

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

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S.C. Supreme Court

ALJAQUON R. DRAKE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-0001077

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
)
 COUNTY OF JASPER COUNTY) CASE NO.'S: 2007-GS-27-673 AND
 2007-GS-27-674

STATE OF SOUTH CAROLINA)
)
)
 vs.) TRANSCRIPT OF RECORD
)
 ALJAQUON DRAKE,)
)
 DEFENDANT.)

DECEMBER 1ST AND 2ND, 2008.

JASPER COUNTY, SOUTH CAROLINA

B E F O R E

THE HONORABLE CARMEN MULLEN, JUDGE

APPEARANCES:

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 Deputy Solicitor for the 14th Judicial Circuit
 Attorney for the State of South Carolina

JIM BANNON, ESQUIRE
 Assistant Solicitor for the 14th Judicial Circuit
 Attorney for the State of South Carolina

MR. STEPHEN PLEXICO, ESQUIRE
 Assistant Public Defender for 14th Judicial Circuit
 Attorney for the Defendant

REBECCA H. HILL
 Official Court Reporter
 Walterboro, SC 29488

Jury Selection
 State v. Aljaquon Drake
 2007-CP-27-673; 2007-CP-27-674
 December 1st and 2nd, 2008

Juror #	Name	Race	Gender	Pl.	Df.	Jury
45	Elizabeth Lowper	O	F		1	
46	Deloris Dunham	B	F			1
61	Ronnie Fraser	B	M			2
81	Heidi Holloway	W	F			3
33	Ginger C. Moore	W	F			4
213	Christopher Wilson	B	M			5
112	David Lowther, Jr.	W	M			6
99	Connie Kennedy	W	F			7
54	Robert Emanuel	W	M		2	
28	Ella Mae Chisolm	B	F			8
26	Tammy Chaneyfield	B	F			9
7	David Beaty	W	M			10
3	Edith Badger	H	F		3	
38	Debra Daley	W	F		4	
135	Frank Nettles	W	M		5	
121	Calvin Medlock	B	M	1		
116	Rodney Malphrus	W	M		6	
17	Toni Broschard	W	F			11
111	Pamela Logan	B	F	2		
126	Dustin Mock	W	M			12

92	Carletta Jenkins	B	F			Alt1
113	Teresa Loy	W	F			Alt2

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1 **THE COURT:** Sir, is it Aljaquon Drake?

2 **MR. DRAKE:** Yes.

3 **THE COURT:** Sir, do you understand that your jury trial
4 begins today?

5 **MR. DRAKE:** No, ma'am, I don't.

6 **THE COURT:** Well, yes, sir, it does. I can tell you
7 that we're getting ready to pick the jury in your case. The
8 trial will actually start in the morning, but we are going
9 to pick your jury this afternoon. My understanding from
10 your lawyer is that you do not wish to dress out; is that
11 correct?

12 **MR. DRAKE:** Well, I mean, Miss, to tell you the truth,
13 I don't really understand, you know what I'm saying? Like,
14 what's going on. You know what I say? Like what you said.
15 You know what I'm saying? Like, what's been said about me,
16 you know what I'm saying?

17 **THE COURT:** Well, Mr. Drake, you're charged with
18 multiple counts of burglary first, is my understanding.
19 They're trying you on two of those counts here. Sir, I will
20 also tell you that we did have a motions hearing back in
21 Beaufort some six weeks ago or so that you were there at,
22 and you understood what was going on. You have been slated
23 for trial. You are up for trial. You have the right, sir,
24 to be dressed out in street clothing for trial. Okay? And
25 it's my understanding from your attorney, Mr. Plexico, that

1 they have street clothes for you; do you understand that?

2 MR. DRAKE: Yes, ma'am.

3 THE COURT: Sir, do you want to wear a jumpsuit when
4 you go to trial or would you rather wear street clothes?

5 MR. DRAKE: Street clothes.

6 THE COURT: I think that's a good idea. Sir, I'm going
7 to send you back in there. You're going to put your street
8 clothes on and you're going to come back out here. There's
9 going to be a jury panel and we're going to go ahead and
10 pull a jury in your case. Do you understand that?

11 MR. DRAKE: Yes, ma'am.

12 THE COURT: Okay. And then we're going to start in the
13 morning. All right, sir?

14 MR. DRAKE: Thank you.

15 THE COURT: All right. Thank you. Y'all take him back
16 and get him dressed.

17 (DEFENDANT DRAKE EXITS WITH DEPUTY'S AND BAILIFF.)

18 THE COURT: You guys take about five minutes. We're
19 gonna bring the panel back in, and we'll go ahead and pull
20 the first one. I hope we're going to have enough. .
21 Obviously, if it's a burglary, the strikes are 10 and 5, so
22 we'll just see what we have left over. Okay? How many
23 alternates are we going with the burglary first case, Mr.
24 Plexico?

25 MR. PLEXICO: I must have 12 for a verdict.

1 THE COURT: Okay. One alternate?

2 MR. PLEXICO: If y'all want one, that's fine. I must
3 -- as long as I have one.

4 THE COURT: I understand that. Okay. Well, let's just
5 see how many I've got. All right. Take five and we'll be
6 back and pull the first jury.

7 (DECEMBER 1, 2008, 3:42 P.M., WHEREUPON A BRIEF RECESS
8 IS TAKEN BY THE COURT, AND THEREAFTER, THE FOLLOWING
9 PROCEEDINGS WERE HELD ON THE RECORD:)

10 THE COURT: Is the State ready?

11 DEPUTY SOLICITOR TANNER: Yes, ma'am.

12 THE COURT: Is the defense ready?

13 MR. PLEXICO: Yes, Your Honor.

14 THE COURT: Bring the jury panel back in.

15 (DECEMBER 1, 2008, 4:00 P.M., WHEREUPON THE JURY PANEL
16 ENTERS THE COURTROOM, AND THEREAFTER, THE FOLLOWING
17 PROCEEDINGS WERE HELD ON THE RECORD:)

18 THE COURT: All right, Solicitor, if you will call your
19 case.

20 DEPUTY SOLICITOR TANNER: Thank you, Your Honor. The
21 State is ready in Indictment 2007-GS-27-674, The State of
22 South Carolina versus Aljaquon Drake, charging him with
23 burglary in the first degree. The State is also ready in
24 Indictment 2007-GS-27-673, The State of South Carolina
25 versus Aljaquon Drake for a second count of burglary in the

1 first degree.

2 **THE COURT:** Ladies and gentlemen of the jury panel, we
3 are about to begin the case entitled The State of South
4 Carolina versus Aljaquon Drake, who is charged in the Bill
5 of Indictment by the Grand Jury of Jasper County, with the
6 offense of burglary in the first degree.

7 Ladies and gentlemen, the State is represented in this
8 case by Ms. Angie Tanner, if you would introduce yourself.

9 **DEPUTY SOLICITOR TANNER:** My name is Angela Tanner and
10 I'm Deputy Solicitor for the Fourteenth Judicial Circuit.

11 **THE COURT:** And Mr. Bannon, if you'll stand up and
12 introduce yourself as well, sir.

13 **MR. BANNON:** Good afternoon, my name's Jim Bannon, and
14 I'm an Assistant Solicitor for the Fourteenth Judicial
15 Circuit.

16 **THE COURT:** Thank you, y'all. Ladies and gentlemen,
17 the defendant in this case is represented by Mr. Steve
18 Plexico.

19 **MR. PLEXICO:** Good afternoon.

20 **THE COURT:** And Mr. Plexico, would you also ask your
21 client to stand and face the jury panel as well?

22 (DEFENDANT COMPLIES.)

23 Thank you, Mr. Drake. And Mr. Hughes, why don't you
24 introduce yourself as well, since you're at the table?

25 **MR. HUGHES:** Good afternoon, my name is Robert Hughes.

1 I'm a public defender in the Fourteenth Circuit.

2 **THE COURT:** Thank you. Ladies and gentlemen of the
3 jury panel, I have a number of questions to ask you in
4 reference to this case, but again, I'm going to ask each of
5 you to stand and swear you in as the petit jury panel for
6 this trial. Would you all please just stand?

7 (JURY PANEL COMPLIES.)

8 WHEREUPON, the jury panel was duly sworn.

9 **THE COURT:** Thank you, be seated. Ladies and
10 gentlemen, my questions are as follows.

11 Is there any member of the petit jury panel who is
12 related by blood or connected by marriage with the
13 defendant, Mr. Aljaquon Drake? If so, please stand.

14 (No response.)

15 **THE COURT:** Is there any member of the petit jury panel
16 who is a close personal friend or shares a special
17 relationship with the defendant in this case, Mr. Aljaquon
18 Drake? If so, please stand.

19 (No response.)

20 **THE COURT:** Ladies and gentlemen, I also introduced you
21 to the attorneys who were going to be trying this case here
22 this week. My question is the same to you in regards to the
23 attorneys. Is there any member of the jury panel that is
24 related by blood or connected by marriage with any of the
25 attorneys here in the courtroom trying this case this week?

1 If so, please stand.

2 (No response.)

3 **THE COURT:** Is there any member of the jury panel who
4 is a close personal friend or shares a special relationship
5 with any of the attorneys trying this case? If so, please
6 stand.

7 (No response.)

8 **THE COURT:** Ladies and gentlemen, potential witnesses
9 in this case are as follows: Investigator Henry Criss of
10 the Jasper County Sheriff's Office, Mr. Deondre Fields, Mr.
11 Byron Mobley, Ms. Maggie Niedert, Ms. Patience Perry, Ms.
12 Scarlett Ann Nimmer, Mr. Calvin Smith, Ms. Billy Kay Smith,
13 Ms. Mary Scott. Ladies and gentlemen, my question is the
14 same, is there any member of the jury panel that is related
15 by blood or connected by marriage with any of the potential
16 witnesses? If so, please stand.

17 (No response.)

18 **THE COURT:** Is there any member of the jury panel who
19 is a close personal friend or shares a special relationship
20 with any of these potential witnesses? If so, please stand.

21 (No response.)

22 **THE COURT:** Ladies and gentlemen, I know you know very
23 little about these cases. They occurred back in July 25th
24 of 2007. Ladies and gentlemen, my question is to you, is
25 there any member of the petit jury panel that has seen,

1 heard, read anything whatsoever about this case? If so,
2 please stand at this time.

3 (No response.)

4 **THE COURT:** Ladies and gentlemen, is there any member
5 of the jury panel who is a member of, or a contributor to,
6 any group which has as its primary concern the promotion of
7 law enforcement or victim's rights? These groups would
8 include, but is not limited to, groups such as Citizen's
9 Against Violent Crime, also known as C.A.V.E., or M.A.D.D.,
10 Mothers Against Drunk Driving, or Students Against Drunk
11 Driving. And I'll repeat the question, is there any member
12 of the jury panel who is a member of, or is a contributor
13 to, any of these types of groups? If so, please stand.

14 (No response.)

15 **THE COURT:** Is there any member of the jury panel that
16 has formed or expressed an opinion as to the guilt or
17 innocence to the defendant, Mr. Drake, in this case? If so,
18 please stand at this time.

19 (No response.)

20 **THE COURT:** Are there any members of the jury panel
21 that is conscious of any interest, any bias, or any
22 prejudice, for or against the defendant, Mr. Drake, in this
23 case? If so, please stand.

24 (No response.)

25 **THE COURT:** Does any person on the jury panel know of

1 any reason whatsoever that you cannot give both the State
2 and the defendant, Mr. Drake, a fair and impartial trial?
3 If so, please stand.

4 (No response.)

5 THE COURT: Is there any further voir dire requested of
6 this panel from the State?

7 DEPUTY SOLICITOR TANNER: Nothing from the State.

8 THE COURT: From the defense?

9 MR. PLEXICO: No, Your Honor.

10 THE COURT: All right, ladies and gentlemen, while we
11 are putting all of your names in the proverbial hopper,
12 which is now a computer these days, you are welcome to stand
13 up and stretch. I'm just going to ask you to don't leave
14 the courtroom, because I assure you, as soon as we can pick
15 this jury, if I have enough jurors, I'm going to go ahead
16 and pick the next one, and then I'm going to send you all
17 home for the day. All right? So if you need to stand up
18 and stretch again, you are welcome to. We'll go ahead and
19 pull this first jury.

20 (WHEREUPON, A BRIEF RECESS WAS TAKEN IN THE COURTROOM;
21 THEREAFTER, AT 4:08 P.M., THE FOLLOWING PROCEEDINGS
22 WERE HELD ON THE RECORD)

23 THE COURT: Ladies and gentlemen, when your name is
24 called, I ask that you bring all of your belongings and walk
25 up the center aisle and just turn around and face, which

1 you're going to face the jury panel, and you're either going
2 to be sat or not sat on the case. If you're sat, we're
3 going to invite you to come sit over in the jury box, and if
4 not, I'm going to ask that you go ahead and go back to your
5 seat. All right?

6 So with that said, Ms. Bostick?

7 **MADAM CLERK:** Number Forty-five, Elizabeth Lowper.

8 **THE COURT:** Just turn around, please, ma'am.

9 **MADAM CLERK:** What says the State?

10 **DEPUTY SOLICITOR TANNER:** Please present the juror.

11 **MADAM CLERK:** How says the defense?

12 **MR. PLEXICO:** Please excuse the juror from the trial of
13 this case.

14 **MADAM CLERK:** Thank you, ma'am. Have a seat back in
15 the audience.

16 Number Forty-six, Deloris Dunham? How says the State?

17 **DEPUTY SOLICITOR TANNER:** Please present the juror.

18 **MADAM CLERK:** How says the defense?

19 **MR. PLEXICO:** Swear the juror.

20 **MADAM CLERK:** Have a seat in the jury box, ma'am.

21 Number Sixty-one, Ronnie Fraser -- Ronnie Fraser, Sr.

22 How says the State?

23 **DEPUTY SOLICITOR TANNER:** Please present the juror.

24 **MADAM CLERK:** How says the defense?

25 **MR. PLEXICO:** Swear the juror.

1 MADAM CLERK: Have a seat in the jury box, please.
2 Number Eighty-one, Heidi Holloway.
3 How says the State?
4 DEPUTY SOLICITOR TANNER: Please present the juror.
5 MADAM CLERK: How says the defense?
6 MR. PLEXICO: Swear the juror.
7 MADAM CLERK: Have a seat in the jury box, ma'am.
8 Number Thirty-three, Heidi Holloway Moore -- I'm sorry.
9 Ginger Cooler Moore, number Thirty-three.
10 How says the State?
11 DEPUTY SOLICITOR TANNER: Please present the juror.
12 MADAM CLERK: How says the defense?
13 MR. PLEXICO: Swear the juror.
14 MADAM CLERK: Have a seat in the jury box, ma'am.
15 Number Two-thirteen, Christopher Wilson.
16 How says the State?
17 DEPUTY SOLICITOR TANNER: Please present the juror.
18 MADAM CLERK: How says the defense?
19 MR. PLEXICO: Swear the juror.
20 MADAM CLERK: Have a seat in the jury box, sir.
21 Number One-twelve, David Lowther, Jr.
22 How says the State?
23 DEPUTY SOLICITOR TANNER: Please present the juror.
24 MADAM CLERK: How says the defense?
25 MR. PLEXICO: Swear the juror.

1 **MADAM CLERK:** Have a seat in the jury box, sir.
2 Number Ninety-nine, Connie Kennedy:
3 How says the State?
4 **DEPUTY SOLICITOR TANNER:** Please present the juror.
5 **MADAM CLERK:** How says the defense?
6 **MR. PLEXICO:** Swear the juror.
7 **MADAM CLERK:** Have a seat in the jury box, ma'am.
8 Number Fifty-four, Robert Emanuel?
9 **MR. PLEXICO:** Was it Fifty-four?
10 **MADAM CLERK:** Fifty-four.
11 How says the State?
12 **DEPUTY SOLICITOR TANNER:** Please present the juror.
13 **MADAM CLERK:** How says the defense?
14 **MR. PLEXICO:** Please excuse the juror from the trial of
15 this case.
16 **MADAM CLERK:** Thank you, sir, have a seat back in the
17 audience. Number Twenty-eight, Ella Mae Chisolm.
18 How says the State?
19 **DEPUTY SOLICITOR TANNER:** Please present the juror.
20 **MADAM CLERK:** How says the defense?
21 **MR. PLEXICO:** Please swear the juror.
22 **MADAM CLERK:** Have a seat in the jury box, ma'am.
23 Number Twenty-six, Tammy Chaneyfield.
24 How says the State?
25 **DEPUTY SOLICITOR TANNER:** Please present the juror.

1 MADAM CLERK: How says the defense?
2 MR. PLEXICO: Please swear the juror.
3 MADAM CLERK: Have a seat in the jury box, ma'am.
4 Number Seven, David Beaty.
5 How says the State?
6 DEPUTY SOLICITOR TANNER: Please present the juror.
7 MADAM CLERK: How says the defense?
8 MR. PLEXICO: Swear the juror.
9 MADAM CLERK: Have a seat in the jury box, sir.
10 Number Three, Edith Badger.
11 How says the State?
12 DEPUTY SOLICITOR TANNER: Please present the juror.
13 MADAM CLERK: How says the defense?
14 MR. PLEXICO: Please excuse the juror from the trial of
15 this case.
16 MADAM CLERK: Thank you, ma'am, have a seat back in the
17 audience. Number Thirty-eight, Debra Daley.
18 How says the State?
19 DEPUTY SOLICITOR TANNER: Please present the juror.
20 MADAM CLERK: How says the defense?
21 MR. PLEXICO: Excuse the juror from the trial of this
22 case.
23 MADAM CLERK: Thank you, ma'am, have a seat back in the
24 audience. Number One thirty-five, Frank Nettles.
25 How says the State?

1 DEPUTY SOLICITOR TANNER: Please present the juror.
2 MADAM CLERK: How says the defense?
3 MR. PLEXICO: Excuse the juror from the trial of this
4 case.
5 MADAM CLERK: Thank you, sir. Have a seat back in the
6 audience.
7 Number One Twenty-one, Calvin Medlock.
8 How says the State?
9 DEPUTY SOLICITOR TANNER: Please excuse the juror.
10 MADAM CLERK: Thank you and have a seat back in the
11 audience, sir.
12 Number One-sixteen, Rodney Malphrus, Jr.
13 How says the State?
14 DEPUTY SOLICITOR TANNER: Please present the juror.
15 MADAM CLERK: How says the defense?
16 MR. PLEXICO: Excuse the juror from the trial of this
17 case.
18 MADAM CLERK: Thank you, sir. Have a seat back in the
19 audience.
20 Number Seventeen, Toni Broschard.
21 How says the State?
22 DEPUTY SOLICITOR TANNER: Please present the juror.
23 MADAM CLERK: How says the defense?
24 MR. PLEXICO: Swear the juror.
25 MADAM CLERK: Have a seat in the jury box, ma'am.

1 Number One-eleven, Pamela Logan.
2 How says the State?
3 **DEPUTY SOLICITOR TANNER:** Please excuse the juror.
4 **MADAM CLERK:** Thank you, ma'am.
5 Number One twenty-six, Dustin Mock.
6 How says the State?
7 **DEPUTY SOLICITOR TANNER:** Please present the juror.
8 **MADAM CLERK:** How says the defense?
9 **MR. PLEXICO:** Swear the juror.
10 **MADAM CLERK:** Have a seat in the jury box.
11 **THE COURT:** Your two alternates, y'all.
12 **MADAM CLERK:** Number Ninety-two, Carletta Jenkins.
13 How says the State?
14 **DEPUTY SOLICITOR TANNER:** Please present the juror.
15 **MADAM CLERK:** How says the defense?
16 **MR. PLEXICO:** Present the juror.
17 **MADAM CLERK:** Have a seat in alternate chair one,
18 ma'am.
19 Number One-thirteen, Teresa Loy.
20 How says the State?
21 **THE COURT:** Jo, are you gonna have an extra chair?
22 We're gonna need one more.
23 **DEPUTY SOLICITOR TANNER:** Please present the juror.
24 **MADAM CLERK:** How says the defense?
25 **MR. PLEXICO:** Swear the juror.

1 **MADAM CLERK:** Have a seat, alternate number two.

2 **THE COURT:** All right. For those of you that are still
3 out there on the panel, we're gonna pull one more jury
4 today. To be honest with you, it's good news because if I
5 pull it today then I won't have to bring all of you back
6 when that next case is going to start after the first one is
7 finished, so I would rather just get you taken care of.

8 Respectfully, though, what I'm going to have to do,
9 ladies and gentlemen, is excuse you back out of the
10 courtroom for about five or ten minutes or so. Once we can
11 bring you back in, we will. So again, don't go anywhere
12 other than just leave the courtroom if you would, and we
13 will be back with you in just a few minutes. Thank you.

14 (MONDAY, DECEMBER 1, 2008, 4:25 P.M., WHEREUPON THE
15 REMAINING JURY PANEL EXITS THE COURTROOM. THEREAFTER,
16 AT 4:31 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON
17 THE RECORD IN THE PRESENCE OF THE JURY PANEL SELECTED
18 FOR THE DRAKE TRIAL.)

19 **THE COURT:** All right. Anything else from the State?

20 **DEPUTY SOLICITOR TANNER:** Nothing from the State.

21 **THE COURT:** From the defense?

22 **MR. PLEXICO:** No, Your Honor.

23 **THE COURT:** All right. Are y'all okay if we start at
24 9:30, although you will be here earlier, but I'm going to
25 bring the jury back at 9:30; is that fine?

1 **DEPUTY SOLICITOR TANNER:** Yes, ma'am. There was one
2 thing I wanted to put on the record before the evening ends,
3 outside the presence of the jury.

4 **THE COURT:** Absolutely. All right.

5 Well, ladies and gentlemen, welcome. I'm sure y'all
6 understand that you are my jury for this first trial. I
7 will tell you that we believe it's going to take two days at
8 the most and we are going to start tomorrow morning.

9 Ladies and gentlemen, what I'm going to ask is that you
10 all come back tomorrow morning at 9:30. I will also just
11 give you a few cautionary rules just here in the courtroom.
12 Most importantly, I can't start until all fourteen of you
13 are here, so please try to be on time. If you have
14 transportation issues, anything along those lines, please
15 call us here and we'll come get you. All right? Because
16 again, nothing happens until all fourteen of you are here.

17 I'll also tell you, ladies and gentlemen, that we don't
18 allow cell phones or any type of electronic devices in the
19 courthouse, sometimes they get past us and they get here.
20 It's even more important if you sit on a jury, because
21 nowadays with Blackberry's, and all the other devices, you
22 could get information off of them. So out of an abundance
23 of caution, please just make sure you leave that back at
24 home or in your car when you come in here.

25 I will tell you that if someone has an emergency or

1 needs to get a hold of you, just tell them to call the
2 clerk's office, and I'll assure you that one of Ms.
3 Bostick's staff will come get me and I will come find you,
4 so you don't need to worry about that. All right?

5 Lastly, ladies and gentlemen, I have not had any
6 requests whatsoever on any type of news coverage on this
7 case. Usually if there is someone that may want to write
8 something about it, or if they want to put it on the news,
9 they have to give me a request for the order. However, out
10 of an abundance of caution, if you are to open the newspaper
11 tomorrow morning, or in any of the local newspapers, or hear
12 something on the radio or the T.V. about this case, you are
13 to ignore it, turn it off, do something completely else,
14 because it simply wouldn't be appropriate for you to get any
15 outside information. You're going to have everything you
16 need to decide this case right here in this courtroom. You
17 are not to have any outside influence or information. With
18 that said as well, ladies and gentlemen, when you go home
19 tonight, I know your family members and friends are going to
20 say, "What are you doing up there at the courthouse?" Or
21 your loved ones are going to say, "What's happening?" The
22 only thing you are allowed to say is that you are sitting on
23 a criminal jury and that is it. You cannot say who it
24 involves. You cannot say anything about it whatsoever; do
25 you all understand that? And I want you to understand that

1 this is vitally important. I know that's hard to do when
2 your spouse says, "What are you doing up there?" But,
3 again, it's so important because I wouldn't them to have any
4 outside information.

5 Lastly, ladies and gentlemen, I know you know very
6 little about this case. However, I don't want you on the
7 street talking about it because I don't want anyone else to
8 give you any other information. Okay? So, again, your only
9 job tonight is to go home, have a good dinner, come back at
10 9:30 tomorrow morning. The lawyers are going to come back
11 earlier, so they're ready to receive you here in the
12 courtroom.

13 I will tell you, ladies and gentlemen, because in this
14 courthouse, we only really have one good entrance for y'all
15 to come up, sometimes, if I'm holding or conducting a
16 hearing regarding this case or others that I can't have you
17 present, we may have to hold you outside the door, so just
18 understand that that's what we're doing, and it's not that
19 we're holding you out of the courthouse or the courtroom,
20 but it's just because there's something we need to take up
21 out of your presence. Okay?

22 So with that said, ladies and gentlemen, have a
23 wonderful evening. We'll see you back here at 9:30. I
24 will tell you -- you want to take them back there to show
25 them or ---

1 **MADAM CLERK:** I think we can just have the bailiff show
2 them tomorrow morning.

3 **THE COURT:** That's fine, at 9:30 is fine. Yeah, that's
4 fine. I will tell you just timing-wise and for purposes,
5 it's my understanding that we'll probably run until about
6 4:30-ish, 5:00, tomorrow. Okay? So if anyone needs to make
7 arrangements to have children picked up, or other things
8 going on, you need to go ahead and make that arrangement. I
9 will also tell you, too, that I think the case is going to
10 end by Wednesday, unless your deliberation goes longer than
11 that. So that's just what I'm anticipating. I tell you
12 that, ladies and gentlemen, so you can plan. I'm not going
13 to put you on any other jury, so y'all are going to be free
14 Thursday and Friday. Okay? So just know for planning
15 purposes that that's what we're doing. Okay?

16 So with that said, ladies and gentlemen, there's just
17 one last thing I need to ask you to do is when you come in
18 tomorrow morning, I'm going to ask that you all elect a
19 foreperson. A foreperson doesn't have any more say than
20 anyone else. It's simply the person that I communicate with
21 and it's also the person that facilitates the communication
22 when you begin your deliberations. You all, at any time you
23 come and go in the courtroom, you can take any seat; you can
24 change each time that you come in. The only thing that I
25 ask is that my alternates remain here in those two seats,

1 and that my foreperson take this front row, front seat each
2 time. Okay? So with that said, ladies and gentlemen, good
3 night. Thank y'all for being here and I will see y'all
4 bright and early in the morning. All right? Thank you.

5 (MONDAY, DECEMBER 1, 2008, 4:36 P.M., THE JURY EXITS
6 THE COURTROOM FOR THE DAY; THEREAFTER, THE FOLLOWING
7 PROCEEDINGS WERE HELD ON THE RECORD.)

8 THE COURT: Solicitor, you said there's something you
9 need to put on the record?

10 DEPUTY SOLICITOR TANNER: Yes, Your Honor. Tomorrow
11 the State intends to introduce certified copies of Mr.
12 Drake's prior convictions from Beaufort County. There are
13 three counts of burglary that he was convicted of in
14 Beaufort County. We have certified copies of the
15 indictments and the sentencing sheets. The State does not
16 intend to call the witness from Beaufort County Clerk of
17 Court, just introduce those. I believe, that the South
18 Carolina Rules of Evidence allow me to just introduce those
19 copies because they are certified. They self-authenticate
20 themselves and they are public records under Rule 1005.
21 But, I do believe Mr. Plexico is going to have an objection,
22 so I thought it would be best if we do it tonight, in case I
23 did have to get someone from Beaufort, because they are not
24 aware that they need to be here tomorrow.

25 THE COURT: All right. Mr. Plexico?

1 **MR. FLEXICO:** Your Honor, I -- I -- I just think the
2 better practice is to have the clerk here, and I would take
3 this opportunity and to object to the third, the law only
4 requires two, and I'm well aware of the case law where many
5 more have been admitted as far as the prior -- prior
6 convictions. She's not relying on her case in chief to
7 prove the burden of first degree. Now, the case that
8 involves joining the circumstantial case, I think it's
9 particularly prejudicial to introduce more than two in this
10 limited circumstance, I think might distinguish it from
11 prior case law, and I would ask that you limit her to only
12 introducing two prior burglaries, Judge, since these were
13 two circumstantial evidence cases that are being tried
14 together through joint or any way, that wouldn't be
15 admissible under law. In their case in chief, if they tried
16 each one individually, the other would not be admissible
17 under law, so based on that theory, Judge, I would ask that
18 you limit it to only two the number of prior convictions.

19 **DEPUTY SOLICITOR TANNER:** I believe the statute for
20 burglary first is two or more, so I don't believe I'm
21 limited to two. If he does have more, I believe the jury is
22 entitled to hear the State's evidence, which is that he has
23 three prior convictions of burglary at the time he commits
24 the two he is on trial for now.

25 **THE COURT:** All right. Y'all just do some research

1 tonight if you can find any case law to support your
2 position, give it to me in the morning. Solicitor, can it
3 be anyone from the clerk's office, or who, specifically, or
4 does it have to the "The Clerk"?

5 DEPUTY SOLICITOR TANNER: I don't know. I would ---
6 the only time I've ever used any documents like that, I've
7 been allowed just to introduce documents, so I haven't
8 actually addressed that issue about who has to testify.

9 THE COURT: Okay.

10 DEPUTY SOLICITOR TANNER: And again, I am using South
11 Carolina Rules of Evidence 1005, as well as, self-
12 authenticating, which is 9 -- I believe -- 02. Yes, ma'am,
13 902, sub-section number 4, "certified copies of public
14 records. A copy of an official record or report or entry
15 therein, or the document authorized by law, to be recorded
16 or filed, and actually recorded or filed in a public office,
17 including data confirmations in any form, etc." And that is
18 an example of a self-authenticating document, under Rule
19 902.

20 THE COURT: I think 105, or 1005, from the Rules of
21 Evidence allows that, Mr. Plexico.

22 MR. PLEXICO: I understand your ruling, Your Honor.

23 THE COURT: I've never heard anyone object to it
24 before, but ---

25 DEPUTY SOLICITOR TANNER: And these documents, each one

1 has the official seal and a signature from the Clerk's
2 Office, and I have provided copies to defense.

3 **THE COURT:** Can I see a copy of it?

4 **DEPUTY SOLICITOR TANNER:** Yes, ma'am. (Hands copy to
5 The Court.)

6 **THE COURT:** Okay. It does have the raised seal and the
7 contract color.

8 Do you have anything further that we need to put on the
9 record?

10 **DEPUTY SOLICITOR TANNER:** Not that I'm aware of, Your
11 Honor.

12 **THE COURT:** Mr. Plexico, anything further?

13 **MR. PLEXICO:** I don't have anything further, Judge.

14 **THE COURT:** I will see the attorneys tomorrow morning a
15 little after 9:00.

16 (MONDAY, DECEMBER 1, 2008, 5:01 P.M., WHEREUPON COURT
17 RECESSED FOR THE EVENING IN THE TRIAL OF THIS CASE.

18 TUESDAY, DECEMBER 2, 2008, 9:20 A.M., THE FOLLOWING
19 PROCEEDINGS WERE HELD ON THE RECORD BEFORE JURY ENTERS
20 FOR THE TRIAL OF ALJAQUON DRAKE.)

21 **THE COURT:** Good morning. Anything we need to take up
22 this morning? I don't even know if we have all of our
23 jurors here, but I want to make sure --- we're still three
24 short? All right. Is there anything from the State that we
25 need to take up this morning?

1 **DEP. SOLICITOR TANNER:** Your Honor, when we left
2 yesterday, you asked us to research the issue regarding
3 whether or not all three prior convictions would be
4 introduced, versus just the two on burglary first. I did
5 some research last night and I came across State v. Tommy
6 Lee James. According to the South Carolina Appellate Court,
7 they decided absolutely not, the statute does not limit, in
8 any way, the number of convictions that can be presented,
9 and, in fact, they allowed in seven prior convictions to the
10 jury.

11 However, when it went to the Supreme Court, they
12 reversed it somewhat and they said -- they didn't limit it,
13 they didn't say it could only be two, however, they did
14 believe that seven might have been too many, but that there
15 needed to be an analysis of the versus the prejudicial,
16 under 403.

17 **THE COURT:** Okay.

18 **DEP. SOLICITOR TANNER:** That's where they left it. The
19 State's argument was that three would not be prejudicial
20 beyond the two, but they did leave that grey area. Seven
21 might be too many, but were not limited to two, was what I
22 took out of it. The Supreme Court cite ---

23 **THE COURT:** Actually, can you just give me a copy right
24 now? My law clerk's not here.

25 **DEP. SOLICITOR TANNER:** Yes, ma'am.

1 **THE COURT:** She would have the only computer.

2 **DEP. SOLICITOR TANNER:** I printed these at home, so I
3 only printed one copy. I'll give you mine. It is -- for
4 Mr. Plexico, it is 355 S.C. 25, The State versus Tommy Lee
5 James.

6 **THE COURT:** Mr. Plexico, did you find anything?

7 **MR. PLEXICO:** No, I did not, Judge. Nothing supporting
8 -- I do have a great argument, I do believe, when you get a
9 chance, Judge.

10 **DEP. SOLICITOR TANNER:** I went ahead and printed the
11 Appellate Court's Opinion as well, if you'd like to look at
12 that also, Judge, but I believe the Supreme Court Opinion
13 does address it.

14 **THE COURT:** (After reading through document.)
15 Solicitor, what exactly do you intend on introducing, just
16 the certified copy of the record; is that correct?

17 **DEP. SOLICITOR TANNER:** Yes, ma'am, we have certified
18 copies of the sentencing sheets and indictments.

19 **THE COURT:** Okay. Obviously, you're not going to go
20 into the details? I mean, are they two prior burglary
21 seconds, or burglary thirds, or what are they?

22 **DEP. SOLICITOR TANNER:** They are three prior burglary
23 second degree. I believe they are all there, all non-
24 violent. One from 2006 and two from 2007.

25 **THE COURT:** Okay. Mr. Plexico?

1 **MR. PLEXICO:** Your Honor, to begin with, if we're gonna
2 -- if we're talking about danger of undue prejudice here
3 regarding two iffy burglaries, which are entirely
4 circumstantial evidence cases. On top of that, we're adding
5 in at least two prior burglary convictions, and if she puts
6 in more than the facts of just the burglary, now we're
7 adding in the facts that are alleged in the Indictments
8 themselves, also, Judge. I think that this becomes a due
9 process issue between the State ---

10 **THE COURT:** Wait a minute, I didn't hear her say she
11 was putting the Indictments in. I heard her -- you are
12 putting the indictments in?

13 **DEP. SOLICITOR TANNER:** (Nods head affirmatively.)

14 **THE COURT:** I understand there to be the sentencing
15 sheets and ---

16 **DEP. SOLICITOR TANNER:** Indictments.

17 **THE COURT:** --- the indictments. All right, well let
18 me see the Indictments.

19 **MR. PLEXICO:** I think it becomes a due process issue
20 when the State and Federal, between the State and Federal
21 Constitution, Judge. I think that there's gonna be so many
22 -- so much innuendo and -- and -- and so many facts, there
23 gonna be unable to distinguish one case from the other and
24 determine if they've met their burden of proof for guilt
25 beyond a reasonable doubt for all of the burglaries at hand,

1 Judge, and I just think that the danger of prejudice is --
2 is so great and could weigh against a juror's potential
3 outcome. Putting the proof in as a part of the court
4 record, I can understand that, and putting the testimony in,
5 Judge, but I think it's the case now that I think is, you
6 know, I propose to join her, obviously, on the due process,
7 for the State and Federal due process grounds.

8 THE COURT: Mr. Plexico, tell me -- tell me what the
9 allegations are in this case. Where is it that on both the
10 two cases? Where is it did he allegedly break in?

11 MR. PLEXICO: Well, allegedly, the Nimmer and Smith,
12 Judge. Sometime between say 8 and 12:30, we don't know
13 which residence was broken into first. One residence was
14 broken in and, essentially, a knapsack was taken, that's the
15 issue that's in question here.

16 THE COURT: Okay.

17 MR. PLEXICO: They have a non-descript knapsack that my
18 client is wearing while cashing in some coins which were
19 stolen from -- allegedly, from the other residence.

20 THE COURT: Okay. So it was the second house; and they
21 caught him on camera, if I'm correct, at some type of store
22 putting the change in and getting cash from the change; is
23 that correct?

24 MR. PLEXICO: Yes, he and a friend.

25 THE COURT: Yeah.

1 MR. PLEXICO: But you can't see a container the coins
2 are in, particularly. I've seen the video. The coins, of
3 course, are just coins. They're non-descript. We're not
4 talking about a large amount of coins. I mean, there's just
5 -- this is just run of the mill stuff. Kids have thousands
6 of back packs. I mean, everybody has some coins somewhere,
7 and they're combining this already, which is entirely
8 circumstantial. There's no evidence he was ever at any of
9 the houses at all; no direct evidence at all.

10 THE COURT: Well, that's a determination for the jury
11 to make, obviously, if it is the same backpack or knapsack,
12 or whatever it is, so that's a jury determination. Okay.

13 MR. PLEXICO: I just think that it's entirely
14 circumstantial and that the danger of unfair prejudices is
15 great, Judge.

16 THE COURT: Respectfully, I will tell you, if you do a
17 403 now, looking at the primitive value versus any
18 prejudicial aspect, I do think I could probably let all
19 three in, Solicitor; but I can tell you out of an abundance
20 of caution, because this man is faced with two counts of
21 burglary first, we are going to err on the side of caution
22 here, and I'm going to allow you, Solicitor, to choose which
23 two you want. That is all that's required. That is all
24 that you need, and, again, we are going to err on the side
25 of caution on this and only allow two of them in. It will

1 be sufficient, obviously.

2 Also, this case asks and states that if you requested,
3 Mr. Plexico, you could ask for a limiting instruction that
4 these two prior convictions that I'm going to let in only be
5 for their consideration on why there's an enhancement on
6 this, as opposed to that he in any way is guilty, or infers
7 any type of guilt. So if you want a charge to that effect,
8 Mr. Plexico, you need to request it and you need to make
9 that decision. Okay?

10 MR. PLEXICO: I can tell you, I already will, Judge. I
11 will make that request.

12 THE COURT: Okay.

13 DEP. SOLICITOR TANNER: And I think that's probably a
14 good idea.

15 MR. PLEXICO: All right. Just so I understand, are the
16 Indictments coming in or just the sentencing sheet? I think
17 that the statement he has been convicted and them being part
18 of the Court record, Judge, would be more than sufficient
19 for them to prove their case.

20 THE COURT: I think it would be sufficient, and one of
21 the things I was asking is about the fact scenario. The
22 case we're trying here today is allegedly him breaking into
23 two homes. It appears that all of these are businesses.
24 I'm seeing that one of them is a BBQ restaurant and I think
25 they are all some type of businesses.

1 **DEP. SOLICITOR TANNER:** Your Honor, I don't have any
2 objection to just introducing the sentencing sheet. I think
3 it covers the State's purposes.

4 **THE COURT:** Okay.

5 **DEP. SOLICITOR TANNER:** And then we don't go into any
6 types of facts regarding any of the other burglaries. I
7 think it suits our purposes just fine, and they hear he has
8 two prior burglary convictions, and that's the end of it.

9 **THE COURT:** And, obviously, Mr. Plexico, you could
10 stipulate there are two prior burglaries, the Solicitor
11 doesn't have to accept that stipulation, of course, and she
12 still has the right to go ahead and introduce.

13 **DEP. SOLICITOR TANNER:** That's correct.

14 **MR. PLEXICO:** I would offer to do that, but in my
15 reading of the case law I just didn't think she was willing
16 to do that.

17 **DEP. SOLICITOR TANNER:** No, sir. We don't intend to
18 stipulate.

19 **THE COURT:** And that's understandable. So we're just
20 going to go ahead and introduce two of these sentencing
21 sheets is what we'll do. Okay?

22 **DEP. SOLICITOR TANNER:** Yes, ma'am. If I could -- I'll
23 have to remark those.

24 **THE COURT:** Solicitor, I'll give it back to you.

25 **DEP. SOLICITOR TANNER:** Thank you.

1 THE COURT: Thank you. All right. Anything further?

2 DEP. SOLICITOR TANNER: Nothing from the State.

3 Actually, at the top of the sentencing sheet, as is
4 customary, we've written 0 to 15 years.

5 THE COURT: I think we need to ---

6 DEP. SOLICITOR TANNER: --- redact that ---

7 THE COURT: --- redact that, yeah.

8 MR. PLEXICO: Your Honor, not to cause a problem, but I
9 ask that the ones that -- that -- that only one on the 20th,
10 and there's another one on the 24th; the one on the 24th and
11 the one on the 20th be admitted so as not to try to reflect
12 upon the facts that both of these happened on the same day,
13 in an attempt to use the prior convictions, which their sole
14 purposes to establish a burglary first jurisdiction, that we
15 aren't using those crimes to establish that "Yeah, he's the
16 guy that did two burglaries that are alleged on this day."

17 After all, they picked out five different -- of five
18 burglaries they could have tried and joined. I mean, they
19 didn't all happen on the same -- the five burglaries they
20 charged ---

21 THE COURT: So is your argument that they're too
22 similar to the current charges?

23 MR. PLEXICO: Yes, Your Honor.

24 THE COURT: If you put two on the same day in?

25 MR. PLEXICO: Yes, Your Honor.

1 THE COURT: Is that what your argument is?

2 MR. PLEXICO: Yes. Are they only putting the sentence
3 sheets in?

4 THE COURT: Only the sentencing sheets. Solicitor, do
5 you have a position on that?

6 DEP. SOLICITOR TANNER: You know what, I actually was
7 already thinking that I wanted to put one from '06 and one
8 from '07 in, so I think that ---

9 THE COURT: It's a non-issue then.

10 MR. PLEXICO: Okay. There's no indictments coming to
11 the jury?

12 THE COURT: No.

13 MR. PLEXICO: All right. We're okay.

14 THE COURT: All right. Anything further? Do we still
15 have a couple of jurors back there waiting to come in, sir?

16 BAILIFF: We have two, Your Honor.

17 THE COURT: Two? All right. Why don't we go ahead and
18 let those jurors back in if they're out there. Good
19 morning. (TO JURORS WALKING THROUGH.)

20 DEP. SOLICITOR TANNER: Your Honor, I've already marked
21 State's exhibits, if I could have a moment to show Mr.
22 Plexico what we've marked?

23 THE COURT: Sure.

24 MR. PLEXICO: Your Honor, I think we have an issue on
25 being able to redact the 0 to 15 on the sentencing sheets.

1 I don't see why the actual certified copies have to go to
2 the jury. We could just send a copy to the jury and that
3 would eliminate them being able to see the -- I can clearly
4 see 0 to 15 through the block on this paper.

5 **DEP. SOLICITOR TANNER:** Your Honor, we can fix that.

6 **MR. PLEXICO:** I'd move to just copy it and let it go to
7 the jury. It proves the same thing. I mean, you can tell
8 them they're certified.

9 **THE COURT:** Well, the problem is you objected to giving
10 them certified copies yesterday, so the Solicitor was trying
11 to establish that and wanted to give them actual sealed
12 copies.

13 **DEP. SOLICITOR TANNER:** They're not even going to know
14 what it means, even if they can read it. I just wanted to
15 be extra cautious.

16 **MR. PLEXICO:** I think we've remedied that problem,
17 Judge.

18 **THE COURT:** Okay. Anything else before we go ahead and
19 bring the jury out?

20 **DEP. SOLICITOR TANNER:** I just wanted to show him how I
21 did it.

22 **THE COURT:** Okay. Do we have all the jurors, Jo?

23 **BAILIFF:** We do, yes, ma'am.

24 **THE COURT:** Okay. Y'all ready to go?

25 **DEP. SOLICITOR TANNER:** Yes, ma'am.

1 MR. PLEXICO: Yes, Your Honor.

2 THE COURT: All right. Bring the jury out, Jo.

3 (TUESDAY, DECEMBER 2, 2009, 9:47 A.M., WHEREUPON THE
4 JURY ENTERS THE COURTROOM AND THE FOLLOWING PROCEEDINGS
5 WERE HELD ON THE RECORD.)

6 THE COURT: I just need my alternates to keep the seats
7 down here and the rest of you up here. Thank you, and
8 welcome y'all, good morning.

9 JURY PANEL: Good morning.

10 THE COURT: All right. Can we go ahead and swear the
11 jury, please? Ladies and gentlemen, if you'll please stand
12 and raise your right hand?

13 (WHEREUPON, the jury was duly sworn.)

14 THE COURT: Thank you, y'all, please be seated. Ladies
15 and gentlemen, what I'm now going to say to you is intended
16 to serve as an introduction to the trial of this case.
17 These remarks are not a charge on the law. I'm am going to
18 charge on the law in this case at the very end of this
19 trial. This is merely an explanation of what's going to
20 happen so you can better understand what we're doing here.

21 Ladies and gentlemen, the defendant, Mr. Drake, is
22 charged in an Indictment filed with the Court with the
23 crimes of burglary in the first degree, elements of which I
24 will explain to you later. Now, the indictments are simply
25 the charge by which the case is brought into the Court, and

1 it is not, in any sense, evidence that any of the
2 allegations that it contains.

3 Ladies and gentlemen, the state has the burden of
4 proving all the elements in the indictment, and to the
5 indictment, Mr. Drake has plead not guilty.

6 Ladies and gentlemen, it is your duty to decide whether
7 the state has met their burden of proving Mr. Drake guilty
8 of these charges. Now, ladies and gentlemen, as the jury,
9 your purpose is to find and determine the facts. You are
10 the sole judge of the facts. If at any time I make any
11 comment regarding a fact, you must disregard it.

12 Ladies and gentlemen, you are only to determine a fact
13 from the testimony that you are going to hear up here on the
14 witness stand, as well as any other evidence that is
15 introduced in the Court. Ladies and gentlemen, it is
16 especially important that you perform your duty of
17 determining the facts in this case diligently and
18 conscientiously, because ordinarily, there is no way to
19 correct an error in this determination of the fact by a
20 jury.

21 On the other hand, and with equal emphasis, the same
22 law that makes you the judges of the facts in this case,
23 makes me the judge of the law. The laws given by the Court
24 is the only law that you may consider. You must accept and
25 follow it, even if you disagree with it. I can't tell you

1 what the facts are. You can't disagree with me about what
2 the law is or what you think the law should be. Your job,
3 ladies and gentlemen, is to take the facts as you find them
4 and apply it to the law, as I give it to you, and after
5 doing that, you will render a verdict, a true and just
6 verdict, under the sole event that you just took as jurors.

7 Now, ladies and gentlemen, until I tell you to begin
8 your deliberation, you must not discuss this case with
9 anyone, including fellow jurors, family members, friends, or
10 anyone that's involved in this case. Ladies and gentlemen,
11 when the case is submitted to you, you must discuss it only
12 in the jury room with your fellow jurors.

13 Now, the attorneys in this case have been advised that
14 they are not to speak to you, in any way whatsoever, coming
15 and going from the courthouse. So if you see someone
16 involved in this case and you pass them and they don't even
17 say hello, they're not being unkind, they're just following
18 my orders; even an innocent conversation can often be
19 misconstrued, and I just wouldn't want that to happen here.

20 Ladies and gentlemen, as I told you yesterday, you are
21 not to read, listen to, or watch any news reports about this
22 case, and this includes anything that you may see in a
23 newspaper, or on T. V., or hear on the radio.

24 Ladies and gentlemen, it's especially important that
25 you keep an open mind and not decide any issue in the case

1 until all the evidence has been presented, the parties have
2 made their closing arguments, and you've heard my charge on
3 the law.

4 Ladies and gentlemen, it is your solemn responsibility
5 to determine the guilt or innocence of the defendant, and
6 your verdict must be based solely on the evidence that is
7 presented to you in this trial and on the laws that I
8 instruct to you, during, and at the close of, this case.

9 Now, ladies and gentlemen, in just a moment the
10 solicitor is going to make what's called an "opening
11 statement", in which she is going to explain to you the
12 issues in the case, or what she believes the issues in the
13 case are. Then, Mr. Plexico, the attorney for the
14 defendant, is also going to make an opening statement,
15 although he is not required to do so.

16 Ladies and gentlemen, what the attorneys tell you
17 during their opening statement is not evidence in this case.
18 It's only their contention as to what they believe the
19 issues are. Again, as I told you, the evidence in this case
20 is going to be presented to you by the testimony of sworn
21 witnesses right here in this witness box, and again, any
22 other exhibits that may be introduced as evidence in this
23 case.

24 Now from time to time, you may hear the attorney say
25 something like, "Your Honor, I believe we have a question of

1 law" or "May we approach?" or sometimes, I, myself, might
2 find it necessary to excuse you back into the jury room.
3 Ladies and gentlemen, I want you to know we are not hiding
4 anything from you. Oftentimes when I have to rule as a
5 matter of law whether or not something comes in, I may make
6 a comment on the fact, and I would never want anything I say
7 on the facts of the case to influence you in any way,
8 because, again, you are the sole determiners of the fact.

9 Ladies and gentlemen, in determining what the true
10 facts are in this case, you must decide whether or not the
11 testimony of the witnesses is believable. It's my
12 responsibility to determine whether or not a testimony is
13 admissible at all, but once the testimony is admitted,
14 whether or not you believe it, is solely for you to
15 determine.

16 Ladies and gentlemen, in deciding whether to believe a
17 witness' testimony, you have the right to consider the
18 interest of the witness, the bias of the witness, the
19 prejudice of any witness, and the opportunity for the
20 witness to have seen the matters and things about which
21 they're testifying, and you can watch the way the witness
22 acts on the witness stand. You have the right to consider
23 anything that is in the record that will help you evaluate
24 the testimony of the witness. That means it's your duty to
25 play close attention, to observe the witnesses, and to

1 listen to them.

2 Ladies and gentlemen, because this is going to be a
3 relatively short trial, I am not going to permit you to take
4 notes. So, again, I just encourage you to watch the
5 witnesses and listen carefully, so when you go back to the
6 jury room and begin your deliberations you can recall the
7 testimony accurately and completely.

8 Ladies and gentlemen, at this time, in order to
9 preserve everyone's rights, and you're going to hear me say
10 this each time I speak to you, "Is there anything from the
11 State that you would like me to add to this jury?"

12 **DEPUTY SOLICITOR TANNER:** Nothing from the state.

13 **THE COURT:** Anything from the defense?

14 **MR. PLEXICO:** No, Your Honor.

15 **THE COURT:** All right. Ladies and gentlemen, at this
16 time, we are going to begin the opening statements from the
17 attorneys. Solicitor Tanner?

18 **DEPUTY SOLICITOR TANNER:** Thank you, your Honor. May
19 it please the Court?

20 **THE COURT:** Yes, ma'am.

21 **OPENING STATEMENT**

22 **BY DEPUTY SOLICITOR TANNER:**

23 **DEP. SOLICITOR TANNER:** Good morning, ladies and
24 gentlemen.

25 **JURY PANEL:** Good morning.

1 **DEP. SOLICITOR TANNER:** You heard from the judge
2 yesterday that this was going to be a short trial, and it
3 is, it's fairly short. However, it is extremely serious.
4 But why is it so serious? It's so serious because over the
5 nine or so years that I've been doing this, all the crimes
6 I've seen, all the things I've seen people do to each
7 other, burglary is one of those that reaches a special
8 level of violation; because with burglary, it's not about
9 things. It's not about money that's taken. It's about that
10 peace of mind that's removed when a burglary is committed,
11 because ---

12 **MR. PLEXICO:** Your Honor, I don't believe that's -- I
13 think that's the motion to appeal. I would object, Your
14 Honor.

15 **THE COURT:** Well, that's your objection. All right.
16 Solicitor, you can go ahead.

17 **DEP. SOLICITOR TANNER:** Thank you, Your Honor.

18 Well, the Judge is going to give you the law, but a
19 burglary is entering a dwelling, a home of another, and
20 again, there's no amount that has to be taken. So it's not
21 about the things, it's about the burglary. And you're going
22 to hear in this case what this is about. It's about this
23 man, Aljaquon Drake, who looks like he got a haircut last
24 night. The same individual we picked the jury for
25 yesterday, he's that guy. He's that stranger that broke

1 into two people's homes on July 25th, 2007.

2 You're going to hear testimony that on July 27th, 2007,
3 here in Jasper County, Aljaquon Drake entered the home of
4 Anne Nimmer after she left for work. So while she's at
5 work, he smashes into her home, rifles through her
6 belongings. He ends up taking a backpack that belongs to
7 her son, a CD player that apparently belonged to her son,
8 and he sticks around long enough to try to cook something to
9 eat. Then, he's on foot. He takes the things he stole from
10 Anne Nimmer's residence and walks down to the Smith's
11 residence, Mr. and Mrs. Smith, also at work. While they're
12 at work, while they're earning a living, he smashes into
13 their home. He rifles through their belongings while
14 they're at work. He takes loose change and a pair of
15 binoculars. It doesn't sound like a whole lot, but these
16 people come home, Ms. Nimmer, Mrs. Smith, Mr. Smith, they
17 come home and they find their home violated by Aljaquon
18 Drake.

19 The Judge is going to give you the law at the end of
20 the case. She's going to tell you what a burglary is and
21 what you have to decide. A burglary is the entering of a
22 dwelling, a home, without consent, with the intent to commit
23 a crime while you're there. Now, what makes it burglary in
24 the first degree? As I told you, it's two counts of
25 burglary in the first degree, burglary in the Nimmer

1 residence and the burglary of the Smith residence.

2 Well, first degree means there's something extra. The
3 law gives us a small list of things of that extra. In this
4 case, the extra is the fact that Mr. Drake had two prior
5 convictions of burglary at the time that he broke into Ms.
6 Nimmer's home and the Smith home; that makes it first
7 degree. How do we know he did this? Well, you're going to
8 hear from the witnesses, two of the witnesses, you're going
9 to hear Maggie Neidert, who gave him a ride. Within the two
10 hour time period, he commits two burglary's and catches a
11 ride with Maggie Neidert, down at Harvey's Supermarket, you
12 may be familiar with that if you're from this area. How do
13 we know that? Well you're going to hear from a fellow named
14 Deondre. Deondre lives across the street from the
15 supermarket. Deondre's mom works at the supermarket.
16 Aljaquon asked Deondre to help him cash these coins, which
17 he was carrying, in Ms. Nimmer's son's backpack, and you'll
18 get to see the surveillance video. You'll get to see within
19 two and a half hours of two burglary's, Aljaquon Drake on
20 video. He's got the Nimmer backpack on, he's listening to
21 the cd player, and he's cashing the stolen coins. So at the
22 end of this case, ladies and gentlemen, I'm going to come
23 back and ask you to find him guilty of two counts of
24 burglary in the first degree.

25 The Judge will tell you that your verdict, that you

1 don't owe anybody anything, you can't change anything about
2 what's happened in the past. Your verdict is about justice.
3 Your verdict is about the truth. Verdicts speak the truth,
4 and the truth is Aljaquon Drake committed two burglary's in
5 the First Degree on July 25th, 2007, right here in Jasper
6 County. Thank you very much.

7 THE COURT: Thank you, Solicitor. Mr. Plexico?

8 OPENING STATEMENT

9 BY MR. PLEXICO:

10 If it pleases the Court, Madame Solicitor? I'm Steve
11 Plexico. I'm the Public Defender for Allendale, Hampton and
12 Jasper Counties

13 Every time anyone talks to a jury, it's just a
14 privilege. This, however, is a unique case, from my
15 perspective. This is probably one of the hardest decisions
16 I think that a juror is going to have to make. You have
17 heard that my client is -- you're going to hear evidence
18 from the Solicitor that he has two prior burglaries. While
19 you certainly cannot take that and assume that the State
20 does not have to prove their case beyond a reasonable doubt
21 they not only have to prove beyond a reasonable doubt that
22 he indeed has two prior records, they have to prove that
23 these are two separate cases. All right, one is the Nimmer
24 residence, that he was there, that he entered -- he entered
25 without consent. He entered with intent to commit a crime.

1 And then there's the Smith residence, a whole different
2 set of facts that they have to prove through evidence from
3 the witness stand and through exhibits, that he was there,
4 he entered without consent. Now, you just can't roll all
5 these facts in. They have to prove each case individually.
6 And as you hear each witness from the witness stand, look at
7 each exhibit, ask yourself these questions, because you're
8 going to have to go back and make a decision. You'll have
9 to make it individually and ask how does this evidence --
10 put out of your mind that the defendant has two prior
11 burglaries. Put that out of your mind and say, the Smith
12 residence, how does this affect that? Or as you're listening
13 to them together, how did -- was this proof that he entered
14 without consent? Look at the facts. The next piece of
15 evidence, the same thing. You go back and you apply all of
16 the evidence to each individual case.

17 They have to prove each individual case beyond a
18 reasonable doubt. And this isn't about confusion, this is
19 about clear thinking, so I'm asking you to think clearly to
20 start with this morning. Remember, everybody deserves to be
21 treated the same in a courtroom. I don't care if George
22 Washington was on trial. I don't think the British would
23 have cared very much if Alexander Hamilton or Thomas
24 Jefferson were caught; I don't think they would have cared
25 very much about guilt beyond a reasonable doubt. I think

1 they would have been probably pretty summarily lumped
2 together with whatever statements were made before they were
3 shot or hung.

4 Now we have our differences. Those gentlemen set up a
5 system not to check the *. Remember, it didn't take long
6 for the British to come back. Okay? What exactly was it
7 they set up?

8 Now, these men set up in their wisdom, a system, a jury
9 system. Okay? You're entitled to counsel, all right, now,
10 this is a system that we have. Okay? The State has all the
11 money, all the taxing power. They can put on the taxes, the
12 power of the police, get all the forensic investigators they
13 want. Okay? They can bring in whatever they want. What
14 does the lowly citizen have? Just himself, and sometimes he
15 can't even afford a lawyer, only appointed from the list.

16 Now, the State has to prove each and every element in
17 the charge itself beyond a reasonable doubt. There is a
18 reason for that, because the common man doesn't have the
19 power of the State, power -- sheer power, to compete.

20 Now, what becomes -- what comes between the State and
21 the defendant? Twelve jurors. You can't be criticized on
22 your decision, when you have the last word. That's it.
23 That's what tempers that awesome power of the State.

24 Y'all have a great responsibility. It's the State's
25 duty, not the defendant to prove himself innocent, the

1 State's duty to prove each and every charge in each element
2 thereof beyond a reasonable doubt. If you have a reasonable
3 doubt, then you cannot convict. Now, when you hear this
4 evidence, how does this affect the decision of how you
5 render that evidence against, or the lack thereof? In this
6 case, as you listen, you will see that what amounts to a
7 lack of evidence in this case. Thank you very much.

8 **THE COURT:** Thank you, Mr. Plexico. Ladies and
9 gentlemen of the jury, we're going to take a brief recess.
10 I'm going to send you back to your jury room.

11 Ladies and gentlemen, I know you've only heard the
12 opening arguments, but, again, it's not appropriate for you
13 to begin discussing this case. I will be back with you
14 shortly. Sir, I assume you've been elected the foreperson.
15 He shakes his head "no". Okay. Have you elected a
16 foreperson?

17 **GENTLEMAN FROM JURY:** No.

18 **THE COURT:** Well, all right, that's what you all are
19 going to do over about the next five minutes. Okay? So if
20 you all will go ahead and go back to your jury room, elect a
21 fore person, and he can take your seat. We'll be with you
22 shortly.

23 (DECEMBER 2, 2008, 10:08 A.M., WHEREUPON JURY EXITS THE
24 COURTROOM, AND THEREAFTER THE FOLLOWING PROCEEDINGS
25 WERE HELD ON THE RECORD:)

1 **THE COURT:** You can stand right there, ma'am. I
2 just need to put this on the record. During the opening
3 argument, you made a couple signals to me, you looked a
4 little concerned, like you needed to say something and I
5 didn't know if it was a response to hearing a name or what
6 the problem was ---

7 **MS. HOLLOWAY:** Yesterday, I did not hear you say
8 Nimmer.

9 **THE COURT:** Are you talking about Scarlett Ann
10 Nimmer?

11 **MS. HOLLOWAY:** Scarlett?

12 **THE COURT:** Scarlett, I believe, her real name is --
13 you know her as Ann Nimmer; is that correct?

14 **MS. HOLLOWAY:** Ann Nimmer, and her son.

15 **THE COURT:** How do you know them?

16 **MS. HOLLOWAY:** I'm not friendly enough with her, but I
17 realized she had her home broken into, but I've known her
18 for quite some years, and her son.

19 **THE COURT:** Okay. I did read her as a potential
20 witness in this case, and they listed her as Scarlett Ann
21 Nimmer, so it may not have triggered to you yesterday, but
22 you have known them; is that correct?

23 **MS. HOLLOWAY:** It did not. I have.

24 **THE COURT:** Okay. Mr. Plexico and Ms. Tanner, out of
25 an abundance of caution, we have two alternates. I would

1 prefer to just go ahead and excuse Ms. Holloway from the
2 trial in this case because she does say that she is a friend
3 of theirs, and then just go ahead and seat the first
4 alternate. Is there any objection from the State?

5 DEP. SOLICITOR TANNER: Nothing from the State.

6 THE COURT: Any objection from the defense?

7 MR. PLEXICO: None, Your Honor.

8 THE COURT: All right. What I'm going to do, Ms.
9 Holloway, just because you do know them, I'm going to go
10 ahead and excuse you from the trial of this case, but the
11 good news of that is that I get to excuse you for the rest
12 of the week, so I understand that you may have -- do you
13 have belongings back there?

14 MS. HOLLOWAY: Yes, I have my pocketbook back there.

15 THE COURT: Actually, do you mind, Jo, would you go get
16 it for her? And I'm going to make sure -- Ms. Holloway,
17 I know you were there for only one quick moment, but
18 you didn't have an opportunity to say that to anyone in the
19 jury room, did you?

20 MS. HOLLOWAY: Oh, no.

21 THE COURT: I got you out immediately.

22 MS. HOLLOWAY: Yeah, that's what I figured.

23 THE COURT: And I appreciate that, absolutely. Well,
24 Jo's going to get your pocketbook. I'm going to go ahead
25 and excuse you, and I'll go ahead and seat one of the

1 alternates on the jury, but I appreciate you bringing to my
2 attention. It is so important and you telling me that,
3 I want you to know it makes all the difference in the world;
4 it really does, and I want you to know that, because, if for
5 some reason, you hadn't disclosed it, and if it influenced
6 you in any way in the case, you know, we would have had to
7 declare a mistrial, so I appreciate it. All right, Ms.
8 Holloway, thank you.

9 MS. HOLLOWAY: Thank you, too.

10 THE COURT: Okay. Give her your name tag, and you are
11 excused. Thank you.

12 MR. PLEXICO: I have one matter, Judge, that I forgot.
13 I move to sequester the State's witnesses, Judge.

14 THE COURT: Okay. Is there an issue with that,
15 Solicitor?

16 DEP. SOLICITOR TANNER: I don't believe any of the
17 State's witnesses are in here.

18 THE COURT: Okay. Well, who are we going to put in
19 charge to make sure that -- who's your lead investigator
20 -- who can be --

21 DEP. SOLICITOR TANNER: Investigator Criss.

22 THE COURT: Okay. You're going to be sitting with him?
23 All right. So we can put Mr. Bannon, or Mr. Vaux, or Mr.
24 Ferguson, or someone in charge of making sure they're
25 sequestered. All right. Your motion's granted. Anything

1 further y'all?

2 DEP. SOLICITOR TANNER: No. We'll just send word back
3 to the witnesses to let them know that they can't discuss
4 the testimony.

5 THE COURT: Okay. I appreciate that. If y'all don't
6 mind, I'm going to step down for only one minute. I'll be
7 right back out to bring the jury in, and I'm just going to
8 simply explain to them that I had to release a juror, just
9 because they believed that they heard about, or knew someone
10 on the case, and I'm going to seat the first alternate.
11 Margaret, who is the first alternate?

12 MADAM CLERK: Carletta Jenkins.

13 THE COURT: Ms. Jenkins? All right. So I'm going to
14 go ahead and seat Ms. Jenkins as a member of the jury, and
15 hopefully they'll also have a foreperson for me. I will be
16 right back.

17 (DECEMBER 2, 2009, WHEREUPON A RECESS IS TAKEN IN THE
18 COURTROOM; THEREAFTER, AT 10:12 A.M., THE JURY ENTERS
19 THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD
20 ON THE RECORD:)

21 THE COURT: Ms. Jenkins, I had to excuse Ms. Holloway
22 from the trial of this case, so you are now a member of the
23 jury. So if you would, you can go ahead and take a seat up
24 in the jury box as well. I would appreciate it, ma'am.
25 Thank you. All right, Solicitor, if you would call your

1 first witness.

2 **DEP. SOLICITOR TANNER:** Thank you, Your Honor. First,
3 under South Carolina Rules of Evidence, 902 and 1005, the
4 State intends to move State's Exhibit's Eleven and Twelve
5 into evidence. These are the sentencing sheets. I have
6 shown them to defense counsel, indicating Mr. Drake's two
7 prior convictions.

8 **THE COURT:** Mr. Plexico, you've reviewed them, sir?

9 **MR. PLEXICO:** Your Honor, just subject to what I've
10 already objected to, just telling about it will be more than
11 sufficient.

12 **THE COURT:** If I may publish to the jury what these
13 are?

14 **THE COURT:** You may.

15 (WHEREUPON, State's Exhibit No. Eleven and Twelve were
16 received into evidence.)

17 **DEP. SOLICITOR TANNER:** State's Exhibit Number Eleven
18 is a sentencing sheet from Beaufort County indicating that
19 Aljaquon Drake was convicted of burglary in the second
20 degree, and it occurred on July 24th, 2006. He was
21 convicted June 18th, 2007. State's Exhibit Number Twelve,
22 is another conviction in Beaufort County, and Aljaquon Drake
23 was convicted of burglary, second degree, on June 18th,
24 2007, for a burglary that occurred on July 20th, 2006; but
25 these are sentencing sheets indicating the convictions.

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1 The State calls Scarlett Ann Nimmer.

2 THE COURT: Ms. Nimmer, if you will please come forward
3 to be sworn. If you will raise your right hand and place
4 your left hand on the Bible, ma'am.

5 SCARLETT ANN NIMMER, after being duly sworn, testified
6 as follows:

7 THE COURT: Ma'am, go ahead and take a seat right here.
8 You may need to adjust this a little bit to get close to the
9 microphone.

10 DIRECT EXAMINATION

11 BY DEPUTY SOLICITOR TANNER:

12 Q Good morning, Ms. Nimmer.

13 A Good Morning.

14 Q Would you please spell your name for the court
15 reporter?

16 A A-N-N, first name. Last name, Nimmer, N-I-M-M-E-R.

17 Q Ms. Nimmer, where do you live?

18 A Road.

19 Q And is that here in Jasper County?

20 A Yes, it is.

21 Q Is it in the Town of Ridgeland?

22 A Not in the town limits, no.

23 Q But your address is Ridgeland?

24 A Yes.

25 Q And how long have you lived at Road?

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1 A Approximately three years.

2 Q So you were living there July 25th, 2007?

3 A Yes.

4 Q Can you describe your home for us? What kind of area
5 it's in?

6 A It is set off of the main road there, the main Tarboro
7 Road. I have a circle driveway and I do have a wooded area
8 between my house and the main highway.

9 Q And ---

10 A So it does sit off the road. You can't really see it
11 that well.

12 Q So you've actually got a little privacy?

13 A Yes.

14 Q And can you describe your home for us? How many
15 bedrooms? Who lives with you?

16 A It's a fairly small home. It's approximately 1200
17 square feet. It is just me and my son there. My son is 18
18 now, but he was 17 at the time, and it's 3 bedroom, 2 baths,
19 a living room, and kitchen.

20 Q Let's talk about July 25th, 2007. Do you remember that
21 day?

22 A Yes, I do.

23 Q All right. How did that day start for you?

24 A I got up as normal and went to work. I have to be to
25 work here in Jasper County at nine o'clock, which I usually

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1 try to leave my house between quarter till and ten tilt nine
2 to be at work at nine o'clock. So, I went my normal
3 schedule that day, and a lot of times I come home for lunch,
4 and I usually -- my lunch hour starts at 12:30. I usually
5 go from 12:30 to 1:30 for lunch.

6 Q You say you left your house around 9:00 a.m.?

7 A Yes, approximately.

8 Q And did you come home for lunch that day?

9 A I did.

10 Q And what time did you arrive ---

11 A It was probably about a quarter to one.

12 Q When you get back home from lunch, what do you find?

13 A I drive in my driveway and I have a front door with
14 glass in the front door. I have a back door that is
15 partially glass as well, it has the little partitions for
16 panes in the back, and it's halfway through the door. My
17 main front door is an oval shape on the door. So I pull in
18 my front, in the driveway, pull up to the front, and get out
19 of the car and go in the front door, as I normally do at
20 lunch time. I just leave my car in the driveway there, and
21 I come in the front door and unlock the door, and go in and
22 see that the back door had been busted out and the kitchen
23 was all ransacked. So it was during the summertime. My son
24 has a summer job and I thought that maybe he had come home
25 for lunch, and, maybe, left a little bit of a mess, but it

1 was more than what he would have actually done.

2 Q I'm going to ask you if you can identify what's been
3 marked as State's Exhibit One and Two?

4 DEP. SOLICITOR TANNER: If I can approach the witness?

5 THE COURT: You may.

6 Q These are Exhibits One and Two. Can you identify
7 those?

8 A Yes, this is my back door that goes into the rear of my
9 house, and this is just, it's the same door.

10 Q And is that how it appeared on July 25th, 2007, when
11 you arrived back home for lunch?

12 A Yes, ma'am.

13 Q All right. And can you describe for me again, is that
14 your front or your back door?

15 A This is the back door.

16 Q Does it appear different then it did when you left nine
17 o'clock that morning?

18 A Yes.

19 Q Okay. What's different about it?

20 A It's been shattered and broken into.

21 DEP. SOLICITOR TANNER: Your Honor, State moves One and
22 Two into evidence. I have previously shown these to the
23 defense.

24 MR. PLEXICO: No objection, Your Honor.

25 THE COURT: They're in evidence, without objection.

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1 (WHEREUPON, State's Exhibit No.'s One and Two were
2 received into evidence.)

3 DEP. SOLICITOR TANNER: If I may publish these to the
4 jury?

5 THE COURT: You may.

6 Q I'm going to ask you if you can identify what's been
7 marked as State's Exhibit Number Three?

8 DEP. SOLICITOR TANNER: If I may approach, Your Honor?

9 THE COURT: You may.

10 A Yes, this is what I saw when I actually walked into the
11 front of my house. This is what the kitchen -- what was
12 left.

13 Q What's different about the way you left it as the way
14 you found it?

15 A I normally don't leave my house with the cabinets open.

16 Q What else did you find in your kitchen?

17 A There was food that had been brought out of my freezer
18 and heated up, cooked, whatever. There was a microwavable
19 meal that was on the counter that had been taken out of my
20 freezer, put into the toaster oven, and caught on fire. I
21 mean, it was charred on the counter, and there was water on
22 the counter as well, where it had been diced with water,
23 because evidently the cardboard box that it came in had
24 started burning, and the toaster oven had been opened and
25 pulled out, and that was sitting there as well.

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1 Q And that wasn't there when you left?

2 A No.

3 DEP. SOLICITOR TANNER: Your Honor, this time State
4 moves Three into evidence, and I have previously shown this
5 to defense counsel.

6 MR. PLEXICO: I have no objection, Judge.

7 THE COURT: In evidence without objection.

8 (WHEREUPON, State's Exhibit No. Three was received into
9 evidence.)

10 DEP. SOLICITOR TANNER: If I may publish this to the
11 jury?

12 THE COURT: You may.

13 Q Once you see your kitchen like that, do you go any
14 further into the residence at that time?

15 A No, I do not.

16 Q What did you do?

17 A I immediately turned around and went back to my vehicle
18 where my cell phone was.

19 Q What do you do?

20 A First thing I did was call 9-1-1.

21 Q And, I guess, did you meet with anyone after you called
22 9-1-1?

23 A Yes, I stood at the end of my driveway, so that they
24 could identify where I was and waited on them to get there,
25 because I didn't know if perhaps someone was still in the

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1 house or not. I stayed on the phone until they got there.

2 And as soon as they got there, I called my son to make sure
3 that he had not come home during his lunch as well.

4 Q And did he come home?

5 A No, he did not come home that day.

6 Q And did you get to look through your residence after
7 law enforcement arrived?

8 A Yes. I let them go through it first, and then I went
9 in after.

10 Q All right. I'm going to show you what's been marked as
11 State's Exhibit Four and Five.

12 DEP. SOLICITOR TANNER: If I may approach, Your Honor?

13 THE COURT: You may.

14 Q If you can identify what is pictured here.

15 A This is a picture of -- two pictures of my son's
16 bedroom. Now, he's not the neatest teenager in the world,
17 but he does not live like this. His room had been
18 ransacked. The mattress had been taken off of his bed and
19 leaned up against the dresser in the bedroom. The sheets
20 and everything stripped off of his bed, and then all of his
21 belongings had been gone through as well.

22 DEP. SOLICITOR TANNER: State moves Four and Five into
23 evidence.

24 MR. PLEXICO: Without objection, Your Honor.

25 THE COURT: They're in evidence without objection.

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1 (WHEREUPON, State's Exhibit No.'s Four and Five were
2 received into evidence.)

3 DEP. SOLICITOR TANNER: Thank you, Your Honor. If I
4 may publish to the jury?

5 THE COURT: You may.

6 Q Now, Ms. Nimmer, after you get back into your home, are
7 you able to determine if anything is missing?

8 A It actually takes a little while. I wait until my son
9 gets home as well so that he can go through his things. I
10 went through my bedroom, and things had been moved around.
11 I didn't see anything that was actually missing. After my
12 son gets home and goes through his things, which, obviously,
13 it takes a while, but he noticed that a backpack of his had
14 been taken and a portable CD player.

15 DEP. SOLICITOR TANNER: If I may approach the witness,
16 Your Honor?

17 THE COURT: You may.

18 Q I'm going to ask you if you can identify what's been
19 marked as State's Exhibit Number Six?

20 A Yes. This is the backpack that my son said was
21 missing, and it has his name on it somewhere. Yeah, he had
22 written on it, here. (Indicating.) That's how he knew that
23 it was his.

24 Q And how about here?

25 A Yeah, yeah. It has his name on there, and then, he had

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1 written on it there, as well.

2 Q And this was taken from your home on July 25th, 2007?

3 A Yes, it was.

4 DEP. SOLICITOR TANNER: Your Honor, at this time, State
5 moves Six into evidence. I have previously shown this to
6 defense counsel.

7 MR. PLEXICO: No objections, Your Honor.

8 THE COURT: It's in evidence, without objection.

9 (WHEREUPON, State's Exhibit No. Six was received into
10 evidence.)

11 DEP. SOLICITOR TANNER: If I may publish to the jury?

12 THE COURT: You may.

13 Q Ms. Nimmer, do you know Aljaquon Drake?

14 A No, I don't.

15 Q Do you know any reason why Aljaquon Drake should have
16 been in your home on July 25th, 2007?

17 A No, ma'am.

18 Q Did you invite him?

19 A No, I did not invite him.

20 Q Did you give him any consent to come into your home
21 that day?

22 A I did not give him permission to eat my food either.

23 Q Thank you, Ms. Nimmer. Please answer anything that Mr.
24 Plexico has.

25

CROSS-EXAMINATION

Cross-Examination of Scarlett Ann Nimmer by Mr. Plexico

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1 BY MR. PLEXICO:

2 Q Good afternoon, ma'am. Please tell me when the
3 officers came over, they took fingerprints didn't they and
4 they looked around for evidence, correct?

5 A Yes, they did.

6 Q Okay. Now, there were three pizzas eaten, correct?

7 A Yes.

8 Q All right. Now, wouldn't that indicate to you that
9 there was more than one person there? Whoever entered your
10 home, it had to be more than one person, with all logic,
11 correct?

12 A Not necessarily. He could have just been hungry.

13 Q Okay. All right. That might indicate that, might it
14 not?

15 A I don't have any idea.

16 Q All right. Now, did you see my client at your house
17 that day?

18 A No, sir. I did not see him.

19 Q All right. Now, did you see -- do you have a videotape
20 from security of my client at your house that day?

21 A No, sir.

22 Q All right. So you have no personal evidence my client
23 was at your house that day? That's on your own personal
24 knowledge?

25 A No, sir.

Redirect Examination of Scarlett Ann Nimmer by Sol. Tanner

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1 Q All right. Now, so you were hurt, somebody broke into
2 your house and you're upset, right?

3 A Pardon me?

4 Q You were hurt, somebody broke into your house, correct?

5 A Yes.

6 Q All right. I don't have anything further.

7 THE COURT: Any redirect?

8

REDIRECT EXAMINATION

9 BY DEP. SOLICITOR TANNER:

10 Q Ms. Nimmer, those three pizzas he's talking about, were
11 they eaten or were they just pulled out and burnt and
12 cooked?

13 A One of them had been eaten on.

14 Q Eaten on?

15 A Eaten on, yeah. I don't know if it was actually the
16 whole -- I can't remember if the whole thing was consumed or
17 not, but yeah, there was three things.

18 Q That were cooked, but not like he said, that were all
19 eaten on?

20 A No, they were not all eaten on.

21 DEP. SOLICITOR TANNER: No further questions.

22

FURTHER CROSS-EXAMINATION

23 BY MR. PLEXICO:

24 Q Well, not to be silly, but were they -- were they
25 nibbled on? Were two of them burned? What was the

Further Cross-Examination of Scarlett Ann Nimmer by Mr.
Plexico

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1 condition of the pizzas?

2 A One was burned, one had been eaten on, and the other
3 was on the counter.

4 Q Okay. Now, you might have frightened somebody off when
5 you came home then?

6 A No, there was no one there.

7 Q That you knew of?

8 A That I knew of.

9 Q Okay. But you pulled up to the front and went in the
10 front door?

11 A Yes, sir.

12 Q So somebody could have left through the back door,
13 correct?

14 A Possibly.

15 Q You wouldn't have known about it. You wouldn't know if
16 five people left through the back door.

17 A Exactly.

18 Q You said "exactly"?

19 A I don't have any way of knowing because I wasn't there
20 when someone was there.

21 MR. PLEXICO: I don't have anything further.

22 THE COURT: Any redirect?

23 DEP. SOLICITOR TANNER: Nothing from the State.

24 THE COURT: You may step down, Ms. Nimmer.

25 MR. BANNON: The State calls Billy Kay Smith to the

Direct Examination of Billie Kay Smith by Sol. Bannon

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1 stand.

2 THE COURT: All right. Please let Ms. Smith come to
3 the stand.

4 DEP. SOLICITOR TANNER: May Ms. Nimmer be excused, Your
5 Honor, so that she may remain in the courtroom if she
6 wishes, or go back to work, whatever she wants to do?

7 THE COURT: Any objections, Mr. Plexico?

8 MR. PLEXICO: I have no objections.

9 THE COURT: All right. You may be excused, Ms. Nimmer.
10 Ms. Smith, if you'll please come forward to be sworn.
11 If you'll raise your right hand and place your left hand on
12 the Bible?

13 MRS. BILLIE KAY SMITH, after being duly sworn,
14 testified as follows:

15 THE COURT: Come take a seat right here, ma'am. You
16 can adjust the microphone.

17 DIRECT EXAMINATION

18 BY ASST. SOLICITOR BANNON:

19 Q Good morning, ma'am. How are you doing today?

20 A All right.

21 Q Can you state and spell your name for the court
22 reporter?

23 A Billie Kay Smith. B-i-l-l-i-e K-a-y S-m-i-t-h.

24 Q Where do you live?

25 A Road in Ridgeland.

Direct Examination of Billie Kay Smith by Sol. Bannon

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1

2 Q Okay. And that's in Jasper County?

3 A Yes.

4 Q How long have you lived there?

5 A We've lived there three-and-a-half years.

6 Q Okay. When you say "we", who -- who are you talking
7 about?

8 A Oh, my husband and I, and now we have a little boy.

9 Q Okay. When was he born?

10 A He was born two days before this happened, so July
11 7th, 2007 -- two days after it happened.12 Q Okay. So I guess on July 25th, it was just you and
13 our husband who was living at

14 A Yes, and our dog.

15 Q Okay. And do you have any pets?

16 A We have one dog.

17 Q Okay. Was he there on July 25th, 2007?

18 A No, she was with me to be groomed.

19 Q Okay. So -- but she was living with you at the house?

20 A Yes.

21 Q And -- all right. Could you describe your house there?

22 A Sure. It's off of Malphrus Road. You go down a dirt
23 road. We're the second trailer on the left side, and
24 it's a gray trailer, a driveway, back yard.

25 Q Okay. Is it in a neighborhood?

Direct Examination of Billie Kay Smith by Sol. Bannon

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- 1 A No. It's secluded.
- 2 Q Okay. Are there woods or anything around?
- 3 A Yes. There's woods on three sides.
- 4 Q And do you remember July 25th, 2007?
- 5 A I do.
- 6 Q Okay. And I guess you were pretty pregnant at that
- 7 point?
- 8 A I was five days overdue.
- 9 Q And now -- does your husband work?
- 10 A He does.
- 11 Q Okay.
- 12 He works at Hargray in Hilton Head, but was working in
- 13 Ridgeland the week of, because I was overdue and could go at
- 14 any time.
- 15 Q And what time did he go to work that morning; do you
- 16 remember?
- 17 A He went to work at eight o'clock.
- 18 Q At eight o'clock? Were you still at the house when he
- 19 left for work?
- 20 A I was.
- 21 Q Okay. And when he went to work, did you see him again
- 22 that morning?
- 23 A No.
- 24 Q Okay. And did you leave the house at all that day?
- 25 A I did. I left around ten o'clock to go get my dog

Direct Examination of Billie Kay Smith by Sol. Bannon

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1 groomed in Walterboro.

2 Q Okay. So was anyone at the house when you left at ten
3 o'clock?

4 A No.

5 Q And when you left your house, did you lock it?

6 A Yes. Our back door stays locked. Our shed stays
7 locked. I went out the front door and locked up.

8 Q Okay. And no one was in the house?

9 A No.

10 Q Okay. Did you give anyone, anyone at all, permission
11 to come in to your house?

12 A No.

13 Q Give anyone at all permission to come in and take
14 anything?

15 A No.

16 Q On that day, had you ever heard the name Aljaquon Drake
17 before?

18 A No.

19 Q Okay. And this fellow sitting right over here in the
20 checked shirt, he's Aljaquon Drake. Have you seen him
21 before?

22 A No.

23 Q All right. Okay. Did you ever give him permission to
24 go into your house?

25 A No.

Cross-Examination of Billie Kay Smith by Mr. Plexico

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1 MR. BANNON: No further questions, Your Honor.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MR. PLEXICO:

5 Q Now, when you got home, you didn't see my client at
6 your house, correct?

7 A My husband got home before I did, so no.

8 Q He got off work, what, about four o'clock, four-thirty?
9 When did he get off?

10 A No. He came home for lunch at 12.

11 Q Okay. Now, do you know what time he got home?

12 A My husband?

13 Q Yes.

14 A Around 12.

15 Q Is that when he takes -- is that his lunch hour,
16 generally?

17 A Yes.

18 Q Twelve to one?

19 A Yes.

20 Q It would have taken him some time to get there,
21 correct?

22 A He said he left the office about ten minutes early
23 because it was raining.

24 Q All right. Now, so he comes home. He didn't see my --
25 my client there, correct?

Cross-Examination of Billie Kay Smith by Mr. Plexico

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1 A No.

2 Q All right. He didn't see anybody there?

3 A No.

4 Q Right? Now, he doesn't know how many people went into
5 his and your home, correct?

6 A Correct.

7 Q He didn't know if it was one? Five? Ten?

8 A Don't know.

9 Q Okay. All right. Now -- and you didn't have any video
10 surveillance at your house, correct?

11 A No, sir.

12 Q Okay.

13 MR. PLEXICO: I don't have anything further.

14 THE COURT: Any redirect, Mr. Bannon?

15 MR. BANNON: No, Your Honor.

16 THE COURT: Ms. Smith, you may step down.

17 MR. BANNON: The State would now call Calvin Smith to
18 the stand.

19 THE COURT: Mr. Smith, please come forward to be sworn,
20 sir.

21 MR. CALVIN SMITH, after being duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. BANNON:

25 Q Good morning, sir. How are you doing?

Direct Examination of Calvin Smith by Sol. Bannon

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- 1 A Good. How are you?
- 2 Q I'm doing all right. All right. Could you go ahead
- 3 and state your name and spell it for the court reporter?
- 4 A Calvin Smith, which is C-A-L-V-I-N S-M-I-T-H.
- 5 Q And where do you live, sir?
- 6 A Road.
- 7 Q How long have you been living there?
- 8 A Since 2005.
- 9 Q Okay. And do you live alone?
- 10 A I live with my wife and my son.
- 11 Q And on July 25th of 2007, were you still living at
- 12 Road?
- 13 A Yes, sir.
- 14 Q Okay. And who was living there with you then?
- 15 A My wife.
- 16 Q Was your son born yet?
- 17 A Not yet. He was due in -- well, he was due five days
- 18 prior. We went into the hospital the very next day and he
- 19 was born that Friday.
- 20 Q And where do you work?
- 21 A Hargray Telephone.
- 22 Q Were you working on July 25th of ---
- 23 A Yes.
- 24 Q --- 2007?
- 25 A Yes, sir.

Direct Examination of Calvin Smith by Sol. Bannon

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1 Q Do you remember, did you go to work that day?

2 A I went to work that day. I went -- I worked in
3 Ridgeland because my wife was overdue for the baby. My boss
4 let me work in Ridgeland instead of normally Hilton Head.
5 That way I could be close in case she needed to go to the
6 hospital.

7 Q What time do you generally -- or do you remember what
8 time you left for work that day?

9 A Probably about ten minutes till eight. I had to be
10 there at eight o'clock.

11 Q And did you ever come home that day?

12 A I came home for my lunch break.

13 Q What time did you come home?

14 A About 11:50.

15 Q And when you came home, what did you find?

16 A Well, it was raining, and so I pulled up to the side of
17 my house to back up to my front door so I could be closer to
18 the door. And when I pulled up, I noticed that my shed door
19 was wide open, so I got out of the car and ran to close it.
20 I noticed that the door was still locked, which was strange,
21 and then I saw the broken-out window.

22 Q This was a window on the shed?

23 A Yes.

24 Q And so what did you do then?

25 A Well, it was pouring down rain so I didn't -- I figured

Direct Examination of Calvin Smith by Sol. Bannon

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1 I'd look at it later. I went on back to my car and backed
2 up to the door and then I saw my front door was open at that
3 point.

4 Q Okay. Was the door damaged at all?

5 A Yes.

6 Q Okay. Badly or --

7 A The door jamb was broken, itself, where the -- where
8 the door lock was. It had broken out and then the -- where
9 the actual door knob was, was broken too.

10 Q Was the door open?

11 A It -- it was open. Yes.

12 Q So what did you do then?

13 A Ran inside. I went to my room, grabbed the gun, and
14 searched the house to make sure there was no one in the
15 house, and then I ran outside to search around the house to
16 make sure there was no one around the house.

17 Q Did you find anyone?

18 A No.

19 Q You say you ran inside and grabbed your gun?

20 A Yes.

21 Q All right. I -- I presume that it was still there?

22 A Yes, it was still there.

23 Q Okay. Now, are we talking about a pistol or a shotgun?

24 A A shotgun.

25 Q A shotgun? So you searched the house and you said you

Direct Examination of Calvin Smith by Sol. Bannon

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1 didn't see anybody. Did you see anything missing?

2 A That's when I -- after I saw no one was there, I went
3 through and just tried to find if anything was missing. I
4 noticed drawers had been gone through. My closet had been
5 gone through and I noticed our safe was gone. The only
6 other thing I'd noticed missing at that time was we had a
7 jar of change and all the change was gone out of the jar.

8 Q Okay. Now -- now, are you talking about a big jar of
9 change?

10 A I mean, the jar itself was big, but there was very
11 little change in it.

12 Q Okay. About how much money in change would you
13 estimate was in there?

14 A Five, ten dollars. It couldn't have been much.

15 Q And did you call the police?

16 A Yes.

17 Q And did they arrive?

18 A Yes.

19 Q Did you ever find your safe?

20 A Yeah. I called my wife to let her know and she asked
21 to -- told me to check around the back of the shed and see
22 if our golf cart was still there. Ran around back there and
23 it was still there and the safe was on the back of it. It
24 was busted wide open.

25 Q Okay. And was anything missing from inside the safe?

Direct Examination of Calvin Smith by Sol. Bannon

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1 A Oh, there was -- all that was in there was paperwork
2 and so it just got rained on; so nothing was missing, no.

3 Q Okay. So there wasn't anything -- there were important
4 papers but not anything of value?

5 A Yes.

6 Q And -- so you said that a safe was missing and some
7 coin was missing?

8 A Yeah.

9 Q All right. Were those the only things that were taken
10 from you?

11 A That was the only thing I had noticed at that time.
12 And the officer, a few days later -- I can't remember
13 exactly how many days later -- he called me and asked me if
14 I was missing a pair of binoculars.

15 Q And were you missing a pair of binoculars?

16 A I went back and looked and I -- I was.

17 Q Okay. And could you describe the binoculars that you
18 were missing?

19 A They were Tasco. They were black; pretty old. They
20 were dusty. They were just a cheap pair that I had gotten
21 when I was a teenager.

22 Q Okay. So these were fairly old?

23 A Yeah.

24 MR. BANNON: Permission to approach, Your Honor.

25 THE COURT: You may.

Direct Examination of Calvin Smith by Sol. Bannon

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1 Q Sir, I'd like to have you take a look at what has
2 already been marked as State's Exhibit No. 7. Just go ahead
3 and take a look at that for me. Do you recognize it?

4 A Yes, sir.

5 Q And what is it?

6 A These are my binoculars.

7 Q What brand are they?

8 A Tasco.

9 Q And are they in the same or similar condition as they
10 were when you last had them?

11 A Yes, sir.

12 Q And, sir, I'd like to talk to you about the door. Can
13 you describe the door to us? The front door?

14 A It's -- it's a white trailer door. It's nothing
15 spectacular about it.

16 Q Okay. Is it -- is it a big, heavy door?

17 A No. No. It's -- it's just what comes with a trailer.
18 It's -- it's not -- it's not heavy-duty or anything.

19 Q Okay. And you said that it had been, I guess, broken
20 where it attaches to the wall and the knob?

21 A Yes, sir.

22 Q Was the -- was the door bent or damaged in any way?

23 A The wood in it was. It was -- kind of right on the
24 edge of it. It was cracked all the way up and down.

25 Q Uh-huh. Afterwards, did -- did -- did the door remain

Direct Examination of Calvin Smith by Sol. Bannon

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1 usable?

2 A We -- we made do for about a week until we can --
3 because she went into the hospital to have the baby so we
4 just made do with it until we could actually get it
5 replaced.

6 Q Okay. And did you get it replaced?

7 A Yes, sir.

8 Q Now that day, had you ever heard the name Aljaquon
9 Drake?

10 A No.

11 Q Did you give anyone named Aljaquon Drake permission to
12 enter your house?

13 A No, sir.

14 Q Or to take your binoculars?

15 A No, sir.

16 Q Okay. And now, this right over here is Aljaquon Drake.
17 Have you ever seen him before?

18 A Prior to this? No.

19 MR. BANNON: No further questions, Your Honor.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. PLEXICO:

23 Q Thank you for being here today, sir. Now, tell me, the
24 binoculars, you got them from, like, Wal-mart or something
25 or --

Cross-Examination of Calvin Smith by Mr. Plexico

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1 A Yes, sir.

2 Q All right. So, you know, you walked in, they had 200
3 there, you picked up one of them, they were just something
4 that you'd have that's kind of neat, right?

5 A Yeah. I mean, I -- I've had them for well over ten
6 years.

7 Q Okay.

8 A They're pretty old.

9 Q Okay. All right. But they're a common item, right?

10 A Yes.

11 Q Wal-mart is a mass merchandiser?

12 A Yes, sir.

13 Q And they sell tons and tons and tons of things, like,
14 from socks to binoculars to tools, or whatever you need?

15 A Yes, sir.

16 Q Okay. It makes it a little profit if you sell a whole
17 of them, right?

18 A Yes, sir.

19 Q Did you put any initials on your binoculars?

20 A I did not.

21 Q And so they're just the way you got them?

22 A Yes.

23 Q So they're indistinguishable from thousands and
24 thousands of other ones that could have been sold at Wal-
25 Mart, correct?

Redirect Examination of Calvin Smith by Sol. Bannon
Further Cross-Examination of Calvin Smith by Mr. Plexico

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1 A Uh-huh.

2 Q All right. And, of course, you didn't see my client at
3 your house that day?

4 A No, sir.

5 Q Okay. And you don't know if -- who broke in or how
6 many people broke in, correct?

7 A I sure don't.

8 Q All right. I don't have anything further, sir. Thank
9 you.

10 THE COURT: Redirect, Mr. Bannon?

11 REDIRECT EXAMINATION

12 BY MR. BANNON:

13 Q Are those your binoculars?

14 A They -- they look like them.

15 Q No further questions.

16 THE COURT: MR. PLEXICO?

17 FURTHER CROSS-EXAMINATION

18 BY MR. PLEXICO:

19 Q They look like them because they're one of, could be,
20 any pair. You wouldn't be able to tell the difference if I
21 had five just alike, right?

22 A If they looked just like mine? No.

23 Q Same model -- same model, same brand, you couldn't tell
24 the difference, right?

25 A Yeah. Yeah.

Direct Examination of Inv. Criss by Solicitor Tanner

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1 Q All right. I don't have anything further.

2 THE COURT: Mr. Bannon?

3 MR. BANNON: Nothing more, Your Honor.

4 THE COURT: You can sit down, Mr. Smith.

5 MR. SMITH: Okay. Do you want ---

6 THE COURT: Just leave it right there, sir.

7 SOLICITOR TANNER: May this witness be excused?

8 THE COURT: Any objection, Mr. Plexico?

9 MR. PLEXICO: No, Your Honor.

10 THE COURT: You may be excused, Mr. Smith.

11 Call your next witness.

12 SOLICITOR TANNER: Your Honor, the State calls

13 Investigator Henry Criss to the stand.

14 THE COURT: All right. Investigator Criss, if you'd
15 come forward to be sworn.

16 INVESTIGATOR HENRY CRISS, after being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR TANNER:

20 Q Good morning, Investigator Criss.

21 A Good morning.

22 Q Please state and spell your name for the court
23 reporter.

24 A My first name is Henry, H-e-n-r-y. And my last name is
25 Criss, C-r-i-s-s.

Direct Examination of Investigator Criss by Sol. Tanner

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1 Q Investigator, where are you employed?

2 A With the Jasper County Sheriff's Office.

3 Q And how long have you been with the Sheriff's office?

4 A For a little over five years now.

5 Q And what kind of training or education do you have that
6 assists you in working at the Sheriff's office?

7 A In those five years, I've attended numerous
8 investigative schools and also different enforcement schools
9 over those five years.

10 Q Now, were you working on July -- in July, 2007 and --
11 let me go back. Were you called out to be involved in the
12 investigation of two burglaries that occurred on July 25th,
13 2007?

14 A Yes, ma'am. Those cases were assigned to me for
15 follow-up investigation.

16 Q All right. And what were the addresses of those two
17 burglaries?

18 A One of them was Road, and the other one
19 was on Tarborough Road. I believe it was 9340, but I'd have
20 to look at the report to make sure.

21 Q And in preparation for your testimony today, did you
22 prepare an exhibit that would actually aid in your
23 testimony?

24 A Yes, ma'am, I did. I've prepared a -- an aerial-view
25 of the map.

Direct Examination of Investigator Criss by Sol. Tanner

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1 Q And is that what I showed you earlier that's marked as
2 State's Exhibit No. 8?

3 A Yes, ma'am. That's correct.

4 Q All right.

5 DEP. SOLICITOR TANNER: And I have shown this to
6 defense counsel, Your Honor.

7 Q If I may, is this the Exhibit you prepared?

8 A Yes, ma'am, it is.

9 DEP. SOLICITOR TANNER: At this time, I'd move State's
10 Exhibit No. 8 in that we may publish to the jury.

11 THE COURT: Mr. Plexico?

12 MR. PLEXICO: Publish without objection, Judge.

13 THE COURT: In evidence without objection.

14 (WHEREUPON, State's Exhibit No. Eight was received into
15 evidence.)

16 DEP. SOLICITOR TANNER: All right. You might want to
17 put it over here to make sure everybody can see it.

18 THE COURT: Can everyone on the jury see this?

19 DEP. SOLICITOR TANNER: I think it'd be better if I
20 bring it out here and have Mr. Criss get off the stand.

21 THE COURT: All right.

22 Q Investigator Criss, can I have you please come down
23 here and stand? Just right there.

24 MR. PLEXICO: Your Honor, can my client come around
25 to ---

Direct Examination of Investigator Criss by Sol. Tanner

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1 THE COURT: Mr. Plexico, you are welcome, absolutely.

2 Q Can you describe for the jury what is depicted in this
3 Exhibit?

4 A Yes, ma'am. This is an aerial view of the -- the
5 intersection of tar -- and the area surrounding the
6 intersection of Tarborough Road and Malphrus Road, which is
7 in the Ridgeland area of Jasper County, South Carolina.
8 Indicated on the map ---

9 THE COURT: Investigator Criss, can you back up a
10 little bit, just so ---

11 MR. CRISS: Yes, ma'am.

12 THE COURT: --- our jury can see?

13 MR. CRISS: Absolutely.

14 THE COURT: Thank you.

15 A Indicated by this arrow here is -- is Ms. Nimmers'
16 residence, which is located at 9340 Tarborough Road. Also
17 is the -- Mr. and Mrs. Smith's residence at
18 Road and another residence located on this location.

19 Q And what is the significance of the green markings
20 between the Nimmer residence and the Smith residence?

21 A That's the -- the distance -- the approximate distance
22 in miles between the two residences as the crow flies.

23 Q And what would that distance be?

24 A Approximately 0.51 mile.

25 Q About half a mile?

Direct Examination of Investigator Criss by Sol. Tanner

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1 A Yes, ma'am.

2 Q And what would be the significance of 348 Darby
3 Plantation Road, which is also marked on your exhibit?

4 A During the course of my investigation, I received
5 information that a subject had been seen in the area
6 immediately after the burglary of the residence of 309
7 Malphrus Road, and I subsequently made contact with the
8 folks who live here at this residence, 348 Darby Plantation
9 Road, and -- and that's where I actually got the binoculars
10 from, was the folks -- the people there.

11 Q And were you able to determine if Aljaquon Drake had
12 been at 348 Darby Plantation Road ---

13 MR. PLEXICO: I would object on hearsay grounds, Your
14 Honor.

15 Q --- as part of this investigation?

16 MR. PLEXICO: Your Honor, I would object.

17 THE COURT: Overruled.

18 A Yes, ma'am. During -- during the course of my
19 investigation, I was able to -- to determine Mr. Drake had,
20 indeed, had been here at this residence, 348 Darby
21 Plantation Road.

22 Q And do you know about what time on July 25th he was at
23 the Darby Plantation Road residence?

24 A Yes, ma'am. It was sometime between -- between 12 and
25 1. Sometime during that -- that -- either right at

Direct Examination of Investigator Criss by Sol. Tanner

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1 lunchtime or early afternoon.

2 Q You mentioned that you collected binoculars from --
3 from this residence. Is that what's been marked as State's
4 Exhibit No. 7?

5 A Yes, ma'am, it is.

6 Q And, also, there were green markings between the Darby
7 Plantation Road and the Malphrus Road residences. What
8 does that indicate?

9 A That's the -- the distance as the crow flies between
10 the roads -- the Malphrus Road from Darby Plantation Road,
11 which is approximately 0.22 miles or right about a quarter
12 of a mile.

13 Q So from the Nimmer residence to the Smith residence to
14 this location where Mr. Drake was seen around 12:30, is less
15 than a mile?

16 A Yes, ma'am. That's correct.

17 Q Thank you, Investigator. You can re-take the stand.

18 A Thank you.

19 Q As part of your investigation, do you conduct
20 interviews of people?

21 A Yes, ma'am, I do.

22 Q And who did you interview as part of your investigation
23 as far as witnesses go in this case?

24 A Initially, I spoke with many different people in the
25 area. I conducted what's known as a "canvass." I spoke

Direct Examination of Investigator Criss by Sol. Tanner

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1 with just about everybody that lived out there that I could
2 make contact with. The ones I spoke to that provided me
3 with information, that aided my investigation, I spoke with
4 -- with a subject named Patience Perry. Also, a -- a
5 subject named Michael Ayers, who is also known as "Peppy".
6 And I spoke with a Margaret Neidert who was also there. I
7 also spoke with several employees at the -- at the Harvey's
8 Supermarket, one of them being Byron Mobley, I believe is
9 his name.

10 Q All right. And you said you spoke to a Margaret
11 Neidert. Does she also go by "Maggie"?

12 A Yes, ma'am.

13 Q Now -- and after you conducted these interviews, you
14 said you were led to Harvey's Supermarket?

15 A That's correct.

16 Q Who do you speak to at Harvey's?

17 A I initially spoke with Byron Mobley, who was the
18 manager on duty.

19 Q All right. And what, if anything, did you get from
20 speaking with Mr. Mobley?

21 A After speaking with Mr. Mobley, I was able to obtain a
22 copy of the video surveillance at Harvey's for that day.

23 Q And did you review the surveillance from Harvey's for
24 that day?

25 A Yes, ma'am, I did.

Cross-Examination of Investigator Criss by Mr. Plexico

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1 Q Okay. All right. And was anyone identified by you on
2 those surveillance tapes?

3 A Yes, ma'am. There were two persons identified on the
4 tapes. One of them being the defendant, Mr. Drake, and the
5 other one being a Deondre Fields.

6 Q And were you able to talk to Mr. Deondre Fields?

7 A Yes, ma'am, I did. I spoke with him not too long after
8 I obtained the videotape.

9 Q Do you recall what time Mr. Drake is observed on the
10 videotape at Harvey's?

11 A Yes, ma'am. It was approximately -- a little bit after
12 12, I believe. It was between 12 and 1.

13 Q What do you see him doing on the surveillance tape?

14 A It appears he's cashing in some coins at the Coin Star
15 machine.

16 Q Uh-huh. Can you tell anything else about him from the
17 videotape?

18 A Yes, ma'am. He's listening to a -- what appears to be
19 a portable CD player. He's also carrying a -- a backpack.

20 Q At the conclusion of your investigation, do you then
21 arrest Mr. Drake?

22 A Yes, ma'am. Mr. Drake was ultimately arrested.

23 Q And at the time he is arrested, does he have anything
24 with him?

25 A Yes, ma'am. At the time of his arrest, he had the --

Cross-Examination of Investigator Criss by Mr. Plexico

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1 the -- the blue backpack that belonged to -- to Ms. Nimmer's
2 son and also he had some other items.

3 Q Are you referring to State's Exhibit No. 6?

4 A Yes, ma'am.

5 Q So you collected this at the same time you arrested Mr.
6 Drake?

7 A That's correct.

8 Q Ms. Nimmer's son's backpack was on Mr. Drake at the
9 time of arrest?

10 A Correct.

11 Q Thank you, Investigator. Please answer anything Mr.
12 Plexico has.

13 A Yes, ma'am.

14 CROSS-EXAMINATION

15 BY MR. PLEXICO:

16 Q Okay. Now, my client was arrested in an automobile,
17 correct?

18 A That's correct. Yes, sir.

19 Q And that'd be quite some time after the backpack was
20 taken; is that not correct?

21 A It was -- I believe it was maybe several months after.

22 I -- I wouldn't associate "quite some time."

23 Q Several months ---

24 A Yes.

25 Q --- after ---

Cross-Examination of Investigator Criss by Mr. Plexico

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- 1 A Correct.
- 2 Q --- the knapsack was taken from my client. Now, you
3 had a -- you typed up a police report in regards to this
4 matter, correct?
- 5 A That's correct.
- 6 Q All right.
- 7 MR. PLEXICO: The Court's indulgence, please?
- 8 THE COURT: Yes, sir.
- 9 Q Now, in that car, was there four -- three to -- three,
10 four, five other people? How many other people were in that
11 car?
- 12 A I believe there was three or four in the car, right off
13 the top of my head.
- 14 Q Okay. Now, you also have a photograph of the knapsack
15 laying down on the back seat of the car, correct, sir?
- 16 A Yes.
- 17 Q All right. Now, so the -- there was a -- a -- several
18 people in the back seat sitting on the knapsack, correct?
- 19 A No, sir. Mr. Drake was sitting on the knapsack.
- 20 Q Okay. All right. Now, do you know when the knapsack
21 was placed in the car?
- 22 A No, sir.
- 23 Q Okay. Now, do you know who placed the -- did you see
24 who placed -- of those -- was it four people or five in the
25 car?

Cross-Examination of Investigator Criss by Mr. Plexico

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1 A I believe there was five. Yes, sir.

2 Q Okay. Of those five people, did you see who -- who
3 placed the knapsack in the car?

4 A No, sir, I did not.

5 Q Do you know if the knapsack had been in there for a
6 month?

7 A No, sir. I don't know.

8 Q Do you know if it had been there -- in there just four
9 days?

10 A No, sir.

11 Q My client was in the back seat of the car, correct?

12 A That's correct.

13 Q He did not have control or possession of that
14 automobile, correct?

15 A No, sir.

16 Q Was the automobile registered in his name?

17 A No, sir.

18 Q Was the automobile registered in his mother's name?

19 A I don't recall what name it was registered in.

20 Q Okay. All right. So there's nothing about the
21 ownership of that automobile that ties that automobile to my
22 client, correct?

23 A Not the automobile. No, sir.

24 Q Okay. All right. Now --

25 MR. PLEXICO: I don't have anything further,

Redirect Examination of Investigator Criss by Sol. Tanner
Further Cross-Examination of Inv. Criss by Mr. Plexico 94

1 Judge.

2 REDIRECT EXAMINATION

3 BY DEP. SOLICITOR TANNER:

4 Q Investigator, let's go back to the day of the burglary:
5 July 25th, 2007. You watched the surveillance tape from
6 Harvey's Supermarket --

7 A Correct.

8 Q -- between 12:30 and 12:45?

9 A Yes, ma'am.

10 Q Mr. Drake is on the surveillance tape wearing this
11 backpack?

12 A It appears so. Yes, ma'am.

13 Q The day of the burglary -- burglaries?

14 A Yes, ma'am.

15 A Thank you. No further questions.

16 THE COURT: Mr. Plexico?

17 FURTHER CROSS-EXAMINATION

18 BY MR. PLEXICO:

19 Q "It appears so," because you can't be sure because the
20 video is just not that good, is it? Correct?

21 A I'm not sure I understand the question. Is it the
22 quality of the video?

23 Q You can really tell colors on the video very well, can
24 you?

25 A Yes, sir. You can tell colors fairly well.

Further Direct Examination of Inv. Criss by Sol. Tanner

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1 Q Okay. All right. But, I mean, it's not that close-up
2 of a picture and it's not something you'd want to stake your
3 life on that this is the same backpack that was on that
4 video?

5 A No, sir, but it appears to be a similar backpack.

6 Q A "similar" backpack?

7 A Yes, sir.

8 Q All right. And don't -- don't tens, hundreds,
9 thousands, hundreds of thousands of millions of children
10 carry their things to school every day in America in
11 backpacks?

12 A Yes, sir. I would imagine so. I imagine they carry
13 all kinds of things.

14 Q There are millions of backpacks in America today,
15 correct?

16 A Yes, sir.

17 Q And that's one of millions, correct?

18 A Yes, sir.

19 Q I don't have anything further.

20 **FURTHER DIRECT EXAMINATION**

21 **BY SOLICITOR TANNER:**

22 Q How many of them you think say "Nimmer" on them?

23 A I would have to guess, but I'd say very few of them.

24 Q This one?

25 A But that one, definitely, yes, ma'am.

Further Cross-Examination of Calvin Smith by Mr. Plexico

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1 Q Thank you. No further questions.

2 MR. PLEXICO: Court's indulgence, please?

3 FURTHER CROSS-EXAMINATION

4 BY MR. PLEXICO:

5 Q This is seen -- a backpack, excuse me, is seen on the
6 video being worn by someone, correct?

7 A Yes, sir.

8 Q And have you ever seen anybody when they're wearing a
9 backpack, being worn like this, with the names on the back,
10 of those millions that all of them have a name? Nobody
11 would know the name on any of them, right? So it becomes
12 one more indistinguishable knapsack, one of millions on the
13 video, because there's no way to see this on the video,
14 correct?

15 A There's only the one knapsack on the video.

16 Q Right. And it's being worn, correct?

17 A Correct. Yes, sir.

18 Q And you can't see this on the video, correct?

19 A No, sir. I couldn't see the "Nimmer" on it, that's
20 correct.

21 Q Right. So there was nothing to distinguish this
22 knapsack from the other millions of knapsacks in America on
23 the video, correct?

24 A No, sir. I -- I think it's been stated through by what
25 the color of the knapsack and the way it's made. I -- I

Further Cross-Examination of Calvin Smith by Mr. Plexico
Further Redirect Examination Calvin Smith by Sol. Tanner 97

1 understand, Mr. Plexico, where you're going, but to answer
2 your question, I believe that knapsack is distinguishable
3 from the millions of other ones.

4 Q Okay. But you don't know how many hundreds of
5 thousands of these were made?

6 A No, sir. I have no clue.

7 Q Do you know if it was a mass market item sold over at
8 the Hardeeville Market Wal-Mart? That they sold 10,000 of
9 that year?

10 A No, sir. I believe that knapsack is Old Navy. I don't
11 -- I don't -- I don't know how many of them they made. No,
12 sir.

13 Q Or where they were sold at or for how many years and
14 years and years that model was sold, correct?

15 A No, sir, I don't know.

16 Q All right. Thank you.

17 THE COURT: Solicitor?

18 SOLICITOR TANNER: Yes, ma'am.

19 FURTHER REDIRECT EXAMINATION

20 BY DEP. SOLICITOR TANNER:

21 Q Just to clarify, the day the Nimmer residence is
22 burglarized, Mr. Drake is on video within two hours of that
23 burglary wearing a backpack that looks just like this one?

24 A Yes, ma'am, that's correct.

25 Q And the day he's arrested, he's actually sitting on

Direct Examination of Maggie Neidert by Sol. Tanner

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1 this one that says "Nimmer"?

2 A Yes, ma'am, that's correct.

3 Q No further questions.

4 MR. PLEXICO: There's just no point. Your Honor, I
5 don't have any further questions.

6 THE COURT: You may sit down, sir.

7 INVESTIGATOR CRISS: Thank you, Your Honor.

8 THE COURT: Solicitor, call your next witness.

9 DEPUTY SOLICITOR TANNER: Thank you, Your Honor.
10 The State calls Maggie Neidert.

11 THE COURT: Ms. Neidert, would you please come forward
12 to be sworn? Right over here, ma'am. Place your left hand
13 on the Bible and raise your right hand.

14 MS. MAGGIE NEIDERT, after being duly sworn, testified
15 as follows.

16 DIRECT EXAMINATION

17 BY DEP. SOLICITOR TANNER:

18 Q Good morning, Ms. Neidert. Could you please spell your
19 name for the court reporter?

20 A My last or first?

21 Q Both.

22 A Maggie, M-a-g-g-i-e. Neidert, N-e-i-d-e-r-t.

23 Q Ms. Neidert, I thank you for being here. Keep it
24 short. I'm just going to ask you some questions about July
25 25th, 2007. Do you recall any point that day going to 348

Direct Examination of Maggie Neidert by Sol. Tanner

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- 1 Darby Plantation Road?
- 2 A Yes, ma'am.
- 3 Q All right. And why did you go to that -- do -- do you
- 4 live there?
- 5 A No, ma'am. I went there to visit a friend.
- 6 Q And who was your friend?
- 7 A Patience.
- 8 Q Patience lived at -- at 348 Darby Plantation?
- 9 A Yes, ma'am.
- 10 Q And on this day, do you actually meet up with Patience?
- 11 A Yes, ma'am.
- 12 Q Describe a little bit about that. You pull up in the
- 13 drive -- you drove there?
- 14 A Yes, ma'am.
- 15 Q What kind of car do you -- were you driving then?
- 16 A It was a white Chevrolet pickup truck. And I went up
- 17 and knocked on the door and went inside and talked with
- 18 Patience. And there was a boy standing out on the porch
- 19 that was needing a ride and couldn't -- come and knocked on
- 20 the door and wanted to know if he -- if Patience had a phone
- 21 he could use, and she didn't, and then he wanted a ride
- 22 uptown. And, basically, Patience asked me, cause I was
- 23 fixing to leave anyways, if I would give him a ride because
- 24 she was real nervous about him being there, and would I
- 25 please give him a ride because he claimed that he knew her

Direct Examination of Maggie Neidert by Sol. Tanner

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1 boyfriend, Peppy. So, you know, I was trying to do her a
2 favor by, you know, giving him a ride and taking him away
3 from the house.

4 Q Uh-huh. And what do you recall about how this guy
5 looked that day? What'd he look like?

6 A He had braids. Just -- well, I mean, he was short. I
7 picked him out on a line-up because the detective come to my
8 house. It's really hard for me to be able to do it right
9 now.

10 Q I know you've had a personal tragedy this week and I
11 appreciate you being here.

12 What was -- do you remember what -- what kind of
13 clothes he was wearing?

14 A Shorts with a tank top.

15 Q Do you remember what color?

16 A I want to say blue or yellow. Like I said, I'm not --
17 I'm not exactly sure.

18 Q Do you remember if he had anything with him when you
19 picked him up?

20 A He had a backpack.

21 Q All right. Can you tell me if it looked like State's
22 Exhibit No. 6?

23 A Yes, ma'am.

24 Q It looked like this one?

25 A Yes, ma'am.

Direct Examination of Maggie Neidert by Sol. Tanner

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1 Q Did you have any conversation with him while he was in
2 the car with you?

3 A Not too much. He claimed that he knew Peppy. He asked
4 -- like I said, I really -- I can't be exact. I just ---

5 Q It's been a year.

6 A Yeah. And I just -- he wanted to go to Harvey's to --
7 he said he wanted to go to the Coin Star to Harvey -- at
8 Harvey's and that when I got there, if I waited outside, he
9 would bring me some gas money, but I told him that I wasn't
10 worried about it. And I took him to Harvey's and he got out
11 my truck and I left.

12 Q All right. So you just dropped him off at Harvey's and
13 that was the end of it?

14 A Yes, ma'am.

15 Q Was he with anyone or was he alone when you picked him
16 up on Darby Plantation Road?

17 A He was alone.

18 Q So you didn't give anybody else a ride but this guy to
19 Harvey's?

20 A Yes, ma'am.

21 Q All right. And do see that guy you gave a ride to in
22 the courtroom today?

23 A Yes, ma'am.

24 Q Can you point him out for the jury, please?

25 A (Points to Aljaquon Drake.)

Cross-Examination of Maggie Neidert by Mr. Plexico

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1 Q Can you describe what he's wearing?

2 A A plaid, brown shirt.

3 DEP. SOLICITOR TANNER: For the record, please indicate
4 she has indicated Mr. Drake, the defendant.

5 Q All right. Thank you, Ms. Neidert. Please answer
6 anything the defense has.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. PLEXICO:

10 Q Thanks for being here today. You wouldn't have any
11 particular reason to concentrate on the knapsack, so you
12 don't know if it was this blue and black knapsack or another
13 blue and black knapsack? It was just a knapsack --

14 A That's ---

15 Q --- isn't that right?

16 A That's what it -- I mean, he had it right there in-
17 between his legs and in my truck, I have a middle bench in
18 my truck --

19 Q So you're ---

20 A --- and he had it in-between.

21 Q You're looking at the road, right?

22 A Well, I mean, I had some conversation with him.

23 Q Sure. But I'm saying there was no need for you to
24 concentrate on the knapsack, correct?

25 A No. But I seen him with a book bag that looked like

Cross-Examination of Maggie Neidert by Mr. Plexico

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1 that.

2 Q Okay. But you don't know if it was this one or another

3 one that looked like it, correct?

4 A Correct.

5 Q Okay. Did you mark down or did you make any notes

6 about the details of the backpack?

7 A No, sir, I did not, because I didn't realize that he

8 had broken into somebody's house.

9 Q It was alleged, that's what you were told, right? Did

10 you take him to break into a house?

11 A No, sir.

12 Q You don't have any personal knowledge that he broke

13 into a house, right?

14 A No, sir.

15 Q Isn't that correct?

16 A No, sir. All I did was give him a ride.

17 Q Okay. And you don't want to be part of a group thing

18 that -- about creating something that didn't happen,

19 correct?

20 A I mean, I didn't know --

21 Q That's what hurts people, correct?

22 A I didn't know that he had even broken into a house

23 until I talked to the --

24 Q But you still -- you -- do you -- did you take him to

25 break in a house?

Redirect Examination of Maggie Neidert by Sol. Tanner

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1 A No, I did not.

2 Q Did you see him break into a house?

3 A No, I did not.

4 Q You have no personal knowledge that he broke into a
5 house, correct?

6 A No, I do not.

7 Q You don't, correct?

8 A Correct.

9 Q Okay. All right. I don't have anything further.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION

12 BY SOLICITOR TANNER:

13 Q Do you recall what time it was when you dropped him off
14 at Harvey's?

15 A 11:00, 12:00, between 11:00 and 12:00, around there, or
16 maybe 1:00.

17 Q No further questions, Ms. Neidert.

18 THE COURT: Mr. Plexico?

19 MR. PLEXICO: I don't -- I don't have anything further,
20 Your Honor.

21 THE COURT: Any objections to Ms. Neidert being
22 excused?

23 SOLICITOR TANNER: None from the State.

24 MR. PLEXICO: No objections from the defense, Your
25 Honor.

1 THE COURT: Ms. Neidert, you are excused. Thank you.
2 All right. Ladies and gentlemen of the jury, I think it's a
3 good time for a break right now. I'm going to go ahead and
4 excuse you back to your jury room. I'm going to remind you,
5 you are not to begin discussing this case. It wouldn't be
6 appropriate to do so at this time, and we will be back with
7 y'all shortly. Go ahead and get a cup of coffee or a Coke
8 and we'll have you right back. Thank you.

9 (TUESDAY, DECEMBER 2nd, 2008, 11:15 A.M., WHEREUPON,
10 THE JURY EXITS THE COURTROOM. THEREAFTER, THE
11 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

12 THE COURT: Solicitor, how many more witnesses do you
13 have?

14 SOLICITOR TANNER: I have two more, and my last two I'm
15 going to be using this projector.

16 THE COURT: All right.

17 SOLICITOR TANNER: I'm going to use the surveillance
18 tape, so I'm going to go ahead and set that up.

19 THE COURT: That'd be a great idea right now.

20 SOLICITOR TANNER: It's going to take just a minute or
21 two for me to figure it out.

22 THE COURT: Mr. Plexico, how many witnesses do you
23 anticipate?

24 MR. PLEXICO: I'll be very brief, Judge.

25 THE COURT: Okay. You need to obviously go through

1 your client's Fifth Amendment rights, as well, at that
2 point. What I intend on doing, if it's a natural break, is
3 maybe take a short lunch, and then arguing a charge at
4 lunch, if that's an appropriate time. Okay? Just to let
5 y'all know.

6 All right, y'all, we're going to be at ease for about
7 ten minutes.

8 (TUESDAY, DECEMBER 2ND, 2008, 11:50 A.M., WHEREUPON THE
9 JURY ENTERS THE COURTROOM, AND THEREAFTER, THE
10 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

11 THE COURT: Welcome back, ladies and gentlemen.
12 Solicitor?

13 SOLICITOR TANNER: Thank you, Your Honor. The State
14 calls Byron Mobley. Byron Mobley?

15 THE COURT: Mr. Mobley?

16 THE BAILIFF: Byron Mobley?

17 THE COURT: Mr. Mobley, if you'd please come forward to
18 be sworn, sir? Right up here, sir. If you will raise your
19 right hand and put your left hand on the Bible.

20 BYRON MOBLEY, after being duly sworn, testified as
21 follows:

22 THE COURT: Come on over here, sir. All right, sir.
23 Come take a seat right here. And, sir, if you'll adjust the
24 microphone so everyone can hear you in the courtroom? Thank
25 you, sir.

Direct Examination of Byron Mobley by Sol. Tanner

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1 If you could give us your full name for the record and
2 spell it for the court reporter?

3 **MR. MOBLEY:** That's Byron Lee Mobley. B-y-r-o-n, L-e-
4 e, M-o-b-l-e-y.

5 **THE COURT:** Thank you, sir. Solicitor?

6 **DIRECT EXAMINATION**

7 **BY SOLICITOR TANNER:**

8 Q Good afternoon, Mr. Mobley.

9 A Afternoon.

10 Q Where are you employed?

11 A Harvey's Supermarket.

12 Q And what is your position at Harvey's Supermarket?

13 A Store manager.

14 Q And how long have you been the manager there?

15 A Two years.

16 Q And what are some of your duties as a manager at
17 Harvey's? What -- what would a normal day for you be like?

18 A Basically, see the overall operation of the store.

19 Q And as part of your overall operations, did that
20 include any kind of security, or surveillance equipment?

21 A Yes.

22 Q And prior to your testimony here today, did you meet
23 with me and review actual tapes from your supermarket?

24 A Yes.

25 **SOLICITOR TANNER:** Your Honor, if I may approach?

Direct Examination of Byron Mobley by Sol. Tanner

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1 Q If I could have you identify what's been marked as
2 State's Exhibit No. 9?

3 A Those are my initials.

4 Q You initialed this when? Not the date, but what
5 happened prior to you initialing these?

6 A I watched them.

7 Q With me?

8 A Yes.

9 Q All right. And those are your initials on that disk?

10 A Correct.

11 Q Okay, State's Exhibit 9. And I'll have you identify
12 what's been marked as State's Exhibit No. 10.

13 A I watched and initialed it.

14 SOLICITOR TANNER: All right. At this time, State
15 moves 9 and 10 into evidence.

16 THE COURT: Mr. Plexico?

17 MR. PLEXICO: I don't have any objections.

18 (WHEREUPON, State's Exhibit No.'s. Nine and Ten were
19 received into evidence.)

20 MR. PLEXICO: I do have an objection, Judge. May I
21 approach?

22 THE COURT: You may.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
24 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER,
25 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

Direct Examination of Byron Mobley by Sol. Tanner

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1 SOLICITOR TANNER: State's 9 and 10 are into evidence?

2 THE COURT: They are.

3 MR. PLEXICO: Your Honor, when it starts, we need to
4 hear.

5 THE COURT: Obviously. You can move over. Not a
6 problem.

7 MR. PLEXICO: Thank you.

8 THE COURT: I think -- you want to go ahead and move,
9 Mr. Plexico?

10 SOLICITOR TANNER: Could you turn the lights off?

11 Q Mr. Mobley ---

12 DEP. SOLICITOR TANNER: And I believe we're going to be
13 blocking the jury. If we could move back here and I'll move
14 the --

15 Q Mr. Mobley, can you see the screen from where you are
16 located?

17 A Yes, ma'am.

18 Q Can you describe for the jury what it is we're looking
19 at here on the screen?

20 A That's our surveillance system.

21 Q And why is it in a bunch of different little boxes?

22 A Because they are different cameras.

23 Q Okay. And are they recording at the same time in the
24 store?

25 A Correct.

Direct Examination of Byron Mobley by Sol. Tanner

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1 Q Okay. And can you tell me what the time stamp is on
2 this surveillance video?

3 THE COURT: If you need to get up and look at it, you
4 are welcome to, sir.

5 A (Witness complies.) 12:24 p.m.

6 Q That's the afternoon?

7 A Yes.

8 Q Okay, sir.

9 THE COURT: Sir, if you want to, you can stand there,
10 if it's easier for you ---

11 MR. MOBLEY: Yes, ma'am.

12 THE COURT: --- to read.

13 Q Now, are these tapes kept in the course of your
14 business?

15 A Yes.

16 Q Do you record these and keep track of these?

17 A Yes.

18 Q In the bottom, right-hand corner box, can you tell me
19 what part of the store that actually -- that camera is
20 located on? What it's looking at?

21 A It's located on the front end.

22 Q All right. And what -- what all can you see from here?
23 And if you need to come closer and actually point to the
24 screen, that's fine as well.

25 A You can see our front entrance way. You can see the

Direct Examination of Byron Mobley by Sol. Tanner

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1 right-hand door the customers come in and come out. You can
2 see our Coin Star. You can see our ATM machine, a couple of
3 displays, card rack.

4 THE COURT: Mr. Mobley, will you do this? Will you go
5 stand on the other side of the screen and just point out,
6 because you're blocking the view of these jurors, and show
7 them again?

8 Q Can you actually point on the screen where your Coin
9 Star machine is located in this -- in this screen?

10 A Right here beside my -- my ATM machine.

11 Q All right. And that's where it was in July, 2007?

12 A Yes, ma'am.

13 Q All right. And you said -- and the front entrance is
14 what we see at the top?

15 A Correct.

16 Q Okay. All right. I'm going to show you the next
17 exhibit. Go back to another screen here. This one right
18 here. I'm trying to make it clearer. All right. See where
19 the arrow is right here?

20 A Yes.

21 Q What does that screen right there show?

22 A I'm viewing the inside of the store, that's my right-
23 hand entrance/exit door.

24 Q Okay. So when we were looking at the other screen, it
25 was actually showing top, right-hand corner?

Direct Examination of Byron Mobley by Sol. Tanner

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1 A Correct.

2 Q All right. Okay. Now I'll show you State's Exhibit
3 No. 10, which is the other disk you identified. All right.
4 This frame up here. Top, right-hand corner -- top, right-
5 hand corner panel. What does that depict?

6 A That depicts my register three and four.

7 Q So that is also in Harvey's?

8 A Correct.

9 Q All right. And what time is indicated on here?

10 A 13:02, which is 1:02 p.m.

11 Q All right. So about 10/15 minutes after the first
12 video?

13 A Correct.

14 Q Is that correct? All right. Thank you, Mr. Mobley.
15 You can return to the stand.

16 Mr. Mobley, that's all the questions I have.
17 Please answer anything Mr. Plexico has.

18 MR. PLEXICO: I don't have any questions, Judge.

19 THE COURT: You may sit down, Mr. Mobley. Any
20 objections to him being excused?

21 SOLICITOR TANNER: No, ma'am, and he's anxious to get
22 back to work.

23 MR. PLEXICO: None from the defense.

24 THE COURT: You are excused, sir. Thank you.

25 MR. MOBLEY: You're welcome.

Direct Examination of Deondre Fields by Sol. Tanner

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1 SOLICITOR TANNER: The State calls Deondre Fields.

2 THE COURT: Mr. Fields, if you'll please come forward
3 to be sworn. Right over here, sir. If you'll place your
4 left hand right here -- would you place your left hand on
5 the Bible and raise your right hand, sir?

6 MR. DEONDRE FIELDS, after being duly sworn, testified
7 as follows:

8 THE COURT: Sir, come take a seat right here and you
9 can adjust the microphone and make sure you speak loudly
10 enough so everyone in the courtroom can hear, sir.

11 DIRECT EXAMINATION

12 BY SOLICITOR TANNER:

13 Q Good afternoon, Mr. Fields.

14 A Good afternoon.

15 Q And you're not talk -- I know you talk really soft.
16 You're going to have to be real loud in here so we can all
17 hear you.

18 Mr. Fields, where do you live?

19 A Across the street from Harvey's.

20 Q Across the street from Harvey's Supermarket?

21 A Yes,

22 Q That's right down the road in Ridgeland here?

23 A Yeah.

24 Q All right. And were you living there July 25th, 2007?

25 A Yes, ma'am.

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- 1 Q All right. And are you still living there today?
- 2 A Yeah.
- 3 Q All right. Well, what do you do these days? Do you go
- 4 to school or do you work?
- 5 A I work at Harvey's.
- 6 Q So you're working at Harvey's now?
- 7 A Yeah.
- 8 Q Were you working there in July of 2007?
- 9 A No.
- 10 Q All right. Was anybody in your family working there?
- 11 A My momma.
- 12 Q So you were familiar with Harvey's back in ---
- 13 A Yeah.
- 14 Q --- July of '07?
- 15 A Yes.
- 16 Q All right. Well, let me talk about July 25th, 2007.
- 17 What'd you do that day?
- 18 A Nothing much.
- 19 Q All right. Lean into the microphone. What'd you do
- 20 that day?
- 21 A Nothing much.
- 22 Q All right. What was "nothing much"? How did your day
- 23 start?
- 24 A I just had got out the shower, and I stepped outside
- 25 and I saw Aljaquon, and he asked me to help him cash in some

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1 change.

2 Q All right. So about what time was that you stepped
3 outside your house?

4 A I'd say about 11-something.

5 Q It was afternoon?

6 A Yeah.

7 Q Okay. And before that, had you seen Aljaquon earlier
8 that day?

9 A No.

10 Q And how do you know Aljaquon?

11 A Well, I knew -- I knew his younger brothers, that's how
12 I knew him.

13 Q And how do you know his brothers?

14 A From school.

15 Q Okay. Where'd you go to school?

16 A At Ridgeland, Ridgeland High.

17 Q Okay. Do you remember what Aljaquon was wearing that
18 day?

19 A I believe it was gray.

20 Q It was what?

21 A Gray, like a gray sweat suit.

22 Q It was a sweat suit? All right. Do you remember if he
23 had anything with him that day?

24 A I remember a black bag.

25 Q Okay. Was it -- what kind of bag?

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- 1 A Like a book bag or something.
- 2 Q All right. Now, you said he came up to you in your
3 yard across from Harvey's; is that correct?
- 4 A Yeah.
- 5 Q And what did he say to you in your yard?
- 6 A Just, like, "Come help me cash in some change."
- 7 Q All right. And did you do that? Did you help him cash
8 in some change?
- 9 A Yeah. I helped him.
- 10 Q Why'd you do that?
- 11 A I was just doing a favor.
- 12 Q Okay. All right. So do you guys go to Harvey's then?
- 13 A Well, after?
- 14 Q After he asked you to? Do you walk over with him?
- 15 A Yeah, we walked over.
- 16 Q All right. Well, what'd you do?
- 17 A We went to the coin machine.
- 18 Q Okay. And how does the coin machine work?
- 19 A It just -- you got -- there's a lot of different steps
20 you go to ---
- 21 Q Okay.
- 22 A --- before you put the change in.
- 23 Q So how's it work? Does it give you cash or how does
24 that work?
- 25 A How do you mean?

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- 1 Q Does it spit out dollar bills if you pour change into
2 it or how does that work?
- 3 A Oh, no. It give you, like, a little ticket.
- 4 Q Okay. And once you get your ticket what do you do?
- 5 A You go to the cash register.
- 6 Q And did you do that that day?
- 7 A Yes.
- 8 Q Okay. Did you take the ticket to the cash register or
9 did Aljaquon?
- 10 A I took it.
- 11 Q You took it?
- 12 A Yeah.
- 13 Q Why'd you take it to the register?
- 14 A I don't know. He just asked me to take it.
- 15 Q So he asked you to take it -- take it to the register
16 for him?
- 17 A Yeah.
- 18 Q Is that true?
- 19 A Yeah.
- 20 Q Now, he asked you to cash some change. Where did he
21 have all this change he wanted to cash?
- 22 A He was taking it out a book bag.
- 23 Q It was in the book bag?
- 24 A Yeah.
- 25 Q Okay. All right. Now, Deondre, I'm going to show you

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- 1 something. Can you see this screen from where you're
2 sitting?
- 3 A Yeah.
- 4 Q Because I want you to be on the microphone, if you can.
- 5 A Yeah, I can see it.
- 6 Q So I can hear you. All right. Can you see this?
- 7 A Yes.
- 8 Q Do you remember this?
- 9 THE COURT: Step down, Mr. Drake.
- 10 Q If you need to, get up, but you're going to have to
11 talk real loud if you get away from the microphone. Do you
12 remember what's going on here?
- 13 A Yeah. That's us cashing in the change.
- 14 Q All right. You said "us." Who -- who's right here?
- 15 A Me and Aljaquon.
- 16 Q Now, who's this right here in the yellow?
- 17 A Aljaquon.
- 18 Q Now, you said he was wearing gray. Did you just
19 remember wrong?
- 20 A It was so long ago.
- 21 Q Yeah, it's been over a year. But you're saying this is
22 Aljaquon here in the yellow?
- 23 A Yeah.
- 24 Q Has he got a gray shirt on under the yellow?
- 25 A No, white.

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1 Q Okay. Now, where are you? What are you wearing?

2 A I got on black. I'm on the opposite side.

3 Q Okay. So you're back here?

4 A Yeah.

5 Q All right. Now, what are y'all doing right here? What
6 is this?

7 A That's the coin machine. We're putting change in it
8 there.

9 Q All right. Now, how long does that take usually?

10 A Depends on how much change you got, you know, whether
11 it takes that long.

12 Q Okay. And now, what is this right here? I just saw
13 something in -- in his hands. What's he holding?

14 A That's the bag we're holding together.

15 Q All right. The book bag?

16 A Yeah.

17 Q All right. And what are y'all doing with the book bag?

18 A We're just taking the change out of it and putting it
19 in there.

20 Q Okay. And how do you put it in the machine? Do you
21 put, like, a drink machine one at a time or is there a tray?
22 How does it work? I've never used one of these.

23 A Put it in a tray.

24 Q Okay. All right. What are y'all talking about while
25 you're standing there?

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- 1 A We ain't talking about nothing.
- 2 Q Did you ask him where those coins came from?
- 3 A No.
- 4 Q You didn't? Did he tell you where they came from?
- 5 A No.
- 6 Q Did he tell you what he'd been doing that day?
- 7 A Unh-unh.
- 8 Q You got to answer "yes" or "no".
- 9 A No.
- 10 Q No? Did you ask him what he'd been up to that day?
- 11 A No.
- 12 Q All right. How long were you with him, you think, that
- 13 day?
- 14 A I'd say about 30 minutes.
- 15 Q Okay. All right. It looks like there's another person
- 16 that's come up to the machine. Who is that?
- 17 A Mary. She was working there at the time.
- 18 Q All right. What is she doing over at the machine with
- 19 you guys?
- 20 A Something had happened to it. It got jammed up or
- 21 something.
- 22 Q All right. Was she able to fix it?
- 23 A Yeah.
- 24 Q Okay. Now, is this you here?
- 25 A Yeah, in the black.

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- 1 Q Okay. Is that the door of the machine?
- 2 A Yeah. That's when she opened it.
- 3 Q Okay. She had to fix the jam you said?
- 4 A Yeah.
- 5 Q So what y'all talking about? Anything?
- 6 A No.
- 7 Q Had you ever seen Aljaquon before with that back pack?
- 8 A Unh-unh.
- 9 Q Yes or no?
- 10 A No.
- 11 Q Did he have anything else with him that day besides a
- 12 back pack? Do you remember?
- 13 A No.
- 14 Q Do you remember a CD player?
- 15 A I seen the headphones.
- 16 Q Oh, you saw headphones?
- 17 What's going on now? Are you -- is Mary still working
- 18 on the machine or are y'all finished yet?
- 19 A She's still working on it.
- 20 Q Did you know Mary?
- 21 A I don't know her, personally. I know her as working at
- 22 Harvey's.
- 23 Q Okay. And how long you been working at Harvey's now?
- 24 A About three weeks now.
- 25 Q What kind of work do you do there?

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- 1 A Carts and, like, bagging.
- 2 Q Bagging and carts?
- 3 A Yes, ma'am.
- 4 Q You like it all right?
- 5 A It's all right.
- 6 Q Are you in school now?
- 7 A No.
- 8 Q Have you graduated from high school?
- 9 A Yeah.
- 10 Q How old are you?
- 11 A Eighteen.
- 12 Q How long does it take them to fix the machine? Are we
- 13 getting close to it being fixed?
- 14 A Yeah.
- 15 Q Yeah? Okay. I think the door's closing. Had you ever
- 16 used this machine before? Were you familiar with it?
- 17 A Uh-huh. Yes.
- 18 Q Yes, sir?
- 19 A Nothing.
- 20 Q Oh, I thought you were -- all right. Okay. Well, the
- 21 door's back open. Are we getting close to the end of this?
- 22 A Uh-huh.
- 23 Q Okay. Now, I see you here. Where's Aljaquon right
- 24 now?
- 25 A Like, probably on the other side, you know, because the

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- 1 door open.
- 2 Q And he's still with you?
- 3 A Yeah.
- 4 Q Now, did you bring any change in to be cashed?
- 5 A No.
- 6 Q It was just what Aljaquon had?
- 7 A Yeah.
- 8 Q Now, Deondre, one thing you're probably going to be
- 9 asked is: Were you with Aljaquon earlier that day when he
- 10 got these coins?
- 11 A No.
- 12 Q Did you help him get these coins?
- 13 A No.
- 14 Q Do you hang out with Aljaquon when you're not in school
- 15 or not at work?
- 16 A No.
- 17 Q How often would you say you saw him before this?
- 18 A Like, every now and then; once in a while.
- 19 Q Are you -- do you hang out with his brothers or you
- 20 just know them from school?
- 21 A Yeah. We used to hang out.
- 22 Q When you were in school?
- 23 A Yeah.
- 24 Q Is he older or younger than his brothers?
- 25 A Older.

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1 Q Okay. It looks like the machine's working. Who is
2 this right here? Right here in the yellow?

3 A Aljaquon.

4 Q Okay. And what's this right here at his feet? Is that
5 the bag?

6 A Yeah.

7 Q Where'd you go?

8 A I'm on the other side.

9 Q So you're still standing there as well? All right.
10 Okay. All right. Now, you guys walked away. When you
11 leave the Coin Star machine -- oh, still there. Where do
12 you go from the Coin Star machine?

13 A To the cash register.

14 Q Did Aljaquon go with you to the cash register?

15 A No.

16 Q Where did he go?

17 A Outside.

18 Q Did you see him walk that way?

19 A Uh-huh.

20 Q Okay. Did he leave the store?

21 A What do you mean? Like, follow --

22 Q Did he go somewhere else or was he waiting on you?

23 A He was waiting on me.

24 Q All right. I'm going to show you a little bit from
25 another camera angle. Okay? And see if you can tell me

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1 what's going on. I want to see this. Okay. All right.

2 Do you recognize this part of Harvey's?

3 A Yeah. That's, like, when you walk out the door.

4 Q Okay. All right. Who's this right here just walked by
5 the front door?

6 A Aljaquon.

7 Q Is this during the time that you're at the cash
8 register?

9 A Uh-huh.

10 Q All right. And you said -- all right, so he had
11 headphones on? Do you remember seeing that?

12 A Uh-huh.

13 Q The back pack? Did he have that on ---

14 A Oh, yeah.

15 Q --- when you were talking to him? Is that what the
16 change was in?

17 A Yeah.

18 Q Okay. When you leave, you come out this door?

19 A Yeah.

20 Q Okay. Okay. What's that?

21 **SOLICITOR TANNER:** (To projector operator.) Stop it.
22 Go back. Just pause it.

23 Q All right. When you guys were right here, what were
24 y'all doing?

25 A I was giving him the money.

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- 1 Q All right. You gave him the money?
- 2 A Yeah.
- 3 Q Did you keep any of the money?
- 4 A Yeah, he gave me back five dollars.
- 5 Q Oh, he gave you five dollars back?
- 6 A Yeah.
- 7 Q Okay. How much money was it?
- 8 A It was about a hundred and something.
- 9 Q Okay. Who's that?
- 10 A Me.
- 11 Q All right.
- 12 SOLICITOR TANNER: (To projector operator) Start
- 13 it back up.
- 14 Q Now, once y'all go out the door, do y'all go to your
- 15 house together?
- 16 A Go different ways.
- 17 Q All right. Which way do you go?
- 18 A I go back home.
- 19 Q And which way did he go?
- 20 A Back toward the apartments.
- 21 Q So y'all went in opposite directions?
- 22 A Yeah.
- 23 Q Okay. All right. Now, one more thing to show you.
- 24 All right. Right here. Who's that?
- 25 A Me.

1 Q What are you doing?

2 A About to give a lady the little ticket ---

3 Q Okay.

4 A --- that come out the Coin Star machine.

5 Q Is it -- what does it look like? Is it a little
6 receipt?

7 A Yeah, it looks something like a receipt.

8 Q Okay. Did you know this lady that was working that day
9 or -- that's not your momma, is it?

10 A No.

11 Q Okay. All right. Well, we saw the end. Do you
12 actually get cash from her for the receipt?

13 A Yeah.

14 Q Did Aljaquon tell you why he wasn't going to cash it
15 in?

16 A No.

17 Q He -- did he -- what did he say about cashing the
18 ticket in?

19 A He just, you know, like, after it came up, he just -- I
20 just got the thing out the thing and he said, "Go cash that
21 for me."

22 Q Did you ask him why?

23 A No.

24 Q Let me ask you, Deondre: Did you know you were on
25 camera right here?

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1 A Uh-huh.

2 Q Did you know that there were surveillance cameras at
3 Harvey's?

4 A Yeah.

5 Q Did you know that there was one at the front door, too?

6 A No, I didn't know.

7 Q All right. Thank you. You may take the stand.

8 (Witness complies.)

9 Q All right. Deondre, you know that the reason we're
10 here today is because Aljaquon's been charged with burglary.
11 So my question is: Did you participate or help him in any
12 way committing the burglary?

13 A No.

14 Q All right. Now, why are you helping him cash in coins
15 that day?

16 A Like I say, I -- I knew his brothers, you know, I was
17 just -- I wanted to do a favor -- doing a favor for him.

18 Q You was being a nice guy?

19 A Yeah.

20 Q Final thing. We talked about Aljaquon on the video.
21 Is that Aljaquon that's on the video in this courtroom right
22 now?

23 A That's me and him.

24 Q You and him? All right. Can you point to Aljaquon in
25 the courtroom right now?

Cross-Examination of Deondre Fields by Mr. Plexico

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1 A (Witness points to defendant, Mr. Drake.)

2 Q Can you tell me what he's wearing?

3 A Like a plaid-looking shirt.

4 Q Plaid shirt?

5 SOLICITOR TANNER: Please have the record reflect he's
6 indicated the defendant.

7 Q All right. Thank you, Mr. Fields. Please answer
8 anything that Mr. Plexico has.

9 THE COURT: Mr. Plexico, cross-examination?

10 MR. PLEXICO: Thank you.

11 CROSS-EXAMINATION

12 BY MR. PLEXICO:

13 Q How are you today, young fella?

14 A I'm doing all right.

15 Q Great. Great. Look, now, when you reached in and
16 picked up the cash receipt, Aljaquon didn't go, "You give me
17 that back. You gonna get that money and run out the back
18 door", did he?

19 A No.

20 Q Okay, because that would've been silly. It didn't
21 matter who cashed it in, did it? Because you're not going
22 to steal a guy's money, are you?

23 A No.

24 Q All right. Then you went in there, y'all did some
25 work, he helped you out, he gave you a few bucks,

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1 everything's fine, right? No indication there's anything
2 wrong with that, right?

3 A (No response.)

4 Q Right?

5 THE COURT: You need to say "yes" or "no" for the
6 record, Mr. Fields.

7 A Yes.

8 Q So there's no big deal, right?

9 A Yeah.

10 Q Is that right?

11 A Yeah.

12 Q Okay. Nothing criminal. Y'all did nothing criminal,
13 right?

14 A No.

15 Q Okay. Then there's no big deal about who cashed it in,
16 right?

17 A No.

18 Q I mean, he just didn't snatch it back out of your hands
19 rudely, right?

20 A No.

21 Q Yeah. Okay. I don't have anything further.

22 THE COURT: Redirect?

23 SOLICITOR TANNER: Nothing further, Your Honor.

24 THE COURT: You may step down, Mr. Fields.

25 Any objection to him being excused?

1 SOLICITOR TANNER: No, ma'am.

2 MR. PLEXICO: No, Your Honor.

3 THE COURT: Thank you. You are excused, sir.

4 All right. Solicitor?

5 SOLICITOR TANNER: Your Honor, the State rests.

6 THE COURT: Okay. Ladies and gentlemen of the jury,

7 I'm going to send you back to your jury room very briefly.

8 The State has rested their case. I will be back with you

9 shortly to figure out how we're going to proceed. Again, I

10 will tell you that you are not to begin discussing this case

11 because it would not be appropriate to do so at this time.

12 Like I said, I'll bring you out in just a few moments and

13 we'll decide how we're going to break for lunch. Thank you.

14 (TUESDAY, DECEMBER 2, 2008, 12:26 P.M., WHEREUPON, THE

15 JURY EXITS THE COURTROOM AND THE FOLLOWING PROCEEDINGS

16 WERE HELD ON THE RECORD.)

17 THE COURT: Mr. Plexico, any motions?

18 MR. PLEXICO: Yes, Your Honor, I do have a Motion for a

19 Directed Verdict. Your Honor, in regards -- I'll take

20 Number 6 -- 673 first, Your Honor. This is the -- the

21 burglary of Scarlett Nimmer, Your Honor. Ms. Nimmer left

22 her home, well, before nine o'clock. She came back home --

23 I forget the exact testimony, Your Honor, for lunch. She

24 goes to lunch at 12:30. Sometime -- somebody broke in from

25 -- from 8:50, I believe she said, to 12:30. That's about

1 three hours and -- and 40 minutes, Judge. I believe she
2 said that they had entered and went in the -- the back door.
3 There was some food eaten, Judge. At the time, she didn't
4 notice there was much taken, but she says a knapsack was
5 taken.

6 THE COURT: Okay.

7 MR. PLEXICO: Sometime later, a knapsack is found in an
8 individual -- in a car, not owned by my client, but my
9 client is occupying, that he's sitting on, has been
10 identified as the knapsack that is in evidence today, Judge.

11 I believe that without -- without more, Judge, that --
12 that -- there's no fingerprints, there's no forensic
13 evidence, there's no direct evidence that my client was
14 there. If he's found in possession of the knapsack, as
15 Detective Criss said, maybe some months later when he was
16 arrested, that is not an indication he committed burglary.
17 Furthermore, no one in this courtroom has identified the
18 back pack that is seen in the video on the day of the
19 burglary, Judge, as the back pack that is in evidence today
20 or as the -- Ms. Nimmer has not identified the back pack in
21 the video as the one that is in evidence today.

22 And the -- I don't think anybody testified as to the
23 day that the video was actually taken that's been played in
24 front of the jury in my recollection. So there's nothing
25 tying this evidence -- the limited evidence together. I

1 mean, this creates no more than -- I don't think it even
2 creates a -- a -- a suspicion, you know, of guilt. But I
3 think that it's not substantial evidence that is worthy
4 enough to go to a jury, Judge, and we're asking for a
5 directed verdict of not guilty in regards to Number 673.

6 **THE COURT:** Respectfully, I do find that there is
7 evidence from which the defendant's guilt may be fairly and
8 logically deduced. The back pack that is here in the
9 courtroom, with the name "Nimmer" written on it, was
10 actually found on the defendant when he was, in fact,
11 arrested. I do think there's adequate circumstantial
12 evidence from which this jury could decide and deduce that
13 he is guilty of the Nimmer burglary.

14 **MR. PLEXICO:** Your Honor, moving on to 674?

15 **THE COURT:** Uh-huh.

16 **MR. PLEXICO:** Your Honor, this is the burglary of
17 Calvin Smith.

18 **THE COURT:** Uh-huh.

19 **MR. PLEXICO:** The boys are, allegedly, on this video,
20 cashing in a hundred dollars worth of coins. They are at
21 the coin machine for a long time where they cashed in a
22 large number of coins. Mr. Smith says that he's -- he's out
23 five dollars worth of -- or five to ten dollars worth of
24 change, which is a -- a miniscule amount of change.

25 **THE COURT:** Uh-huh.

1 **MR. PLEXICO:** There's nothing specific about the
2 change. There is no identity that the change he was cashing
3 in has to be the change being -- being that which was taken
4 from the Smith residence.

5 And the binoculars: No one's ever said that my client
6 actually had possession of the binoculars. They only
7 testified as to where the binoculars were found at. Nobody
8 testified anything about the binoculars, so there's nothing
9 really tying the Smith burglary to my client. And, once
10 again, I would move for a directed verdict in regards to
11 that case. And, at this time --

12 **THE COURT:** What was the testimony of where the
13 binoculars were found?

14 **SOLICITOR TANNER:** They were recovered on the porch at
15 348 Darby Plantation Road, which is the porch he was
16 standing on when ---

17 **THE COURT:** --- Ms. Neidert gave him a ride home?

18 **SOLICITOR TANNER:** That's correct.

19 **MR. PLEXICO:** But she never said she saw him with the
20 binoculars. There's nothing putting the binoculars in my
21 client's possession.

22 So -- and in addition to that, Judge, on 673 and 674,
23 I'd -- I'd move -- I -- I don't think that -- that -- I
24 think the evidence has to stand independent of each other
25 for each crime. And they have -- have to be

1 distinguishable, and I don't think that -- that you could
2 combine the evidence in any way to -- to -- to find that
3 there was more than a hunch, not even a reasonable
4 suspicion. I just don't think there's substantial evidence
5 to go to a jury in these two circumstantial evidence cases,
6 Judge. I move for a directed verdict of 674 and 673.

7 **THE COURT:** All right. Respectfully, I'm going to deny
8 your motion on that charge as well. I do find there is that
9 there is adequate circumstantial evidence to prove Mr.
10 Drake's guilt on the second burglary as well. And, as you
11 all know, we had the motion in Beaufort some weeks back in
12 regards to trying these two cases together. Of course, the
13 State's argument then was, is that you needed one to prove
14 the other because it was a chain of events and to be able to
15 show the chain, which is exactly what circumstantial
16 evidence is. It's one fact combined with other facts to
17 prove a final fact. So, respectfully, I'm going to deny
18 your motion at this time.

19 Any other motions, sir?

20 **MR. PLEXICO:** I have no further motions, Judge.

21 **THE COURT:** All right. Mr. Plexico, have you discussed
22 with your client whether or not he wants to testify?

23 **MR. PLEXICO:** Yes, Your Honor, we have, and we're ready
24 to proceed ---

25 **THE COURT:** Okay.

1 MR. PLEXICO: --- in regards to if he wishes to
2 testify ---

3 THE COURT: Did he say he wishes to testify or not
4 testify?

5 MR. PLEXICO: He -- he wishes to not testify, Your
6 Honor.

7 THE COURT: Okay. All right, sir. Give me just a
8 moment. Mr. Drake -- actually, sir, will you raise your
9 right hand? Do you swear or affirm the testimony you give
10 will be the truth, the whole truth, and nothing but the
11 truth so help you God?

12 MR. DRAKE: Yeah.

13 THE COURT: Sir, at this time, I'm going to explain to
14 you a certain rights that you have. If there's anything
15 that I say that you don't understand, stop me and say,
16 "Please explain it a different way." Okay, sir? And I'm
17 happy to do that and give you more detail.

18 We've now reached the stage of a trial where you may
19 present your defense. You have the right, though, sir, to
20 claim the protections that are given you -- given to you
21 under the Fifth Amendment of the Constitution of the United
22 States. And -- and basically, in this part, what we're
23 talking about is that no person should be compelled in any
24 criminal case to be a witness against himself. This means,
25 sir, that you can't be required to testify in this case.

1 You need to understand that, sir.

2 Additionally, though, sir, you also have the right to
3 testify if you want to. But, again, no one can make you
4 testify. This is a personal right and only one that you can
5 invoke. Do you understand that?

6 Sir, if you do choose to testify, you are going to be
7 subject to the same rules that govern all the other witness,
8 and you can be examined and cross-examined as to your
9 testimony and as to any relevant issue in the case.

10 Additionally, sir, if you have convictions in your
11 past, which I believe you do, within the last ten years, it
12 would subject you to possible cross-examination, those would
13 be brought out. Do you understand that potentially, sir?

14 **MR. DRAKE:** No, I don't.

15 **MR. PLEXICO:** You understand that, don't you?

16 **THE COURT:** Okay. Mr. Plexico, have you explained to
17 him that he has prior charges and convictions that would
18 subject him to being cross-examined by the State on those,
19 or Mr. Plexico could bring them up if he wanted to try to
20 circumvent that.

21 **MR. PLEXICO:** Yes, Your Honor. I have explained that
22 and he does understand that. He's just said he doesn't,
23 though.

24 **THE COURT:** And, basically, sir, what they're going to
25 do is they would introduce your record just to try to attack

1 your credibility. That -- that would be the point of it.

2 Okay? Do you understand that?

3 (No response.)

4 Now, sir, again, if you decide to testify, the decision
5 you make to testify has to be done freely and voluntarily on
6 your behalf and by with your choice. Of course, Mr.
7 Flexico's explained to you your Fifth Amendment rights. But
8 understand this is your right and your right only. Only you
9 can make this decision. Okay?

10 MR. DRAKE: Okay.

11 THE COURT: All right, sir. I will also tell you, sir,
12 though, that if you choose not to testify in the trial of
13 this case, I'm going to tell the jurors that they can't hold
14 it against you. And, again, the reason why is that you are
15 always presumed innocent until and unless a jury finds you
16 guilty. You don't have any burden to prove yourself
17 innocent. The burden's on the State to prove your guilt
18 beyond a reasonable doubt. Do you understand that, sir? Do
19 you understand that, Mr. Drake?

20 MR. DRAKE: Yes, ma'am.

21 THE COURT: All right. Sir, have you understood what
22 I've explained to you?

23 MR. DRAKE: Yes, ma'am.

24 THE COURT: All right. And do you have any questions
25 to ask me about what I've explained to you?

1 MR. DRAKE: No, ma'am.

2 THE COURT: All right. And have you discussed with Mr.
3 Plexico whether or not you should testify?

4 MR. DRAKE: Yes, ma'am.

5 THE COURT: All right. Do you wish to talk to him any
6 more or right now before you decide to testify or not
7 testify?

8 MR. DRAKE: Yes, ma'am.

9 THE COURT: You want to take a minute to talk to him?
10 That's absolutely fine, sir. You can sit down. Go ahead
11 and speak to him.

12 (Sotto voice discussion between Mr. Plexico and
13 Aljaquon Drake.)

14 THE COURT: Y'all that are in the courtroom are welcome
15 to take a stretch. Whatever you need. Take your time, Mr.
16 Plexico.

17 THE COURT: Has -- has Mr. Drake made a decision?

18 MR. PLEXICO: Yes, Your Honor.

19 THE COURT: All right. Mr. Drake, do you want to
20 testify or not testify?

21 MR. DRAKE: No, Your Honor.

22 THE COURT: You do not want to testify?

23 MR. DRAKE: Unh-unh.

24 THE COURT: All right. And as I told you, sir, I'm
25 going to instruct this jury, in my jury charge, that they

1 are not to even consider that or even talk about it back in
2 their deliberations. All right, sir?

3 MR. DRAKE: Okay.

4 THE COURT: Okay. All right. Thank you, sir. You may
5 be seated.

6 All right. Anything else from anyone?

7 Mr. Plexico, do you intend on putting up any witnesses?

8 MR. PLEXICO: No, Your Honor. At this -- I'll need to
9 rest in front of the jury, but I think I ---

10 THE COURT: Right.

11 MR. PLEXICO: --- may renew my motions after that.

12 THE COURT: What we're going to do is this: If we can
13 put down the screen, y'all. Mr. Plexico, I'm going to bring
14 the jury out. I want you to rest in front of them. I'm
15 going to send them off to lunch and I'm going to bring them
16 back at 2:15. Is that enough time for y'all? Bring them
17 back about 2:15, when we'll go ahead and argue and charge.
18 All right? Okay. I can bring them back a little bit
19 sooner, I've just got to give them an opportunity to get
20 somewhere to eat, so let me see what time it is when we
21 actually send them out of here and I may do it at 2:00, but
22 we'll see. Somewhere between there, all right?

23 So go ahead and put the screen down.

24 Okay, Jo, let's go ahead and bring them on out.

25 (TUESDAY, DECEMBER 2, 2008, 12:38 P.M., WHEREUPON, THE

1 JURY ENTERS THE COURTROOM. THEREAFTER, THE FOLLOWING
2 PROCEEDINGS WERE HELD ON THE RECORD IN THEIR PRESENCE.)

3 THE COURT: Welcome back, ladies and gentlemen of the
4 jury. Mr. Plexico?

5 MR. PLEXICO: Your Honor, the defense would rest at
6 this time, Your Honor.

7 THE COURT: Thank you, sir. Ladies and gentlemen, the
8 defense has now rested their case as well. At this time,
9 what I'm going to do is send y'all off to lunch and ask that
10 you come back at 2:00 where we are going to hear the
11 arguments from the lawyers as well as my charge on the law
12 and we're going to give the case to you this afternoon. All
13 right?

14 So with that said, ladies and gentlemen, you are free
15 to do whatever you want over the lunch hour. Again, I will
16 caution you: You are not to begin discussing this case.
17 And that's because although you have all the evidence, you
18 have not heard the arguments from the lawyers, and you have
19 not heard my charge on the law, and it simply wouldn't be
20 appropriate to do so. All right?

21 So with that said, go have a wonderful lunch and we'll
22 see you all back in the jury room at 2:00. Thank you.

23 (TUESDAY, DECEMBER 2, 2008, 12:40 P.M., WHEREUPON, THE
24 JURY EXITS THE COURTROOM. THEREAFTER, THE FOLLOWING
25 PROCEEDINGS WERE HELD ON THE RECORD.)

1 **THE COURT:** Mr. Plexico, you want to renew your
2 motions, sir?

3 **MR. PLEXICO:** Yes, Your Honor. I would like to renew
4 my motions in regards to 673 and 674, Your Honor, on the
5 same grounds as I have stated before, Judge.

6 **THE COURT:** Thank you, sir. Respectfully, I'm denying
7 your motions based on my same reasoning's again. I see --
8 because I have circumstantial evidence from which Mr.
9 Drake's guilt could be fairly and logically deduced by this
10 jury as to these two burglaries.

11 Y'all, before we break for lunch, I'd like to go over
12 the jury charge just so we know what is going to be charged,
13 so y'all can prepare your arguments. Maybe -- Solicitor and
14 Mr. Plexico, I don't know if you even have it printed yet.
15 Why don't you take about five minutes and then I'll either
16 come back out, or y'all come back, and we'll just go over
17 it. Do either of you have any special requests to charge?

18 **DEP. SOLICITOR TANNER:** I know that State v. James case
19 that I gave you actually had the charge regarding the prior
20 conviction. It had the language that they are not to use
21 that as an inference of guilt, only an element of burglary
22 first. I believe the language of it is in there.

23 **THE COURT:** It was in a little part of it and I
24 actually wrote one while we were doing that.

25 **DEP. SOLICITOR TANNER:** Okay.

1 MR. PLEXICO: Well, I only have a couple, Judge. I can
2 tell you now, if you would like.

3 THE COURT: Yes, sir.

4 MR. PLEXICO: One is the right to remain silent, and
5 the other is, each case must -- must be decided separately
6 on their own evidence, Your Honor.

7 THE COURT: Yes, sir. That's in my standard multiple
8 charges charge, as well as, obviously, Mr. Drake's choice
9 not to testify is in my standard charge. It's already in
10 there.

11 MR. PLEXICO: And that each case must be decided
12 without considering there's prior convictions for which are
13 in the record, Judge.

14 THE COURT: That was from the James case that we talked
15 about and I'm going to go through and look at it again.
16 Then what I would do is, I've written one, and it basically
17 says that I'm instructing the jury to limit its
18 consideration of James' convictions to the particular
19 purpose for which the convictions were offered. I think
20 it's a little innocuous. I wrote it a little more detailed
21 so they can understand what we're talking about. But I'll
22 go ahead and as soon as I have it, I'll read it to y'all, so
23 you'll know exactly what I'm saying. Okay?

24 Anything further? Any other requests to charge from
25 the defense?

1 MR. PLEXICO: Not -- not that I can think of, Judge.

2 THE COURT: Okay. From the State?

3 SOLICITOR TANNER: No, ma'am.

4 THE COURT: All right. Y'all give me about five
5 minutes before you run off for lunch, both of you. And
6 let's just go over what we've got and then we'll break for
7 lunch until 2:00.

8 (WHEREUPON, THE COURT RECESSED FOR LUNCH. THEREAFTER,
9 AT 2:20 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON
10 THE RECORD OUTSIDE THE PRESENCE OF THE JURY.)

11 THE COURT: Did you both have an opportunity to look at
12 the verdict form?

13 MR. PLEXICO: Yes, Your Honor.

14 THE COURT: Mr. Plexico, any objections?

15 MR. PLEXICO: No objections.

16 THE COURT: Thank you. Any objections from the State?

17 DEP. SOLICITOR TANNER: No, ma'am.

18 THE COURT: Thank you. Are you ready, Solicitor?

19 DEP. SOLICITOR TANNER: Yes, ma'am.

20 THE COURT: Mr. Plexico, you ready?

21 MR. PLEXICO: Yes, Your Honor.

22 THE COURT: Bring in the jury, Jo.

23 (DECEMBER 2ND, 2008, 2:23 P.M., THE JURY ENTERS THE
24 COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD ON
25 THE RECORD.)

1 **THE COURT:** Welcome back, ladies and gentlemen of the
2 jury. At this time, you are going to hear the closing
3 arguments from the attorneys in this case.

4 Solicitor?

5 **SOLICITOR TANNER:** Thank you, Your Honor. May it
6 please the Court?

7 **THE COURT:** Yes, ma'am.

8 **CLOSING STATEMENT**

9 **BY DEPUTY SOLICITOR TANNER:**

10 Ladies and gentlemen of the jury, this is the end of
11 the trial. This is the closing statements. And before we
12 let you go, I want to walk through July 25th, 2007 just one
13 more time.

14 Now, you heard testimony that Ms. Nimmer left her home
15 for work around 9 a.m. Her home's at 9340 Tarborough Road.
16 This is the Nimmer home, right here. (Indicating on
17 screen.) She leaves around nine o'clock, she goes to work,
18 and she comes back for lunch around 12:45. And what she
19 finds is that while she's gone, her house has been broken
20 into. Someone's actually taken time to burn a pizza in her
21 toaster oven. Don't know exactly what time that was. We
22 know she leaves at 9:00, she comes back at 12:45, and it's
23 already happened. We don't know, maybe he was waiting for
24 her to leave and saw her leave. How else would he have
25 known, perhaps, that he had time to burn a pizza? But we

1 know between 9:00 and 12:45 it's done.

2 Then, he steals -- steals the backpack, steals the CD
3 player from Ms. Nimmer's son's bedroom. This backpack. I
4 know you heard a lot about the backpack today. "Nimmer" is
5 on the backpack. Stolen on July 25th, 2007 from the
6 Tarborough residence. It says "Nimmer" on it. It's also on
7 the defendant when he's arrested. So on July 25th, 2007, he
8 finishes at Ms. Nimmer's residence, walks about half-a-mile
9 to the Smith residence at Road; just a little
10 walk here. Got the backpack, got the CD player, walks on
11 over to the Smith residence, smashes in their front door.
12 We know they leave -- Ms. -- Ms. Smith leaves by 10 a.m. We
13 know that Mr. Smith comes in before 12 p.m. That's only two
14 hours. But he's not there very long. He kicks in the front
15 door, goes in, steals some loose change, puts it in the
16 Nimmer backpack, goes out to the shed, steals the
17 binoculars, and he leaves the Smith residence. Where does
18 he go? Well, then he takes a walk on over to -- you heard
19 about the girl's house on Darby Plantation Road. He walks
20 over there. Again, it's not even a quarter of a mile. So
21 he hasn't even traveled a mile yet. He gets to this, and by
22 the time he gets to the Darby Plantation Road, maybe he
23 figures out what Mr. Smith said about his binoculars.
24 They're kind of cheap and they're old, so he leaves them on
25 the front porch. Leaves them behind. Doesn't really want

1 them.

2 But he catches a ride from Maggie. Remember Maggie?
3 He catches a ride with her and goes to Harvey's. He's on
4 the video tape at Harvey's. We know he's standing at the
5 coin machine at 12:45 at Harvey's. But when he gets to
6 Harvey's, he goes and gets Deondre. You saw Deondre
7 testify. You saw his demeanor. You know, why is Deondre
8 helping him cash stolen coins? I don't know. He just seems
9 like a sweet kid who probably has no idea when somebody's
10 getting one over on him. But I tell you another theory:
11 Everybody probably knows that when you're at the cash
12 register, there's a camera on you. Who knew there'd be a
13 camera on you at the front door? What? Apparently not
14 Aljaquon Drake. Because there he is at the front door of
15 Harvey's waiting on poor old Deondre to cash that little
16 piece of paper and bring him the money back. This is at
17 1:00 -- actually 1:04.

18 He's got Ms. Nimmer's backpack, he's got the son's CD
19 player, and he's cashing in the coins that belonged to the
20 Smith's all by 1:00 in the afternoon. He's committed two
21 burglaries, he's gotten a ride to town, and there he is with
22 the stolen property. Less than two and a half hours from
23 the time the first victim goes to work. There he is with
24 stolen property. And I know you heard a lot about the
25 stolen property, but come on. He's got the Nimmer backpack

1 when he's arrested. You saw the video.

2 I told you at the beginning, at the end of the case I
3 would come back and I would ask you for a verdict that spoke
4 the truth. You know, "verdict" comes from a Latin word that
5 means "speak the truth." *Vere dicto*, "speak the truth", and
6 the truth is that on July 25th, 2007, Aljaquon Drake, by
7 himself -- he was by himself when Maggie picked him up;
8 Deondre wasn't with him. So whatever you think Deondre's
9 motive was for cashing in those coins, Deondre wasn't with
10 him when Maggie picked him up half a mile down the road from
11 the burglaries.

12 Thank you for your attention today. I mean, I told you
13 it'd be short, but it is so serious. These are two
14 burglaries. These are two homes. It's a burglary first
15 degree. First, you got to decide it's a burglary, and then
16 it's first degree. What's the first degree for? Because
17 he's got two prior burglary convictions when he commits
18 these. Thank you.

19 THE COURT: You want to take the screen down, please?

20 SOLICITOR TANNER: Yes, ma'am.

21 THE COURT: Mr. Plexico?

22 MR. PLEXICO: If it pleases the Court, and Madame
23 Solicitor?

24 CLOSING STATEMENT

25 BY MR. PLEXICO:

1 Well, this begins the phase of the introduction of the
2 evidence. Sometimes when I hear the prosecutors make their
3 closing argument, I'm not sure if I've sat in the same
4 courtroom as the prosecutors have. Let me point out to you
5 that the evidence is not what the Solicitor says it is. The
6 evidence is as you would find it to be.

7 Now, let's look at this. Who testified that any of the
8 stuff, other than the summary of the Solicitor, that he was
9 walking from here to there? That he was cashing in stolen
10 coins? Not a soul. The only evidence that you could
11 consider, come from this witness stand, and any exhibits
12 that have been placed into evidence.

13 Let's start with these. Now, the fact that he's had a
14 prior conviction cannot enter into your consideration of
15 these charges. Only if you find, beyond a reasonable doubt,
16 that he entered, without consent, the Smith residence,
17 without -- with the intent to commit a crime, then you can
18 consider those if you find that to be a burglary first
19 degree. And the same for the Nimmer residence, but you'd
20 have to have independent evidence. You just can't go, "Oh,
21 he's done these house break-in's, let's convict him. Let's
22 give him what we can." That's not your vote. You have to
23 follow the rules. Now, if he's guilty, anybody with a
24 knapsack with an orange stripe who's cashing in coins, like
25 millions of Americans all have -- hundreds of millions of

1 Americans has a knapsack like millions of American kids.
2 Okay? Some of which a sub-set has an orange stripe on them,
3 to be guilty of this burglary.

4 Look at the evidence. Now, what do they have? Nobody
5 testified my client was there. Nobody testified that they
6 saw him there -- either place. There's no physical
7 evidence. They took fingerprints from Mrs. Nimmer's and
8 where is the fingerprint report saying it's my client's?
9 Oops, there isn't one.

10 Okay, now, Exhibit One shows a broken door. Exhibit
11 Two shows the same broken door. That doesn't show who broke
12 it. Exhibit Three, a kitchen. My client's not in it, no
13 mirror and their reflection standing in another room.
14 There's no evidence that my client's here. A bedroom,
15 Exhibit Four. My client's not in it. No one saw him in the
16 bedroom. No one saw him in the kitchen. Nobody saw him at
17 the front door of the Nimmer residence. Living room, again,
18 now, he's not in it. That's not evidence against my client.
19 It's evidence that somebody's been there, but not evidence
20 against my client.

21 Now, so what do we have at the Nimmer residence? A
22 missing knapsack. A missing CD player. Well, who testified
23 from that stand, "When I see that video and I see that CD
24 player, it's mine." Oops, no one. So there's no evidence
25 that my client is in possession of the stolen CD player at

1 all.

2 Now, can a reasonable person look at that video for
3 what you see and say, "I am sure -- sure it is this
4 knapsack." Okay? Can you? The evidence is not here. It's
5 not there. You can't do that. So there is no evidence,
6 unless you want to go with a light-colored stripe. Okay? A
7 light -- of all the millions, how many might have a light-
8 colored stripe -- or stripe? We don't know. So where's the
9 evidence for the Nimmer burglary? None. What ties my
10 client to it? Nothing.

11 Now, who testified -- even if this -- these are Mr.
12 Smith's binoculars, okay, who testified that he brought them
13 over to the Darby Plantation house and left them there? Who
14 said, "I saw him walk up and set them down"? Nobody. Who
15 testified he was in possession of these binoculars at the
16 Darby Plantation house? No one. There's no evidence that
17 he ever had this. It's not that it's not evidence, but it's
18 not evidence against him. Okay? All right?

19 Let's go on to this. Okay, does this show -- and this
20 is Exhibit Eight. Does this show my client? No. Does this
21 show where my client lives? No. Is this evidence against
22 my client? Unh-unh. And I believe there were two videos
23 into evidence. Are there two videos into evidence? So a
24 young man cashed in a hundred dollars in coins and five were
25 stolen. Does that mean that five of that he had to steal?

1 No. It about seems so.

2 Was there anything unique about the coins that Mr.
3 Smith lost, as evidence from this video, I can say that's --
4 that's Mr. Smith's collection? No. What's the other --
5 what's the other video show? Nothing. He has on a knapsack
6 that we can't say beyond a reasonable doubt -- and the
7 evidence has to -- you have to find it beyond a reasonable
8 doubt -- that this is the Nimmer knapsack. Okay? Well,
9 this isn't a possession of stolen goods case. Say you go,
10 "I think it is that same knapsack" just for argument sake,
11 playing devil's advocate. Is that evidence that he entered,
12 without consent, the Nimmer residence? It has nothing to do
13 with the Smith house. And who made up this story about how
14 the Nimmer house was burglarized first and then they needed
15 that to carry five dollars in coins -- or ten dollars.
16 That's a pretty fortune, ten dollars? Who would need a
17 knapsack? There's no evidence whether it was nickels?
18 Dimes? Pennies? Where's the evidence? Where's the
19 evidence against my client? Let me see, they've got one,
20 two, three, four, five, six, seven, eight, nine. I'm not
21 sure if there's any -- is there any evidence I'm missing?
22 Oh, okay. These. It's not evidence in this case. It's
23 evidence in the past, but not with this case. Now, who
24 testified he did it? That doesn't show he did it. They
25 have to prove my client guilty beyond a reasonable doubt.

1 Mr. Drake here, he has nothing to hide. This is his one day
2 in Court. His one day. He has a right to put the State to
3 their evidence. Now, I think I was accurate when I said
4 that this was about a lack of evidence. Okay? Now,
5 suspicion, imagination, is not evidence. I think this is
6 one of them. That's all there is to it.

7 MR. PLEXICO: The Court's indulgence, please?

8 THE COURT: Yes, sir.

9 MR. PLEXICO: Why anyone would think that these two
10 break-ins are related? Now, there's no evidence the same
11 person did it through the same day. Now, they tie one in
12 with the coins. Now, I don't know who was over at the house
13 that Miss -- I'm not even sure we have the name, Ayers, who
14 was over there. Okay? Or who might have been there that
15 day? Okay? Now, you never heard Mr. Ayers say "Those
16 aren't my binoculars", did he? Or the lady that she was
17 visiting saying, "I got those in trade" or whatever -- or
18 "somebody gave them to me." Just where is the evidence? I
19 don't see any evidence.

20 Now, the emotional drive might be do we want to get
21 somebody? Okay? You know, this isn't about our emotions.
22 You know, it's not about your own personal prejudices, or
23 whatever you want to think. You don't want people getting
24 broken into . . .

25 It's only about the evidence. So nobody testified my

1 client did this. He was out cashing some coins, in which
2 doesn't match the Smith theft, and doing it openly. And his
3 friend picked up the ticket and cashed it in. Big deal. As
4 if he was hiding. You know, look at the imagination of the
5 State. He's in there in front of a busy grocery store. We
6 all saw him walking in there. What could he try and do?
7 The Coin Star machine is right there in front by the cash
8 registers, beside a money machine. He's not hiding. How
9 can the State take things that are very innocent, and twist
10 it around? Try to make you look deceitful or guilty?

11 The same thing with him cashing the -- the ticket.
12 They had a hundred bucks in coins. Each must have weighed a
13 ton. Now, who testified that the videotape has the second
14 date that one of them downloaded and brought here? It's the
15 same date as the date of the burglary. All I ever saw was
16 the time. If you think back in retrospect, you'll become
17 wise. No one testified of the date. Right? Okay. So if
18 you don't have the videotape, and you can't rely on that.
19 what evidence is there? Nothing. A double zero.

20 Well, in reviewing the things that are mass-produced,
21 who could say how many Wal-mart Tasco binoculars were sold?
22 A hundred? Ten? Five hundred? A boy of ten years. A boy
23 of fifteen years, how many knapsacks have been sold to kids
24 their age? How many kids get the same kind of knapsacks?
25 You know, I want to see Stevie's stolen knapsack or Stevie

1 Wonder knapsack. Whatever. I mean, who knows? How many
2 does Wal-mart sell, not including all of their little
3 extras? And how many have you guys bought? Who knows?
4 It's unreliable evidence.

5 Now, this is a burglary first degree. This isn't some
6 trespass. This isn't possession of stolen property. Okay?
7 This is a serious, serious, serious crime. I said it would
8 be hard for you, but setting aside the knowledge that you
9 have that he has two prior burglaries, is something you have
10 to do in good conscience, and then look at the evidence.
11 And what is it? Nobody saw him there. There's no pictures.
12 They took fingerprints. We know they have fingerprints.
13 They didn't tell you about the fingerprints. They don't
14 match my client's. They don't know who it is. They've got
15 fingerprints. Ms. Nimmer said they took fingerprints.

16 **SOLICITOR TANNER:** Objection, Your Honor. He is mis-
17 characterizing evidence at this point. That is so not true.

18 **MR. PLEXICO:** According to Ms. Nimmer, Judge.

19 **SOLICITOR TANNER:** That is not --

20 **THE COURT:** Sir, hold on a second. You can go ahead.
21 It's argument.

22 **MR. PLEXICO:** Their duty is to prove my client guilty.
23 There is no evidence against Aljaquon Drake. They might not
24 like him. He might have a history, but you don't condemn a
25 man in America today for what he did yesterday or for what

1 he was yesterday. Okay? You can't do it. You might even
2 have a suspicion that he's guilty, but suspicion is not
3 guilt beyond a reasonable doubt.

4 You look at that video and say, "I can't say that's the
5 same backpack." There's no case at all. Even if you do
6 say, "I think it's the same backpack." What does that show
7 you? That doesn't mean he took it. Okay? Now, you can't
8 say it's the same backpack in the video. Months later,
9 according to the officer, when my client's arrested with
10 five guys in the car, and he's sitting there -- sitting on
11 top of it, he says, there's no evidence it's -- he has ID in
12 it, he had his favorite music videos in it, presumably,
13 Steve Plexico. Okay? There's no evidence that he had
14 possession of it or he controlled the car. So we're taking
15 far-flung innocent things, okay? Somebody obviously had
16 stolen the knapsack. What was found? We don't know.
17 Nobody -- we don't know that. We might have a suspicion,
18 but is that suspicion really guilt beyond a reasonable
19 doubt? No, it's not. What does it show that there was
20 evidence of a stolen knapsack theory? No evidence it was.
21 There's nothing there. You have a little bit you can grasp
22 on, there's no way you're going to convict him and still
23 follow your conscience. This is America. It's hard to do
24 the right thing. Okay? It's hard to do the right thing.
25 All right? The right thing, when you're a juror, is not

1 built on suspicion. Okay? It's built on hard, cold facts,
2 and they don't have any. No such thing as circumstantial
3 evidence. Even if he had it that day, that might be
4 circumstantial evidence that he knew it was stolen, but not
5 that he stole it. Nobody even saw him in the neighborhood.
6 This is just a shameful waste, I believe, of this young
7 man's life if he's found guilty. Now, don't do that. Be
8 honest and follow -- do your duty. Without the evidence,
9 they have not proved their case beyond a reasonable doubt.
10 Okay? You have to prove each one separately. Then you must
11 find him not guilty. Thank you for your time.

12 THE COURT: Now, Mr. Foreman, ladies and gentlemen of
13 the jury, you've followed very patiently and listened very
14 attentively to the presentation of the evidence in this
15 case, and I want to thank you for that. Also, the able
16 arguments made by Solicitor Tanner and Mr. Plexico on behalf
17 of the defendant.

18 It now becomes the duty of the trial judge, under the
19 constitution of this State, to charge and instruct you on
20 the applicable law in this case, and it's your duty as
21 jurors to accept and apply the law as the Court will now
22 give it to you.

23 Ladies and gentlemen, it is your exclusive duty to
24 decide all issues of fact in this case. You must determine
25 the effect, the value, the weight, and the truth of the

1 evidence. But the State, and the defendant, have a right to
2 expect that you will carefully consider and evaluate the
3 evidence, and apply the law of the case to the evidence.

4 By doing so, that the State of South Carolina, and the
5 defendant, Mr. Drake, will obtain a fair and impartial trial
6 in this case. Ladies and gentlemen, the State of South
7 Carolina, by the bills and indictment in this case, charges
8 the defendant, Mr. Aljaquon Drake, with two counts of
9 burglary in the First Degree.

10 The first indictment reads as follows: That in Jasper
11 County, on or about July 25th, 2007, that the defendant,
12 Aljaquon Richard Drake, did enter the dwelling of Scarlett
13 Nimmer, located at 9340 Tarborough Road, without consent and
14 with the intent to commit a crime therein, and at the time a
15 burglary was committed, the defendant had a prior record of
16 two or more convictions for burglary.

17 The second indictment reads that in Jasper County, on
18 or about July 25th of 2007, the defendant, Aljaquon Drake,
19 did enter the dwelling of Calvin Smith, Road,
20 without consent and with the intent to commit a crime
21 therein. And at the time the burglary was committed, the
22 defendant had a prior record of two or more convictions for
23 burglary.

24 Ladies and gentlemen, I remind you that the facts that
25 the defendant was arrested, charged, and indicted in this

1 case, is not evidence in this case, and cannot be considered
2 by you as evidence of guilt in this case, nor does it create
3 any presumption or inference of guilt.

4 These documents are simply the formal written
5 instruments which contain the charges made against the
6 defendant. It's the formal documents by which this case is
7 brought into the courtroom. Now, ladies and gentlemen,
8 these two indictments allege two counts of burglary in the
9 First Degree. Each indictment charges a separate and
10 distinct offense. You must decide each indictment
11 separately on the evidence and the law applicable to it,
12 uninfluenced by your decision as to any other indictment.
13 The defendant may be convicted or acquitted on any or all of
14 the offenses charged. You'll be asked, Mr. Foreperson, to
15 write a separate verdict of guilty or not guilty as to each
16 indictment.

17 Now, ladies and gentlemen, as to these indictments, the
18 defendant, Mr. Drake, has pled not guilty, and that puts the
19 burden on the state to prove the defendant's guilty beyond a
20 reasonable doubt. Ladies and gentlemen, a person charged
21 with committing a criminal offense in South Carolina, is
22 never required to prove himself innocent. I charge you as
23 an important rule of law, the defendant in a criminal trial,
24 no matter what the seriousness of the charges might be, will
25 always be presumed innocent of the crime for which the

1 indictments were issued, unless guilt has been proven by
2 evidence that satisfies you of this guilt beyond a
3 reasonable doubt.

4 Ladies and gentlemen, this presumption of innocence
5 does not end when you begin your deliberations. But it
6 accompanies the defendant throughout the entire trial, until
7 you reach a verdict based on evidence satisfying you, the
8 jury, of that guilty, beyond a reasonable doubt. The
9 presumption of innocence is like a robe of righteousness,
10 placed about the shoulders of the defendant, which remains
11 with the defendant until it has been stripped from the
12 defendant by evidence that satisfies you, the jury, of the
13 defendant's guilt beyond a reasonable doubt.

14 Ladies and gentlemen, the presumption of innocence is
15 not a mere legal theory. It's not just a legal phrase we
16 use. It's a substantial right to which every defendant is
17 entitled, unless you, the jury, are satisfied from the
18 evidence of the defendant's guilt beyond a reasonable doubt.

19 Ladies and gentlemen, the term "reasonable doubt", must
20 be given its plain and ordinary meaning. However, to the
21 extent that I may define it for you, a reasonable doubt is
22 the kind of doubt that would cause a reasonable person to
23 hesitate to act in the most important of their personal
24 decision.

25 Ladies and gentlemen, the State has the burden of

1 proving the defendant guilty, beyond a reasonable doubt.
2 Ladies and gentlemen, the defendant is entitled to every
3 reasonable doubt arising in the whole case. If, upon any
4 issue of fact, essential to a conviction, you have a
5 reasonable doubt as to how that issue is to be resolved, you
6 must resolve that reasonable doubt in favor of the
7 defendant.

8 Now, some of you may have been jurors in civil cases,
9 where you were told that it's only necessary to prove that a
10 fact is more likely true than not true, such as by the
11 greater weight, or what we call the preponderance of the
12 evidence. In criminal cases, the State's proof must be more
13 powerful than that. It must be beyond a reasonable doubt.
14 Ladies and gentlemen, proof beyond a reasonable doubt is
15 proof that leaves you firmly convinced of the defendant's
16 guilt.

17 Now, ladies and gentlemen, there are very few things in
18 this world that we know with absolute certainty, and in
19 criminal cases, the law does not require proof that
20 overcomes every possible doubt. If, based on your
21 consideration of the evidence, you are firmly convinced that
22 the defendant is guilty of the crime or crimes charged, you
23 must find the defendant guilty. If on the other hand, you
24 think there's a real possibility the defendant is not
25 guilty, you must give the defendant the benefit of the doubt

1 and find him not guilty.

2 Ladies and gentlemen, I remind you that during the
3 trial of this case, you and I have certain duties to
4 perform. As a trial judge, it's my responsibility to
5 preside over the trial of this case; and I also have the
6 duty to rule on the admissibility of the evidence that's
7 offered during the trial. You are only to consider the
8 competent evidence that's before you. You are only to
9 consider the testimony which has been presented from here at
10 this witness stand, and any exhibits which have been made a
11 part of the record in this case. I have the additional duty
12 to charge you the law that's applicable.

13 As the presiding judge, I am the sole judge of the law
14 and it is your duty as jurors to accept and apply the law as
15 I now state it to you. If you have any idea as to what the
16 law is or what the law ought to be and it doesn't agree with
17 what I'm now telling you what the law is, you must abandon
18 your own ideas, because you are sworn to accept the law as I
19 state it to you.

20 Ladies and gentlemen, every case tried in this Court
21 before a jury, the jury becomes the sole and exclusive judge
22 of the facts. The trial judge can't intimate, state,
23 comment on, or make any statement to a trial jury about the
24 facts of this case. You the jury, are the sole judge of the
25 facts of this case, you are not to infer from what I have

1 said during the progress of this trial, in ruling upon the
2 admissibility of evidence or otherwise, or anything that I
3 now say during this charge, that I have any opinion about
4 the facts in this case. The law does not allow me to have
5 an opinion. This matter is solely for you.

6 As jurors, it's your duty to determine, as I told you
7 before, the effect, value, weight and truth of the evidence
8 presented during this trial, and that is your decision
9 alone.

10 Ladies and gentlemen, there are two types of evidence
11 that are generally presented during a trial, direct evidence
12 and circumstantial evidence.

13 Direct evidence is the testimony of a person who claims
14 to have actual knowledge of a fact, such as an eyewitness.
15 It is evidence which immediately establishes the main fact
16 to be proved. Circumstantial evidence is proof of a chain
17 of facts and circumstances indicating the existence of a
18 fact. It is evidence which immediately establishes
19 collateral facts, from which the main fact may or may not be
20 inferred. Circumstantial evidence is based on inference and
21 not on personal knowledge or personal observation.

22 Ladies and gentlemen, the law makes absolutely no
23 distinction between a weight or value to be given to either
24 direct or circumstantial evidence, nor is a greater degree
25 of certainty required of circumstantial evidence than of

1 direct evidence. You should weigh all of the evidence in
2 this case, and after weighing all of the evidence, if you
3 are not convinced of the guilt of the defendant beyond a
4 reasonable doubt, you must find the defendant not guilty.

5 Ladies and gentlemen, it is your duty to determine the
6 credibility of the witnesses that have testified in this
7 case. Credibility simply means believability. It becomes
8 your duty as jurors to analyze and evaluate the evidence and
9 determine which evidence convinces you of its truth. In
10 determining the believability of witnesses who have
11 testified in this case, you may believe one witness over
12 several witnesses, or several witnesses over one. You may
13 believe a part of a testimony of a witness, and reject the
14 remaining part of the testimony of that same witness. You
15 may believe the testimony of a witness in its entirety or
16 reject that witness's testimony in its entirety.

17 You may consider whether any witness who's exhibited to
18 you any interest, any bias, any prejudice, or other motives
19 in this case. You may also consider the appearance and
20 manner of the witness while on the witness stand. Ladies
21 and gentlemen, I instruct you and emphasize that the fact
22 the defendant did not testify is not a factor to be
23 considered by you in any way in your deliberation and in
24 your consideration on the question of the guilt or innocence
25 of the defendant. It must not be considered by you in any

1 manner whatsoever. A defendant has the constitutional right
2 to remain silent, and the assertion of this right must not
3 be considered by you in your deliberation. I repeat, under
4 your oath, you are to draw no conclusion whatsoever, from
5 the fact that the defendant in this case did not testify.
6 The fact that this defendant did not testify should not even
7 be discussed in the jury room. Ladies and gentlemen, as I
8 told you, the burden of proof is on the State. The
9 defendant is not required to prove his innocence, and the
10 burden of proof remains on the State to prove guilt beyond a
11 reasonable doubt.

12 Now, ladies and gentlemen, the defendant is charged
13 with two counts of first degree burglary. The State must
14 first prove beyond a reasonable doubt that the defendant,
15 number one, entered a dwelling without consent. Ladies and
16 gentlemen, a dwelling is any building, or portion of a
17 building, in which a person ordinarily sleeps. In order to
18 prove the defendant entered the dwelling, the State does not
19 have to show that the defendant's entire body entered the
20 dwelling, smallest entry is sufficient. In addition, the
21 State has to prove that force was used to gain entry.

22 Next, the State must prove beyond a reasonable doubt
23 that the defendant intended to commit a crime, either a
24 felony or a misdemeanor at the time of the entry. The mere
25 entry into a dwelling without consent is not burglary. If

1 the intent to commit a crime is formed after the entry, it
2 is not burglary.

3 On the other hand, if the defendant intended to commit
4 a crime at the time of the entry, it is a burglary, even if
5 the intent was abandoned after the entry. It does not
6 matter that the intended crime was not completed.

7 Finally, ladies and gentlemen, the State must prove
8 beyond a reasonable doubt the defendant has a prior record
9 of two or more convictions for burglary and/or
10 housebreaking. Ladies and gentlemen, evidence of prior
11 offenses committed by the defendant was not offered to prove
12 the defendant has a bad character or to prove that the
13 defendant committed the burglaries on this occasion. The
14 prior convictions may be considered by you only for the
15 purpose of determining whether or not it satisfies that
16 element of the offense that makes it first degree burglary.
17 If you enter a dwelling without consent to commit a crime
18 and that you have two prior convictions for burglary and
19 housebreaking.

20 Ladies and gentlemen, before you can even consider the
21 evidence of the defendant's prior burglary, you must first
22 find the State has proved beyond a reasonable doubt that a
23 burglary was committed by the defendant. If you find beyond
24 a reasonable doubt that the burglary was committed, then you
25 may consider the evidence of the prior convictions as

1 evidence, the one whose circumstances which would make the
2 burglary a first degree burglary.

3 Ladies and gentlemen, if you do not find beyond a
4 reasonable doubt that the defendant committed there alleged
5 prior offenses, then you cannot return a verdict of first
6 degree burglary.

7 Mr. Foreman, ladies and gentlemen of the jury, as you
8 retire to begin your deliberations, I wish to express the
9 hope that each of you will be mindful of the importance of
10 your responsibility here today. You're not called upon very
11 often to serve as jurors, and the proper performance of this
12 duty requires each of you to reach the height of freeing
13 your mind of all improper influences. You and I are acting
14 for the community and that is why we must see to it that
15 this trial is fair and the verdict is just. You've
16 observed, ladies and gentlemen, that the presiding officer
17 of this Court is always addressed as Your Honor for a reason
18 is that this Court is entrusted with the honor of this
19 community, with the honor of this state, with the honor of
20 this country in seeking that every case tried here in this
21 courtroom receives fair and impartial justice, that you, the
22 jury, take into your care and keeping, the preservation of
23 this community, the honor of this state, and the honor of
24 this country.

25 Now, ladies and gentlemen, please don't get the idea

1 that I'm trying to intimate to you how I might think you
2 should decide this case. I've already told you, under the
3 laws of the State of South Carolina, you, the jury, are the
4 sole judge of all questions of fact. It would be highly
5 improper for me to influence you in the performance of that
6 duty, so I'm not trying to tell you what your verdict should
7 find, but as a presiding officer of this Court, I am vitally
8 concerned that whatever verdict you find would be the result
9 of your going back into that jury room, and confining your
10 consideration to the evidence and the law that you've heard
11 hear in this courtroom, weighing it fairly and impartially,
12 as I have every confidence you will.

13 Ladies and gentlemen, everyone is entitled to justice
14 in this case, both the State and the defendant. You owe no
15 support or sympathy to anyone. The Court is of the
16 confirmed opinion that whatever verdict you reach will
17 represent truth and justice for all the parties involved.

18 Mr. Foreperson, you must remember that your verdict
19 must be unanimous. It must be the verdict of all twelve
20 jurors. I'm now going to explain the verdict to you, Mr.
21 Foreperson. It simply has the case caption. It's the State
22 of South Carolina, County of Jasper, versus Aljaquon Drake.
23 It has the two indictment numbers, and you must answer both
24 questions, Sir. The first question is: As to Indictment
25 Number 2007-GS-27-673, the charge of burglary in the first

1 degree at 9340 Tarborough Road, we, the jury, unanimously
2 find the defendant, Aljaquon Drake, it either says "not
3 guilty" or "guilty". Then, the second question: As to
4 Indictment Number 2007-GS-27-674, the charge of Burglary in
5 the First Degree at Road, we, the jury,
6 unanimously find the defendant, Aljaquon Drake, again, "not
7 guilty" or "guilty".

8 Ladies and gentlemen, please don't infer anything from
9 the order in which I put "guilty" or "not guilty"; each
10 trial I just flip them. Mr. Foreperson, there has been a
11 line for you to sign your name and it's already dated and
12 addressed on this, sir. When you have reached a unanimous
13 verdict, respectfully, I ask you to knock on the courtroom
14 door and we will accept you back into the courtroom. All
15 right?

16 Now, for the very last time, ladies and gentlemen, I am
17 going to send you back to the jury room and I am going to
18 tell you not to begin your deliberations, and that's because
19 there may be something additional these lawyers want me to
20 charge you. If there is, I'm going to bring you back out
21 and I'll charge you further.

22 If there is not, what I'm going to do is I'm going to
23 send a verdict form, Mr. Foreperson, and all the evidence in
24 this case back to you. That will be your signal to begin
25 your deliberations. All right?

1 Ladies and gentlemen, again, I'm going to go ahead and
2 excuse you and I appreciate y'all's attention. Be with you
3 shortly.

4 (TUESDAY, DECEMBER 2, 2008, 3:06 P.M., WHEREUPON JURY
5 EXITS THE COURTROOM, THEREAFTER THE FOLLOWING
6 PROCEEDINGS WERE HELD ON THE RECORD:)

7 THE COURT: All right. Any exceptions or additions to
8 my charge from the State?

9 DEP. SOLICITOR TANNER: Nothing from the State.

10 THE COURT: From the defense?

11 MR. PLEXICO: No, Your Honor.

12 THE COURT: All right, y'all. I'm giving Becky the
13 verdict form. As well, y'all, go through and make sure
14 we've got all the evidence. If we're in agreement that if
15 for some reason they need to see something on the video,
16 what we're going to do is bring them back out here to show
17 them, because it's my understanding, Mr. Plexico, that there
18 were portions on the video that were not shown to them in
19 evidence, correct, sir?

20 MR. PLEXICO: Yes, Your Honor.

21 THE COURT: All right. Solicitor, are you in agreement
22 if that's what they request?

23 DEP. SOLICITOR TANNER: Yes, ma'am.

24 THE COURT: Okay. Thank you, y'all.

25 MR. PLEXICO: And I meant to put that on the record and

1 I forgot; that was our bench conference.

2 THE COURT: That was our bench conference. I just took
3 care of it for you, Mr. Plexico, so we're good to go.

4 MR. PLEXICO: Thank you, Your Honor.

5 THE COURT: All right. I want to the two of y'all to
6 go through the exhibits. I need -- when they go back, Jo, I
7 need the alternate juror and I need to see after that, Mr.
8 Plexico, Mr. Hughes, Ms. Swanson, Ferguson -- you can bring
9 the whole Solicitor's Office in, everyone that wants to
10 come, and let's just figure out what we're going to do
11 tomorrow and the rest of this afternoon, if there's anything
12 we can do, so we'll all have a chat. Becky, I want you to
13 come, too, because I know we're trying to schedule
14 accordingly.

15 (TUESDAY, DECEMBER 2, 2008, 3:10 P.M., WHEREUPON, THE
16 EXHIBITS AND VERDICT FORM WERE TAKEN INTO THE JURY
17 ROOM, AND THIS CASE WAS RECESSED WHILE AWAITING A
18 VERDICT. THEREAFTER, AT 3:40 P.M., THE FOLLOWING
19 PROCEEDINGS WERE HELD ON THE RECORD.)

20 THE COURT: I have a note from our Foreperson with four
21 questions. The first is, "What is the defendant's current
22 address at time of burglary and arrest?" It's not in
23 evidence. Mr. Plexico, would you agree?

24 MR. PLEXICO: Yes, Your Honor.

25 THE COURT: The next question is, "What's the timeframe

1 from time of burglary to time of arrest?" I heard testimony
2 is that it was a couple of months, maybe, but that's as much
3 as was distinguished, and that was it. Who did that come in
4 from? Was it Investigator Criss?

5 DEP. SOLICITOR TANNER: Investigator Criss.

6 THE COURT: Mr. Plexico, that's what you recall as
7 well, sir; is that correct?

8 MR. PLEXICO: Yes, Your Honor.

9 THE COURT: How do you want to respond to that?

10 DEP. SOLICITOR TANNER: They'll have to recall what
11 they heard from the stand.

12 THE COURT: From the testimony. I say from
13 Investigator Criss, you know we're gonna be playing back his
14 testimony.

15 MR. PLEXICO: I think if you just say that they will
16 need to recall what was testified, they can base their
17 verdict on that in regards to that matter.

18 THE COURT: Okay. Number Three, "Did the State collect
19 fingerprints, and if so, did they match the defendant's?"
20 Again, I think they'll need to recall the testimony as to
21 what was testified to. I know you objected in your closing
22 argument. I believe it was Ms. Nimmer that testified that
23 she thought the police ---

24 DEP. SOLICITOR TANNER: They dusted, but ---

25 THE COURT: Right; and that was the distinction you

1 make, and Ms. Nimmer certainly didn't make it and neither
2 will this jury. All right. "Did the State collect
3 fingerprints, and if so, did they match the defendant's?"
4 Again, I think they just need to recall the testimony as it
5 was stated. Mr. Plexico, do you want to weigh in on that?

6 **MR. PLEXICO:** Your Honor, that sounds great to me.

7 **THE COURT:** Okay. Number Four: "In any search of the
8 property, was a glove recovered of any kind?"

9 **DEP. SOLICITOR TANNER:** There was no testimony about a
10 glove.

11 **THE COURT:** Yeah, there was no testimony. I think -- I
12 think on that one I can just say that there is no testimony,
13 you know, to that fact; or there was no evidence presented
14 as to that fact. Also, what is the defendant's current
15 address at time of burglary and arrest?" There was no
16 evidence to that effect. The other two, they just need to
17 recall the testimony that was given.

18 **DEP. SOLICITOR TANNER:** There was actually no testimony
19 with regards to fingerprints being collected, either.

20 **THE COURT:** Well, Ms. Nimmer did say that they took
21 some fingerprints from her kitchen. That's what she said.
22 If you want me to go back and get her testimony back, we can
23 do that.

24 **DEP. SOLICITOR TANNER:** No, that's fine. But there's
25 no testimony about whether they matched anybody or didn't

1 match anybody or -- I just think for all four questions it
2 could be one answer, that you either recall -- that you can
3 only base your decision based on what testimony you heard in
4 this courtroom, instead of going through each question
5 individually, because basically it's the same answer. You
6 have to base your decision on what you heard in this
7 courtroom from the witness stand.

8 THE COURT: Uh-huh.

9 DEP. SOLICITOR TANNER: Instead of splitting hairs on
10 each question about what was said.

11 THE COURT: Mr. Plexico?

12 MR. PLEXICO: Your Honor, I don't see how that's --
13 that would be just fine with me, Judge. I mean, they can
14 base their decision on the evidence that -- that -- the best
15 they remember it, with what was given to them.

16 THE COURT: Okay. I think I will go also so far as to
17 say, though, too, that if necessary, I can play back
18 testimony of particular witnesses, but it has to be in the
19 entirety. So if they wish to hear it, they're going to have
20 to hear the direct and the cross and any redirect and any
21 re-cross. I understand offering that up to them time, but I
22 think they need to know that if they have a question, and
23 they believe -- I think they need to be able to have a
24 source to go to. Any objection to that, Mr. Plexico?

25 MR. PLEXICO: No, Your Honor.

1 THE COURT: Okay. All right. Jo, I'm just going to
2 bring them out here and just instruct them.

3 (DECEMBER 2, 2008, 3:55 P.M., WHEREUPON THE JURY IS
4 BROUGHT BACK INTO THE COURTROOM FOR INSTRUCTION AND
5 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

6 THE COURT: Welcome back, ladies and gentlemen of the
7 jury. Mr. Foreperson, you had sent me out a note with four
8 questions. The first question is "What is the defendant's
9 current address at the time of burglary and arrest?" The
10 next question is "What's the timeframe from time of burglary
11 to time of arrest?" The third question is, "Did the State
12 collect fingerprints, and if so, did they match the
13 defendant's?" And lastly, "In any search of the property,
14 was a glove recovered of any kind?", sir, and you signed it.

15 Mr. Foreman, ladies and gentlemen of the jury, you need
16 to use your collective memory to determine and recall the
17 testimony, if any, that answers these questions for you.
18 Now, Mr. Foreperson, I can tell you that if you would like a
19 certain witness's testimony replayed, I can do that. It is
20 only by audio. I will also tell you that if you do request
21 a particular person's testimony, I have to play the entire
22 testimony of that witness, which would include both the
23 direct examination, the cross examination, and any redirect,
24 and any re-cross. So it would have to be the entire
25 testimony. You can't stop it or start it or find it in the

1 middle. Do you all understand that?

2 (JURY PANEL NODS IN AGREEMENT.)

3 THE COURT: So, I hope that answers your questions to
4 some extent. You just have to go back and look back at the
5 evidence again, and again, use your collective memory to
6 determine the evidence. All right. I'm going to send y'all
7 back. You just let me know if you need something.

8 (DECEMBER 2, 2008, 3:58 P.M., WHEREUPON THE JURY EXITS
9 TO THE JURY ROOM FOR FURTHER DELIBERATION. THE
10 FOLLOWING WAS THEREAFTER HELD ON THE RECORD.)

11 THE COURT: All right. Anything further from the
12 State?

13 DEP. SOLICITOR TANNER: Nothing from the State.

14 THE COURT: From the defense?

15 MR. PLEXICO: No, Your Honor.

16 THE COURT: All right. We'll be at ease until we hear
17 back from them again.

18 (THE COURT WAS RECESSED WHILE AWAITING A VERDICT.
19 THEREAFTER, AT 4:27 P.M., THE FOLLOWING PROCEEDINGS
20 WERE HELD ON THE RECORD.)

21 THE COURT: All right. It's my understanding we have a
22 verdict. I will say this just for Mr. Drake and the benefit
23 of your family and anyone else, that regardless of what the
24 verdict is, I just ask everyone contain themselves. If I
25 need to, I will have you removed from the courtroom and

1 taken into custody, so with that said, is the State ready?

2 DEP. SOLICITOR TANNER: The State's ready, Your Honor.

3 THE COURT: Is the defense ready?

4 MR. PLEXICO: Yes, Your Honor.

5 THE COURT: All right. Go ahead and bring them in.

6 (DECEMBER 2, 2008, 4:28 P.M., WHEREUPON THE JURY ENTERS

7 THE COURTROOM, AND THEREAFTER, THE FOLLOWING

8 PROCEEDINGS WERE HELD ON THE RECORD:)

9 THE COURT: All right. Mr. Foreperson, I understand
10 you've reached a verdict?

11 FOREPERSON: Yes, ma'am, we have.

12 THE COURT: Thank you. If you'll hand it to the
13 bailiff, please, sir. Will you publish the verdict, Madam
14 Clerk?

15 MADAM CLERK: State of South Carolina ---

16 THE COURT: --- Mr. Drake, if you'll rise, sir?

17 MADAM CLERK: County of Jasper, The State of South
18 Carolina versus Aljaquon Drake, Indictment Number 2007-GS-
19 27-673, 2007-GS-27-674, verdict of the jury is guilty.
20 Indicted for burglary in the first degree in 07-673.
21 Indictment 07-674, verdict of the jury, guilty, signed by
22 the foreperson.

23 THE COURT: Thank you. Ladies and gentlemen of the
24 jury, if this is your verdict, would you please signify by
25 raising your right hand?

1 (ALL JURORS RASIED THEIR RIGHT HAND.)

2 THE COURT: Thank you. You may put them down. Mr.
3 Plexico, would you like the jury individually polled?

4 MR. PLEXICO: Yes, Your Honor.

5 THE COURT: Ms. Bostick?

6 MADAM CLERK: As I call your name, would you please
7 raise your right hand. Deloris Dunham, was this your
8 verdict? Is it still your verdict?

9 JUROR: Still my verdict.

10 MADAM CLERK: Thank you. Ronnie Fraser, was this your
11 verdict? Is it still your verdict?

12 JUROR: Still my verdict.

13 MADAM CLERK: Thank you. Ginger Cooler-Moore, was this
14 your verdict? Is it still your verdict?

15 JUROR: Still my verdict.

16 MADAM CLERK: Thank you. Christopher Wilson, was this
17 your verdict? Is it still your verdict?

18 JUROR: Still my verdict.

19 MADAM CLERK: Thank you. David Lowther, Jr., was this
20 your verdict? Is it still your verdict?

21 JUROR: Still my verdict.

22 MADAM CLERK: Thank you. Connie Kennedy, was this your
23 verdict? Is it still your verdict?

24 JUROR: Still my verdict.

25 MADAM CLERK: Thank you. Ella Mae Chisolm, was this

1 your verdict? Is it still your verdict?

2 JUROR: Still my verdict.

3 MADAM CLERK: Thank you. Tammy Chaneyfield, was this
4 your verdict? Is it still your verdict?

5 JUROR: Still my verdict.

6 MADAM CLERK: Thank you. David Beaty, was this your
7 verdict? Is it still your verdict?

8 JUROR: Still my verdict.

9 MADAM CLERK: Thank you. Toni Broschard, was this your
10 verdict? Is it still your verdict?

11 JUROR: Still my verdict.

12 MADAM CLERK: Thank you. Dustin Mock, was this your
13 verdict? Is it still your verdict?

14 JUROR: Still my verdict.

15 MADAM CLERK: Thank you. Carletta Jenkins, was this
16 your verdict? Is it still your verdict?

17 JUROR: Still my verdict.

18 MADAM CLERK: Thank you.

19 THE COURT: All right. Is there anything further
20 required from this jury from the State?

21 DEP. SOLICITOR TANNER: Nothing from the State.

22 THE COURT: From the defense?

23 MR. PLEXICO: No, Your Honor.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, I want to thank you for your service here this week.

1 I know it's not easy to sit in judgment on fellow citizens,
2 but I want you to know how important your service has been.
3 You've helped us not only resolve these two cases, but in
4 addition to that, many other guilty pleas that I took on
5 Monday, and will take for the rest of the week to be able to
6 move our docket here in Jasper. So please understand,
7 again, how important it is, until and unless, we have jurors
8 sitting in the jury box willing to serve, we aren't able to
9 dispose of our cases in the various ways that we can. So
10 again, I want to thank you.

11 I will tell you, ladies and gentlemen, at this time,
12 this ends your service here, not only in this case, but for
13 the week. At this time, I am going to sentence Mr. Aljaquon
14 Drake. You are welcome to stay if you wish or you can
15 leave, it's completely up to you. But what I am going to
16 ask, ladies and gentlemen, is that if you do want to remain
17 and stay, I'm going to ask that you go and sit out in the
18 gallery, towards the back, if you would. Again, you're not
19 required to in any way, but if you would like to, you're
20 more than welcome to stay. So with that, I'm going to go
21 ahead and excuse you all and thank you for your service
22 here.

23 **DEP. SOLICITOR TANNER:** Your Honor, as far as the State
24 can tell, we believe his only prior record are the three
25 counts of burglary, second degree, from Beaufort County,

1 that occurring on June 18th, 2007, I guess, just a little
2 over a month prior to the commission of these burglaries.

3 THE COURT: And he pled to all three, Solicitor?

4 DEP. SOLICITOR TANNER: Yes, ma'am. He pled to all
5 three.

6 THE COURT: Got a youthful offender sentence?

7 DEP. SOLICITOR TANNER: A youthful offender, suspended
8 to probation, so he was out on probation when this occurred.
9 So I'm guessing there will be some type of violation to deal
10 with in regards to that. He does have three more burglaries
11 pending here in Jasper County. But he was -- I believe he
12 was 19 at the time these were committed, which would have
13 made him just old enough to be an adult in Beaufort County
14 when he got these first convictions, so I'm not -- I haven't
15 researched his juvenile record, so I can't give you that
16 information.

17 THE COURT: Okay. Anything else you need to add,
18 Solicitor?

19 DEP. SOLICITOR TANNER: No, ma'am. I don't know if Ms.
20 Nimmer or Mr. Smith would like to say anything, but they are
21 still present.

22 THE COURT: Okay. Thank you. I see them both. All
23 right, Mr. Plexico?

24 DEP. SOLICITOR TANNER: Yes, Your Honor. My client is
25 20 years old. Well, he just turned 20, Your Honor. We

1 understand you have a large range you can sentence him to,
2 but 20 years old, the minimum, with just a no parole
3 offense, is 15 years, and would be a big chunk of his life
4 as it stands now, and we would ask you to sentence him to
5 the minimum in regards to it. Before we go there, I would
6 like to make a motion to renew my prior motion.

7 THE COURT: Yes, sir.

8 MR. PLEXICO: On the same grounds that I had. I would
9 also like to make a motion for a new trial, Judge, based on
10 the evidence that was presented to the jury. I don't see
11 how they could have returned a verdict of guilty on our
12 charge, Your Honor, unless they were confused about the
13 issues and the evidence that was presented in the case, and
14 that would be my only premise for a -- a -- a new trial,
15 Judge. I believe it was a case of this going -- instead of
16 being prejudicial. That's all I have.

17 THE COURT: Okay. Well, respectfully, it's noted for
18 the record. As this was a circumstantial evidence case,
19 although there were a lot of different things that put the
20 case together, that I certainly think the jury could fairly
21 deduce that beyond a reasonable doubt, Mr. Drake committed
22 these crimes. So, respectfully, I'm going to deny your
23 motion for a new trial.

24 Mr. Drake, what would you like to say?

25 DEFENDANT DRAKE: I'm hoping, Your Honor, if I get

1 home, I want to go home. The only thing I know right now,
2 you know what I'm saying? Deep hurt, what I'm saying, I'm
3 saying -- like I said, like I told the officer before, you
4 know what I'm saying? Even that, what I'm saying, that I
5 would have just known, saying, like, pay for the damages,
6 even though, you know what I'm saying? Anybody accuse me,
7 you know what I'm saying? I would pay for the damages.
8 What I'm saying, you know, if even -- if I didn't, you know
9 what I'm saying? Even if I did it or I didn't, you know
10 what I'm saying? If I did did it.

11 **THE COURT:** Mr. Drake ---

12 **DEFENDANT DRAKE:** --- I ask for, what I'm saying, mercy
13 and sympathy; and to tell you the truth, I'm scared of
14 prison. You know what I'm saying? I'm telling you, y'all
15 looking at me as a bad criminal. I ain't like that, you
16 know what I'm saying? I wouldn't lie to you, you know, I
17 wouldn't lie to you, but ---

18 **THE COURT:** Mr. Drake, when you received your six years
19 youthful offender's sentence and came out on probation, did
20 you do ten months and then came out? Is that what happened?

21 **DEFENDANT DRAKE:** No, I -- no, I just got three year
22 probation.

23 **THE COURT:** You got three years probation?

24 **MR. HERD:** Yes, sir, Your Honor. It was a youthful
25 offender sentence, suspended to three years probation. So

1 he's got a youthful offender hanging over his head.

2 THE COURT: Okay.

3 MR. HERD: There was restitution ordered and he was
4 sentenced on June the 18th, 2007, so these incidents
5 occurred maybe a month or so after he started probation.

6 THE COURT: Mr. Drake, what didn't you understand the
7 first time you came to court? You talk about paying back.
8 Do you understand that you are charged with two counts of
9 burglary in the first degree? I have to give you, at a
10 minimum, 15 years in prison, and I can put you in up until
11 life; which means you will never come out. What part of it
12 did you not understand when you first pled guilty to these
13 other three burglaries? I mean, you obviously got out on
14 probation and went back and did the same thing over again.
15 You not only have these two charges, but you have three
16 others. Is there something that someone could have done or
17 told you for you to understand what you're facing?

18 DEFENDANT DRAKE: No, I don't know. I tell you the
19 truth, I ain't gone say. I would like -- I would like to
20 know, know what I'm saying? All I want -- know what I'm
21 saying? To have my own car, know what I'm saying? Drive to
22 work, know what I'm saying? Be a man. Know what I'm
23 saying? I mean, be -- be a man, know what I'm saying? Be a
24 man. I love -- I like, you know what I'm saying? I -- I --
25 I like to work, I mean, but ---

1 MR. PLEXICO: He had a job, Your Honor, and was making
2 pretty good money

3 THE COURT: How far did he go in school, Mr. Plexico?

4 MR. PLEXICO: (To Defendant) How far did you go in
5 school?

6 DEFENDANT DRAKE: I went 10th -- 10th Grade.

7 THE COURT: 10th Grade?

8 DEFENDANT DRAKE: 10th Grade.

9 THE COURT: Is your family from here?

10 DEFENDANT DRAKE: Yes, ma'am.

11 THE COURT: Well, where is your family right now?

12 MR. PLEXICO: His dad and his -- and his brother are
13 here in the courtroom, Judge.

14 THE COURT: Okay. Who are you, sir?

15 MR. DUPONT: I'm William Dupont.

16 THE COURT: And how are you related to Mr. Drake?

17 MR. DUPONT: That is my son.

18 THE COURT: Your son?

19 MR. DUPONT: Yes, ma'am.

20 THE COURT: All right. Sir, help me out here. Right
21 now, I'm looking at someone who it sounds to me like has
22 never been to prison before, and right now he is going at a
23 minimum of 15 years and up to life. Help me understand how
24 I get a 20-year-old like this?

25 MR. DUPONT: Well, he was -- me and his mother is not

1 together, and he was staying with his mother, and he was
2 getting in trouble with her, and I asked Sara to let him
3 come stay with me, she did, he was doing good until she got
4 to the point she don't want him to stay down there no more,
5 and then I asked him, because she wouldn't do it, so I
6 called to the family court, and they told me I had to get a
7 lawyer. I mean, times is hard, I just can't afford no
8 lawyer. When he was with me, you know, he was doing good.

9 THE COURT: All right. And you are -- what's your
10 name, sir?

11 MR. DUPONT: William Dupont, his brother -- younger
12 brother.

13 THE COURT: Younger brother?

14 MR. DUPONT: Uh-huh (affirmative).

15 MR. DUPONT: He's not a bad kid. Just like I say, when
16 he been with me, for like, maybe, six months at the most, he
17 never did got into trouble, but when he moved back with his
18 mother, that's when stuff like this happened. Like I say, I
19 couldn't afford a lawyer, you know, to try to get custody of
20 him and that what the court told me I had to do.

21 THE COURT: All right, Mr. Drake, is there anything
22 else you would like to say?

23 DEFENDANT DRAKE: Yes, ma'am. I need -- I need, what
24 I'm saying, if you could recommend, what I'm saying, that I
25 -- know what I'm saying, that I get counseling, know what

1 I'm saying? You know, I mean, I -- I -- I'm -- I'm scared
2 of prison. You know what I'm saying? I'm saying the thing
3 about it cause I see my aunt, you know what I'm saying? My
4 aunt -- you see my aunt got killed, right? You know what
5 I'm saying? Know what I'm saying? Prison -- I ain't -- I
6 ain't never -- you know what I'm saying? I ain't never
7 looked at, I mean, you know, I never thought, see, until I
8 got here, you know. I ain't know, like, what, like what I'm
9 facing, like, you know what I'm facing. I didn't realize
10 that what my purpose is -- was on earth, you know what I'm
11 saying? I just ask -- you know what I'm saying, the people
12 don't -- don't forgive me, and don't look at me, you know
13 what I'm saying, like a -- like a criminal, you know what
14 I'm saying? You can't really judge a book by its cover.
15 You know what I'm saying? But in my heart, I'm -- I'm --
16 I'm sweet as honey, man. I'm sweet -- I'm the sweetest man.
17 I'm a nice person. Just like, I -- I -- I -- don't see
18 myself getting married. I don't see myself getting married.
19 You know what I'm saying? Know what I'm saying? I know,
20 like, God, you know what I'm saying? Like, God watching
21 over me. I just -- I just -- I just hope -- I don't know
22 what it was. Come to my senses and work hard and enjoy --
23 enjoy -- know what I'm saying? Live, like live, live --
24 live, you know what I'm saying? Just live until -- you know
25 what I'm saying? Until my last breath, you know, my last

1 breath. I'm frightened; you know what I'm saying? I ain't
2 no fighter. I ain't a fighter. I never thought about that,
3 you know what I'm saying? Like when you go to prison, you
4 got to fight -- fight when you go to prison. Know what I'm
5 saying? Scared -- scared -- my aunt -- my aunt -- my aunt
6 got shanked (sic), you know what I'm saying? That kind of
7 scared me, you know, about going in there. I don't know if
8 my life, you know what I'm saying, I don't know what to
9 think. I been asking God for help. It's just I came to
10 jail and ask him to forgive me, and what I'm saying, to
11 change -- to change my life. I -- I love everybody. I
12 don't hate nobody. Just want to be, you know what I'm
13 saying, a human being. You know what I'm saying? Live on
14 earth. Know what I'm saying? I just want to be part of
15 something. You know what I'm saying? A part of -- a part
16 of -- I just want to be a part of something.

17 **THE COURT:** Well, Mr. Drake, you're a very young man
18 and you're going to go to prison for a long time. However,
19 it's not going to be forever. You're going to get out and
20 you're going to have an opportunity to actually do something
21 with your life. I hope it doesn't ruin you. I don't know.
22 I don't know what it's going to do to you when you come out.
23 But I think you will be given an opportunity where you will
24 be of an age where -- it will be close, but you can go on
25 possibly and have a family and maybe teach them right and do

1 what's right. I wish you'd actually seen the inside of
2 prison before you're going to go now for a very long time,
3 because I often wonder if that maybe would have done
4 something for you, maybe kept you from doing what you've
5 done.

6 DEFENDANT DRAKE: Miss, I just ask for mercy.

7 THE COURT: It's not smart.

8 DEFENDANT DRAKE: I just ask for mercy. I just ask for
9 mercy. Please don't send me. Give me a -- a -- a -- a bond
10 fee. I mean, like some ---

11 THE COURT: Mr. Drake, you need to understand this, and
12 I know I've told you this, I know Mr. Plexico has told you
13 this, the statute requires that I give you a mandatory
14 minimum sentence of 15 years for burglary in the first
15 degree, mandatory minimum. So I can guarantee you that
16 before you walk out of this room, you're going to get at
17 least 15 years, and sir, you could get up to life in prison.
18 Do you understand that?

19 DEFENDANT DRAKE: Yes, ma'am.

20 THE COURT: All right. Anything further from anyone?

21 MR. PLEXICO: Mr. Plexico, Your Honor, just ask you to
22 give him the minimum, which is a huge amount of non-
23 parolable time. That's all, Judge.

24 THE COURT: Anyone else?

25 MR. HERD: Your Honor, I'm with probation. I'd like to

1 have the citation served on him. The citation number is CC-
2 27-08-0004, and it is charging him with violating Condition
3 6, by the new conviction.

4 THE COURT: Did he ever report after he got out on
5 probation?

6 MR. HERD: He made one report from the first time that
7 -- from Beaufort County, after he got the probationary
8 sentence from court. He made the one report and then he got
9 arrested before time to report for the next time.

10 THE COURT: Okay.

11 DEFENDANT DRAKE: I have one more thing to say -- one
12 more thing to say.

13 THE COURT: Yes, Mr. Drake?

14 DEFENDANT DRAKE: I know it's late to say it, but, know
15 what I'm saying, miss, If I was -- if I was, you know what
16 I'm saying? If I was -- if I was told what to do after I
17 came from Beaufort, you know what I'm saying, for my
18 probation, like when I first reported in his office, I
19 wouldn't have been in trouble.

20 THE COURT: "If you were told what to do." Are you
21 telling me that you need a probation officer to tell you not
22 to break into anyone else's house? Because that ---

23 DEFENDANT DRAKE: Oh, no ---

24 THE COURT: --- because that is common sense.

25 All right, Solicitor, you're standing. Is there

1 anything you need to say?

2 **DEP. SOLICITOR TANNER:** Your Honor, I just want to say
3 the State's position is this is someone who is going to
4 continue to break into people's homes. It could escalate.
5 Obviously it didn't make any impact when he was convicted
6 before. I'm not sure that this would make an impact. At
7 some point, he's going to get out and I do believe he will
8 do this again. And that's the State's position.

9 **THE COURT:** Thank you.

10 **DEFENDANT DRAKE:** I got one more -- I got one more
11 thing, miss?

12 **THE COURT:** Yes, sir.

13 **DEFENDANT DRAKE:** Excuse me, I would like -- none of
14 you, like, nobody, like, just like the State, I don't know
15 none of them. I don't know, it's like, I don't know them,
16 know what I'm saying, never seen them -- I never seen them
17 before,
18 but ---

19 **MR. PLEXICO:** Your Honor, 15 years gives him a long
20 time to finish getting educated and grow up in life.

21 **THE COURT:** All right. Anything further from anyone?

22 All right. On Indictment 2007-GS-27-673, for burglary
23 in the first degree, the sentence of this Court is that he
24 be committed to the Department of Corrections for a period
25 of 16 years. On Indictment Number 2007-GS-27-674, for

1 burglary in the first degree, the sentence of this court is
2 that you be committed to the Department of Corrections for a
3 period of 16 years. Those will run concurrent to each
4 other. Good luck to you, Mr. Drake.

5 MR. PLEXICO: Thank you, Your Honor.

6 MR. HERD: Your Honor, on the probation matter?

7 THE COURT: He's just been served with his warrant. I
8 think we could just terminate his probation at this point.
9 He'll be out on parole when he eventually gets out, so let's
10 just go ahead ---

11 MR. HERD: Can I request a civil judgment for the
12 restitution?

13 THE COURT: Yes, you may, and I'll grant it. Thank
14 you. I do find that it's a willful violation of his
15 probation.

16 MR. HERD: Thank you, Your Honor.

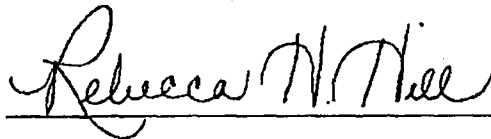
17 (This ends the requested portion of transcript.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Jasper County, South Carolina, on the 1st and 2nd day of
December, 2008.

April 9, 2009



REBECCA H. HILL, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Jasper)Applicant: Richard Drake #332148)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-27-CC7

APPLICATION FOR

POST-CONVICTION RELIEF

2012 JAN 10 AM 9:55
 JASPER COUNTY CLERK OF COURT
 JASPER COUNTY SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Jasper County Court House
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007 GS 2700673 - First Degree Burglary
 - (b) 2007 GS 2700674 - First Degree Burglary

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Dec 2, 2008 and 16 years concurrent _____
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
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. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 15, 2011 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. They decide the case without oral argument pursuant to _____
- ii. Rule 5.215, SCACR _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Intentional Act of Criminal Violation of a legal or moral
 (b) obligation; No Record from hearing was held the date of
 (c) Intentional Injustice; Violation of 14th Amendment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) I will Amend PCR later
 (b) I will Amend PCR later
 (c) I will Amend PCR later

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

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) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? ✓
 (c) your sentencing? ✓
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

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. Steve Piryice - Trial
Kathrine Hudgins - Appeal, 1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332 Post Office Box 11589
Columbia, South Carolina 29211-1589
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial - Steve Piryice
Appeal - Kathrine Hudgins
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Reversal of New Trial and Vacated
part of ~~the~~ conviction

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

County of Jasper)

VERIFICATION

I, Allegan Drake, 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.

Allegan Drake

SWORN to and subscribed before me this 3rd
 day of January, 2012.

Shirley T. McArthur, Jr. (L.S.)
 Notary Public

My Commission Expires: November 7, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Allegiance R. Drake #332198, 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.

Allegiance R. Drake

Applicant

SWORN or affirmed to and subscribed before me this

3rd day of January, 2012.

Deanna M. Millanley
Notary Public

My Commission Expires: January 7, 2016

2012 JAN 10 AM 9:55
 MARGARET BOSTON
 CLERK OF COURT
 JASPER COUNTY SC

Revised
11

①

Violated 4th Amendment

Changes were made by addition, deletion
esp by an alteration in wording.

FILED
2012 JAN 10 AM 9:55
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY SC

②

Violation of a legal or moral obligation

An Act that the law makes punishable - Trial judge

③

No grand jury hearing was held the Date of Indictments
hearing.

My Indictment document written was held
Sept 23, 2008 and airt title under Jasper County General
Sessions for Jasper County.

INEFFECTIVE Assit of Counsel

④

Lacking knowledge of Reports, statements, Picture, All documents
Pertaining to Rule 5 motion of Discovery (Brady Motion) Entering
TRIAL

Legal Proceeding to the statutes

Ineffective Asst of Counsel - Appeal

Explains to make place of the Blame
and Accusation.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	
	)	
	)	2012-CP-27-0007
	)	
Aljaquon R. Drake, #332148,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 10, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. The Applicant was indicted at the September 2008 term of the Jasper County Grand Jury for two counts of burglary-first degree (2007-GS-27-0673, -0674). Applicant was represented by Stephen Plexico, Esquire.

The Applicant proceeded to trial and was convicted. On December 2, 2008, the Applicant was sentenced by the Honorable Carmen T. Mullen to confinement for a period of 16 years on both charges. The sentences are to be served concurrent.

The Applicant filed a timely notice of appeal. His appeal was perfected by Katherine Hudgins, Esquire, of the South Carolina Office of Appellate Defense. The Court of Appeals affirmed his convictions and sentences. The Remittitur was sent August 31, 2011.

Attached herewith and incorporated herein are the records of the Jasper County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate documents. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Lack of subject matter jurisdiction.
 - a. "No grand jury hearing was held the date of the indictments hearing."
3. Violation of the 4th amendment.

III.

The Applicant has alleged ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges that the Grand Jury did not meet during the time his indictment was true-billed. The Respondent interprets this as an allegation that the circuit court lacked subject matter jurisdiction due to the Grand Jury allegedly not meeting.

Defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court and such a claim may be raised at any time. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777. The circuit courts obviously have subject matter jurisdiction to try criminal matters. Therefore, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

The Respondent submits further that a challenge to the legality and sufficiency of the process of the state grand jury does not implicate the subject matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). Further, a defendant must challenge the legality and sufficiency of the process before the jury renders a verdict in order to preserve the issue for appellate review. Id. The regularity of grand jury proceedings is presumed absent clear evidence to the contrary. Id. at 514, 611 S.E.2d at 520.

The chief administrative judge for each circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Jasper County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene on September 23, 2008 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, the Respondent requests that this Court summarily dismiss this allegation with prejudice.

V.

The Respondent construes Applicant's last claim as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

VI.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel and the remaining allegations be summarily dismissed with prejudice.

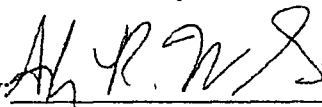
Respectfully submitted,

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By: 
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February 21, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

2012-CP-27-0007

ALIJAQUON R. DRAKE, #332148)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

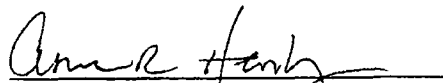
STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day **served** a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Gerald A. Kelly, Esquire
 4760 Yemassee Hwy
 Varnville, SC 29944

DATED this 21st day of February, 2013


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF GENERAL SESSIONS
CASE NO. 2012-CP-27-00007

ALJAQUON R. DRAKE

APPLICANT/DEFENDANT

VERSUS

APRIL 1, 2013

TRANSCRIPT OF POST-CONVICTION

RELIEF HEARING

BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. PERRY M. BUCKNER, JUDGE.

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

ON BEHALF OF THE STATE:

HON. ASHLEIGH R. WILSON

ON BEHALF OF APPLICANT/DEFENDANT:

HON. GERALD A. KELLY

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were presented, either for marking for purposes of identification or entering as evidence.

1 BEGINNING 9:30 A.M.

2 BY THE COURT:

3 THE COURT: That brings us to number two for
4 hearing, with the schedule to begin at 9:00 o'clock, but
5 Mr. Plexico is not here. This is a Jasper County case,
6 Mr. Aljaquon Drake. I know Mr. Kelly's here, so I'm
7 assuming we're ready.

8 Mr. Kelly, have you had a chance to meet with your
9 client?

10 MR. KELLY: Yes, your Honor.

11 THE COURT: Is your client present?

12 MR. KELLY: He is, your Honor.

13 THE COURT: Come on and have a seat by Mr. Kelly. I
14 got a packet -- Ms. Wilson.

15 MS. WILSON: Yes, your Honor. Sorry.

16 THE COURT: Does Mr. Kelly have one?

17 MS. WILSON: Yes, your Honor.

18 THE COURT: All right. Let the record reflect this
19 is 2012, from Jasper County, at 0007. Present before me
20 is Gerald Kelly, representing the applicant, Aljaquon R.
21 Drake. Also present in the courtroom is Ashleigh
22 Wilson, representing the State of South Carolina.

23 I have read the application for post-conviction
24 relief. I have read the return of the State, and I have
25 read the transcript of a pretrial hearing concerning the

1 issue under *Simmons*, as to whether or not two burglary
2 cases could be tried together. I'm ready to proceed at
3 this time.

4 Is the applicant ready to proceed?

5 MR. KELLY: Yes, your Honor.

6 THE COURT: Is the State ready to proceed?

7 MS. WILSON: Yes, your Honor.

8 THE COURT: Very well. Call your first matter.

9 MR. KELLY: Your Honor, I'd call Aljaquon Drake.

10 THE COURT: Mr. Drake, if you'd come around. Do I
11 have a *Bible*, Bob? I, obviously, don't have the clerk,
12 but I have a *Bible*. I'm going to give it to somebody to
13 hold.

14 Put your left hand on the *Bible*. Raise your right
15 hand as best you can. Do you solemnly swear or affirm
16 that the testimony you're about to give this court will
17 be the truth, the whole truth, and nothing but the
18 truth?

19 MR. DRAKE: Yeah.

20 THE COURT: Speak up.

21 MR. DRAKE: Yes, sir.

22 THE COURT: Have a seat on the witness stand. Pull
23 that microphone down for him, Jo. Speak up so everybody
24 in this courtroom can hear you. No uh-huhs or uh-uhs.
25 Say yes or no, so the court reporter can take down your

1 testimony. Don't shake your head or nod your head. She
2 can't take that down. Begin by stating your full name
3 and spelling your last name for the record.

4 MR. DRAKE: Aljaquon Richard Drake.

5 THE COURT: Can't hear you. You got to speak up.

6 MR. DRAKE: Aljaquon Richard Drake.

7 THE COURT: Bob, turn that up a little bit. Mr.
8 Drake, you've got a timid voice, now. Don't be timid.
9 You can hear me; can't you?

10 MR. DRAKE: Yes, sir.

11 THE COURT: I want to be able to hear you.

12 MR. DRAKE: Aljaquon Richard Drake.

13 THE COURT: All right. Speak up. Your witness, Mr.
14 Kelly, direct examination.

15 APPLICANT/DEFENDANT ALJAQUON RICHARD DRAKE

16 DIRECT EXAMINATION, MR. KELLY:

17 Q Aljaquon, were you represented in 2008 on burglary
18 charges by the public defender in Jasper County?

19 A Yes, sir.

20 Q And was that public defender Mr. Plexico?

21 A Yes, sir.

22 Q Okay. How long were you in jail down there?

23 A About a year, I think.

24 Q Speak up.

25 A About a year.

1 Q About a year?

2 A Yeah.

3 Q Now, this lady right here in front of me and you,
4 she's got to hear what you got to say.

5 THE COURT: Not to mention that the judge does, Mr.
6 Kelly. I can't hear him, so you're going to have to get
7 him to speak up.

8 Q You got to speak up for me, understand?

9 A All right.

10 Q Speak up. Can you hear me?

11 A Yeah.

12 Q Well, I can't hear you, so speak up. Now, Aljaquon,
13 today, you told me what about your mental capacity and
14 what's going on in your head. What did you tell me?

15 A Basically, you know, I ain't -- I wasn't given a
16 fair trial.

17 Q You weren't given a fair trial. What did you tell
18 me about your mental capacity?

19 A Well, basically, I'm mentally ill.

20 Q Did you tell me you were unstable?

21 A Right.

22 Q All right. What does mentally ill and unstable mean
23 to you?

24 A That you innocent.

25 Q What does mentally ill and unstable mean to you?

1 A Being innocent.

2 Q What?

3 A Being innocent.

4 Q Being innocent.

5 A Right.

6 Q Do you have any problem understanding what I'm
7 saying to you today?

8 A Pretty much, yeah.

9 Q And what is it that you don't understand that I'm
10 asking you?

11 REPORTER'S NOTE: THE APPLICANT/

12 DEFENDANT DID NOT ANSWER.

13 Q Well, let me ask you another question. Do you
14 remember when you were in jail?

15 A Right.

16 Q Speak up. Lean into that microphone.

17 COURT REPORTER: Scoot your whole chair up. Scoot
18 your whole chair up to -- and then --

19 Q You remember when you were in jail?

20 A Right.

21 Q Were you unstable in jail the way you say you're
22 unstable today?

23 A Yeah.

24 Q Did you talk with Mr. Plexico about being unstable?

25 A I mean, we -- we mentioned it.

1 Q You mentioned it?

2 A Yeah.

3 Q What did Mr. Plexico say to you about you saying you
4 were unstable?

5 A He said -- basically, you know, we discuss about if
6 -- if I should take the stand or not.

7 Q And what did you all decide to do?

8 A Didn't take it.

9 Q Why not?

10 A Because, basically, it wasn't right.

11 Q What wasn't right?

12 A Me, you know, taking the, you know, taking the
13 stand, you know.

14 Q Why was it not right for you to take the stand?

15 A Because the reason I ain't got no treat -- I ain't
16 never been treated for, basically.

17 Q You ain't got no treat for it?

18 REPORTER'S NOTE: APPLICANT/

19 DEFENDANT SHOOK HEAD.

20 Q What does that mean?

21 REPORTER'S NOTE: APPLICANT/

22 DEFENDANT DID NOT ANSWER.

23 Q Did you tell Mr. Plexico what your alibi was for
24 these crimes, where you were, when they took place?

25 A I'm not sure.

1 Q Say what, again?

2 A I'm not sure.

3 Q You're not sure? Do you not remember whether or not
4 you gave your alibi to Mr. Plexico?

5 A You say alibi?

6 Q Yeah, your alibi. That means where you were when
7 you were not committing these crimes.. Did you talk to
8 him about it?

9 REPORTER'S NOTE: APPLICANT/
10 DEFENDANT SHOOK HEAD.

11 Q Did you talk with your family and Mr. Plexico
12 together?

13 MS. WILSON: Excuse me, your Honor. Can you please
14 verbally answer. He's shaking his head.

15 THE COURT: I realize that you're not familiar with
16 being in court, Mr. Drake, but you're going to have to
17 speak up verbally with a yes or a no. No shaking your
18 head. No nodding your head. Your lawyer can't hear you
19 or understand you. I can't understand you, and I'm here
20 to listen to you. And now, the State can't hear you.
21 So, you're going to have to speak up with an answer,
22 yes, or no, if you know the answer to the question.

23 All right. Proceed, Mr. Kelly.

24 BY MR. KELLY:

25 Q Did you discuss your alibi with Mr. Plexico?

1 A What alibis?

2 Q Alibi is where you were when you were not committing
3 these crimes. Did you discuss where you were? They
4 claim that you were breaking into houses and smashing
5 the doors and ransacking the houses and carrying off the
6 goods in the houses. And you say you didn't do it.
7 That means you had to be somewhere else. Did you
8 discuss where else that was with Mr. Plexico?

9 A Yes, sir, --

10 Q Say yes or no.

11 A No.

12 Q Why not?

13 REPORTER'S NOTE: APPLICANT/

14 DEFENDANT DID NOT ANSWER.

15 Q Do you know a reason, or do you have a reason, that
16 you didn't discuss that with him?

17 A No.

18 Q Why did you decide not to tell the jury where you
19 were when these crimes were taking place? Why did you
20 make that decision?

21 A When I take the trial or something -- stand?

22 Q For not taking the stand; why did you make that
23 decision?

24 A Uh --

25 Q Do you know why you made that decision?

1 A Not taking the stand?

2 Q For not taking the stand.

3 A It be -- you know, I'm a --

4 REPORTER'S NOTE: APPLICANT/

5 DEFENDANT SHOOK HEAD.

6 Q Do you remember discussing that with Mr. Plexico?

7 A Not take the stand?

8 Q Yes, do you remember that? You have to say yes or
9 no.

10 A Yes, sir. Yes, sir.

11 Q And do you remember making the decision not to do
12 that?

13 REPORTER'S NOTE: APPLICANT/

14 DEFENDANT SHOOK HEAD.

15 A No, sir.

16 MR. KELLY: Your Honor, I don't have any further
17 questions.

18 THE COURT: Very well. Cross-examination.

19 MS. WILSON: Thank you, your Honor.

20 THE COURT: Counsel, come up here so he can see you
21 when you ask the questions. Now, Mr. Drake, I want you
22 to give me a verbal answer. Proceed. Cross-
23 examination.

24 APPLICANT/DEFENDANT, ALJAQUON R. DRAKE

25 CROSS-EXAMINATION, MS. WILSON:

1 Q Mr. Drake, do you remember how many times you met
2 with Mr. Plexico before your trial?

3 THE COURT: You can't shake your head.

4 A No.

5 THE COURT: Yes or no.

6 A No.

7 Q Okay. Do you recall going over discovery or any
8 evidence that the State had with Mr. Plexico?

9 A No.

10 Q Do you recall discussing any possible defenses with
11 Mr. Plexico?

12 A Say again.

13 Q Do you recall discussing any possible --

14 THE COURT: Explain to the witness what you mean by
15 defenses, Counsel. Mr. Kelly's already used alibi. He
16 asked what that was. Explain to him what you mean.
17 Let's proceed.

18 MS. WILSON: Yes, your Honor.

19 BY MS. WILSON:

20 Q Do you recall talking with Mr. Plexico about what
21 type of things he would argue to the court during your
22 trial?

23 Do you need me to repeat the question?

24 A Yes, ma'am.

25 Q Do you recall talking with Mr. Plexico about the

1 THE COURT: Your witness, Counsel.

2 HON. STEPHEN T. PLEXICO

3 DIRECT EXAMINATION, MR. KELLY:

4 Q Mr. Plexico, you observed Mr. Drake this morning on
5 the stand.

6 A Yes.

7 Q How does that compare to his presentation of himself
8 during the time you represented him in Jasper County?

9 A Well, he -- I just thought he was a very -- lack of
10 intelligence when I -- when I talked with him.

11 Q Did he exhibit any kind of apparent mental illness
12 or mental disability or any unstability, as he calls it?

13 A Well, sir, the only thing that he could possibly
14 qualify would be for some range of mental retardation.
15 He seemed to understand what evidence was, Mr. Kelly,
16 because he kept telling me, *They don't have any evidence*
17 *on me.* And he was certainly bright enough to see that
18 they had slim evidence on him.

19 Q Did he offer to you an alibi?

20 A Well, on one of the cases, for instance, he told me
21 they went to collect money from a drug deal. And one of
22 his buddies had cut the power off to the house. They
23 broke the glass out when the boy wouldn't come to the
24 door, because he'd had -- wouldn't pay his drug bill.
25 And he said, of course, they weren't there to commit

1 burglary; they were there to collect a drug debt. That
2 was on the Crabapple burglary that I've noticed.

3 Mr. Bryan had the case to start with, and he has
4 multiple notes. And I don't see anything that -- that
5 he has on here indicating that he thought that he was
6 anything more than just dumb. And Mr. Bryan might have
7 told me that he was just dumb as dirt. I -- I have a
8 vague memory of that. I think he's ignorant, but I
9 don't have any indication he doesn't know that
10 burglary's wrong.

11 Q You mentioned the Crabapple case. To what are you
12 referring?

13 A Well, I have notes in here about they went to a
14 house to collect drug money. Okay? This is one of the
15 -- it's hard to keep them all straight, because he had
16 so many different burglaries. They concentrated on two
17 for the joinder. And they were bringing in the other
18 ones that he had committed, so. But he understood that
19 the two that they had, they had slim evidence on. And
20 of course, that's what all the motions and the motion
21 and the trial was all about.

22 Q Well, there were two residences broken in, in the
23 cases that were tried in Jasper County, correct?

24 A Yes.

25 Q And one of them was the home of Billie Kay Smith?

1 A Okay. All right.

2 Q And the other one was a Nimmer.

3 A Right.

4 Q No Crabapple.

5 A No. He had another case with the Crabapple.

6 Q That case was not tried.

7 A That case was not tried, but I'm using that as an
8 example of his ability to understand what was going on
9 during that time and to be able to communicate with me
10 during an interview.

11 Q Well, Mr. Plexico, if the Crabapple case was not in
12 issue, then, what took place would not be an issue as an
13 alibi for the Nimmer and the Smith case.

14 A That's true, sir, but it would show that he
15 certainly had the intelligence and the ability to
16 communicate an alibi, if, in fact, he had one.

17 Q Well, your Honor -- Mr. Plexico, what I asked you
18 was, is, did he offer you an alibi for the two
19 burglaries that took place that you tried him for? That
20 would be the Nimmer residence and the Smith residence.

21 A No, sir.

22 Q He offered you no alibi?

23 A No, sir, he did not. He kept saying they have no
24 evidence.

25 Q How did you attempt to determine where he was at the

1 time of these burglaries?

2 A Well, I mean, he didn't tell me where he was, so I
3 assumed he was committing the burglaries, because he
4 gave me --

5 Q And why do you assume that?

6 A He gave me no -- no other reason to believe that he
7 wasn't doing the burglaries.

8 Q Well, he was located first in evidence of being in
9 that neighborhood; was he not?

10 A Yes.

11 Q And he had gone to a home where he claimed to know a
12 man who lived there. Is that not correct?

13 A Yes.

14 Q And from there, he received a ride by truck to the
15 market, where he cashed in coins, correct?

16 A Nearby, yes.

17 Q And did Mr. Smith, who's house was burglarized, say
18 that the coins that were taken from his home were 5 or
19 \$10.00 worth of coins? Do you recall that?

20 A About \$15.00.

21 Q And the person who helped Mr. Drake cash the coins,
22 all of which was videotaped at the market, said that the
23 coins were over a hundred dollars' worth.

24 A Absolutely. A huge difference I brought out in the
25 motion and during the trial.

1 Q Well, I don't see where you brought it out, Mr.
2 Plexico.

3 A Okay.

4 Q But, I'll ask you this. How did your client account
5 to you for the difference in the amounts that were
6 placed on the cashing in of these coins.

7 A As I --

8 Q Which would be a difference of five to ten times as
9 much.

10 A As -- he never admitted doing the burglaries to me.
11 He never gave me an alibi where he was. As I recall, he
12 said the money was his. He also said, *They just don't*
13 *have any evidence on me.* That's what he kept saying.
14 No matter what I asked him, he always got -- he would
15 stare at me and look at me and ask what evidence they --
16 they have on me. That was -- that was his typical
17 response. Okay? It was very frustrating.

18 Q Why didn't you try to talk --

19 THE COURT: Hold on. Whoa. You don't interrupt the
20 witness. And Mr. Plexico, you don't talk when a
21 question's being asked. Ask a question, Counsel. She
22 can't take down both of you all chitchatting at the same
23 time. Proceed.

24 BY MR. KELLY:

25 A It was frustrating talking to him, because he didn't

1 want to address the issues, when I felt like he had the
2 ability that he could.

3 Q Did you call in his parents?

4 A No.

5 Q Why not?

6 A I didn't see any reason to.

7 Q Well, if you could communicate with him to get the
8 evidence from him that you needed, why didn't you enlist
9 professional or family help?

10 A Well, that would be when I felt it was a lack of a
11 willingness to communicate versus an inability to
12 communicate. And since he chose to communicate, he can
13 go collect drug money, for instance. That means, to me,
14 that he can communicate. He can participate in a
15 relatively sophisticated scheme. And while he's not
16 bright, certainly not bright, that doesn't mean that he
17 didn't know the difference between right and wrong and
18 could not communicate with me if he chose to.

19 He knew they had little evidence on him, and he was
20 confident, I feel, about his case.

21 Q You say Mr. Hughes originally had this case?

22 A Mr. Bryan.

23 Q Mr. Bryan.

24 A Yes.

25 Q Mr. Bryan originally had the case. When did you

1 take it over?

2 A Don't have notes on that.

3 Q How long before trial did you take it over?

4 A I don't have notes on that. I don't remember.

5 Q Well, you were present at the motion hearing; were
6 you not?

7 A Yes.

8 Q And there were two motion hearings; were there not?

9 A I thought there was one motion hearing.

10 Q Well, there was one motion hearing that we have a
11 transcript for, where it was determined by Judge Mullen,
12 was it not, that it was -- that the cases could be tried
13 together.

14 A Yes.

15 Q Is that correct?

16 A Yes.

17 Q Now, there came a time -- and you were attorney at
18 that time; were you not?

19 A Yes.

20 Q And was Mr. Bryan still in the case?

21 A No.

22 Q Do you have any idea how long he'd had the case
23 before you took it over?

24 A The file was open October 1, 2007.

25 Q And you don't know when you took it over?

1 A I couldn't -- I don't have any notes on that.

2 Q Did Mr. Bryan have any luck determining alibi? Can
3 you tell from his notes?

4 A I can look.

5 Q I'll withdraw that question. Did you check Mr.
6 Bryan's notes when you took the case over to determine
7 whether he'd had any luck determining an alibi?

8 A Well, I have them right here. I would have read
9 over his notes when I assumed the case from him, but I
10 don't remember anything significant out of the notes.

11 Q When was it determined the client would not testify
12 at trial?

13 A I don't recall that exactly.

14 Q Why was it determined?

15 A I never -- I mean, he never told me what he was --
16 exactly what he was doing. He was confident that --
17 that they didn't have any evidence, and it was --
18 everything was going to go his way. And I -- I told
19 him, you know, they were going to bring in the prior
20 burglaries. Well, what he understood was, they didn't
21 have any evidence. And I mean, they had very slim
22 circumstantial evidence on the boy. And he understood
23 that.

24 Q You mean that, if he had testified, they would bring
25 in evidence of a conviction of a prior burglaries in

1 order to impeach his testimony?

2 A Yes.

3 Q And that would be one of the factors that you would
4 consider would be adverse to him?

5 A They were already -- I'm sorry, sir. I didn't mean
6 to cut you off. Go ahead.

7 Q That would be a factor that you considered that he
8 should not testify?

9 A Normally, yes. I don't remember how many burglaries
10 that he had, but they were already bringing in two, so
11 that was not really of significance. But I'm not going
12 to tell anybody to testify unless I know exactly what
13 they're going to testify to. And of course, if you
14 won't tell me that you didn't do it, I'm going to -- I
15 assume you did do it, and I'll tell you, don't take the
16 stand and lie.

17 Q Well, --

18 A Because you don't have a right to lie.

19 Q Well, at the time that the judge determined that the
20 cases could be tried together, that was the motion
21 hearing. When was it determined that the jury was going
22 to be told this information about him being previously
23 convicted?

24 A When she ruled on the -- as I understood, that was
25 their theory of the case, sir.

1 Q Did you make a motion to bifurcate the proceeding on
2 notice to the jury that he had been previously
3 convicted?

4 A No, I did not.

5 Q Why not?

6 A I didn't see any reason to.

7 Q Well, Mr. Plexico, don't you think that, that would
8 prejudice him in front of the jury?

9 A That clearly prejudiced him, and that was the entire
10 point of -- of the -- of them bringing it up. I mean,
11 that's -- that's the statute. I have a statutory right
12 to proceed on that.

13 Q Well, why didn't you just simply make a motion to
14 Judge Mullen that, first of all, it should be determined
15 whether or not he burglarized residences by the jury,
16 and then, if he was convicted, that the jury determine
17 then whether or not his previous convictions were
18 actually convictions or not?

19 A Perhaps I should have done that. In retrospect, I
20 probably should have.

21 Q Might?

22 A I should have done that, yes

23 Q And why should you have done that, Mr. Plexico?

24 A Well, that may have kept the evidence out of the
25 prior burglaries, if it had been granted.

1 Q Well, does --

2 A I've never heard -- I've never heard of that being
3 done.

4 THE COURT: Hold it. Let him finish.

5 A I've never heard of that being done.

6 Q Well, does that stop you from doing it?

7 A No.

8 Q Isn't that a logical thing to do, under those
9 circumstances?

10 A That would have been, if I had thought of it. I did
11 not think of that, sir.

12 Q Well, that's a failing on your part, isn't it, Mr.
13 Plexico?

14 A I was not creative enough that day for sure, Judge
15 -- Mr. Kelly.

16 Q Well, Mr. Plexico, how long have you been public
17 defender?

18 A I've been a public defender since 1990.

19 THE COURT: Speak up for me.

20 A I've been a public defender since 1990.

21 Q And you've had hundreds of burglary cases.

22 A Yes.

23 Q And you had over a year to prepare for this case,
24 correct?

25 A I -- I don't -- I don't know the time, but I'm

1 not --

2 Q Well, Mr. Plexico, for a jury to learn, don't you
3 believe, or do you not believe, that, for a jury to
4 learn of prior burglary convictions when a man is being
5 tried for burglary is highly prejudicial, no matter what
6 the court says to them?

7 A Absolutely.

8 Q And you would go so far as to count that as a factor
9 that a person should not testify because they would come
10 in. Is that not correct?

11 A It depends on -- this -- all right. This statute
12 entitles the State to bring it. I mean, they can bring
13 this open -- they can bring this out in their opening
14 argument. It is part of the statute. It's part of what
15 they have to prove.

16 Q No, your -- no, Mr. Plexico, it does not. The
17 statute does not speak to when it comes in front of the
18 jury. Have you read the statute?

19 A Yes, I have. It doesn't say -- you're correct. It
20 doesn't say that you could bring any specific element,
21 any specific time in front of a jury, but I believe
22 that's how all the statute's handled. You can talk
23 about all the evidence that you're going to put in front
24 of a jury, period.

25 Q Well, all that you've done have been handled that

1 way. Is that correct?

2 A That's right.

3 Q That's because you haven't made any motion to
4 bifurcate it. Isn't that right?

5 A That's correct.

6 Q Now, Mr. Plexico, what is the first thing the
7 solicitor told the jury about your client?

8 A I'm not sure. Probably that he had two burglaries.

9 Q Well, that's what the transcript shows. The very
10 first thing that she said to them was this is a man
11 who's been previously convicted of two burglaries.

12 A Yes.

13 Q Didn't you realize that's what she was going to do?

14 A Yeah.

15 Q And you didn't attempt to stop it by making a simple
16 motion that it not come before the jury unless the man's
17 convicted?

18 A As I've already testified, that did not occur to me.

19 Q Well, do you remember the binoculars?

20 A Yeah.

21 Q Do you remember that she said in her opening
22 statement that the binoculars were found on the porch of
23 the residence?

24 A If you say so, sir. I don't remember. I don't have
25 the statute -- the -- in front of me.

1 Q Well, do you remember that in her closing argument,
2 she said that the binoculars were found on the porch of
3 the residence where he left them? Do you remember that?

4 A I remember that was some evidence in the case.

5 Q Well, do you remember in the case any evidence that
6 said by any witness that they found binoculars on that
7 porch?

8 A I don't -- I don't recall that.

9 Q Well, that was because there wasn't any, Mr.
10 Plexico. Do you remember the investigator saying that
11 they had been found at the residence?

12 A Yes. there's a receipt in the file, I believe,
13 about the binoculars.

14 Q But if you recall, he said nothing about where they
15 were found or who found them. Do you recall that?

16 A Yes.

17 Q Do you recall that you didn't make an objection in
18 the closing argument when she said that they'd been
19 found in a place where it wasn't in evidence?

20 A I didn't realize that at the time.

21 Q Well, the record shows you did not.

22 A Okay.

23 Q Did you make any motion previous to trial, previous
24 to opening argument, that no evidence that did not later
25 appear in evidence, no claimed evidence, should be made

1 or published by the solicitor in opening argument? Did
2 you make that motion?

3 A No. No.

4 Q Mr. Plexico, don't you think you let this man down
5 when you didn't make this motion to bifurcate this
6 matter?

7 A No, I don't. I mean, it's -- it was just a loser.
8 It was just a loser to start with from start to finish,
9 and that was pretty much the way I -- I saw it. And I
10 don't think he has a right to have it bifurcated, nor do
11 I think any court's going -- going to allow that. That
12 would defeat the legislative intent of the statute, in
13 my opinion, now that you bring it up.

14 Q Well, that wasn't your opinion at the time of the
15 trial, though; was it?

16 A What -- what do you mean what was my opinion at the
17 time of the trial?

18 Q Well, you said earlier that you didn't do it because
19 you didn't think of it. Now you say you didn't think
20 you had a right to do it. I'm saying you didn't think
21 about these arguments then.

22 A I don't think he had a right -- I didn't -- I didn't
23 think about it. I don't think he had a right to it.
24 You're asking.

25 Q Why not?

1 A I don't think he has a -- it would defeat the
2 legislative intent. What would -- what would -- what
3 would be the point of having that in the statute, if
4 you're essentially going to try the case, and you take
5 that out of the statute to start with?

6 Q Is it not listed in the statute as an aggravating
7 circumstance?

8 A Absolutely. So therefore, every time I try a case,
9 I would need to take out the aggravating circumstance
10 that so and so with the defendant or co-defendant was
11 armed; that a defendant entered in the nighttime.
12 That's just not done. It's not standard practice.

13 Q What is not standard practice?

14 A It's not standard practice to ask for a bifurcated
15 proceeding. For instance, it's to see whether or not a
16 burglary happened, and then have a separate trial to
17 determine whether it happened in the nighttime, or any
18 other aggravating circumstance, such as having two or
19 more prior burglaries. It just did not occur to me to
20 ask for that. That's not standard practice. In 25
21 years, I've never seen another lawyer do it in a
22 burglary case, nor have I.

23 Q Well, Mr. Plexico, there's quite a difference
24 between physical evidence carrying a pistol in and out
25 of a residence and having previous convictions; don't

1 you think?

2 A Well, there's a difference in all of it.

3 Q Sir?

4 A Obviously, each one's different, yes. Each one has
5 it's own circumstances.

6 Q Well, there's a major difference here.

7 THE COURT: Hold it. Let him finish the answer,
8 then ask a question. Are you finished with the answer?

9 A I am.

10 THE COURT: Proceed.

11 Q Well, the different circumstance here would be all
12 other aggravating circumstances had to do with what took
13 place at the time of the burglary.

14 A Yes.

15 Q But this aggravating circumstance that enhances the
16 penalty to Burglary 1st, has happened long before in
17 history, and it's highly prejudicial to a fair trial, if
18 the jury knows about it. Isn't that correct?

19 A That's correct, and I argued that.

20 MR. KELLY: All right. I have no further questions.

21 THE COURT: Cross-examination. Cross-examination.

22 MS. WILSON: Thank you, your Honor.

23 HON. STEPHEN T. PLEXICO

24 CROSS-EXAMINATION, MS. WILSON:

25 Q Mr. Plexico, how long did you say you'd been

1 practicing law?

2 A Twenty-five years, or thereabouts. Close to it.

3 Q And you were appointed to represent Mr. Drake on
4 this case. That's correct?

5 A Yes.

6 Q And how many times do you think you met with him
7 before trial?

8 A I -- I couldn't tell you, but I -- I have a stack
9 here, as I spent a lot of time on the case.

10 Q And did you file *Brady* or *Rule 5* motions on his
11 behalf?

12 A Yes, I did.

13 Q Did you get some discovery material back from the
14 State?

15 A Yes.

16 Q And did you review it with Mr. Drake?

17 A Yes.

18 Q Okay. And did you, prior to trial, discuss with him
19 the elements of the charges against him and what the
20 State had to prove in order to convict him?

21 A Yes.

22 Q And also, did you discuss his version of the facts?

23 A I -- I attempted to. I told him what he had. He
24 was reluctant to talk to me. I didn't know if he didn't
25 like me or what was going on. I went over everything.

1 So, he goes, *So, what's the evidence.* And you know,
2 that's -- that -- that was, essentially, his attitude,
3 no matter when I talked to him, you know, what kind of
4 evidence do they have. He knew they had no one who saw
5 him go in, for instance. They didn't have fingerprints;
6 they didn't have video. I mean, they -- it was slim-to-
7 none, the evidence. And but for joinder and but for
8 using the statute in aggravating circumstances that they
9 did, or, and/or the combination of both, they never
10 would have gotten a conviction. You know, -- it's -- I
11 argued it best I could, and I'm sorry that the joinder
12 was there.

13 Q Did you discuss any possible defenses with him?

14 A Well, he didn't give me any -- aside from not
15 meeting the statutory requirement. I mean, he had ample
16 time to talk to me and tell me what was going on, but he
17 chose not to. And I assume that was because he didn't
18 want to tell me that, yes, he did it. I mean, he could
19 tell me about the other stuff. I mean, he's going out
20 to collect drug money, so. I mean, I noted that. I
21 mean, you know, I felt sorry for the guy. He wasn't
22 very bright, but then, again, you know.

23 Q Okay. And he didn't give you any potential leads or
24 witnesses to investigate?

25 A No.

1 Q Did you do any type of investigation after you
2 received discovery from the State?

3 A No. Nothing independent.

4 Q So, does that mean you just basically reviewed what
5 you were given from the State, and then you didn't see
6 the need to investigate anything further?

7 A Well, he didn't give me anything to go on. I didn't
8 have any reason to believe he was anywhere else. And
9 then it became a case of whether or not there was enough
10 evidence to -- to convict the client. And he still
11 wanted a trial, and he didn't want to plead guilty,
12 because he knew the weakness of the State's case and
13 items that they simply did not have.

14 Q Okay. And did you feel like you had ample time to
15 prepare for trial?

16 A Yes.

17 Q And you indicated just a second ago that Mr. Drake
18 didn't want to plead guilty. Were there any plea
19 negotiations on his behalf with the State?

20 A I don't recall that. He just didn't want to plead
21 guilty. I mean, they weren't -- they -- as I recall,
22 you know, it was basically a burglary 1st, anyway. And
23 Judge Mullen, I think, gave him 16 years. An extra
24 year, basically, for going to trial, for which, as I
25 recall, what they were willing to give him anyway.

1 Q Okay. And did you think that, had the defendant
2 been willing, do you think he would have been able to
3 assist you at trial?

4 A Well, I mean, you know, if he's not testifying and
5 I'm not putting up any motions, the best assistance any
6 client can give me is to -- is to not try to talk to me
7 during the hearing so I can hear what's going on. Or
8 during the trial. I mean.

9 Q Did you have any concerns about his mental health?

10 A No, not about his mental health. His I.Q., I
11 thought, was low, but, you know, he could communicate
12 some things with me when he felt like it, as noted, you
13 know, look over the file with Detective Cris, yeah, he
14 could communicate with him when he wanted to, wanted --
15 you know. Apparently, when he thought it might serve
16 him.

17 Q And he didn't give you an alibi to pursue.

18 A None.

19 Q And do you recall at trial bringing out the
20 discrepancy about the amount of coins that was stolen
21 from the victim's home and the amount that was testified
22 was cashed in by Mr. Drake?

23 A Yes. It was like \$85.00 or something. You know.
24 And coins are nondescript. There's no -- coins are
25 coins, and there wasn't like a unique type of coin. It

1 wasn't like all quarters or all dimes or all gold coins
2 or foreign coins or something like that. I mean, it was
3 -- they were just coins.

4 Q Okay. And you spoke with Mr. Drake about whether or
5 not he should take the stand at trial. Is that correct?

6 A Yes. I mean, I -- I didn't -- if -- I don't know
7 what you're going to say; I'm certainly not going to
8 tell you to testify.

9 Q So you didn't know what he would testify to.

10 A Not a clue.. In regards to these matters.

11 Q And with regard to his prior burglaries, that is a
12 requirement that the State's required to prove for
13 burglary 1st. Is that correct?

14 A Yes.

15 Q And you recall stipulating with regard to the priors
16 so that the jury wouldn't know the details? Do you
17 recall doing that during trial?

18 A Yes. I tried to stipulate. As I recall, she
19 wouldn't agree to. Just did the entire matter. But you
20 know, because he, in fact, did have two burglaries. And
21 then proceed that way, but she would not agree to that.

22 Q Okay.

23 A That would stipulate to that. And the State would
24 not stipulate to that, and that would have kept it from
25 the jurors. But of course, they're not going to do

1 that.

2 Q And with regard to this motion to bifurcate, have
3 you ever made that motion before?

4 A No, I have not.

5 Q And do you think that it likely would have been
6 futile in this case?

7 A I don't think it would have -- would have been
8 granted, since he's brought it up. I mean, why would
9 you pursue it? Essentially, that is telling -- that is
10 taking away from the State the advantage that the
11 legislature has determined to give them in cases
12 involving defendants with past burglary histories.
13 Convictions, plural. It makes it a nullity. It
14 nullifies the legislative advantage to the State in
15 regards to that item.

16 MS. WILSON: Okay. Nothing further. Thank you.

17 THE COURT: Re-direct.

18 MR. KELLY: Yes, your Honor.

19 HON. STEPHEN T. PLEXICO

20 RE-DIRECT EXAMINATION, MR. KELLY:

21 Q Well, Steve, if you had made the motion for the
22 bifurcation, and it had been granted, that would have
23 been helpful to a fair trial to your client; wouldn't
24 it?

25 A Absolutely, sir.

1 Q And if you had been denied, then it could have been
2 -- would have been one of the issues on the appeal;
3 would it not?

4 A Yes, sir.

5 Q And it would be settled now.

6 A Yes, sir.

7 Q Would it not?

8 A Yes, sir.

9 Q Well, so there's really no down side to making that
10 simple motion, correct?

11 A There you go, sir, absolutely. I should have made
12 it.

13 Q And it doesn't really steal anything from the
14 legislature; does it?

15 A To make the motion, of course not.

16 Q Or to deny it or to accept it by the judge, neither
17 one, correct?

18 A I disagree. If the judge -- if the -- if the -- I
19 believe it would have -- I don't believe a judge would
20 have granted it. And if a judge -- if the judge had
21 granted it, I believe it would have been overturned, if
22 I had won the case.

23 Q And so, that wouldn't --

24 A Well, whatever.

25 Q And so, that wouldn't take anything away from

1 anybody; would it?

2 A No.

3 Q Would it?

4 A No.

5 Q It would only clarify the matter; would it not?

6 A Yes. There you go.

7 MR. KELLY: I have no further questions.

8 THE COURT: Re-cross limited to re-direct.

9 HON. STEPHEN T. PLEXICO

10 RE-CROSS-EXAMINATION, MS. WILSON:

11 Q Mr. Plexico, you testified that you think the court
12 would have denied the motion had you requested a
13 bifurcated trial. Is it your general practice to make
14 motions that may be futile?

15 A No.

16 MS. WILSON: Nothing further, your Honor.

17 THE COURT: You may step down. Call your next
18 witness, Mr. Kelly.

19 MR. KELLY: Rest, your Honor.

20 THE COURT: Very well. Is the State ready to
21 proceed?

22 MS. WILSON: Nothing further from the State, your
23 Honor.

24 THE COURT: All right. I'm going to ask you both --
25 take out your pen, Mr. Kelly, so you can make a note.

1 Although, you might have my address memorized. I'm
2 going to ask you both to submit proposed orders to me.
3 I'm assuming now, Ms. Wilson, Mr. Kelly has a complete
4 package you handed me. Is that right?

5 MS. WILSON: That's correct, your Honor.

6 THE COURT: And the package you're handing me don't
7 go back to Jasper County. These are the Court's packet.

8 MS. WILSON: Yes, sir, for you.

9 THE COURT: All right. I'm going to ask you both to
10 submit proposed orders to me. Please submit them to me
11 within ten days of today. Please submit them to me at
12
13

14 Please copy opposing counsel on your transmittal of
15 the proposed orders to the court. And when you send the
16 order to me, please include a self-addressed, stamped
17 envelop with sufficient postage affixed thereto for the
18 return of the proposed order. Do not send me a 25-page
19 order. I wish Mr. Brown was in the courtroom right now.
20 And send me an envelop with one stamp on it. I have to
21 pay my own postage. I expect you to know what it weighs
22 when you send it to me.

23 If you want to email me your orders, you may do so,
24 but you will still have to snail mail me an envelop with
25 postage. My email address is

1 Please copy my law clerk: as
2 well as counsel. My law clerk will need a working copy
3 of the order and I will need a copy of the order. I'll
4 expect you both to comply with the ten-day deadline.
5 There will be no extensions. Please make sure opposing
6 counsel is copied on any transmittal to the Court.

7 Any questions about the proposed order procedure
8 from counsel for the applicant?

9 MR. KELLY: No, your Honor.

10 THE COURT: Any questions about proposed order
11 procedure for counsel for the State of South Carolina?

12 MS. WILSON: No, your Honor.

13 THE COURT: Mr. Kelly, so you know, I'll be taking
14 back to my office application that your client filed for
15 post-conviction relief. The return of the State. I
16 will, obviously, have to read. I have not read the
17 entire trial transcript, but I have read the transcript
18 of Thursday, October 23, 2008. I have not read the
19 trial transcript of December 1, the 2nd, December 8, but
20 I will do so.

21 I will look forward to receiving your proposed
22 orders. Thank you for being on time and being prepared.

23 Yes, sir.

24 MR. KELLY: Your Honor, one final matter, if I may
25 ask the Court to entertain one final motion. And that

1 is to make the --

2 THE COURT: Hold on a second. I have to hear it
3 before I tell you, because I've closed the hearing. And
4 I'll let the State object, if they want to. You make
5 the motion now. I don't do that after I've asked for a
6 proposed order.

7 MR. KELLY: Yes, sir. I understand.

8 THE COURT: Go ahead.

9 MR. KELLY: I would ask that the complaint conform
10 to the proof -- that the application conform to the
11 proof.

12 THE COURT: Mr. Kelly, there is an allegation -- I
13 know you've read the application of ineffective
14 assistance of counsel. Any objection to his motion, Ms.
15 Wilson?

16 MS. WILSON: No, your Honor.

17 THE COURT: So ordered, Mr. Kelly. Look forward to
18 receiving your proposed order.

19 MR. KELLY: Thank you, sir.

20 THE COURT: Thank you.

END HEARING 10:20 A.M.

CERTIFICATE OF REPORTER
APRIL 1, 2013 TRANSCRIPT OF
POST-CONVICTION RELIEF HEARING

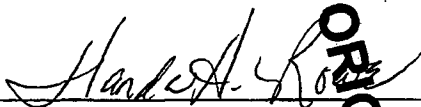
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 1, 2013 Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had in the case of Aljaquon R. Drake versus State of South Carolina, Jasper County, Court of Common Please, Case Number 2012-CP-27-00007.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature July 18, 2013.


WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

ORIGINAL

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Aljaquon R. Drake, #332148,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
2012-CP-27-0007

ORDER OF DISMISSAL

2013-2 MAY 21
JASPER COUNTY S.C.

#1
PMB
This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 10, 2012. The Respondent made its return on February 21, 2013. An evidentiary hearing on the matter was convened on April 1, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Gerald Kelly, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was Stephen T. Plexico, Esquire. The Court had before it the trial transcript, the Jasper County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Jasper County Clerk of Court. The Applicant was indicted at the September 2007 term of the Jasper County Grand Jury for two counts of burglary-first degree (2007-GS-27-0673, -0674). He was represented by Stephen T. Plexico, Esquire.

POSTED
5/2/13

On October 23, 2008, the State made a motion to join the trial of the two burglaries. The State's motion was granted and the Applicant proceeded to trial on both burglaries. The Applicant was found guilty as indicted. On December 2, 2008, the Honorable Carmen T. Mullen, sentenced the Applicant to concurrent terms of 16 years for each burglary.

A Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Katherine Hudgins, Esquire of the South Carolina Office of the Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. The Remittitur was sent August 31, 2011.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Violation of a legal or moral obligation."
2. Lack of subject matter jurisdiction.
 - a. "No grand jury hearing was held the date on indictment."
3. Violation of the 4th amendment.

At the hearing, Applicant made a motion to amend his application to conform to the proof. The Applicant's motion was granted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Summary of Testimony

The Applicant was present and testified he was represented by Stephen T. Plexico from the Public Defender's Office. He testified he was not given a fair trial. The Applicant also testified he is mentally ill and unstable; therefore, he is innocent. The Applicant testified he mentioned his mental instability to counsel. The Applicant also testified he spoke with counsel about taking the stand, but chose not to take the stand. Lastly, the Applicant testified he did tell trial counsel about his alibi.

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Trial counsel, Stephen T. Plexico was also present to testify. Counsel testified he has been practicing law for 25 years. He testified he was appointed to represent the Applicant and met with him frequently prior to trial. Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. Counsel also testified he reviewed the discovery materials he received with the Applicant. Counsel testified that prior to trial he discussed with the Applicant the elements of the charges against the Applicant and what the State was required to prove.

Counsel testified he tried to discuss the Applicant's version of the facts, but was never given anything by the Applicant to investigate. Counsel testified he had ample time to prepare for trial and his trial strategy was to highlight to the jury the State's lack of evidence. Counsel testified the Applicant never wanted to plead guilty and always wanted to proceed to trial.

Counsel testified that while the Applicant lacked intelligence, he understood the evidence against him or the lack thereof. Counsel testified he had no indication that the Applicant did not know that burglary was wrong. He testified the Applicant could communicate when he wanted to and had even previously communicated with one of the detectives on the case.

Counsel testified the Applicant had the ability to communicate an alibi if he had one. He testified further that since the Applicant never offered an alibi, he did not know where the

Applicant was during the burglaries and assumed the Applicant was guilty. Counsel testified the Applicant gave him no reason to believe he was somewhere else when the crimes were committed.

Counsel testified that at times it was frustrating to communicate with the Applicant because he did not want to address the issues he was facing. He testified he spoke with the Applicant about taking the stand at trial. Counsel testified he advised the Applicant not to testify because he could be impeached with his prior burglaries. Counsel also testified he did not know what the Applicant's testimony would be if he took the stand.

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Counsel testified he did not make a motion to bifurcate the Applicant's trial. Counsel testified that at the time he did not see the need to bifurcate the trial, but in hindsight he may have done it. Counsel testified the Applicant's prior burglary convictions were an element that had to be proven by the State for a burglary- first degree conviction. Counsel testified he has never heard of a motion for bifurcated trial being granted. He also testified he has never made a motion to bifurcate a burglary trial and it is not his standard practice to do so. Counsel testified it is unlikely a motion to bifurcate would have been granted as it would basically take away the statutory advantage of the State to prove past burglaries.

Lastly, counsel testified he did not recall evidence being presented about the Applicant's placing the binoculars on the porch. He testified he did not object to the State saying the Applicant left the binoculars on the porch in their closing argument. Counsel testified he did not make a motion about the Solicitor discussing facts not in evidence.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

This Court finds the Applicant's testimony was not credible, while also finding trial counsel's testimony was credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to carry his burden of proving counsel should have investigated the Applicant's alibi and presented an alibi witness at trial. In order to support a claim that trial counsel was ineffective for failing to interview or call a potential alibi witness, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. The applicant's mere

speculation as to what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

This Court finds this allegation is without merit as both the Applicant and trial counsel testified the Applicant never told counsel about his alibi. This Court finds further the Applicant failed to present any alibi witness at the hearing and has not proven what would have been discovered had counsel investigated the Applicant's alleged alibi. This Court finds this allegation is without merit and counsel's performance was not deficient.

#6
PMB
This Court finds the Applicant failed to carry his burden of proving counsel should have advised the Applicant to take the stand. Counsel gave credible testimony that he discussed the right to testify with the Applicant and he advised the Applicant not to testify. This Court finds counsel's advice was justified because the Applicant could have been impeached with his prior burglaries and counsel gave credible testimony he would not have known the substance of the Applicant's testimony if he had taken the stand. This Court finds any misadvice by counsel with regard to taking the stand was cured when the trial court advised the Applicant of his right to testify. During this colloquy with the Court, the Applicant was told the following:

"sir, you also have the right to testify if you want to. But again, no one can make you testify. This is a personal right and only one that you can invoke...if you have convictions in your past, which I believe you do, within the last ten years, it would subject you to possible cross-examination, those would be brought out." (T. 137)

This Court finds this allegation is without merit and counsel's performance was not deficient.

This Court finds the Applicant failed to carry his burden of proving counsel should have looked into the Applicant's mental health prior to trial. A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In determining if counsel is ineffective for failing to request a competency hearing, an applicant

must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

This Court finds counsel gave credible testimony that while the Applicant lacked intelligence, he was aware of right from wrong and was able to communicate and assist in his defense when he chose to. Further, this Court finds the Applicant has presented no evidence that the Applicant suffered from any mental illnesses that would have caused him to be found incompetent at the time of his trial. This Court finds this allegation is without merit and counsel's performance was not deficient.

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PMB
This Court finds the Applicant failed to carry his burden of proving ~~but~~ ^{that} counsel should have made a motion for a bifurcated burglary trial. Counsel gave credible testimony that he has never requested that a burglary trial be bifurcated to separate the burglary elements and the Applicant's prior convictions. Counsel also gave credible testimony that he has never heard of the motion being successfully argued and it would probably have been denied. This Court finds counsel's perception of the motion is accurate and it is unlikely the trial court would have bifurcated the trial when a record of two or more prior burglary convictions is an element of burglary-first degree¹ which the State is required to prove beyond a reasonable doubt. This Court finds this allegation is without merit and counsel's performance was not deficient.

This Court finds the Applicant failed to carry his burden of proving counsel should have objected to the State closing statement. Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. State v. Mouzon, 321 S.C. 27, 31-32, 467

¹ S.C. Code Ann. §16-11-311(A) (1976) provides: A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and... (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both.

S.E.2d 122, 124-25 (Ct. App. 1995) aff'd, 326 S.C. 199, 485 S.E.2d 918 (1997). After all the evidence is in, counsel for the parties are in the position to present their respective versions of the case as a whole. Id. Only then can they argue the inferences to be drawn from all the testimony, and point to weakness of their adversaries' positions. Id. This Court finds counsel was not ineffective for failing to object to the Solicitor's closing argument in which she argued that the Applicant left the stolen binoculars on the porch of a home he visited. (T.146:14-25). This Court finds the Solicitor's statements were a part of the State's version of the facts and not objectionable. This Court finds the State's argument did not deprive the Applicant of a fair trial. This Court finds this allegation is without merit and counsel's performance was not deficient.

#8
PMB
Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore they are hereby denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of April, 20 13



Perry M. Buckner
Presiding Judge
14th Judicial Circuit

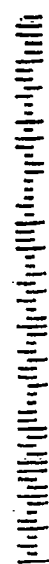
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Vannette, SC
29944

Hon. Daniel E. Sharone
Clerk of South Carolina Supreme Ct.
P.O. Box 11330
Columbia, SC
29211

2521131330



WITNESSES

Henry Criss, JCSO

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

September Term 2008

ARREST WARRANT NUMBER

J365788

THE STATE

vs.

Aijaquon Richard Drake

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FOREMAN

DATE

9/23/08

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

Burglary - First degree

SC Code: 16-11-0311 (A)(2)

CDR Code:0079

Class: Fel (EXM) / violent

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment to

Defendant

Witness:

C.C.C. PLS. and G.S.

WITNESSES

Henry Criss, JCSO

M. MALONIS JCSO

DOCKET NO. 2007GS2700673

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

October Term 2007

J365788

ARREST WARRANT NUMBER

THE STATE

VS.

Allaquon Richard Drake

ACTION OF GRAND JURY

TRUE BILL ☒

NO BILL

FOREMAN *Charles A. Stewart*

DATE *10/23/07*

Foreperson of Grand Jury
Date:

VERDICT

Pled Guilty 12/2/08

Indictment for

Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

Foreperson of Petit Jury
Date:

SC Code: 16-11-0312
CDR Code: 0080
Class: Fel/D

C.C.C. PLS. and G.S.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

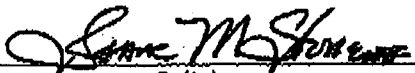
2007GS2700673

At a Court of General Sessions, convened on October 23, 2007, the Grand Jurors of Jasper County present upon their oath:

Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

That in Jasper County, on or about July 25, 2007, the Defendant, Aljaquon Richard Drake, did enter the dwelling of Scarlett Nimmer located at _____ without consent and with the intent to commit a crime therein in violation of Section 16-11-312(A) of the South Carolina Code of Laws (1976, as amended.)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

WITNESSES

Henry Criss, JCSO

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

J365791

September Term 2008

THE STATE

vs.

Aljaquon Richard Drake

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FOREMAN *Richard Drake*

DATE 9/23/08

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

Burglary - First degree

SC Code: 16-11-0311(A)(2)

CDR Code:0079

Class: Fel (EXM) / Violent

C.C.C. P.L.S. and G.S.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment to

Defendant

Witness:

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

2007GS2700674

At a Court of General Sessions, convened on September 23, 2008, the Grand Jurors of Jasper County present upon their oath:

Burglary - First degree

That in Jasper County, on or about July 25, 2007 the Defendant, Aljaquon Richard Drake, did enter the dwelling of Calvin Smith located at . without consent and with the intent to commit a crime therein. At the time the burglary was committed, the defendant had a prior record of two or more convictions for burglary in violation of Section 16-11-311(A) of the South Carolina Code of Laws (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

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WITNESSES

Henry Criss, JCSO

N. Macenis JCSO

DOCKET NO. 2007GS2700674

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

October Term 2007

ARREST WARRANT NUMBER

J365791

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

VS.

Aljaquon Richard Drake

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FOREMAN

DATE

Foreperson of Grand Jury
Date:

VERDICT

Pled Guilty 12/2/08

Indictment for

Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

Foreperson of Petit Jury
Date:

SC Code: 16-11-0312
CDR Code: 0080
Class: Fel/D

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

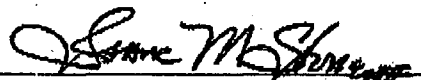
2007GS2700674

At a Court of General Sessions, convened on October 23, 2007, the Grand Jurors of Jasper County present upon their oath:

Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

That in Jasper County, on or about July 25, 2007 the Defendant, Aljaquon Richard Drake, did enter the dwelling of Calvin Smith located at , without consent and with the intent to commit a crime therein in violation of Section 16-11-312(A) of the South Carolina Code of Laws (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor