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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

LEROY BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000498

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State of South Carolina)
)

County of)
RICHLAND)
)

The State of South Carolina,
Plaintiffs

vs.

Trial
Indictment No. 08-GS-40-11862

Leroy Adams Brown,
Defendant

December 10th-11th, 2008,
Columbia, S.C.

BEFORE THE HONORABLE CLIFTON NEWMAN, JUDGE.

MR. DANIEL GOLDBERG,
Assistant Solicitor for the State

MR. RICHARD C.R. CATHCART,
Assistant Solicitor for the State

MR. LUKE SHEALY,
Attorney for the Defendant

MR. MICHAEL LEDDY,
Attorney for Defendant

Margaret T. Sullivan
Court Reporter

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1 (Whereupon, the following takes place On
2 December 10, 2008.)

3 (Whereupon, the following takes place outside
4 the presence of the jury.)

5 MR. SHEALY: Your Honor, my concern was, Your
6 Honor, that on Friday, I will not be here. I will be
7 out of state running a road race. And my concern was
8 with the potential length of witnesses in this case,
9 we would not finish by Friday. And I would not be
10 here. And therefore, I would ask for a continuation.

11 THE COURT: When is the race over?

12 MR. SHEALY: Saturday.

13 THE COURT: It starts Friday?

14 MR. SHEALY: No, Your Honor. I am checking in
15 and getting prepared to do all that. The actual race
16 is Saturday morning.

17 THE COURT: Saturday.

18 MR. SHEALY: And that was the basis for my
19 asking for continuance.

20 THE COURT: Well we better get going then.
21 If you're in a race; get started.

22 MR. SHEALY: Yes, sir.

23 THE COURT: Anything from the Solicitor?

24 MR. GOLDBERG: Your Honor, Mr. Shealy handed
25 me a Requested Voir Dire in this case. And a couple

1 of brief issues with that. Does Your Honor have it?

2 THE COURT: Voir Dire, yes, I do.

3 MR. GOLDBERG: Okay. No. 5, there's a
4 question about seeking the rights previously
5 reciprocal. As well as a reciprocal on No. 12 with
6 regard to whether anyone's been a victim of a
7 burglary. And been accused. Also in regards to No.
8 10, I would ask that that be stricken. I believe your
9 standard instruction at the end of the case to the
10 jury about not considering the two prior convictions
11 as evidence would be sufficient, as opposed to asking
12 them that question.

13 THE COURT: What do you say about that,
14 counsel?

15 MR. SHEALY: Just that I have no problem with
16 the reciprocals. But as to No. 10, I think that would
17 be appropriate in the case. You know, a past burglary
18 conviction would be an element. And I think it would
19 fair to inquire of the jury panel about that.

20 THE COURT: The request of the defendant to
21 afford as much balancing as I can, considering the
22 Indictment in the case. And notice to the jury of
23 prior burglaries is appropriate.

24 MR. SHEALY: Thank you, Your Honor.

25 THE COURT: Or some derivation of the question

1 would be appropriate. Regarding the issue of my son
2 being employed by the Solicitor's Office. Did you
3 inform your client, Mr. Shealy?

4 MR. SHEALY: No, Your Honor, I have not
5 informed my client of that. I probably should have.
6 May I have a brief moment to discuss---

7 THE COURT: Yes.

8 MR. SHEALY: ---that matter with him?

9 THE COURT: Yes.

10 (Whereupon, Mr. Shealy confers with client.)

11 MR. SHEALY: Your Honor, I apologize for that
12 delay. I have discussed the situation with your son's
13 employment here with the Richland County Solicitor's
14 Office. And does not have, or foresee that as being
15 any problem.

16 THE COURT: Is that correct, Mr. Brown?

17 THE DEFENDANT: Yes, sir..

18 THE COURT: Any other matters then before we
19 proceed with the jury?

20 MR. SHEALY: Your Honor, would you like us to
21 do the pretrial matters now, or after the jury is
22 selected?

23 THE COURT: What are the pretrial matters?

24 MR. SHEALY: Your Honor, just basically I was
25 going to renew my Rule 5 Motion that I like to renew

1 before the trial. I don't think there's anything else
2 out there that we need to turn over. But just out of
3 an abundance of precaution, I would ask for that to be
4 done.

5 THE COURT: Mr. Goldberg, anything else?

6 MR. GOLDBERG: Not that I am aware of. I have
7 provided counsel with copies of pictures. And
8 fingerprint cards and the like. And informed him
9 that the two lay witnesses have not mentioned in the
10 discovery or informed as to what they intend to
11 testify to. And I don't believe there is anything
12 else.

13 MR. SHEALY: That satisfies me. Also a Motion
14 to settle the record of all the witnesses. I know
15 there a couple of lay witnesses. I guess the brief I
16 think would be Mr. Boykin and Mr. Shuler. And I would
17 ask to have the record presented to me and a copy for
18 us as to what they're testifying.

19 THE COURT: Are there criminal histories?

20 MR. SHEALY: I don't know, Your Honor. That's
21 what I'm---

22 THE COURT: That's what you're referring to?

23 MR. SHEALY: Yes, sir, criminal histories.

24 MR. GOLDBERG: Your Honor, they are scheduled
25 to be here any minute now. When they arrive, I have

1 them -- insist they give me the information so she can
2 get those run off on time before we put them on the
3 stand.

4 THE COURT: Okay.

5 MR. SHEALY: And, Your Honor, I don't know
6 whether -- understand whether my client is going to
7 wish to testify or not. If you want us to settle the
8 record now as a precaution we can. Or at the
9 appropriate time we can do it.

10 THE COURT: How about later in the process.

11 MR. SHEALY: Yes, sir. I just have a motion
12 to sequester witnesses. You know, once we get the
13 jury selected and started.

14 THE COURT: Which witnesses do you want to
15 sequester?

16 MR. SHEALY: I would like all the witnesses
17 sequestered except the lead investigator.

18 THE COURT: How about the victims?

19 MR. SHEALY: I think the victim has the right
20 to be there. I'm not sure. I don't want to have
21 anybody in here in place except the people that are
22 absolutely necessary.

23 THE COURT: Excluding the lead officer and the
24 victim.

25 MR. SHEALY: Yes, sir.

1 THE COURT: What says the state?

2 MR. GOLDBERG: No objection, Your Honor.

3 THE COURT: That motion is granted.

4 MR. SHEALY: Your Honor, you have a couple of
5 stipulations that I was going to address with the
6 Court. One of which Mr. Goldberg and I discussed
7 during the course of this, was we are willing to
8 stipulate to two prior burglary convictions. And that
9 is one of the elements of this charge. And I know
10 that State doesn't have to stipulate to that. Under
11 State vs. Hamilton. But just, you know, if they would
12 like, we would be willing to do that, stipulate to two
13 and only two. So I kind of want to throw that out
14 there and see if the State has a position on that.

15 THE COURT: What would the stipulation be?
16 What would you want me to tell the jury regarding the
17 stipulation? What would you want me to tell the jury
18 about this information?

19 MR. SHEALY: Your Honor, just that Mr. Brown
20 does have two prior burglary convictions satisfies the
21 elements of this case in that respect. Obviously no
22 details I don't think would be permitted under United
23 States vs. Old Chief. But just that he does have two
24 burglary convictions, that do satisfy the record. And
25 we will stipulate to that.

1 THE COURT: What says the State?

2 MR. CATHCART: Your Honor, Richard Cathcart
3 with the State. The State vs. Hamilton, does not say
4 you don't have to stipulate. It basically says you
5 have prove it. In order to prove it, if I put into
6 evidence the two, and only two prior convictions of
7 housebreaking or burglary. He has I think six prior
8 convictions that were alluded to. We have State vs.
9 James in order to do. We will be putting the
10 certified, true, correct self authenticated
11 Indictments into evidence. Wherever you wish to show
12 the jury as to the front of the Indictment is fine.
13 To limit it as to just a conviction for burglary. We
14 are not seeking to introduce into evidence of what he
15 did while doing the burglary, unless he opens the door
16 to that.

17 So I don't think from what he's asking as to a
18 stipulation. What we would be putting into evidence
19 for the jury would be basically what he's asking to
20 stipulate as well. And we don't have -- we can't
21 stipulate, we have to prove it before the evidence.

22 THE COURT: All right.

23 MR. SHEALY: I understand that position. And,
24 you know, I think they probably could if they wanted
25 to. But obviously they don't have to. I am just

1 bringing this up because I was asked about this
2 previously during the week. As to ---

3 THE COURT: Well I agree with you; that they
4 could stipulate. That means the State does have not
5 to offer proof, because the stipulation is a
6 substitute for proof. And but while that may be the
7 case, the State is not required to accept the
8 stipulation.

9 MR. SHEALY: Yes, sir.

10 THE COURT: But the Court can limit the impact
11 of whatever evidence the State seeks to offer. And it
12 appears they are not seeking to offer that much.

13 MR. SHEALY: Yes, sir. And I think as long as
14 the front of the Indictment says burglary, whatever
15 burglary they wish to choose. There are two of them.
16 And I don't have any specific details about the case.
17 Then I---

18 THE COURT: I think the front of the
19 Indictment just has the date and the victim's names
20 are listed on the front. And the statute that he
21 supposedly violates.

22 MR. CATHCART: Yes, sir. What we would
23 anticipate to put into evidence, what we will put into
24 evidence is the entire, what he pled to. And what,
25 you know, both sides of the Indictment and the

1 sentencing sheets, as to what goes into the evidence.
2 However, we have no problem putting to the jury just
3 the front of the Indictment indicating who he is.
4 What he plead to, and what the charge is.

5 THE COURT: Have you looked at that?

6 MR. SHEALY: No, sir. Not the particular ones
7 individually.

8 MR. CATHCART: I have got a copy. We have not
9 decided which ones. First of all, I think it's kind
10 of predevelopment as to each one. But each one of the
11 Indictments. We can show you.

12 THE COURT: There is some time to deal with
13 that issue.

14 MR. SHEALY: You know, leave that issue---

15 THE COURT: I mean, you all can look at each
16 other and decide to -- you're satisfied with what
17 they're proposing. You don't have to do it at this
18 moment. You have time to do that. We don't need to
19 fully address the issue, although you will need to
20 have an agreement. If there if a problem then we will
21 address it then.

22 MR. SHEALY: But I will fully agree to the
23 basic information of a conviction for a burglary.
24 Without any details including what he got in his
25 sentence. We don't need too much of the detail under

1 the law.

2 THE COURT: Well they don't know exactly what
3 they want to offer right now. So there is nothing for
4 you to see right now.

5 MR. SHEALY: Yes, sir.

6 THE COURT: You all can probably at some point
7 and time can deal with it.

8 MR. SHEALY: And just, while we're talking
9 about the subject of the burglaries, and Mr. Cathcart
10 did mention State vs. James. I just reiterate our
11 position for the record. We think on that case law
12 that only two is required. In that case I think seven
13 burglaries was found to be unduly prejudicial. And,
14 you know, they kind of said any time you get past the
15 two, although the statute says two or more, anytime
16 you get past two burglaries being offered as evidence
17 by the state, that it becomes unduly prejudicial.

18 THE COURT: Mr. Cathcart just said they only
19 plan to enter two.

20 MR. SHEALY: Yes, sir.

21 MR. CATHCART: Following that case, Your
22 Honor.

23 MR. SHEALY: Okay. That's fine with us. We
24 have another stipulation. We're going to stipulate
25 that these are his fingerprints. Leroy Brown's

1 fingerprints at the scene. We have no problem with
2 that.

3 THE COURT: I believe the State will chew on
4 that proposal. And you would all agree and not call
5 the witness, but accept the stipulation or in lieu of
6 the testimony that you made now that you agree, that
7 you propose that stipulation.

8 MR. SHEALY: Yes, Your Honor. Nothing further
9 from the defense at this time..

10 THE COURT: Are you ready for the jury?

11 MR. GOLDBERG: Yes, judge.

12 MR. SHEALY: Yes, sir.

13 THE COURT: We will be at ease now for just a
14 moment while the jury congregates.

15 (Whereupon, the following takes place within
16 the presence of the jury.)

17 MR. GOLDBERG: The State calls the case of the
18 State versus Leroy Brown. Indictments
19 2008-GS-40-11825, 2008-GS-40-11826. The charges are
20 burglary in the first degree, petty larceny.
21 Representing the State is myself, Dan Goldberg, along
22 with Richard Cathcart.

23 THE COURT: Ladies and Gentlemen, the State
24 has called for trial, the case of the State versus
25 Leroy Brown. And this case comes in to court as the

1 result of an Indictment, two Indictments issued by the
2 Richland County grand jury charging Mr. Brown with
3 burglary first degree and petty larceny. He has pled
4 not guilty to these two charges. He is presumed to be
5 not guilty of these charges. He cannot be found
6 guilty of these charges unless the jury is convinced
7 of his guilt based on evidence satisfying the jury of
8 that guilt beyond a reasonable doubt.

9 He is in Court with counsel. Counsel, if you
10 will introduce yourself to the jury panel.

11 MR. SHEALY: I am Luke Shealy with the
12 Richland County Public Defender's office. This is
13 Mr. Leroy Brown.

14 MR. LEDDY: And I am Mike Leddy also with the
15 Richland County Public Defender's office.

16 THE COURT: Thank you. And this offense, or
17 these offenses allegedly occurred on or about October
18 29th 2007, on here in Richland County.

19 , is that in Forest Acres?

20 MR. GOLDBERG: Right outside the Shandon area.

21 THE COURT: Shandon.

22 MR. GOLDBERG: Sherwood Forest.

23 THE COURT: This is the Sherwood Forest area
24 in Richland County. If any member of the member of
25 the jury panel knows anything about this case, or if

1 you have heard anything about this case, please stand.

2 (Whereupon, no response.)

3 THE COURT: No one standing. If you know Mr.
4 Brown, Leroy Brown. If you know any of lawyers
5 involved in this case, please stand. If you are a
6 friend, relative or associate of any of them, please
7 stand.

8 (Whereupon, no response.)

9 THE COURT: The alleged victim in this is
10 Regina Monteith. If you are here, please stand and
11 face the jury panel, please. Thank you. If you know
12 Ms. Monteith, please stand.

13 Yes, ma'am. Who are you, please?

14 THE JUROR: Elizabeth Clare.

15 THE COURT: And, Ms. Clare, the fact that you
16 know Ms. Monteith, would that fact affect your ability
17 to be a fair and impartial juror?

18 THE JUROR: Probably, Yes.

19 THE COURT: Ma'am, tell me your name one more
20 time.

21 THE JUROR: Elizabeth Clare.

22 THE COURT: Juror No.?

23 THE JUROR: No. 58.

24 THE COURT: we will not consider you for
25 selection in the case, but stay with us if you will.

1 Other people who may testify in this case
2 include the following folks. And if you are here,
3 please stand. Paul Reid of the Columbia Police
4 Department. Star Medlock, Columbia Police Department.
5 J. Bradley, Columbia Police Department. Pete Currie
6 of the Police Department. Who will not testify?

7 MR. GOLDBERG: Yes, sir, he would.

8 THE COURT: He is not here. Ashley Huett, the
9 Columbia Police Department. Ed Shuler, who is
10 standing there. Gerald Boykin next to Mr. Shuler and
11 Buddy Rose of the Police Department. Thank you all.
12 If you are a friend, relative or associate of any of
13 those individuals, please stand. Yes, ma'am.

14 THE JUROR: I am Patty Halsey, No. 111. I am
15 the Deputy Director for Human Resources for the City
16 of Columbia?

17 THE COURT: Ma'am, do you believe you should
18 be excluded in this case based on employment?

19 THE JUROR: Probably should.

20 THE COURT: Probably should. Ms. Halsey,
21 thank you. We will not consider you for selection.
22 If you are a friend, acquaintance, or if you are
23 related by blood or marriage to anyone who works in
24 law enforcement, please let us know that by standing.

25 THE COURT: Yes, ma'am, tell us who you are,

1 please.

2 THE JUROR: My name is Linda Carpet. No. 202.
3 My husband is a retired police officer, Correction's
4 Officer for New York City. And now he is a lost
5 Prevention Manager at the Burlington Coat Factory.

6 THE JUROR: Thank you. Yes, sir.

7 THE JURY: My name is Bob Gardner, Juror No.
8 98. My sister's husband is a police officer in
9 Jacksonville, Florida.

10 THE COURT: Thank you, sir.

11 THE JUROR: Richard Stire. I work part time
12 with the Richland County Sheriff's Department.

13 THE COURT: If you are related by blood or
14 marriage, or if you have some friendship with anyone
15 who works with the South Carolina Attorney General's
16 office, Fifth Circuit Solicitor's Office, or any of
17 the prosecuting attorney's office, please stand. Yes,
18 ma'am.

19 THE JUROR: I'm Gina Morris. My mother-in-law
20 is a Solicitor in here in this courthouse.

21 THE COURT: Here in this courthouse?

22 THE JUROR: Yes.

23 THE COURT: If you have ever been employed by
24 any civilian or military law enforcement agencies,
25 please stand. Yes, sir.

1 THE JUROR: John Young. Juror 299. Former
2 corrections person for the State of Ohio.

3 THE COURT: Thank you.

4 THE JUROR: Katie Rubin. Juror 227. I worked
5 for the Metropolitan Police Department for 2 years in
6 Washington, D.C.

7 THE COURT: Thank you. If you have any
8 friends or relatives or acquaintances who are employed
9 by Richland County Public Defender's office, or any
10 Public Defender's office, please stand.

11 (Whereupon, no response.)

12 THE COURT: No one standing. If you are
13 member or contributor to any group which has as its
14 primary concern, Law Enforcement, or victim's rights;
15 including, groups such as, CAVE, MADD SADD, Sister
16 Care or any related organizations. If so, please
17 stand.

18 (Whereupon, no response.)

19 THE COURT: If you are a member or contributor
20 or associate of any pro-defense Organizations? If so,
21 please stand.

22 (Whereupon, no response.)

23 THE COURT: If you know of any reason why you
24 cannot sit as a fair or impartial juror, or if you
25 know of any reason why you should be selected as a

1 juror to sit on this case, please stand.

2 (Whereupon, no response.)

3 THE COURT: Ladies and Gentlemen, the
4 Indictment in this case alleges that the defendant has
5 two or more prior convictions for burglary and or
6 housebreaking. Knowing that fact, do you believe
7 that knowing that fact would affect your ability to
8 give this defendant a fair and impartial trial in this
9 case? Please stand. Yes, ma'am. Your name and
10 number, please.

11 THE JUROR: Juror No. 70 Susan Martin.

12 THE COURT: Ms. Martin will not be considered.

13 THE JUROR: No. 202 Wendy Parker.

14 THE COURT: Ms. Parker will not be considered.

15 THE JUROR: Gina Rubin, No. 227.

16 THE COURT: 227. Ms. Rubin will not be
17 considered. Anyone else?

18 (Whereupon, no response.)

19 THE JUROR: If any member of the jury panel
20 who has been the victim or had a family member to be a
21 victim of a burglary or similar home intrusion type
22 case. If so, please stand. All right yes, sir.

23 THE JUROR: Shawn Epps 300.

24 THE COURT: 300.

25 THE JUROR: James Stokes, 253.

1 THE COURT: 253.
2 THE JUROR: Elizabeth Clare, 58.
3 THE COURT: Yes, ma'am.
4 THE JUROR: 232, Brenda Shelby.
5 THE COURT: Yes, ma'am.
6 THE JUROR: No. 78, Barb Broyle.
7 THE COURT: Ms. Broyle. Yes.
8 THE JUROR: Mark Smith, No. 243.
9 THE COURT: Thank you.
10 THE JUROR: Ruth Waller, 278.
11 THE JUROR: Michael Graham, 106.
12 THE JUROR: Bob Gardner, 98.
13 THE JUROR: Tron Morass, 187.
14 THE COURT: Thank you. If you believe that
15 fact would affect your ability to be a fair and
16 impartial juror in the trial of this case, the State
17 versus Leroy Brown, please stand. Yes, ma'am.
18 THE JUROR: I just remembered I do have a
19 friend who someone broke in their house. Linda Eagle
20 81.
21 THE COURT: Do you believe that would affect
22 your ability to be fair and impartial?
23 THE JUROR: No.
24 THE COURT: Is any member of the jury panel or
25 any member of your immediate family has ever been

1 accused of burglary, or any similar crime, please
2 stand. If you or any member of your family has ever
3 been accused of burglary or any similar home intrusion
4 offense, if so, please stand.

5 (Whereupon, no response.)

6 THE COURT: No one standing. Anything else
7 either the State or the defense would like for me to
8 pose to this jury?

9 MR. GOLDBERG: Nothing from the State, Your
10 Honor.

11 MR. SHEALY: Nothing from the defense, Judge.

12 THE COURT: Ladies and Gentlemen, aside from
13 those of you who have been excluded, and you have
14 other things, Ms. Stockholm.

15 MS. STOCKHOLM: Yes, sir.

16 THE COURT: Follow Ms. Stockholm, and we will
17 proceed with jury selection:

18 THE CLERK: Ladies and Gentlemen, as I call
19 your name, if you will please come to microphone at
20 the center of the courtroom. Bringing any personal
21 belongings with you. And state your name and
22 occupation, please.

23 No. 167 Christopher Marshall (m-w) accepted,
24 248 Richard Steiner (m-w) defense struck, No. 188 Gina
25 Morris (f-w) defense struck, No. 14 Charles Bass (m-w)

1 accepted, No. 40 Charlton Brown (m-b) state struck,
2 No. 39 Carlissa Brown (f-b) accepted, No. 98 Bob
3 Gardner (m-b) defense struck, No. 138 Jason Jolin
4 (m-w) accepted, No. 243 Mark Smith (m-w) defense
5 struck, No. 232 Brook Schelbel (f-w) defense struck,
6 No. 8 James Archer (m-w) accepted, No. 17 Vanessa
7 Johnson (f-b) state struck, No. 10 Norman Bailey (m-w)
8 accepted, No. 171 Mi Meanally (f-o) accepted, No. 44
9 William Bullock (m-w) accepted, No. 299 John Young
10 (m-w) defense struck, No. 49 Danni Byrd (f-b)
11 accepted, No. 103 Shirley Goodwine (f-b) accepted, No.
12 29 Kisha Bookman (f-b) accepted, No. 76 Jack Donaworth
13 (m-w) accepted, No. 229 Naomi Samuel (f-b) accepted.

14 THE COURT: Any matters of law regarding jury
15 selection?

16 MR. GOLDBERG: Not from the State.

17 MR. SHEALY: Not from the defense, Judge.

18 THE COURT: You have been selected to be on
19 the jury in the trial of this case. Those of you who
20 were not selected, I will ask that you to return to
21 the assembly room, is that right?

22 THE CLERK: Yes, Your Honor.

23 THE COURT: Thank you all. Ladies and
24 Gentlemen, if you will stand to be sworn.

25 (Whereupon, jury is sworn.)

1 THE COURT: Ladies and Gentlemen, you have
2 just taken an oath to well and duly try this case and
3 render a true verdict according to the law and
4 according to the evidence. In saying that and
5 accepting that oath, you have indicated through your
6 oath that you will decide this case based on the law,
7 and based on the evidence so help you God.

8 Now only you can decide the facts of this
9 case. And that's why you were selected to be on the
10 jury in this case. Under our constitution of this
11 State and the Constitution of the United States, the
12 right to a trial by a jury is guaranteed to every
13 citizen. And the jury as a group, and jurors
14 individually play a pivotal role in the justice system
15 of this country. Only you can decide the guilt or the
16 innocence of this defendant. You are to do that based
17 on the law as I will instruct you, and based on the
18 evidence that you will hear from the witness stand and
19 through exhibits that are offered during the course of
20 this trial.

21 And you will decide -- in order to be in a
22 position to decide this case based on the law and the
23 evidence, you must listen closely to the testimony and
24 give this case your undivided attention. Because I am
25 sure that you know the significance of decisions made

1 by juries.

2 Now under our rules of procedure, you are not
3 allowed to discuss the case with each other. Or with
4 anyone else until I authorize you to do so. And that
5 will be after you have listened to the entire case.
6 And after you have listened to the arguments of the
7 lawyers and after you have listened to the jury
8 instructions that I will give you. Just as only you
9 can decide the facts of this case, and the guilt or
10 innocence of this defendant, I am the sole judge of
11 the law of this case. You must accept and apply the
12 law exactly as I give it to you at this time during
13 the trial and at the end of the trial. I look forward
14 to working with you during the course of this trial.
15 I am sure the lawyers look forward to working with you
16 as well. And we will do all that we can to keep this
17 case moving. I am sure when you were called to come
18 to jury duty, you found yourselves full of
19 anticipation in coming and a lot of waiting after you
20 got here. You are now on this jury. And we plan to
21 keep this case moving so that we can get the job
22 done. We will do opening statements from the State.

23 MR. CATHCART: Your Honor.

24 THE COURT: Yes, sir. Mr. Cathcart.

25 MR. CATHCART: Please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 MR. CATHCART: Good afternoon. My name is
3 Mr. Cathcart. And I am here with Dan Goldberg. We
4 are both Assistant Solicitors here in Richland County.
5 It is our job to present the case on Mr. Leroy Brown.
6 Mr. Brown has been charged with two crimes. The first
7 one is burglary in the first degree. The second one
8 is petty larceny. It's our job as Assistant
9 Solicitors, as the prosecutors in this case, to prove
10 beyond a reasonable doubt that he committed these
11 crimes.

12 We do that by putting forward the witnesses of
13 the case. You will hear from the victim and from the
14 officers that arrived at the scene, and they will tell
15 you what occurred. And it's our burden to prove that
16 he committed these crimes. We have the burden of
17 proof. And that's the way it should be. When a
18 person is accused of committing an act that violates a
19 person's home, her sense of security in her own home.
20 It's up to the State to prove that he actually did it.
21 We have the burden of proof. Which is a burden we
22 have to prove beyond a reasonable doubt.

23 Proof beyond a reasonable doubt not mean that
24 I have to prove any doubt whatsoever in the world. So
25 that's an impossible standard. It's a doubt for

1 anything. Proof beyond a reasonable doubt merely
2 means I have to prove to you, such that you are firmly
3 convinced that the person who committed this burglary.
4 You have to be firmly convinced that the person went
5 into the window, and left his fingerprint at the
6 scene. And took the victim's purse from her home.

7 Now let me tell you all exactly what burglary
8 in the first degree, what we have to prove. To make
9 it a little bit easier. A burglary in the first
10 degree, now burglary is basically if someone enters a
11 dwelling without the consent of the owner, with the
12 intent to commit a crime therein. That's a burglary.
13 It does not mean you have a break in. It doesn't mean
14 you have to unlock a door, open a window. Open the
15 door itself. If you just enter the dwelling of
16 another person without their permission with intent to
17 commit a crime in there, that's a burglary.

18 What makes it a burglary first as opposed to a
19 second or third, is that it is at dark. Either at
20 night, or the person who commits this burglar, the
21 person who did this crime, has two or more prior
22 convictions of burglary or housebreaking. And so if
23 he did it at night or he did it while he's already
24 been convicted two times of doing the same thing, that
25 just makes it a burglary first degree. Petty larceny

1 is just basically taking anything from the house.
2 There two types of larceny. There's petty larceny and
3 grand larceny. Grand larceny, if he takes something
4 that is over a \$1,000 or more. Petty larceny if you
5 take anything. If you went in that house with the
6 intent to steal a ball of lint, that is a petty
7 larceny. But in this case he took her purse.

8 And, Ladies and Gentlemen, as the State, we
9 have to prove this beyond a reasonable doubt. Now
10 we'll do so and you will hear from the witnesses. And
11 you will see from the forensic investigators as to
12 what was found there at the scene. Because on October
13 29th of 2007, this defendant went into the house. But
14 he went in there while the victim was asleep. She
15 had gone to bed that night. Late that night. Was
16 upstairs in her house. In her bedroom. Alone in her
17 home, asleep.

18 While she was asleep, the defendant went to
19 her downstairs back window. He went around the house,
20 and he observed that there was some ladders out there.
21 Because People were doing some work there. Doing
22 construction work that they were doing. And that man
23 was not a part of their crew, and certainly had no
24 business at the house. You will hear from the victim
25 that man has never been to her home. With her

1 knowledge.

2 He went around the house and found some
3 ladders that the paint crew had left out in the
4 backyard. He took that ladder into a back window, and
5 entered the house through that ladder. How do we
6 know that? Because the evidence will show that. He
7 went into her home, and went through her house.
8 Didn't stop just where he came in. But went through
9 the house. How do we know that, because the evidence
10 will show that. But her purse wouldn't have been
11 right beside the window being broken into. Her purse
12 was in another section of the room.

13 So while she was sleeping upstairs, he was
14 going through her house until he found something of
15 value. He found her purse. He left the house with
16 the purse. We know that because the construction crew
17 the next morning found the purse on the front lawn.
18 Her wallet was missing. But he did this during the
19 cover of darkness. No one saw him go in the house.
20 No one saw him as he went through the house. She was
21 upstairs asleep. In the safety of her own bed. And
22 the safety of her own house. No one saw him as he
23 took the purse and fled the scene. But he didn't just
24 take her purse. When he took her purse, he took her
25 sense of security in her own house. He also didn't

1 just take things, he left something too. Because he
2 went and he went through the room into that window.
3 He had to crawl from the ladder to get inside. And on
4 the inside frame of that window. Not this
5 fingerprint. Not this one. Not this one. But right,
6 the one that comes out, about the 6th or 7th print.
7 This one right there on No. 4 comes out perfectly on
8 it. It comes back to that. On the inside of the
9 window frame, as he comes into the house, his
10 fingerprint at that point.

11 I ask you listen to the evidence in this case.
12 And I'll have an opportunity to cross examine all the
13 witnesses. And after the end of the case, we will
14 tell you what we think the evidence shows. In this
15 case it is a burglary and petty larceny. He went into
16 her house without her permission. We know he did so
17 because he left his print. Not a face that somebody
18 can say looks like Mr. Brown, that someone saw across
19 the street. He left his fingerprint. It couldn't be
20 anybody else's. Nobody else in the world. He is the
21 man guilty. Just find him guilty. Thank you.

22 MR. LEDDY: May it Please the Court, Your
23 Honor.

24 THE COURT: Yes, sir.

25 MR. LEDDY: I am Michael Leddy who is a Public

1 Defender. And that is Luke Shealy, who is also a
2 Public Defender. It's my pleasure to represent Mr.
3 Leroy Brown in this matter.

4 The Solicitor told you that you are going to
5 hear about fingerprint evidence. And you're going to
6 hear that there was indeed a burglary taking place at
7 this house. Because this nice lady here, she woke up
8 the next day and her purse was on the lawn. Okay. So
9 there is no doubt that somebody went in that house.
10 There is no doubt that it would be a burglary. There
11 is also no doubt that Mr. Brown's fingerprint was
12 found on that window sill. And all things being
13 equal, that's a pretty easy, pretty two and two equals
14 four case. And indeed when you're talking about a
15 case where they can make a burglary first in a couple
16 of ways, one by showing it was done at night. And one
17 by showing that it is by a person that has two prior
18 convictions for a burglary. And you know that, then
19 you're talking about a serious uphill climb. And I
20 challenge you to give this man a fair trial.

21 And I'll tell you why to come out with not
22 guilty and why we're going to ask you to. You're
23 going to hear from Mr. Leroy Brown in this case. Why
24 are his fingerprints on this house? And why does it
25 not show that the theory of the State? They said it

1 was because he pulled himself in that night, make
2 sense. Why does his story make more sense? Even
3 though it doesn't have to make more sense? He doesn't
4 have to prove himself innocent. His story does make
5 more sense, because of exactly which finger it is that
6 he left. And where he left this finger, the right
7 hand.

8 It's on the left side of the window. And the
9 State would have you think that it's from pulling
10 himself in. Doesn't make sense. Mr. Brown went there
11 prior to the night of the burglary there. There was a
12 work crew, Mr. Brown is going to tell you. He's a
13 painter by trade. He knows how to paint. He went
14 there looking for extra side jobs to make money. He
15 offered his services. And he talked to somebody who
16 was working at that window. He asked for a job, and
17 they said we're not hiring.

18 They can prove to you that his fingerprints
19 were on that window. And indeed the defense
20 stipulates to that. And it would be silly to sit here
21 and argue with them about that. We're not going to
22 waste your time. What they can't prove is when were
23 those prints left there. And really that's a big
24 problem for the State. Because they have to prove
25 beyond a reasonable doubt, not just that the prints

1 were there, but when they were placed there. And they
2 don't have that evidence. And they can't rebut what
3 Mr. Brown is going to tell you.

4 So please, it's an uphill climb. And it's
5 difficult to set aside a preconceptions in a case like
6 this. But I do ask you to give Mr. Brown a fair
7 trial. And listen to his testimony. And it's going
8 to be a brief case, but it's extremely important.
9 Thank you.

10 MR. GOLDBERG: Please the Court, the State
11 calls Ed Shuler.

12 John Edwin Shuler, after being duly
13 sworn, testified as follows:

14 THE CLERK: Please have a seat on the witness
15 stand and state your full name for the record.

16 A My name is John Edwin Shuler.

17 DIRECT EXAMINATION BY MR. GOLDBERG:

18 Q Mr. Shuler, good afternoon.

19 A Good afternoon.

20 Q Can you tell the jury a little bit about
21 yourself? Where you come from, who you are, what you
22 do?

23 A I'm a remodeling contractor. I live in
24 close to Regina Monteith. And I was
25 fortunate enough to have a chance to do a little work

John Shuler-direct by Goldberg

1 for her. We did exterior painting and so forth. And
2 that's mostly the kind of thing we do. Whole house
3 renovations is the kind of thing we do. No new
4 construction though. I have been doing since 1985.
5 And I have lived in Columbia since 1981.

6 Q Okay going back to October of 2007, did Ms.
7 Monteith hire you and your company to do some work on
8 her house?

9 A Yes, she did.

10 Q Do you remember what she hired you to do?

11 A I believe we were doing exterior painting. And
12 either at the time or shortly afterwards we did some
13 interior painting in her kitchen area.

14 Q Is it an uncommon practice for you to also
15 hire out a subcontractor to help you out with some of
16 your work?

17 A That is not uncommon. In fact, I rely on a
18 staple of subs that I've used for years to do
19 specialty things like, painting, roofing, plumbing,
20 electrical. Those people are not on the direct
21 payroll but they subcontractors.

22 Q And regards to the work on Ms. Monteith's
23 house in October of 2007, did your company do the
24 work, or did you hire subs?

25 A We did the work. We had the contract with

John Shuler-direct by Goldberg

1 Regina. And then it was, and then I supervised the
2 subcontractor. In this case, Gerald Boykin that I had
3 employed to do the painting work at her house. But I
4 was on site typically every day and supervised that
5 work as it was unfolding.

6 Q So would it be fair to say then both your
7 company and Mr. Boykin's workers did the work?

8 A I would say, that is correct. And what we
9 present to our customers is that we're responsible for
10 the project. So if you have a question about the job,
11 you know, any concern about what is going on, call me.
12 We'll take care of it. The buck stops with me.

13 Q Are you familiar with an individual named
14 Leroy Brown?

15 A No, I am not.

16 Q Has there ever, to your knowledge, been an
17 individual by that name that has worked for your
18 company?

19 A No. He has not been my employee.

20 Q The gentleman seated at the table here, do you
21 recognize him?

22 A No, I do not.

23 Q Has the man ever done any work for that you
24 are you aware of?

25 A No, he has not.

John Shuler-direct by Goldberg

1 Q And can you tell me if you've looked into your
2 records at all about whether or not anyone by that
3 name has been employed with you?

4 A Well as a matter of fact, yes. My wife who is
5 partners with me in the business, keeps all my
6 records. And she went back and checked on employee
7 records back to 1998 through 2007. And we verified
8 that we had no employees during that time by the name
9 of Leroy Brown.

10 Q I also want to ask you about the condition of
11 the work site, when you're done for the day. Can you
12 tell me what is done with the materials that are being
13 used to work on someone's house when you're done for
14 the day?

15 A Typically we take down all the ladders that
16 are surrounding the building as we are doing painting
17 work. Store them on site, but stacks that were in a
18 pile. We're particularly carefully about not leaving
19 ladders against the house. Kids come in there that
20 would be curious and climb the ladders. So we're very
21 careful not to leave ladders against the house. Those
22 were the primary kind of materials that were left on
23 site. But they would be extension ladders and step
24 ladders that we use as we are working on the other
25 side of the house. Preparing the painting the outside

John Shuler-direct by Goldberg

1 of the house.

2 Q And again, the work that was being done for
3 Ms. Monteith on October of 07, that was painting on
4 the exterior of the home, is that correct?

5 A Yes, that is correct.

6 MR. GOLDBERG: Thank you, sir.

7 A Thank you.

8 THE COURT: Any Cross Examination?

9 MR. SHEALY: Yes, Your Honor. May it please
10 the court.

11 Cross Examination by Mr. Shealy:

12 Q Good afternoon, Mr. Shuler.

13 A Good afternoon.

14 Q A brief few questions. Do you remember the
15 exact date that you started working for Ms. Monteith?

16 A I do not have that in front of me, but it was
17 in October. I have to check my records. I just don't
18 have that. And I typically have a proposal that we
19 draw up. And that is typically what kind of spells
20 out the agreement between us. And this day that would
21 be what I used to try to tie it back. I think it was
22 in October that we started that project.

23 Q Like I said, you were hired as a general
24 contractor to do this remodeling and painting, right?

25 A That is correct.

John Shuler-cross by Shealy

1 Q Would you imagine it took weeks, months?

2 A Typically exterior painting, is a one to three
3 week process.

4 Q So to best of your recollection, this probably
5 might have taken a month.

6 A I think that is reasonable, yes.

7 Q So that would be in your records.

8 A Yes, it would.

9 Q Now you said you hired a subcontractor to do
10 the actual exterior painting?

11 A That is correct.

12 Q A man by the name Gerald Boykin?

13 A That is correct.

14 Q He's the man you worked with before?

15 A Yes.

16 Q And in terms of this exterior painting problem
17 alone, how long do you think that would take?

18 A As I say, my recollection is that we were on
19 that project for a two to three week time frame.

20 Q She's got a fairly large home?

21 A Yes, she does. And it required a bit of
22 preparation. And yes, there's -- it's a brick next to
23 it, but the trim still required more prep. And so I
24 would say a two to three week time frame.

25 Q Okay. You said there was some kitchen

John Shuler-cross by Shealy

1 painting on the interior done as well?

2 A Yes. And I don't exactly remember whether
3 that happened at the time this break-in occurred or if
4 it happened the following that. I just don't know
5 have that exactly in my mind.

6 Q And that was a part of the total project.

7 A My thinking is that we started with the
8 outside. And Regina liked our work, and then she had
9 this additional work done in the kitchen and asked us
10 to do that.

11 Q Inside the house after.

12 A That's correct. But as I say, I believe the
13 way we got started was on the outside and then the
14 project grew to include the kitchen after she got a
15 chance to know us, and she was pleased with what we
16 did on the outside.

17 Q Yes, sir. How many of your employees did you
18 have under your supervision at this time, working on
19 this project?

20 A I would say the general somewhere in the
21 range of 3 to 5 employees.

22 Q And how many were working for Mr. Boykin?

23 A Would you clar -- that would represent
24 Gerald's crew?

25 Q Right.

John Shuler-cross by Shealy

1 A I did not have any employees on site on the
2 project.

3 Q Okay. But that's Gerald crew.

4 A That would Gerald's crew. And he could speak
5 specifically as how many people he had on site. But
6 typically it was in the 3 to 5 men range.

7 Q So you didn't personally know each and every
8 one of these employee's, did you?

9 A I knew them because they had worked regularly
10 all the other jobs.

11 MR. SHEALY: I beg the court's indulgence.
12 Nothing further, Judge, thank you.

13 THE COURT: Anything further?

14 MR. GOLDBERG: No, sir.

15 THE COURT: Thank you, sir.

16 MR. GOLDBERG: Your Honor, may this witness be
17 excused?

18 THE COURT: Any objection?

19 MR. SHEALY: No objection.

20 THE COURT: You may be excused. Next witness.

21 MR. GOLDBERG: The state calls Regina
22 Monteith.

23 REGINA MONTEITH, after being duly sworn,
24 testified as follows:

25 THE CLERK: Please have a seat on the witness

John Shuler-cross by Shealy

1 stand and state your full name for the record.

2 A My name is Regina Monteith.

3 Direct Examination By Mr. Monteith:

4 Q Ms. Monteith, good afternoon. Can you tell
5 this jury a little bit about yourself? Where you're
6 from? How you know Columbia? That sort of thing? A
7 short version.

8 A I am a New Yorker who moved to South Carolina
9 in 1990, with my husband, who was a native of
10 Columbia. After 25 years in the northeast, he decided
11 it was time to come home. And he dragged his northern
12 family kicking and screaming behind him. But I have
13 adjusted. And I have lived here since 1990, in my
14 house at .

15 Q Is that in the City of Columbia?

16 A Yes.

17 Q And here in Richland County?

18 A Yes, it is.

19 Q So you have lived there since 1990?

20 A That's correct.

21 Q With your husband?

22 A Until he passed away in 1999.

23 Q And since then have you lived by yourself
24 there?

25 A For a time my younger child Minor , lived with

Regina Monteith-direct by Goldberg

1 me while he was finishing high school. But when he
2 graduated in 2004, he went off to school. And he has
3 been back only intermittently.

4 Q So back when this happened in
5 October 29th 2007, you were living there by yourself?

6 A Yes.

7 Q And can you tell the jury a little bit about
8 what you were doing on that day? Well actually, let
9 me back up. Were you having some work done on your
10 house?

11 A Yes, I had come in to some funds. And I
12 decided to do some work on my house. Deferred
13 maintenance as it were. So one of first things, I
14 considered doing was having the exterior wood trim of
15 my house painted. It had last been painted in 1990,
16 so it was about time. The house is a brick house, but
17 it has wooden windows, wooden eaves, wooden doors and
18 frames, so there was a significant amount of wood to
19 be painted.

20 At the same time, I also decided that the
21 linoleum floor was pho-slate, pha-slate floor, that I
22 had loathed since I had moved into the house; that it
23 was time for it to go. So I was doing, getting
24 estimates on these projects at the same time. But I
25 believe that I had the kitchen floor ripped up. And the

Regina Monteith-direct by Goldberg

1 kitchen painted before I had the exterior of the house
2 painted.

3 The reason is that in order for the kitchen
4 floor to be done, the linoleum had to come up. And what
5 was underneath the linoleum was heart pine. Which was
6 the major construction material of the house when it was
7 built in 1920. And my son was home at the time. He
8 hadn't yet returned to school. And we had to take
9 everything off the walls, and out of the lower cabinets.
10 And once the floors were done, the original heart pine
11 was refinished. And where there wasn't heart pine;
12 where there had been a porch that had just had been a
13 plywood floor, we installed new heart pine.

14 And when that was done, they, you know, they
15 had to sand it. And they had to -- we didn't stain it.
16 We polyurethaned it. And it had to dry a couple of days
17 and they did it again. And I said to myself, I am not
18 doing this again. So I called Ed, Ed Shuler, who had
19 already given me an estimate for painting the exterior
20 of the house. And I said, Ed, come help me out. This
21 is an emergency. Can you please paint the inside of my
22 house. In the kitchen. And above the Butler's pantry.
23 And I wanted to paint it before my son went back to
24 school, so that he would help me put everything back.

25 It was an enormous project. It took us

Regina Monteith-direct by Goldberg

1 because I have a very big kitchen and a very large
2 Butler's pantry, and a laundry and a food stuffs pantry.
3 You know, with 8 shelves on one side, and 8 shelves on
4 another. And so it was a lot of stuff to be moved. And
5 when you see pictures of the interior of the house, you
6 can see that the living room is disrupted because the
7 kitchen wasn't put back together yet.

8 Q But---

9 A So where was I going?

10 Q The project in the kitchen got completed,
11 correct?

12 A Yes. It was a separate project from the
13 exterior project. But I called Ed, because we had
14 already committed to his painting the exterior.

15 Q Even though he hasn't already done the
16 exterior?

17 A Right.

18 Q So the kitchen project gets done?

19 A Yes.

20 Q And then at some point thereafter, you get Ed
21 back out to the house to do to the outside project?

22 A Right.

23 Q And that would involve painting those wood
24 frames you were talking about around the outside
25 windows, correct?

Regina Monteith-direct by Goldberg

1 A Yeah. Well first they had to take the storms
2 and screens out.

3 Q Okay. And then they got to work.

4 A Yes.

5 Q And started working on that. And that would
6 have been in October of 2007?

7 A Yes.

8 Q Take me to the incident date we are here
9 about, and how you discovered that your purse was
10 missing. What you were doing that night. Where you
11 were, if you were out of your home. Take us through
12 that?

13 A Well I discovered my purse was missing at 8
14 o'clock in the morning when the painters showed up and
15 said, "Ms. Monteith," it was Gerald Boykin. He said,
16 "Ms. Monteith, why is your purse on the front lawn."
17 I said, "What?" And he said: "Yeah, and why is your
18 back window open and why is there a ladder up against
19 it." I said, "What?"

20 Q Now the night before this, had any of your
21 windows been opened?

22 A No.

23 Q Were there any ladders up to any windows?

24 A No, they were meticulous about putting all the
25 ladders into a big pile. They didn't leave any

Regina Monteith-direct by Goldberg

1 ladders leaning against the house.

2 Q And didn't leave any windows open.

3 A No, did not leave any windows open.

4 Q And you did sleep there the night before,
5 correct?

6 A Yes.

7 Q Okay. Tell us where your bedroom is in
8 connection to the window that had the ladder up to it.

9 A As far away from it as possible.

10 Q And is that on the same floor?

11 A Oh, no. It's on the -- my bedroom is on the
12 second floor. And it is on, as you are facing it, the
13 left side of the house, there is the living window; to
14 which the perpetrator entered is on the right back
15 side of the house. My bedroom is on the left front
16 side of the house..

17 Q Do recall what time you locked up and went
18 upstairs to bed? Ballpark?

19 A My recollection is that I was in my bedroom by
20 3:00 o'clock. But that---

21 Q 3 a.m.?

22 A 3 a.m. Maybe I went up earlier and was
23 reading. In any event, it's unlikely that I would
24 have heard anything while I was on the second floor
25 that was occurring on the first floor.

Regina Monteith-direct by Goldberg

1 Q And why do you say that?

2 A Because the house is very soundproof. I live
3 on [redacted] and you hardly ever hear any
4 traffic from [redacted]. I mean the house is set
5 back a little bit. But just last week, an SUV totaled
6 itself on the garter table of the SCE & G post that's
7 at the corner of my property. At the corner of
8 [redacted] and [redacted]. And the SUV also catapulted
9 a brick pillar that is 4 feet high and probably a foot
10 on each side square. It catapulted it about 100 yards
11 on to my lawn.

12 Q And you didn't hear a thing.

13 A I didn't hear a thing, no. Three police cars,
14 an ambulance, a fire truck. I heard all about it from
15 my neighbor.

16 Q And just by point of reference. Excuse my
17 drawing. But this is [redacted] here. Then would this
18 be [redacted] or going across? They kind of intersect
19 with one another, is that right?

20 A But first, you've got Blossom. Where
21 [redacted] dead-ends at [redacted].

22 Q [redacted] dead-ends at [redacted].

23 A No, No, no. I am sorry.

24 Q This would be [redacted] right here, correct?

25 A [redacted] dead-ends at [redacted] Road. Yes.

Regina Monteith-direct by Goldberg

1 Q Right here.

2 A And where you have that K, go a little more to
3 the right and that's where that pole is. That way.

4 Q And your house is somewhere in here?

5 A Yeah.

6 Q And then right on this area right here, what
7 is that?

8 A That Long's Drug Store. And it's a parking
9 lot. And the back is the parking lot for the Piggly
10 Wiggly. That's another thing, I live right next to
11 the Piggly Wiggly and I never hear the trucks coming
12 or going.

13 Q So you were up in your bedroom and you didn't
14 hear anything.

15 A I'm sorry, Mr. Goldberg.

16 Q Yes, ma'am.

17 A The Piggly Wiggly extends the whole length of
18 my property.

19 Q The length of your property.

20 A Yes. So you need to draw that line a little
21 further.

22 Q And then it backs up to your house.

23 A Yes, but further. Further.

24 Q Across.

25 A Over, yeah.

Regina Monteith-direct by Goldberg

1 Q Now when you went to bed that night on the
2 second floor, tell me about the conditions of the
3 lighting in the house. Was it pitch black or was
4 it,---

5 A Oh, no, my house is never pitch black. In
6 1996, my husband and I and our two children were at
7 home when a disastrous fire broke out. We were
8 fortunate to leave the house without any injury also
9 taking our animals with us. But since that time, I
10 have never had the house in darkness. Especially
11 after my husband died. I leave a light on in the
12 hallway on the first floor. A table lamp.

13 And on the hall on the second floor, there is
14 an overhead light. And there is a window on the landing
15 for the staircase. The staircase goes up, and there is
16 a landing. And then it twists. But right there is the
17 window. And an SCE & G private light at the rear of my
18 property shines in that window. Around the light on the
19 second floor in the hallway shines out. So, and then
20 all along the side of -- along the side of my house
21 between my property, along the property line of my
22 property and the Piggly Wiggly, SCE & G has a 20 foot
23 wide, right of way.

24 And along that right of way, there were three
25 electrical poles. The Piggly Wiggly got expanded about

Regina Monteith-direct by Goldberg

1 2001. And to accommodate the expansion, all the
2 utilities along there were upgraded. And so right at
3 the back of my property along the line between me and
4 the Piggly Wiggly, there is a pole with two lights. And
5 then at the front there is a pole with one light. And
6 then further back there is another pole with a light.
7 So it's like a football field. And it's really well
8 lit.

9 Q So it's fair to say then that when you go to
10 bed at night and you're upstairs, it's pretty quiet.
11 And then the rest of the house is pretty well lit?

12 A Uh-huh. (affirmative.)

13 Q If not by the lamp lights that you have left
14 on, but also by exterior lighting coming through the
15 windows.

16 A Uh-huh. (affirmative.)

17 Q It's enough then for a person to see where
18 they are going if they are walking through the house.

19 A Oh, no, problem.

20 Q So let's move forward to that morning. And
21 Mr. Boykin came and told you that he found your purse.

22 A He called me.

23 Q He called you?

24 A Uh-huh. (affirmative.)

25 Q Okay. Take us through that.

Regina Monteith-direct by Goldberg

1 A Well they're usually there at 7:30 or 8
2 o'clock.

3 Q Do you remember what day of week it was?

4 A No. No.

5 Q Go ahead.

6 A So he called me. I didn't, that was not
7 really a surprise. He didn't necessarily call me
8 every morning. But he called me because there was
9 something unusual. My black purse was in the yard.
10 In the front yard. And he drove around, because they
11 usually park in the back. And he could see that one
12 of the windows to the living room was open. And
13 leaning against it was a ladder. And he said "Why is
14 your window open." I said, "What window." And "Why
15 is there a ladder leaning against it." And I said, "I
16 don't have any clue."

17 Q So did you then go downstairs?

18 A And then I either put on a robe, or threw some
19 clothes on and came downstairs. And he was outside.
20 He had pulled around to the front of the circular
21 drive. He had pulled around to the front, and he was
22 holding my purse, which is the black leather one under
23 the bench there.

24 Q This one?

25 A That one exactly.

Regina Monteith-direct by Goldberg

1 Q And the night before when you went to bed,
2 where was that purse located?

3 A That was in the kitchen.

4 Q Okay.

5 A Which is on the other side of the house from
6 the living room.

7 Q The living room of where the window was open.

8 A Where the window was open. And in order -- do
9 you want me to elaborate?

10 Q Sure.

11 A In order to get to the living room -- I mean,
12 to the kitchen from the living room, you have to go up
13 to the front of the living room. That window was open
14 in the back of the living room. And the living room
15 is about 20, 25 feet long. You have to go up the
16 front. Up to the front, through the doorway, through
17 the reception hall, then through the hallway into the
18 Butler's pantry, past the laundry. Past the food
19 pantry. And then into the kitchen. And my purse was
20 against the far wall of the kitchen.

21 We have a little rack under one of the
22 original windows with hooks on it. And that's where I
23 hang my purses or backpacks. That kind of thing.

24 Q And that's where it had been.

25 A That's where it had been. I always put my

Regina Monteith-direct by Goldberg

1 purse there.

2 Q Now when you got your purse back that morning
3 when Mr. Boykin found it, was there anything missing
4 from it?

5 A Yes, my wallet was missing.

6 Q And what was inside the wallet?

7 A Well first of all, my driver's license.
8 Second of all, my medicare. My medicare card. My
9 prescription card, my supplemental insurance card, my
10 American Express card, my Visa Card, my Sam's Club
11 charge card. \$50 in cash. A Belk's charge card. A
12 Dillard's charge card. My driver's license. My
13 Columbia Museum of Art membership card. And my
14 American Association of Museum card. Along with, you
15 know, the store discount cards that you get.

16 Q They were all gone.

17 A Everything -- the entire wallet was missing,
18 and everything in it. He didn't stop to, whoever did
19 it, did not stop to empty just the cash, but took the
20 whole thing. In which it---

21 Q I'm sorry, go ahead.

22 A A major annoyance, because of what you have to
23 go through to replace all those pieces of paper that
24 are essential to your life.

25 Q And once you had discovered all this had

Regina Monteith-direct by Goldberg

1 happened, did you call the police?

2 A I called the police immediately.

3 Q And officers from the Columbia Police
4 Department---

5 A They responded within minutes.

6 Q They talked to you, and got some information
7 from you.

8 A Uh-huh. (Affirmative.)

9 Q Took a report.

10 A That's correct.

11 Q And then looked around and conducted an
12 investigation.

13 A Yes. And then Officer Bradley came. He was a
14 crime scene investigator.

15 Q And he examined the window.

16 A Just like in the movies. Just like on TV. On
17 the crime scene investigator. I watched CSI Miami.
18 CSI New York. I watch the reruns. My favorite
19 program. But it's also the favorite program of a lot
20 of other Americans. I'm not alone. But he got out
21 his camera, and he took all those photographs as you
22 see the people doing. And then he got out his black
23 powder and dusting the printing. And he swirled his
24 little brush around. And he used his tape and took
25 more photographs. And took photographs of the outside

Regina Monteith-direct by Goldberg

1 of the house. And he took photographs of the inside.

2 MR. SHEALY: Your Honor, I object to the kind
3 of narrative version of. It's not really in response to
4 the question. I just ask for a response to the
5 question.

6 THE COURT: Pose a question.

7 Q The Police Department came and they took the
8 report.

9 A Yes.

10 Q And Mr. Bradley came out and conducted his
11 investigation?

12 A Yes.

13 Q And he was thorough.

14 A Yes, he was thorough.

15 Q Thank you. And once they were done conducting
16 their investigation at your house, they left at the
17 time, correct?

18 A Yes, sir.

19 Q The individual sitting over here at the
20 defense table, have you ever seen him before in your
21 life?

22 A No, sir.

23 Q Have you ever allowed this man in your house
24 at any time?

25 A No, sir.

Regina Monteith-direct by Goldberg

1 Q Do you know this man in any way whatsoever?

2 A No, sir.

3 MR. GOLDBERG: Thank you. Please answer
4 any of the defense's questions.

5 THE COURT: Yes, sir.

6 Cross Examination by Mr. Shealy:

7 Q Good afternoon, Ms. Monteith. How are---

8 A Hello.

9 Q ---you doing?

10 A I'm fine.

11 Q I'll try to be as brief as possible. We have
12 been talking a lot about the night in question. This
13 is October 29th of last year, right?

14 A Yes.

15 Q This night happened in the middle of a kind of
16 large scale renovation project in your home, correct?

17 A I wouldn't say renovation. It was a painting
18 job.

19 Q But it also included your floors and things
20 like that that happened previously, correct?

21 A Yes.

22 Q And I think you just testified that your
23 kitchen was painted prior to the exterior paint work?

24 A That's correct.

25 Q And Mr. Shuler helped with the kitchen

Regina Monteith-cross by Shealy

1 painting. You called it kind of a emergency
2 situation.

3 A Yes.

4 Q You wanted to get that done before your son
5 went away again, right?

6 A That's correct.

7 Q And you were here when Mr. Shuler testified as
8 well about he hired a subcontractor to do most of his
9 painting?

10 A Yes.

11 Q I believe his name is Mr. Gerald Boykin,
12 right?

13 A That's correct.

14 Q And Mr. Boykin had employees working for him
15 doing the painting?

16 A Yes.

17 Q Do you know all their names?

18 A I did at the time.

19 Q You don't know their names now?

20 A Sir, it's been over a year.

21 Q Yes, ma'am. I am just asking the questions
22 about what you know.

23 A No. I haven't seen of any them since they
24 stopped the paint job. And there is no reason for me
25 to remember their names.

Regina Monteith-cross by Shealy

- 1 Q Yes, ma'am. I'm just asking what you know.
- 2 A Okay.
- 3 Q In terms of about how many employees we're
- 4 working at the time of the incident, would it be fair
- 5 to say three to five?
- 6 A Yes.
- 7 Q Okay. And then previously, how many people
- 8 were involved in the kitchen work?
- 9 A There were two men who were sanding.
- 10 Q Uh-huh. (Affirmative.)
- 11 A But that was not part of Mr. Boykin's crew.
- 12 Q Okay.
- 13 A And I don't think that were more than 3 or 4.
- 14 But as I say, it was over a year.
- 15 Q Yes, ma'am. I understand it's hard to
- 16 remember everything. Now did Mr. Boykin, did his crew
- 17 do inside painting as well?
- 18 A Yes.
- 19 Q So Mr. Shuler had him do pretty much do all
- 20 the painting.
- 21 A Ed came back---
- 22 Q Okay.
- 23 A ---every day to see what they were doing and
- 24 to do special things.
- 25 Q There were trucks around?

Regina Monteith-cross by Shealy

- 1 A Yes.
- 2 Q Okay.
- 3 A At least one truck.
- 4 Q Uh-huh. (affirmative.)
- 5 A Often two or three.
- 6 Q Yes, ma'am.
- 7 A And usually with Ed Shuler's name on it.
- 8 J. E. Shuler.
- 9 Q Yes, ma'am.
- 10 A I mean there was no doubt that painting was
- 11 going on.
- 12 Q Oh, yes, ma'am. And they were bringing forth
- 13 paint, I guess, paint supplies, ladders and the like.
- 14 A Yes. And there was also a sign out front.
- 15 Q Probably, you know, he was advertising what he
- 16 is---
- 17 A Yes.
- 18 Q --- doing in terms of renovations?
- 19 A Yes.
- 20 Q A good way to promote business.
- 21 A Yes.
- 22 Q Especially does a good job?
- 23 A Yes.
- 24 Q Now I was asking Mr. Shuler this a little bit.
- 25 But in terms of your memory of this, even though it is

Regina Monteith-cross by Shealy

1 over a year ago, would you say that this whole project
2 took a month?

3 A Yes, it could have easily taken a month.

4 Q It couldn't have taken longer?

5 A Well if you include the kitchen as part of
6 that, yes, well over that.

7 Q Okay. So including the kitchen work which
8 would include the floors, the sanding and all that,
9 would you estimate how much that took as well?

10 A I would think that the kitchen job took in the
11 vicinity of two weeks. And I am estimating that. It
12 may have even taken longer than that, because my son
13 had to take everything down. But I am fairly certain
14 we started the kitchen work mid-August, and it had to
15 be finished by the end of August or the beginning of
16 September, because my son had to go back to school.

17 Q And was he actually doing work other than
18 taking things down? Was he doing any sanding or
19 replacing of the wood?

20 A My son?

21 Q Yes, ma'am.

22 A Oh, no. No. No.

23 Q But he was helping take things down.

24 A Yeah, I have one wall that must be 10 feet
25 high. The ceilings are really high. That's got a

Regina Monteith-cross by Shealy

1 couple of dozen blue and white plates on it. And then
2 another couple of dozen with pots on it. And then all
3 the hangers, you know, the brass hooks. There's just
4 a lot of stuff on the walls in our kitchen. And in
5 the pantry as well.

6 Q And after this day, October 29th, how much
7 more work was required to do in terms of finishing the
8 job? In terms of time.

9 A I am sorry, I really can't answer that
10 question. I did not look at my diary for last year.

11 Q Uh-huh. (Affirmative.)

12 A Nor did I consult my checkbook which would
13 have told me when I made the payments to Ed Shuler.
14 Because I didn't make the last payment until the job
15 was completely done.

16 Q Yes, ma'am. If you had an estimate, could you
17 tell me that?

18 A I would have to say it would have been at the
19 latest before, the week before Thanksgiving. Because
20 I normally go to New York for Thanksgiving since both
21 of my children are in New York. Or were in New York
22 at the time.

23 Q Now in terms of this night in question we are
24 all here for today itself, October 29th, you told the
25 Solicitor you think you were in bed by 3:00 a.m.?

Regina Monteith-cross by Shealy

1 A Uh-huh. (affirmative.)

2 Q Okay. And your house was lit?

3 A Yes.

4 Q And it's fairly a soundproof house in terms of
5 you not really hearing much noise from the street.

6 A That's correct.

7 Q Including a recent accident that happened
8 outside.

9 A That's correct.

10 Q Do you know what time you actually retired to
11 the upstairs portion of the house?

12 A Well, sometimes I stay up until one or two to
13 watch TV.

14 Q Okay.

15 A The CSI reruns I mentioned earlier.

16 Q Yes, ma'am.

17 A And then sometimes when I go up to bed, I
18 actually sit up and read for an hour.

19 Q All right.

20 A So again, you know, it has been over a year
21 since the incident happened. And so I don't have a
22 clear recollection. All I can speak to is my
23 patterns.

24 Q Correct.

25 A Going to bed late. Reading. I don't have any

Regina Monteith-cross by Shealy

1 obligation to get up early in the morning.

2 Q Right. Let me ask you this. Now you said you
3 usually keep your purse on the same hook in the
4 kitchen, right?

5 A Yes.

6 Q And that's fairly far away from the window
7 that we're talking about here.

8 A Yes.

9 Q Across the house, right?

10 A Yes.

11 Q Now the purse was actually found in the front
12 yard the next morning by Mr. Boykin, right?

13 A Yes.

14 Q And he approached you with, actually called
15 you and said I have got some strange stuff going on.

16 A Uh-huh. (Affirmative.)

17 Q And you came downstairs, and he had your
18 purse, right?

19 A That's correct.

20 Q And this was while exterior painting was going
21 on at that time at your house, right?

22 A I hadn't started that morning. They had just
23 arrived.

24 Q Hadn't started.

25 A No.

Regina Monteith-cross by Shealy

1 Q Was some prep. work going on?

2 A No.

3 Q Some scraping and some things---

4 A No. No.

5 Q No scrapings going at the time of this.

6 A No, they had just arrived.

7 Q I am talking about in general terms of the
8 long term project.

9 A Oh, I can't remember what they were doing at
10 the time.

11 Q Fair enough. Now usually when they are
12 working on your house, do they lock your windows after
13 they are done working on things?

14 A No. My windows are normally pinned. And they
15 were unpinned so that they could be painted. Do you
16 know what I mean by pinned?

17 Q Are you talking about the little locks at the
18 top?

19 A No. No. These are nails. The windows have
20 been drilled on either side of the lower sash going in
21 to the upper sash. And then nails about this long
22 have been pushed into them, as a device preventing the
23 window from being raised or lowered.

24 Q Okay.

25 A You know, it's a common safety device.

Regina Monteith-cross by Shealy

1 Q So you had no capability to open your windows
2 in the house at all?

3 A No, unless you remove the pins.

4 Q Okay.

5 A And those was done by someone who lived there
6 before I did.

7 Q Yes, ma'am.

8 A Prior to 1990.

9 Q Okay. So while this renovation or while this
10 painting work is going on, the pins were being removed
11 so they can access the windows.

12 A Right.

13 Q Typically during this painting would
14 Mr. Boykin put the pins back at night?

15 A No.

16 Q So you just had an un-secure house during this
17 period?

18 A Yes. Well that is the windows were not
19 secured.

20 Q Right. You do have an alarm at your house at
21 this time, right?

22 A Yes.

23 Q And you say you have never seen Mr. Brown
24 before in your life?

25 A No.

Regina Monteith-cross by Shealy

1 Q The night we are talking about here, the 29th
2 of October last year, you didn't see anybody that
3 night entering your house, or leaving your house,
4 right?

5 A No.

6 MR. SHEALY: Okay. I beg the Court's
7 indulgence. Nothing further.

8 THE COURT: Any redirect?

9 MR. GOLDBERG: I beg the Court's indulgence.
10 Nothing further, Judge.

11 THE COURT: Madam, you may step down. Ladies
12 and Gentlemen, I am going to have you to go to the
13 jury room for a short break. Do not discuss the case
14 while you are in the jury room.

15 A Thank you, sir.

16 THE COURT: We will take a 10-minute break.

17 (Whereupon, the following takes place outside
18 the presence of the jury.)

19 MR. GOLDBERG: Your Honor, the record, Mr.
20 Boykin, he has a conviction for forgery back in 1987.
21 He received probation. And in 1995, a couple of
22 convictions for fraudulent check less than \$500.

23 THE COURT: Who is that, the painter?

24 MR. GOLDBERG: Yes, sir. I don't know if the
25 Defense is seeking to bring this out or not.

Regina Monteith-cross by Shealy

1 MR. SHEALY: I don't think any of that is
2 eligible---

3 THE COURT: All right.

4 MR. SHEALY: ---under the rule.

5 THE COURT: All right.

6 (Latent prints and photographs marked State's
7 1 through 15 for id.)

8 THE COURT: Are you all ready for the jury?

9 MR. GOLDBERG: Yes, sir.

10 THE COURT: Let's bring them on.

11 (Whereupon, the following takes place within
12 the presence of the jury.)

13 THE COURT: Your next witness, please.

14 MR. GOLDBERG: Please the Court, the State
15 calls Star Medlock.

16 STAR MEDLOCK, after being duly sworn,
17 testified as follows:

18 THE CLERK: Have a seat on the witness stand,
19 and state your full name for the record.

20 A My name is Star Lynn Medlock.

21 Direct Examination by Mr. Goldberg:

22 Q Is it officer Medlock?

23 A Yes, sir.

24 Q Where are you employed?

25 A City Columbia Police Department.

Officer Medlock-direct by Goldberg

1 Q How long have you been employed there?

2 A Four years.

3 Q Can you describe to the jury your duties with
4 the Police Department?

5 A My duties as a Police Officer is to enforce
6 the laws, state mandated. My job is also to keep the
7 citizens as safe as I possibly can. I also do
8 somewhat basic, first person on the totem pole
9 investigation.

10 Q And when you say that, what do you mean?

11 A I'm the first officer on the scene. I
12 basically gather the information from everybody in the
13 party. And then do an Incident Report. Send it up to
14 investigators; crime scene. Anybody that needs to do
15 further investigations.

16 Q When you say investigations, you mean, like
17 detective? Would that be another word for that?

18 A Yes.

19 Q Let me take you back to October 29th 2007.
20 Were you with the department then?

21 A Yes, I was.

22 Q You were on patrol that night?

23 A Morning.

24 Q That morning.

25 A Yes, sir.

Officer Medlock-direct by Goldberg

1 Q Do you recall what your shift was?

2 A Yes, it was 6:30 a.m. to 6:30 p.m.

3 Q And did you get a call about an incident over
4 on ?

5 A Yes.

6 Q What was the nature of that call?

7 A It was in reference to a possible burglary at
8

9 Q It could have been : : : : ?

10 A

11 Q And do you recall about what time you got that
12 call?

13 A Approximately between 9:45 and 10 o'clock in
14 the morning.

15 Q Do you recall how far you were away from the
16 scene?

17 A I cannot recall how far I was from there.

18 Q How long, approximately how long did it take
19 you to get there?

20 A Anywhere from 5 to 10 minutes.

21 Q And when you arrived on the scene, what did
22 you do when you pulled up?

23 A I got out of the car and spoke to -- knocked
24 on the door and made contact with the victim, because
25 she would have called the police.

Officer Medlock-direct by Goldberg

1 Q Would that be Ms. Monteith here in court?

2 A Yes.

3 Q And what is your purpose in your initial
4 contact with the victim in a case such as this?

5 A We have to make sure that what she saying, I
6 have to investigate as far as I can. As far as, is it
7 a burglary. Is it not a burglary. Is she telling the
8 truth. Is she trying to pull a fast one. You know,
9 it's my decision on whether or not with all the
10 evidence around the area after talking to her.

11 Q And then you're also trying to gather just
12 basic information about what happened, isn't that
13 correct?

14 A Yes.

15 Q And in this case, like in the day,
16 October 29th 2007, right?

17 A Uh-huh. (affirmative.)

18 Q And the location, the victim's name, date, all
19 that sort of stuff. Correct?

20 A Yes.

21 Q And can you describe for us the information
22 that you learned about what happened there?

23 A As I pulled on the scene and proceeded to talk
24 to the victim who sitting in that bench back there,
25 she stated to me that there was, her purse was sitting

Officer Medlock-direct by Goldberg

1 on a kitchen table inside her residence. And that her
2 purse was gone. And her purse was out in the yard.
3 She never touched her purse, but it was out in the
4 yard. And that somebody would have had to put a
5 ladder up to the front of -- to the rear residence
6 window. Open the window, because she does keep her
7 windows unlocked. Climb through her window. Took her
8 purse. Took her wallet out of her purse. Threw her
9 purse in the yard where we found it. And shut the
10 window. Put the ladder back and left.

11 Q And you were talking about gathering basic
12 information. It is your job to then proceed with the
13 investigation through completion, or do you then turn
14 it over to investigators?

15 A After I do my incident report, I turn it over
16 to investigators. I am no longer a part of the case.

17 Q And in this case, did you notify other
18 officers to come out to the scene?

19 A Yeah, I notified the crime scene to do the
20 fingerprinting of the scene.

21 Q So that would be---

22 A As well as the prints.

23 Q That would be their expertise?

24 A Yes.

25 MR. GOLDBERG: I beg the Court's indulgence.

Officer Medlock-direct by Goldberg

1 Thank you, that's all I have.

2 THE COURT: Cross examination?

3 Mr. SHEALY: Yes, Your Honor, if it Please the
4 Court.

5 Cross Examination by Mr. Shealy:

6 Q Good afternoon. Officer Medlock, you said you
7 have been with the City of Columbia four years?

8 A Yes.

9 Q Okay. And they give you some previous
10 training as part of being an officer with the City of
11 Columbia, right?

12 A Yes.

13 Q Train you on how to use your weapon.

14 A Uh-huh. (affirmative.)

15 Q How to fill out an Incident Report like you
16 did in this case?

17 A Yes.

18 Q Every little box has a meaning, correct?

19 A Uh-huh. (Affirmative.)

20 Q So that way you can document information---

21 A Uh-huh. (Affirmative.)

22 Q ---so we know how clear and we know what's
23 going on, right?

24 A Uh-huh. (affirmative.)

25 THE COURT: Officer, give complete answers.

Officer Medlock-cross by Shealy

1 A Yes.

2 Q Now so you said on patrol, I think you said a
3 shift was from 6:00 a.m. to 6:00 p.m. about?

4 A 6:30 a.m. to 6:30 p.m.

5 Q You know, just to get out there, you don't
6 have any personal knowledge of seeing anybody running
7 from the scene or nothing like that in this case,
8 right?

9 A No, I didn't.

10 Q And pretty much what you put in your Incident
11 Report is what Ms. Monteith told you?

12 A Yes.

13 Q Right. Which was basically, you know, what
14 she gleamed from the scene?

15 A Yes.

16 Q And her purse was found in the front yard?

17 A Yes.

18 Q And there was a ladder she says against the
19 wall.

20 A Yes.

21 Q And so you didn't take any pictures or
22 anything, right?

23 A No. Not of this, no.

24 Q Did you notify Officer Bradley to come out and
25 do all that stuff?

Officer Medlock-cross by Shealy

1 A Yes.

2 Q Okay. And you said the window was shut when
3 you got there, right?

4 A Yes.

5 Q And she had -- you said her purse was on the
6 window -- I mean, her purse was on the table and she
7 told you it was taken from there, right?

8 A Yes.

9 Q By the time you got there, she had her purse
10 back, right?

11 A Yes.

12 MR. SHEALY: I beg the court's indulgence.

13 Nothing further.

14 THE COURT: Anything further?

15 MR. GOLDBERG: Just briefly.

16 Redirect Examination by Mr. Goldberg

17 Q While you were at the crime scene, did you
18 touch anything? Any windows?

19 A No.

20 Q Any ladders?

21 A No.

22 Q Did you alter anything in any way?

23 A No.

24 Q Did you move anything at all?

25 A No.

Officer Medlock-recross by Goldberg

1 THE COURT: Anything further?

2 MR. SHEALY: No, Your Honor.

3 THE COURT: You may step down.

4 MR. GOLDBERG: May this witness be excused?

5 MR. SHEALY: No objection.

6 THE COURT: You may be excused. Next witness.

7 MR. GOLDBERG: The State calls Gerald Boykin.

8 GERALD BOYKIN, after being duly sworn,

9 testified as follows:

10 THE CLERK: Have a seat on the witness stand,

11 and state your full name for the record.

12 Direct Examination by Mr. Goldberg:

13 Q If you would just state your name for the
14 record.

15 A Gerald Boykin.

16 Q Thank you, Mr. Boykin. Mr. Boykin, what kind
17 of work do you do, sir?

18 A I'm a painter/contractor.

19 Q How long have you been in that business?

20 A About 20 years.

21 Q 20 years? Where is your business based out
22 of?

23 A My home.

24 Q Is that here in Columbia?

25 A Yes, sir.

Gerald Boykin-direct by Goldberg

1 Q And do you also have some work that you do
2 with Ed Shuler?

3 A Yes, sir.

4 Q Have you guys done a lot of work together?

5 A Yes, sir.

6 Q Did Mr. Shuler hire you to do some work on
7 Regina Monteith's house?

8 A Yes, sir.

9 Q And that would have been back in, I guess the
10 last time would have been the late summer of 2007, is
11 that about right?

12 A Yes.

13 Q And that work, was that for the kitchen?

14 A Yes.

15 Q And when you get hired to do this kind of job,
16 do you have other employees helping you?

17 A I have, right now I have about four employees.

18 Q Okay. And those fellows came and helped you
19 do the kitchen, right?

20 A Yes.

21 Q Was that job completed?

22 A Yes.

23 Q At some point later did Mr. Shuler contact you
24 about working on the exterior of the house.

25 A Yes, sir.

Gerald Boykin-direct by Goldberg

1 Q What was your job going to be there?

2 A Do the paint. Paint the entire outside of the
3 house.

4 Q It's a brick house, correct?

5 A Yeah, that's all trim on the house. The
6 windows, the columns.

7 Q And these windows, they have the wood frames
8 around them?

9 A Yes.

10 Q And again, when you started to work on that,
11 work on the inside of the house and had been finished,
12 correct?

13 A Yes.

14 Q And how many guys did you take with you to
15 help out on this job.

16 A I had about six guys on that job?.

17 Q Had they -- did you know these guys pretty
18 well? Had they done work for you before or?

19 A Yeah.

20 Q How does that work?

21 A These guys had been -- on that job, they have
22 been with me anywhere about 15 years on that job. You
23 know, worked for me at that time. One has been about
24 8 years, 7 years, 4 years. So, you know...

25 Q I want to take you to the morning of October

Gerald Boykin-direct by Goldberg

1 29th 2007.

2 A Uh-huh. (Affirmative.)

3 Q Well let's back up. That was a Monday, is
4 that right?

5 A It was a Monday.

6 Q Had you done work at the house over the
7 weekend?

8 A No, sir.

9 Q When was the last time you guys had been there
10 working?

11 A That Friday.

12 Q And when you finished up on Friday, what kind
13 of condition was the house in?

14 A It was in pretty fair condition. We locked it
15 up, and cleaned it up. And....

16 Q When you say locked it up and cleaned it up,
17 can you describe what that means?

18 A You know, I always got in touch with the owner
19 of the house, Ms. Regina. And let her know that we
20 were leaving so she could make sure everything was
21 locked. And that was about it.

22 Q As you were doing work on her house in a
23 situation like this, would you have any random doors
24 or windows open that you weren't working on?

25 A No.

Gerald Boykin-direct by Goldberg

1 Q If you are doing work on the exterior of the
2 house, that is.

3 A No.

4 Q And when you left on that Friday, what did you
5 do with all the ladders that you all were using to do
6 your painting?

7 A We locked them up.

8 Q Where did you put them?

9 A They was over by the tree away from her house.

10 Q Away from the house?

11 A Uh-huh. (Affirmative.)

12 Q To your knowledge, were any of the windows
13 open?

14 A I couldn't to my knowledge at the time, I
15 couldn't really say.

16 Q Over the course of your time doing this kind
17 of work, normally if you completed work on a window
18 like, would you leave the window open or closed?

19 A Closed.

20 Q So when you got there that Monday, what did
21 you find when you walked up?

22 A That Monday when I drove up in her driveway,
23 you know, she has really a drive on both ways of the
24 house. So, you know, when I drove around on the left
25 side of the house, I looked to my left and I saw the

Gerald Boykin-direct by Goldberg

1 pocketbook so I stopped the van. And I picked it up.
2 And I opened and looked in there and a piece of paper
3 said, Regina on it. And I said, "Dog," you know, "She
4 must have left her pocketbook outside." Like that.
5 So I backed up and I drove around the other way of the
6 house. As I was entering the house, go around the
7 house, I see a ladder prompted up against the house.

8 Q You saw a ladder prompted up against the
9 house?

10 A Uh-huh. (affirmative.)

11 Q Okay.

12 A In front of the window. I said, I told my
13 guys, "Man, you know, I said, "Somebody must have
14 broke in the house." So I called her, I asked her,
15 "Ms. Regina, do you know your window is open?" She
16 said, "No." I said, "Are you all right." She said,
17 "Yes." And she came downstairs and she said, "Oh, my
18 God." And so, you know, took it from there. She
19 called the police.

20 Q And you said the ladder was up against the
21 house?

22 A Uh-huh. (Affirmative.)

23 Q Underneath the window.

24 A Yes.

25 Q And was the window open or closed?

Gerald Boykin-direct by Goldberg

1 A Open.

2 Q The gentleman sitting here at the table, do
3 you recognize him?

4 A No.

5 Q You ever seen him before in your life?

6 A No.

7 Q Has he ever done any work for you before?

8 A No.

9 Q How long did you say you have you been in this
10 business?

11 A 20 years.

12 Q Now in your experience in this business, isn't
13 it fair to say that sometimes while you all are doing
14 a job, that people will come up to you and your
15 workers and ask about, if they get any work from you?

16 A Oh, yeah.

17 Q Does that happen pretty often?

18 A It happens. You know, it's depends on what
19 area you are working in.

20 Q Now one of your guys -- what would one of your
21 guys do if somebody came up to them and said that?

22 A They would say, "Gerald, you know, a guy came
23 by looking for some work. And we told him we didn't
24 have no work."

25 Q They would come to you.

Gerald Boykin-direct by Goldberg

1 A Yeah, they would come to me.

2 Q And they would tell you about it?

3 A Oh, yes.

4 Q Because they work for you?

5 A Yes.

6 Q Now while you were working doing this job on
7 Rd. at Ms. Monteith's house, did anybody
8 come up and ask about doing any kind of work on this
9 house?

10 A No.

11 MR. GOLDBERG: I beg the court's indulgence.

12 Can I approach the witness, Your Honor?

13 THE COURT: Yes.

14 Q Mr. Boykin, I want to show you this picture
15 that has been marked State's Exhibit No. 4. Can you
16 take a look at that for me just for a second?

17 A Uh-huh. (Affirmative.)

18 Q And also I want to show you State's Exhibit
19 No. 3, and have you look at that as well. Do you
20 recognize what's in those pictures? Or what that is a
21 picture of?

22 A Yes.

23 Q Is that Ms. Monteith's house?

24 A Yes.

25 Q Okay. And do those pictures fairly and

Gerald Boykin-direct by Goldberg

1 accurately show how her house looked on that morning
2 when you found her purse?

3 A Yes.

4 MR. GOLDBERG: Your Honor, at this time, we
5 would offer State's 3 and 4 admitted into evidence.

6 Excuse me for just one moment.

7 MR. SHEALY: No objection.

8 THE COURT: They're admitted.

9 (Photographs marked State's 3 and 4 admitted
10 in to evidence.)

11 Q In each of these photographs can you tell me
12 if that's how it appeared when you saw it that
13 morning?

14 A Yes.

15 Q Is that the ladder you saw up against the
16 house?

17 A Uh-huh. (Affirmative.)

18 Q And a window that was open?

19 A Uh-huh. (Affirmative.)

20 Q And again, is that in the front or the back of
21 the house?

22 A Back.

23 MR. GOLDBERG: That's all I have. Thank you.

24 THE COURT: Cross.

25 MR. SHEALY: Thank you. May it please the

Gerald Boykin-direct by Goldberg

1 court.

2 Cross Examination by Mr. Shealy

3 Q How are you doing, Mr. Boykin?

4 A Fine. How are you doing, sir?

5 Q Not too bad. You have been a painter for a
6 long time, 20 years.

7 A Yes, sir.

8 Q And obviously we're talking about this
9 particular job that Mr. Shuler had you subcontract out
10 for?

11 A Yes.

12 Q To work for Ms. Monteith right there.

13 A Yes, sir.

14 Q And I think you said at the time you had about
15 six people working for you?

16 A About six. Right at about six.

17 Q And these are guys that you knew really well.

18 A Oh, yeah.

19 Q One guy worked for you for 15 years.

20 A Yeah.

21 Q A couple worked for 6 or 7 years.

22 A Yeah.

23 Q Multiple years you knew these guys?

24 A I knew them, yeah.

25 Q And you are their boss, right?

Gerald Boykin-cross by Shealy

- 1 A That's right.
- 2 Q They get their money by working for you.
- 3 A That's right.
- 4 Q And just in terms of chronology of this whole
5 case, you all did the inside kitchen, first.
- 6 A Yes.
- 7 Q Did all the paint work?
- 8 A Yes.
- 9 Q Did you all do the floors, or was that
10 somebody else?
- 11 A That was somebody else's job.
- 12 Q That was someone Mr. Shuler had do that?
- 13 A Yeah. You know, like, the only thing we did
14 was like to paint in there.
- 15 Q And after you did the inside painting, then
16 you proceeded to the outside painting?
- 17 A Yes.
- 18 Q Which consisted of all the exterior frames.
- 19 A Yeah.
- 20 Q The windows.
- 21 A Uh-huh. (Affirmative.)
- 22 Q The doors.
- 23 A Yeah.
- 24 Q The overhangs---
- 25 A Uh-huh. (Affirmative.)

Gerald Boykin-cross by Shealy

1 Q ---in the front of the door. And it's a two
2 story house.

3 A Yeah.

4 Q It was a pretty size little job?

5 A Yeah.

6 Q And is it fair to say all you were making
7 decent money from this job?

8 A Pretty decent.

9 Q Okay. I mean you get your percentage. And
10 you give whatever you are paying to -- the guys that
11 work for you?

12 A Yes.

13 Q The guys that you have known for a while.

14 A Yeah.

15 Q Okay. Now you said you all didn't work, this
16 incident that we're talking about allegedly happened
17 on a Monday, right?

18 A Uh-huh. (Affirmative.)

19 Q That's when you came up for work and you saw
20 the purse in the yard.

21 A Yeah, I can't say it happened that Monday.
22 But that Monday morning when I came there, that's what
23 I found.

24 Q That's when you found the purse.

25 A Uh-huh. (Affirmative.)

Gerald Boykin-cross by Shealy

1 Q And none of your crew had been there that
2 weekend, right?

3 A No.

4 Q You all worked the Friday before that, right?

5 A Yeah, worked that Friday.

6 Q So this is the 29th. We're talking the 26th
7 is when you all worked of October?

8 A Yeah.

9 Q And how long had y'all been working on the
10 outside part this time?

11 A We had been there for about a couple of weeks.

12 Q A couple of weeks?

13 A Uh-huh. (affirmative.)

14 Q Now you talked about you all typically leave
15 the windows open when you're done for the day, right?

16 A We try not to leave the windows open.

17 Q I mean you've got a single woman. That's not
18 really a safe thing, is it?

19 A No.

20 Q Okay. Do you lock them personally?

21 A Yeah. I go and lock them or I tell her to
22 lock them.

23 Q Okay. Are you on site every second of the
24 day that your guys are working, or do you just kind of
25 supervise them come and go?

Gerald Boykin-cross by Shealy

1 A No, I am there all the time.

2 Q There all the time. You're actually painting
3 too, right?

4 A Yeah.

5 Q Now the locks on these windows, what kind of
6 locks are we talking about? Are we talking about
7 locks that latch like this?

8 A It's got a lock -- yeah.

9 Q So it has locks that go like this?

10 A Yeah, on the side and they turn.

11 Q And that's when you lock it from the inside?

12 A Yes, sir.

13 Q And so you come in at the end of the day and
14 lock the window from the inside like this?

15 A Uh-huh. (Affirmative.)

16 Q And so you were sure at the end of the day,
17 this house is secure.

18 A Yeah, we try to be.

19 Q So Friday when your crew left, the window you
20 saw open would have been locked by your crew.

21 A It should have been locked.

22 Q Okay. And you talked about when you've got a
23 lot of equipment, you've got paint obviously, right?

24 A Uh-huh. (affirmative.)

25 Q You've got brushes.

Gerald Boykin-cross by Shealy

- 1 A Uh-huh. (Affirmative.)
- 2 Q And scrapers.
- 3 A Yeah.
- 4 Q Rollers.
- 5 A No, we did the job with the---
- 6 Q You come in a truck though, right?
- 7 A That's right.
- 8 Q Sometimes two trucks?
- 9 A No, just one.
- 10 Q Just one truck.
- 11 A Just one.
- 12 Q Now at the you end of the job you talked about
- 13 locking up the equipment, right?
- 14 A Uh-huh. (affirmative.)
- 15 Q And setting it aside away so it will not
- 16 interfere with her life, but also not pose a safety
- 17 problem, right?
- 18 A Uh-huh. (affirmative.)
- 19 Q And you talked about locking up the stuff.
- 20 Are you talking about locking it up with a chain or
- 21 locking it up with what? What do you mean by locking
- 22 it up?
- 23 A With a chain.
- 24 Q So your ladders are chain locked.
- 25 A Yeah.

Gerald Boykin-cross by Shealy

1 Q So someone from your crew, you or someone else
2 would have access to unlocking that, right?

3 A Yeah.

4 Q So Friday when you left on the 26th,
5 everything was locked up?

6 A Everything to my knowledge was locked up.

7 Q Okay. But when you come back that Monday you
8 see a ladder out the window?

9 A Uh-huh. (Affirmative.)

10 Q Now you told the Solicitor that it was pretty
11 common when you're working and you're painting,
12 sometimes people come up and say, hey, can I do some
13 work, right?

14 A Oh, yeah.

15 Q And this is something that happens to
16 painters. A lot of people paint?

17 A Uh-huh. (Affirmative.)

18 Q Now when you got your set crew on this job,
19 right?

20 A Oh, yeah.

21 Q These are guys you have known for such a long
22 time.

23 A Oh, yeah.

24 Q And you hope to earn a decent pay for this
25 large, nice house, right?

Gerald Boykin-cross by Shealy

1 A Yes.

2 Q So if someone comes up to them asking for
3 work, they're not going to tell you, because they
4 don't -- the slots are filled, right?

5 A Yeah, but, you know, it wasn't like, you know,
6 every job we've been on someone came up. They always
7 let me know.

8 Q So every time someone comes up off the street
9 looking for work, your crew, who you have been working
10 with for 15, 7, 8 years who is depending on you for
11 painting, asked you if you will hire somebody who just
12 came off the street.

13 A Yes.

14 Q Every time they do that.

15 A Yeah.

16 MR. SHEALY: I beg the Court's indulgence.

17 Nothing further, judge.

18 MR. GOLDBERG: Please the court.

19 Redirect Examination by Mr. Goldberg

20 Q This work being done on the house, it wasn't
21 an open construction site or anything like that, was
22 it?

23 A No.

24 Q It wasn't anybody just able to come and go as
25 they please?

Gerald Boykin-cross by Shealy

1 A No.

2 Q The front door wasn't open, was it?

3 A No.

4 Q And regards to the window, he asked you about
5 whether the window was locked. And you said I believe
6 it should have been locked.

7 A Yeah.

8 Q And I believe, isn't that because you said
9 earlier that sometimes the homeowner actually locks
10 the window?

11 A Yeah. We ask her, you know, would she will
12 lock them up. And she will lock them up.

13 Q So you don't always do that.

14 A We don't always do it inside. You know, if
15 she is inside, we ask her to lock them up. If she is
16 around where we can see her, we ask her could she lock
17 them up.

18 Q But on this particular occasion, you did at
19 least close the window, didn't you?

20 A Yeah, we closed the window.

21 Q And when you arrived on Monday morning.

22 A The window was open.

23 Q The ladder that was up against the window.
24 The one in the picture, was that your ladder?

25 A That's my ladder.

Gerald Boykin-cross by Shealy

1 MR. GOLDBERG: Thank you.

2 THE COURT: Anything further?

3 MR. SHEALY: Nothing further, Judge.

4 THE COURT: You may step down.

5 MR. GOLDBERG: Can this witness be excused?

6 MR. SHEALY: No objection from the defense.

7 THE COURT: The witness can be excused.

8 MR. GOLDBERG: The State calls Officer

9 Bradley.

10 Officer Gerald Bradley, Being first
11 duly sworn, testified as follows:

12 THE CLERK: Have a seat on the witness stand
13 and state your full name for the record.

14 A My name is James M. Bradley, III.

15 Direct Examination by Mr. Cathcart:

16 Q Where are you employed?

17 A I'm employed with the Columbia City Police
18 Department.

19 Q And how long have you been there?

20 A I've been there for seven years.

21 Q And what do you do there?

22 A Presently I'm in the Crime Scene Unit.

23 Q Okay. And can you please describe to the jury
24 what you do as Crime Scene investigator?

25 A Yes, sir. I go to crime scenes and collect

Officer Bradley-direct by Cathcart

1 evidence. Take photographs and analyze evidence.

2 Q Would it be safe to say you kind of do like

3 CSI, Crime---

4 A Yes, sir.

5 Q ---Scene Investigation,---

6 A Yes, sir.

7 Q ---correct? And were you called to this house

8 at back on October 29th, or October

9 30th, of last year?

10 A Yes.

11 Q In reference to a what?

12 A In reference to a burglary.

13 Q And what did you find when you arrived there?

14 A When I arrived there, I met Officer Medlock.

15 And she showed me the area where the house was broken

16 into.

17 Q Okay. And did you observe that area?

18 A Yes, sir.

19 Q And let me show you what has been entered into

20 evidence as State's Exhibit No. 4 and State's Exhibit

21 No. 3. Do you recognize these?

22 A Yes.

23 Q And who took these pictures?

24 A I did.

25 Q And can you tell the jury what these are

Officer Bradley-direct by Cathcart

1 pictures of?

2 A This is the residence of the victim. And this
3 is the back of the residence. And the back yard area.

4 Q And is on the front of the
5 residence?

6 A Yes, sir.

7 Q Is there any public access to the back of the
8 area without going through the yard of the house?

9 A No, sir.

10 Q Okay.

11 A This is a close shot of the area where I saw
12 ladder up on to a window. An open window. This is
13 also the rear of the residence.

14 Q In fact, if you look on State's Exhibit No. 3,
15 can you see that ladder as well in there?

16 A Oh, yes, sir.

17 MR. CATHCART: Your Honor, may I pass State's
18 Exhibit No. 3 and 4 to the jury?

19 THE COURT: Yes.

20 MR. CATHCART: If you all will pass those
21 around.

22 Q I am going to try to run through these fairly
23 quick, because there are a bunch of photographs. All
24 these photographs, you took a bunch of photographs at
25 the crime scene, correct?

Officer Bradley-direct by Cathcart

1 A Yes, sir.

2 Q I am going to get you to take a look at
3 State's Exhibit No. 2. And could you please tell the
4 jury what that is a picture of?

5 A Officer---

6 MR. CATHCART: Don't show it to the jury as of
7 yet. I'm sorry. Just describe what it is.

8 A Also the residence of the victim.

9 MR. CATHCART: Your Honor, at this time, the
10 State seeks to introduce State's Exhibit No. 2 into
11 evidence, as has already been shown to counsel.

12 THE COURT: What says the defense?

13 MR. SHEALY: No objection.

14 THE COURT: Admitted without objection.

15 (Photograph marked State's Exhibit No. 2 into
16 evidence.)

17 MR. CATHCART: May I publish these to the jury
18 as I go through them?

19 THE COURT: You may.

20 Q And that is the front of the residence?

21 A Yes, sir.

22 Q Let me get you to take a look at State's
23 Exhibit No. 5. Can you describe to the jury, first of
24 all, can you describe what that is?

25 A That's the open window from the rear of the

Officer Bradley-direct by Cathcart

1 residence.

2 Q Is that from the picture taken from the
3 outside or the inside of the residence?

4 A From the outside.

5 MR. CATHCART: Again the State seeks to
6 introduce State's Exhibit No. 5.

7 MR. SHEALY: No objection.

8 THE COURT: Admitted without objection. You'
9 may publish it.

10 (photograph marked State's No. 5 into
11 evidence.)

12 Q Let me show you what's been marked as State's
13 Exhibit No. 7. Do you recognize that?

14 A Yes, sir.

15 Q What is that?

16 A That is the same open window from the inside
17 of the residence.

18 Q When you found out that this was the point of
19 entry, or did you take it as the point of entry?

20 A Yes.

21 MR. CATHCART: State seeks to introduce
22 State's Exhibit No. 7.

23 MR. SHEALY: No objection.

24 THE COURT: Admitted.

25 MR. CATHCART: Thank you.

Officer Bradley-direct by Cathcart

1 MR. SHEALY: We don't have any objection to
2 all of the ones he has on the table there. If he
3 wants to read off the exhibit numbers.

4 MR. CATHCART: No. 15.

5 REPORTER: 1 through 15.

6 THE COURT: They're all admitted.

7 MR. CATHCART: Thank Your Honor.

8 (Photographs marked 2 through 15 admitted into
9 evidence.)

10 Q When you determined the point of entry, what
11 at that point did you do?

12 A Of course, first hand, we take photographs.
13 And then afterwards, I start processing the area for
14 latent prints. Meaning, I look for fingerprints.

15 Q How do you go about looking for fingerprints?
16 What do you do?

17 A What I do is, I use fingerprint powder. Also
18 a brush. And I use that powder to go over the
19 surface, to see if I can bring from an invisible print
20 to a visible print, where I make eye contact.

21 Q Are you able to determine who that print
22 belongs to just at that point?

23 A No, sir.

24 Q Basically you're just looking to find
25 something that appears to be a fingerprint, correct?

Officer Bradley-direct by Cathcart

1 A Yes, sir.

2 Q And did you do that at this point of entry?

3 A Yes, sir.

4 Q And did you do that on the outside or the
5 inside of the window?

6 A I did it on both sides, the outside as well as
7 the inside.

8 Q And did you do it on the ladder that was below
9 the window?

10 A Yes, sir.

11 Q And did you do it on the purse that was found
12 in the front yard?

13 A No, sir. That surface a fingerprint powder,
14 that's a pretty rough surface. I wouldn't be able
15 to---

16 Q That's State's Exhibit No. 15. Is that the
17 purse we're talking about?

18 A Yes, sir.

19 Q And that was un -- you can't really use a
20 fingerprint powder on that to find a print?

21 A No, sir.

22 Q Because the texture of the purse?

23 A That is correct.

24 Q But you did indicate that you did on the
25 ladder?

Officer Bradley-direct by Cathcart

1 A Yes, sir.

2 Q The inside of the window.

3 A That is correct.

4 Q Did you try on the outside of the window?

5 A That is correct.

6 Q And were you able to find any prints?

7 A Yes, I did.

8 Q Let me show you the rest of these photographs.

9 Let me show you what has been marked State's Exhibit
10 No. 6. Can you tell me what that is?

11 A Yes, sir. That is a latent print from the
12 inside window. Same window that was found at the
13 bottom.

14 Q That's, if we're talking about a square
15 window. This is the bottom sash of the window, and
16 the top sash. And the window was open and it was ajar
17 at this time, correct?

18 A Yes, sir.

19 Q And that fingerprint on State's Exhibit No. 5,
20 excuse me, 6, where was it around this?

21 MR. CATHCART: May the witness step down, Your
22 Honor?

23 THE COURT: He may.

24 MR. CATHCART: You may use my marker.

25 (Whereupon, the witness steps down from the

Officer Bradley-direct by Cathcart

1 witness stand.)

2 A This is the inside of the window from the
3 inside of the room.

4 Q As we're looking outside?

5 A Sir?

6 Q As we're looking outside the window?

7 A Yes, sir. The fingerprint was found in this
8 area.

9 Q Okay. And how was it situated on that window?

10 A By looking at this frame, the finger, the
11 length of the finger of the individual sort of has a
12 slant position.

13 Q Stay there for a second, please, sir. I show
14 you what has been marked as State's Exhibit No. 9 and
15 8.

16 A Once again, this is from the inside of the
17 window. This is a fingerprint that was developed by
18 me. Fingers going in the upward position.

19 Q Kind of like this, as my fingers are on here?

20 A Yes, sir.

21 Q So inside the sash, fingers like that?

22 A Yes, sir.

23 Q As if someone is pulling up a window.

24 A Right.

25 Q Okay. Again, State's Exhibit No. 8.

Officer Bradley-direct by Cathcart

1 A The same thing. I developed these
2 fingerprints from the inside of the window again.
3 Like this on one. And this being developed from the
4 outside to the inside.

5 Q And again, 10 and 11.

6 A Once again, this is at the base of the window.
7 And this fingerprint is in an upward position like
8 someone was lifting it. The same thing in this one
9 also.

10 Q And that would be 10 and 11. Let me show you
11 again, State's Exhibit no. 12. Can you please
12 describe to the jury what that is?

13 A This is the same window from the inside of the
14 residence, which was the living room area. I
15 developed some fingerprints from the side of the
16 window framing. As you can see, this is the window
17 here. And this is more like the cord on the side of
18 the window. And that's where I developed the prints.

19 Q Okay. That's State's Exhibit No. 12. State's
20 Exhibit No. 13 and 14, are these just closeups of
21 these prints?

22 A Yes, sir. Once again, these are the same
23 prints. If you will look at right now, I just took a
24 closer shot of these prints. And this is once again
25 the outside and the wood floor area of the window

Officer Bradley-direct by Cathcart

1 frame. If I was standing in front of the window, it
2 would be on my right side of the window. These are
3 the same prints.

4 Q If you could, just go ahead and sit back down,
5 sir.

6 (Whereupon, the witness resumes the witness stand.)

7 Q Now when you use the powder and develop
8 fingerprints, what do you do at that time? Just the
9 photograph is all you do, or what else do you do?

10 A The next step is to lift the prints. And
11 what I do is, we have lifting tape. And we also have
12 these lifting cards. White in color. One side is
13 shiny. The other side, we have to fill out on the
14 information on the card, that's as far as, the victim.
15 The address, where it happened at, the case number,
16 the date of the incident. And also the location where
17 you got the latent print from.

18 Q And did you do that in this case?

19 A Yes, sir.

20 Q On each of the prints that you just took
21 photographs of?

22 A That is correct.

23 MR. SHEALY: No objection to it's 1-a through
24 f. 1-a, b, c, d, e. No objection.

25 THE COURT: They're admitted.

Officer Bradley-direct by Cathcart

1 (latent prints marked 1a-1-f admitted into
2 evidence.)

3 Q Let me show you what's been marked, 1-a 1-b,
4 1-c, 1-d, 1-e. And I'm sorry, 1-f. Do you recognize
5 these?

6 A Yes.

7 Q Could you please describe to the jury what
8 they are, and again, how you filled out the back of
9 it?

10 A Once again, these are the prints that I
11 located at that window from the inside of the
12 residence. And once again, I lifted them from off
13 that surface. And I placed it on this card here.
14 Afterwards I fill out this information on the back.
15 Like the name of the victim. The date of the
16 incident. The case number, which is the case of that
17 is assigned to this burglary. The victim's name. And
18 also I draw a diagram of that location where I got the
19 fingerprint from.

20 Q So looking at State's Exhibit No. 1-a, you
21 drew a diagram on the back of it.

22 A Yes, sir.

23 Q Pointing out, this figure at 1-a was found at
24 the side of this other window, correct?

25 A That's correct.

Officer Bradley-direct by Cathcart

1 Q Okay. And State's Exhibit No. 1-e, you then
2 drew a diagram of it, saying that that picture was
3 found right here---

4 A Yes, sir.

5 Q ---on the bottom of the window.

6 A Right.

7 Q State's Exhibit 1-f, again found at the bottom
8 of the window frame, correct?

9 A Yes, sir.

10 Q State's Exhibit No. 1-d a little further off
11 to the right on the window frame, correct?

12 A Yes, sir.

13 Q And 1-c again, a little bit further down to
14 the right of the window frame, is that correct?

15 A That's exact.

16 Q And finally, 1-b again off to the side of the
17 window, is that correct?

18 A Yes, sir.

19 Q After you pull these prints and you put them
20 in the card, on the card, and identify where they
21 were found, what do you do next?

22 A After I cleared the scene, I went back to
23 headquarters. And shortly after master Patrol Officer
24 Pete Currie, who also is assigned to the crime scene
25 unit, I personally gave the fingerprints to him to

Officer Bradley-direct by Cathcart

1 analyze.

2 Q And is he the one that does the analysis of
3 it?

4 A Yes, sir.

5 Q Do you know how long Investigator Currie has
6 been with the Columbia Police Department?

7 A Over 20 years.

8 Q And he's kind of a guru there on fingerprints?

9 A Yes, sir.

10 MR. CATHCART: I beg the court's indulgence.
11 Please answer any questions of defense counsel.

12 MR. LEDDY: Thank you, sir.

13 Cross Examination by Mr. Leddy:

14 Q Good afternoon, officer. So First of all,
15 when you arrive at a crime scene, the most important
16 thing to do is to secure it right away, right?

17 A Yes, sir.

18 Q Okay. So you did that in this case, right?

19 A I was not that first officer there.

20 Q Okay. So you got called after the first
21 responder?

22 A Yes, sir.

23 Q After they had secured the scene.

24 A Yes, sir.

25 Q And were you informed that the scene as

Officer Bradley-cross by Leddy

1 photographed, and the pictures that are making their
2 way through the jury now, is as it was found?

3 A It was exactly what I saw. And that is
4 exactly what I took photographs of.

5 Q Okay. I beg the court's indulgence. Just
6 okay, so looking at State's Exhibit 12, you can take a
7 look at this for me.

8 A Uh-huh. (Affirmative.) yes, sir.

9 Q That window is in the position that it was in
10 when you arrived?

11 A Yes, sir.

12 Q Okay. And you didn't move the window?

13 A I probably had at one point---

14 Q Okay.

15 A ---while I was processing; yes, sir.

16 Q So you're not sure then if that is actually
17 the level the window was at when you arrived?

18 A The first -- the one on the first picture,
19 that's the original position.

20 Q Okay. And what would be the purpose of
21 moving it? I am just curious.

22 A Sometimes I have to, when I am processing, I
23 have to reposition things to get to it.

24 Q Okay. Now you testified that on the bottom of
25 the sash, you testified it would be consistent with

Officer Bradley-cross by Leddy

1 somebody's hand pulling it up, right?

2 A Yes, sir.

3 Q Now you're aware that when people are painting
4 around windows and such, that the windows are
5 oftentimes open, right?

6 A That is correct.

7 Q And you would agree that this particular
8 window is not high off the ground as to make it
9 unreachable without a ladder, right?

10 A The window was high off the ground. I
11 couldn't get to it. It was, I'm 6 feet tall, and It
12 was probably a little higher than me.

13 Q Okay. So how high would you estimate?

14 A Probably about 8 feet.

15 Q The window itself?

16 A Yes, sir.

17 Q You testified that you tried to get a print
18 off the ladder, right?

19 A That's correct.

20 Q So now this is one of those aluminum ladders,
21 that I think everybody is familiar with. It's got
22 ridges in the metal, right?

23 A That is correct.

24 Q So that makes it difficult to get a print off
25 of, right?

Officer Bradley-cross by Leddy

1 A It's made out of metal, and that is a good
2 surface to try to get a print off of.

3 Q So the ridges don't get in the way of getting
4 a print?

5 A If the print happens to come across that
6 ridge, yes.

7 Q Okay.

8 A But as far as the surface overall you can be
9 able to get a laten print off of it.

10 Q Okay, now I believe you testified the
11 roughness of the surface of the purse that made it
12 impossible to get a print, right?

13 A With the material that I had, yes.

14 Q So, I am curious about that answer, what do
15 you mean?

16 A I had dust, sir.

17 Q Right.

18 A And that surface was, using the fingerprint
19 dust, I wouldn't be able to get a print off that
20 surface there.

21 Q So there is technology that would have gotten
22 the print off it if there was one?

23 A Sir?

24 Q There is such a technology?

25 A There are other ways. Yes, sir.

Officer Bradley-cross by Leddy

1 Q Okay. Did you attempt those?

2 A No, I didn't.

3 Q Okay. And you didn't attempt to obtain any
4 fingerprints out of any of the contents of the purse,
5 right?

6 A When I got there to the scene of the crime,
7 that purse had already been contaminated by other
8 people.

9 Q All right. Now as far as your fingerprint
10 dust inside the house, I know you testified you were
11 actually inside the house working on the window,
12 right?

13 A Yes, sir.

14 Q I mean, that's obvious. I mean that was the
15 obvious point of entry, because there was a ladder
16 there, right?

17 A That is correct.

18 Q Okay. And so you went right there and you got
19 good fingerprints.

20 A Yes, sir.

21 Q Let me ask you this, you didn't actually dust
22 inside the house; such as, the kitchen counter, right?

23 A No, sir.

24 Q And you didn't dust the table where the victim
25 in the case stated she had her purse?

Officer Bradley-cross by Leddy

1 A No.

2 Q Were there any areas that would have been
3 conducive to footprints that you noticed?

4 A Probably the living room area.

5 Q Did you photograph that?

6 A Did I photograph the living room area?

7 Q Uh-huh. (Affirmative.)

8 A I didn't see no footprints.

9 Q And do you, are you trained in DNA collection?

10 A I am from my field office, yes. I am trained
11 to do swabs.

12 Q And no such attempt was made on the purse,
13 right? The one thing that was certain that the
14 perpetrator would have touched?

15 A I didn't swab the purse.

16 MR. LEDDY: Nothing further, Your Honor.

17 Redirect Examination by Mr. Cathcart

18 Q By the time you got there, the purse had
19 already been handled by about three other people---

20 A Yes, sir.

21 Q ---isn't that correct? Now the window, I
22 believe you said it was too high for you to get up to?

23 A Yes, sir.

24 Q There is a ladder underneath it, correct?
25 This ladder right here?

Officer Bradley-redirect by Cathcart

- 1 A Yes, sir.
- 2 Q Are you familiar with that kind of ladder?
- 3 A Yes, sir.
- 4 Q It's an 8 feet step ladder, isn't it?
- 5 A Yes, sir.
- 6 Q It reaches down to the bottom of that?
- 7 A That is correct.
- 8 Q So based upon an 8 feet ladder barely reaching
- 9 the window, how high is that window?
- 10 A Probably about at least 8 foot off the ground.
- 11 Q Did you see any blood?
- 12 A No.
- 13 Q Did you see any semen at that area?
- 14 A No, sir.
- 15 Q Did you see anything to swab with DNA?
- 16 A No, sir.
- 17 MR. CATHCART: No further questions, Your
- 18 honor.
- 19 MR. LEDDY: Just a couple of things, Your
- 20 Honor.
- 21 Recross Examination by Mr. Leddy:
- 22 Q I don't think this got entered in to evidence.
- 23 MR. CATHCART: It is not in evidence.
- 24 Q All right, now this is not in evidence, but
- 25 if you will have a look at this for me, please. That

Officer Bradley-recross by Leddy

1 looks like the back of the house in question, right?

2 A Yes, sir.

3 MR. LEDDY: Okay. Your Honor, I would offer
4 that photograph in evidence as a defense exhibit.

5 THE COURT: What says the state?

6 MR. CATHCART: There's no problem with it
7 being in evidence, Your Honor.

8 THE COURT: It's No. 1. Defense No. 1.

9 (Photograph marked Defendant's Exhibit No. 1
10 into evidence.)

11 Q Okay. Now you testified that was an 8 foot
12 ladder. And the window was about 8 feet off the
13 ground, right?

14 A Yes.

15 Q Now on this picture, you said, this is a
16 two-story house, right?

17 A From looking at it, yes, sir.

18 Q So this door is on the first floor, isn't it?

19 A In these two pictures.

20 Q And I hate to be pointing it out in such small
21 steps, but that's the way we have to do it. And this
22 window is on the first floor, right?

23 A Yes, sir.

24 Q So there are one, two, three, four, five, six
25 steps up to that.

Officer Bradley-recross by Leddy

1 A Yes, sir.

2 MR. LEDDY: I am going to pose this to the
3 jury if I may, Your Honor.

4 Q And you said you are about 6 feet tall?

5 A Yes, sir.

6 Q And that you could not reach the bottom of the
7 sill from the ground?

8 A I couldn't -- my head is not up there.

9 Q Right, but could you reach it?

10 A I am 6 feet tall. My arms are long, so I
11 would be able to reach the bottom of the window if we
12 stand.

13 MR. LEDDY: Nothing further. Thank you, Your
14 Honor.

15 MR. CATHCART: Your Honor, if I may, he kind
16 of went beyond the scope, but may I reply? Just one
17 question.

18 THE COURT: We've had direct, redirect.

19 MR. CATHCART: But his last statement was kind
20 of beyond the scope. The last redirect. If I may
21 just point out one thing about the picture. That's
22 all.

23 THE COURT: All right.

24 MR. CATHCART: Thank you.

25 THE COURT: One question.

Officer Bradley-recross by Leddy

1 Redirect Examination by Mr. Cathcart:

2 Q May I see that picture real quick?

3 Defendant's Exhibit No. 1, what is that over there on
4 the far edge?

5 A Okay, that looks like a platform.

6 Q Excuse me. Right here. Is that the ladder in
7 the window in question that he was just talking about?

8 A Yes, sir.

9 Q Is that the bottom of that hill?

10 A Yes, sir.

11 Q Where it goes down a little bit?

12 A Yes, sir.

13 MR. CATHCART: Thank you. That's it, Your
14 Honor.

15 THE COURT: Anything further from the defense?

16 MR. LEDDY: No, Your Honor.

17 THE COURT: You may step down, sir.

18 MR. GOLDBERG: Your Honor, may this witness be
19 excused?

20 MR. LEDDY: No objection, Your Honor.

21 THE COURT: You are excused.

22 MR. GOLDBERG: I beg the court's indulgence
23 for just a moment. Actually if we may approach on a
24 scheduling issue?

25 (Whereupon, the attorneys approach the bench

Officer Bradley-redirect by Cathcart

1 and confer with judge.)

2 THE COURT: Ladies and gentlemen, let's stand
3 for a moment or two. Next witness.

4 MR. CATHCART: Your Honor, the state would
5 call Buddy Rose. Can you mark these please ma'am.

6 (State's 16 and 17 marked for Id.)

7 Walter Buddy Rose, being first
8 duly sworn, testified as follows:

9 THE CLERK: If you would have a seat on the
10 witness stand and give us your full name.

11 A I'm Walter Rose.

12 Direct Examination by Mr. Cathcart:

13 Q Mr. Rose, where are you employed?

14 A With the City of Columbia Police Department.

15 Q And what do you do there?

16 A Work in the Crime Scene Unit.

17 Q And at some point were you called to get
18 fingerprints from Leroy Brown?

19 A I was.

20 Q And did you do so?

21 A I did.

22 Q Is Mr. Brown present in the courtroom today?

23 A He is.

24 Q Would you please point him out to the jury?

25 A He's sitting at the table there wearing a blue

Walter Rose-direct by Cathcart

1 jacket.

2 Q Let the record reflect he has identified the
3 defendant Leroy Brown.

4 THE COURT: It will.

5 Q And what did you do when you were with Mr.
6 Brown?

7 A I rolled his palm prints and did a temporary
8 card and took a fingerprint from each one of his
9 fingers.

10 Q So you rolled a set of his prints?

11 A Yes, sir.

12 Q This has been marked State's Exhibit No. 16
13 and 17.

14 A Yes, sir.

15 Q Can you please describe to me what they are?

16 A Yes, sir. This is called a ten print card.
17 And the other one is a palm print card.

18 MR. CATHCART: Your Honor, at this time, the
19 state seeks to introduce No. 16 and 17 into evidence.

20 MR. SHEALY: Without objection.

21 THE COURT: They're admitted without
22 objection.

23 (Fingerprint cards marked State's Exhibit Nos.
24 16 and 17 into evidence.)

25 Q Now please show them to the jury, and tell

Walter Rose-direct by Cathcart.

1 them what they are.

2 A This is a ten print card. On this card here
3 you have an inked impression of each finger. The
4 top line is your right hand. The middle line here is
5 your left hand. And down here at the bottom is a
6 simultaneous print. Which the right and left handed.
7 Right and left hand fingers and two thumbs here in the
8 center. And this is a -- this is called the palm
9 print card. And it's just that. It's the right palm
10 and left palm. And it's on both sides.

11 Q And what did you do after you got those from
12 Mr. Brown?

13 A These cards were given to Officer Currie.

14 Q With the Columbia Police Department?

15 A Yes, sir.

16 Q And where does he -- and what part does he do
17 there?

18 A He works in the crime scene unit as well.

19 MR. CATHCART: Thank you. Please answer any
20 questions for the defense counsel.

21 MR. SHEALY: No questions, Your Honor.

22 THE COURT: You may step down.

23 MR. GOLDBERG: We ask that this witness be
24 excused.

25 MR. SHEALY: No objection.

Walter Rose-direct by Cathcart

1 THE COURT: You may be excused. Your next
2 witness.

3 MR. GOLDBERG: Your Honor, if we may approach?

4 THE COURT: All right.

5 (Whereupon, attorneys approach and confer with
6 the judge.)

7 THE COURT: Ladies and gentlemen, we are
8 through for this day. We will start back at 9:15
9 tomorrow morning. When you return tomorrow morning,
10 Mr. Jolin, Mr. J.C.P. Jolin, I am appointing you to
11 serve as foreperson of the jury. Is that you?

12 MR. JOLIN: Yes, sir.

13 THE COURT: And the foreperson, you will take
14 the first seat on the front row. As the foreperson,
15 it will be your responsibility to serve as the
16 spokesperson for the jury; to preside over the jury
17 deliberations, and to complete the verdict form
18 representing the unanimous verdict of the jury.

19 Please remember, that you're not to discuss
20 this case with anyone at home. You can only talk
21 about the case with people who have listened to the
22 case, which would be your fellow jurors. And that's
23 after you have listened to the entire case as well as
24 the instructions of law. Please abide by that
25 instruction. And we'll see you all tomorrow morning

1 at 9:15. Please do not come through courtroom. Come
2 through the way the bailiff indicated to you. Come to
3 the jury room. The bailiff will reiterate that to
4 you.

5 (Whereupon, the jury is dismissed.)

6 (Whereupon, the following takes place outside
7 the presence of the jury.)

8 THE COURT: Are there any other matters or
9 issues on this case?

10 MR. SHEALY: Nothing from the defense right
11 now, Your Honor.

12 MR. GOLDBERG: No, sir.

13 THE COURT: Regarding the defendant's right to
14 testify or not testify. Counsel has indicated that he
15 intends to testify. Since counsel has given an
16 indication, I will question Mr. Brown on that issue at
17 this time, if you would like me to.

18 MR. SHEALY: That would fine, Your Honor.

19 THE COURT: Mr. Brown, would you please stand.

20 (Whereupon, the defendant is sworn.)

21 THE COURT: Sir, we will soon reach the point
22 in the trial where you will have the opportunity to
23 present your defense. Your lawyer has indicated
24 through statements to the jury that you intend to
25 testify. So I will explain to you certain of your

1 rights at this time.

2 You have the right to claim the protections
3 given to you by and afforded by the 5th Amendment to
4 the Constitution of the United States. And this
5 Amendment states in part that no person can be
6 compelled or required in any criminal case to be a
7 witness against himself. And this means that you
8 cannot be required or made to testify in this case.
9 You do have the right to testify, however, and no one
10 can make you testify. And this is a personal right
11 and no one can give up or waive up that right except
12 you.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now if you decide to testify, you
16 will be subject to the same rules that govern other
17 witnesses, and you may be examined or examined on any
18 relevant issue in this case.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: In addition, it's been mentioned
21 that you, in the Indictment it alleges that you have
22 prior convictions for housebreaking, larceny, and the
23 Solicitor mentioned some others. If I determine that
24 the probative value of admitting this evidence
25 outweighs its prejudicial effect to you, then the

1 Solicitor will be able to introduce your record to
2 attack your credibility.

3 Now If you decide to testify, this decision on
4 your part must be a free and voluntary decision made
5 by you, acknowledging the protections given to you by
6 the 5th Amendment. As well as the consequences of
7 your decision to testify. Now if you decide not to
8 testify, I will instruct the jury that you -- that
9 they cannot give the fact that you did not testify any
10 consideration whatsoever. And there is to be
11 absolutely no prejudice to you because you did not
12 testify.

13 Now this is left entirely up to you. And
14 certainly you should and may confer with your lawyers,
15 but the final decision will left entirely up to you.
16 Do you understand that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do understand everything I have
19 explained to you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you have been in consultation
22 with your lawyers on the question of whether or not
23 you should testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you going to talk with him

1 some more about that?

2 THE DEFENDANT: We have discussed it, sir.

3 THE COURT: Have you made a decision already?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you plan to testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir, if you decide at any point
8 that you do not want to, and that is your free and
9 voluntary decision, then that is your decision.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Very good.

12 MR. SHEALY: Thank you.

13 THE COURT: We will break camp until 9:15
14 tomorrow morning.

15 (Whereupon, the trial commences at 9:15 on
16 Thursday, December 11, 2008.)

17 (Whereupon, the following takes place outside
18 the presence of the jury.)

19 MR. GOLDBERG: If you will mark these please,
20 ma'am.

21 (Indictments marked State's Exhibits No. 18
22 and 19 for Id. only.)

23 THE COURT: Are we ready to proceed?

24 MR. CATHCART: The State is ready, Your Honor.

25 MR. SHEALY: The defense is ready, Judge.

1 THE COURT: If you will bring the jury.

2 (Whereupon, the following takes place within
3 the presence of the jury.)

4 MR. GOLDBERG: Your Honor, may we approach?

5 (Whereupon, the attorneys approach the bench
6 and confer with judge.)

7 THE COURT: Good morning. Good to see you all
8 again. Continuing with the State's case, you may call
9 your next witness.

10 MR. CATHCART: May it please the Court, Your
11 Honor, the State calls Investigator Paul Mead.

12 Paul Mead, Being first duly
13 sworn, testified as follows:

14 PAUL MEAD, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat on the witness
17 stand, and state your full name for the record. And
18 please spell your last name.

19 A Paul James Mead. M-E-A-D.

20 Direct Examination by Mr. Goldberg:

21 Q Investigator Mead, where are you employed?

22 A The City of Columbia Police Department.

23 Q How long have you been employed there?

24 A Right at 23 years.

25 Q Can you describe to the jury what your duties

1 are with the department?

2 A For about the last 15 years, I have been in
3 the Criminal Investigation Division of the Police
4 Department. I have done all kinds of investigations
5 from homicides down to property crimes.

6 Q And when you say investigations, can you tell
7 the jury a little bit about what that entails?

8 A Normally what happens is, an Incident Report
9 is taken by one of the line units. After the Incident
10 Report, the information is gathered from there. The
11 report is sent to investigations for a follow up.
12 And I would be one of the persons that would do the
13 follow-up. Speaking with individuals. Checking for
14 any kind of physical evidence or anything like that.

15 Q Back in October of 2007, were you forwarded
16 some information about a possible burglary at
17 Road?

18 A Yes, I was.

19 Q How did you become aware of that?

20 A I was given an Incident Report through my
21 supervisor; in which, the Incident Report was a
22 burglary. And it also had a supplement to it. In
23 which a fingerprint or some fingerprints were
24 recovered at the scene, the entry point. And that
25 they had made an identification of those fingerprints.

1 Q And to your knowledge, who actually made the
2 identification of the fingerprints?

3 A Pete Currie. He's with our Crime Scene Unit.

4 Q And did he get a name from the analysis?

5 A He did.

6 Q Do you know what that name was?

7 A Yes, Leroy Brown.

8 Q And when you received that information, what
9 did you do with it?

10 A At that point, I took a photograph of Mr.
11 Brown. Went to the victim's residence, showed her the
12 photograph of Mr. Brown. Asked her if she knew the
13 individual. She indicated that she did not. She had
14 never seen him before. And not somebody that would
15 have been in her residence.

16 Q Was there anyone else out at her residence
17 when you were there that day?

18 A Yes, there were a work crew, a couple of
19 individuals. I had showed the photograph to the two
20 individuals that were there working. Neither one of
21 them knew Mr. Brown. Said he was not somebody working
22 with them. They called their boss on the phone and
23 gave them the name. And he indicated he never had
24 anybody by that name working for him.

25 Q And based upon all this information, what was

1 your next step in your investigation?

2 A At that point, I drew warrants for the
3 burglary first and the larceny.

4 MR. GOLDBERG: Thank you, sir.

5 THE COURT: Defense.

6 MR. SHEALY: May it Please the Court.

7 THE COURT: Yes.

8 Cross Examination by Mr. Shealy:

9 Q Morning, Investigator.

10 A Good morning.

11 Q You've been with the City for a long time, 23
12 years?

13 A Yes, sir.

14 Q You've had a lot of cases.

15 A I have.

16 Q A lot of training. You know the basis of this
17 like every officer how to fill out an Incident Report,
18 right?

19 A Yes, sir.

20 Q How to use your weapon?

21 A Yes, sir.

22 Q How to secure a crime scene.

23 A Yes.

24 Q But you didn't get to be an investigator just
25 by knowing the basis of it. You got further

1 additional training about how to investigate a case,
2 right?

3 A Correct..

4 Q But in this case, I mean, it is fair to say,
5 that most of the investigation was done by other
6 people in terms of the fingerprints and things like
7 that.

8 A That's correct, sir.

9 Q But you did show Ms. Monteith a photo of
10 Mr. Brown and she had never seen him, right?

11 A That's correct, sir.

12 Q Okay. And eventually once a name was
13 identified, Leroy Brown he was arrested, right?

14 A He was.

15 Q Okay. At that time, he didn't have any of her
16 belongings on him, did he?

17 A No, not that I am aware of. No, sir.

18 Q Didn't have any of her credit cards?

19 A No, sir.

20 Q Didn't have a wallet.

21 A I don't know if he had wallet. I mean he
22 didn't have her wallet that I know of. No, sir.

23 Q And as far as you know, her credit cards were
24 never used anywhere that could be traced anywhere,
25 right?

1 A Not that I am aware of, no, sir.

2 Q Okay. Were efforts made to track down that
3 information if her credit cards were ever used
4 anywhere?

5 A The credit card companies were notified. And
6 if anything had been done with those cards hopefully
7 we would have been notified.

8 Q And there is no DNA evidence in this case
9 right?

10 A Not that I am aware of, no, sir.

11 Q No eye witnesses?

12 A No, sir.

13 MR. SHEALY: Nothing further judge?

14 THE COURT: Mr. Goldberg.

15 Redirect Examination by Mr. Goldberg

16 Q Investigator, the incident took place October
17 29th of 2007, is that correct?

18 A That's correct.

19 Q What day was Mr. Brown actually placed under
20 arrest?

21 A I believe it was November 2nd of 2007.

22 MR. GOLDBERG: Thank you.

23 THE COURT: Anything further?

24 MR. SHEALY: No, Your Honor.

25 THE COURT: Thank you, sir.

1 MR. GOLDBERG: I ask that the witness be
2 excused.

3 MR. SHEALY: No objection.

4 THE COURT: You may be excused. The next
5 witness.

6 MR. CATHCART: The state calls Pete Currie.

7 Peter Currie, after being duly sworn,
8 testified as follows:

9 THE CLERK: Please have a seat on the witness
10 stand and state your full name for the record, and
11 spell you last name.

12 A My name is Peter Currie. C-U-R-R-I-E.

13 Direct Examination by Mr. Cathcart:

14 Q Investigator Currie. Where are you employed?

15 A The Columbia Police Department.

16 Q In what capacity?

17 A I work in the Crime Scene Unit.

18 Q And what do you do there?

19 A My main function is to photograph, collect and
20 process evidence.

21 Q And how long have you been doing that?

22 A I've been with the department right at 19
23 years. I have been in the Crime Scene Unit right at
24 13 years.

25 Q And is part of that your duty to analyze

1 fingerprints?

2 A That is correct.

3 Q Have you had any training in the analysis of
4 fingerprints?

5 A Yes, I have. I have attended and completed
6 the basic fingerprint course. The FBI advanced
7 fingerprint course, i.e. Tech School. I am also Avis
8 certified. The automated fingerprint identification
9 system by sled.

10 Q Have you ever testified as an expert in the
11 courtroom before as to fingerprint analysis?

12 A Numerous times.

13 Q Have you been qualified as an expert?

14 A Yes, sir.

15 MR. CATHCART: Your Honor, at this time the
16 State seeks to qualify investigator Pete Currie as an
17 expert in fingerprint analysis.

18 THE COURT: What says the defense?

19 MR. SHEALY: No objection, Judge.

20 THE COURT: He is so qualified.

21 Q Let me let you take a look at what has been
22 marked as State's 1 a through f. Do you recognize
23 what these are?

24 A Yes, sir, I do.

25 Q Have you had an opportunity to see those

1 before?

2 A Yes, sir.

3 Q In what connection?

4 A Officer Bradley asked me to review any of
5 these latents to see if anything fit for Avis. And
6 that's what I did.

7 Q And out of those fingerprints, did you find
8 anything that was usable by Avis?

9 A Yes, I did.

10 Q And what was that?

11 A That was latent 1.1.

12 Q And can you describe to the jury basically
13 what Avis is?

14 A Avis is a computer that sled has, a data bank
15 of fingerprints of all different sources. And that is
16 where you can enter a print in to Avis. It will give
17 you possible suspects. It will not make a match for
18 you, but it will give you numerous suspects, and then
19 you physically have to look at the prints themselves
20 when they come back to you, to make a match.

21 Q And as you said, you found one that was able
22 to be used by Avis?

23 A Yes, sir.

24 Q Did you use Avis with it?

25 A Sir?

1 Q Did you use Avis with that print?

2 A Yes, I did.

3 Q And based upon Avis, did you get a name?

4 A Yes, I did.

5 Q And what name was that?

6 A It was Leroy Brown.

7 Q Let me show you what has been marked State's
8 Exhibit No. 17 and 16. Do you recognize what these
9 are?

10 A Yes, I do.

11 Q Please describe to the jury what these are.

12 A These are fingerprints palm prints that were
13 rolled by Officer Rose on the suspect.

14 Q And did you based upon the fingerprint, at one
15 point, analyze it as the known prints of Leroy Brown?

16 A When he was refingerprinted, I reexamined
17 latents to make sure it was him. And we know it was a
18 definite match. But to reassure that these were his
19 fingerprints, we rolled the individual ourselves.

20 Q And how do you determine that it was a
21 definite match?

22 A You determine that, may I show? I have the
23 Avis Chart.

24 Q Can you describe what this is? We're not
25 showing anything as of yet. Just what it is.

1 A Right. This is where I sketch out the chart
2 comparing the latent print against the known print of
3 the suspect.

4 MR. CATHCART: Your Honor, at this time the
5 State seeks to introduce State's Exhibit No. 20.

6 THE COURT: What says the defense?

7 MR. SHEALY: No objection, Your Honor.

8 (Fingerprint Analysis marked State's exhibit
9 No. 20 into evidence.)

10 Q If you would please explain to the jury how
11 you make a match.

12 A Ladies and Gentlemen of the Jury, I don't know
13 how well you can see. Your Honor, may I approach?

14 MR. CATHCART: Can he approach the jury?

15 THE COURT: Yes, you may.

16 (Whereupon, the witness steps down from the
17 witness stand and in front of the jury.)

18 A To start off with, this is the print that was
19 lifted from the scene. This is this print that came
20 back to me on the Avis machine. First of all, you
21 have to pretty much try to identify what kind of
22 prints you have. This is what is called a whirl. So
23 you look at the characteristics inside the print and
24 the print itself. And even to start off with, you can
25 see it pretty much, you know, all pretty much looks

1 the same. But if by looking the same, doesn't make
2 any difference whatsoever. Then you find independent,
3 we call it points or characteristics. You have ending
4 ridges. Ridges that will end in a certain area. That
5 will have to end in the same place where the known
6 print is. You will have ridges that are in your
7 fingers that will split or called bifurcations. You
8 will have little islands in there. As you can see,
9 there's an island right through here.

10 All these points of identification or
11 characteristics have to be in the exact same place one
12 to the next. In other words, if I have a characteristic
13 right here, and then I count 1, 2, 3 ridges over, and
14 then I have my next characteristic, it has to be in the
15 same place as right here. And you have a characteristic
16 right here, and 1, 2, 3 friction ridges over. And it
17 all has to coordinate. Nothing can be out of place. Or
18 you can not have more than the other. Anytime there is
19 anything out of place, there is no match. And this is a
20 100 percent match. There is no doubt that this is
21 Mr. Brown's fingerprint.

22 Q Thank you. And you made that same match that
23 with the known print that was rolled by investigator
24 Buddy Rose.

25 A That's correct.

1 MR. CATHCART: Please any questions of defense
2 counsel.

3 (Whereupon, the witness resumes the witness
4 stand.)

5 Cross Examination by Mr. Leddy:

6 Q Good morning.

7 A Good morning, sir.

8 Q I just want to establish a couple of things.
9 First of all, it's impossible to age a fingerprint,
10 isn't it?

11 A It's impossible to what, sir?

12 Q To age it. To say when it was placed.

13 A That is correct to a certain extent.

14 Q Okay.

15 A Depending on where it comes from.

16 Q Can you tell me when this fingerprint was
17 placed there?

18 A No, sir, I can't.

19 Q The only other thing is, it was the No. 4
20 finger that you used to make a match, right?

21 A That's correct.

22 Q And that's the right hand ring finger.

23 A That is correct.

24 Q And it was lifted off the left side interior
25 of the window, right?

1 A That's what I was told. I did not lift the
2 print.

3 MR. LEDDY: Nothing further, Your Honor.

4 THE COURT: Anything further?

5 MR. CATHCART: Just a couple of questions,
6 Your Honor.

7 Redirect Examination by Mr. Cathcart:

8 Q Are there some things that would make a
9 fingerprint deteriorate faster?

10 A Yes. One of the things with fingerprints,
11 they don't quite work the way they do on television,
12 CSI and whatever. When you go to a very cold,
13 extremely cold weather, a fingerprint, unless you have
14 a lot of oil on your hands, 97 percent of it is
15 nothing but secretion. You have extreme cold, that
16 fingerprint within minutes, hours, will freeze. When
17 it warms up, it will thaw out and run off.

18 Extreme heat, well, all of you all know that
19 when you put secretion in water or whatever, or whether
20 it's a piece of glass, a piece of wood or a piece of
21 metal, and it's a hard freeze outside, it won't last an
22 hour. It will burn it completely off.

23 Q Would the fluctuations in temperatures of any
24 degree make it harder for a fingerprint to last?

25 A Exactly.

Peter Currie-redirect by Cathcart

1 Q And would an outside single pane window from a
2 1920's house fluctuate in temperatures?

3 A If there---

4 MR. LEDDY: Your Honor, I object. I don't
5 know if he's qualified to answer that question. And
6 if it's relevant.

7 MR. CATHCART: He's qualified as an expert in
8 fingerprints, Your Honor.

9 MR. LEDDY: We stipulate it's his fingerprint.
10 I don't see what the point of the question is.

11 THE COURT: The Objection is overruled.

12 Q Would a single pane window from a 1920's
13 house, be an area where you would expect a fingerprint
14 to last a long time?

15 A No, sir, it would not last very long.

16 MR. CATHCART: Thank you, no further
17 questions.

18 THE COURT: Anything further?

19 MR. LEDDY: No, Your Honor.

20 THE COURT: Step down.

21 MR. CATHCART: May this witness be excused,
22 Your Honor?

23 THE COURT: Any objection?

24 MR. LEDDY: No objection at this time.

25 THE COURT: You may be excused. Ladies and

Peter Currie-redirect by Cathcart

1 Gentlemen, I am going to have you go to the jury room
2 for a little while. I will have you come back soon.
3 Please do not discuss the case.

4 (Whereupon, the following takes place outside
5 the presence of the jury.)

6 THE COURT: Concerning the side bar issue
7 raised by defense counsel.

8 MR. SHEALY Yes, Your Honor, one of my
9 concerns about entering these two Indictments or
10 sentencing sheets that we are talking about is, I
11 think the jury obviously has a right to know there is
12 a past burglary, two burglaries. But I think the case
13 law is very relatively clear, details obviously about
14 those past burglaries are prohibited. And really I
15 think the fact that it is a burglary, but anything
16 more than I think would weigh against my client
17 unfairly.

18 I think even the fact that it would say
19 burglary first degree, the statute doesn't say
20 burglary first degree can be proven by another
21 burglary. It just says, burglary. I think that would
22 even be too much information. What I would propose
23 to do is to, you know, is to make whatever documents
24 they have to produce as a Court Exhibit. Get the
25 testimony out of the way. What witnesses they are

1 planning on calling. The jury knows it's a Court
2 Exhibit. But my concerns about all the information in
3 the Indictment. I haven't even seen what they're
4 talking about. They haven't introduced it yet.

5 THE COURT: Solicitor.

6 MR. CATHCART: They've been provided with the
7 copies of these Indictments. He has seen them.

8 MR. SHEALY: I just don't know what specific
9 ones.

10 MR. CATHCART: Well I anticipate introducing
11 State's Exhibit No. 19, State's Exhibit No. 20 for
12 identification at this time. That is Indictment No.
13 2006-GS-40-11602. And Indictment 88-GS-40-4721. And
14 what I have done in the past, Your Honor, And I think
15 cures any problem, I think they should all go in
16 totally as they are, in case there is any qualms.
17 What I usually do is redact the exhibits that go back
18 to the jury, and just produce the front and face of
19 the Indictment. Therefore, nothing about who was the
20 victim, what occurred inside other than the fact that
21 he has pled guilty or was found guilty of burglary in
22 this case.

23 It's not that -- the statute doesn't state
24 that you have to prove burglary. It is burglary and
25 or housebreaking. That is -- there are different

1 kinds of burglary that is true. But I don't think
2 that is an issue as to the facts as to what he did.

3 THE COURT: If you will him, the defense
4 counsel, the exhibit that you propose to introduce.

5 THE COURT: Is there an objection?

6 MR. SHEALY: The objection is---

7 THE COURT: Is there an objection?

8 MR. SHEALY: Yes, sir.

9 THE COURT: Let me see the exhibits.

10 MR. SHEALY: Your Honor, the objection is,
11 that even if they're talking about in terms of the
12 face of these documents, they say, first degree lets
13 the jury know it is not just a burglary or
14 housebreaking, it's the most serious. I think all
15 jurors that watch TV know that first degree is the
16 worse offense than a second degree or third degree.
17 And I have an objection with that.

18 THE COURT: What is the objection?

19 MR. SHEALY: There too much detail. Under the
20 case law; such as, United States vs. Old Chief, it was
21 those types of details that were found to be
22 impermissible when entering into that type of
23 evidence. So that is my objection that it is too much
24 detail knowing that it's a first degree burglary. If
25 they redact the first up there, I have no problem

1 with.

2 THE COURT: All right.

3 MR. CATHCART: Your Honor, by redacting that,
4 you are now saying it's a second degree burglary. Or
5 perhaps you're saying it's a third degree burglary.
6 It's what he pled to. The fact is, I think he pled to
7 on the newest one as to a second as it is. It's not a
8 first degree. It just says on the face of it, but a
9 second degree.

10 THE COURT: Well both Indictments the record
11 appears that these exhibits will show that he was
12 indicted for burglary first degree and plead guilty to
13 burglary second degree.

14 MR. CATHCART: Yes, sir.

15 THE COURT: And the defense's objection is not
16 in that he was charged with first degree, and that the
17 jury should not be made aware of the charge of
18 burglary first degree, because the conviction is for
19 burglary second degree. And it would give the jury
20 the impression that he must have committed burglary
21 first degree though he pled guilty to burglary second
22 degree.

23 That's the excessive details that he claims
24 was prohibited by the Old Chief case.

25 MR. CATHCART: I disagree with that, Your

1 Honor. I don't see other than that. The State has
2 the burden of proof that he has been found guilty of
3 these burglaries. I think that in the Old Chief case
4 it specifically talks about the factual basis of the
5 facts of a burglary. Not what he was convicted of.
6 Or what he was charged with. Your Honor, I agree that
7 the face of this Indictment says he was not
8 charged -- I mean, not convicted of burglary first
9 degree.

10 THE COURT: He was charged -- both Indictments
11 say that he was charged with burglary second degree.
12 Both Indictments say that he was convicted of burglary
13 second degree. And the defense's objection is that
14 the jury should not be told what he was charged with,
15 but only what he was convicted of.

16 MR. CATHCART: Well I disagree.

17 THE COURT: That's my argument for you. You
18 have to make your own argument.

19 MR. LEDDY: Your Honor, my argument is really
20 simple. just that the statute says burglary or
21 housebreaking. And that I don't find that it should
22 be redacted so it just says burglary, because it let's
23 us know what type of burglary. And I think, you know,
24 any juror who wants to gleam what type of burglary it
25 is by seeing first and what does that mean to them, is

1 too much detail. So I think burglary or housebreaking
2 would suffice.

3 THE COURT: Anything else on this issue?

4 MR. CATHCART: Nothing from the State, Your
5 Honor.

6 THE COURT: Okay, the court will allow the
7 cover, this first sheet. What do you call it? The
8 face sheet?

9 MR. CATHCART: The face sheet of the
10 Indictment, yes, sir.

11 THE COURT: The face of these two Indictments
12 to go in provided that the first degree, the word
13 first degree will be redacted on both of these face
14 sheets.

15 MR. CATHCART: We'll send back to the jury.

16 THE COURT: To show that he was convicted of
17 burglary second degree. How is that, counsel?

18 MR. SHEALY: That works for me, Your Honor.

19 THE COURT: All right that works for you.

20 MR. CATHCART: Your Honor, basically the State
21 is going to introduce these as a self authenticated
22 document. As they're under public seal, subsection
23 four.

24 THE COURT: Any objection to that?

25 MR. SHEALY: No objection, judge.

1 THE COURT: It will come up as part of the
2 agreement.

3 THE COURT: The State's next witness, I mean
4 the next bit of the evidence by the State, and then
5 beyond that, do we have more evidence?

6 MR. GOLDBERG: Your Honor, at that point the
7 State plans on resting.

8 THE COURT: All right.

9 MR. CATHCART: And I guess, Your Honor, since
10 we have the jury, in an abundance of moving this
11 along, I would ask the Defendant's prior record, what
12 we would seek to introduce, other than these two prior
13 burglaries. It's within the past 10 years. There is
14 another Indictment from 1988-GS-40-4382. We would
15 also seek to introduce as his sentence was within the
16 10-year period. Or not to introduce as -- but for
17 impeachment purposes as it was sentenced within the
18 10-year range. As to his credibility.

19 MR. LEDDY: We're bringing the burglaries in
20 as to the credibility?

21 MR. GOLDBERG: I think what he is saying is,
22 if he takes the stand that in addition to the two that
23 are being used as a part of the elements of the crime,
24 There is one other one that falls to within the
25 window. There is a third conviction within the

1 10-year window a 1988 conviction he got 15 years on.
2 So it would be -- we would be seeking to use that for
3 impeachment purposes. Credibility.

4 MR. LEDDY: Your Honor, I had the pleasure of
5 trying, I was the second chair on a case called State
6 vs. Bryan that Mr. Cathcart tried in front of me.

7 THE COURT: Does that mean you got a positive
8 result based on you had the pleasure of doing it as a
9 result?

10 MR. LEDDY: No, unfortunately we lost. It was
11 one that he remembers but is familiar with. The Court
12 held that, "violation of the laws are not probative
13 for truthfulness, but more a conviction for robbery,
14 burglary, theft, drug possession. Beyond the basis of
15 the crime itself, is not affirmed for truthfulness."
16 So as impeachment goes, I think that it is probative
17 of truthfulness and therefore not relevant for
18 impeachment purposes. Basically I would say, because
19 we have got two burglaries, two or more in the record
20 that it would be cumulative. And therefore, as to the
21 prejudicial effect of bringing it up.

22 THE COURT: Would you say all that again, a
23 little slower?

24 MR. LEDDY: Sorry.

25 THE COURT: The Court Reporter is trying to

1 keep up----

2 MR. LEDDY: Yes, sir.

3 THE COURT: When read, they tend to talk a
4 little faster, and it's more difficult to listen to
5 everything you're saying.

6 MR. LEDDY: Right. Well I was just saying
7 that in State vs. Bryan the court held that
8 burglaries are not probative of truthfulness. And
9 therefore since that's the only purpose for
10 impeachment, they would not be relevant.

11 THE COURT: That burglaries are not or
12 narcotics?

13 MR. LEDDY: Well they were using narcotics,
14 burglaries, robberies, theft. And in that case it was
15 a gun charge. Are not probative of the truthfulness.
16 Okay, and therefore not relevant for impeachment
17 purposes.

18 THE COURT: Well what is?

19 MR. LEDDY: Crime of dishonesty.

20 THE COURT: And burglary is not a crime of
21 dishonesty?

22 MR. LEDDY: Not according to our Supreme
23 Court.

24 THE COURT: And this case is the Bryant case.

25 MR. LEDDY: Yes, sir.

1 THE COURT: And read the language that it
2 said.

3 MR. LEDDY: "Furthermore a conviction for
4 robbery, burglary, theft and drug possession beyond
5 the basis of the crime itself is not probative of the
6 truthfulness."

7 THE COURT: Beyond the basis of the crime
8 itself. I think they were saying information of the
9 basic crime itself. Evidence of the basic crime
10 itself other than the conviction.

11 MR. LEDDY: Well they want to go in to his
12 prior burglaries to impeach his credibility. And
13 that's what I'm saying; is that, it wouldn't be
14 probative of his credibility.

15 THE COURT: Yes, sir, Solicitor.

16 MR. CATHCART: Your Honor, The State vs.
17 Bryant, as he is correct, I am familiar with it. It
18 was originally tried by David Pascoe. And in that
19 case, it was overturned, because they introduced some
20 pistol charges. Carrying a pistol unlawfully. That
21 was the reason for overturning it. Not about
22 burglary. The fact as to burglary and robbery, I
23 would submit that Al-Amin that it doesn't even go to
24 the balancing test. As it is a larceny is a per se,
25 dishonest thing to do. Bryant does not hold fast to

1 burglary. Or especially not robbery. Al-Amin, it
2 basically says it not only comes in it's not even the
3 balancing test. It goes in to the credibility issues.

4 State vs. Bryant, is specifically about a
5 carrying a pistol charge, and possession of a pistol
6 charge on a case where this is a murder.

7 MR. LEDDY: I would add the language from
8 Bryant, it says, "Initially when we note that when the
9 prior offense is similar to the offense for which the
10 defendant is on trial, the danger of unfair prejudice
11 to the defendant from impeachment by that prior
12 offense weighs against its admission.

13 MR. CATHCART: And I would submit, Your Honor,
14 that Al-Amin, the balancing test, that would be a good
15 part of the balancing test he is talking about. The
16 balancing test does not apply to the burglary or
17 robbery.

18 THE COURT: I'll have to look at Al-Amin. I
19 do have a memo about the balancing test as to whether
20 burglary is involving a death; if the evidence Of it
21 has some probative value, in weighing whether it
22 should be allowed for impeachment purposes. Give me
23 your last argument on this point.

24 MR. LEDDY: Well, Your Honor, because a
25 burglary can involve any crime including larceny or

1 any crime, any crime inside, as well, it is not
2 inherent per se to dishonesty.

3 THE COURT: But here he is indicted for
4 burglary and larceny for going in the lady's house and
5 stealing her purse.

6 MR. LEDDY: In this particular case he is.
7 And In that burglary, I don't know anything about that
8 prior burglary. But even it if is a larceny, because
9 burglary doesn't have to be something that is
10 inherently dishonest. He could enter with the intent
11 to punch somebody in the face. That's not dishonest.
12 So it's a difference between shoplifting and which has
13 been held per se dishonest in this State.

14 And apart from the what the federal rule is,
15 that's not necessarily the case of a burglary so it's
16 not dishonest per se. And therefore in this
17 particular case, it's piling on prejudicial
18 information, in addition to what has to come in,
19 because it's an element of the crime. The two prior
20 burglaries. They have to come in because it's an
21 element of the crime. We can't keep those two out.
22 But if you add this in, and it is just extremely
23 prejudicial, because it just shows the jury I mean,
24 you saw it yourself, and we had several people decide
25 they couldn't even be impartial when they knew the guy

1 had had a prior. Because it's just human nature you
2 decide that way.

3 THE COURT: You said it's hard for the jury to
4 know that he has two prior burglary convictions. They
5 shouldn't know that he has three prior burglary
6 convictions.

7 MR. LEDDY: Well I wish that the legislature
8 had drafted the burglary statute differently and made
9 the two priors a sentencing consideration rather than
10 an element of the crime. If this---

11 THE COURT: Well that's your wish list. But
12 that's beyond the point.

13 MR. LEDDY: And if they had written it that
14 way, then of course, I would argue they couldn't come
15 in because of the prejudicial effect of it. And it's
16 the same argument that I made on this third burglary.
17 And it's not saying that it's okay that they hear it.
18 They get to hear it because that's the way the law has
19 been written. But the law hasn't been written in a
20 way that allows to hear about this third one.

21 THE COURT: Let me hear from the State.

22 MR. CATHCART: Your Honor, I just point out,
23 the law is written that it does not allow me to talk
24 about the third burglary unless he gets on the stand
25 and puts his credibility at issue. And at that point,

1 the law does allow us to go into the fact that he had
2 a burglary for which he was sentenced to a time that
3 fits within the 10 year period that limits my being
4 able to put it in.

5 THE COURT: Well I will ponder that for a few
6 minutes. Is there anything else?

7 MR. LEDDY: If the state has rested, Your
8 Honor, I will proceed with my directed verdict motion.

9 MR. CATHCART: We haven't rested as of yet.
10 We haven't put these in.

11 MR. LEDDY: Oh, okay.

12 MR. CATHCART: We have do it in front of the
13 jury.

14 MR. LEDDY: Well it's also obviously an 88
15 conviction, is over 10 years old. They have not shown
16 when he was released and if that was within 10 year
17 period.

18 MR. CATHCART: Whether he released, or whether
19 he was not, it was either when he was either
20 incarcerated, or under the jurisdiction of probation
21 or parole.

22 THE COURT: And when was that as to the third
23 burglary?

24 MR. CATHCART: He received a sentence from
25 1988 to 15 years confinement. And a 10-year

1 confinement concurrent on the two 1988 charges. That
2 was in 88, so that would make it up to 98. November
3 22 of 1988. Just the 10 year, not including the 15
4 years.

5 THE COURT: When was he released?

6 MR. CATHCART: I am not sure, Your Honor.

7 THE COURT: He could be sentenced to 15 years.
8 He could have gotten out in 2003 or 2004. Oh, I am
9 sorry. Not 2003. 93.

10 MR. CATHCART: Your Honor, then that would be
11 with the Office Probation and Parole. And he had a
12 Parole Revocation in 2003. He was parole revoked in
13 2003. And then he was sent back to the Department of
14 Corrections. And in fact he was still under these
15 same burglaries about August 3rd 2006, and he went to
16 the Department of Corrections as well. I am sorry
17 2003, his parole was revoked. So he was still on
18 parole in 2003.

19 THE COURT: So his parole was revoked in
20 2003? But he was sentenced in 1988?

21 MR. CATHCART: That is correct, Your Honor.
22 That's the only thing he has been convicted of since
23 1988, was attempted burglary second. 15 years
24 confinement in the South Carolina Department of
25 Corrections January 15th 2003, parole revoked. Made

1 to serve time. If I may approach, I will hand up a
2 copy of his Rap Sheet.

3 THE COURT: The two prior burglaries, that you
4 all agreed to, when did they happen?

5 MR. CATHCART: The first one was 1988, along
6 with this one we are seeking to introduce, as
7 credibility. That was two together. In 2006, he was
8 convicted of another burglary second degree.

9 THE COURT: Is he on parole now? In prison?
10 Parole or is he?

11 MR. SHEALY: In 2006, he got a four-year
12 active sentence on the burglary second nonviolent.

13 THE COURT: In 2006, A four year sentence.

14 MR. SHEALY: Yes, sir.

15 THE COURT: Is he is through doing that time?

16 MR. SHEALY: He spent a substantial amount of
17 time in jail before pleading guilty to that.

18 MR. LEDDY: Your Honor, the rule states that
19 it's when you're released from confinement.

20 MR. CATHCART: Yeah, and you're still
21 confined when you are on probation and parole.

22 THE COURT: Say it again.

23 MR. LEDDY: I don't know of any rule that says
24 that you confined when you are on parole or probation.

25 MR. CATHCART: Are you free to go?

1 MR. LEDDY: I think if he weren't -- if he
2 were confined, my client wouldn't be so interested in
3 getting probation.

4 THE COURT: All right, anything else?

5 MR. LEDDY: No.

6 THE COURT: We will take a break on this one,
7 and study this issue for a little while before we
8 proceed. We'll take about a 10 minute break. 10 or
9 15 minute break on this case, and study this issue and
10 then see if we can deal with that other issue.

11 MR. GOLDBERG: Yes, sir.

12 MR. SHEALY: Thank Your Honor.

13 (Whereupon, the Court takes a short recess.)

14 (Whereupon, the following takes place outside
15 the presence of the jury.)

16 MR. CATHCART: Your Honor, we were in the
17 process of trying to find my Indictments. Do you have
18 them?

19 THE COURT: I have your Indictments. We can
20 have them redacted before it goes to the jury.

21 THE COURT: We will take and redact them.

22 MR. CATHCART: Yes, sir. But I was going to
23 introduce both of these Indictments as they are. But
24 before it goes to the jury, the redacted copy goes to
25 the jury.

1 MR. GOLDBERG: Judge, if I may hand up, just
2 on the issue about prior conviction.

3 THE COURT: Yes, sir.

4 MR. GOLDBERG: There was one case I discovered
5 State vs. Scott.

6 MR. CATHCART: I think you have 2006, one also
7 up there, Your Honor. The 2008, we were seeking to
8 introduce credibility. Should I mark it for
9 identification? Can you mark this for Identification?
10 State's 21 Id.

11 (Indictment marked State's Exhibit No. 21 for
12 id. only.)

13 THE COURT: We need Mr. Brown back. I have
14 been handed up another case, State vs. Leon Scott.
15 And I have also had the opportunity to review the
16 Indictment, including the Affidavit of the September
17 5th 1988, conviction. Which says the defendant
18 entered the house on Street through the west
19 side door. The door was closed, but not locked. He
20 was seen in the dining room of the house. The
21 defendant was seen inside of the house by three
22 victims that lived at the house. The victims held the
23 defendant until the police arrested the defendant.
24 And now I think have heard enough argument on this to
25 rule on this issue.

1 Under Rule 609(a) 2 evidence that a witness
2 has been convicted of a crime shall be admitted it is
3 involves dishonesty or false statement regardless of
4 the punishment. And the issue in this case as raised
5 by the defense is whether burglary is a crime of
6 dishonesty. The State argues that under The State vs.
7 Bryant case and other cases, that burglary is not
8 automatically a crime of dishonesty; in that, where a
9 similar offense is similar to the offense with which
10 the defendant is on trial, the danger or unfair
11 prejudice to the defendant, the impeachment of that
12 prior offense weighs against its submission.

13 The State arguments that under the Al-Amin
14 case that the Court does not have to conduct the
15 analysis as weighing and balance where the
16 defendant -- that the State does not have to undergo
17 that analysis because if the offense involves
18 dishonesty or false statement the analysis that must
19 be done in this case; however, is that the court must
20 look at the prior offense or defense sought to be
21 introduced to determine whether or not it involves
22 larceny or whether larceny intent is to be gleamed
23 from the case including the Affidavit. And we do not
24 have the transcript of that prior offense.

25 The only thing that we have is this Affidavit

1 in which the Defendant was caught inside the house by
2 the occupants before he stole anything. Or if he was
3 going to steal, he was in the house, he was caught.
4 The State has handed up to me another case, The State
5 vs. Leon Scott where the guy robbed the BP station on
6 Broad River Road here in Columbia, took \$73.70 from
7 the cashier. And in that case he was convicted and
8 sentenced.

9 And maybe the point of this by the State is
10 that he is under -- the sole issue in the case was
11 whether allowing the state to impeach him with this
12 1977 robbery conviction. And the trial judge ruled
13 that it did not, it was too remote in time to use for
14 impeachment.

15 Considering all of the things in this case,
16 first of all, I find that burglary may be a crime of
17 dishonesty. And of course, as well as we have to look
18 at the facts of the burglary. And looking at the
19 facts of this burglary, the burglary in question, I
20 cannot conclude that it involved dishonesty or false
21 statements under 609 (a) 2 so that I would not have to
22 go through this analysis that is required under 609(a)
23 1. According to the analysis of 609(a)1, I find that
24 the closeness of the offense that he is on trial for
25 that offense, coupled with the already admission of

1 the other two burglaries weighs against the State such
2 that admitting that evidence outweighs the prejudice.
3 Admitting it outweighs any probative value. So
4 therefore I am excluding burglary No. 3.

5 MR. LEDDY: Thank you, Your Honor.

6 THE COURT: What else? Are you ready for the
7 jury?

8 MR. LEDDY: Has the state rested?

9 MR. GOLDBERG: No, we need to introduce these.
10 (Whereupon, the following takes place within
11 the presence of the jury.)

12 THE COURT: Welcome back. The State is
13 continuing. Mr. Cathcart.

14 MR. CATHCART: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. CATHCART: At this time the State seeks to
17 introduce State's Exhibit No. 18 and 19. It's a
18 conviction for burglary. 2006-GS-40-11602. And
19 1988-GS-40-4721.

20 THE COURT: Any objection to the admission of
21 those, evidence of those convictions as being self
22 authenticating?

23 MR. SHEALY: No, Your Honor.

24 THE COURT: They are so admitted.

25 MR. CATHCART: Thank Your Honor.

1 (Indictments marked State's Exhibit Nos. 18
2 and 19 marked into evidence.)

3 MR. GOLDBERG: May it please the court, Your
4 honor.

5 THE COURT: Yes, sir.

6 MR. GOLDBERG: At this time, the state rests.

7 THE COURT: Ladies and Gentlemen, the State
8 has rested. That means the state has presented its
9 case prior to proceeding with the defense. I must
10 have an additional discussion with the lawyers. So I
11 need to have you go back again. It won't be that long
12 this time. Please don't discuss the case.

13 (Whereupon, the following takes place Outside
14 the presence of the jury.)

15 THE COURT: Anything from the defense?

16 MR. LEDDY: Your Honor I would like, I would
17 like to proceed with our directed verdict motion at
18 this time.

19 THE COURT: Yes, sir.

20 MR. LEDDY: Your Honor, If I may approach, I
21 have a couple of cases I would like to hand up to Your
22 Honor to consider while arguing this.

23 THE COURT: All right.

24 MR. LEDDY: Your Honor, the cases that I
25 handed up are first, State vs. Mitchell, 341 S.C. 406,

1 Supreme Court 2000. Also State vs. Arnold, 361 S.C.
2 386, Supreme Court 2004. And it's accompanying Court
3 of Appeals opinion, the State vs. Arnold 351 S.C. 302,
4 Court of Appeals 2002.

5 Your Honor, the evidence in this case is
6 entirely circumstantial for the State. The only
7 evidence they have that links Mr. Brown to the
8 burglary was his fingerprints on this window.
9 Fingerprints can't be dated. That was stated by their
10 own expert. So they cannot connect Mr. Brown to the
11 time and the scene of the crime. There is no evidence
12 when those fingerprints were placed there. And I
13 believe that State vs. Mitchell is as on point as you
14 can be to this particular case. In that case, it was
15 a burglary case, where the only evidence was a
16 fingerprint on a screen that's propped up against the
17 house at the point of entry of a burglary.

18 THE COURT: A screen that was where?

19 MR. LEDDY: It was near a window.

20 THE COURT: Screen near a window.

21 MR. LEDDY: That had been discovered had been
22 broken. In that case the homeowner came home at lunch
23 and noticed he had 10 beers in his fridge. And when
24 he came home after work, he noticed he didn't have any
25 beers in his fridge. And some time later he

1 discovered some broken glass on the ground and then he
2 noticed that a window -- he pulled the blinds and
3 noticed that a window was broken.

4 And the only evidence that was presented in
5 that case that connected the defendant to the burglary
6 was a fingerprint on a screen. Now that defendant had
7 been at the scene on at least three prior occasions.
8 He had helped move in the victim's son.

9 THE COURT: Plenty of opportunity to put his
10 fingerprints there on this screen.

11 MR. LEDDY: Well while he was there, there was
12 no reason for his fingerprint to be on that screen.

13 THE COURT: Plenty of opportunities.

14 MR. LEDDY: There were opportunities, right.
15 And the court held that his conviction had to be
16 vacated, because that wasn't substantial
17 circumstantial evidence. And substantial, and the
18 standard for a directed verdict for the defense is
19 whether there was any direct or substantial
20 circumstantial evidence. So it's not just any
21 circumstantial evidence. And I would state that
22 circumstantial evidence is a series of facts or
23 circumstances from which you can infer something in
24 question.

25 THE COURT: I know some of those cases that

1 the State did not present any evidence whether the
2 screen was on the window at the time the window was
3 broken. Or when the screen was removed.

4 MR. LEDDY: Right. And likewise in this case,
5 the State has presented no evidence when the
6 defendant's fingerprints were placed on the window.

7 THE COURT: You say the State didn't present
8 any evidence of whether the screen was on the window
9 or in the yard or outside the house. They found it
10 outside the house, didn't they?

11 MR. LEDDY: That is correct.

12 THE COURT: This window wasn't outside the
13 house.

14 MR. LEDDY: Right. And, Your Honor, there is
15 a spot in this case that to distinguish the case at
16 bar from the State vs. Mitchell, Your Honor, has hit
17 directly on it. Exactly right.

18 THE COURT: In fact, the Respondent's
19 fingerprint was on a screen that was propped up
20 against the house does not prove entry where
21 Respondent had been in and around the victim's house
22 at least three times prior to the burglary.

23 MR. LEDDY: That's right.

24 THE COURT: That's that case.

25 MR. LEDDY: That's that case.

1 THE COURT: How does that fit with this case?

2 MR. LEDDY: It fits with this case, because
3 the evidence in this case are fingerprints on a window
4 outside and inside, okay. And a fingerprint on the
5 inside of a window doesn't prove entry. A fingerprint
6 in the kitchen. Because you have to be inside the
7 house to make that fingerprint. You do not have to be
8 inside a house to make a fingerprint on a window.

9 THE COURT: You're going to have to convince
10 the jury about that.

11 MR. LEDDY: The jury, Your Honor, is---

12 THE COURT: I am saying you're going to have
13 to convince the jury about that.

14 MR. LEDDY: Well, Your Honor, that -- this
15 leads me to State vs. Arnold, which is why I have also
16 presented these.

17 THE COURT: Okay.

18 MR. LEDDY: In that case, there was, compared
19 to this case, Your Honor, there was a mountain of
20 evidence against the defendant in that case. This was
21 a murder case in which the defendant was, the victim
22 in the case was a doctor. He called his secretary
23 around lunch, and canceled all his afternoon
24 appointments, which was unusual. Nobody ever saw him
25 again. He had borrowed somebody's car.

1 THE COURT: I remember this case. I read it
2 closely when it came out.

3 MR. LEDDY: Okay.

4 THE COURT: It's a new case. Relatively new.
5 Go ahead.

6 MR. LEDDY: Right. Well then if you're
7 familiar with, I will just summarize the 7 points of
8 circumstantial evidence that the court noted and found
9 insufficient to send it to the jury. First, that the
10 car was found near the defendant in another State.
11 That the defendant's fingerprint was found on a coffee
12 cup in the car; that the defendant and the victim in
13 fact were involved in a sexual relationship.

14 THE COURT: Right.

15 MR. LEDDY: That the victim had withdrawn a
16 large amount of money before he was found dead; that
17 there was scratches on the car consistent in some
18 people's mind with the car having been driven to a
19 remote location, down on a country road where a murder
20 could have taken place; that all of these instances
21 occurred in a short time frame.

22 THE COURT: The fact that his fingerprint was
23 in the doctor's car does not prove him guilty.

24 MR. LEDDY: That is what the court determined.

25 THE COURT: Right. What does that have to do

1 with this case?

2 MR. LEDDY: Well the reason that it has
3 something to do with this case is because what the
4 Court of Appeals stated in the accompanying opinion
5 which was affirmed, that by taking on the Indictment,
6 which at this time on page 4 of that Court of Appeals
7 case, by bringing the case, the State assumes the
8 burden of proving that the accused was at the scene of
9 the crime when it happened, and that he committed the
10 criminal act.

11 The fingerprints don't prove that he was there
12 when it happened, Your Honor. They have no evidence,
13 circumstantial or direct that he was there when the
14 burglary took place.

15 THE COURT: You will have to convince the jury
16 of that.

17 MR. LEDDY: Well, Your Honor, respectfully, I
18 don't think it rises to a level---

19 THE COURT: Well I have given you an
20 indication as to how I am going to rule on your
21 motion.

22 MR. LEDDY: Yes, sir. And I am just making
23 the record clear. It seems to me that you have to
24 have substantial circumstantial evidence. And
25 circumstantial evidence is defined as a series of

1 facts and circumstances. And one single piece of
2 circumstantial evidence can't possibly fit the
3 substantial requirement. And in this case, Your
4 Honor, being that it's completely circumstantial, it's
5 no doubt that it raises a strong suspicion, Your
6 Honor.

7 THE COURT: You're using, when you say
8 substantial, how are you defining circumstantial
9 evidence?

10 MR. LEDDY: And I can bring this up to you as
11 well, Your Honor, if you would like. This is State
12 vs. Cherry, 361.

13 THE COURT: What year was that?

14 MR. LEDDY: 2005. 361, S.C.588, 2005. And
15 it's on just the second page. Deciding to quote the
16 State vs. Grippon G-R-I-P-P-O-N. The circumstantial
17 evidence is proof of a chain of facts and
18 circumstances indicating the existence of a fact. And
19 here you have one single piece of evidence, which is
20 fingerprints, Your Honor. So again,---

21 THE COURT: Well you have more than that. You
22 have the ladder, the window, the fingerprints, the
23 person in the yard.

24 MR. LEDDY: There's---

25 THE COURT: All of that is evidence.

1 MR. LEDDY: The ladder is not connected to
2 Mr. Brown unless you make the logical leap that his
3 fingerprints were near the ladder, therefore, he moved
4 it there. The evidence in the record is that the
5 ladders were all locked up. So....

6 THE COURT: How about that ladder at the
7 house when the man got there that Monday morning?

8 MR. LEDDY: But I'm saying, I would disagree,
9 Your honor, that the ladder is evidence.

10 THE COURT: See you can disagree with me---

11 MR. LEDDY: Yes, sir.

12 THE COURT: ---but it doesn't matter. I mean
13 I am not on this issue. I'm saying you have got to
14 convince the jury. You cannot convince me on the
15 issue of directed verdict, because I believe there is
16 sufficient evidence for which the jury can find him
17 guilty. Based on the direct and circumstantial
18 evidence in this case.

19 MR. LEDDY: Yes, sir. And I'm only---

20 THE COURT: You have to convince the jury.
21 You don't have to -- you have to make sure. It
22 doesn't matter whether I -- you disagree with me,
23 you've got to convince the jury. They are the ones
24 you don't want to disagree with you.

25 MR. LEDDY: That's right. It matters insofar

1 as, that it reserves or doesn't reserve the issue,
2 Your Honor. And I didn't---

3 THE COURT: Well the record is reserved. You
4 made your motion. But I disagree with you. I believe
5 that the jury in relation to the circumstantial
6 evidence is to consider all of the circumstantial
7 evidence as well as all the direct evidence. And that
8 the fingerprints being inside the window and wherever
9 they were found, was one piece of circumstantial
10 evidence. Among other pieces of circumstantial
11 evidence that the jury could consider and should
12 consider.

13 That's why I asked you what is your definition
14 of circumstantial evidence. You are talking about a
15 substantial circumstantial evidence. When you were
16 defining it, I didn't hear you use that term. That's
17 why I am asking your circumstantial evidence
18 definition.

19 MR. LEDDY: Circumstantial evidence is a proof
20 of a chain of facts and circumstances indicating the
21 existence of a fact. All right, so you can have---

22 THE COURT: Where is your argument about
23 something that is a substantial circumstantial
24 evidence that you were talking about earlier?

25 MR. LEDDY: That's, circumstantial evidence as

1 defined, the way I just did it, is inserted into the
2 analysis of whether to send the case to the jury. You
3 have to have substantial. And that's the test. You
4 have to have any direct evidence, or you have to have
5 substantial circumstantial evidence. And that's in
6 every, certainly that's in State vs. Mitchell.

7 THE COURT: What year was that case?

8 MR. LEDDY: 2000. And that states, actually
9 it may be better to quote from the Arnold case. And
10 it states, "The trial court has the duty to submit the
11 case to the jury where the evidence is circumstantial
12 if there is substantial circumstantial evidence which
13 reasonably tends to prove guilt of the accused, or
14 from which his guilt may be fairly and logically
15 deduced. Unless there is a total failure of the
16 competent evidence to charge it, refusal by the trial
17 judge to direct a verdict of acquittal is not
18 inherent. The trial judge should grant a directed
19 verdict; however, when the evidence merely raises a
20 suspicion that the accused is guilty on appeal, the
21 denial of a directed verdict of acquittal, he must
22 look at the evidence in the light most favorable to
23 the state."

24 And they go on to state the circumstances of
25 that case, which as I said, were much more suspicious

1 than this particular case, because they had seven
2 different things to look at. Seven different facts.
3 Seven different circumstances and a chain of events
4 from which they can infer that the defendant was
5 guilty. And indeed when that case was sent to a jury,
6 Your Honor, he was convicted. So just because a jury
7 is going to convict somebody like if the standard, the
8 standard is whether there is substantial
9 circumstantial evidence. In this case there is only
10 one piece.

11 THE COURT: I understand your argument. I
12 deny your motion.

13 MR. LEDDY: Thank Your Honor.

14 THE COURT: Anything else before we bring the
15 jury back?

16 MR. GOLDBERG: No, sir.

17 MR. SHEALY: No, Your Honor.

18 THE COURT: You have pointed out an
19 interesting thing the probation is dealing with how to
20 integrate the circumstantial versus direct evidence in
21 jury charges and in determining how the court is to
22 consider it upon the directed verdict motion as well.
23 In the State vs. Cherry case and the State vs.
24 Edwards, they went through the entire analysis issue
25 as you have done. I find in this case that should the

1 jury believe the State's evidence that the defendant's
2 prints were in the house as a result of his burglary
3 of the house, then they can find him guilty. And I
4 believe there is sufficient evidence exists from which
5 the jury can make that determination.

6 That's why you have to convince the jury about
7 the matter. You can't convince me that it constitutes
8 insufficient evidence for the case to go to the jury.

9 MR. LEDDY: Thank you, Your Honor.

10 (State's exhibit Nos. 1-20 into evidence.
11 State's Exhibit No. 21 for id only.)

12 THE COURT: Anything else before we bring if
13 jury in.

14 MR. GOLDBERG: No, sir.

15 MR. LEDDY: No, sir.

16 THE COURT: Bring them on.

17 (Whereupon, the following takes place within
18 the presence of the jury.)

19 THE COURT: Ladies and Gentlemen, you have
20 heard the State's case. It's now the defense's turn.
21 You may proceed.

22 MR. SHEALY: Your Honor, at this time the
23 defense would call Lawrence McNealy.

24 THE COURT: Mr. McNealy, come forward.

25 LAWRENCE MCNEALY, after being duly sworn,

1 testified as follows:

2 THE CLERK: Please have a seat on the witness
3 stand, and state your full name for the record.

4 A Lawrence McNealy.

5 Direct Examination by Mr. Shealy:

6 Q Good morning, Mr. McNealy.

7 A Good morning.

8 Q Can you tell the jury where you are employed
9 currently?

10 A I'm employed as an investigator with the
11 Richland County Public Defender's Office and have been
12 so for 6 years.

13 Q And do you have any past investigative
14 experience?

15 A I retired from the Richland County Sheriff's
16 Department with 24 and a half years service. I have
17 my private investigative business for 10 years. And I
18 have been doing it for the Public Defender's Office
19 now for 6 years.

20 Q Have you ever received law enforcement
21 training?

22 A I attended the South Carolina Criminal Justice
23 Academy. And on a number of occasions for the basics
24 investigative courses. I have been to homicide
25 investigation school out of State. Fingerprints.

Lawrence McNealy-direct by Shealy

1 And I can't remember. It has been a number of them.

2 Q And who have you been working for recently?

3 A I'm working this case for you, sir.

4 Q And lastly, yesterday did I tell you to do
5 something on this case?

6 A Yes, sir. You asked would I go over and
7 measure the distance from the ground to the window
8 sill at the house at

9 Q Right. And would that be this house right
10 here?

11 A Yes, sir, it would.

12 Q And would that be the house of Ms. Monteith?

13 A Yes, it is.

14 Q And have you actually spoken to her in the
15 past?

16 A I spoke with her I believe in April of this
17 year.

18 Q Okay. And looking at the State's Exhibit No.
19 4 here, does that look like the window I asked you to
20 measure?

21 A Yes, sir, it is.

22 Q And did the you measure the window on the
23 right as you're facing the house?

24 A I measured the window where the ladder is
25 standing.

Lawrence McNealy-direct by Shealy

1 Q Yes, sir. And what did you use to measure the
2 window with?

3 A A normal tape measure. 10 foot tape measure.

4 Q Something like that?

5 A Yes, sir.

6 Q Qualified to work this device?

7 A Yes, sir.

8 Q And based on you measuring this window from
9 the ground to the window sill, what was your
10 measurement that you got?

11 A 70 inches or 5-foot 10 inches.

12 MR. SHEALY: Thank you. Mr. McNealy, please
13 answer anything the State may have.

14 Cross Examination by Mr. Cathcart:

15 Q I show you what has been marked State's
16 Exhibit No. 4, that's the picture he just showed you,
17 correct?

18 A Yes, sir.

19 Q And you're talking about you measured from the
20 ground to the top of the sill, correct?

21 A I measured from the ground to the wood right
22 here above the brick sill.

23 Q Okay. And That was 5 feet 10 inches. An inch
24 less than 6-foot, correct?

25 A Two inches less than 6 foot.

Lawrence McNealy-cross by Cathcart

- 1 Q Two inches, I'm sorry if I misspoke. Now how
2 big are these windows? Can you tell me how high they
3 are? Did you measure those?
- 4 A No, I didn't measure the total window.
- 5 Q It's a tall window, isn't it?
- 6 A Yes, sir.
- 7 Q It's about a 6 foot high window, isn't it?
- 8 A It would be probably somewhere around 74
9 inches.
- 10 Q 74 inches. So 2 inches over 6 foot, correct?
- 11 A Yes. Uh-huh. (Affirmative.)
- 12 Q Did you know where the fingerprint is on this
13 window?
- 14 A I have no idea.
- 15 Q Well let me help you out with that. Let me
16 show you what has been marked as State's Exhibit No.
17 12. Do you recognize what that is on that window?
- 18 A It appears to be a fingerprint. A latent
19 fingerprint.
- 20 Q Okay. And that would be the fingerprint, have
21 you been in this courtroom during this trial?
- 22 A No, sir, I haven't.
- 23 Q It wouldn't surprise you that that was the
24 fingerprint identified belonging to Leroy Brown, would
25 it?

Lawrence McNealy-cross by Cathcart

1 A No, sir, if you say so.

2 Q And that fingerprint is about how high above
3 that window sill? About A foot would you say? Two
4 foot?

5 MR. SHEALY: Objection, Your Honor. He's
6 asking the witness to speculate.

7 THE COURT: Overruled.

8 MR. CATHCART: Thank you, Your Honor.

9 A I would say just from looking at this, the
10 best I can tell without measuring, probably somewhere
11 around 14, 16 inches maybe.

12 Q So a little bit over a foot. Four inches over
13 a foot? Two inches over a foot?

14 A Yes, sir.

15 Q Okay. That's above that sill right there,
16 correct?

17 A It's above this sill here.

18 Q I am sorry. That window is open, isn't it?

19 A Yes, sir.

20 Q It's about a foot above right there, correct?

21 A No.

22 Q I'm sorry?

23 A That's not the window sill. That's the window
24 itself. You are talking about the window sill---

25 Q Yes, sir.

Lawrence McNealy-cross by Cathcart

1 A ---that's on the bottom here.

2 Q Yes, sir.

3 A I understand it's coming up, it would be 16
4 inches above this here.

5 Q I want you to look at that picture again.

6 A All right.

7 Q Does that door -- is the sill down there or up
8 here?

9 A The window sill is down here.

10 Q Yes, sir. And that fingerprint is right here,
11 correct?

12 A Right.

13 Q Above this window.

14 A Right.

15 Q So you're saying that's only a foot above the
16 entire sill?

17 A No, I am saying from here, here the can of
18 powder is sitting---

19 Q Yes, sir.

20 A ---to this fingerprint here, is approximately
21 16 inches I would think, without measuring.

22 Q Okay. And this is the other side of that
23 window. Does that look about 16 inches to you?
24 Because that would be right about up here, wouldn't
25 it?

Lawrence McNealy-cross by Cathcart

1 A No. 16 inches would probably be right in
2 here.

3 Q In Crime Scene Investigation, do you, do
4 people, does the crime scene investigator move the
5 windows around when he's taking pictures the first
6 time?

7 A I would think so.

8 Q So and in fact the testimony today was that
9 or yesterday was he did not move the scene.

10 A I don't know what the testimony was yesterday.

11 Q Let me show you a further scene of that
12 picture.

13 A Uh-huh. (Affirmative.)

14 Q Based upon what the fingerprint is in this
15 picture, and based upon where that window is in that,
16 how far off that sill is that? Is that just a foot?

17 A No, it would probably be about half the
18 distance from here to the upper window.

19 Q Yes, sir. So that would according to your
20 measurements before be almost 3 feet, correct?

21 A No.

22 Q How high?

23 A It would be approximately one and a half foot,
24 or 16 inches from the bottom of this window sill to
25 where about the fingerprint is. From here to here is

Lawrence McNealy-cross by Cathcart

1 37 inches.

2 Q Yes, sir, okay. But the fingerprint, and I
3 will let you look at picture again. In fact I have
4 got a better picture. I'll let you mark this for me,
5 please, ma'am.

6 (photo marked State's Exhibit No. 22 for id.)

7 Q I show you what has been marked State's
8 Exhibit No. 22. That's a picture of the interior of
9 the house, correct?

10 A Yes, sir.

11 Q With the window open as it was when the
12 burglar left it, correct?

13 A I have no idea how it was when the burglar
14 left.

15 Q Open just as high as it is on this picture,
16 correct?

17 A That's correct.

18 Q And the picture showing it after it has been
19 processed, the fingerprints are above the window sash,
20 the bottom window sash or window, correct?

21 A Correct.

22 Q Now how high, so it would be right above.

23 MR. CATHCART: Your Honor, at this time the
24 state seeks to introduce State's Exhibit No. 22.

25 THE COURT: What says the defense?

Lawrence McNealy-cross by Cathcart

1 MR. SHEALY: No objection.

2 THE COURT: Introduced.

3 MR. CATHCART: Thank you.

4 (Photo marked State's Exhibit No. 22 into
5 evidence.

6 Q The fingerprints are right above there, so it
7 would be right about there, correct?

8 A I would say not. It appears that the window
9 here in this photograph is higher than the window in
10 this photograph. I wasn't there and I didn't measure
11 it.

12 Q You weren't there.

13 A So I don't know. I'm just telling you I'm
14 seeing from looking at the picture. It appears that
15 one is higher than the other one.

16 Q And the testimony as before, nothing was moved
17 when this was done, correct?

18 A I have no idea what was testified in court.

19 MR. SHEALY: Your Honor.

20 THE COURT: Just a moment.

21 MR. SHEALY: Your Honor, he wasn't here for
22 any of the testimony. He wouldn't know what the
23 testimony was. And we've already gone over what his,
24 you know, the question about the measurement.

25 THE COURT: That's your statement. What's

Lawrence McNealy-cross by Cathcart

1 your objection?

2 MR. SHEALY: The objection is asked and
3 answered.

4 THE COURT: Your objection is overruled.

5 MR. CATHCART: Thank you, your honor.

6 Q The window looks like that, correct?

7 A In that photograph.

8 Q And you work for the public defender's office?

9 A Yes, sir, I do.

10 Q Working for that man right there.

11 A Yes, sir, I do.

12 THE COURT: Redirect.

13 MR. SHEALY: Redirect, Judge.

14 Redirect Examination by Mr. Shealy:

15 Q Mr. McNealy, have you ever known a tape
16 measure to lie to you?

17 A No, sir.

18 Q We are talking windows, and positioning the
19 windows. Mr. Cathcart here bear with me. This window
20 here where it has been dusted and there is a dust can
21 under it, you see that?

22 A Yes, sir, I do.

23 Q That's entered into evidence. Does that
24 window look in the same position as this picture of
25 the window?

Lawrence McNealy-redirect by Shealy

1 A No, sir, it does not.

2 Q So in your opinion it seems like it has been
3 moved?

4 A Yes, sir.

5 Q MR. SHEALY: Thank you, that's all.

6 Recross Examination by Mr. Cathcart:

7 Q Did you measure any more as to the length and
8 height of that window as to where the fingerprint was?

9 A I don't know where the fingerprint was.

10 Q So you didn't measure how high the fingerprint
11 was above the sill, correct?

12 A No.

13 MR. CATHCART: Thank you.

14 THE COURT: You may step down, sir.

15 MR. SHEALY: Judge, may this witness be
16 excused?

17 THE COURT: Any objection?

18 MR. CATHCART: No, sir.

19 THE COURT: You may be excused. Next witness.

20 MR. SHEALY: The defense calls Mr. Leroy
21 Brown.

22 LEROY BROWN, after being duly sworn,
23 testified as follows:

24 THE CLERK: If you would please have a seat on
25 the witness stand and state your full name for the

Lawrence McNealy-recross by Cathcart

1 record.

2 A My name is Leroy Brown.

3 Direct Examination by Mr. Shealy:

4 Q Good afternoon.

5 A How are you doing?

6 Q Mr. Brown, where are you from?

7 A Right here in Columbia.

8 Q How old are you?

9 A I'm 52 years old. Yes, sir.

10 Q Have you lived here your whole 52 years?

11 A Yes, sir.

12 Q Born and raised?

13 A Yes, sir.

14 Q Have you have children, Mr. Brown?

15 A Yeah, I have got two daughters.

16 Q Do you they have any children?

17 A Yeah, they have got 9. We have got 9

18 grandchildren.

19 Q So you're a grandfather?

20 A Yes, sir.

21 Q We're talking a lot about last October. I

22 want to draw your attention there. Where were you

23 living at that time?

24 A I was staying at

25 Q Okay. Were you working at that time?

Leroy Brown-direct by Shealy

1 A Yes, sir.

2 Q Tell the jury where you working.

3 A I was working at an industrial plant.

4 National Linen Service on 48.

5 Q Can you tell us what you were doing there?

6 A Well I was driving a forklift, and sometimes I
7 helped in the electrical area.

8 Q Okay. Now you got paid to do this work?

9 A Yes, sir.

10 Q Do you remember how much money you were making
11 an hour?

12 A Well they started me off at 9.75 an hour. And
13 after 90 days I moved up.

14 Q Do you remember how often you got paid?

15 A I got paid every two weeks.

16 Q What days did you get paid?

17 A On Friday.

18 Q On Friday, typically what type of paycheck
19 would you pick up?

20 A Anywhere from 835 to 840.

21 Q Now in terms of this job, can you tell us when
22 you went to work typically?

23 A Well I went to work, I have to be at work at
24 5:30. I leave home at four.

25 Q And what time do you usually get off?

Leroy Brown-direct by Shealy

1 A Anywhere between 2:30 and 3:00 o'clock.

2 Q So is this type of job you punch in and punch
3 out?

4 A Yes, sir.

5 Q Now when you get off of work, would you
6 sometimes visit your daughter?

7 A Yeah, I would visit her quite frequently.

8 Q Where does she live?

9 A Right up the street from Dreher.

10 Q Do you know what street that is?

11 A That's where and branch off
12 right there.

13 Q Okay. And so you go there from work after
14 getting off.

15 A Yes, sir.

16 Q What road would you typically use to get
17 there?

18 A When I leave work, you can turn and take Belt
19 Line. And will run you into
20 and will bring you all the way to

21 And then you cross over and it will take
22 you all the way to

23 Q Okay, so you would travel down i?

24 A Right. So, you know, after work, I usually
25 stop at the Sub Station right there on the corner of

Leroy Brown-direct by Shealy

1 A Yes, sir.

2 Q So why would you want this additional job?

3 A Well painting is what I love to do.

4 Q Okay.

5 A And not only that, I just wanted the extra
6 money. The reason why, the sole purpose of you having
7 extra money is because a lot of all jobs you work, you
8 know, people want their house painted. Or the front
9 or a room painted. And most of the time you have got
10 to have your own money to buy the paint.

11 Q Okay. Do you like to paint more than your
12 other job?

13 A Yes, sir.

14 Q Okay. Now back, thinking back to October of
15 last year.

16 A Uh-huh. (Affirmative.)

17 Q Do You recall sometime in that month when you
18 actually were stopped at . . . ?

19 A Yes, I was stopped there.

20 Q And you probably don't know the address. But
21 at the construction site you were just talking about.

22 A Right. There was a big old sign there.

23 Q Okay. Why would you want to stop in there?

24 A To ask them did they need any part-time work
25 or part-time help.

Leroy Brown-direct by Shealy

1 Q Okay. And when you recall doing this, can you
2 estimate what time of day this was?

3 A Well I got off about 2. So it would be
4 anywhere between 2 to 2:30.

5 Q Talking about the afternoon?

6 A Yes.

7 Q And you said you were looking to try to ask
8 about work?

9 A Yes.

10 Q Okay. We've got a lot of exhibits here. A
11 lot of pictures of the house. Does this house look
12 like the house you were talking about?

13 A Yes, sir.

14 Q Where you would have stopped to look for work?

15 A Yes, sir.

16 Q So did you walk around looking for someone to
17 talk to?

18 A Yes, sir. Because when I parked my car, I
19 went around it. That's when I ran into the fellow
20 working on that window.

21 Q Okay.

22 A Well he was working on several windows,
23 because he had had them all.

24 Q Well let me stop you here.

25 A Uh-huh. (Affirmative.)

Leroy Brown-direct by Shealy

1 Q You ran into a fellow?

2 A Yeah.

3 Q What did he look like?

4 A Well he was about 5'7, 5'8. And he had on
5 painter's pants.

6 Q A black guy, white guy?

7 A Yes, sir.

8 Q Can you describe his complexion?

9 A Well he was dark skinned. He was anywhere
10 between, I give him, in his early, in his late 20's.
11 About 30.

12 Q Okay. So was he the first person you actually
13 saw?

14 A Yeah, he was the first person I ran into.
15 Yes, sir.

16 Q Okay. Was he alone?

17 A Yes, sir, because he -- what he was doing, he
18 was prepping the window.

19 Q Okay. Well let me ask you about that. But
20 he was by himself, right?

21 A Yes, sir.

22 Q We've got a couple of pictures here which have
23 been entered into evidence. Does this look like about
24 the window where he was working?

25 A Yes, sir.

Leroy Brown-direct by Shealy

1 Q Did he have a ladder out?

2 A Yeah, he had a ladder out.

3 Q Okay, but you didn't -- were you sure exactly
4 what stage of work he was doing?

5 A No, I know he -- well by the, you know, since
6 I've been painting for a while, you couldn't tell
7 whether or not either they are painting a window,
8 scraping the window or they are trying to prep a
9 window to get it ready.

10 Q Well he hadn't started it yet.

11 A Yet.

12 Q Okay. So what did you do then to try to talk
13 to him?

14 A Well in the painting business what you call,
15 what you call pitch yourself, you know, when you go on
16 a painting job and you want to look for work, you've
17 got to be able not only to ask somebody what, but
18 you've got to be able to tell what you know. Because,
19 you know, because when you're learning the paint
20 business, anybody can come and say a different paint.
21 But when you get down to it, they really can't paint.
22 So what we call in the painting business, "Pitch
23 yourself." You start breaking down and telling them
24 things in the paint business. And therefore by doing
25 that, you will be able to let them know that he know's

Leroy Brown-direct by Shealy

1 what he's talking about. He can paint.

2 Q Okay. So you were trying to impress him with
3 your knowledge?

4 A Yes. Right.

5 Q It was almost like a little mini job
6 interview?

7 A Right.

8 Q Bear with me. I've got a very rough prop.
9 Just to help show the jury kind of your conversation
10 of what took place near this window. We are going to
11 measure out 5-foot 10 inches.

12 MR. SHEALY: Do you mind permission to allow
13 the witness to step down, judge?

14 THE COURT: He can.

15 Q All right. Now if I am the painter.

16 A Uh-huh. (Affirmative.)

17 Q And you all are talking about this window that
18 looks like he is about to work on, what type of thing
19 is he saying now?

20 A Well this is what I am explaining to him. See
21 I'm -- what you do in the painting business you
22 describe the wood to him. Because a lot of the wood
23 if the house has been there, and it is old---

24 Q Uh-huh. (Affirmative.)

25 A ---the wood have what you call bulk.

Leroy Brown-direct by Shealy

1 Q Right.

2 A It will bulk up when you put paint on it,
3 because the wood is old. And that pretty much
4 determines whether the wood is good or rotten.

5 Q Okay.

6 A So what you do, you've got to be able to touch
7 it and run your hand over.

8 Q Uh-huh. (Affirmative.)

9 A Because sometimes that wood has been there so
10 long, because of the heat and the cold, and we use
11 another term, it will knot up too. We have little
12 knots in the wood. So therefore when you press the
13 wood, you've got to be able to sand the wood down and
14 sand the knots down.

15 Q Right.

16 A And then you've got to be able to touch it to
17 see whether or not it's got bulk in there to.

18 Q Okay.

19 A So this is what I was explaining to him, when
20 I went to him and tell him about the wood.

21 Q And you're trying to impress him---

22 A Right.

23 Q ---with your knowledge.

24 A Right. Because any painter will know if you
25 know what you are talking about on the wood. If you

Leroy Brown-direct by Shealy

1 know what you are talking about when you are talking
2 about painting.

3 Q And at this time was the window open?

4 A Yeah, the window was open. Yes, sir.

5 Q I mean was it cranked wide up or was it low
6 open?

7 A Well that's the part I can't determine, but I
8 know it was up.

9 Q I mean, It's kind of been a while.

10 A Yeah.

11 Q You don't know exactly.

12 A Right.

13 Q But you do recall having this conversation?

14 A Yes.

15 Q And at that point you think you might have
16 been talking about the wood?

17 A Right. But not only was I talking about the
18 wood, but I was talking about the use of oil base
19 paint. And if the wood ain't no good, or either if
20 you've got bulk paint, then the oil paint basically
21 ain't going to stay on there. What it does is, it
22 makes it knot up more and more.

23 Q Okay.

24 A So that's why I was explaining to him about
25 the wood. And he then can determine an opinion from

Leroy Brown-direct by Shealy

1 there of whether to use a thin coat or a heavy coat.

2 Q Okay. Do you think it is possible at this
3 time when you are examining this wood, that you would
4 actually put your hand on the---

5 MR. GOLDBERG: Objection to the leading.

6 THE COURT: Do not lead the witness.

7 Q Do you think at this time---

8 MR. GOLDBERG: Objection, same objection.

9 MR. LEDDY: Your Honor,----

10 THE COURT: I didn't hear the entire question.

11 MR. GOLDBERG: I just ask that he not lead the
12 witness.

13 MR. LEDDY: I wasn't leading the witness.

14 Q Mr. Brown.

15 A Yes, sir.

16 Q Do you recall at the time putting your hands
17 on the window at all?

18 A Yes, sir.. You have to put your hand on the
19 window in order for you to touch the wood. You've got
20 to be able to put your hand on the surface. You've
21 got to be able to touch this part and that part.

22 Q Okay. And you recall doing this because---

23 A Right. Because what I am trying to do is sell
24 a pitch to him and let him know, "Hey, I am painter."
25 By me doing that, that lets him know, hey, this man

Leroy Brown-direct by Shealy

1 knows what he is talking about.

2 Q Okay. You can have a seat, Mr. Brown.

3 (Whereupon, the witness resumes the witness
4 stand.)

5 Q Mr. Brown, did he tell you they were hiring?

6 A No, he just told me flat out, no.

7 Q Okay. Did it seem like he wanted you to work
8 there?

9 A I know after when I was talking to him, I
10 could tell he was getting uncomfortable. But I felt
11 as though well maybe he was getting this way, well we
12 can use a man like this. But when I asked him, I
13 said, well, do you think they are hiring. Because I'm
14 thinking this may be the foreman I am talking to.

15 Q Okay.

16 A You know, because the way he, you know, the
17 painter clothes.

18 Q Did he give you his name?

19 A No, sir.

20 Q Did you give him your name?

21 A No.

22 Q The entire conversation.

23 A Right.

24 Q How long was it?

25 A It was about 4 minutes. 5 minutes.

Leroy Brown-direct by Shealy

1 Q Pretty short. And after he told you no, we
2 are not hiring, what did you do?

3 A I left.

4 Q You left the same way you came.

5 A Yes.

6 Q You walked back to your car.

7 A Yes.

8 Q And then you left to go see your---

9 A My job.

10 Q ---job.

11 A Yes.

12 Q Did it seem like that man was going to run off
13 and tell his foreman please hire you?

14 MR. GOLDBERG: Objection. Speculation about
15 what the other man was going to do, and it's leading.

16 THE COURT: The objection is overruled.

17 Q You may answer.

18 THE COURT: Just a moment. Answer.

19 A Yes. Because when I was walking off, he just
20 turned around and go back to the window.

21 Q Okay. So he didn't pay you much mind.

22 A No.

23 Q Mr. Brown, I am going to be blatantly honest
24 with you. Did you break into this house?

25 A No.

Leroy Brown-direct by Shealy

1 MR. LEDDY: Thank you.

2 THE COURT: Cross Examination.

3 Cross Examination by Mr. Goldberg:

4 Q You said you get paid on Friday.

5 A Yes, sir.

6 Q And that you were looking for some additional
7 cash.

8 A Yes. Not only that, I already had a truck
9 with equipment. I already had a truck and painting
10 equipment.

11 Q So you were looking for some additional money.

12 A Right.

13 Q You wanted a job. So you saw a sign that said
14 there was construction work going on.

15 A Yes.

16 Q You went to the property. You went up to this
17 fellow that you described. And you don't remember his
18 name.

19 A No.

20 Q You gave us a general description of him. You
21 said, I believe, that he was working on several
22 windows at the time, is that right?

23 A Yeah, because several windows were up.

24 Q Several windows were up. But you're sure that
25 this one particular window that he showed you, the one

Leroy Brown-cross by Goldberg

1 with the ladder, is the one you all had the
2 conversation about?

3 A Right. Because to be the size he was, he had
4 to be working on that window.

5 Q Because of the size he was?

6 A Yeah. He was no more than about 5'7, 5'8.

7 Q And the window is about 6 feet off the ground,
8 right?

9 A By the measurement y'all just said.

10 Q So the one window, and you said, you went up
11 to him after a little diagram up here. And you were
12 talking to them about the wood on this frame, right?

13 A Right.

14 Q Have you, on that day did you get a good look
15 at that house? Did you look at it as you walked by
16 other than just that one window?

17 A Well I know they had several wood frames on
18 the house. And it takes a lot of paint. And I also
19 know they had anywhere from a 20 foot ladder to a 36
20 inch ladder propped up.

21 Q And it's fair to say that there's a lot of
22 windows on this house.

23 A Yes, sir.

24 Q And that they were preparing to do work on
25 several of the windows.

Leroy Brown-cross by Goldberg

1 A And not only that because whenever you say
2 remodeling and painting, and then when you run into
3 people on the outside, you know, it's quite natural in
4 the painting business that you are working on the
5 outside.

6 Q And the window that you happened to talk to
7 this man about happens to be the same one as the one
8 point of entry of the burglary.

9 A This is where I met---

10 Q Yes or no.

11 A Right. This is where I met him. Yes, sir.

12 Q That's the one.

13 A Yeah.

14 MR. GOLDBERG: I beg the court's indulgence.

15 Q The whole conversation that you had this
16 fellow was outside the house, correct?

17 A Yes, sir.

18 Q You never went inside?

19 A No.

20 THE COURT: Redirect?

21 MR. SHEALY: No, sir, your honor.

22 THE COURT: You may step down. Next witness.

23 MR. SHEALY: Your Honor, at this time, the
24 defense would rest.

25 THE COURT: Ladies and Gentlemen, you have

Leroy Brown-cross by Goldberg

1 heard the defense's case. Any reply by the State?

2 MR.. GOLDBERG: I beg the Court's indulgence.

3 No, sir.

4 THE COURT: Ladies and Gentlemen, you have now
5 heard all of the evidence in this case. What remains
6 is the closing arguments. And we will take a break
7 and we will come back for closing arguments. Please
8 go to the jury room. Please do not discuss the case.

9 (Whereupon, the following takes place outside
10 the presence of the jury.)

11 THE COURT: Any matters of law?

12 MR. SHEALY: Your Honor, we would just renew
13 all our prior objections and motions. Specifically
14 Mr. Leddy's directed verdict motion.

15 THE COURT: I respectfully deny the renewal of
16 the motion for a directed verdict. Any requested jury
17 charges?

18 MR. SHEALY: Your Honor, would it be possible
19 for us to submit those after lunch?

20 THE COURT: No, sir.

21 MR. SHEALY: One jury charge I can think of to
22 make my argument to this, is to the charge that would
23 say as to the burglary, two prior burglaries, the jury
24 would, you know, be instructed you are not to consider
25 that or anything other than to prove the elements not

1 for bad character or propensity of the evidence. For
2 the burglary in this case. We would ask that that be
3 instructed. And you may have already been thinking
4 along those lines.

5 THE COURT: I have an instruction that
6 evidence of prior offenses committed by the defendant
7 is not offered to prove the defendant has a bad
8 character or to prove that the defendant committed the
9 burglary on this occasion. The prior convictions may
10 be considered by you to determine for the purpose of
11 determining whether or not it satisfies that element
12 of the offense that makes it first degree burglary if
13 you enter a dwelling without consent to commit a crime
14 and you have two prior convictions for burglary and
15 housebreaking.

16 MR. SHEALY: Yes, Your Honor. That's what I
17 had in mind.

18 THE COURT: Anything else?

19 MR. SHEALY: I beg the court's indulgence.

20 THE COURT: From the State?

21 MR. GOLDBERG: Judge, the only thing I can
22 think of and I am trying to remember your standard
23 reasonable doubt charge. If you wouldn't mind just
24 sharing that with us.

25 THE COURT: To hesitate to act. The

1 combination of hesitate to act and firmly convinced.

2 MR. GOLDBERG: Thank you.

3 MR. LEDDY: Your Honor, we would like to
4 request, as Your Honor has stated before, the Courts
5 have been successful in how to handle the circumstantial
6 evidence and jury charge as well as the directed
7 verdict. Now we are at the jury charge, I would like to
8 request that Your Honor not just give the charge as
9 stated in the State vs. Griffin. But all of what
10 Justice Toal stated in her assent in State vs. Cherry
11 and go through the more traditional circumstantial
12 evidence charge as stated in State vs. Edwards.

13 THE COURT: What do you want me to tell them?

14 MR. LEDDY: I would like you to tell that the
15 traditional circumstantial evidence charge provides
16 that when the state relies on circumstantial evidence
17 to prove its case, that the jury may not convict
18 unless every circumstance relied upon by the state has
19 been proven beyond a reasonable doubt. And all the
20 circumstances so proven are consistent with each other
21 and taken together point conclusively to the guilt of
22 the accused to the exclusion of every other reasonable
23 hypothesis. And they cite is State vs. Edwards, 298
24 S.C. 272. That was a 1989 case.

25 THE COURT: Well the case you handed up to

1 me, the court had to conclude so long as the jury is
2 properly instructed on reasonable doubt, it is
3 unnecessary to instruct the jury that circumstantial
4 evidence must be so strong as to exclude a reasonable
5 hypothesis other than guilt.

6 MR. LEDDY: Yes, sir. Obviously I am asking
7 you to do something that you are not required by the
8 courts to do.

9 THE COURT: Overrule the Supreme Court?

10 MR. LEDDY: No, but I don't think they said
11 you can't do. They just said you are not required to.
12 I am asking you to do it, although you are not
13 required to. Because I want that issue back before
14 the court. And I think Justice Toal is right.

15 THE COURT: What says the State?

16 MR. CATHCART: Your Honor, the issue involving
17 the Supreme Court and the case law is clear as to
18 circumstantial evidence in that the person's right,
19 basically, we would request because your normal
20 charge.

21 THE COURT: I think the Court has settled the
22 issue as to proper charge as to circumstantial
23 evidence. And I would give the charge on
24 circumstantial evidence that refers to the
25 circumstantial evidence as the chain of facts and

1 circumstances indicating the existence of a fact. And
2 the law makes absolutely no distinction between the
3 weight or value given to circumstantial versus direct
4 evidence. Nor is a greater degree of certainty
5 required of circumstantial than direct.

6 You should weigh all the evidence. And after
7 weighing all of the evidence if you are not convinced
8 of the defendant's guilt beyond a reasonable doubt,
9 you must find him not guilty.

10 MR. CATHCART: Thank you, Your Honor.

11 THE COURT: Any other requested of the
12 charges?

13 MR. LEDDY: Nothing.

14 THE COURT: Do you need a break?

15 MR. GOLDBERG: No, sir.

16 THE COURT: We are going to take about 10
17 minutes and proceed with closing arguments.

18 (Whereupon, the Court takes a short recess.)

19 THE COURT: Who is going to do closing
20 arguments?

21 MR. GOLDBERG: Your Honor, I believe
22 Mr. Cathcart is going to open on the law, and I am
23 going to close on the facts.

24 THE COURT: Who will argue for the defense?

25 MR. LEDDY: I will, Your Honor.

1 THE COURT: You may bring the jury.

2 (Whereupon, the following takes place within
3 the presence of the jury.)

4 THE COURT: We will now hear closing
5 arguments. Mr. Cathcart.

6 MR. CATHCART: Please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. CATHCART: Ladies and Gentlemen, I
9 appreciate your patience. I know it's not the longest
10 trial. But is very important to the State and I
11 submit to you it is very important for Mr. Brown as
12 well. And I do appreciate the fact that you sat here
13 and watched and paid attention in this case.

14 What I am going to do right now is to do a
15 short summary as to the law in this case. After I
16 finish giving you all the law, the defendant will have
17 an opportunity to speak, and then Mr. Goldberg will
18 get a closing as well. And then the judge will charge
19 you as to the law in this case. If I say anything
20 about the law that is different from what the judge
21 says, listen to him. He is the judge of the law, and
22 you all are the judges of the facts.

23 Now this case when we started this thing, this
24 is a burglary in the first degree. Burglary is
25 entering a dwelling of another person without their

1 consent, with the intent to commit a crime therein.
2 This is a mere entry of a dwelling. If any part of
3 the body is inside the dwelling that's an entry. If
4 it is done so with the intent to commit a crime
5 therein, that makes it a burglary. What makes this a
6 burglary in the first degree is the fact that this
7 entry of the dwelling occurred during the nighttime
8 hours. And also that when Mr. Brown did this, he had
9 already been convicted of two counts of burglary.

10 Now it's the State's burden to prove this case
11 beyond a reasonable doubt. Proof beyond a reasonable
12 doubt is proof that leaves you firmly convinced that
13 the person who broke into her house, the person who
14 went on that ladder, left that day, and stole her
15 purse was Mr. Brown. If you firmly convinced of that
16 you must find him guilty. You do that by putting
17 forth the evidence that you saw in Court. Those
18 witnesses, Ms. Monteith who says that, "I've never
19 seen this man. He has never been in my house." And
20 the workers who said that guy has never been around
21 our crew. "We have no idea who that is." And even
22 from the defendant himself when he told us about he
23 touched the outside window. But he never talked about
24 putting his hand in.

25 You judge their credibility. You are judges

1 of the facts. The credibility is judged by this why
2 would they say what they are saying. Is there a
3 reason to say one thing and not another thing? Is
4 there a reason that they would lie. Is there is a
5 reason somebody who would go, well, "Oh, yeah, the
6 reason my fingerprint was there, because out of all
7 those windows in the house that was the one outside."

8 MR. SHEALY: Objection, Your Honor. Mr.
9 Cathcart is not sticking to the law, he is arguing the
10 facts.

11 MR. CATHCART: I am just trying to give
12 examples as to what I am talking about, Your Honor.

13 THE COURT: The objection is overruled.

14 MR. CATHCART: Thank, Your Honor. There is
15 two types of evidence. There is direct evidence and
16 circumstantial evidence. They are both and equally as
17 strong as the other. Direct evidence is, "I saw this
18 happen." The circumstantial evidence is, "The
19 evidence shows what happened;" such as, a fingerprint
20 left on a point of entry. Such a window left open.
21 Such as, the victim's purse when he came on her front
22 lawn.

23 I would ask that you would listen carefully to
24 the closing arguments from the defense and from the
25 State. And again, if the judge tells you anything

1 differently as to the law in this case, you take his
2 law before anything else. Thank you.

3 THE COURT: MR. SHEALY.

4 MR. SHEALY: May it please the Court. I was
5 watching television late one night. I'm a big fan of
6 the AMC channel. I like old stuff. I came across a
7 movie that struck me dearly to my life. It's called:
8 "12 angry men." A classic 1957 film starring Henry
9 Fonda. And it's about what you all have been asked to
10 do today. It's about the role of the jury. The
11 entire film is in black and white. It is set inside a
12 deliberation room, which you will soon be entering and
13 it's about a murder. It's hot and sweaty. And it's
14 summer. And 12 people have been asked to deliberate.
15 And Henry Fonda plays the lead character. And as soon
16 as they get in there, as soon as they get back to the
17 room, they ask for a count. Who says he is guilty. I
18 do. It's 11 to one guilty.

19 Henry Fonda obviously to start the show is the
20 hold out. And what did he do? He asked them to
21 evaluate the evidence. The evidence that comes from
22 this witness stand. The evidence that you all will
23 see. The only evidence they have is the witness'
24 testimony that had a knife that supposedly killed the
25 victim.

1 He asked them to put aside their passion. He
2 asked them that put aside their prejudice. And to
3 think about what the law requires them to think about.
4 Reasonable doubt. The judge asked them to do this.
5 They listened. They put aside their passion and their
6 prejudice, and they did come to a true sense of what
7 reasonable doubt. And they reached a just result.
8 But it wasn't easy to put aside their passion and
9 prejudice. And I submit it probably won't be easy for
10 you all. As Mr. Leddy told you, this case, you hear
11 Mr. Brown has a past. And the State wants you to
12 think about that. They want to inflame your passion
13 and your prejudice about his past. They're telling
14 you they have to prove this to you as an element of
15 burglary in the first degree. They want you to think
16 about it and dwell on it.

17 But the judge in our constitution tells you
18 you cannot consider this as to whether he is a bad
19 guy. Because this is a bad guy theory you're talking
20 about right here. They want you to think Mr. Brown is
21 a bad guy because of his past. Okay. Let's talk
22 about the State's job. The State has the burden of
23 proof. They have to convince you of their story; that
24 Mr. Brown burgled this home. Took Ms. Monteith's
25 purse in the middle of the night. They have to do

1 that beyond a reasonable doubt. And they told you
2 that.

3 But let's talk about this and break it down.
4 What is beyond a reasonable doubt? That means that
5 after you hear all the testimony, which you have, and
6 after you look at all the exhibits and you have all
7 the evidence, if you are firmly convinced of their
8 story, all 12 of you, unanimously that is the only way
9 you can convict Mr. Brown. If you have a hesitation
10 if only one of you has any doubts our law says he must
11 remain an innocent man. And I say and remain an
12 innocent man, he does not have to prove anything. He
13 sits there cloaked in a robe of righteousness
14 according to our Supreme Court; the highest law.
15 Which means, it's fancy words meaning, he doesn't have
16 to prove himself innocent. And he doesn't have to
17 prove himself not guilty. The State's job is to prove
18 innocence. I want to make that real clear. This is
19 the biggest day in this man's life. I ask that you
20 hold the State to their burden and evaluate the
21 evidence that we have here.

22 So I want to bring you right to that. What
23 evidence do we have here? We have evidence in the
24 form of testimony, live testimony. And we have
25 pictures, things of that nature. So let's talk about

1 it. We going to kind of play detective here a little
2 bit. Reasonable doubt. We first heard from Mr.
3 Shuler. He was hired as a general contractor by Ms.
4 Monteith. She knows him. He is responsible for this
5 work. But he doesn't really do the work. I mean this
6 is a paint job. He got Mr. Boykin to do the work.
7 What we heard from him was that Mr. Leroy Brown was
8 never employed by Mr. Shuler. As far as the records
9 could tell. We are not saying that he was ever
10 employed by Mr. Shuler. Okay. You heard from Mr.
11 Brown, and we'll get to that; about his involvement at
12 this house. That puts him aside.

13 Let's get to Ms. Monteith. I am sure she
14 hates sitting here. And I hate that she has to sit
15 here. She lives alone in very nice, large house off
16 of . She moved here in 1990. She is
17 from New York. She is a widow. Her husband is not
18 with us, of course. But she lives alone. She came in
19 to some money. She wanted some renovations done to
20 her house. The first painting that was done was to
21 the kitchen.

22 Mr. Boykin and his crew, crew of six, he said,
23 doing the painting on the kitchen work first. At that
24 time they also did staining on the floors. Mr. Boykin
25 and his crew had access to the inside of her house.

1 She testified that she keeps her purse on the hook.
2 The same place she always keeps it. Mr. Boykin and
3 his crew would have access to this knowledge. She
4 testified that her house was very sound proof; that
5 she didn't see anything that night. She didn't hear
6 anything that night. She certainly had never seen my
7 client before. But the interesting thing I want y'all
8 to think about is her windows. Before this work was
9 done, all her windows were pinned. They don't have
10 the traditional latch like you and I think about to
11 lock her window. They were pinned. And as this work
12 was being done, the painters as they got done on the
13 inside, were taking the pins out so they could open
14 and close the windows for the work purpose alone. I
15 want y'all to think about that.

16 Let's talk about Mr. Boykin. I really want
17 you all to focus on Mr. Boykin. Mr. Boykin has been
18 painting a long time. I don't doubt his experience as
19 a painter. He runs a paint company out of his home.
20 He said on this job, as you recall his witnesses
21 testimony, he had six crew members working. Six
22 people in the house, in the kitchen and around and
23 about the house doing outside work. These are guys
24 he knows very well. One has worked there for 15
25 years. A couple for 4 or 5 years. I don't know

1 exactly how many. But the number of years, these men
2 are under his employment.

3 He also said something interesting though.
4 When he thought it was a pretty fairly common for
5 someone to come up off the street and ask for work,
6 just like Mr. Leroy Brown asked for work that day.
7 And that, you know, this is not something that is
8 rare. But when that person asks for work and then
9 depend upon him for their money, the men who have been
10 working with him for 15 years, 4 years, 5 years, they
11 immediately tell him about every single person who is
12 coming off the street, looking for work; asking that
13 that guy be hired. Does that make sense to you all?
14 In these rough economic times; that his crew members
15 of a lengthy amount of time are going to going to ask
16 their boss, "Hey can this guy take my job?" This guy
17 who just came off the street. No, they are not going
18 to tell Mr. Boykin about every person that comes off
19 the street. Access that credibility. I don't think
20 that makes any sense whatsoever that he would know.

21 So I am telling you, that he would know every
22 person like Mr. Brown who might have approached a
23 member of his crew. Why would they want to substitute
24 their own jobs. They wouldn't. That's a doubt,
25 Ladies and Gentlemen. Another thing that was

1 interesting about Mr. Boykin he didn't seem to know
2 even though he says he is on the job site daily, about
3 Ms. Monteith's windows were secured. He said they
4 have a traditional latch like this, not pins, what she
5 testified. She knew how the house was built. So
6 either he doesn't know what he is talking about or
7 what. But that's very curious to me. That's just one
8 side.

9 The other thing that is interesting he
10 testified that for safety reasons, he never leaves his
11 equipment out. Not the paint. Not the ladders. They
12 are all locked up and secured. Out of way of the
13 house when he is done on his job. It makes sense to
14 you, doesn't it? You don't want your own equipment
15 being stolen by somebody who comes off the street. It
16 happens all the time. You don't want a ladder propped
17 up against the house and have somebody peeping in.
18 That's not good business. And it makes sense that he
19 would lock it up.

20 And who did he tell you had access to his
21 ladders? He does. And his crew members. The only
22 people that have access to those ladders. The ladders
23 that were locked up the last day they worked there
24 before this incident that Friday. He testified from
25 this very stand that all those ladders were locked up.

1 And only he and his crew members would have access to
2 that. So that begs the question, how in the world,
3 and they say this is their ladder propped against the
4 house. How in the world would Mr. Brown who doesn't
5 have any access to these ladders, be able to prop a
6 ladder up against a window that is secured and locked
7 up? We haven't heard any testimony about any cut
8 locks. About Mr. Brown having access to any ladders.
9 Think about that.

10 The only people, and we talked about the
11 length of this job. It was at least a month long or
12 maybe longer. According to all the witnesses who did
13 some work there. And that seems reasonable. Doing a
14 complete kitchen paint job and floors. And then the
15 outside of a very large brick house that has all these
16 windows and trim.

17 Mr. Boykin and his crew of six unnamed people,
18 were there well over a month; having access to the
19 inside. Getting a good look around. Looking through
20 the windows. They're there and they're supposed to be
21 there. But they're the only ones who would know where
22 she keeps her valuables. We'll get to Mr. -- let's go
23 ahead and get to Officer Bradley. He's doing his job.
24 He came to the scene. I am not even going to talk
25 about after the first officer that got there. She got

1 there. She is doing her job. She says if you will
2 recall, when she got there the window was closed. Not
3 open like Mr. Monteith and Mr. Boykin say. And keep
4 in mind Mr. Boykin is the one that found her purse in
5 the front yard. And rang her on the phone. Saying
6 there is a ladder here. Your window is open. But
7 when the officer who is trained to investigate these
8 things, she says on the stand, she said that window
9 was closed.

10 Okay, so it's either been moved or it was
11 never open in the first place. Be that as it may, Mr.
12 -- Officer Bradley comes to do his investigation.
13 He's trained to do fingerprints. You know, they like
14 to say it's just like CSI. I guarantee you if they
15 didn't have a fingerprint, they'd be saying CSI is not
16 reality. But today we're going to say it's just like
17 CSI everybody. Let's focus on this fingerprint.

18 Let's talk about Officer Bradley. He admitted
19 to moving the window some. You got a picture there
20 with this dust can. He's dusting, looking around. He
21 found fingerprints. Okay. He found fingerprints on
22 the outside at the base of the window. On the inside
23 and one a little higher up. Okay. These are Mr.
24 Brown's fingerprints. We never doubt that. We're not
25 trying to hide that. We told you that in our opening

1 statement. Mr. Bradley, Officer Bradley, he dusted
2 the ladder for fingerprints as well. He wouldn't dust
3 it if he didn't think he would get prints off of it.

4 But what does he found? Nothing. So let's
5 put this into the State's story. If Mr. Leroy Brown
6 is skulking over in middle of the night and somehow
7 gets this ladder from being in a safe, secure, locked
8 spot, without cutting any chains, or maybe he has keys
9 somehow, and puts it to a window. And by the way, all
10 these windows are supposed to be secure.

11 Mr. Boykin says they're all fast and secured
12 at night. Okay. He somehow fortunately finds a
13 window that is unlocked. He put his fingers on the
14 ladder. And then walks up to it, and puts his fingers
15 all over the window. Why are there no prints on the
16 ladder? If he was dusting for prints, his prints
17 would be on the ladder too. There aren't, because he
18 didn't do this.

19 Let's talk about what Mr. Bradley didn't do.
20 You know, he didn't look for any DNA. DNA clears
21 everything up. You can get it off a swab. You can
22 get it even from a fingerprint. You can get it from a
23 lot of ways. Didn't do a DNA for the purse. The
24 purse was in the front yard. Swab that thing for DNA.
25 That will tell you who was touching the purse. Well

1 they didn't want to do. I don't know why. I think it
2 was Mr. Boykin had the purse in his hand. And he was
3 the one who said, "Hey I think this was broken into."
4 Mr. Boykin found the purse, had it in his hand in the
5 front yard. They didn't look for DNA. They didn't
6 look for fingerprints anywhere else in the house.

7 The testimony is according to the State's
8 theory, the man that entered the house, walked all the
9 way through the house from the living room to the
10 kitchen and grabbed the purse off the hook. We didn't
11 look for fingerprints anywhere else. This house was
12 not rifled through, Ladies and Gentlemen. If you
13 don't know anything else about a house, and you're
14 coming in and looking for something valuable, you're
15 going to be digging through drawers. You're going to
16 be shuffling through papers, looking for money,
17 looking for a purse.

18 Whoever took this purse knew enough about the
19 house; had been there long enough to know exactly
20 where she keeps her purse. Some one on the this
21 painting crew, who had worked the kitchen who had been
22 inside, who knew which windows were locked or not, who
23 had access to a ladder would have known exactly where
24 the purse is kept.

25 Doubt. They brought in Pete Currie, a smart

1 man. He worked for the City of Columbia for a long
2 time. He is their fingerprint guy. These are
3 Mr. Brown's fingerprints. We are not denying that.
4 But one thing that was interesting that Mr. Currie
5 told you all, was that with fingerprints, you can't
6 put a time stamp on it. There is no way to say
7 exactly what that fingerprint was there. The State
8 cannot come in here and tell you that fingerprint was
9 left during the hours of darkness of October 29th.
10 They can't do it.

11 Mr. Brown told you when he went to the house
12 and when he left his fingerprint there sometime in
13 October while this construction was going. They
14 cannot prove that his print was left there during this
15 incident. Cannot do it.

16 Let's talk about my witnesses. First, Mr.
17 McNealy. He's my investigator. I pay him. My office
18 pays him. They had many investigators they pay, you
19 know. All I asked Him to do was get a good measure.
20 How tall is this window? How tall is it? I told him
21 to do that yesterday. Went out to Ms. Monteith's
22 house with her permission and measured from the ground
23 to where the window starts. Five feet 10 inches.
24 Seventy inches all and all. This is the house. Which
25 is, and we demonstrated to you exactly that height

1 measurement, roughly done, mock window. And Mr. Brown
2 showed you how he was talking about the window, and
3 What he was talking about with the man he met that
4 day.

5 The State didn't like that. Officer Bradley,
6 says, "Um, I think this window was 8 feet. I couldn't
7 touch it. I don't think I could touch it." They
8 don't want you to think about the common sense, they
9 want you to check that at the door, your common sense,
10 and feel like it would be impossible for Mr. Brown to
11 put his hands on the window unless he is burglarizing
12 this place. But the tape measure does not lie. It
13 was measured. The investigator knows how to use the
14 tape measure, and went under oath and told you
15 exactly what the height is to the best of his ability.
16 5 feet 10 inches. I am 5 feet 11. I submit
17 Mr. Brown is probably taller. You all saw him on the
18 demonstration. I will leave that to you all.

19 Then you heard from Mr. Brown himself. Mr.
20 Brown, he didn't have to testify. He has a
21 Constitutional Right not to testify. But the thing I
22 told you, the State through its government lawyers has
23 the burden of proof to try to convict him if they can.
24 Otherwise, he sits there an innocent man. But he
25 wanted to tell you his side of the story. We talked

1 about whether he should testify or not. He wants to
2 tell you the truth. And what did he tell you? He was
3 working at the time; that he was going to see his
4 children as he usually does, and this sign attracted
5 him because he is a painter. He loves to paint. He
6 paints by trade. And he wanted to see if he could
7 pick up some more work.

8 You know, in these economic times everybody
9 wants to see if they can pick up some more work.
10 Things he likes to do. He stopped in. What does he
11 ask the first person he could see at this house about
12 what do they know. "Are you all hiring. Are you all
13 hiring" But not only did he do that, he knows a lot
14 about painting. He wanted to impress that person.
15 And he demonstrated in his conversation that he
16 recalls and it was a year and a half ago or so, but
17 roughly right there in front of that window, talking
18 to a man who was prepping windows. The windows were
19 up. It looked like he was in the middle of a paint
20 job. Which all the witnesses said, this house was
21 undergoing a paint job in October of 07.

22 He wanted to impress this man about what he
23 knew about the wood. About the past work that had
24 been done. And he told you right from his own mouth
25 that he was trying to pitch, is what he said. You

1 know, he wants to impress this guy. It's like a
2 mini-job interview. He's touching on it. He's
3 talking about the wood. He's evaluating it.

4 The State is going to come in here and tell
5 you that he never said that he touched up here. This
6 is way too tall for him to touch. I didn't ask him to
7 give a play by play of a year and a half ago. I don't
8 think anybody can remember exactly a year and a half
9 ago unless something is sticking out in your mind to
10 the point where you remember it. You remember parts.
11 To him, this was just another day. He was looking for
12 work. He's a good painter. So he's touching on it.
13 Telling you he had a conversation about the wood. The
14 words from his own mouth, you all get to judge. You
15 are the triers of fact. You decide what's credible,
16 what is not credible. Judge his credibility. Did he
17 look you dead in the eye and tell you what he doing
18 that day?

19 When I asked him, did you burglarize this
20 home, did he hesitate? I am going to leave that for
21 you all. That's your choice and your decision to
22 make. But judge his credibility. That's the case,
23 Ladies and Gentlemen, you are going to get to hear
24 from the State one more time. They are going to argue
25 their side of the story just like I told you what my

1 opinion was. But in looking at those clear instances
2 of doubt, that is enough for them not to be able to
3 convict.

4 They have not met their burden. It's a high
5 standard, Ladies and Gentlemen. We have a judicial
6 system that is a revered throughout the world. A
7 pinnacle. Everybody looks to us for our judicial
8 system. It is a the highest standard in all the land
9 to have to prove someone guilty beyond a reasonable
10 doubt. And make no mistake, that is their burden.
11 This is a deadly important and serious day for
12 Mr. Brown. I asked you to expert more from your
13 government. Hold them to their burden. You know why
14 I ask you to do, because we didn't get here easily.
15 It took a couple of hundred years of blood, sweat and
16 tears to get to this judicial system that has been
17 protecting you. It protects every citizen.

18 And now I am asking you to protect it. Make
19 them meet their burden. Hold them to their standard.
20 You can only find Mr. Brown not guilty of burglary
21 first degree.

22 THE COURT: Mr. Goldberg.

23 MR. GOLDBERG: May it please the court. This
24 case is not about 12 angry men. It's about one man.
25 One man and one fingerprint. One man who admitted

1 that he needed some extra money. One Man and one
2 fingerprint and one burglary of one lady in her house
3 alone in the middle of the night. And when I was
4 younger, a lot younger, I spent a lot of time with my
5 granddad. And my grandfather was crazy about doing
6 jigsaw puzzles. He loved them. Absolutely loved
7 them. Whenever I went over to his house he always
8 wanted me to do them with him. And I was a little
9 hesitant to do that, because I didn't really like them
10 very much. He loved them, I downloaded. And my
11 problem was number 1, I wasn't really patient enough.

12 And number 2, I really didn't know where to
13 begin. He dumped out of a box all his puzzle pieces
14 and they were scattered everywhere and how do you know
15 where to start? Well the one thing he told me about
16 where to start is you go to the corners. Pick out the
17 corners. You build from each corner. And you work
18 your way in, and the rest will fill itself in. And
19 that's how you put it together.

20 Ladies and Gentlemen, this is no different.
21 There are cornerstones to this case, puzzle pieces
22 that you have to put together. You are the judges of
23 the facts. Your job is to determine what happened
24 based upon what we presented. And I am going to give
25 you four cornerstones that you can work from and

1 combine together to come to a conclusion that Leroy
2 Brown was guilty of this offense. The first one,
3 there was a burglary at

4 . And there was a larceny as a result
5 of the burglary. Her purse was taken. That's one.
6 The second corner, is that, a fingerprint was found
7 inside the house. The fingerprint belonged to Leroy
8 Brown. No question about that inside the house. And
9 it was found at the point of entry. The third corner,
10 is that, Mr. Brown has no reasonable, no credible, no
11 truly believable explanation that he provided to you
12 as to how his fingerprint was inside this house.

13 He give you his story. And the question you
14 have to ask is, is it believable. And the fourth
15 corner, that goes on the first corner, is the element
16 of these charges, is that, put into evidence that
17 Mr. Brown has two prior convictions of burglary---

18 MR. SHEALY: Objection, Your Honor.

19 MR. GOLDBERG: ---element of the offense.

20 MR. SHEALY: The propensity of the evidence
21 right now.

22 THE COURT: The objection is overruled.

23 MR. GOLDBERG: Now you take those four corners
24 and you work from them, and in the middle you will
25 fill in the pieces and you fill find that Mr. Brown

1 committed this offense.

2 So let's go through them one by one. We'll
3 start with on the first corner. There is no dispute
4 Mr. Leddy told you in his opening, absolutely no
5 dispute that a burglary took place here. And that a
6 larceny went with it. Ms. Monteith told you that on
7 that weekend, that Sunday night, I guess it was, and
8 she went up to bed, late at night. It was dark out.
9 I believe she said it was about 3 o'clock in the
10 morning. She had been doing some reading.

11 She goes up to bed. And when she does so, all
12 the windows are closed. She leaves a few lights on in
13 the house. She lives by herself. A couple of lamps
14 here and there. In the hallway, here and there. She
15 goes upstairs. Her purse is in the kitchen where she
16 always puts it, and she goes to bed. She tells you
17 that it is hard for her to hear noise going on
18 downstairs. She told you all about the car accident
19 that took place near by. She couldn't even hear that.

20 She told you about the condition of her house
21 late at night. If you recall, it borders a Piggly
22 Wiggly and a Long's Drug Store. A big area. A
23 parking lot. Lots of overhead light. I believe SCE &
24 G provides those lights. She's even got her own
25 privacy light from SCE & G in the backyard. There are

1 a couple of lights from the grocery store back there.

2 So she tells you that the inside of her house
3 is fairly well lit. So if we are going to talk about
4 how would anyone know where to go inside the house
5 once they got in, y'all are going to see the pictures
6 of this house. How many windows there are. There is
7 a lot of light coming in this house at that time of
8 night. Between the outside lights and the lights she
9 leaves on, it would be easy for anybody to walk
10 through there. And apparently she is not going to
11 hear it if they are.

12 No dispute there was a burglary. Said that
13 from minute one of this case. Someone came in. They
14 took her purse. They took the wallet out and ditched
15 her purse. Her purse was recovered the next morning.
16 Mr. Boykin notified her, what he found. She looked at
17 it, her cards were missing. The money was missing.
18 That's your larceny. The taking of personal goods
19 under \$1,000. Her cards were missing. Her money.
20 She told you the whole value of things that were
21 missing. No dispute. A burglary took place. That's
22 the first piece of the puzzle. The first corner.

23 The second corner is the fingerprint.

24 You've heard all the testimony from Pete Currie and
25 everybody else, Officer Bradley, about where the

1 fingerprint came from. Pete Currie told you that
2 there is absolutely no doubt whatsoever, that the
3 fingerprint that was lifted from the inside of this
4 house, 100 percent belonged to Leroy Brown and they
5 admitted as much, that his fingerprints were in the
6 house. Bradley told you about how he lifted the
7 prints; where it came from, how it got, all of that.

8 There are couple of points that Mr. Shealy
9 makes about those fingerprints that I want to point
10 out to you and Officer Bradley. He talks about how
11 Officer Bradley didn't get anything from the ladder.
12 And if he had moved the ladder, wouldn't his prints be
13 on the ladder. Well Officer Bradley told you there
14 are ridges on this ladder. That normally that surface
15 isn't too bad to lift the print off of it, but these
16 ridges compromise and make it difficult to lift any
17 prints off the ladder. He explained that to you.
18 Mr. Brown told you I believe when he testified, and
19 they put the little mark up on the wall there; that he
20 walked up and he wanted to make his pitch. He was
21 looking for a little extra work. He wanted a job. He
22 made his pitch as a worker, about helping him out in
23 the paint work. And he wanted to show him about all
24 the different pieces of the wood that he could touch.

25 And Mr. Shealy, I believe, told you that he

1 wasn't going to have Mr. Brown get up there and give
2 you a play by play in detail what happened. I submit
3 to you that's exactly what he did. If you recall his
4 testimony, he described in great detail, the path that
5 he took to get there. The sign he saw out front;
6 going around to the back of the house. The fellow he
7 encountered. He gave you a description of how big he
8 was. He remembered that. He remembered his skin
9 tone. What that was like. And then he goes in to
10 this retelling of how he checked this wood rot and he
11 was talking about this, and what he was trying to
12 explain. Sounds like pretty good detail.

13 Now Mr. Brown is a smart man. Now he has been
14 sitting here for this entire trial. And he knows from
15 the evidence that has been presented where the
16 fingerprint that matched with him came from. And he
17 knows that that fingerprint came from the inside the
18 window. The interior of the window. So wouldn't it
19 be reasonable to think that when he's up there and he
20 has his chance and he's telling you everything about
21 how he was making his pitch and make it sell, then he
22 would have an explanation for how---

23 MR. SHEALY: Objection, Your Honor. That's
24 clear burden shifting.

25 THE COURT: Objection is overruled.

1 MR. GOLDBERG: The explanation for how that
2 fingerprint got inside there, he was telling you about
3 everything he was doing. There was no mention of
4 that. How his fingerprint ended up inside of a window
5 that just so happens to be the one window out of all
6 of the windows in this house that was the point of
7 entry. Is that believable? Is it credible? Is it
8 even reasonable to think that? Your job to decide.
9 You are the judges of the facts. You decide if they
10 are telling the truth or not.

11 I want to talk about reasonable doubt for a
12 second, along those lines. I believe Mr. Shealy was
13 telling you about reasonable doubt. He told you if
14 you had any doubt in your mind this man had to be
15 found not guilty and that is absolutely not true. You
16 listen to the judge what he tells you about reasonable
17 doubt and what the standard is.

18 This case, as you know, the burden of proof is
19 on the State. The State welcomes that burden. That's
20 the way the system is. It's the way it should be.
21 But the burden is proof beyond a reasonable doubt.
22 Not any doubt. And not all doubt, a reasonable doubt.
23 Is the doubt that has been provided to you by
24 Mr. Brown about why his fingerprint is there
25 reasonable? Is it believable?

1 Mr. Shealy also brought up about how the State
2 would like you to look at Mr. Brown's two prior
3 convictions for burglary, as a reason he is a bad guy.
4 I don't know if he is a bad guy or not. He could be a
5 nice guy. I've never talked with the man. What I do
6 know is that he does have two prior convictions for
7 burglary. They are in evidence. And that is an
8 element the State must prove in order to meet our
9 burden that is being asked of us. We have to tell you
10 that. We have to tell you that there was an entry
11 without consent. Something that was an intent to
12 commit a crime. In this case a larceny. Something
13 was taken. And one of two things, either Mr. Brown
14 has two prior convictions for a burglary or it took
15 place during the nighttime hours. It is required to
16 prove our case to you; that he has two prior
17 burglaries do not make him a bad guy. But it is a
18 fact to prove our case.

19 Now in addition to that, I submit to you we
20 have meet both elements even though we only have to
21 meet one. And that's in regards to the nighttime
22 element. Ms. Monteith went to bed late at night.
23 The window was closed. The next thing she knows the
24 first thing in the morning, Mr. Boykin shows up. I
25 believe he said about 7 or 7:30 in the morning he

1 finds her purse out in the yard. The odds of a
2 burglary taking place between the sun coming up and
3 Mr. Boykin getting there, probably is not good. And I
4 submit to you that those elements have been met for
5 that reason.

6 We talked a lot about Mr. Boykin today. About
7 the ladders and the locks on the windows. Don't take
8 what I say about the facts, or what Mr. Shealy says
9 about the facts, as the facts. They're how you
10 remember them. You were the ones paying attention.
11 You all heard what the man said. What I believe he
12 said is that the windows and the ladders should have
13 been locked up. Should have been locked up. Leaving
14 open the possibility that for whatever reason on that
15 Friday they didn't put chain locks on the ladders.
16 But they took them down off the house. Closed all the
17 windows up. Mr. Boykin did tell you that he didn't
18 always lock the windows. He said if he didn't lock
19 them up, he made sure Ms. Monteith knew they were
20 leaving so she could do it. As far as the ladders go,
21 maybe they just didn't do it that day. He said it
22 should have been done. That doesn't mean that it
23 definitely was. And not believe the possibility of
24 someone else coming up, grabbing a ladder, putting it
25 up against a 6 foot high window.

1 I am not even going to go in to the issue of
2 whether or not, you know, the window frame was up 16
3 inches, or 34 inches or anything like that. That's
4 not an issue. Mr. Brown -- there is no testimony that
5 Mr. Brown actually reached his hand in there put it on
6 the window sill or excuse me, the window frame. That
7 print is in there. That's a fact. That was testified
8 to. There is no escaping. No matter what point the
9 window was when it was open.

10 Officer Medlock, he told you, he testified
11 that when she got there, the window was down. And Mr.
12 Boykin said it was up. Bradley said it was up. Ms.
13 Monteith said it was up. So that's at least three
14 people who said when they saw it, it was up. But she
15 remembered it being down. Is it possible that she
16 just got confused? This was over a year ago. She is
17 a reporting officer. Takes hundreds and hundreds of
18 reports a year. It's possible she just got it wrong.
19 Maybe she just got it wrong. But none of that, none
20 of that, has anything to do with the fact that
21 Mr. Brown puts himself at the scene and his
22 fingerprint is inside that house.

23 They talked to you about DNA. How there was
24 no DNA taken in this case. Well the witnesses told
25 you that the purse had already been contaminated. It

1 had been in the possession of several people by the
2 time they got there to test it. What were they going
3 to get at that point? There was no reason to test it.
4 It had already been compromised. Whereas the window
5 sill had not been altered. The inside where the
6 fingerprint was had not been altered. There was no
7 substances anywhere to take a swab of DNA to test.
8 That's not an issue in this case.

9 Pete Currie told you that you cannot time
10 stamp a fingerprint. That's true, you cannot time
11 stamp a fingerprint. I can't tell you the exact
12 moment that the fingerprint was placed on the window.
13 What he did tell you that in those conditions, late
14 October, on a window like that, single pane glass, it
15 is not going to stay there very long. It's not going
16 to stay there real long for them to be able to pull
17 that print. He did tell you that.

18 So the defense wants to harp on the fact that
19 we can't tell you when his print got there. I can
20 tell you that there was a burglary in that house; that
21 that window where his print was inside, was the point
22 of entry for the burglary. That he wasn't supposed to
23 be there. The owner of the house had never seen him
24 before. She had never let him in the front door.
25 There was no evidence he has ever been inside the

1 house at any point and time ever; that none of the
2 workers there ever talked to him.

3 Mr. Brown told you his version of the events.
4 You can choose to believe that how you wish. But at
5 the same time consider Mr. Boykin and Mr. Shuler's
6 testimony. Consider what they told you. It is their
7 words that are evidence here. Their testimony that
8 you have to believe or not believe. That's up to you.
9 But they both told you that if somebody came up to the
10 job especially Mr. Boykin, somebody came on the site
11 looking for a job and talked to one of his guys about
12 a job, that they would have talked to him. Or at some
13 point they would tell him about it. The defense wants
14 you to think that because these workers who depend on
15 Mr. Boykin to get paid, do depend on him to get paid,
16 that they wouldn't tell him if they somebody wanted a
17 job. He told you these guys have been working for him
18 for years. 15 years, 8 years, 7 years.

19 Obviously these folks have job security.
20 They're a tight crew. They have been together a long
21 time. Why would it bother them if somebody else
22 wanted to come in and see about getting some work.
23 They are trusted employees already. They have got
24 nothing to gain by not telling Mr. Boykin about it.
25 And even if they did, even if that is true that they

1 didn't tell him that he came by asking for a job, how
2 do you explain the fingerprint inside the house? How
3 did it get there?

4 Let's talk about how this window is set up for
5 a second. I'm just trying to picture it in my mind to
6 get an idea. If we are looking from the outside, and
7 we're standing outside the house looking into the house,
8 and that's the window in question, how would the Number
9 4 finger end up on this side? That's the question. Of
10 course, the man has a stepladder to climb on up. When
11 he climbs on up, is it reasonable to believe that when
12 he gets up to this point that he puts his hand on it to
13 brace himself he steps in? That's pretty reasonable.
14 Or in the alternative, once he is inside the house and
15 he is going out back through the same point of entry,
16 again you all are looking from the outside. So this is
17 going to be where the prints are found here.

18 He has to climb out on to the ladder and steps
19 over, puts his hand up to brace himself as he steps back
20 through. Two very logical reasonable explanations as to
21 how that print on that finger got in that exact spot.
22 That exact spot. I am not going to belabor the point
23 any longer. You have all heard the testimony. You All
24 are familiar with the evidence.

25 And the bottom line is, is the story provided

1 by the witnesses believable? Are they credible? I
2 submit this is something that you do every day of your
3 lives. You may not realize it, but you could be at the
4 water cooler talking to your co-worker and they're
5 talking. And whatever they are talking to you about,
6 somewhere inside of you are trying to decide is this
7 person telling the truth. Is it believable? Is it
8 credible? And that's what you've got to do in this
9 case.

10 Think back about what these witnesses told you
11 in this case. Are they more believable? Do the stories
12 they told you make sense? Is it reasonable. Start from
13 the corner. Mr. Shealy wanted you to use your common
14 sense. I am begging you to use it. Think about it.
15 Just think about it. The one window out of all the
16 windows in this house, the one window that is the point
17 of entry for this burglary. That's undisputed there was
18 a burglary. That one window just so happens to be the
19 one that Mr. Brown's print is found inside. Inside.
20 And that happens to be the one that he walked up to and
21 asked for a job about.

22 And even if he did, where was his hand inside
23 if he was talking with them? Use your common sense
24 please. Put together those corners, there was a
25 burglary, no question. His fingerprint was there.

1 Doesn't have any reasonable doubt explanation for it.
2 And again consider all the elements in the case. That's
3 the fourth corner. The elements. There was an entry
4 without consent. Larceny occurred at nighttime or the
5 fact that Mr. Brown has two prior convictions for
6 burglary. Put those pieces together, and you have no
7 choice but to come back with a verdict of guilty on both
8 counts. Thank you.

9 THE COURT: Ladies and Gentlemen, stand just a
10 moment. Mr. Foreman and Members of the Jury, you have
11 heard the testimony and the evidence and arguments of
12 the State and the defendant. I will now explain to
13 you the law that applies to this case. Under the
14 constitution and laws of South Carolina, you are the
15 finders of the facts in this case. I do not have the
16 right to pass upon the facts or even express any
17 opinion that I might have as to them. Because this is
18 a matter solely for you the jury to determine. And as
19 jurors then, it is your duty to determine the effect,
20 the value, the weight and the truth of the evidence
21 presented during this trial.

22 You are also the judges, the sole judges of
23 the credibility; that is, the believability of the
24 witnesses who have testified in this case. And in
25 passing upon their credibility, you may consider many

1 things; such as, the demeanor or manner of testifying.
2 Whether the witness had reason to be biased or
3 prejudice. Whether a witness' testimony was
4 contradicted on the one hand or supported and
5 corroborated on the other hand. All these things you
6 will consider bearing in mind that you should give
7 the defendant the benefit of any reasonable doubt.

8 It becomes your duty as jurors to analyze and
9 to evaluate the evidence and try to determine which
10 evidence convinces you of its truth. Now as the trial
11 judge, it is my responsibility to preside over the
12 trial of this case. I also have the duty to pass upon
13 and rule upon the admissibility of evidence offered
14 during the trial. And you therefore, are to consider
15 only the testimony which has been presented from the
16 witness stand, together with any exhibits which have
17 been made part of the record in this case.

18 I have the additional duty to charge you the
19 law applicable to this case. And as the presiding
20 judge, I am the sole judge of the law in this case.
21 It is your duty as jurors to accept and apply the law
22 exactly as I now state it to you. And after
23 determining the facts and applying the law you then
24 reach your verdict.

25 And I finally charge you in this regard that

1 you should not be concerned about what you think the
2 law out to be, but what I charge you the law to be.
3 But the fact that the defendant was arrested, charged
4 and indicted in this case is not evidence in this
5 case. It cannot be considered by you as evidence of
6 guilt in this case. Nor does it create a presumption
7 or inference of guilt. The Indictments are simply the
8 formal written instruments which contain the charge or
9 charges made against the defendant.

10 The Indictments are the formal documents by
11 which this case is brought into Court. The defendant
12 has pled not guilty to these Indictments. And that
13 plea puts the burden on the State to prove the
14 defendant guilty. A person charged with committing a
15 criminal offense in South Carolina is never required
16 to prove himself or herself innocent. And I charge
17 you that it is an important rule of the law that the
18 defendant in a criminal trial no matter what the
19 seriousness of the charge may be, will always be
20 presumed to be innocent of the crime for which the
21 Indictment was issued unless guilt has been proven by
22 evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 Now this presumption of innocence does not end
25 when you begin your deliberations but it accompanies

1 the defendant throughout the trial until you reach a
2 verdict of guilt based on evidence satisfying you of
3 that guilt beyond a reasonable doubt. The presumption
4 of innocence is like a robe of righteousness placed
5 about the shoulders of the defendant, which remains
6 with the defendant until it has been stripped from the
7 defendant by evidence satisfying you of the
8 defendant's guilt beyond a reasonable doubt.

9 Presumption of innocence is not a mere legal
10 theory. It's not just a legal phrase. It is a
11 substantial right to which every defendant is entitled
12 unless you the jury are satisfied of the defendant's
13 guilt beyond a reasonable doubt. The State must prove
14 the defendant's guilt beyond a reasonable doubt.

15 So what is a reasonable doubt in the law? A
16 reasonable doubt is any kind of doubt which makes an
17 honest, sincere, conscientious juror in search of the
18 truth hesitate to act. Proof beyond a reasonable
19 doubt must therefore be proof of such a convincing
20 character that a reasonable person would not hesitate
21 to rely and act upon it in the most important of his
22 or her own affairs. Proof beyond a reasonable doubt
23 can also be described as proof that leaves you firmly
24 convinced of the defendant's guilt.

25 Now there are very few things that we know in

1 . . . this world with absolute certainty. And in criminal
2 cases the law does not require proof that overcomes
3 every possible doubt.. If based on your consideration
4 of the evidence you are firmly convinced that the
5 defendant is guilty then you must find him guilty. If
6 on the other hand you think that there is a real
7 possibility that he is not guilty, you must then give
8 him the benefit of the doubt and find him not guilty.

9 . . . Now the rules of evidence ordinarily do not
10 permit witnesses to testify to opinions or
11 conclusions. An exception to this rule exists for
12 witnesses who are called expert witnesses. A witness
13 who by education, experience has become expert in some
14 Art, Science, Profession or calling. Those witnesses
15 may state an opinion as to relevant and material
16 matter in which the witness claims to be an expert.
17 And may also give the state the reasons for the
18 opinion.

19 . . . You should consider any expert opinion
20 received in evidence in this case like any other
21 evidence, give it the weight you think it deserves.
22 If you decide that the opinion of an expert is not
23 based on sufficient education or experience or if you
24 conclude that the reasons given in support of the
25 opinion are not sound or that the opinion is

1 outweighed by other evidence, you may disregard the
2 opinion entirely. An expert witness' testimony is to
3 be given no greater weight than that of other
4 witnesses simply because this witness is an expert.
5 Further you are not required to accept an expert
6 opinion even though it is not contradicted.

7 The Indictments in this case allege two
8 different offenses against the defendant. The charges
9 are Indictment No. 1, burglary first degree.
10 Indictment No. 2, petty larceny. Each Indictment
11 charges a separate and distinct offense. You must
12 decide each Indictment separately on the evidence and
13 the law applicable to it uninfluenced by your decision
14 as to any other Indictment.

15 The defendant may be convicted or acquitted on
16 any or all of the offenses charged. You will be asked
17 to write a separate verdict, guilty or not guilty for
18 each Indictment. Now there are two types of evidence
19 which are generally presented during a trial: direct
20 evidence and circumstantial evidence. Direct evidence
21 is the testimony of a person who claims to have actual
22 knowledge of a fact; such as, an eye witness. It is
23 evidence which immediately establishes the main
24 factors to be proved.

25 Circumstantial evidence is proof of a chain of

1 facts and circumstances indicating the existence of a
2 fact. It is evidence which immediately establishes a
3 collateral fact from which the main fact may be
4 inferred. Circumstantial evidence is based on
5 inference not on personal knowledge or observation.
6 The law makes absolutely no distinction between the
7 weight or value to be given either direct evidence or
8 substantial evidence. Nor is a greater degree of
9 certainty required of circumstantial evidence than of
10 direct evidence.

11 You should weigh all the evidence in this
12 case. After weighing all of the evidence if you are
13 not convinced of the guilt of the defendant beyond a
14 reasonable doubt, you must find the defendant not
15 guilty. The defendant is charged with burglary in the
16 first degree. The State must first prove beyond a
17 reasonable doubt that the defendant entered a dwelling
18 without consent. In order to prove that the defendant
19 entered the dwelling, the State does not have to show
20 that the defendant's entire body entered the dwelling.
21 The smallest entry is sufficient. It may be any part
22 of the body.

23 In addition, the State does not have to prove
24 that force was used to gain entry. Next the State
25 must prove beyond a reasonable doubt that the

1 defendant intended to commit a crime. Either a felony
2 or a misdemeanor at the time of the entry. Mere
3 entry into a dwelling without consent is not burglary.
4 If the intent to commit a crime was formed after the
5 entry, it is not a burglary.

6 On the other hand, if the defendant intended
7 to commit a crime at the time of the entry, it is
8 burglary even if the intent was abandoned after entry.
9 It does not matter that the intended crime was not
10 completed. Intent may be shown by acts and conduct of
11 the defendant and other circumstances from which you
12 may naturally and reasonably infer intent.

13 Finally, the State must proof beyond a
14 reasonable doubt either of the following
15 circumstances. One, that Defendant entered the
16 dwelling in the nighttime. Nighttime is the period
17 between sunset and sunrise during which there is not
18 enough daylight to recognize a person's face. Set by
19 artificial light or moonlight. Or two, that the
20 defendant had a prior record for two or more
21 convictions of burglary and or housebreaking.
22 Evidence of prior offenses committed by the defendant
23 were not offered to prove that defendant had a bad
24 character or to prove that the defendant committed the
25 burglary on this occasion. The prior convictions may

1 be considered by you only for the purpose of
2 determining whether or not it satisfies that element
3 of the offense that makes it first degree burglary.

4 If you enter a dwelling without consent to
5 commit a crime, and you have two prior convictions for
6 burglary and or housebreaking before you can even
7 consider the evidence of the defendant's prior
8 burglary and or housebreaking conviction, you must
9 first find that the State has proven beyond a
10 reasonable doubt that a burglary was committed by the
11 defendant. If you find beyond a reasonable doubt that
12 the burglary was committed, then you may consider the
13 evidence and prior convictions as evidence of one of
14 the circumstances which would make the burglary first
15 degree burglary.

16 If you do not find beyond a reasonable doubt
17 that the defendant committed these alleged prior
18 offenses, then you cannot return a verdict on first
19 degree burglary.

20 The defendant is also charged with petty
21 larceny. The State must prove beyond a reasonable
22 doubt that the defendant took and carried away the
23 property of another against the will or without
24 consent of another person. This applies to removal of
25 the property, or the complete possession of the

1 property even for an instant by the defendant is
2 enough to show the taking and carrying away of the
3 property.

4 The State must prove beyond a reasonable doubt
5 that the defendant intended to permanently deprive the
6 owner of the property. Finally the State must prove
7 that the value of the property taken was less than
8 \$1,000. In conclusion, Mr. Foreman and Members of the
9 Jury, you have been selected by both the State and the
10 defendant as fair and impartial jurors. It is your
11 duty by your joint deliberations to determine the
12 truth in this case, giving the defendant the benefit
13 of every reasonable doubt on each and every issue.

14 From the facts which you determine to be
15 truth, you take and apply the law which I have just
16 given to you and thus arrive at a verdict which speaks
17 the truth in this case. I have told you the standards
18 that you have to apply to the charges of burglary
19 first degree and petty larceny. You have heard the
20 evidence and now you have heard the law. Whatever
21 your verdict as to these charges, Mr. Foreman, you
22 will indicate by writing guilty or not guilty on the
23 Indictments. On the back where it has the word
24 verdict you will write your guilty or not guilty on
25 the Indictments, signing your name and dating it on

1 the bottom of the Indictments.

2 There is no significance to the order in
3 which I state these possible verdicts. Simply one
4 must be stated first. Now remember that although the
5 foreperson is the only juror who signs the verdict, it
6 is not to be his alone. The verdict has to be a
7 unanimous verdict as to the charges.

8 Mr. Foreman, you are not authorized to write
9 or sign that verdict until all of you have agreed as
10 to what the verdict should be. Ladies and Gentlemen,
11 I am going to send you to your juror room, but do not
12 begin to discuss the case until you have received a
13 copy of this jury charge, the exhibits and the
14 Indictments. Once you have received these things,
15 that would be signal to begin your deliberations.
16 Once you begin your deliberations, you will deliberate
17 until you have reached a verdict at which time you
18 will knock on the door, and we will bring you out to
19 receive the verdicts.

20 I will give you a copy of these instructions
21 in written form. During your deliberations you may
22 refer to the instructions while you are in your
23 deliberations. Consider the instructions as a whole
24 and not follow some and ignore others. Please return
25 the instructions to the court at the time your

1 verdict is rendered. I received a note from Juror No.
2 103 about a doctor's appointment at two. We have
3 selected 13 jurors. And if wish to continue with jury
4 deliberates or do you wish to go to your appointment
5 and have the alternate take your place?

6 THE JUROR: I can call and cancel.

7 THE COURT: Very good. In that event, then
8 the first 12 jurors can go to the jury room. The food
9 should be there. Go to jury room. And all except the
10 13th juror, Ms. Samuel, you stay while the others go
11 to the jury room. Wait for the exhibits,
12 instructions. And other instructions. Please go the
13 jury room.

14 (Whereupon, the following takes place outside
15 the presence of the jury.)

16 THE COURT: Are there any additions or
17 exceptions to the charge?

18 MR. GOLDBERG: None from the State.

19 MR. SHEALY: None from the defense.

20 THE COURT: We will then review the exhibits
21 that go back and the jury will deliberate.

22 (Whereupon, at 1:14 p.m. jury commences
23 deliberations.)

24 (Whereupon, the Alternate is excused.)

25 (Whereupon, at 2:23 p.m. jury reached a

1 verdict.)

2 THE COURT: I understand there is a verdict.

3 Have the jury come in.

4 (Whereupon, the following takes place within
5 the presence of the jury.)

6 THE COURT: Mr. Foreman, you may stand. Have
7 you reached a verdict?

8 MR. FOREMAN: Yes, Your Honor.

9 THE COURT: Is it a unanimous verdict?

10 MR. FOREMAN: Yes, Your Honor.

11 THE COURT: If you will pass it up for us,
12 please. You may be seated. If the defendant will
13 stand. You may publish the verdict.

14 THE CLERK: Indictment No. 2008-GS-40-11826,
15 the State of South Carolina versus of Leroy Brown
16 indicted for burglary first degree. We the jury find
17 the defendant guilty. Indictment No.
18 2008-GS-40-11825, the State of South Carolina versus
19 Leroy Brown indicted for petty larceny. We the jury
20 find the defendant not guilty. Signed No. 138.
21 Jason Jolin, Foreman, December 11, 2008.

22 Mr. Foreman, was this your verdict and the
23 verdict of the entire jury?

24 MR. FOREMAN: Yes.

25 THE CLERK: Thank you.

1 THE COURT: Any additional polling requested?

2 MR. SHEALY: Yes, Your Honor. I would ask the
3 jury be polled.

4 THE COURT: If you will poll the jury
5 individually please.

6 THE CLERK: Ladies and Gentlemen of the Jury,
7 I am going to ask you two questions. If this is your
8 verdict and still your verdict. Please answer yes or
9 no to both questions. No. 138 Jason Jolin, is this
10 your verdict?

11 MR. JOLIN: Yes.

12 THE CLERK: Is it still verdict?

13 MR. JOLIN: Yes.

14 THE CLERK: No. 167 Christopher Marshall, is
15 this your verdict?

16 MR. MARSHALL: Yes.

17 THE CLERK: Is it still your verdict?

18 MR. MARSHALL: Yes.

19 THE CLERK: No. 14, Charles Bass, is this your
20 verdict?

21 MR. BASS: Yes.

22 THE CLERK: And still your verdict?

23 MR. BASS: Yes.

24 THE CLERK: No. 39, Jennifer Brown, is this
25 your verdict?

1 MS. BROWN: Yes.

2 THE CLERK: Is it still your verdict?

3 MS. BROWN: Yes.

4 THE CLERK: No. 8, James Archer, is this your
5 verdict?

6 MR. ARCHER: Yes.

7 THE CLERK: Is it still your verdict?

8 MR. ARHCER: Yes.

9 THE CLERK: No. 10 Norman Bailey, is this your
10 verdict?

11 MR. BAILEY: Yes.

12 THE CLERK: Is it still your verdict?

13 MR. BAILEY: Yes.

14 THE CLERK: No. 171 Mi Menaelly, is this your
15 verdict?

16 MS. MENAELLY: Yes.

17 THE CLERK: Is it still your verdict?

18 MS. MENAELLY: Yes.

19 THE COURT: No. 44 William Bullock, is this
20 your verdict?

21 MR. BULLOCK: Yes.

22 THE COURT: Is it still your verdict?

23 MR. BULLOCK: Yes.

24 THE CLERK: No. 49 Danni Byrd, is this your
25 verdict?

1 MS. BYRD: Yes.

2 THE CLERK: Is it still your verdict?

3 MS. BYRD: Yes.

4 THE CLERK: No. 103 Shirley Goodwin, is this
5 your verdict?

6 MS. GOODWIN: yes.

7 THE CLERK: Is it still your verdict?

8 MS. GOODWIN: Yes.

9 THE COURT: No. 29 Kesha Bookman, was this
10 your verdict?

11 MS. BOOKMAN: Yes.

12 THE CLERK: Is it still your verdict?

13 MS. BOOKMAN: Yes.

14 THE CLERK: No. 76 Jack Donaworth, was this
15 your verdict?

16 MR. DONAWORTH: Yes.

17 THE CLERK: Is it still your verdict?

18 MR. DONAWORTH: Yes.

19 THE CLERK: The jury has been polled, Your
20 Honor.

21 THE COURT: The verdict appears to be the
22 unanimous verdict of each and every juror. And you
23 may be seated.

24 THE COURT: Any post-trial motions?

25 MR. SHEALY: Yes, Your Honor. Your Honor, at

1 this time, I would ask for a new trial based on some
2 of our prior objections to that motion. Specifically,
3 Mr. Leddy's directed verdict motion. Regarding
4 whether or not it's a case where a fingerprint
5 involved was denied. Also specifically regarding his
6 jury instruction regarding just the sole definition of
7 what circumstantial evidence is. And also I would ask
8 for a new trial based on the somewhat unique verdict
9 we have here, where I would argue that the crime
10 therein is petty larceny was found to be not guilty.
11 And that is an essential element of the burglary. And
12 I would ask that I think perhaps the jury needed more
13 time to go over that. And to think about that point.
14 And all to come up with an appropriate verdict of
15 guilty for burglary. And so I would ask for the new
16 trial.

17 THE COURT: All right. Any response by the
18 State?

19 MR. GOLDBERG: Your Honor, just in regards to
20 the nature of the verdicts. I would point out that
21 the element necessary for a burglary conviction is
22 just that he entered with an intent to commit a crime.
23 Not necessarily a larceny. But the jury interpreted
24 that to be something other than a larceny. I believe
25 that is their word on this issue.

1 THE COURT: I would respectfully deny that
2 motion. The jury instruction asked the jury to
3 separately consider each offense uninfluenced by their
4 decision as to the other offense. The jury could have
5 easily concluded that the defendant -- that the State
6 proved the burglary without concluding that the State
7 could prove larceny.

8 The testimony on what was stolen was, the
9 value of what was stolen is very sketchy. And I can
10 certainly understand how the jury would not feel that
11 that element of that offense would be proven beyond a
12 reasonable doubt. But I deny the motion as to both.
13 There are other cases that exist where the sole
14 evidence, the fingerprint evidence, I find that that
15 evidence is sufficient evidence.

16 Particularly considering where the
17 fingerprints were found showed that not only that the
18 defendant's fingerprints existed, because he committed
19 the burglary. Considering that evidence along with
20 all the other testimony in the case, that evidence of
21 the purse and the testimony of all of the state's
22 witnesses, and the defendant, that that all points to
23 the guilty verdict. And I stand by the jury's verdict
24 as well.

25 Ladies and Gentlemen, I want to thank you for

1 your jury service in this case. After you have found
2 a person guilty then it becomes my duty to impose a
3 sentence. Burglary carries with it a sentence of up
4 to 15 years to life imprisonment. This defendant who
5 you have heard about has two prior burglary
6 convictions. And in fact he has been convicted of how
7 many different burglaries?

8 MR. CATHCART: I believe nine. Ten other
9 prior burglary convictions, Your Honor. From 1977
10 until to this date. This last one being in 2006.

11 THE COURT: So I would have to consider that
12 in sentencing. I am going to consider and do the
13 sentencing tomorrow afternoon. Oh, you can't be here
14 tomorrow. Marathon runner. We will do the sentencing
15 right now. And, Ladies and Gentlemen, although you
16 have no role in sentencing, I often find that jurors
17 having vested their time and energy in listening to
18 the case, and are interested in the disposition of the
19 case. So I would invite you to stay if you would
20 like.

21 THE COURT: Anything further from the State?

22 MR. GOLDBERG: I beg the Court's indulgence.
23 The victim does not wish to address the Court. Just
24 in regards to the prior record obviously we would
25 point out his prior burglary convictions. A number of

1 them. I would just add in addition to that, there are
2 other convictions for larceny in 1975. A trespassing
3 in 1978. An assault and battery of a high and
4 aggravated nature in 1980. Several of the burglary
5 and or housebreakings that Mr. Cathcart had mentioned
6 had larceny charges accompanying them. A shoplifting
7 in 1987. And that would be the extent of the outside
8 of this nine prior burglaries or 10 prior burglaries.

9 THE COURT: If the defendant will come around
10 for sentencing. Mr. Shealy.

11 MR. SHEALY: Thank you, Your Honor. May it
12 please the Court.

13 THE COURT: Yes, sir.

14 MR. SHEALY: Your Honor, I have gotten
15 obviously to know Mr. Brown for almost -- going over a
16 year. And I have had nothing but a pleasurable
17 experience in terms of him being my client. In our
18 interaction together, he's always maintained his
19 innocence on this. He's always told me the exact
20 version of events as that he this court today. And I
21 have no reason to deny it or not trust that.

22 Your Honor, he is 52 years of age. He has two
23 children. I think about nine grandchildren. He is
24 from Columbia. He does have a substantial criminal
25 history. There is no getting around that. That is as

1 the State has presented that. You have seen his Rap
2 Sheet. And here we are with another conviction,
3 Judge. I think that at his age and considering the
4 life span of a person in the Department of
5 Corrections, I would ask you do not give him life. I
6 don't think that life is always appropriate at trial
7 as an option. But I ask that you should sentence him
8 accordingly under your good discretion. And I would
9 propose a sentence for less than 15 years.

10 It has been a pleasure representing him. And,
11 you know, the jury has made their decision. And I
12 will leave it up to you, judge.

13 MR. LEDDY: Your Honor, I don't know Mr. Brown
14 nearly as well as Mr. Shealy does.

15 THE COURT: Mr. Brown.

16 THE DEFENDANT: Yes, Your Honor. I realize
17 the jury came back with a verdict of guilty. And I am
18 told but at the same time I would ask Your Honor to
19 consider a 15-year sentence.

20 THE COURT: When did you learn how to paint?

21 THE DEFENDANT: I learned how to paint from my
22 granddad and my daddy.

23 THE COURT: And when did you paint?

24 THE DEFENDANT: I started painting at 17.

25 THE COURT: When did you stop painting?

1 THE DEFENDANT: When did I stop? I stopped
2 painting when -- well I wasn't, I really never stopped
3 painting. It's just that I got another job working at
4 industrial National Linen Service.

5 THE COURT: The thing I am trying to figure
6 in, is that you have been convicted of housebreaking
7 or larceny, the solicitor said nine times. You were
8 sentenced in 1988 to a 15-year prison sentence.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you had your parole revoked in
11 2003. When were you painting? Where were you
12 painting?

13 THE DEFENDANT: During my conviction I was
14 even painting.

15 THE COURT: Say it again.

16 THE DEFENDANT: I said even during my
17 convictions, I was painting for the Department of
18 Corrections.

19 THE COURT: You were a Department of
20 Corrections painter.

21 THE DEFENDANT: No, I started---

22 THE COURT: How many years have you been in
23 prison?

24 THE DEFENDANT: About 15 of 17 years, sir.

25 THE COURT: You were sentenced in 1988 to 15

1 years. When did you get out?

2 THE DEFENDANT: I got out in 96, sir.

3 THE COURT: You did 8 years. And when did you
4 go back in?

5 THE DEFENDANT: Well they give me an extended
6 parole so in 2000 or something. That's when I
7 violated my parole.

8 THE COURT: 2000. You did four years.

9 THE DEFENDANT: Right, I am saying I violated
10 in 2002.

11 THE COURT: And how long did you stay in there
12 that time?

13 THE DEFENDANT: Well I got out on what is
14 called a supervised furlough. That's it ain't what
15 you call in nighttime, you know, it was earlier.

16 THE COURT: You went back in 2003, or 2004?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How long did you stay in there?

19 THE DEFENDANT: What happened caused me to
20 went out of time, but they had violated me. But I
21 didn't know I was out time. So I stayed in there
22 about 6 months, sir.

23 THE COURT: You got in 2005?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That's when you did the last time,

1 the housebreaking and burglary before this one? The
2 one before this one?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And that was when you were
5 sentenced on that?

6 THE DEFENDANT: I was sentenced on that -- I
7 was sentenced on that it was 4 years.

8 THE COURT: 2006.

9 THE DEFENDANT: Right.

10 THE COURT: How much time did you do?

11 THE DEFENDANT: I did 15 months.

12 THE COURT: When did you get out?

13 THE DEFENDANT: I got out in 2007, the last of
14 2007.

15 THE COURT: Were you on parole?

16 THE DEFENDANT: Sir?

17 THE COURT: Were you on parole?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The date of this offense is
20 October 29th 2007.

21 THE DEFENDANT: I got out in June. And it
22 wasn't nothing that I pay off a fine. Paid off the
23 victim for the money. That's all it was.

24 THE COURT: You paid out some money?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You went in someone's house then?

2 THE DEFENDANT: Yes. In this incident the
3 window was broken out, and they told me to just pay
4 for the window. So I paid off the window.

5 THE COURT: I mean, you gave beautiful
6 testimony about being a painting and a painting expert
7 and all that. But I was just wondering when did you
8 have time to paint considering your tenure in the
9 Department of Corrections, unless you were a
10 Department of Corrections painter?

11 THE DEFENDANT: I always painted, sir.

12 THE COURT: What else do you want to tell me?

13 THE DEFENDANT: I am asking, begging the Court
14 to show mercy.

15 THE COURT: Don't you think it's about time
16 for you to go into retirement on these burglaries?

17 THE DEFENDANT: Sir, I have.

18 THE COURT: Sir? No, I mean not voluntary
19 retirement. But don't you think it's time for me to
20 retire you from these burglaries considering that fact
21 that you have been in this position so many times
22 before?

23 THE DEFENDANT: Yes, sir. I am of the age
24 where, you know, if I haven't learned, I am not going
25 to learn.

1 THE COURT: Well that's the point.

2 THE DEFENDANT: Yes, sir. And I am 52 years
3 old. It's not to young age. Because I have got
4 plenty of gray hair.

5 THE COURT: Why do you like to burglarize
6 folk's homes? Why are you burglar?

7 THE DEFENDANT: Well a few incidences, sir, I
8 was on drugs. Using drugs. And I always get up in
9 the crowd. You know, some of the incidences I was
10 hanging with people to try to just---

11 THE COURT: Well here is something in 1988,
12 going by the evidence where three people caught you
13 inside the house, and I guess held until the police
14 got there.

15 THE DEFENDANT: Yeah, on that incident, sir,
16 they were using narcotics. In which they were fully
17 aware but it was never presented.

18 THE COURT: So you are a painter and a drug
19 addict at the same time?

20 THE DEFENDANT: Yeah, and an alcoholic too.

21 THE COURT: An alcoholic too?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Brown, what else do I need to
24 know?

25 THE DEFENDANT: That's about it, sir.

1 THE COURT: You know burglary the reason why
2 you can get life for burglary; is that, a person's
3 home is the one place where everything we have to face
4 as we go about living up and down the streets in our
5 circumstances dealing with the people, the one place
6 that a person should be able to have peace, comfort
7 and sanctity is in their own home. And it appears
8 based on your career, that's the one thing you have
9 absolutely have no respect for.

10 THE DEFENDANT: I have respect for that, sir.

11 THE COURT: Well why do you continue to do a
12 burglary, nighttime? The reason why it is -- another
13 reason it such a serious offense is because when a
14 person commits a burglary, goes in someone's home at
15 night particularly, the law presumes that when you go
16 in there, either you are prepared to kill someone, or
17 be killed. Because the property owner, the homeowner
18 has a right to defend themselves. And in that
19 setting, it is such a dangerous setting in this
20 instance, where the lady was asleep. You did come for
21 burglary. But under most settings, you have a
22 situation where someone is going to get killed or be
23 killed.

24 And I have sat, presided over those trials
25 where in so many instances the homeowner was killed.

1 Because the burglar goes in the home, and that person
2 wakes up and confronts the burglar. And in some
3 instances the burglar is killed. So it's a serious
4 offense that you should be able to appreciate. You
5 don't look like a burglar. You are standing there and
6 look -- it looks like you might even be a preacher.
7 You've got a pretty smooth conversation from that
8 witness stand as well. You don't look like a burglar.
9 You don't sound like a burglar.

10 Go ahead.

11 THE DEFENDANT: Excuse me. I always get
12 caught up with the same people over and over again.
13 Running around here like a revolving door. Because
14 the same people what they're doing, I am doing it
15 also. So one thing I have learned since I have been
16 locked up; is that, a habit is something that you have
17 that you don't just up and get rid of it. A habit is
18 something that you just got to convince in your mind,
19 I need to leave this part of town alone. I need to
20 get away from these people. Because if you have been
21 on drugs for so long as I have, it becomes second
22 nature to you.

23 THE COURT: You're 52 years old. You are
24 beyond -- you should be beyond anything. When you
25 committed this burglary, you were how old?

1 THE DEFENDANT: 51.

2 THE COURT: 51.

3 THE DEFENDANT: And I had the misfortune of a
4 fellow telling me it was a joint, and all that time it
5 was basically crack. And so when I had smoked it, it
6 started the same chain reaction as the drug; had
7 really snorted cocaine all over again. You know, the
8 high don't get no better high; it don't take, you
9 know. But yet it still makes you want more and more.

10 THE COURT: Well if you can't handle freedom,
11 that's why we have the Department of Corrections for
12 those who can't handle the joys of being free. They
13 have to be locked away to protect everybody else.

14 THE DEFENDANT: It's not where I don't enjoy
15 freedom, sir. I really enjoy being around my children
16 and grandchildren, you know.

17 THE COURT: All right, Mr. Brown. Mr. Shealy,
18 anything else?

19 MR. SHEALY: No, your honor.

20 THE COURT: Anything else from the state?

21 MR. GOLDBERG: No, sir.

22 THE COURT: Mr. Brown, anything else?

23 THE DEFENDANT: No, sir.

24 THE COURT: Mr. Brown, when considering
25 whether or not a person who continues in this pattern

1 should be put into retirement, and that is the real
2 consideration the judge has, whether or not the
3 pattern of continuing to be in and continuing to be
4 out. On parole, good time. Extended release. Early
5 release. All of those things that you probably know
6 better than anyone else in this courtroom. Basically
7 your experience in dealing with them.

8 So it is a consideration. I am sure when the
9 judge gave you the 15 years in 1988, he was hoping
10 when you got out, you wouldn't come back even though
11 you had been in. How old were you when you first went
12 to prison?

13 THE DEFENDANT: I think I was 20. I think,
14 you know, at the same time, you know you use the term
15 retirement, you know, your life span ain't but so
16 much. You know when you get past your 50, your life
17 span ain't but so much.

18 THE COURT: But in the law, life is life.
19 Whether you go another 50 years. And that's pretty
20 easy to define life, isn't it?

21 THE DEFENDANT: Well we're talking about life
22 ever after, I can understand. But you know to be a
23 life while you are here on this earth, you know, it's,
24 your life span don't go but so far.

25 THE COURT: It seems like you might be doing

1 pretty fine inside the prison.

2 THE DEFENDANT: No, sir. It's a jungle in
3 there, sir.

4 THE COURT: It seems like you wouldn't try so
5 hard to get back in there.

6 THE DEFENDANT: It's not where you try so hard
7 to get back. See, Your Honor, it's people. You know,
8 can -- I can go and talk to a therapist. I can talk
9 to a psychiatrist. Or I can even talk to any drug
10 counselor. And, you know, since I have been locked up
11 this time, there is something I did that I never did,
12 and that's when a preacher came and introduced me to
13 the bible. And I was never one to get into the
14 spiritual essence of things. But what he did, he
15 opened up a whole new world for me. You know, he took
16 his time and come see me constantly. He took his time
17 and come on Sunday.

18 You know, he took his time and sat down. And
19 we wasn't indulging in what I was in there for. He
20 took me beyond something else. He caused me to know,
21 you know, my Savior. And it was something that was a
22 totally new experience. It was a mind blowing, you
23 know, because I never, I have heard preachers preach,
24 but I always ignore it, you know. But he took me
25 somewhere. So high, you know, if I live or die, I

1 come to realize, you know, where I am going.

2 THE COURT: And that's a good message of
3 testimony that you should be able to take to those
4 fellows who are not 52 years old that you encounter in
5 the Department of Corrections. Maybe you can help
6 them out. Maybe you can teach them a way that won't
7 be the way of Leroy Brown at age 52. The fellows in
8 the prison, how old are they now? The ones you are
9 doing time with?

10 THE DEFENDANT: Well I've seen a lot of them
11 on the street, you know. I have had a chance to see
12 them, you know. And I have seen the kind of life
13 they were living. You know, some, you know, life in
14 general. Some succeed and some don't. And you can
15 put forth the willingness. But I am fortunate enough
16 to see some with a bible in their hand. And I always
17 say that, you know, each his own. And that was a
18 figure of speech that I come to regret. Because when
19 you come to know the lord, there is no such thing as
20 to each his own. It's where, this is a life that you
21 want to live, you know, because now it's not the one
22 you are living, it's a life where somebody else is
23 taking control of your life and leading you and
24 guiding you.

25 So you no longer have to think about the wrong

1 things in your life. Because I have come to learn
2 that he gives you better thoughts. He gives you -- he
3 shows you a better way of life. You know, that's why
4 I repeat that. Basically it's a totally new
5 experience for me. It's a mind blower. You know, I
6 always heard it but I have never known the experience
7 myself; that you could experience anything beyond your
8 mind.

9 So but, you're right. Even in the county
10 jail, you know, I was beginning to share with the
11 fellows down there that, you know, especially with the
12 young ones; that this is not the kind of life you
13 want to live. Because if you look at the newspaper
14 and look at television, you know, just like I tell
15 them, the young is dying faster than the old. You
16 know, because they're choosing this life. Your life
17 span ain't but so long, so why hurry death.

18 You know, this is what I talk to a lot of the
19 young fellows in jail about. You know, because every
20 time you watch TV or see the news, you know, they're
21 killing one another. You know, it's gotten to the
22 point where the gangs are related and everything. So
23 if I can make a difference in just one person's life,
24 you know, I am happy.

25 THE COURT: You will have that opportunity.

1 Mr. Brown, it is always pretty sad when someone who
2 could be doing something constructive with their life,
3 comes up under these situations. And you wonder why a
4 person's life has taken a turn. And how easy it is to
5 blame it on those drugs. It has got to be a little
6 more than that.

7 THE DEFENDANT: Right. Because I come to
8 learn drugs is just an easy way to cop out, you know.
9 But to live as long as I have, 52 years, and to see
10 your life take off no way is sad. But, you know, now
11 since I have found somebody way stronger and more
12 powerful than me, I know where my life can take off
13 somewhere else.

14 THE COURT: Mr. Brown, sentence of the Court
15 is that you be committed to the State Department of
16 Corrections for a period of 18 years. I started to
17 give you 25. I thought about 30. I thought about 20.
18 But you've made good impressions. But It is just
19 unfortunate that you decided to be a burglar. So I am
20 going to give you 18. That's about the time you
21 started committing all these crimes. I will just give
22 you that as a starting point for doing this last
23 stretch. And hopefully you will work well inside the
24 department. Good luck to you, sir.

25 MR. SHEALY: Thank you, Your Honor.

1 THE COURT: Credit for time served.

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CERTIFICATE

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, Margaret T. Sullivan, Official Court Reporter
for the Third Judicial Circuit of the State of South
Carolina, do hereby Certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in General Sessions
Court on December 10th-11th 2008, in Richland County,
Columbia, South Carolina.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

3-13-09
DATE

Margaret T. Sullivan
COURT REPORTER

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Leroy Adams Brown, Appellant.

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2011-UP-041
Submitted December 1, 2010 – Filed February 1, 2011

AFFIRMED

Deputy Chief Appellate Defender Wanda H.
Carter, of Columbia, for Appellant.

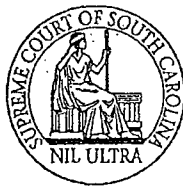
Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott,
Assistant Attorney General Christina J. Catoe,
and Solicitor Daniel E. Johnson, all of Columbia,
for Respondent.

PER CURIAM: Leroy Adams Brown appeals his conviction for burglary in the first degree, arguing the trial court erred in denying his motion for a directed verdict. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) (explaining if any direct evidence or substantial circumstantial evidence reasonably tends to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury); State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) ("Any doubt about the correctness of [affirming the appellant's conviction] is eliminated by the admission of appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge, that he had participated in the robbery Further review of the record, therefore, is rendered unnecessary.").

AFFIRMED.

HUFF, KONDUROS, and LOCKEMY, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.



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

February 8, 2012

Deputy Chief Appellate Defender Wanda H. Carter
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

RECEIVED

Re: State of SC v. Brown, Leroy Adams
Trial Court Case No. 2008-GS-40-11826

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

February 8, 2012."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,


CLERK

SHR

SC Attorney General
RECEIVED

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Richland

2012 CP 4003270

02 2017

Leroy Brown #155199)

Referred to Corney

Full name and prison number, if any, of applicant.)

Answered _____

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

Name of Respondent)

FILED
RICHLAND COUNTY
2012 MAY -8 AM 10:34
JEANETTE W. MCBRIDE
C.C.P. & G.S.

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 Lee Corr Inst 990 Wiscacky Hwy
Bishopville SC 29010

2. Name and location of Court which imposed sentence Richland County Court of
General Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 1st Burglary 2008-GS-46-11826

(b) _____

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) Dec 10-11-08 18 yrs

(b) _____

(c) _____

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 and Rehearing
 ii. South Carolina Supreme Court
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Denied - Denied
 ii. Denied
 iii. _____

(c) the date of each such result:

- i. S.C. Court of Appeals Denied Feb. 2-2011
 ii. Rehearing Denied By Court of Appeals March 24-2011
 iii. SC Supreme Court Denied Feb 5-2010

(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) N/A
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Ass. of Counsel
 (b) S.C. Court of Appeals, perpetrate Fraud Due Process Violation
 (c) Fifth and 14th Amendment Violation

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Counsel Failed to file or request a Direct Verdict

(b) Court of Appeal Exigent Fraud

(c) State and Federal Const.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

(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. ~~N/A~~ Luke Shealy Public Defenders Office
- ii. Main St. Columbia S.C.
- iii. Linda Carter Division of Appellate Defense
- iv. 1330 Lady Street Suite 401 Columbia S.C. 29211-1584

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- 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? _____

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- 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) N/A
- (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? _____

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)

VERIFICATION

I, _____, 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.

Leroy Brown

Sworn to and subscribed before me

This 27 day of Feb, 2012

Duke Jones L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF

I, Leroy Brown, 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 or 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.

Leroy Brown
 Applicant

Sworn to and subscribed before me

This 27 day of Feb, 2012

Duke Jones L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

2012 MAY -8 AM 10:35
 J. ANNETTE W. MCCBRIDE
 C.C.P. & G.
 FILED
 RICHLAND COUNTY

5th RC
2012 CP400 4209

STATE OF SOUTH CAROLINA)

County of Richland)Leroy Brown - 155199)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

In the Court of Common Pleas

APPLICATION FOR

POST-CONVICTION RELIEF

2012 JUN 15 PM 4:32
JEANNETTE W. MORRIS
C.C.P. & G.S.RICHLAND COUNTY
FILEDINSTRUCTIONS - 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 Lee Corr. Inst. 990 Wisacky Hwy.
Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Richland County Court of
General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 1st Burglary 2008-GS-40-11826
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) Dec 10-11-08 18 yrs
(b) _____
(c) _____

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 and Rehearing
 ii. South Carolina Supreme Court
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Denied - Denied
 ii. Denied
 iii. _____

(c) the date of each such result:

- i. S.C. Court of Appeals Denied Feb. 2-2017
 ii. Rehearing Denied By Court of Appeals March 24-2017
 iii. S.C. Supreme Court Denied Feb. 8-2017

(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) N/A
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully;

- (a) Ineffective Ass. of Counsel
 (b) S.C. Court of Appeal, perpertrate Fraud Due Process Violat
 (c) Fifth 6th and 14th Amendment Violation

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Constitutional Right to Fair Trial & Presumption of Innocence

(b) Grant of Hysterical Exigent Fraud

(c) State and Federal Const.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

(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. ~~N/A~~ Luke Shealy Public Defenders Office
- ii. Main St. Columbia S.C.
- iii. Wanda Carter Division of Appellate Defense
- iv. 1330 Lady Street Suite 401 Columbia S.C. 29211-1589

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 1/1/1
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- 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? _____

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- 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) N/A
- (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? _____
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

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. _____
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Seeks ~~Relief~~ Relief from my conviction and sentence

19. Are you now under sentence from any other court that you have not challenged?

No

I do not have post-conviction counsel at this time. Further I do not yet have a copy of trial counsel's files, access to discovery, access to funds for expert and investigative services, or any ability to conduct an investigation. Given those limitations, I cannot provide further information regarding additional claims for post-conviction relief, although I believe there are other viable post-conviction claims available to me. With the exception of the specific issues included in the application at this time, I do not waive the attorney-client privilege to any extent and I request that my trial counsel not provide any portion of my files to any representative of the attorney's general office outside the scope of these specific issues.

STATE OF SOUTH CAROLINA

VERIFICATION

COUNTY OF _____

I, Leroy Brown, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Sworn to and subscribed before me

This 27 day of Feb, 2012

Debra Sines L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

HIGHLAND COUNTY
FILED
2012 JUN 15 PM 4:32
JENNIFER W. NOBBERIDGE
C.C.P. & G.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Leroy Brown, 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.

Leroy Brown
Applicant

Sworn to and subscribed before me

This 27 day of Feb, 2012

Debra Sines L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Leroy Brown, #155199,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEA
FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-03270

2012-CP-40-04209

ORDER FOR MERGER

RICHLAND COUNTY
FILED
2012 JUN 26 PM 3:08
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Applicant in the above-captioned matter has filed two duplicate applications for post-conviction relief challenging his December 11, 2008, conviction for Burglary – First Degree out of the Richland County Court of General Sessions (2008-GS-40-11826). Applicant filed the first on May 8, 2012, (2012-CP-40-03270), thereafter filing a duplicate copy on June 15, 2012 (2012-CP-40-04209). The two were assigned separate docket numbers. Since an applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (See, Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90), and because the two applications are seemingly identical copies, this Court orders that the two proceedings be merged into one distinct action, with the application filed May 8, 2012, being the remaining action (2012-CP-40-03270), and the latter serving as an amendment to the original action.

The Richland County Clerk of Court is therefore ordered to merge the two cases, with docket number 2012-CP-40-03270 being the surviving case. Hereafter, the word "Application" will refer to docket number 2012-CP-40-03270; the word "Amendment" will refer to docket number 2012-CP-40-03270, which will be considered as an amendment to the application for post conviction relief.

IT IS THEREFORE ORDERED that the Richland County Clerk of Court merge the two actions with docket number 2012-CP-40-03270 being the surviving case and all future pleadings bearing docket number 2012-CP-40-03270. Docket number 2012-CP-40-03270 will be dismissed upon the merger.

AND IT IS SO ORDERED this 25 day of June, 2012.


James R. Barber, III
Administrative Judge -- Common Pleas
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

BROWN Leroy -
00155199,

2012CP4003270

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 8, 2012, and amended June 15, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the February 2008 term of the Richland Grand Jury for Burglary After 6/20/85 1st Degree (2008-GS-40-11826).² He was represented by Luke Shealy, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable Clifton Newman. On December 11, 2008, Applicant was found guilty and sentenced to eighteen (18) years imprisonment.

¹<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4003270&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00155199>

Direct Appeal

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. He was represented by Deputy Chief Appellate Defender Wanda H. Carter, Esquire, on the appeal. By order filed February 1, 2011, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence pursuant to Rule 220(b)(1), SCACR. State v. Leroy Brown, 2011-UP-041 (S.C. Ct. App. filed February 1, 2011). The subsequent Petition for Rehearing was denied by order filed March 24, 2011.

A Petition for Writ of Certiorari was filed with the South Carolina Supreme Court on May 25, 2011. The state made its Return to the petition on June 21, 2011. By order dated February 8, 2012, the South Carolina Supreme Court denied the petition. The Remittitur was issued February 14, 2012.

The current application for post conviction relief (PCR) was filed May 8, 2012, and amended June 15, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

In the application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Ass. of Counsel
- (b) S.C. Court of Appeals, perpetrates Fraud Due Process Violation
- (c) Fifth, 6th and 14th Amendment violation

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Counsel Failed to file or request a Direct Verdict

- (b) Court of Appeals Engaged Fraud

- (c) State and Federal Const.

Applicant's June 15, 2012, "Amended Application" was a duplicate copy setting forth identical grounds for relief.

IV.

For the purposes of this Return, 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. 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, 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, 80 L.Ed.2d 674. 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, citing 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. 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.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Henry F. Griffin, III, Esquire regarding when the hearing should be set.⁴

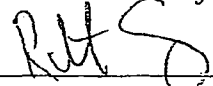
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

July 13, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

BROWN Leroy -
00155199,

2012CP4003270

Applicant,

v.

CERTIFICATE OF SERVICE

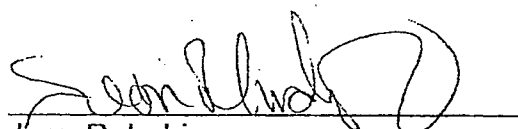
State of South Carolina,

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 a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

Henry F. Griffin, III, Post Office Box 76 , Columbia, SC 29202

DATED July 16, 2012.


Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND }

COURT OF COMMON PLEAS

LERROY BROWN)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
12-CP-40-3270

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

January 13, 2013
Columbia, South Carolina

B E F O R E :

THE HONORABLE G. THOMAS COOPER, JUDGE

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

H. FLYNN GRIFFIN, III, ESQ.
Attorney for the Petitioner

JOHN WALTER WHITMIRE, ESQ.
ROB D. CORNEY, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Elizabeth Harris

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(There were no exhibits submitted.)

1 MR. WHITMIRE: May it please the Court,
2 Your Honor. The State now calls Leroy Brown v.
3 State, 2012-CP-40-3270. Applicant was true bill
4 indicted in the February 2008 term Richland County
5 Grand Jury for burglary first degree, p. larceny,
6 applicant was represented by Luke Shealey and
7 Michael Lighty. Applicant proceeded to trial
8 December 11th, 2008. He was found guilty of
9 burglary first as indicted and acquitted of larceny,
10 received 18 years imprisonment, and filed a direct
11 appeal. Court of Appeals issued its remittitur on
12 February 14th, 2012. Currently he's filed an
13 application for post-conviction relief May 8th,
14 2012, and is represented by Mr. Flynn Griffin. The
15 defendant is present. At this moment the State
16 turns this case over to Mr. Griffin.

17 THE COURT: Mr. Griffin.

18 MR. GRIFFIN : I believe there are two
19 petitions, Your Honor. The other one is, the last
20 four digits are 4209.

21 THE COURT: I have both them.

22 MR. GRIFFIN: Thank you, Your Honor. At
23 this time we call Mr. Brown to the stand.

24 WHEREUPON,

25 **LEROY BROWN,**

1 having been duly sworn by the Court, testified as
2 follows:

3 THE COURT: Have a seat please and state
4 your full name for the record.

5 THE WITNESS: Leroy Brown.

6 THE COURT: All right.

7 **DIRECT EXAMINATION**

8 **BY MR. GRIFFIN:**

9 Q Mr. Brown, how old are you?

10 A 56.

11 Q All right. And when you were arrested where were
12 you employed?

13 A National Linen Service.

14 Q How long have you been employed there?

15 A I've been there for about eight months, nine
16 months.

17 Q All right. And you were convicted of burglary;
18 is that correct?

19 A Yes, sir.

20 Q And you were sentenced to 18 years?

21 A Yes, sir.

22 Q All right. But you were acquitted of petit
23 larceny?

24 A That is correct.

25 Q And you attended the trial in this case?

- 1 A Yes, sir.
- 2 Q Did you plead guilty or not guilty?
- 3 A No, I took a jury trial.
- 4 Q You had a jury trial?
- 5 A Yes, sir.
- 6 Q After pleading not guilty?
- 7 A Right.
- 8 Q And you were charged with burglary?
- 9 A That is correct.
- 10 Q Could you explain to the Court how the trial
- 11 went?
- 12 A Well, we came to trial with -- first they had
- 13 offered me a plea. Mr. Shealey had came to see me.
- 14 They had offered me a plea which I refused so we
- 15 went to trial, and the trial went along and ---
- 16 Q Now let me interrupt you. Mr. Shealey, that's
- 17 Luke Shealey?
- 18 A Yes, sir.
- 19 Q He was your attorney?
- 20 A Yes, sir.
- 21 Q He's was with the Public Defender's Office?
- 22 A That is correct.
- 23 Q And that's him here today?
- 24 A Yes, sir.
- 25 Q All right. Thank you, I'm sorry.

1 A Okay. So we went through the trial and, but the
2 trial --, the trial was going on all right. And so
3 when I was offered to take the stand which my
4 attorney advised me of taking the stand, but he also
5 said that they would bring up my past record too
6 which I had a previous, a couple of previous
7 burglaries. So when I took the stand they -- the
8 solicitor was able to bring that up which
9 Mr. Shealey never advised me on the fact that I
10 could have made closing arguments and my record
11 would never have come up so ---

12 Q Well, let me interrupt you one more time. I
13 think you're getting ahead of yourself. My
14 understanding is that there was -- the burglary
15 occurred in Shandon; is that correct?

16 A Right, that's correct.

17 Q And there was a lady whose house in Shandon was
18 being remodeled?

19 A Right.

20 Q And when the construction people showed up at the
21 house to work on the remodeling job they found her
22 pocketbook out on the lawn?

23 A Right.

24 Q And she testified that the money was missing from
25 the pocketbook; is that correct?

1 A That is correct.

2 Q And the construction people testified that there
3 was a ladder leaning up against the house ---

4 A That is correct..

5 Q ---near a window that's -- the bottom of the
6 window about 6 feet off the ground so it'd be hard
7 to climb in the window, you'd have to use a ladder.
8 Did the construction people testify that the ladders
9 were locked up ---

10 A Yes.

11 Q ---after they went home?

12 A Yes, he -- the supervisor said that the ladders
13 was locked, and so Luke asked him was all the
14 windows locked. They said yes, all the windows were
15 locked on the inside before we left. The ladders
16 was a key and locked. So the question was raised,
17 how did the ladder get to the window if nobody has
18 the key but your parents and how did the window get
19 unlocked when you just stated that all the windows
20 was locked. So when the question arose they really
21 couldn't answer that. We never really received a
22 straight answer on that.

23 Q All right. When the police came they called the
24 fingerprint people; is that right?

25 A Right, that is correct.

1 Q All right. And the fingerprint people testified
2 at your trial?

3 A Right.

4 Q And that they found a fingerprint ---

5 A Right.

6 Q ---of yours on the window there?

7 A Right, that's correct.

8 Q All right. Well, did they have any eyewitnesses
9 or the ---

10 A No.

11 Q Now who actually did it? They just found the
12 pocketbook on a ---

13 A Right.

14 Q ---on a front yard?

15 A Right.

16 Q But nobody actually testified that they saw you
17 burglarize the house?

18 A That is correct.

19 Q All right. And when you are arrested you told
20 the police that you didn't do it?

21 A That's correct.

22 Q You never gave them a statement that you, you had
23 done it?

24 A That is correct.

25 Q There was no coconspirator or anything. There's

1 nobody else who was there testified that you had
2 done it. What they had was a fingerprint?

3 A That is correct.

4 Q All right. Now do you have a prior record of
5 burglary?

6 A Yes, I do.

7 Q All right. Now tell us about -- what kind of
8 record do you have?

9 A I had two previous burglary. One I received five
10 years and the other one I received six years.

11 Q All right.

12 THE COURT: It was burglary first or
13 burglary second?

14 THE WITNESS: Burglary second.

15 THE COURT: Both burglary seconds?

16 THE WITNESS: Right.

17 **BY MR. GRIFFIN:**

18 Q Were those burglaries admitted into evidence
19 during the trial?

20 A They was brought up when I took the stand.

21 Q Wasn't it before you took the stand ---

22 A Yeah.

23 Q ---the State introduced evidence that you'd been
24 convicted twice of burglaries?

25 A That is correct.

1 Q Now hadn't your attorney indicated before then,
2 that you stipulate to the convictions?

3 A Repeat that question please.

4 Q Had your attorney prior to the convictions being
5 admitted in evidence stipulated that you had been
6 convicted?

7 A Well, yes.

8 Q All right. There's no question that you had this
9 prior record?

10 A That is correct.

11 Q And that's the basis for accusing you of burglary
12 in the first degree that you have a prior record?

13 A Right.

14 Q After you had these convictions admitted in the
15 record you testified; is that correct?

16 A That's correct. That is correct.

17 Q And what was your testimony at that time during
18 the trial?

19 A My testimony was, see, at the house they had a
20 sign out there, painters, and doing construction.

21 And I went there looking for a job. And then when I
22 went looking for a job they was painting the

23 windows. So I was explaining to the fellow, showing

24 him my expertise as a painter about the texture of

25 wood, how it's a different texture and how much

1 paint you got to lay on the inside and on the
2 outside because you got new boards that you just put
3 in and you got old boards. So I was explaining to
4 him, and during the trial because during when I came
5 in other peoples coming looking for a job too. So
6 that was that. So he say he was -- would inform his
7 supervisor so I gave him my name and stuff so I
8 left.

9 Q All right. So that's how your fingerprint got on
10 the window?

11 A Yeah, yeah.

12 Q All right. Did you come back later and ---

13 A No, I didn't ---

14 Q ---go into the house?

15 A No, I didn't even come back.

16 Q Did you have a key to unlock the ladder?

17 A No, I didn't.

18 Q For the ladder?

19 A No, sir.

20 Q Did you have a way to open the window ---

21 A No, sir.

22 Q ---without breaking it?

23 A No, sir.

24 Q All right. So it was pretty clear whoever did it
25 had the key to the ladder, and one of the

1 construction people left the window open and they
2 went and took the pocketbook?

3 A That is correct.

4 Q All right. And you didn't have any of the lady's
5 property on you when they arrested you?

6 A No.

7 Q What did the jury decide? You were convicted?

8 A Yes, sir.

9 Q Of burglary?

10 A Of burglary.

11 Q But acquitted of petit larceny?

12 A That is correct.

13 Q Did you appeal?

14 A Yes, I did.

15 Q And how long was the -- you appealed based on the
16 court's denial of directed verdict?

17 A Right.

18 Q Mr. Shealey argued a motion for directed verdict
19 that there was inadequate evidence to convict you?

20 A That is correct, yeah.

21 Q Judge Newman overruled the objection and allowed
22 the case to proceed to the jury?

23 A That is correct.

24 Q And the appellate court affirmed that?

25 A That's correct.

1 Q All right. Now in part, the appellate court said
2 that you admitted guilt. Could you explain how
3 that, to Judge Cooper, how that arose?

4 A When they -- when the jury came back out and we
5 was standing at the podium waiting on the jury's
6 verdict, the jury came back and found me guilty of
7 burglary but not guilty of the larceny. So I'm
8 standing up there, I'm stung, in a state of shock
9 because he just found me guilty of first degree
10 burglary which we all know carry a life sentence so
11 I'm in a state of shock. So while I'm standing
12 there Judge Newman asked me a question, how old were
13 you when you committed the crime. At that time I
14 didn't even understand what he was saying. I think
15 he asking me how old was I when I got arrested so I
16 told him I was 51 years old. So during my direct
17 appeals and all this here they use that against me;
18 they saying I admitted guilt.

19 Q All right. But in fact, you pled not guilty?

20 A I pled not guilty.

21 Q And you testified that you did not burglarize the
22 house?

23 A That is correct.

24 Q Now, and did Mr. Shealey correct you after you
25 said you were 51?

1 A No, nothing was said.

2 Q So you've accused Mr. Shealey of not representing
3 you adequately. What problems do you have with
4 Mr. Shealey's services in this case?

5 A The problem I -- he did all right job, but it
6 could have been more because you got -- they took my
7 picture back to the house, and just my picture, and
8 asked these, and asked the painter there have they
9 seen this fellow along. I felt as though they were
10 showing prejudice there because you only took my
11 picture. That's the same as I'm standing in front
12 of a lineup, you know. And then I -- if I would
13 have been advised that I couldn't make the closing
14 arguments and my record would have never been used
15 against me, then I think I had a fighting chance
16 because I think I was convicted on the grounds of my
17 record, not because of the crime.

18 Q All right. So you feel that he should have done
19 more?

20 A Yeah.

21 Q Did he object to the admission of your, the two
22 convictions?

23 A No, he said if I take the stand he said that
24 nobody can tell the story better than I can.

25 Q But the State admitted to two convictions during

1 the State's case in chief. That was before you
2 testified.

3 A Right.

4 Q And Mr. Shealey didn't object to the two
5 convictions?

6 A No.

7 Q And do you feel that adversely affected your
8 case?

9 A Yes, sir.

10 Q Did he tell you about your right to address the
11 jury, make a closing statement?

12 A No, sir.

13 Q All right. Any other problems with Mr. Shealey?

14 A No, sir.

15 Q All right. Please answer any questions that the
16 State has.

17 MR. WHITMIRE: Beg the Court's indulgence.

18 MR. GRIFFIN: Your Honor, there's a case
19 that I have, State v. James, I'll be happy to pass
20 it up. I've highlighted it and I -- this case was
21 argued in motion, trial court. In fact, Mr. Shealey
22 is familiar with it. But it says, and the -- as
23 Your Honor knows it's two years, if you have two
24 prior convictions then it's burglary in the first
25 degree.

1 THE COURT: Right.

2 MR. GRIFFIN: And the question is whether
3 those two convictions should be admitted in evidence
4 and ---

5 THE COURT: Right.

6 MR. GRIFFIN: It's a weighing test for
7 prejudice and the probative value. My position is
8 that since they stipulated, there's no probative
9 value at all. It was prejudicial to submit his
10 record. Now the cases have struggled with this but
11 the conclusion the State Supreme Court had -- this
12 is State versus James, 583 Southeast 2d 745, 2003
13 decision. It says: Burglary, none other relevant
14 authorities notify the trial judge's traditional
15 role in weighing the probative value of evidence
16 versus the prejudicial effect or suggest that rule
17 403 is displaced by operation of 16-11-311, the
18 burglary statute. So there seems to be whenever the
19 prior precedence are, there has to be a weighing of
20 the probative value versus prejudice.

21 THE COURT: 403 analysis.

22 MR. GRIFFIN: Yes, sir. And in this case
23 Mr. Shealey didn't object to the two convictions
24 being admitted in evidence after, you know, he
25 stipulated that there were two convictions so

1 there's no probative evidence for telling the jury
2 about that and it's prejudicial. So that's our —
3 I'm happy to pass up the case, Your Honor.

4 THE COURT: Please do. I share that
5 concern with you.

6 MR. WHITMIRE: And Your Honor, would you
7 like me to address opposing counsel's argument on
8 ---

9 THE COURT: Not right now.

10 MR. WHITMIRE: ---on State v. James or
11 save it?

12 THE COURT: I want you to cross-examine
13 the witness right now.

14 MR. WHITMIRE: Yes, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. WHITMIRE:**

17 Q Good afternoon, Mr. Brown?

18 A How are you doing?

19 Q Mr. Brown, did the State use your prior
20 convictions to impeach your credibility when you
21 testified?

22 A They brought out my credibility when I was on the
23 stand, yes.

24 MR. WHITMIRE: Your Honor, I'd like to
25 reference the record on cross-examination. There's

1 at no point that the State referenced his
2 credibility refers to his -- of past convictions.

3 THE COURT: What are you -- just a minute.
4 What are you referring to?

5 MR. WHITMIRE: Oh, I'm on
6 cross-examination of Mr. Brown.

7 THE COURT: Well, point it out to me.

8 MR. WHITMIRE: Sir? Your Honor?

9 THE COURT: Show me. I got the record
10 here.

11 MR. WHITMIRE: It is right...

12 MR. GRIFFIN: Your Honor, I think he's
13 trying to say that at no place during the
14 cross-examination do they impeach him. When he
15 testified they did not impeach him. The convictions
16 were admitted as a part of the State's case in
17 chief.

18 THE COURT: Okay.

19 MR. WHITMIRE: I just want to point that
20 out.

21 MR. GRIFFIN: So there wouldn't be a place
22 in the record where it'd be -- they didn't refer to
23 it. That'd be the entirety of the transcript.

24 BY MR. WHITMIRE:

25 Q Mr. Brown, do you recall the State's evidence on

1 your finger having your -- well, the State's
2 evidence of guilt at trial having your fingerprint
3 inside the window ---

4 A Yes.

5 Q ---of the victim's home? And in preparing for
6 trial did Mr. Shealey or Mr. Lighty explain to you
7 the elements of burglary first?

8 A Yes.

9 Q They explained to you that one of the require--
10 one way to prove burglary first is to introduce two
11 prior convictions of burglary or for house breaking?

12 A Yeah.

13 Q And did they explain to you that the State would
14 use your record potentially to satisfy their case in
15 chief?

16 A Uh-huh, yeah.

17 Q And do you recall the efforts they made at trial
18 to limit your past burglaries being put in?

19 A It was stated that the State would use two prior
20 convictions if you take the stand.

21 Q And do you remember what the State actually did
22 introduce?

23 A No, I don't remember. I know they introduced
24 two.

25 THE COURT: Did they tell you that at

1 pretrial? Did they tell you -- Mr. Shealey tell you
2 that before the trial?

3 THE WITNESS: Yeah, that they introduced
4 two prior convictions.

5 THE COURT: He told you that before you
6 went to trial?

7 THE WITNESS: No, he told me that while we
8 were standing over there.

9 THE COURT: Say what?

10 THE WITNESS: He told me, yeah, when we
11 was at trial. He told me that at trial.

12 THE COURT: I said before the trial.

13 THE WITNESS: No, he didn't tell me that
14 before the trial.

15 THE COURT: Okay.

16 BY MR. WHITMIRE:

17 Q And Mr. Brown, how many prior burglaries have you
18 been convicted of?

19 A Five or six, I don't...

20 Q But the State only introduced two at trial?

21 A Right.

22 Q Thank you. At the conclusion of your case did
23 Mr. Shealey move for a motion for a new trial, do
24 you recall that?

25 A No.

1 Q Well, he moved for motion for new trial based on
2 the grounds of your conviction for burglary, not for
3 larceny.

4 MR. WHITMIRE: Beg the Court's indulgence.
5 That's all, Your Honor. Nothing further.

6 THE COURT: All right, you may come down.
7 Next witness.

8 MR. GRIFFIN: I call Mr. Shealey, Your
9 Honor.

10 THE COURT: Come around Mr. Shealey.
11 WHEREUPON,

12 **LUKE SHEALEY,**
13 having been duly sworn by the Court, testified as
14 follows:

15 THE COURT: Have a seat in the witness
16 box. State your full name for the record.

17 THE WITNESS: Luke Shealey.

18 **DIRECT EXAMINATION**

19 **BY MR. GRIFFIN:**

20 Q Mr. Shealey, my name is Flynn Griffin. I'm an
21 attorney here in Richland County. I've been ordered
22 to represent Mr. Brown. I don't believe we've ever
23 met before today; is that correct?

24 A That's correct.

25 Q All right. Now, and you're employed by the

1 Public Defender's Office?

2 A Yes, sir.

3 Q And you were employed by the Public Defender's
4 Office at Mr. Brown's trial?

5 A Yes, sir.

6 Q And you had a primary responsibility for
7 defending him?

8 A Yes, sir.

9 Q All right. Could you go through your
10 qualifications to be a defense attorney at -- the
11 trial was in 2008; is that correct?

12 A Yes, sir.

13 Q What were your qualifications as a criminal
14 attorney at that time?

15 A Well, licensed member of South Carolina Bar in
16 good standing and employed by the Public Defender's
17 Office.

18 Q All right. When did you graduate from law
19 school?

20 A 2006.

21 Q So you'd been out of law school for about two
22 years ---

23 A Yep.

24 Q ---when the trial took place?

25 A Yes, sir.

1 Q And you'd been employed by the Public Defender's
2 Office the entire time from law school until the
3 trial?

4 A Yes, sir.

5 Q Okay. They really throw you into the deep end
6 just starting out; don't they?

7 A They certainly do.

8 Q Now you agreed, when the case first started you
9 agreed that Mr. Brown had at least two convictions
10 for burglary?

11 A Yes, sir. I don't have his rap sheet in front of
12 me, but it was somewhere between two to five if
13 memory serves.

14 Q It was more than two, certainly more than two?

15 A Yes, sir, it was more than two.

16 Q And you agree that two -- he had been -- you
17 stipulated there'd been convictions of more than
18 two?

19 A Right.

20 Q And that was on page 9 of the transcript. I
21 mean, that was the first thing.

22 A Right. I think I tried -- thinking back on it
23 now in reading the transcript, I tried to stipulate
24 to somewhat control how many burglaries they might
25 try to come in. They didn't agree to my

1 stipulation, but I think I was trying to limit it in
2 the way they prove the elements of burglary first
3 degree.

4 Q All right. And you also stipulated that it was
5 his fingerprint on the window?

6 A Yes, sir. In talking to Leroy about his position
7 which he just always maintained, he came by looking
8 for work, that we didn't -- we were gonna own the
9 fingerprints in terms of our defense. Also I did
10 hire a fingerprint expert who said that they were a
11 very strong hit to his print cards in the system.

12 Q All right. And you heard Mr. Brown's testimony
13 earlier. This burglary was a house in Shandon ---

14 A Yes, sir.

15 Q ---that was being remodeled?

16 A Yes, sir.

17 Q And when the construction company workers came
18 this morning they found the lady's purse out on the
19 front yard?

20 A Yes, sir.

21 Q All right. And that the money had been taken out
22 of the purse?

23 A Yes, sir.

24 Q All right. And the -- they also saw this ladder
25 leaning up against the side of the house near an

1 open window; is that correct?

2 A Right. That was how they, police assumed the
3 burglar would have gotten into that point of entry,
4 some window that was about 5 foot 10, 5 foot 11.
5 But there weren't any prints on that, weren't any
6 prints on the purse, it was simply at the window.

7 Q So you're saying bottom of the window is about 6
8 feet off the ground?

9 A Even shorter, but approximately 6 feet.

10 Q So it'd be hard for a person to get in that
11 window without a ladder. I couldn't do it.

12 A Well, maybe a young man but. Right, it would be
13 hard to probably go through without the ladder and I
14 think we -- it was important at trial that the
15 height of the window due to Mr. Brown's testimony
16 about touching the window.

17 Q The testimony at trial was that these workers
18 would always lock the ladders up at night. They
19 certainly didn't want people stealing the ladders.

20 A Yes.

21 Q So the argument you made as an attorney was that
22 Mr. Brown didn't have a key to the ladders, he
23 couldn't put the ladder up against the house,
24 therefore he didn't do it?

25 A Correct. That and the fact there was -- his

1 prints weren't on the ladder as well.

2 Q And then his prints weren't on the purse?

3 A Correct.

4 Q And the construction workers always -- they
5 testified when they left they always locked up the
6 house to make sure the windows were locked?

7 A Yes, sir.

8 Q So the argument you would make would be that one
9 of the construction workers left the window up,
10 unlocked the ladder, leaned the ladder up against
11 the house, went in the house, took the purse, and
12 then left the purse on the front yard?

13 A Right. With it being clear that Mr. Brown didn't
14 have a key to lock ladders, you know, we were
15 definitely leaving it out there that it was probably
16 someone with the construction crew; and if he had
17 actually done it, it probably would have left a
18 print on the ladder, on the purse. That's why we
19 definitely argued this as a circumstantial case. We
20 were denied directed verdict. But that was our
21 theory, yes, sir, that probably someone with the
22 crew did it if they had access to the ladder.

23 Q So there are no eyewitnesses testifying Mr. Brown
24 to the crime?

25 A Correct.

1 Q And he denied guilt throughout the -- up until
2 the time he was convicted?

3 A Yes, sir. That's as long as I'd represented him
4 he always maintained that he did not do it, that he
5 had maintained to me probably much in the way that
6 he testified at trial which was that he is a career
7 painter, that he saw this construction crew doing
8 work, that he went to kind of impress them with his
9 knowledge of painting, touched a window as he was
10 standing by discussing whether he could actually
11 work on this job. They told him no, and he walked
12 off. And he always denied it until, like you said,
13 when during sentencing -- and like you said, I'd
14 only been a public defender for two years at this
15 point. I hadn't experienced a sentencing where
16 there were so many questions of the judge, by the
17 judge but, I feel that I failed him at that point by
18 not counseling him to remain silent and maybe I
19 didn't know at that point that he could, he should
20 still remain silent because like he testified, this
21 is a pretty strong, in my opinion, circumstantial
22 case and the Court of Appeals didn't even address
23 those issues because they felt he admitted guilt
24 during sentencing so maybe I failed him there but.
25 Q All right. And you didn't object to the two

1 convictions being admitted?

2 A No, I tried to stipulate to those because all the
3 reading of the case law that I could find was that
4 the State had the burden to prove the elements, the
5 indictment here being hours of darkness or at least
6 two prior burglaries. I couldn't find any way
7 around those getting into evidence during the
8 State's case in chief as they have to prove the
9 elements of burglary first degree so I tried to get
10 the State to stipulate without actually offering in
11 those convictions into evidence. I was
12 unsuccessful, but we were successful once they
13 testified in having further burglaries come into
14 evidence.

15 Q You actually stipulated that he'd been convicted?

16 A Yes, sir.

17 Q You told the Court there's no dispute that he's
18 been convicted and I'll stipulate he's been
19 convicted of the two burglaries?

20 A Yes, sir.

21 Q But you didn't object to the admissibility of the
22 burglaries?

23 A Not, not during when they came in other than my
24 pretrial wish to stipulate to them.

25 Q The point of stipulating is trying to get the

1 State to say that's okay, we won't submit them. The
2 State wanted to pursue those convictions, admit
3 those convictions?

4 A Right. They wanted to actually put the
5 indictments into evidence and have them go back to
6 the jury, yes.

7 Q And the -- since you stipulated outside the
8 presence of the jury that he'd been convicted twice,
9 then there's no probative reason to admit those
10 convictions, is there?

11 A Well, I don't think -- the State didn't agree to
12 my stipulation; they wanted to prove it. And the
13 judge didn't force them to stipulate obviously so I
14 think I can't say -- they didn't, I mean, I don't --
15 they had to prove their case but they -- I wanted to
16 allow them to stipulate to further the damage of his
17 record, or not further but to limit the exposure of
18 his record but...

19 Q What I'm saying is you didn't object. You didn't
20 say, judge, we object to the admission of those two
21 guilty pleas.

22 A I don't believe I did.

23 Q I can show you in the transcript where ---

24 A I'm sure you've read it.

25 Q ---you said no problem?

1 A Right, I think I read it while I was waiting
2 earlier.

3 MR. GRIFFIN: And Your Honor, the -- I've
4 got it page 158 of the transcript Mr. Shealey did
5 not object to the conviction.

6 THE COURT: Okay.

7 MR. GRIFFIN: And on page 12 I have,
8 that's fine with us..

9 BY MR. GRIFFIN:

10 Q All right, and then you moved for directed
11 verdict in the case?

12 A Cocounsel argued it but we did move for directed
13 verdict at the end of the State's case.

14 Q On what basis?

15 A On that it was not substantial circumstantial
16 evidence, it was just a mere suspicion. We argued
17 State v. Mitchell, State v. Arnold. Mitchell was a
18 case where there's a fingerprint on a screen that
19 didn't, that shouldn't have gotten past directed
20 verdict, the conviction was vacated. Arnold was a
21 murder case where they had seven points of
22 circumstantial evidence including a coffee mug with
23 his print in the victim's car and other things of
24 suspicion. And I think Mr. Lighty argued he had
25 seven points of circumstantial evidence. Here you

1 have one fingerprint, one point of circumstantial
2 evidence, and the argument was this doesn't rise to
3 level of things that have been found to not be
4 enough so we did argue it as a circumstantial
5 evidence threshold argument.

6 Q Judge Newman denied that?

7 A Yes, sir.

8 Q And that was affirmed on appeal?

9 A Well, they didn't address the issue on appeal
10 because I allowed Mr. Brown to seemingly admit that
11 he did this burglary when questioned by Judge
12 Newman. I didn't counsel him to remain silent so
13 they, reading their opinion which I just read today,
14 refused to take up the issue of whether this was
15 actually should have gotten past directed verdict or
16 not. They cite State v. Weston and State v. Sheroka
17 (ph) saying that they're not going to take it up
18 because of admission in open court of guilt which
19 is, I assume, they're referring to the sentencing
20 questioning upon Mr. Brown.

21 Q But in fact, he had pled not guilty and testified
22 that he was not guilty prior to that, the questions
23 from the judge?

24 A Yes, sir. And I was just re-reading it this
25 morning. And I assume they're talking where he says

1 how old were you when you did this burglary, he said
2 51. So that's what they're saying, I guess, is an
3 admission of guilt and he said what ---

4 Q And you would have treated that differently
5 today?

6 A Today I would -- honestly, every judge is
7 different after sentencing. That was my first
8 burglary first trial. That was my first sentencing
9 after a trial. That's the first time I ever lost a
10 trial unless you count the petit larceny, which I
11 don't, as a victory, but I wasn't expecting that
12 level of questioning so I -- and I didn't even
13 realize perhaps that he still had a Fifth Amendment
14 right to remain silent and the right to my counsel
15 at that point so I really just, I didn't counsel him
16 any further. And it seems that that's -- that
17 causes the Court of Appeals to not take, to not
18 review his appeal because of that, what they called
19 admission but. So I feel I certainly would treat it
20 differently today. I wouldn't have allowed my
21 client to talk so freely about anything going to his
22 guilt or alleged guilt on a case like this.

23 Q All right. Thank you very much. Please answer
24 any questions that the State has.

25 MR. WHITMIRE: May it please the Court.

CROSS-EXAMINATION

BY MR. WHITMIRE:

Q Good afternoon, Mr. Shealey.

A Good afternoon.

Q Do you recall meeting with Mr. Brown to discuss these charges and the State's evidence?

A I do, yes.

Q And were you able to review his file for prior criminal history with him and how that served as a basis for the elements of burglary first?

A Yes, sir.

Q And did you briefly discuss your trial strategy?

A The trial strategy itself was what -- was to argue like we did on directed verdict that this was just merely a case of potentially circumstantial evidence that didn't rise to the level that our courts require to get to a jury, to allow him to testify what he'd always maintained which was that he had walked by this construction crew and touched the window while talking about a potential painting job that he did not get. But in terms of other strategy, you know, are you referring to his, me attempting to stipulate to his --

Q Oh, no, not yet.

A But that was the case. He just said he didn't do

1 it but here's now my fingerprints could have gotten
2 there, and it was relatively straight forward.
3 There wasn't any other evidence.

4 Q And do you recall your cross-examination of State
5 witness Boykin, the subcontractor, who was doing the
6 work?

7 A Generally, I mean, I don't remember it word for
8 word but, if you want to point me to something I
9 can...

10 Q And you brought out -- did you not on
11 cross-examination bring out that Mr. Boykin wasn't
12 present at the scene all the time, that his general
13 testimony were just as procedures helping were
14 supposed to be done?

15 A I apologize, could you repeat that.

16 Q When you cross-examined Mr. Boykin, Mr. Boykin in
17 his direct testimony testified that the ladders were
18 typically locked and the windows were shut, and you
19 used that on cross-examination to show that he
20 wasn't there all the time. He couldn't account for
21 his workers to support your case?

22 A That sounds probably like something I would have
23 asked him about.

24 Q In your defense of Mr. Brown, did Mr. Brown offer
25 any potential witnesses for you to investigate?

1 A No. He maintained kind of what he testified to
2 here today, that he just went there alone. He
3 didn't have anybody that would back up his story
4 about looking for work so we didn't -- I sent my own
5 investigator out there to measure the window, things
6 like that, but no other witnesses.

7 Q So Mr. Brown was not able to identify the person
8 that he allegedly spoke with to explain the story of
9 touching the windows and asking for work, the worker
10 that would have been on the subcontractor's crew.

11 A No, I mean, he -- it was a brief conversation
12 with a group of guys as I recall. He didn't really
13 get names, just kind of talking about painting,
14 trying to talk of his painting abilities and
15 experience. And once they made it clear to him that
16 they were part of this crew, already contracted to
17 do this work, and he was kind of told to move along,
18 you know, I didn't know any names of the crew and he
19 didn't -- I don't think he got any names.

20 Q And now just a few more questions for you,
21 Mr. Shealey. Regarding the use of his two prior
22 convictions, what efforts or pretrial motions did
23 you make to limit his exposure?

24 A Like I said, I offered to -- I didn't know
25 exactly how gung ho the State was going to be about

1 it. I know he had plenty of burglaries that could
2 potentially be used. I tried to stipulate to that
3 he had two so that potentially that the State
4 wouldn't introduce that, the indictments. I don't
5 remember them agreeing to that. They ended up
6 introducing those indictments in their case in
7 chief. I think we argued about and got part of them
8 redacted to not say first degree or whatever they
9 were because we had a issue about the degrees being
10 more prejudicial but. And then I think we argued
11 successfully once he did testify to keep out any
12 additional burglaries coming in under 609 for
13 impeachment as being more prejudicial than probative
14 especially when facing a burglary charge.

15 Q So you were able to, regarding his prior
16 convictions, limit your exposures just the face
17 sheets of the indictment with the redacted degree of
18 the charge; is that correct? Would that sound
19 familiar to you?

20 A Yes.

21 Q All right, just a few more questions. And
22 regarding his sentencing do you believe that his
23 testimony of remorse provided mitigation, any
24 mitigation at all?

25 A As to the sentence that he was given? I don't

1 know if I really can answer that question. Judge --
2 my experience with Judge Newman is that he'll give
3 whatever he feels is appropriate so it -- his
4 lengthy questioning about past burglaries and drug
5 use. And I got the sense that Judge Newman did
6 honestly like him, liked his demeanor. There was
7 some talk of religion. But at the point in time I
8 just -- I would not have let him give any admission
9 of guilt. I didn't counsel him on that and I should
10 have. And I don't know how that played into whether
11 it did or not that Judge Newman sentenced him.

12 Q Do you recall -- this is on page 271 of the
13 transcript, Your Honor, line 17. Judge Newman
14 stating on record that he was considering sentencing
15 Mr. Brown to 30 years but based on his demeanor
16 and -- well, instead of that sentence ended up
17 giving him 18 years. Do you recall that?

18 A I do. And I read it this morning. I remember
19 him, like I said, liking Mr. Brown's demeanor even
20 saying he sounds like a preacher. And he said that
21 he liked his demeanor so he's giving him an 18 year
22 sentence. I don't know if he means his demeanor in
23 questioning at sentencing or just his overall
24 demeanor in testifying, I don't know.

25 MR. WHITMIRE: That's all, Your Honor.

1 THE COURT: Redirect?

2 MR. GRIFFIN: Nothing further, Your Honor.

3 THE COURT: All right, come down, sir.

4 Anything further from the applicant?

5 MR. GRIFFIN: No, sir.

6 THE COURT: From the State?

7 MR. WHITMIRE: State rests, Your Honor.

8 THE COURT: All right. How do you wish to
9 proceed?

10 MR. WHITMIRE: The State would like to
11 make a brief closing argument on the admission of
12 his two prior burglaries ---

13 THE COURT: Go ahead.

14 MR. WHITMIRE: ---to prove the elements.
15 According to case law.

16 THE COURT: What case law?

17 MR. WHITMIRE: Benton, State v. Benton.

18 THE COURT: I got Benton.

19 MR. WHITMIRE: 338 SC 151. Mr. Shealey
20 was not required -- I mean, sorry, the State was not
21 required to stipulate to his two past burglaries.
22 The case law is clear that a particular information
23 relating to a crime should not be admitted to the
24 jury, and I believe Mr. -- well, the record shows
25 Mr. Shealey was affected in the way he limited

1 Mr. Brown's exposure. And the second prong, the
2 second element that was mentioned in Benton, trial
3 judge instruct the jury limited purpose for which
4 the prior evidence can be considered. And in this
5 case the trial judge in the jury instructions does
6 this on, well, at page 245, 255, 256. Mr. Shealey
7 did request that in his jury instructions.

8 And we would like to distinguish -- oh,
9 State v. James, the case that opposing counsel
10 cites. In James there was seven prior convictions
11 that were admitted at trial. And the court in
12 citing James did state -- well, the seven prior
13 burglaries outweigh the probative value of proving
14 the State's case going into prior convictions under
15 the statute. And it did say that the State would
16 have submitted only two prior convictions, it would
17 not constitute a reversal error. There's been
18 indication of it. In that regard we believe --
19 well, respondent submits that Mr. Shealey was
20 effective. Regarding ---

21 THE COURT: You think there's a difference
22 between seven convictions and two convictions for
23 the same thing?

24 MR. WHITMIRE: Well, Your Honor, it's my
25 understanding of James and Benton is that it is

1 expressly allowable only that the State can use to
2 meet their -- to meet their burden under the statute
3 that they must show two prior convictions or ---

4 THE COURT: I understand that.

5 MR. WHITMIRE: So anything past that would
6 be prejudicial and unnecessary.

7 THE COURT: Why can't -- why can't the
8 State or the Court find that there were two prior
9 convictions and not present that to the jury on the
10 basis of a 403 analysis which says it's more
11 prejudicial than probative.

12 MR. WHITMIRE: Well ---

13 THE COURT: You admit it's prejudicial;
14 don't you?

15 MR. WHITMIRE: Well, under the reading of
16 the statute ---

17 THE COURT: Do you admit it's prejudicial?

18 MR. WHITMIRE: We're not -- the State
19 doesn't admit it's prejudicial. The State admits
20 that under the reading of the statute for burglary
21 first the solicitor must prove his case in chief,
22 that you have a breaking without consent during
23 night or that there are two prior convictions of
24 burglary. And the State under Hamilton is free to
25 proceed to prove its case, will prove the evidence

1 of its case, without stipulation.

2 THE COURT: I understand that.

3 MR. WHITMIRE: And Mr. Shealey did try to
4 stipulate in his pretrial motion to just, as you
5 said, and this court did not allow it but he was
6 able to, able to very successfully limit Mr. Brown's
7 exposure to just the face of the indictment to show
8 the charge itself so there's no facts of ---

9 THE COURT: What would be the difference
10 between the two convictions and the five convictions
11 that he had, what's the difference? The jury's only
12 gonna convict him of this particular crime. They
13 can't add on anything based on the fact it's five or
14 two or seven.

15 MR. WHITMIRE: Well, it's unnecessary for
16 the State to meet its prime facie case only that the
17 State's required to prove two prior convictions and
18 ---

19 THE COURT: The court can take judicial
20 knowledge of that.

21 MR. WHITMIRE: And Mr. Shealey attempted
22 to do that in his pretrial motion. He attempted to
23 have the State stipulate. And the State, I do
24 believe, did argue Hamilton, that he did not have
25 to. That the current case law standing the State

1 does not have to stipulate ---

2 THE COURT: I understand that.

3 MR. WHITMIRE: ---to too. I mean, I
4 understand your point of view. In following case
5 law Mr. Shealey did everything he could within his
6 dominion to keep this out. I mean, I understand
7 your concern and do share it in some regard but he
8 did -- he was effective in the way that he only had
9 the State able to introduce two or face sheets of
10 two prior convictions during Mr. Brown's trial.

11 THE COURT: All right, Mr. Griffin.

12 MR. GRIFFIN: Well, Your Honor, for
13 ineffective assistance of counsel I believe we have
14 to show two things, the deficient conduct by the
15 attorney and prejudice. The deficient conduct is
16 two things. One the, you know, in effect
17 Mr. Shealey agrees that they do things differently
18 about the admission laid in the case when Judge
19 Newman was asking Mr. Brown about his age when he
20 was -- when he did this crime.

21 THE COURT: Yeah, well that, that was
22 after he was convicted.

23 MR. GRIFFIN: Yes, sir. And ---

24 THE COURT: After the trial.

25 MR. GRIFFIN : And the Court of Appeals, I

1 think you take the trial as a whole, you know, he
2 pled not guilty, he testified he didn't do it. The
3 Court of Appeals in their decision, when they ruled
4 on it they base their opinion on the fact that he
5 admitted he done it after he was convicted, and I
6 think that ---

7 THE COURT: Is that the fault of appellate
8 counsel or trial counsel? I said, could that be the
9 fault of appellate counsel as opposed to trial
10 counsel?

11 MR. GRIFFIN: I read the appellate briefs
12 Your Honor. I didn't see where they addressed that
13 issue.

14 THE COURT: So it sounds. ---

15 MR. GRIFFIN: I think looking at the
16 transcript you'd say, you know, he denied his guilt.
17 This one little thing out of context, it's kind of
18 unfair, but that's what the Court of Appeals based
19 it on.

20 THE COURT: And the Court of Appeals just
21 out of the blue picked that up and -- okay. I
22 haven't read that.

23 MR. GRIFFIN: The second thing is these
24 admissions. There's no question he's guilty of the
25 two prior burglaries. And the problem is that if

1 that gets to the jury, the jury can make a decision
2 based upon his prior bad acts when his prior bad
3 acts really didn't have anything to do with this
4 one. So Mr. Shealey, I think, conceded there's no
5 probative reason to admit these two convictions, and
6 it is prejudicial.

7 THE COURT: What could he have done
8 differently?

9 MR. GRIFFIN: He could have objected to
10 the admission of the two convictions. He -- after
11 he stipulated he agreed that two convictions were
12 admissible, and he shouldn't have done that. He
13 should have insisted that the judge have a 403
14 hearing so that a determination could be made by a
15 weighing of the probative value versus the prejudice
16 since he stipulated there's no probative value --

17 THE COURT: And brought James to the
18 attention of the trial judge?

19 MR. GRIFFIN: He argued it at trial, he
20 read it, he's familiar with it.

21 THE COURT: Oh, he was? I haven't --
22 Judge Newman was?

23 MR. GRIFFIN: They argued it extensively
24 at trial.

25 THE COURT: The James case?

1 MR. GRIFFIN: Pardon me?

2 THE COURT: They argued the James case?

3 MR. GRIFFIN: Yes.

4 THE COURT: Okay.

5 MR. GRIFFIN: Yes. Mr. Shealey, I'm not
6 saying he was unprepared, he read the case, but then
7 he didn't object. And my reading of the James case
8 is that nothing in the prior authorities eliminates
9 the responsibility of the Court and of the attorneys
10 involved to have this 403 weighing process, the 403
11 hearing. And where Mr. Shealey messed up, I think,
12 is because he didn't insist on that hearing. He
13 waived the objection and that was prejudicial to Mr.
14 Brown's case.

15 THE COURT: This is in -- was this done in
16 pretrial?

17 MR. GRIFFIN: He agreed on the record in
18 the transcript.

19 THE COURT: I mean, was the matter raised
20 before the trial judge before the trial began as a
21 pretrial matter?

22 MR. GRIFFIN: Yes.

23 THE COURT: Okay.

24 MR. GRIFFIN: He said, like I said, on
25 page 9 of the transcript he said we stipulate; but

1 then, you know, before the jury came in he said, but
2 two convictions are admissible, they don't have to
3 stipulate. He didn't insist on this 403 hearing.
4 And that's, we feel that was prejudicial to Mr.
5 Brown but the jury was out this case for about an
6 hour, an hour and ten minutes. And with a
7 circumstantial case like this there's no direct
8 evidence; all there is is the fingerprint that was
9 explained. It seems to me that there's substantial
10 indications that the jury was prejudiced by the
11 prior convictions.

12 MR. CORNEY: Your Honor, if I may, I just,
13 I know that I was trying to keep my mouth closed;
14 but if I may, the State has a right to prove its
15 case. And they can't -- defense can't force the
16 State to stipulate to these two priors, they can't
17 force them to.

18 THE COURT: Forget about the stipulation,
19 I agree with that.

20 MR. CORNEY: Absolutely. He can't force
21 them to stipulate to the two prior burglaries. The
22 State has a right to introduce evidence to prove
23 that as an element of the crime. That's exactly
24 what they did. The best that Mr. Shealey could do
25 is to step up and say, I want the specifics of those

1 two charges taken out. That's all they know is two
2 prior burglaries, not -- they don't know any
3 specifics.

4 THE COURT: That probably was done.

5 MR. CORNEY: Which was exactly what Mr.
6 Shealey did, and that's the best he can do. The
7 State has a right to introduce those two convictions
8 to show as an element of the crime. For the court
9 ---

10 THE COURT: Well, he's saying that
11 Mr. Shealey should have raised a prejudicial effect
12 and made it a James argument. Now if he did, then
13 he did.

14 MR. CORNEY: Absolutely, Your Honor.

15 THE COURT: And the judge overruled him
16 and went ahead and ---

17 MR. CORNEY: And I understand that, but
18 clearly, I mean, from a prejudice prong is what I'm
19 going to here. Clearly, it wouldn't have been kept
20 out of the 403. They have a right to prove these
21 two prior burglaries.

22 THE COURT: I understand that.

23 MR. CORNEY: But the James case says five
24 is too many because then we start getting into Lyle
25 evidence, and we're talking about prior bad acts.

1 The two prior burglaries as an element to first
2 degree burglary is specifically excluded from Lyle.
3 It's a specific exclusion from Lyle prior bad act
4 evidence; whereas, five is just starting to get to
5 point where it's this is prior bad act and we're
6 trying to show actual conformity with that. So
7 that's the difference between James and here. We're
8 talking about two, the bare minimum that we have to,
9 that the State has to show as an element for the
10 crime versus five which is Lyle evidence, and we're
11 proving action in conformity with that saying he's
12 done all these burglaries before, he did it again,
13 here it is, and that's the issue of James. James
14 specifically set that forth and James v. Hamilton
15 ---

16 THE COURT: James was seven.

17 MR. CORNEY: Exactly, seven. And here
18 Mr. Brown had, I believe, I want to say it was nine
19 house breakings and burglaries. Mr. Shealey did a
20 fantastic job keeping those nine out which would
21 have rose to the level of Lyle evidence. He even
22 actually, I think, and I read this transcript a
23 while ago, but I even think he kept out any mention
24 of a third one which he made sure they stayed right
25 there at the bare minimum of two is exactly what's

1 required by statute and he took out every single
2 specific indication of the facts ---

3 THE COURT: I'll ask you the same question
4 I asked your cocounsel.

5 MR. CORNEY: Yes, Your Honor.

6 THE COURT: What's the difference between
7 five and two? When you tell the jury just he did
8 it, he did it, he did it two times before, and the
9 jury -- and he's charged with the same thing, the
10 jury goes out, in an hour brings back a guilty
11 verdict, how can you assume anything other than that
12 prejudiced the defendant's case?

13 MR. CORNEY: Well, I mean, it's obviously
14 prejudicial. I mean, he's had two priors, it's
15 prejudicial, but the issue is probative versus
16 prejudicial. And when we're looking at that
17 analysis the statute says, I mean, once the statute
18 is rewritten the only way to prove two priors is to
19 bring evidence of these two convictions, the two
20 priors.

21 THE COURT: The statute doesn't say you
22 have to present it to the jury.

23 MR. CORNEY: Absolutely, but it also says
24 the State is allowed to prove its case and as long
25 as the court is not going to take judicial threats

1 of it then defense counsel is bound by saying, okay,
2 well, I guess we'll let in the bare minimum. As
3 long as the Court is not sitting up there saying I'm
4 not going to force the State to stipulate and I'm
5 not gonna take judicial notice of it, defense
6 counsel is bound at that point. I mean, he did all
7 he could do.

8 THE COURT: I understand.

9 MR. CORNEY: So that's our argument, Your
10 Honor is, if the law were to change and say the
11 State -- that the defense counsel can force the
12 State to stipulate to it or if courts start taking
13 judicial notice of that type of thing, then that
14 would be a different situation. But in this
15 scenario the court refused to do that. He couldn't
16 require the State to stipulate to it so all he could
17 do is say, all right, well, if you're gonna let them
18 I'm only gonna let two in, I want to make sure the
19 other seven don't come in 'cause then we're getting
20 to the level of Lyle prior bad acts and that's what
21 the content of that case states.

22 THE COURT: I understand.

23 Mr. Griffin.

24 MR. CORNEY: Thank you very much, Your
25 Honor.

1 MR. GRIFFIN: When Mr. Corney argued can't
2 force the State to stipulate, and that's what they
3 said in James, and the statute says what it says.
4 They address both those issues in James, and they
5 included those two things don't overrule the rules
6 of evidence. And in order for something to be
7 admissible in evidence it has to be more probative
8 than prejudicial. It's prejudicial, we know that.
9 Is it probative? No, because they stipulated that
10 he'd been convicted so it should have been excluded.
11 Mr. Shealey, by not insisting on the exclusion or at
12 least a hearing -- he didn't object, he didn't
13 object to the two, he objected to those in excess of
14 two. But he never objected to the two admissions,
15 and that's the -- Mr. Brown's complaint about the
16 ineffective assistance of counsel.

17 THE COURT: All right, thank you very
18 much. Proposed orders?

19 MR. WHITMIRE: Your Honor, the State
20 requests that we can brief this issue through you
21 also.

22 THE COURT: I'll be glad. Just make it
23 part of the order if you want to do so.

24 MR. WHITMIRE: Thank you, Your Honor.

25 MR. GRIFFIN: How long do you have to do

1 that, Your Honor?

2 THE COURT: I'd say earlier but I think
3 all proposed orders should be in within ten days.
4 Is that a hardship?

5 MR. GRIFFIN: Your Honor, I practice by
6 myself. I'm -- I left my law firm about two months
7 ago. I don't have a secretary right now. Could we
8 have a -- could I have a little bit more time than
9 that?

10 THE COURT: You tell me.

11 MR. GRIFFIN: Say 15 days.

12 THE COURT: I give you 21.

13 MR. GRIFFIN: Thank you, Your Honor. I'll
14 take it.

15 THE COURT: Thank you very much.

16

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18 * * *END OF REQUESTED TRANSCRIPT OF RECORD * * *

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1 C E R T I F I C A T E O F R E P O R T E R

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3
4 STATE OF SOUTH CAROLINA)
5 COUNTY OF FLORENCE)

6
7 I, FRANCES BAKIS-RAY, Registered
8 Professional Reporter (RPR), court reporter for the
9 State of South Carolina, Twelfth Judicial Circuit,
10 do hereby certify that the foregoing proceeding was
11 transcribed for Elizabeth Harris through
12 computer-aided transcription; that the foregoing
13 transcript contains a true record of the proceedings
14 to the best of my ability.

15 I further certify that I am neither
16 counsel for, nor related to nor employed by any of
17 the parties connected to the action, nor am I
18 financially interested in the action.

19 Witness my hand at Florence, South
20 Carolina, this 26th day of April, 2013.

21
22 *Frances B Ray*
23 _____
24 FRANCES BAKIS-RAY, RPR

25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Leroy Brown, #00155199,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-3270

4209

ORDER OF DISMISSAL

JEANETTE W. NEIDIG
C.C.P. & G.S.

2013 FEB 19 PM 12:55

RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 8, 2012. Respondent made its Return on July 12, 2012. An evidentiary hearing into the matter was convened on January 14, 2013 at the Richland County Courthouse. Applicant was present at the hearing and was represented by H. Flynn Griffin III., Esquire. The Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Luke Shealy, Esquire. This Court also had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the exhibits entered into evidence at the hearing.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the February 2008 term Richland County Grand Jury for Burglary—First Degree.

(2008-GS-40-11826) and Petit Larceny (2008-GS-40-11825). He was represented by Luke Shealy, Esquire and Michael Leddy.

On December 10, 2008, Applicant was tried for Burglary-First Degree, and Petit Larceny. In the defense's pretrial motion, trial counsel requested the State to stipulate to two prior burglary convictions to limit Applicant's exposure to potential bias. Solicitor Cathcart argued that pursuant to State v. Hamilton, the State had the discretion in proving its case to introduce Applicant's prior convictions without consenting to the defense's stipulation. (Tr. p.9).¹ Defense counsel argued that "no details, I don't think would be permitted under United States v. Old Chief. But just that [Applicant] does have two burglary convictions, that does satisfy the record."² (Tr. p.8). In response, Solicitor Cathcart stated,

In order to prove [the burglary -first charge], if [the State] put into evidence the two, and only two prior convictions of housebreaking or burglary. [Applicant] has I think six prior convictions that were alluded to. We have "State v. James in order to do that. We will be putting the certified, true, correct self authenticated Indictments into evidence. Wherever [the defense] wish to show the jury as to the front of the Indictment is fine. To limit it as to just a conviction for burglary. We are not seeking to introduce into evidence of what [Applicant] did while doing the burglary, unless he opens the door to that. So I don't what he is asking as to a stipulation. What we would be putting into evidence for the jury would be basically what he's asking to stipulate as well. And we don't have - we can't stipulate, we have to prove it before the evidence.

(Tr. p.9, ln. 5-21). The trial judge commented, "But the Court can limit the impact of whatever evidence the State seeks to offer. And it appears they are not seeking to offer that much." (Tr. 10, ln 10-12). Solicitor Cathcart stated that the State would follow State v. James, and only introduce

¹ State v. Hamilton, 327 S.C. 440, 466 S.E.2d 516 (Ct. App. 1997).

² Old Chief v. United States, 519 U.S. 172, 117 S.Ct. 644 (1997).

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evidence of two prior convictions to satisfy its burden in proving the elements of the offense. (Tr. p.12).³

Near the close of the State's case in chief, Solicitor Cathcart, presented the Court with two previous indictments he sought to introduce outside the presence of the jury. (Tr. p. 138). Trial counsel objected to the qualifying language of first degree burglary on the State's proposed exhibits. Trial counsel objected and stated,

I think the jury obviously has a right to know there is a past burglary, two burglaries. But I think the case law is very relatively clear, details obviously about those past burglaries are prohibited. And really I think the fact that it is a burglary, but anything more would weigh against my client unfairly.

(Tr. p.138, ln 12-17). The trial judge sustained trial counsel's objection and ordered the words "first degree" be redacted from both fact-sheets of the indictments. (Tr. p.143). Additionally, the defense was able prevent the State from utilizing Applicant's prior convictions for impeachment purposes upon its cross-examination of Applicant. (Tr. pp.144-58).

The defense made its motion for directed verdict at the end of the State's case. (Tr. pp.158-70). The trial judge denied it. The trial judge issued the following jury instruction:

Evidence of prior offenses committed by [Applicant] were not offered to prove that [Applicant] committed the burglary on this occasion. The prior convictions may be considered by "the jury" only for the purpose of determining whether or not it satisfies that element of the offense that makes it first degree burglary.

(Tr. p. 245 ln. 22—Tr. p. 246, ln. 3). Subsequent to the jury returning a guilty verdict for Burglary—First Degree, Applicant offered remorse for his actions in mitigation during the sentencing phase of the trial. (Tr. pp. 265-271). Upon issuing his sentencing pronouncement, the trial judge stated: "[Applicant], sentence of the Court is that you be committed to the State

³ State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003).

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Department of Corrections for a period of 18 years. I started to give you 25. I thought about 30. I thought about 20. But you've made good impressions. So I am going to give you 18." (Tr. p.271, ln. 14-20).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented by Deputy Chief Appellate Defender Wanda H. Carter, Esquire, on appeal. By order filed February 1, 2011, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence pursuant to Rule 220(b)(1), SCARC. The subsequent Petition for Rehearing was denied by Order filed March 24, 2011.

A Petition for Writ of Certiorari was filed with the South Carolina Supreme Court on May 25, 2011. The State made its Return to the Petition on June 21, 2011. By Order dated February 8, 2012, the South Carolina Supreme Court denied the Petitioner. The Remittitur was issued February 14, 2012.

At the January 15, 2013 evidentiary hearing, Applicant proceeded on two allegations of Ineffective Assistance of Counsel.

1. Counsel failed to object to the submission to the jury two of Applicant's prior convictions for Burglary.
2. Counsel failed to advise Applicant not to make admissions of guilt during the mitigation phase of sentencing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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, 385 S.E.2d at 625, citing 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.

Summary of Testimony

Applicant testified that he was falsely implicated although his fingerprints were located on the inside of the window to the victim's home. Applicant testified he was innocent and that he did not give a statement to police. Applicant testified he rejected the State's guilty plea offer.

Applicant stated that he testified he was falsely accused and that he only entered the worksite at the victim's home days before the burglary to inquire about work. Applicant stated he was unable to identify the painter that he spoke to. Applicant testified that trial counsel told him the Solicitor would be able to introduce two of his prior six convictions because they were elements of the offense charged.

Applicant further testified that counsel erred in allowing him to make admissions of guilt and remorse at sentencing. Applicant stated that "appellate court used that against me saying I admitted guilt."

Trial counsel testified that he is employed as an Assistant Public Defender and was appointed to represent Applicant. Trial counsel stated that he had been practicing law for two years when he tried Applicant's case. Trial counsel stated that he did not hire a fingerprint expert and stipulated to the State's evidence because it was indisputable that the fingerprints in the victim's home belonged to the Applicant.

Trial counsel further testified that he desired to stipulate to Applicant's two prior convictions for burglary or housebreaking to limit prejudice before the jury. However, trial counsel testified the State would not accept his offered stipulation. When the State attempted to enter the face of indictments of Applicant's prior burglary convictions to meet the elements of First Degree Burglary, trial counsel objected because the evidence of the prior burglaries mentioned "First Degree" burglary. Trial counsel stated that he moved to prevent the State from

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introducing Applicant's prior convictions at trial other than to prove the elements of the offense.

Trial counsel testified that he made motion for a directed verdict. On appeal, trial counsel testified that the Appellate court affirmed the trial judge's denial of his motion.

Findings

This Court finds that Applicant failed to meet his burden to prove trial counsel was ineffective for not objecting to the State's use of two prior convictions to prove the elements of Burglary—First Degree.

The Court of Appeals held that under §16-11-311(A)(2), prior burglary or housebreaking convictions are clearly an element of burglary in the first degree." As such, the prosecution in Hamilton was entitled to present evidence relevant and material to that element of the offense, despite our "well-established rule that evidence an accused has committed other crimes is not admissible in the prosecution for the crime charged.

State v. Cheatham, 349 S.C. 101, 107, 561 S.E.2d 618, 622 (Ct. App. 2002) (quoting State v/ Hamilton, 327 S.C. 440, 486 S.E.2d 512 (Ct. App. 1997) (internal citations omitted)). Evidence which is logically relevant to a material element of the crime for which a defendant is charged is not inadmissible because it may elaborate upon guilt of another crime. The Court in Cheatham further held that, "for purposes of an element of first degree burglary under §16-11-311(A)(2), the probative value of admitting the defendant's prior burglary and/or housebreaking convictions is not outweighed by its prejudicial effect. Rule 403, SCRE." Id. at 198, 561 S.E.2d at 622.

This Court finds trial counsel did not err in failing to object on Rule 403, SCRE, grounds to the introduction of two prior convictions. Trial counsel provided effective assistance of counsel when he successfully moved to exclude the particular facts of Applicant's prior convictions at trial.

GC 7

Furthermore, Applicant failed to prove that trial counsel's alleged error constituted prejudice under Strickland's second prong. Jurors are presumed to follow the instructions of the trial court. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). The trial judge properly issued a limiting instruction to the jury to only consider Applicant's prior convictions as an element of Burglary—First Degree.

Regarding Applicant's second allegation, this Court finds Applicant failed to meet his burden to prove counsel was ineffective for allowing Applicant to admit guilt and remorse during the mitigation phase of sentencing. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Trial counsel articulated valid strategic reasons for allowing Applicant to admit guilt and display remorse during the sentencing phase of Applicant's trial. Trial Counsel's successful presentation during mitigation directly led to the trial judge imposing an eighteen year term of imprisonment instead of a thirty year term of imprisonment.

Furthermore, Applicant failed to prove that trial counsel's alleged error constituted prejudice under Strickland's second prong. Applicant failed to present evidence that Applicant's ownership of guilt was outcome determinative in the Court of Appeal's decision to affirm the trial judge's denial of trial counsel's directed verdict motion.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

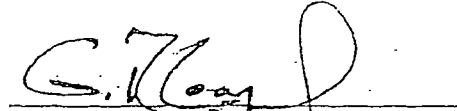
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

EL

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!


G. Thomas Cooper, Jr.
Presiding Circuit Court Judge
Fifth Judicial Circuit

FEBRUARY 15, 2013

COLUMBIA, South Carolina

ARREST WARRANT

K-291235 0735642

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of
COLUMBIATHE STATE
against

LEROY BROWN

Address: COLUMBIA SC 29202

Phone: SSN:

Sex: M Race: B Height: 5'2 Weight: 180

DL State: N #

DOB: Agency ORI# SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: MEAD P/ GOLDBERG

Offense: BURGLARY 1ST

Offense Code: BER

Code/Ordinance Sec: 16-11-311

This Warrant is CERTIFIED FOR SERVICE in the
County/ ☒ Municipality of COLUMBIA The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on 11-2-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
POST OFFICE BOX 644
COLUMBIA, S. C. 29202

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of
COLUMBIA

AFFIDAVIT

Personally appeared before me the affiant P MEAD
being duly sworn deposes and says that defendant LEROY BROWN
did within this county and state on 10/29/2007 violate the criminal laws of theState of South Carolina (or ordinance of County/ ☒ Municipality of COLUMBIA
in the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY 1ST

16-11-311

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:ON 10/29/07 BETWEEN 0300HRS AND 0830 HRS WHILE AT
COLUMBIA SC, DEF BROWN ENTERED THE RESIDENCE AT THAT LOCATION
THROUGH A REAR LIVING ROOM WINDOW. DEF BROWN THEN TOOK A WALLET
CONTAINING CASH AND PAPERS WITH AN APPROX VALUE OF \$62 AND THEN FLED
THE SCENE. CRIME SCENE OFFICER BRADLEY PROCESSED THE ENTRY POINT AND
OBTAINED A FINGERPRINT POSITIVELY IDENTIFIED BY AFIS AS DEF BROWNS.
DEF BROWN HAD PRIOR CONVICTIONS FOR BURGLARY IN 1980 AND 2005.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of
COLUMBIAAffiant's Address: JUSTICE SQ SC
COLUMBIA, SC 29201
Affiant's Telephone: 5453500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 10/29/2007 defendant LEROY BROWN did violate the criminal laws of the State of South Carolina (or ordinance of
County/ ☒ Municipality of COLUMBIA) as set forth below:DESCRIPTION OF OFFENSE: BURGLARY 1ST
16-11-311Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/2/2007

Signature of Issuing Judge
Judge Code: 403223Judge's Address: CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644
Judge's Telephone: 5453500
Issuing Court: ☐ Magistrate ☒ Municipal ☐ CircuitForm Approved by
S.C. Attorney General
SC04-01003
SC04-010

ORIGINAL

WITNESSES

(S) P Mead - CPD

DOCKET NO. 2008-GS-40-11826

The State of South Carolina

County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

K-291235

74

FEBRUARY TERM 2008

THE STATE

Witness:

LERROY BROWN

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRIPLE BILL

Foreperson of Grand Jury
Date: FEB 20 2008

VERDICT

Guilty

Indictment for

BURGLARY(AFTER 6/20/85)
1ST DEGREE

SC Code: 16-11-311
CDR Code: 0079
Class FEL-EXM(V)

Foreperson of Petit Jury
Date:

Foreperson of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on February 20, 2008, the Grand Jurors of Richland County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That LEROY BROWN did in Richland County on or about October 29, 2007, willfully and unlawfully enter the dwelling at _____, without consent and with the intent to commit a crime therein and the defendant entered during the hours of darkness and/or the defendant has two or more prior convictions for Burglary and/or Housebreaking, all in violation of Code 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.

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.Leroy BrownAKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____08 INDICTMENT/CASE#: _____
- GS - 40 - 11826AW#: K291235
Date of Offense: October 29, 2007
S.C. Code §: 16-11-311
CDR Code #: 0101719
☐ CASE RESTORED
SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burg 1st
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State...

ATTEST:

[Signature]
SolicitorLeroy Brown
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
\$14-1-211(A)(2) (DUI Surcharge)	\$100 \$
\$56-5-2995 (DUI Assessment)	\$12 \$
\$35.13 (Public Def/Prob)	\$500 \$
\$73.3, 1B TP (Law Enforce. Funding)	\$25 \$
\$33.7, 1B TP (Drug Court Surcharge)	\$100 \$
\$50-21-114(BUI Breath Test Fee)	\$50 \$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$
TOTAL	\$

Amy McCulloch/A
Clerk of Court/Deputy Clerk
Court Reporter: M. SullivanPTUP _____
days/hours Public Service EmploymentObtain 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: 121119Sentence Date: 12/11/08

ARREST WARRANT

K-291242 0755642

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA
THE STATE
against

LEROY BROWN

Address: COLUMBIA SC 29204

Phone: SSN: 180

Sex: M Race: B Height: 5 00 Weight: 180

DL State: N # Agency OR# SC04400102

DOB: CITY OF COLUMBIA

Prosecuting Agency: MEAD P/ GOLDBERG

Prosecuting Officer: PETIT LARCENY

Offense: PETIT LARCENY

Code/Ordinance Sec: 16-13-30A Offense Code: LAR

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☒ Municipality of COLUMBIA
 The accused is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant on 11-02-2007

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 MUNICIPAL CLERK
 POST OFFICE BOX 644
 COLUMBIA, S. C. 29202

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

AFFIDAVIT

Personally appeared before me the affiant P MEAD

being duly sworn deposes and says that defendant LEROY BROWN

did within this county and state on 10/29/2007

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA

in the following particulars: PETIT LARCENY

16-13-30A

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

ON 10/29/07 BETWEEN 0300HRS AND 0930 HRS WHILE AT
 COLUMBIA SC, DEF BROWN ENTERED THE RESIDENCE AT THAT LOCATION
 THROUGH A REAR LIVING ROOM WINDOW. DEF BROWN THEN TOOK A WALLET
 CONTAINING CASH AND PAPERS WITH AN APPROX VALUE OF \$62 AND THEN FLED
 THE SCENE. CRIME SCENE OFFICER BRADLEY PROCESSED THE ENTRY POINT AND
 OBTAINED A FINGERPRINT POSITIVELY IDENTIFIED BY AFIS AS DEF BROWNS.
 DEF BROWN HAD PRIOR CONVICTIONS FOR BURGLARY IN 1988 AND 2006.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
COLUMBIA

COLUMBIA

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 10/29/2007 defendant LEROY BROWN

did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA

as set forth below: 16-13-30A

DESCRIPTION OF OFFENSE: PETIT LARCENY

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/02/2007

Signature of Issuing Judge: (L.S.)

Judge: Peter H. Mead

Judge's Address: CITY OF COLUMBIA, SC
 MUNICIPAL CLERK, P.O. BOX 644 29202

Judge's Telephone: _____
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

WITNESSES

L.P. Mead - CPD

DOCKET NO. 2008-GS-40-11825

The State of South Carolina

County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

74

ARREST WARRANT NUMBER

K-294236

K-291242

THE STATE

VS.

LEROY BROWN

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRIPPLE

Renee R. Rouse

Foreperson of Grand Jury

Date: FEB 9 9 2008

VERDICT

Not Guilty

Indictment for

PETIT LARCENY

SC Code: 16-13-30(A)

CDR Code: 0480

Class MIS/JNC

Foreperson of Petit Jury

[Signature]

I hereby appear in my own proper person and plead guilty to the within indictment or to

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

At a Court of General Sessions, convened on February 20, 2008, the Grand Jurors of Richland County present upon their oath:

PETIT LARCENY

That LEROY BROWN did in Richland County on or about October 29, 2007, feloniously take and carry away property of the victim, Regina Monteith, of the value of less than One Thousand Dollars, described as follows: under \$1,000 worth of U.S. Currency and/or credit cards and/or a wallet, with intent to deprive the owner permanently of such property. All in violation of South Carolina Code of Laws § 16-13-30.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B Giese
Warren B. Giese, SOLICITOR