was shown to you by
- 13 Officer Teal?
- 14 A. Yes sir.
- 15 Q. Did he suggest who you should pick out in that photo
- 16 array?
- 17 A. No sir; not at all?
- 18 Q. Were you able to recognize anybody in that photo
- 19 array?
- 20 A. Yes sir.
- 21 Q. Did you tell the officer of that you recognized
- 22 somebody?
- 23 A. Yes sir. I pointed at the guy that shot me that
- 24 night.
- 25 Q. Which one was that?

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1 A. On this sheet, it's -- uh -- person Number 5.

2 Q. Okay. And he had you sign that?

3 A. Yes sir.

4 SOLICITOR:

5 And I believe, if I'm not
6 mistaken, that this is already into evidence.

7 I wish to publish it to the jury
8 at this time.

9 THE COURT:

10 You may do so.

11 DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

12 Q. And this was shown to you on November the 4th --

13 A. Yes sir.

14 Q. -- of 2004?

15 A. Yes sir.

16 Q. How sure are you that's him?

17 A. I'm positive; 100 percent positive.

18 Q. I'm showing you State's Exhibit Number 1. The
19 officer had you fill out an affidavit basically
20 saying which picture you picked out?

21 A. Yes sir.

22 Q. Did you sign that?

23 A. Yes sir.

24 Q. Is that your signature at the bottom of it?

25 A. Yes sir.

1 Q. Does that accurately reflect how that form looked
2 whenever you signed it?

3 A. Yes sir.

4 SOLICITOR:

5 Your Honor, at this time, I move
6 State's Exhibit Number 1 into evidence.

7 DEFENSE COUNSEL:

8 Your Honor, objection because he's
9 already testified as to what picture he picked out; and
10 that doesn't mean -- how the picture was picked out --

11 THE COURT:

12 Any objection there?

13 DEFENSE COUNSEL:

14 Yes, my objection is unnecessary
15 bolstering.

16 THE COURT:

17 I haven't seen what the document
18 says.

19 You want to hand it to me, so I
20 can see it?

21 SOLICITOR:

22 Yes, Your Honor.

23 THE COURT:

24 I'm going to overrule the
25 objection.

1 I'll admit it into evidence.

2 SOLICITOR:

3 Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. MR. WILLINGHAM CONTINUED:

5 Q. Mr. Lyles?

6 A. Uh-huh.

7 Q. Show me and this court where the man is that shot
8 you that night?

9 A. That guy sitting right there with the grey suit on;
10 black shirt; glasses; and a beige and black tie.

11 Q. Tell me what you were wearing?

12 A. I was wearing a -- uh -- navy blue; yellow striped
13 shirt and blue jeans.

14 Q. I show you State's Exhibit Number 8; and ask if you
15 recognize that photograph?

16 A. Yes sir.

17 Q. Whose car is that?

18 A. That is my car.

19 Q. Whose shirt is that?

20 A. That's my shirt.

21 Q. And that's what you had on, on September 29th, 2004?

22 A. Yes sir.

23 SOLICITOR:

24 Your Honor, at that time, I move
25 State's Exhibit Number 8 into evidence.

1 THE COURT:

2 Any objection?

3 DEFENSE COUNSEL:

4 No, Your Honor.

5 THE COURT: Without objection, it will be received as
6 marked.

7 You may proceed.

8 SOLICITOR:

9 Thank Your Honor. May I publish
10 this to the jury?

11 THE COURT:

12 Yes, you may.

13 SOLICITOR:

14 I beg the Court's indulgence.

15 THE COURT:

16 Yes sir.

17 SOLICITOR:

18 Mr. Lyles, I would appreciate it
19 if you would answer any questions the Defense lawyers got
20 for you.

21 THE COURT:

22 Mr. Allen?

23 DEFENSE COUNSEL:

24 Thank you, Your Honor.

25 CROSS-EXAMINATION BY MR. ALLEN:

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1 Q. Mr. Lyles, can you tell me what time was it that you
2 arrived that night at the apartment to visit Ms.
3 McCoy?

4 A. It was around 1 o'clock.

5 Q. You -- you arrived around 1 o'clock?

6 A. It was about somewhere close to that.

7 Q. Had you called here earlier?

8 A. We had talked over the phone.

9 Q. Okay. Just before you arrived; or earlier that --

10 A. After she had got off from work, we had talked.

11 Q. Okay. And so it was planned that you would come
12 over to visit at about 1 o'clock?

13 A. Yes sir.

14 Q. Okay. Uh -- do you recall what y'all were watching
15 on television?

16 A. I'm not sure. It was -- uh -- probably lifetime or
17 else -- something -- I'm not sure exactly?

18 Q. Okay. Now the knock that you heard was -- uh --
19 pretty much a regular knock -- the first knock?

20 A. Yes sir.

21 Q. Okay. Uh -- And when you heard a voice on the
22 other end of the door; it didn't sound agitated or
23 upset or angry; did it?

24 A. No sir.

25 Q. And by the time -- and I believe it was Mr. McCoy --

1 you said that came in.

2 Now you didn't really know him
3 from before; did you?

4 A. No. I had seen him only once.

5 Q. Okay. And that was some time before that; right?

6 A. Yes sir.

7 Q. I mean, some years beforehand?

8 A. Yes sir.

9 Q. Okay. Uh -- And did you tell him any things, such
10 as: I haven't touch her -- or: I haven't touched
11 them -- or anything to that effect?

12 A. All I said was: I haven't done any thing.

13 Q. You said: I haven't done any thing?

14 A. Right.

15 Q. Okay. And he was wanting to know who you were?

16 A. Yes. He said: What you doing -- What are you doing
17 here -- is what he said.

18 Q. And --

19 A. As though he lived there.

20 Q. Okay. Uh -- and did you tell him who you were?

21 A. No. I didn't have time to; because after I said --
22 uh -- I'm not doing anything; he just shot me.

23 Q. Okay. And you were standing up at first when he
24 came in?

25 A. Yes.

1 Q. Uh -- And you were standing -- uh -- when you say he
2 shot you?

3 A. Was I standing?

4 Q. Yes sir?

5 A. Yes; I was standing when he shot me.

6 Q. All right. Were you moving towards him?

7 A. No sir.

8 Q. Just standing still; were you trying to get out?

9 A. I was just standing still, kind of -- yeah.

10 Q. After you left the apartment, you say you were
11 running towards your car or were you running where?

12 A. I was just running to -- to get away from him; and
13 to try and see if I could probably hide somewhere or
14 something like that.

15 Q. Okay. Did you -- Did you fight with him?

16 A. No. But if anybody maybe would have heard anything
17 that was going on;; they probably would have thought
18 that we were fighting because something broke and
19 there was a big thud when I hit the wall -- and the
20 ground, whatnot -- I meant the floor -- after he had
21 shot me.

22 Q. Okay. Was that from the time that you say he shot
23 inside the apartment or outside?

24 A. Inside.

25 Q. Okay. Uh -- but did you end up hitting against

1 someone else's door?

2 A. I mean -- uh -- what door are you talking about? I
3 mean --

4 Q. Any other door?

5 A. Door; as in car door; or --

6 Q. As in apartment door?

7 A. No; I hit -- heard -- if I hit a door, it what -- it
8 wasn't no door -- it was the floor and the wall when
9 I hit the glass and maybe hit the wall of her
10 apartment.

11 Q. Okay. You didn't take any glass outside?

12 A. No sir.

13 Q. Okay. You didn't break any glass once you left the
14 apartment?

15 A. No sir; but the door was open while all of this was
16 happening.

17 Q. Okay. And you didn't run by your car?

18 A. I went through the parking lot and I didn't really
19 have no destination where I was going.

20 I was just more or less just
21 trying to get away from the apartment.

22 Q. Okay. And you ran into this grassy area toward a
23 fence?

24 A. Yes sir.

25 Q. Or; what ended up being toward a fence; right?

1 A. In a bend toward the fence; yes.

2 Q. Okay. Now there were no street lights right there;
3 were there?

4 A. I think they have some kind of light pole or
5 something; I think.

6 I'm not sure it it's right there
7 directly in the middle of the parking lot; or over
8 towards another set of parking lots -- but, it might
9 have been one.

10 I can't recall, exactly.

11 Q. But you were -- where you ended up over there by the
12 fence was pretty much in the dark; correct?

13 A. Yeah, it was kind of dark. It was kind of dark; but
14 you still could see a little bit, because of the --
15 from the illumination from the -- from the light
16 that they -- they have in the parking lot.

17 You could still -- you could see a
18 little something.

19 Q. Okay. And you pretty much expected to see Mr.
20 McCoy when you turned around; right?

21 A. Yes; because I heard his voice when he asked me:
22 Where you going.

23 Q. Okay. I mean, when you ended up by the fence; you
24 pretty much expected to see Mr. McCoy there too;
25 right?

1 A. Well, after I had turned and started running away
2 from him -- when he said: Where are you going; I
3 expected him to follow me, because he's started
4 chasing me.

5 And once I turned around and
6 started running; he started running also.

7 Q. Okay. So you pretty much expected that he was
8 following you?

9 A. Yes sir.

10 Q. Now; when you were looking at the photographic
11 lineup; you were pretty much looking for Mr. McCoy;
12 correct?

13 A. Yes sir.

14 Q. I mean -- and -- because you had seen him from a
15 time before, you essentially knew what he looked
16 like; right?

17 A. I essentially knew what he looked like because I
18 seen him when he shot me inside the apartment; as
19 well as, when I turned around and he said: Where you
20 going.

21 That's how I knew who it was.

22 Q. You didn't -- or did you pull any weapon out at him?

23 A. No sir.

24 Q. Did you scuffle with him at any point that night?

25 A. No sir.

1 Q. Even after you left the apartment, you did not
2 scuffle with him?

3 A. No; I -- I couldn't have scuffled with him; because
4 - after he seen me in the parking lot, I ran.

5 And I fell. And after I did all
6 that; he caught up with me.

7 And then he just started shooting
8 at me.

9 Q. Okay. And I believe you said that this person was
10 five or six feet away from you when the shooting was
11 going on; correct?

12 Q. Yes sir.

13 Q. So you weren't close enough to scuffle with him?

14 A. No sir.

15 DEFENSE COUNSEL:

16 Nothing further, Your honor.

17 Thank you.

18 THE COURT:

19 Redirect?

20 REDIRECT EXAMINATION BY MR. WILLINGHAM:

21 Q. I want clarify -- Whenever Mr. Allen asked if you
22 picked him out of that photo lineup because you were
23 looking for John McCoy; that's because John McCoy is
24 the one that shot you?

25 A. Exactly.

1 Q. Not because you had seen him months or years before?

2 A. Right.

3 Q. Is that a fair statement?

4 A. Yes sir.

5 Q. And did you have any weapons?

6 A. No sir.

7 Q. Did you have any way to defend yourself at all?

8 A. No way whatsoever; only my fist -- uh -- or my feet;
9 if anything.

10 SOLICITOR:

11 Okay.

12 THE COURT:

13 Recross?

14 DEFENSE COUNSEL:

15 No, Your Honor.

16 THE COURT:

17 Sir, you may step down.

18 SOLICITOR:

19 Your Honor at this time the State
20 would rest.

21 THE COURT:

22 All right. Ladies and gentlemen
23 of the jury, the State is now presented the evidence that
24 it intends to present in its case in chief.

25 Uh -- There are some matters that

1 I need to take up with the attorneys at this point in
2 time; and that does have to be outside of your hearing.

3 So I'm going to excuse you to the
4 jury room with the same caution that I've given you every
5 time I've excused you from the courtroom

6 Please don't begin any discussions
7 concerning this case until you have heard all of the
8 evidence in this case and I have charged you with the
9 law.

10 You can be excused at this point
11 in time.

12 Thank you very much.

13 (Whereupon: the jury empanelled in
14 the case withdrew from the courtroom and was no longer
15 present during the following proceedings.) 6/14/05

16 3:08:36 PM

17 THE COURT:

18 Mr. Allen; anything you'd like to
19 take up with The Court.

20 DEFENSE COUNSEL:

21 Your honor, if it please The
22 Court?

23 I would ask for a motion for a
24 directed verdict based on the grounds (inaudible) --

25 COURT REPORTER:

1 I'm sorry, sir?

2 MR. ALLEN:

3 I'm mumbling -- I'm sorry.

4 I make a motion for a directed
5 verdict -- based on the evidence taken in the light most
6 favorable to the State does not tend to show each and
7 every element of the offenses as alleged.

8 THE COURT:

9 You wish to be heard, Mr.
10 Willingham?

11 SOLICITOR:

12 Your Honor; just briefly.

13 I believe every element of
14 burglary, first degree; and assault and battery with
15 intent to kill -- there is sufficient evidence from the
16 testimony -- uh -- as to each and every element.

17 He entered the dwelling with
18 attempt to commit a crime therein.

19 It occurred at nighttime and while
20 armed with a deadly weapon -- a firearm -- displayed the
21 firearm and caused serious physical injury to the victim,
22 Mr. Daniel Lyles; and without the consent of Royal McCoy
23 as far as coming into the residence.

24 On the assault battery with intent
25 to kill; it's clear that he shot him a number of times

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1 where there were nine bullet holes in him.

2 I think malice may be inferred
3 from the use of the deadly weapon.

4 I believe every element of both
5 charges have been satisfied to -- hopefully to the
6 satisfaction of the Court.

7 THE COURT:

8 All right. Well, before I rule,
9 there is one other thing I would like to clear up.

10 The -- uh -- photo lineup -- uh --
11 I reviewed my ruling on that earlier.

12 And -- uh -- it probably should
13 not have been admitted at the time the police officer
14 testified.

15 However, I assume you would move
16 to admit it through the testimony of Mr. Lyles; is that
17 correct, Mr. Willingham.

18 SOLICITOR:

19 Yes sir, Your Honor.

20 THE COURT:

21 You wish to renew your objection
22 to that?

23 Because I would exclude it based
24 on the officer's testimony.

25 But, at this point in time, Mr.

1 Lyles has testified concerning it; and we are offered it
2 again through Mr. Lyles' testimony.

3 Any objection?

4 DEFENSE COUNSEL:

5 No, Your Honor.

6 THE COURT:

7 Okay. So -- uh -- the record

8 should reflect that it has been admitted based on Mr.
9 Lyles' testimony.

10 All right.

11 Now -- uh -- concerning your -- uh
12 -- client's right to testify; do you wish for me to
13 inquire?

14 DEFENSE COUNSEL:

15 Yes, Your Honor; if The Court
16 please?

17 I have kind of discussed it with
18 him; but maybe we should also resolve whether or not the
19 State would offer to the --

20 THE COURT:

21 I'm -- I'm going to deny your
22 motion, by the way.

23 And then, we're going to move on.

24 DEFENSE COUNSEL:

25 Yes. I --

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1 THE COURT:

2 I do deny your motion.

3 Go ahead.

4 DEFENSE COUNSEL:

5 Yes sir.

6 Uh -- whether or not the State
7 would intend to impeach my client, should he decide to
8 testify -- uh -- through the use of any prior
9 convictions.

10 I believe they have given me --
11 no; I know they have given me his -- his record.

12 I didn't see any impeachable
13 offenses on there, so therefore --

14 THE COURT:

15 Mr. Willingham?

16 SOLICITOR:

17 No sir, Your Honor.

18 He has no convictions of the type
19 that would allow me to impeach him.

20 THE COURT:

21 Okay.

22 Now; sir if you would -- you can
23 remain seated there.

24 If you will raise your right hand;
25 and Madam Clerk, please swear the Defendant.

1 (Whereupon: the Defendant was
2 duly sworn and participated in the following voir dire
3 examination by The Court.)

4 THE COURT:

5 You can be seated, Mr. McCoy.

6 Uh -- At this time, I'm going to
7 explain certain rights to you concerning -- uh -- your
8 case.

9 If you do not understand the
10 explanations that I give to you at this point in time, I
11 would ask that you please ask me to go back over the --
12 what you do not understand; and I will be happy to do
13 that.

14 Do you understand what we are
15 going to do at this point in time, sir?

16 DEFENDANT:

17 Yes sir.

18 THE COURT:

19 Uh -- We've reached the stage of
20 this trial where you have the right to present your
21 defense.

22 Uh -- the -- You have a right to
23 claim the protections which have been afforded you under
24 the Fifth Amendment to the Constitution of the United
25 States of America.

1 That amendment, in part, reads
2 that:

3 No person shall be compelled in
4 any criminal case to be a witness against himself.

5 This means that you cannot be
6 required to testify in this case.

7 You have a right to testify on
8 your behalf.

9 However, no one can make you
10 testify.

11 It's a personal right that you
12 have; and no one can give up your right to remain silent
13 except yourself.

14 If you decide to testify, I will
15 tell you that you will be governed by the same rules that
16 any other witness is governed by.

17 That means that you will be
18 examined by your attorney; and you will be cross-examined
19 by the State.

20 Now, the State has informed us at
21 this point in time that there are no offenses on your
22 record for which you could be impeached.

23 And so, therefore, they do not
24 intend to use your record against you -- uh -- during
25 your testimony; and of course we would not allow that at

1 this point in time, since they've informed us they do not
2 intend to do that.

3 However, if you decide to testify;
4 again, you will be subject to the same rules that any
5 other witness is subject to.

6 You would be subject to cross-
7 examination; and examination by the attorneys.

8 If you decide to testify, this
9 decision must be made on your part freely and
10 voluntarily.

11 It must be made intelligently,
12 with knowledge of the protections which are afforded to
13 you by the Fifth Amendment to the Constitution of the
14 United States of America.

15 As I've stated previously, you are
16 not required to prove anything in this case.

17 Uh -- no person is required to
18 prove their innocence in a case.

19 Now, should you decide to exercise
20 your right to remain silent; I will tell you that I will
21 instruct the Jurors that they cannot give this fact any
22 consideration whatsoever; and it is not to be of any
23 prejudice to you because you did not testify.

24 Again, the decision as to whether
25 or not to testify is left entirely up to you.

1 You have the right to discuss that
2 decision with family, friends, your attorney, or anyone
3 else you choose to discuss the decision with.

4 However, the decision is finally
5 up to you; and you must make that decision yourself.

6 Now do you understand what I have
7 explained to you concerning this -- this right?

8 DEFENDANT:

9 Yes sir.

10 THE COURT:

11 All right.

12 Do you have -- -- uh -- Do you
13 wish to discuss this question with anyone at this point
14 in time; or with your attorney at this point in time?

15 DEFENDANT:

16 My attorney.

17 THE COURT:

18 You would like to discuss it with
19 him?

20 DEFENDANT:

21 Yes sir.

22 THE COURT:

23 Okay. We'll be at ease for a few
24 minutes.

25 And we will give you an

1 opportunity to discuss that.

2 If you would like to do that in
3 private; we can make a room available outside of the
4 courtroom.

5 The Court will be at ease while
6 the discussion takes place.

7 (Whereupon: The Court was
8 recessed.) 6/14/05 3:15:09 PM

9 (Whereupon: The Court was called to order by the Bailiff
10 and all pertinent parties and their counsel were back and
11 present in the courtroom.) 6/14/05 3:28:58 PM

12 THE COURT:

13 Thank you very much; you can be
14 seated.

15 Okay. Mr. McCoy; I'll remind you
16 that you remain under oath at this point in time.

17 Have you had an opportunity to
18 fully discuss the questions we talked about and your
19 right to remain silent with your attorney at this point
20 in time?

21 DEFENDANT:

22 Yes sir.

23 THE COURT:

24 Anything else you wish to talk to
25 him about; or with anyone else about, concerning your

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1 decision?

2 DEFENDANT:

3 No sir.

4 THE COURT:

5 Do you wish to testify in this
6 case?

7 DEFENDANT:

8 Yes sir.

9 THE COURT:

10 Okay.

11 Anything further, Mr. Allen,
12 before we start back?

13 DEFENSE COUNSEL:

14 No, Your Honor.

15 THE COURT:

16 The State have anything?

17 SOLICITOR:

18 No sir, Your Honor.

19 THE COURT:

20 All right.

21 You can bring the jury back.

22 (Whereupon: the jury empanelled in the case returned to
23 the courtroom and was present during the following
24 proceedings.) 6/14/05 3:29:45 PM

25 THE COURT:

1 Okay.

2 The record should reflect that all
3 the Jurors have returned to the courtroom.

4 At this point in time, ladies and
5 gentlemen, the State has rested its case.

6 They have presented the evidence
7 that they chose to present in their case in chief; and
8 this is the opportunity that the Defendant now has to
9 present its case.

10 Mr. Allen, you may call your first
11 witness.

12 DEFENSE COUNSEL:

13 Thank you, Your Honor.

14 I call Ila Simmons to the stand.

15 THE COURT:

16 Ma'am, come forward to be sworn.

17 ILA SIMMONS, HAVING BEEN FIRST

18 DULY SWORN, WAS EXAMINED AND GAVE EVIDENCE AS FOLLOWS:

19 THE COURT:

20 Mr. Allen; your witness.

21 DEFENSE COUNSEL:

22 Thank you, Your Honor.

23 DIRECT EXAMINATION BY MR. ALLEN:

24 Q. You are Ila Simmons; correct?

25 A. That's correct.

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1 Q. Okay. If you can speak up a little bit louder for
2 me --

3 A. Okay.

4 Q. -- I would appreciate it. Where do you work?

5 A. I'm employed at the South Carolina Law Enforcement
6 Division, commonly known as SLED in the Forensics
7 Division and the Trace Evidence Department.

8 Q. And what are some of your duties in the Trace
9 Evidence Department?

10 A. We analyze gunshot residue; gunpowder residue; we
11 compare fibers; we compare hairs. We also analyze
12 explosives and arson debris?

13 Q. Okay. Have you been trained in the area of
14 analyzing gunshot residue?

15 A. Yes, I have.

16 Q. And can you tell us something back your training and
17 education to hold that position?

18 A. I received a Bachelor's of Science in Chemistry. I
19 was employed by SLED; and I completed a three year
20 in house training program at SLED in the areas of
21 gunshot residue and trace evidence analysis.

22 Q. And so you have been trained on how to analyze it
23 and interpret the results?

24 A. Yes. I had to take examinations on how to collect,
25 analyze -- uh -- log in this evidence, as well as

1 how to analyze all of the evidence on the
2 instrumentation that we use.

3 Q. Okay. And you've testified in court before in the
4 areas of gunshot residue examination and
5 interpretation of the test results?

6 A. Yes, I have.

7 DEFENSE COUNSEL:

8 Your honor, at this time, I would
9 offer her as an expert in the area of examination
10 and interpretation of the results of gunshot residue
11 test.

12 SOLICITOR:

13 No objection, Your honor.

14 THE COURT:

15 All right.

16 Ladies and gentlemen of the jury -
17 - uh -- generally under our system of justice and rules
18 of evidence, witnesses are not allowed to testify
19 concerning their opinions on subjects.

20 The law, however, makes an
21 exception for those witnesses who have been qualified and
22 recognized as experts in a given field.

23 Uh -- those persons who do possess
24 because of educational background or training, or
25 experience, expertise in a certain field, or a

1 specialized field that would assist you in determining
2 the questions that you have to decide, are allowed to
3 give their opinions within their area of expertise.

4 In this case, this witness has
5 been offered as an expert witness -- uh -- on the
6 analyzation of trace evidence.

7 Uh -- The State does not object;
8 so the Court is going to determine that this witness is
9 an expert witness within that field.

10 That means that she will be
11 allowed to give her opinion concerning matters within
12 that area of expertise.

13 At the close of the trial, I will
14 give me some additional instructions as to how you should
15 approach or analyze the testimony given by all of the
16 witnesses, including expert witnesses in this.

17 You may proceed, Mr. Allen.

18 CROSS-EXAMINATION BY MR. ALLEN CONTINUED:

19 Q. Tell us what is supposed gunshot residue?

20 A. When a gun is fired, there is a mixture of chemicals
21 that come out of the gun. They are confined within
22 primer of the cartridge and within the cartridge
23 casing.

24 Uh -- the firing falls; it strikes
25 the primer; a small spark is created; the gunpowder

1 begins to burn; and a bullet is expressed from the
2 end of the gun.

3 Along with this bullet, is gunshot
4 residue; it's a mixture of chemicals that come out
5 and get on vicinity -- anything that is in the
6 vicinity of the weapon when it's fired.

7 Q. And are you looking primarily for certain chemicals?

8 A. Yes, we are. We're looking for lead, barium, and
9 antimony; those of the three primary chemicals that
10 are found.

11 Q. Okay. And now -- Do you find these three chemicals
12 either singly -- uh -- or in -- in combination of
13 any other -- uh -- common things that we see around;
14 or how --

15 A. You can find lead. You can find barium and
16 antimony.

17 When they are all together in a --
18 in combination with one another, they are specific
19 to gunshot residue.

20 Q. Okay. Is it fair to say that when you find those
21 three together, that they are found only in gunshot
22 residue?

23 A. Yes. If they are in -- if they -- that they have a
24 the certainly morphology and things that we are
25 looking for; yes.

1 Q. Okay. And now -- Now, tell us about the gunshot
2 residue tests kit. First of all, I'm showing you
3 Defense Exhibit Number 1 for Identification.

4 Can you tell me what that is?

5 And if you have to open it up;
6 please feel free to do so.

7 We'll staple it back.

8 A. Thank you, sir. Uh -- This is the gunshot residue
9 kit collected from John Curtis McCoy. It is the
10 gunshot residue kit that I processed and analyzed.

11 Q. Okay. Now, take us through the steps -- because we
12 heard a little bit about the collection of the
13 gunshot residue kit; so what is being done when they
14 -- when the kit is being collected?

15 A. When the kit is collected, there are two primary
16 parts of the kit.

17 There are what are called particle
18 lifts; which are returned with the kit when it is
19 returned.

20 They look like this.

21 It's basically just a little vial
22 with a lid. And you can remove this lid. And there
23 is a little stub on the inside.

24 It's got -- it's just this tape on
25 it. It's double sided tape.

3 There are 4 samples submitted.

4 There is one from the right palm;
5 one from the left palm; one from the back of the
6 left hand; and one for the back of the right hand.

7 Uh -- After these are collected,
8 each separately; they are capped, put back into the
9 envelope; and then they are -- swabs are also
10 collected.

11 The swabs are not returned with
12 the kit from our agency, because they have to be
13 treated with acid to process; and they create a bio-
14 hazard danger. And they are not returned.

15 But -- uh -- after the particle
16 lifts are taken, the swabs are treated with a dilute
17 acid; and there also, samples are taken from the
18 right hand; a sample from the back of the right
19 hand; the left palm; and the back of the left hand.

20 Q. Now why are these lifts taken from those areas
21 specifically?

22 A. We try to determine -- it -- sometimes try to
23 determine how a gun is positioned or where someone's
24 hand is in relationship to a weapon.

25 If someone is being fired upon;

1 you know, if they were to throw their hands up in a
2 situation like this, it can get on the palms of the
3 hands and not on the backs of the hands.

4 Q. Well, let me ask you more specifically; how does
5 gunshot residue get on someone's hands so that they
6 might be detected from that kit?

7 A. The three primary ways that someone can get gunshot
8 residue on their hands is by: first, firing the
9 weapon, of course. Their hands being in close
10 proximity to a weapon when it goes off; or handling
11 a weapon that has recently been fired.

12 Q. Okay. Part of those gunshot residues come out
13 after the bullet -- or after the cartridge has
14 ignited -- the gunpowder is ignited. How does the
15 gun -- gunshot residue come out?

16 A. The majority of the gunshot residue comes out of the
17 muzzle of the gun; the same area where the bullet
18 comes out. It -- and it can also come out in a
19 revolver with a revolving type of cylinder. It can
20 come out around the cylinder. It can come out
21 around the trigger. In a semiautomatic, where the
22 shell is extracted -- extracted from the gun, it can
23 also come of the ejector port.

24 Q. Okay. Uh -- And when the gunshot residue comes out
25 -- say even from the muzzle -- does it go forward,

1 ...or what happens to it?

2 A: It -- It's very light. It's microscopic -- it's
3 microscopic chemicals. It's very light.

4 ... Once it meets the resistance of
5 the air, it comes out in like a cone shape form, and
6 begins to curve back around.

7 ... And that's how it can get on the
8 hands of someone firing a weapon.

9 Q: Okay. Now, how long does gunshot residue stay on
10 the back of a living person's hand?

11 A: It can stay on a living person's hands for six
12 hours. After six hours, it is -- there will be no
13 gunshot residue from a specific incident -- shooting
14 incident.

15 Q: What causes gunshot residue to come off of the
16 hands?

17 A: It's -- It's very light. It's like flour. Uh -- it
18 can be washed away; if someone were to wash their
19 hands.

20 ... If someone were to -- uh -- wipe
21 their hands in and out of their pocket, it can be
22 wiped away; or wiped on a towel.

23 Q: Okay. And doe it also absorb through the skin

24 A: Yes, it does. It can be absorbed through the skin,
25 as well as if you -- someone were to begin to sweat,

1 it would be washed away.

2 Q. Okay. And the absorption through the skin; is that
3 one of the reasons there's a six-hour window; or --

4 A. Yes, it is. Yes, there is.

5 Q. Okay. After 6 hours, you don't expect to find any
6 gunshot residue on someone's hands?

7 A. That is correct.

8 Q. Now -- uh -- what steps do you take; and what steps
9 did you take specifically in this case in analyzing
10 the gunshot residue kit that was submitted to you
11 from Mr. McCoy?

12 A. Uh -- When this kit came in; it came in with the
13 swabs and the particle lifts.

14 It's a combination kit.

15 Uh -- I prepared the swabs for
16 analysis; analyzed them using -- uh -- our
17 instrumentation; and received my results from that
18 instrument.

19 Q. Uh -- do you first look at the -- uh -- envelope or
20 the bag in which it is delivered to you?

21 A. Yes. That all occurs in the processing; and in
22 that inspection; and I will see to make sure that
23 the evidence is sealed, and it is initialed; and
24 that there is -- no tampering has been done to the
25 envelope that the gunshot residue kit is in.

1 Q. What would you do, say, if you do see some that is
2 not properly sealed; or it's not been -- or it's
3 been tampered with in some way? What would you do?

4 A. I would make a note in my case jacket to -- to the
5 extent of the -- uh -- the damage to the kit. If it
6 is severe damage, I may not be able to analyze the
7 kit at all; but that was not the case in this
8 situation.

9 Q. Did you note any damage to the kit?

10 A. No; I did not.

11 Q. So it arrived to you intact?

12 A. Yes, I did.

13 Q. Okay. Uh -- And when you -- and you, of course,
14 analyzed?

15 A. Yes, I did.

16 Q. And what, if anything -- uh -- could you tell us
17 from your analysis of the gunshot residue kit?

18 A. Uh -- In this kit, no gun --

19 SOLICITOR:

20 I would just simply ask that
21 before she testifies as to her results, it seems to
22 me that it needs to be introduced in evidence as to
23 what item she actually analyzed -- or she testified
24 that she analyzed.

25 THE COURT:

TESTIMONY OF ILA SIMMONS

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1 Do you wish to introduce the item
2 at this point in time?

3 DEFENSE COUNSEL:

4 This is the item, itself; yes sir.

5 THE COURT:

6 And I assume there's no objection,

7 Mr. Willingham?

8 SOLICITOR:

9 No sir.

10 THE COURT:

11 All right. Without objection, it
12 will be received into evidence.

13 I think that's Defendant's Number

14 1; is that right?

15 DEFENSE COUNSEL:

16 Number 1; yes, sir.

17 THE COURT:

18 All right.

19 You may proceed, Mr. Allen.

20 Q. Okay. Now so what were the results?

21 A. No gunshot residue was found in this particular kit.

22 Q. And from your results of this analysis, can you make
23 any interpretation about that?

24 A. Yes. This is -- uh -- consistent with two possible
25 scenarios: the first being that the person had not a

1 weapon within six hours of the kit being collected.

2 The other scenario is that the
3 person did fire a weapon; however, the gunshot
4 residue was removed in some way between the time
5 that the shooting occurred and the time the kit was
6 collected.

7 Q. Now -- I mean, but you can't say specifically, one
8 or the other; is that right?

9 A. No, I can't.

10 Q. A can say is that there is no gunshot residue on his
11 -- or from that kit -- or from his hands; correct?

12 A. Correct.

13 Q. Okay. Now did you prepare a report in connection
14 with this matter?

15 A. Yes, I did.

16 Q. Do you have a copy of your report; or do you have --

17 A. Yes, sir. I do.

18 Q. You have a copy or the original?

19 A. I have a copy of my report.

20 DEFENSE COUNSEL:

21 It's a two-Page report. I ask
22 that this be marked as Defense Exhibit 2.

23 WITNESS:

24 A kit collected from a -- a
25 steering wheel and a gear shift.

1 DEFENSE COUNSEL:

2 Did you --

3 COURT REPORTER:

4 I -- I beg your pardon?

5 WITNESS:

6 It was a gunshot residue kit
7 collected from a steering wheel and a gear shift.

8 DIRECT EXAMINATION BY MR. ALLEN CONTINUED:

9 Q. And did you perform the analysis on that test kit?

10 A. Uh -- No, I did not.

11 Q. And why not?

12 A. When we are -- when we receive gunshot residue kits
13 from a vehicle -- uh -- we only analyze them if we
14 believe that the gunshot occurred within the
15 vehicle.

16 We do not analyze for what is
17 called: secondary transfer.

18 Secondary transfer would be if I
19 shot a gun; and then came and touched the
20 microphone.

21 It would be from my hands onto the
22 microphone; because it is not a one to one percent
23 transfer; very small amounts of the gunshot residue
24 would be transferred to the microphone, if any at
25 all.

1 So we don't analyze for secondary
2 transfer.

3 Q. Okay. So -- Now, there was nothing wrong with the
4 kit; as far as you remember?

5 A. No. No; there was nothing wrong with the kit.

6 Q. Okay. It's just that was a decision that was made
7 because of the reasons you stated?

8 A. Right.

9 Q. Okay. Now let's look at this. Is this a copy of
10 the report that you prepared in connection with this
11 case?

12 And by this, I am referring to
13 Defense Exhibit 2.

14 A. Yes.

15 DEFENSE COUNSEL:

16 Okay. Your Honor, I offer this
17 into evidence at this time.

18 THE COURT:

19 Any objection?

20 SOLICITOR:

21 No sir, Your Honor.

22 THE COURT:

23 Without objection, it is received
24 as marked.

25 You may proceed.

1 DEFENSE COUNSEL:

2 May I publish it to the jury --

3 THE COURT:

4 Yes, you may.

5 DEFENSE COUNSEL:

6 -- publish it to the jury by

7 handing it to the Jurors.

8 THE COURT:

9 By publication to the jury, we
10 mean that you may pass that among the other jury members;
11 and they have a chance to look at that.

12 All right. You may proceed.

13 DEFENSE COUNSEL:

14 I've got no further questions of
15 Ms. Simmons.

16 THE COURT:

17 Mr. Willingham, your witness.

18 SOLICITOR:

19 Thank you, Your Honor. If in the
20 record please The Court; I'll give the jury an
21 opportunity to look at that exhibit before I --

22 THE COURT:

23 You may.

24 SOLICITOR:

25 Thank you.

1 CROSS-EXAMINATION BY MR. WILLINGHAM:

2 Q. Okay. Ms. Simmons, I'm looking at Defense Exhibit
3 Number 2. Based on your analysis, you indicated
4 that quantities known or detected did not indicate
5 the presence of gunshot residue?

6 A. That's correct.

7 Q. Okay. Does that mean that John McCoy didn't shoot
8 Daniel Lyles?

9 A. No, it does not.

10 Q. Okay. Can you tell me if he did or not?

11 A. No; I can't say what, if --

12 Q. Can you tell me he did?

13 A. No, I cannot.

14 Q. And you can't say he didn't?

15 A. No sir.

16 Q. Isn't it possible, Ms. Simons, that you could go
17 with me to a firing range and watch me fire a gun;
18 and then four hours later, do a gunshot residue on
19 my hands.

20 And not knowing what I've done in
21 those four hours, you could have these very same
22 results?

23 A. Yes, it is.

24 Q. At that point, you'd be able to testify that I had
25 shot a gun, because you had seen me; right?

1 A. Correct.

2 Q. But not because of any results from the gunshot
3 residue?

4 A. That's correct.

5 Q. Okay. Uh -- and the reason for that is what you
6 said; that gunshot residue comes off?

7 A. Yes, it does. Uh -- it come off naturally, if you
8 sweat?

9 A. Uh-huh.

10 Q. Does it come off?

11 A. Yes.

12 Q. And you said -- I think when Mr. Allen was asking
13 you -- you said that the skin actually absorbs some
14 of it?

15 A. Yes, it does.

16 Q. So that would cause it to come off?

17 A. Uh-huh.

18 Q. Uh -- if I wipe my hands?

19 A. Yes, it would be removed then.

20 Q. Okay. And you indicated that the reason you don't
21 test -- uh -- steering is because that's a secondary
22 transfer; but that's a transfer? And so, driving
23 your car could cause it to come off?

24 A. Yes.

25 Q. Uh -- Drinking beer, if the can's sweating, could

1 cause it to come off?

2 A. Yes. That is a possibility.

3 Q. Eating chicken wings could cause it to come off?

4 A. Yes.

5 Q. And in this case, you had --uh -- as part of your

6 kit --uh -- the Analysis Information Form; is that

7 correct? Is that part of what was submitted?

8 A. Yes, it was.

9 Q. And, in fact, on there, it indicates: drank beer and

10 ate some wings?

11 A. Yes, it does.

12 Q. So that could cause it to come off?

13 A. Yes. That is a possibility.

14 Q. And so -- I just want to make sure that I'm clear;

15 and that the jury is clear.

16 You're not here today saying John

17 McCoy didn't shoot Danny Lyles; are you?

18 A. No, I'm not.

19 Q. You just can't say?

20 A. I cannot say.

21 SOLICITOR:

22 Thank you, ma'am. I appreciate

23 your coming.

24 THE COURT:

25 Mr. Allen; redirect?

1 REDIRECT EXAMINATION BY MR. ALLEN:

2 Q. By the same token, you are not saying that he did
3 fire a weapon either; did you?

4 A. No. I can't say from the evidence -- that I was
5 submitted.

6 DEFENSE COUNSEL:

7 Right. Thank you.

8 No other questions of Ms. Simmons.

9 THE COURT:

10 Recross?

11 SOLICITOR:

12 We'd ask that she be excused,

13 Judge.

14 THE COURT:

15 Ma'am, you may step down; I

16 assume.

17 Have you completed with this

18 witness?

19 DEFENSE COUNSEL:

20 Yes sir. I would join in that

21 request.

22 THE COURT:

23 Ma'am, thank you very much. You

24 are excused.

25 DEFENSE COUNSEL:

1 I call Mr. McCoy to the stand.

2 THE COURT:

3 Mr. McCoy, come forward and be
4 sworn.

5 JOHN CURTIS MCCOY, BEING FIRST
6 DULY SWORN WAS EXAMINED AND GAVE EVIDENCE AS
7 FOLLOWS:

8 THE COURT:

9 Mr. Allen; your witness.

10 DEFENSE COUNSEL:

11 Thank you.

12 DIRECT EXAMINATION BY MR. ALLEN:

13 Q. You are John Curtis McCoy?

14 A. Yes sir.

15 Q. I'm going to ask you to speak up a little bit; okay?

16 I'm going to try and stand over here; and I
17 want you to speak up loud enough for me to hear;
18 okay?

19 How old are you, sir?

20 A. Uh -- I just turned 27.

21 Q. I really need you to speak up a little bit.

22 A. I -- I just turned 27.

23 Q. You just turned 27?

24 A. Yes sir.

25 Q. Thank you. Are you married?

1 A. Yes sir.

2 Q. And your wife is whom?

3 A. Royal McCoy.

4 Q. Okay; the woman that testified in this case;
5 correct?

6 A. Yes sir.

7 Q. Mr. McCoy, I'm going to talk to you a little bit
8 about September 28th, September 29th of this past
9 year. Uh -- First of all, where were you living
10 September 28th, 29th of 2004?

11 A. Uh -- a friend-guy. I was living with a friend-guy
12 at that time. I had just moved out from with my
13 cousin?

14 Q. Okay. I'm still having a hard time hearing?

15 A. I was living --

16 Q. I having a hard time --

17 A. I was living -- I was living with a friend-guy over
18 there in Whispering Pines.

19 Q. Okay. How long had you been there?

20 A. Uh -- it was like -- uh -- since June -- June of
21 2004.

22 Q. Okay. Where were you living before that?

23 A. I was living with Angelo Wells before then; my
24 cousin.

25 Q. Your cousin; and before that, where were you living?

1 A. I was home at -- uh -- 3107 Culpepper Crossing.

2 Q. Okay. Had you been back to -- uh -- 3107 Culpepper
3 Crossing since when you left?

4 A. Yes sir.

5 Q. How many times?

6 A. Uh -- I don't -- numerous occasions. Me and my wife
7 would get together.

8 Q. And when you say get together -- uh -- if you will
9 please define that delicately? I mean, like what do
10 you mean? Like were you staying overnight? Were
11 you just going by to drop something off? What were
12 you doing?

13 A. Some days, early; or either, on my lunch break, I
14 would stop by the house.

15 Q. Okay. And when you stopped by; how long would you
16 stay?

17 A. Uh -- I end up -- usually I ended up taking a
18 shower. She would wash my work clothes. And I'd be
19 there for a little while -- uh -- put my work
20 clothes back on, then I leave.

21 Q. Okay. Did you spend the night there?

22 A. Uh -- I did once.

23 Q. Okay. Do you recall how long before September
24 28th, 29th; when was it -- How long had it been
25 since you had been there before September 28th,

1 29th?

2 A. Uh -- The last time I was there was in August?

3 Q. August?

4 A. Yes sir.

5 Q. Now then; let's talk about September 28th. Was that
6 a special day?

7 A. That's my youngest son's birthday.

8 Q. And your younger son's name is?

9 A. Tyler McCoy.

10 Q. Tyler McCoy?

11 A. Yes sir.

12 Q. And he -- And his mother is Royal McCoy, your wife;
13 correct?

14 A. Yes sir.

15 Q. Do you have any other children?

16 A. No sir. I have a stepson with my wife.

17 Q. Stepson?

18 A. But I -- I have been there ever since he was born;
19 so he's pretty much my stepson.

20 Q. Okay. Well, you mentioned so youngest; so I want
21 to make sure you are understood.

22 A. Yes sir.

23 Q. So you have two children; one stepson and one's your
24 own -- uh -- actual son; correct?

25 A. Yes sir.

- 1 Q. Okay. Now had you attempted to reach your wife on
2 the 28th of September?
- 3 A. Yes sir.
- 4 Q. And how did you try to do that?
- 5 A. Uh -- I tried contacting her on her cell phone.
- 6 Q. Uh -- What number would you call?
- 7 A. Uh --
- 8 Q. You know, you don't have to give me the exact
9 number; but whose number would you --
- 10 A. I would call my wife's cell phone number.
- 11 Q. Your wife's cell phone number?
- 12 A. Yes sir.
- 13 Q. Did you ever reach her?
- 14 A. No sir.
- 15 Q. Did you leave a message?
- 16 A. Yes sir.
- 17 Q. Did you ask her to call back?
- 18 A. Uh -- I told her that I was -- basically, when I --
19 when I called her, I told her that I was trying to
20 get in contact with her for the -- to call me back
21 soon as she could.
- 22 Q. Why were you trying to contact her?
- 23 A. Because was my son's birthday.
- 24 Q. All right. Were you contacted about a party over
25 at your grandmother's house for your son?

1 A. No sir.

2 Q. Now, did you ever get -- did you ever get hold of
3 Ms. McCoy that evening, or that night?

4 A. No sir.

5 Q. Okay. What did you do?

6 A. Uh -- After the last time I called her, I didn't get
7 an answer; so I went to the House.

8 Q. Okay. Did you do anything before that?

9 A. Uh -- Before then, me and a friend got out -- uh --
10 we went to Canyons over on East Main Street. We was
11 going to some hot wings; but they were closed.

12 He asked me to stop by the Hot
13 Spot which is located over near Union Street.

14 He stopped -- he bought -- uh --
15 two 24 ounce cans of Bud Light.

16 We then left from there and went
17 to the BP located on -- uh -- on the corner of 295
18 and John B. White Boulevard.

19 That's where I purchased some
20 chicken wings.

21 Q. Okay. And then what, if anything, did you do?

22 A. Went back to Whispering Pines.

23 Q. What did you do there?

24 A. Uh -- I ate chicken wings; and I call -- tried to
25 call my wife again; but I still didn't get a answer.

1 Q. Did you know what time that was?

2 A. Uh -- what -- When I left the -- uh -- BP, it was
3 around about 12:00, 'cause they was pretty much
4 getting ready to put up the food.

5 The BP. They was getting ready to
6 put up the food --

7 Q. Okay.

8 A. -- at the BP. It was round about 12 o'clock when I
9 was at the BP.

10 Q. Okay. How long did you stay over at Whispering
11 Pines?

12 A. Uh -- I stayed there long enough to finish eating
13 and give my wife another call.

14 Q. Then, did you go anywhere after that?

15 A. I went to Duncan after I left Whispering Pines.

16 Q. Where were you going specifically in Duncan?

17 A. I was going to 3107 Culpepper.

18 Q. Why were you going over there?

19 A. I had been calling my wife all the -- all that
20 morning, and later on that day and I still couldn't
21 get a answer.

22 So I was pretty much going to
23 check and see what was going on.

24 Q. Did you go to your wife's apartment?

25 A. Yes sir.

1 Q. Okay. That's 3107 Culpepper Crossing?

2 A. Yes sir.

3 Q. What did you do when you got there?

4 A. Uh -- knocked on the door. I didn't get a answer.
5 I knocked on the door a second time. I still didn't
6 get a answer.

7 As I proceeded to go back to my
8 vehicle, I seen Mr. Lyles -- well, I didn't know who
9 he was at the time -- but I seen him standing up in
10 the living room.

11 So then I went back to the door
12 and knocked again; and I still didn't get an answer.

13 That's when I pushed the door
14 open. And when I got -- Once I got inside the
15 apartment, I asked Mr. Lyles: Where was my wife;
16 and what was he doing inside my apartment.

17 His response was: I didn't touch
18 her.

19 Well then, he then came towards me
20 and we kind of got into a scuffle. That's when he
21 pulled a weapon. The gun --

22 Q. Who pulled a weapon?

23 A. Mr. Lyles did.

24 Q. Okay.

25 A. The gun went out during the little scuffle. He

1 pulled the trigger again; but it didn't fire a
2 second time.

3 He then ran out the apartment.

4 I waited a couple of seconds; then
5 I went out to the apartment heading toward --
6 heading towards my vehicle. That's when I seen him.

7 Uh -- He was standing, like in-
8 between -- I didn't know it was his vehicle at the
9 time -- which was parked right beside mine.

10 He was standing in-between my
11 vehicle and his vehicle.

12 I then proceeded to run down
13 towards -- it's -- uh -- sort of like a hill which
14 leaded down towards the fence.

15 I ran down that way.

16 He also went in the same direction
17 as I was heading into.

18 He -- just like he said earlier --
19 he -- I don't know whether if he tripped or fell, or
20 what. But, he did fall.

21 I then thought -- I was -- could
22 pretty much get away. And I went to my vehicle and
23 drove off.

24 Q. Okay. Now, let me make sure I understand. When
25 you were going into the apartment, you say you

1 pushed the door open?

2 A. Yes sir.

3 Q. Do you recall how you pushed it open?

4 A. With my -- with my shoulder.

5 Q. And why were you going into the apartment?

6 A. Because there was a guy inside the house. I didn't
7 know who he was; and I had been -- it's like I say,
8 I had been trying to contact my wife all that day,
9 but couldn't get an answer.

10 Q. Were you going in there to hurt him?

11 A. No. I was pretty much going to find out, you know,
12 what was going on.

13 Q. Okay. Uh -- how did -- What was his tone and
14 demeanor like towards you when you went into the
15 apartment?

16 A. After I asked him: Where was my wife; and what was
17 he doing in house; he -- like -- I didn't touch her.
18 And when -- as he -- He was -- like I say -- it was
19 -- it was a love seat and a couch over on the other
20 side.

21 He was standing up behind the love
22 seat. He came up from behind the -- the love seat
23 that was right there in front of the door.

24 Like I said, we -- we tussled and
25 that's when the gun shot went off.

1 I'm not sure where it went to.

2 And as I say, he tried to pull it
3 again; but it wasn't go fire. That's when he ran
4 outside the apartment.

5 Q. Okay. Now -- and you say it was who, who pulled
6 the weapon out?

7 A. It was Mr. Lyles.

8 Q. During the struggle, did you ever get the -- the gun
9 in your hand?

10 A. No sir.

11 Q. Did you have a gun?

12 A. No sir.

13 Q. Did you take a gun into that apartment?

14 A. No sir.

15 Q. When you left the apartment, where were you trying
16 to go?

17 A. I was just trying to get away, basically.

18 Q. Okay. Did you shoot him?

19 A. No sir; I didn't.

20 Q. Mr. Lyles?

21 A. No sir.

22 Q. Did you shoot at him?

23 A. No sir.

24 Q. At any time while you were over at Culpepper
25 Apartments, did you have a gun in your hand?

1 A. No sir, I didn't.

2 Q. Or did you shoot a gun?

3 A. No sir.

4 Q. All right. Where did you go after you left?

5 A. I went to whispering Pines.

6 Q. Did anybody shoot Mr. -- uh -- Lyles while you were
7 there?

8 A. Uh -- the only gunshot I heard was the one that was
9 inside the apartment.

10 Q. What did --

11 A. I'm not sure if he --

12 Q. What did Mr. Lyles do before you left?

13 A. After -- after he fell, I ran and got into my jeep.
14 I'm not quite sure what went on after that.

15 Q. Okay. I'm going to show you the box from State's
16 Exhibit 4. It's been earlier testified -- there has
17 been some testimony about that. Do you know what
18 this box is?

19 A. Yes sir.

20 Q. What is this?

21 A. It's the -- uh -- box my work tool come out of.
22 It's a multi tool.

23 Q. By multi tool, can you describe it a little bit?

24 A. It's -- uh -- like a all-in-one tool. It's got like
25 pliers, a screwdriver, and different other kind of

1 gadgets on it.

2 Q. Okay. Do you recall when you acquired it?

3 A. Uh -- I bought it when I first started working with
4 Charlie, 'cause I needed it for my job.

5 Q. Okay. There is also in here, a -- Did you have
6 this in your car?

7 A. No sir, I didn't.

8 Q. This is a cartridge of some sort. Did you have a --
9 did you put any bullets in your car?

10 A. No sir.

11 Q. Did you put any bullets in this box?

12 A. No sir, I didn't.

13 DEFENSE COUNSEL:

14 Nothing further, Your Honor.

15 THE COURT:

16 Mr. Willingham; your witness.

17 SOLICITOR:

18 Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. WILLINGHAM:

20 Q. Mr. McCoy, let's just start with the easy stuff
21 first. You didn't live at 3107 Culpepper Crossing
22 on September 29th of 2014; did you?

23 A. No sir, I didn't.

24 Q. Okay. And you hadn't been there since when?

25 A. Uh -- The last time was in August, I believe it was.

1 Q. You hadn't lived there?

2 A. I was spending the night off and on.

3 Q. Yeah; but that's not living, is it?

4 A. No, it's not.

5 Q. All right. You moved out to live with a buddy of
6 yours since June; and your cousin before that;
7 right?

8 A. Yes sir.

9 Q. When did you move in with your cousin?

10 A. Uh -- it was -- it was either in April of -- May --
11 April or either May of 2004.

12 Q. All right. You did not have a key to Royal McCoy's
13 apartment; did you?

14 A. At one time I did.

15 Q. Okay. But not on September 29th, 2004; did you?

16 A. Oh, not that -- that night I didn't; no sir.

17 Q. That's what we are talking about; okay -- that
18 night? And you didn't have a key?

19 A. No sir.

20 Q. Hadn't had one for awhile; had you?

21 A. No sir.

22 Q. So you couldn't use a key to come in the house; you
23 had to force the door open; right?

24 A. Yes sir.

25 Q. Because you saw a man through the window?

- 1 A. Yes sir.
- 2 Q. Did it make you mad that you didn't get invited to
- 3 your son's birthday party?
- 4 A. No sir. I didn't find out until I was locked up
- 5 that he even had a party.
- 6 Q. Okay. So why were you calling your life over and
- 7 over trying to see your son?
- 8 A. Because it was his birthday.
- 9 Q. Because it was his birthday?
- 10 A. Yes.
- 11 Q. Okay. Did it make you mad she wouldn't let you
- 12 see him on his birthday?
- 13 A. Uh -- No sir.
- 14 Q. Why did you wait till 1:30 in the morning to go over
- 15 to see him?
- 16 A. Well, I had been calling all that day.
- 17 Q. Okay. What made you go at 1:30? Why didn't you go
- 18 over there at four on his actual day of his
- 19 birthday?
- 20 A. Well, I had been calling all that day.
- 21 Q. How old is your son?
- 22 A. How old is he?
- 23 Q. Yes?
- 24 A. He's eight.
- 25 Q. Eight years old. Is an eight year old usually up at

1 1:30 in the morning for you to come visit?

2 A. No sir.

3 Q. No; he's not. It would make more sense to visit
4 during the day; wouldn't it?

5 A. Yes sir.

6 Q. But you didn't do that; did you?

7 A. No sir, I didn't.

8 Q. You didn't go to see your son. You came over there
9 to see Royal; didn't you?

10 A. I came to find out what was going on, because I had
11 been calling.

12 Q. You came because she wasn't returning your calls;
13 right?

14 A. Yes sir.

15 Q. That's right. And you were mad?

16 A. No sir.

17 Q. You weren't mad?

18 A. No sir.

19 Q. You won't admit it? You won't give me that? You
20 weren't made about it?

21 A. No sir.

22 Q. How many times did you try to call?

23 A. Uh -- Probably about four or five times.

24 Q. Okay. So you went to the house?

25 A. Yes sir.

1 Q. Forced you way in.

2 A. Yes sir.

3 Q. Did it bother you that another man was in -- with
4 your wife?

5 A. I didn't see my wife.

6 Q. Okay. Well, in your wife's apartment?

7 A. I -- I just seen him in the apartment.

8 Q. Okay. Now -- And he was clothed; wasn't he?

9 A. Yes sir.

10 Q. Have a hat on? Had on his pants; had on that
11 striped shirt; didn't he?

12 A. (Nods in the affirmative.)

13 Q. I'm showing you State's Exhibit Number 8. That's
14 the shirt he had on; isn't it?

15 A. No -- uh -- actually he had a coat on -- had on a
16 brown coat. I'm not sure what kind of shirt he had
17 on under the coat.

18 Q. All right. You had on a red shirt; didn't you?

19 A. It wasn't an all red shirt. It was black, white,
20 and had red in it.

21 Q. It had red in it?

22 A. Yes sir.

23 Q. How big are you?

24 A. Uh -- six-two.

25 Q. How -- how -- how much you weigh?

1 A. Uh -- when I locked up, I was weighing around about
2 215.

3 Q. About 215? Is it fair to say, you're slimmer than
4 this fellow; isn't it?

5 A. Well I don't know his weight; so --

6 Q. Oh, you won't give me that either; will you?

7 A. Well, I guess -- yeah, I'm slimmer than he is.

8 Q. Okay. Thank you. All right. And you say that
9 he pulled a gun on you?

10 A. Yes sir.

11 Q. And the gun just went off; right?

12 A. During -- during the scuffle; yes sir.

13 Q. Just one time?

14 A. Yes sir.

15 Q. And you were gone?

16 A. No; actually he ran out the door first.

17 Q. Okay. And you chased after him?

18 A. No; I went to my vehicle after he had -- I was
19 headed toward my vehicle after he had left out the
20 door.

21 Q. And you didn't shoot him anymore?

22 A. No; I never shot him the first time.

23 Q. So you're telling me he got nine bullet wounds from
24 one bullet?

25 A. Nah; I'm not telling you anything, because I don't

1 know.

2 Q. You don't know how he got the other eight holes in
3 him?

4 A. I don't know. No sir, I don't.

5 Q. You think they were self inflicted?

6 A. I don't know.

7 Q. You think he shot himself?

8 DEFENSE COUNSEL:

9 Objection. I think he's asking
10 the witness to speculate.

11 THE COURT:

12 Sustained.

13 CROSS-EXAMINATION BY MR. MR. WILLINGHAM CONTINUED:

14 Q. You got back in the car, which is the Jeep Cherokee;
15 right?

16 A. Yes sir.

17 Q. White?

18 A. Yes sir.

19 Q. And you left? Where'd you go?

20 A. To Whispering Pines.

21 Q. To Whispering Pines? How'd you get there?

22 A. I -- I drove.

23 Q. You drove? Okay. Tell me the route you took.

24 A. I went down 29.

25 Q. Went down 29? Well, how do you get there from --

1 Culpepper Crossing is on 290; right?

2 A. Yes sir.

3 Q. How do you get to 29?

4 A. Uh -- Come out of Culpepper; you take -- uh -- a
5 left turn --

6 Q. On to 290?

7 A. No sir. It's a --

8 Q. What's the name of the road?

9 A. I'm not quite sure what the name of the road is.

10 Q. Okay.

11 Q. It goes past -- uh -- Startex Mills and you come out
12 over on 29 over where the Union Camp is.

13 Q. Okay. Then you turn right on 29 going back toward
14 Spartanburg?

15 A. Yes sir.

16 Q. Okay. Uh -- how many -- Well, let me ask you this
17 question. You still had your cell phone with you;
18 didn't you?

19 A. No sir.

20 Q. You didn't?

21 A. No sir.

22 Q. You been trying all day long to call Royal 'cause
23 you wanted to see your baby boy on his birthday; and
24 you left your phone at home?

25 A. Well, I didn't have any more minutes on my phone.

1 Q. What if she tried to call you back and you didn't
2 have any more minutes? She wasn't even gone get
3 you. So you didn't have it in your car?

4 A. No sir.

5 Q. So you couldn't call 911 from your phone?

6 A. No sir.

7 Q. Okay. And you didn't even have it with you?

8 A. No sir.

9 Q. Okay. Whenever you left and went on whatever road
10 it is to go by Startex Mills and hit 29 and come
11 down 29; you come all the way down 29 past Westgate
12 Mall, right there at the Pizza Inn -- and you hang a
13 left to go back toward SMC; and your apartments are
14 back in there; right?

15 A. Yes sir.

16 Q. Is that -- if that's not right; tell me.

17 A. Nah, I was --

18 Q. If that's not the way you went?

19 A. I was trying to think of the name of the college
20 that was down through there.

21 Q. Okay. It's Spartanburg Methodist College; right?

22 A. Yes sir.

23 Q. Okay. How many gas stations did you pass?

24 A. Gas stations; let's see. Uh -- two.

25 Q. Two? Only two? Think now. That's a long ride from

1 29 to the Pizza Inn?

2 A. Actually, it's three.

3 Q. Okay.

4 A. Three of them.

5 Q. All right. How many of those did you pull into and
6 tell somebody to call the police --

7 A. None of them.

8 Q. -- I just got shot at?

9 A. None of them.

10 Q. How many times did you call the police and say: My
11 wife's house or apartment is being burglarized?

12 A. Nary a time.

13 Q. How many times you call the police -- stop at pay
14 phone and say: Some strange man is in my wife's
15 apartment?

16 A. None.

17 Q. I had to go defend her. I had to go defend my
18 children. How many times did you do that, Mr.
19 McCoy?

20 A. I didn't.

21 Q. You didn't, not once; did you?

22 A. No sir.

23 Q. Well, what you did do, Mr. McCoy -- what did you do
24 when the police asked you about what happened? What
25 did you do?

- 1 A. What you mean?
- 2 Q. What did you do?
- 3 A. I told them what happened.
- 4 Q. You told them that you had gone to get beer and
- 5 chicken wings with a buddy of yours; that you
- 6 watched TV until you fell asleep? That's what you
- 7 told them; isn't it?
- 8 A. No sir.
- 9 Q. You told them about the struggle?
- 10 A. Uh -- no sir.
- 11 Q. No; you didn't. You told them about finding some
- 12 strange man in your wife's apartment?
- 13 A. Yes sir.
- 14 Q. You told this officer, right here, that?
- 15 A. Nah; he wasn't the officer that I was talking to.
- 16 Q. Who else did you talk to?
- 17 A. Uh -- I'm not sure what the officer's name was.
- 18 Q. Where did you tell them this at?
- 19 A. At the Duncan police station.
- 20 Q. At the Duncan police station?
- 21 A. Yes sir.
- 22 Q. And this was not the man that talked to you?
- 23 A. He was the second one that questioned me.
- 24 Q. You told them -- you told them you went to a club
- 25 with your friend, Richard Drayton around 11 o'clock

1 and they were closed.

2 . . So you went to Hot Spot on Union
3 Street, got some beer and went to the BP and got
4 some chicken wings.

5 You took them home; set on the
6 porch; drank beer; ate chicken wings for a while.

7 You didn't remember the time.

8 You went to bed; fell asleep
9 watching TV.

10 Didn't say anything else except
11 the following people were in your apartment with
12 you: Richard Drayton; Dray Burger; Germaine Griggs,
13 Travis Fant, Keith Wells. (All phonetic.)

14 You said you did drive the white
15 jeep; no one drove it except your cousin the morning
16 before the 29th.

17 You state you had been separated
18 from your wife about six or seven months.

19 That's what you told them?

20 A. Uh -- No sir, it's not.

21 Q. It's not?

22 A. A little bit of it; but not all of it.

23 Q. So you left out the part where you admitted being
24 there?

25 A. I know even know who -- uh -- Dray Burger is; so

1 it's people on there I don't even know.

2 Q. Okay. But by a coincidence, they left out the
3 crucial element of burglary of you being there?

4 They left that out; right?

5 A. They knew I was there.

6 Q. Is that what you want -- that's what you want me to
7 believe?

8 A. No; I told the police I was there.

9 Q. So they left it out?

10 A. Evidently, they did.

11 Q. Okay. How did that get in your car?

12 A. I don't know.

13 SOLICITOR:

14 I beg The Court's indulgence.

15 THE COURT:

16 Yes sir.

17 SOLICITOR:

18 That's it, Your Honor. I have
19 nothing further.

20 THE COURT:

21 Redirect?

22 DEFENSE COUNSEL:

23 No redirect, Your Honor.

24 THE COURT:

25 Sir, you may step down.

1 Mr. Allen, you may call your next
2 witness.

3 DEFENSE COUNSEL:

4 That's our case, Your Honor.

5 THE COURT:

6 The State wish to take up
7 anything; or offer any rebuttal testimony?

8 SOLICITOR:

9 We call Chief Cothran back,
10 briefly; yes, sir.

11 THE COURT:

12 Sir, come back to the stand,
13 please, sir.

14 Sir, I'm going to remind you, you
15 have previously been sworn in this case. You remain
16 under oath at this time. You may have a seat.

17 WITNESS:

18 Yes sir. Thank you.

19 RYAN COTHAN, HAVING BEEN EARLIER
20 DULY SWORN AND GIVEN PREVIOUS TESTIMONY WAS EXAMINED AND
21 GAVE FURTHER EVIDENCE AS FOLLOWS:

22 THE COURT:

23 Mr. Willingham; your witness.

24 SOLICITOR:

25 Thank you.

1 REBUTTAL DIRECT EXAMINATION BY MR. WILLINGHAM:

2 Q. Chief Cothran; I'm going to be very brief. But I
3 thought your testimony was that you took the
4 statement from John McCoy?

5 A. Yes sir; I did.

6 Q. And that it was an oral statement.

7 DEFENSE COUNSEL:

8 Your Honor, if it please The
9 Court, may we approach?

10 THE COURT:

11 Yes, you may.

12 (Whereupon: counsel for each party
13 conferred with The Court off the record at the bench.)

14 Tuesday, June 14, 2005 4:16:33 PM

15 SOLICITOR:

16 Thank you, Your Honor.

17 REBUTTAL DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

18 Q. Now, Chief you were there the entire interview; is
19 that fair?

20 A. Yes sir.

21 Q. And you were present -- you would have heard
22 everything Mr. McCoy had to say to you?

23 A. Yes sir. I was the officer then did the
24 questioning.

25 Q. You -- you were the one that questioned him?

1 A. Yes sir. Mr. Hollifield, as I stated earlier, just
2 read him his rights.

3 Q. Okay. And you actually did the interview?

4 A. Yes sir; in my office.

5 Q. Did he once admit to being at Culpepper Crossing?

6 A. No sir.

7 Q. Did he ever tell you that he was the victim -- that
8 he had been shot or they pulled a gun?

9 A. No sir.

10 Q. Did he ever tell you he saw some strange man in his
11 estranged wife's apartment?

12 A. No sir, he did not.

13 Q. If he had told you those things, would you have
14 written them down?

15 A. Yes sir.

16 Q. In fact you wrote down in his statement of watching
17 TV and sleeping?

18 A. Yes sir.

19 Q. That's not incriminating; is it?

20 A. No sir, it's not.

21 Q. But you wrote it down anyway?

22 A. Yes sir.

23 Q. Because that's what he said?

24 A. That's right.

25 Q. And sir; if he would have told you --

1 DEFENSE COUNSEL:

2 Objection. He's leading this
3 witness.

4 THE COURT:

5 He hasn't completed the question
6 yet, but he does sound like he's starting to lead the
7 witness; and I caution you against doing that, Mr.
8 Willingham.

9 SOLICITOR:

10 Thank you.

11 THE COURT:

12 Thank you.

13 REBUTTAL DIRECT EXAMINATION BY MR. WILLINGHAM CONTINUED:

14 Q. Would you have left out any details that Defendant
15 would have told you?

16 A. No sir. I would not. That's -- everything he told
17 me is what I put down in their report?

18 SOLICITOR:

19 I have no more questions. I thank
20 you.

21 THE COURT:

22 You may cross examine; Mr. Allen.

23 REBUTTAL CROSS EXAMINATION BY MR. ALLEN:

24 Q. Chief, you're relying primarily on the report;
25 correct?

1 A. Yes sir.

2 Q. And you're surely like all of us. Occasionally, you
3 do make mistakes; correct?

4 A. Yes sir. I make mistakes, but I typed this up as
5 soon as he left; because I didn't transport him to
6 the jail.

7 So another officer transported him
8 to the jail; and I typed it up just then off my
9 notes that I had handled it.

10 Q. Well, what I'm getting at, is that sometimes you --
11 because of the cases -- the number of cases -- that
12 you might get confused about certain things;
13 correct?

14 A. Maybe.

15 Q. I mean, well, for example in this case; you remember
16 that day I came out and you and I met. We looked at
17 various items of evidence.

18 A. Yes sir.

19 Q. And you showed me this Winchester box; and you told
20 me at that time that this Winchester box -- you
21 didn't know where it came from?

22 A. And we determined you had to separate case -- we had
23 to separate case numbers -- and the evidence officer
24 got a different McCoy case.

25 And that's the reason that was not

1 entered into evidence.

2 Q. All right. But at first, you -- you thought that
3 this was related to this case; correct?

4 A. Back then, I pulled out -- I just pulled out the box
5 that the evidence officer had left for you out of
6 the evidence locker for you to view; and that's what
7 was in there -- and we determined later that was
8 not; and I told you about it.

9 I had no reason not to tell you.

10 Q. Right. Right; but you determined later that it
11 didn't have anything to do with this case?

12 A. Yes, sir. I did.

13 Q. Okay. Uh -- the -- your interview with Mr. McCoy
14 could have been tape-recorded and then we would all
15 know exactly what happened; correct?

16 A. It could have, but I had no reason to; because he
17 already told me where he was at and --

18 Q. Okay.

19 A. -- you know, that's all he wanted to talk about.

20 Q. So you had a tape recorder there and just -- you
21 decided not use it?

22 A. I had no reason to.

23 DEFENSE COUNSEL:

24 All right. Thank you.

25 THE COURT:

1 Redirect?

2 SOLICITOR:

3 Just very briefly.

4 REBUTTAL REDIRECT EXAMINATION BY MR. WILLINGHAM:

5 Q. And you wrote that report the day you talked to him?

6 A. Yes, sir. I did.

7 Q. And the purpose of writing the report is to put down
8 the details?

9 A. Yes sir.

10 Q. So that you can remember when you come to trial a
11 month later --

12 A. That's what the report's for.

13 Q. Okay. Would you miss the details of him at the
14 crime scene?

15 A. Definitely not.

16 Q. Is that a mistake -- or something you would just
17 overlook?

18 A. It's not a mistake; and definitely nothing I would
19 overlook. I definitely would have noted that in
20 there.

21 SOLICITOR:

22 Thank you.

23 THE COURT:

24 Cross?

25 DEFENSE COUNSEL:

1 No more questions, Your Honor.

2 THE COURT:

3 You may step down, sir. Thank you
4 very much.

5 WITNESS:

6 Thank you, Your Honor.

7 THE COURT:

8 Any other reply or rebuttal
9 testimony?

10 SOLICITOR:

11 No sir, Your Honor. Thank you.

12 THE COURT:

13 Ladies and gentlemen of the jury,
14 we have reached the State of the trial where all of the
15 evidence has been placed in.

16 That means what remains is for the
17 attorneys to make their closing statements or arguments;
18 and I will charge you concerning the law.

19 However, that process -- I'm
20 looking at the clock; and we're at 4:20 at this point in
21 time, and it would probably take beyond 5 o'clock.

22 And then we would have to submit
23 the case to you for your consideration after that period
24 of time; and your deliberation.

25 And quite frankly, I think that

1 that's not such a good idea; because I think you ought to
2 have plenty of time to discuss the case and deliberate
3 before you make your decision.

4 Uh -- So at this point in time,
5 I'm going to break this case for the evening.

6 Uh -- I'm going to ask that you
7 return to the jury room and 9 o'clock in the morning.

8 We will resume the case with the
9 attorneys' final statements -- arguments to you; and I
10 will charge you with the law; and then allow you to begin
11 your deliberations.

12 So, again, if you would please,
13 return to the jury room at 9 o'clock in the morning.

14 We will resume the case at that
15 point in time.

16 Now over the -- over the evening.
17 break, I will offer the same cautions I offered to you at
18 the lunch break.

19 Please do not look at; read;
20 watch; or otherwise -- uh -- consider any outside source
21 of information -- any news report or any other source of
22 information -- concerning any matter that might be
23 involved in this case.

24 Please do not discuss this case
25 with anyone: friends; family; other Jurors.

1 Don't discuss the case with anyone
2 at this point in time; because while you have heard all
3 of the evidence; you've not heard my charge concerning
4 the law; and it's your responsibility to apply the law as
5 I give it to you to the facts as you've heard them in
6 order to determine the outcome of this case.

7 Should anyone attempt to contact
8 you concerning this case over our evening break; please
9 report that to The Court in the morning; and again, I
10 will take the appropriate action -- uh -- for that
11 contact.

12 Again, I hope you have a good
13 evening.

14 Please return to the jury room at
15 9 o'clock in the morning.

16 Thank you very much.

17 (Whereupon: the jury empanelled in
18 the case withdrew from the courtroom and was no longer
19 present during the following proceedings.) Tuesday, 14
20 June, 2005 4:22:57 PM

21 THE COURT:

22 Any thing from the State before we
23 break for the evening?

24 SOLICITOR:

25 No sir, Your Honor.

1 THE COURT:

2 Anything from the Defense?

3 DEFENSE COUNSEL:

4 No, Your Honor.

5 THE COURT:

6 Okay. Uh -- we will resume,
7 then, at 9 o'clock in the morning. Defendant will remain
8 in custody overnight.

9 Thank you very much. The court's
10 in recess.

11 (Whereupon: The Court was
12 recessed for the day.) Tuesday 6/14/05 4:23:33 PM

13 (Whereupon: The Court was called
14 to order by the Bailiff and all pertinent parties and
15 their counsel were back and present in the courtroom.)
16 Wednesday 9:22 AM 6/15/05

17 BAILIFF:

18 All rise and come to order,
19 please.

20 THE COURT:

21 Thank you very much. You can be
22 seated.

23 All right. Is the State ready?

24 SOLICITOR:

25 Yes sir.

1 THE COURT:

2 Defense ready?

3 DEFENSE COUNSEL:

4 Yes, Your Honor.

5 THE COURT:

6 Let's see, I believe then, since
7 the -- uh -- you presented evidence, then you will be
8 going first; is that correct?

9 DEFENSE COUNSEL:

10 Yes, Your Honor.

11 THE COURT:

12 All right; and you're ready?

13 DEFENSE COUNSEL:

14 Yes, Your Honor.

15 THE COURT:

16 All right. Bring the jury back.

17 (Whereupon: the jury empanelled

18 in the case returned to the courtroom and was present

19 during the following proceedings.) Wednesday, June 15,

20 2005 9:18:04 AM

21 THE COURT:

22 Good morning ladies and gentlemen;

23 I trust everyone had a good evening and you're ready to

24 complete the trial of this case.

25 When we closed the case yesterday,

1 both sides had presented the evidence that was to be
2 presented in this case; and I told you we would begin
3 this morning with the arguments of counsel.

4 Again, I will advise you that the
5 statements or the arguments of counsel are not evidence
6 to be used to determine the guilt or the innocence of the
7 Defendant in this case.

8 But they will serve to sum up the
9 evidence that you've heard from the perspective of both
10 parties.

11 In this case, the Defendant goes
12 first with the closing argument.

13 Mr. Allen, you may proceed.

14 DEFENSE COUNSEL:

15 Thank you, Your Honor.

16 If it please The Court?

17 THE COURT:

18 Yes sir.

19 DEFENSE COUNSEL:

20 Ladies and gentlemen, on the 29th
21 of September in the early morning hours, John McCoy, my
22 client, went over to the Culpepper Landing Apartments to
23 check on -- talk to his wife -- check on his wife and
24 child.

25 No one answered the door. His

1 wife, Ms. McCoy, would not even answer his several calls
2 to her -- to her telephone during the day before -- or
3 the evening before.

4 He knocked on the door a couple of
5 times. And, then as he was leaving, he saw someone in
6 the window of her apartment; a person that he did not
7 recognize -- and that he did not immediately recognize
8 anyway.

9 So he returned to the door and
10 essentially forced the door open. And he asked this man
11 essentially -- essentially who he was; what was he doing
12 there.

13 Mr. Ingles (sic) said that he had
14 not touched her. And a struggle then ensued between Mr.
15 McCoy and Mr. Ingles (sic).

16 During that struggle a gun that
17 Mr. Ingles (sic) had pulled out fired.

18 Mr. Ingles (sic) left the
19 apartment. Mr. McCoy also left the apartment after him.

20 Mr. McCoy got in his car and drove
21 back to his apartment that he shared with someone else,
22 where he was arrested.

23 Now ladies and gentlemen, Mr.
24 McCoy cannot tell you who shot Mr. Lyles or how he got
25 shot; but he knows that he did not shoot Mr. Lyles.

1 And you have heard, essentially,
2 two versions of what happened at that time over at
3 Culpepper Landing.

4 And the question that you've now
5 got to decide is: Do you believe the State's case beyond
6 all reasonable doubt?

7 Now the State wants you to believe
8 that Mr. McCoy, out of the blue, went over to the
9 apartment entered it -- and entered that apartment with
10 the intent to commit a crime in there; probably the crime
11 of assault or harming someone else.

12 They want you to believe beyond
13 all reasonable doubt that he brought a gun in with him;
14 he shot it at Mr. Lyles, whom he did not know -- uh --
15 and who he did not know would even be there.

16 The problem with this case is --
17 the State's case -- is that there's never -- not be a
18 weapon found, although they looked for one in both his
19 apartment -- in Mr. McCoy's apartment and in his car.

20 No ammunition or any kind of
21 evidence that he had a gun was found in the car -- excuse
22 me; in the apartment.

23 They claim a round was found in
24 his car, although there was no indication, no
25 description, no explanation of whereabouts in the car it

1. was allegedly found.

2. And then there was this box that
3. was found, which they propose is an ammunition box; but
4. which Mr. McCoy tells you is a box that contained a multi
5. purpose tool that he had -- uh -- purchased.

6. And the box -- and we've showed
7. you the -- uh -- example of an ammunition box made by
8. Winchester, specifically a 25 caliber box. It looks
9. completely different; that example we showed you.

10. The box that's in evidence and you
11. look at has the small writing on it which indicates that
12. the contents of that box was made by a tool knife company
13. which is consistent with, obviously, a multi purpose tool
14. being originally packaged in that box.

15. Even the gunshot residue test on
16. Mr. McCoy's hand -- or hands -- was negative.

17. Now several interpretations can be
18. made of that gunshot residue test. But one thing that
19. test -- or those test results show is that it does not
20. prove that he shot some -- shot a gun, or that he was
21. around when a gunshot was fired.

22. Essentially, the only evidence
23. that the State has presented indicating that Mr. McCoy
24. shot Mr. Lyles came from the testimony of essentially
25. three witnesses; specifically, two of them: Ms. McCoy,

1 who's obviously not happy with -- uh -- John McCoy; and
2 Mr. Lyles, who was in her apartment after 1 o'clock in
3 the morning -- who was being questioned by Mr. McCoy when
4 he came into that apartment about what he was doing
5 there; and who apparently thought he was actually being
6 chased by Mr. McCoy.

7 But again, he couldn't really see.
8 He just expected that he was being chased by Mr. McCoy.
9 And he essentially couldn't see that well, I submit, when
10 he went to that fenced in -- or the area near the fence,
11 which was apparently away from street lights and somewhat
12 in the dark.

13 And then, of course, the other
14 testimony came from Ms. McGomery, who really didn't see
15 that much -- could not identify anyone as being a person
16 involved, not even Mr. Lyles.

17 There is no other evidence which
18 points to Mr. McCoy as the one who entered the apartment
19 with an intent to commit a crime therein; and as the one
20 who shot Mr. Lyles.

21 There's even a claim that the
22 person who did the shooting stood in essentially one
23 location outside and shot several times at Mr. Lyles.

24 But yet when the police looked
25 around that area -- in that grassy area, they only found

1 two fired cartridges.

2 The only other fired cartridge
3 that they found was located in the apartment at Culpepper
4 landing.

5 But interestingly enough, no one,
6 no one compared these cartridges with each other to
7 determine if they were fired by one gun or two or more
8 guns.

9 Did anyone search Mr. Lyles' car
10 for a gun; or for ammunition; or for evidence that it had
11 recently had a gun or ammunition? We heard no evidence
12 about that.

13 The only thing Mr. McCoy can do --
14 or attempt to prove in a case like this is to do what he
15 essentially did; tell you that he did not do it --
16 subject himself to cross-examination -- and tell the
17 police that he did not do it.

18 Yes, he went over there. Yes, he
19 forced the door open; but not to hurt someone; only to
20 find out what was this guy whom he did not recognize --
21 what was this guy doing in the apartment where his wife
22 and his child lives.

23 No, he did not shoot a gun. No,
24 he did not shoot Mr. Lyles.

25 He tells us that he told all of

1 this to Officer Cothran, who apparently -- the only thing
2 we can submit to you is that he just did not report
3 everything that was told to him.

4 Do we really know what happened in
5 that conversation; no. The officer decided not to tape
6 record it. So there's no real record of that
7 conversation other than his notes, his memory, and Mr.
8 McCoy's memory.

9 The State cannot prove beyond a
10 reasonable doubt, we submit, what was really said.

11 We didn't even hear from the other
12 officer who was apparently present; Mr. -- uh -- I think
13 his name was Hollifield. His name's reflected on the
14 State's Exhibit -- the Pre-interrogation Rights Waiver
15 Form. He was not even presented to tell you what he
16 remembered about the conversation -- about what Mr. McCoy
17 told him.

18 They simply -- The State simply
19 wants you to take one officer's word for what happened;
20 and totally discount anyone else's -- uh -- explanation
21 of what was said.

22 Now the State brought these
23 charges against Mr. McCoy as we've explained to you.

24 And the State, by electing to
25 bring these charges against him must prove beyond a

1 reasonable doubt each and every element of each of the
2 offenses they've brought.

3 If they fail to prove any
4 essential element beyond a reasonable doubt of any of
5 these charges; then it is your duty -- as you've taken
6 your oath yesterday -- to find Mr. McCoy not guilty of
7 that offense -- or of those offenses.

8 I'm not going to go into a great
9 deal of detail about what these offenses are. The judge
10 will charge you the law on that.

11 But burglary, in general, is an
12 unlawful entry into another person's dwelling or home
13 without the person's consent and with the intent to
14 commit a crime therein.

15 Now the intent must essentially
16 accompany the unlawful entry. It's not enough -- it's --
17 in other words, for the intent to be formulated at some
18 later time after the entry occurred.

19 He went in to check on his wife
20 and child; to find out why someone else whom he did not
21 recognize was in there.

22 He didn't go in there with the
23 intent to harm anyone. Therefore, that entry is not done
24 with the intent to commit a crime.

25 And that's an element that the

1 State's failed to prove beyond a reasonable doubt. And
2 for that reason, he should be found not guilty of
3 burglary.

4 In trying to prove the assault and
5 battery with intent to kill, they must prove that Mr.
6 McCoy assaulted Mr. Lyles with malice and with the intent
7 to kill. But even the identity of the person who shot
8 Mr. Lyles must be proven to your satisfaction beyond
9 reasonable doubt.

10 In other words, they've got to
11 prove beyond a reasonable doubt that Mr. McCoy did it.

12 Now, one thing the State may say
13 in its argument to you is that you must believe the
14 State's witnesses or believe our witnesses -- it's either
15 believe Mr. McCoy or believe them.

16 But that's not the issue ladies .
17 and gentlemen. The question is, after considering all
18 the evidence you have heard, including the testimony of
19 Ms. Simons concerning the gunshot residue test results,
20 including the testimony of Mr. McCoy, and all the other
21 witnesses, do you believe the State's case beyond a
22 reasonable doubt. Do you believe the State's proven the
23 charges against Mr. McCoy beyond a reasonable doubt?

24 That's the issue; not necessarily
25 do you believe them versus him -- do you believe the

1 State's case after you consider everything that you've
2 heard?

3 As I said before, you've been
4 charged before and you'll be charged again; and Mr. McCoy
5 and I do not have to prove to you anything. Why?
6 Because he came into this courtroom when his trial
7 started presumed innocent.

8 The State may also claim that Mr.
9 McCoy has an interest in this case; and for that reason
10 you shouldn't believe him.

11 The same can be said almost of --
12 uh -- actually not almost -- the same could be said of
13 any person whom the State elects to charge with an
14 offense and put on trial.

15 The mere fact he's on trial should
16 not be a reason for you to disbelieve him.

17 He's presumed innocent.

18 And if you are going to presume
19 someone innocent, they why should anyone just look at
20 whatever he says suspiciously just because the State has
21 brought a charge or charges against him.

22 Even the State's primary witnesses
23 -- Ms. McCoy and Mr. Lyles -- have an interest in the
24 case too.

25 She's obviously mad at him. She

1 doesn't -- She wants him out of her life. She's even
2 recently filed divorce proceedings against him.

3 Mr. Mc -- Mr. Lyles believes he
4 was shot by Mr. McCoy; and of course his testimony is
5 along those lines.

6 They want you to believe them as
7 well.

8 But the State has failed in its
9 burden of proof.

10 They have not proven the burglary
11 charge beyond a reasonable doubt. They have not proven
12 beyond a reasonable doubt the charge of assault battery
13 with intent to kill.

14 There are just simply too many
15 unanswered questions.

16 What about the weapon? Where was
17 the weapon?

18 What about the cartridges -- the
19 fired cartridges, the spent cartridges -- fired by one
20 weapon or -- or more than one.

21 There is no other positive
22 evidence pointing to Mr. McCoy -- pointing that he did
23 the offenses that they claim -- states -- he did.

24 I'm going to ask you to be true to
25 your oath and true to the law -- as I know you will be --

1 and find Mr. McCoy not guilty of each and these offenses.

2 Thank you.

3 THE COURT:

4 Mr. Willingham; for the State.

5 SOLICITOR:

6 Thank you, Your Honor.

7 THE COURT:

8 Yes sir.

9 SOLICITOR:

10 Ladies and gentlemen, I told you
11 yesterday in my opening that this would be my last
12 opportunity to talk to you.

13 And what I want to do during this
14 opportunity to talk to you is talk to you about the law
15 that the judge is going to give you, and about the facts
16 that you have heard in this courtroom.

17 It's going to take just a few
18 minutes, if you will bear with me, to go over that.

19 First thing I'd like to talk about
20 is the burglary.

21 Burglary is the entering of a
22 dwelling of another person without content and with the
23 intent to commit a crime inside. And the crime had to
24 occur either in the nighttime or with a firearm or cause
25 great bodily injury -- or serious bodily injury.

1 I told you in the opening that a
2 lot of people think of burglary as stealing; because that
3 usually is how it goes.

4 You enter somebody else's house
5 without consent and with intent to commit a crime inside;
6 and the crime that you intend to commit inside is
7 larceny; when you break into somebody's house and you
8 steal something.

9 But that's not the only definition
10 of -- of burglary.

11 It's going in somebody else's
12 house without permission and with intent to commit a
13 crime inside.

14 What evidence do we have?

15 What evidence do we have of him
16 entering?

17 He went through the front door.

18 After knocking a number of times
19 and not being allowed in; and being told that you're not
20 coming in over and over and over -- he forced that front
21 door open.

22 And he forced it open so hard that
23 it -- when it came open, it left a circle in the back of
24 that drywall behind the door where that doorknob went
25 through.

1 So he entered the dwelling of
2 another; the home of Royal McCoy -- 3107 Culpepper
3 Crossing -- her house.

4 She lived there with her two
5 children. He hadn't been there in six months. It was
6 her house -- without consent.

7 What evidence do we have that he
8 didn't have consent or permission to be there?

9 He knocked on the door; she said,
10 no.

11 He knocked again: Let me in. No.
12 I need to go to the bathroom. No. I've good company.
13 You're not coming in.

14 But he did.

15 After being told no over and over
16 and over again, he comes through that door.

17 He didn't have a key. He hadn't
18 lived there. He didn't have permission to be there.

19 With the intent to commit a crime
20 inside:

21 What crime did he intend to commit
22 when he went there?

23 Assault -- the crime he committed
24 -- assault and battery with intent to kill.

25 And we will talk about that crime

1 more in a minute.

2 But he went there to commit the
3 crime of assault and battery with -- he went inside.

4 I'm not saying he went to
5 Culpepper Crossing for that reason.

6 Contrary to what Mr. Allen thinks,
7 I'm not saying he across town to go shoot up somebody.

8 I suspect he went over there
9 because he may have tried to call his estranged wife; and
10 she didn't answer him.

11 It was his child's birthday -- had
12 a party -- didn't get to see his -- his child that day;
13 so he went over there.

14 But once he got there and was
15 refused entry -- he was coming in. Once she told him no;
16 he was coming in -- especially when he went out and saw,
17 according to him, some strange man in her apartment.

18 How dare somebody else be in my
19 estranged wife's house? And she's disrespecting me;
20 telling me I'm not coming in; telling me that she's got
21 company. How dare her?

22 How do you know that he had that
23 intent when he walked in? Why else would you force open
24 the front door and have a handgun with you.

25 If you're going to visit your

1 child because of his birthrate at one-thirty in the
2 morning -- which we are going to talk about in one minute
3 -- why do you go with a handgun? Why do you force you
4 way in?

5 That's the crime he intended to
6 commit.

7 It happened at approximately 1:30
8 in the morning -- in the night time. He had a firearm --
9 a 25 caliber gun.

10 Great bodily injury:

11 You can't to get much more serious
12 injury than nine gunshot wounds.

13 Every element of burglary is met
14 beyond a reasonable doubt.

15 So we move to the next crime:
16 assault and battery with intent to kill.

17 So an assault, and a battery, and
18 an intent to kill; three elements, just like it says.

19 What's an assault?

20 An assault is probably best
21 defined by example.

22 If I rear back to hit you, and
23 I've got the present ability to carry it out -- if I've
24 got the ability to hit you -- if I rear back, that's an
25 assault the and if I swing through and has got that's an

1 assault.

2 If I swing through and I miss;
3 that's an assault. If I swing through and I hit you; the
4 hitting is the battery.

5 We have this in this case.

6 We've had the assault. We have
7 the pointing of the gun. We got the chasing of him
8 through the parking lot.

9 We got the standing over him. We
10 got the battery with the bullets hitting him and leaving
11 nine bullet holes in him when he's done.

12 With intent to kill:

13 Now that is a -- is a term of
14 heart.

15 The judge will tell you what
16 intent to kill means; but it -- it's best defined by
17 malice -- by the presence of malice -- like I said in my
18 opening; ill will. A heart bent upon mischief; a
19 depraved heart; wickedness.

20 And malice may be -- like I said,
21 an ill will -- it may be either expressed malice; or may
22 be implied.

23 Now what do I mean by expressed?

24 Expressed malice could be: I'm
25 going to kill you. I'm going to shoot you. I'm going to

1 kill you.

2 We don't have that in this case.

3 What we have is implied malice.

4 Malice may be implied from the
5 circumstances -- from the things that happen -- from the
6 things that happen -- such as: showing up or using a
7 deadly weapon.

8 The judge will tell you that
9 malice may be inferred or implied from the use of a
10 deadly weapon.

11 And the reason for that is: you
12 use a deadly weapon -- hence the name -- it's -- you
13 intend to intentionally cause death.

14 It may be inferred or implied from
15 the -- the number or how serious the injury was.

16 You can't get much more malicious
17 than nine shots -- several in the arm -- or nine holes --
18 I'm not saying how many shots there were because we don't
19 know exactly.

20 There a reasonable doubt as to the
21 number of shots.

22 We know it was more the one. We
23 know it was probably less than nine; because there are
24 entry and exit wounds.

25 But we know he was shot in the

1 arms -- both arms.

2 We know he was shot in the chest.

3 We know he's shot in the back.

4 That is evidence of malice.

5 Every element of assault and
6 battery with intent to kill has been proven beyond a
7 reasonable doubt...

8 How do we know it?

9 How do we know it? Royal McCoy
10 told you what happened.

11 She was there minding her own
12 business visiting with friends.

13 A knock the door; she runs down
14 the hall when the door gets get kicked open.

15 She looks over her shoulder and
16 who does she see? Him.

17 What is he wearing?

18 Red shirt.

19 What do you do?

20 I am scared; so I go and gather my
21 children; and I hide in the back bedroom until the police
22 tell me I can leave; or come and get me.

23 How else do you know it?

24 Danny Lyles, the victim, says: I
25 was their visiting a friend of mine; watching TV.

1 The next thing I know, the
2 estranged husband is knocking on the door. He comes in
3 with a gun and says: What you doing here? I'm not doing
4 anything.

5 Without any ability or any further
6 instruction, he is shot.

7 That right there is assault and
8 battery with intent to kill.

9 But he didn't stop.

10 Danny Lyles fled and ran for his
11 life until he fell in the parking lot where that man came
12 and stood over him and continued to shoot him.

13 He -- Mr. Lyles came to this court
14 room and pointed out to you who it was.

15 Not only that, he picked him out
16 at the photo lineup several months later -- who it was
17 that had shot him.

18 This is not a who-done-it.

19 I kind of thought maybe it was
20 whenever I heard some of the Defense lawyer's questions,
21 though.

22 Well, it was dark outside, wasn't
23 it? You were just kind of expecting John McCoy to be
24 behind you; weren't you? There wasn't any streetlights
25 out there. The light wasn't that great. You really

1 couldn't see, could you? I thought it was a who-done-it.

2 That's why the testimony of Amy
3 Montgomery was important. She was the one that came and
4 told you that she looked -- she heard a commotion -- she
5 looked out -- she saw the slender guy in the red shirt
6 chasing the heavyset guy in the striped shirt. And that
7 the heavyset guy fell down -- the slim red -- red shirted
8 guy stood over him and shot him.

9 She's looking out her window.
10 She lives in an apartment next door. She couldn't come
11 in here and say who was who.

12 But she could tell you what they
13 were wearing. We know from the testimony of the
14 Defendant he finally conceded that he was more slender
15 than Mr. Lyles. It was hard to get him to concede that;
16 but he did; and that he was wearing a red shirt.

17 And we know who was wearing the
18 striped shirt, State's Exhibit Number 8.

19 The victim, Danny Lyles, was
20 wearing the striped shirt. He was the one on the ground
21 being shot over and over.

22 That's why Amy Montgomery's
23 testimony was important.

24 Again, I thought it was a who-
25 done-it.

1 Whenever the Defense presented the
2 SLED Agent -- the gunshot residue expert; I thought she
3 was gone possibly come in here and say: Because there is
4 no gunshot residue -- and that's exactly what this report
5 says -- because there is -- this report says: There is
6 no gunshot residue on John McCoy's hands.

7 But she didn't come in here and
8 say: That's because he didn't fire a gun.

9 That's not what she said at all.

10 She said: I don't know. She said:
11 I can't say he did fire one; I can't say he didn't fire
12 one.

13 All I can do is say: He didn't
14 have any metals on his hands consistent with gunshot
15 residue.

16 But that doesn't advance the ball,
17 ladies and gentlemen.

18 That doesn't help you know the
19 truth of what happened.

20 That's why we didn't call her.

21 There are so many things that can
22 cause gunshot residue to come off; such as: washing your
23 hands; driving a car; drinking beer; eating chicken
24 wings.

25 Those are all the things that can

1 cause those metals to come off your hands.

2 She did not testify that he had
3 not shot a gun.

4 So once it became -- it got passed
5 of a who-done-it; it became, I guess, justifiable -- that
6 he saw some strange man in the apartment; and therefore
7 it is a justifiable shooting -- or an accident because we
8 just struggled over that gun. And it went off one time;
9 and that one magic bullet left nine holes in Danny Lyles.

10 Ladies and gentlemen, I -- when
11 the Defendant was testifying yesterday; I -- I got fairly
12 fired up. And I -- I think probably with good reason.

13 But I'm telling you, the most
14 important tool that you bring to this jury system and to
15 this courtroom -- to this judicial process; the most
16 important thing you got is common sense.

17 You each come from 13 different
18 walks of life, counting the alternate -- 13 different
19 life experiences.

20 And those like expenses help you
21 know the difference between right and wrong; the
22 difference between what makes sense and what doesn't make
23 sense; the difference between who's telling the truth and
24 who's not.

25 I ask you, ladies and gentlemen,

1 to use your common-sense in this case; and ask yourself
2 back there in that jury room what reason does Royal McCoy
3 have to lie about what happened?

4 None.

5 She's not up here saying that she
6 saw John McCoy shoot Danny Lyles over and over and over.

7 She says she saw him get in my
8 door: and I ran because I was scared and gathered my
9 children, and gathered my babies, and tried to keep them
10 safe; that's what she says.

11 What reason or motivation does she
12 have to lie? Is she mad about it? Probably so. I
13 probably would be. Is she filing for divorce? Sure.
14 Probably not a bad idea.

15 But does that mean that she's
16 going to lie about what happened; no.

17 She has no reason to lie.

18 Danny Lyles: Ask yourself back in
19 the jury room, what reason does Danny Lyles have to lie?

20 None.

21 He was sitting there minding his
22 own business and visiting a friend; hoping to have a good
23 night. He ends up going to the hospital -- spending a
24 week or more because of holes he's got in him.

25 He has no interest in this case;

1 other than being the victim and the interest that justice
2 be done.

3 He has no personal gain.

4 There's monetary type interest.

5 Look at Amy McGomery.

6 What interest does she have in
7 saying what she said; none.

8 I mean, she's sitting there with
9 her mom and her sister in a different apartment --
10 doesn't even know these folks -- looks out the window and
11 she tells you what she saw happen.

12 She has no interest or reason to
13 lie.

14 Ask yourself about John McCoy.

15 What interest or reason does he
16 have to come up here and tell you something other than
17 the truth?

18 Think about it.

19 He told the police that he and a
20 buddy went to a club -- the club was closed -- went to
21 get beer and chicken wings -- and went back to my
22 apartment at Whispering Pines and watched TV until I fell
23 asleep.

24 That's what he told the police.

25 We know that's not true.

25 No. It doesn't make sense because

1 that's not why he went there.

2 He admitted his child is usually
3 in bed at 1:30. He didn't go there -- and it's the
4 following day -- it's the following morning. His
5 birthday's on the 28th -- it's the early morning hours of
6 the 29th -- birthday's over.

7 He didn't go see his child during
8 the daylight hours or try to go see his child during the
9 daylight hours -- if that's really why he was going over
10 there.

11 He went at 1:30, not to visit his
12 child.

13 Does it make sense that the gun
14 accidentally going off -- well, going off once is going
15 to cause nine bullet holes?

16 That doesn't make sense.

17 The reason it doesn't make sense
18 is because that's not what happened.

19 Does it make sense that the
20 gunman, according to the Defendant, has nine holes in
21 him; and the victim, according to the Defendant, hadn't
22 got a scratch on him?

23 Does that make sense? No; because
24 it didn't happen.

25 Does it make sense that you go to

1 an apartment; you see a strange man inside; you go to try
2 to rescue your wife and children; you struggle over a
3 gun; shots are exchanged -- or shots go off; and you
4 don't call 911?

5 Does it make sense that you are a
6 victim and you don't call the police; that you just drive
7 back home like nothing's going on -- nothing's happened?

8 You pass gas station after gas
9 station after gas station -- you don't stop at any of
10 them and say: Look, I need some help. There's a strange
11 man still in my estranged wife's apartment. She might
12 need some help.

13 No. He didn't do it; because that
14 didn't happen.

15 He passed payphone after payphone
16 after pay phone -- never once calling 911; saying:
17 There's some crazy man in my wife's apartment who's tried
18 to shoot me.

19 He didn't do it because it didn't
20 happen.

21 How do we know it? How do we know
22 it? We know it from the testimony of the witnesses.

23 You've got Royal; you've got
24 Danny; and you've got Amy.

25 Does it make sense -- you got the

1 Chief of Police of Duncan who is interviewing him; trying
2 to find out happened.

3 Dose it make sense that he would
4 actually sit down and write down that the man is at a
5 club drinking beer, eating chicken wings, falling asleep
6 after watching TV -- Does it make sense -- none of that
7 is incriminating.

8 Does it really make any sense that
9 the Chief of Police of Duncan is going to write that
10 down; but is going to leave out the most critical element
11 -- or one of the most critical elements of burglary --
12 the fact that he was at the crime scene -- that he
13 entered the dwelling of another without consent and with
14 intent to commit a crime.

15 Is he going to really -- as a law
16 enforcement officer -- as the ranking officer in this
17 investigation -- is -- does it make sense he's going to
18 leave out that little detail?

19 They want you to believe: Oh, it
20 just must have slipped his mind.

21 Do you think that is an element
22 that's going to slip somebody's mind that you are
23 actually at the crime scene? No.

24 The reason it doesn't make sense
25 is because that's not what happened.

1 You've got the witnesses that tell
2 you what happened.

3 You got the officers that told you
4 what they did.

5 You got the evidence laid out over
6 here.

7 And what's consistent about it?

8 It's consistent that the casing
9 inside was a 25; the casings outside were 25's; and the
10 one casing inside his car was a 25..

11 We don't have the handgun.

12 We don't -- I'm not trying to say
13 we do -- not trying to say we're holding it back from
14 you.

15 We don't. What happened to the
16 gun; don't know.

17 I know it's a long way from Duncan
18 to apartments near SMC.

19 Did he throw it out? Who knows?

20 Did he give it to one of his
21 buddies at the apartment? Who knows?

22 Did he throw it in a ditch or
23 leave it somewhere else? Who knows?

24 There's reasonable doubt on where
25 the gun is.

1 I'm not trying to sit up here and
2 tell you I know where the gun is.

3 I don't.

4 But I know where the casings were.
5 -- in the apartment -- in the parking lot -- in his car.

6 He's guilty. He's guilty of
7 burglary. He's guilty of assault and battery with intent
8 to kill.

9 Thank you for the attention that
10 you've given to me; that you've given these witnesses and
11 that you've given this Court.

12 I ask you to go back to your jury
13 room and just simply use your common sense.

14 Remember the evidence. Remember
15 the testimony. Remember the exhibits -- take the
16 exhibits with you.

17 And you apply the facts as you've
18 heard them in this court room all day yesterday; and you
19 take those facts and apply it to this law; as I said,
20 there is one true and just verdict; a verdict that tells
21 John McCoy: You can't go in your estranged wife's
22 apartment at 1:30 in the morning and start shooting up
23 the place.

24 You're not gone -- that -- that's
25 not right. You're not gone do that. You are wrong for

1 doing that. And that no amount of lies to the police or
2 to the jury is going to relieve you of those
3 consequences.

4 I ask you; take the facts and take
5 the law and find him guilty.

6 Thank you. 6/15/2005 9:58:00 AM

7 THE COURT:

8 Ladies and gentlemen of the jury,
9 we have now reached the stage of the trial that -- where
10 I have told you that I will charge you concerning the law
11 in the case.

12 As I told you at the very
13 beginning of this case, the Defendant is charged in two
14 Indictments.

15 Those Indictments I have before me
16 today; and the Indictments are for burglary in the first
17 degree -- uh -- a dwelling; and assault and battery with
18 intent to kill.

19 I have gone over these indictments
20 with you prior to this time. I will do that one more
21 time so that you understand the charges that he is faced
22 with.

23 First of all, the Indictment in
24 Case Number 2005-GS-42-642; assault and battery with
25 intent to kill;

1 That Indictment alleges:

2 That the Defendant, John Curtis
3 McCoy, did in Spartanburg County or about September 29th
4 of 2004 with malice aforethought commit an assault and
5 battery upon one Daniel Mack Lyles, Jr., by shooting the
6 victim several times with the intent to kill the said
7 victim, all in violation of Code Section 16-03-620 of the
8 Code of Laws of South Carolina, 1976 as amended.

9 That's the first Indictment.

10 The second Indictment is in Case
11 Number 2005-GS-42-643.

12 This is for burglary in the first
13 degree.

14 This Indictment reads:

15 That the Defendant, John Curtis
16 McCoy, did in Spartanburg County on or about September
17 29th of 2004 -- uh -- willfully and intentionally enter
18 the dwelling belonging to Royal Arnelia McCoy located at
19 3107 Culpepper Crossing -- uh -- Duncan, South Carolina
20 without consent and with the intent to commit a crime
21 therein; and that the Defendant did enter the dwelling
22 either in the nighttime and/or armed with a deadly weapon
23 or explosive and/or caused physical injury to Daniel Mack
24 Lyles, Jr.; and/or displays what is or appears to be a
25 knife, pistol, revolver, rifle, shotgun, machine gun, or

1 other firearm; all in violation of Code Section 16-11-311
2 of the Code of Laws of South Carolina, 1976 as amended.

3 I remind you the fact that the
4 Defendant was arrested, charged and indicted for these
5 crimes is not evidence in this case; and cannot be
6 considered by you in reaching your verdict in this case;
7 nor does it create any presumption or inference of guilt.

8 These are documents that simply
9 bring the charges before this Court and inform the
10 Defendant of the charges that have been lodged against
11 him.

12 Now, there are two charges in this
13 case.

14 Each Indictment charges a separate
15 and distinct offense.

16 You must decide each Indictment
17 separately on the evidence and the law applicable to it;
18 and that should not affect and you should not be affected
19 by your decision on the other Indictment.

20 The Defendant may be convicted or
21 acquitted on any or all of the offenses charged.

22 You will be asked to write -- and
23 I will go over with you in a few minutes -- a separate
24 verdict of guilty or not guilty as to each Indictment.

25 Now to those Indictments, the

1 Defendant has pled not guilty.

2 And that plea then puts the burden
3 upon the State to prove the -- uh -- Defendant guilty of
4 each and every element of the charges alleged in the
5 Indictment.

6 A person charged with committing a
7 criminal offense in this state is never required to prove
8 himself innocent.

9 I charge you that it is an
10 important rule of law that the Defendant in a criminal
11 case, such as this one; no matter what the seriousness of
12 the crime might be, always comes before this Court
13 presumed to be innocent of the crime for which the
14 Indictment alleges he did.

15 This presumption of innocence does
16 not end when you begin your deliberations.

17 It continues with the Defendant
18 throughout the trial.

19 You -- In order for you to reach a
20 verdict of guilt based on the evidence, you must find
21 beyond a reasonable doubt that the State has proved the
22 guilt of the Defendant to that degree.

23 The presumption of innocence has
24 been described by some as being like a robe such as the
25 rob that I wear into this courtroom placed about the

1 shoulders of the Defendant which remains with him until
2 such time as it has been stripped from him by evidence
3 which satisfies you the jury of his guilt beyond a
4 reasonable doubt.

5 The presumption of innocence is
6 not a mere legal theory.

7 It is a substantial right that
8 every Defendant is entitled to; and you the jury must
9 give that presumption to the Defendant until such time as
10 you are satisfied from the evidence that the Defendant is
11 guilty beyond a reasonable doubt.

12 Now from my charge thus far, you
13 can tell that the theory or the phrase: beyond a
14 reasonable doubt has great importance in criminal law in
15 this state.

16 And you may ask yourself what is
17 meant by the phrase: beyond a reasonable doubt?

18 I have told you on several
19 occasions that the State has the burden of proving each
20 and every element of the crime to that degree: beyond a
21 reasonable doubt.

22 Some of you may have served as
23 Jurors in civil cases or been aware of civil cases.

24 There is a different standard of
25 proof in those kinds of cases for someone seeking money

1 damages or other civil relief from someone.

2 And that standard is: by the
3 greater weight or the preponderance of the evidence. And
4 that's been described as like the scales of justice,
5 tipping ever so slightly in one direction or another.

6 That's not to standard used in a
7 criminal case such as this one.

8 In a criminal case, the standard
9 again is: proof beyond a reasonable doubt.

10 Proof beyond a reasonable doubt is
11 proof which leaves you firmly convinced of the
12 Defendant's guilt.

13 Now we realize that in life there
14 are very the things that can be proven beyond any doubt
15 whatsoever. And the State is not put to that burden in
16 this case.

17 But if, based on your
18 consideration of the evidence, you are firmly convinced
19 that the Defendant is guilty of the crime charged; then
20 you must find the Defendant guilty.

21 If, on the other hand, you think
22 there is a real possibility -- excuse me -- that the
23 Defendant is not guilty; you must under our law give the
24 Defendant the benefit of the doubt, and find him not
25 guilty.

25 You may have come into this

1 courtroom with some preconceived notion as to what the
2 law is or what the law ought to be.

3 And I charge you now that that
4 notion should be left outside of the door.

5 It's your responsibility to take
6 the law as I now charge it to you; apply it to the facts
7 as you find them to be; and thereby, you will reach a
8 just and true verdict in the case.

9 Now in every case tried in this
10 court, as I've told you, you are the sole and exclusive
11 judges of the facts in this case.

12 A judge cannot indicate in any
13 fashion whatsoever that I have any opinion as to how you
14 should determine the facts to be.

15 If you take from any of my actions
16 during his trial or any statement that I made during the
17 trial that you believe that I have some opinion as to how
18 you determine the facts of this case; I am telling you
19 now to disregard that notion.

20 The law does not allow me to have
21 an opinion concerning the facts in this case.

22 I can assure you, I have no
23 opinion as to how you should determine the facts to be in
24 this matter.

25 Now during the trial of the case,

1 there are two types of evidence which come into every
2 trial.

3 We call those two types of
4 evidence: direct evidence and circumstantial evidence.

5 Direct evidence is evidence or
6 testimony of a person who claims to have direct knowledge
7 of the existence of a fact; such as someone who is an
8 eyewitness to an event or a crime.

9 The other type of evidence is what
10 we call: circumstantial evidence.

11 And circumstantial evidence is
12 proof of a chain of facts or a chain of circumstances
13 which indicate the existence of some other fact or main
14 fact which is intended to be proved.

15 Circumstantial evidence,
16 therefore, is based upon inference; and not on personal
17 knowledge or observation.

18 Our law makes absolutely no
19 distinction between circumstantial evidence or direct
20 evidence; nor is there a greater degree of certainty
21 required for circumstantial evidence than that of direct
22 evidence.

23 You should weigh all of the
24 evidence in the case.

25 And after weighing all of the

1 evidence in the case, if you are not convinced of the
2 Defendant's guilt beyond a reasonable doubt, it is your
3 responsibility to find the Defendant not guilty.

4 Now in the process of determining
5 the facts in this case, necessarily you must determine
6 the credibility of the witnesses who have testified in
7 this case.

8 As I told you at the beginning of
9 the trial, you have the right to consider such factors in
10 determining the credibility of the witnesses who have
11 testified; such as their -- uh -- their -- uh -- stake in
12 the outcome of the case; their ability to know the facts
13 about which they testify, or have seen, or have knowledge
14 of the facts about which they testify -- whether or not
15 the witness has some bias or prejudice in the case.

16 And I told you at the beginning of
17 the trial, and I will emphasize again, you've had the
18 opportunity to directly observe the witnesses as the
19 testified; the manner and the mode in which they
20 testified. You can take all of those factors along with
21 your good common-sense to determine the credibility of
22 the witnesses who have testified in this case.

23 The Rules of evidence, as I told
24 you during the trial, ordinarily do not allow witnesses
25 to give opinions or state opinions concerning facts in a

1 case.

2 There is an exception to that
3 rule, and that's when someone is determined to be an
4 expert witness in the case.

5 That's a person who, by education,
6 experience -- uh -- or experience has become an expert in
7 some art, science, profession, or calling.

8 Those people are allowed by The
9 Courts to state an opinion as to relevant and material
10 matters before The Court.

11 You should consider the testimony
12 of an expert witness which has been received in evidence
13 in this case like any other evidence; and give it the
14 weight that you think it deserves.

15 If you decide that the opinion of
16 an expert witness is not based on sufficient education or
17 experience or you conclude that the reasons given for the
18 opinion are not supported by the facts or are not sound,
19 then you have the right to disregard the opinion
20 altogether.

21 An expert's testimony is to be
22 given no greater weight than any other witness simply
23 because the person is an expert.

24 You are the sole judges, again, of
25 the credibility of the witnesses who testify hereto; and

1 too, you are also the sole judges of what weight you
2 choose to give to the testimony of all of the witnesses
3 who have testified in this case.

4 You are not required to accept
5 the opinion of an expert, even though it may not be
6 contradicted.

7 Now an issue in this case has been
8 the identification of the Defendant as the person who
9 committed the crime.

10 The State does have the burden of
11 proving identity beyond a reasonable doubt.

12 You must be satisfied beyond a
13 reasonable doubt of the accuracy of the identification of
14 the Defendant before you may convict the Defendant.

15 Identification testimony is an
16 expression or a belief or an impression by a witness..

17 You must determine the accuracy of
18 the identification witness in the same way as any other
19 witness.

20 You may consider whether the
21 witness had an adequate opportunity to observe the
22 offender at the time of the offense.

23 This will be affected by things
24 like how long or short of time was available to that
25 witness; how far or how close the witness was; the

1 lighting conditions; whether the witness had a chance to
2 see or know that person in the past.

3 Once again, I instruct you, as I
4 will throughout this charge that the State has the burden
5 of proof; and that extends to every element of the crimes
6 charged; and specifically that includes the burden of
7 proving beyond a reasonable doubt the identity of the
8 Defendant as the person who committed the crime.

9 If after examining the testimony,
10 you have a reasonable doubt as to the identity of the
11 Defendant, you must find the Defendant not guilty.

12 Now in every criminal case; and
13 especially this case -- it's just not any different from
14 any other -- the State has the burden to establish
15 criminal liability and criminal intent.

16 Criminal intent is the State of
17 mind required to be proven by the State for a particular
18 crime. It might be purpose, intent, knowledge,
19 recklessness, or criminal negligence.

20 Criminal intent must be proven by
21 the State beyond a reasonable doubt. Criminal intent is
22 always a matter that must be determined by the jury from
23 the circumstances surrounding the situation.

24 Now there's no mathematical way to
25 determine what someone intends to do.

1 We don't have the ability to cut
2 open someone's brain and look inside and see exactly what
3 they are thinking. So therefore, criminal intent may be
4 proven like other matters by circumstantial evidence; by
5 you looking at the circumstances that then and there
6 existed at the time of the incident.

7 You must make a determination as
8 to whether or not the element of required intent was
9 present.

10 It's not necessary to establish
11 intent, again, by direct and positive evidence; but
12 intent may be established by inference in the same way as
13 any other fact, taking into consideration the acts of the
14 parties and the facts and the circumstances of the case.

15 Criminal intent has been defined
16 as a mental state; a conscious wrongdoing; and it is up
17 to you to determine whether the Defendant -- what the
18 Defendant intended to do based on the circumstances that
19 have been shown to have existed at that time.

20 Again, criminal intent can arise
21 from action or failure to act. It may arise from
22 negligence; recklessness; or an indifference to duty; or
23 to the consequences of what -- of one's actions.

24 Those are matters that are
25 considered by the law to be the equivalent of criminal

1 intent.

2 Now I've told you that there are
3 two charges in this case.

4 The first charge I will go over
5 with you or the first Indictment is the Indictment for
6 assault and battery with intent to kill.

7 The Defendant has been charged
8 with that crime in the Indictment. And in order to prove
9 assault and battery with intent to kill, the State must
10 prove beyond a reasonable doubt that the Defendant
11 committed an unlawful act of a violent nature to the
12 person of another with malice aforethought.

13 An assault occurs when a person
14 unlawfully attempts or offers to commit a violent injury
15 upon another person, and has the present ability to carry
16 that out.

17 It's not necessary that the
18 attempted injury or harm actually take place.

19 For -- so for an assault to happen
20 I -- I could simply walk up to you, draw back my fist as
21 if to hit you; but then not carry out that -- that -- uh
22 -- act. Because I had the present ability to hit you;
23 that constitutes an assault; I have place someone in fear
24 of bodily injury.

25 A battery is the unlawful touching

1 of another person by a person who has committed an
2 assault.

3 An unlawful touching can be caused
4 by a part of the accused' body, or by any object that the
5 accused puts in motion. A battery is the completion of
6 the assault by using or applying force to another person,
7 however slight, in a rude, angry, or resentful manner
8 without legal justification for doing so.

9 Using my earlier example, if I
10 walked up to you -- drew back my fist, then I would have
11 committed the assault. If I carried out the act by then
12 punching you punching you in the face, I will have then
13 committed the battery.

14 Now malice is hatred, ill will, or
15 hostility, toward another person. It is the intentional
16 wrong doing -- excuse me -- doing of an act, a wrongful
17 act without just cause or excuse; and with the intent to
18 inflict an injury under circumstances that the law makes
19 -- uh -- that act illegal.

20 Malice aforethought does not
21 require that malice exist for any particular time before
22 the act is committed; but malice must exist in the mind
23 of the Defendant just before and at the time the act is
24 committed. Therefore, there must be a combination of the
25 previous evil intent and the act.

1 Malice aforethought may be
2 expressed, again, or inferred. These terms: expressed
3 and inferred, do not mean different kinds of malice; but
4 merely mean the manner in which they may be proven or
5 shown to exist; that is, they may be shown -- malice may
6 be shown by either direct, or again, by circumstantial
7 evidence.

8 Malice may be inferred from the
9 conduct; showing a total disregard for human life.

10 Inferred malice may also arise
11 when the deed is done with a deadly weapon.

12 A deadly weapon is any kind of
13 article, instruments or substance which is likely to
14 cause death or great bodily harm. Whether an instrument
15 has been used as a deadly weapon, depends on the facts
16 and circumstances of the case.

17 The following are examples of
18 instruments which are considered by -- which may be
19 considered by the law to be deadly weapons, such as: a
20 pistol, shotgun, rifle, dirk, dagger, knife, slingshot,
21 metal knuckles, razor, gasoline, a firebomb, Molotov
22 cocktail, lighter -- or lighter fluid.

23 A gun may be he a deadly weapon
24 even if it is not operating.

25 If the facts are proven beyond a

1 reasonable doubt sufficient to raise an inference of
2 malice to your satisfaction; this inference would simply
3 be an evidentiary fact to be considered by you, along
4 with the other evidence you will -- you have received.

5 A specific intent to kill is not
6 an element of assault and battery with intent to kill;
7 but there must be general intent to commit serious bodily
8 injury.

9 Intent means intending the result
10 which actually occurs; not accidentally; and not
11 involuntarily.

12 Intent may be shown by acts and
13 conduct of the Defendant and other circumstances from
14 which you may naturally and reasonably, again, infer
15 intent.

16 Evidence of a character -- of the
17 character of the assault, the character of the instrument
18 used, the manner in which it was used, the purpose to be
19 accomplished, and the resulting wounds or injuries may
20 all be considered in determining the intent with which
21 the assault was committed.

22 Intent may be inferred when it is
23 demonstrated that a Defendant voluntarily and willfully
24 commits an act the natural tendency of which is to
25 destroy another's life.

1 Now, as to burglary in the first
2 degree under Code Section 16-11-311; the Defendant has
3 also been charged with that crime.

4 In this case, the State must prove
5 beyond a reasonable doubt that the Defendant entered a
6 dwelling without consent.

7 A dwelling is a building or a
8 portion of a building in which a person ordinarily
9 sleeps.

10 A building constructed as a
11 dwelling which has never been occupied cannot be -- uh --
12 considered as a burglary. But a building is a dwelling
13 even if residents are not -- temporarily absent -- absent
14 from the building.

15 In order to prove that the
16 Defendant entered a dwelling, the State does not have to
17 prove that the Defendant's entire body entered the
18 dwelling. The smallest intrusion is sufficient.

19 If a person enters a building by
20 using deception, artifice, or trick, or
21 misrepresentation, to get consent to enter; this is also
22 entry without consent.

23 Next; the State must prove beyond
24 a reasonable doubt that the Defendant intended to commit
25 a crime -- either a felony or a misdemeanor -- at the

1 time of the entry.

2 The mere entry into a dwelling
3 without the consent is not burglary if the intent to
4 commit a crime is formed after the entry.

5 It is not a burglary, on the other
6 hand, if the Defendant intended -- uh -- intended to
7 commit a crime at the time of the entry; it is a
8 burglary, even if the intent was abandoned after entry.

9 It does not matter that the
10 intended crime may not have been completed.

11 Intent may be shown by acts and
12 conduct of the Defendant in other circumstances from
13 which you may naturally and reasonably infer intent as I
14 previously instructed you.

15 Finally, the State must prove
16 beyond a reasonable doubt that when entering -- uh -- and
17 while in the dwelling, or when fleeing from the dwelling,
18 the Defendant was armed with a deadly weapon or
19 explosive.

20 Again, a deadly weapon is any
21 article, instrument, or substance, which is likely to
22 cause death or great bodily harm.

23 Whether an instrument has been
24 used as a deadly weapon -- uh -- depends on the facts and
25 circumstances in each case.

1 Also the State must prove that
2 when entering a dwelling, or while in the dwelling, or
3 when fleeing from the dwelling, the Defendant caused
4 physical injury to anyone not participating in the crime
5 when entering the dwelling, or when fleeing from the
6 dwelling, the -- uh -- the Defendant may have used or
7 threatened to use a dangerous object.

8 And the State must also prove that
9 when entering the dwelling, or while in the dwelling, or
10 when fleeing from the dwelling, the Defendant displayed
11 what was or appeared to be a knife, pistol, revolver,
12 rifle, shotgun, machine gun, or other firearm.

13 The State must also prove that the
14 Defendant entered or remained in the dwelling in the
15 nighttime. The nighttime is the period between sunset
16 and sunrise during which there is not enough daylight to
17 recognize a person's face except by artificial light, or
18 moonlight.

19 Now ladies and gentlemen of the
20 jury, there are two different Indictments, as I told you.

21 And for each Indictment, there
22 will be two possible verdicts.

23 I will be giving you a jury
24 verdict form in a few minutes for you to record your
25 verdict on.

1 Now in order for the jury to reach
2 a verdict, that verdict must be unanimous.

3 That means each and every one of
4 you must agree upon the verdict before it becomes the
5 verdict of the jury.

6 As I have told you -- uh -- you
7 are the sole judges of the facts in the case and I'm the
8 sole judge of the law in this case.

9 If during your deliberations, you
10 have a question that you wish to ask of this Court, that
11 question should be placed in writing and agreed upon by
12 all Jurors and submitted by the foreperson to the Bailiff
13 who is seated outside of the jury room.

14 I will then consider the question
15 as to whether or not I can answer it. But because of our
16 separate roles, I'm not allowed to answer each and every
17 question you may have concerning your deliberations.

18 Uh -- Ma'am, your name, please?

19 JUROR:

20 Nancy Krick.

21 THE COURT:

22 Ma'am, I'm going to appoint you as
23 the foreperson of this jury.

24 That means it will be your
25 responsibility to oversee the deliberations of the jury.

25 | Again, I'm going to ask that you

1 excuse yourselves to the jury room.

2 Thank you very much.

3 (Whereupon: the jury empanelled in
4 the case withdrew from the courtroom and was no longer
5 present during the following proceedings.) 6/15/05

6 10:24:06 AM

7 THE COURT:

8 Any exceptions to the charge from
9 the State?

10 SOLICITOR:

11 Just one, Judge.

12 On -- on the burglary in first-
13 degree --

14 THE COURT:

15 Yes sir.

16 SOLICITOR:

17 -- when you explained it to the
18 jury -- uh -- the way I heard it, and I may be wrong and
19 will get corrected -- uh -- was that each aggravating
20 factor had to be proven by the State.

21 Judge, I think only one
22 aggravating factor has to be proven. That's --

23 THE COURT:

24 I'll be -- I'll be glad to clear
25 up that inference, if that's the case.

1 SOLICITOR:

2 Thank you.

3 THE COURT:

4 Any one of those would be
5 sufficient.

6 SOLICITOR:

7 Yes sir. Thank you.

8 DEFENSE COUNSEL:

9 No request or objection to the
10 charges.

11 THE COURT:

12 Okay. All right.

13 Uh -- I'm going to -- I -- we'll
14 be at ease for just a minute.

15 I've got to get the jury form from
16 my office; and then we will -- uh -- uh -- well, I'll
17 just have that brought up.

18 SOLICITOR:

19 Thank you, Your Honor.

20 THE COURT:

21 And while we're doing that; if the
22 attorneys will look at the exhibits and agree upon the
23 matters to be submitted to the jury.

24 THE COURT:

25 You gentlemen want to step up and

1 take a look at the verdict form?

2 (Whereupon: counsel for each party
3 conferred with The Court off the record at the bench.)

4 THE COURT:

5 All right.

6 Mr. Willingham, it's my
7 understanding the State has reviewed the evidence to be
8 submitted, along with the verdict form, and you have no
9 objection; is that correct?

10 SOLICITOR:

11 That's correct, Your Honor.

12 THE COURT:

13 And Mr. Allen, the same for the
14 Defense; you've reviewed the evidence and the verdict
15 form and have no objection; is that also correct?

16 DEFENSE COUNSEL:

17 Correct.

18 THE COURT:

19 All right. You can bring the
20 jury back.

21 (Whereupon: the jury empanelled
22 in the case returned to the courtroom and was present
23 during the following proceedings.) June 15, 2005 10:28:59

24 AM

25 THE COURT:

1 All right. Ladies and gentleman
2 of the jury, there is one matter I do want to be sure you
3 are clear on as far as my charge is concerned.

4 Uh -- the offense of burglary does
5 require that the State prove at least one aggravating
6 circumstance.

7 Uh -- the aggravating
8 circumstances, I will go through with you again.

9 Uh -- These circumstances, again,
10 are -- uh -- The State has to prove only one of these in
11 order for a burglary to have occurred -- uh -- but it
12 must prove at least one of them beyond a reasonable
13 doubt.

14 The first one is: when entering,
15 while in the dwelling, or when fleeing, the Defendant --
16 uh -- was armed with a deadly weapon or explosive.

17 When entering, while in the
18 dwelling, or when fleeing, to Defendant caused physical
19 injury to anyone not participating in the crime.

20 The next one is: When entering,
21 while in the dwelling, or when fleeing, the Defendant
22 used or threatened to use a dangerous object.

23 The next one is: When entering,
24 while in the dwelling, or when fleeing the Defendant
25 displayed what appeared to be a knife, pistol, revolver,

1 shotgun, machine gun, or other firearm.

2 The next one is: the Defendant
3 entered or remained in the dwelling in the nighttime.

4 Again, the nighttime is the period
5 between sunset and sunrise during which there is not
6 enough daylight to recognize a person's face except by
7 artificial light or moonlight.

8 Again, those are the aggravating
9 circumstances, at least one of which must have been
10 proven by the State beyond a reasonable doubt before you
11 can find the Defendant guilty of the crime of burglary.

12 Does that take care of the
13 question?

14 SOLICITOR:

15 Yes, sir, Your Honor. Thank you.

16 THE COURT:

17 Any objection to that re-charge?

18 DEFENSE COUNSEL:

19 If I may approach.

20 THE COURT:

21 Certainly.

22 (Whereupon: counsel for each party
23 conferred with The Court off the record at the bench.)

24 THE COURT:

25 Now ladies and gentlemen, those

1 are the -- aggravating circumstances of burglary. Those
2 go in combination with the previous charge for the
3 remainder, such as the entry without consent.

4 The other elements that I charged
5 you also must be proven beyond a reasonable doubt.

6 But at least one of those
7 aggravating circumstances must also be proven beyond a
8 reasonable doubt.

9 Now, Madam Forelady, I'm going to
10 submit to you, a verdict form.

11 The verdict form is a single sheet
12 of paper -- uh -- very self-explanatory, I believe; but I
13 want to go over it with you so that we're clear on what
14 we're going to be doing.

15 It states -- it has the caption of
16 the case and the Indictment Numbers for which the
17 Defendant has been tried.

18 It states that:

19 We, the jury, unanimously find the
20 Defendant, John Curtis McCoy -- the first verdict is for
21 the Indictment for assault and battery with intent to
22 kill.

23 The choices are: not guilty and
24 guilty.

25 Don't take from the fact that I

1 have placed these choices in any order on this form, that
2 I have any preference as to how you determine that
3 question.

4 There's only two choices. I've
5 got to put them in some order.

6 That is a blank beside each
7 choice. You would check or put an "X" in the blank which
8 the jury finds -- uh -- the Defendant to be.

9 The second one is as to the next
10 Indictment for burglary in the first degree.

11 Again, the choices are: not
12 guilty and guilty.

13 Again, once the jury has reached a
14 unanimous verdict on that Indictment, you would check the
15 appropriate block.

16 Once the verdict has been reached.
17 in both -- on both Indictments, then you would sign the
18 form indicating that a verdict has been reached
19 unanimously by the jury; inform the Bailiff that a
20 verdict has been reached; and we will ask you, then, to
21 return to the courtroom to take the verdict.

22 The exhibits will be -- have been
23 agreed upon by the parties as to them all being present
24 at this time.

25 They will be brought back to you

1 by the Bailiff. Uh -- you'll have an opportunity to look
2 at the exhibits during your deliberations.

3 So at this time, I'm going to ask
4 you to return to the jury room.

5 Now you can begin your
6 deliberations and discussions on this case.

7 I would ask that the alternate
8 remain seated in the courtroom while the remainder of the
9 jury retires.

10 Thank you very much.

11 (Whereupon: the jury empanelled in
12 the case withdrew from the courtroom and was no longer
13 present during the following proceedings.) Wednesday, 15
14 June, 2005 10:33:03 AM

15 THE COURT:

16 Any objection from the State to my
17 release of the -- uh -- alternate?

18 SOLICITOR:

19 No sir, Your Honor.

20 THE COURT:

21 Any objection from the Defense?

22 DEFENSE COUNSEL:

23 No, Your Honor.

24 THE COURT:

25 All right, ma'am.

1 You -- you are the alternate on
2 this jury; and your purpose is to be present in case any
3 of the Juror had a problem and could not retire.

4 We do have to have 12 Jurors
5 considered the case.

6 At this time, the jury has retired
7 and all 12 have gone back, so this completes your service
8 in connection with this case.

9 Unfortunately, it does not
10 complete your service on the jury this week; and I
11 believe the jury panel is assembling at 11 o'clock?

12 SOLICITOR:

13 Yes sir.

14 THE COURT:

15 And so -- that's in less than 30
16 minutes, so maybe you would like to make your way back to
17 the jury assembly room -- uh -- and you will be there
18 when the reminder of the jury panel comes in.

19 Thank you very much for your help
20 on this case.

21 All right. This case will be in
22 recess until such time as a verdict has been reached.

23 SOLICITOR:

24 Thank you, Your Honor.

25 THE COURT:

1 Thank you very much.

2 (Whereupon: The Court was
3 recessed.) Wednesday, June 15, 2005 10:34:24 AM

4 (Whereupon: The Court was called
5 to order by the Bailiff and all pertinent parties and
6 their counsel were back and present in the courtroom.)

7 6/15/05 10:58:39 AM

8 BAILIFF:

9 All rise and come to order,
10 please. Thank you; and be seated.

11 THE COURT:

12 All right.

13 It's my understanding the jury has
14 reached a verdict.

15 Is the State ready?

16 SOLICITOR:

17 Yes, Your Honor.

18 THE COURT:

19 Defense ready?

20 DEFENSE COUNSEL:

21 Yes, Your Honor.

22 THE COURT:

23 Bring the jury back.

24 (Whereupon: the jury empanelled
25 in the case returned to the courtroom and was present

1 during the following proceedings.) Wednesday, June 15,

2 2005 11:01:36 AM

3 THE COURT:

4 All right.

5 Madam Forelady, it's my

6 understanding that the jury has reached a verdict in this

7 case; is that correct?

8 JUROR:

9 Yes sir.

10 THE COURT:

11 If you will pass the verdict to

12 the Bailiff, please.

13 Thank you.

14 All right. Madam Clerk, you may

15 publish the verdict.

16 I'd ask the Defendant to please

17 stand.

18 CLERK:

19 State of South Carolina,

20 Spartanburg County in the case of General Sessions

21 Indictment Number 2005-GS-42-0642; and Indictment Number

22 2005-GS-42-0643; the State of South Carolina versus John

23 Curtis McCoy; we the jury unanimously find the Defendant

24 John Curtis McCoy guilty for assault and battery with

25 intent to kill; guilty for burglary in the first-degree;

1 signed: Foreperson Nancy Krick, June 15th 2005.

2 Ladies and gentlemen of the jury,

3 is this your verdict and still your verdict?

4 JURORS:

5 Yes. (All jurors indicated
6 agreement with the verdict.)

7 CLERK:

8 Thank you.

9 THE COURT:

10 All right.

11 Anything from the State before I
12 release the jury?

13 SOLICITOR:

14 No sir, Your Honor.

15 THE COURT:

16 Anything from the Defense before I
17 release the jury?

18 DEFENSE COUNSEL:

19 No, Your Honor. Thank you.

20 THE COURT:

21 All right.

22 Ladies and gentlemen of the jury,
23 this completes your service in connection with this case.

24 I want to thank very much for your
25 attention and your diligence to your duty.

1 I wish I could tell you that this
2 ends your jury service for this week; however, I'm not
3 able to do that.

4 Uh -- I do know that Judge
5 Macaulay is picking a jury, I think this morning.

6 Uh -- I did not get a chance to
7 check on it during our break; but -- uh -- I do
8 understand he will be; so the Bailiffs will instruct you.

9 Uh -- I've told you throughout the
10 trial -- uh -- that you didn't -- should not discuss this
11 case with anyone.

12 You have the right to discuss this
13 case with anyone at this time; but you also have the
14 right not to do so.

15 If you find that someone is
16 harassing you concerning this verdict or cause -- or
17 gives you any problems concerning this verdict, please
18 let the Clerk of Court's Office know about that fact; and
19 we will instruct you as to what appropriate action should
20 be taken in case someone does that.

21 Uh -- You have no -- You have
22 lived up to your oath and your duty in discharging your
23 duties and you have no one to answer to if you do not
24 wish to.

25 Now, at this point in time, I'm

1 going to release you.

2 Uh -- If -- uh -- If they do not
3 need you in the jury assembly room; you are welcome to
4 return to the back of the courtroom for sentencing in
5 this case.

6 Uh -- however, again, you are not
7 required to do and you don't have to do so if you don't
8 wish to.

9 Uh -- but the Bailiffs will
10 instruct you as to where you will go next.

11 Again, I want to thank you very
12 much for your assistance in this matter.

13 You are free to go at this time.

14 Thank you very much.

15 (Whereupon: the jury empanelled in
16 the case withdrew from the courtroom and was no longer
17 present during the following proceedings.) Wednesday, 15
18 June, 2005 11:03:07 AM

19 THE COURT:

20 Mr. Willingham, anything from the
21 State further?

22 SOLICITOR:

23 No sir, Your Honor.

24 THE COURT:

25 From the Defense; anything futher?

1 DEFENSE COUNSEL:

2 We simply renew our motion for --
3 uh -- for a directed verdict.

4 Excuse me -- We move for a new
5 trial based on the grounds that I stated earlier in my
6 motion for a directed verdict.

7 THE COURT:

8 Okay, sir.

9 The motion will be -- uh -- marked
10 as heard and denied.

11 All right. Mr. Allen, I'll be
12 happy to hear from you in mitigation.

13 DEFENSE COUNSEL:

14 Your Honor, if it please The
15 Court.

16 You've heard already that Mr.
17 McCoy is 27 years old.

18 He attended up to the 11th grade
19 at Spartanburg High School.

20 And, after that he has also
21 attended the Daniel Morgan Vocational School where he has
22 received a Certificate in Automotive Technology.

23 As you've heard, he's been married
24 since 1995. This is his first marriage; and he's got the
25 one child Tyler that you've heard about who is now 8

1 years old, I understand.

2 He's been working -- uh -- prior
3 to his arrest.

4 Most recently, he has been working
5 as a cable installer at Charter Communications.

6 He has had that job since around
7 the end of July or the beginning of August.

8 I think there was some training in
9 July 2004; and he actually started on the job in August
10 of 2004.

11 Before that, he had worked for
12 about three to four months at Wal-Mart as a -- in the
13 Tire and Lube Express -- uh -- Department.

14 He had also been an Account
15 Manager for approximately one year at -- uh -- RentWay, a
16 rental company.

17 And also he had worked selling
18 cell phones and beepers for Beeper City and Wireless
19 Solutions.

20 So he's been gainfully employed up
21 until the time of his arrest.

22 Of course he's been in jail,
23 unable to make bond, since the day of his arrest and by
24 my calculations, that's 260 days today -- uh -- he's been
25 in jail on -- on these charges.

1 This is his -- uh -- first General
2 Sessions level offense.

3 So -- with the exception of -- I
4 understand -- one magistrate court conviction, a domestic
5 charge, he has lived a pretty good life as far as not
6 having been in trouble before now.

7 I'd ask The Court to be as lenient
8 with him as possible under all of the circumstances in
9 this case.

10 Even with a minimum sentence of --
11 uh -- on the burglary first is a substantial sentence for
12 someone like Mr. McCoy; and I would ask The Court to
13 consider the minimum sentence in this case.

14 THE COURT:

15 All right.

16 Mr. McCoy; this is your
17 opportunity to address The Court.

18 Is there anything that you would
19 like to say to me?

20 DEFENDANT:

21 No sir.

22 THE COURT:

23 Mr. Willingham, anything from the
24 State?

25 SOLICITOR:

1 Your Honor, there is nothing I can
2 add to the facts. Uh -- the victims -- I have asked --
3 they do not wish to address The Court.

4 He has a prior conviction for
5 Criminal Domestic Violence.

6 THE COURT:

7 They did not wish to speak to --

8 SOLICITOR:

9 They do not wish to address The
10 Court, Your Honor.

11 THE COURT:

12 All right.

13 SOLICITOR:

14 Uh -- He has a prior conviction
15 for Criminal Domestic Violence in 1996 involving the same
16 victim, Ms. Royal McCoy.

17 THE COURT:

18 What is he; 27 you said?

19 DEFENSE COUNSEL:

20 27; yes, sir.

21 THE COURT:

22 In passing the sentence in this
23 case, I'll consider the fact that this crime appeared to
24 me to be somewhat of a crime of passion -- uh -- although
25 it certainly does not excuse what occurred.

1 However; it was a factor that I
2 will consider.

3 Another factor that I considered
4 in passing this sentence is the fact that -- uh -- Mr.
5 McCoy, I think that you were -- uh -- less than candid
6 with The Court in your testimony.

7 Uh -- the -- uh -- that disturbs
8 me somewhat; especially given the highly violent nature
9 of the act that -- that was committed and the jury has
10 found you guilty of.

11 Uh -- But for the grace of God,
12 you would be being tried for murder now; and probably
13 would be -- uh -- facing a much more serious consequence
14 than you do at this point in time..

15 Uh -- But those two factors -- uh
16 -- taken together -- uh -- tend to make me not wish to
17 give the maximum that could be given to you in this case.

18 But also, I don't want to see that
19 you get the minimum either, because of the highly violent
20 nature of this case; and also the fact that I felt like
21 that your testimony was intended to mislead The Court in
22 several instances.

23 At any rate, it's the order of The
24 Court on -- in Case Number 2005-GS-42-643, burglary in
25 the first degree, it is the order The Court you be

1 confined with the State Department of Corrections for a
2 period of 15 years. This will be consecutive to the
3 sentence -- other sentence given in this case. And you
4 will be given credit for the time that you have already
5 served.

6 In Case Number to 2005-GS-42-642,
7 assault and battery with intent to kill, it is the order
8 of this Court you be confined to the State Department of
9 Corrections for a period of 5 years. This will be
10 consecutive with the other sentence given in this case.
11 You will be given credit for time served.

12 Good luck to you, sir.

13 SOLICITOR:

14 Thank you, Your Honor.

15 DEFENSE COUNSEL:

16 Thank you.

17 THE COURT:

18 It's the order of The Court.

19 (THERE BEING NOTHIN FURTHER IN
20 THIS MATTER, THE FOREGOING PROCEEDINGS WERE CONCLUDED AT
21 11:14:58 AM, WEDNESDAY, JUNE 15, 2005).

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED, H. EUGENE BUCKNER, CVR, OFFICIAL COURT REPORTER IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE RECORDED ON THE 14TH AND 15TH DAYS OF JUNE, 2005; AND THAT THE FOREGOING IS AN ACCURATE TRANSCRIPTION OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL NOR SOLICITOR TO ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS, NOR INTERESTED IN THE EVENT OF THE CAUSE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THIS 25TH DAY OF SEPTEMBER, 2005.



H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
7TH JUDICIAL DISTRICT, SPARTANBURG, S.C.

DOCKET NO
05-GS-42-0642

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2005 FEB -3 PM 12:26
MARC KITCHENS

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 31 2005
TERM

THE STATE
VS.

John Curtis McCoy

Indictment for
ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 014
Class FEL-C(V)

WITNESSES

Chris Miller

Duncan Police Dept.

[Handwritten initials]

ARREST WARRANT NUMBER

H781947

ACTION OF GRAND JURY

Tone Bill

Foreperson of Grand Jury
Date: 1-27-05

VERDICT

Guilty

Nancy E. Buck 6/15/05

[Handwritten signature]

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 27 2005

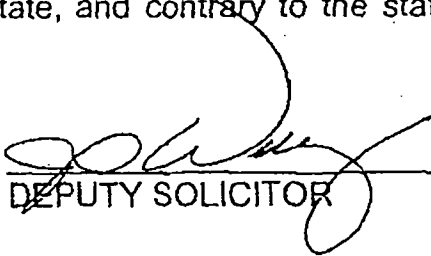
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

The Defendant, John Curtis McCoy did in Spartanburg County on or about September 29, 2004, with malice aforethought commit an assault and battery upon one Daniel Mack Lyles, Jr., by shooting the victim several times, with the intent to kill the said victim. All in violation of Section 16-03-620, 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.


DEPUTY SOLICITOR

362

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

Dec 27 2005

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE
(DWELLING)

The Defendant, John Curtis McCoy, did in Spartanburg County, on or about September 29, 2004, wilfully and intentionally enter the dwelling belonging to Royal Arnelia McCoy located at 3107 Culpepper Xing, Duncan, South Carolina, without consent and with the intent to commit a crime therein, and that the defendant did enter the dwelling either:

- (1) In the nighttime and/or
- (2) Armed with a deadly weapon or explosive; and/or
- (3) Caused physical injury to Daniel Mack Lyles, Jr. and/or
- (4) Displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms.

In violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

Y OF Spartanburg
 vs.
John Curtis McCay
B Sex: M Age: 27
 State, Zip
 SID#

INDICTMENT/CASE#: 05 -GS- 42 - 643
 AWW#: H781946
 Date of Offense: 9/21/04
 S.C. Code §: 16-11-311
 CDR Code #: 0101719
☐ CASE RESTORED
 SENTENCE
☐ PLEA ☒ TRIAL

Position of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

Burglary First Degree 15-Life
 of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719
☐ VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury,
 or ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State,

T: W. J. [Signature] John C. McCay Clay [Signature]
 Solicitor Defendant Attorney for Defendant

BEFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 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 _____
 years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

SENTENCE: ☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 6/15/05
 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.

SPECIAL CONDITIONS:

SUBSTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 \$ _____ plus 20% fee: \$ _____

Payment Terms:
 by SCDPPPS

Amount:
 206 (Assessments 107.5%) \$
 211(A)(1) (Conv. Surcharge) \$100 \$
 211(A)(2) (DUI Surcharge) \$100 \$
 2995 (DUI Assessment) \$12 \$
 3114 (Public Def/Prob) \$500 \$
 1B TP (Law Enforce. Funding) \$25 \$
 1B TP (Drug Court Surcharge) \$100 \$
 114(BUI Breath Test Fee) \$50 \$
 1942(J) (Vehicle Assessment) \$40/ea \$
 County (if paid in installments) \$

PTUP _____ 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, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 0111315Sentence Date: 6/15/05

Barry McKinney, DC
 Clerk of Court/Deputy Clerk
 Reporter: Eugene Buckner

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JOHN CURTIS MCCOY,

APPELLANT.

FINAL ANDERS BRIEF OF APPELLANT

AILEEN P. CLARE
Assistant Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF AUTHORITIES

Cases

State v. Avery, 333 S.C. 284, 509 S.E.2d 476 (1998)..... 6

State v. Home, 324 S.C. 372, 478 S.E.2d 289 (1997)..... 6

State v. Monzon, 326 S.C. 199, 485 S.E.2d 918 (1997)..... 6

State v. Schrock, 238 S.C. 129, 322 S.E.2d 450, 452 (1984)..... 6

STATEMENT OF THE CASE

Spartanburg County grand jurors indicted appellant for first-degree burglary and assault and battery with intent to kill (ABWIK). Appellant stood trial during the June 2005 term of the Spartanburg County Court of General Sessions before the Honorable Rodger E. Couch and a jury. The jury found appellant guilty as charged, and he was sentenced to consecutive terms of confinement of fifteen years for first-degree burglary and five years for ABWIK.

This appeal follows.

Appellant made timely motions for a directed verdict and new trial based on the insufficiency of the evidence. The lower court denied his motions. ROA, p. 216, l. 3 - p. 219, l. 2; p. 351, ll. 2-10. These rulings were error.

A criminal defendant is entitled to a directed verdict if the state fails to submit evidence reasonably tending to prove that he committed the charged offense. State v. Mouzon, 326 S.C. 199, 485 S.E.2d 918 (1997); State v. Horne, 324 S.C. 372, 478 S.E.2d 289 (1997). If the state's evidence "merely raises a suspicion that the accused is guilty," the court must direct a verdict in his favor. State v. Schrock, 238 S.C. 129, 132, 322 S.E.2d 450, 452 (1984).

In reviewing the denial of a motion for directed verdict, this Court must view the evidence in the light most favorable to the state. State v. Avery, 333 S.C. 284, 509 S.E.2d 476 (1998). The lower court must be affirmed if the record contains any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, or from which guilt may be fairly and logically deduced. Id.

The state's evidence against appellant fails the Schrock standard. There was no direct or substantial circumstantial proof that that appellant fired a weapon as alleged. To the contrary, the state's own forensic test tended to show that appellant was not the shooter. The lower court erred by not directing a verdict of not guilty. Appellant's convictions should be vacated, and he should receive a new trial.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

THE STATE

RESPONDENT,

V.

JOHN CURTIS MCCOY,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Curtis McCoy states:

1. She is Assistant Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on June 15, 2005, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for John Curtis McCoy.

Respectfully submitted,


Aileen P. Clare
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of July, 2006.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

THE STATE

RESPONDENT

v.

JOHN CURTIS MCCOY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on John Curtis McCoy, #309696 at McCormick Correctional Institution this 31st day of July, 2006.


Aileen P. Clare
Assistant Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of July, 2006.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

John Curtis McCoy,

Appellant.

Appeal From Spartanburg County
Roger L. Couch, Special Circuit Court Judge

Unpublished Opinion No. 2007-UP-294
Submitted June 1, 2007—Filed June 7, 2007

APPEAL DISMISSED

Assistant Appellate Defender Aileen P. Clare, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; and Harold W. Gowdy, III, of
Spartanburg, for Respondent.



Upd
5/24

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIR ALLEN
DEPUTY CLERK

POST OFFICE BOX 1108
COLUMBIA, SOUTH CAROLINA 29211
1015 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 732-1800
FAX (803) 732-1800
WWW.SCCOURTS.ORG

June 29, 2007

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. McCoy, John Curtis
2005-GS-42-00642
2005-GS-42-00643

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Kenneth A. Richstad
Clerk of Court

KAR/IC

cc: Appellate Defender Aileen P. Clare
John Curtis McCoy, #309696
Assistant Deputy Attorney General Salley W. Elliott
Harold W. Cowdy, III, Esquire

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Spartanburg)John Curtis McCoy 309696)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention McCormick Correctional Institution
386 Redemption Way McCormick SC 29849
2. Name and location of Court which imposed sentence Spartanburg County
General Sessions Court Seventh Judicial Circuit
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 05-GS-42-643 Burglary First Degree
 - (b) 05-GS-42-642 Assault/Battery with Intent to Kill
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 2005 15 years
 - (b) June 2005 5 years
 - (c) _____

EB

5. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty ✓ _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes _____
7. If you answered "yes" to (6), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. June 7, 2007
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Abuse of discretion
 - (b) Prosecutor Misconduct
 - (c) Ineffective Assistance of Counsel

10. State concisely and in the same order the facts which support each of the grounds set out in (9).

(a) The Court did not instruct the jury that they may find the defendant guilty of a lesser included offense.

(b) Prosecutor knowingly presented false and misleading evidence to the jury.

(c) Trial lawyer did not object to false evidence that was being presented during trial.

11. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), 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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Trial error Appellate Defender did not present to Court of Appeals
- (b) Trial however did not object for Appeal review
- (c) Could only be raised on PCR

16. 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 application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

- i. Clay T. Allen 258 North Church Street Spartanburg, SC 29306
- ii. Aileen P. Clare 1205 Pendleton Street Room 306 Columbia, SC 29201
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

New Trial

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

VERIFICATION

I, John C. McCay, 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.

John C. McCay

Sworn to and subscribed before me
This 22 day of August, 2007

Joyce L. Young L.S.
Notary Public for South Carolina
My Commission Expires 8-28-2011

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, John C. McCay, 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 proceeding or give security therefor.

John C. McCay
Applicant

Sworn to and subscribed before me
This 22 day of August, 2007

Joyce L. Young L.S.
Notary Public for South Carolina
My Commission Expires 8-28-2011

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

John Curtis McCoy, 309696,

2007-CP-42-3049

Applicant,

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the Application for Post-Conviction Relief filed August 29, 2007, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the January 2005 term of the Spartanburg County Grand Jury for one count of Assault and Battery with Intent to Kill (ABWIK) (2005-GS-42-0642) and one count of Burglary, 1st (2005-GS-42-0643). He was represented by Clay T. Allen, Esquire. On June 14, 2005 the Applicant proceeded to trial and was found guilty as indicted. He was sentenced by the Honorable Roger L. Couch, to confinement for a period of five (5) years for ABWIK and fifteen (15) years for Burglary, 1st, with the sentences to run consecutively.

A timely notice of appeal was filed on the Applicant's behalf and a brief pursuant to Anders v. California, 386 U.S. 738 (1967) was submitted by Aileen P. Clare, Esquire. The Court of Appeals dismissed the appeal on June 7, 2007 (State v. McCoy, 2007-UP-294). The remittitur was issued on June 29, 2007.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the records from the Applicant's direct appeal.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Abuse of discretion because jury not instructed that it could find applicant guilty of lesser included offense
2. Prosecutorial misconduct for knowingly presenting false testimony
3. Ineffective assistance of trial counsel for not objecting to false testimony

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, and Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

S. PRENTISS COUNTS
Assistant Attorney General

By: S. Prentiss Counts
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 17, 2007.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

John Curtis McCoy,

2007-CP-42-3049

Applicant,

vs.

AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Jacqueline A. Moss, Esquire
Law Offices of Jacqueline A. Moss
145 N. Church Street, Suite 101A, BTC31
Spartanburg, South Carolina 29306


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 17th day of December, 2007.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	CASE NO: 2007-CP-42-3049
COUNTY OF SPARTANBURG	)	
	)	
JOHN MCCOY, SCDC # 309696,	)	AMENDMENTS TO
Applicant,	)	POST CONVICTION
	)	RELIEF APPLICATIONS
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
Respondent	)	
_____	)	

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements to the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with

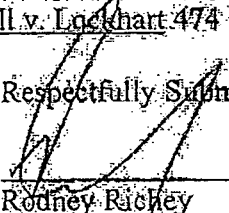
any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leake, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E. 2d 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,


 Rodney Richey
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, South Carolina 29603
 Attorney for the Applicant

May 8, 2008

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMONS PLEAS
CASE NO: 2007-CP-42-3049

COUNTY OF SPARTANBURG)

JOHN MCCOY, - 309696)

AFFIDAVIT OF SERVICE

vs.)

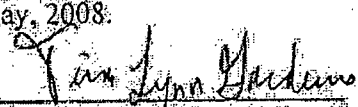
THE STATE OF SOUTH CAROLINA)

I certify that I have served the Amendments to PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on May 8, 2008, addressed to their attorney of record, S. Prentiss Counts, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:


 Rodney Richey
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, South Carolina 29603
 Attorney for the Applicant

Sworn to before me this ____ day of
 May, 2008.


 Notary Public of South Carolina
 My Commission Expires: 12-21-11

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

John Curtis McCoy,
Applicant

#309696

Vs

State of South Carolina
Respondent

IN THE COURT OF COMMON PLEAS
7TH JUDICIAL CIRCUIT

CA-2007-CP-42-3049

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order of dismissal
in this action, dated June 30th, 2008 on July 7th, 2008

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in
and envelope with sufficient postage affixed, addressed as follows:

Michelle J. Parsons, Esq.
Rodney W. Richey, Esq.
John Curtis McCoy, #309696

July 7th, 2008

(DATE)

Sharon Winstead

(SIGNATURE)

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

John Curtis McCoy, 309696,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2007-CP-42-3049

ORDER OF DISMISSAL

MARC KITCHENS

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I. PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 29, 2007. An evidentiary hearing into the matter was convened on May 28, 2008, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. The Respondent was represented by Michelle J. Parsons of the South Carolina Attorney General's Office. This Court had before it the application, the respondent's return, the guilty plea transcript, the records of the Spartanburg County Clerk of Court, the Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the January 2005 term of the Spartanburg County Grand Jury for one count of Assault and Battery with Intent to Kill (ABWIK) (2005-GS-42-0642) and one count of Burglary,

1st (2005-GS-42-0643). He was represented by Clay T. Allen, Esquire. On June 14, 2005 the Applicant proceeded to trial and was found guilty as indicted. He was sentenced by the Honorable Roger L. Couch, to confinement for a period of five (5) years for ABWIK and fifteen (15) years for Burglary, 1st, with the sentences to run consecutively.

A timely notice of appeal was filed on the Applicant's behalf and a brief pursuant to Anders v. California, 386 U.S. 738 (1967) was submitted by Aileen P. Clare, Esquire. The Court of Appeals dismissed the appeal on June 7, 2007 (State v. McCoy, 2007-UP-294). The remittitur was issued on June 29, 2007.

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II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

At the PCR evidentiary hearing, the Applicant testified trial counsel failed to inform him of the elements of burglary first. The Applicant further testified that had his counsel informed him of the elements, he would have pled guilty to the charges of assault and battery with intent to kill, as well as burglary first. The Applicant claimed that he did not plead guilty because he did not know that his actions met the elements of the crime. The Applicant also claimed that he went to trial because his counsel assured him that he would win at trial. Finally, the Applicant testified he did not understand the ramifications of his decision to testify at his trial and his trial counsel failed him in this regard.

Clay Allen, the Applicant's trial counsel, also testified at the PCR hearing. Allen testified that he reviewed the elements of the crime with the Applicant. Allen noted that the Applicant wanted to plead to burglary second instead of burglary first, but the State did not extend any plea offers. As a result, Allen testified that while he did not prevent the Applicant

from pleading, no plea offers were available. Allen also stated he made no assurances to the Applicant about winning at trial. Allen also testified that he explained to the Applicant his Fifth Amendment rights, but the Applicant chose to waive these rights and testify at trial.

III. APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

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MARC KITCHENS

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

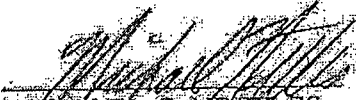
The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds trial counsel's testimony to be credible and the Applicant's to be lacking credibility. This Court finds trial counsel testified truthfully about informing the Applicant about the elements of the crime. This Court also finds trial counsel testified truthfully that he did not discourage the Applicant from pleading, though the State had not presented any plea offers, and he did not assure the Applicant that he would win at trial. Moreover, this Court finds trial counsel testified truthfully about informing the Applicant of his Fifth Amendment rights. As a result, this Court denies and dismisses these allegations.

IT IS THEREFORE ORDERED:

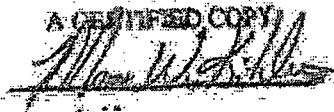
- 1. This application for post conviction relief is denied and dismissed with prejudice.
- 2. The Applicant is remanded to the custody of the South Carolina Department of Corrections to serve the remainder of his sentence.

AND IT IS SO ORDERED this 30 day of June, 2008.


MICHAEL G. NETTLES
Presiding Judge
Seventh Judicial Circuit

Honour, South Carolina.

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MARC KITCHENS

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY: C. D. R. C.
DATED: 7-7-08

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY

MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

JOHN CURTIS MCCOY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

In light of the conflicting testimony as to whether petitioner resided at the residence in which the solicitor alleged he burglarized, trial counsel erred in failing to explain to petitioner the dwelling element and the element of intent to commit a crime, because had he done this, petitioner would have been better able to make an informed decision about whether to plead guilty or give more detailed testimony at trial in reference to these elements.

STATEMENT

Petitioner John Curtis McCoy was tried by jury and found guilty of assault and battery with intent to kill and first degree burglary during the June 2005 term of the Spartanburg County General Sessions Court before the Honorable Rodger L. Couch, Judge. Appellant was sentenced to imprisonment for an aggregate period of twenty years. App. pp. 1 – 357. Petitioner appealed, but his convictions and sentences were affirmed.

On August 22, 2007, petitioner filed a PCR application with the Spartanburg County Office of the Clerk of Court. App. pp. 358 – 363. On December 19, 2007, the respondent filed a return requesting that a hearing be held in the case. App. pp. 372 – 374.

A hearing was convened on May 28, 2008, at the Spartanburg County Courthouse before the Honorable Michael G. Nettles, Judge. App. pp. 375 – 395. On June 30, 2008, Judge Nettles issued an order of dismissal in the case. App. pp. 397 – 402.

Petitioner appealed. This petition follows.

ARGUMENT

In light of the conflicting testimony as to whether petitioner resided at the residence in which the solicitor alleged he burglarized, trial counsel erred in failing to explain to petitioner the dwelling element and the element of intent to commit a crime. Because had he done this, petitioner would have been better able to make an informed decision about whether to plead guilty or give more detailed testimony at trial in reference to these elements.

A person is guilty of first degree burglary if he or she enters a dwelling without consent and with the intent to commit a crime in therein, and while doing so was armed; injured a person not participating in the crime, and/or threatened to use or displayed a weapon. See S.C. Code Ann. § 16-11-311. In the case at bar, the state alleged that petitioner entered the home in which his estranged wife lived and injured his estranged wife's male companion. App. pp. 405 – 406.

At trial, the estranged wife testified that she and petitioner were separated since March 2004, and that shortly after midnight on September 29, 2004, she was in the marital home with a companion when she heard a knock at the door. When the knocker asked to use her bathroom, she knew it was petitioner and denied his entry into the house. Then, according to the estranged wife's summary, petitioner kicked in the door, and shortly thereafter she heard a gunshot. The estranged wife testified that petitioner's name was on the lease at the time as an occupant, and that the lease was for a time period ranging from October 2003 through September 2004. She admitted that petitioner was living there on and off during that time. App. p. 78, line 13 – p. 91, line 25. The estranged wife's companion testified that petitioner entered the home and shot him. App. p. 195, line 14 – p. 196, line 5; App. p. 200, lines 4 – 25.

Petitioner testified that he was living at the same residence where the estranged wife lived even while they were separated despite the fact that he spent time living with male friends simultaneously. Petitioner stated that even after he and his wife separated, he would stop by their home, wash clothes, and spend the night there up until August 2004. Petitioner stated that on the night in question, he had stopped by the house since he was unable to reach his estranged wife because he wanted to speak to their son, who was celebrating his birthday on that date. Petitioner stated that when he arrived at the home, he pushed in the door after getting no answer after knocking. Thereafter, he found himself in a fight with his wife's companion. Petitioner stated that the companion pulled out a weapon and the "gun went out" during the scuffle. App. 246, line 12 - p. 264, line 6.

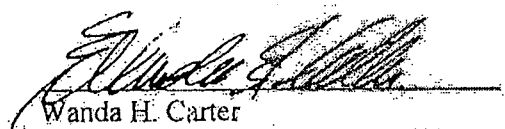
During the PCR hearing, petitioner testified that trial counsel failed to explain to him the elements of burglary, especially the fact that he needed no permission to enter his own home. Petitioner stated that had he known that he could not have burglarized his own home if he lived there, then he could have fully explained the residency issue to the jury. Additionally, petitioner could have explained further that he went inside the residence to investigate because he saw a stranger inside his home, which meant he did not enter with the intent to commit a crime therein. Petitioner told trial counsel that his name was on the lease. Alternately, petitioner testified that had he known of the burglary elements (he thought burglary was breaking in and stealing), then he would have been able to make an informed decision regarding to whether to gamble on the jury's interpretation on the dwelling/residency issue as sufficient to convict on burglary or plead guilty in the case. App. 379, l. 1 - p.385, l. 20.

Trial counsel has a duty to explain the nature of the offense and the elements of the crime to the client. Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). Clearly, in the case at bar, had petitioner understood the burglary elements, he would have been able to make an informed and intelligent decision regarding a trial versus a guilty plea. Due process requires that the prosecution prove every element of the offense charged beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307(1979). Had petitioner been adequately advised to the elements of burglary, this state's burden in this regard could have been more clearly assessed by petitioner. Counsel's error violated of appellant's right to effective representation of counsel guaranteed under the Sixth and Fourteenth Amendments of the South Carolina State Constitution and Article I § 14 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the issue.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of February, 2009.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

JOHN CURTIS MCCOY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Curtis McCoy states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on May 28, 2008. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for John Curtis McCoy.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of February, 2009

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG COUNTY
MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

JOHN CURTIS MCCOY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

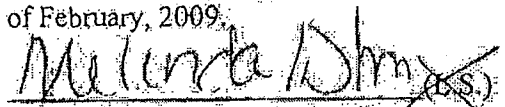
RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Michelle J. Parsons, Esquire, and John Curtis McCoy, #309696, McCormick Correctional Institution, this 27th day of February, 2009.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of February, 2009.


Notary Public for South Carolina

My Commission Expires: October 30, 2018.

The Supreme Court of South Carolina

John Curtis McCoy,

Petitioner,

v.

State of South Carolina,

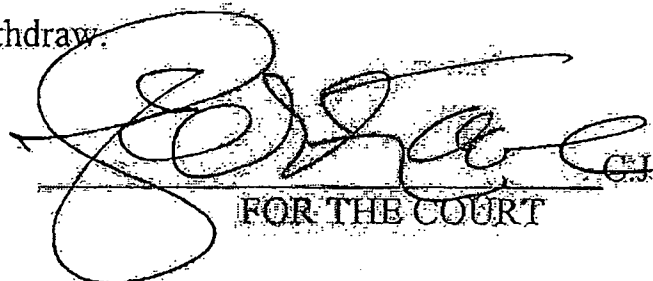
Respondent.

ORDER

This matter is before the Court on a petition for writ of certiorari following the denial of petitioner's application for post-conviction relief.

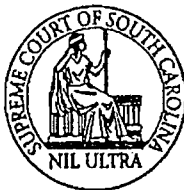
Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has not filed a *pro se* petition.

After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.


FOR THE COURT

Columbia, South Carolina

October 21, 2009



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 6, 2009

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: McCoy, John Curtis v. The State – 2007-CP-42-03049

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

CLERK

DES/jj

cc: Deputy Chief Appellate Defender Wanda H. Carter
John Curtis McCoy #309696
Assistant Attorney General Michelle Parsons

2009-CP-42-6212

STATE OF SOUTH CAROLINA

County of Spartanburg

In the Court of Common Pleas

John Curtis McCoy 309696

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

- Place of detention McCormick Correctional Institution
3860 Redemption Way McCormick SC 29859
- Name and location of Court which imposed sentence General Sessions
State of South Carolina County of Spartanburg 7th Judicial Circuit
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 2005-45-42-643 Burglary First Degree
 - 2005-45-42-642 Assault and Battery with intent to kill
 -
- The date upon which sentence was imposed and the terms of the sentence:
 - 6-15-2005 15 yrs 85% consecutively
 - 6-15-2005 5 yrs 85%
 -

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CLERK OF COURT
SPARTANBURG COUNTY
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MARC KITCHENS

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. The State of South Carolina Court of Appeals
- 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. 2007 June 7th
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.

- (a) After discovered evidence of sixth and fourteenth Amendment violation
- (b) Ineffective assistance of Counsel
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) I was denied the right to a trial by an impartial and objective judge
- (b) My defense attorney did not conscientiously gather any information to protect my rights
- (c) _____

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11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), 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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal in a petition, motion or application which you have filed?

yes

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 SPARTANBURG COUNTY
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14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. Ineffective Counsel
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. P.C.R.
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) After Discovered evidence - Information was not available at the time
- (b) _____
- (c) _____

16. 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? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Clay Milen Spartanburg Public Defenders office Spartanburg SC.
(Trial and Sentencing)
- ii. Aileen P. Clave Assistant Appellate Defender Columbia SC.
(Appeal)
- iii. Rodney Richey Greenville SC 29603 P.O. Box 10916
noel

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal
- iii. P.C.R.

18. State clearly the relief you seek in filing this application.

New Trial or Concurrent Sentence

19. Are you now under sentence from any other court that you have not challenged?

NO

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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA

VERIFICATION

County of _____

I, John Curtis McCoy, 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.

John Curtis McCoy

SWORN to and subscribed before me this _____

day of _____, 19 ____.

Notary Public (L.S.)

My Commission Expires: _____

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, John Curtis McCoy, 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.

John Curtis McCoy
Applicant

SWORN or affirmed to and subscribed before me this

04 day of November, 2009

Gumilla Franklin
Notary Public

My Commission Expires 01-31-2010

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PARTLAND COUNTY
2009 NOV 13 PM 1:17
MARC KITCHENS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
John Curtis McCoy, #309696,	)	2009-CP-42-6212
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed November 13, 2009, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the January 2005 term of the Spartanburg County Grand Jury for one count of assault and battery with intent to kill (ABWIK) (2005-GS-42-0642) and one count of burglary - 1st degree (2005-GS-42-0643). He was represented by Clay T. Allen, Esquire. On June 14, 2005, the Applicant proceeded to trial and was found guilty as indicted. He was sentenced by the Honorable Roger L. Couch to confinement for a period of five (5) years for ABWIK and fifteen (15) years for burglary - 1st degree, with the sentences to run consecutively.

A timely notice of appeal was filed on the Applicant's behalf and a brief pursuant to Anders v. California, 386 U.S. 738 (1967) was submitted by Aileen P. Clare, Esquire. The Court of Appeals dismissed the appeal on June 7, 2007 (State v. McCoy, 2007-UP-294). The Remittitur was issued on June 29, 2007.

The Applicant subsequently filed an application for post-conviction relief (PCR) on August 29, 2007. The State filed its Return on December 17, 2007. An evidentiary hearing was convened

on May 28, 2008, at the Spartanburg County Courthouse, at which the Applicant was present and represented by Rodney M. Richey, Esquire. The Applicant raised the following issues in his first PCR:

- 1) Ineffective assistance of counsel, in that;
 - a) "Counsel did not object to false evidence that was being presented at trial,"
- 2) Abuse of Discretion, in that;
 - a) "The court did not instruct the jury that they may find the defendant guilty of a lesser included offense," and
- 3) Prosecutorial Misconduct, in that;
 - a) "Prosecutor knowingly and willingly presented false evidence to the jury."

The Honorable Michael G. Nettles denied and dismissed Applicant's application by written Order on June 30, 2008. The Applicant filed an appeal following the denial of his PCR application. The Office of Appellate Defense filed a Johnson Petition for Writ of Certiorari on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal by written Order on October 21, 2009. The Remittitur was sent on November 6, 2009.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Counsel, in that;
 - a) "My defense attorney did not conscientiously get her any information to protect my rights," and
- 2) After discovered evidence of Sixth and Fourteenth Amendment violation, in that;
 - a) "I was denied the right to a trial by an impartial and objective jury."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records and the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant's contention that he has discovered evidence that he was not tried by a fair and impartial jury lacks merit. A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). Applicant offers no information to corroborate his allegation or demonstrate how this newly discovered evidence meets

the Lanier test. Additionally, the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads 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 upon an appeal, whichever is later.

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). The Applicant was convicted of the offense(s) he challenges in this Application on June 15, 2005. The Applicant was therefore required to file his application before June 15, 2006. This Application was filed on November 13, 2009, which was well after the expiration of the statutory filing period.

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) (2003) 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." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

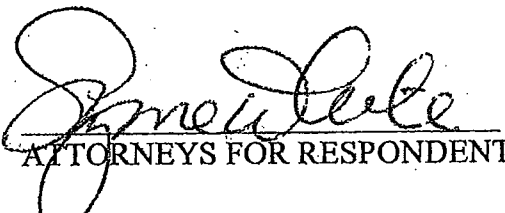
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

Mar 11, 2010.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

John Curtis McCoy,

2009-CP-42-6212

Applicant,

vs.

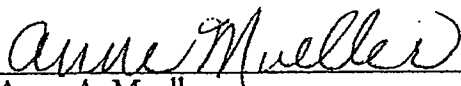
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

John Curtis McCoy, SCDC No. 309696
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina 29899


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 11th day of May, 2010.

STATE OF SOUTH CAROLINA
County of Spartanburg

John Curtis McCoy, #309696
petitioner

v

State of South Carolina,
Respondent

In the Court of Common Pleas
Case NO: 2009-CP-42-6212

Response objecting to Respondent(s)
Motion to Dismiss and Conditional
order of Dismissal.

Now Come's the Petitioner, in the above titled case
requesting to amend the following memorandum of Law to the pleadings titled
motion objecting to respondent's motion to dismiss and conditional order of dismissal.
Petitioner pursuant to the SC. code of Law Ann. § 17-27-45(c), respectfully request this
Honorable Court amend the pleading to include the same.

Petitioner Would respectfully show this Court:

I.

The Petitioner is presently confined in the South Carolina
Department of Corrections pursuant to an order of commitment by the Spartanburg
County Court of General sessions. The petitioner was indicted at the January 2005
term of the Spartanburg County Grand Jury for one Count of assault and battery
with intent to kill (ABWIK) (2005-CS-42-0642) and one Count of burglary-1st
degree (2005-CS-42-0643). He was represented by Clay T. Allen, Esquire. On
June 14, 2005, the petitioner proceeded to trial and was found guilty as indicted.
He was sentenced by the Honorable Roger L. Couch to Confinement for a period
of five(5) years for ABWIK and fifteen(15) years for burglary-1st degree, with the
Sentences to run Consecutively.

A timely notice of appeal was filed on the Petitioner's behalf
and a brief pursuant to Anders v. California, 386 U.S. 738 (1967) was submitted
by Aileen P. Clare, Esquire. The Court of Appeals dismissed the appeal on June 7, 2007
(State v. McCoy) 2007-UP-294). The Remittitur was issued on June 29, 2007.

The Petitioner subsequently filed an application for post
conviction relief (PCR) on August 29, 2007. In his application, the petitioner
alleged that he was being held in custody unlawfully for the following grounds:

- 1. Ineffective Assistance of Counsel, in that;
 - a) "Counsel did not object to false evidence that was being
presented at trial";
 - 2. Abuse of Discretion, in that;

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M. HOGAN, CLERK

- defendant guilty of a lesser included offense", and
3. Prosecutorial Misconduct, in that;
 - a) "Prosecutor knowingly and willingly presented false evidence to the jury";

The state made its return on December 17, 2007. An evidentiary hearing was convened on May 28, 2008, at the Spartanburg County Court house, at which the Petitioner was present and represented by Rodney M. Richey, Esquire. By order filed on June 30, 2008, the Petitioner's PCR Application was denied and dismissed.

The Petitioner's PCR counsel did not file a 596a Motion to alter or Amend the Final Order within the (10) day time limitation. But instead filed an appeal following the denial of the Petitioner's PCR application.

The Office of Appellate Defense filed a Johnson Petition for Writ of Certiorari.

The South Carolina Court of Appeals dismissed Petitioner's appeal by written Order on October 21, 2009. The Remittitur was sent on November 6, 2009.

Petitioner's Current PCR Application

II.

In Petitioner's Current application, Petitioner alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that;
 - a) "Attorney did not conscientiously gather any information to protect his rights"; and
2. After-discovered evidence of sixth and fourteenth Amendment violation, in that;
 - a) "He was denied the right to a trial by an impartial and objective jury";

Attached herewith and incorporated herein by Exhibit(s) are Original PCR Application; Petitioner's Requested voir dire along with Jury Selection; and a Copy of the newly discovered evidence.

III.

Petitioner will set forth the nature of the newly-discovered evidence and why it could not have been discovered previously. And why the Court should deny Respondent's Motion to dismiss the current PCR application with the issue of successive application pursuant to S.C. Code Ann. § 17-27-90.

[1] During voir dire, the court asked potential jurors the following question:

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 N. HARTZ

Are you related by blood or marriage to, or are you a friend of anyone who is employed by the Seventh Judicial Circuit Solicitor's Office, the Spartanburg Department of Public Safety, the Duncan Police Department, the Spartanburg County Sheriff's Office, the police department of any other town or municipality in Spartanburg or Cherokee Counties, or the State Law Enforcement Division? *see exhibit (A)*

Several jurors responded affirmatively to the question above. However, Juror 84 did not respond to question. See Tr. pg 20, lines 22-25 to Tr. pg 25 line 21. Juror 84 was subsequently seated as a juror in the case. When Juror 84's name was drawn, Petitioner had peremptory challenges remaining.

During the same term of Court Juror 84 responded affirmatively to a similar question when asked en Voir dire at a different trial.

The Court shall make specific findings of facts, and state expressly its conclusion of law, relating to each issue presented. This is a final judgment.
S.C. Code Ann. § 17-27-30.

At some juncture finality must be realized except in those rare cases where to continue an Petitioners incarceration without a review of the merits, would amount to a gross miscarriage of Justice. See cited at. Aice v. State, 305 S.C. 449, 409 S.E.2d. 392, 393, 94 (1991).

The filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-45(c) provides that:

If the Petitioner contends that there is evidence of material facts not previously presented and heard that requires vacation of the Conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the fact by Petitioner or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Petitioner learned while comparing legal notes at the McCormick Correctional Institution Law Library with a fellow inmate in November of 2009; that a inmate named Dezern had a similar issue and offered to assist him with getting a copy of Dezern's transcript of Voir dire. Upon review, it was discovered that inmate Dezern went to court during the same time of June 2009 and his jury was selected from the same pool as the Petitioners. It also showed that Juror 84 revealed information of relationship with Head Solicitor Trey Goodly, which was asked during Voir dire. see Exhibit (B)

IV.

All criminal defendants have the right to a trial by an impartial jury. U.S. CONST. amends. VI and XIV; S.C. CONST. art. I, § 14.

To protect both parties right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). "Through the judge, parties have a right to question jurors on their Voir dire examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as will enable them intelligently to exercise their right of peremptory challenge." Gulledge, 277 S.C. at 370, 287 S.E.2d at 490.

When a juror conceals information inquired into during Voir dire, a new trial is required only when the Court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991).

In Kelly, it stated that the first inquiry in the juror disqualification analysis is whether the juror intentionally concealed the information during Voir dire. Kelly, 331 S.C. at 146, 502 S.E.2d at 106-07. However, in Kelly it did not precisely define what constitutes an intentional concealment.

Intentional concealment occurs when the question presented to the jury on Voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

The test pronounced in Thompson v. O'Rourke, *Supra*, makes clear that where a juror's response to voir dire amounts to an intentional concealment, the movant need only show that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Where the juror's failure to disclose information is "without justification," i.e., intentional, the juror's bias will be inferred. Conversely, where the failure to disclose is innocent, no inference of bias can be drawn. See Savage, 306 S.C. at 8, 409 S.E.2d at 810. See also Doyle v. Kennedy Heating & Service, Inc., 33 S.W.3d 199, 201 (Mo. Ct. App. 2000) ("If a juror intentionally withholds material information requested on Voir dire, bias and prejudice are inferred from such concealment. Only where a juror's intentional nondisclosure does not involve a material issue, or where the nondisclosure is unintentional, should the trial court inquire of prejudice." (Emphasis in Original)).

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Petitioner does not claim Juror 84 was disqualified as a potential juror as a matter of law. Instead, the question is whether Juror 84 intentionally concealed information during Voir dire, thus denying petitioner the opportunity to make an informed decision concerning the seating of this prospective Juror. Interest, bias or prejudice of juror may exist, because of relationship with Trey Gowdy, just as with party to litigation and since this affects qualification of juror, parties are entitled to information concerning such relationship. Code 1976, § 14-7-1020.

V.

Because Juror failed to respond to question on Voir dire which clearly applied to her, and because her concealment deprived Petitioner of information material to his intelligent use of peremptory challenges. Therefore as previously established above, the Petitioner has demonstrated a "sufficient reason" why ground raised in application could not have been raised by him in a previous application as required by S.C. Code Ann. § 17-27-90 and why he is entitled to receive a hearing pursuant to S.C. Code Ann. § 17-27-45(c). Petitioner also therein has properly overcome the burden of showing this Honorable Court that a genuine issue of material fact exist.

VI.

Therefore, Petitioner should receive a hearing as a matter of Law and Respondents motion for Summary judgement must be denied.

Date: May 21, 2010

Respectfully Submitted,
st. Jm. Melay
 pro se Petitioner

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 CHARLESTON COUNTY
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 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
 05-GS-42-0642, 05-GS-42-0643

The State of South Carolina)
)

vs.)

DEFENDANT'S REQUESTED
 VOIR DIRE

John McCoy,)

Defendant.)
 _____)

1. Have you discussed this case or heard anyone discuss this case, either today or before today?

2. Have you formed any opinion about this case upon information that you have received?

*W. 94
Shannon
Lewitt*
CDP
#1
 3. Are you related by blood or marriage to, or are you a friend of anyone who is employed by the Seventh Judicial Circuit Solicitor's Office, the Spartanburg Department of Public Safety, the Duncan Police Department, the Spartanburg County Sheriff's Office, the police department of any other town or municipality in Spartanburg or Cherokee Counties, or the State Law Enforcement Division?

4. Have you ever been employed or are you currently employed by any civilian or military law enforcement agency?

5. Have you or any member of your family or any close friend been the victim of a burglary, housebreaking, or any other breaking and entering offense? If so, how would that experience affect your decision today?

6. Have you or any member of your family or any close friend been the victim of a sexual assault? If so, how would that experience affect your decision today?

7. Are you or is any member of your family a victim or a witness in a case currently pending in this court?

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prosecuted by the Seventh Judicial Circuit Solicitor's Office?

8. Have you or has any member of your family been a victim or a witness in a case that was prosecuted by the Seventh Judicial Circuit Solicitor's Office?

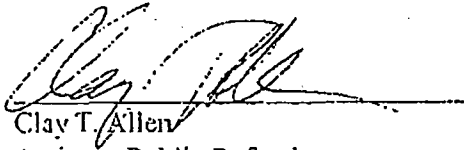
9. Are you a member of or a contributor to Citizens Against Violent Crimes (CAV), or any other organization which has, as its principal purpose, the advocacy of rights of victims of crimes?

10. Did you or did a member of your family or a close friend live in Culpepper Landing Apartments, Duncan, South Carolina, in September, 2004?

11. Do you or does a member of your family or a close friend live in Culpepper Landing Apartment now?

12. Do you know any of the witnesses in this case, specifically Royal A. McCoy, Daniel Mack Lyles, Jr., Amy Montgomery, Lisa Montgomery, Chris Miller, Ryan Cothran, Todd W. Ruffner, Brian Teal, C.B. Wilkins, or Teresa Denise Ferguson?

#2


Clay T. Allen
Assistant Public Defender
Spartanburg County Public Defender Office
258 North Church Street
Spartanburg, South Carolina 29306
(864) 596-2561

June 14, 2005
Spartanburg, South Carolina

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*Jury
voir dire*

1 response.)

2 Has any member of the jury panel
3 -- uh -- ever been -- uh -- ever had a close personal or
4 social relationship; or have you ever been related by
5 blood or marriage to either of the attorneys who are
6 involved in this case?

7 If so, please stand.

8 (Whereupon: there was no
9 response.)

10 Has any member of the jury panel
11 heard anything concerning this case or discussed anything
12 concerning this case either today or before today?

13 If so, please stand.

14 (Whereupon: there was no
15 response.)

16 Has any member of the jury panel
17 formed any opinion concerning this case based on
18 information that you have received thus far?

19 If so, please stand.

20 (Whereupon: there was no
21 response.)

22 Is any member of the jury panel
23 related by blood or marriage or are you a close personal
24 or social friend with any person employed in the
25 judicial circuit solicitor's office; the Spartanburg

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1 client as well.

2 First of all, for the State:

3 SOLICITOR:

4 Thank you, Your Honor.

5 My name is Donnie Willingham; and
6 I'm a Deputy Solicitor here in Spartanburg.

7 THE COURT:

8 For the Defense:

9 DEFENSE COUNSEL:

10 I'm Clay Allen. I'm here in
11 Spartanburg and this is John Curtis McCoy.

12 Mr. McCoy; if you would stand up
13 and turn around.

14 THE COURT:

15 Thank you very much.

16 DEFENSE COUNSEL:

17 Thank you.

18 THE COURT:

19 Now; has a member of the jury
20 panel ever been represented by either of the attorneys
21 that are involved in this case; or have those attorneys
22 appeared against you on the other side of some legal
23 matter?

24 If so, please stand.

25 (Whereupon: there was no

1 Department of Public Safety; the Duncan Police
2 Department; the Spartanburg County Sheriff's Office; the
3 Police Department of any town or municipality in
4 Spartanburg or Cherokee Counties; or the State Law
5 Enforcement Division?

6 If so, please stand.

7 (Whereupon: there were the
8 following responses.)

9 THE COURT:

10 All right, ma'am; your name and
11 number?

12 Kathy Holt, 166.

13 My husband is a police officer in
14 the city of Duncan.

15 THE COURT:

16 Okay. Ma'am, would the fact that
17 your husband serves in that capacity affect your ability
18 to be fair and impartial in this case?

19 JUROR:

20 I don't think so.

21 THE COURT:

22 Okay. Thank you very much
23 the information.

24 I'll get you, now. Yes ma'am
25 your name and number?

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SPARTANBURG COUNTY
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1

2 JUROR:

3

4

Twelve -- uh -- my husband works
with the Spartanburg Sheriff's Office.

5

THE COURT:

6

7

Okay. ma'am, would that affect
your ability to be fair and impartial in this matter?

8

JUROR:

9

No.

10

THE COURT:

11

Thank you very much.

12

Yes ma'am; your name and number?

13

JUROR:

14

15

My name's Erica Dodd. My Number's
39. My brother works at the Greer Police Department.

16

THE COURT:

17

18

19

All right. Now, ma'am, would that
affect your ability to be fair and impartial in this
matter?

20

JUROR:

21

No.

22

THE COURT:

23

Thank you very much.

24

Now, ma'am, your name and number?

25

JUROR:

1 Linda Wallace, Number 136; my son
2 is a police officer in Spartanburg.

3 THE COURT:

4 All right. That's the City of
5 Spartanburg?

6 JUROR:

7 Yes sir.

8 THE COURT:

9 Now, ma'am, would that in any way
10 affect your ability to be fair and impartial to these
11 parties?

12 JUROR:

13 No, it would not.

14 THE COURT:

15 Thank you, ma'am.

16 Now sir; your name and number?

17 JUROR:

18 Chavis Cohens; Juror Number 30.

19 Uh -- I know a police officer --

20 uh -- Mr. Forrest Kerby (phonetic).

21 THE COURT:

22 Okay, sir. Would that affect your
23 ability to be fair and impartial to these parties?

24 JUROR:

25 No, sir.

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1 THE COURT:

2 Thank you very much

3 Yes sir. Your name and number?

4 JUROR:

5 John Edwards, Juror Number 41. My
6 relationship would be you being my stepbrother.

7 (Laughter.)

8 THE COURT:

9 (Laughs.) This is -- this is my
10 stepbrother, John Edwards.

11 JUROR:

12 Sir?

13 THE COURT:

14 Would that affect your ability to
15 be impartial in this case?

16 JUROR:

17 No sir.

18 THE COURT:

19 Thank you, John.

20 Yes ma'am; your name and number?

21 JUROR:

22 Pamela McCoy, Juror Number 172.
23 My husband is related to -- uh -- Judge Rawl.

24 THE COURT:

25 All right.

1 JUROR:

2 They are fourth cousins.

3 THE COURT:

4 Okay. Ma'am, would that affect
5 your ability to be fair and impartial to these parties?

6 JUROR:

7 No.

8 THE COURT:

9 Thank you very much.

10 Yes ma'am; your name and number?

11 JUROR:

12 Juror Number 183, Julie Jeffers.

13 Uh -- some of the Spartanburg
14 County Sheriffs patrol the place where I work in.

15 THE COURT:

16 Okay. Ma'am, would that affect
17 your ability to be fair and impartial in this matter?

18 JUROR:

19 No, sir.

20 THE COURT:

21 Thank you very much.

22 THE COURT:

23 Has any member of the jury
24 been -- currently employed or have you formally been
25 employed by any civilian or military law-enforcement

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1 agency?

2 If so, please stand.

3 (Whereupon: there were the
4 following responses.)

5 THE COURT:

6 Yes sir. Your name and number?

7 JUROR:

8 Cecil Brown, Juror 21.

9 THE COURT:

10 Yes sir.

11 JUROR:

12 For an eight-month period during
13 2002, I worked at GSP International as a security
14 specialist.

15 THE COURT:

16 Okay, sir. Would that affect your
17 ability to be fair and impartial in this case?

18 JUROR:

19 No sir.

20 THE COURT:

21 Thank you very much.

22 I'll take the gentleman and on
23 that side first.

24 Yes sir; your name and number?

25 JUROR:

THE STATE

Against

John Curtis McCoy

Defendant

In The Spthg Co.
General Session CourtCharged with BurglaryAssault & Battery w/ intent to kill1. David Bastarache 072. Ronald Campbell 253. Julie Memmat 1774. Pamela Grubbs 1605. Nancy Kruck 80 Scraperson6. Albert Smalley 1257. Candie Burgess 238. Shearin Covington 349. Adam Ruby 7910. Alex Westall 14011. Shannon Lewis (84)12. Nancy Jay 184All. Erica Dodd 39FILED
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M. HOPE BLACKLEY
CLERK OF COURT
HARRIS COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State of South Carolina)
vs.) VERDICT
John Curtis McCoy,) Indictment # 05-GS-42-0642
Defendant.) Indictment # 05-GS-42-0643

We the jury unanimously find the Defendant, John Curtis McCoy:

1. As to Indictment # 05-GS-42-0642 for Assault and Battery with Intent to Kill:

_____ Not Guilty
_____ Guilty

2. As to Indictment # 05-GS-42-0643 for Burglary in the First Degree:

..... Not Guilty
..... Guilty

I have hereunto set my hand and seal this 15th day of June, 2005.

Foreperson

THE STATE)

Against

John Curtis McCoy

Defendant

In The Spthg. Co.
General Session CourtCharged with BurglaryAssault & Battery w/ intent to kill1. David Bastarache 072. Ronald Campbell 253. Julie Memmet 1774. Pamela Grubbs 1605. Nancy Knick 80 Scraperson6. Albert Smalley 1257. Candie Burgess 238. Shearin Covington 349. Adam Ruby 7910. Alex Westall 14011. Shannon Lewis (84)12. Nancy Jay 184All. Erica Dodd 39

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CLERK
SPRINGFIELD COUNTY

Another trial that took place after applicants trial.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSION
3)
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Timothy Wayne Dezern,) 2003-GS-42-3446
7 Defendant.)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

B E F O R E:

HONORABLE ALEXANDER S. MACAULAY, JUDGE; and a ju:

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

ROBERT PATRICK COLER, ESQUIRE
Attorney for the State

ANDREW J. JOHNSTON, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter
M. HOPE BLACKLEY
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SPARTANBURG COUNTY

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Jury qualification

Exhibit B pg 2

1 JUROR NUMBER 84: Did you say in relation to?

2 THE COURT: Yes, ma'am.

3 I'm going to have to ask you for your name again
4 because that's how we identify ourselves on the record.

5 JUROR NUMBER 84: I was Number 84.

6 THE COURT: Yes, ma'am.

7 JUROR NUMBER 84: ~~My~~ ^{Shannon Lewis} ~~cousin~~ ^{brother in law} is married to Trey Gowdy. ^{works for} ~~county~~ ^{state} ~~police~~ ^{attorney}

8 THE COURT: All right. Would that in any way
9 interfere with your ability to give both the state and the
10 defendant a fair and impartial trial?

11 JUROR NUMBER 84: No.

12 THE COURT: Very good. Thank you, ma'am.

13 Yes, sir.

14 JUROR NUMBER 41: Juror 41. My stepbrother is Roger
15 Couch. ^{Had His House Broken into} ^{15 years ago}

16 THE COURT: All right. Would that in any way
17 interfere with your ability to give both the state and the
18 defendant a fair and impartial trial?

19 JUROR NUMBER 41: No, it would not.

20 THE COURT: Very good. Thank you, sir.

21 Does any member of the jury panel regularly receive
22 copies of the Seventh Circuit Solicitor's newsletter? If
23 so, please stand.

24 (No response.)

25 THE COURT: Any member of the jury panel regular

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BLACKLEY
CLERK OF COURT
JAMES H. COOPER
COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
John Curtis McCoy, #309696,	)	2009-CP-42-6212
	)	
Applicant,	)	
	)	
v.	)	CONDITIONAL ORDER OF
	)	DISMISSAL
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before this Court by way of an application for post-conviction relief filed November 13, 2009. Respondent made its return and motion to dismiss on May 11, 2010.

I. PROCEDURAL HISTORY

The records before this Court show that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the January 2005 term of the Spartanburg County Grand Jury for one count of assault and battery with intent to kill (ABWIK) (2005-GS-42-0642) and one count of burglary - 1st degree (2005-GS-42-0643). He was represented by Clay T. Allen, Esquire. On June 14, 2005, the Applicant proceeded to trial and was found guilty as indicted. He was sentenced by the Honorable Roger L. Couch to confinement for a period of five (5) years for ABWIK and fifteen (15) years for burglary - 1st degree, with the sentences to run consecutively.

A timely notice of appeal was filed on the Applicant's behalf and a brief pursuant to Anders v. California, 386 U.S. 738 (1967) was submitted by Aileen P. Clare, Esquire. The Court of Appeals dismissed the appeal on June 7, 2007 (State v. McCoy, 2007-UP-294). The Remittitur was issued on June 29, 2007.

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The Applicant subsequently filed an application for post-conviction relief (PCR) on August 29, 2007. The State filed its Return on December 17, 2007. An evidentiary hearing was convened on May 28, 2008, at the Spartanburg County Courthouse, at which the Applicant was present and represented by Rodney M. Richey, Esquire. The Applicant raised the following issues in his first PCR:

- 1) Ineffective assistance of counsel, in that;
 - a) "Counsel did not object to false evidence that was being presented at trial,"
- 2) Abuse of Discretion, in that;
 - a) "The court did not instruct the jury that they may find the defendant guilty of a lesser included offense," and
- 3) Prosecutorial Misconduct, in that;
 - a) "Prosecutor knowingly and willingly presented false evidence to the jury."

The Honorable Michael G. Nettles denied and dismissed Applicant's application by written Order on June 30, 2008. The Applicant filed an appeal following the denial of his PCR application. The Office of Appellate Defense filed a Johnson Petition for Writ of Certiorari on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal by written Order on October 21, 2009. The Remittitur was sent on November 6, 2009.

Applicant's Current PCR Application

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Counsel, in that;
 - a) "My defense attorney did not conscientiously get her any information to protect my rights," and
- 2) After discovered evidence of Sixth and Fourteenth Amendment violation, in that;
 - a) "I was denied the right to a trial by an impartial and objective jury."

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the transcript

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of the Applicant's trial, the Applicant's prior application for post conviction relief and the order denying the Applicant's prior application, the Appellate Court records, Applicant's current PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Although Applicant alleges that he has newly discovered evidence, he fails to offer any detail as to how this information would have affected his trial had it been known at that time, or how and when it was discovered. A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1)

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will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). Applicant has failed to meet his burden of proof as to newly discovered evidence. Therefore, Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement 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 upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on June 15, 2005. The Applicant was therefore required to file his application before June 15, 2006. This Application was filed on November 13, 2009, which was well after the expiration of the statutory filing period.

A motion for summary judgement 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) (2003) 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 judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Summary

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Suzanne H. White, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 19 day of July, 2010.

J. Derham Cole
J. Derham Cole
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

_____, South Carolina

A CERTIFIED COPY
M. Hope Blackley
CLERK OF COURT
SPARTANBURG COUNTY
BY: M. Hope Blackley D.C.
DATED 7-21-10

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
John Curtis McCoy, #309696)	2009-CP-42-6212
Applicant,)	Response objecting to Respondents
v.)	Conditional Order of Dismissal
State of South Carolina,	
Respondent.	

This matter comes before this Court by way of an application for post-conviction relief filed November 13, 2009. Respondent made its return and motion to dismiss on May 11, 2010.

I. PROCEDURAL HISTORY

The records before this Court show that the Applicant is presently confined in the South Carolina Dept. of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the January 2005 term of the Spartanburg County Grand Jury for one count of assault and battery with intent to kill (ABWIK) (2005-GS-42-0642) and one count of burglary-1st degree (2005-GS-42-0643). Applicant was represented by Clay T. Allen, Esquire. On June 14, 2005, the Applicant proceeded to trial and was found guilty as indicted. He was sentenced by the Honorable Roger L. Couch to confinement for a period of five (5) years for ABWIK and fifteen (15) years for burglary-1st degree, with the sentences to run consecutively.

A timely notice of appeal was filed on the Applicant's behalf and a brief pursuant to Anders v. California, 386 U.S. 738 (1967) was submitted by Aileen P. Clare, Esquire. The Court of Appeals dismissed the appeal on June 7, 2007 (State v. McCoy, 2007-UP-294). The Remittitur was issued on June 29, 2007.

ATTORNEY GENERAL'S OFFICE

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ADMINISTRATIVE INSTRUCTIONS

FILE _____ OPEN _____ END _____
HAVE _____ COPIES MADE _____
ROUTE TO _____
ORDER: _____ TRANSCRIPT _____
PEN RECORDS _____ CLERK RECORDS _____
OTHER: *Noted am*

The Applicant subsequently filed an application for post-conviction relief (PCR) on August 29, 2007. The State filed its Return on December 17, 2007. An evidentiary hearing was convened on May 28, 2008, at the Spartanburg County Courthouse, at which the Applicant was present and represented by Rodney M. Richey, Esquire. The Applicant raised the following issues in his first PCR:

1) Ineffective assistance of Counsel, in that;

a) "Counsel did not object to false evidence that was being presented at trial,"

2) Abuse of Discretion, in that;

a) "The court did not instruct the jury that they may find the defendant guilty of a lesser included offense," and

3) Prosecutorial Misconduct, in that;

a) Prosecutor knowingly and willingly presented false evidence to the jury."

The Honorable Michael G. Nettles denied and dismissed Applicant's application by written Order on June 30, 2008. The Applicant filed an appeal following the denial of his PCR application. The Office of Appellate Defense filed a Johnson Petition for Writ of Certiorari on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal by written Order on October 21, 2009. The Remittitur was sent on November 6, 2009.

Applicant's Current PCR Application

In Current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1) Ineffective Assistance of Counsel, in that;

a) "My defense attorney did not conscientiously gather any information to protect my rights" and

- 2) After discovered evidence of Sixth and Fourteenth Amendment violation, in that;
- a) "I was denied the right to a trial by an impartial and objective jury."

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the transcript of the Applicant's trial, the Applicant's prior application for post conviction relief and the order denying the Applicant's prior application, the Appellate Court records, Applicant's current PCR application and Respondent's Return and Motion to Dismiss.

II. FINDING OF FACT AND CONCLUSIONS OF LAW

The current application for post conviction relief must not be summarily dismissed because it is not successive to his prior application for post-conviction relief. S.C. Code Ann. § 17-27-45(c) provides that:

If the Petitioner contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the fact by Petitioner or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Petitioner learned of the evidence in November 2009 and filed relief application thereafter which was filed November 13, 2009. The new grounds raised could not have been raised by him in a previous application.

Aice v State, 305 S.C. 449, 409 S.E.2d 392, 393, 94 (1991).

The current allegations could not have been raised on Applicant's prior application for post-conviction relief and thus the current

Application is not successive or barred under S.C. Code § 17-27-45(c).

The newly discovered evidence Applicant alleges, he has offered details as to how this information would have affected his trial and use of peremptory challenges had it been known at the time, and how and when it was discovered. Applicant's motion for a new trial based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Woods v. State, 550 S.E.2d 282, 283

Applicant has met his burden of proof as to newly discovered evidence. Therefore, Applicant has established sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has met the burden imposed upon him. Aice v. State, 409 S.E.2d 372 (1991)

Statute of Limitations

This Application for Post-Conviction Relief should not be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. § 17-27-45(c) reads as follows:

If the Petitioner contends that there is evidence of material facts not previously presented and heard that requires vacation of Conviction or Sentence, the application must be filed under this chapter within one year after the date of actual discovery of the fact by Petitioner or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The Applicant learned of this new evidence in November of 2009. The Application was filed on November 13, 2009, which was well within the expiration of the statutory filing period.

A motion for summary judgement may not properly be used to raise the defense of statute of limitations. In addition, S.C. Code Ann. § 17-27-70(c) (2003) 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 judgement as a matter of law." Therefore, this Court should find that the application for post-conviction relief is not summarily dismissed for failure to file within the time mandated by statute or being successive.

Summary

Pursuant to S.C. Code Ann. § 17-27-45(c), the Court should not dismiss this Application, Applicant has provided reasons, factual and legal why the Application should not be dismissed.

this 27 day of July, 2010.

s: John C. McCoy
John Curtis McCoy, # 309696
386 Redemption Way 3B-216
McCormick SC 29899

Date: 7-27-10
Notary: Joyce L Young
Expire: 8-28-2011

STATE OF SOUTH CAROLINA

County of Spartanburg

John Curtis McCoy, #309696

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

2009-CP-42-6212

Proof of Service

I certify that I have served the Response objecting to Respondents Conditional Order of Dismissal by depositing a copy of it into the U.S. Mail, postage prepaid at the McCormick Correctional Institution mail room, addressed to the following:

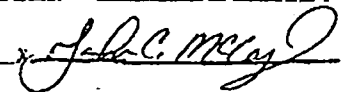
Suzanne H. White

Assistant Attorney General

Office of the Attorney General

P.O. Box 11549

Columbia, South Carolina 29211

this day of the 27th July 2010.

John Curtis McCoy, #309696

386 Redemption Way 3B-216

McCormick SC 29899

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
John Curtis McCoy, #309696,	)	2009-CP-42-6212
	)	
Applicant,	)	
	)	
v.	)	FINAL ORDER
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before this Court by way of an application for post-conviction relief filed November 13, 2009. Respondent made its Return and Motion to Dismiss on or about May 11, 2010, requesting that the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed July 19, 2010, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final.

In documents captioned "Response Objecting to Respondent's Motion to Dismiss and Conditional Order of Dismissal," dated May 21, 2010, and "Response Objecting to Respondent's Conditional Order of Dismissal," dated July 27, 2010, Applicant argues that his application should not be summarily dismissed based on Statute of Limitations and the Doctrine of Successive Petitions. Applicant asserts that he has alleged newly discovered evidence exists, in the form of a seated juror being related to Trey Gowdy, Seventh Judicial Circuit Solicitor. Applicant alleges that he was only able to determine this fact after reviewing another inmate's transcript in November 2009 and filed his application on November 13, 2009, which is within the one-year requirement for after discovered

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evidence.

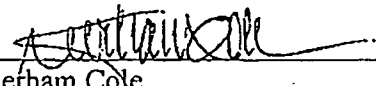
In response, Respondent submits that the Applicant has failed to establish that this information qualifies as after discovered evidence. Respondent submits that the Applicant has not demonstrated that the information could not have been discovered by due diligence or that the information would have affected the outcome of his trial had it been known at the time.

This Court has reviewed Applicant's responses to the State's Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court further finds that Applicant's current Application is successive to Applicant's previously filed application, does not meet the requirements for a hearing as a result of after discovered evidence, and that Applicant's current application was filed outside the statute of limitations.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court cautions 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. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED this 5 day of November, 2010.


J. Derham Cole
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

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_____, South Carolina.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG

J. Derham Cole, CIRCUIT COURT JUDGE

JOHN CURITS MCCOY, #309696,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PRO SE PETITION FOR WRIT OF CERTIORARI

John Curtis McCoy, #309696
McCormick Corr. Inst. F3B-216
386 Redemption Way
McCormick, S.C. 29899
Pro se Petitioner

Other Attorney of Record:
Suzanne H. White, Esquire
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Timothy Wayne Dezern,) 2003-GS-42-3446
7 Defendant,) June 15 & 16, 2005
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE ALEXANDER S. MACAULAY, JUDGE; and a jury
12
13

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

15 ROBERT PATRICK COLER, ESQUIRE
16 Attorney for the State

17 ANDREW J. JOHNSTON, ESQUIRE
18 Attorney for the Defendant
19
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

Exhibit A

THE STATE

Against

John Curtis McCoy

Defendant

In The Spthg Co.
General Session CourtCharged with BurglaryAssault & Battery w/ intent to kill1. David Basterache 072. Ronald Campbell 253. Julie Mermmat 1774. Pamela Grubbs 1605. Nancy Kruck 80 Scraperson6. Albert Smalley 1257. Candie Burgess 238. Shearin Covington 349. Adam Kirby 7910. Alex Westall 14011. Shannon Lewis (84)12. Nancy Jay 184All. Erica Dodd 39

ISSUE PRESENTED

Did the lower Court err by denying Petitioner's motion for either a new trial, relief from judgement, or an evidentiary hearing based on the newly discovered evidence of juror misconduct.

STATEMENT

Petitioner was indicted by the Spartanburg County Grand Jury for one count of Assault and Battery with Intent to Kill (ABWIK) (2005-GS-42-0642) and one count of Burglary 1st (2005-GS-42-0643). Petitioner was tried before the Honorable Roger L. Couch and jury between June 14th-15th, 2005. Petitioner was convicted and sentenced to five (5) years for ABWIK and fifteen (15) years for Burglary 1st, with the sentences to run consecutive. Petitioner appealed his sentence and conviction. The South Carolina Court of Appeals dismissed the appeal on June 7, 2007, State v. McCoy, 2007-UP-294.

Petitioner then filed an application for post-conviction relief (PCR) on August 29, 2007. A PCR evidentiary hearing was held on May 28, 2008, before the Honorable Michael G. Nettles. He was represented by Rodney M. Richey, Esquire. The Order of Dismissal was signed June 30, 2008.

Petitioner then filed an appeal which was dismissed by written Order on October 21, 2009. Petitioner filed a second application for PCR on November 13, 2009 based on newly discovered evidence pursuant to S.C. Code Ann. § 17-27-45 (c). The State responded with a conditional Order of Dismissal signed on July 19, 2010. Petitioner received the final Order November 16, 2010.

This Pro se Petition for Writ of Certiorari now timely follows.

ARGUMENT

Lower Court erred by denying the Petitioner's motion for either a new trial, relief from judgement, or an evidentiary hearing based on newly discovered evidence of juror misconduct.

Petitioner discovered while conducting legal research on his case with a fellow inmate in November of 2009, that another inmate had a similar issue and he offered to assist Petitioner with getting a copy of the inmates voir dire transcript. Upon review, it was discovered that the inmate went to Court during the same time as Petitioner during June 2005. See, Exhibit A.

It was also discovered that inmate Dezern and Petitioner's jury was selected from the same jury pool. Further research uncovered that juror eighty-four (84) served on both trials, see Exhibits B and C, Juror eighty-four (84) revealed information of a relationship with Head Solicitor Trey Gowdy during the second voir dire (Exhibit B, Ln. 5-7), but when asked during Petitioner's voir dire (Tr.p. 20, Ln. 22-25, p. 21, Ln. 1-5) several jurors responded affirmatively to the voir dire question but juror eighty-four (84) did not (Tr.pp. 21-25). Juror eighty-four (84) was subsequently seated as a juror. When juror eighty-four (84) was drawn Petitioner had peremptory challenges remaining. Because juror failed to respond to question on voir dire which clearly applied to her, and she revealed the information when asked during a separate voir dire. Juror intentionally concealed information which deprived Petitioner of information material to his intelligent use of peremptory

challenges. Petitioner has demonstrated a "sufficient reason" why ground raised could not have been raised in a previous application.

LEGAL ANALYSIS

The filing procedures of the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-45 (c) provides that:

If the Petitioner contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this Chapter within one year after the date of actual discovery of the fact by Petitioner or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

All the criminal defendant's have the right to a trial by an important jury U.S. Const. Amends. VI and XIV; S.C. Const. Art. 1, § 14. To protect both parties right to an important jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). "Though the judge, parties have a right to question jurors on their voir dire examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as will enable them intelligently, to exercise their right of peremptory challenge." Gulledge, 277 S.C. at 370, 287 S.E.2d at 490.

When a juror conceals information inquired into during voir dire, a new trial is required only when the Court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges.

Intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable.

Doyle v. Kennedy Heating & Service, Inc., 33 S.W.3d 199, 201 (MO. Ct.App. 2000) ("If a juror intentionally withholds material information requested on voir dire, bias and prejudice are inferred from such concealment. Only when a juror's intentional nondisclosure does not involve a material issue, or where the nondisclosure is unintentional, should the trial Court inquire into prejudice.") (Emphasis in original).

Applying this analysis to the instant case, it's clear the concealment was intentional questions on voir dire was reasonably comprehensible and should have elicited a positive response from juror eighty-four (84).

The question unambiguously sought a response from any juror having any type of relationship by blood or marriage. Despite her relationship with the prosecuting attorney's office, juror eighty-four (84) did not respond on defendant's voir dire.

Having found that juror eighty-four (84) intentionally concealed information on voir dire, it must be determined if the information concealed would have supported a challenge for cause or would have been a material factor in the use of peremptory challenges. See, Thompson v. O'Rourke, supra. A juror should be disqualified by the Court if it appears to the Court the juror is not indifferent in the case.

Because juror eighty-four (84) did not respond to any of the

questions asked during voir dire, any potential biases she might have had toward the defendant were not discovered until well after the trial and through happenstance.

CONCLUSION

Because juror eighty-four (84) failed to respond to questions on voir dire which clearly applied to her, and because her concealment deprived Petitioner of information material to his intelligent use of peremptory challenges, Writ of Certiorari should be granted in order to allow full briefing on this issue.

This _____ day of December, 2010.

Respectfully submitted,

/s/ _____

John Curtis McCoy #309696

Pro se Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SPARTANBURG

J. Derham Cole, CIRCUIT COURT JUDGE

JOHN CURITS MCCOY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I certify, under penalty of perjury, that I have served this PRO SE PETITION FOR WRIT OF CERTIRARI by depositing a copy of it in the McCormick Correctional Institution mailroom via the United States Mail, postage prepaid, on December _____, 2010, addressed to; (1) The South Carolina Supreme Court, P.O. Box 11330, Columbia, S.C. 29211; (2) The South Carolina Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

SWORN AND SUBSCRIBED to before me
this _____ day of December, 2010.

/S/ _____

John Curtis McCoy #309696
McCormick Corr. Inst. F3B-216
386 Redemption Way
McCormick, S.C. 29899
Pro se Petitioner

Notary Public for South Carolina
My Commission Expires: _____