

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Maite Murphy, Circuit Court Judge

ISHMEL J. LEMON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001348

APPENDIX

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1 STATE OF SOUTH CAROLINA)
) Court of General Sessions
2 COUNTY OF CHARLESTON) Case No. 2014-GS-10-1312
)
3 _____)
4 STATE OF SOUTH CAROLINA)
)
5 vs.) Transcript of Record
)
6 ANTWAIN JERIEL CHAMPAIGNE)
 and ISHMEL JAYVAN LEMON,)
)
7 Defendants.)
 _____) DATE: March 2 - 4, 2015
8
9

10 B E F O R E:

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12

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1 THE COURT: Solicitor, are you ready to call your
2 first case?

3 MR. OSBORNE: Yes, Your Honor. The State calls
4 Antwain Champaigne and Ishmel Lemon.

5 THE COURT: Good morning, again, ladies and
6 gentlemen. I'm Judge Jeff Young. And I'm from Sumter. And
7 I love coming to Charleston. I went to the Citadel for four
8 years, have a son over there now. And the opportunity to
9 come back to the Lowcountry is a special time for me. And
10 I'm glad to be with you all this week.

11 As the State said, they are calling the case of the
12 State v. Antwain Jeriel Champaigne and State v. Ishmel Jayvan
13 Lemon. Now, they are charged with burglary in the first
14 degree.

15 And, ladies and gentlemen, let me read the
16 indictment to you. The first one, and this concerns Ishmel
17 Jayvan Lemon, says that in Charleston County, South Carolina,
18 on or about October 23rd, 2013, the defendant, Ishmel Jayvan
19 Lemon, while acting alone or in concert with others, did
20 enter the dwelling of Sabrina Polite, located at ■ Westchase
21 Drive, Apartment ■■■■■, Charleston, South Carolina, without
22 consent and with the intent to commit a crime therein; that
23 in addition, entry occurred at night and the defendant
24 displayed a deadly weapon, to wit, a handgun, in violation of
25 Section 16-11-311 of the South Carolina Code of Laws, 1976,

1 as amended.

2 And the other indictment says that defendant,
3 Antwain Jeriel Champaigne, while acting alone or in concert
4 with others, did enter the dwelling of Sabrina Polite,
5 located at ■ Westchase Drive, Apartment ■■■■■, Charleston,
6 South Carolina, without consent and with the intent to commit
7 a crime therein; that in addition, entry occurred at night
8 and the defendant displayed a weapon, to wit, a handgun, in
9 violation of Section 16-11-311 of the South Carolina Code of
10 Laws, 1976, as amended.

11 Now, ladies and gentlemen, let me remind you, the
12 fact that the defendants were arrested, charged, and indicted
13 in no way is indicative that they are guilty of these
14 charges. The defendants have pled not guilty. And,
15 therefore, the State has the burden of proving each and every
16 allegation of these charges beyond a reasonable doubt. The
17 defendants do not have to prove anything. The burden is
18 completely on the State.

19 Now, ladies and gentlemen, I will remind you that
20 you are still under oath from the oath that you took earlier
21 this morning. And, you know, the reason you are under oath,
22 just like a building must have a firm foundation to be
23 protective and strong for those who must live in it, so must
24 the jury be strong as a basis for a fair and an impartial
25 trial for those who participate, the solicitor for the state

1 and the defendants who are on trial.

2 And your answers to these questions will be the
3 foundation by which these attorneys will build a jury, and
4 they are relying on your truthful answers to help them strike
5 an unbiased jury who will diligently listen to the evidence
6 and deliver a true and just verdict.

7 Now, ladies and gentlemen, let me again thank you
8 for your complete truthfulness as I ask you these questions.

9 All right. Ladies and gentlemen, the first question
10 is: Has any member of the jury panel ever been related by
11 blood or marriage or have a close personal or business
12 relationship with either of the defendants, Antwain Jeriel
13 Champaigne or Ishmel Jayvan Lemon, or the alleged victim,
14 Sabrina Polite? If so, please stand.

15 (No response from the jury.)

16 THE COURT: All right. Thank you. No one is
17 standing.

18 Now, ladies and gentlemen, this is a list of
19 possible witnesses in this case, and I'm going to go through
20 the whole list and then I'm going to ask you basically the
21 same questions.

22 Charleston Police Department Detective Rob Feeters;
23 Charleston Police Department, Jared Briggs; Charleston Police
24 Department, Officer Casey Havers; Charleston Police
25 Department, Sergeant Scotty Tugja; Charleston Police

1 Department, Deputy or Officer Jeff Miller; Charleston Police
2 Department, Officer Nora Carr; Charleston Police Department,
3 Sergeant Dustin Thompson; Charleston Police Department,
4 Detective Stephanie Rough; Charleston Police Department,
5 Officer Brian Hinton; Charleston Police Department, Officer
6 Linda Wilson; Charleston Police Department, Officer Sarah
7 Gladwell; Charleston Police Department, Officer Grant
8 Mattingly; Charleston Police Department, Officer Richard
9 Kennedy; State Law Enforcement Division, forensic scientist
10 Donna Money; the State Law Enforcement Division, Officer
11 Jennifer Aycock; Mr. Brian Moroney; Mr. Russell Frierson;
12 Mr. Karl Shehan; Mr. Jordan Brown; Mr. Timothy Duvall; and
13 Sabrina Polite.

14 Any member of the jury panel who has had a close
15 personal or business relationship or is related by, again,
16 blood or marriage, in any way knows any of these potential
17 witnesses in this case, if so, please stand.

18 Yes, sir. Please state your name and juror number.

19 PROSPECTIVE JUROR: Leo Patat, Juror 251.

20 THE COURT: Who do you know, sir; which one of these
21 potential witnesses?

22 PROSPECTIVE JUROR: Well, that's what I'm saying. I
23 don't recognize the police personnel, but I've worked for the
24 City of Charleston and I do maintenance work on the city
25 headquarters on Lockwood on all the satellite stations.

1 THE COURT: All right. Well, that's going to be
2 another question, but now that you are up, would the fact
3 that you worked with the Charleston Police Department in the
4 areas of maintains and stuff like that make it so that you
5 can't be fair and impartial to both the State and the defense
6 in this case?

7 PROSPECTIVE JUROR: No.

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

9 All right. Ladies and gentlemen, the attorneys who
10 will be trying this case are Mr. David Osborne for the State.

11 Mr. Osborne, would you like to introduce yourself
12 and your staff to the jury?

13 MR. OSBORNE: Yes, Your Honor. Good afternoon. My
14 name is David Osborne. I work for the Ninth Circuit
15 Solicitor's Office. Scarlet Wilson is our boss. This is
16 Greg Voigt. He's also an assistant solicitor. The
17 individual that you saw coming in carrying the box here is
18 Ray Boch. He's my investigator.

19 THE COURT: Thank you. Mr. James Smiley, would you
20 like to introduce yourself?

21 MR. SMILEY: Yes, sir. Thank you. My name is Jim
22 Smiley. I'm a private attorney here in Charleston. I've
23 been practicing since 1993. I have the honor of representing
24 Ishmel Lemon.

25 THE COURT: And, Mr. Bradley, would you like to

1 introduce yourself and your staff?

2 MR. BRADLEY: Thank you, Your Honor. I'm attorney
3 Willie Bradley. I'm from Columbia, South Carolina, private
4 attorney; along with my paralegal, Emily Medlin, and my
5 client, Mr. Antwain Champaigne.

6 THE COURT: All right. Ladies and gentlemen, has
7 any member of the jury panel ever been related by blood or
8 marriage or had a close personal relationship or ever been
9 represented by any of these attorneys? If so, please stand.

10 Yes, sir. Please state your name and juror number.

11 PROSPECTIVE JUROR: I'm Juror No. 252, and I
12 attended law school with Mr. Osborne.

13 THE COURT: Would the fact that you attended law
14 school with Mr. Osborne make it so that you can't be fair and
15 impartial to both the State and the defendants in this case?

16 PROSPECTIVE JUROR: I don't believe so.

17 THE COURT: So you can. You can --

18 PROSPECTIVE JUROR: I don't think I would be, but --

19 THE COURT: Can you listen to the evidence and make
20 your decision based upon the evidence?

21 PROSPECTIVE JUROR: Yes, sir.

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

23 Now, ladies and gentlemen, as I said, this alleged
24 action took place on October 23rd, 2013, at ■ Westchase
25 Drive, Apartment ■■■■■, Charleston, South Carolina.

1 Does any member of the jury panel have any
2 independent knowledge of the events that took place on that
3 day? If so, please stand.

4 (No response from the jury.)

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

8 (No response from the jury.)

9 THE COURT: Thank you. No one is standing.
10 Has any member of the jury panel ever been the
11 victim of or charged with a violent crime? If so, please
12 stand.

13 (No response from the jury.)

14 THE COURT: Thank you. No one is standing.

15 Is there any member of the jury panel who is aware
16 of any bias or prejudice towards either the State or the
17 defendants in this case? If so, please stand.

18 (No response from the jury.)

19 THE COURT: Thank you. No one is standing.

20 Is there any member of the jury panel who is also a
21 member of the Grand Jury that indicted this case? If so,
22 please stand.

23 (No response from the jury.)

24 THE COURT: Thank you. No one is standing.

25 Is there any member of the jury panel who is a

1 member of or contributor to any group which has its primary
2 concern the promotion of law enforcement or victims' rights,
3 and these groups would include but certainly would not be
4 limited to Mothers Against Drunk Drivers, Students Against
5 Drunk Drivers, or Citizens Against Violent Crime, or any
6 other group which promotes law enforcement amongst its
7 members. If so, please stand.

8 (No response from the jury.)

9 THE COURT: Thank you.

10 I have a number of other questions.

11 Has any member of the jury panel or family member of
12 the jury ever been the witness to a violent crime? If so,
13 please stand.

14 PROSPECTIVE JUROR: I was involved in a bank
15 robbery.

16 THE COURT: What's your name and number?

17 PROSPECTIVE JUROR: I'm sorry. My name is Christie
18 Lewis. I'm Juror 201. I was involved in a bank robbery. I
19 was the victim.

20 THE COURT: Would the fact that you were involved
21 with that make it so that you can't be fair and impartial to
22 the State or the defense in this case?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: All right. Thank you.

25 Does any member of the jury panel currently live in

1 apartment housing? If so, please stand.

2 (No response from the jury.)

3 THE COURT: Is there any member of the jury panel or
4 family member of the jury panel who has lived in Westchase
5 Apartment Complex? If so, please stand.

6 (No response from the jury.)

7 THE COURT: Does any member of the jury panel feel
8 that shows like CSI, law enforcement -- or Law and Order and
9 First 48 accurately relate to real police work? If so,
10 please stand.

11 (No response from the jury.)

12 THE COURT: Thank you. No one is standing.

13 Does any member of the jury panel think it is
14 possible to prove a criminal case without presenting any
15 scientific evidence? If so, please stand.

16 (No response from the jury.)

17 THE COURT: Thank you. No one is standing.

18 Has any member of the jury panel or family member of
19 the jury panel ever studied law or worked in a lawyer's
20 office? If so, please stand.

21 Yes, sir. State your name number again.

22 PROSPECTIVE JUROR: Ryan Patterson, Juror 252. I'm
23 an attorney in Mount Pleasant.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: Halsey Schreier, Juror 285. I'm

1 an attorney down here.

2 THE COURT: Yes, sir.

3 PROSPECTIVE JUROR: I'm Alan Hopkins, Juror No. 160.
4 I have a brother-in-law who is an attorney.

5 THE COURT: Yes, sir.

6 PROSPECTIVE JUROR: Marion Gillespie, Juror 122. My
7 wife is an attorney, but she's retired.

8 THE COURT: Yes, ma'am. You just stood up.

9 PROSPECTIVE JUROR: 19, Anne Bauer. My son is an
10 attorney.

11 THE COURT: Yes, ma'am.

12 PROSPECTIVE JUROR: Christina Nelson. I don't know
13 my juror number, but I am an attorney here in downtown
14 Charleston.

15 THE COURT: I will ask all of you, any of y'all who
16 are attorneys or related to attorneys, would the fact that
17 you are related or an attorney make it so that you can't be
18 fair and impartial to the State or the defense in this case?
19 If so, please stand.

20 All right. Thank you.

21 Is there any member of the jury panel who is a
22 former or current law enforcement employee? If so, please
23 stand.

24 (No response from the jury.)

25 THE COURT: Does any member of the jury panel have

1 an immediate family member who is a member of law
2 enforcement, be it state or federal? If so, please stand.

3 (No response from the jury.)

4 THE COURT: All right. Thank you.

5 Has any member of the jury panel or your family ever
6 had criminal charges either as a victim or as a defendant
7 that has been handled by the Ninth Circuit Solicitor's
8 Office? If so, please stand.

9 (No response from the jury.)

10 THE COURT: Thank you. No one is standing.

11 Does any member of the jury panel have any personal,
12 political, or religious beliefs that would prevent him or her
13 from sitting in judgment of another person and then finding
14 that person guilty of a criminal offense? If so, please
15 stand.

16 (No response from the jury.)

17 THE COURT: Thank you. No one is standing.

18 Would any member of the jury panel have any problem
19 following the law as I cite it to you even if you personally
20 believe that the law is inappropriate or unfair? If so,
21 please stand.

22 (No response from the jury.)

23 THE COURT: All right. Thank you. No one is
24 standing.

25 Does the State have any additional questions they

1 would like to ask?

2 MR. OSBORNE: None, Your Honor.

3 THE COURT: Does defendant have any other questions?

4 MR. BRADLEY: None, Your Honor.

5 THE COURT: And -- yes, sir?

6 MR. SMILEY: None for the defendant, Mr. Lemon.

7 THE COURT: What's going to happen now is the
8 computer is going to come up with a list of names. If your
9 name is called, please come up here to the podium. And then
10 each side will have an opportunity to strike you or allow you
11 to sit on the jury.

12 And please don't take it personally if you are not
13 selected. Each side has an idea as to what they believe to
14 be an optimal jury for their case. So if you are not
15 selected, you will have another opportunity, I'm sure, to be
16 selected.

17 But I would like to tell the first person that comes
18 up -- and I had this happen to me in Sumter. The first
19 person came up and facing the back of the room, and the clerk
20 states out loud, said, "What sayeth the State?" or "What say
21 the State?"

22 Well, the juror got confused about that and puffed
23 up and said, "The State is South Carolina."

24 Well, that's not the right answer.

25 The State is going to have an opportunity to strike

1 you, and then the defense will have an opportunity to strike
2 you. They can strike you for any reason or no reason except
3 for your race or your gender.

4 Is the State ready to strike?

5 MR. OSBORNE: Yes, Your Honor.

6 THE COURT: Defense ready to strike?

7 MR. BRADLEY: Yes, Your Honor.

8 MR. SMILEY: Yes, Your Honor.

9 THE COURT: Thank you.

10 We are going to go -- we have 12 primary and two
11 alternates.

12 THE CLERK: Ladies and gentlemen of the jury panel,
13 like the judge said, if I call your name, please come up,
14 stand here at the podium just like I am. I will ask the
15 party different questions, and I will either ask you to have
16 a seat in the jury box or I will ask you to have a seat back
17 in the audience.

18 Juror No. 194, Gary Kuhns.

19 What say you for the State?

20 MR. OSBORNE: Please strike the juror.

21 THE CLERK: Please have a seat back in the audience.

22 You've been excused from the trial of this case.

23 Juror No. 284, Hans Schou.

24 What say you for the State?

25 MR. OSBORNE: Please present the juror.

1 THE CLERK: What say you for the defendant
2 Champaigne?

3 MR. BRADLEY: Please present the juror.

4 The CLERK: What say you for the Defendant Lemon?

5 MR. SMILEY: Please excuse the juror.

6 THE COURT: Mr. Schou, please have a seat back in
7 your seat. You've been excused from the trial of this case.
8 Juror No. 104, Juliana Esser.

9 What say you for the State?

10 MR. OSBORNE: Please present this juror.

11 THE CLERK: What say you for Defendant Champaigne?

12 MR. BRADLEY: Please strike the juror.

13 THE COURT: Ms. Esser, please have a seat back in
14 the audience. You've been excused from the trial of this
15 case.

16 Juror No. 214, Lionel Mackey, 214.

17 What say you for the State?

18 MR. OSBORNE: Please present the juror.

19 THE CLERK: What say you for the Defendant
20 Champaigne?

21 MR. BRADLEY: Present the juror.

22 THE CLERK: What say you for the Defendant Lemon?

23 MR. SMILEY: Please excuse Mr. Mackey.

24 THE CLERK: Mr. Mackey, please have a seat back in
25 the audience. You've been excused from the trial of this

1 case.

2 Juror No. 157, Christopher Hock.

3 What say you for the State?

4 MR. OSBORNE: Please present this juror.

5 THE CLERK: What say you for the Defendant
6 Champaigne?

7 MR. BRADLEY: Beg the Court's indulgence.

8 Please present the juror.

9 THE CLERK: What say you for the Defendant Lemon?

10 MR. SMILEY: Please seat Mr. Hock.

11 THE CLERK: Mr. Hock, please have a seat in the jury
12 box. You've been selected as a juror in this case.

13 Juror No. 252, Ryan Patterson, 252.

14 What say you for the State?

15 MR. OSBORNE: Please excuse Mr. Patterson.

16 THE COURT: Mr. Patterson, please have a seat back
17 in the audience. You've been excused from the trial of this
18 case.

19 Juror No. 329, John Weston.

20 What say you for the State?

21 MR. OSBORNE: Court's indulgence.

22 Please present the juror.

23 THE CLERK: What say you for the Defendant
24 Champaigne?

25 MR. BRADLEY: Please present the juror.

1 THE CLERK: What say you for the Defendant Lemon?

2 MR. SMILEY: Please seat Mr. Weston.

3 THE CLERK: Mr. Weston, please have a seat in the
4 jury box. You've been selected as a juror in this case.

5 Juror No. 66, Christina Cordie.

6 What say you for the State?

7 MR. OSBORNE: Court's indulgence.

8 Please present this juror.

9 THE CLERK: What say you for the Defendant
10 Champaigne?

11 MR. BRADLEY: Please strike the juror.

12 THE CLERK: Please have a seat back in the audience.
13 You've been excused from the trial of this case.

14 Juror No. 251, Leon Patat, 251.

15 What say you for the State?

16 MR. OSBORNE: Please present this juror.

17 THE CLERK: What say you for the Defendant
18 Champaigne?

19 MR. BRADLEY: Please present this juror.

20 THE CLERK: What say you for the Defendant Lemon?

21 MR. SMILEY: Please excuse the juror.

22 THE CLERK: Mr. Patat, please have a seat back in
23 the audience. You've been excused from the trial of this
24 case.

25 Juror No. 221, Nicole Meiklejohn, 221.

1 What say you for the State?

2 MR. OSBORNE: Please present this juror.

3 THE CLERK: What say you for the Defendant
4 Champaigne?

5 MR. BRADLEY: Please present this juror.

6 THE CLERK: What say you for the Defendant Lemon?

7 MR. SMILEY: Please seat Ms. Meiklejohn.

8 THE CLERK: Ms. Meiklejohn, please have a seat in
9 the jury box. You've been selected as a juror in this case.
10 Juror No. 155, Taniqua Hill, 155.

11 What say you for the State?

12 MR. OSBORNE: Please excuse the juror.

13 THE CLERK: Please have a seat back in the audience.
14 You've been excused from the trial of this case.

15 Juror No. 265, Charles Potter, 265.

16 What say you for the State?

17 MR. OSBORNE: Please excuse the juror.

18 THE CLERK: Mr. Potter, please have a seat. You've
19 been excused from the trial of this case.

20 Juror No. 232, Samuel Moon, 232.

21 What say you for the State?

22 MR. OSBORNE: Court's indulgence.

23 Please excuse the juror.

24 THE CLERK: Mr. Moon, please have a seat back in the
25 audience. You've been excused from the trial of this case.

1 Juror No. 160, J. Alan Hopkins, 160.

2 What say you for the State?

3 MR. OSBORNE: Please seat this juror.

4 THE CLERK: What say you for the Defendant
5 Champaigne?

6 MR. BRADLEY: Please strike the juror.

7 THE CLERK: Mr. Hopkins, please have a seat back in
8 the audience. You've been excused from the trial of this
9 case.

10 That's four strikes for the Defendant Champaigne.

11 MR. SMILEY: It's four, four, and three right now;
12 is that correct?

13 THE CLERK: Correct.

14 Juror No. 234, Teresa Moore.

15 What say you for the State?

16 MR. OSBORNE: Please seat the juror.

17 THE CLERK: What say you for the Defendant
18 Champaigne?

19 MR. BRADLEY: Please seat the juror.

20 THE CLERK: What say you for the Defendant Lemon?

21 MR. SMILEY: Please excuse the juror.

22 THE CLERK: Ms. Moore, please have a seat back in
23 the audience. You've been excused from the trial of this
24 case.

25 That's now four strikes for the Defendant Lemon.

1 Juror No. 222, Jason Mengel.

2 What say you for the State?

3 MR. OSBORNE: Please seat the juror.

4 THE CLERK: What say you for the Defendant
5 Champaigne?

6 MR. BRADLEY: Beg the Court's indulgence.

7 Please strike the juror.

8 THE CLERK: Mr. Mengel, please take your seat.
9 You've been excused from the trial of this case.

10 Juror No. 339, Sullivan Williams, 339.

11 What say you for the State?

12 MR. OSBORNE: Please present this juror.

13 THE CLERK: What say you for the Defendant
14 Champaigne?

15 MR. BRADLEY: Please present the juror.

16 THE CLERK: What say you for the defendant Lemon?

17 MR. SMILEY: Please seat Mr. Williams.

18 THE CLERK: Mr. Williams, please have a seat in the
19 jury box. You've been selected as a juror in this case.

20 Juror No. 250, Larry Parker, 250.

21 What say you for the State?

22 MR. OSBORNE: Please present this juror.

23 THE CLERK: What say you for the Defendant
24 Champaigne?

25 MR. BRADLEY: Please present the juror.

1 THE CLERK: What say you for the Defendant Lemon?

2 MR. SMILEY: Please seat Mr. Parker.

3 THE CLERK: Mr. Parker, please have a seat in the
4 jury box. You've been selected as a juror in this case.

5 Juror No. 177, Jeanette Johnson, 177.

6 What say you for the State?

7 MR. OSBORNE: Please present this juror.

8 THE CLERK: What say you for the Defendant
9 Champaigne?

10 MR. BRADLEY: Please present this juror.

11 THE CLERK: What say you for the Defendant Lemon?

12 MR. SMILEY: Please seat Ms. Johnson.

13 THE CLERK: Ms. Johnson, please have a seat in the
14 jury box. You've been selected as a juror in this case.

15 Juror No. 119, Wilson Gautrpaux, 119.

16 What say you for the State?

17 MR. OSBORNE: Please present this juror.

18 THE CLERK: What say you for the Defendant
19 Champaigne?

20 MR. BRADLEY: Please present this juror.

21 THE CLERK: What say you for the Defendant Lemon?

22 MR. SMILEY: Please excuse this juror.

23 THE CLERK: Please have a seat back in the audience.
24 You've been excused from the trial of this case.

25 That's five strikes for the Defendant Lemon.

1 Juror No. 317, Lei Vader Ludington, 317.

2 What say you for the State?

3 MR. OSBORNE: Please present this juror.

4 THE CLERK: What say you for the Defendant

5 Champaigne?

6 MR. BRADLEY: Please dismiss this juror.

7 THE CLERK: Please have a seat back in the audience.

8 You've been excused from the trial of this case.

9 Juror No. 321, James Walker, 321.

10 What say you for the State?

11 MR. OSBORNE: Please present this juror.

12 THE CLERK: What say you for the Defendant

13 Champaigne?

14 MR. BRADLEY: Please present this juror.

15 THE CLERK: What say you for the Defendant Lemon?

16 MR. SMILEY: Please seat Mr. Walker.

17 THE COURT: Mr. Walker, please have a seat in the

18 jury box. You've been selected as a juror in this case.

19 Juror No. 146, Dawn Hatchell, 146.

20 What say you for the State?

21 MR. OSBORNE: Please present this juror.

22 THE CLERK: What say you for the Defendant

23 Champaigne?

24 MR. BRADLEY: Court's indulgence.

25 Please present this juror.

1 THE CLERK: What say you for the Defendant Lemon?

2 MR. SMILEY: Please excuse the juror.

3 THE CLERK: Ms. Hatchell, please have a seat back in
4 the audience. You've been excused from the trial of this
5 case.

6 Juror No. 289, Zachary Sharpe, 289.

7 What say you for the State?

8 MR. OSBORNE: Please seat the juror.

9 THE CLERK: What say you for the Defendant
10 Champaigne?

11 MR. BRADLEY: Please seat the juror.

12 THE CLERK: What say you for the Defendant Lemon?

13 MR. SMILEY: Please seat Mr. Sharpe.

14 THE CLERK: Mr. Sharpe, please have a seat in the
15 jury box. You've been selected as a juror in this case.

16 Juror No. 125, David Godley, 125.

17 What say you for the State?

18 MR. OSBORNE: Please present this juror.

19 THE CLERK: What say you for the Defendant
20 Champaigne?

21 MR. BRADLEY: Beg the Court's indulgence.

22 Please strike the juror.

23 THE CLERK: Mr. Godley, please have a seat back in
24 the audience. You've been excused from the trial of this
25 case.

1 That's seven strikes for the Defendant Champaigne.

2 Juror No. 268, Glen Pulaski, 268.

3 What say you for the State?

4 MR. OSBORNE: Please present this juror.

5 THE CLERK: What say you for the Defendant

6 Champaigne?

7 MR. BRADLEY: Please present this juror.

8 THE CLERK: What say you for the Defendant Lemon?

9 MR. SMILEY: Please excuse the juror.

10 THE CLERK: Mr. Pulaski, please have a seat. You've
11 been excused from the trial of this case.

12 That will be seven strikes for Defendant Lemon.

13 Juror No. 341, Barbara Wilson, 341.

14 What say you for the State?

15 MR. OSBORNE: Please present this juror.

16 THE CLERK: What say you for the Defendant

17 Champaigne?

18 MR. BRADLEY: Please present this juror.

19 THE CLERK: What say you for the Defendant Lemon?

20 MR. SMILEY: Please seat Ms. Wilson.

21 THE CLERK: Ms. Wilson, please have a seat in the
22 jury box. You've been selected as a juror in this case.

23 Juror No. 118, Bonnie Garren, 118.

24 What say you for the State?

25 MR. OSBORNE: Please present the juror.

1 THE CLERK: What say you for the Defendant
2 Champaigne?

3 MR. BRADLEY: Please seat the juror.

4 THE CLERK: What say you for the Defendant Lemon?

5 MR. SMILEY: Please excuse the juror.

6 THE CLERK: Ms. Garren, please have a seat back in
7 the audience. You've been excused from the trial of this
8 case.

9 Juror No. 31, Gary Boone, 31.
10 What say you for the State?

11 MR. OSBORNE: Please present this juror.

12 THE CLERK: What say you for the Defendant
13 Champaigne?

14 MR. BRADLEY: Please seat the juror.

15 THE CLERK: What say you for the Defendant Lemon?

16 MR. SMILEY: Please excuse the juror.

17 THE CLERK: Mr. Boone, please have a seat back in
18 the audience. You've been excused from the trial of this
19 case.

20 That's nine strikes for Defendant Lemon.

21 Juror No. 127, Janet Graeber, 127.

22 What say you for the State?

23 MR. OSBORNE: Please present this juror.

24 THE CLERK: What say you for the Defendant
25 Champaigne?

1 MR. BRADLEY: Please strike this juror.

2 THE CLERK: Ms. Graeber, please have a seat back in
3 the audience. You've been excused from the trial of this
4 case.

5 That is eight strikes for Defendant Champaigne.

6 Juror No. 299, Palmer Skoglund, 299.

7 What say you for the State?

8 MR. OSBORNE: Please present this juror.

9 THE CLERK: What say you for the Defendant
10 Champaigne?

11 MR. BRADLEY: Please present this juror.

12 THE CLERK: What say you for the Defendant Lemon?

13 MR. SMILEY: Please excuse the juror.

14 THE CLERK: Mr. Skoglund, please have a seat back in
15 the audience. You've been excused from the trial of this
16 case.

17 Juror No. 281, Ruth Schaefer, 281.

18 What say you for the State?

19 MR. OSBORNE: Please excuse the juror.

20 THE CLERK: Ms. Schaefer, please have a seat back in
21 the audience. You've been excused from the trial of this
22 case.

23 Juror No. 19, Anne Bauer, 19.

24 What say you for the State?

25 MR. OSBORNE: Please present this juror.

1 THE CLERK: What say you for the Defendant
2 Champaigne?

3 MR. BRADLEY: Please strike the juror.

4 THE CLERK: Please have a seat back in the audience.
5 You've been excused from the trial of this case.

6 That's nine strikes for Defendant Champaigne.

7 Juror No. 207, Jacqueline Littlepage, 207.

8 What say you for the State?

9 MR. OSBORNE: Please strike the juror.

10 THE CLERK: Ms. Littlepage, please have a seat back
11 in the audience. You've been excused from the trial of this
12 case.

13 That's six strikes for the State.

14 Juror No. 212, Jeffrey Maas, 212.

15 What say you for the State?

16 MR. OSBORNE: Please present this juror.

17 THE CLERK: What say you for the Defendant
18 Champaigne?

19 MR. BRADLEY: Please present this juror.

20 THE CLERK: Any challenge from the Defendant Lemon?

21 MR. SMILEY: No challenge.

22 THE CLERK: Mr. Maas, please have a seat in the jury
23 box. You've been selected as a juror in this case.

24 Juror No. 285, Halsey Schreier, 285.

25 What say you for the State?

1 MR. OSBORNE: Please present this juror.

2 THE CLERK: What say you for the Defendant
3 Champaigne?

4 MR. BRADLEY: Please strike the juror.

5 THE CLERK: Ms. Schreier, please have a seat back in
6 the audience. You've been excused from the trial of this
7 case.

8 That's 10 strikes for Defendant Champaigne.

9 Juror No. 253, Lucille Nelson, 243.

10 What say you for the State?

11 MR. OSBORNE: Please present this juror.

12 THE CLERK: Any challenge from the Defendant
13 Champaigne?

14 MR. BRADLEY: None.

15 THE CLERK: Any challenge from the Defendant Lemon?

16 MR. SMILEY: No, sir.

17 THE CLERK: Ms. Nelson, please have a seat in the
18 jury box. You've been selected as a juror in this case.

19 Juror Number 12, Ronald Bailey.

20 What say you for the State?

21 MR. OSBORNE: Please present the juror.

22 THE CLERK: Any challenge from Defendant Champaigne?

23 MR. BRADLEY: No challenge.

24 THE CLERK: Any challenge from Defendant Lemon?

25 MR. SMILEY: No challenge.

1 THE CLERK: Mr. Bailey, please have a seat in the
2 jury box. You've been selected as a juror in this case.

3 Now picking for the first alternate, strikes 2, 2,
4 and 2.

5 Juror No. 40, Linda Brown, 40.

6 What say you for the State?

7 MR. OSBORNE: Court's indulgence.

8 Please excuse the juror.

9 THE CLERK: Ms. Brown, please have a seat back in
10 the audience. You've been excused from the trial of this
11 case.

12 Juror No. 26, Roberta Blanchard, 26.

13 What say you for the State?

14 MR. OSBORNE: Please present this juror.

15 THE CLERK: What say you for the Defendant
16 Champaigne?

17 MR. BRADLEY: Please strike the juror.

18 THE CLERK: Ms. Blanchard, please have a seat back
19 in the audience. You've been excused from the trial of this
20 case.

21 Juror No. 305, John Such, 305.

22 What say you for the State?

23 MR. OSBORNE: Please present this juror.

24 THE CLERK: What say you for the Defendant
25 Champaigne?

1 MR. BRADLEY: Please seat the juror.

2 THE CLERK: What say you for the Defendant Lemon?

3 MR. SMILEY: Please excuse Mr. Such.

4 THE CLERK: Mr. Such, please have a seat. You've
5 been excused from the trial of this case.

6 Juror No. 14, Charles Ball.

7 What say you for the State?

8 MR. OSBORNE: Please present this juror.

9 THE CLERK: What say you for the Defendant
10 Champaigne?

11 MR. BRADLEY: Please present this juror.

12 THE CLERK: What say you for the Defendant Lemon?

13 MR. SMILEY: Please excuse the juror.

14 THE CLERK: Mr. Ball, please have a seat back in the
15 audience. You've been excused from the trial of this case.

16 That's two strikes for Defendant Lemon.

17 Juror No. 189, Janie King, 189.

18 What say you for the State?

19 MR. OSBORNE: Please present this juror.

20 THE CLERK: What say you for the Defendant
21 Champaigne?

22 MR. BRADLEY: Please strike the juror.

23 THE CLERK: Ms. King, please have a seat. You've
24 been excused from the trial of this case.

25 That's two strikes for Defendant Champaigne.

1 Juror No. 43, Verden Brown, 43.

2 What say you for the State?

3 MR. OSBORNE: Please present this juror.

4 THE CLERK: Any challenge from Defendant Champaigne?

5 MR. BRADLEY: No challenge.

6 THE CLERK: Any challenge from Defendant Lemon?

7 MR. SMILEY: No challenge.

8 THE CLERK: Mr. Brown, please have a seat in the

9 jury box. You've been selected as a juror in this case.

10 Now picking for second alternate. Strikes are 2, 2,

11 2.

12 Juror No. 230, Allie Molinari, 230.

13 What say you for the State?

14 MR. OSBORNE: Please present this juror.

15 THE CLERK: What say you for the Defendant

16 Champaigne?

17 MR. BRADLEY: No objection.

18 THE CLERK: Each selection, you get two.

19 MR. BRADLEY: Please seat the juror.

20 THE CLERK: What say you for the Defendant Lemon?

21 MR. SMILEY: Please seat the juror.

22 THE CLERK: Ms. Molinari, please have a seat in the

23 jury box. You've been selected as a juror in this case.

24 Your Honor, the jury has been selected and is

25 seated.

1 THE COURT: Please call out the name of all of the
2 jurors. If you could raise your hands.

3 THE CLERK: Juror No. 157, Christopher Hock. Thank
4 you. 329, John Weston. Thank you. 221, Nicole Meiklejohn.
5 Thank you. 339, Sullivan Williams. Thank you. 250, Larry
6 Parker. Thank you. 177, Jeanette Johnson. Thank you. 321,
7 James Walker. Thank you. 289, Zachary Sharpe. Thank you.
8 341, Barbara Wilson. Thank you. 212, Georf Maas. Thank
9 you. 243, Lucille Nelson. Thank you. Juror No. 12, Ronald
10 Bailey. Thank you. Juror No. 43, Verden Brown. Thank you.
11 And Juror No. 230, Allie Molinari. Thank you.

12 THE COURT: Thank you. All right. Ladies and
13 gentlemen, you all have been selected as the jurors for this
14 case. I'm going to send you back into the jury room for just
15 a few minutes while I take up some matters with the
16 attorneys.

17 But while you are back there, if you could discuss
18 amongst yourself who you want to be the foreperson of the
19 jury. That can be any of the primary jurors. It cannot be
20 one of the alternates.

21 So I'm going to send you back there just for a few
22 minutes, and then I will send you to lunch, and we will start
23 this case this afternoon. So please don't discuss anything
24 about the case while you are back there. Thank you.

25 (Whereupon, the jury leaves open court at

1 12:28 p.m.)

2 THE COURT: All right. Is there any objection to
3 the jury that has been selected or the manner in which they
4 have been selected from the State?

5 MR. OSBORNE: No, Your Honor.

6 THE COURT: Mr. Bradley?

7 MR. BRADLEY: No, Your Honor.

8 THE COURT: And Mr. Smiley?

9 MR. SMILEY: No, sir.

10 Your Honor, I do at some point need to supplement
11 the record.

12 THE COURT: We are going to do that.

13 What I'm going to do now is, ladies and gentlemen,
14 those of you who were not selected, I apologize that you were
15 not selected, but I'm going to throw you back into the pool
16 and maybe you will have an opportunity to be on another jury
17 this week.

18 So, I guess, bailiffs do whatever you do with them
19 at this point. Thank you, ladies and gentlemen, for being a
20 part of our justice system.

21 (Whereupon, the venire leaves.)

22 THE COURT: Are there other matters for me to
23 discuss on the record at this time from the State?

24 MR. OSBORNE: Well, Your Honor, I can go through the
25 procedural history for the record, why I think we are

1 justified in doing a trial in absence.

2 THE COURT: Why don't we go ahead and cut this jury
3 loose so they can have lunch.

4 What time do you want to start back? 2:30? Will
5 that give you enough time to do what you need to do?

6 You are going to have a Biggers hearing; right?

7 MR. OSBORNE: Correct.

8 THE COURT: And that will take about 15 minutes?

9 MR. OSBORNE: I think so.

10 MR. SMILEY: I think the Biggers hearing. And he
11 says he's got two main witnesses this afternoon, and I think
12 that fits 2:30 to 5:00, easy.

13 THE COURT: Let's bring our jury back so I can cut
14 them loose.

15 (Whereupon, the jury returns to open court at
16 12:32 p.m.)

17 THE COURT: Who did you select as your foreperson?

18 A JUROR: We didn't have time.

19 THE COURT: Over lunch, if you can think about it --
20 I'm going to send you out to lunch. Be back here right at
21 2:30 so that we can start on the testimony this afternoon, to
22 be finished as quickly as possible.

23 Now, ladies and gentlemen, again, when you go out to
24 have lunch, don't go tell everybody you see, "I've got jury
25 duty." Because what's going to happen is somebody is going

1 to say, "Hey, I was on a jury one time, and this is what
2 happened in my case." Well, you don't need to know what
3 happened in their case. I'm trying to keep your minds pretty
4 sterile so that the information that you get from this
5 courtroom will be all the information that you will need to
6 make a decision in this case.

7 So ladies and gentlemen, have a nice lunch, but be
8 back here right at 2:30 so we can start. All right?

9 Thank you, ladies and gentlemen.

10 And pick a foreperson when you get back or I will do
11 it.

12 (Whereupon, the jury leaves open court at
13 12:34 p.m.)

14 THE COURT: Is there anything you need to take up?
15 Let's go ahead and do the TIA.

16 MR. SMILEY: Yes, sir, if I could, Jim Smiley on
17 behalf of my client, Ishmel Lemon in this case.

18 Mr. Lemon is not present, so I made a motion in
19 front of the chief administrative judge of this circuit,
20 Honorable Judge Harrington, at a status conference. She
21 indicated that she would not grant a continuance because my
22 client had notice of this case. And that's true. He had
23 been to prior status conferences, Your Honor, had been told
24 what happens if he doesn't show up for his trial.

25 I took this case over November, I guess it was, Your

1 Honor, and it's been continued on two other times, and it was
2 quite apparent that the trial date was going to be today. I
3 know my client knows that his trial is today. He has chosen
4 not to come.

5 But as a matter of procedure, I believe that to
6 protect my client's interests, I do need to ask for a
7 continuance for recordkeeping purposes, Your Honor.

8 THE COURT: Thank you. Mr. Osborne?

9 MR. OSBORNE: Yes, Your Honor. May I approach?

10 THE COURT: You may.

11 MR. OSBORNE: I've just got a couple -- I labeled
12 them exhibits, just because I think it would be easier to see
13 while I'm explaining this.

14 It's my understanding Rule 16 of the South Carolina
15 Rules of Criminal Procedure allows us -- a defendant, even if
16 charged with a felony, to be tried in his absence, as long as
17 defendant has received notice of his right to be present and
18 that a warning was given that the trial would proceed in his
19 absence.

20 The defendant in this case, Ishmel Lemon, was
21 arrested on October the 23rd. On October the 24th,
22 Judge Baldwin advised him orally and in writing that it would
23 be tried in his absence if he didn't show, and that he had a
24 right to be present. That's Exhibit A.

25 If you look at Exhibit B, that's where she read that

1 to him.

2 On July the 28th, I sent an e-mail to Chris Murphy.
3 He was the original attorney for Ishmel Lemon. I told him
4 that I was going to docket the case on December the 8th for
5 trial. Trial notice went out on November 7th. At the
6 December the 2nd status conference, Judge Young informed
7 Ishmel that the case would go forward and tried in his
8 absence if he failed to appear at the December 8th trial.

9 At that time, Ishmel said he wanted a new attorney.
10 Judge Young said that he would revisit the request for new
11 counsel on Wednesday. That would give him enough opportunity
12 to get a new attorney.

13 On December the 3rd, Mr. Smiley told the Court he
14 would represent Mr. Lemon. On December the 4th, Judge Young
15 granted a continuance request and said the case would go
16 forward either on January 5th or January 12th.

17 On December 15th we sent out trial notice that the
18 case was going to go forward on January 12th, and if not
19 reached, we would go forward on February 9th. That's
20 Exhibit B that you have.

21 On December the 30th, we had another status
22 conference. Mr. Smiley at that point stated that he
23 understood the case would go forward on February the 9th, and
24 Lemon was present for that status conference. Judge
25 Harrington advised Lemon then of the charge, that it was

1 burglary first, and that the case would go forward on
2 February the 9th if he didn't appear.

3 On January the 24th, Lemon was involved in a
4 shooting incident that occurred at [REDACTED] Westwood on James
5 Island. Basically, he's alleged to have shot an individual.
6 He was -- arrest warrants were obtained for discharging a
7 firearm, and A and B first.

8 The U.S. Marshals spoke to family members. His name
9 was plastered all over the news. He knows that he was wanted
10 for that case. They have not been able to locate him. I
11 just got a text message from a U.S. Marshal just now; they
12 still can't find him.

13 On February 3rd we had a status conference.
14 Mr. Bradley then asked for a continuance. Lemon failed
15 to appear for that. Judge Harrington moved the case to
16 March 2nd and said the case would go forward in his absence.
17 Mr. Bradley asked for a continuance. We were set to go
18 forward on March the 2nd.

19 On February the 25th at the status conference, again
20 Lemon didn't show up. Judge Harrington then advised that the
21 case would be put on the docket.

22 We mailed out notice on February 26th. That is
23 Exhibit C. And in an abundance of caution, I had my
24 investigator go by Mr. Lemon's residence and personally serve
25 whoever was there, and it turned out it was his aunt. That's

1 Exhibit D. And my investigator filled out an affidavit of
2 service for that day.

3 I spoke to Mr. Lemon's bondsman, and she, too, has
4 not been able to contact him.

5 MR. SMILEY: One last thing for the record.

6 I spoke with Mr. Lemon approximately 10 days ago and
7 made it very clear that March the 2nd was going to be his
8 trial. So he certainly has notice, Your Honor.

9 THE COURT: And there is a family relationship
10 between the defendants.

11 MR. SMILEY: They are distant cousins. No?

12 THE COURT: Certainly, he has no --

13 MR. SMILEY: Wait a second. I might have misspoke,
14 Your Honor.

15 Y'all aren't cousins?

16 DEFENDANT CHAMPAIGNE: No.

17 MR. SMILEY: He told me they were cousins.

18 THE COURT: He's not acknowledging it. Okay.

19 Would the bailiff please call the name of Ishmel
20 Jayvan Lemon in the courthouse halls three times, please.

21 (Pause in proceedings.)

22 THE DEPUTY: No Mr. Lemon, Your Honor.

23 THE COURT: The bailiff has called the name of the
24 defendant three times in the courthouse hall. It is very
25 apparent he has had ample notice of this hearing and this

1 trial today. He has chosen to be elsewhere. The wheels of
2 justice will proceed without his being here, and we will
3 start this trial and proceed.

4 MR. SMILEY: And lastly, Your Honor, just so -- I
5 think I can do it this way so I don't have to keep bringing
6 this up. Can I preserve this motion for a continuance
7 throughout the trial?

8 THE COURT: Absolutely.

9 MR. SMILEY: That way I don't have to do it again.

10 THE COURT: You are protected. You've done all you
11 that could do at this point. It's your client's decision to
12 stay away.

13 MR. SMILEY: I'm prepared and able to go forward as
14 we are, Your Honor. Of course, I would rather have my
15 client here.

16 THE COURT: Absolutely.

17 MR. SMILEY: But if he's not here, I still feel
18 competent to proceed and protect his rights.

19 Thank you, Your Honor.

20 THE COURT: Thank you. Anything further?

21 MR. OSBORNE: No, Your Honor.

22 THE COURT: Court is in recess until 2:30.

23 (A recess transpired.)

24 THE COURT: Mr. Bradley, is your client going to
25 join us?

1 MR. BRADLEY: Yes, Your Honor. Let me see if he's
2 back.

3 THE COURT: Are you all ready to start your Biggers
4 hearing?

5 MR. OSBORNE: Yes, Your Honor, we are.

6 MR. BRADLEY: Yes, Your Honor.

7 THE COURT: You may call your first witness.

8 MR. OSBORNE: The State calls Detective Rob Feeters.

9 ROBERT FEETERS,
10 having been duly sworn, testifies as follows:

11 THE CLERK: Please state your name and spell your
12 last name for the record.

13 THE WITNESS: Sure. First name is Robert. Last
14 name is Feeters, spelled F-e-e-t-e-r-s.

15 DIRECT EXAMINATION

16 BY MR. OSBORNE:

17 Q. Detective Feeters, where do you work?

18 A. Charleston City Police Department.

19 Q. And how long have you worked there?

20 A. Ten years coming June.

21 Q. What are some of the various assignments that you've
22 had?

23 A. Well, at Charleston Police Department, I served as a
24 patrol officer, field training officer, team investigator,
25 which worked the street crime cases. I'm currently assigned

1 to detective to the warrants division for the major crime
2 warrants division.

3 Q. Were you working on the night of October the 23rd,
4 2013?

5 A. Yes. I was a duty detective.

6 Q. Did you have the occasion to respond to a burglary
7 call at ■ Westchase Drive, Apartment ■?

8 A. Yes, sir.

9 Q. What did you learn when you arrived?

10 A. When I first arrived, I learned victim, Ms. Polite,
11 was inside her apartment, she heard some banging at the front
12 door, then she heard her glass break, breakage, and then
13 someone made entry into her apartment.

14 Also learned that officers on scene had chased --
15 made contact with individuals leaving her apartment building.
16 They had stopped three individuals.

17 And I also made contact with a witness, Mr. Duvall.

18 Q. Do you know the names of the individuals that had
19 been detained?

20 A. Mr. Lemon, Mr. Champaigne, and Mr. John Brown.

21 Q. Did you learn if two of those individuals had been
22 detained while seen running from the victim's apartment?

23 A. Yes, sir.

24 Q. And who were those two?

25 A. I believe it was Mr. Champaigne and Mr. Lemon.

1 Q. Did you have the occasion to speak to a witness?

2 A. Yes, sir.

3 Q. And who did you talk to?

4 A. Mr. Duvall. Timothy Duvall.

5 Q. And briefly, tell us what you learned after speaking
6 with Timothy, or what did he see?

7 A. Mr. Duvall met with me and conducted an interview.
8 He explained to me he was walking around the corner towards
9 his sister's apartment, which was the apartment building next
10 to the victim's apartment.

11 He had seen two individuals underneath a street
12 light, one of the lights next to the apartment. One of them
13 appeared to be holding a handgun, and they smelled like they
14 were smoking marijuana, the way he explained it to me. He
15 described the individuals to me.

16 When they saw him upon his approach, they said,
17 "It's police," and the individual holding the handgun had
18 dropped the handgun in the bushes, and they took off.

19 Q. The individual that was holding the handgun, do you
20 recall what Mr. Duvall said he was wearing?

21 A. Yes, I do. He was -- he stated he was wearing a
22 hooded sweatshirt with a distinctive white emblem in the
23 front, he was tall, and his sneakers, high-top sneakers had a
24 shiny -- like a shiny toe to it, a distinctive shiny part to
25 it where the toe was.

1 Q. Now, approximately how long before the burglary did
2 he see these two individuals which -- under the victim's
3 apartment or besides the victim's apartment?

4 A. I believe, if I recall, it was 20, 25 minutes. It
5 wasn't too long.

6 Q. Okay. Did Timothy indicate to you that if he were
7 to see the subjects again, he might be able to identify them?

8 A. Yes.

9 Q. Both of them or just one?

10 A. The tall one with the handgun, that caused
11 attention. He was able to describe to me his clothing, and
12 he was pretty sure he could identify that person.

13 Q. Based on the description of that individual, did you
14 find that description to match any of the three subjects that
15 had been detained?

16 A. Yes, sir. Patrol officers had pursued in foot
17 pursuit an individual wearing a hooded sweatshirt with a
18 similar white, distinctive symbol in the front, and sneakers
19 that were similar also.

20 Q. And who was that?

21 A. It was Mr. Champaigne.

22 Q. Did Timothy appear to be drinking or intoxicated?

23 A. No. He was in good state of mind. He didn't appear
24 to be intoxicated. I didn't smell anything on him.

25 Q. What did you do then?

1 A. I asked him if -- we had individual detained -- if
2 he would mind doing a show-up, and which meant I would put
3 him in my car, we drove over to where the officers had
4 Mr. Champaigne stopped, and he was illuminated by some light.

5 Q. Let me just back up just a second and ask you: Why
6 did you elect to do a show-up instead of a lineup in this
7 case?

8 A. Due to the fact it was such a short distance in time
9 from the scene of the crime, and also that the individuals
10 were seen immediately after the incident, running from the
11 scene, officers gave the commands to stop. They continued to
12 run. Based on the proximity of time and distance and similar
13 descriptions, I elected to do a show-up as opposed to a photo
14 lineup.

15 Q. Do you know about how long after the burglary you
16 actually conducted the show-up?

17 A. Between when it was dispatched until we got
18 everything rolling was probably an hour, hour and a half. We
19 had to secure the scene. I began to interview the victim and
20 take steps before we just started driving people around to a
21 show-up.

22 Q. At any point did you suggest to Mr. Duvall that you
23 had the suspect detained or that you wanted him to identify
24 someone?

25 A. I believe I said, "We have someone detained. If you

1 are confident, you feel like you can identify him, you know,
2 would you mind?"

3 He said, "No, I don't mind at all."

4 Q. Walk the judge through the show-up process. How did
5 you conduct it?

6 A. My car was parked right around the corner. I walked
7 to my car. They had Mr. Champaigne stopped near some -- a
8 trash container towards the back of the complex. I put him
9 in my car. I drove him up there.

10 What I did was I put my high beams on. The officers
11 took Mr. Champaigne out of the car, put him on the side of
12 the car, and with the headlights, we illuminated
13 Mr. Champaigne.

14 Q. About how far was Mr. Duvall from Mr. Champaigne
15 when he made the ID?

16 A. He was inside my car. I would say probably no
17 farther from here to the exit sign, maybe about -- maybe to
18 the swinging doors. It was well-lit.

19 Q. Illuminated by your flashlights and headlights?

20 A. Correct.

21 Q. When he -- do you remember if he viewed
22 Mr. Champaigne first or Mr. Lemon first?

23 A. I don't recall who he -- who he saw first.

24 Q. All right. Upon viewing Mr. Champaigne, was he able
25 to make an ID?

1 A. Yes.

2 Q. What did he say?

3 A. He said, "That's him."

4 I said, "Are you sure?"

5 He said, "Yes."

6 Q. Did you ask him on a scale of 1 to 10, 10 being the
7 most positive, how certain he was?

8 A. Yes, I did.

9 Q. And what did he say?

10 A. He said, "10."

11 Q. Did he have the opportunity to view Mr. Lemon as
12 well?

13 A. I believe so. And he was able to see him, but he
14 could not identify him.

15 Q. Did Mr. Duvall give you any indication how long he
16 had the opportunity to actually observe Mr. Champaigne?

17 A. I remember Mr. Duvall. He was wearing a leather
18 jacket with several different pins on it. And I remember
19 when he walked around the corner, he had actually, it looked
20 like, a sheriff badge. He indicated to me that "They thought
21 I was police when they saw that."

22 He was able to -- he saw him long enough to see that
23 it was a black handgun in I believe the right hand. He was
24 able to describe his clothing to a T, but I don't remember
25 the exact -- if he sort of -- he was able to --

1 Q. I think he was knocking -- you said he was knocking
2 on his sister's door, when he came up, while he was looking
3 back?

4 A. Yes, and she was the next over.

5 MR. OSBORNE: No further questions.

6 THE COURT: Yes, sir. Mr. Bradley.

7 MR. BRADLEY: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BRADLEY:

10 Q. Officer, you said between the time you spoke with
11 Mr. Duvall the first time and the time you actually ID'd my
12 client, how much time had gone by?

13 A. About an hour and a half.

14 Q. About an hour and a half?

15 A. About an hour and a half, yes, sir.

16 Q. Did Mr. Duvall tell you what he was doing during
17 that hour and a half?

18 A. What we were doing during --

19 Q. What he was doing during that hour and a half
20 between the time you first saw the young man and the time he
21 ID'd Mr. Champaigne?

22 A. He explained to me that he went to the store and he
23 was returning, and he saw police cars coming in and chasing
24 the individual in that area. He saw commotion.

25 Q. And could you tell me at what time prior to the

1 alleged break-in or the break-in did he see the young guy
2 standing outside of the apartment?

3 A. I believe it was about 20 minutes. I'm not sure. I
4 don't have my notes. I don't have the report. But I don't
5 recall, you know, the exact time.

6 Q. So your testimony is that he actually saw the young
7 man 20 to 25 minutes prior to the incident, and he identified
8 them about an hour and a half later; is that correct?

9 A. Yeah, that sounds correct.

10 Q. When he identified Mr. Champaigne, was
11 Mr. Champaigne handcuffed?

12 A. Yes.

13 Q. Was Mr. Champaigne standing near a police car?

14 A. Yes, sir.

15 Q. Was Mr. Lemon also -- was he also in handcuffs?

16 A. Yes, sir.

17 Q. So both suspects were identified, they were already
18 handcuffed and standing beside a police car at the time y'all
19 asked him to identify them; is that correct?

20 A. Correct.

21 Q. The clothing that Mr. Duvall alleged that my client
22 had on, can you explain to the Court again what it was, what
23 type clothing they had on?

24 A. It was a -- he could only positively identify
25 Mr. Champaigne because he caused attention, he was standing

1 in the light, and he saw the gun. So he focused his
2 attention on him.

3 Q. Sure.

4 A. He said it was a hooded sweatshirt, that the
5 individual was tall with a hooded sweatshirt on with a white
6 distinctive emblem on the front. He also said he had dark
7 pants on and his sneakers had a shine around the toe because
8 of the reflect of the light.

9 Q. And so the testimony or the identification he gave
10 you was that the client was tall with shiny sneakers and a
11 sweatshirt with an emblem on it?

12 A. With a white emblem on it, yes, and dark pants.

13 Q. With a white emblem on it?

14 A. Yes.

15 Q. Okay. Did you ask Mr. Duvall what he was doing
16 within that hour and a half after he -- between the hour and
17 a half that he allegedly saw them from the beginning until
18 the time that he identified them?

19 A. He had left and went to a store right down the
20 street, convenience store. And upon returning, he saw the
21 commotion and then he flagged down one of the officers. He
22 was located, he was brought to me as a potential witness, and
23 then we started to begin the process.

24 Q. Were there any other witnesses -- were there any
25 other suspects, I'm sorry, that y'all may have detained at

1 that time?

2 A. Another young man, Mr. Brown, that was walking from
3 the scene, but other than that, none of the officers -- we
4 canvassed the area on foot thoroughly. We also knocked on
5 doors, tried to check for any potential witnesses.

6 Q. Did you all put Mr. Brown in the lineup as well?

7 A. Mr. Brown, we did not do a lineup for Mr. Brown.

8 Q. Can I ask why?

9 A. Why? Because I believe he was put in a follow-up
10 lineup by the detective working the case.

11 Based on what I had in front of me, tall, male,
12 hooded, with his clothing, we elected to go with the two guys
13 that were running from the apartment.

14 They found Mr. Brown walking from the apartment.
15 They couldn't -- we didn't go to Mr. Brown.

16 Q. Y'all decided that he did not fit the description;
17 is that what it is?

18 A. Correct, but he was walking from the scene. The
19 officers chased the two individuals, Mr. Lemon and
20 Mr. Champaigne, from the apartment in question.

21 Q. Did you all later find out that Mr. Brown was some
22 way involved in any of this?

23 A. Through further investigation and questioning, they
24 had made statements that they were smoking marijuana together
25 in the area of the apartments, and there may have been some

1 communication via cell phone that was provided, but they
2 acknowledged that they knew each other. They were all there.

3 Q. Did you all later on put Mr. Brown in the lineup for
4 Mr. Duvall to identify?

5 A. That would have been the investigation by the
6 follow-up detective who worked the case. Being an on-call
7 detective, we worked the case to a certain point. Once an
8 arrest was made, it would be assigned to the detective for
9 follow-up investigation. But I did not put Mr. Brown in
10 photo lineup.

11 Q. And again, the only two that you actually put in the
12 lineup was Mr. Lemon and Mr. Champaigne, and they were
13 actually beside the police car at the time it happened; is
14 that correct?

15 A. So we are talking about show-up; correct?

16 Q. Exactly. Just a show-up lineup. That's the only
17 one that I know.

18 A. Yes. Yes.

19 Q. Okay. And they were handcuffed at the time?

20 A. Yes, sir.

21 MR. BRADLEY: No further questions. Thank you.

22 THE COURT: Mr. Smiley.

23 MR. SMILEY: It's really not my motion, but I have
24 one question now.

25 CROSS-EXAMINATION

1 BY MR. SMILEY:

2 Q. Ishmel Lemon was not identified?

3 A. He was not identified as -- he was not positively
4 identified. The only person that was positively identified
5 was --

6 Q. I just heard a question that sounded like there
7 was -- that he was identified, but I want to be clear. He
8 was done a show-up, and Mr. Duvall says, "I can't pick him
9 out"; correct?

10 A. Correct.

11 MR. SMILEY: All right. That's all I have, Judge.
12 I just wanted to be sure.

13 THE COURT: Any redirect?

14 MR. OSBORNE: No, Your Honor.

15 THE COURT: Thank you. You may step down.

16 (Whereupon the witness is excused.)

17 MR. OSBORNE: I think that's all we need. We have
18 another witness, but I think that should suffice.

19 MR. BRADLEY: Your Honor, of course, we move to
20 strike the out-of-court identification of the witness at this
21 particular time. An hour and a half between the time he saw
22 them, they were standing in front of the police car. They
23 were in handcuffs, Your Honor, at the time. That is overly
24 and unduly suggestive, as Neil v. Biggers, United States
25 Supreme Court has already said that that cannot be reliable.

1 I don't think that the prosecution, you know, at
2 this particular point has proved that Mr. Duvall's
3 identification, out-of-court identification was untainted.
4 It clearly was tainted. Any witness who sees someone in
5 handcuffs, standing beside a police car, with a light shining
6 on them at that particular time, I think that clearly would
7 prejudice any jury at that time.

8 Your Honor, we would ask that you strike that and
9 not allow any testimony of out-of-court identification.

10 THE COURT: Mr. Osborne.

11 MR. OSBORNE: Your Honor, while it's true that
12 show-ups are suggestive just by their nature, as long as we
13 show that there's no substantial likelihood of
14 misidentification, then the ID is generally allowed. It's a
15 totality of circumstances test. The witness's opportunity to
16 view the subject.

17 Detective Feeters testified that while Mr. Duvall
18 knocked on the door, he had plenty of time to see the
19 subject, the witness's degree of attention. He looked at
20 him; he made eye contact with him. He was able to describe
21 his clothing, gave a pretty good description too, hooded
22 sweatshirt, white emblem, shiny shoes. When Mr. Champaigne
23 was apprehended, he matched that description, and then the
24 witness's level of certainty at the identification, and he
25 gave a 10 out of 10 of his certainty.

1 THE COURT: The linchpin on this is concerning
2 reliability and there's a number of factors. The amount of
3 time, I don't think an hour and a half is excessive. He was
4 very certain as to what he saw. He had an opportunity prior
5 to the lineup to see the people, and I'm going to allow the
6 testimony.

7 So I'm going to respectfully deny your motion.
8 Thank you.

9 Anything else?

10 MR. OSBORNE: No, Your Honor.

11 THE COURT: Okay. Anything before we bring our jury
12 in?

13 MR. OSBORNE: One matter. If we are running right
14 into openings, I have a few photographs I want to show in my
15 opening in a PowerPoint. I presented them both to Mr. Smiley
16 and Mr. Bradley, and they don't have any objection.

17 THE COURT: No objection on those photographs?

18 MR. SMILEY: No, Your Honor, not as to Mr. Lemon.

19 (Pause in proceedings.)

20 MR. OSBORNE: Your Honor, is there any objection to
21 having Detective Feeters hang out in the courtroom and watch
22 the rest of the trial?

23 THE COURT: No motion has been made to have
24 witnesses sequestered, so --

25 MR. SMILEY: I haven't made a motion to sequester.

1 THE COURT: And you are not making a motion?

2 MR. BRADLEY: No, sir, Your Honor.

3 THE COURT: He can stay if he wants to.

4 (Whereupon, the jury returns to open court at
5 2:51 p.m.)

6 THE COURT: Mr. Bailey, you have accepted the
7 position of being foreperson of this jury, is that a fact?

8 THE FOREPERSON: Yes, Your Honor.

9 THE COURT: Will you please swear our jury.

10 (Whereupon, the jury is sworn.)

11 THE CLERK: Please let the record reflect that all
12 14 jurors took their seat.

13 THE COURT: Thank you.

14 Ladies and gentlemen, I hate that you have to have a
15 trial on the first nice day we've had in a long time, but I
16 hope you are ready to enjoy it for just a few minutes at
17 least this afternoon.

18 Ladies and gentlemen, before we begin this trial, I
19 want to tell you that this trial will probably be different
20 from what you might expect. You know, most people never have
21 an opportunity to attend and participate in an actual trial
22 as y'all are today, and you may think from watching TV,
23 movies, or reading in books, that trials are always full of
24 high drama, riveting circumstances, and intense action.

25 Well, while these things might be true at times,

1 this trial is not for entertainment. This is a real trial,
2 which is a fundamental part of our democracy, and it's a
3 search for the truth to ensure that justice is done. And
4 searching for the truth and ensuring that justice is done is
5 often slow, deliberate, and repetitive, the exact opposite of
6 what you may have seen on TV, movies, or read in books.

7 Ladies and gentlemen, this courtroom is a place of
8 honor that is dedicated to the protection and the
9 preservation of our citizens' rights to what has been called
10 and what I truly believe to be the greatest justice system
11 ever created.

12 The attorneys who are appearing before you are
13 advocates for the parties that they represent; but first and
14 foremost, they are officers of this court who are sworn to
15 uphold the integrity and the fairness of our judicial system
16 and to help you in your search for the truth. Ladies and
17 gentlemen, you should expect them to be professional,
18 competent, and ethical in the representation of their
19 clients' interests.

20 And remember, ladies and gentlemen, you also just
21 took an oath to listen to the evidence in this case and reach
22 a fair and just verdict, and you are expected to be
23 professional, reasonable, and ethical as well. And again,
24 thank you for accepting this very important responsibility of
25 jury duty.

1 Now, ladies and gentlemen, what I'm going to tell
2 you now is just intended as the -- to serve as an
3 introduction of the trial of this case. These remarks are
4 not a charge on the law. I will charge you the law that is
5 applicable to this case at the end of the trial, and this is
6 merely an explanation of the procedures that we will follow
7 during this trial so you may better understand what might be
8 happening.

9 Now, ladies and gentlemen, let me say up front that
10 you will not be allowed to take notes during this trial.
11 Therefore, it's very important that you listen closely
12 throughout this trial.

13 Now, ladies and gentlemen, the defendants are
14 charged by indictments filed with this Court with burglary in
15 the first degree. Then the specific elements of these
16 charges will be explained to you later.

17 But, again, I'm going to remind you, like I did when
18 we had all your other jurors there, that the indictment that
19 charges the defendant is only the document by which this case
20 is brought into court, and is in no way evidence of any of
21 the allegations contained therein.

22 The defendants have pled not guilty, so the State
23 therefore has the burden of proving each and every allegation
24 of the charges beyond a reasonable doubt. And it will be
25 your duty, ladies and gentlemen, to determine whether the

1 State has met that burden.

2 Now, ladies and gentlemen, your purpose as jurors is
3 to determine the facts in this case. You are to determine
4 the facts from the testimony that you hear from the witness
5 stand and any other evidence that is admitted in this case,
6 and any inferences which you may feel are probably drawn from
7 the evidence.

8 Ladies and gentlemen, it's especially important that
9 you perform your duty diligently and conscientiously, because
10 ordinarily, there is no way to correct an erroneous
11 determination of facts by a jury.

12 Now, on the other hand, and with equal emphasis, the
13 same law that makes you the judges of the facts makes me the
14 judge of the law. And the law as given to you by me is the
15 only law that you may consider. You must accept the law as I
16 give it to you and apply it --

17 Whose phone is that going off? Bailiffs will take
18 the phone.

19 And you must follow it, even though you might
20 disagree.

21 And I will make an agreement with you. I won't tell
22 you what the facts are and you cannot disagree with me about
23 what the law is or what the law ought to be. Your job as
24 jurors is to take the law as I give it to you and apply it to
25 the facts as you find them, again, from the testimony and the

1 other evidence that is presented. And after hearing that
2 evidence, you will deliberate and render a just verdict under
3 the solemn oath that you just took as jurors.

4 Now, ladies and gentlemen, until I tell you --
5 advise you to begin your deliberations at the conclusion of
6 this case, you must not discuss the case with anyone else, to
7 include your fellow jurors.

8 You may not use a computer, a cellular phone, or
9 other electronic device with communications capabilities
10 while in attendance at court or during your deliberations.
11 Now, these devices may be used when you break for lunch or
12 something like that, or when you go home for the evening, but
13 even then, they cannot be used to disclose any information
14 about the case when you are not in court.

15 And information about the case would include but
16 certainly would not be limited to any information about a
17 party, a witness, an attorney, or a court officer; any news
18 accounts about the case or any information collected through
19 juror research on any topic raised or testimony presented by
20 any witness, or any other information collected through juror
21 research that you think might be helpful in deciding this
22 case.

23 Ladies and gentlemen, after the case is submitted to
24 you, you must discuss it only in the jury room with your
25 fellow jurors. The attorneys and the parties in this case

1 are advised that they are not to talk to you at all. So if
2 you see one of them around this small courthouse square and
3 they don't even say hello, well, they are not being
4 unfriendly; they are just following my instructions.

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

10 Now, ladies and gentlemen, it's your solemn
11 responsibility to determine the guilt or innocence of the
12 defendants, and your verdict must be based solely on the
13 evidence as it is presented in this courtroom and on the law
14 as I give it to you.

15 Now, in just a moment, the solicitor will make what
16 is called an opening statement in which he will explain to
17 you what he believes the issues are in this matter. The
18 attorneys for the defendants may also make a closing
19 argument, although they are not required to do so. But let
20 me remind you, what the attorneys tell you during their
21 opening statement is not evidence in this case. It's only
22 their contention as to what they believe the evidence will
23 show.

24 Now, from time to time during this trial, you may
25 hear one of the attorneys say something like, "Your Honor, I

1 believe we have a matter or a question of law to speak with
2 you about," or, "Your Honor, may we approach the bench," or
3 sometimes I might find it necessary to excuse you from the
4 courtroom for a short time so the attorneys and I can discuss
5 a matter of law.

6 Now, the reason for this is, as I said, since you
7 are the judges of the facts, and sometimes when I'm
8 discussing matters of law with the attorneys, it might be
9 necessary for me to make some comment on the facts as to
10 whether a particular law applies or not. And as I've said,
11 I'm not supposed to tell you what the facts are, so I will
12 excuse you from the courtroom while these discussions take
13 place so that you will in no way be influenced by anything
14 that I might say or do in connection with the facts.

15 Also during the trial, ladies and gentlemen, you
16 might hear one of the attorneys make an objection to certain
17 testimony or evidence that is about to be presented. Whether
18 I sustain, which would be to grant the objection, or
19 overrule, which would be to deny the objection, should not be
20 construed that I favor one side over the other. I do not.
21 Nor should you infer that the objecting party is trying to
22 hide something from you.

23 Now, ladies and gentlemen, in this court, as in all
24 situations in life, there are specific rules that must be
25 followed, and the attorneys, as officers of the court, are

1 merely trying to follow the rules of evidence in this court
2 in making their objections, and I am only ruling based upon
3 what I believe the law of this state to be concerning the
4 evidence that is about to be presented.

5 Now, ladies and gentlemen, in determining what the
6 true facts are in this case, you must decide whether or not
7 the testimony of a witness is believable. It will be my
8 responsibility to rule, as a matter of law, as to whether
9 certain testimony is admissible, but once I rule that it is
10 admissible, whether or not you decide to believe it is
11 entirely up to you.

12 In determining whether to believe a witness, you
13 have a right to consider the interests of any witness, the
14 bias of any witness, the prejudice of any witness, and the
15 opportunity for the witness to have actually observed the
16 matters and things about which the witness might testify.

17 Now, ladies and gentlemen -- and you can also
18 consider how the witness acts on the witness stand.

19 Now, ladies and gentlemen, you have a right to
20 consider anything that is in the record that will help you
21 evaluate the testimony of a witness, and that means it's your
22 responsibility and duty to pay close attention to the
23 witnesses, to observe the witnesses, to listen to the
24 witnesses, and to pay close attention to the attorneys and to
25 the Court.

1 Ladies and gentlemen, please do not let your
2 thoughts wander, but give strict attention to the testimony
3 in this case, so at the end of all of the testimony, after
4 argument of counsel and the charge on the law by me, you will
5 then be in a position to determine what the facts are and to
6 apply the law to those facts and thus render a just verdict.

7 Now, Mr. Foreman, in addition, it will be your duty
8 to preside over the jury room and be the jury spokesperson
9 here in court. And it will also be your responsibility to
10 write down the verdict, but I will give you more instructions
11 on that at the appropriate time.

12 Now, in order to preserve everyone's rights, I will
13 give the parties an opportunity to object to anything that
14 I've stated.

15 Does the State have any objection to anything I've
16 stated?

17 MR. OSBORNE: No, Your Honor.

18 THE COURT: Mr. Bradley, any objection?

19 MR. BRADLEY: No objection, Your Honor.

20 THE COURT: Mr. Smiley?

21 MR. SMILEY: No objection.

22 THE COURT: Thank you.

23 All right. Ladies and gentlemen, we will now begin
24 the trial of this case.

25 Mr. Solicitor.

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

3 THE COURT: Yes, sir.

4 MR. OSBORNE: It's the night of October the 23rd,
5 2013, just a few short days from Halloween. A schoolteacher
6 is home alone in her apartment where she lives, working on
7 her lesson plans. She hears a knock at the door. She goes
8 to the door, looks through the peephole, sees an individual
9 wearing a hooded sweatshirt. She doesn't recognize him. She
10 goes back to her lesson plans and hopes he leaves.

11 She feels at ease when she hears a person walking
12 down the steps to the front of her building and away from her
13 building. But seconds later, she hears a mild banging on her
14 front door. She hurries, goes to the peephole, looks again.
15 She sees the same hooded subject, but this time he has his
16 back turned to the front door and is mule-kicking at the
17 door, hard.

18 She runs to grab her phone. She calls 911. Then
19 she hears the sound of breaking glass coming from her front
20 window. The next 11 minutes would be her nightmare.

21 She runs to her closet, still on the phone with 911,
22 closes the door. She looks through the slits in the closet
23 door. She sees one intruder come into her apartment, walk
24 around, open the door, then a second intruder comes in, maybe
25 a third.

1 One of the intruders then goes into the kitchen. A
2 second goes into the bedroom where she's located, opens the
3 door. Goes into her bedroom. Comes to the closet door,
4 opens the closet door, comes into the closet where she's at.
5 She's still on the phone with 911 holding her breath.

6 The intruder then pulls out the drawers, rummages
7 through some things, at one point even brushes up against her
8 and steps on her foot. Luckily, he doesn't catch her. He
9 doesn't know that she's there.

10 Now, this might sound like a nightmare to you, might
11 sound like a horror story, but it's not. This really
12 happened.

13 This is the victim's apartment. This is where the
14 schoolteacher lived. This is in Westchase, in West Ashley,
15 right up 61 where the 526 overpass is. This is the front
16 door to her apartment. This is the window that they broke,
17 unlatched the latch, and then went in. Here's the closet
18 where the schoolteacher was hiding. There's the drawers that
19 they went through.

20 Ladies and gentlemen, this young lady seated right
21 here in the front steps here, or the front seat, that's
22 Sabrina Polite. She's the schoolteacher in this case.

23 There were two defendants apprehended. This is one
24 of them right here, Antwain Champaigne. There are two
25 defendants in this case. The other individual is Ishmel

1 Lemon. Because of the quick action of this officer, Officer
2 Casey Havers, and other officers with CPD, they were both
3 apprehended and arrested that night.

4 Now, when Sabrina was on the call, on the 911 call,
5 Officer Havers and Officer Briggs and Officer Moroney were
6 just a couple miles away, so they were pretty quick to arrive
7 on the scene.

8 Officer Briggs was the first to arrive. He observed
9 an individual walking away from the victim's apartment. That
10 individual is Jordan Brown. He detained Jordan Brown.

11 Officer Havers arrives next, with Officer Moroney
12 right behind him. As Officer Havers is walking towards the
13 victim's apartment, he sees Antwain Champaigne and Ishmel
14 Lemon coming out of the victims's apartment. They give
15 chase.

16 Let me back up. When they come out of the
17 apartment, they came down these steps right here, they jumped
18 over that first landing right there, then went around the
19 left of the building. Officers then gave chase.

20 This is an overhead of Westchase. You are going to
21 hear testimony, the evidence is going to show, that both of
22 the officers chased these individuals and they were both
23 apprehended within close distance.

24 One of the individuals, Ishmel Lemon, was
25 apprehended right there at the top of that picture. That's a

1 dumpster. The second individual, Antwain Champaigne, he was
2 apprehended over there by the water.

3 Now, after they arrested both of these individuals,
4 they went back to check on Sabrina and when they got back,
5 they observed this. That's a handgun. This is the steps
6 right there that they jumped off, these are the bushes, this
7 is the area that they went around to the left of the
8 building. The handgun is right there by the path.

9 Now, while the officers were still on scene, they
10 were approached by an individual named Timothy Duvall.
11 Timothy also lives in Westchase. Timothy is going to testify
12 that just prior to the burglary, he's going to go check on
13 his sister. His sister lives in the building right next to
14 the victim. He sees two individuals. They are talking.
15 They see Timothy. They think he's a police officer because
16 he's wearing a leather jacket with some sort of emblem on it.
17 Timothy then sees an individual with a hooded sweatshirt
18 throw down a pistol.

19 When these two individuals are detained, they come
20 back and do a show-up ID, and he identifies Antwain
21 Champaigne as the individual with the pistol.

22 Timothy also hears them say something that's very
23 important. He hears one of them say, "Hold on. Maybe we
24 should wait until she comes out."

25 Now, the judge is going to instruct you on the law,

1 so if I say anything different than what the judge says, you
2 go with what the judge says. But I do want to go over some
3 points that I think we need to prove in order for you to
4 convict them of burglary in the first degree.

5 First, that the defendants entered a dwelling with
6 the intent to commit a crime, and when entering or fleeing,
7 the defendants were armed with a deadly weapon; the
8 defendants entered the dwelling at nighttime. These last two
9 are either/or. I think when you hear the evidence, you are
10 going to be convinced we proved both of them.

11 These two defendants broke into Sabrina's apartment
12 that night. They were armed. They didn't have consent.
13 They were intending to commit a crime when they got in there.
14 I'm confident after hearing all of the evidence you will be
15 convinced of that fact and you will find them both guilty of
16 burglary in the first degree.

17 Thank you.

18 THE COURT: Thank you, Mr. Osborne.

19 Mr. Bradley.

20 MR. BRADLEY: Thank you, Your Honor. If it please
21 the Court.

22 Ladies and gentlemen of the jury, I've introduced
23 myself earlier as attorney Willie Bradley. I represent
24 Mr. Champaigne, one of the defendants alleged to have broken
25 into the apartment that the prosecutor and the solicitor just

1 showed you.

2 The prosecutor is actually right. This was a
3 horrendous crime. Someone went into the young lady's
4 apartment. The prosecutor didn't bring up all the facts.
5 The prosecutor didn't tell you everything.

6 The prosecutor didn't tell you that there are
7 witnesses who he's going to present that are going to
8 conflict each other's story. One is going to tell you one
9 thing; one is going to tell you there were two or three
10 people that entered the apartment; one is going to tell you
11 maybe there were four people in the apartment.

12 The prosecutor also didn't tell you that they saw
13 that there were other possible people that they thought may
14 have gone in, but they took up residence, they went by the
15 little apartments and they stood by those apartments because
16 they thought maybe that some of those people were fleeing,
17 went inside those apartments.

18 The prosecutor also didn't tell you that the
19 crime -- the defendants were driving one vehicle, but that
20 they suspected there was another vehicle, a Saturn, that
21 could have possibly been used by the suspects who actually
22 went in.

23 One thing the prosecutor also didn't tell you, and
24 the judge will instruct you on at the end of this, is if you
25 are at a crime scene, if you are standing outside where a

1 crime is committed, that does not mean you actually committed
2 the crime. The prosecutor would have you believe that
3 because these young men ran away when the policeman came,
4 that they actually committed the crime. That's not enough.
5 That's not enough.

6 There isn't going to be one witness that the
7 prosecutor will put on the stand that will say, "These
8 guys, we saw these guys go into that house. This guy,
9 Mr. Champaigne, went into that house." There's not one
10 witness that's going to tell you that.

11 They are going to tell you everything surrounding
12 that. They are going to tell you they were standing outside.
13 They are going to tell you they were downstairs. They may
14 even mention something to you about they may have been
15 smoking marijuana at the time, which I would allege to you is
16 a reason to run when a policeman comes, anyway. That's
17 normal. I've certainly heard that before.

18 They also didn't tell you that, from what I
19 understand, these young men who went into the house with the
20 intent to commit a crime, I don't think anything was stolen
21 out of the residence.

22 There's a lot more to this case than what the
23 prosecutor just told you. The prosecutor would have you
24 believe that because these young men were standing outside
25 when the policeman came up, and when another man came up, a

1 witness, Mr. Duvall, came up and saw them outside, that that
2 means that they committed the crime.

3 I would suggest to you to listen to the evidence. I
4 would suggest that you look at the witnesses. I would
5 suggest that you listen to the witness's story. I would
6 suggest that you choose whether or not the witnesses are
7 testifying honestly, whether or not these witnesses have, you
8 know, some sort of a reason to be telling an untruth.

9 The prosecutor also didn't tell you that one of
10 their witnesses was alleged to have been included in the
11 crime as well. I didn't hear that come out. I didn't hear
12 him say one time that there was a third guy who they want to
13 put on the stand who is going to tell you probably two or
14 three different stories as to what may have happened in that.

15 But what I do tell you, what I do say to you, is we
16 trust that y'all will listen to the evidence, that y'all are
17 smart enough to be able to draw your conclusion as to whether
18 or not they have proven their case.

19 At the end, the judge will instruct you on what is
20 called reasonable doubt. Reasonable doubt is a high hurdle
21 to reach. It doesn't mean I think he's probably guilty. It
22 doesn't mean he may have done it. It means that there is no
23 doubt, no doubt, that Mr. Champaigne went into that house
24 that night with the intent to cause a crime.

25 I would submit to you that that is not what the

1 prosecutor is going to be able to prove. I just ask that you
2 do your duty as jurors, and I thank you for your time.

3 Thank you, Your Honor.

4 THE COURT: Mr. Smiley.

5 MR. SMILEY: If it please the Court.

6 It's sort of interesting. This is the case of State
7 of South Carolina vs. Antwain Champaigne and the State of
8 South Carolina vs. Ishmel Lemon, and I represent Ishmel.
9 These are two separate trials going on at the same time.
10 They have to prove their case against Mr. Champaigne and
11 independently prove a case against Ishmel Lemon.

12 There are three defendants in this case, not two,
13 the evidence will show, and we are doing to hear from one of
14 them today.

15 I'm going to ask you to keep an open mind in this
16 case. It's real easy to jump to the conclusion he must be
17 guilty. I'm going to ask you to keep an open mind until
18 everything is in, and sit back in your jury room and talk
19 about it and say what do we know, not what we guess.

20 This isn't a guessing game. This is a knowing game.
21 It's what do we know happened? What was proved in this
22 court? What dots are they asking us to connect?

23 Sort of the way I think of it is, we start off with
24 two blank canvases: Above one it says State vs. Antwain
25 Champaigne, and over here we've got one that says the State

1 vs. Ishmel Lemon, and they are blank. It's the State's job
2 to paint those canvases so at the end of it you look at it
3 and go: I know beyond a reasonable doubt what that is. You
4 look at it and you go: I'm not sure, or it might be that,
5 you know what your verdict is going to be.

6 At the end of this, the evidence, you are going to
7 realize -- terrible crime, but you can't convict Ishmel Lemon
8 based on the evidence because he didn't do it.

9 I ask you to keep an open mind, look at what's said
10 and not said, what physical evidence is presented and what
11 physical evidence is not presented. And to look at bias.
12 Everybody has a bias. But does it affect their testimony
13 here today and tomorrow.

14 Thank you.

15 THE COURT: Thank you. The State may call its first
16 witness.

17 MR. OSBORNE: The State calls Timothy Duvall.

18 TIMOTHY DUVALL,

19 having been duly sworn, testifies as follows:

20 THE CLERK: State your full name and then spell your
21 last name.

22 THE WITNESS: My name is Timothy Duvall,
23 D-u-v-a-l-l.

24 THE COURT: You may proceed.

25 MR. OSBORNE: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. OSBORNE:

3 Q. Mr. Duvall, let's just tell the jury a little bit
4 about yourself.

5 Are you married?

6 A. I'm separated.

7 Q. Do you have any children?

8 A. I've got seven in all.

9 Q. Where were you born?

10 A. I was born in Kentucky.

11 Q. And where do you live now?

12 A. I'm staying in North Carolina.

13 Q. What type of work do you do?

14 A. I'm disabled.

15 Q. And prior to that, what kind of work did you do?

16 A. I was an engineer for Daufuskie Island Golf Resort.

17 Q. Back on October the 23rd of 2013, where did you
18 live?

19 A. At [REDACTED] Westchase Drive in West Ashley.

20 Q. At that time, did you have a sister that also lived
21 in Westchase?

22 A. Yes, sir. She lived in the adjacent building. I
23 think it was [REDACTED] or [REDACTED].

24 Q. What was her name?

25 A. Vicky Tully (ph).

1 Q. On the night of October the 23rd of 2013, did you
2 have the occasion to walk over to her apartment?

3 A. Yes, sir, I did. I was returning some keys to her.

4 MR. OSBORNE: Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. OSBORNE:

7 Q. I'm showing you what's been marked as State's
8 Exhibit 1. Do you recognize that?

9 A. Yes, I do. It's an aerial view of the apartment
10 complex.

11 MR. OSBORNE: Your Honor, the State would request
12 State's 1 be moved into evidence.

13 THE COURT: Any objection?

14 MR. BRADLEY: No objection.

15 THE COURT: Without objection, State's Exhibit 1 is
16 admitted.

17 (State's Exhibit No. 1, Aerial view of apartment
18 complex, is moved into evidence.)

19 BY MR. OSBORNE:

20 Q. Mr. Duvall, on there can you point out which
21 apartment building you lived in?

22 A. I lived in this one here.

23 Q. Okay. And where was your sister living at that
24 time?

25 A. She lived on this one here.

1 Q. So on that night, when you walked over to your
2 sister's apartment, just walk us through what you saw, what
3 you heard, and what you did.

4 A. Okay. I left the apartment here and came this route
5 to my sister's.

6 And when I got right here, I walked up on two males
7 and they was -- what I'm familiar with the smell -- they was
8 engaged in smoking some marijuana. Upon me walking up on
9 them, I startled them. I had just gotten off my motorcycle
10 earlier that evening. I had a leather jacket on. I was a
11 firefighter for 10 years, and the badge, I believe they
12 thought I was the police.

13 And at that time I witnessed them fumbling with a
14 gun, trying to pass it back and forth to each other, and they
15 put it in the bushes where they was standing.

16 Q. You say you saw two individuals?

17 A. Yes, sir.

18 Q. Did they say anything at first when they saw you
19 wearing this outfit with the patch?

20 A. At first, I'm pretty sure they thought I was the
21 police. And then as I walked up on them, I proceeded from
22 that point to my sister's apartment, and I was knocking on
23 the door, but I didn't get no answer at that time.

24 Q. All right. You said that they were -- seemed like
25 they were passing a gun back and forth. Just so we can

1 understand and distinguish one subject from another, what
2 were they wearing?

3 A. Both of them was in dark clothing. One of them was
4 taller than the other one. He had a hoody on, and the hoody
5 was open with a white logo in the front. And he had some
6 shoes like I've never seen before. It was chrome-looking
7 Jordan tennis shoes.

8 Q. When you first saw the gun, was the individual
9 wearing the sweatshirt, did he have the gun, or did the other
10 individual have the gun?

11 A. The other individual, he pulled it out and tried to
12 pass it off to him. He said he didn't want it, tried to give
13 it back to him, and then he just dumped it in the bushes.

14 Q. So the second individual had the gun first? That's
15 what you saw?

16 A. Yes, sir.

17 Q. And it looked like he tried to hand it to the
18 individual with the hooded sweatshirt; is that what you said?

19 A. Well, the one with the hooded sweatshirt was the one
20 that pulled it out of his waistband.

21 Q. Okay. Did they both, at one point or another,
22 handle the gun?

23 A. No. He went to give it to him and he pushed him
24 away, and he just hid it.

25 Q. So the second individual didn't want the gun?

1 A. Right.

2 Q. And then it ends up in the bushes?

3 A. Right.

4 Q. All right. The individual that was wearing the
5 hooded sweatshirt, did he have the hood -- how did he have
6 the hood?

7 A. It was loose on the back of his head. It wasn't
8 fully forward, it was more to the back, and it was opened up
9 in the front.

10 Q. Was it pulled up over tight --

11 A. No.

12 Q. -- on his head, cinched tight, where you could
13 barely see his face?

14 A. No. His face was in perfect view.

15 Q. Did you have a good opportunity to see his face?

16 A. Yes, somewhat. Yes, sir.

17 Q. And how far were you when you were viewing him?

18 A. From me to you.

19 Q. Was there any light in the area?

20 A. It was dim. That area there is kind of dark.

21 Q. Okay.

22 A. But it wasn't pitch-black dark.

23 Q. Okay. Now, you say that you went -- did you go to
24 your sister's apartment?

25 A. Yeah. I knocked on the door and stood there for

1 like five minutes and overheard them behind me. We were
2 close enough to where I could overhear them talking.

3 And what I heard was, "As soon as she comes out, we
4 are going to go in."

5 Q. I'm sorry. Say it one more time?

6 A. He said, "As soon as she comes out, we are going to
7 go in."

8 At that time I assumed they may have been --

9 MR. SMILEY: Objection, Your Honor. Requires
10 speculation.

11 THE COURT: Sustained. Rephrase your question.

12 BY MR. OSBORNE:

13 Q. Mr. Duvall, just tell us what you saw, what you
14 heard. Okay?

15 A. Okay.

16 Q. Now, could you tell which one of those two
17 individuals made that comment?

18 A. No, sir.

19 Q. All right. So knocking at the door; I take it your
20 sister doesn't come to the door?

21 A. No, sir.

22 Q. So then what happens?

23 A. Then I turn around and I leave and I walk back
24 towards where I was living, looking over my shoulder just to
25 be sure and aware of the area.

1 Q. When you walked away, were the two individuals in
2 the same spot or did they move?

3 A. They were there, and then they walked off as I
4 looked back.

5 Q. Okay. Do me this favor. Put an "X" where you first
6 saw them, and then draw a line like you did before and point
7 out where they left, as you were walking away, where they
8 went.

9 A. This is where I saw them. And as I left, I walked
10 in this direction, and they proceeded around this way.

11 Q. Okay. Now, you said you went back to your
12 apartment?

13 A. Yes.

14 Q. Then what happened?

15 A. And I had went to get cigarettes from the gas
16 station, and as I returned to the complex, the police were
17 behind me and they blocked off the entrance. And once I got
18 into the apartment complex, I parked my motorcycle here, and
19 here come one guy running this way, and the other one ran
20 this way. And he went over to this area and here come two
21 police officers directly behind me.

22 And as I was getting off my bike in this area, I
23 told them, "Someone just now ran towards the dumpster." And
24 they apprehended one of the guys there.

25 Q. Okay. Did you tell the police what you saw -- not

1 just this, but earlier with the gun and all that?

2 A. Yes. Later on, approximately 15, 20 minutes later,
3 I went out to -- from here, I went back to my bike, and I
4 went to put the motorcycle cover on it, and they approached
5 me and asked me, you know, had I seen anything.

6 And then I proceeded to tell them what I told you
7 earlier.

8 Q. Okay. Now, did they take you at any point and have
9 you do what they call a show-up, where you could look at
10 these two individuals?

11 A. Yes, sir. They asked me to go back to where I first
12 seen them, which is where this "X" is at, and then we walked
13 from there over here, and they had one of them in a patrol
14 car here. And I was standing across from it here.

15 And he shined the spotlight on him and asked me
16 could I identify that particular person. And I did by the
17 clothing that they was wearing from that distance.

18 Q. You identified one or two?

19 A. One of them.

20 Q. Okay. You identified which one?

21 A. The one with the chrome-looking shoes and the
22 sweatshirt with the logo on the shirt and all.

23 Q. Now, did you identify him based on his clothing or
24 did you identify him based on his face or a combination of
25 both?

1 A. At that moment, it was just from the clothing,
2 because of the distance. And then from that point, it moved
3 to over here, and the officers had came through this way with
4 another guy, put him in a patrol car here, and asked me to
5 observe him. But I honestly couldn't give them anything
6 there, because I never made eye contact with him. I just
7 didn't know who he was.

8 Q. Okay. I'm going to show you first what was marked
9 as State's Exhibit 15. Can you open that bag?

10 MR. OSBORNE: This is for ID purposes only.

11 THE COURT: All right.

12 BY MR. OSBORNE:

13 Q. Can you take a look at it and see if you recognize
14 it?

15 A. Yeah.

16 Q. What is it?

17 A. Chrome-looking shoes that I seen on the guy that
18 night.

19 Q. Okay.

20 A. They stuck out real good.

21 Q. I'm showing you now what's been marked as State's
22 Exhibit 14, again, for ID purposes only.

23 A. Yep, this would be the hoody that I observed with
24 the logo on the front.

25 Q. Okay. Mr. Duvall, I know it's been almost two

1 years.

2 Do you see the individual in the courtroom here that
3 you identified?

4 A. Honestly, I can't tell. My eyes aren't as good as
5 they were then. But, no, sir, I really don't.

6 MR. OSBORNE: It's no problem.

7 No further questions.

8 THE COURT: Mr. Bradley.

9 MR. BRADLEY: Thank you, Your Honor. May it please
10 the Court.

11 THE COURT: Yes.

12 CROSS-EXAMINATION

13 BY MR. BRADLEY:

14 Q. Mr. Duvall, do you remember giving a statement to
15 the police at the time you witnessed what you said you saw?

16 A. Yes, sir.

17 Q. Do you remember what you said in that statement?

18 A. It's been a little over a year. I don't remember
19 word for word, but bits and pieces.

20 Q. Okay. You recall earlier, you just testified that
21 there were two gentlemen; and what did you tell the Court
22 they were doing?

23 A. They was smoking marijuana.

24 Q. They were smoking marijuana.

25 And you are sure it was only two individuals? It

1 was not three; is that correct?

2 A. That's all that I observed, was two at that point.

3 Q. Okay. Did you have your glasses on at that time?

4 A. No, sir. I didn't need them at that time.

5 Q. You didn't need glasses at that time.

6 Did you have a prescription for glasses at the time?

7 A. No, sir. These are just reading glasses.

8 Q. Did you see any of those young men go into an
9 apartment?

10 A. I did not observe that, no, sir.

11 Q. Did you observe any of these young men come out of
12 an apartment?

13 A. I seen them come from the building, but not out of
14 the apartment.

15 Q. And you just told the prosecutor that you cannot
16 identify any of those young men at this time; is that
17 correct?

18 A. That's correct.

19 Q. And everything you've told this Court so far has
20 been truthful; is that correct?

21 A. Yes, sir.

22 Q. You had any run-ins with the law yourself, sir?

23 MR. OSBORNE: Objection, Your Honor.

24 THE COURT: Sustained. He's just a fact witness.

25 BY MR. BRADLEY:

1 Q. You just made a pretty distinct -- you were pretty
2 certain that what you saw on that shirt was the logo that you
3 saw that night; is that correct?

4 A. Yes, sir.

5 Q. And how far of a distance were you from the young
6 man?

7 A. From me to you.

8 Q. From me to you. You could see the logo on that
9 shirt clearly, but you couldn't identify the face; is that
10 correct?

11 A. That's correct.

12 Q. What did you do between the hour and a half that you
13 left and you came back to the scene?

14 A. I went back to my apartment and then went to the gas
15 station, got a few things at the gas station, and then
16 proceeded back to the apartment.

17 Q. Do you mind if I ask you what you bought at the gas
18 station?

19 A. Cigarettes, a couple of lottery tickets, and a soda
20 and a candy bar.

21 Q. Did you have anything to drink that night?

22 A. No, sir.

23 Q. You said you'd never seen shiny shoes like that
24 before; is that correct?

25 A. That's correct.

1 Q. Okay. Did you ever see the shirt with the logo like
2 that on before?

3 A. I've seen that particular logo, but I didn't see the
4 wording until now. I wasn't close enough to read the
5 wording, but I have seen that logo before.

6 Q. You said you could not read the logo. You weren't
7 close enough to read the logo at that time; is that what
8 you've just testified to?

9 A. Not that small lettering that was on it.

10 Q. Once the policeman asked you to identify the
11 suspects, were they already in handcuffs?

12 A. Yes, sir.

13 Q. Were they standing near police cars?

14 A. Yes, sir.

15 Q. How far were you away at that time?

16 A. From approximately here to the courtroom doors.

17 Q. You identified suspects from here to the courtroom
18 door at that particular time?

19 A. One suspect.

20 Q. One suspect at that time.

21 A. Yes, sir.

22 Q. You were only asked to identify one?

23 A. Well, I was asked to identify that particular one
24 due to the clothing that I described that I seen on him.

25 Q. Okay. Did you ever tell the police that you

1 identified one of the suspects by face?

2 A. Yes, sir.

3 Q. You did? Do you remember which one you identified
4 by face?

5 A. The first one with the clothing.

6 Q. That's the same one with the clothing.

7 So you actually identified him by face?

8 A. Right.

9 Q. Okay. And, again, besides smoking the marijuana,
10 you didn't see either of those suspects commit any crime that
11 night, did you?

12 A. No, sir.

13 Q. What you saw was them standing around, smoking
14 marijuana; is that correct?

15 A. Standing there, smoking marijuana, and then the one
16 pulled a gun out, I believe, in fear that I was the police,
17 and he tried to pass it off to the other one, and it ended up
18 getting put in the bushes.

19 Q. Which one pulled the gun out?

20 A. The one day that had the hoody on, with the bright,
21 shiny shoes.

22 Q. With the bright, shiny shoes.

23 And they put the guns in the bushes; is that right?

24 A. Sat it on top of the shrubs.

25 Q. You saw all this from a pretty close distance; is

1 that correct?

2 A. From me to you.

3 Q. Okay. If they thought you were a policeman, why
4 would they pull out a gun at that time?

5 A. To hide it.

6 Q. To hide the gun while you were looking at them?

7 A. Well, I don't think they could tell that I could see
8 them that good, because where I was at was a very dark area,
9 and I was just coming into a lit area where they were
10 standing.

11 Q. Okay. What type of disabilities do you have right
12 now?

13 A. I've got --

14 MR. OSBORNE: Objection, Your Honor. Relevance.

15 THE COURT: He can testify to it. Overruled.

16 Go ahead.

17 THE WITNESS: I have a spinal problem. I've got an
18 L4 and L5 fused together with rods and screws, and a rebuilt
19 vertebrae with my hip bone.

20 MR. BRADLEY: Sorry to hear that.

21 BY MR. BRADLEY:

22 Q. Why were you turning in the keys to your sister that
23 night?

24 A. She had left them -- it was her mailbox key. She
25 had left them at my mom's, because usually when she checks

1 her mail, she will check my mom's.

2 Q. Okay.

3 A. And she had just left her keys to the mailbox over
4 there.

5 Q. Do you remember saying anything to those two
6 suspects that you saw that night -- to the two men you saw?

7 A. I told them I was startled. I said, "I think I
8 startled y'all as much as y'all startled me."

9 Q. That's all you remember saying to them?

10 A. Yes, sir.

11 Q. Okay. Do you remember giving a statement to the
12 police where you told them that "I am not a police officer"?

13 A. Yes, sir, somewhat.

14 Q. You do now?

15 A. Yes, sir.

16 Q. So you told them you were not the police?

17 A. I said, "I'm not the police, if that's what you are
18 worried about."

19 Q. Were they -- and did they seem to be worried about
20 the fact that they were smoking marijuana?

21 A. No, not particularly. I think the gun was what they
22 was worried about.

23 Q. But the gun didn't come out until after you walked
24 up on them; is that correct?

25 A. Right.

1 Q. And just one more time for the Court: You did not
2 see any of them commit any crime, any burglary, that night;
3 is that correct?

4 A. No, sir, I did not.

5 MR. BRADLEY: No further questions at this time.
6 Thank you.

7 THE COURT: Mr. Smiley.

8 CROSS-EXAMINATION

9 BY MR. SMILEY:

10 Q. My name is Jim Smiley, and I represent Ishmel Lemon.
11 How are you?

12 A. I'm fine. Thank you.

13 Q. I've just got a few questions.

14 You were asked to do two identifications that night?

15 A. Right.

16 Q. Right. Unbeknownst to you, they didn't ask you for
17 four? They didn't ask you to do four that night, just two?

18 A. Right.

19 Q. And only on one of those did you say, "That's the
20 fellow that was standing outside, smoking marijuana."

21 A. Right.

22 Q. All right. You weren't saying, "That's the guy that
23 committed any kind of burglary."

24 "That's the guy I saw standing outside."

25 A. Right.

1 Q. Correct?

2 A. That's correct.

3 Q. And the second gentleman that you were shown in
4 cuffs in front of the policeman, you actually looked at him
5 and said, "I can't tell you if that's the guy or not";
6 correct?

7 A. Correct.

8 Q. All right. So now, this -- do me a favor, because
9 you've got this mapped out a lot better than me.

10 A. Okay.

11 Q. I think I've got it somewhat.

12 Point out your sister's apartment again, if you
13 don't mind?

14 A. Right here.

15 Q. I thought so.

16 And that corner is where you first saw them; right?
17 If you'd put an X again.

18 A. Right here.

19 Q. Right. As you walked up past them; right?

20 A. Right. I come from this direction here, which was
21 very dark.

22 Q. I got you.

23 A. Once I got from here to this corner, then there's a
24 light and it gets a little brighter.

25 Q. There's a little bit of ambient lighting in that

1 area?

2 A. Correct.

3 Q. It's not direct, but it's much lighter than where
4 you came from?

5 A. They have lampposts throughout there.

6 Q. About what time is this?

7 I'm not trying to trick you; just about what time?

8 A. It's been a while, but I'm pretty sure between 9:00
9 and 10:30.

10 Q. Pitch-black dark, in other words?

11 A. Right.

12 Q. So as you walk up, you see the fellows, and you're
13 both sort of startled because you are coming out of the dark
14 and they were standing there, and it's sort of like everybody
15 looked at each other and sort of did one of these?

16 A. One guy kept his back to me the whole entire time,
17 and the other was facing me. That's the reason I was able
18 to ...

19 Q. So that's a new fact I haven't heard. Let me make
20 sure I got that right.

21 As you are walking towards your sister's, you see
22 the fellow that you identify.

23 A. Correct.

24 Q. And then you see another guy, but the other guy had
25 his back turned?

1 A. Correct.

2 Q. For the most part, you never got a look at his face?

3 A. Never.

4 Q. You smelled marijuana?

5 A. Right.

6 Q. Made the comment as you got close about, "Hey, I'm
7 as startled as y'all are, and I'm not the police"; right?

8 A. Yeah.

9 Q. Then you sat there at your sister's for a couple,
10 three minutes?

11 A. Yes, sir.

12 Q. Because you thought she was home; correct?

13 A. Well, she was, but she was already asleep.

14 Q. I got you. So she didn't come to the door.

15 A. No, sir.

16 Q. So you are standing 30, 40 feet away from those
17 fellows while you were at --

18 A. Approximately that far.

19 Q. I'm not holding you to the exact feet; but you could
20 still see them?

21 A. Right.

22 Q. As a matter of fact, you thought you could overhear
23 some of the things they were talking about?

24 A. Well, I did actually overhear it, yeah.

25 Q. And I think you've testified what you overheard is,

1 "Let's wait and see if she comes out"?

2 A. Correct.

3 Q. All right. And the gun that this fellow pulled out,
4 he put it in the bushes?

5 A. Yes, sir.

6 Q. And while the other guy had his back turned to you,
7 he didn't want any part of that gun, did he?

8 A. No, sir.

9 Q. All right. Now, after your sister didn't answer the
10 door, you walked back the way you came; right?

11 A. Right.

12 Q. And I think you testified, about the time as you are
13 walking back, the other two fellows walk off?

14 A. Well, I looked over my shoulder.

15 Q. Right.

16 A. And they walked off in the opposite direction that I
17 was walking.

18 Q. Okay. So they went around the corner of the
19 building?

20 A. Right. They went from this spot, around this way.

21 Q. Okay. But once they went around the corner of the
22 building, you couldn't see them anymore.

23 A. No. By that time I was headed over here, headed
24 back to my apartment.

25 Q. Because I see how you are curving them around, but

1 truthfully, once they were walking away from you and once --

2 A. Once I got to this area here, they was probably
3 here, and --

4 Q. That's the last --

5 A. It was out of sight.

6 Q. All right. Fair enough.

7 Now, I'm going to talk to you about the second part,
8 after you come back from the grocery store -- excuse me --
9 the gas station, and you've come in, the police have closed
10 off --

11 A. Directly behind me. They was behind me. I actually
12 thought they was pulling me for some reason.

13 Q. I bet. Like what's going on?

14 A. What they was doing was they were blocking the
15 complex off. Our complex was one-way in, one-way out.

16 Q. Right. So as soon as you came in, they blocked it
17 off, and then you saw a couple guys running; right?

18 A. I seen several officers. They was already on the
19 scene. There must have been 15, 20 officers.

20 Q. They were everywhere?

21 A. They were everywhere.

22 Q. Got you.

23 But I think you testified you saw two fellows
24 running; right?

25 A. Yes, sir. I proceeded in on my motorcycle, and this

1 is a designated area here for motorcycles.

2 Q. Okay.

3 A. I got off my bike. One of the people come running
4 through this way, and the other one went this way. And this
5 one stopped in this area.

6 I couldn't tell you if he was behind a dumpster.
7 It's an enclosed area on three sides. But that is where they
8 apprehended him, right here.

9 Q. That fellow that ran almost right past you, you
10 didn't go, "Gosh, that's the guy that I saw earlier"?

11 A. That's the same guy I seen standing at the corner
12 back there awhile ago.

13 Q. That's the guy with the hoody?

14 A. Yeah.

15 Q. All right. The other fellow running, you didn't go,
16 "Boy, that's the other guy I saw"?

17 A. That was a flash.

18 Q. That was a flash.

19 A. But this place, that night, there was people
20 everywhere, walking their animals. People stay out there at
21 night.

22 Q. I was going to get to that, so thank you for getting
23 me there.

24 So this isn't like a deserted apartment complex.
25 This is a busy place; correct?

1 A. Right.

2 Q. It's not uncommon for people to hang out there; fair
3 enough?

4 A. Fair enough.

5 Q. It's not uncommon for people from the outside to
6 come in there, is it, either?

7 A. No, not at all.

8 Q. I think sometimes you probably wish they didn't, but
9 people from the outside come in and hang out sometimes;
10 correct?

11 A. Yeah. There's several cut-throughs in that place
12 where people shortcut through there.

13 Q. And I venture to say that's not the first time you
14 smelled or seen somebody smoking marijuana there either?

15 A. That seems to be the area, right in there.

16 Q. Right in there?

17 A. Yeah.

18 Q. I got you.

19 A. It's somewhat dark and secluded in the evenings.

20 Q. It's a little bit light, but not like you stand out;
21 right?

22 Let me ask you this: In this activity and you get
23 back and you've got your motorcycle parked and what-have-you,
24 an officer came up almost immediately to you, or did you go
25 to the officer?

1 A. I had time to leave here, walk around, and go in and
2 come back out and put the cover on my bike.

3 Q. And then that's when the officer walked up and asked
4 if you had seen anything?

5 A. Right, walked up and asked me where I was at.

6 Q. And you told him your story; right?

7 A. Right.

8 Q. Which, of course, you would.

9 And then they gave you the opportunity to see if
10 those fellows were the ones you saw?

11 A. Right.

12 Q. And one you could identify; one you couldn't?

13 A. Correct.

14 Q. And they didn't show you the other two they took
15 into custody that night?

16 A. I never knew nothing about them.

17 Q. All right.

18 A. I did observe five people get detained, though.

19 Q. Okay.

20 A. But they were residents, and I confirmed two of them
21 as being residents.

22 Q. I guess to be more proper, instead of me saying "put
23 into custody," I think the right word -- you used it, and
24 shame on me. I said "put in custody" that night. Four
25 people were detained that night?

1 A. Correct.

2 Q. Fair enough.

3 Ms. Polite, had you ever met her before?

4 A. No, I hadn't.

5 Q. Okay. Did you know what apartment she lived in?

6 A. My sister did. Later on --

7 Q. Not asking what your sister knows; I'm asking what
8 you know.

9 A. No, sir, I did not.

10 MR. SMILEY: Thank you very much for your honesty.

11 THE WITNESS: You're welcome.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Mr. Duvall, did you know either one of those
16 individuals that they took you to for show-up? Did you have
17 prior knowledge of who they were?

18 A. Never seen them before in my life.

19 Q. When you made your identification, do you recall the
20 detective asking you on a scale of 1 to 10 how certain you
21 were?

22 A. Yes, sir. I told them I was -- it was 100 percent
23 sure. I told him 10 at that time. There was no doubt in my
24 mind. There was nobody else running around with those color
25 shoes and that hoody on out there.

1 MR. OSBORNE: Thank you.

2 Your Honor, no further questions.

3 THE COURT: Any cross based on the redirect?

4 RECROSS-EXAMINATION

5 BY MR. BRADLEY:

6 Q. The second suspect, do you remember what he was
7 wearing?

8 A. Dark clothing is all I could say.

9 Q. Did he have on shiny shoes?

10 A. No, sir, not that I recall.

11 Q. He did not. Okay.

12 MR. BRADLEY: I have no further questions.

13 MR. SMILEY: I have one.

14 RECROSS-EXAMINATION

15 BY MR. SMILEY:

16 Q. Scale of 1 to 10, 10 being the fellow with the
17 shoes, the other fellow would have been 0; right?

18 A. Right.

19 MR. SMILEY: Thank you.

20 THE COURT: Thank you. You may step down.

21 Any objection to this witness being excused?

22 MR. OSBORNE: None, Your Honor.

23 (Whereupon the witness is excused.)

24 THE COURT: All right. Why don't we take a
25 ten-minute recess.

1 Ladies and gentlemen, I will send you back to your
2 jury room for about ten minutes. Please do not discuss
3 anything about the case while you are back there.

4 Thank you.

5 (Whereupon, the jury leaves open court at
6 3:48 p.m.)

7 THE COURT: Court will be in recess until 4 o'clock.

8 (A recess transpired.)

9 THE COURT: Anything before we bring the jury back?

10 MR. OSBORNE: No, Your Honor.

11 MR. BRADLEY: No, Your Honor.

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

13 (Whereupon, the jury returns to open court at
14 4:04 p.m.)

15 THE COURT: Wherever I go in the state, jurors,
16 after about the second time they've sat in the same seat,
17 become very territorial. But you can sit anywhere you want
18 to. It doesn't make a difference.

19 The State may call its next witness.

20 MR. OSBORNE: The State calls Jordan Brown.

21 JORDAN BROWN,
22 having been duly sworn, testifies as follows:

23 THE CLERK: State your full name and spell your last
24 name.

25 THE WITNESS: Jordan Brown.

1 THE COURT: You may proceed.

2 MR. OSBORNE: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. OSBORNE:

5 Q. Jordan, where are you from?

6 A. West Ashley.

7 Q. Where did you go to school?

8 A. West Ashley High.

9 Q. Graduate?

10 A. Yes, sir.

11 Q. Do you work?

12 A. No, sir.

13 Q. What do you do to make money?

14 A. I haven't been employed in a while.

15 Q. To make money, what do you do?

16 A. I hustle.

17 Q. And tell the jury what does that mean, "hustle"?

18 A. I sell marijuana.

19 Q. Now, back on October the 23rd of 2013, were you
20 selling marijuana back then?

21 A. Yes, sir.

22 Q. Let's talk about that night.

23 Did you leave your house that night to go sell
24 marijuana?

25 A. Yes, sir.

1 Q. When you left your house -- and you live in
2 West Ashley?

3 You have to answer "yes" or "no."

4 A. Yes, sir.

5 Q. When you left your house, where did you first go?

6 A. I stopped at a gas station.

7 Q. Which one?

8 A. Right there on the corner, Ashley Road.

9 Q. How did you get there?

10 A. I got a ride from my brother.

11 Q. Who is your brother?

12 A. Marquel Brown.

13 Q. Why were you going to the Kangaroo? Or was it a
14 Kangaroo?

15 A. Yes, sir.

16 Q. Why were you going there?

17 A. To make a drug sale.

18 Q. Now, in the middle of that sale, did you get a phone
19 call from someone?

20 A. Yes, sir.

21 Q. Who did you get a phone call from?

22 A. From Ishmel Lemon.

23 Q. And who is Ishmel Lemon to you?

24 A. A drug partner.

25 Q. How long have you known him?

1 A. Probably about a year or two.

2 Q. Now, why did Ishmel call you?

3 A. Because he needed some marijuana.

4 Q. And what did you tell him?

5 A. "I will call you in a minute."

6 Q. Did at any point you talk to Ishmel and y'all agreed
7 to meet at Westchase?

8 A. Yes, sir.

9 Q. Why did you want to go to Westchase?

10 A. Because I was already over there.

11 Q. Why were you there?

12 A. I was with James Scott, seeing his newborn baby.

13 Q. And who is James Scott to you?

14 A. My cousin.

15 Q. Now, James Scott, where does he live again?

16 A. Westchase.

17 Q. And where is that in relation -- don't you have a
18 grandmother or something that lives around there?

19 A. Yes, sir, by Salvation Army.

20 Q. Now, at any point did Ishmel call you again?

21 A. Yes, sir.

22 Q. And how did that conversation go?

23 A. He said he want to meet up.

24 Q. And what did you tell him?

25 A. Meet me at Westchase.

1 Q. Okay. Did he come to Westchase? Did you meet him?

2 A. Yes, sir.

3 Q. All right. Tell us about that meeting. How did
4 that happen?

5 A. He called me. I went outside and served him the
6 marijuana.

7 Q. Was he sitting in a car or was he on foot?

8 A. Yes, sir. He was in the car.

9 Q. What kind of car was it?

10 A. A Volvo.

11 Q. Was there anyone else in the car?

12 A. Yes, sir.

13 Q. Who?

14 A. Antwain Champaigne.

15 Q. Where was Ishmel seated in the car?

16 A. Passenger.

17 Q. And where was Antwain seated?

18 A. In the driver's seat.

19 Q. Now, at that time, did you know Antwain's name?

20 A. Yes, sir.

21 Q. Had you seen Antwain before?

22 A. A few times.

23 Q. When you saw him, how did that come about, or who
24 did you see him with?

25 A. He always been with Ishmel.

1 Q. So is it fair to say that you knew Ishmel better
2 than you knew Antwain?

3 A. Yes, sir.

4 Q. I'm going to show you what's already been marked as
5 State's Exhibit 1.

6 Do you recognize that area at all?

7 A. Yes, sir.

8 Q. And what is that?

9 A. Westchase.

10 Q. Can you point out -- you can touch that screen right
11 there. Can you point out where Antwain and Ishmel parked the
12 Volvo?

13 A. In that area. (Witness indicates.)

14 Q. Can you point out where James Scott, your cousin
15 lives?

16 A. Right behind.

17 Q. Now, when you met with them, did you get in the car
18 with them during this transaction?

19 A. No. I served them through a window.

20 Q. Served them; you mean sell them?

21 A. Yes, sir.

22 Q. Just walk me through that transaction. How much did
23 they give you and what did you give them?

24 A. I gave them two grams, and he gave me back \$50.

25 Q. Who did you give the two grams of marijuana to?

1 A. Ishmel.

2 Q. Who gave you the money?

3 A. Ishmel.

4 Q. Now, what did Ishmel do with the marijuana when he
5 got it?

6 A. He was -- he started to roll it up.

7 Q. Both of them?

8 A. Ishmel.

9 Q. What did they do then?

10 A. They exited the vehicle.

11 MR. OSBORNE: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MR. OSBORNE:

14 Q. I'm showing you now for ID purposes only what's been
15 marked as State's Exhibit 12. Can you grab that and take a
16 look at it? Go ahead and open it up and take a look at it.

17 Do you recognize that?

18 A. Yes, sir.

19 Q. And what is that?

20 A. Marijuana.

21 Q. You can put it back in the bag.

22 Does this marijuana resemble a packaging of
23 marijuana, the marijuana you sold to Ishmel?

24 A. Yes, sir.

25 Q. When they walked out of the car, which way did they

1 go?

2 A. The scene on the side, right there. (Witness
3 indicates.)

4 Q. And what were they doing on the side?

5 A. Smoking marijuana.

6 Q. Where were you at?

7 A. Right there on the side.

8 Q. All right. At any point did you see a white male
9 walk up?

10 A. Yes, sir.

11 Q. How did that come about?

12 A. He came from the side of the building, and he was
13 going to his house.

14 Q. And what did you do or y'all do when he walked up?

15 A. I walked off.

16 Q. Which way did you walk?

17 A. Back to the parking lot area.

18 Q. Why did you walk off?

19 A. Because I didn't know who he was.

20 Q. All right. What was going on on that -- on the side
21 of the building there? What were y'all talking about?

22 A. We weren't talking about too much anything.

23 Q. Did Antwain or Ishmel -- were they doing anything
24 unusual?

25 A. They had a little side conversation.

1 Q. Did you hear what they were saying?

2 A. I heard a few words.

3 Q. All right. Tell the jury what you heard.

4 A. They were like, "I'm looking for a come-up."

5 Q. They were looking for a come up.

6 What does that mean?

7 A. I guess to commit a crime.

8 MR. SMILEY: Objection, Your Honor. I'm going to
9 ask that be stricken as speculation.

10 THE COURT: Sustained, unless he knows.

11 MR. SMILEY: I would ask it be stricken.

12 THE COURT: It will be stricken. The jury will
13 disregard that.

14 BY MR. OSBORNE:

15 Q. All right. Who said that?

16 A. Ishmel Lemon.

17 Q. So Ishmel said he's looking for a come-up?

18 MR. SMILEY: Your Honor, I just --

19 THE COURT: That's a different question. Proceed.

20 BY MR. OSBORNE:

21 Q. What did you say to that?

22 A. I didn't really say too much.

23 Q. What did Antwain say?

24 A. Them two have a conversation together. I just
25 overheard it.

1 Q. All right. So after Ishmel makes that comment, did
2 you hear him say anything else directed to you?

3 A. He told me to stay right here.

4 Q. Stay right here and what?

5 A. And look out.

6 Q. Stay right here and look out for what?

7 A. For the crime they about to commit.

8 Q. Walk us through what happened and who said what and
9 where you were standing.

10 A. I was right here. (Witness indicates.)

11 Q. And then Ishmel said he's about to come up?

12 A. Yes, sir.

13 Q. And he told you to look out?

14 A. Yes, sir.

15 Q. Where did they go then?

16 A. Proceeded to the front.

17 Q. All right. While y'all were standing over there on
18 the side of the building, did Ishmel or Antwain have a gun?

19 A. I think Antwain Champaigne had the gun.

20 Q. Why do you think that?

21 A. Because he had something bulge inside his hoody.

22 Q. He had something inside his hoody?

23 A. A weight in his hoody. He was, like, fumbling
24 around with a gun.

25 Q. Where was he fumbling around with it? Side? Front?

1 A. Right here in the front, in the middle pouch.

2 Q. All right. So y'all walk around to the front of the
3 steps there?

4 A. Yes, sir.

5 Q. Tell us what happened when you get to the front of
6 the steps.

7 A. Ishmel Lemon and Antwain, they went up the steps.

8 MR. OSBORNE: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MR. OSBORNE:

11 Q. I'm showing you now what's been marked as State's
12 Exhibit 2.

13 Do you recognize this?

14 A. Yes, sir.

15 Q. And what is this?

16 A. That is the steps.

17 Q. These are the steps that you saw them walking up
18 that night?

19 A. Yes, sir.

20 Q. Was this photograph taken at night?

21 A. It looks like during the daytime.

22 Q. Does it fairly and accurately depict the steps as
23 you remember them?

24 A. Yes, sir.

25 MR. OSBORNE: Your Honor, I request State's

1 Exhibit 2 be moved into evidence.

2 THE COURT: Any objection?

3 MR. BRADLEY: No objection.

4 MR. SMILEY: No, Your Honor.

5 THE COURT: Without any objection, State's Exhibit
6 No. 2 is admitted. State's Exhibit 2.

7 (State's Exhibit No. 2, Photograph, is moved into
8 evidence.)

9 BY MR. OSBORNE:

10 Q. So, Jordan, again by using your touch screen right
11 there, when y'all were at the front of the steps, point out
12 where y'all were standing.

13 A. Right here. (Witness indicates.)

14 Q. This is all three of you?

15 A. Yes, sir.

16 Q. You, Antwain Champaigne, and Ishmel Lemon?

17 A. Yes, sir.

18 Q. Where did Ishmel make the comment to you to look
19 out?

20 A. Right there. (Witness indicates.)

21 Q. What happened after that?

22 A. They proceeded up the steps.

23 Q. Both of them went up the steps?

24 A. Yes, sir.

25 Q. You stayed there?

1 A. Yes, sir.

2 Q. What happened next?

3 A. He knocked on the door.

4 Q. Which one or both?

5 A. Both.

6 Q. They both knocked on the door?

7 A. Yes, sir.

8 Q. Now, prior to going up the steps, did Antwain do
9 anything with his hoody or anything?

10 A. He tied it on real tight, 'til you couldn't see his
11 face.

12 Q. Then he knocks on the door?

13 A. Yes, sir.

14 Q. He's got Ishmel with him?

15 A. Yes, sir.

16 Q. Then what happens?

17 A. Then he came back down.

18 Q. Both of them?

19 A. Yes, sir.

20 Q. Then what happened?

21 A. Then he went back up. And then he used the butt of
22 the gun to break the window.

23 Q. Who used the butt of the gun?

24 A. Antwain Champaigne.

25 Q. When he broke the window with the butt of the gun,

1 what happened?

2 A. Then he left the window up and he went inside and
3 opened the door for Ishmel.

4 Q. Antwain went inside?

5 A. Yes, sir.

6 Q. He went in through that window?

7 A. Yes, sir.

8 Q. That window right there?

9 A. Yes, sir.

10 Q. Then he opened up the door?

11 A. Yes, sir.

12 Q. What happened then?

13 A. Then they went inside the house, and I came back
14 down the steps to come back to the parking lot, and I hear
15 sirens.

16 Q. You said you came back down the steps.

17 Were you up there?

18 A. No, sir. I was right there the whole time.

19 Q. Right where?

20 A. Right here. (Witness indicates.)

21 Q. Why were you standing there? What was your purpose
22 for being there?

23 A. I was the lookout.

24 Q. What would you have done if you had seen police or
25 heard sirens?

1 A. I was going to run.

2 Q. Did you hear sirens?

3 A. Yes, sir.

4 Q. Did you warn Ishmel or Antwain that there were
5 sirens?

6 A. No, sir.

7 Q. What did you do?

8 A. I was in the parking lot when the police pulled up.

9 Q. Why didn't you run off?

10 A. Because I was already far away from the crime as
11 possible.

12 Q. When the police showed up, did they stop you?

13 A. Yes, sir.

14 Q. And how did that go down?

15 A. The police officer, he detained me and put me in the
16 back seat of the car for like five minutes.

17 And then time I saw Ishmel and Antwain Champaigne
18 came from the house, and they were in pursuit by the police
19 officer.

20 Q. All right. You are sitting in the back seat of the
21 car. You see them both come out of the window or the front
22 door?

23 A. The front door.

24 Q. All right. What did they do?

25 A. They jumped off the balcony.

1 Q. Which way did they go?

2 A. They went this way.

3 Q. Around the left side of the building?

4 A. Yes, sir.

5 Q. Now, when Antwain used the butt of the gun to break
6 the window, were you able to see it?

7 A. Yes, sir.

8 Q. You saw the gun?

9 A. Yes, sir.

10 Q. I'm showing you now what's, for ID purposes only --

11 MR. OSBORNE: Your Honor, may I approach?

12 THE COURT: Yes, sir.

13 BY MR. OSBORNE:

14 Q. -- State's Exhibit 11.

15 Do you recognize that?

16 A. Yes, sir.

17 Q. What does that look like?

18 A. The same firearm.

19 Q. You can't be certain?

20 A. Yes, sir.

21 Q. Can you be certain that's the same firearm?

22 A. Yes, sir.

23 Q. How can you be certain?

24 A. It's the same black handgun he had in his hand.

25 Q. It's a black handgun.

1 Have you touched that gun before?

2 A. No, sir.

3 Q. Have you held that gun before?

4 A. No, sir.

5 Q. Jordan, you were questioned by the police that
6 night; correct?

7 A. Yes, sir.

8 Q. In fact, you were charged that night, weren't you?

9 A. In the same crime.

10 Q. Burglary in the first degree?

11 A. Yes, sir.

12 Q. And when you spoke to the detectives that night, you
13 weren't exactly completely honest with them, were you?

14 A. Yes, sir, because I was scared.

15 Q. Now, after your arrest, you entered into a proffer
16 agreement with the State; is that correct?

17 A. Yes, sir.

18 Q. With myself.

19 Explain to the jury, what is a proffer agreement.

20 A. When you tell the truth, to be truthful and willing
21 to, if you don't, they can use that against you in a court of
22 law.

23 Q. So if you lie, then we can use whatever you tell us
24 against you?

25 A. Yes, sir.

1 Q. Is that correct?

2 MR. OSBORNE: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MR. OSBORNE:

5 Q. I'm showing you now what's been marked as State's
6 Exhibit 23. Take a look at that.

7 Do you recognize that?

8 A. Yes, sir.

9 Q. And what is that?

10 A. The proffer agreement.

11 MR. OSBORNE: Your Honor, I'd request State's 23 be
12 moved into evidence.

13 THE COURT: Any objection?

14 MR. BRADLEY: No objection, Your Honor.

15 THE COURT: Without objection, Mr. Smiley?

16 MR. SMILEY: No objection.

17 THE COURT: Without objection, State's Exhibit
18 No. 23 is admitted.

19 (State's Exhibit No. 23, Proffer agreement, is
20 moved into evidence.)

21 BY MR. OSBORNE:

22 Q. Does that mean you are not being prosecuted for
23 burglary in the first degree?

24 A. I'm still being prosecuted for burglary in the first
25 degree.

1 Q. It's not an immunity or anything like that?

2 A. No, sir. I wasn't promised anything, no deals.

3 Q. Let's be honest. I mean, you are hoping that you
4 are going to catch some sort of break for testifying?

5 A. No, sir. I'm just here to tell the truth.

6 Q. So you are not hoping for a break?

7 A. No, sir.

8 Q. I want to show you another picture.

9 MR. OSBORNE: Your Honor, may I approach?

10 THE COURT: You may.

11 BY MR. OSBORNE:

12 Q. I'm showing you what's been marked as State's
13 Exhibit 33. Do you recognize that?

14 A. Yes, sir.

15 Q. And who is that individual?

16 A. Ishmel Lemon.

17 MR. OSBORNE: Your Honor, I request State's 33 be
18 moved into evidence.

19 THE COURT: Any objection?

20 MR. BRADLEY: No objection.

21 MR. SMILEY: No objection.

22 THE COURT: Without objection, State's Exhibit
23 No. 33 is admitted.

24 (State's Exhibit No. 33, Photograph of Ishmel
25 Lemon, is moved into evidence.)

1 BY MR. OSBORNE:

2 Q. Who is that individual?

3 A. Ishmel Lemon.

4 Q. Is that the individual that's on trial here today?

5 A. Yes, sir.

6 Q. Is this one of the two individuals that you observed
7 go through that apartment that night?

8 A. Yes, sir.

9 MR. OSBORNE: No further questions.

10 THE COURT: All right. Mr. Bradley,
11 cross-examination.

12 MR. BRADLEY: Thank you, Your Honor. May it please
13 the Court.

14 CROSS-EXAMINATION

15 BY MR. BRADLEY:

16 Q. Mr. Brown, what were you wearing that night?

17 A. All black.

18 Q. All black.

19 Explain to me what type sneakers you had on.

20 A. A pair of Nikes.

21 Q. What type Nikes?

22 A. Air Griffey's.

23 Q. Were they shiny Air Griffey's?

24 A. No, sir.

25 Q. They weren't shiny at all?

1 A. No, sir.

2 Q. What type of shirt did you have on that night?

3 A. All black.

4 Q. So you were dressed in all black?

5 A. Yes, sir.

6 Q. Any particular reason you were dressed in all black?

7 A. I always be all black.

8 Q. You always wear all black. Okay.

9 You testified just a minute ago that you never saw
10 the gun; is that correct?

11 A. Yes, sir.

12 Q. Okay. Well, how were you able to identify a gun
13 that they just showed you just now that was so certain that
14 was the gun?

15 A. I told them I saw a firearm when he broke the window
16 with the glass.

17 Q. You did?

18 A. Yes, sir.

19 Q. But you testified earlier that you never saw the
20 gun.

21 A. I said I didn't see a firearm on the side of the
22 building.

23 Q. Okay. When you were on the side of the building,
24 did you -- all three of y'all move to the front of the
25 building?

1 A. Yes, sir.

2 Q. And so when the witness or when the guy that was the
3 biker guy showed up, he saw all three of y'all; is that
4 correct?

5 A. Yes, sir.

6 Q. Mr. Brown, let's be truthful. How many different
7 stories did you tell the police?

8 A. Three different stories.

9 Q. Three different stories.
10 Which one was the truth? Were any of them the
11 truth?

12 A. All of them was the truth.

13 Q. All of them were the truth.

14 Well, if that's the case, then how come you told
15 three different stories that were -- each of the different
16 stories minimized your role in the crime?

17 A. Because I didn't do the crime.

18 Q. You didn't do the crime?

19 A. Yes, sir.

20 Q. Were you involved in the crime?

21 A. Yes, sir.

22 Q. You were involved in a crime? And your involvement
23 was?

24 A. Being lookout.

25 Q. Okay. You said that Mr. Lemon said that he was

1 going to make a come-up; is that right?

2 A. Yes, sir.

3 Q. Why didn't you just leave at that point?

4 A. Why didn't I leave?

5 Q. Yes, sir.

6 A. I was waiting on my ride.

7 Q. You were waiting on your ride?

8 A. Yes, sir.

9 Q. Okay. Well, you just told the Court that you were
10 being a lookout.

11 A. Yes, sir.

12 Q. So which one is it?

13 A. I was being a lookout.

14 Q. So you just said you were waiting on your ride.

15 A. That's why I didn't leave.

16 Q. Yes, sir.

17 A. I was waiting on my ride.

18 Q. Didn't you have family that lived over there?

19 A. Yes, sir, around the corner.

20 Q. Why didn't you just go to your family's house?

21 A. That's too far of a walk.

22 Q. Too far of a walk for you?

23 A. Yes, sir.

24 Q. How much marijuana did you say you sold these young
25 men?

1 A. Two grams.

2 Q. Two grams of marijuana for how much money?

3 A. 50.

4 Q. 50?

5 A. Yes, sir.

6 Q. And you had the money on you at the time when the
7 police got you?

8 A. Yes, sir.

9 Q. Okay. Explain to me, where were you at the time the
10 police officer caught you?

11 A. I was in the parking lot.

12 Q. You were -- were you directly in front of the
13 apartment door?

14 A. Not in front of the apartment door. I was in the
15 parking lot where the car was at.

16 Q. You were in the parking lot where the cars were.
17 How close were you to the apartment that allegedly
18 was broken into?

19 A. Probably 200 feet.

20 Q. About 200 feet?

21 A. Yes, sir.

22 Q. You were 200 feet.

23 Were you inside the patrol car?

24 A. Yes, sir.

25 Q. So you were 200 feet, inside the patrol car, and you

1 saw Mr. Lemon and Mr. Champaigne leave from outside of the
2 residence?

3 A. Yes, sir.

4 Q. Okay. And could you explain to me, how could you
5 see that from 200 feet away inside a car?

6 A. Because I was looking through the back seat. And
7 you can look through the window and you could see them jump
8 off the balcony.

9 Q. Did you have to turn around to do it or were you
10 facing backwards?

11 A. Yes, sir. I wasn't handcuffed.

12 Q. It doesn't matter whether you were handcuffed. That
13 wasn't my question.

14 My question is: If you are sitting in a police car,
15 you have to turn around and look in order to see them come
16 out of this apartment; is that correct?

17 A. Yes, sir.

18 Q. Okay. And you managed to do all that while you were
19 sitting in the back of the police car; is that correct?

20 A. Yes, sir.

21 Q. Did you handle that gun?

22 A. Huh?

23 Q. Did you handle that gun?

24 A. No, sir.

25 Q. Did you ever have that gun in your hands?

1 A. No, sir.

2 Q. Were you the one that went into Ms. Polite's
3 apartment?

4 A. No, sir.

5 Q. How do we know whether you are telling the truth
6 today?

7 A. Because I ain't -- I wasn't caught --

8 Q. I'm sorry?

9 A. Because I didn't get caught coming out of the
10 house.

11 Q. The fact that you didn't get caught doesn't mean you
12 weren't involved in it.

13 A. I was not inside that lady's house.

14 Q. Ever been charged with a crime?

15 A. Yes, sir.

16 MR. OSBORNE: Objection, Your Honor.

17 Sidebar?

18 THE COURT: Overruled.

19 MR. OSBORNE: Thank you.

20 THE COURT: Let me see the attorneys up here.

21 (Whereupon, a bench conference takes place.)

22 THE COURT: The objection is withdrawn.

23 BY MR. BRADLEY:

24 Q. Mr. Brown, can you explain to the Court what you've
25 been convicted of?

1 A. Selling marijuana.

2 Q. Selling marijuana.

3 Is that the only crime you've been convicted of?

4 A. Yes, sir.

5 Q. Is your story going to change if I call you to the
6 stand tomorrow?

7 A. No, sir.

8 Q. It's changed three or four times already.

9 MR. BRADLEY: No further questions, Your Honor.

10 THE COURT: All right. Thank you.

11 Mr. Smiley.

12 CROSS-EXAMINATION

13 BY MR. SMILEY:

14 Q. So you are sitting up there testifying, looking at
15 15 to life; right?

16 A. Yes, sir.

17 Q. So you have the burglary first charge; correct?

18 A. Yes, sir.

19 Q. So while you say you weren't doing anything, the
20 police believed you were; right?

21 A. Yes, sir.

22 Q. Okay. And so it's your hope, by getting up here and
23 testifying for the State, that they won't send you to prison
24 for 15 to life; right?

25 A. No, sir.

1 Q. That's your hope, though; right?

2 A. No, sir.

3 Q. Oh, you are okay going to prison for life?

4 A. No, sir.

5 Q. Now, the white gentleman, remember him walking by,
6 the fellow that looked like he had a motorcycle jacket on?

7 A. Yes, sir.

8 Q. He walked pretty much right by y'all; right?

9 A. Yes, sir.

10 Q. And he actually said some things back and forth to
11 y'all, didn't he?

12 A. No, sir.

13 Q. You don't remember that?

14 A. No, sir.

15 Q. Okay. But you do remember him walking by?

16 A. Walking through.

17 Q. And stopping at a house close by?

18 A. Yes, sir.

19 Q. And then walking back away; right?

20 A. Yes, sir.

21 Q. All right. Now, you are the one that suggested to
22 meet at Westchase, aren't you?

23 A. Yes, sir.

24 Q. Because you were -- Ishmel is somebody you had sold
25 marijuana to before; right?

1 A. Yes, sir.

2 Q. And you are the one that said, "Hey, I'm going over
3 that way anyway, so meet me at Westchase"; right?

4 A. Yes, sir.

5 Q. And the purpose of Ishmel going over to Westchase
6 was to meet you; right?

7 A. Yes, sir.

8 Q. Okay. So you get to Westchase, and what's your
9 brother's name that was driving the Volvo?

10 A. Marquel Brown.

11 Q. Marquel Brown?

12 A. No, driving the Volvo?

13 Q. What was he driving?

14 A. A Cadillac.

15 Q. Cadillac.

16 So you were riding shotgun in a Cadillac over at the
17 Westlake?

18 A. Yes, sir.

19 Q. Westchase. Excuse me.

20 And he dropped you off?

21 A. Yes, sir.

22 Q. So you could make your sale, and he was going to
23 come back and pick you up?

24 A. Yes, sir.

25 Q. And then you knew if he got hung up somewhere, you

1 had family there if you needed them; right?

2 A. Yes, sir.

3 Q. Okay. So you were hanging out there with Ishmel,
4 right, and Antwain?

5 A. Yes, sir.

6 Q. And you are saying that Ishmel rolled up the blunt
7 or the marijuana cigarette, however you want to call it, and
8 they were smoking?

9 A. Yes, sir.

10 Q. You smoked some too?

11 A. Yes, sir.

12 Q. All right. How long do you think that the three of
13 y'all were standing out there around that corner of the
14 building?

15 It's pretty dark in that area; right?

16 A. Yes, sir. Probably about 15, 20 minutes.

17 Q. All right. So after that 15 or 20 minutes, you
18 walked around to the other side of the building; right?

19 A. Yes, sir.

20 Q. And it's your testimony that these two fellows went
21 up the stairs, knocked on the door somewhere, and then came
22 back downstairs?

23 A. Yes, sir.

24 Q. And they were upstairs for about how long?

25 A. Probably about three to five minutes.

1 Q. Okay. That's the first time?

2 A. The first time.

3 Q. And you are downstairs during that time; right?

4 A. Yes, sir.

5 Q. Okay. Are you just hanging out --

6 A. Yes, sir.

7 Q. -- at that point? All right.

8 When they came downstairs, about how long did they
9 stay downstairs with you?

10 A. Probably about two minutes.

11 Q. Okay. So you've now been standing at the side of
12 the building for 15 minutes, and you've got 5 to 7 minutes in
13 front of the building; right?

14 A. Yes, sir.

15 Q. Okay. And then -- oh, something I didn't
16 understand.

17 The police -- you heard the sirens, boom, boom,
18 boom; right? You got away from the building, right?

19 A. Yes, sir.

20 Q. The police pull in and they saw you and cuffed you;
21 right?

22 A. No. I didn't get cuffed. I was only detained.

23 Q. They put you in the police car right away?

24 A. Yes, sir.

25 Q. From the time you heard the sirens 'til the time you

1 were in the police car took about how long?

2 A. Probably about five minutes.

3 Q. Okay. So you could hear the sirens coming for a
4 bit; right?

5 A. Yes, sir.

6 Q. Okay. And you are still in that area; you didn't
7 run off to your relatives or anything. You were still
8 somewhat in that area; right?

9 A. Yes, sir.

10 Q. Actually, you sort of started heading that way;
11 right?

12 A. Yes, sir.

13 Q. And they caught you before you got there?

14 A. I didn't run.

15 Q. Well, forgive me. I wasn't trying to put any words
16 in your mouth.

17 But you were heading towards your relatives' when
18 you heard the sirens?

19 A. Yes, sir.

20 Q. Instead of running off, you were pretty much
21 slinking off, saying get out of here without getting in this
22 mess; right?

23 A. Yes, sir.

24 Q. Okay. So after five minutes or so, they get you in
25 the car, right, and that car pulls into a parking place and

1 your back is facing away from the apartments; right?

2 A. Yes, sir.

3 Q. How long were you sitting in that police car before
4 you started looking over your shoulder back at the apartment?

5 A. I would say about three minutes.

6 Q. All right. So we now are eight, ten minutes into
7 the sirens and all of that, and you are looking over your
8 shoulder back at the apartment?

9 A. Yes, sir.

10 Q. And that's when you say you saw them jumping over
11 the railing?

12 A. Yes, sir. I saw them exit the front door and jump
13 off of the railing.

14 Q. Oh. So you actually could see up from where you
15 were?

16 A. From where the car was parked, I could see them very
17 clearly.

18 Q. I'm just asking. Just trying to get what you saw.

19 All right. So you say you saw up there and you saw
20 the two guys come out of the apartment, come down the stairs,
21 and jump over the railing?

22 A. Yes, sir.

23 Q. And that's about eight, ten minutes after the
24 sirens?

25 A. No, sir.

1 Q. Okay. Let's back up. You told me from the time you
2 heard the sirens 'til they detained you, as you called it,
3 about five minutes?

4 A. About five minutes.

5 Q. And then I asked you around the time that you got
6 put in the police car, put into that parking place where you
7 got your back to the apartment, how long is that? And you
8 said two, three minutes?

9 A. Yes, sir, two, three minutes.

10 Q. All right. So we're eight minutes now from the
11 sirens. Okay? So we will keep it on the short side.

12 So eight minutes after the sirens is when you look
13 over your shoulder, and during that period is when you saw
14 these fellows jump?

15 A. Yes, sir.

16 Q. All right. We are at about 10 o'clock at night?

17 A. About 10:15.

18 Q. It's pretty dark out there; right?

19 A. Yes, sir.

20 Q. All right. And did you see which direction these
21 fellows went when they came over the --

22 A. They went to the left.

23 Q. Went to the left?

24 Now, you are facing away from the building, looking
25 over your shoulder. So if I'm looking, sitting where you

1 were in the police car, did they go that way or that way?

2 A. They went to the left.

3 Q. This way?

4 A. Yes, sir.

5 Q. Just making sure, because that's left if I'm facing
6 the other way.

7 Okay. So they both went the same direction?

8 A. Yes, sir.

9 Q. All right. When you got to the police station, you
10 told them you're just out there selling marijuana; right?

11 A. Yes, sir.

12 Q. That's about all you told them, isn't it?

13 And you went to jail?

14 A. Yes, sir.

15 Q. And your lawyer and you got together; right?

16 A. Yes, sir.

17 Q. And decided that you wanted to come down and tell
18 your story to the prosecutor; right?

19 A. Yes, sir.

20 Q. And that's when you did this thing where if you tell
21 the truth, you are protected, but if you lie to them, you are
22 not; right?

23 A. Yes, sir.

24 Q. So you go in, you sit down with the police, and -- I
25 mean the prosecutor, and first time you talk to him, you

1 didn't tell him the truth, did you?

2 A. No, sir.

3 Q. Because there's two kinds of lying. There's lies
4 where you change something, and then there's lies where you
5 leave stuff out; right?

6 A. Yes, sir.

7 Q. Do you agree with me on that?

8 A. Uh-huh.

9 Q. And the story that you told that prosecutor was a
10 lie for the most part; right?

11 A. Yes, sir.

12 Q. Okay. So now, you are looking at 15 to life,
13 burglary first; right?

14 Prosecutor just said, "Tell me the truth, no matter
15 what it is, just tell me the truth, and I can't use it
16 against you." Right?

17 A. Yes, sir.

18 Q. And the first thing out of your mouth was a lie,
19 wasn't it? Wasn't it?

20 A. Like I say, I left things out.

21 Q. Right. That's a lie.

22 You agree with me; right?

23 A. Yes, sir.

24 Q. Okay. As a matter of fact, the prosecutor in that
25 involvement and his investigator go, "Whoa, whoa, whoa, whoa,

1 whoa. You might want to talk to your attorney before you
2 talk to us again." Right?

3 A. Yes, sir.

4 Q. Because they weren't buying it, were they?

5 A. No, sir.

6 Q. All right. And that story that you were telling
7 there that night -- that day to the prosecutor really wasn't
8 what you told him the first time that you met with the police
9 either, was it? Your story had changed; right?

10 A. Yes, sir.

11 Q. All right. So you've talked to your attorney,
12 everybody sits back down, you tell another story -- well, you
13 tell the story and add some detail; fair enough?

14 They still go, "Hmmm, that's not what we want. You
15 need to talk to your attorney again," didn't they?

16 A. Yes, sir.

17 Q. So you go out and you talk to your attorney. He
18 tells you, "Hey, look, buddy, you've got to do this," right,
19 for the most part, in so many words; correct?

20 A. Yes, sir.

21 Q. So you come back in and tell a third version;
22 correct?

23 A. Yes, sir.

24 Q. Now, the prosecutor, he didn't pull your proffer,
25 though, and say, "Hey, we are going to use this against you,"

1 did he?

2 A. No, sir.

3 Q. And you admit you lied to him; right? Right?

4 A. Yes, sir.

5 MR. SMILEY: Beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 BY MR. SMILEY:

8 Q. Fair to say Ishmel Lemon never said to you, "Hey, I
9 need you to be a lookout for an armed robbery"? He didn't
10 tell you that, did he?

11 A. No, sir.

12 Q. Fair to say Antwain Champaigne didn't look at you
13 and say, "I need you to be a lookout for an armed robbery,"
14 did he?

15 A. No, sir.

16 Q. Did you know anybody that lived up there?

17 A. No, sir.

18 Q. All right. You had 50 bucks that night from Ishmel?

19 A. Yes, sir.

20 Q. And that would have been in your pocket when you
21 went to jail; right?

22 A. Yes, sir.

23 Q. What were you getting out of this being a lookout?

24 A. Nothing.

25 MR. SMILEY: That's all I've got.

1 THE COURT: Any redirect?

2 MR. OSBORNE: No, Your Honor.

3 THE COURT: All right. Thank you. You may step
4 down.

5 (Whereupon the witness is excused.)

6 THE COURT: Let me see the attorneys up here for
7 just a minute.

8 (Whereupon, a bench conference takes place.)

9 THE COURT: All right. Ladies and gentlemen, the
10 attorneys wanted you to work 'til about 9 o'clock tonight.

11 No. I'm just teasing. It's a nice day out there.
12 That's all the testimony y'all will hear today. I'm going to
13 ask that you be back here at 9:30 tomorrow morning, where we
14 will continue taking testimony.

15 Have a nice evening. Please do not discuss this
16 case with anyone. Thank you.

17 (Whereupon, the jury leaves open court at
18 4:43 p.m.)

19 THE COURT: Anything before we recess for the day?

20 MR. BRADLEY: Nothing further, Your Honor.

21 THE COURT: Court is adjourned until 9:30 tomorrow
22 morning.

23 MR. OSBORNE: Thank you, Your Honor.

24 MR. BRADLEY: Thank you, Your Honor.

25 (Whereupon, proceedings are adjourned.)

1 (Whereupon, the trial continues on March 3, 2015.)

2 THE COURT: Anything we need to bring up before the
3 jury comes in?

4 MR. OSBORNE: No, Your Honor.

5 MR. BRADLEY: No, Your Honor.

6 MR. SMILEY: No, sir. The defense is ready to
7 proceed.

8 THE COURT: I did get your request for -- you wanted
9 "The hand of one is the hand of all"?

10 MR. BRADLEY: Yes, Your Honor.

11 THE COURT: I'm going to add a mere presence charge
12 on y'all's behalf.

13 MR. BRADLEY: Thank you.

14 THE COURT: Is there anything else?

15 MR. OSBORNE: Only other charge that I've requested
16 was the presumption of --

17 THE COURT: Inferences.

18 MR. OSBORNE: -- the inference with the intent to
19 commit a crime by trespassing at nighttime.

20 THE COURT: Any objection to that?

21 MR. BRADLEY: No objection at this time.

22 MR. SMILEY: Can I think about it?

23 THE COURT: Yeah.

24 MR. SMILEY: Because truthfully, I don't want the
25 charge. I need to think about a legal basis.

1 THE COURT: That you can actually argue that in good
2 conscience.

3 All right. Let's bring our jury in.

4 (Whereupon, the jury returns to open court at
5 9:35 a.m.)

6 THE COURT: Good morning, ladies and gentlemen. I
7 hope y'all had a nice afternoon. It was a nice afternoon
8 yesterday. After the bad weather we've had, we needed just a
9 few hours. Now it seems to be back to the old way, but I
10 understand tomorrow is going to be good.

11 So I want to say thank you for being here on time.
12 It makes everything work out well when everybody is here and
13 we can get started. Sooner we can get started, the sooner we
14 can get finished.

15 All right. State ready to proceed with its next
16 witness?

17 MR. VOIGT: We are checking in the hall to make sure
18 she walked down and around.

19 THE COURT: All right. You may call your next
20 witness.

21 MR. OSBORNE: The State calls Sarah Gladwell.

22 SARAH GLADWELL,

23 having been duly sworn, testifies as follows:

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

1 THE WITNESS: Sarah Gladwell, G-l-a-d-w-e-l-l.

2 DIRECT EXAMINATION

3 BY MR. OSBORNE:

4 Q. Good morning, Ms. Gladwell. Where do you work?

5 A. I work for the Charleston Police Department and the
6 crime scene unit.

7 Q. How long have you worked there?

8 A. I've worked there for about five years.

9 Q. So what are some of the duties as -- while you are
10 working on crime scenes?

11 A. As a crime scene technician, we respond to various
12 crime scene calls. We take photographs and collect evidence,
13 process the same, dust for fingerprints, those sorts of
14 things.

15 Q. All right. As a crime scene tech, do you also
16 transport evidence to SLED to be analyzed?

17 A. Yes.

18 Q. Did you transport any evidence in this burglary
19 case?

20 A. Yes, I did.

21 Q. And what did you transport?

22 A. I transported three buccal swabs, swabs from a
23 handgun, and swabs from a window lock.

24 Q. Okay. When did you come into possession of those
25 items?

1 A. May 14th, 2014, at 6:06 a.m.

2 Q. And who did you come into possession of those items
3 from?

4 A. Linda Wilson, who works in the evidence unit.

5 Q. Okay. What did you do with the evidence after --
6 those items once you got them?

7 A. Once I got them, they were in my possession, I
8 transported them to Columbia, where SLED is located.

9 Q. Do you know who you handed them off to?

10 A. Yes.

11 Q. And who was that?

12 A. Jennifer Aycock.

13 Q. What time was that?

14 A. It was 9:13 in the morning on the same day.

15 Q. Same day.

16 MR. OSBORNE: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. OSBORNE:

19 Q. Ms. Gladwell, I'm showing you what's been -- for ID
20 purposes only, what's been marked State's Exhibit 26, 25, 18,
21 and 10.

22 Could you please go through -- well, first, do you
23 recognize those items?

24 A. Yes, I do.

25 Q. And could you please go through and identify each of

1 those items?

2 A. Yes. State's 10 is swabs from a window lock and
3 swabs from a handgun; State's 26 is -- they are swabs from --
4 buccal swabs from Jordan Brown; State's 25 is buccal swab
5 from Antwain Champaigne; and 18 is buccal swab from Ishmel
6 Lemon.

7 Q. Now, during that two- or three-hour period these
8 items were in your possession, did you tamper with them or
9 alter them in any way?

10 A. No, sir.

11 MR. OSBORNE: Your Honor, I would like to just go
12 ahead and enter these into evidence now, if there's no
13 objection.

14 THE COURT: Any objection?

15 MR. BRADLEY: No, Your Honor.

16 MR. SMILEY: None, Your Honor.

17 THE COURT: Without objection, these are entered in
18 as 25 --

19 MR. OSBORNE: 10, 18, 25 and 26.

20 (State's Exhibit 10, Swabs from window lock, is
21 moved into evidence.)

22 (State's Exhibit 18, Buccal swab from Ishmel
23 Lemon, is moved into evidence.)

24 (State's Exhibit 25, Buccal swab from Antwain
25 Champaigne, is moved into evidence.)

1 (State's Exhibit 26, Buccal swabs from Jordan
2 Brown is moved into evidence.)

3 MR. OSBORNE: No further questions.

4 THE COURT: Mr. Bradley.

5 CROSS-EXAMINATION

6 BY MR. BRADLEY:

7 Q. Your only job during that process was to transfer
8 that information from one person to the other?

9 A. Transfer the evidence.

10 Q. Transfer the evidence.

11 A. Yes.

12 Q. And you had no opportunity to open that evidence or
13 do anything with that evidence; is that correct?

14 A. Yes, that's correct.

15 Q. You did no testing or anything of any of the
16 evidence?

17 A. No, sir.

18 MR. BRADLEY: No further questions. Thank you.

19 THE COURT: Mr. Smiley.

20 CROSS-EXAMINATION

21 BY MR. SMILEY:

22 Q. You are a crime scene tech, but that wasn't your
23 responsibility in relation to this case at all. Your only
24 part was transportation; correct?

25 A. Yes, sir.

1 MR. SMILEY: That's all I have.

2 THE COURT: Any redirect?

3 MR. OSBORNE: None, Your Honor.

4 THE COURT: Thank you. Witness may step down.

5 Any objection to this witness being excused?

6 MR. OSBORNE: None, Your Honor.

7 MR. BRADLEY: None, Your Honor.

8 MR. SMILEY: No, sir.

9 THE COURT: Thank you.

10 (Whereupon the witness is excused.)

11 THE COURT: Next witness?

12 MR. VOIGT: Your Honor, the State calls Donna
13 Money.

14 DONNA MONEY

15 having been duly sworn, testifies as follows:

16 THE CLERK: State your name and spell your last name
17 for the record.

18 THE WITNESS: Donna Money, M-o-n-e-y.

19 DIRECT EXAMINATION

20 BY MR. VOIGT:

21 Q. Ms. Money, where do you work?

22 A. I work for the South Carolina Law Enforcement
23 Division, also known as SLED.

24 Q. And what are your duties there?

25 A. I'm a forensic scientist in the DNA casework

1 department.

2 Q. Talk as loudly as you can; I appreciate it.

3 What's your background in forensic science?

4 A. I have a degree in forensic science from the
5 Pennsylvania State University.

6 Q. Okay. And what do you test mostly at SLED? What's
7 your role there?

8 A. In the casework department, we run DNA analysis on
9 evidence items and known DNA standards.

10 Q. Do you have any specialized testing in the field of
11 DNA analysis? Any specialized training, rather?

12 A. At SLED we do undergo a year and a half training
13 program in order to become qualified as a DNA analyst.

14 Q. Have you ever been qualified in the state -- in a
15 state court in South Carolina as an expert in the field of
16 DNA analysis and testing?

17 A. Yes.

18 MR. VOIGT: At this time, the State tenders the
19 witness as an expert.

20 THE COURT: Any requests to voir dire her?

21 MR. BRADLEY: No questions.

22 THE COURT: Any objection?

23 MR. SMILEY: I don't have any.

24 THE COURT: Any objection?

25 MR. BRADLEY: No.

1 THE COURT: All right. Ladies and gentlemen, I'm
2 going to deem her to be an expert in forensic analysis.

3 Now, what that means is ordinarily a witness can
4 only testify as to what they saw, heard, tasted, smelled, or
5 felt; however, when somebody has an extra amount of education
6 and experience, we will allow them to give opinions and draw
7 conclusions.

8 Now, ladies and gentlemen, whether or not you decide
9 to accept her opinions is solely for you as jurors to decide.
10 Ladies and gentlemen, you should not give her testimony any
11 greater weight or any lesser weight just because she is an
12 expert, but just take it along with all the other evidence
13 and give it the weight that you believe it should have.

14 You may proceed with your questioning.

15 MR. VOIGT: Thank you very much, Your Honor.

16 BY MR. VOIGT:

17 Q. Now, Ms. Money, were you asked to test certain
18 samples in this particular case?

19 A. Yes.

20 Q. And when I say "this particular case," I'm referring
21 to a SLED lab number of L1400017.

22 Does that pertain to Antwain Champaigne, Ishmel
23 Lemon, and Jordan Brown?

24 A. Yes.

25 Q. And what's the purpose of that SLED lab number?

1 A. The SLED lab number is a number we give the evidence
2 items when they are entered in at SLED to differentiate it
3 from the agency case number that was assigned.

4 Q. So does that number track every bit of evidence that
5 comes in pertaining to that particular case?

6 A. Yes.

7 Q. So if it went to a different -- if it went to a
8 different branch in SLED that tested definite things, y'all
9 would be using the same lab number?

10 A. Yes.

11 Q. And did you prepare a report in this matter?

12 A. Yes.

13 Q. And I'm going to --

14 MR. VOIGT: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MR. VOIGT:

17 Q. I'm going to show you what's been previously marked
18 as State's Exhibit 24. Would you take a look at that? It
19 may be stapled in reverse order.

20 Do you recognize that item?

21 A. Yes. This is my report.

22 Q. And that's the report you prepared in anticipation
23 of your testimony here today?

24 A. Yes.

25 Q. And that's basically a standard SLED report that

1 would have -- you would do for any DNA analysis; correct?

2 A. Correct.

3 MR. VOIGT: At this time the State would offer
4 State's 24.

5 THE COURT: Any objection?

6 MR. BRADLEY: No objection, Your Honor.

7 MR. SMILEY: No objection.

8 THE COURT: Without objection, State's Exhibit 24 is
9 admitted.

10 (State's Exhibit 24, SLED report, is moved into
11 evidence.)

12 BY MR. VOIGT:

13 Q. Let's talk a little bit about what this report
14 contains.

15 You were asked to look at buccal swabs; is that
16 correct?

17 A. Yes.

18 Q. And what is a buccal swab? What does -- "buccal" is
19 not a word we tend to use in everyday conversation. What are
20 we talking about when we are talking about a buccal swab?

21 A. A buccal swab is a type of known DNA standard that
22 is collected. It's done by rubbing a -- essentially a Q-Tip
23 on the inside of a person's cheek to collect the skin cells
24 inside.

25 Q. And does that give you a sample, a known sample, by

1 which you can compare other things to?

2 A. Yes.

3 Q. Okay. And whose buccal swabs were you asked to
4 extract DNA from in this particular case?

5 A. May I refer to my report?

6 Q. Absolutely.

7 A. SLED received buccal swabs from Antwain Champaigne,
8 buccal swabs from Ishmel Lemon, and buccal swabs from Jordan
9 Brown.

10 Q. So you had three different people that the agency
11 was looking at, and the only way you know how to
12 differentiate one from the other is basically what the agency
13 tells you; right?

14 You have no role in the collection of this evidence?

15 A. No, I do not.

16 Q. So you look at a -- basically a long Q-Tip and you
17 extract a DNA sample from it?

18 A. Yes.

19 Q. Were you able to extract a DNA sample from each of
20 the buccal swabs?

21 A. Yes.

22 Q. So there was no problem; you had everything you
23 needed from law enforcement to have a known sample of Jordan
24 Brown, Ishmel Lemon, and Antwain Champaigne?

25 A. No problem.

1 Q. And what were you asked to compare those samples to?
2 What else were you given?

3 A. SLED also received swabs from a window lock and
4 swabs from a handgun.

5 Q. And you had no role in the collection of that
6 particular evidence?

7 These are, again, when you say "swab," we are
8 talking about essentially long Q-Tips that are wiped onto a
9 surface with the intent of extracting a DNA profile?

10 A. Yes.

11 Q. And I believe in your report you have those labeled
12 as 5 and 6?

13 A. Yes.

14 Q. And 1, 2, and 3 are the buccal swabs from each of
15 the other individuals, from the persons?

16 A. The numbers are 2, 3, and 4.

17 Q. I'm sorry; 2, 3, and 4.

18 Let's just start with your analysis of 5, which is
19 the swab from the window. This is the easiest part; right?

20 You didn't get a DNA profile, did you?

21 A. That is correct.

22 Q. So you have nothing to compare -- no DNA sample to
23 compare from the window lock to the three people that we
24 asked you to test?

25 A. That is correct.

1 Q. And so there's no conclusion you could possibly
2 reach; right?

3 A. Correct.

4 Q. All right. Now, you did reach conclusions as to the
5 other -- we will call it Number 6, which is the swabs from
6 the handgun.

7 Do you know specifically where on the handgun those
8 swabs were taken? Were you given that information?

9 A. No. I was not given that information.

10 Q. So from somewhere on the handgun, you received swabs
11 from law enforcement, and you were asked to compare those
12 with these three known individuals; correct?

13 A. Yes.

14 Q. And when you are looking to -- tell the jury about
15 inclusion and exclusion. What do those terms means in terms
16 of your testing?

17 A. Inclusion and exclusion are terms we use when we
18 compare evidence profiles to known DNA standards. Those
19 terms are typically used when dealing with mixtures that can
20 be found on an item. A mixture is a situation where there's
21 multiple people's DNA present, and we have to determine
22 whether or not the known standards submitted, if those
23 individuals' DNA may be present or may not be present;
24 therefore may be included or may be excluded.

25 Q. Okay. And in-between included and excluded, is

1 there a third category?

2 A. There is. In the middle, there's a no conclusive
3 interpretation. We utilize that because we try to give the
4 most conservative interpretation to prevent false inclusions
5 or false exclusions.

6 Q. Okay. And did you come to any conclusion -- now,
7 was this mixture in 6 from the handgun, was that a mixture of
8 DNA samples?

9 A. Yes.

10 Q. Could you tell how many people it was a mixture of?

11 A. Based on the data developed, at least three
12 individuals contributed DNA to this item.

13 Q. It could have been more than three?

14 A. Yes. That's why we say "at least three."

15 Q. Okay. Certainly more than two?

16 A. Yes.

17 Q. And that was because of the values that you received
18 in your testing?

19 A. Yes.

20 Q. Let's talk a little bit about how those values are
21 expressed.

22 Now, did you prepare a chart or a table to help
23 explain your findings in this particular case? Is that part
24 of your work?

25 A. Yes.

1 Q. I'm going to put on the screen -- and hopefully it's
2 visible with our new technology. This would be page 3 of 3
3 of your report in State's Exhibit 24.

4 All right. Can you see that on the screen in front
5 of you?

6 A. Yes.

7 Q. All right. While that warms up, I will have you do
8 some explaining. All right. Cut off up there, but as I can
9 see it, we have Antwain Champaigne, he's Number 2; Ishmel
10 Lemon, Number 3; Jordan Brown, Number 4, window lock,
11 Number 5. And across there is a bunch of lines because you
12 didn't find anything there; right?

13 A. Correct.

14 Q. And then Number 6 is the handgun sample, and then we
15 have a bunch of numbers and that's why you were saying it's
16 at least three or more people, because we have a bunch of
17 numbers down there where Mr. Champaigne, Mr. Lemon, and
18 Mr. Brown either have one or two numbers. The handgun has
19 got -- some of them have four, some of them have five, some
20 of them -- it looks like five is about as many as we get.

21 Let's start at the top. There are -- are these 15
22 different categories?

23 A. Yes. There's 15 locations, and then there's a
24 gender location.

25 Q. And these locations, are these called loci? Is that

1 the term y'all use?

2 A. Yes. Each one is called a locus, and then all
3 together they're called loci.

4 Q. Okay. Loci.

5 And they have designations up there which are
6 letters and Number DAS1179. What does that refer to?

7 A. Those refer to the location on a person's chromosome
8 that we are looking at.

9 Q. So are these 15 different locations from the same
10 chromosome or are these 15 different locations spread out
11 among multiple chromosomes?

12 A. They are spread out.

13 Q. Why are these particular values chosen? Why are
14 these loci chosen?

15 A. These locations were chosen because they are
16 specific to individuals but, they don't code for anything
17 specific. All we can tell from these are essentially if you
18 are male or female.

19 Q. Okay. And so male and female, that's this over
20 here?

21 A. Yes.

22 Q. And when we have a Y, that means that a man touched
23 that, a man is part of that mix; right?

24 A. Yes.

25 Q. What did these -- like, for example, here's a 9.

1 What does that number represent?

2 A. Each number is called an allele, and essentially
3 what an allele is, is a numerical -- the number is a
4 numerical representation of how often the sequence of a
5 person's base pairs occur at that location.

6 Q. So it's -- if in that case there are 9 repeats of a
7 base pair, base pairs are represented by letters; right?

8 A. Yes.

9 Q. So if you have 9 repeats, that expresses itself in
10 your chart as the number 9 on the certain location?

11 A. Yes.

12 Q. Loci, loci.

13 And some of those I see are 11, 12, so you would
14 have -- is it true that then you would have 11
15 representations of these pairs and then 12, and that's how it
16 would be expressed?

17 A. Yes.

18 Q. And then on these ones that have one number, is that
19 because they may have multiple expressions but they both wind
20 up either being a 14 or a 9 or 11 or 7, and doesn't make
21 sense to express those twice?

22 A. Yes.

23 Q. In other words, if you find a 7 and he's got two 7s
24 in that place, it doesn't -- there's no added value in
25 putting another 7 in; correct?

1 A. That's correct.

2 Q. Because you can't tell which one it would be from?

3 A. No.

4 Q. I see some numbers up there, and not on
5 Mr. Champaigne, Mr. Lemon, and Mr. Brown, but on the handgun
6 I see some numbers up there that are expressed in
7 parentheses. What does that mean?

8 A. We put parentheses around allele values that are in
9 a range of cautious interpretation that we have when we
10 interpret our data. We have these thresholds that if it's
11 below our threshold, we interpret it with caution to give a
12 conservative interpretation. Any number that is above the
13 threshold, we do not designate with parentheses.

14 Q. And this threshold is SLED's an accredited
15 laboratory; right?

16 A. Yes.

17 Q. Are these thresholds set by national or crediting
18 agencies and whatnot having to do with laboratory?

19 A. We get input from other national accredited
20 laboratories on determining our thresholds. We do internal
21 validation to verify our thresholds.

22 Q. Okay. So all of those numeric values that are
23 expressed without parentheses, these are clearly above your
24 threshold and you have no problem with them whatsoever?

25 A. Yes.

1 Q. Those things in parentheses, however, are below
2 threshold. Are they still scientifically significant?

3 A. Yes.

4 Q. I mean, it's not background chatter or noise. It's
5 not -- they are just not expressed in as much volume as the
6 ones above the threshold?

7 A. That is correct. They are not as strong.

8 Q. So let's quickly go through what -- you know, is
9 this chart -- does this represent the basic information then
10 that you use to determine whether somebody is included,
11 excluded, or neither?

12 A. Yes.

13 Q. You were asked to look at three different
14 individuals and compare those samples with your known sample,
15 which is the swab from the gun?

16 A. That's correct.

17 Q. And these are very basic -- you don't know where on
18 the gun it was taken, you know it's at least three people,
19 and these are the values that you have to work with?

20 A. Correct.

21 Q. Okay. For example, Antwain Champaigne, here in this
22 first category, he's got a 15. There's a 15 down here that's
23 as good as far as it goes, but there's no 16, which is his
24 other value; right?

25 A. Correct.

1 Q. All right. Problematic. He has a 28 and a 30. 28
2 and 30 are down here. So in the second loci, at least values
3 appear that are consistent with his. However, that's not the
4 end of your analysis; right?

5 A. Correct.

6 Q. So you keep going. 11 and 12, we have an 11 and 12
7 down here, even though the 12 is below threshold, so far so
8 good, but that is not where you stop. You have to keep
9 going; right?

10 A. Correct.

11 Q. So a 7 and a 12 and we have a 7 and a 12 here,
12 although the 12 is below threshold, so far so good, but you
13 have to keep going?

14 A. Correct.

15 Q. Okay. 17 and 19, there's no 19 down there. There's
16 a 17, but there's no 19. So now we are at a second loci and
17 we have an allele value for Mr. Champaigne that's not
18 contained in your known sample from the handgun; correct?

19 A. Correct.

20 Q. Would two samples alone be enough to exclude you?
21 Would these two values that he contains that are not
22 contained in the handgun be enough to exclude him from being
23 a contributor to these samples found on the handgun?

24 A. If we were just looking at these five locations,
25 depending on the interpretation guidelines, it's possible,

1 but we don't stop at just five locations. We go through the
2 whole profile, 15.

3 Q. And this doesn't matter so much because we do have
4 an XY here. Clearly, they are all men. All right. So we
5 are just really talking about the rest of these.

6 He's got a 7 and an 8; there's a 7, but there's no
7 8. 11 and 12, so far so good. He only has a 9, which really
8 could be two 9s. There's a 9 there.

9 Well, here we go again. There's a missing 19.
10 There's no 19 in this, although there is a 20.

11 Here he has a different value. He has an 11 and 11.
12 So far so good, but there's a 14.2. What's a 14.2? Why is
13 that expressed like that?

14 A. Alleles that appear like that are called
15 microvariants. They -- in that sense, it means it didn't
16 quite reach a 15. It was two pairs short. And that's why we
17 designated a 14.2.

18 Q. But there's nothing like a 14.2 on that loci, which
19 is D-19S433; right?

20 A. Correct.

21 Q. Okay. Next one, 17, 19; there's a 17, 19 there.
22 8/11, there's an 8/11 there, 15/19 up here. There's no 19
23 down here, although there is a 15. 8/12, there's no 8. And
24 20.24, there's a 24 below threshold, but there's no 20.

25 That is 1, 2, 3, 4, 5, 6, 7, 8 out of 15 possible

1 loci contain something that's not -- or rather, do not
2 contain a value that's expressed in Mr. Champaigne's DNA
3 profile.

4 What did you do with that information? How did you
5 use that information?

6 A. Part of the interpretation process, once we go
7 through and compare each known DNA standard to the evidence
8 item and see which locations it may or may not be present in,
9 we also then look at which locations we can use to calculate
10 a statistic, and if an individual is missing from those
11 locations, we exclude them as part of our conclusion.

12 Q. And what was your conclusion regarding the swab
13 taken from the gun as compared to the buccal swab of Antwain
14 Champaigne?

15 A. May I refer to my report?

16 Q. Yes.

17 A. Antwain Champaigne is excluded as a contributor to
18 this mixture.

19 Q. Okay. So it's your scientific opinion that you
20 cannot conclusively say that the mixture taken on the tip of
21 the Q-Tip from the gun is -- can be -- is the mixture taken
22 from the tip of the Q-Tip from the inside of Antwain
23 Champaigne's mouth; is that correct?

24 A. Can you rephrase that question?

25 Q. You cannot say that these samples represent the same

1 DNA values?

2 A. Correct.

3 Q. And that's true as well for Jordan Brown. I'm not
4 going to go through that whole thing again with Jordan Brown,
5 but Jordan Brown has values.

6 Now, in addition to having values --

7 MR. SMILEY: Your Honor, I'm going to object to
8 leading. He's needs to ask a question that -- objection,
9 leading, Your Honor.

10 THE COURT: Watch your question.

11 MR. VOIGT: Thank you.

12 BY MR. VOIGT:

13 Q. Did you come to a conclusion about Jordan Brown?

14 A. Yes.

15 Q. Okay. And what was your conclusion regarding Jordan
16 Brown?

17 A. Jordan Brown is excluded as a contributor to this
18 mixture.

19 Q. So similarly, as with Mr. Champaigne, you cannot
20 scientifically conclude, based on the parameters set out by
21 SLED, that these two mixtures represent the same DNA values?

22 A. Can you rephrase that?

23 Q. That the values contained on the handgun, the DNA
24 profiles, because it's multiple profiles that you've taken
25 from the DNA handgun, that you cannot say that Jordan Brown

1 or Antwain Champaigne conclusively contributed to that
2 profile?

3 A. Correct.

4 Q. Now let's turn to Mr. Lemon. Mr. Lemon has a 14 and
5 a 15.

6 Did you find 14 and a 15 in the first loci?

7 A. Yes.

8 Q. A 30 and a 31.2. Did you find a 31.2 in the second
9 loci?

10 A. No.

11 Q. 8 and 12. Did you find an 8 and 12 on the third
12 loci?

13 A. Yes.

14 Q. Did you find a 7 and 12 in the third loci?

15 A. Yes.

16 Q. 15, 16, did you find those on the fourth loci --
17 fifth loci, rather?

18 A. Yes. Yes.

19 Q. Did you find a 7 in the next loci?

20 A. Yes.

21 Q. Did you find an 11/12 on the next loci?

22 A. Yes.

23 Q. Similarly, did you find an 11 on the next loci?

24 A. Yes.

25 Q. Did you find a 21 and a 22 on the next loci?

1 A. Yes.

2 Q. An 11 and a 13 on the next loci?

3 A. Yes.

4 Q. A 15 on the next loci?

5 A. Yes.

6 Q. An 8 and 9 on the next loci?

7 A. Yes.

8 Q. Did you find a 20 on that next loci?

9 A. No.

10 Q. But you did find a 13?

11 A. Correct.

12 Q. You found a 12 on the next loci?

13 A. Yes.

14 Q. And did you find a 22 and a 24 on that last loci?

15 A. Yes.

16 Q. So in this profile, Mr. Lemon's profile, we had two
17 -- do we have two expressions of allelic value that are not
18 found in your known sample?

19 A. Yes.

20 Q. Based on that, what did you concluded about
21 Mr. Lemon?

22 A. May I refer to my report?

23 Q. Absolutely.

24 A. Ishmel Lemon cannot be excluded as a contributor to
25 this mixture. The probability of randomly selecting an

1 unrelated individual who could have contributed to this
2 mixture is approximately 1 in 3.

3 Q. That's a fairly broad conclusion, isn't it, 1 in 3?

4 A. Yes.

5 Q. And normally when you testify, you testify of
6 probabilities that are considerably greater than 1 in 3;
7 isn't that correct?

8 A. Often, yes, we do.

9 Q. Often you talk about numbers that are actually
10 larger than possible population of the planet; right?

11 A. Yes.

12 Q. So 1 in 3 really doesn't tell us whether Mr. Lemon
13 positively contributed to that mixture or didn't positively
14 contribute to that mixture; correct?

15 A. That is correct.

16 MR. VOIGT: I will tender the witness, Your Honor.

17 THE COURT: Thank you. Mr. Bradley.

18 MR. BRADLEY: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. BRADLEY:

21 Q. The prosecutor just took you through a lot of
22 variables and numbers and procedures, and some of which I'm
23 familiar with, some of which I am not. But could you just do
24 me a favor and explain it to the jury in simple terms what
25 the results of your report were regarding Mr. Antwain

1 Champaigne?

2 A. As I stated earlier, Mr. Antwain Champaigne is
3 excluded as contributor to this mixture. Based on the data
4 that was developed and the inability to provide a statistic
5 because he was missing from those locations, I can say with a
6 reasonable degree of scientific certainty that his DNA is not
7 present.

8 Q. And that would -- on the window lock, you didn't get
9 any DNA; is that correct?

10 A. That's correct.

11 Q. But from the gun, this one we are talking about now,
12 is totally -- he is excluded from being a contributor of the
13 mixture; that's correct?

14 A. Yes.

15 MR. BRADLEY: I have no further questions.

16 Thank you.

17 THE COURT: Mr. Smiley.

18 MR. SMILEY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q. You are the CSI girl. You are the one I always like
22 to talk to. You are the one in the lab, looking at your
23 samples, running the machines, and all that kind of stuff.
24 You get to do the fun stuff in there; right?

25 A. Correct.

1 Q. Okay. Let's start. I got -- no disrespect, I got
2 real confused when Mr. Voigt was speaking to you, and I'm
3 pretty simple-minded, so let's start with some simple things.

4 We start off with the population of the world as
5 being possible contributors; correct?

6 A. Yes.

7 Q. Because your tests exclude people. They don't pull
8 them into the circle, they push them out; right?

9 A. Yes.

10 Q. For an easier way to look at it.

11 So I don't know much about DNA, but it's my
12 understanding that DNA's got a whole bunch of those loci, and
13 I think that's an understatement; correct?

14 A. Yes.

15 Q. We are looking at just 15 places.

16 A. Correct.

17 Q. I'm going to ask the question -- I probably
18 shouldn't -- how many loci, approximately, is there on a
19 piece of DNA, just in round numbers so -- we aren't talking
20 about 20. We are talking about a big number; right?

21 If I ask a bad question, give it to me the best way
22 the jury would understand it.

23 A. I can't say for certain a specific number, because
24 not every location has been identified. I would have to say
25 at least over 100.

1 Q. Okay. The genome projects where they go in and they
2 take your chromosome or whatever and they stretch out your
3 DNA and they look at it all, that's somewhat what you are
4 doing; correct? You are just looking at 15 places?

5 A. We look at 15 places. We are not sequencing an
6 individual's every single base pair, because there's over 4
7 billion base pairs.

8 Q. That is the number I was looking for, 4 billion base
9 pairs.

10 And those base pairs are sort of like the numbers
11 you are writing; is that right?

12 A. A base pair is a letter representation.

13 Q. A letter. Okay. All right. Getting over my head,
14 so I'm going to stop before I sink us all.

15 So when you look at a sample -- I guess we ought to
16 start there, too. When they collect the DNA -- when you get
17 it, you don't just put it in a machine and automatically get
18 your DNA string; right? You've got to do a process first;
19 right?

20 A. Yes. There's a multi-step process.

21 Q. Okay. And I am not going to go through all the
22 steps, but they take a little piece and you've got to like
23 spin it up, replicate it, make it bigger so you can look at
24 it? Is that --

25 A. That is part of the process.

1 Q. And so you take this little bit of DNA, replicate it
2 so that you can compare it to the DNA you collected from the
3 known sample that you've done the same process to; correct?

4 A. Yes.

5 Q. All right. To cut through all of this, you've got a
6 match -- or not a match -- someone is strongly included.
7 That is probably a bad word too. But you do statistical
8 analysis that if you -- 1 in 1 trillion sometimes is the kind
9 of statistics you come up with that it would be some other
10 person; correct?

11 A. The purpose of the statistic is to apply a weight to
12 the evidence profile and say, for instance, if a statistic is
13 1 in 1 trillion, that gives a stronger weight that the
14 individual contributing the DNA is essentially the source of
15 the DNA.

16 When the statistic is much lower, say, well below
17 the world's population, it applies a lower weight to the
18 evidence item. And that is why we use the terminology
19 "cannot be excluded," because we can't say for certain, yes,
20 that is the person.

21 Q. Right. Very good. So using this number 1 in 3, you
22 would expect in the population of this courtroom, just
23 randomly, that 1 out of every 3 people would match that
24 person's profile?

25 A. We are not saying "match." We are saying that their

1 DNA could have parts that could have contributed to that
2 mixture.

3 Q. Okay. But the most important part is, 1 out of 3
4 people in this given population would be expected to be a
5 contributor, and you say it's 1 out of 3; correct?

6 A. Yes.

7 Q. So two-thirds of the population could not have been
8 excluded from that?

9 A. That's correct.

10 Q. All right. So that statistic or that DNA evidence
11 doesn't tell us a whole lot, does it?

12 A. It doesn't provide much of a weight.

13 Q. When you come to testify in court and you've got
14 some DNA, you would expect -- withdraw that question, please.

15 All you can say, based on your analysis of the DNA,
16 is that 1 out of every 3 people -- is that right, making sure
17 I'm doing -- 1 in 3 people is going to have that DNA at those
18 sites; is that correct? Or am I wrong?

19 A. The stat is saying the probability of pulling
20 somebody off the street and their DNA potentially having
21 contributed to the mixture is a 1 in 3, not necessarily every
22 three people. You pick one and it's going to be them.

23 Q. Okay. Very good. So really that information
24 doesn't tell you anything about whether Ishmel Lemon handled
25 the gun. All it tells you is one out of -- if you pick three

1 people, one of them most likely would have matched in the
2 same position as Mr. Ishmel Lemon; fair enough?

3 A. The result is stating that the -- looking at the
4 data, his profile, evidence profile, he cannot be excluded.
5 I'm not saying match. What he has and what's in the mixture,
6 he could potentially be a source of what is present. And
7 with saying that, applying the statistic applies the weight
8 of whether or not that DNA present and his DNA are
9 consistent.

10 Q. Exactly. So bottom line is your report doesn't
11 provide a whole a lot of support to the fact that Mr. Lemon's
12 DNA was on that gun?

13 A. Doesn't provide a strong support.

14 Q. You wouldn't be prepared to say, based on those
15 samples, that there's a strong statistical possibility that
16 his DNA was on the gun?

17 A. That's correct.

18 MR. SMILEY: That's all I have.

19 THE COURT: Mr. Osborne -- excuse me. Mr. Voigt.

20 REDIRECT EXAMINATION

21 BY MR. VOIGT:

22 Q. Last follow-up.

23 When you get results like these, are you looking for
24 any particular result when you are comparing DNA? Are you
25 looking to find a match or to include or exclude any

1 particular person or defendant?

2 A. No. We run the evidence items first and then we
3 look at those profiles and determine mixture or not, and then
4 we run the standards separately at a later time. And we just
5 compare them and see if an individual is present or not, and
6 then we go from there.

7 MR. VOIGT: Thank you.

8 THE COURT: Any recross?

9 MR. BRADLEY: If I may, just one question.

10 RECROSS-EXAMINATION

11 BY MR. BRADLEY:

12 Q. In the 1 in 3 analysis, Ms. Money, that you just
13 spoke about, and I think Mr. Smiley just said 1 in 3 people
14 in the courtroom, would Mr. Champaigne be excluded from those
15 1 in 3, based on the results of your report?

16 A. Could you rephrase that question?

17 Q. Would Mr. Champaigne be excluded from those 1 in 3
18 contributors to the DNA that was on the gun?

19 A. That statistic isn't being applied to the conclusion
20 for Mr. Champaigne. It's only being applied for Mr. Lemon.

21 Q. Okay. And in Mr. Champaigne's case, he is not
22 inconclusive; is that correct?

23 A. He is excluded.

24 Q. He is excluded. Thank you.

25 MR. BRADLEY: No further questions.

1 THE COURT: Mr. Smiley?

2 MR. SMILEY: No, sir.

3 THE COURT: Thank you. You may step down.

4 Any objection to this witness being excused?

5 MR. OSBORNE: None, Your Honor.

6 MR. BRADLEY: No objection.

7 THE COURT: Have a nice day.

8 (Whereupon the witness is excused.)

9 THE COURT: How long do you think your next witness
10 will be?

11 MR. OSBORNE: Very short.

12 The State calls Sergeant Dustin Thompson.

13 DUSTIN THOMPSON,

14 having been duly sworn, testifies as follows:

15 THE CLERK: Please state your name and spell your
16 last name for the record.

17 THE WITNESS: Sergeant Dustin Thompson,
18 T-h-o-m-p-s-o-n.

19 DIRECT EXAMINATION

20 BY MR. OSBORNE:

21 Q. Good morning, Sergeant Thompson.

22 A. Morning.

23 Q. Where do you work?

24 A. I work for the Charleston Police Department.

25 Q. How long have you worked there?

1 A. Worked there for 13 years.

2 Q. And what are some of the various assignments that
3 you've held during that time period?

4 A. I've worked on a lot of different assignments
5 throughout my years on Traffic Division, patrol,
6 investigations, administrative positions.

7 Q. And where do you work now?

8 A. Currently assigned to supervisor of the burglary
9 division, supervising all the investigations, all burglary
10 investigations.

11 Q. So generally speaking, in your experience as a
12 burglary detective and the sergeant in charge of the unit,
13 are a lot of scenes processed by crime scene units?

14 A. Yes.

15 Q. And when those scenes are processed, do oftentimes
16 crime scene techs attempt to get DNA swabs from various
17 items?

18 A. Yes, they do.

19 Q. Points of entry?

20 A. Yes, sir.

21 Q. When those swabs are taken, the detectives that work
22 for you and yourself, what do you all do then?

23 A. If a suspect is developed or arrested in a case, we
24 will obtain the DNA sample from them and then compare it to
25 the DNA left at the scene.

1 Q. So -- and that DNA is compared by SLED?

2 A. Yes.

3 Q. Through your experience, do you often get positive
4 results?

5 MR. SMILEY: Objection, Your Honor. He's not
6 offering opinion testimony.

7 THE COURT: Rephrase your question.

8 BY MR. OSBORNE:

9 Q. In your experience as a sergeant in charge of the
10 burglary unit, you often submit these samples to be compared
11 to a suspect?

12 A. Yes.

13 Q. Through your experience, being in charge of that
14 unit, would you say it's more likely that you get positive
15 results or inconclusive results?

16 A. Inconclusive most of the time.

17 Q. But sometimes you do get positive results.
18 Otherwise you wouldn't submit it at all; right?

19 A. Yes.

20 Q. But more frequently you get inconclusive results?

21 A. That's correct.

22 Q. Let's talk about this case right here, this burglary
23 case.

24 Did you have the occasion to prepare search warrants
25 for the buccal swabs to the suspects in this case?

1 A. I did.

2 MR. OSBORNE: Your Honor, may I approach?

3 MR. SMILEY: Actually, may we approach, Your Honor?

4 THE COURT: Yes.

5 (Whereupon, a bench conference takes place.)

6 THE COURT: Counsel, proceed.

7 BY MR. OSBORNE:

8 Q. When you prepared those search warrants, did you
9 meet with a judge?

10 A. I did.

11 Q. Did you present the search warrants to the judge?

12 A. I did.

13 Q. After that, did you collect the buccal swabs from
14 the subjects?

15 A. I did.

16 Q. Who did you collect the buccal swabs from?

17 A. I collected the buccal swabs from each of the three
18 defendants, Antwain Champaigne, Ishmel Lemon, and Jordan
19 Brown.

20 Q. Okay. Once you got those buccal swabs, what did you
21 do with them?

22 A. They are packaged, placed into evidence at the
23 police department, and then I send them off to SLED for
24 comparisons.

25 Q. Did you then put in the request to have those buccal

1 swabs analyzed?

2 A. I did.

3 MR. OSBORNE: No further questions.

4 THE COURT: Mr. Bradley.

5 MR. BRADLEY: No questions for this witness.

6 THE COURT: Mr. Smiley.

7 CROSS-EXAMINATION

8 BY MR. SMILEY:

9 Q. In this case, other than the collection of the
10 buccal swabs, were you involved in it?

11 A. Yes.

12 Q. Were you the supervising agent?

13 A. Yes.

14 Q. Okay. Did you direct people on what their jobs
15 should be at the crime scene?

16 A. No, I did not.

17 Q. Who was in charge of that?

18 A. It would have been the patrol sergeant on duty that
19 day.

20 Q. Okay. So you went there and you had an overall
21 supervisory position, but you weren't specifically directing
22 people in this case?

23 A. No, sir.

24 MR. SMILEY: All right. That's all I've got.

25 THE COURT: Any redirect?

1 MR. OSBORNE: None, Your Honor.

2 THE COURT: Thank you. You are excused.

3 MR. OSBORNE: The next witness might be a little
4 longer.

5 THE COURT: Then why don't we take a ten-minute
6 recess and y'all get a cup of coffee or something like that,
7 stretch, and we will come back and take some more testimony.

8 Thank you, ladies and gentlemen. Please do not
9 discuss anything about the case while you are back there.

10 (Whereupon, the jury leaves open court at 10:24
11 a.m.)

12 THE COURT: Court is in recess for approximately 10
13 to 15 minutes.

14 (A recess transpired.)

15 THE COURT: Anything before we bring our jury back
16 in?

17 MR. OSBORNE: The only thing I would request is to
18 go ahead and take Mr. Champaigne into custody. My next
19 witness, I plan on doing an inquiry identification. I notice
20 that he walked out during my direct on the last witness and
21 that caused me problems.

22 THE COURT: I'm not going to put him in custody at
23 this point in time, but he is to stay in his seat.

24 MR. BRADLEY: Thank you, Your Honor.

25 MR. OSBORNE: Thank you, Your Honor.

1 THE COURT: All right. Let's bring our jury in.
2 (Whereupon, the jury returns to open court at 10:42
3 a.m.)

4 THE COURT: The State may call its next witness.

5 MR. OSBORNE: The State calls Brian Moroney.

6 BRIAN MORONEY,
7 having been duly sworn, testifies as follows:

8 THE CLERK: If you will, please state your full name
9 and spell your last name for the record.

10 THE WITNESS: Brian John Moroney, M-o-r-o-n-e-y.

11 DIRECT EXAMINATION

12 BY MR. OSBORNE:

13 Q. Mr. Moroney, where do you work?

14 A. I currently work for the Assistant Solicitor's
15 Office, 8th Judicial Circuit in Greenwood County.

16 Q. How long have you been there?

17 A. About two weeks.

18 Q. What is your title there?

19 A. I'm an Assistant Solicitor, so prosecuting various
20 crimes.

21 Q. Same thing I do.

22 A. Yes.

23 Q. But in another circuit?

24 A. Correct, Greenwood County.

25 Q. Where did you work before that?

1 A. The City of Charleston Police Department.

2 Q. You were a police officer?

3 A. Yes.

4 Q. What were some of the various assignments that
5 you've had while you worked at CPD?

6 A. Started out in uniform patrol, and then the last
7 year and a half that I was employed with the City of
8 Charleston, was assigned to the power squad unit and Team 4
9 West Ashley, which is responsible for focusing on violent
10 crimes and proactive criminal patrol of narcotics.

11 Q. So while you worked on the power shift, you mostly
12 did proactive work. Did you also respond to calls for
13 service as well?

14 A. Yes, we respond typically to high-priority calls for
15 service. Most of the proactive work was done on our own
16 accord. So we wouldn't typically in a shift respond to
17 numerous calls for service, but if they are a priority,
18 in-progress call, we respond.

19 Q. And what is a prior -- what are some examples of
20 priority, in-progress calls?

21 A. Something typically where the complainant, the
22 person calling 911, the victim, is experiencing or
23 witnessing a crime in progress and it is typically an
24 important nature, felony, for example, a burglary that's
25 happening in progress.

1 Q. And I believe Officer Casey Havers was in that unit
2 with you as well?

3 A. Yes, he was.

4 Q. So is it fair to say you guys wouldn't respond to
5 traffic accidents?

6 A. No, not -- I mean, not unless we were doing traffic
7 patrol to help just a major accident.

8 Q. Were you working on the night of October the 23rd,
9 2013?

10 A. I was.

11 Q. And were you working that same capacity that night?

12 A. Yes. Team 4 Power Squad.

13 Q. Did you become involved in the investigation of a
14 burglary that occurred at [REDACTED] Westchase?

15 A. I did.

16 Q. Let me ask you this: [REDACTED] Westchase, is that in the
17 City and County of Charleston?

18 A. Yes.

19 Q. All right. Tell me how you came about to become
20 involved in that.

21 A. That night we were on patrol. As I recall, we were
22 in the area of -- roughly the area of 61 Ashley River Road
23 and Wallenberg Boulevard. I was by myself in an unmarked
24 unit and following behind Officer Casey Havers, who we
25 typically ride together as partners, but that night we were

1 assigned to ride separately.

2 When a call for services went out, in-progress call
3 for service, dispatch relayed to officers over Channel 3, the
4 dispatch radio, that a burglary was occurring, that the
5 female complainant called 911 reporting unknown black males
6 had broken into her residence. She was hiding in the closet
7 and needed help.

8 So -- and that was put out that it was at Westchase
9 Apartments, which was just not even a mile, maybe a mile up
10 the road. So we knew we were in close proximity to that
11 location.

12 Q. When you responded, were you the first to get into
13 Westchase or was Officer Havers the first?

14 A. I was behind Officer Havers. So Officer Havers made
15 the left, and I was right directly behind him.

16 Q. Were you two the first officers from CPD that
17 arrived on scene, or was there another?

18 A. No. Officer Briggs from the Charleston Police
19 Department had relayed over the radio that he arrived first
20 on scene. And he also relayed to --

21 MR. SMILEY: Your Honor, I'm going to object to
22 hearsay.

23 THE COURT: Yes, sir.

24 MR. OSBORNE: Officer Briggs is going to testify.
25 He's just laying --

1 THE COURT: It's not offered through -- overruled.

2 BY MR. OSBORNE:

3 Q. So tell the jury what you saw when you arrived at
4 Westchase.

5 A. Well, we had been given information over dispatch
6 radio of the location and that an individual had been stopped
7 in the parking lot in the general location of the building
8 14, where this burglary was taking place, so we proceeded to
9 building 14.

10 Officer Havers was in front of me, and as we got
11 close to building 14, we stopped the patrol car some distance
12 from the apartment, which is kind of police tactics that we
13 are taught in the academy. For safety purposes, you don't
14 pull up right in front of the residence. You create yourself
15 some distance. So we were kind of at a 45-degree angle from
16 that building.

17 Officer Havers parked. I subsequently parked. He
18 exited first, I exited first, and we started proceeding on a
19 diagonal towards building 14. As we walked probably about 10
20 yards -- and again, Officer Havers was probably about 10
21 yards in front of me, had a little bit of a head start since
22 he parked in front of me, and we were looking at building 14
23 straight ahead.

24 We observed 2 black males and I observed two black
25 males come out of the top left, as I'm looking at the

1 apartment, running out of the top left apartment on the top
2 balcony, proceed down steps, and there's kind of a landing of
3 the steps before it comes all the way to the bottom. And
4 when they hit that landing, both males jumped over the
5 railing, hit the ground, and started running.

6 Obviously, we realized this was the building, I
7 realized this was the building, so we started yelling, "Stop.
8 Police." Had no effect. They continued to run and made a
9 sharp right turn around that building.

10 Q. Their right?

11 A. Their right, hugging, coming right off that steps,
12 and their right shoulders cut quickly around that right
13 corner.

14 Q. If I'm facing the front of the building, is it fair
15 to say that would be on the left side of the building?

16 A. That's correct, from my vantage point.

17 MR. OSBORNE: Your Honor, may I approach?

18 THE COURT: You may.

19 BY MR. OSBORNE:

20 Q. I'm going to show you what's been previously marked
21 and I believe entered into evidence as State's Exhibit 9.

22 Do you recognize this?

23 A. I do.

24 Q. And what is that?

25 A. Appears to be the front of the building 14 and the

1 steps that I described and the top left apartment that we
2 responded to.

3 THE COURT: Is that in evidence? Was there any
4 objections?

5 MR. SMILEY: Mr. Lemon does not object, Your Honor.

6 MR. BRADLEY: No objection.

7 THE COURT: Without objection, State's Exhibit No. 9
8 is in evidence. You may publish it to the jury.

9 (State's Exhibit 9, Photograph, is moved into
10 evidence.)

11 BY MR. OSBORNE:

12 Q. You didn't take this picture, did you?

13 A. No.

14 Q. Does this picture show or accurately show an angle
15 that you were walking up, or where would your vantage point
16 have been?

17 A. My vantage point would have been mirror image, in a
18 way, with this.

19 Q. Would you have been further to the right, further to
20 the left?

21 A. As I'm looking at it, further to the left.

22 Q. As you are looking at it, further to the left.

23 A. Yeah.

24 Q. Okay. Go ahead and go through that again, if you
25 would, with the jury. As you are walking up -- you can mark

1 on that screen right there.

2 A. Okay. Just I touch my finger?

3 Q. Yeah. And point on there where, when you first saw
4 the two subjects, where were they standing?

5 A. From my vantage point as I was walking up, the
6 subjects were running here and then proceeding down the
7 steps, and they got to this step landing, jumped over, hit
8 the ground, went around those bushes, and a foot pursuit
9 ensued.

10 Q. Just so I understand, it's not your testimony that
11 you saw these two individuals exiting the front door; is that
12 correct?

13 A. No. Due to the angle, I did not see the door swing
14 open and them run out. However, the speed that they were
15 coming out of that corner, there's no way they could gain
16 that kind of speed in that short distance as when I did see,
17 the part that's obscured is minimal due to my angle.

18 So although I didn't see the door swing open, the
19 speed of their running on that front porch is clear that they
20 were exiting that apartment.

21 Q. When they jumped that banister right there and then
22 ran around the side of the building, did they stumble, fall
23 down?

24 A. From my recollection, they hit the ground running.
25 I mean, there was no tumble, skipped beat. Obviously, they

1 regained themselves and continued to run. So nobody stumbled
2 or fell.

3 Q. And you and Officer Havers took off after them?

4 A. That's right, started pursuing.

5 MR. OSBORNE: Your Honor, I'm just going to show
6 State's 1 that's already in evidence.

7 THE COURT: All right.

8 BY MR. OSBORNE:

9 Q. Mr. Moroney, do you recognize that?

10 A. I do.

11 Q. And what is it?

12 A. It appears to be an aerial of the Westchase
13 apartment complex.

14 Q. Can you point out on there where the victim's
15 apartment is?

16 A. Yes. This is building 14. Victim's apartment would
17 have been right approximately there.

18 Q. All right. Well, using the map, tell us what
19 happened next.

20 A. So I've explained that we had parked, exited the
21 vehicles, saw the two males run out of the apartment, jumped
22 the landing, ignore our commands to stop, and they proceeded
23 around this corner here, running.

24 At this point, Officer Havers was ahead of me about
25 10 yards, roughly, and gave -- started giving chase directly

1 behind, directly behind --

2 Q. You can actually clear that yourself if you want.

3 A. Okay. So as the subjects went around here, Officers
4 Havers gave chase directly following behind them. Now, since
5 I was behind Officer Havers at this location, and they
6 started running that way and Officer Havers gave chase, I
7 didn't feel it appropriate to continue running straight after
8 them. I've been involved in a few foot pursuits before. I
9 felt it best to go this way, to cut them off.

10 The Westchase apartment complex is quite expansive,
11 and most of the expanse can't show on this map. It goes
12 towards this way. So I thought it might be very reasonable
13 that those subjects were going to continue running and double
14 back that way, so I cut them off.

15 But I continued along this way, at which point when
16 I rounded the corner, I again saw the subjects far ahead,
17 Officer Havers about here, and again, I was now back in the
18 chain, where it was myself, Officer Havers, and then the two
19 suspects, defendants, running ahead.

20 We proceeded to follow the suspects as they ran
21 through this brush here. There was pine straw and pine
22 trees, weaving in and out of trees. Again, the order never
23 changed. I was behind Officer Havers. The two suspects kept
24 running.

25 At this point one of the suspects broke off to the

1 right and Officer Havers followed that one suspect that broke
2 off to the right, and it appeared there was some kind of
3 dumpster there or a surrounding dumpster for the apartment.
4 And I knew there was one suspect and Officer Havers -- and I
5 that felt comfortable that he had that under control.

6 I kept my focus on the additional suspect, who at
7 this point was right here, about when I hit the street. And
8 there's two buildings here. He was running in-between those
9 two buildings. Again, now I was completely focused just on
10 one suspect, again, yelling repeatedly, "Stop. Police, City
11 of Charleston." Ignored.

12 Went right around this corner here, and there's a
13 sidewalk that's not clearly visible here, and I ran to the
14 corner, and we were now running directly on the sidewalk. I
15 was directly behind him, again, giving repeated commands.
16 And at this point I could see that the suspect was getting
17 tired. I was getting tired too, but he was starting to
18 labor.

19 And he proceeded right around here, and it's
20 difficult to see, but there's kind of a retaining wall that
21 goes down, wood pilings of some sort. I don't know if it was
22 an old big flowerbed or something, and the suspect jumped
23 down into that retaining wall, proceeding to run until I was
24 able to catch him, and that was right up when he reached the
25 end of the retaining wall. There's steps about, to my

1 recollection, three feet high. And I apprehended him at that
2 point.

3 MR. OSBORNE: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. OSBORNE:

6 Q. I'm showing you what's been marked as State's
7 Exhibit 8. Take a look at that.

8 Do you recognize that?

9 A. I do.

10 Q. And what is it?

11 A. This is that area that I didn't know how to quite
12 describe, kind of a retaining wall with wood pilings, the
13 area that suspect jumped down into and was apprehended.

14 Q. Again, I think that photograph was taken during the
15 daytime?

16 A. Yes.

17 Q. So it wasn't taken at night?

18 A. Appears the sun's out it's daytime.

19 Q. Does it fairly and accurately depict that area, as
20 you recall it?

21 A. Yes. I do remember the shape of the wood was just
22 oblong and a different shape.

23 MR. OSBORNE: Your Honor, I request State's 8 be
24 moved into evidence.

25 THE COURT: Any objection?

1 MR. BRADLEY: No objection, Your Honor.

2 MR. SMILEY: No objection.

3 THE COURT: Without objection, State's Exhibit 8 is
4 admitted. You may publish.

5 (State's Exhibit 8, Photograph, is moved into
6 evidence.)

7 BY MR. OSBORNE:

8 Q. Can you point out in that area where you actually
9 apprehended him?

10 A. It would have been right here.

11 Q. Mr. Moroney, when you were going through the travel
12 and the direction, the path that you took, how many times did
13 you actually lose eyesight of the individual that you
14 apprehended?

15 A. So I will have to recount it. As I went left here,
16 lost eyesight, while Officer Havers gave pursuit on this
17 right side, and then regained sight at this point as they ran
18 around.

19 Through this brush, because of the trees, there
20 would be quarter-second increments where I would lose sight
21 of the suspects as we were weaving, but it was clear, based
22 on the surroundings and running after these people, that it
23 was the same people.

24 And then at this point, as the suspect rounded this
25 corner, lost view for probably about two to three seconds, I

1 would guess, as he rounded that corner.

2 Q. So is that fair to say --

3 A. And the last would be around this corner, obviously.
4 At that point I was closing in on them, probably maybe a
5 one-second increment.

6 Q. Is it fair to say that you lost eyesight of him for
7 the longest period of time during this first turn, where you
8 took a left and he went straight through?

9 A. Yes.

10 Q. How long a period would you estimate?

11 A. Estimating, would be six seconds at the most.

12 Q. When you last saw him, I believe you testified you
13 saw Officer Havers chasing both of them?

14 A. Yes.

15 Q. When you saw them again, was Officer Havers still
16 chasing both of them?

17 A. Yes. Yes, he was.

18 Q. Now, when you apprehended the individual by the
19 little retaining area, did you learn the identity of the
20 individual?

21 A. I did. Not at that moment. My recollection is the
22 suspect wasn't talking at that point, was out of breath, but
23 he was identified as Antwain Champaigne.

24 Q. When you apprehended him, did you put him in
25 handcuffs?

1 A. Yes.

2 Q. And while you were going through that process, did
3 you notice anything unusual, something that struck you as odd
4 about his clothing or the way he was wearing his attire?

5 A. After I placed handcuffs on Mr. Champaigne, stood
6 him up and turned him around to face me, he was wearing a
7 dark black-colored hooded sweatshirt, and this hood on the
8 sweatshirt was tied -- it had drawstrings on it -- it was
9 cinched so tight on his face, covering the mouth, just so
10 that barely the eyes could be visible, that my first thought
11 was, how did this guy not run into a tree, you know, run into
12 an apartment as I was chasing him. This was cinched so tight
13 covering the whole face, it was almost comical how tight it
14 was.

15 So I had to undo. It was knotted; took awhile to
16 undo, pull the hood down, and we escorted him back to the
17 patrol car.

18 MR. OSBORNE: Your Honor, may I approach?

19 THE COURT: You may.

20 BY MR. OSBORNE:

21 Q. I'm going to show you what's been marked as State's
22 Exhibit 14 and 15. Can you take a look at both these.

23 Do you recognize those items?

24 A. I do. It appears to be the clothing that Antwain
25 Champaigne was wearing that night.

1 Q. On the night that you arrested him?

2 A. Yes.

3 MR. OSBORNE: Your Honor, at this time we request
4 State's 14 and 15 be moved into evidence.

5 THE COURT: Any objection to 14 and 15 being moved
6 into evidence?

7 MR. BRADLEY: No objection, Your Honor.

8 MR. SMILEY: No objection.

9 THE COURT: Without objection, State's Exhibit 14
10 and 15 are admitted. They may be published to the jury.

11 (State's Exhibit 14, Black sweatshirt, is moved into
12 evidence.)

13 (State's Exhibit 15, Shoes and hat, is moved into
14 evidence.)

15 BY MR. OSBORNE:

16 Q. Now, after you arrested him, do you know where he
17 was taken after that?

18 A. After he was placed in handcuffs, placed in the
19 patrol car, he was taken, I believe by central detectives,
20 back to CPD headquarters.

21 Q. I think a show-up was done in-between there?

22 A. I believe so. I wasn't involved particularly with
23 that, but ...

24 MR. OSBORNE: Your Honor, may I approach?

25 THE COURT: You may.

1 BY MR. OSBORNE:

2 Q. I'm showing you now what's been previously marked as
3 State's Exhibit 35. Can you take a look at that.

4 First, do you recognize the individual in the
5 screenshot?

6 A. Yes. It appears to be Antwain Champaigne.

7 Q. Do you know from looking at the date and time stamp
8 when that screenshot or when that photograph was taken?

9 A. That would have been the night and into the morning
10 after this incident occurred, burglary occurred.

11 Q. And are you familiar with where he's seated?

12 A. Yes. It looks like CPD investigations, the office
13 up there.

14 MR. OSBORNE: Your Honor, at this time I request
15 State's 35 be admitted into evidence.

16 THE COURT: Any objection?

17 MR. BRADLEY: No objection.

18 May I approach?

19 THE COURT: You may. Without objection, State's
20 Exhibit 35 is admitted.

21 (State's Exhibit 35, Photograph, is moved into
22 evidence.)

23 BY MR. OSBORNE:

24 Q. I think you said that the time is October the 24th,
25 2013, at 1:52 a.m.?

1 A. Yes. That's what appears on the time stamp here.

2 Q. Same night of the incident, just the next day?

3 A. Right, the next morning.

4 Q. Mr. Moroney, do you see the individual in the
5 courtroom here today that you chased and that you caught
6 wearing the hoody cinched up tight?

7 A. I do.

8 Q. Can you point him out and identify him to the Court?

9 A. He's sitting right there next to the gentleman in
10 the pink tie, and he's wearing a black pattern tie.

11 MR. OSBORNE: Let the record reflect he identified
12 the defendant.

13 THE COURT: The record will so reflect that the
14 witness identified the Defendant Champaigne as the person he
15 arrested on that night.

16 MR. OSBORNE: No further questions.

17 THE COURT: Mr. Bradley.

18 MR. BRADLEY: Thank you, Your Honor. May it please
19 the Court.

20 CROSS-EXAMINATION

21 BY MR. BRADLEY:

22 Q. Officer Moroney, I guess I should refer to you now
23 as Attorney Moroney. You were in law school at the time this
24 incident happened?

25 A. No, sir.

1 Q. You were not in law school?

2 A. No, sir. I graduated law school in actually 2007.

3 Q. 2007.

4 So you were still working as a police officer at
5 that time?

6 A. At what time? I'm sorry.

7 Q. You were just working as a police officer, not as an
8 attorney at that time?

9 A. Yes. Yes, that's correct.

10 Q. Okay. When did you go to the Criminal Justice
11 Academy?

12 A. It would have been in 2010.

13 Q. 2010.

14 And you were taught basic crime scene investigations
15 and things that are routinely taught during the session at
16 the Criminal Justice Academy; is that correct?

17 A. Sure.

18 Q. When you arrived that night and you pulled up, you
19 said that you were more to the left; is that correct? You
20 were to the left of the apartment; is that correct?

21 A. That's correct.

22 Q. Okay. So your vantage point would have been to this
23 side, the apartment would have been to this side; is this
24 correct?

25 A. That's correct, the apartment, yep, where you are

1 pointing.

2 Q. Okay. I'm just showing you a couple of photos. I
3 want you to take a look at these photos and tell me if that
4 accurately depicts the angle that you were at when you came
5 up to the apartment.

6 A. No. This is more of a straight-on angle.

7 Q. That's more of a straight-on angle?

8 A. Yes.

9 Q. That angle would actually have given you a better
10 shot?

11 A. Right.

12 Q. Than you actually had; is that correct?

13 A. That angle -- this angle would be better than the
14 other one?

15 Q. Uh-huh.

16 A. I don't know what you are trying to get at.

17 Q. I'm asking you if it's a straight-on angle?

18 A. Sure.

19 Q. If it was straight on, that's going to give you a
20 better picture of that apartment --

21 A. Yes.

22 Q. -- than the angle that you would have had, which was
23 to the left; is that correct?

24 A. If I was standing directly in front of it, it would
25 be a better angle than if I were to the side.

1 Q. Is there anything obstructing your view in those
2 pictures?

3 A. It appears in this picture there is --

4 MR. OSBORNE: Your Honor, I'm just going to object
5 to that, because we have no idea when these photographs were
6 taken. And to ask Mr. Moroney to say that this image is
7 better than the image that night seems a little unfair when
8 we don't know when these photographs were taken.

9 THE COURT: Build your foundation a little bit.

10 MR. BRADLEY: Thank you, Your Honor.

11 BY MR. BRADLEY:

12 Q. Was there anything blocking your view at the time
13 that you were actually looking at the apartment to see these
14 guys come out?

15 A. No.

16 Q. Was there a tree that was in front of that
17 apartment?

18 A. Not from my recollection.

19 Q. You don't recall any tree being there in front of
20 that apartment that was blocking the door?

21 A. No.

22 Q. Okay. So you clearly -- did you clearly see them
23 come out of the apartment?

24 A. As I stated a little bit earlier, I did not see the
25 door swing open and them come running out. However, what I

1 did see is the two subjects enter -- or exit from that top
2 left of the apartment, from the second story.

3 Q. Okay.

4 A. And the rate that they were running, there was no
5 other logical conclusion than they were exiting that
6 apartment.

7 Q. So you are speculating they were exiting that
8 apartment, but you did see them on the second floor; is that
9 correct?

10 A. Running from Apartment 14 to -- yes.

11 Q. But you are not sure whether they were coming from
12 that apartment; is that correct?

13 A. I'm fairly sure based upon just general human
14 observation, things of that nature, that, yes, they were
15 exiting that apartment.

16 Q. Okay. When they jumped -- when you allege that they
17 jumped from the second-story apartment, was there a third
18 suspect being detained?

19 A. I believe so. I didn't interact with that third
20 suspect.

21 Q. Did you actually see him being detained?

22 A. No. I heard that over the radio. Officer Briggs
23 had relayed to us over CPD Dispatch 3 that he had detained
24 one subject standing in the parking lot and near the vicinity
25 of building 14.

1 Q. So what you actually saw were two young men come
2 from the second story, from the second-story building, and
3 start to run; is that correct?

4 A. I saw, yes, saw two men running out of the apartment
5 in the top left there, Apartment [REDACTED], and then they started
6 running away from us.

7 Q. You keep saying "coming out of the apartment," but
8 you just testified you didn't actually see them come out of
9 the apartment; is that correct?

10 A. That's right.

11 Q. So you actually just saw the two men come from the
12 second story and start -- and jump down and start to run; is
13 that correct?

14 A. Right. You are just making an assertion and kind of
15 putting words in my mouth, though, that I only seen them
16 appear on the second balcony and they started running.

17 I think it's important to also include that they --
18 the rate of speed they were running from that corner leads no
19 other conclusion; they were running out of that apartment.

20 Q. How far were you from the apartment door?

21 A. I would guess -- again, this is a rough guess of
22 distance, but I would guess 25 yards, 30 yards, but I'm not
23 great at guessing.

24 Q. 25, 30 yards away.

25 What time was it?

1 A. This was, I believe, about 11:00 at night,
2 approximately.

3 Q. What were they wearing?

4 A. So relatively dark clothing. Obviously, two
5 subjects. One was wearing a long sleeve, black T-shirt, not
6 Mr. Champaigne, dark pants and dark shoes, it appeared. And
7 the other suspect, Mr. Champaigne, was wearing this clothing
8 right here, gray pants, black hooded sweatshirt, black and
9 gold tennis shoes.

10 Q. Okay. Do you remember during your report stating
11 that the suspect that you were chasing was in all black?

12 A. Do I remember stating that in my report that he was
13 in all black?

14 Q. Sir -- yes. Do you remember saying that -- yes. Do
15 you remember saying that the suspect that you were chasing
16 was dressed in all black?

17 A. As in a written report?

18 Q. In any report that you've given to CPD.

19 A. Not off the top of my head.

20 Q. Do you remember any of the witnesses stating that
21 the subjects were dressed in all black?

22 A. It could have been, could have been relayed at some
23 point, but I don't have any recollection of that.

24 Q. Did you speak with any of the witnesses?

25 A. Any of the witnesses to this burglary --

1 Q. Yes.

2 A. -- in progress?

3 Q. Yes.

4 A. No. I didn't speak to the victim or ...

5 Q. Didn't have a chance to speak to any of them?

6 A. Like who in particular?

7 Q. The victim, any eyewitnesses, anyone in the area
8 that night?

9 A. We rode up on scene and caught two guys that just
10 broke into a lady's house.

11 Q. Once you caught --

12 MR. SMILEY: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. BRADLEY:

15 Q. Once you caught the person that you were
16 apprehending, did you all go back and look for additional
17 suspects?

18 A. No.

19 Q. Once you caught the two guys that you were chasing,
20 you ended the investigation at that point with the arrest; is
21 that correct?

22 A. Because we had caught the guys we were chasing that
23 came out of that apartment.

24 Q. Well, you caught the guys that you were chasing that
25 you saw on the second floor, running; is that correct?

1 A. Okay.

2 Q. I'm not trying to trip you up, Officer. I'm just
3 trying --

4 A. I understand.

5 Q. But I don't want you to put words in the jury's head
6 that you saw something that you did not see.

7 A. I'm sure I was clear. I hope they didn't see that.

8 Q. Again, the question I will ask again is: You did
9 not see these guys come out of that apartment directly, did
10 you?

11 A. No.

12 MR. BRADLEY: No further questions at this time.

13 THE COURT: Mr. Smiley.

14 CROSS-EXAMINATION

15 BY MR. SMILEY:

16 Q. You were on the power patrol?

17 A. Power Squad is the name that it's been referred to.

18 Q. Okay. And it's an acronym of some sort; correct?

19 A. Sure. To be honest with you, I'm a little unsure
20 about it.

21 Q. Me either.

22 You were in a special squad, basically; right? And
23 your job was to go root out crime, not just wait for the
24 call. To go root it out; right?

25 And you were familiar with Westchase apartments?

1 A. Yes.

2 Q. You had been in there quite a few times; right?

3 A. Yes.

4 Q. As -- one of the reasons you were in there, it's one
5 of the places you went to root out crime; right?

6 A. It wasn't a real problematic area, but we would do
7 walk-and-talks and peek checks and patrols in the area as
8 well.

9 Q. Okay. Let's start with the map. All right. I'm
10 just trying to figure out how we are going to go about this.
11 Maybe I already have it over here. I hope so.

12 Sorry to walk you through this, but I'm going to be
13 as quick as I can.

14 Will you point out the apartment building 14.

15 A. (Witness indicates.)

16 Q. And put a dot. Thank you. All right.

17 I'm going to ask you to do it again since I, of
18 course, moved the photographs, so it's not going to be there.
19 All right.

20 A. (Witness indicates.)

21 Q. Did you dot 14 for me?

22 A. I did. I think it erased it for some reason. I
23 will do it again.

24 Q. All right. And will you show the jury the entrance
25 and exit to Westchase.

1 A. (Witness indicates.)

2 Q. There's only one way in and out?

3 A. Right. It's going to be kind of out here, but we
4 can't really see it --

5 Q. That would be the direction from which you came in?

6 A. Correct.

7 Q. So you came in, you took a right, and you followed
8 around, correct?

9 A. I'm sorry? Can you repeat that?

10 Q. Well, I'm terrible at this.

11 You came in this street, came around, and stopped;
12 correct?

13 A. No.

14 Q. Okay. Then show us.

15 A. So we would just come down this way (indicating).

16 Q. Okay. All right. You told the jury on direct that
17 part of police tactics procedures is not to pull right up in
18 front; correct?

19 A. Uh-huh.

20 Q. To stop on a 45.

21 Will you indicate to the jury approximately where
22 you stopped your car.

23 A. (Witness indicates.)

24 Q. Where that stops? Fair enough. Or a little further
25 up?

1 A. Oh, no. It would have been up into here. (Witness
2 indicates.)

3 Q. Okay. So you stopped your car on that 45?

4 A. Correct.

5 Q. And you got out, and that's when you saw the two
6 people fleeing; correct?

7 A. No. We walked out for -- and started our approach
8 on that angle and kind of scanned the area.

9 Q. All right.

10 A. And as we were walking, there's a dumpster kind of
11 like right here. I think you can see it a little bit. So we
12 walked kind of around past that dumpster, and at that point,
13 as we still kept our eyes on that, we knew that was the
14 location where this burglary was taking place, that was when
15 the two subjects came running from the top balcony.

16 Q. You knew that was where it was taking place because
17 you had received a dispatch?

18 A. That's right.

19 Q. And the dispatch, I believe it's -- that you
20 received, it says, "CPD dispatch advised you that a black
21 male had forcibly entered the residence and the victim was
22 hiding in the closet." Correct?

23 A. That sounds about right.

24 Q. All right. So you come up and see a couple guys
25 running. They don't respond to "Stop. Police." Right?

1 A. Right.

2 Q. And in your career as a police officer, you've had
3 fellows run from you before, I'm sure; right?

4 A. That's right.

5 Q. And they run for all kinds of reasons; correct?
6 Usually because they've committed a crime; right?

7 A. That's right, usually different crimes.

8 Q. For instance, people that had drugs on them, they
9 have run from you before; right?

10 A. Sure.

11 Q. They do not want to get caught, so they take off?

12 A. Sure.

13 Q. There's numerous reasons they run; would you agree
14 with that?

15 A. I've been involved in numerous foot pursuits where
16 people have run for varying reasons, that's correct.

17 Q. Variety of reasons, right.

18 When you made contact, visual contact with the two
19 gentlemen that you and Officer Havers chased, you were about
20 approximately around that trash can area; would that be fair?

21 A. Yes.

22 Q. I'll ask so the jury will see where you were
23 standing.

24 A. Sure.

25 Q. Instead of us fighting about whether you saw

1 somebody coming in or coming out, just -- they can figure it
2 out.

3 A. Right.

4 Q. You were standing about from that garbage can area;
5 right?

6 A. Yeah, probably somewhere in there, on an angle, line
7 of sight there.

8 Q. I got you. And the two gentlemen came -- I'm going
9 to put up State's 2 at this point. I'm probably going to
10 come back to this but we will clear it out.

11 This is State's No. 2. Does this look like the
12 front of building 14?

13 A. Appears --

14 Q. From a different angle?

15 A. -- similar, yeah, from a different angle.

16 Q. And you, as you testified, were over to the left;
17 right?

18 A. Yes.

19 Q. And when you said they came off the second floor, it
20 was actually the landing between the first and second floor?
21 They didn't jump --

22 A. They didn't jump from up here, no, no. From this
23 landing.

24 Q. Okay.

25 A. Down to the ground, and start running.

1 Q. So they came over.

2 When they came over -- by the way, were you in
3 uniform that night?

4 A. Yes.

5 Q. Okay. So two fellows come over -- was the lights on
6 your car on?

7 A. No.

8 Q. Were there any sirens and lights out there at all
9 when you pulled up?

10 A. No. Again, that would go to tactics, and that
11 wouldn't be a smart thing to do.

12 Q. I'm just asking.

13 A. Right.

14 Q. You were there. I wasn't.

15 A. No blue lights.

16 Q. Okay. So these two gentlemen come over that. Y'all
17 are pretty much 25 yards away?

18 A. Again, yeah.

19 Q. I'm not trying to hold you to an exact distance.

20 A. Right.

21 Q. But in general, you were over by those -- to the
22 right of the trash can area?

23 A. Yes, some distance away.

24 Q. All right. And those fellows actually came in your
25 general direction before they went around the corner; right?

1 A. Ran down here and then to the right.

2 Q. Okay. So they were running towards you at first?

3 A. No.

4 Q. They weren't --

5 A. They were running on the side, because I'm looking
6 at them, they are going this way and then to the right, from
7 my recollection. They are not running towards me.

8 Q. Okay. They aren't really running away, they are
9 running parallel; fair enough?

10 A. They were running away.

11 Q. Okay. Well, maybe I'm a little dense. Okay.

12 Again, put a dot on 14, just so we know, please,
13 sir.

14 A. (Witness complies.)

15 Q. Put a dot on the trash can, please.

16 A. I think the trash can appears to be somewhere --
17 (Witness complies.)

18 Q. And you were to the left of that?

19 A. Yes.

20 Q. They came over that -- I actually think you can see
21 the sidewalk in front of that balcony; right?

22 A. Uh-huh.

23 Q. Will you point that out for the jury?

24 A. They came out this balcony, ran down the side and
25 around the right.

1 Q. Okay.

2 A. When you were saying "did they run at you," I would
3 interpret running at me to be running at me.

4 Q. Okay. It's semantics.

5 A. Sure.

6 Q. They certainly ran away from you or else you
7 wouldn't have had to chase them all over the place.

8 A. That's right.

9 Q. But to begin with, when they first saw you, they
10 didn't run away from you, they ran parallel and then went
11 around the building; fair enough?

12 A. Fair enough. Yes.

13 Q. You can agree or disagree.

14 A. Yes. Yes.

15 Q. Because if I'm wrong, I'm just trying to get where
16 we are going. All right?

17 Okay. When you received the call, you were at
18 Ashley Hall Road or Ashley River Road?

19 A. Ashley River Road and Wallenberg, approximately.

20 Q. And you said that was about a mile away?

21 A. Yes. It's close. It's close.

22 Q. I'm just using what you have testified to.

23 A. That's right.

24 Q. About a mile away.

25 Did you all put on sirens to get there?

1 A. We would have probably maybe for the first -- given
2 the time of night, it depends. I can't recall. I don't
3 recall.

4 Q. All right.

5 A. But typical response to a call like that would be
6 yes, but given our close proximity, again, for tactical
7 purposes, you wouldn't have lights and sirens going once you
8 get to a certain radius or proximity to the --

9 Q. When you came to the entrance, no officers had
10 blocked it at that point?

11 A. No.

12 Q. You came in behind Officer Havers, and to the best
13 of your knowledge, you were the second or third cars to
14 arrive?

15 A. Yes.

16 Q. That is what I was trying to get to.

17 A. I got you.

18 Q. Officer Briggs was the first car on the scene?

19 A. That's right.

20 Q. Because he already had or was in the process of
21 taking detainees?

22 A. Yes.

23 Q. And he was parked directly in front of 14 or down --

24 A. I didn't see. I think later, after everything had
25 settled down, I saw cars parked kind of over here.

1 Q. Okay.

2 A. But I didn't observe that. I was focused on that
3 building, focused on the subject.

4 Q. So you actually didn't see him detain the young man?

5 A. No. No. We heard it. He relayed it over the
6 radio.

7 Q. So the way you knew it is by the fact that he had
8 already radioed, Hey, I'm taking the young man into custody
9 or detaining him?

10 A. That's right, and we suspect it might be related to
11 this incident due to the nighttime.

12 Q. From the time that you got the dispatch until the
13 time you got out of your car, can you tell the jury
14 approximately how much time that elapsed, to the best of your
15 recollection?

16 A. It would have been two minutes maybe, or less.

17 Q. Couple minutes?

18 A. Sure.

19 Q. All right. Westchase is a fairly populated place;
20 right?

21 A. It's a large complex, one of the bigger ones in West
22 Ashley.

23 Q. There's a pretty good bit of activity that's going
24 on there, even late evening; correct?

25 A. No. I would have to disagree with that.

1 Q. Okay. All right.

2 A. Not really. Typically people are getting ready for
3 bed and it's pretty quiet other than people walking their dog
4 or something like that, which there's a lot of too.

5 Q. There's people walking dogs?

6 A. There may be from time to time, yes.

7 Q. If the only -- when you pulled up, got out of your
8 car, chased these two individuals, put one of them in
9 custody, you didn't see other people?

10 A. No.

11 Q. All right. After you detained Mr. Champaigne and
12 what you've explained, was that the end of your involvement
13 in this case?

14 A. Yes. I placed him in handcuffs, escorted him in the
15 patrol car. We remained on scene. After that, after
16 completing case report, that is the end of my involvement.

17 Q. You weren't directed by any supervisors or on your
18 own interview anybody, collect any evidence, do anything,
19 anything else?

20 A. No.

21 MR. SMILEY: Thank you very much.

22 THE COURT: Any redirect?

23 MR. OSBORNE: None, Your Honor.

24 THE COURT: All right. Thank you. You may step
25 down.

1 (Whereupon the witness is excused.)

2 THE COURT: Why don't we take a ten-minute recess.

3 Let me see the attorneys up here.

4 Ladies and gentlemen, y'all need to go back to the

5 jury room. Please do not discuss anything about the case

6 while you are there.

7 (Whereupon, the jury leaves open court at 11:27

8 a.m.)

9 (A recess transpired.)

10 MR. OSBORNE: Your Honor, the next witness is going

11 to be our crime scene tech. I already checked with

12 Mr. Smiley and Mr. Bradley, and we have a few items they are

13 going to consent to, to be entered into evidence, to move

14 along a little quicker: State's 30, 31, 32, State's 3 and

15 State's 6.

16 THE COURT: 30, 31, 32.

17 MR. OSBORNE: State's 3 and State's 6.

18 THE COURT: Is that correct?

19 MR. BRADLEY: No objection, Your Honor. That's

20 correct.

21 MR. SMILEY: Not consenting, but not objecting.

22 THE COURT: Right. Okay. You are not admitting.

23 MR. SMILEY: That's correct. We are saying we won't

24 fight about them putting in the pictures.

25 THE COURT: All right. Let's bring our jury.

1 (State's Exhibit 30, Photograph, is moved into
2 evidence.)

3 (State's Exhibit 31, Photograph, is moved into
4 evidence.)

5 (State's Exhibit 32, Photograph, is moved into
6 evidence.)

7 (State's Exhibit 3, Photograph, is moved into
8 evidence.)

9 (State's Exhibit 6, Photograph, is moved into
10 evidence.)

11 (Whereupon, the jury returns to open court at 11:45
12 a.m.)

13 THE COURT: State may call its next witness.

14 MR. OSBORNE: The State calls Jeff Miller.

15 JEFF MILLER,

16 having been duly sworn, testifies as follows:

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

19 THE WITNESS: Jeffrey, M-i-l-l-e-r.

20 DIRECT EXAMINATION

21 BY MR. OSBORNE:

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

23 A. Charleston Police Department.

24 Q. And how long have you worked there?

25 A. I've been there 29 years.

1 Q. And in that 29-year period, what are some of the
2 various assignments you've had?

3 A. In '85 I started as a patrol officer. Then I became
4 a patrol supervisor. And then in 1994, I went into the crime
5 scene unit. I retired in 2009, and now I'm a civilian.

6 Q. And now you work at crime scenes?

7 A. Yes.

8 Q. And what are some of the duties as a crime scene
9 tech?

10 A. We respond to calls for service. It may be just to
11 take a picture. We go to calls to look for, collect, and
12 preserve physical evidence.

13 Q. Did you have the occasion to respond to a burglary
14 at [REDACTED] Westchase Drive?

15 A. Yes.

16 Q. And that was in October, I think, of 2013?

17 A. Yes.

18 Q. Just so the jury understands, when -- how do you get
19 called out? Is it an officer who does that?

20 A. Well, most of the time, yes, an officer will call us
21 to a scene, but we also work on the same channel that this
22 incident happened in. So I heard the call also go out. So I
23 had started to go to that call before I was dispatched.

24 Q. Because you knew that would be a call you would have
25 to respond to and process?

1 A. Yes.

2 Q. So just walk us through. What did you do when you
3 arrived on scene?

4 A. Well, I observed the scene and I had the information
5 that it was an in-progress burglary, people ran from the
6 scene, and that there was a gun involved, and it was dropped
7 in front of building 14.

8 Q. Did it appear from your observations and what you
9 learned that the individuals had made forced entry into the
10 apartment?

11 A. Yes. There was a window -- this apartment was on
12 the second floor, and there was a window close to the front
13 door of the apartment, and that window was broken.

14 Q. I would like to show you what's been marked as
15 State's Exhibit 6.

16 THE COURT: It was admitted, State's Exhibit 6; is
17 that correct?

18 MR. OSBORNE: Yes, Your Honor.

19 BY MR. OSBORNE:

20 Q. Is that the window you were referring to?

21 A. Correct.

22 Q. And is that the front door off to the background?

23 A. Off to the left.

24 Q. All right. So when you respond to a scene like that
25 and you see this, what do you do? What are you thinking?

1 A. Well, I knew it was a burglary, so I like to start
2 processing on the outside and then work my way into the
3 apartment.

4 And in this case, you can see -- on the right of the
5 picture, you can see the window screen. So I started latent
6 processing with the window screen, and then I did the window
7 itself.

8 Q. Latent processing. What does that mean?

9 A. I'm dusting for fingerprints with fingerprint
10 powder.

11 Q. Did you recover any fingerprints in this case?

12 A. No, I did not.

13 Q. Explain to the jury, why weren't you able to get any
14 fingerprints?

15 A. Well, there are several things that affect whether a
16 person even leaves a fingerprint. So you have the person;
17 that's the first thing.

18 The second thing would be the type of surface. Even
19 though it is a good surface for a print, it could be dirty,
20 could have layers of dirt on it, the temperature. Everything
21 affects whether or not I can lift the print with fingerprint
22 powder.

23 Q. And none were recovered from this area?

24 A. None were recovered.

25 MR. OSBORNE: Your Honor, I would like to publish

1 what has been admitted as State's Exhibit 30.

2 THE COURT: All right.

3 BY MR. OSBORNE:

4 Q. And what does that show?

5 A. This is a photograph of inside that bedroom, and you
6 can see, I'm showing where the glass is broken and that the
7 lock is right there to open the window.

8 Q. Mr. Miller, in this area, and also this area, did
9 you see any signs of blood?

10 A. No, I did not.

11 MR. OSBORNE: All right. Your Honor, I would like
12 to publish what's been marked into evidence, State's Exhibit
13 32.

14 THE COURT: All right. You may.

15 BY MR. OSBORNE:

16 Q. Now, what is this photograph showing?

17 A. This is showing -- you can see right by the window,
18 you can see pieces of the broken glass, and there's loose
19 change lying on the outside of the window and the door.

20 Q. Coins, change, things of that nature?

21 A. Coins.

22 Q. What did you do with those coins?

23 A. I collected the coins to be submitted to latent
24 recovery to be processed for prints.

25 Q. Were any fingerprints recovered from those coins?

1 A. No.

2 MR. OSBORNE: Your Honor, I would like to publish
3 State's Exhibit 3.

4 THE COURT: Admitted without objection.

5 BY MR. OSBORNE:

6 Q. And what is this photograph showing?

7 A. This shows the closet that the person who was in the
8 apartment was hiding in at the time, and shows the plastic
9 doors that had been pulled from a container to the right of
10 the photo as you see it.

11 Q. Those drawers, were they of particular interest to
12 you? And if so, why?

13 A. Well, the drawers had been pulled -- it's kind of
14 like a little dresser for storage, and they were pulled out
15 of that unit to the right, so I processed the doors for
16 fingerprints.

17 Q. And did you have any luck?

18 A. No prints.

19 MR. OSBORNE: Your Honor, I would like to publish
20 what's been marked and admitted into evidence, State's
21 Exhibit 31.

22 THE COURT: All right.

23 BY MR. OSBORNE:

24 Q. What does this photograph depict?

25 A. This shows damage to the front door of the

1 apartment.

2 Q. Did you learn who caused that damage?

3 A. The officers who made entry to the door.

4 Q. All you are doing with this photograph is just
5 documenting the damage?

6 A. Yes.

7 MR. OSBORNE: Court's indulgence?

8 THE COURT: Yes.

9 BY MR. OSBORNE:

10 Q. Mr. Miller, I was going to show you a photograph of
11 the pistol or gun.

12 Did you recover a gun from this scene?

13 A. Yes. I picked the gun up outside of the building on
14 the ground.

15 Q. At this time I would like to present to you State's
16 Exhibit 11.

17 MR. OSBORNE: Your Honor, may I approach?

18 THE COURT: You may.

19 BY MR. OSBORNE:

20 Q. Take a look at this. Mr. Miller, do you recognize
21 that item?

22 A. Yes. This is the handgun I picked up off the
23 ground.

24 Q. How do you know that?

25 A. Well, inside the trigger, I put a tag with my

1 initials, the case number, and the item number. This is also
2 the box that I placed it in. And that's my tag that I filled
3 out, and then I had initialed on the seal once I put it in
4 the box and I sealed it up.

5 Q. I'm showing you now what's been marked as State's
6 Exhibit 4.

7 MR. OSBORNE: May I approach?

8 THE COURT: You may.

9 BY MR. OSBORNE:

10 Q. What is this?

11 A. This is a photo showing the gun laying on the grass
12 right next to the sidewalk.

13 Q. And State's Exhibit 5?

14 A. This is a picture showing the number I gave them,
15 No. 1 for photo purposes.

16 MR. OSBORNE: Your Honor, I would like to move
17 State's 4, 5, and I believe 10 into evidence.

18 THE COURT: Any objection?

19 MR. BRADLEY: No objection, Your Honor.

20 MR. SMILEY: No objection, Your Honor.

21 THE COURT: Without objection, State's 4, 5 and 10
22 are admitted.

23 (State's Exhibit 4, Photograph, is moved into
24 evidence.)

25 (State's Exhibit 5, Photograph, is moved into

1 evidence.)

2 BY MR. OSBORNE:

3 Q. This is State's Exhibit 4. Can you point out the
4 firearm?

5 A. (Witness complies.)

6 Q. And where is the victim's apartment?

7 A. It's up here.

8 Q. Okay. I believe this is just a different
9 photograph, again showing the gun?

10 A. Yes. Like I said, this time I put the number with
11 it for photo purposes as Item 1.

12 Q. And that in the background, what are those, stairs?

13 A. Yeah. Those are the stairs that would go up to that
14 apartment that was broken into.

15 Q. Okay. After you got the gun, what did you do with
16 it?

17 A. Well, after I collected it, I swabbed it for contact
18 DNA and then I put it in the box to seal it up, and then
19 submitted it to latent recovery for fingerprinting.

20 Q. So it was fingerprinted and DNA?

21 A. Correct.

22 Q. Were there any fingerprints recovered from the
23 gun?

24 A. No, there were not.

25 Q. Is that common? In your 29 years of experience in

1 crime scene, do you often get fingerprints on guns?

2 A. No.

3 Q. And I guess that's for the same reason you mentioned
4 earlier, surface area, things of that nature?

5 A. Right.

6 Q. What happened with the -- do you know what happened
7 with the swabs that you took?

8 A. Well, I collected the swabs and I sealed them up in
9 an envelope, same thing with the tag and initials, and then
10 they eventually got taken to SLED.

11 MR. OSBORNE: I misspoke, Your Honor. The handgun
12 is State's Exhibit 11.

13 THE COURT: Okay. 11. Without objection?

14 MR. SMILEY: Without objection.

15 MR. BRADLEY: Yeah.

16 (State's Exh. 11, handgun, was received in
17 evidence.)

18 MR. OSBORNE: No further questions.

19 THE COURT: Mr. Bradley.

20 MR. BRADLEY: I'm going to defer to my colleague,
21 Mr. Smiley.

22 CROSS-EXAMINATION

23 BY MR. SMILEY:

24 Q. How are you doing, Investigator Miller? Good to see
25 you. Jim Smiley. I represent Ishmel.

1 You are the guy -- you are the collector, I guess.

2 To put a term on each person, you collect stuff; correct?

3 A. Correct.

4 Q. Did anybody direct you on what to collect and where
5 to collect it that night, or were you just there, so you just
6 did what you thought was best?

7 A. Well, no. The gun I collected. And when I do a
8 burglary, of course, I've done this for a very long time.

9 Q. Right.

10 A. And I start with the outside and then work my way in
11 and then process items and that appeared to have been
12 touched, or in this case I was told that the drawers had been
13 pulled out, so I did the drawers.

14 Q. As you keep saying "in this burglary" -- we know
15 there was a break-in; right?

16 A. Yes.

17 Q. What was taken from the apartment? Was there
18 anything that you were directed to inside the apartment?

19 A. That was actually taken?

20 Q. Yes.

21 A. No.

22 Q. You had an opportunity to review the inside of the
23 apartment; correct?

24 A. Yes.

25 Q. And there was the standard things you'd find in an

1 apartment, a television, for instance?

2 A. Yes. There were normal items in there.

3 Q. And you weren't directed to any area where there was
4 an item missing, though?

5 A. No.

6 Q. Now, you took all the photographs we've been looking
7 at, for the most part?

8 A. Correct.

9 Q. And so one of your jobs when you get on the scene is
10 to accurately take pictures, so when we come to court, we can
11 show the jury; right?

12 A. Yes.

13 Q. And so you were able -- we've seen some of the
14 pictures, but you took pictures of the whole building; right?

15 A. Well, not the whole building, but that corner
16 showing where the gun was.

17 Q. Okay. So you collected a gun from out front by the
18 sidewalk; correct?

19 A. Correct.

20 Q. You tried to get fingerprints from the outside and
21 inside; correct?

22 A. Correct.

23 Q. Of the apartment?

24 I noticed there was a screen in one of those
25 pictures, a screen that goes over the window?

1 A. Yes.

2 Q. Did you remove that or was it already --

3 A. That's the way it was, and that was fingerprinted
4 also.

5 Q. Okay. So the screen was fingerprinted. The broken
6 area around where someone would have had to manipulate the
7 lever --

8 A. Correct.

9 Q. -- was fingerprinted. The front door was
10 fingerprinted?

11 A. Did not do the front door due to it being damaged,
12 and I knew that the officers did that.

13 Q. So you didn't do the knobs?

14 A. No.

15 Q. In the inside, since it appeared that this apartment
16 had been gone through, you were directed or from your
17 experience were drawn to the drawers that had been pulled
18 out?

19 A. Correct.

20 Q. The closet that we saw a picture of, did you try to
21 take anything off the louvers or anything?

22 A. The louvers are very hard, but you could do, you
23 know, parts of the door that have the smoother surfaces.

24 Q. All right. Now, your job is to collect the stuff
25 and then send it off later for analysis; correct?

1 A. Well, in this case, I collected the gun and the
2 change and I submitted that to latent recovery for
3 fingerprint processing.

4 Q. I guess, let me see if I can ask a better question.

5 You are in charge of gathering the items that are
6 taken from the scene because you are in charge of the crime
7 scene; correct?

8 A. Yes.

9 Q. So you collected a gun, you took photographs, did
10 fingerprints; right?

11 A. Yes.

12 Q. Did you collect the marijuana?

13 A. No.

14 Q. There was no marijuana collected in this case?

15 A. Not that I'm aware of.

16 Q. Okay. So if some was collected, it was collected
17 outside the scope of you being the collector at the scene?

18 A. Correct.

19 Q. Now, one way you wouldn't leave behind fingerprints
20 would be to have gloves on; right?

21 A. That's correct.

22 Q. Okay. Were you directed to go look at any other
23 places for any other things other than what we've discussed?

24 A. No.

25 MR. SMILEY: That's all I have.

1 THE COURT: Any redirect?

2 MR. OSBORNE: None, Your Honor.

3 THE COURT: Thank you. You may step down.

4 Any objection to this witness being excused?

5 MR. OSBORNE: None, Your Honor.

6 (Whereupon the witness is excused.)

7 MR. OSBORNE: The State calls Sergeant Scotty Tugya.

8 SCOTTY TUGYA,

9 having been duly sworn, testifies as follows:

10 THE CLERK: State your full name and spell your last
11 name for the record.

12 THE WITNESS: Sergeant Scott Tugya, T-u-g-y-a.

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Where do you work, Sergeant?

16 A. City of Charleston Police Department, patrol
17 division.

18 Q. How long have you worked there?

19 A. Ten years.

20 Q. What are some of the other various assignments
21 you've that during that time period?

22 A. I've supervised patrol squads in West Ashley, James
23 and Johns Island. I'm currently assigned to the explosive
24 devices team. I'm a bomb technician. I'm certified through
25 the FBI.

1 For years I was a police training officer. My
2 responsibilities included training new officers out of the
3 academy.

4 Q. The bomb technician stuff, that's an auxiliary
5 assignment?

6 A. That is correct.

7 Q. Crime area assignment, is it patrol supervisor?

8 A. That's correct.

9 Q. Back on the night of October the 23rd, what was your
10 assignment then?

11 A. I was working in a patrol facet. I was also acting
12 an a PTO. Officer Hopkins was being trained by myself.

13 Q. PTO, what does that stand for again?

14 A. PTO is an acronym which means police training
15 officer. It is an officer who has a responsibility of
16 training new hires with our police department.

17 Q. I'm sorry. Go ahead.

18 A. There's specialized training. It's rather rigorous
19 training, because it is deemed rather important by our
20 department to train the new hires.

21 Q. Did you have the occasion to respond to a burglary
22 at ■ Westchase Drive, Apartment ■?

23 A. I did.

24 Q. Do you happen to recall that night, as you were
25 preparing for trial, looking at the photographs and whatnot

1 and reading your reports, what the weather was like that
2 night?

3 A. It was very comfortable. It was in the 60s.

4 Q. Do you remember whether you were the first unit to
5 arrive on scene?

6 A. I was not.

7 Q. Do you happen to recall a description of a suspect
8 being broadcast over the radio while you were on the way?

9 A. I do.

10 Q. Do you remember if that description or descriptions
11 evolved at all while you were on the way?

12 A. As best I can remember, responding to that call for
13 service, we were responding in a code, which meant we were
14 operating blue lights and sirens, responding to that
15 location.

16 As we got to the incident location, we parked at the
17 main entrance to the apartment complex, and we went ahead and
18 deployed on foot, both myself and officer Hopkins. We were
19 aware, due to radio traffic, that officers were engaged in a
20 foot pursuit with several suspects, which were identified
21 over the air as black males wearing dark-in-color clothing,
22 possibly hoody sweatshirts.

23 We parked at the main entrance to the apartment
24 complex because we felt that if we were to engage in a foot
25 patrol of the area that we would cut off these suspects as

1 they were fleeing from law enforcement.

2 We ran through the apartment complex, and as we were
3 running through the apartment complex, we heard over our
4 radios that were on our persons that two parties had been
5 detained.

6 We continued to move through the apartment complex,
7 and it was at Apartment 1416 --

8 Q. Let me just stop you right there.

9 So you said there was a foot pursuit; two parties
10 were detained.

11 Why did you continue to go through the apartment
12 complex if two parties had been detained?

13 And I believe -- well, did you know that a third
14 party had been detained?

15 A. No, sir. We were not certain if the parties that
16 were fleeing from law enforcement were, in fact, the parties
17 that were detained. This was a very fluid situation. We did
18 not have the luxury of time at that moment in time to
19 corroborate that the two individuals that were detained by
20 law enforcement were, in fact, the two individuals who were
21 evading law enforcement prior to our arriving on scene.

22 Q. So when you arrived on scene, is it fair to say that
23 you are not participating in the foot pursuit?

24 A. That's correct.

25 Q. Is that correct?

1 You arrived on scene; all you are hearing is what
2 comes across the radio?

3 A. That's correct.

4 Q. Okay. What you heard come across the radio is that
5 officers were chasing two individuals?

6 A. That's correct.

7 Q. And then you hear officers detain two individuals?

8 A. That's correct.

9 Q. From your perspective, you don't know if you are
10 still looking for more suspects or whether these were the
11 same two that got caught; is that correct?

12 A. That is correct.

13 Q. While you are looking through the apartment complex,
14 do you run across an individual?

15 A. I do.

16 Q. And who do you run across?

17 A. This individual was subsequently identified through
18 an interview to be Mr. James Scott, a black male who had
19 exited from Apartment 1416.

20 Q. Did you -- I know at this time you didn't know where
21 the victim was living, but did you later learn where the
22 victim was living?

23 A. I did, in fact.

24 Q. And where is the victim's apartment in relation to
25 James Scott's apartment?

1 A. It is on -- the victim's apartment, [REDACTED], the
2 incident location, is in building 14. And that apartment is
3 adjacent from the parking lot.

4 On the back side of that building is Apartment [REDACTED],
5 where I came across Mr. James Scott. It's fair to say that
6 his apartment is on the back side of the the victim's
7 building.

8 Q. After you spoke to James Scott, what did you do with
9 him?

10 A. He was detained. I turned Mr. Scott over to another
11 officer, Officer Hill, and I proceeded to the incident
12 location.

13 Q. Do you know if Mr. Scott was arrested or released?

14 A. Mr. Scott would later be released.

15 Q. All right. So where did you go next?

16 A. I went to the incident location, which was Apartment
17 [REDACTED], the location of the victim of the burglary.

18 Q. What did you do when you got there?

19 A. I noticed that there were several officers on the
20 top landing of the apartment complex. These officers were in
21 the process of forming a stack.

22 A stack is a term that we use in law enforcement to
23 best describe a formation of officers who are about to make
24 entry into an unknown, whether that be a building or a
25 residence. The reason why they would form in a stack is for

1 tactical advantage, to go ahead and enter that unknown
2 location and to render it secure and safe.

3 Me knowing this, and me being aware of what was
4 transpiring, I immediately fell into that formation. I was
5 in back of the stack, which is the best way I can describe
6 that.

7 Q. Did you all attempt to make contact with the
8 homeowner?

9 A. We did. We did. We attempted to make contact with
10 the homeowner. We were unsuccessful. The door to the
11 apartment was secure, so we had to make forced entry,
12 specifically Officer Briggs, who was in that stack, who was
13 in the front of the stack closest to the door.

14 Once we made forced entry into that apartment, we
15 went ahead and secured that apartment. By saying "secure," I
16 mean, we were able to determine that there were no suspects
17 at large within that apartment.

18 We did locate the victim, the homeowner.

19 Q. So just to kind of paint a picture of what was going
20 on at that time from your testimony, you respond, burglary in
21 progress, the victim is hiding in the closet, a lot of
22 information coming out, it's happening fast.

23 Is it fair to say that from your perspective at that
24 time you weren't -- were you 100 percent sure that there
25 wasn't someone else in that apartment with the victim?

1 A. No. No.

2 Q. And would that explain the forced entry and the
3 tactic of going in quick?

4 A. Yes, sir.

5 Q. All right. So you say you located the victim in the
6 apartment.

7 Where was she?

8 A. She was located in the closet of the bedroom.

9 Q. Did you locate anyone else in the apartment?

10 A. No.

11 Q. After you located the victim, I guess you ensured
12 she was okay.

13 What did you do then?

14 A. I then exited the apartment. I wanted to follow up
15 with the individual that I first encountered, Mr. Scott, who
16 I spoke about earlier, ascertain more information from that
17 individual.

18 As I was walking back to Mr. Scott's residence on
19 the back side of the building as I described earlier, I saw
20 lying upon the ground a black-in-color semiautomatic pistol.

21 Q. I'm just going to show you, Sergeant, what's been
22 marked as State's Exhibit 4.

23 Do you recognize that?

24 A. I do, sir.

25 Q. And what is that?

1 A. That is building 14. That is the building in which
2 Mr. Scott resides, as well as the victim.

3 Q. And do you see anything else in the photograph?

4 A. I do, sir.

5 Q. You can use that touch screen right there. Just go
6 ahead and mark what you see and what is it?

7 A. Yes, sir. This is the sidewalk I was speaking of,
8 where the red dot is, and this object here is a
9 black-in-color semiautomatic pistol. That was the location
10 in which I found that item.

11 Q. Did you all -- did you or another officer stay watch
12 over that weapon until it was finally secured by crime
13 scene?

14 A. Yes, sir. That individual was Corporal Miller, one
15 of our crime scene technicians.

16 MR. OSBORNE: No further questions.

17 THE COURT: Mr. Bradley.

18 MR. BRADLEY: Thank you, Your Honor. May it please
19 the Court.

20 CROSS-EXAMINATION

21 BY MR. BRADLEY:

22 Q. Officer, can you explain to the jury why y'all
23 released Mr. James Scott?

24 A. Yes, sir. Mr. Scott was detained without incident.
25 Mr. Scott was interviewed by one of our detectives, Detective

1 Feeters. It was determined through that interview that
2 Mr. Scott was not implicated in that incident and that he was
3 free to go.

4 Q. Okay. Can you explain, why was he not implicated?

5 A. Well, that line of questioning would best be
6 directed at Detective Feeters in the fact that Detective
7 Feeters was the individual who spoke with him.

8 Q. Do you remember what he was wearing?

9 A. I do. Mr. Scott was wearing a white-in-color tank
10 top, T-shirt, best described as an undershirt. He was
11 wearing shorts. He had his hair braided back behind his
12 head. Yes, sir.

13 Q. And how long from the time you got the call to the
14 time you ran into -- how much time elapsed between the time
15 you got the call and the time you ran into Mr. Scott?

16 A. The time that the call was toned out? Is that what
17 you are referring to, sir?

18 Q. Exactly, yes, sir.

19 A. Okay. I would have to say minutes. I would
20 estimate minutes.

21 Q. Would you estimate that he would have time to change
22 clothes?

23 A. It's probable.

24 Q. It's probable? He would have time to take off a top
25 garment?

1 A. That is probable.

2 Q. Did he give you a reason why he was on the scene?

3 A. He had stated something to the effect of his cousin
4 was detained by law enforcement and he was concerned.

5 Q. Okay. Do you know who his cousin was?

6 A. I believe it was later discovered that his cousin
7 was Jordan Brown.

8 Q. Jordan Brown?

9 A. Yes, sir.

10 Q. One of the alleged defendants was his cousin?

11 A. Yes, sir.

12 Q. And you saw no other reason to detain him -- I mean,
13 I'm sorry, you saw no reason to actually place him under
14 arrest at that moment?

15 A. No, sir, no. I deferred that decision to the
16 detective and the fact that that detective was the individual
17 who had interviewed him.

18 Q. Do you know whether or not he was put in a lineup to
19 be identified by the homeowner?

20 A. I do not believe that he was, sir.

21 MR. BRADLEY: Okay. No further questions. Thank
22 you.

23 THE WITNESS: Yes, sir.

24 THE COURT: Mr. Smiley.

25 MR. SMILEY: Just a couple.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Sergeant, Jim Smiley. We've met several times.

A. Yes, sir.

Q. I represent Ishmel Lemon.

A. Yes, sir.

Q. How many officers were in the stack, roughly?

A. Roughly, if memory serves me correct, I want to say either five or six. Yes, sir.

Q. And y'all made forced entry?

A. That is correct, sir.

Q. If the door had been unlocked, y'all wouldn't have kicked in the door, though; right?

A. That's correct, sir.

Q. So somebody tried it and the door was locked?

A. Yes, sir.

MR. SMILEY: All right. That's all I've got.

Thanks.

THE COURT: Any redirect?

MR. OSBORNE: None, Your Honor.

THE COURT: All right. Thank you. You may step down.

Any objection to this witness being excused?

MR. OSBORNE: No, Your Honor.

MR. BRADLEY: No objection.

1 (Whereupon the witness is excused.)

2 MR. OSBORNE: I have one other short witness,
3 Officer Nora Carr, and after that they get a little longer.

4 THE COURT: So you want to break after that?

5 Okay, that is fine. This will be the last witness
6 for this morning.

7 NORA CARR,

8 having been duly sworn, testifies as follows:

9 THE CLERK: State your full name and spell your last
10 name for the record.

11 THE WITNESS: My full name is Nora Jane Carr,
12 c-a-r-r.

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Good afternoon. Ms. Carr, where do you work?

16 A. I work for the City of Charleston Police Department.

17 Q. How long have you been a police officer?

18 A. Eight years, but I've been with the City for three
19 and a half, four years now.

20 Q. What are some of the various assignments that you've
21 had?

22 A. I worked in West Ashley on patrol for two and a half
23 years, and then I got transferred to a flex unit, which was
24 still patrol, just a different avenue of it. And I currently
25 am with the Field Intelligence Unit of the police

1 department.

2 Q. Back on October 23rd, 2013, where were you working
3 that night?

4 A. I was working Team 4, direct patrol of a subdivision
5 near Westchase.

6 Q. Did you have the occasion to respond to a burglary
7 at Westchase?

8 A. Yes.

9 Q. And what did you do?

10 A. I was informed that patrol had three individuals in
11 custody and they were being transported to CPD headquarters
12 in separate vehicles.

13 I then instructed them to pull over on Sycamore and
14 Ashley River Road so I could meet up with them.

15 Q. Why did you want to meet up with them?

16 A. I wanted to see if they had any kind of vehicle
17 keys, cell phones, of that matter.

18 Q. You were going to try to go back, I guess, to the
19 scene, use a key file, try to find the key -- or a car?

20 A. Yes.

21 Q. Do you recall if each one of the individuals had
22 keys on them?

23 A. I only retrieved keys from Officer Shehan's
24 prisoner, which was Mr. Champaigne.

25 Q. Only one had keys?

1 A. Yes.

2 Q. When you got the keys from Shehan's prisoner,
3 Antwain Champaigne, what did you do?

4 A. I returned to Westchase near the victim's apartment
5 and I used the key fob in order to locate the vehicle.

6 Q. And you were able to locate a vehicle?

7 A. I was.

8 Q. I'm going to show you what's been previously marked
9 and admitted as State's Exhibit 1.

10 Officer Carr, do you know or did you learn where
11 this burglary occurred?

12 A. Yes.

13 Q. And can you point out -- you can touch that screen
14 right there. Can you point out where the victim's apartment
15 is?

16 A. Victim apartment, from my recollection, has been in
17 this area right up here.

18 Q. Okay. And you said that you located a Volvo. Where
19 was that car parked?

20 A. About right over here. It was backed in.

21 Q. So what did you do with the car?

22 A. I radioed in to dispatch and requested Jenny's to
23 tow the vehicle.

24 Q. Is that pretty much standard protocol, you arrest
25 someone, you tow their car?

1 A. Yes. Whenever we make an arrest, we tow the vehicle
2 for safekeeping.

3 Q. Now, prior to towing the car, did you do anything
4 with the vehicle?

5 A. We conducted an inventory search.

6 Q. And is that also standard protocol?

7 A. Yes, it is. It's policy.

8 Q. It's policy?

9 A. Yes.

10 Q. I suppose that's because you don't want to transport
11 anything dangerous or anything like that?

12 A. Correct.

13 Q. Did you locate anything inside the vehicle?

14 A. I did. On the driver's side door panel, there was a
15 clear bag full with green leafy substance.

16 MR. OSBORNE: May I approach?

17 THE COURT: You may.

18 BY MR. OSBORNE:

19 Q. Officer Carr, I'm showing you State's Exhibit 12.
20 Can you take a look at that?

21 A. Yes.

22 Q. What is that?

23 A. This was the evidence that I retrieved from the
24 vehicle.

25 Q. Inside the vehicle?

1 A. Yes.

2 Q. And how do you know?

3 A. It has my initials all over it, along with filling
4 out the voucher.

5 MR. OSBORNE: Your Honor, request State's 12 be
6 admitted into evidence.

7 THE COURT: Any objection?

8 MR. BRADLEY: No objection, Your Honor.

9 THE COURT: Mr. Smiley?

10 MR. SMILEY: No, sir.

11 THE COURT: Without objection, State's Exhibit 12 is
12 admitted.

13 (State's Exhibit 12, Marijuana, is moved into
14 evidence.)

15 MR. OSBORNE: No further questions.

16 THE COURT: Mr. Bradley.

17 MR. BRADLEY: Your Honor, I have no questions.

18 THE COURT: Mr. Smiley.

19 CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q. Were you in charge that night?

22 I keep asking. Who was the supervising detective
23 that night?

24 A. For the scene?

25 Q. Yes.

1 A. I was not in charge of the scene.

2 Q. Okay. The reason I ask that is because you said you
3 told them to pull over, I'm just trying to figure out who was
4 in charge.

5 A. We had several different commanders on scene.

6 Q. All right. When you searched the individuals, you
7 were looking for keys, cell phones, that kind of stuff?

8 A. Yes. I did not search them personally.

9 Q. Okay. But that was the purpose --

10 A. Correct.

11 Q. -- of having them stop. You wanted to see if there
12 were some keys?

13 A. Yes.

14 Q. To further the investigation?

15 A. Correct.

16 Q. All right. And in the car, you didn't find any TVs
17 or anything like that?

18 A. No. I believe I retrieved and seized a cell phone,
19 cell phone charger, and --

20 Q. Not that you thought it was stolen, but that it was
21 something that could be helpful in pursuing leads in the
22 case?

23 A. Correct.

24 Q. Did you collect anything that had been taken from
25 the young lady's apartment?

1 A. No.

2 MR. SMILEY: That's all I have.

3 THE COURT: Thank you. Any redirect?

4 MR. OSBORNE: None, Your Honor.

5 THE COURT: All right. Thank you.

6 Any objection to this witness being excused?

7 MR. OSBORNE: None, Your Honor.

8 MR. BRADLEY: No objection.

9 THE COURT: Thank you.

10 (Whereupon the witness is excused.)

11 THE COURT: All right. Ladies and gentlemen, that's
12 going to be all the testimony we hear this morning. I'm
13 going to excuse you for lunch, with instructions that you not
14 speak to anyone about this case while you are at lunch. And
15 be back here at 2:00.

16 All right. Thank you, ladies and gentlemen. Have a
17 nice lunch.

18 (Whereupon, the jury leaves open court at 12:22
19 p.m.)

20 THE COURT: Court's in recess until 2:00. Thank
21 you.

22 (Whereupon, recess transpired.)

23 THE COURT: How many witnesses do we have for this
24 afternoon?

25 MR. OSBORNE: Three, Your Honor.

1 THE COURT: Anything before we bring our jury in?

2 MR. OSBORNE: No, Your Honor.

3 THE COURT: Let's bring in our jury in.

4 (Whereupon, the jury returns to open court at 2:04
5 p.m.)

6 THE COURT: State may call its next witness.

7 MR. OSBORNE: The State calls SLED Agent Jared
8 Briggs.

9 JARED BRIGGS,
10 having been duly sworn, testifies as follows:

11 THE CLERK: Please state your full name and spell
12 your last name for the record.

13 THE WITNESS: My name is Jared Edward Briggs,
14 B-r-i-g-g-s.

15 DIRECT EXAMINATION

16 BY MR. OSBORNE:

17 Q. Agent Briggs, where do you work now?

18 A. I'm currently a special agent with the South
19 Carolina Law Enforcement Division.

20 Q. How long have you been there?

21 A. For almost two months.

22 Q. And where did you work prior to that?

23 A. I worked for the Charleston City Police Department.

24 Q. How long were you a police officer with Charleston?

25 A. For approximately five and a half years.

1 Q. Let's go right to the night of October the 23rd of
2 2013.

3 What was your assignment that night?

4 A. My assignment was Team 4 patrol.

5 Q. Did you have the occasion to -- and in patrol, you
6 respond to calls for service?

7 A. Yes, sir.

8 Q. Did you have the occasion to respond to a call for
9 service to a burglary in Westchase?

10 A. Yes, sir, I did.

11 Q. And do you recall what time you were dispatched to
12 that call?

13 A. I was dispatched at approximately 2255 hours.

14 Q. What information was initially relayed to you by
15 dispatch?

16 A. We were told that someone broke into an apartment.
17 There was one black male at the time. While in or out, we
18 were up-to-date with new information saying they were
19 approximately three to four black males within the residence
20 and the victim was also still inside the residence and in the
21 closet. She was hiding in the closet.

22 Q. Where were you responding from?

23 A. I was coming from Wally School Road and Ashley River
24 Road.

25 Q. About how far is that location to the victim's

1 apartment?

2 A. About a mile.

3 Q. About a mile?

4 A. Yes, sir.

5 Q. Were you the first officer to respond on the scene?

6 A. Yes, sir, I was.

7 Q. What did you see when you responded?

8 A. When I responded, I initially pulled up slightly
9 past the apartment. Saw a black male walking away from
10 Apartment [REDACTED]. I immediately exited my patrol car, detained
11 -- asked him to stop, detained him at that time, and placed
12 him in handcuffs and put him in the back seat of my patrol
13 car.

14 Q. So when you say you detained him, can you just kind
15 of walk us through exactly what does that mean? You are
16 approaching an individual. You think he's a suspect. What
17 exactly do you do?

18 A. What I do, as I said, I exited my car and asked him
19 to stop. When I detained him, I advised him why we were
20 there, why I was detaining him; until we could verify the
21 scene was secure, I advised him I was going to put him in
22 handcuffs and place him in the back seat of my patrol car,
23 which I did.

24 Q. You think you put him in handcuffs?

25 A. Yes, sir.

1 Q. At that point, had other officers responded on the
2 scene?

3 A. Yes, sir. As I was putting him in the back seat of
4 my patrol car, Officer Havers and Officer Moroney arrived.

5 Q. All right. So you got one black male in the back
6 seat of your car. Did you later identify who that was?

7 A. Yes, sir. That was Jordan Brown.

8 Q. What did you do then?

9 A. When I placed him in the back seat of my patrol car,
10 I turned around and looked at Officer Havers, who had just
11 arrived. And as I was looking at him, he was facing the
12 apartment. I heard him yell, and then that's when I looked
13 at the apartment that was -- we were dispatched to.

14 Q. You heard him yell? What did he yell?

15 A. He yelled to notify us that people were coming out
16 of the apartment.

17 Q. I'm going to show you what's already been marked as
18 State's Exhibit 9 and admitted.

19 Do you recognize that photograph?

20 A. Yes, sir, I do.

21 Q. And what is that?

22 A. That is a picture of the front of the building,
23 facing Apartment [REDACTED].

24 Q. After Officer Havers yelled, did you turn to the
25 victim's apartment?

1 A. Yes, sir, I did.

2 Q. What did you see?

3 A. I saw two black males running down the steps,
4 running from the second balcony, down the first set of steps.

5 Q. So understanding this -- well, is it? Is this the
6 angle that you would have made that observation?

7 A. Yes, sir, it is.

8 Q. This is about the same angle?

9 A. Yes, sir.

10 Q. So where did you see the two individuals?

11 A. When I looked, the two individuals would have been
12 right there (indicating), by the top of the steps.

13 Q. Just about ready to start coming down?

14 A. Yes, sir.

15 Q. What did they do then?

16 A. They ran in -- am I allowed to draw?

17 Q. Yeah.

18 A. They ran down the steps and then they jumped over
19 this balcony right here, or this landing.

20 Q. Did you participate or help in the chasing of these
21 two individuals?

22 A. Yes, sir, I did. They ran around the left side of
23 the building, around that way, and then I participated in the
24 foot pursuit of the two suspects.

25 Q. Officer Havers and Moroney were the first to be

1 pursuing these two individuals?

2 A. Yes, sir.

3 Q. Probably pretty fast too?

4 A. Yes, sir.

5 Q. Once they were apprehended, did you then come back
6 to the victim's apartment?

7 A. Yes, sir, I did. We were still being notified that
8 there could be somebody possibly still inside the apartment,
9 so once the other two suspects were detained, I came back to
10 the apartment.

11 Q. What happened when you got back to the apartment?

12 A. When we got back to the apartment, like I said, we
13 were told that there was somebody possibly still inside. So
14 we challenged the door. The door was locked. Once we
15 discovered the door was locked, I then kicked the door in.

16 Q. What do you mean, "challenged the door"?

17 A. You know, announced ourselves as police officers,
18 said that we were coming in, and made sure there was nobody
19 still -- we could hear anybody or anything inside the
20 apartment.

21 Q. And you kicked in the front door?

22 A. And I kicked in the front door, yes, sir.

23 Q. When y'all went into the apartment, did you locate
24 the victim?

25 A. Yes, sir, we did.

1 Q. Where was she?

2 A. She was hiding in the closet in the back side of the
3 apartment.

4 Q. I'm going to show you what's been marked and
5 admitted as State's Exhibit 3.

6 Do you recognize that?

7 A. Yes, sir.

8 Q. What is that?

9 A. That is the closet that the victim was hiding in.

10 Q. Did you learn the victim's name?

11 A. Yes, sir.

12 Q. So what was the victim's name?

13 A. It was Ms. Polite.

14 Q. What was Ms. Polite's demeanor or mental state when
15 you saw her?

16 A. When we located her in the closet, she was actually
17 still on the phone, on the phone with the 911 operator. When
18 she finally saw that it was us inside, she was very
19 emotionally distraught. She was scared. She was very upset.

20 MR. OSBORNE: No further questions.

21 THE COURT: Mr. Bradley.

22 MR. BRADLEY: Thank you, Your Honor, if it please
23 the Court.

24 CROSS-EXAMINATION

25 BY MR. BRADLEY:

1 Q. Sergeant Briggs, you were busy detaining Mr. Brown
2 at the time these suspects were coming out of the apartment;
3 is that correct?

4 A. It would have been just before, yes, sir.

5 Q. Just before?

6 Can you explain to me how you were in the process of
7 detaining someone and at the same time were so vividly able
8 to remember where these suspects were coming from?

9 A. Well, by the time that the suspects were coming down
10 the steps, Mr. Brown was already in the back seat of my
11 patrol car. I had already turned to start walking towards
12 Officer Havers.

13 Q. So you left him in the patrol car and you walked
14 away from the patrol car at that time; is that correct?

15 A. Yes, sir.

16 Q. Okay. And you said someone yelled. What did they
17 yell?

18 A. Officer Havers, in the heat of the moment -- I don't
19 know his exact words. All I know is it was enough to get us
20 -- to get me to look at the apartment.

21 Q. Okay. The officers testified earlier that they were
22 moving at a pretty high rate of speed. So if they yelled
23 that someone was coming out, that person would have already
24 been away from that apartment at the time you looked up; is
25 that correct?

1 A. Yes, sir.

2 Q. Okay. So when you saw them, they were how far down
3 the stairs?

4 A. They were right at the top of the stairs.

5 Q. They were at the top of the stairs. But not at the
6 top -- they were at the very top or were they at the part
7 where they jumped over?

8 A. The very top of the first set of steps.

9 Q. Did you give chase?

10 A. Yes, sir.

11 Q. Do you remember what the suspects were wearing at
12 the time?

13 A. One suspect was wearing a black T-shirt with blue
14 jeans. The other suspect was wearing a hoody with the hood
15 pulled up over his head.

16 Q. You said it was a black T-shirt?

17 A. Yes, sir.

18 Q. You are sure of that; is that correct?

19 A. Yes, sir.

20 Q. From the angle that you were at, the way your patrol
21 car was, was there anything obstructing your view of the
22 apartment at the time?

23 A. Not that I can remember. But me being on the
24 ground, I was not able to -- from my angle, I was not able to
25 see the entire front part of the apartment.

1 MR. BRADLEY: Can we please put up State's Exhibit
2 No. 9. It's already been entered into evidence, please.

3 BY MR. BRADLEY:

4 Q. From that exhibit, can you explain to me where your
5 police patrol was, where your car was?

6 A. No, sir, not from this view. It would be hard for
7 me to tell you where the patrol car was.

8 Q. Is it fair to say that your car was not directly in
9 front of where this picture is; is that correct?

10 A. No, sir. My patrol car was not directly in front of
11 the apartment.

12 Q. So on both sides of that apartment, are there trees
13 there?

14 A. Yes, sir, there are.

15 Q. Okay. Was there trees that was blocking your view
16 of the apartment?

17 A. No, sir.

18 Q. Okay. At the time, even where your patrol car was
19 parked?

20 A. Where my patrol car was parked, where I was when I
21 saw the suspects, I was towards the back of my patrol car;
22 the trees were not obstructed.

23 Q. You said you were towards the back -- you were
24 standing towards the back of the car?

25 A. I was walking towards Officer Havers' car.

1 Q. Okay. This is after you had already had Brown in
2 the car?

3 A. Yes, sir.

4 Q. How long did you have him in the car before you got
5 out of the car?

6 A. I never got in the car.

7 Q. Okay. You put Mr. Brown in the car.

8 Did you start -- did you question him?

9 A. No, sir.

10 Q. You did not?

11 A. No, sir.

12 Q. You detained him at that time and didn't ask him any
13 questions or anything like that?

14 A. No, sir. I wanted to make sure the scene was secure
15 before we did anything like that.

16 Q. How did you know the scene was not secured yet?

17 A. Because the latest information that we had, there
18 were three or four suspects.

19 Q. And as of this moment, how many suspects are you
20 aware of that there were?

21 A. Three.

22 Q. And Mr. Brown was one of the suspects as well; is
23 that correct?

24 A. Yes, sir.

25 Q. Afterward, did you have a chance to question

1 Mr. Brown?

2 A. No, sir, I did not. Our detectives did.

3 Q. So your only involvement in this was you actually
4 detained Mr. Brown and you gave chase to the other suspects
5 that were fleeing the area; is that correct?

6 A. Yes, sir.

7 Q. Did you see any of those suspects commit any kind of
8 crime while you were on the scene?

9 A. No, sir.

10 MR. BRADLEY: Okay. I have no further questions at
11 this time.

12 THE COURT: Mr. Smiley.

13 CROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q. Were you involved with the show-up ID?

16 A. I believe so, yes, sir.

17 Q. With both individuals or --

18 A. Not with Mr. Lemon or Mr. Champaigne.

19 Q. Forgive me. I'm Jim Smiley and I represent Ishmel
20 Lemon.

21 A. Yes, sir.

22 Q. From the time you -- dispatch went out to the time
23 you arrived, about how much time went by?

24 A. It would have been somewhere around a minute,
25 somewhere along in there.

1 Q. All right. So you pull up and you see the gentleman
2 walking away.

3 A. Yes, sir.

4 Q. And you pulled up to him and stopped him, got him in
5 the car.

6 Did you leave your car sitting where it was?

7 A. Yes, sir.

8 Q. Okay. Got him, turned around, heard the noise from
9 the officer, see two fellows coming down the steps, jump
10 over. And while you gave chase, the other two guys were
11 already off chasing them?

12 A. Yes, sir.

13 Q. All right. When they came down the stairs, did they
14 have anything in their hands that you could see?

15 A. I don't know. Not that I could see. It was dark.

16 Q. You went into the apartment; right?

17 A. Once the other two suspects were detained, yes, sir.

18 Q. You were part of the stack that went in?

19 A. Yes, sir.

20 Q. Actually, you were leading the stack. You said you
21 kicked the door; right?

22 A. Yes, sir.

23 Q. Once you were inside and you found the young lady
24 back in the closet, did you see anything that was missing
25 from the house?

1 A. No, sir. I don't know what was in there and wasn't,
2 what wasn't in there.

3 Q. Well, anything obvious, like a TV with wires and
4 stuff like that?

5 A. To be honest, sir, when I went into the house, I
6 wasn't looking for something like that. I was looking to
7 make sure nobody else was in the house so I could safely
8 secure the apartment.

9 Q. All right. The distance from your car to where
10 Officer Havers and Moroney stopped was about how far?

11 A. 10, 20 feet. I don't know exactly.

12 Q. Oh, so they were right on top of you?

13 A. Yes, sir. They weren't far behind me at all.

14 MR. SMILEY: Very good. Thank you.

15 THE COURT: Any redirect?

16 MR. OSBORNE: None, Your Honor.

17 THE COURT: Thank you. You may step down.

18 Any objection to this witness being excused?

19 MR. OSBORNE: No, Your Honor.

20 MR. BRADLEY: No objection.

21 MR. SMILEY: No, sir.

22 (Whereupon the witness is excused.)

23 MR. OSBORNE: The State calls Officer Casey Havers.

24 CASEY HAVERS,

25 having been duly sworn, testifies as follows:

1 THE CLERK: Please state your full name and spell
2 your last name for the record.

3 THE WITNESS: My name is Casey Havers. The last
4 name is H-a-v-e-r-s.

5 DIRECT EXAMINATION

6 BY MR. OSBORNE:

7 Q. Officer, where do you work?

8 A. I currently work for Charleston Police Department.

9 Q. How long have you worked there?

10 A. Just under five years.

11 Q. What are some of the various assignments that you've
12 held?

13 A. Since I started in Team 4 patrol, I was on patrol
14 for roughly three years, and then I moved over to the Team 4
15 Power Squad. Been on there ever since.

16 Q. Do you hold any auxiliary assignments while at CPD?

17 A. I've been a member of the CPD squad team for the
18 last two years.

19 Q. Were you working on the night of October 23rd?

20 A. Yes.

21 Q. And what assignment did you have that night?

22 A. We were just on our -- pretty much just patrol,
23 proactive patrol, in West Ashley.

24 Q. Did you have the occasion to respond to the
25 burglary?

1 A. I did.

2 Q. Now, were you driving by yourself that night, or did
3 you have someone else in the car with you?

4 A. That night I was by myself. We usually drive
5 double, but that night we were assigned one per car. So I
6 was by myself.

7 Q. When you do ride double, who do you normally ride
8 with?

9 A. Officer Moroney.

10 Q. Now, you've heard testimony here. You've been
11 sitting here throughout the whole trial. The individual who
12 just testified, Officer Briggs, he was the first to arrive on
13 scene?

14 A. Yes, sir.

15 Q. I'm going to show you what's been marked and
16 admitted as State's Exhibit 1.

17 Go ahead and just point out the victim's apartment
18 again.

19 A. That would be right here. (Witness indicates.)

20 Q. And when you pulled up, where did you park?

21 A. I pulled up and we came in through here. And I
22 would say I was roughly right about -- right in this area.

23 Q. And Officer Briggs was in front of you?

24 A. Yes. Officer Briggs, he was actually more right
25 around there. He had actually went just on the other side of

1 the apartment, I came.

2 Q. Officer Moroney was behind you?

3 A. Yes. He was right behind me.

4 Q. When you arrived on scene, what did you see?

5 A. I arrived on scene. At first I saw Officer Briggs'
6 car. Before I even parked, I saw Officer Briggs' car. We
7 were notified that he was going to be out with one party in
8 front.

9 As I came up, I exited my patrol car. It's an
10 unmarked Crown Vic. We did not have our lights on at the
11 time. I exited the car and started walking towards the
12 target apartment, [REDACTED].

13 I could see -- as soon as I got out of the car, I
14 saw two subjects exit the apartment, run down the breezeway,
15 come down the steps to that first landing, hop over the
16 landing. As I saw them come out, what I said -- what I
17 believe I said was, "Here they go."

18 They came out. When they hopped over, they landed
19 on their feet and then circled around, and a foot pursuit
20 ensued.

21 Q. I'm showing you what's been marked as and admitted
22 as State's Exhibit 9.

23 All right. Officer Havers.

24 A. Yes.

25 Q. When you first saw the individuals, where were they?

1 A. They were coming out of this residence right here.

2 Q. Are you sure?

3 A. Yes.

4 Q. Did you see them in the balcony and just assume that
5 you saw them coming out of the --

6 A. I saw them actually breaking the threshold. Because
7 of where I parked, I had actually parked further up than
8 everyone else. Officer Briggs went past it. Officer Moroney
9 went short of it. And I actually came just before parallel
10 to it.

11 Q. Is there any doubt in your mind?

12 A. No.

13 Q. All right. Go ahead and -- I know we've done it a
14 couple different times -- point out which way they ran and
15 what you saw on there.

16 A. Well, they both came out pretty much simultaneously,
17 came down this flight of stairs, went over this landing
18 railing, like I said, landed here, did not break stride,
19 continued around this hedgerow and towards the back of the --
20 this building.

21 Q. I'm going to go back to State's 1.

22 All right. Just go ahead and mark on there the
23 direction of flight.

24 A. Came from this building. They went around, pretty
25 much following this sidewalk there.

1 We cut through here, went around in-between these
2 two buildings, kind of hugging the side of that building.
3 Once we went that way, we kind of hugged that corner through
4 this parking lot, through this.

5 And then this is where I detained Mr. Lemon, right
6 here, which is an enclosed dumpster, as the other subject
7 continued past.

8 Q. Okay. So you were behind both of them the entire
9 time until you left off at the dumpster?

10 A. Correct, until I saw Mr. Lemon peel off. I knew he
11 was -- appeared to be exhausted. So that's when I peeled off
12 and detained him in that area.

13 That's when the other subject kept running and I
14 lost -- I did not have eye contact with him.

15 Q. Is there any possibility that while you were chasing
16 these two individuals, that someone else got in there and
17 then you ended up chasing somebody else?

18 A. Zero percent.

19 Q. Did you ever lose eyesight of them while you were
20 chasing them?

21 A. I did not.

22 Q. While you were chasing them, did you ever see either
23 one of them throw down a gun?

24 A. I did not.

25 Q. Are you yelling anything to them while you were

1 running after them?

2 A. Numerous "Police, stop" commands which became no
3 effect, and then after that, after several commands, it was
4 just pretty much just a foot pursuit.

5 MR. OSBORNE: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. OSBORNE:

8 Q. Officer Havers, I'm showing you what's been marked
9 as State's Exhibit 7.

10 Do you recognize that item?

11 A. Yes, I do.

12 Q. What does that photograph depict?

13 A. That's the dumpster with the enclosed area where
14 Mr. Lemon was detained.

15 Q. By you?

16 A. Yes.

17 THE COURT: Any objection?

18 MR. SMILEY: No objection, Your Honor.

19 THE COURT: Any objection?

20 MR. BRADLEY: No objection.

21 THE COURT: Without objection -- this is State's
22 Exhibit what?

23 MR. OSBORNE: State's Exhibit 7.

24 THE COURT: It is admitted.

25 (State's Exhibit 7, Photograph, is moved into

1 evidence.)

2 BY MR. OSBORNE:

3 Q. Is this a picture of where you ended up detaining
4 Mr. Lemon?

5 A. Correct, the final arrest. By the time I put
6 handcuffs on him, we were right in-between the dumpster and
7 the shrubs.

8 Q. And you didn't know -- or did you? Did you know
9 him? I mean, did you have any previous experience with him?

10 A. I did not.

11 MR. SMILEY: Objection, Your Honor. May we
12 approach?

13 (Whereupon, a bench conference takes place off the
14 record.)

15 THE COURT: Objection overruled. Proceed.

16 BY MR. OSBORNE:

17 Q. Did you later learn the identity of the individual?

18 A. Yes.

19 Q. And what was his name?

20 A. Ishmel Lemon.

21 MR. OSBORNE: Court's indulgence.

22 BY MR. OSBORNE:

23 Q. I'm going to show you what's been previously marked
24 as State's Exhibit 33.

25 MR. SMILEY: This is already in evidence.

1 MR. OSBORNE: Yeah, entered into evidence.

2 BY MR. OSBORNE:

3 Q. Do you recognize that individual?

4 A. Yes.

5 Q. And who is that?

6 A. That's Ishmel Lemon.

7 Q. That is the individual you detained that night?

8 A. Yes, sir.

9 MR. OSBORNE: No further questions.

10 THE COURT: Mr. Bradley.

11 MR. BRADLEY: Thank you, Your Honor, if it please
12 the Court.

13 CROSS-EXAMINATION

14 BY MR. BRADLEY:

15 Q. Investigator Havers, you seem pretty sure that you
16 saw them come out of what you call the threshold to the
17 apartment?

18 A. Yes, sir.

19 Q. How many officers were on the scene before you
20 showed up?

21 A. Officer Briggs was -- he was there first. I was
22 there second.

23 Q. Okay. And Officer Briggs testified -- I think you
24 were here -- that he did not see them come out of the
25 threshold; is that correct?

1 A. Correct.

2 Q. Were there trees beside the apartment?

3 A. There was, I believe, maybe a pine tree or something
4 to the left side of the apartment.

5 Q. Okay. I would like to put up again what was State's
6 Exhibit 9. I think it's still here.

7 Officer, there are trees on both sides of that
8 apartment?

9 A. Yes, sir.

10 Q. Your view was not obstructed by any of those trees?

11 A. No, sir.

12 Q. Okay. Was any of those trees covering the -- or in
13 any way obstructing the door to that apartment?

14 A. From my view, no.

15 Q. Did you see the faces of the guys who were coming
16 out?

17 A. I couldn't see faces, more of just their
18 silhouettes, clothing.

19 Q. Do you recall what they were wearing at the time?

20 A. Yes. One subject had on a dark hoody, white emblem.
21 I noticed him because his hood was up.

22 And the other subject, he was wearing dark-in-color
23 pants. The second subject that I saw had on a black or
24 dark-in-color long-sleeved shirt with darker jeans or pants.

25 Q. Did you show that both of the pants -- everyone was

1 wearing dark clothing; is that correct?

2 A. Dark, dark. Maybe I believe one had gray. One pair
3 of pants I believe was a gray pair of pants. But at that
4 lighting and with them moving as fast as they were, it
5 appeared as dark clothing.

6 Q. And you gave chase to these individuals; is that
7 correct?

8 A. Correct.

9 Q. So you clearly would have seen what type clothing,
10 what type pants they were wearing; that's correct?

11 A. Correct.

12 Q. And you said both of them were dark-colored pants?

13 A. Correct. One had on gray pants, which, from my
14 opinion, were darker gray pants.

15 Q. Do you recall which one had on the dark gray pants?

16 A. That I believe was Mr. Champaigne with the hood.

17 Q. He had on the dark -- what color pants?

18 A. Grayish pants.

19 Q. Dark grayish pants?

20 Have you had a chance to look over this evidence
21 prior to coming to trial today?

22 A. We have.

23 Q. Okay. So you are familiar with what Mr. Champaigne
24 had on because you actually looked at this stuff recently; is
25 that correct?

1 A. Recently as just in this trial Monday.

2 Q. Recently within the last week; is that correct?

3 A. Yes.

4 Q. Okay. And that's how you became familiar or that's
5 how you familiarized yourself with what they had on; is that
6 correct?

7 A. Going over it, yes, more so.

8 Q. And the reason I'm asking is because in your report,
9 your case supplemental report, it said that Mr. Champaigne
10 was wearing a dark-hooded shirt and dark jeans.

11 And is that still your testimony today?

12 A. As -- at the time, when you are running past someone
13 in the dark, it's dark gray, dark jeans. They are going to
14 look dark.

15 Q. So at that time it looked dark, but today it was
16 gray.

17 A. From what I've seen.

18 Q. From what you've seen in reviewing the evidence
19 prior to coming to trial today; is that correct?

20 A. Correct.

21 Q. Is it common that people run from the police when
22 the police pull up?

23 A. Usually only following criminal activity.

24 Q. Okay. So only people that run have done something
25 criminal; correct?

1 A. For the most part, in my experience.

2 Q. Have you ever had anyone run from the police that
3 you later on found out they ran because they were afraid?

4 A. Normally it's more than just they are afraid.

5 Q. I'm not asking you normally. I'm asking you if you
6 have ever had someone tell you, "I ran because I was afraid
7 of the police"?

8 A. Oh, yes. I've heard it before.

9 Q. You've heard that before?

10 A. Also made the arrest.

11 Q. You've made the arrest, but have there been times
12 when you have not made an arrest when someone has run from
13 the police?

14 A. No. Myself, no.

15 Q. So every suspect that has fled from the police on
16 foot is fleeing because they had done some criminal activity;
17 is that correct?

18 A. No. I mean, you are asking me if I have?

19 Q. For you, yes, sir. I'm sorry.

20 A. Well, everyone, yes, we've had charges on everyone
21 that has fled.

22 Q. How long have you been on the Charleston Police
23 Department?

24 A. A little under five years.

25 Q. Did you work any other place before then as a police

1 officer?

2 A. No, sir.

3 Q. So in your five years experience, the only people
4 that run from the police that you have had a chance to
5 apprehend were engaged in criminal activity; is that correct?

6 A. Yes, sir.

7 Q. Okay. Is smoking weed considered criminal activity?

8 A. Yes, sir.

9 MR. BRADLEY: No further questions at this time.

10 Thank you, sir.

11 THE COURT: Mr. Smiley.

12 MR. SMILEY: Just a couple.

13 CROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q. You didn't see these individuals throw down
16 anything?

17 A. No, sir. I did not see a throw.

18 Q. It was dark out there for the most part?

19 A. Yes, sir.

20 Q. I know there was some ambient lighting, but it
21 wasn't like they were in a really bright spot at any point in
22 time?

23 A. Correct.

24 Q. And the path that they ran, did y'all later walk
25 that path to see if anything was thrown down?

1 A. I know several officers did. Myself, I kind of just
2 stayed with Mr. Lemon until he was put into another patrol
3 car.

4 Q. While we are talking about that, were you present
5 during the show-up?

6 A. No, I was not.

7 Q. Okay. Do you know who conducted the show-up?

8 A. I believe it was Detective Feeters. He was the
9 on-call detective that night.

10 Q. Was he in charge that night?

11 A. From the investigative aspect, yes.

12 Q. I've been asked --

13 A. Just that night.

14 Q. Okay. Are you -- you are the case officer?

15 A. Yes, sir.

16 Q. All right. Were any gloves recovered?

17 A. Not that I know of. I did not process the crime
18 scene, though.

19 Q. Were any items recovered that were taken from Ms.
20 Polite's home, to your knowledge?

21 A. To my knowledge, no.

22 Q. All right. Building [REDACTED], you were to the left of
23 it?

24 A. Slightly to the left.

25 Q. Slightly to the left, over about where that

1 garbage --

2 A. Yes, just past the garbage, dumpster.

3 Q. I'm going to show you a different view that's
4 convenient. It's from the right angle, but I want to see if
5 we can get a little bit more.

6 I'm going to show you what's State's Exhibit No. 2.
7 And this is a picture of [REDACTED]; correct?

8 A. Yes, sir.

9 Q. All right. And I know you weren't directly in
10 front, and again, this is from the right, but you were
11 somewhat to the left of that balcony area?

12 A. Yes, slightly to the left, pretty much.

13 Q. All right. And I think that's the tree that
14 Mr. Bradley was talking about?

15 A. I believe. I would assume so.

16 Q. And the doorway of [REDACTED] is all the way at the end of
17 that deck at the top?

18 A. I don't know if it's all the way to the end. I
19 think it was about a foot or so.

20 Q. Well --

21 A. It's the last door.

22 Q. Looking at the picture, it's the last thing up there
23 on the left; right?

24 A. Yes, sir.

25 Q. All right. It is -- I'm trying to find the right

1 word. It opens parallel to the parking lot; right? It's not
2 perpendicular, I guess is what I'm asking.

3 A. It faces the parking lot.

4 Q. Thank you. Okay.

5 Were you part of the team that made entry?

6 A. No, I was not.

7 Q. Who came down first?

8 A. I'm sorry?

9 Q. Which one of the individuals came down first? The
10 guy with the hoody?

11 A. They were pretty much neck and neck, like I said,
12 coming down at the same point. When they jumped over, they
13 jumped over almost simultaneously. I couldn't tell you which
14 one exactly --

15 Q. Which one came through the door first?

16 A. Like I said, when they came through the door, they
17 came through almost simultaneously. I believe it was -- what
18 I -- from what I saw, it was the sweatshirt, the sweatshirt
19 with the white emblem is what I saw first, but almost right
20 on his shoulder was the other individual.

21 Q. Okay.

22 A. So if I had to choose, decipher the two, I would say
23 the one with the white emblem and hooded sweatshirt was who I
24 saw first and I assume exited first.

25 Q. Were there lights on in the apartment?

1 A. In the inside of the apartment or in the breezeway?

2 I believe so, but like I said it was -- I couldn't
3 really tell.

4 Q. Okay. You are down on the first floor. They are up
5 on the second floor. And I'm not trying to put you way off
6 to the left, but you are somewhat to the left?

7 A. Yes.

8 Q. And so there's a corner that -- I'm not going to say
9 "obscures," but at least you've got to look past it; correct?

10 A. Yes, sir.

11 Q. And there's the trees going on. There's some kind
12 of lighting on that breezeway, right, up there?

13 A. Yes, from what I recall.

14 Q. It wasn't bright?

15 A. I couldn't tell you how much.

16 Q. It's pretty dark up there for the most part;
17 correct?

18 A. I would assume so.

19 Q. Well, I'm not asking you to assume. You were out
20 there, and I know it was a couple years ago, but it's pretty
21 important stuff, so I'm trying to get your vantage point.

22 From where your vantage point was, what sources, of
23 lighting were you relying upon?

24 A. Just the dimly lit breezeway right there is what --
25 and that's why I'm telling you, when they came out, it was

1 more than just two figures coming out of the doorway
2 simultaneously as opposed to me looking at someone's face and
3 saying, "That's him. That's him."

4 Q. I understand. Okay.

5 And your view was basically the same as Officer --
6 I'm going to mispronounce it; keep saying Mahoney -- Moroney?

7 A. No, I was actually in front of him, so he would have
8 been behind me several feet. I don't know exactly how far he
9 was, but I was further up than him, which would -- gives me a
10 better angle.

11 Q. Well, actually you are angled -- if you were closer,
12 it would have been steeper; correct?

13 A. No. I'm saying up. If this is your doorway,
14 closer, say, to Officer Briggs.

15 Q. To the center. Okay.

16 A. Than the apartment.

17 Q. I understand what you are saying.

18 You both had the same angle up; you just happened to
19 be a little further over?

20 A. I was just a little further past the apartment.

21 Q. So that the corner up there wasn't obscuring your
22 vision as much; is that what you are basically saying there?

23 A. Yes.

24 Q. Okay. All right. When they came out, did you see
25 them close the door?

1 A. I did not. I could not tell if they closed the door
2 or not.

3 Q. You didn't hear it slam or anything like that?

4 A. No.

5 Q. Oh, I do have another question, before I forget it.

6 About how long did it take you from the time you
7 received dispatch to the time you got there?

8 A. A minute or two. A short amount of time.

9 MR. SMILEY: That's all I have. Thank you.

10 THE COURT: Any redirect?

11 MR. OSBORNE: Just one.

12 REDIRECT EXAMINATION

13 BY MR. OSBORNE:

14 Q. Do you know what assignment Detective Rob Feeters
15 has with the Charleston Police Department?

16 A. Currently?

17 Q. At this time.

18 A. Yes. He was the investigator. He was the on-duty
19 central.

20 Q. No, I understand that, but do you know what division
21 in central he worked?

22 A. Warrants.

23 Q. He was a warrants investigator?

24 A. Yes.

25 Q. So he just happened to be the duty detective?

1 A. Yes. He worked -- he served warrants, but he was on
2 the rotation -- I'm not sure, I think it's every seven weeks,
3 everybody in the detectives have to work a midnight rotation
4 for seven days.

5 Q. Do you remember if any other detectives showed up
6 that night?

7 A. That night, I do not recall seeing any other
8 detectives, but I wasn't back at that show-up or anything
9 like that.

10 MR. OSBORNE: No further questions.

11 THE COURT: Any recross-examination?

12 MR. BRADLEY: No questions.

13 RE CROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q. I thought it was Investigator Feeters that was in
16 charge of this investigation. If it wasn't him, who was it?

17 A. He was in charge of the investigation that night.
18 Like I said, he was the on-call central detective. So he's
19 the only one that responds out that night.

20 Q. Who would have been in charge of directing people on
21 what to do?

22 A. That would have been -- you are talking about
23 investigative side?

24 Q. Yes.

25 A. That would have been Sergeant Dustin Thompson.

1 Q. Thompson.

2 A. Thompson, yes. He was in here earlier.

3 Q. Okay. Detective Thompson --

4 A. Thompson.

5 Q. All right. So he was in charge that night?

6 A. Not that night.

7 Q. I'm sorry. I'm not trying -- I promise, I'm not
8 trying to --

9 A. No, I understand. That night was -- Detective
10 Feeters was in charge, because our detectives do not work 24
11 hours. They are off at night. So Detective Feeters handled
12 that investigation that night.

13 Q. And handed it off?

14 A. Handed it off to the day shift, which would be
15 burglary unit, Sergeant Dustin Thompson.

16 Q. So this case, while Detective Feeters had initial
17 control and direction, Detective Thompson, this would have
18 become his case?

19 A. He would have been overseeing it.

20 MR. SMILEY: Okay. That's what I need to know.

21 Thank you.

22 THE COURT: Thank you. You may step down.

23 (Whereupon the witness is excused.)

24 MR. OSBORNE: The State calls Sabrina Polite.

25 SABRINA POLITE,

1 having been duly sworn, testifies as follows:

2 THE CLERK: Please state your full name and then
3 spell your last name.

4 THE WITNESS: Sabrina Polite, P-o-l-i-t-e.

5 DIRECT EXAMINATION

6 BY MR. OSBORNE:

7 Q. Good afternoon, Sabrina.

8 I'm just going to take a moment to introduce
9 yourself to the jury a little bit.

10 Where did you grow up?

11 A. I grew up in a small town in South Carolina.

12 Q. Which town?

13 A. It's Ridgeland.

14 Q. Are you married?

15 A. No.

16 Q. You don't have to give the address, but where do you
17 live now?

18 A. Now I'm living in Ridgeland.

19 Q. You moved back?

20 A. Yes.

21 Q. What kind of work do you do now at Ridgeland?

22 A. I'm a kindergarten teacher.

23 Q. What school do you work for?

24 A. Jasper County, Ridgeland Elementary.

25 Q. How long have you worked for Jasper County?

1 A. This is my first year.

2 Q. All right. What did you do before that?

3 A. I worked in Charleston County as a kindergarten
4 teacher.

5 Q. What school did you work for there?

6 A. Buist Academy.

7 Q. How long were you at Buist?

8 A. I was there about four years.

9 Q. Three years?

10 A. Four.

11 Q. Four years. Okay.

12 So then what kind of work did you do?

13 A. I taught fifth, first, and second grade.

14 Q. Where was that at?

15 A. That was in Charlotte.

16 Q. Pretty much a teacher your whole life, it sounds
17 like.

18 A. Exactly.

19 Q. Let's go to the night of October 23rd of 2013.

20 Were you working at Buist then?

21 A. Yes.

22 Q. Where did you live there -- or then?

23 A. I lived in Mount Pleasant, because the school was in
24 Mount Pleasant, and then they went downtown. So I wanted to
25 be closer, so I moved to West Ashley.

1 And I went to school at College of Charleston, and I
2 stayed in Westchase. So I just went back to Westchase.

3 Q. So on the night of October the 23rd, you resided in
4 Westchase?

5 A. Yes.

6 Q. Do you remember what your apartment number was?

7 A. [REDACTED].

8 Q. Now, on the night of the burglary, backing it up,
9 how long had you lived in that apartment?

10 A. Less than a month. I had just moved in there.

11 Q. You just moved in?

12 A. Yes.

13 Q. Did you have any roommates?

14 A. No.

15 Q. All right. So let's go ahead and go to the night of
16 October the 23rd.

17 You were home that night?

18 A. Yes.

19 Q. And was anyone home with you?

20 A. I was alone.

21 Q. What were you doing that night?

22 A. I was working on lesson plans.

23 Q. For those who don't have children, what are lesson
24 plans?

25 A. That's -- I was planning on being out the next day.

1 I was going to a workshop. So I wanted to make sure that my
2 assistant and the substitute teacher knew exactly what to do
3 when they walked in the classroom. So I was just writing out
4 some plans for them.

5 Q. Did something happen while you were working on your
6 lesson plans that takes you away from it?

7 A. I received a knock at my door. And I went and
8 looked through the peephole, didn't recognize the guy, so I
9 went back to doing my lesson plans.

10 Q. Now, was it an ominous knock or was it just a normal
11 knock?

12 A. The first time, it was just a normal knock.

13 Q. When you went to the door and looked through your
14 peephole, could you tell at all what the individual was
15 wearing?

16 A. I saw just a dark -- a dark sweatshirt, and I kind
17 of looked, glimpsed his face. I didn't recognize him, so I
18 just figured he had the wrong apartment.

19 Q. What did you do then?

20 A. Went back and finished the lesson plans.

21 Q. What happened next?

22 A. I heard footsteps go down, so I figured he realized
23 he had the wrong apartment.

24 Q. Then what happened?

25 A. Then I heard footsteps come back up, and I heard a

1 more assertive pounding at the door.

2 Q. What did you do then?

3 A. So that's what made me put my laptop aside, get up
4 to see what was going on, and I saw him lean against the
5 door, listen, because I had the TV on, and then he turned and
6 started kicking the door. So that's when I knew something
7 else was going on.

8 Q. This was pretty assertive, I take it?

9 A. Right.

10 Q. Did you think they were coming in?

11 A. I did.

12 Q. What did you do?

13 A. I looked for my cell phone quickly and I went and
14 got it, and as soon as I picked it up to dial 911, I heard
15 glass breaking in the first bedroom door -- in the first
16 bedroom.

17 Q. Where were you when you heard the glass breaking?

18 A. I was standing near the door, near my front door,
19 because I had just peeped in the peephole.

20 Q. When you heard that glass breaking, what did you do?

21 A. I tried to figure out where I should go hide.

22 Q. Where did you hide?

23 A. In the closet.

24 Q. All right. That closet, was it in your front
25 bedroom or in your back bedroom?

1 A. It was in the back bedroom.

2 Q. While you were in the closet, could you see if
3 anyone came in your apartment?

4 A. Yes, because the closet had a direct line to the
5 front door in the other bedroom.

6 Q. Did you have the closet door closed?

7 A. Closed.

8 Q. How were you able to see through the closet door?

9 A. It had little slits.

10 Q. Could you see how many people entered your
11 apartment?

12 A. I saw one guy come in through the first bedroom. He
13 went around the door and opened the door, and I saw two guys
14 come in.

15 Q. So the first guy goes in through -- does he go in
16 through the window, then, or were you not able to see that?

17 A. No, he could be -- because he came from the first
18 bedroom. So he went in through the window.

19 Q. So you don't have a door in that bedroom, so the
20 only way to get in would have been through the window?

21 A. Correct.

22 Q. Once he went in, you said -- did he open the door?
23 Is that what you said?

24 A. He opened the door.

25 Q. And then you saw two more come in?

1 A. Correct.

2 Q. All right. So now you've got three individuals in
3 your apartment. One, can you track where they are going and
4 what they are doing?

5 A. If you divided the apartment up, it's three
6 sections. So I have the first bedroom. One went there. The
7 kitchen/living room, one was there. And one came into the
8 master bedroom.

9 MR. OSBORNE: Your Honor, may I approach?

10 THE COURT: You may.

11 BY MR. OSBORNE:

12 Q. I'm showing you what's been marked as State's
13 Exhibit 22. And if you look, this is -- do you recognize
14 that?

15 A. I do.

16 Q. What is that?

17 A. This is a copy model of my apartment.

18 MR. OSBORNE: Your Honor, I'd request State's 22 be
19 moved into evidence.

20 THE COURT: Any objection?

21 MR. BRADLEY: No objection.

22 MR. SMILEY: None, Your Honor.

23 THE COURT: Without objection, State's Exhibit 22.

24 (State's Exhibit 22, Copy model of apartment, is
25 moved into evidence.)

1 BY MR. OSBORNE:

2 Q. All right. So I know the words are inverted. So --
3 and the reason why it's inverted is because this right here
4 is a more accurate layout of your apartment?

5 A. Yes.

6 Q. So we had to flip it.

7 A. Okay.

8 Q. Go ahead -- you can mark on that screen right there.
9 Go ahead and mark on the screen where you heard the sound of
10 the breaking glass.

11 A. In this bedroom. (Witness indicates.)

12 Q. And go ahead and mark on the screen where you ran
13 to.

14 A. I ran to this closet. (Witness indicates.)

15 Q. So from that -- and I think if you can draw a line
16 from that closet to where the front door is.

17 A. (Witness complies.)

18 Q. So you saw one individual come in through where the
19 broken glass was, go around and open up the front door, and
20 then you saw at least two other -- or two individuals coming
21 through the front door?

22 A. Yes.

23 Q. Okay. All right. Now, you left off, you said that
24 you saw -- or you heard one individual in your kitchen?

25 A. Yes.

1 Q. Okay. Where is that?

2 A. Kitchen is this area. (Witness indicates.)

3 Q. Do you know what either of the other individuals
4 were doing?

5 A. They were looking, just looking through my things.

6 Q. You could hear them throughout your apartment?

7 A. I could hear them and they were talking.

8 Q. What were they saying?

9 A. One person said, "All I see is girl stuff."

10 And someone else said -- called my name. They were
11 like, "Who is Sabrina Polite?"

12 And then the other one, one said, "Are you sure we
13 have the right apartment?"

14 Q. Did anyone respond to that?

15 A. No one responded. They just said, "Keep looking."

16 Q. They said what?

17 A. "Keep looking."

18 Q. Keep looking.

19 Now, you say you heard one of the subjects say your
20 name?

21 A. Uh-huh.

22 Q. You lived there. Did you have property, paperwork
23 with your name, letters, throughout the apartment?

24 A. I did. Because when I heard my name, I thought,
25 "Uh-oh." But I have mail and I had my wallet out, so it

1 could have been on anything.

2 Q. I'm showing you now what's been previously marked
3 and admitted as State's Exhibit 3.

4 Is this the closet you ran into?

5 A. Yes.

6 Q. Did anyone come into the bedroom while you were in
7 the closet?

8 A. Yes.

9 Q. All right. What happened?

10 A. They looked in the bedroom and then back here is
11 where I have a bathroom. So they looked in that room, went,
12 looked in the bathroom, and eventually came in the closet.

13 Q. Opened up the door and came in the closet with you?

14 A. Yes.

15 Q. How many?

16 A. Just one.

17 Q. And I know that's a real close-up picture.

18 Where in the closet were you hiding?

19 A. I had one jacket, so right here. (Witness
20 indicates.)

21 Q. You kind of had the jacket covering you?

22 A. Uh-huh.

23 Q. What happened when the individual was in the closet
24 with you?

25 A. He just started looking through things, pulling out

1 shelves, looking through whatever was in there.

2 Q. Did he ever make contact with you?

3 A. He did. He brushed against me a couple of times.
4 He stepped on my foot a couple of times. But he didn't
5 realize that it was me.

6 Q. He pulled out those drawers?

7 A. Yes.

8 Q. When he left -- at some point he ends up leaving the
9 closet?

10 A. Uh-huh.

11 Q. What happens then?

12 A. They kind of just looked around and gathered like in
13 the middle of the apartment, so the den area, and --

14 Q. Wait one second. Where?

15 A. Right in this living room area. (Witness
16 indicates.)

17 Q. Okay.

18 A. And I couldn't really hear what they were saying,
19 but they kind of huddled together and opened the door at that
20 point and closed it back, then said something to each other
21 and ended up walking out.

22 Q. Could you hear sirens coming?

23 A. I couldn't hear sirens, but when they opened the
24 door, I could see the blue lights. Because when I was on the
25 phone with the 911 operator, she said the police were there,

1 so it's okay.

2 Q. Did they leave the apartment?

3 A. They left the apartment.

4 Q. Did they go out the front door or out the window?

5 A. The front door.

6 Q. What did you do once they walked out? Or did they
7 walk out or run out?

8 A. I saw two walk out. They just walked out, one right
9 next to the other. They just kind of walked behind and
10 walked out and closed the door.

11 And I told the 911 operator they were out. She told
12 me -- asked if anybody else was in there, and I told her I
13 wasn't sure, because I didn't see the third guy. So she
14 said, "Look quickly."

15 I locked the door, and then she told me to go back
16 to the closet.

17 Q. So you locked the front door?

18 A. I locked the front door.

19 Q. After you locked the front door, you said you went
20 back to the closet?

21 A. Yes.

22 Q. Did the police ever come into your apartment?

23 A. They came in, guns raised, and they were positioned
24 in that living room, pointed towards the bedroom.

25 Q. Now, after everything was over -- you had just moved

1 in; correct?

2 A. Correct.

3 Q. I mean, you hadn't even unfinished packing yet;
4 right?

5 A. No.

6 Q. When you had an opportunity to go back through your
7 things and everything, did you notice that you were missing
8 any items?

9 A. I really didn't go back through my things. That
10 night was the last night really I was at the apartment. When
11 we were packing, I didn't see anything missing. The only
12 thing that was just destroyed is the -- you know, whatever
13 they trampled on or threw out, but I couldn't see anything
14 missing.

15 Q. Whatever they rummaged through?

16 A. Uh-huh.

17 Q. You've been sitting in here throughout the entire
18 trial; correct?

19 A. Correct.

20 Q. You heard Jeff Miller, who is a crime scene tech,
21 testify?

22 A. Yes.

23 Q. That was the one who found the coins outside of your
24 apartment?

25 A. Uh-huh, uh-huh.

1 Q. Did you leave coins outside your apartment?

2 A. Not outside. I mean, I do have a piggy bank. So I
3 don't know if, in the haste to get out, maybe something
4 happened or they took -- I don't know.

5 MR. OSBORNE: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. OSBORNE:

8 Q. I'm showing you what's been marked as State's
9 Exhibit 20.

10 Will you take a look at that and tell me if you
11 recognize it.

12 A. I do.

13 Q. What is that?

14 A. This is the 911 tape.

15 Q. How do you know?

16 A. Because I initialed it.

17 Q. We listened to it together in my office?

18 A. Yes.

19 MR. OSBORNE: Your Honor, I request this be entered
20 into evidence and published to the jury.

21 THE COURT: Any objection?

22 MR. BRADLEY: May we approach?

23 THE COURT: You may.

24 (Whereupon, a bench conference takes place off the
25 record.)

1 THE COURT: Any objection?

2 MR. BRADLEY: No objection.

3 MR. SMILEY: No, sir.

4 THE COURT: Okay, without objection.

5 (State's Exhibit 20, 911 tape, is moved into
6 evidence.)

7 (Video playing.)

8 BY MR. OSBORNE:

9 Q. Now, at this point, you had said that one individual
10 had broken into your apartment?

11 A. Right.

12 Q. Is this the part in your story where the one
13 individual is entering the bedroom?

14 A. The bedroom.

15 Q. You are in the closet?

16 A. Uh-huh.

17 Q. Are you in the closet at this point?

18 A. Yes.

19 (Video playing.)

20 MR. OSBORNE: Sabrina, there's only one more
21 recording.

22 (Video playing.)

23 BY MR. OSBORNE:

24 Q. Did the police enter right after that?

25 A. Yes.

1 Q. Sorry to make you listen to that yet again. I think
2 it's important.

3 But I've got two more questions.

4 Did you know either one of these individuals or any
5 three of them?

6 A. I did not.

7 Q. Did you give them permission to enter your
8 apartment?

9 A. I did not.

10 THE COURT: Mr. Bradley.

11 MR. BRADLEY: Thank you, Your Honor, if it please
12 the Court.

13 CROSS-EXAMINATION

14 BY MR. BRADLEY:

15 Q. Ms. Polite, I will just first say, you were a
16 champion the way you handled yourself during that invasion.
17 I'm sorry you had to go through something like that. But I
18 do just have a couple of questions for you.

19 At the end of that tape, were you talking with the
20 police officers at that time?

21 A. I had two phones. I was actually talking to the 911
22 operator.

23 Q. Okay.

24 A. And I was trying to tell my principal that I would
25 not be at school.

1 Q. So you were actually in the closet with one phone
2 talking to the principal, to let him know that this event had
3 occurred and you wouldn't be there?

4 A. Yes.

5 Q. And on the other you were with the 911 operator?

6 A. Yes.

7 Q. Okay. At the beginning, you testified that you
8 looked through the peephole and you saw someone that you
9 didn't recognize.

10 A. Correct.

11 Q. Do you recall the -- can you identify that person
12 that you saw at the peephole?

13 A. No. I don't know the person.

14 Q. But were you able to get a -- was their face clear?
15 Did they have something obstructing their face? Did they
16 have on a mask or anything like that?

17 A. When the person knocked, they turned their face as
18 to look to someone who was behind them.

19 Q. To the back? Okay.

20 So you just got a back glimpse of their head; is
21 that correct?

22 A. The side.

23 Q. The side of their head.

24 Did they have a hoody or hat on or anything like
25 that?

1 A. Not at the time.

2 Q. Not at that time. Okay.

3 And you said you didn't see the face, so you would
4 not have known whether they had a hoody or anything tied over
5 their face or anything like that; correct?

6 A. When they came in, that's when they had everything.

7 Q. Okay. And how many -- you said I think one time
8 that there was anywhere from one to three people that entered
9 your apartment?

10 A. One came in first, so I assumed that it was just
11 one.

12 Q. Sure.

13 A. Until he went in and opened the door.

14 Q. And when he opened the door, from the view -- you
15 said that there were little peep holes, I guess. I imagine
16 the closet has those long slits in it?

17 A. Uh-huh.

18 Q. And you could actually see other people coming into
19 your apartment; is that correct?

20 A. Right.

21 Q. And how many people did you see come into your
22 apartment?

23 A. I saw two.

24 Q. You saw two.

25 So a total of three people came in your apartment;

1 is that correct?

2 A. Right.

3 Q. Okay. When you were in the closet and this person
4 came into the closet, were you covered -- you were -- were
5 you covering yourself up with something?

6 A. Right. That's when I just stepped back behind the
7 clothes.

8 Q. So you stepped back so that person didn't see you
9 there. Thank goodness.

10 You also mentioned in your testimony that they
11 gathered in the den area, that they were having a
12 conversation?

13 A. Right.

14 Q. Can you tell me again, what were they discussing?

15 A. I couldn't hear anything.

16 Q. You could not hear anything?

17 But you could still see them from your vantage point
18 in the closet; is that correct?

19 A. Right.

20 Q. And were you able to identify any of the guys that
21 came into your apartment?

22 A. No. I just knew they had on dark clothing.

23 Q. Everyone had on dark clothing?

24 A. Uh-huh.

25 Q. Including dark pants?

1 A. Pants, I'm not sure.

2 Q. Okay.

3 A. As far as the top part, I could see.

4 Q. When you got up to lock the door -- I think you
5 testified that you were actually the one that locked the
6 door; is that correct?

7 A. Correct.

8 Q. Did you look out of the window? Did you look out of
9 the peephole?

10 A. No.

11 Q. Didn't do any of that? You just went right back
12 into the closet?

13 A. Uh-huh.

14 Q. Probably a pretty smart move.

15 When the police -- did they bring any of the
16 suspects to a show-up lineup? Did they ask you to identify
17 any of the suspects in the lineup?

18 A. Yes.

19 Q. And were you able to identify any of those suspects?

20 A. I wasn't able to identify because I told them I
21 couldn't see the face. The one that -- I was able to see
22 boxers from the one that was rummaging through the closet.

23 Q. Okay.

24 A. And I just said they had on -- like it was -- it
25 wasn't a plain boxer. It was one with different little

1 symbols.

2 Q. When you say "boxers," just to make sure we are
3 clear, we are talking about their underwear?

4 A. Right.

5 Q. How did you wind up seeing the underwear?

6 A. Because they were over -- I'm standing up, and he
7 didn't realize that I'm a person right there, and they were
8 bent over, pulling things out.

9 Q. Okay. And you said what color, what type underwear
10 were those?

11 A. It was just -- it wasn't plain. It had different
12 little symbols on it.

13 Q. And did you tell the police officers that?

14 A. I did.

15 Q. You did?

16 MR. BRADLEY: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 BY MR. BRADLEY:

19 Q. Ms. Polite, I want to show you a picture that's been
20 marked State's Exhibit No. -- I thought it was No. 9, which
21 was actually the floor plan.

22 And I think you can touch on your screen, but can
23 you show me again on the glass -- where the glass break
24 occurred?

25 A. The window, this right here. (Witness indicates.)

1 Q. Front window?

2 And where were -- which closet were you in? I think
3 there's three closets there.

4 A. Right here. (Witness indicates.)

5 Q. You were in the back closet?

6 Were you able to see -- you weren't able to see the
7 glass breaking, you just heard it; is that correct?

8 A. Correct.

9 Q. Okay. But you did see an individual walk in between
10 the living room and the entry to open the door; is that
11 correct?

12 A. Correct.

13 Q. Okay. And from that vantage point you did see two
14 other people enter through that entry point where you were;
15 is that correct?

16 A. Correct.

17 Q. Okay. And at this particular point here, does that
18 obstruct your view to the doorway?

19 A. No.

20 Q. It does not? You can clearly see the doorway at
21 that particular point; right?

22 A. Yes.

23 Q. Okay. When they knocked at the door the first time,
24 was it a normal knock?

25 A. First time, no.

1 Q. And you looked out of the peephole and you said that
2 you couldn't recognize the individual; is that correct?

3 A. Right.

4 Q. Okay. Did you ask, "Who is it?" Did you say
5 anything to them just to see, you know, maybe if they were
6 knocking at the wrong door?

7 A. No.

8 Q. These people who broke into your apartment, did
9 they -- were there things around that were of value?

10 A. I had a TV, so I guess --

11 Q. Did you have a computer or anything around?

12 You said your wallet was around there?

13 A. Well, I have no money. I'm a teacher. So that was
14 empty, but I had a few things, a TV, yeah.

15 Q. Did they take anything of value from your apartment?

16 A. No, not that I can ...

17 Q. And you said from the conversation, it appeared that
18 whomever broke into your apartment knew where they were
19 going, because they said they had the wrong apartment; is
20 that correct?

21 A. Right.

22 MR. BRADLEY: Okay. I have no further questions for
23 you at this point. Thank you.

24 THE COURT: Mr. Smiley.

25 MR. SMILEY: Just a couple of things.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. So you aren't missing anything, right?

A. No.

Q. So from listening to the dispatch and from your testimony, this went on for several minutes; right?

A. Right.

Q. So if they were there to take something, they certainly had time to do it; right?

A. Correct.

Q. And your TV was still there. And while you didn't have any money, I'm sure you had some bank cards; right?

A. No.

Q. No, no bank cards either? All right. You are in about the same shape I was in -- I am in myself.

So there was nothing missing, so whoever broke in didn't steal anything that you could see, and you never found anything that was stolen later on when you were looking through your things, "Oh, they took that"?

There was nothing you could determine being stolen; correct?

A. Not right now. I kind of just -- everything -- someone packed everything in boxes. They are still in boxes.

Q. I got you. I got you.

You never told the police that something was taken?

1 A. No.

2 Q. And the person that knocked on your door and broke
3 in didn't come looking, per se, for you; right?

4 A. Correct.

5 Q. So it didn't appear that they were breaking in to
6 try to assault you; right?

7 A. Correct.

8 Q. And you testified that from your vantage point, it
9 appeared that you could see someone walk in -- saw two of
10 them walking out; right?

11 A. Right.

12 Q. Okay. And they closed the door behind them?

13 A. Correct.

14 Q. At what point on that tape -- and I know it's hard
15 to remember, so I'm not holding you to a point. I'm just
16 trying to get a -- some kind of timeline.

17 At what point did you go lock the front door?

18 A. It was -- they had left and the operator asked if
19 there was anyone else in the apartment. And I said I would
20 go check. And then she told me to get back in the closet.

21 So I just locked the door, just in case they decided
22 to come back, and got back in the closet.

23 Q. Okay. So you weren't afraid of there being
24 something else still in there or you wouldn't have come out
25 of that closet, would you?

1 A. Well, I was okay because the police were there.

2 Q. Okay. So when you went to go lock that -- that
3 helps.

4 So when you went to go lock the front door, you had
5 already been told by the operator the police were there?

6 A. Right.

7 Q. Okay. And you couldn't hear the police beating on
8 your door and saying, "Police, come in"?

9 A. No. I heard something. And I asked her if it was
10 the police, and she said she was checking.

11 Q. Okay. We heard that. Yeah. All right.

12 So you couldn't hear the boom, boom, "Police. Open
13 up. We are coming in," or anything like that?

14 A. No.

15 Q. Okay. Were the lights on in your apartment that
16 night?

17 A. I had the first bedroom light on.

18 Q. Okay. Now, we are going to have to -- I know about
19 bedrooms.

20 You've got the front door; right?

21 A. Right.

22 Q. And I'm going to call it the right bedroom. That's
23 where the glass was broken. Okay?

24 A. The left bedroom glass was broken.

25 Q. Okay. Left bedroom was where the glass was broken.

1 A. Correct.

2 Q. And the bedroom that you were in -- and I would have
3 called that the master, I guess?

4 A. Correct.

5 Q. That would be the second bedroom?

6 A. Yes.

7 Q. All right. So when you were saying -- when you were
8 talking about the bedrooms, which one were you talking about?

9 A. The first -- not the master.

10 Q. Okay. The first, the one that you said was on the
11 left, then?

12 A. Right.

13 Q. That's the one you are talking about?

14 A. Yes.

15 Q. So that light was on?

16 A. That light was on. And I think I had the kitchen
17 light -- there was another light, either the kitchen light or
18 the den. It was lamps.

19 Q. You had your TV on?

20 A. Right.

21 Q. Was the volume turned up?

22 A. Volume was turned up.

23 Q. Did you have a computer?

24 A. I had a laptop.

25 Q. It was on?

1 A. Yes.

2 Q. Bathroom light?

3 A. Off.

4 Q. Off.

5 And in your master bedroom, everything was off in
6 there?

7 A. Off.

8 Q. You were in the dark part of the house, back there
9 in that closet?

10 A. When they came in, correct.

11 Q. And you were looking out towards the lighted part of
12 the house?

13 A. Correct.

14 Q. So you could get a decent view of what was going on
15 out there; right?

16 A. Yes.

17 Q. So the fellow that you said came to the door and
18 then came back in, you provided a description of that person
19 to the police; right?

20 A. Well, I just said dark on his clothes.

21 Q. Again, I'm not trying to trick you. I promise you.
22 I promise.

23 But you gave them a description; right?

24 A. Yes.

25 Q. Okay. And then that person is -- when you gave the

1 description -- you didn't say, but I want to ask -- did he
2 have gloves on, a mask on, anything like that?

3 A. No. What they did, they covered their hands with --
4 the one that had the hoody tight. So it was one long sleeve
5 and they had it covered up. And the one that had the dark
6 top on without a collar had it pulled down around the hand
7 too.

8 Q. I got you. I understand what you are saying.

9 Now, that person that -- the second person, you were
10 able to see his face; right?

11 A. When they came in, I couldn't see a full face,
12 because they came in and it was -- one had a -- I could see
13 maybe this much. (Witness indicates.)

14 Q. That was the fellow with the hoody?

15 A. Right.

16 Q. All right.

17 A. And then the other one had on like something
18 obscuring his face. I couldn't really tell. Maybe a dark
19 hat or something over. I couldn't really --

20 Q. Well, do you remember talking to the police that
21 night?

22 A. Uh-huh.

23 Q. And it was pretty vivid and fresh in your mind that
24 night; right?

25 A. Right.

1 Q. When you spoke to the police about the second guy,
2 you didn't say anything about him obscuring his face, did
3 you?

4 A. Well, I mean, a hand -- I couldn't see the face.

5 Q. Well, you didn't tell the police about that, though,
6 did you?

7 A. I'm not sure. It's been about two years.

8 Q. I understand that. And, again, you tried to make an
9 identification in the case; right?

10 A. Right.

11 Q. Okay.

12 MR. SMILEY: And beg the Court's indulgence.

13 BY MR. SMILEY:

14 Q. You didn't identify this gentleman as being in your
15 house that night, did you?

16 A. I really couldn't identify him.

17 Q. You didn't identify anybody, did you?

18 A. Right.

19 Q. And this is Ishmel Lemon.

20 You did not identify him being in your house that
21 night?

22 A. No.

23 MR. SMILEY: Beg the Court's indulgence.

24 THE COURT: Yes.

25 BY MR. SMILEY:

1 Q. Do you have a car?

2 A. Yes.

3 Q. Were your car keys out?

4 A. I don't know.

5 Q. Okay. They didn't get taken, though, did they?

6 A. No.

7 Q. All right. And you had never met Mr. Lemon before?

8 You don't know Mr. Lemon at all, do you?

9 A. No.

10 Q. All right. Or any of the gentlemen that have been
11 mentioned in this courtroom, you don't know any of them?

12 A. No.

13 Q. All right. So I'm making sure I've got it covered
14 and I don't ask the question I don't need to ask.

15 MR. SMILEY: Ms. Polite, I know it was a difficult
16 evening. I appreciate your testimony. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Any redirect?

19 MR. OSBORNE: None, Your Honor.

20 THE COURT: All right. Thank you. You may step
21 down.

22 (Whereupon the witness is excused.)

23 MR. OSBORNE: State rests, Your Honor.

24 THE COURT: Ladies and gentlemen, it's a good time
25 for a break. I'm going to send you back.

1 Please do not discuss anything about the case while
2 you are back there. And if you want a Coca-Cola or snack or
3 something like that, enjoy it back there. Thank you.

4 (Whereupon, the jury leaves open court at 3:32 p.m.)

5 THE COURT: All right. You may be seated.

6 Are there any motions to be made at this time?

7 MR. OSBORNE: None from the State, Your Honor.

8 THE COURT: Mr. Bradley.

9 MR. BRADLEY: Your Honor, if it please the Court, of
10 course, at this time we make a motion for a directed verdict.
11 Your Honor, based on the lack of anyone placing my client
12 inside of the apartment that night, Your Honor, along with
13 the witnesses' testimony that no one saw my client in that
14 apartment, Your Honor, we would ask that the Court dismiss
15 all charges and we'd ask for a judgment of acquittal at this
16 time.

17 THE COURT: Any motions?

18 MR. SMILEY: Yes, sir. And it's actually a directed
19 verdict motion, but I'm going to attack one of the other
20 elements.

21 In this case, as you know, Your Honor, to establish
22 the burglary, you have to be entering the dwelling of another
23 with the intent to commit a crime therein.

24 I've tried my best through cross-examination to
25 determine what the intent to commit a crime therein was.

1 Looking at the evidence in the light most favorable to the
2 State, there has been no evidence of any intent to commit a
3 crime whatsoever; and therefore, on that basis, I would move
4 for a motion for a directed verdict in favor of Mr. Lemon.

5 THE COURT: Yes, sir. Mr. Osborne.

6 MR. OSBORNE: Thank you, Your Honor, may it please
7 the Court.

8 I don't believe we are required to show exactly what
9 crime they were trying to commit when they entered the
10 residence, just a crime, but I think there's plenty of
11 inference here to suggest that it was a larceny that they
12 were trying to commit when they entered the residence.

13 And the intent can be shown by acts and conduct of
14 the defendants and of the circumstances from which you may
15 naturally and reasonably infer intent.

16 In this case we have two defendants standing at the
17 victim's apartment. We have testimony that said one of the
18 defendants said, "Wait until she comes out." They were armed
19 with a handgun at that time.

20 We have further testimony that says that as one of
21 the defendants, Mr. Champaigne, went up the steps to the
22 victim's apartment, he pulled his hoody tight, cinched it
23 tight. They both went up, knocked on the door, leaned in,
24 waited to see if they could hear anyone in there. No one
25 answered.

1 Then they kicked at the door. Then they broke the
2 window with a pistol, went inside, rummaged through her
3 belongings. Some of the comments, "Think we have the wrong
4 apartment?" Another one says, "Just keep looking, keep
5 looking."

6 Ishmel Lemon put a co-defendant Jordan Brown on
7 lookout.

8 Then we have further testimony where they were
9 covering up their hands, trying not to leave fingerprints.

10 I think that's more than enough evidence to suggest
11 that they weren't visiting a neighbor. They were intending
12 to commit a crime when they got in that apartment.

13 And the fact that it was abandoned while they were
14 in there, if it was the wrong apartment, doesn't negate the
15 fact that it was a burglary.

16 THE COURT: Well, at this stage of the trial, the
17 Court is more concerned with the existence of any evidence,
18 not the weight of the evidence. There is sufficient
19 evidence. It is more than mere speculation concerning their
20 intent.

21 I think you had the testimony of Jordan Brown, who
22 was asked to be a lookout while -- I guess there was a slang
23 word, take-down or breakdown or something that they were
24 going to do.

25 I think there's simply enough evidence to be more

1 than mere suspicion, and I'm going to let it go to the jury.

2 So the motions for directed verdict are respectfully
3 denied.

4 Now, I think I will go ahead and question your
5 client now about his testimony.

6 The Defendant Antwain Champaigne, please stand and
7 be sworn.

8 I'm only going to ask you questions not about the
9 incident, but about your testimony. Please place him under
10 oath.

11 (Whereupon, the Defendant Champaigne is sworn.)

12 THE COURT: You are Antwain Champaigne?

13 THE DEFENDANT CHAMPAIGNE: Yes, sir.

14 THE COURT: Mr. Champaigne, at this time I'm going
15 to explain to you certain of your rights. Now, if you do not
16 understand what I'm saying to you, please let me know. And
17 if you want me to explain anything in greater detail, I will
18 be happy to do so as well.

19 Do you understand that?

20 THE DEFENDANT CHAMPAIGNE: Yes, sir.

21 THE COURT: Now, we've now reached the stage of your
22 trial where you may present your defense, and you have a
23 right to claim the protection given to you by the United
24 States Constitution under the Fifth Amendment, which states
25 in part that no person shall be compelled in a criminal case

1 to be a witness against himself.

2 Now, that means that you cannot be required to
3 testify in this case, but you do have a right to testify on
4 your own behalf. However, no one can force you to testify.
5 It's a personal right, and no one can waive this right except
6 for you.

7 Now, if you decide to testify, you will be subjected
8 to the same rules that govern other witnesses, and you may be
9 examined and cross-examined on any relevant issue in this
10 case.

11 In addition, if you have any convictions involving
12 dishonesty or false statements or for crimes punishable by
13 imprisonment of more than one year, and I determine that the
14 probative value of admitting that evidence outweighs the
15 prejudicial effect on you, then the State will be able to
16 introduce your record to attack your credibility.

17 Solicitor, what record would you have to present,
18 should he testify?

19 MR. OSBORNE: Your Honor, I don't believe any of
20 those charges are impeachable, his convictions.

21 THE COURT: All right. So if you were to testify,
22 there would be no reference to any charges that you might
23 have.

24 Now, if you decide to testify, the decision on your
25 part must be made freely, voluntarily, knowingly, and

1 intelligently, with the knowledge of the protections given to
2 you by the Fifth Amendment and the consequences of your
3 decision to testify.

4 Now, if you decide not to testify, I will instruct
5 the jury that they cannot give the fact that you did not
6 testify any consideration whatsoever, and there is to be
7 absolutely no prejudice to you because you decided not to
8 testify. It's left entirely up to you as to whether or not
9 you want to testify. You may talk with your attorney or any
10 family member, but the final decision will be up to you.

11 Now, have you understood everything that I've told
12 you?

13 THE DEFENDANT CHAMPAIGNE: Yes, sir.

14 THE COURT: Do you have any questions for the Court?

15 THE DEFENDANT CHAMPAIGNE: No, sir.

16 THE COURT: All right. Now, we will go ahead and
17 take a 15-minute recess, and that will give you time to talk
18 to your attorney or anyone else that you need to talk with,
19 and then we will come back before we bring the jury in and I
20 will ask you the ultimate question. All right?

21 MR. BRADLEY: Thank you, Your Honor.

22 THE COURT: The Court will be in recess for 15
23 minutes.

24 (A recess transpired.)

25 MR. BRADLEY: Your Honor, I apologize. I beg the

1 Court's indulgence. Could we just have maybe another 15
2 minutes to speak with my client about whether or not he's
3 going to take the stand?

4 THE COURT: Okay.

5 MR. BRADLEY: I apologize, but it wound up being a
6 little bit more complicated.

7 THE COURT: All right.

8 See if the jury wants to -- tell them it's going to
9 be about 15 more minutes. That way they are not sitting back
10 there.

11 We will be in recess about 15 more minutes.

12 MR. BRADLEY: Thank you, Your Honor.

13 (A recess transpired.)

14 (Whereupon, the defendant is present.)

15 THE COURT: All right. Mr. Champaigne, have you
16 decided whether or not you want to testify or not?

17 THE DEFENDANT CHAMPAIGNE: Yes, sir, I did.

18 THE COURT: You did decide. Do you want to testify?

19 THE DEFENDANT CHAMPAIGNE: No, sir.

20 MR. BRADLEY: So we will be resting.

21 THE COURT: So y'all will be resting.

22 And Mr. Smiley?

23 MR. SMILEY: I don't intend on presenting any case,
24 Your Honor, and Mr. Lemon decided not only not to come, but
25 he won't be testifying either.

1 THE COURT: All right. Very well. Let's bring them
2 in.

3 And what I will do is allow y'all to rest on the
4 record, and I will explain to the jury that we will do final
5 arguments and closing tomorrow.

6 MR. SMILEY: Yes, sir.

7 THE COURT: 9:30 good for y'all?

8 MR. BRADLEY: That's a good time.

9 (Whereupon, the jury returns to open court at 4:19
10 p.m.)

11 THE COURT: All right. Mr. Bradley.

12 MR. BRADLEY: Your Honor, the defense will rest in
13 the State's case.

14 THE COURT: Mr. Smiley?

15 MR. SMILEY: Mr. Lemon does not intend to present a
16 defense, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, that
18 means that all the testimony that you are going to hear in
19 this case has been delivered to you.

20 Rather than arguing and charging this afternoon and
21 then having you possibly deliberate into the evening, what
22 I'm going to do is I'm going to go ahead and dismiss you for
23 the day with strict instructions that you not speak to anyone
24 concerning this case; do not talk amongst yourselves.

25 But be back here at 9:30 tomorrow morning, where the

1 attorneys will give you their closing arguments. I will then
2 give you the charge on the law, and then you will begin your
3 deliberations.

4 So ladies and gentlemen, have a nice evening, get a
5 good night's rest, and I will see y'all here at 9:30.

6 Thank you.

7 (Whereupon, the jury leaves open court at 4:20 p.m.)

8 THE COURT: My law clerk has sent you a copy of the
9 charge. If you want to look over it tonight, if you have any
10 changes that you want to make --

11 MR. SMILEY: I had read it during lunch, and the
12 only thing --

13 THE COURT: Please stand. Please stand.

14 MR. SMILEY: Oh, I apologize, Your Honor. I got too
15 comfortable.

16 The only thing I noticed was mere presence.

17 THE COURT: That's supposed to be in there.

18 MR. SMILEY: I didn't see it.

19 THE CLERK: We just added that.

20 MR. SMILEY: All right. That's all, other than
21 that.

22 THE COURT: And we added the hand of one is the hand
23 of all, and the mere presence goes along with it.

24 MR. OSBORNE: So we would ask for the inference for
25 the trespass at nighttime, but we found another case and I

1 like the verbiage actually better in that case. So if it's
2 okay, I will send it to you this afternoon.

3 THE COURT: All right. That will be fine. And then
4 we will have an opportunity to talk about it.

5 Be sure to make sure they have a copy.

6 MR. SMILEY: I actually gave them the case.

7 THE COURT: Okay. That's nice.

8 MR. SMILEY: Well, I'm supposed to.

9 THE COURT: All right. Thank you.

10 The Court is in recess until tomorrow morning at
11 9:30. Thank you.

12 (Whereupon, proceedings are adjourned.)

13 (Whereupon, the trial continues on March 4, 2015.)

14 THE COURT: Did you all have an opportunity to
15 review the proposed order?

16 MR. OSBORNE: Yes, Your Honor, I did.

17 THE COURT: Any objection?

18 MR. OSBORNE: No, Your Honor.

19 THE COURT: Mr. Bradley?

20 MR. BRADLEY: No objection, Your Honor.

21 THE COURT: Mr. Smiley?

22 MR. SMILEY: I wish I could, but I won't, Your
23 Honor.

24 THE COURT: All right. Then we will bring in the
25 jury.

1 (Whereupon, the jury returns to open court at
2 9:35 a.m.)

3 THE COURT: All right. Ladies and gentlemen, I hope
4 y'all had a good night's rest. I didn't. All these changes
5 of weather for me have given me a cold.

6 So y'all have heard all of the evidence. Now is the
7 time for the attorneys to give you their closing arguments.
8 Then I will charge you, and then you will begin your
9 deliberations.

10 Is the State ready to proceed?

11 MR. OSBORNE: Yes, Your Honor.

12 THE COURT: You may proceed.

13 MR. OSBORNE: Thank you, Your Honor, may it please
14 The Court.

15 (Audio playing.)

16 MR. OSBORNE: This was no horror story. This was a
17 real story. One of those intruders was so close to Sabrina
18 in that small closet that you can almost hear him say, "We
19 must have the wrong place." Luckily, somehow, in that small
20 little closet, even after brushing up against her and even
21 after stepping on her foot at one time, he didn't find her or
22 didn't know she was there.

23 You've all been paying attention. I'm not going to
24 rehash what every single witness had to tell you, but I'm
25 going to go through some of the points that I think are

1 important, and some of the points that I think that once you
2 contemplate, once you deliberate, that you will be firmly
3 convinced that both of these defendants committed burglary in
4 the first degree.

5 Let's first look at the statute. Again, I want to
6 reiterate: I'm not the judge; Mr. Bradley is not the judge;
7 Mr. Smiley is not the judge.

8 The judge is going to instruct you on the law. If
9 anything any one of us says is different than what the judge
10 says, you must listen to the judge.

11 The defendant entered a dwelling with the intent to
12 commit a crime. I would submit to you that this is what this
13 entire case is about. Did they intend to commit a crime when
14 they entered that dwelling?

15 Now, there are some legal points in regards to
16 intent to commit a crime that I want to go through.

17 Intent to commit a crime must be present at the time
18 of entry. If the crime is abandoned after they enter the
19 dwelling, it's still a burglary.

20 In case one of them tells you that they entered the
21 dwelling, they found out they had the wrong apartment --
22 which I would agree -- then they abandoned their intent to
23 commit a crime and it's not a burglary, that's not true. It
24 only matters what they were intending when they entered a
25 dwelling, not whether they abandoned that intent once they

1 were inside.

2 It doesn't matter whether a crime was completed. If
3 they try to argue that they didn't steal anything, so this
4 isn't a burglary, that's not what the law says. If they
5 intend to commit a crime when they enter that dwelling, it
6 doesn't matter whether they left with anything or not. It's
7 still a burglary.

8 Now, the law also allows you to look at other
9 things. Intent may be shown by acts and conduct of the
10 defendant and other circumstances which may naturally and
11 reasonably infer intent.

12 So what are some of the conduct, what are some of
13 the things that you learned these two defendants did that
14 night that would allow you to believe that they had the
15 intent to commit a crime?

16 "Hold on. Let's wait and see if she comes out
17 first." Remember, that's what Timothy heard one of the two
18 defendants say while they were standing right underneath
19 Sabrina's apartment just prior to the burglary.

20 I would submit to you this is a conversation between
21 Antwain and Ishmel regarding do we confront Sabrina in her
22 apartment or do we wait until she comes out and then confront
23 her?

24 Hoody cinched tight. Remember what Timothy told
25 you. The individual that he later identifies as Antwain,

1 standing underneath Sabrina's apartment, he's wearing the
2 hoody loose. He's wearing it normally. When Antwain walked
3 up the steps, Jordan says that he pulls the hoody over his
4 head, pulls it real tight. When Officer Moroney catches him
5 coming out of the apartment, he still has it pulled tight.
6 He's doing that so he can conceal his identity and won't be
7 identified later.

8 Armed. They were armed when they went in that
9 apartment. You don't go into a friend's apartment by
10 breaking a window and being armed. And that's the same gun
11 that was recovered later that night, right underneath the
12 victim's apartment.

13 Breaking a window. Smashed a window with that gun,
14 opened the lock, lifted it, and went inside. Pulled out the
15 drawers, rummaging through Sabrina's things, one of them
16 said, "I think we've got the wrong apartment." Another one
17 says, "Keep looking." They were looking for something.

18 Hands covered. Remember what Sabrina said, not one
19 of them, but both of them, the individual with the hooded
20 sweatshirt and the other individual with the long dark
21 sweatshirt, both had their hands like this, had the sleeves
22 like this. They didn't want to leave fingerprints. They
23 didn't want to get caught.

24 They had a lookout: Jordan Brown. I'm not saying
25 that Ishmel told Jordan, "Jordan Brown, stand right here, be

1 a lookout while we commit a crime, and if the police show-up,
2 give us a warning." That's not the language that was used.
3 He said, "Jordan, look out." Jordan knew what that meant,
4 that he was supposed to be a lookout. You need a lookout
5 when you are committing a crime.

6 And they ran from the police. They knew they had
7 just did something wrong and both of them ran.

8 All of these things right here point to one thing.
9 When they entered Sabrina's apartment without consent, they
10 were intending to commit a crime. We don't have to prove
11 what crime they were trying to commit. We don't need to
12 specifically say they were trying to commit this crime.
13 That's not what the law says. I would submit to you that
14 they were trying to commit a larceny. I think it's pretty
15 obvious, but we don't have to prove that.

16 Now, the law also allows you to look at another
17 thing. You can sit here and say that they committed a
18 trespass into the dwelling of another at nighttime, and by
19 that alone, you can infer they were trying to commit a crime.
20 Intent to commit a crime may be inferred from the act of
21 trespassing at nighttime. You have a trespass into Sabrina's
22 apartment, she told you she didn't give either one of them
23 permission to enter, and it was at night.

24 Let's look at the next element to the crime: When
25 entering or fleeing, the defendants were armed with a deadly

1 weapon.

2 I want to talk to you a minute about SLED Agent
3 Donna Money and her testimony. All right? Sum it up real
4 quick.

5 What Donna tested was buccal swabs from Ishmel
6 Lemon, Antwain Champaigne, and Jordan Brown. She tested that
7 DNA to DNA swabs which were taken from the gun. That swab
8 developed a DNA profile, meaning of at least three
9 individuals. She then compared the DNA from these three
10 individuals to that.

11 She was able to eliminate Jordan Brown as being a
12 contributor to that DNA mixture. Does that mean Jordan
13 didn't touch the gun? No. It just means that his DNA
14 profile could not be identified in this profile.

15 She compared Antwain Champaigne. Antwain Champaigne
16 was eliminated as being a contributor to this DNA profile.
17 Does that mean that Antwain Champaigne didn't touch the gun?
18 No. It just means that his DNA wasn't found in this profile.

19 Ishmel Lemon. Ishmel Lemon could not be eliminated
20 as a contributor. Does that mean that Ishmel Lemon
21 definitely touched the gun? Absolutely not. We are not
22 saying that.

23 What I'm telling you is this. Can you imagine if we
24 did not put Donna Money on the stand? I'm sure both of them
25 would have had a field day with that. Didn't swab the guns;

1 didn't test the guns for DNA. This is standard police
2 procedure, and we put her up here so we could tell you that,
3 and if we don't put her up now on the stand, you will never
4 hear it.

5 But there's more. The defendants entered a dwelling
6 at nighttime. If for some reason you are not convinced that
7 that gun was involved in this crime, the mere fact that they
8 entered Sabrina's apartment at nighttime without consent
9 makes this a burglary in the first degree. It's an
10 either/or. I would submit we've proven both.

11 Now, you've often heard me refer to them as "they,"
12 those defendants entered, those defendants rummaged through
13 the stuff, those defendants ran together, and they had a gun.
14 It's pretty obvious that two people didn't hold the gun at
15 the same time.

16 But the reason why I refer to it that way is because
17 of a legal principle: "A hand of one is the hand of all."
18 If a crime is committed by two or more people who are acting
19 together in the commission of that crime, the act of one is
20 the act of all. They all went in together. They committed
21 the crime together. They are all equally guilty.

22 Let's talk about Jordan Brown for a second.

23 Now, I would submit to you that Jordan is not the
24 smartest criminal. When he was on the stand, you heard me
25 ask him, "You are looking for a break here by testifying?" I

1 thought that was a pretty obvious yes, he's hoping for a
2 break. Instead he says, "No, I don't want a break." And
3 Mr. Smiley asked him, "Are you ready to plead guilty to a
4 15-year to life sentence?" And he said, "Yeah."

5 Jordan was given a simple task. And Ishmel chose
6 the worst lookout in possibly the history of lookouts to do
7 that task. All Jordan had to do was whenever he saw the
8 lights, just warn them, the police are coming. And then they
9 would have got out.

10 He didn't warn them, and he couldn't even get away.
11 He messed that up. All he had to do -- his cousin lived
12 right in the back apartment. All he had to do was walk
13 around there. But instead he hung out in the parking lot.
14 He thought that when the police showed up he was going to
15 say, "Look. I'm a drug dealer. It is what I do," and they
16 would let him go and not figure out what he was involved in.

17 Here's what I would suggest to you about Jordan's
18 testimony. Believe the parts that can be corroborated. So
19 let's look at Jordan's testimony.

20 Jordan tells you that he was going to Westchase and
21 he was being dropped off so he could visit his cousin, James
22 Scott. Sergeant Tugya tells you that he spoke to James
23 Scott. Jordan said James lives right behind the victim.
24 Sergeant Tugya told you, James lives right behind the victim.

25 Jordan said he sold marijuana to Ishmel while they

1 were in the Volvo and Antwain Champaigne was in the Volvo.
2 Officer Nora Carr testified that she found the baggy, green
3 vegetable matter, in the Volvo, and that Volvo was parked in
4 front of Sabrina's apartment and it was Antwain Champaigne
5 who had the keys to the Volvo.

6 And no one cares about the marijuana. We are not
7 here for the marijuana. The only thing I'm suggesting to you
8 is that this corroborates that little portion of Jordan
9 Brown's statement. Jordan testified that Ishmel and Antwain
10 were under the victim's apartment, smoking marijuana, and
11 Antwain had a gun.

12 Timothy Duvall said there were two subjects smoking
13 marijuana under the victim's apartment. One was wearing a
14 hoody. That individual threw the gun. That individual was
15 later identified as Antwain Champaigne. He's the only one
16 that was wearing a hoody that night.

17 Jordan said it was cinched up tight. Officer
18 Moroney found him, it was cinched up tight. Officer Moroney
19 even said it was comical; he didn't know how he could even
20 see, it was cinched so tight.

21 Jordan said Antwain knocked at the door. Sabrina
22 Polite said the hooded subject knocked at the door.

23 Jordan said Antwain used the butt of that pistol to
24 smash the window. Is it possible that Antwain used something
25 else to smash the window, maybe an elbow, maybe he found

1 something on the ground, maybe he had his hand in his sleeve
2 and popped it? That is possible.

3 But Jeff Miller testified to say that he didn't see
4 any blood or any signs of blood on the window. So what I'm
5 suggesting to you is that it makes sense.

6 Jordan said Antwain and Ishmel entered the victim's
7 apartment. Well, this corroborated by Officer Casey Havers,
8 who saw both of them coming out of the victim's apartment,
9 corroborated by Officer Briggs and Officer Moroney, who
10 picked up both of them coming off the balcony and down the
11 steps.

12 Did Jordan enter her apartment?

13 There is a proffer agreement that I went into with
14 Jordan, that I agreed to enter into with Jordan, and this is
15 it. You are going to have it back there when you deliberate.
16 Feel free to look at it. Nowhere on here does it say that
17 Jordan is granted immunity or he won't have to answer to this
18 crime.

19 Mr. Smiley asked Jordan at one point -- to my
20 recollection, he said, "Jordan, you entered into a proffer
21 agreement with the prosecutor?"

22 Jordan says, "Yes."

23 He said, "And then when you first met with him, you
24 lied."

25 He said, "Yeah," said he didn't know anything,

1 didn't do anything, doesn't know anything about the burglary.

2 Then Mr. Smiley said, "But he didn't terminate your
3 proffer agreement, did he? He let it keep going."

4 Understand what Jordan said about the proffer
5 agreement, which is true; the proffer agreement says that at
6 any point if Jordan lies, I can use his statement against
7 him.

8 What was his statement at that point? His statement
9 was, "I don't know anything. I wasn't involved in a
10 burglary." Can't really use that statement against him.

11 But did he enter the apartment? Did Jordan go in
12 the apartment? Well, let's look at it.

13 Jordan says that while he was being a lookout, he
14 walked up the first few steps. Is it possible that Jordan
15 walked up a few more steps and maybe he took a left at that
16 balcony and through that door frame, he actually kind of
17 stepped inside during that 11 minutes while she was in
18 terror, hiding in the closet? Maybe he just stepped inside
19 for a minute, just to take a peek around, and that is when
20 she saw three people?

21 Not only is that possible, I think that's probable.

22 Now, she sees three people. And then is it possible
23 that he sees the lights and he kind of dips down a little
24 bit, and she looks up again in the heat of the moment and she
25 sees what she thinks is three when, in fact, it was only two?

1 Bottom line is this. Jordan Brown is what he is. I
2 can't pick the witnesses. This man and Ishmel Lemon picked
3 him to be a lookout. I mean, if you only believe the parts
4 of Jordan's testimony that you can corroborate, you still
5 heard enough. Even taking away all of the other evidence,
6 both of them are guilty of burglary in the first degree.

7 This is the last opportunity that I'm going to have
8 to talk to you. Mr. Smiley and Mr. Bradley are both going to
9 talk to you after me. I don't know what they are going to
10 say, so I kind of have to guess and address some of those
11 points and maybe address some of your concerns, hopefully, in
12 the process too. I'm going to make that guess on some of
13 the -- what they are going to talk about on some of the
14 questions that they asked the witnesses, and also some of the
15 points that they brought up in opening.

16 Here's some of the things that I heard that kind of
17 made me think this is what they might talk to you about.

18 Mr. Smiley often asked the question to many of the
19 officers, "Who is in charge?" He asked that question quite a
20 bit. I can only assume that he's going to somehow suggest
21 that they did sloppy police work, maybe a rush to judgment,
22 maybe an inaccurate investigation.

23 To that -- I mean, I can only tell you this. I
24 mean, was it sloppy police work? Did they do something
25 wrong?

1 Let's look at the things they did right. They
2 respond to a burglary in progress. They caught all three of
3 the individuals involved. They found a witness, and they
4 took a gun off the street.

5 And one other thing, and I don't know if you caught
6 it. When Officer Havers was talking, Mr. Smiley asked him,
7 you know, "Who is in charge? Who is in charge?" And he
8 said, "Well, Detective Sergeant Dustin Thompson is in charge,
9 the same Detective Dustin Thompson who testified earlier."

10 With all due respect to Mr. Smiley, if he had any
11 questions to ask in regards to sloppy police work, he had the
12 sergeant in charge of the burglary unit right on the stand.
13 He could have asked him any questions he wanted.

14 You didn't hear from Detective Feeters. Detective
15 Feeters was a warrants investigator who happened to be there
16 that night, but the burglary sergeant, Brunsburg (ph),
17 Investigator Brunsburg (ph) was right here.

18 This wasn't sloppy police work. This was a sloppy,
19 botched burglary. They got the wrong apartment, they picked
20 a poor lookout, and they got caught.

21 Now, they may also try to confuse you with that
22 whole intent to commit a crime thing. Don't get confused.
23 It doesn't matter whether they committed a crime. It doesn't
24 matter whether they abandoned it. It's still intent to
25 commit a crime.

1 The last thing they may talk about: Mere presence.
2 It's another legal standard. Goes something like, "Mere
3 presence at the scene of the accident is insufficient to
4 convict." Well, that's true. That's the way it should be.
5 If you are just standing there, why should you get convicted
6 of a crime? You didn't participate or act in it. And that's
7 good.

8 At what point have you heard any evidence to suggest
9 that Ishmel Lemon or Antwain Champaigne were just standing
10 there? They both talked about it. They both went in. They
11 both rummaged, and they both ran, fled together.

12 I will talk to you a minute about proof beyond a
13 reasonable doubt. It's not proof beyond all doubt. It's
14 proof that leaves you firmly convinced of the defendant's
15 guilt. The law does not require proof that overcomes every
16 possible doubt. There are few things in life that we know to
17 an absolute certainty.

18 This is a high burden. It should be a high burden.
19 We welcome it. Don't believe this is an impossible burden.

20 Ladies and gentlemen, all the facts that you've
21 heard, all the evidence points to one thing: These two men,
22 three men, were caught red-handed.

23 I told you this was like a horror story. The
24 difference is this: In this story, you control the ending.

25 Give Sabrina Polite the ending she's hoping for and

1 give these two gentlemen the ending they deserve. Find them
2 guilty of burglary in the first degree.

3 Thank you.

4 THE COURT: Thank you.

5 Mr. Bradley.

6 MR. BRADLEY: Thank you, Your Honor, if it pleases
7 the Court.

8 THE COURT: Yes.

9 MR. BRADLEY: Ladies and gentlemen of the jury,
10 you've known throughout this trial, I represent Mr. Antwain
11 Champaigne, who is sitting right there at counsel's table,
12 who was here listening in on everything that's going on
13 today.

14 I want to thank you all for your service. Thank you
15 for your time. I know it's kind of tough doing jury duty.
16 Lots of people like to get out of jury duty, but you brave
17 people decided that you would stay here and do your civic
18 duty. And we thank you and thank the people of Charleston
19 County.

20 What you are in is a unique position. Today you are
21 going to be given some facts. You are going to be given a
22 case. You are going to be given the life of a young man.
23 And you are going to be asked whether or not the State has
24 proved their burden beyond a reasonable doubt.

25 The prosecutor is correct; we are going to use that

1 term "beyond a reasonable doubt" a lot, because that is
2 exactly what's happening here.

3 Now, one of the strange things about being a juror
4 in a criminal case is, usually when we make decisions, our
5 decisions are made based on, okay, there's enough weight
6 here, you know, to tip the scale, there's enough weight here
7 to tip the scale.

8 Well, in a criminal case it's a lot different. In a
9 criminal case, you are not asked whether or not maybe he did
10 it. You are not asked to sit back there and say, oh, I have
11 a gut feeling that maybe he did it. What you are asked to do
12 is say there's no reasonable doubt in my mind that that
13 defendant did that act.

14 And the burden of proof is on the State. And I will
15 submit to you that the State has not met that high burden.
16 Proof beyond a reasonable doubt is a very high burden to
17 reach. It is a burden to which you have to say, I have no
18 reasonable doubt in my mind that the defendant, Antwain
19 Champaigne, committed burglary first.

20 Not that Mr. Antwain Champaigne was committing a
21 crime by standing outside and smoking marijuana, and when the
22 policeman came up, then he took off running; not that
23 Mr. Antwain Champaigne didn't cut a deal with prosecutors and
24 decide to testify. You are not asked about that.

25 And the other thing that the judge is going to

1 instruct you on today is that you cannot take the fact that
2 Mr. Antwain Champaigne did not get on that stand and testify
3 and hold it against him.

4 You have to do something that we normally don't do
5 in our everyday lives. In our everyday lives, we just use
6 strict common sense. We make decisions based on a snap
7 decision sometimes. Well, you know, maybe it's best for me
8 to take this job because this is the one that's offering me
9 the better benefits, you know.

10 Proof beyond a reasonable doubt is different. Proof
11 beyond a reasonable doubt requires you to go through every
12 single witness's testimony, for you not to just take parts of
13 the testimony like the State just suggested -- well, let's
14 believe some of what Mr. Brown says as long as it
15 corroborates the story and the theory which I put up. Let's
16 take as much of Mr. Brown's testimony that supports our case
17 and let's run with it, but Judge, forget the rest, because
18 he's not quite a good guy. That's not proof beyond a
19 reasonable doubt.

20 We have y'all here with this -- given this huge
21 duty, not only to listen to what they say, but you have to
22 judge the credibility of the witnesses.

23 I submit to you that the State put on a guy who told
24 stories, and I believe -- I don't know if they told you this,
25 but probably told three or four different versions prior to

1 even coming and taking the stand, under that same proffer
2 agreement that the prosecutor held up and said he doesn't get
3 a deal.

4 Now, we all know proffer agreements doesn't mean
5 that you are going to get some kind of deal out of it. You
6 are going to get something, you know. What it's going to be?
7 No, they are not going to make that deal up front. They are
8 not going to say, "We are going to give you this if you
9 testify for us," because I will get to stand here and I will
10 get to tell you all of this, which would constitute bias.
11 You would know that Mr. Brown is biased.

12 Well, I don't need to tell you that. I think y'all
13 know that. I think y'all heard him on the stand, and I think
14 y'all clearly understand that what he said just didn't add
15 up. It didn't make sense. He is the one who called them
16 over to Westchase, but he had nothing to do with anything.
17 He's the one who said, "Meet me at Westchase." He's the one
18 whose cousin lives behind the victim. He knows Westchase.

19 Mr. Brown is not a credible witness. Mr. Brown is
20 trying to do any and everything he can to get a deal,
21 irrespective of what the prosecutor tells you about no deal
22 has been promised to him. I agree, they haven't promised him
23 anything, but he wouldn't sign that agreement and he wouldn't
24 have come in here and testified just because he had a good
25 conscience. I guarantee you that.

1 Mr. Brown, I would submit to you, is not a credible
2 witness. I will tell you this: Mr. Brown has more than
3 enough reason to be biased, and much more than enough reason
4 to tell untruths, and he's done it time and time again. We
5 don't know which story to believe from Mr. Brown.

6 I would submit to you that we just reject
7 Mr. Brown's testimony. Mr. Brown's testimony is not the
8 truth.

9 You've heard a lot of the witnesses testify.
10 Sabrina Polite took the stand. Very nice lady. Horror
11 story. You've heard the prosecutor just play for you the 911
12 tape of Ms. Brown in -- Ms. Polite, I'm sorry, in her closet.
13 She's scared. There's no question.

14 That's not the issue here. The issue in this case
15 is: Who broke into that apartment? Was there a burglary
16 committed? Did Mr. Antwain Champaigne commit that burglary?
17 That's the question that we are answering here. Certainly
18 from glass that's broken, from Ms. Sabrina Polite. I don't
19 think she would get on 911 and say she sees gentlemen enter
20 her apartment unless there was someone in her apartment.

21 She wasn't precise about how many people were in the
22 apartment. She couldn't do that because she was more worried
23 about herself and she was wanting to hide. She wanted to
24 make sure that -- she went into survival mode, is what I call
25 it, as any reasonable person would do.

1 Ms. Polite even testified, "I wasn't at a vantage
2 point to be able to identify these guys, but I did identify
3 some boxers." I think you remember her saying "boxers." I
4 didn't see the State pull out one pair of boxers to see
5 whether or not those were the boxers that she could actually
6 identify. I didn't see any boxers come out. But clearly
7 that was what she used to identify the person who was in that
8 closet with her. She said there were boxers.

9 Mr. Duvall, a likable guy, very nice gentleman. He
10 testified and said, "I saw these gentlemen standing outside
11 smoking marijuana." This was prior to the crime.

12 Mr. Duvall then told you, "I didn't see anyone go in
13 any apartment. I didn't see anyone break any glass. I
14 didn't see anyone come out of any apartment. I saw those
15 gentlemen downstairs, smoking marijuana, and one dropped a
16 gun." That's what Mr. Duvall testified to.

17 Beyond a reasonable doubt. Beyond a reasonable
18 doubt. Is there doubt in this case?

19 Mr. Duvall's testimony added one important thing,
20 that he placed these guys outside of the apartment. He put
21 them outside of the apartment. He saw them there. We are
22 not denying that. There's no question about it. Clearly,
23 that is the case.

24 I ask you to excuse me a minute, because I get
25 emotional when I'm doing closing argument. My heart is into

1 this thing because my client's life stands in the balance
2 here. So I just ask you to bear with me a little bit.

3 Ms. Money, a SLED agent, very nice lady, very smart
4 lady. She testified that DNA on the gun was not Mr. Antwain
5 Champaigne's DNA.

6 State's theory has told me different. State's
7 theory says Mr. Antwain Champaigne handled the gun. State's
8 witness says, "Well, we saw the gun following. Looks like
9 Mr. Antwain Champaigne had the gun."

10 Mr. Brown took the stand and said he thought
11 Mr. Antwain had the gun just simply based on the way he was
12 moving and he was wiggling.

13 I submit to you, he didn't see a gun. He didn't see
14 that gun in his hand, Mr. Champaigne's hand. He didn't see
15 Mr. Champaigne go into the apartment. At least that's what
16 he testified to.

17 I don't know if y'all believe it. I certainly don't
18 believe his story. I think he's told too many of them. I
19 think he's told too many things that just don't add up.

20 We've got police officers who arrived at the scene.
21 These police officers arrived at the scene and they told you
22 from their vantage point they could not see who came out of
23 the apartment, but they saw someone jump over the rail and
24 they gave chase. They started running behind these guys.
25 They chased them, and when they caught them, that was the end

1 of their investigation. That was it. It was over at that
2 point.

3 Well, you heard Mr. Duvall take the stand and say,
4 "Well, you know what? There were lots of people out there
5 that night. There were people walking their dogs out there
6 at night, you know. No, I can't tell you this because there
7 were other people who were out there."

8 Reasonable doubt. Reasonable doubt.

9 Mrs. Carr, one of the ladies who testified to towing
10 the car and the marijuana. And I think that's a very strange
11 point too. Mr. Brown sat on the stand and they showed him
12 some marijuana, and they asked him, "Does that look like your
13 marijuana?"

14 I would submit to you, y'all, that he either was
15 well-prepped or he told another untruth. How is he going to
16 identify his marijuana? How are you able to tell your
17 marijuana a year and a half later that you possibly sold to
18 someone?

19 And the other thing is, the marijuana -- no one is
20 denying that there wasn't marijuana being smoked outside that
21 apartment. As a matter of fact, we will submit to you,
22 that's why these defendants ran. That's why Mr. Brown drove
23 off from everyone else. That's why Mr. Champaigne took off
24 running. That's why Mr. Lemon took off running. They were
25 smoking marijuana and the policemen came. The police

1 officers pulled up. This happens.

2 Now, could there have been a better investigation?
3 I think that the State just alluded to Mr. Smiley possibly
4 saying this investigation was done sloppily. Well, I'm not
5 going to tell you it was done sloppy, but I am going to say
6 this: I don't think that after they saw two fleeing suspects
7 that they did any type of investigation. I don't think they
8 went around and knocked on doors.

9 Very easy for someone to come out of an apartment
10 and go into another apartment. As a matter of fact, I think
11 one of the police officers did testify that he thought maybe
12 there was another suspect that had gone into another
13 apartment.

14 There happened to be a Mr. James Scott, who came out
15 of the apartment. At this point he's got on a tank top and
16 short pants. And he says, "Well, you know, I came out here
17 because I'm concerned or I heard my cousin was detained."

18 Well, I submit to you, how could he have heard his
19 cousin was detained just that quick? Did someone run in the
20 apartment and tell him that his cousin was being detained?
21 They didn't put on any evidence to say that his cousin got on
22 the cell phone, that he may have called to his cousin, that
23 Brown may have called to his cousin and said, "Hey, come
24 outside. I'm being detained."

25 It's what you call holes in the case. That's what

1 you call dots not connected. That's what you call reasonable
2 doubt.

3 If you bear with me a minute, I'm going to submit to
4 you, if it pleases the Court -- I've shown this to the
5 prosecutor already, Your Honor.

6 MR. OSBORNE: No objection, Your Honor.

7 MR. BRADLEY: Can everyone see this pretty clearly?

8 What that is, is the burden of proof. Ladies and
9 gentlemen, that's the burden of proof in a criminal case.
10 That's the burden of proof in this case. It's pretty
11 straightforward. Big burden, very high burden, because it
12 says -- you know, you can start from the bottom here. "I
13 think it's highly unlikely that he's guilty."

14 Well, the State's put on some evidence that put him
15 on the scene, so, you know, I think that your burden may be a
16 little higher than that.

17 "Well, I think it's less likely that he's guilty."
18 That equals not guilty.

19 Let's leap up a little bit. "I don't really know if
20 he's guilty or not." The law requires you to come back with
21 a not-guilty verdict. That's called reasonable doubt.

22 Let's go a little further. "I suspect that he may
23 be guilty."

24 I'm sure some of you may be thinking that, based on
25 the dots that are not connected, because one of the theories

1 and one of the things that prosecutors do is you throw
2 everything up. Throw everything up there that you can. You
3 play the 911 tape. You listen to that. You get the juries
4 to the point where they feel, oh, my goodness, you know, this
5 thing happened so someone has got to be punished for it.
6 Someone has got to take the fall for it because of what
7 happened.

8 I will submit to you, that is not what the law
9 places on you as jurors. The law says you have to have no
10 reasonable doubt.

11 Well, let's take it another step further. "Guilt is
12 probably likely. He's probably guilty."

13 The burden of proof says that you have to come back
14 not guilty. If those dots do not connect, it's not guilty.
15 You cannot go on a hunch. You cannot go on just a sporadic,
16 well, we will throw this guy in, we will take part of Brown's
17 testimony. Well, two officers didn't see him, but this
18 officer says maybe he came from this side of the building.

19 No one put Mr. Champaigne inside that apartment. No
20 one put Mr. Champaigne inside of that apartment. No one did.
21 No witness put Mr. Champaigne in that apartment.

22 Well, you know what? I think because he was hanging
23 around out there, he was smoking marijuana, and he ran from
24 the police -- and this is the biggest leap they are asking
25 you to just -- pretty much just jump on the train and ride

1 with this.

2 He ran from the police. If he ran from the police,
3 he's guilty. You heard one of the officers say, "Well, in my
4 five years, everyone who ran from me, he was committing some
5 kind of crime."

6 I would submit to you, ladies and gentlemen, that
7 that's not always the truth. And maybe in his case it
8 certainly is. I don't have any reason to believe he's not
9 telling the truth. But I can tell you this: Certainly
10 there's been times when people have run from the police when
11 they are not committing a burglary. They could be smoking a
12 cigarette underage. They could be drinking in public. They
13 could be huddled up, doing anything that's not a burglary.

14 But they have to prove to you beyond a reasonable
15 doubt that this defendant committed a burglary, a burglary in
16 the first degree. You can't do that by asking the jury to
17 make assumptions. Well, we need you to assume because that
18 makes the most sense, and, you know, that's what we come to.

19 "Well, guilt is highly likely." That's not guilty.
20 That's not guilty. That's doubt. That's what we call
21 reasonable doubt.

22 What y'all have is a grave task. We have several --
23 again, several officers who testified that after they gave
24 chase and after they got the two suspects, that was the end
25 of it.

1 There was another defendant that's on trial here,
2 Mr. Lemon. I didn't see his clothes. They apprehended him.
3 I didn't see what type sneakers he had on. They talk about
4 shiny sneakers and sweatshirts and people make analogies
5 between a sweatshirt and a hoody and, you know, this one had
6 on -- everyone had on dark clothes.

7 And then I saw them pull some light gray jeans out
8 of the bag, and I'm thinking, "Wait a minute here. That's
9 not very dark."

10 You are going to have inconsistencies in the State's
11 theory of the case. There's inconsistencies in the witness's
12 testimony. There's clearly an inconsistency even in several
13 of the witnesses who have seen three people come out of the
14 apartment. Ms. Polite said certainly there were three to
15 four people at one point in the apartment. We don't know
16 about a fourth person. We don't know because the police
17 stopped doing any type of investigations once they saw
18 someone running. They saw someone take off running and they
19 chased those people and that was it.

20 You have people in the lineup, and Mr. Duvall is the
21 only one who said, "Yep, that's who I saw." Mr. Duvall said,
22 "I saw these guys outside," but he used the word that no
23 other witness used. He said he was 100 percent certain. He
24 was certain. Certain is a word that you need to hear out of
25 the witness's mouth. I am certain that this is the person.

1 That means there's no doubt. That witness doesn't have any
2 doubt.

3 But when that witness tells you, like those
4 witnesses testified in this case, well, you know, maybe it is
5 this person, or we thought we saw it from this vantage point,
6 you have holes. You have holes in cases.

7 I didn't create those holes. I didn't put on the
8 State's theory. I didn't put on the State's case. I wasn't
9 the one who prepped the witnesses prior to them taking the
10 stand. I wasn't the one who -- they reviewed the evidence.
11 They looked at the evidence prior to taking the stand.

12 They knew exactly what evidence was going to come
13 out, what was going to be shown to the jury. They had it
14 all. They saw it before. They saw it not a year and a half
15 ago, as they may want you to believe. They saw it prior to
16 coming in and testifying. Not hard at that point to recall,
17 look, you know, this is the person, this is what he had on,
18 because the police took this from one of the guys. Well, the
19 only guy they took clothes from was Mr. Champaigne.

20 I submit to you, reasonable doubt. I also submit to
21 you that there's certainly holes in the case. These dots
22 don't connect. What they want you to do is take these leaps,
23 to make leaps, to fill in the holes yourselves, you know.
24 Okay? If there's a hole in the evidence, if there's -- if
25 there's a problem, then we are going to just assume that this

1 had to happen. If these guys are at the top of the stairs,
2 we are going to have to just let the jury assume that these
3 guys were the ones who went into the house. You can't do
4 that.

5 "Definitely guilty" is the only thing that you can
6 come back with a guilty verdict with. You have to say there
7 is no doubt, no reasonable doubt. Very high burden.

8 Highly likely, highly likely that he's guilty. From
9 a lot of the stuff they say, there's a -- you know, a lot of
10 people who -- I don't know if y'all watch a lot of shows and
11 TV shows, but lots of times eyewitnesses see things and then
12 later on we find out that what that witness saw exactly was
13 not what it was. We find people getting exonerated time
14 after time again, be it because of scientific evidence, be it
15 because of a new witness who happened to come about.

16 That stuff happens because people dig into the
17 cases. They take their time and they go over the evidence.
18 They investigate. They go from door to door. They talk to
19 people who are outside.

20 The only witnesses who came in here who was outside
21 was Mr. Duvall, and he clearly said, "I didn't see any type
22 of crime being committed. I did see someone drop a gun.
23 Well, yeah, I saw these guys smoking marijuana. I smelt
24 these guys smoking marijuana."

25 Didn't say anything about any burglary being

1 committed. I didn't hear it from Mr. Duvall. I didn't hear
2 it from any of the State's witnesses who came here who were
3 outside that day.

4 Did they give chase to any other individuals? No, I
5 don't think they did. I don't think they testified to
6 anything like that.

7 Everyone's statement not consistent. I will submit
8 to you, if there is a conflict in evidence, you find
9 reasonable doubt. You can find a lack of evidence or you can
10 find a conflict in evidence.

11 You, the jury, is given a grave task. You make the
12 decision as far as which witnesses you believe who took that
13 stand, which witnesses you don't believe who took that stand.
14 You have to make that decision as jurors.

15 You have a man's life in your hands. That young man
16 sitting right there, that young man who is standing here
17 today, standing before you, his life is in your hands. His
18 family back here, they are interested in this thing. That's
19 their job. That's their son. That is their brother.

20 They want you to do your jobs as jurors. Your job
21 as jurors is to say: I am not going to convict
22 Mr. Champaigne. He is not guilty unless I have no reasonable
23 doubt. I am definite. Guilt beyond a reasonable doubt
24 requires more than guilt highly likely, more than leaps.

25 Conflicts in evidence. One witness sees one thing;

1 another witness sees another thing. The State says, "Don't
2 worry about that. Don't worry about that. Just take the
3 part of the testimony that actually goes along with our
4 theory."

5 It's like a wheel. It's got spokes. Those spokes
6 have to connect to that hub. If it does not, that wheel
7 locks.

8 Reasonable doubt. Dots don't connect. Stories
9 aren't told. Whole thing didn't come out. Witnesses seeing
10 things that witnesses clearly could not have seen.

11 Y'all are the ones who make that decision. I trust
12 that you will do it. Mr. Champaigne trusts that you will do
13 it. We trust that you will do the duty that the law requires
14 of you to do.

15 The judge is going to give you instructions. He has
16 asked you, and it's -- you know, in real life, we know it's
17 almost utterly impossible not to leave here and think about
18 all of the evidence that you've heard when you go home at
19 night. He has asked you not to talk about it. The only time
20 that we discuss anything dealing with this case is while we
21 are actually in this courtroom, until y'all go and
22 deliberate.

23 Well, it's easy to make first impressions. First
24 impressions stick in people's minds. The State put on their
25 case. They put on all these witnesses. They came up and

1 said A, B, C, and D. And in your mind, it's oh, he's got to
2 have done it. That's called a first impression. That's a
3 snap judgment, snap to make a judgment.

4 Then you try to convince yourself, well, now the
5 defense has got to convince me otherwise. Well, the judge is
6 going to tell you, you can't do that. That's inappropriate.
7 It's inappropriate.

8 The judge is going to tell you, Mr. Champaigne is
9 presumed innocent until he's proven by the State to be
10 guilty, and he's got to be proven by the State to be guilty,
11 folks, beyond a reasonable doubt. Beyond a reasonable doubt.
12 That's what the task is.

13 I submit to you, that burden is very high. I submit
14 to you, the State has not reached that burden.

15 I submit to you that the State has thrown people up
16 and thrown things together and taken sweatshirts and having
17 y'all make assumptions when they've got holes in the case,
18 when they've got inconsistencies in the case, when they've
19 got people taking the stand who's told three, four different
20 stories, and they still choose to put that person on the
21 stand and have y'all believe what that person is saying now
22 is the truth.

23 They didn't go over the other three or four times
24 that they sat down with this witness and he told them
25 something different. They just told you in closing, yeah,

1 well, he didn't tell the truth at that time, but, you know,
2 just disregard that because some of what he says corroborates
3 their theory of the case.

4 Reasonable doubt. Reasonable doubt.

5 I'm going to close with this. Any young attorney,
6 having a guy's life in your hands, is a pretty tough job.
7 It's a pretty tough job. Y'all's job is equally as tough as
8 jurors, to wade through the evidence, to listen and think
9 about the credibility of the people who took the stand, to
10 think about whether or not these dots connect, but to not do
11 this one thing, to not make this leap over certain holes and
12 say, well, if this equals this, this adds up, so we can make
13 this leap, we can put these two together.

14 Beyond a reasonable doubt. Innocent. Presumption
15 of innocence requires you not to do that. It requires the
16 State to put on evidence and tell their story that makes
17 sense, tell their story that doesn't have gaps, that doesn't
18 have witnesses that say certain things and then come back and
19 say other things. It requires them to tell a story that
20 leaves no doubt in a jury's mind -- not whether there's any
21 doubt that someone broke into Ms. Polite's apartment, but
22 doubt as to who was the person who went inside that
23 apartment.

24 Was Mr. Champaigne one of these people? Reasonable
25 doubt. They haven't proven that. They haven't proved it.

1 Just like the witnesses who said DNA is on the gun, and then
2 you have an expert take the stand and said he's totally
3 excluded.

4 Well, I didn't hear any story from Mr. Duvall about
5 him carrying the gun. He had his hands tucked under here
6 like this so his DNA wouldn't have been on the gun. If he
7 handled the gun the way that Mr. Duvall said he handled the
8 gun, if he also had the gun when he broke in or went into
9 this place, if he also had the gun when he was running away
10 and grabbing the gun, his DNA would have been all over that
11 gun.

12 No DNA on the locks of the door. Someone opened the
13 door and went in. We do not have any scientific evidence to
14 prove who did that, do we? There's a hole. There's a gap.

15 They want to introduce the evidence that they have
16 as scientific evidence, again, that they think points to
17 their case, but the ones that doesn't point to their case,
18 they don't want to have anything to do with that.

19 I submit to you, that's not justice.

20 Ladies and gentlemen of the jury, I would like to
21 thank you again. Thank you for your service. Thank you for
22 your time. Y'all sat there. I watched, looked over there;
23 everyone was attentive and looking at -- everyone was looking
24 at the witnesses. Everyone was looking at the evidence. So
25 we have faith; we have trust that you will do your job. I

1 know you will. I know you will.

2 I refer to you when I'm not here as this is our
3 jury. This is our jury. This is the jury that's going to
4 listen to this and is going to say this doesn't make sense.
5 This doesn't add up. There are too many holes and gaps to
6 take a man's life away, put him in prison. This is not
7 enough. We need to have witnesses who are telling the truth.

8 I trust that you will do that. And at the end of
9 the day, when y'all deliberate -- and I trust that you will
10 take your time and do what's right. You will go over there
11 and you will come back and you will say, "Well, I don't
12 really know if he's guilty or not." The burden of proof
13 requires you to say he's not guilty at this time.

14 Again, thank you for your time. Thank you for your
15 patience. Thank you for serving as jurors.

16 I have nothing further. Thank you.

17 THE COURT: Mr. Smiley.

18 MR. SMILEY: With the exception of one person,
19 anything I say doesn't mean I call anybody a liar in this
20 case.

21 The young man that testified, told three or four
22 stories, I hope you will take his testimony and throw it in
23 the trash, because that's what it's worth, because he would
24 have told you there was a pink elephant out there if he
25 thought that would advance the law. He sat on that stand and

1 told you that he wasn't worried about a life sentence. But
2 he had to be.

3 Otherwise, I'm just telling you everybody else is
4 human. And being human, we make assumptions. And this case
5 starts with assumptions and it ends with assumptions. If you
6 notice in this case, we are here to determine -- present
7 y'all evidence to determine whether a burglary took place.

8 I will submit to you, it's assumed that a burglary
9 took place the moment the police were called. Then an older
10 defense attorney hates when that happens at this point. I
11 cringe every single time that we heard, "I'm responding to a
12 burglary in process" -- or progress, because, you know, they
13 kept calling it a burglary. A burglary. They had already
14 decided before they got there, it had to be a burglary.

15 Well, that is y'all's job. And I hope you will not
16 rubber-stamp this.

17 The judge told you another thing, that of all the
18 errors in this courtroom, you can fix all of them, but y'all
19 on the side, it's not going to be disturbed. Y'all are the
20 judges of the facts.

21 I think I have a difficult job, not nearly as
22 difficult as y'all's. I sat here and stared at this case and
23 tried to make sense of this case. It doesn't make sense.
24 Absolutely makes no sense.

25 But unlike the police, the prosecutor, and the

1 witnesses, I'm going to ask you not to start with the premise
2 that this was a burglary and that Mr. Lemon committed it,
3 which is where they started from.

4 You have to start at the other end. I mean, white
5 slates. We've got two trials going on here, two empty
6 canvases. Only canvas I'm responding to is the evidence
7 towards Ishmel Lemon. They have to paint the picture from a
8 blank slate to the point that you look at it and say, beyond
9 a reasonable doubt as to Ishmel Lemon, they proved their
10 case.

11 They aren't going to be able to. I don't think he
12 they've come close. I will make no comment on the other
13 painting. It's not my job.

14 Now, the first witness in this case, Mr. Duvall, he
15 tried to be as helpful as possible. Let's talk about a few
16 things he said, things that he was certain.

17 There were two guys out there. Two guys out there.
18 He was out there for about five minutes. It wasn't like he
19 had a 15-second view or 1-minute view. He was out waiting to
20 see if his sister would come to the door for five minutes, in
21 close proximity to the two fellows out there.

22 And he says that he saw one guy with a gun try to
23 hand it to the other guy. The assumption is the other guy
24 was Ishmel Lemon. That's what they started with.

25 Well, the most suggestive kind of lineup was done in

1 this case. And that's the one where you put a guy in cuffs,
2 you have them at the scene, you pull them out of a police
3 cruiser, put him in front of the headlights, put a spotlight
4 on him with Mr. Duvall and say, "Is that the guy?"

5 Oh, wait. One more thing. He's already shown him
6 another guy; right? The guy with the hoody. Done the same
7 thing, most suggestive thing, and says, "Is that the guy?"

8 As to that second identification, I can't say that
9 is the guy. I appreciate his honesty, but needs to be said
10 that had to be the guy because y'all arrested him. He said,
11 "No, I can't identify him."

12 So through Mr. Duvall, they have not established
13 anything regarding Ishmel Lemon at that point in time.
14 Nothing. Says, "I can't identify him. I had a five-minute
15 lookout. I identified the other guy. I don't know who that
16 was. I can't recognize him."

17 All right. Jordan Brown said -- I'm going to skip
18 over him. Y'all can do what you want with him.

19 Well, I guess I won't skip over him after I said
20 that. I just want to point out a couple of things.

21 He lied, he lied, he lied, and he lied. And more
22 than that, changed his story, was told by his lawyer, "You
23 better tell them something different." He did. Again,
24 that's not what they want. And again. And he modified his
25 testimony to get whatever benefit he could get.

1 The truth is the truth. If he was going to tell the
2 truth, it shouldn't have been so hard. Shouldn't have to be
3 prompted about what is the truth they want.

4 "You are okay with a 15-to-life sentence?"

5 "Yes, sir."

6 A little boggling to me. But he said something that
7 will show you how he modified his testimony, show you that he
8 was saying whatever he could be prompted with. Because he
9 said he saw a white man, that being Mr. Duvall.

10 I asked him, "You are saying there was three of
11 y'all out there?"

12 "Oh, yeah."

13 Well, Mr. Duvall was very clear, very clear. "There
14 was only two people and I can identify one."

15 Now, something that really wasn't what Mr. Brown
16 thought was important, but turned out to be, is I asked him,
17 "Who decided to go to Westchase?"

18 He said, "I did. I made that decision to go to
19 Westchase." You know, pointed out he had family there. He
20 got a family member to drop him off there. He picked the
21 place for this burglary that he was drawn into for no
22 benefit.

23 Does that make sense?

24 So through Mr. Brown, if they established anything
25 as to Ishmel Lemon, well, they've established that Mr. Brown

1 will say whatever is required to get him to the next step,
2 which is cutting a deal so he doesn't go to prison for
3 15-to-life.

4 And they kept asking who's the case officer, and
5 there's a reason for that. I wanted to find out who was in
6 charge. And if I had known that Sergeant Thompson was in
7 charge, I would have asked him questions. Because it was
8 apparent I wouldn't have had to ask the question. Because, I
9 mean, not until yesterday or closing arguments today was I
10 sure who was in charge.

11 And reason I asked that is, if there is to be an
12 investigation, somebody has to be doing the investigating. I
13 submit to you, because of what I brought up, there wasn't any
14 investigation in this case. They decided that it was a
15 burglary, and they had caught two fellows there, and they
16 didn't need to look into anything else.

17 And that's not fair. That's not fair in this
18 country. It's not fair to Ms. Polite. It's not fair,
19 certainly, to Mr. Lemon. And it's not fair to us as
20 citizens.

21 Do your job.

22 I'm a criminal defense attorney. I'm not like a
23 whole lot of people. But it is the greatest honor in the
24 world to stand in front of you and represent the Constitution
25 of our nation. You think, boy, that sounds very -- it's the

1 truth. The Constitution, unfortunately, sits on my shoulders
2 every day I get up for work. Because I come to make sure the
3 State, the police, Your Honor, they all do their jobs.

4 Now, there's about -- I guess about ten minutes that
5 supposedly this burglary, this break-in, is taking place.
6 Nothing was taken. Oh, doesn't matter. Doesn't matter that
7 a crime was being committed. In order to find beyond a
8 reasonable doubt, you've got to know what was going on. I
9 mean, it wouldn't be an element of the crime, would it?

10 The intent to commit a crime therein. If that was
11 the case, if you just showed somebody went into somebody's
12 house at night, we don't care what crime it is; we jump to
13 burglary first or burglary, without adding nighttime or a
14 weapon. Says, well, it was abandoned. Why? Well, the
15 police came.

16 They were in there for ten minutes. If there were
17 two people, if there were three people, if there were four
18 people, and nothing was taken -- to believe the State's case,
19 there's a Volvo sitting right down there. It didn't get
20 loaded up. So I don't think that you can make the jump that
21 they were there to steal something.

22 Were they there to assault Ms. Polite? Doesn't say
23 they were looking for a person. What were they there to do?
24 I don't know. I don't have to prove to y'all.

25 This gentleman hasn't done anything.

1 Now, when they talk about the gun that was down on
2 the ground, kept thinking about it. This gun, this dangerous
3 weapon, didn't have any bullets. Didn't even have a clip.
4 It was a hammer, if you take the State's case for what it
5 was.

6 DNA. Red herring. Okay? The DNA doesn't prove
7 anything at all. You can't say Mr. Lemon touched that gun.
8 You could say that if you were looking for two-point-some-odd
9 billion people, because that's how many people would have
10 been left in the circle based on the evidence that they
11 analyzed.

12 It's useless. Useless. No fingerprints, no trace
13 evidence, nothing. I heard crime scene came and took some
14 pictures, but nobody directed them where to take
15 fingerprints. I was looking for a case agent.

16 Now, let's get to the officers. And I have great
17 respect for Officer Havers and the other officers, so don't
18 get me wrong. They are doing their job. Their job is to
19 arrest people. Their job is to seek justice. My job is to
20 zealously represent my client.

21 Now, the officer, which one testified, one minute to
22 ten minutes later, were listening to the 911 call, talking to
23 Mr. Brown, but there was a fairly decent period of time. If
24 they truly were in the wrong place, why did they hang around
25 until the police came? If they truly were there for

1 burglary, why weren't things being loaded up?

2 They haven't proved that Ishmel Lemon went into that
3 house whatsoever.

4 Did they get a description from Ms. Polite other
5 than they had on dark clothes? Did they later sit down and
6 talk to her? Did you hear any testimony? This guy had short
7 hair; this guy had long hair. This gentleman was dark
8 colored; this one was light colored. He was muscular?

9 You didn't hear any of that. They didn't care,
10 because they had already made the assumption, we got what we
11 are looking for, from the very beginning.

12 Now, the pictures that you've been given, you will
13 have back in there. I've looked for a picture from the
14 left-hand side where the officers were, by the trash can.
15 There's not one in evidence, and that would be the one I
16 would hope to be most helpful to the jury, because that's
17 where the officers were that say they could see him coming
18 out across the threshold.

19 The officer that had the better view to the right,
20 Officer Briggs, said he saw two fellows on the stairs. Okay?
21 Officer Havers and Officer Moroney were to the left, looking
22 up to a door that was tucked in, said they saw him running
23 across the threshold, which, of course, conflicts with what
24 Ms. Polite said. She said they walked out, also that they
25 walked out side by side. I don't know if that's possible the

1 conventional way, but to make this case work, it had to be
2 they were coming out of the apartment.

3 There is no doubt of one thing. Ishmel Lemon ran
4 from the police. He was caught. That's the only thing
5 that's not disputed.

6 We've heard lots of reasons for running, and
7 according to Officer Havers, everybody who runs from him has
8 committed a crime. Okay, I will accept that assumption. But
9 marijuana, you run from the police when they show up and you
10 are smoking marijuana.

11 Mr. Duvall, who's got no dog in this fight,
12 testified there was nothing.

13 By the way, where the heck are the boxers? The two
14 fellows that were supposedly in the house, they were
15 arrested. As you can tell, their clothes were taken into
16 evidence. It's the State's burden to prove. You can be
17 dang sure if there was some boxers, they would have shown
18 them to Ms. Polite and they would have brought them to this
19 courtroom. They are not here, so you can assume there
20 weren't any boxers, okay, on Ishmel Lemon.

21 Mere presence. This describes like you are going to
22 give a mere presence charge. Well, there's a reason for
23 that. Being present at the scene of a crime does not make
24 you guilty. And the judge will tell you, there's got to be a
25 lot more than that.

1 And then he's going to rely on the hand of one is
2 the hand of all, and that's a preplanned and common scheme.
3 Well, have you heard any testimony about this common scheme?

4 The one thing we heard is that Mr. Duvall heard
5 Mr. Champaigne and the other fellow say something about,
6 "Let's wait and see if she comes out." That causes a
7 problem, because Ms. Polite says she heard them say, "We've
8 got the wrong apartment." That just doesn't match.

9 If they are down there and they say, "Let's wait
10 until she comes out," they know who is in the apartment. But
11 then they are in there and go, "Oh, we are in the wrong
12 apartment." That just is not sensible.

13 And now Ms. Polite. Ms. Polite sees the fellow with
14 the hoody. She doesn't see anyone else on the outside of the
15 apartment. When the banging started on the door and the
16 breaking of the window, she retreated to the back corner of
17 her apartment, got in the closet --

18 THE COURT: Bailiff, do not let anyone come or go
19 through this courtroom at this point.

20 THE DEPUTY: Yes, sir.

21 MR. SMILEY: Back to Ms. Polite. She's in the back
22 closet.

23 THE COURT: Have a seat, sir.

24 You may proceed.

25 MR. SMILEY: Thank you very much.

1 Ms. Polite is in the back closet. Probably a good
2 place to run. But from that back closet with the doors
3 closed, through the slats, she was able to see the front door
4 and the opening of the bedroom?

5 Like I said, to make sure you understand, I am
6 not calling her a liar. I'm calling her human. Her
7 perception -- we are not video-recording what she was -- her
8 perceptions, her influence about what's happening at the
9 time, a stressful situation, information we receive
10 afterwards, and then two years later, when we testify.

11 I would submit to you that it would be near
12 impossible to see the things she said she saw. However, if
13 we are going to give her that benefit, and I understand that,
14 she had the opportunity to view the fellows or fellow -- I
15 don't know how many people there are -- that were in the
16 apartment for five minutes. And I'm using an average, okay?
17 Two minutes, five minutes. It wasn't 10 or 15 seconds.

18 And, by the way, if there was a mask or gloves or
19 scarf or bandanas, they would have been in this courtroom.
20 So we can assume there aren't. There weren't any put in
21 evidence.

22 But I asked her directly, "Did you see this fellow
23 inside?" Mr. Lemon. She said she could not identify him.
24 And then she started talking about that he had something on
25 his head too. Like I said, she's only human, but she cannot

1 identify him. There's no one that identifies Mr. Ishmel
2 being inside of the apartment -- excuse me. Mr. Lemon.

3 I'm not a rocket scientist. I'm a lawyer. More
4 than that, I'm a human just like everybody else. And the way
5 I look at it, y'all got a hard job. Y'all got a really hard
6 job.

7 When it comes down to reasonable doubt, we did this
8 with DNA and was trying with the DNA expert, and I was
9 actually trying to do it with this young lady, but she wasn't
10 in the teaching mode. She just wanted to answer her
11 questions.

12 But in the past I asked a DNA expert, you've got
13 a -- in this case, there was a 1 in 500 chance, I think it
14 was, that it was the person, would you bet your life on it?
15 No. If it was 1 in 10 million or trillion, would you bet
16 your life on it? Yes, sir.

17 We are all sort of in the same position.

18 Reasonable doubt? You bet your life on it, if there
19 is any. It's an easy play. Is there reasonable doubt?
20 Would you bet your life that Ishmel Lemon committed this
21 burglary? Let's count his liberty, his life, and I bet you
22 won't. Not guilty.

23 Thank you.

24 THE COURT: Ladies and gentlemen of the jury, y'all
25 okay with -- my charge will take about 25 minutes. Do you

1 all need a break?

2 No? Okay. All right. We will go on to it.

3 All right. Ladies and gentlemen, all of the
4 evidence and testimony has been presented to you, and now is
5 the time when I will charge you the law that is applicable to
6 this case.

7 And I remind you that during this trial, you and I
8 have certain duties to perform, and as the trial judge, it is
9 my responsibility to preside over the trial of this case, and
10 I also have the responsibility to rule on the admissibility
11 of the evidence that has been presented during this trial.

12 You are to consider only the competent evidence that
13 has been presented before you. And if there was any
14 testimony ordered stricken from the record in this case, you
15 must disregard that testimony, because you will consider only
16 the testimony that has been presented from the witness stand
17 and any other exhibits which have been made a part of the
18 record or any stipulations of counsel.

19 Now, ladies and gentlemen, I have the additional
20 duty to charge you the law that is applicable to this case.
21 And as the presiding judge, I am the sole judge of the law of
22 this case. And it is your duty as jurors to accept and apply
23 the law as I now exactly state it to you.

24 If you have any idea as to what the law is or what
25 the law ought to be, and it does not agree with what I now

1 tell you the law is, you must abandon that idea, because,
2 ladies and gentlemen, you are sworn to accept and apply the
3 law exactly as I state it to you.

4 Now, in every case tried before -- in this court
5 before a jury, you the jury become the sole and exclusive
6 judges of the facts. As a trial judge, I cannot intimate,
7 state, comment, or in any way make any statement to a trial
8 jury about the facts of a case. Since you are the jury, you
9 are the sole judges of the facts.

10 And please do not infer by anything that I have said
11 during the progress of the trial in ruling upon the
12 admissibility of evidence or otherwise, or anything that I
13 now state to you during the course of these instructions,
14 that I have any opinions about the facts of this case. The
15 law simply does not allow me to have an opinion about the
16 facts in the case.

17 This is a matter solely for you as jurors to
18 determine, and to determine the effect, the value, the
19 weight, and the truth of the evidence that has been presented
20 during this trial.

21 Now, ladies and gentlemen, the indictments in this
22 case allege one offense against each one of the defendants,
23 Antwain Jeriel Champaigne and Ishmel Jayvon Lemon, under
24 Indictment 2014-GS-10-1301 and 2014-GS-10-1312, the charges
25 of burglary in the first degree.

1 And I remind you, as I've done several times, the
2 fact that the defendants were arrested, charged, and indicted
3 is not evidence in this case and cannot be considered by you
4 as any evidence of guilt, nor does it create any presumption
5 or inference of guilt. The indictment is simply the formal
6 written documents by which these charges are made against
7 these defendants. And it is the formal document by which
8 this case is brought into this court.

9 Now, ladies and gentlemen, I charge you that there
10 are two defendants in this case, each of whom is charged with
11 burglary in the first degree. The case of each defendant and
12 the evidence and the law concerning that defendant should be
13 considered separately and individually, and your verdict does
14 not have to be the same for both defendants.

15 The fact that you may find one defendant guilty and
16 one not guilty should not control your verdict as to the
17 other defendant. Where more than one person is charged with
18 the crime, if the evidence warrants it, you may convict one
19 or acquit the other or you may acquit both or you may convict
20 both. And it will depend upon your view of the testimony and
21 the evidence.

22 And you must take each defendant and consider the
23 evidence that that defendant -- as to that defendant and my
24 instructions to you on the law. You will then write a
25 separate verdict of guilty or not guilty for each individual

1 defendant.

2 Now, ladies and gentlemen, under the laws of this
3 state, a defendant may be tried even if the defendant does
4 not attend the trial. But the fact that the defendant is not
5 present may not be considered against the defendant in any
6 manner whatsoever.

7 Ladies and gentlemen, the defendants have pled not
8 guilty to the charges in these indictments, and that plea
9 puts the burden on the State to prove the defendants guilty.

10 And I remind you that a person charged with
11 committing a criminal offense in South Carolina is never
12 required to prove himself innocent. I charge you that's an
13 important rule of law, that the defendant in a criminal
14 trial, no matter what the seriousness of the charge may be,
15 will always be presumed to be innocent of the crime for which
16 the indictment was issued unless guilt has been proven by
17 evidence satisfying you of that guilt beyond a reasonable
18 doubt.

19 Presumption of innocence does not end when you begin
20 your deliberations, but it accompanies the defendants
21 throughout the trial until you reach a verdict of guilty
22 based on evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 The presumption of innocence is like a robe of
25 righteousness that's placed about the shoulders of the

1 defendant, which remains with the defendant until it has been
2 stripped from the defendant by evidence, again, satisfying
3 you of the defendant's guilt beyond a reasonable doubt.

4 Presumption of innocence is not a mere legal theory
5 or legal phrase that we use, but it is a substantial right to
6 which every defendant is entitled, again, unless you, the
7 jury, are satisfied from the evidence presented of the
8 defendant's guilt beyond a reasonable doubt.

9 Now, ladies and gentlemen, as we've heard, the State
10 has the burden of proving the defendants guilty beyond a
11 reasonable doubt. And some of you may have served as jurors
12 on civil cases where you were told that it is only necessary
13 to prove that a fact is more likely true than not true, such
14 as by the greater weight or the preponderance of the
15 evidence.

16 Now, in criminal cases, though, the State's proof
17 must be more powerful than that. It must be beyond a
18 reasonable doubt. Proof beyond a reasonable doubt is proof
19 that leaves you firmly convinced of the defendant's guilt.

20 Ladies and gentlemen, there are very few things in
21 this world that we know with absolute certainty, and in
22 criminal cases, the law does not require proof that overcomes
23 every possible doubt.

24 If, based on your consideration of the evidence, you
25 are firmly convinced that the defendant is guilty of the

1 crime committed or charged, you must find the defendant
2 guilty.

3 If, on the other hand, you think there's a real
4 possibility that the defendant is not guilty, then you must
5 give the defendant the benefit of the doubt and find him not
6 guilty.

7 Now, ladies and gentlemen, there are two types of
8 evidence which are generally presented during a trial.
9 There's direct evidence and there's circumstantial evidence.

10 Now, direct evidence is the testimony of a person
11 who claims to have actual knowledge of a fact, such as an
12 eyewitness. It is evidence which immediately establishes the
13 main fact to be proved.

14 Circumstantial evidence is evidence of a proof of a
15 chain of facts and circumstances indicating the existence of
16 a fact. It is evidence which immediately establishes
17 collateral facts from which the main fact may be inferred.
18 And circumstantial evidence is based on inference and not on
19 personal knowledge or observation.

20 But the law makes absolutely no distinction between
21 the weight or value to be given to direct or circumstantial
22 evidence, nor is a greater degree of certainty required of
23 circumstantial evidence than of direct evidence.

24 Ladies and gentlemen, as jurors, you should weigh
25 all of the evidence in this case, and after weighing all of

1 the evidence, if you are not convinced of the guilt of these
2 defendants beyond a reasonable doubt, you must find that
3 defendant not guilty.

4 Now, ladies and gentlemen, I instruct you, and I
5 emphasize, the fact that the defendant did not testify is not
6 a factor to be considered by you in your deliberations and in
7 your consideration on the question of guilt or innocence.
8 And it must not be considered by you in any manner
9 whatsoever.

10 The defendant has the Constitutional right to remain
11 silent, and the assertion of this right must not be
12 considered by you in your deliberations. And I repeat, under
13 the oath, you are to draw no conclusions whatsoever from the
14 fact that the defendants did not testify. The fact that the
15 defendants did not testify should not even be discussed in
16 the jury room.

17 The burden of proof, as I have stated to you, is on
18 the State, and the defendant is not required to prove his
19 innocence. The burden of proof remains on the State to prove
20 guilt beyond a reasonable doubt.

21 Now, ladies and gentlemen, you must determine the
22 credibility of witnesses who have testified in this case.
23 And credibility simply means believability. And it becomes
24 your duty as jurors to analyze and evaluate the evidence and
25 determine which evidence convinces you of its truth.

1 In determining the believability of witnesses who
2 have testified in this case, you may believe one witness over
3 several witnesses or several witnesses over one witnesses.
4 You may believe a part of the testimony of a witness and
5 reject the remaining parts of the testimony of that same
6 witness. You may believe testimony of a witness in its
7 entirety or you may reject the testimony of a witness in its
8 entirety. You may consider whether the witness has any --
9 has exhibited to you any interest, bias, prejudice, or other
10 motive in this case. You may also consider the appearance
11 and manner of a witness while on the witness stand.

12 Now, ladies and gentlemen, a person who has a past
13 criminal record is competent to testify during a trial, and a
14 past record does not affect the ability of that witness to
15 testify. The past record may only be considered by you, if
16 at all, in determining the witness's believability.
17 Remember, you are the sole judges of the facts in this case,
18 and believability of any and all of the witnesses is up to
19 you.

20 Now, ladies and gentlemen, the rules of evidence
21 ordinarily do not permit a witness to testify as to opinions
22 or conclusions. There's an exception to this rule, however,
23 for witnesses we call expert witnesses. If there's a witness
24 who, by education and experience, has become an expert in
25 some art, science, or profession or calling, and may state an

1 opinion as to relevant and material matter in which the
2 witness claims to be an expert, and may also state the
3 reasons for the opinion.

4 Ladies and gentlemen, you should consider any expert
5 opinion received in evidence in this case, and like any other
6 evidence, give it the weight that you think it deserves. And
7 if you decide that the opinion of an expert witness is not
8 based on sufficient education and experience, or if you
9 conclude that the reasons given in support of the opinion are
10 not sound, or that the opinion is outweighed by other
11 evidence, you may disregard the opinion entirely.

12 And an expert witness's testimony is not to be given
13 any greater weight than that of any other witness simply
14 because the witness is a expert. Further, you are not
15 required to accept an expert's opinion even though it is not
16 contradictory.

17 Now, ladies and gentlemen, the defendants are
18 charged with first degree burglary. The State must prove
19 beyond a reasonable doubt that the defendants entered a
20 dwelling without consent.

21 A dwelling is any building or portion of a building
22 in which a person ordinarily sleeps. A building constructed
23 as a dwelling that has never been occupied cannot be
24 considered a dwelling for the purposes of a burglary. But a
25 building is a dwelling even if the residents are temporarily

1 absent from the building.

2 In order to prove that the defendant entered the
3 dwelling, the State does not have to show that the
4 defendant's entire body entered the building. The smallest
5 entry is sufficient. It may be any part of the body, such as
6 a hand or a foot, or even an instrument, such as a hook or
7 other instrument.

8 In addition, the State does not have to prove that
9 force was used to gain entry. If a person enters a building
10 by using deception, artifice, trick, or misrepresentation to
11 get consent to enter, this is an entry without consent.

12 Next, the State must prove beyond a reasonable doubt
13 that the defendant intended to commit a crime, either a
14 felony or a misdemeanor, at the time of the injury -- or the
15 entry. The mere entry into a dwelling without consent is not
16 burglary if the intent to commit a crime is formed after the
17 entry. It is not burglary.

18 If, on the other hand, the defendant intended to
19 commit a crime at the time of the entry, it is burglary, even
20 if the intent was abandoned after the entry, and it does not
21 matter that the intended crime was not completed. An intent
22 may be shown by acts and conduct of the defendant and other
23 circumstances which you may naturally and reasonably infer
24 intent.

25 Finally, the State must prove beyond a reasonable

1 doubt that, one, when entering or while in the dwelling or
2 when fleeing, the defendant or an accomplice was armed with a
3 deadly weapon or explosive.

4 A deadly weapon is any article, instrument, or
5 substance which is likely to cause death or great bodily
6 harm. And whether an instrument has been used as a deadly
7 weapon depends on the facts and the circumstances of each
8 case.

9 Or, the defendant entered or remained in the
10 dwelling in the nighttime. The nighttime is the period
11 between sunset and sunrise where there is not enough daylight
12 to recognize a person's face except by artificial light or
13 moonlight.

14 And the law is well settled and widespread, that
15 where one breaks into the property of another in the
16 nighttime, an inference may be drawn that he did so with the
17 intent to commit a larceny. And a reasonable mind recognizes
18 that people do not usually break into and enter the building
19 of another under the shroud of darkness with innocent intent,
20 and that the most usual intent is to steal.

21 Direct evidence to prove intent is not necessary.
22 The proof of intent is not a precise process.

23 Now, ladies and gentlemen, if the crime is committed
24 by two or more people who are acting together in committing
25 the crime, the act of one is the act of all. A person who

1 joins with another to commit an unlawful act is criminally
2 responsible for everything done by the other person which
3 happens as a probable or natural consequence of the acts done
4 in carrying out the common plan and purpose.

5 For example, two people can be guilty of killing
6 another person when only one had a gun, and there's only one
7 bullet, and only one of the two fired the shot that caused
8 the death. If two or more people are acting together -- are
9 together, acting together, assisting each other in committing
10 the offense, the act of one is the act of all. As it's
11 sometimes said: The hand of one is the hand of all.

12 And prior knowledge of the crime that's going to be
13 committed without more is not sufficient to make a person
14 guilty of that crime, and mere knowledge that another person
15 is going to commit a crime, even if the defendant is present
16 when the crime is committed, is not sufficient to convict the
17 defendant as a principal.

18 Guilt as a principal is shown by actual or
19 constructive presence at the scene as a result of a prior
20 arrangement. Therefore, finding a prior arrangement plan or
21 common scheme is necessary for a finding of guilt as a
22 principal.

23 And the State must prove beyond a reasonable doubt,
24 by competent evidence, that the theory of the hand of one is
25 the hand of all.

1 And the principal in a crime is one who either
2 actually commits the crime or who is present, aiding,
3 abetting, or assisting in committing the crime.

4 And when a person does an act in the presence of
5 another, with the assistance of another, the act of one is
6 done by both. Where two or more acting with a common plan
7 are present at the commission of the crime, it does not
8 matter who actually commits the crime. All are guilty. The
9 hand of one is the hand of all.

10 And presence at the commission of a crime means to
11 be sufficiently near to aid and abet and assist in the
12 commission of the crime. However, mere presence at the scene
13 of the crime is not sufficient to convict one as a principal
14 on the theory of aiding and abetting.

15 And intent is also a necessary element, for there to
16 have been a common design or intent to commit the crime, and
17 the crime must have been committed pursuant thereto with the
18 person aiding and abetting by some overt act.

19 Intent means intending the result which actually
20 occurs, not accidentally or involuntarily. Intent may be
21 shown by acts and conduct of the defendant and other
22 circumstances from which he may naturally and reasonably
23 infer intent, and the State must prove this evidence beyond a
24 reasonable doubt.

25 Again, mere presence at the scene is not sufficient

1 to prove someone guilty of a crime. A defendant's presence
2 where a crime is being committed or mere association with the
3 person who commits the crime does not make a defendant an
4 accomplice or an aider and abettor of the person committing
5 the crime.

6 The burden is on the State to prove every element of
7 the crime charged. And if you find, after reviewing all of
8 the evidence, that the State has proved that the defendant
9 was only present at the scene of the crime, and that they
10 have not proved beyond a reasonable doubt any other
11 participation in the crime, then you must find the defendant
12 not guilty.

13 And the law is that the proof at the scene of the
14 crime -- proof at the scene of the crime is not sufficient to
15 find someone guilty.

16 Ladies and gentlemen, there are two possible
17 verdicts which you may find in this case on the charge of
18 burglary in the first degree.

19 Under Indictment 2014-GS-10-1310, Ishmel Jayvon
20 Lemon: Not guilty or guilty.

21 Under Indictment 2014-GS-10-1312, Antwain Jeriel
22 Champaigne: Not guilty or guilty.

23 Now, ladies and gentlemen, there's no significance
24 whatsoever in the order which I state the possible verdicts.
25 It's simply that one must be stated first.

1 Ladies and gentlemen, your verdict must be
2 unanimous. All 12 of you must agree on the verdict. And
3 your decision must not be based on sympathy, passion,
4 prejudice, emotion, or any other consideration that is not in
5 evidence in this case.

6 Mr. Foreman, when the jury agrees on a verdict, you
7 will write your verdict on the verdict form which I have for
8 each defendant. You will check not guilty or guilty. Then
9 you will sign your name as the foreperson, and then knock on
10 the jury room door. And you will then be escorted back out
11 here for the publication of your verdict.

12 Now, ladies and gentlemen, I'm going to send you to
13 your jury room, but please do not begin your deliberations.
14 There are some things that I still need to talk to the
15 attorneys about.

16 And again, the bailiffs will tell you when you can
17 begin your deliberations. So if you take the 23 primary
18 jurors to the jury room and leave the alternates in the
19 hallway, and I will talk to them. Thank you.

20 (Whereupon, the jury leaves open court at
21 11:19 a.m.)

22 THE COURT: Are there any objections to the charge
23 that has been given?

24 MR. OSBORNE: No, Your Honor.

25 MR. BRADLEY: No objection.

1 MR. SMILEY: No, sir.

2 THE COURT: All right. If y'all want -- do you all
3 have any objection to me sending a copy of the charge back
4 there with the jury?

5 MR. OSBORNE: None, Your Honor.

6 MR. BRADLEY: None.

7 MR. SMILEY: Actually, my preference would be that
8 they have it.

9 THE COURT: We have a copy of everything I just read
10 to them, so if you can get that with the verdict forms, if
11 y'all want to get together. Court will be in recess pending
12 the call.

13 Thank you.

14 (Attorneys agree to not allow S-20 into jury room
15 for deliberations.)

16 (Whereupon, the jury deliberates at 11:25 a.m.)

17 (Recess.)

18 THE COURT: I've got a question from the jurors.

19 (Whereupon, the defendant is present.)

20 THE COURT: I've got a question. The jury says,
21 "Can we review Ms. Polite's testimony regarding description
22 of who she saw in the apartment and can we review
23 Officer Havers' testimony regarding the suspect's exiting the
24 threshold?"

25 All right. If you can take this back to them. You

1 will have to listen to the complete testimony of each
2 witness, which we can allow you to do. See if they still
3 want to do that. They may not. And if you want to bring
4 them in, their lunch hasn't come yet. Now is a good time to
5 do that.

6 (Jury returns to open court at 12:45 p.m.)

7 THE COURT: Mr. Foreman, I've got your note, and the
8 court reporter is going to play back the entire testimony of
9 both of these witnesses. To do it any other way would be
10 unfair to one side, so I'm just going to listen to it all.

11 Please proceed.

12 (Court's Exhibit 1, Jury note requesting Ms. Polite
13 and Mr. Havers testimony be replayed, was marked for
14 identification.)

15 (Ms. Polite's and Mr. Havers' testimony played.)

16 THE COURT: All right. Ladies and gentlemen, I'm
17 going to ask that you go back to your jury room and resume
18 your deliberations. Your lunch is waiting for you.

19 Thank you.

20 (Whereupon, the jury leaves open court at 1:46 p.m.)

21 THE COURT: Court is at ease pending the call.

22 (Whereupon, the jury deliberates at 1:46 p.m.)

23 (Recess.)

24 THE COURT: Let's bring in our jury.

25 (Whereupon, the jury returns to open court at

1 3:16 p.m.)

2 THE COURT: Mr. Foreman, has the jury reached a
3 verdict?

4 THE FOREPERSON: We have, Your Honor.

5 THE COURT: Is it unanimous?

6 THE FOREPERSON: Yes, sir.

7 THE COURT: If the defendant will please stand.
8 Please publish the verdict.

9 THE CLERK: Verdict Form in the matter of State of
10 South Carolina vs. Ishmel Jayvon Lemon, Defendant, as to the
11 charge of burglary in the first degree, we, the jury,
12 unanimously find the defendant guilty. Signed by the
13 foreperson on the jury on March 4th, 2015.

14 Ladies and gentlemen of the jury, if this was your
15 verdict, please raise your right hand.

16 Thank you.

17 Please let the record reflect that all jurors --

18 THE COURT: We need both verdicts read. There's two
19 verdicts.

20 THE CLERK: Yes, sir.

21 The Verdict Form in the matter of State of South
22 Carolina vs. Antwain Jeriel Champaigne, Defendant, as to the
23 charge of burglary, first degree, we, the jury, unanimously
24 find the defendant guilty. Signed by the foreperson of the
25 jury on March 4th, 2015.

1 Ladies and gentlemen of the jury, if this was your
2 verdict, please raise your right hand.

3 Thank you.

4 Please let the record reflect that all 12 jurors
5 have raised their right hand.

6 THE COURT: Thank you. Does the defense request
7 polling of the jury?

8 MR. BRADLEY: No polling, Your Honor.

9 THE COURT: Thank you. You may be seated.

10 Ladies and gentlemen, let me take this opportunity
11 to thank you for your three days of work. You know, it's
12 never easy holding the life of a fellow citizen in your
13 hands, and I want to thank you for taking your role as jurors
14 to be very seriously -- very seriously in your deliberations.

15 One of the things about a jury trial system, it
16 makes America unique. It's people like y'all who will come
17 out of their jobs, their homes, and their normal lives, and
18 will come in here and take on the role of jurors. Because in
19 a free country like we are, citizens -- only citizens can say
20 whether another person is guilty or not. We don't allow the
21 police to do it. We don't allow judges to do it. But only
22 free citizens make that determination as to whether another
23 citizen is guilty.

24 Ladies and gentlemen, let me -- couple of things.
25 Throughout this trial, I told you, "Don't talk to anybody

1 about the case." That is over with. You can talk with
2 whoever you want to for as long as you want to, or for as
3 little as you want to. What y'all did in there is up to
4 y'all, and if you want to tell somebody about why you made
5 your decision, you can do that, but you don't have to.

6 This counts as your jury service, so you cannot be a
7 juror for the next year, and you don't have to be a juror for
8 the next three years if you don't want to.

9 Now, ladies and gentlemen, in about 15 minutes, I am
10 going to sentence the defendant, who is here in open court.
11 You've been here throughout this trial. You are welcome to
12 stay here and see what sentence I impose upon him.

13 And ladies and gentlemen, I tell people that I have
14 the best job in the world, because I get to sit between these
15 two flags as I do my job. And these flags are more than just
16 pieces of cloth. These are ideals that say that justice and
17 a fair trial are important. People have died, thousands and
18 thousands of people have died for this flag, and you didn't
19 have to die to be a juror to support this country, but you
20 did all you could this week.

21 There were a lot of important things going on in
22 Charleston, but I can assure you, there was nothing more
23 important than making sure that justice is done for the
24 defendants as well as the victim.

25 But I want you to go out of here thinking of

1 yourselves as one of the threads that make up these flags
2 that we honor, and you honor those flags by your job as
3 jurors. And I would tell you the same thing if you had found
4 him not guilty. It makes no difference. You did your job
5 and you reached a verdict.

6 Again, what do they pay them here? \$25 a day?

7 THE CLERK: No, sir. \$10 a day.

8 THE COURT: They are going to pay you \$10 a day,
9 which is chicken feed compared to the job that you did for
10 your community.

11 And, again, like I said, it's never easy to come and
12 do what you've had to do, but I hope you have a greater
13 appreciation for your justice system. These lawyers, they
14 are officers of the court, as I told you, and I certainly
15 think they have upheld their civility oath, and you upheld
16 the oath you took.

17 Ladies and gentlemen, I would like to take an
18 opportunity to shake your hands as you leave.

19 And, again, you are absolutely welcome to stay here,
20 or if you want to go back to your families and your homes and
21 your jobs, you are welcome to do that too.

22 If you need a work excuse, I will be glad to make
23 sure the clerk gives those to you. But I'm going to excuse
24 you now. You are excused for the rest of the week. There's
25 no more trials.

1 (Whereupon, the jury leaves open court at 3:23 p.m.)
2 THE COURT: Are there any post-trial motions?
3 MR. OSBORNE: None from the State, Your Honor.
4 MR. BRADLEY: Your Honor, of course, defendant would
5 request to file a written motion in regards to that.
6 THE COURT: Y'all want 10 days to file a written
7 motion?
8 MR. BRADLEY: Yes, if Your Honor sees fit.
9 THE COURT: Mr. Smiley.
10 MR. SMILEY: Your Honor, I would go ahead and renew
11 my motion for a directed verdict. I might have inadvertently
12 forgotten to renew that since we didn't present any evidence.
13 THE COURT: You know, I was thinking about that
14 earlier. I was thinking that you did not. However, there
15 was no other evidence presented.
16 MR. SMILEY: I'm trying to fix it now, just in case.
17 THE COURT: That was the end of all evidence, when
18 you made the motion. It would have been redundant for you to
19 make the same --
20 MR. SMILEY: I agree, Your Honor. Out of an
21 abundance of caution, I bring that up. There's no new
22 information, but once again, for protection of the record, I
23 would just renew my directed verdict motion at the end of the
24 trial now for a motion for a new trial, notwithstanding the
25 evidence, and I appreciate it, Your Honor.

1 THE COURT: Well, you are not going to file a
2 written?

3 MR. SMILEY: Yes, sir.

4 THE COURT: I'm going to deny your motion at this
5 point in time. But if you want 10 days to file a written
6 motion, I will certainly allow you your opportunity.

7 MR. BRADLEY: Thank you, Your Honor.

8 THE COURT: We will take about a 15-minute recess,
9 and then I will sentence this defendant in open record.
10 I will sentence yours by seal.

11 MR. SMILEY: Yes, sir. At that point, I would like
12 to make a motion after that's done.

13 THE COURT: I will give you both an opportunity to
14 do that.

15 MR. SMILEY: Thank you.

16 THE COURT: Court's in recess for 15 minutes.

17 (A recess transpired.)

18 THE COURT: Mr. Osborne, would the victim like to
19 speak at this point in time?

20 MR. OSBORNE: No, Your Honor, she would not, but I
21 could sort of relay her feelings about it.

22 THE COURT: All right.

23 MR. OSBORNE: Would you like me to do that now?

24 THE COURT: If you can go over the criminal
25 histories of the defendants.

1 MR. OSBORNE: Yes, Your Honor.

2 First, Ishmel Lemon. In 2005, he has a conviction
3 for strong-arm robbery; and in 2012, he has a conviction for
4 possession of marijuana, 28 grams or less.

5 Antwain Champaigne. In 2005, he has a conviction
6 for disturbing schools; and in 2006 he has a conviction for
7 possession of stolen vehicle.

8 THE COURT: All right. All right, sir.

9 MR. OSBORNE: Your Honor, I would just start with
10 Ishmel Lemon.

11 My hope is that whatever sentence you render, it
12 will allow me to resolve some of the other charges I have
13 against Ishmel. I have a possession of marijuana second. I
14 have a possession with intent to distribute cocaine;
15 possession with intent to distribute cocaine base. I have a
16 possession with intent to distribute close proximity. I have
17 an assault and battery first degree and discharging firearm
18 in a dwelling.

19 Law enforcement is very familiar with Ishmel. Law
20 enforcement is not at all familiar with Antwain Champaigne.
21 I know this is going to sound kind of odd with the testimony
22 that Antwain had the pistol, Antwain went through the window.
23 I think there was some testimony from Mr. Duvall that was
24 kind of revealing. When Antwain saw Mr. Duvall make the
25 corner, he tried to give the gun to Ishmel.

1 We don't have any proof to say that was the source
2 of the gun, except to say when you look at the records and
3 what Ishmel has done since he's been out on bond for this
4 charge, it doesn't seem like a stretch.

5 I've spoken with the victim. I guess our
6 position, the State's position, would be lenient sentence for
7 Mr. Champaigne is appropriate.

8 THE COURT: You know that means from 15 to life?
9 Leniency is 15 years.

10 MR. OSBORNE: Yes, Your Honor. I don't believe such
11 a sentence would be appropriate for Mr. Lemon.

12 Thank you.

13 THE COURT: Thank you.

14 Mr. Bradley, would you like to say anything?

15 MR. BRADLEY: Thank you, Your Honor, if it please
16 the Court.

17 First I would like to apologize to the victim,
18 Ms. Polite, and to her family for what she had to go through,
19 a horrible ordeal. Sitting here in court and doing my job is
20 sometimes even harder when you have a victim that you know
21 has gone through a lot, and I sincerely want to apologize to
22 you and to your family for what y'all had to go through. No
23 one should have to go through that. I myself have three
24 daughters, and I wouldn't want any one of them to go through
25 anything like that. So I do apologize to the victim.

1 Your Honor, my client is 28 years old, has a
2 two-year-old child. As you've heard, his record is really
3 what I would consider minimal, particularly for a charge of
4 this type. Your Honor, his last conviction in 2006 was in
5 possession of a stolen automobile. I won't go into the
6 details of that. Prior to that, he had a disturbing school
7 charge.

8 Your Honor, you saw I think the entire time that we
9 were here, Mr. Champaigne's family has been here with him in
10 support. He has several members of the family. I think
11 several of them would like to address Your Honor if Your
12 Honor would see fit.

13 But I would also ask if you would -- and I really
14 want to thank the Solicitor for the recommendation. I think
15 that was very appropriate, and I think it is appropriate,
16 Your Honor, if you would at least take that recommendation
17 into consideration when you do give your sentencing.

18 15 years is a long time, Your Honor.

19 THE COURT: He's going to have to serve 85 percent
20 of that.

21 MR. BRADLEY: Yes, sir, Your Honor, and that's a
22 pretty high sentence. But I will say, my client showed up
23 every time to court, Your Honor. As you've seen, he was here
24 today. He sat here beside me. He assisted, doing everything
25 he could. He did not commit any further crimes while he was

1 out on bond; he didn't have his bond revoked; he didn't have
2 any of the other issues that some of the other defendants
3 had, including Mr. Brown.

4 And so, Your Honor, I would just ask if you would,
5 please, Your Honor, give mercy to Mr. Champaigne, Your Honor.

6 And at this particular time, if you would see fit, I
7 know that his dad would like to address the Court, and his
8 mom may want to address the Court as well. I don't want to
9 be redundant, but I just want to make sure it's fine with
10 y'all.

11 THE COURT: All right. Yes, sir. Please come
12 forward to the podium.

13 If you could just state your name for the record.
14 Thank you.

15 MRS. MURRAY: My name is Albea Murray (ph). I'm
16 Antwain's mother.

17 MR. MURRAY: I'm Antwain's father.

18 Your Honor, me, myself, I'm not here to humor you
19 today. I'm not here to entertain this Court. But I am here
20 to put myself and her and Antwain at the mercy of your court.

21 Please, sir, have some care in your heart, because I
22 know my son has potentials. He got involved with someone,
23 and the Court clearly see who started this whole idea about a
24 burglary or whatever with Mr. Brown.

25 This man act as though he could control anybody's

1 mind he come into path with him. People is afraid of
2 Mr. Lemon. You walk away from him, you may get shot. He's
3 like a cult leader. He leads people in the wrong direction,
4 and that is what he done to my son.

5 And my son doesn't deserve a punishment for the rest
6 of his life, for the next 30, 25 years. If that's the case,
7 put me in the handcuffs. I will do the time for him, because
8 I have unconditional love for him. I would do the time.

9 Please, sir, consider this young man to go and do
10 the punishment that you set forth in front of him and come
11 back and be with his family.

12 Y'all daughter, we don't want to mess the daughter's
13 life up, because that's what happens when a father or mother
14 is missing for so long. And it affects the smaller kids. We
15 don't want that, because we know that Antwain has ambition,
16 and he can go in that place and he can reform himself, reform
17 himself to be better, if he had any involvement. I don't
18 know. The parents the last to know. But we would gladly
19 accept him still in our family when he come out.

20 That's all I have to say you, Your Honor. Please
21 consider leniency, it's hard enough. I'm sorry, ma'am. This
22 family is sorry that we took you through all of this. We are
23 really sorry. It's no more that I can say.

24 Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 MRS. MURRAY: Please give honor to God to help my
2 life. I want to apologize to Ms. --

3 MR. MURRAY: Polite.

4 MRS. MURRAY: -- Polite. I apologize for my child.
5 He didn't know what he was doing. I apologize. He got
6 caught up with the wrong person. He's a good child. He's a
7 good child. He give me no trouble whatsoever. He's a very
8 helpful child around the home and everything. He just got
9 caught up with the wrong thing. I want y'all to please
10 forgive him for what he have done. Please forgive him.
11 Please.

12 That's all I have to say.

13 THE COURT: Thank you.

14 MR. BRADLEY: Thank you, Your Honor. If it please
15 the Court, I think my client would like to make a statement
16 at this moment.

17 THE COURT: All right. Yes, sir, Mr. Champaigne?

18 THE DEFENDANT CHAMPAIGNE: I would like to say I
19 apologize to Ms. Polite, and the situation, embarrassing
20 situation that I be here. Her family, I apologize to the
21 Court. I apologize to you, Judge. I apologize to my family.

22 I'm a good guy. I never actually -- just give me
23 some leniency on my sentencing. I never went up the road
24 before. This will be my first time. I don't get in trouble.
25 I just messed up with the wrong people. I apologize.

1 THE COURT: Thank you.

2 MR. BRADLEY: Thank you, Your Honor. I would again
3 ask if you would concede the recommendation of the
4 prosecutor, and I beg Your Honor for mercy of the court, and
5 I'd ask for the minimum sentence possible. Thank you.

6 THE COURT: Thank you.

7 Mr. Smiley.

8 MR. SMILEY: I'm going to be very brief. I think
9 it's important to know, Your Honor, that there was no plea
10 offer in this case. And I recognize there's certain cases
11 you don't make plea offers on, and I understand that, but I
12 think that there are times when your alternatives are such
13 that you are put in a position of trial because you don't see
14 any other options.

15 And Mr. Lemon, I wish he was here to tell you that.
16 It's very difficult to try a case without a client.

17 Mr. Lemon, when he hired me, sat down and talked to
18 me, and I thought he was very straightforward with me, and
19 had told me what his goal was. And I'm going to share that
20 with you, Your Honor.

21 His goal when hiring me is he said, "Mr. Smiley, if
22 you can get me a burglary second violent 15 years, I will
23 take it right now." That was his goal. It wasn't offered,
24 and I understand that. I begged for it.

25 Couldn't do that, so we were thrust into trial, and

1 I lost all options when Mr. Lemon forfeited his right to be
2 present.

3 I'm not going to defend Mr. Lemon any further today.

4 I will -- I know this is a little unusual. I know
5 the Champaigne family. I was involved with them and a
6 deceased relative years ago, and they are good people.

7 And I've had an opportunity to meet with Antwain in
8 the presence of his attorney, and I will say, he's a polite
9 young man as I've ever met.

10 I'm not advocating for him, because I can't in my
11 position.

12 THE COURT: I understand.

13 MR. SMILEY: I just thought it was something that I
14 have recognized. So thank you very much, Your Honor.

15 THE COURT: Anything further from the State?

16 MR. OSBORNE: None, Your Honor.

17 THE COURT: And the State is asking for leniency?

18 MR. OSBORNE: Yes, Your Honor, we are.

19 THE COURT: And that's leniency for Mr. Champaigne.

20 MR. OSBORNE: For only Mr. Champaigne.

21 THE COURT: Only.

22 Mr. Ishmel Lemon has been sentenced.

23 MR. SMILEY: Thank you very much, Your Honor.

24 THE COURT: Burglary in the first degree is a
25 extremely violent crime. It is the virtual rape of a

1 person's home. And I think a person has a right to feel
2 secure in their own homes.

3 Ms. Polite was sitting there, minding her own
4 business, when these two gentlemen or three gentlemen decided
5 that they would invade her privacy and scare the living hell
6 out of her. The tape was very telling, where her breathing,
7 I was amazed that she didn't pass out from hyperventilating.

8 And normally I have no reservations in giving a
9 maximum sentence on this type of crime. In this case,
10 however, I have been asked to provide some leniency to this
11 defendant from the State as well as the victim.

12 The minimum is 15-year sentence. I don't know that
13 I will go that low. But it's a horrible, horrible crime.
14 But, again, I do have -- no one was injured, and I do believe
15 that they initially thought that there was no one home. I
16 don't think they were crashing someone's -- this is not your
17 normal home invasion. Because I think they knocked on the
18 door to see if anyone was home, and then they probably didn't
19 think there was, but they were going inside.

20 I am going to take the recommendation of the State
21 and of Ms. Polite. I want her to feel that she got justice
22 today too. But, again, the legislature has established
23 minimum guidelines, which I am going to go closer to.

24 So the sentence of this Court -- and I'm also
25 impressed by the fact that Mr. Champaigne has family support.

1 I always say that I always see more tears from family members
2 than I often do from the defendants, but I certainly see them
3 from the defendant here today.

4 Sentence of the Court is that you, Antwain
5 Champaigne, be sentenced to the State Department of
6 Corrections for a period of 16 years. Sentence will
7 commence, and you will get credit for time served if you had
8 any.

9 And so good luck, sir. This will give you an
10 opportunity to still have a life.

11 MR. BRADLEY: Thank you, Your Honor.

12 MR. SMILEY: Your Honor, at this time can I make one
13 final motion?

14 THE COURT: Yes, sir.

15 MR. SMILEY: May I be relieved as counsel for Ishmel
16 Lemon?

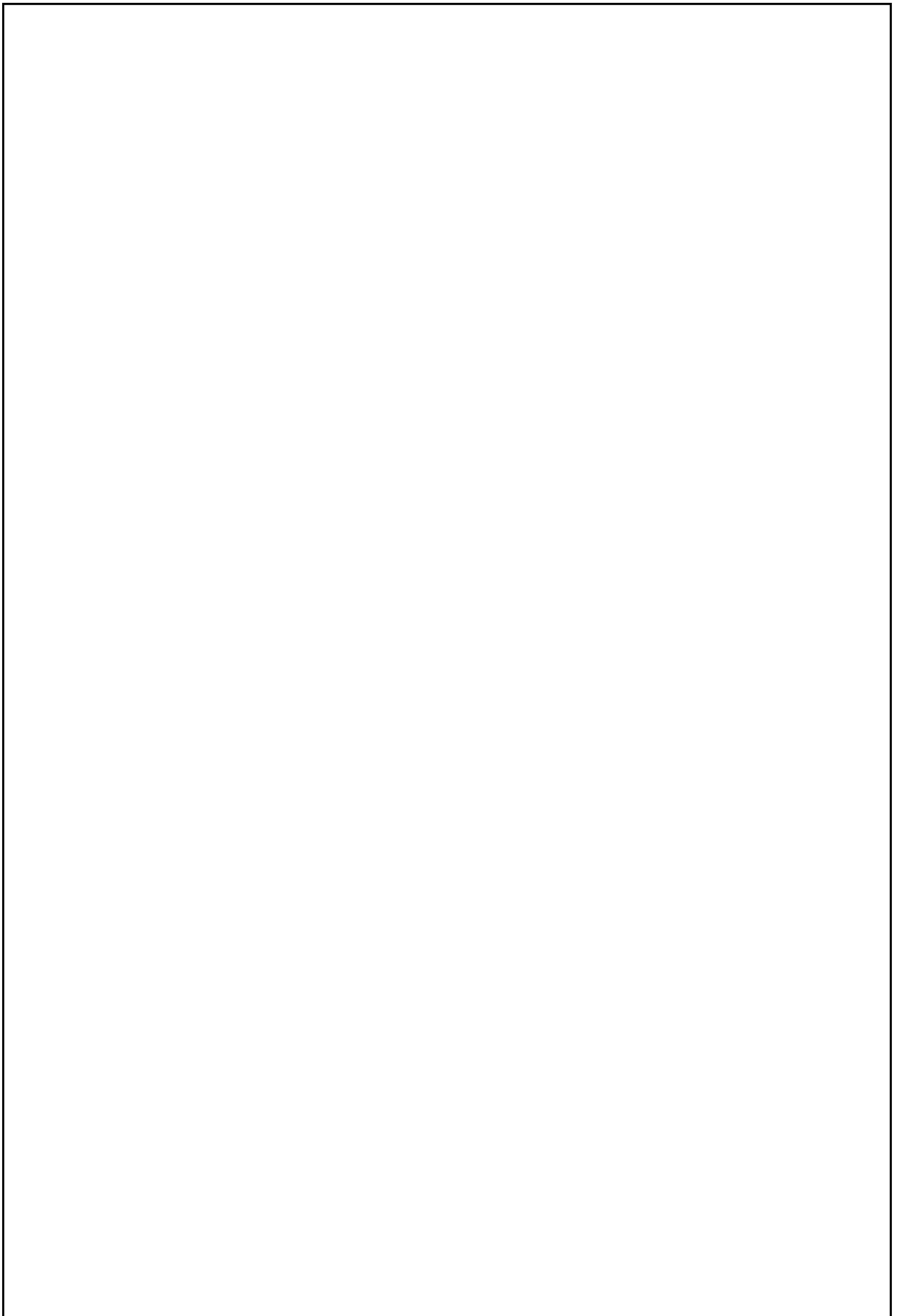
17 THE COURT: Absolutely. You did all you could for
18 Mr. Lemon. I'm just sorry he chose not to join us. My
19 sentence to him was appropriate, whether or not he would have
20 been here.

21 MR. SMILEY: I understand completely. I will
22 provide a written order tomorrow afternoon.

23 THE COURT: Thank you, sir.

24 Court is adjourned until 9:30 tomorrow morning.

25 (Whereupon, the proceedings are adjourned.)



CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

1 STATE OF SOUTH CAROLINA)
2) Court of General Sessions
COUNTY OF CHARLESTON COUNTY) Case No. 2014-GS-10-01310
3)
4 STATE OF SOUTH CAROLINA)
5)
v.) Transcript of Record
6 ISHMEL LEMON,)
7 Defendant.)
DATE: December 14, 2015

8
9
B E F O R E:

10 THE HONORABLE KRISTI LEA HARRINGTON
11

12
A P P E A R A N C E:

13 DAVID OSBORNE
14 Attorney for the State

15 JAMES W. SMILEY
16 Attorney for the Defendant

17
18 Karen V. Andersen, RMR, CRR
Circuit Court Reporter
19
20
21
22
23
24
25

1 MR. OSBORNE: The State calls Ishmel Lemon.

2 THE COURT: Are you Ishmel lemon?

3 THE DEFENDANT Yes, ma'am.

4 THE COURT: Please swear the defendant.

5 (Whereupon, the defendant is sworn.)

6 THE COURT: Mr. Osborne, what are we doing here
7 today?

8 MR. OSBORNE: Thank you, Your Honor. Mr. Lemon was
9 charged with burglary in the first degree. He requested a
10 jury trial. We had that trial in front of the Honorable Jeff
11 Young on March the 24th of 2015. Mr. Lemon did not appear.
12 So we did a trial in his absence. He has recently been
13 arrested. This sentence has been sealed. So we are here to
14 hear this sentence.

15 THE COURT: Mr. Smiley, procedurally, I understand
16 that Judge Young relieved you. You tried the case. And at
17 the conclusion of the case, he relieved you. I requested
18 that you be here, just I think it makes it cleaner. And I do
19 appreciate you being here.

20 MR. SMILEY: That's correct.

21 THE COURT: Mr. Lemon, do you understand what is
22 going to happen here today?

23 THE DEFENDANT: Yeah, but I need some time because
24 I've got something I need to discuss with the solicitor and
25 my lawyer.

1 THE COURT: All right. Well, the time to do that
2 has already passed. And so what I'm going to do here today
3 is simply -- Mr. Lemon, is I'm going to unseal this sentence.
4 And after unsealing this sentence, you will have 10 days to
5 appeal this sentence that I'm about to impose upon you. All
6 right?

7 Mr. Smiley has been relieved. He is no longer your
8 attorney. Do you understand that?

9 THE DEFENDANT Yes, ma'am.

10 THE COURT: Okay. Anything before I unseal the
11 sentence, Mr. Osborne?

12 MR. OSBORNE: No, Your Honor.

13 THE COURT: It's the order of the Court on
14 2014-GS-10-1310 that you be committed to the State Department
15 of Corrections for a term of 30 years. Good luck to you,
16 sir.

17 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
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I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NO.: 2014-GS-10-01310
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-VERSUS-	)	MOTION TO RECONSIDER
	)	SENTENCE
ISHMEL JAY VAN LEMON,	)	
	)	
Defendant.	)	
	)	

NOW INTO COURT, comes the Defendant, Ishmel Lemon, respectfully submitting this Motion to Reconsider and reduce the sentence imposed on the Defendant on December 14, 2015.

Mr. Lemon was tried and convicted in his absence on one count of Burglary, First Degree and sentenced to thirty (30) years on March 4, 2015. This sentence was unsealed and subsequently imposed by the Honorable Kristi Harrington on December 14, 2015. Pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure, this request is timely submitted within ten (10) days of the imposition of sentence.

As grounds for the reconsideration and reduction, Mr. Lemon urges that, upon information and belief, this Honorable Court was not made privy to certain mitigating information that may entitle Mr. Lemon to a lesser sentence. Specifically, at the time of sentencing, Mr. Lemon was a productive citizen in that he was gainfully employed with career opportunities ahead of him and had two young daughters who very much depend on him both emotionally and financially. Further, Mr. Lemon urges that the disparity between his sentence and the sentence issued to a similarly-situated co-defendant

warrants further review of his sentence. Finally, Mr. Lemon asserts that the interests of justice will be served by the granting of this request.

WHEREFORE, the Defendant, Ishmel Lemon, humbly requests that this Honorable Court consider and review this Motion, and will present further grounds as necessary, both in open court and *in camera* at such date and time should the Court deem it appropriate to set such a hearing.

Respectfully submitted,

WILLIAMS & WALSH, LLC

125-A Wappoo Creek Drive, Suite 202

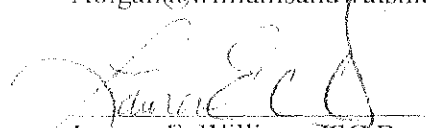
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Lauren E. Williams (SC Bar # 75158)

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Attorneys for the Defendant

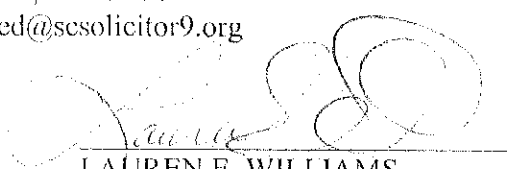
Charleston, South Carolina
December 22, 2015.

2015 DEC 22 PM
JULIE J. BROWN
CLERK OF COURT
C/O

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NO.: 2014-GS-10-01310
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-VERSUS-	)	CERTIFICATE OF SERVICE
	)	
ISHMEL JAYVAN LEMON,	)	
	)	
Defendant.	)	
_____	)	

I, Lauren E. Williams, certify that I have this day delivered copies of a Motion to Reconsider Sentence via email to the following:

David Osborne, Esq.
 Charleston County Solicitor's Office
 101 Meeting St., 4th Floor
 Charleston, SC 29401
 Email: osborned@scsolicitor9.org


 LAUREN E. WILLIAMS

December 23, 2015.

2015 DEC 23 AM 11:00
 JUDGE ABBOTT
 CLERK OF COURT
 CC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

versus-

ISHMEL LEMON,

Defendant.

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

INDICTMENT #(s): 2014-GS-1001310

WARRANT #(s): 2013A1010205847

Charges: Burglary 1stSTATE'S RESPONSE IN OPPOSITION
TO MOTION TO RECONSIDER

PLEASE TAKE NOTICE that the State of South Carolina opposes the Defendant's Motion to Reconsider.

Procedural Background

On October 24, 2013 at about 10:25 pm, Sabrina Polite was in her residence located at Westchase Dr. Apt. ■ doing her lesson plans. Ms. Polite worked as a school teacher. At that time, she heard a knock on her door. She went to the door, looked through the peep hole, and observed an unknown subject wearing a hood. She thought the subject must have the wrong door, so she went back to her work. Seconds later, she heard her front window break. She ran to the closet and called 911. Over the next several minutes, at least two subjects entered her apartment and rummaged through her belongings. At one point, one of the subjects entered the closet where Ms. Polite hid. The subject brushed against Ms. Polite's foot but didn't notice she was there. The subject can be heard over the 911 call saying, "I think we got the wrong house."

CPD Officers arrived on scene and located a subject named Jordan Brown standing in front of the residence. Brown was immediately detained. Officers then observed two subjects

come out of Ms. Polite's front window. A foot pursuit ensued, both subjects were apprehended, and identified as Ishmel Lemon and Antwan Champagne. Officers canvassed the area and located a handgun in the path Lemon and Champagne fled.

On March 14, 2015, Lemon and Champagne were tried in front of the Honorable Judge Jeff Young. Despite receiving notice, Lemon chose not to appear and was tried in his absence. Both Lemon and Champagne were convicted of Burglary 1st in a jury trial. Champagne was sentenced to 16 years and Lemon's sentence was sealed. Lemon remained on the run until being apprehended in December of 2015 when he was located by the US Marshalls. At the time of his arrest, Lemon was found to be in possession of narcotics and a stolen pistol. On December 14, 2015, Lemon was brought before the Honorable Judge Kristi Harrington where the sentence was unsealed and Lemon was sentenced to 30 years.

Argument

I. The Court ruled within its wide discretion in sentencing

The authority to change a sentence rests solely and exclusively with the sentencing judge within the exercise of his discretion. *State v. Smith*, 276 S.C. 494 (1981). A judge is to be accorded very wide discretion in determining an appropriate sentence and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. *Wasman v. United States*, 468 U.S. 559 (1984).

Prior to the sentencing of Lemon, the Court was aware of the facts of the case and was able to consider arguments from both the State and Lemon's attorney, James Smiley regarding sentencing. The State provided Lemon's criminal record and outlined its position regarding Lemon's sentence. The State spoke to Ms. Polite who did not wish to address the Court. Ms. Polite told the State she was not opposed to a "lenient" sentence for Champagne. Ms. Polite

made that decision based on knowing Champagne's lack of criminal history and his presumed good behavior since her incident. The State then requested a lenient sentence for Champagne only. The State made it very clear to the Court that the request for a lenient sentence was only being made for Champagne based on his lack of criminal history and that same benefit was not being requested for Lemon. The Court was able to consider all information presented prior to making its sentencing decision and ruled within its discretion based on the information presented.

The length of the sentence imposed on the Defendant is within the broad discretion of the court. *Garrett v. State*, 320 S.C. 353 (1995), provides that "A judge is allowed broad discretion in sentencing within statutory limits." The State Legislature has established that one convicted of Burglary 1st Degree for violating Code of Laws of South Carolina § 16-11-311 (1976) must be imprisoned at least fifteen years and can be sentenced up to life in prison. In the instant case, the sentence of 30 years in the South Carolina Department of Corrections is within the range of fifteen years to life established by the Legislature.

D. Lemon's Criminal History and Pending Charges Situate Him in a Different Posture than Champagne

Lemon's criminal history is as follows:

- 04: Defendant was arrested for Attempted Armed Robbery and pled to Strong Arm Robbery
- 12: Possession of Marijuana

In addition to these charges, Lemon had the following charges pending in the 9th Circuit:

Possession of Marijuana 2nd

Possession With Intent to Distribute Cocaine

Possession With Intent to Distribute Cocaine Base

Possession With Intent to Distribute Close Proximity

Assault and Battery 1st

Discharging a Weapon into a Dwelling

Champagne's criminal history is as follows:

05: Disturbing Schools

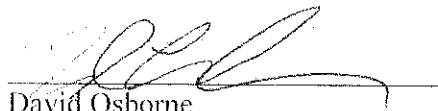
09: Possession of a Stolen Vehicle

The severity of Lemon's convictions compared to Champagne's convictions justified a disparity in the two sentences. Furthermore, Champagne arrived at the trial, which Lemon chose not to appear.

Conclusion

In the instant case, the Court properly considered a variety of factors in determining the proper punishment for Lemon, and the sentence handed down should not be disturbed. For the foregoing reasons, the State requests the motion be denied.

Respectfully Submitted,



David Osborne
Assistant Solicitor
Ninth Judicial Circuit

This the ____ day of January, 2016

CLERK OF COURT

2016 JAN 19 AM 9:51

11377

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA,

Plaintiff,

-versus-

ISHMEL JAYVAN LEMON,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) INDICTMENT NO.: 2014-GS-10-01310

RECEIVED

FEB 22 2016

SC Court of Appeals

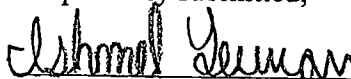
NOTICE OF INTENT TO APPEAL

COMES NOW, the Defendant/Appellant, Ishmel Lemon, through undersigned counsel respectfully submitting this Notice of Intent to Appeal for this Honorable Court's review and consideration.

Pursuant to the mandate of Rule 203(d)(1)(B)(iv), the Defendant/Appellant asserts that the issues to be raised on appeal may include:

- ① Sentencing disparity in violation of the 8th Amendment;
 ② Due process errors at trial.

Respectfully submitted,


ISHMEL LEMON, *pro se*

Charleston, South Carolina,

Feb 18th, 2016.

The South Carolina Court of Appeals

The State, Respondent,

v.

Ismel Jayvan Lemon, Appellant.

Appellate Case No. 2016-000308

RECEIVED

MAY 19 2016

ATTORNEY GENERALS
OFFICE

*open + close
after remittitur
JBA*

The Honorable W. Jeffrey Young
Charleston County
Trial Court Case No. 2014GS1001310

ORDER

Appellant failed to timely serve the Respondent in the above-captioned appeal as required by Rule 203(b) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc:

Ishmel Jayvan Lemon, 00310411

Lauren E. Williams, Esquire

Alan McCrory Wilson, Esquire

John Benjamin Aplin, Esquire

FILED

May 18, 2016 TF

**RECEIVED**
CLERK

JUN 20 2016

ATTORNEY GENERALS
OFFICE**The South Carolina Court of Appeals**JENNY ABBOTT KITCHINGS
CLERKV. CLAIRE ALLEN
DEPUTY CLERKPOST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 14, 2016

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210**REMITTITUR**Re: The State v. Ishmel Jayvan Lemon
Lower Court Case No. 2014GS1001310
Appellate Case No. 2016-000308

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Ishmel Jayvan Lemon, 00310411
Lauren E. Williams, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

FORM 5

STATE OF SOUTH CAROLINA

County of

Charleston

2017-CP-10-1693

IN THE COURT OF COMMON PLEAS

RECEIVED

MAR 29 2017

BRCI

MAILROOM

APPLICATION FOR

POST-CONVICTION RELIEF

Ismael ~~JAYVAN~~ LEMON #310411

Full name and prison number (if any) of Applicant

v.

State of South Carolina

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- Place of detention Broad River Correctional Inst;
4460 Broad River Rd; Columbia, S.C. 29210
- Name and location of Court which imposed sentence Charleston Court
of GENERAL SESSIONS; Charleston, S.C. 29401-29410
- Name(s) of co-defendant(s) (if any) ANTHONY CHAMPAGNE; And
JORDAN BROWN
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) # 2014-CS-10-D1310; Burglary 1st DEGREE

- (b) _____
- (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) March 4, 2015 "Sealed 30yrs Sentence"
- (b) December 14, 2015 "Unsealed 30yrs. Sentence"
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. DISMISSED - Failure to timely serve Respondent
- ii. _____
- iii. _____

(c) the date of each such result:

- i. May 18, 2016
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Appellate Case No. 2016-DOD308; "Order"
- ii. May 18, 2016; Remitter - June 14, 2016
- iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) _____

- (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See Memorandum of Law
 (b) Attached !!!
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Memorandum of Law
 (b) Attached !!!
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. Motion To Reconsider Sentence
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Charleston County Court of General Sessions;
 ii. Ninth (9th) Federal Circuit, Charleston,
 iii. S.C. 29401-2210

iv. _____
 (c) the disposition thereof: Dismissed

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. February 12, 2015

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/D

15. If you answered "yes" to (14) 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. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the Appellant's first
 (b) PCR - Application III
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Mr. James Smiley, Esq., 178 King St;
Charleston, S.C.
 ii. Ms. Lauren E. Williams, Esq., 125-A
Wappoo Creek Dr., Ste. 202, Charleston, SC 29412
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Arrest, Arraignment, Trial, and Sentencing
 ii. Motion To Reconsider Sentence, and
Filing the Notice of Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

The State's Plea Offer of Seven (7) years; AND
A NEW TRIAL !!!

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Ishmel Jayvan Lemon #318411, 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.

Ishmel Jayvan Lemon

SWORN to and subscribed before me this 29
 day of March, 2017.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 8/16/2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Ismael Jayvan Lemon #310411, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ismael Jayvan Lemon
Applicant

SWORN or affirmed to and subscribed before me this

27 day of MARCH, 2017.

[Signature]
Notary Public

My Commission Expires: 9/16/2026

Memorandum of Law

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

A. The Applicant asserts that his Due Process and Equal Protection Rights were violated under the Fifth (5th); and fourteenth (14th) Amendment of the United States Constitution. When the trial court failed to make a finding of fact in regards to Rule #16, SCRCrim.P., that the Applicant received notice of his right to be present for trial and that defendant was given warning that he would be tried in his absence. Also, violated his confrontation rights under the Sixth (6th) Amendment right of the United States Constitution!!!

B. Ineffective assistance of trial counsel!!!

C. Ineffective assistance of Appellate counsel!!!

D. Applicant assert that he is entitled to a Belated Appeal pursuant to White v. State, as a matter of Constitution right to a first appeal!!!

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

A. On March 4, 2015, the Applicant's Burglary, 1st Degree case was called for trial. Although, the Applicant was not present;... he was represented at trial by Mr. James W. Smiley, IV, Esq. The trial court records will show, that the Applicant **was never** warned by the trial court; trial counsel; and etc., In regards to Rule #16, SCRCrim.P which states---"Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court!!!

(2)

The Applicant's trial proceeded with him not being present, but was represented by trial counsel. He was convicted and was sentenced to a "Sealed" "30yrs" "Sentence" by the Charleston County Court of General Sessions. The South Carolina Supreme Court ruled in State v. Flemming, 287 S.C. 268, 335 S.E.2d 814 (1985) Absence a Rule #16, (former Rule #3) SCRCrim.P., finding fact, that he received notice of his Right to be Present for Trial and given warning that he would be tried in his absence should he fail to attend court, is a reversible error!!! See also State v. Jackson, 341 S.E.2d 375; State v. Ritch, 354 S.E.2d 909; State v. Williams, 355 S.E.2d 375; City of Aiken v. David, Michael v. Koontz, 368 S.C. 542, 629 S.E.2d 686; Richland County v. Simpkins, 348 S.C. 658, 560 S.E.2d 899; and State v. Goode, 299 S.C. 470, 385 S.E.2d 844 !!!

Also, the Sixth (6th) Amendment of the United States Constitution guarantees right of accused to be present at every critical stage of his trial. Ellis v. State, 267 S.C. 257, 227 S.E.2d 304; State v. Fairey, 646 S.E.2d 445, 448 (S.C.App.); State v. Bell, 2008 WL9841510; and State v. Whaley, 351 S.E.2d 340. While Rule #16, SCRCrim.P., permits a knowing and intelligent waiver of the right to be present, such a waiver is permitted only in limited circumstances. State v. Patterson, 367 S.C. 219, 625 S.E.2d 239. In order for a criminal defendant to be tried in Absentia, certain requirements must first be met. State v. Truesdale, 345 S.C. 542, 548 S.E.2d 804. A trial Judge must determine a defendant voluntarily waived his right to be present at trial in order to try the case in absentia. State v. Ritch, Supra; State v. Jackson, Supra, quoting from City of Aiken v. Koontz, 368 S.C. 542 !!!

B. The Applicant asserts that he suffered Ineffective Assistance of Trial Counsel, In violation of the Sixth (6th) Amendment of the United States Constitution. When trial counsel did not object at the first opportunity to do so.... In regards to the Applicant being tried in his absence!!!

The Applicant's trial in his absence, on March 4, 2015, in the Charleston County Court of General Sessions. He was represented

by Mr. James W. Smiley, IV. Esquire. When the trial court, called the Applicant's Burglary, 1st Degree case, Indictment No. #2014-GS-10-01310; for trial, and he was not in the courtroom. His Sixth (6th) Amendment rights attaches and he has the right to be present at all criminal stages of a criminal prosecution.

The trial court elected to go forward with his trial in the Applicant's absence. Trial counsel failed to make a "Contemporaneous Objection" on the record, about the Applicant being tried in his absence. Trial Counsel's duty, as the United States Supreme Court stated in Snyder v. Massachusetts, 291 U.S. 97, 54 S.Ct. 330 (1934), "In order to claim the protection afforded by criminal practice Rule #16 (formerly Rule #3) SCRCrim.P., a defendant or his attorney must object at the first opportunity to do so."

In United States v. Hill, 310 F.2d 601 (4th Cir.1962) (Counsel is required to acquaint himself or herself with the law of the case.)" Also, in Jones v. Cunningham, 313 F.2d 353,-- "Of course, it is not for a lawyer to fabricate defenses, but he does have an affirmative obligation to make suitable inquiry to determine whether valid ones exist. Such a duty is imposed for the salutary reason that prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings, and laws involved, and then offer inform opinion. Von Moltke v. Gillis, 332 U.S. 708, 48 S.Ct. 316 (1948)!!!!

Trial counsel's failure to "Object" at the first opportunity to do so, which was at the start of Applicant's trial in his absence. Not only violated his Sixth (6th) Amendment right to effective assistance of counsel. Trial counsel's failure willfully violated his due process and equal protection rights. "The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that: In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him, we have held that the fourteenth Amendment makes the guarantees of this clause obligatory upon the states." Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065 (1965).-- quoting from Illinois v. Allen, 397 U.S. 1057, 90 S.Ct. 1057 (1970)!!!

(4.)

Trial counsel's ineffectiveness severely prejudiced the Applicant and his deficient actions fell way below professional norms, in violation of the two prong test in Strickland v. Washington, 466 U.S. 668. Also, caused him to receive a "30"yrs. Sealed sentence, on March 4, 2015, and trial counsel's failure to safeguard any of the Applicant's trial or Appellate rights, under the fifth, sixth, and fourteenth Amendments of the United States Constitution, and similar rights under the South Carolina Constitution. The trial court records will show, that trial counsel did not make any "Contemporaneous Objections", In regards to Rule #16, SCRCrim.P. rights of the Applicant or to safeguard his Constitution rights at trial or for Appellate review. Therefore, trial counsel's actions were deficient as stated in Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527 (2003); and the deficient performance severely prejudiced the Applicant, as indicted in Hill v. Lochart, 474 U.S. 52, 106 S.Ct. 366 (1985).

The United States Supreme Court's laws. Rules, Mandates, and etc., outlined in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052.... has been shown by the Applicant, and is a reversible error!!!

Trial counsel was ineffective when he failed to convey a plea offer of seven (7yrs.) years from the state, until the last day the "Plea" would be valid. The Applicant asserts that he would have taken the seven years plea offer and told his trial counsel to inform the state he would accept their offer!!!

The state withdrew their offer when trial counsel failed to get back with them before the "Deadline date" of the plea expired. In Missouri v. Frye, 132 S.Ct. 1399 (2012)-- The United States Supreme Court held, the Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. That right applies to "All critical stages of the criminal proceedings." Montejo v. Louisiana, 556 U.S. 778, 129 S.Ct. 2079; and Hill v. Lochart, 474 U.S. 52, 106 S.Ct. 366, Established that Strickland's two part test governs ineffective assistance claims in the plea bargain context. However, In Padilla v. Kentucky, 559 U.S. ___, 130 S.Ct. 1473, Where a plea

offer was set aside because counsel had misinformed the defendant of its immigration consequences, this court made clear that the negotiation of a plea bargain is a "critical" stage for ineffective assistance purposes, *Id.*, at 1392, 130 S.Ct., at 1486 and rejected the argument made by the state in this case that a knowing and voluntary plea supersedes defense counsel's errors. Plea bargains have become so central to today's criminal justice system that defense counsel must meet responsibilities in the plea bargain process to render the adequate assistance of counsel that the Sixth Amendment requires a critical stages of the criminal process. Pp. 1405-08.

As a general rule, rule, defense counsel has the duty to communicate formal prosecution offers to accept a plea on terms and conditions that may be favorable to the accused Missouri v. Frye, Supra. The prosecution and trial court may adopt measures to help ensure against late, frivolous, or fabricated claims. First, a formal offer's terms and processing can be documented. second, states may require that all offers be in writing. Third formal offers can be made part of the record at any subsequent plea proceeding or before trial to ensure that a defendant has been fully advised before the later proceedings commence; Here, also, as the result of counsel's deficient performance, the offers lapsed.

To show prejudice where a plea offer has lapsed or been rejected because defendant's trial counsel's deficient performance defendant must demonstrate a reasonable probability both that they would have accepted the more favorable plea offer had they been afforded effective assistance of counsel and that the plea would have been entered without the prosecution's canceling it or the trial court's refusing to accept it, if they had the authority to exercise that discretion under state law. The Applicant's Fifth and Fourteenth Amendments 'due process and equal protection rights under the United States Constitution were willfully violated. As well as his, Sixth Amendment right to the effective assistance of counsel, and similar rights under the South Carolina Constitution.

Where a defendant shows ineffective assistance has caused the rejection of a plea leading to a more severe sentence at trial the remedy must "neutralize the taint" of a constitution violation, United States v. Morrison, 449 U.S. 361, 365, 101 S.Ct. 665; quoting from Lafler v. Cooper, 566 U.S. 156, 132 S.Ct. 1376. To establish Strickland prejudice a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." quoting Strickland, at 604. Here, the case at bar the Applicant's attorney allowed the plea offer of seven (7yrs.) years to expire after the Applicant informed the trial attorney to accept the State's offer. Trial attorney instead went to trial in absentia and allowed the State's offer to expire!!!

C. The Applicant was denied effective assistance of Appellate counsel, when counsel failed to timely serve the respondent as required by Rule #203(b) of the South Carolina Appellate Court Rules. In violation of the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution. Also, his Sixth Amendment right to effective assistance of counsel!!!

In Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985).-- "The United States Supreme Court ruled the Due Process Clause of the Fourteenth (14th) Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal as of right." A first appeal as of right therefore is not adjudicated in accord with due process of law if the Appellant does not have the effective assistance of an attorney. The promise of Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, that a criminal defendant has a right to counsel on his first appeal as of right like the promise of Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 702, that a criminal defendant has a right to counsel at trial would be futile gesture unless it comprehended the right to effective assistance of counsel!!!

The Applicant's trial in his absence, begin with trial counsel on March 4, 2015. He was found guilty by a jury trial, and the Charleston County Court of General Sessions sentenced him to a "Sealed Sentence". However, once the Applicant was in custody

on December 14, 2015, the Honorable Kristi Harrington, unsealed the sentence which was thirty (30yrs.) years. Applicant's trial counsel, Mr. James W. Smiley, IV, Esq., was in the courtroom with him. As soon as the sentence was unsealed... The Applicant made it known and clear, that he wanted to appeal the thirty (30yrs.) years sentence. This was verbally conveyed in open court for the record and to his Retained Attorney!!!

Applicant's, mother, obtained the service of Ms. Lauren E. Williams, Esq., who pursuant to Rule #29, SCRCrim.P., filed a Motion To Reconsider Sentence. Which was timely submitted within (10) days of the imposition of sentence. See Motion To Reconsider Sentence, filed with the Charleston County Clerk of Court's Office, on December 22, 2015. The Applicant's trial counsel did not file a Notice of Intent to Appeal; on December 14, 2015;... After the Applicant verbally stated his desire to appeal, in open court. Both his trial counsel "(Mr. James W. Smiley, IV)" and the attorney that filed the Motion To Reconsider Sentence "(Ms. Lauren E. Williams)".... was retained counsels, who was ineffective for not filing a Notice of Appeal timely and timely serving the same upon the Respondent!!!

Nevertheless, on May 18, 2015, the South Carolina Court of Appeals dismissed Applicant's direct appeal... For failing to timely serve the respondent as required by Rule #203(b) of the South Carolina Appellate Court Rules!!!

In Southerland v. State, 524 S.E.2d 833-- "The South Carolina Supreme Court Ruled, a defendant is Constitutionally entitled to the effective assistance of Appellate counsel... First the burden of proof is on Petitioner to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing norms." Second, the Petitioner must prove that he or she was prejudiced by such deficient to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland v. Washington, Supra; accord Smith v. State, 309 S.C. 413, 424 S.E.2d 480 (1992). In analyzing a claim of ineffective

assistance of Appellate counsel the court applies the Strickland Test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 680 S.E.2d 273 (2009).

Here in the case at bar, trial counsel's failure to file a Notice of Intent to Appeal on December 14, 2015. When the Honorable Kristi Harrington opened Applicant's sealed sentence of thirty (30yrs.) years. Especially, when the Applicant prior to his trial had instructed his trial counsel... to accept the State's seven (7) years plea offer. Also, informed trial counsel to appeal the thirty (30yrs.) years sentence, because it was twice the amount of time his co-defendant received for the same charge, and before the very same Judge and Jury!!!

The Applicant's Motion to Reconsider Sentence was denied on Feb. 12, 2015. Ms. Lauren E. Williams, Esq., ...who was retained to file the motion, later informed the Applicant of his rights to Appellate review, in a letter. Nevertheless, it appears that Ms. Williams failed to file a timely Notice of Intent to Appeal, ... on the Respondent once the Motion to Reconsider Sentence was denied. Both attorneys, Mr. James W. Smiley, IV, Esq., and Ms. Lauren E. Williams, Esq., knew or should have known the Applicant was constitutionally guaranteed a direct appeal as first right. See Evitts v. Lucey, supra!!!

The United States Supreme Court ruled in Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1984)... "the Due Process Clause of the Fourteenth (14th) Amendment guarantees a criminal defendant the effective assistance of counsel, on his first appeal as of right." A first appeal as of right, therefore is not adjudicated in accord with due process of law if the Applicant does not have the effective assistance of an attorney. If a State has created Appellate courts as an integral part of the system for finally adjudicating the guilt or innocence of a defendant. In Griffin v. Illinois, 351 U.S. at 18, 76 S.Ct. 590, ... the procedures must comport with the demands of the Due Process and Equal Protection Clauses of the United States Constitution. Here, neither the Applicant's trial attorney or the attorney who filed the Motion

to Reconsider Sentence, neither filed or timely served the Respondent as required by Rule #203(b) of the South Carolina Appellate Court Rules. Again, See United State v. Hill, 310 F.2d 601 (4th Cir.1962)---"Counsel is required to acquaint himself or herself with the law of the case."

However, both the South Carolina Court of Appeals "Order", and the "Remittitur", was sent to Ms. Lauren E. Williams, Esq.. The Order and the Remittitur, shows that the Applicant has been denied his constitutional right to a first appeal as of right. The dismissal of the appeal shows that the appeal violated the Due Process and Equal Protection Right Clauses of the Fifth (5th) and Fourteenth (14th) Amendments of the United States Constitution. As well as his Sixth (6th) Amendment right to the effective assistance of Appellate Counsel!!!

Therefore, the Applicant asserts that his "Appeal" was the result of failures on the part of his trial and Motion to Reconsider Sentence attorneys. Which violated his Sixth (6th) Amendment rights. As well as his Fifth (5th) and Fourteenth (14th) Amendments rights to Due Process and Equal Protection Clauses of the United States Constitution. Applicant was not represented with effective assistance of counsel on his first appeal as of right. See Evitts v. Lucey, supra; Douglas v. California, supra; Gideon v. Wainwright, supra; Southerland v. State, supra; Smith v. State, supra; Bennett v. State, supra; Strickland v. Washington, supra; and Griffin v. Illinois, supra;..."Which states the procedures must comport with the demands of the Due Process and Equal Protection Clauses of the United States Constitution !!!

D. The Applicant asserts that he is entitled to an appeal under White v. State, 263 S.Ct. 110, 208 S.E.2d 35 !!!

The Applicant states, that he is entitled to the effective assistance of counsel, on his first appeal. In the case, Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830. The United States Supreme Court ruled ----"The Due Process clause of the Fourteenth (14th) Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal as of right. See Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708 (1980) "(Nonetheless, if a State has

created Appellate Courts as "an integral part of the...system for finally adjudicating the guilt or innocence of a defendant" Griffin v. Illinois, 351 U.S. 18, 76 S.Ct. 590, the procedures used in deciding appeals must comport with demands of the due process and Equal Protection Clauses of the Constitution !!!

The South Carolina Court of Appeal's "Order", on May 18, 2016 and the Remittitur, on June 14, 2016, clearly shows that his (Applicant) direct appeal did not comport with the due process and equal protection clauses of the Fifth (5th) and Fourteenth (14th) Amendments of the United States Constitution. The Applicant's direct appeal was "Dismissed" as the result of the attorneys failure to timely serve the respondent with the Notice of Appeal. As required by Rule #203, of the South Carolina Appellate Court Rules. Both retained counsel's actions were deficient and prejudicial because Applicant's appeal would have been reversed had it been properly perfected. The Applicant expressed his desire to appeal in open court and to his attorney, on December 14, 2015.

In Simuel v. State, 701 S.E.2d 738, 740----"following a trial counsel must make certain the defendant is made fully aware of the right to appeal. (Turner I,) Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373 (2008)(citation omitted). Also, see Turner v. State, 384 S.C. 451, 682 S.E.2d 792 (2009)(finding counsel must inform a criminal defendant found guilty of a crime after a trial about the possibility of an appeal.)(Turner II), In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738, 87 S.Ct. 1397 (1967). Turner, 380 S.Ct. at 224, 670 S.E.2d at 374 (citation omitted).

"To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal." See Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462 (2004) !!!

The Applicant asserts that he is entitled to a White v. State, 263 S.C. 110, 208 S.E.2d 35, appeal. He has not been given his first appeal as of right. As the result of him being subjected to ineffective assistance of counsel, in violation of the Sixth (6th),

and Fourteenth Amendments of the United States Constitution !!!

CONCLUSION

Wherefore, the allegation set forth in the Applicant's Post-Conviction Relief Motion. The Applicant is entitled to a reversal of conviction because he informed his trial counsel to accept the State's Plea Offer of seven (7yrs.) years, and trial counsel allowed the plea offer to expire. He was never informed of his Rule #16, SCRCrim.P., rights to be tried in his absence; and his trial attorney never made any "Objections" to him being tried in his absence in the courtroom at the first opportunity to do so. Nor did his attorneys timely serve the respondent with the Notice of Appeal. The Applicant asserts that his Fifth (5th); Sixth (6th); and Fourteenth (14th) Amendments rights under the United States Constitution has been willfully violated !!!!!

State of South Carolina
County of Charleston

In The Court of Common Pleas

Ishmel Jayvan Lemon #310411
Appellant,

Civil Action No.

2017-CP-10-1693

v.

Certificate of Service

State of South Carolina
Respondent.

I, Ishmel Jayvan Lemon, hereby certify that I have served a copy of the Application for Post-Conviction Relief on the Respondent, the Honorable Alan M. Wilson, South Carolina Attorney General's Office; P.O. Box 11549; Columbia, S.C. 29211, by placing in The U.S. Mailbox postage pre-paid here at Broad River Corr. Institution; 4460 Broad River Rd., Columbia, S.C. 29211.

Sincerely,

Ishmel Jayvan Lemon

Ishmel Jayvan Lemon #310411

SWORN to and SUBSCRIBED before me

this 29 day of MARCH 2017.

[Signature]
Notary Public for South Carolina

My Commission Expires:

9/16/2020

JULIE J. ARMSTRONG
CLERK OF COURT

2017 APR -4 PM 4:55

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ishmel Jayvan Lemon, #310411
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2017-CP-10-1693

**RETURN AND MOTION TO DISMISS
WITHOUT PREJUDICE**

FILED
2018 FEB -1 PM 3:22
JULIE J. ARMSTRONG
CLERK OF COURT

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on April 4, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In March 2014, the Charleston County Grand Jury indicted Applicant for first degree burglary (2014-GS-10-1310). The charge resulted from an October 2013 incident in which Applicant and at least one other individual broke into the victim's apartment and ransacked the apartment while she hid in the closet. Tr. pp. 69-70. James Watson Smiley, Esquire represented Applicant. David Leon Osborne, Esquire prosecuted the case. On March 2, 2015, Applicant and a codefendant proceeded to trial before the Honorable W. Jeffrey Young. The jury found Applicant guilty as indicted. Applicant's sentence was sealed by Judge Young because Applicant failed to appear at trial despite having adequate notice. Tr. p. 42. Mr. Smiley requested to be relieved as counsel at the end of trial, and that request was granted. Tr. p. 411. Applicant appeared before the Honorable Kristi Lea Harrington on December 14, 2015, to hear his sentence. Judge Harrington unsealed Applicant's sentence of imprisonment for thirty years for first degree burglary.

Applicant filed a *pro se* notice of intent to appeal on or around February 18, 2016. Applicant was represented by Lauren E. Williams, Esquire during the appellate process. The appeal was dismissed for failure to timely serve Respondent pursuant to Rule 203(b), SCACR by order filed May 18, 2016. State v. Lemon, App. Case No. 2016-000308. The remittitur was returned to the circuit court on June 14, 2016.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant asserts his Due Process and Equal Protection rights were violated under the Fifth and Fourteenth Amendments when the trial court failed to make a finding in fact regarding Rule 16, SCRCrimP., that Applicant received notice of his right to be present for trial and the defendant was given warning that he should be tried in his absence. Also, violated his confrontation rights under the Sixth Amendment."
 - a. "The trial court records will show that Applicant was never warned by the trial court, trial counsel, etc. in regards to Rule 16, SCRCrimP."
 - b. "Absent a Rule 16 finding of fact that [Applicant] received notice of his right to be present for trial and given warning that he would be tried in his absence should he fail to attend court is a reversible error."
 - c. "The Sixth Amendment guarantees the right of the accused to be present at every critical stage of the trial."
2. "Ineffective Assistance of Trial Counsel."
 - a. "When Trial Counsel did not object at the first opportunity to do so regarding Applicant being tried in his absence."
 - b. "Applicant's Sixth Amendment rights attach and he has the right to be present in the courtroom."
 - c. "Counsel failed to make a contemporaneous objection on the record about Applicant being tried in his absence."
 - d. "Trial Counsel's failure willfully violated Applicant's due process and equal protection rights."
 - e. "Trial Counsel's ineffectiveness severely prejudiced Applicant and his deficient actions fell way below professional norms in violation of the two prong test in Strickland."
 - f. "Trial Counsel was ineffective when he failed to convey a plea offer of seven years from the State, until the last day the plea would be valid. Applicant asserts that he would have taken the plea offer and told his Trial Counsel to inform the State he would accept the offer. The state withdrew their offer when Trial Counsel failed to

get back with them before the “deadline date” of the plea expired.”

3. “Ineffective Assistance of Appellate Counsel.”
4. “Applicant asserts he is entitled to a belated appeal pursuant to White v. State as a matter of constitutional right to a first appeal.”

III.

Applicant’s post-trial motion remains pending before the Court. As such, the time to file a notice of appeal remains stayed. Rule 203(b)(1), SCACR (“When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion.”). Therefore, pursuant to Rule 71.1(b), SCRCP, Respondent submits that at the present time, post-conviction relief is not available to the Applicant because the time in which an appeal may be perfected is not yet expired. Therefore, Respondent submits that this application must be summarily dismissed without prejudice until such time as Applicant’s opportunity to appeal has passed.

IV.

Respondent denies each allegation not expressly admitted, qualified, or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application without prejudice because Applicant's motion to reconsider remains pending before the trial court.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RASHEEDA CLEVELAND
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

1/30, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ISHMEL LEMON, #310411)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2017-CP-10-1693

AFFIDAVIT OF SERVICE BY MAIL

FILED
2018 FEB -1 PM 3:22
CLERK OF COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss without Prejudice** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this the 30th day of January, 2018.

Jennifer Jennison
Jennifer Jennison, Legal Assistant
For Respondent

ce
AG - mail
AT
GS
SOL

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ishmel Jayvan Lemon, #310411
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2017-CP-10-1693

**ORDER OF DISMISSAL
WITHOUT PREJUDICE**

2018 FEB 16 AM 11:20

This matter comes before the Court by way of an application for Post-Conviction Relief ("PCR") filed on April 4, 2017.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In March 2014, the Charleston County Grand Jury indicted Applicant for first degree burglary (2014-GS-10-1310). The charge resulted from an October 2013 incident in which Applicant and at least one other individual broke into the victim's apartment and ransacked the apartment while she hid in the closet. Tr. pp. 69-70. James Watson Smiley, Esquire represented Applicant. David Leon Osborne, Esquire prosecuted the case. On March 2, 2015, Applicant and a codefendant proceeded to trial before the Honorable W. Jeffrey Young. The jury found Applicant guilty as indicted. Applicant's sentence was sealed by Judge Young because Applicant failed to appear at trial despite having adequate notice. Tr. p. 42. Mr. Smiley requested to be relieved as counsel at the end of trial, and that request was granted. Tr. p. 411. Applicant appeared before the

Honorable Kristi Lea Harrington on December 14, 2015, to hear his sentence. Judge Harrington unsealed Applicant's sentence of imprisonment for thirty years for first degree burglary.

Applicant filed a *pro se* notice of intent to appeal on or around February 18, 2016. Applicant was represented by Lauren E. Williams, Esquire during the appellate process. The appeal was dismissed for failure to timely serve Respondent pursuant to Rule 203(b), SCACR by order filed May 18, 2016. State v. Lemon, App. Case No. 2016-000308. The remittitur was returned to the circuit court on June 14, 2016.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant asserts his Due Process and Equal Protection rights were violated under the Fifth and Fourteenth Amendments when the trial court failed to make a finding in fact regarding Rule 16, SCRCrimP., that Applicant received notice of his right to be present for trial and the defendant was given warning that he should be tried in his absence. Also, violated his confrontation rights under the Sixth Amendment."
 - a. "The trial court records will show that Applicant was never warned by the trial court, trial counsel, etc. in regards to Rule 16, SCRCrimP."
 - b. "Absent a Rule 16 finding of fact that [Applicant] received notice of his right to be present for trial and given warning that he would be tried in his absence should he fail to attend court is a reversible error."
 - c. "The Sixth Amendment guarantees the right of the accused to be present at every critical stage of the trial."
2. "Ineffective Assistance of Trial Counsel."
 - a. "When Trial Counsel did not object at the first opportunity to do so regarding Applicant being tried in his absence."
 - b. "Applicant's Sixth Amendment rights attach and he has the right to be present in the courtroom."
 - c. "Counsel failed to make a contemporaneous objection on the record about Applicant being tried in his absence."
 - d. "Trial Counsel's failure willfully violated Applicant's due process and equal protection rights."
 - e. "Trial Counsel's ineffectiveness severely prejudiced Applicant and his deficient actions fell way below professional norms in violation of the two prong test in Strickland."
 - f. "Trial Counsel was ineffective when he failed to convey a plea offer of

seven years from the State, until the last day the plea would be valid. Applicant asserts that he would have taken the plea offer and told his Trial Counsel to inform the State he would accept the offer. The state withdrew their offer when Trial Counsel failed to get back with them before the "deadline date" of the plea expired."

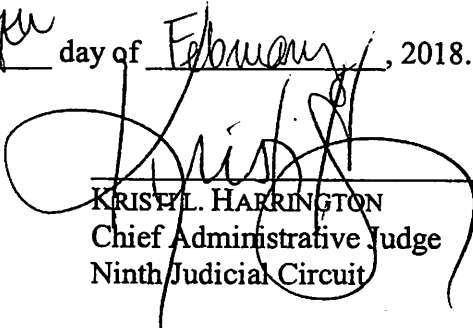
3. "Ineffective Assistance of Appellate Counsel."
4. "Applicant asserts he is entitled to a belated appeal pursuant to White v. State as a matter of constitutional right to a first appeal."

III.

Applicant's post-trial motion remains pending before the Court. As such, the time to file a notice of appeal remains stayed. Rule 203(b)(1), SCACR ("When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion."). Therefore, pursuant to Rule 71.1(b), SCRCrP, Respondent submits that at the present time, post-conviction relief is not available to the Applicant because the time in which an appeal may be perfected is not yet expired. Therefore, this Court finds that this Application for PCR must be summarily dismissed without prejudice until such time the time for filing an appeal has expired.

IT IS THEREFORE ORDERED that the Application filed on December 29, 2015, be dismissed without prejudice.

AND IT IS SO ORDERED this 20 day of February, 2018.


KRISTYL L. HARRINGTON
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

State of South Carolina

v.

Ishmel Jayvan Lemon,

Defendant.

IN THE COURT OF GENERAL
SESSIONS

Indictment No.: 2014-GS-10-1310

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER
SENTENCING**

This matter originally came before this Court during March 2015, when Defendant Lemon was convicted by a jury of his peers of Burglary in the First Degree. He received a 30-year sentence on this charge. On March 4, 2015, Defendant Lemon filed a Motion for Reconsideration of Sentence.

Judge Kristi Harrington left office on July 31, 2018. Therefore, this Order is executed under Rule 63, SCRCP, which states: "If at any time after a trial or hearing has been commenced, but before the final order or judgment has been issued, the judge is unable to proceed, a successor judge shall be assigned. The successor judge may proceed upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties. In a hearing or a trial without a jury, the successor judge shall, at the request of a party, recall any witness whose testimony is material and disputed and who is available to testify without undue burden. A successor judge may also provide for the recall of any witnesses." Rule 63, SCRCP.

After thoroughly considering the Defendant's motion and supporting material, and based on the same, this Court denies Defendant's Motion to Reconsider Sentencing.

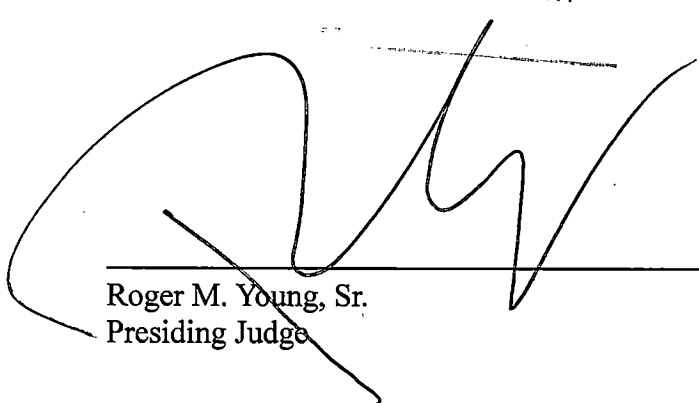


THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
Defendant Brown's Motion for Reconsideration of Sentence is DENIED.

2018 AUG -9 AM 9:59

JILL J. ARMSTRONG
CLERK OF COURT

IT IS SO ORDERED!

August 8, 2018
Charleston, SC

Roger M. Young, Sr.
Presiding Judge

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2022-CP-10-1043
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution 4460 Broad Riverrd
2. Name and location of Court which imposed sentence Charleston County Columbia SC
3. Name(s) of co-defendant(s) (if any) Jordan Brown General session court S.C. 29210
Atwan Champagne 29401-2210
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) #204-GS-10-01310 Burglary, 1st Degree
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 4th 2015 "(sealed 30 yrs)"
 - (b) December 14th, 2015 (unsealed 30 yrs)

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed failure to timely serve-Respondent
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 18th 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appellate case # 2016-000308 Order-May 18 2016
- ii. Remittitur June 17th, 2016
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 (b) Trial Counsel failed to file Appeal after
 (c) I directed him to. My fourteenth Amendment right to due Process was Violated and my Sixth Amendment Right
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) ~~_____~~
 (b) ~~_____~~
 (c) ~~_____~~

12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

- (b) the name and location of the Court in which each was filed:

- i. Court of General Sessions Ninth (9th)
 ii. Judicial Circuit; Charleston, S.C. 29401-2210
 iii. _____
 iv. _____

- (c) the disposition thereof:

- i. ~~_____~~ Denied
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. February 12th 2015
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) 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. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is the Applicant first Opportunity
- (b) his first PCR.
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? NO
- (c) your sentencing? NO
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Mr. James Smiley Esq; 178 King St.
 - ii. Charleston, S.C.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Charleston)

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.

Ishmel Jayvan Lemon

SWORN to and subscribed before me this _____
day of _____, 2____.

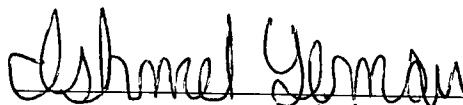
Notary Public (L.S.)

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2____.

Notary Public

My Commission Expires: _____

To whom may be concerned
I, Ishmel Lemon added on with
my P.C.R application to show and review
the courts my lawyer Mr. James Smiley
was ineffective of Counsel. On March
2014 the Charleston County grand jury
indicted applicant for first degree burglary
(2014-GS-10-1310).

The allege crime was committed
October 2013 which the applicant and
at least 2 other individuals allegedly
break into an apartment where nothing
was stolen also the victim never saw
or identify a suspect, but claim to
have heard someone enter the residence.
One hundred fifty dollars of damage
was done to a broken window.

On March 2nd 2015 I, Ishmel Lemon
and Co-defendant proceeded to trial
before the Honorable judge W. Jeffrey
Young. The Applicant was indicted and
sentence to 30 years in prison, in his absence
at trial. Attorney Mr. James Smiley never
objected to the proceeding of the trial
with knowing his client wasn't present
to face his accusers. Shortly after my
conviction at trial that same day.

Mr. James Smiley asked to be relieve from Counsel before having to file my direct appeal. Mr. James Smiley failed to file my direct appeal on my behalf Williams vs Lockhart 849 f 2d 1134.

Mr. James Smiley told me at the Court house after my sentencing to file my own direct appeal. Mr. James Smiley is my attorney that represented me on my direct appeal. Even though his attempt was fruitless, he was still my appellate Counsel. Also that being said Mr. James Smiley was ineffective of counsel for failing to inform me of the one year Statute of limitations for filing A P.C.R application. If Mr. James Smiley had of shown in writting to file your appeal in timely manner, I could of shown it to someone in this matter to help me under these ~~conditions~~ to have my P.C.R application file in the proper time. Therefore Mr. James Smiley was required to make some kind of effort to inform me of the one year Statute of limitations after my direct appeal was dismissed. I did not give a knowing and intelligent waiver of my right to direct appeal.

Pursuant to White v State 208 S.E. 2d 35, (1974) there is no statute of limitations for a denial of my to a direct appeal. The issue can be raised at anytime in an initial P.C.R application. This matter is required pursuant to White v State, for this court to conduct a hearing to determine rather or not applicant was denied ineffective assistance of counsel in regards to perfecting my appeal.

Also soon as I, Ishmel Lemon file my P.C.R application February 18th 2016 I, Ishmel Lemon was represented by Lauren E. Williams, Esquire during the appellate process. The appeal was returned dismissed for failure to timely serve respondent pursuant to rule 203 (b) S.C.A.C.R by order filed May 18th 2016 State v Lemon App case NO. 2016-000308.

The remittitur was returned to circuit court June 14th 2016. Due to the grounds pursuant White v State the exception rule applies to this P.C.R application in regards to the statute of limitations claim raised by the respondent.

Even if the court determines the application is untimely A White v State was suppose to be conducted in regards to my direct appeal rights, similar to Austin v State.

Truly Submitted
Ishael Lemon

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Ishmel J. Lemon, #310411,	)	CASE NO. 2022-CP-10-1043
	)	
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

RETURN
(Counsel Appointed)

FILED
2023 MAR 28 AM 10:59
JULIE J. ARMSTRONG
CLERK OF COURT

In response to Ishmel J. Lemon's (Applicant) action for post-conviction relief (PCR) filed March 03, 2022, Respondent makes this Return.¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court orders of commitment. In March 2014, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2014-GS-10-1310). On March 2, 2015, Applicant and a codefendant proceeded to a jury trial before the Honorable W. Jeffrey Young. James W. Smiley, Esquire, represented Applicant, and David L. Osborne and Gregory K. Voight, Esquires, prosecuted the case. Applicant was found guilty as indicted. Applicant's

¹ Respondent's return was due to be filed within ninety days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

sentence was sealed by Judge Young because Applicant failed to appear at trial despite having adequate notice. (Tr. p. 42). Mr. Smiley requested to be relieved as counsel at the end of the trial, and that request was granted. (Tr. p. 411). Applicant appeared before the Honorable Kristi Lea Harrington on December 14, 2015, and Judge Harrington unsealed Applicant's sentence of imprisonment for thirty years for first-degree burglary.

Applicant filed a motion to reconsider the sentence on December 22, 2015. Applicant filed a *pro se* notice of intent to appeal on or around February 18, 2016. Applicant was represented by Lauren E. Williams, Esquire during the appellate process. The appeal was dismissed for failure to timely serve Respondent pursuant to Rule 203(b), SCACR by order filed May 18, 2016. State v. Lemon, App. Case No. 2016-000308. The remittitur was returned to the circuit court on June 14, 2016.

Applicant's Initial Post-Conviction Relief Action (2014-CP-15-0127)

Applicant filed his *first* application for post-conviction relief on December 29, 2015. In that application, Applicant alleged he was being held in custody unlawfully based on:

1. "Applicant asserts his Due Process and Equal Protection rights were violated under the Fifth and Fourteenth Amendments when the trial court failed to make a finding in fact regarding Rule 16, SCRCrimP., that Applicant received notice of his right to be present for trial and the defendant was given warning that he should be tried in his absence. Also, violated his confrontation rights under the Sixth Amendment."
 - a. "The trial court records will show that Applicant was never warned by the trial court, trial counsel, etc. in regards to Rule 16, SCRCrimP."
 - b. "Absent a Rule 16 finding of fact that [Applicant] received notice of his right to be present for trial and given warning that he would be tried in his absence should he fail to attend court is a reversible error."
 - c. "The Sixth Amendment guarantees the right of the accused to be present at every critical stage of the trial."
2. "Ineffective Assistance of Trial Counsel."
 - a. "When Trial Counsel did not object at the first opportunity to do

- so regarding Applicant being tried in his absence."
- b. "Applicant's Sixth Amendment rights attach and he has the right to be present in the courtroom."
- c. "Counsel failed to make a contemporaneous objection on the record about Applicant being tried in his absence."
- d. "Trial Counsel's failure willfully violated Applicant's due process and equal protection rights."
- e. "Trial Counsel's ineffectiveness severely prejudiced Applicant and his deficient actions fell way below professional norms in violation of the two prong test in Strickland."
- f. "Trial Counsel was ineffective when he failed to convey a plea offer of seven years from the State, until the last day the plea would be valid. Applicant asserts that he would have taken the plea offer and told his Trial Counsel to inform the State he would accept the offer. The state withdrew their offer when Trial Counsel failed to get back with them before the "deadline date" of the plea expired."
- 3. "Ineffective Assistance of Appellate Counsel."
- 4. "Applicant asserts he is entitled to a belated appeal pursuant to White v. State as a matter of constitutional right to a first appeal."

As requested relief, Applicant is seeking "[t]he State's Plea Offer of Seven (7 yrs) years; And A New Trial."

Respondent made its return on January 30, 2018, requesting for the application to be summarily dismissed without prejudice. In February 2018, the Honorable Kristi Lea Harrington pursuant to Rule 71.1(b), SCRCP, summarily dismissed the application without prejudice because at the time the application was submitted, the time in which Applicant could appeal had not passed. The order was filed in February 2018, and notice was mailed, on February 21, 2018, to all counsel of record and/or all parties entitled to receive notice.

CURRENT APPLICATION

Applicant timely commenced this application on March 03, 2022. Applicant asserts he is being held in custody unlawfully, alleging ineffective assistance of counsel as follows:

1. Ineffective Assistance of Counsel²
 - a. "Trial Counsel failed to file Appeal after I directed him to my fourteenth Amendment right to due process was violated and my sixth amendment."
 - b. Counsel "never objected to the proceeding of the trial with knowing his client wasn't present to face his accusers."

Applicant does not state what request the Applicant is seeking.

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, Applicant's appellate records, the records from Applicant's first post-conviction relief matter, and records of the current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

In his application, Applicant raises ineffective assistance of trial counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of that constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

² Applicant attached a memo to his Application further stating the grounds on which Applicant's allegations are based.

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). Id. at 690–95; Butler, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Id. at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so

undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether,

in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of

the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." Id. at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Id. at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Finally, the performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Strickland, at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

Allegation #1(b): Tried in Absentia

In the present application, Applicant alleges that trial counsel was ineffective because counsel "never objected to the proceeding of the trial with knowing his client wasn't present to face his accusers." The record reflects Applicant had all the required notice regarding his right to be present for trial, the term of court during which his trial was scheduled to be held, and the consequences of his failure to appear. The trial court's ruling to proceed without Applicant is fully supported by the assertions of trial counsel and the solicitor. Respondent submits the record

supports that trial counsel was not deficient in his representation as Applicant validly waived his right to be present for trial by knowingly and voluntarily failing to appear. As a result, Respondent contends this allegation is without merit.

A criminal defendant unquestionably has a constitutional right to be present for trial coupled with a corresponding legal obligation to appear at the time set for the trial. See Illinois v. Allen, 397 U.S. 337, 338 (1970) ("One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial."); State v. Holloway, 262 S.C. 552, 556, 206 S.E.2d 822, 824 (1974) ("A person charged with a crime is required to appear at the time set for trial, and he cannot be permitted to absent himself for any reason which he chooses."); City of Aiken v. Koontz, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006) (recognizing a criminal defendant has a constitutional right to be present for trial); State v. Patterson, 367 S.C. 219, 230, 625 S.E.2d 239, 244 ("The right to be present at trial is not the right to be absent from trial.").

However, in South Carolina, a defendant may voluntarily waive his right to be present for trial by failing to appear and may be tried in his absence if he fails to appear for trial after receiving notice regarding: (1) his right to be present; and (2) the consequences of his failure to attend. See Rule 16, SCRCrimP ("Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court."); State v. Green, 269 S.C. 657, 662, 239 S.E.2d 485, 487 (1977) ("The right to be present at trial, like many other constitutional rights can be waived if done 'voluntarily' and 'knowingly'").

The South Carolina Court of Appeals has ruled that a court may not try a criminal defendant *in absentia* unless it finds that he received notice of the trial and voluntarily chose to be absent. State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (2017). Accordingly, our courts have considered what constitutes sufficient notice to enable a defendant to make an effective waiver of his right to be present at trial and found that "a bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear." State v. Ravenell, 692 S.E.2d 554, 558 (S.C. Ct. App. 2010). Likewise, our courts have held that notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present. City of Aiken, 368 S.C. at 456. "The deliberate absence of a defendant who knows that he stands accused in a criminal case and that his trial will begin during a specific period of time indicated nothing less than an intention to obstruct the orderly processes of justice." State v. Ravenell, 387 S.C. 449, 456, 692 S.E.2d 554, 558 (Ct. App. 2010).

Where defense counsel is faced with the prospect of proceeding with a trial *in absentia*, he or she may be professionally obliged to both move for a continuance *and* object to proceeding *in absentia*. See Morris v. State, 371 S.C. 278, 639 S.E.2d 53 (2006) (finding ineffectiveness where counsel failed to move for a continuance when defendant signed a sentencing sheet to plead guilty to a lesser-included offense and then left the courthouse). Despite this obligation, South Carolina trial judges are vested with broad discretion when faced with a decision as to whether to grant or deny a motion for a continuance, and such decisions are ordinarily entitled to and afforded the highest degree of deference. Yarborough, 363 S.C. at 266, 609 S.E.2d at 595; see State v. Squires, 248 S.C. 239, 244, 149 S.E.2d 601, 603 (1966) ("It is well settled in this jurisdiction, as well as in most others, that the trial court's refusal of a motion for continuance in a criminal case will not be

disturbed in the absence of a clear and conclusive abuse of discretion."'). As a result, reversals of continuance decisions "are about *as rare as the proverbial hens' teeth*" in our state. State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957) (emphasis added).

Here, prior to the beginning of the trial, trial counsel moved for a continuance based on Applicant's absence. Recognizing Applicant received all the notice needed for him to be able to knowingly exercise his right to be present for trial, the trial court found Applicant was aware of his right to be present, the term of court during which his trial was scheduled to be held, and the fact his trial would proceed forward without him if he failed to appear. Those findings supported the court's determination Applicant voluntarily waived his right to be present for trial by failing to appear as required.

For the above-reasons, Applicant cannot satisfy either requirement of Strickland, nor show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Allegation 1(a): White v. State³

Applicant alleges "Trial Counsel failed to file appeal" which applicant claims is the reason that Applicant did not appeal. Applicant's trial counsel was relieved by the Court after sealed sentencing at trial. In the memorandum attached to the application, Applicant admits that trial counsel "told me at the court house after my sentencing to file my own direct appeal." Respondent

³ 263 S.C. 110, 208 S.E.2d 35 (1974).

submits this claim is without merit.

When counsel has consulted with the defendant regarding the right to appeal, "[c]ounsel performs in a professionally unreasonable manner *only* by failing to follow the defendant's express instructions with respect to an appeal." Flores-Ortega, 528 U.S. at 478 (emphasis added). In White, the South Carolina Supreme Court held that even though the post-conviction relief court finds the applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

In the present application, Applicant alleges the reason for not appealing is because his counsel failed to file an appeal. Because this allegation likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last

minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S/C?231. 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See Love (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and Signature Page Follows]

CONCLUSION

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel.

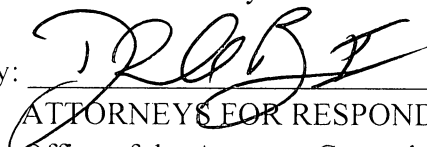
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
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 DANIELLE DIXON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

March 24, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ishmel Jayvan Lemon, #310411

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

2022-CP-10-01043

CERTIFICATE OF SERVICE BY MAIL

FILED
2023 MAR 28 AM 10:59
JULIE J. ARMSTRONG
CLERK OF COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 24th day of March, 2023.

Vickie Hall

Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ishmel J. Lemon, #310411,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2022-CP-10-1043

AMENDED RETURN AND
PARTIAL MOTION TO DISMISS
(Counsel Appointed)

2023 APR -7 AM 12:05
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

In response to Ishmel J. Lemon's (Applicant) action for post-conviction relief (PCR) filed March 3, 2022, Respondent makes this amended return and partial motion to dismiss:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-year sentence. In March 2014, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2014-GS-10-1310). On March 2, 2015, Applicant and a codefendant's case proceeded to a jury trial before the Honorable W. Jeffrey Young. James W. Smiley, Esquire, represented Applicant. David L. Osborne and Gregory K. Voight prosecuted the case. Applicant was not present during his trial despite having adequate notice. (Tr. 42). The jury convicted him as indicted, and Judge Young sealed the sentence. (Tr. 42). At the conclusion of trial, Judge Young granted Mr. Smiley's request to be relieved. (Tr. 411). On December 14, 2015, Applicant appeared before the Honorable Kristi Lea Harrington for sentencing. Pursuant to the sealed sentence, he was sentenced to thirty years' imprisonment.

On December 22, 2015, Applicant filed a motion to reconsider the sentence.¹ On February 18, 2016, Applicant filed a *pro se* notice of intent to appeal. Lauren E. Williams, Esquire,

¹ According to the public index, this motion was denied on August 9, 2018.

represented Applicant on appeal. On May 18, 2016, the appeal was dismissed for failure to timely serve Respondent. State v. Lemon, App. Case No. 2016-000308. The remittitur was sent on June 14, 2016.

Applicant's Initial Post-Conviction Relief Action (2014-CP-15-0127)

Applicant filed his first PCR application on December 29, 2015, while his motion to reconsider the sentence was pending. In that application, Applicant alleged he was being held in custody unlawfully based on:

1. "Applicant asserts his Due Process and Equal Protection rights were violated under the Fifth and Fourteenth Amendments when the trial court failed to make a finding in fact regarding Rule 16, SCRCrimP., that Applicant received notice of his right to be present for trial and the defendant was given warning that he should be tried in his absence. Also, violated his confrontation rights under the Sixth Amendment."
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 - b. "Absent a Rule 16 finding of fact that [Applicant] received notice of his right to be present for trial and given warning that he would be tried in his absence should he fail to attend court is a reversible error."
 - c. "The Sixth Amendment guarantees the right of the accused to be present at every critical stage of the trial."
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 - b. "Applicant's Sixth Amendment rights attach and he has the right to be present in the courtroom."
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 - e. "Trial Counsel's ineffectiveness severely prejudiced Applicant and his deficient actions fell way below professional norms in violation of the two prong test in Strickland."
 - f. "Trial Counsel was ineffective when he failed to convey a plea offer of seven years from the State, until the last day the plea would be valid. Applicant asserts that he would have taken the plea offer and told his Trial Counsel to inform the State he would

accept the offer. The state withdrew their offer when Trial Counsel failed to get back with them before the "deadline date" of the plea expired."

3. "Ineffective Assistance of Appellate Counsel."
4. "Applicant asserts he is entitled to a belated appeal pursuant to White v. State as a matter of constitutional right to a first appeal."

As relief, Applicant sought "[t]he State's Plea Offer of Seven (7 yrs) years; And A New Trial."

Respondent made its return on January 30, 2018, requesting the application be summarily dismissed without prejudice. On February 16, 2018, the Honorable Kristi Lea Harrington summarily dismissed the application without prejudice pursuant to Rule 71.1(b), SCRPC, finding that at the time the application was submitted, the time in which Applicant could appeal had not passed.

CURRENT APPLICATION

Applicant *untimely* commenced this current application on March 3, 2022. Applicant asserts he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel²
 - a. "Trial Counsel failed to file Appeal after I directed him to my fourteenth Amendment right to due process was violated and my sixth amendment."
 - b. Counsel "never objected to the proceeding of the trial with knowing his client wasn't present to face his accusers."

Applicant does not state what relief he is seeking.

Respondent incorporates by reference the attachments to its previously-filed return, which include the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, Applicant's appellate records, the records from Applicant's first post-conviction

² Applicant attached a memo to his application further stating the grounds on which Applicant's allegations are based.

relief matter, and records of the current application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

PARTIAL MOTION TO DISMISS

Allegation 1(b) should be summarily dismissed as *untimely*, barred by the statute of limitations, and for failure to comply with the filing procedures of the PCR Act.³ S.C. Code Ann. §17-27-10 to -160. The Act requires:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The statute of limitations applies all PCR applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). The Court may "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." S.C. Code Ann. § 17-27-70(c).

Here, Applicant was sentenced on December 14, 2015. He filed a timely motion to reconsider the sentence, which was dismissed on August 9, 2018. Although Applicant filed a direct appeal while his motion to reconsider was pending, Applicant did not file a direct appeal after his motion for resentencing was denied. Thus, his application was due to be filed by August

³ Respondent further submits that any amended allegations raising ineffective assistance of counsel—with the exception of the belated appeal issue discussed below—would be barred by the statute of limitations.

10, 2019. Respondent waited until March 3, 2022—more than two years after the statute of limitations expired. Therefore, Respondent requests that this Court summarily dismiss allegation 1(b) due to Applicant's failure to file within the time mandated by the Act.

ALLEGATION 1(A): BELATED APPEAL PURSUANT TO WHITE V. STATE⁴

Applicant alleges "Trail Counsel failed to file appeal," which applicant claims is the reason Applicant did not appeal. Applicant's trial counsel was relieved by the Court after sealed sentencing at trial. In the memorandum attached to the application, Applicant admits that trial counsel "told me at the court house after my sentencing to file my own direct appeal." Thus, Respondent submits this claim is without merit.

When counsel has consulted with the defendant regarding the right to appeal, "[c]ounsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Flores-Ortega, 528 U.S. at 478. Where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. White, 263 at 119, 108 S.E.2d at 39-40.

Here, Applicant alleges he did not file an appeal because his counsel failed to file an appeal. Because this allegation likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges

⁴ 263 S.C. 110, 208 S.E.2d 35 (1974). The State concedes the statute of limitations does not apply to White claims.

specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S/C?231. 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance. See Love (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to section 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

CONCLUSION

WHEREFORE, Respondent respectfully moves to dismiss allegation 1(b) as barred by the statute of limitations. Respondent further requests this Court convene an evidentiary hearing solely on Applicant's allegation related to a belated appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

April 5, 2023

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Ishmel J. Lemon, #310411,

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

2022-CP-10-1043

CERTIFICATE OF SERVICE BY MAIL

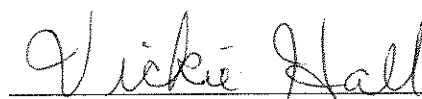
1. I am an employee of the Respondent in the above-captioned action.

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 Amended Return and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402**

DATED this 5th day of April, 2023.



Vickie Hall, Legal Assistant
For Respondent

FILED
2023 APR -7 AM 11:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY DCL

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BERKELEY

2022-CP-10-01043

Ishmel J. Lemon

)

) TRANSCRIPT OF RECORD

-vs-

)

) October 18, 2023

State of South Carolina)

) Moncks Corner, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge

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

Danielle Dixon, Esquire
Attorney for the StateChristopher L. Murphy, Esquire
Attorney for the Applicant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 MS. DIXON: May I approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 MS. DIXON: This is the court packet for
4 the case coming up right now. May it please the Court.

5 THE COURT: Yes, ma'am.

6 MS. DIXON: Danielle Dixon, assistant
7 attorney general for the state of South Carolina.
8 This is the case of Ishmel Lemon v. State, Docket
9 No. 2022-CP-10-1043. Mr. Lemon is currently serving
10 a 30-year sentence.

11 In March of 2014, he was indicted by the
12 Charleston County Grand Jury for first-degree burglary;
13 that's indictment No. 2014-GS-10-1310. He was tried
14 in his absence in March of 2015 before the Honorable
15 Jeffrey Young. He was represented by James Smiley,
16 and Assistant Solicitors David Osborne and Gregory
17 Voigt [ph] prosecuted the case. He was convicted,
18 as indicted. The sentence was sealed, and on December
19 14th, 2015, Judge Harrington unsealed the sentence
20 and gave him -- imposed a 30-year sentence at that time.

21 On December 22nd, 2015, he filed a motion
22 to reconsider his sentence. And at that time, that was
23 filed with the assistance of attorney Lauren Williamson
24 [sic.]. While that was pending, he filed his first
25 PCR application December 29th, 2015; that's docket No.

1 2014-CP-10-127. He also, while those were both pending,
2 filed a pro se notice of appeal February 18th, 2016.
3 The appeal was dismissed for failure to timely serve
4 the respondent. The remittitur was sent June 14th,
5 2016.

6 February 16, 2018, Judge Harrington
7 dismissed his first PCR application without prejudice,
8 finding at the time of filing, the time in which
9 he could appeal had not yet passed. August 9th, 2018,
10 Judge Young, this is Roger M. Young, Sr., issued
11 an order denying his motion to reconsider the sentence
12 in general sessions. This PCR application was filed
13 March 3rd, 2022. The State did file a return, and then
14 an amended return, and a motion to dismiss all claims
15 as barred by the statute of limitations, with the
16 exception of the White claim related to a late appeal.

17 Our understanding at this time, Your Honor,
18 is the only issue they're intending to go forward on
19 is the White issue. And, I guess, before we go further,
20 I think that Mr. Murphy may have represented Mr. Lemon
21 prior to Mr. Lemon retaining James Smiley, so we would
22 like to make sure that he's waiving any potential
23 conflict on the record. And then, I believe Mr. Murphy
24 and I have just a couple of stipulations.

25 THE COURT: All right, yes, ma'am.

1 MR. MURPHY: Thank you, Your Honor.
2 May it please the Court. First, I have represented
3 Mr. Lemon very briefly in the past, and I cannot recall
4 if it was for the criminal -- the underlying criminal
5 charges, or if it was for one of the PCRs that were
6 dismissed. I -- it would have been through a Rule 608
7 appointment, but it was very brief, and I don't recall
8 even talking to him during that time period.

9 To the extent that's a conflict, we wanted
10 to bring that up before the Court. And then again,
11 Your Honor, the -- explained to Mr. Lemon the name
12 change -- our names, and no conflict. And then,
13 that is correct that we want to go forward on the direct
14 appeal. He missed out on his direct appeal only.

15 THE COURT: All right. Thank you,
16 Mr. Murphy. Mr. Lemon, if you'll please rise and raise
17 your right hand.

18 (Whereupon, MR. ISHMELEMON was duly sworn.)

19 THE COURT: All right. So, Mr. Lemon,
20 we've got two issues here that we've got to talk about
21 as far as potential conflicts of interest. Mr. Murphy
22 and I are not related, even though both of our names
23 are Murphy. I also have a husband named Christopher
24 Murphy, which is his name as well, but they do have
25 a different middle initial. This Mr. Murphy and I don't

1 know each other, although professionally I've seen him,
2 of course, in the courtroom, but there would be no
3 conflict for you to be concerned about, and just wanted
4 to explain that to you so that you would not have any
5 concerns about us having the same name.

6 MR. LEMON: Yes, ma'am.

7 THE COURT: All right. Do you have any
8 questions or concerns about that?

9 MR. LEMON: No, ma'am.

10 THE COURT: All right. And in regards
11 to the other potential conflict, I understand that
12 Mr. Murphy previously represented you briefly
13 on a criminal issue. Do you have any problems with
14 him representing you now as far as today's proceedings
15 are concerned?

16 MR. LEMON: No, ma'am.

17 THE COURT: You waive that conflict,
18 knowing fully that he may have had information
19 on you in the past?

20 MR. LEMON: Yes, ma'am.

21 THE COURT: And are you doing so freely
22 and voluntarily?

23 MR. LEMON: Yes, ma'am.

24 THE COURT: All right. Mr. Murphy.

25 MR. MURPHY: Thank you, Your Honor.

1 MS. DIXON: And then, Your Honor, just
2 briefly, I think Mr. Murphy and I can stipulate,
3 Mr. Smiley was relieved at the end of the trial in
4 absence. Judge Harrington did require him to attend
5 the sentencing, but he would testify that he did not
6 speak to Mr. Lemon at that time or after that point.

7 Additionally, Lauren Williamson would
8 testify that she provided him a pro se -- that they
9 had a hearing before Judge Young in February of 2016,
10 actually, and she provided him a pro se notice
11 of appeal at that time, and told him that, basically,
12 this is what he would need to do if he wanted to appeal
13 it, and we do know that he did attempt to appeal it.
14 So in light of that, that would be, I think, the
15 evidence that would be offered if we had witnesses
16 here today.

17 THE COURT: Is that correct, Mr. Murphy?

18 MR. MURPHY: That is correct, Your Honor.
19 And we would just call Mr. Lemon to the stand.

20 THE COURT: All right, Mr. Lemon, come
21 on up. I mean, I don't mind if he testifies over
22 there.

23 MR. MURPHY: That's fine, that's fine.
24 You could sit down.

25 THE COURT: Does that give you enough room,

1 Mr. Murphy?

2 MR. MURPHY: That does. We're going
3 to be very brief, Your Honor.

4 THE COURT: Okay.

5 MR. MURPHY: And if you'll swear
6 the witness; I'm not sure if he's already sworn.

7 THE COURT: He's already sworn.

8 MR. MURPHY: All right.

9 THE COURT: You're still under oath,
10 Mr. Lemon.

11 DIRECT EXAMINATION

12 BY MR. MURPHY:

13 Q. Mr. Lemon, you had Mr. Smiley represent you
14 in your underlying criminal charges; is that correct?

15 A. Yes, sir.

16 Q. And you've got to speak up for the court
17 reporter.

18 A. Yes, sir.

19 Q. And he was retained, or was he appointed?

20 A. He was retained.

21 Q. All right. And did you speak with him,
22 or have knowledge that your trial was going forward,
23 the underlying case?

24 A. I spoke to him, but never about the trial dates
25 or anything.

1 Q. Okay. And in terms of the actual trial that
2 you were tried in your absence, did you know about
3 that -- that trial was going forward?

4 A. No, because I had another charge that I had
5 that I went on the run for.

6 Q. Okay. So you were on the run for another charge
7 and lost touch with Mr. Smiley?

8 A. Yes, sir.

9 Q. After the conviction for this trial, did you talk
10 to Mr. Smiley?

11 A. No, sir.

12 Q. Okay. And then you realized that you had
13 a sealed sentence, you were convicted in your absence,
14 correct?

15 A. I didn't realize anything, because I didn't
16 have any contact with anyone; I was on the run.

17 Q. Okay. And then at one point, you hired
18 Ms. Lauren Williams; is that correct?

19 A. Yes, sir.

20 Q. And what was the scope of her representation?

21 A. I hired her for reconsideration of my sentence.

22 Q. Okay. And did you attend court for that
23 reconsideration?

24 A. Yes, sir.

25 Q. All right. And then afterwards, did the judge

1 issue a ruling from the bench, or did the judge take
2 it under advisement and issue an order?

3 A. He issued a ruling that he dismissed my
4 reconsideration.

5 Q. Okay. And so after the judge dismissed your
6 motion to reconsider, did you talk to Ms. Williams
7 about an appeal?

8 A. Yes, sir, but she didn't file an appeal.

9 Q. Okay. Did you expect her to file an appeal?

10 A. Yes, sir.

11 Q. Did you want to file an appeal?

12 A. Yes, sir.

13 Q. All right. Now you attempted to file an appeal
14 by yourself; is that correct?

15 A. Yes, sir.

16 Q. And what happened with that?

17 A. I actually don't know anything about the law,
18 I'm blind to the law. So, I tried it, and I tried
19 to see what results I could get.

20 Q. And did you get any -- did anybody from appellate
21 defense contact you about representing you?

22 A. They referred me to a guy named -- he passed
23 away, Mr. Falk, James Falk.

24 Q. All right. And do you know what Mr. Falk
25 was supposed to do, or how he was supposed to represent

1 you?

2 A. He was supposed to give me my transcript papers,
3 motions, things like that; he never gave me anything.

4 Q. All right.

5 A. He never contacted ---

6 Q. And why we're here, is you want to appeal any
7 issues from your underlying trial; is that correct?

8 A. Yes, sir.

9 Q. And you still want to do that?

10 A. Yes, sir.

11 Q. Okay.

12 MR. MURPHY: That's all I have, Your Honor.

13 THE COURT: Thank you. Any
14 cross-examination?

15 MS. DIXON: Nothing, Your Honor.

16 THE COURT: Any other witnesses?

17 MR. MURPHY: Nothing, Your Honor. We rest.

18 THE COURT: All right. Thank you,
19 Counsel. I'll take the time to review the transcripts
20 in the matter before the Court, and notify you.

21 MS. DIXON: Thank you.

22 (End of Transcript of Record)

23

24

25

CERTIFICATE OF REPORTER

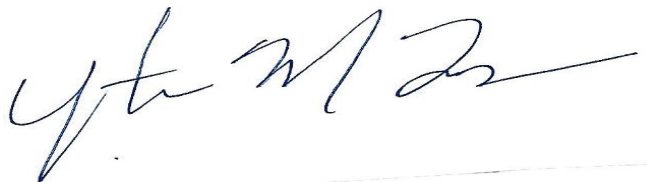
State of South Carolina)

County of Berkeley)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 18th of October, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 7, 2024



Yvestre Torres

Circuit Court Reporter

Ag
GS
Sol
Atty

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ishmel J. Lemon, #310411,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)
)

) CASE NO. 2022-CP-10-1043
)
)
)

ORDER OF DISMISSAL

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Ishmel J. Lemon's (Applicant) on March 3, 2022. Respondent made a return and motion to dismiss all claims (other than Applicant's claim related to a belated appeal) as barred by the statute of limitations. On October 18, 2023, a hearing convened before the Honorable Maite Murphy. Applicant was present and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. During the hearing, Applicant waived all claims other than his belated appeal claim. Applicant testified on his behalf during the hearing. Additionally, the parties stipulated that trial counsel James W. Smiley, Esquire, was relieved at the end of Applicant's trial *in absentia* and did not speak to Applicant thereafter. The parties further stipulated that Lauren Williamson, Esquire—whom Applicant hired to file a motion for reconsideration—provided Applicant a pro se notice of appeal from at the motion hearing in February 2016, which Applicant attempted to file. After considering the records, this Court finds Applicant failed to prove he is entitled to a belated appeal. This Court further finds Applicant waived his remaining claims, which would have been barred by the statute of limitations. Thus, this application is denied and dismissed with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a thirty-year sentence. In March 2014, the Charleston County Grand Jury indicted Applicant for first-degree burglary (2014-GS-10-1310). On March 2, 2015, Applicant and a codefendant proceeded to a jury trial before the Honorable W. Jeffrey Young. James W. Smiley, Esquire, represented Applicant. David L. Osborne and Gregory K. Voight prosecuted the case. Applicant was not present at trial despite having adequate notice. (Tr. 42). The jury convicted him as indicted, and Judge Young sealed the sentence. (Tr. 42). At the conclusion of trial, Judge Young granted Mr. Smiley's request to be relieved. (Tr. 411). On December 14, 2015, Applicant appeared before the Honorable Kristi Lea Harrington for sentencing. Pursuant to the sealed sentence, he was sentenced to thirty years' imprisonment.

On December 22, 2015, Applicant filed a motion to reconsider the sentence.¹ Lauren E. Williams, Esquire, represented Applicant. On February 18, 2016, Applicant filed a *pro se* notice of intent to appeal. On May 18, 2016, the appeal was dismissed for failure to timely serve Respondent. State v. Lemon, App. Case No. 2016-000308. The remittitur was sent June 14, 2016.

Applicant's Initial Post-Conviction Relief Action (2014-CP-15-0127)

Applicant filed his first PCR application on December 29, 2015, while his motion to reconsider the sentence was pending. In that application, Applicant alleged he was being held in custody unlawfully based on ineffective assistance of counsel and various constitutional violations. Applicant also asserted he was entitled to a late appeal pursuant to White v. State. As relief, Applicant sought "[t]he State's Plea Offer of Seven (7 yrs) years; and A New Trial."

Respondent filed a return requesting summary dismissal without prejudice. On February

¹ According to the public index, this motion was denied on August 9, 2018.

16, 2018, the Honorable Kristi Lea Harrington summarily dismissed the application without prejudice pursuant to Rule 71.1(b), SCRCR, finding that at the time the application was submitted, the time in which Applicant could appeal had not passed.

CURRENT APPLICATION

Applicant *untimely* commenced this current application on March 3, 2022. Applicant asserts he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel failed to file Appeal after I directed him to my fourteenth Amendment right to due process was violated and my sixth amendment."
 - b. Counsel "never objected to the proceeding of the trial with knowing his client wasn't present to face his accusers."

Applicant did not state what relief he is seeking. At the hearing, Applicant waived allegation 1(b) and proceeded only on allegation 1(a). This Court finds Applicant voluntarily waived allegation 1(b) and dismisses this ground with prejudice.²

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, Applicant's appellate records, the records from Applicant's first PCR, and records of the current application. 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. After a careful review, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

² Alternately, this Court finds allegation 1(b) is barred by the statute of limitations, as asserted by Respondent in its amended return. See S.C. Code Ann. § 17-27-45(A).

*ALLEGATION 1(A): BELATED APPEAL PURSUANT TO WHITE V. STATE*³

This Court finds Applicant did not prove he is entitled to a late appeal. When counsel has consulted with the defendant regarding the right to appeal, "[c]ounsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Flores-Ortega, 528 U.S. at 478. Where an accused establishes in a PCR hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the PCR decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. White, 263 at 119, 108 S.E.2d at 39-40.

At the PCR hearing, Applicant testified he retained Smiley to represent him at trial. He acknowledged he was "on the run for another charge" and was tried in his absence. Applicant stated he hired Williamson to file a motion to reconsider the sentence, but the judge denied his motion from the bench. He testified he spoke to Williamson about an appeal and attempted to file a pro se notice of appeal. Applicant further testified he was referred to James Falk, Esquire.

This Court finds Applicant did not prove he was unconstitutionally deprived of his statutory right of a direct appeal. The evidence before this Court establishes Applicant was aware of his right to appeal. At the time Applicant attempted to file the pro se notice of appeal, Applicant's appeal was premature because the motion to reconsider the sentence had not been finally ruled upon. Once the motion to reconsider was denied on August 9, 2018, Applicant waited more than three years to file the instant action seeking a late appeal—notwithstanding the fact Applicant was aware of his right to appeal and had been referred to an attorney about an appeal. Based on the foregoing, this Court finds Applicant knowingly and voluntarily waived his right to appeal. Thus,

³ 263 S.C. 110, 208 S.E.2d 35 (1974). The State conceded the statute of limitations does not apply to White claims.

this claim is denied and dismissed with prejudice.

CONCLUSION

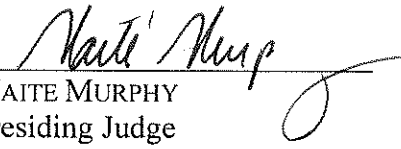
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance on appeal. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to appeal, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71,1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 29 day of Dec, 2023.


MAITE MURPHY
Presiding Judge
Ninth Judicial Circuit

St. George, South Carolina

CTN2013100810-508

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1317228

ARREST WARRANT NUMBER

2013A1010205847

DATE OF ARREST

October 24, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 10 2014

VERDICT

Guilty

Foreperson of Petit Jury

3/4/15

Date:

INDICT

DOCKET NO. 2014GS1001310

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2014

THE STATE

vs.

ISHMEL JAYVAN LEMON

DOB: [REDACTED]
B/M

Indictment for

Burglary 1st Degree

TIA SENTENCE
3/4/15
Judge W. Jeffrey [Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

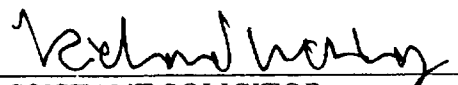
INDICTMENT

At a Court of General Sessions, convened on March 10, 2014 the Grand Jurors of Charleston County present upon their oath:

Burglary 1st Degree

That in Charleston County, South Carolina, on or about October 23, 2013, the Defendant ISHMEL JAYVAN LEMON, while acting alone or in concert with others, did enter the dwelling of Sabrina Polite, located at [REDACTED] [REDACTED], Charleston, South Carolina, without consent and with the intent to commit a crime therein. That, in addition, entry occurred at night and Defendant displayed a deadly weapon, to wit: a handgun; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston

STATE VS.

Ishmel Jayvan Lemon

AKA:

Race: BLACK Sex: M Age: 28

DOB: [REDACTED] SS# [REDACTED]

Address: [REDACTED]

City, State, Zip: Charleston, SC [REDACTED]

DL#: [REDACTED] SID#: SC01538857

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 1st degree

INDICTMENT/CASE#: 2014GS1001310

A/W#: 2013A1010205847

Date of Offense: 10/23/2013

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Osborne, David L

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2156

Sentence Date: March 4, 2015

Imposed: 12/14/2015